

SOUTHERN EXPOSURE

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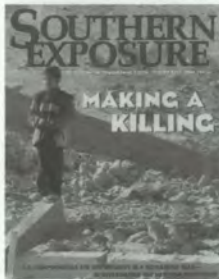
ACTS OF GOD?

HOW NATURAL ARE NATURAL DISASTERS?



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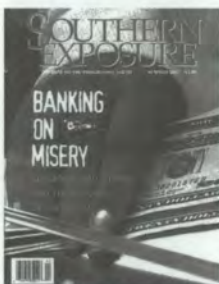
**TOOLS FOR
UNDERSTANDING
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**Vol. XXXI, Nos. 3-4 Fall/Winter
2003/2004**

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SOUTHERN EXPOSURE

Southern Exposure has been published since 1973 by the Institute for Southern Studies. With its combination of investigative reporting, historical perspective, oral histories, photography, and literature, the magazine has earned a national reputation. The magazine has received a National Magazine Award; two George Polk Awards; the Sidney Hillman Award for courageous reporting on racial injustice; the John Hancock Award for excellence in business journalism; two Alternative Press Awards for best regional publication; and several Project Censored Awards.

The Institute for Southern Studies is a nonprofit center working for progressive change in the region. Since its founding in 1970, the Institute has sponsored research, education, and organizing programs to 1) build the capacity of grassroots organizations and communities with strong local leadership and well-informed strategies; 2) provide the information, ideas, and historical understanding of Southern social struggles necessary for long-term fundamental change; and 3) nourish communication, cooperation, and understanding among diverse groups.

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SOUTHERN EXPOSURE

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FRONT PORCH

As I write, Hurricane Jeanne—the last of 2004's historic and seemingly endless procession of storms—is leaving its finishing touches on the Carolinas before continuing its lazy march northward. Jeanne promises to deliver our Northern neighbors little more than a few gusty rains—a far cry from the devastation witnessed in Florida and other points South.

It's true that this year has been unusual: it's the first time since record-keeping began in 1851 that four hurricanes have hit Florida in the same Atlantic hurricane season (from June to November), filling the minds of more than a few Sunshine State residents with apocalyptic visions and leaving them to wonder what they did to deserve this.

Yet for all of 2004's storm surprises, the stories that have emerged from Florida's wreckage are also eerily familiar, even predictable. We read of low-income communities with sub-standard housing—often trailer parks—leveled by wind and rain. We hear of posh beachfront developments laid waste due to their cozy proximity to the ocean, while owners demand government bailouts for the “unforeseen” damage. On occasion, we learn that wastewater pools and similar facilities have overflowed—usually because they weren't built with severe weather in mind—leaking contaminants into local water supplies and endangering thousands.

“Strictly speaking,” says the United Nations in their International Strategy for Disaster Reduction, “there are no such things as natural disasters.” There are only natural *hazards*, the U.N. says—which only become “disasters” if communities are vulnerable or unprepared for whatever nature has in store.

So there's nothing “natural” about the fact that Hurricane Jeanne, while killing 70 people and knocking out electricity for 1.5 million in Florida, claimed the lives of over 2,000 people in Haiti, a country where decades of economic and social devastation have rendered the country uniquely vulnerable to powerful storms.

As the stories in this issue of *Southern Exposure* show, there's nothing new about how corporate leaders and state boosters underplay the role of human forces—especially race and class—in determining who suffers (and who gains) when nature strikes.

These elites have also been predictably reluctant to acknowledge how greed and bad policy—as manifested in activities like wide-scale deforestation, mountaintop removal, and destruction of coastal wetlands—help trigger disasters by making natural systems more fragile, putting not only the environment but entire communities at risk.

LETTER FROM THE PUBLISHER

As the staggering impact of humans on the planet grows, our ability to understand and confront the role of political and economic choices in creating disasters will only become more vital.

Whether or not the flurry of hurricanes that battered the South this year is the direct result of human-caused global climate change, as several scientists have suggested, may never be conclusively demonstrated. But there is little dispute that our country's tragic and unnecessary addiction to polluting energy sources will set in motion enormous climate changes with permanent and severe repercussions—not just during hurricane season, but every day of the year.

The sooner we stop seeing these developments as “Acts of God” and admit that they are the byproducts of policies that we can and must change, the better off we'll be. Indeed, our survival may depend on it.

HONORS & ACCOLADES

One reason that our readers tell us they love reading *Southern Exposure* is because of the quality of our in-depth coverage of critical social issues. We are pleased to announce that *SE*—especially our landmark 2003 project investigating predatory banking by Citigroup and other financial institutions, led by Virginia-based reporter Michael Hudson—has recently been honored with some of the top awards in journalism.

In just the last year, *Southern Exposure* and its writers have garnered the following accolades:

Winner, 2003 George Polk Award, Magazine Reporting (previous winners include *Harpers*, *The New Republic* and *Time*)

2nd Place, Society of Professional Journalists, 2003 “Green Eyeshade Award” (the top award for Southern journalism)

Judge's Award, 2003 Harry Chapin Media Award for poverty reporting

Honorable Mention, 2003 White House Correspondents' Association Award

Honorable Mention, 2003 National Press Club Award, Consumer Journalism

Finalist, 2003 *Utne* Independent Press Award, Local/Regional Coverage

A big “congratulations!” to our writers and editors—and a big “thank you” to our readers and supporters for making it possible.

This issue is a bit behind schedule, and we apologize. Rest assured that you will receive a full complement of Southern Exposures in the coming months. We have some great issues planned, so stay tuned!

CHRIS KROMM
Editor and Publisher



SE's investigative and editorial team accepting the 2003 George Polk Award for our two-part series on predatory lending. L to R: Bob Manning, Mary Kane, Gary Ashwill, Mike Hudson, and Chris Kromm. Photo courtesy of Long Island University/George Polk Awards.

SOUTHERN NEWS ROUNDUP

EXTREME MAKEOVER?

Southern Progressives Stage a Democratic Coup

Efforts are underway across the South to give the Democratic Party a populist makeover, with activists in North Carolina, Alabama, and Florida organizing progressive caucuses within their state parties and working to wrest control from Republican wannabes.

South Carolina and Texas Democrats have had progressive party caucuses for several years now, and similar initiatives are taking place in states outside the South, including Arizona, Iowa, Maine, and Utah.

The caucuses are pressing the party to focus not merely on beating Republicans, but to engage a disaffected electorate by promoting core Democratic issues such as economic and social justice and environmental sustainability. Organizers say the party's rightward drift over the past several decades has created conditions conducive to a progressive renaissance.

"How [Al] Gore ran his campaign in 2000, [Ralph] Nader's role and the way [President] Bush is running the planet over a cliff has poured fuel on a smoldering fire," says Brett Bursey, a Columbia resident who serves on the planning committee for the Progressive Caucus of the South Carolina Democratic Party.

Since forming four years ago, the South Carolina organization has made substantial gains. At the state party's convention this past May, 271 out of the 704 delegates on the floor were progressive caucus members. "We're on track to have a majority of the voting delegates at the '06 convention," says Bursey.

He traces the South Carolina caucus's roots to 1984, when Rev. Jesse Jackson won the state's Democratic presidential primary and his supporters came close to capturing the party leadership. The Jackson forces were composed of progressive Democratic activists who focused on precinct-level organizing, demonstrating the possibilities of grassroots change within the party.

After the Christian Coalition employed a similar strategy to win control of South Carolina's GOP in the mid-1990s—an achievement it leveraged to capture the state House and governorship—economic and social justice activists began organizing their own coalition. That became the South Carolina Progressive Network, which Bursey directs. The group includes about 60 organizations representing more than 100,000 people and serves as the caucus's base.

The presidential campaigns of Howard Dean and Dennis Kucinich have also played a critical role in the formation of progressive caucuses by drawing energetic and activist-oriented voters into the party fold.

"Lots of Dean and Kucinich folks wanted to do something, so they began organizing these caucuses," says Kevin Spidel. The former national field director for Kucinich's campaign, Spidel is now helping organize Arizona's progressive Democratic caucus. He also directs ProgressiveVote.org, a national organization established earlier this year to help coordinate and provide resources to state-level progressive Democratic efforts.

"We are beginning to organize under the banner of the Democratic Party to bring the party back to the people," says Spidel.

The Progressive Democrats of North Carolina refer to themselves as "Green Dog Democrats."

Among the new party activists excited about the establishment of ProgressiveVote.org is Brooke Moore, who chairs the Progressive Democratic Alliance of Alabama. Founded earlier this year, the alliance is still in the early stages of development and is not yet seeking official recognition from the party. Moore, a Birmingham resident, got involved in Democratic organizing when she led a Dean meet-up at a local donut shop.

"We're still very green when it comes to politics," Moore says of her group. "To have an organization that can give us some direction is a big weight off our shoulders."

Spidel reports that efforts are also underway to organize Democratic caucuses in Florida and a handful of other states, though he says it's still too early to offer details.

Further along in their organizing efforts are the Progressive Democrats of North Carolina. The group held its founding convention in June 2004, drawing more than 200 people to Greensboro. Members refer to themselves as the "Green Dogs," a play on the term "Yellow Dog Democrat," which denotes party members so loyal they'd vote for an ochreous hound before a Republican.

Like their South Carolina counterparts, the Green Dogs want formal inclusion in the state Democratic Party, like the Young Democrats or the African American Caucus. That would give the caucus seats on the state, congressional district and county executive committees. The state party executive committee will rule on inclusion at a meeting to be held sometime this fall. The Green Dogs are also forming a political action committee to support candidates for state office.

We are beginning to organize under the banner of the Democratic Party to bring the party back to the people.

“What has been chronically missing among progressive-issue activists is a way to flex their political muscle in a way that gets candidates elected to the legislature,” says Green Dog organizer Pete MacDowell of Chapel Hill.

But not everyone thinks formal party recognition is necessarily the best route for a progressive caucus to take. The Progressive Populist Caucus of the Texas Democratic Party, for example, has chosen to eschew formal recognition for a more radically reformist approach.

“I see no tangible benefit to being officially recognized,” says Chair Stan Merriman of Houston. “When you put yourself in that situation, you dilute your ability to speak from the outside lovingly but critically about the party leadership and the way the party functions.”

Despite its insurgent status, however, the Texas group won 17 of 62 seats on the state party’s executive committee at the recent convention and captured a third of the platform advisory committee. In addition, about 15 percent of the state party’s delegates to the national convention are progressives. “We have shifted the party’s center of gravity to the left,” says Merriman.

Whether caucus organizing takes place within the official party structure or without, left-leaning lawmakers say they welcome the effort. N.C. Rep. Paul Luebke, a Durham Democrat serving his seventh term in the state House, has often found himself among an isolated minority of lawmakers pushing for progressive legisla-



Photo: Becci Robbins.

In just two years, State Representative Joe Neal has helped lead the South Carolina Progressive Caucus to a position of influence. At the Democratic Party Convention in May 2004, 271 out of 704 delegates were Progressive Caucus members.

tion on health care, taxes, education, and the environment. By demonstrating that there is significant support among the electorate for such initiatives, he says, the Green Dogs will make his job much easier.

“If they can learn how to work with legislators, it will make a huge difference,” says Luebke. “It’s an idea long overdue.”

SUE STURGIS

THE PRICE OF WAR GAMES

Two Mississippians are trying to make the U.S. military pay for its damage to a Puerto Rican island

Before arriving in Vieques, Puerto Rico, earlier this year, I had imagined this small island (20 miles long by 3.5 miles wide) to be barren, destroyed by more than 50 years of U.S. weapons testing. I had envisioned a brown island, a tired island. Instead, I was spellbound by an immensely beautiful place.

When I walked into a local progressive radio station, I faced my second surprise: two charming men from Jackson, Mississippi. John Arthur Eaves, from Eaves Law Firm, and Bif Browning, a researcher, are trying to make the U.S. government pay for health problems that they say the people of Vieques suffer as a result of the island's bombardment.

"Our [legal]claim," explained Eaves, "is for fear and flight [damages] plus medical problems plus future medical costs. Presently, we have 7,500 people that are sick. We want them to have enough money so each family can decide the best way to protect themselves. The Navy stated that it would honor its commitment to repair the injury to the health of the people—as long as we proved our case. And we're going to continue working to make sure that they honor their commitment."

Browning and Eaves were first invited to work on the case by Vieques resident Rodami Serato, who told them that 13 of his relatives were suffering from cancer.

"They started bombing the island in 1941, so the

weapons they've used have evolved over time," says Browning. "They've used everything from [small] bombs—50 pounds to 100 pounds—up to 3,000 and 5,000-pound bombs. Just the sheer size of the bombs would do damage to the island and shake it and damage the structure of the house and cause a lot of nervous problems in the children." He compares the effects of the largest bombs to earthquakes.

The federal system—when confronted by a determined community—can be defeated.

From the 1950s through the 70s, Browning says, Vieques was also the main chemical weapons testing ground. "We know by the navy's admission that they've used depleted uranium here. They've used napalm. They've done all kinds of electronic and radiological testing. They've dispersed chemical sprays [and] defoliants, possibly Agent Orange. This island for 60-plus years has been in a state of war."

"Simply put," adds Eaves, "everything that our military has used—with the exception of the nuclear bomb—has been first tested on Vieques."

The military not only used approximately 75 percent of the island for its testing range, it also tested weapons directly on the people of Vieques. According to Eaves and Browning, a former marine has revealed that during the nighttime, U.S. soldiers would come through town in jeeps dispersing chemical sprays. The two also say that a U.S. general has praised the Vieques range for the realism of its training, due to the close proximity of the civilian population.

The land has been so contaminated that it no longer can produce healthy food, and, thus, not only has a serious consequence on human health, but also has reduced economic health on the island. Cattle-grazing was a large scale operation, until some cattle recently tested positive for contaminants.

Even though the bombing has stopped, the people will continue to be exposed to toxins in the environment for years, according to Eaves, and could pass them on to their descendants. "Generations are passing on a contaminated legacy," says Eaves. "Until we are told of all

They've used depleted uranium here. They've used napalm. They've done all kinds of electronic and radiological testing. They've dispersed chemical sprays [and] defoliants, possibly Agent Orange. This island for 60-plus years has been in a state of war.

Photo: Rania Masri



Crosses representing Vieques residents said to have died from environmental contamination caused by a U.S. Navy firing range.

that has been used here, and conduct the research to identify which plants can be used for bioremediation, the people will remain at risk with anything they eat. Until the Navy recognizes its responsibility and owns up to everything it used here so that science can study it more in depth, the people are at high risk.

"This is the clearest case of environmental racism that we have observed, and we are from Mississippi and we've seen many things."

The people of Vieques are not alone in their suffering. "Many soldiers have been damaged by the things that were developed here in Vieques," says Browning. "We know many of our own soldiers have type two diabetes from cellular mutation caused by Agent Orange. We know that napalm has harmed many of our soldiers. All those things were developed here in Vieques first. So, as a result of what is happening in Vieques, many soldiers have been hurt."

He explains that the politics of the Vieques controversy have shifted as a result of pressure from the increasingly powerful Hispanic and Puerto Rican communities. "These people have been suffering here for many, many years. It is only recently that their voice has been heard in Washington." The Black and Asian caucuses in the U.S. Congress have also lent their support to the cause.

The campaign against the Vieques live-fire testing range kicked into high gear in 1999, after a stray bomb killed a civilian security guard. In February 2003, the U.S. military finally announced it was abandoning the Vieques range. Bob Rabin, head of the Committee for the Rescue and Development of Vieques, and one of the lead organizers of the massive civil disobedience actions, calls this "a victory for Vieques, for Puerto Rico, and for the world."

"The victory has given hope, given an opportunity for the earth to cure itself, opened possibilities for future environmental cleaning," says Rabin. "This struggle epitomizes..."

This is the clearest case of environmental racism that we have observed, and we are from Mississippi and we've seen many things.

mizes the colonial situation of Puerto Rico. And we stopped the U.S. military from using Vieques to prepare aggressive military attacks, invasions against people throughout the world.”

We learned, Rabin said, that “the federal system—when confronted by a determined community—can be defeated.”


The trainings and testing, of course, continue elsewhere. According to Rabin, the military has moved its activities to several sites on the Gulf and south Atlantic coasts, in the Carolinas, Georgia, and Florida, including a large bombing range in the Okala forest.

Rabin urges Southerners to protest these facilities used to replace Vieques, as “an act of solidarity with Vieques and the rest of the world. Every step we take to stop U.S. militarism is a step towards world peace.”

RANIA MASRI

Bob Rabin of the Committee for the Rescue and Development of Vieques can be contacted at bieke@prorescatevieques.org.


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EDITOR OF THE NEW SOUTH

John Seigenthaler's *Tennessean* challenged political corruption, corporate wrongdoing, and the Ku Klux Klan.

John Seigenthaler's eyes are as blue as a gas flame, but they burn with white-hot intensity. For 30 remarkable years, those eyes pored over millions of type written words as editor of *The Tennessean* newspaper, searching for nuance and truth. In doing so, he trained some of the finest journalists of a generation, spoke for the voiceless, and liberally wielded power in the New South.

Seigenthaler joined *The Tennessean* in 1949. By 1954, he had broken his first major story—the murder of Owen Travis, a black saw-hand, by Ernest Cole, a white cab driver, over an \$8 fare. Cole had stabbed and run over Travis. Within 36 hours, the Benton County grand jury, on which Cole's father-in-law sat, had cleared Cole.

Seigenthaler's articles forced a new grand jury to be empanelled and launched a boycott of *The Tennessean* by white readers in West Tennessee. Eventually, Cole was convicted of manslaughter, marking the first time since Reconstruction in Tennessee that a white man had been found guilty and imprisoned for killing a black man.

Another news story changed Seigenthaler's life and, temporarily, his career path. In 1957, he investigated the Teamsters Union in Tennessee, which, at the time, was engaged in systematic violence, intimidation, and the bribery of a judge. His reports got the attention of then chief counsel to the Senate Labor-Management Rackets Committee Robert F. Kennedy, who brought the committee to Tennessee. The two men became fast friends, and in 1960 Seigenthaler joined Kennedy's Justice Department as the attorney general's right-hand man.

At the Justice Department, Seigenthaler played a key role in the protection of the Freedom Riders by demanding that governors provide troops to protect them. On one summer day, he even threw himself into a mob to protect two women civil rights workers who were being attacked—an action that resulted in a fractured skull and a brief coma. Later that year, however, he was offered and took the job he had dreamed of—editor of *The Tennessean*.

Immediately, under his editorial leadership, the paper exposed vote fraud by Gene “Little Evil” Jacobs, a corrupt city politician, who eventually went to jail. He also enacted hiring policies that favored eccentric, idealistic, and talented reporters. Reporters such as Bill

Kovach, Jim Squires, Wendell "Sonny" Rawls, and future Vice President Al Gore filled his desks.

Day in and day out, *The Tennessean* challenged powerful political machines and corrupt corporations.

"He encouraged us to take on sacred cows," says Rawls. "Nothing was out of bounds. Hell, we could call senators and bank presidents in the middle of the night for a story."

"Working at *The Tennessean* in the 1960s was like breathing pure oxygen," Kovach observed to *The Nashville Scene*. "People of my generation were attracted to the paper. We saw journalism as an opportunity to help people who had no representation, who were overlooked by the system."

In 1973, Seigenthaler assigned a young reporter named Frank Sutherland to be committed to a state mental institution for a month to expose the treatment of the mentally ill. His story began: "Central State Psychiatric Hospital is a warehouse for the storage of people—an unaccredited and unclean hospital with more than half its doctors unlicensed to practice in Tennessee. I know. I just spent 31 days there." The article forced a state investigation and reform of Tennessee's psychiatric care.

Six years later, he sent investigative reporter Jerry Thompson undercover to infiltrate the Ku Klux Klan. For 18 months, Thompson lived under a fake identity and painstakingly penetrated the Alabama Klan, surviving several intense interrogations by suspicious and violent members. Thompson's findings garnered national recognition and a book deal. He toured the country offering insights into the tactics and goals of David Duke's "new Klan."

Day in and day out, *The Tennessean* challenged powerful political machines and corrupt corporations, exposed scandals in the society class, and even took on the revered Tennessee Valley Authority. Journalist Willy Stern described Seigenthaler's tenure at the paper as "an epic chapter in Southern journalism filled with crusades

for black men and women, for open government, disenfranchised voters, the poor and infirm and the otherwise dispossessed."

Part of the draw of the paper was that even as the news industry changed, Seigenthaler refused to let profits drive the bottom line. Rawls notes that he "never had a word spoken to me about [a story] being too expensive." However, paying for a story and paying reporters were two different things. Many of the reporters were so broke that the office had a coat and tie that reporters would share when they needed it for a story. "We got starvation wages. They paid you in molasses," says Squires. "But you could get up every morning and do the right thing."

For three decades, *The Tennessean* exposed fraud in city government, environmental damage caused by coal mining, and abuse in retirement homes. It fought vigorously for civil rights. It also operated as a political machine. "Hell yeah, we'd slant the news for our candidates," noted columnist Frank Ritter. "*The Tennessean* had a mission," says Squires. "You could either get on board or you could be a namby-pamby-balanced-don't-take-any-sides reporter."

Seigenthaler also took stands outside *The Tennessean*, engaging in what he calls "situational ethics." He wrote his resignation from the Rotary Club on a napkin when they turned down the first black applicants. One December, Fisk University, a predominately black college in Nashville, could not pay its heating bills. The power company turned off the heat. For five days, Seigenthaler staged a one-man picket of the company and raised the money needed to pay the bill and get the heat back on.

***The Tennessean* had a mission. You could either get on board or you could be a namby-pamby-balanced-don't-take-any-sides reporter.**

Seigenthaler retired from *The Tennessean* in 1991 to found the First Amendment Center, which fights against infringements on free expression and for more diversity in the newsroom. He is also promoting his book on

President James K. Polk (a Tennessean) and avidly watches his son, an anchor on NBC.

He moves a little more slowly now. But when asked about the state of journalism today, he vehemently argues that "if you deny the newsroom the resources to do the job, you deny the opportunity to provide excellent reporting. And beyond that, you deny the readers the information they need for a democratic society." Those blue eyes start their slow burn.

RYAN COONERTY

ROUNDUP CONTRIBUTORS

RYAN COONERTY is a graduate of the University of Virginia School of Law. He currently teaches legal studies at the University of California, Santa Cruz.

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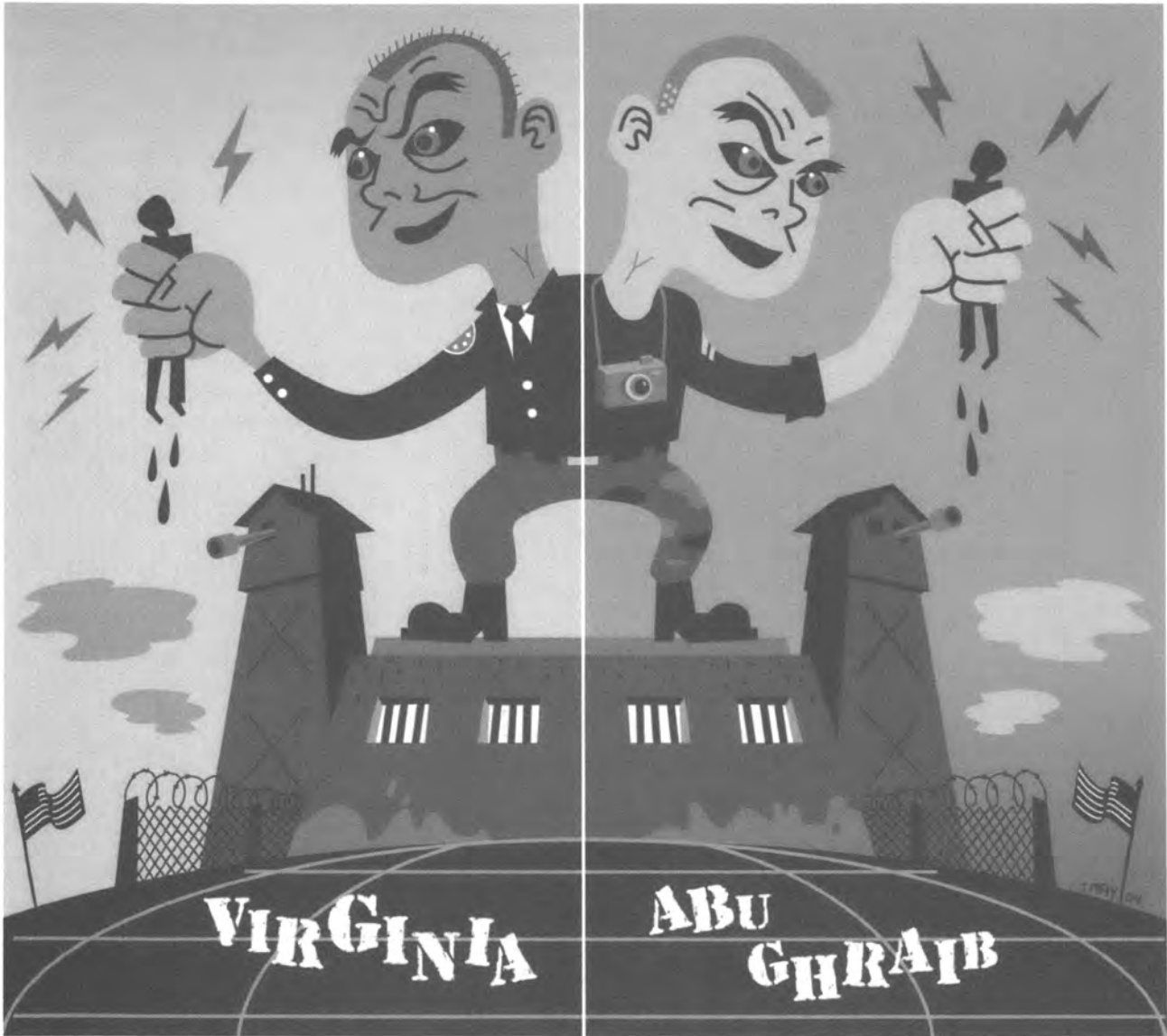


Illustration: Ted May

When Albuquerque, N.M., lawyer Paul Livingston first saw the now-infamous photos of the naked Iraqi prisoner being menaced by American soldiers with dogs in Baghdad's Abu Ghraib Prison, he immediately thought of Virginia.

Livingston represents 66 of 108 New Mexico inmates shipped to Virginia's Wallens Ridge prison in 1999. The cases, he says, involve inmates who were non-violent offenders and have since been released. Nevertheless, Virginia prison guards beat them, shot them with stun guns and rubber bullets, slammed them against floors and walls, chained them to their beds for days at a time, sub-

Abuse of Iraqi inmates follows a pattern established in Southern prisons

Virginia prison guards beat them, shot them with stun guns and rubber bullets, slammed them against floors and walls, chained them to their beds for days at a time, subjected them to racist verbal abuse, and threatened them with sodomy and vicious dogs.

jected them to racist verbal abuse, and threatened them with sodomy and vicious dogs. This was done as a matter of policy, Livingston says, "just to show them who was boss and how terrified they should be."

But while the Abu Ghraib abuse photos provoked international outrage and apologies from President George W. Bush, published reports of incidents in Virginia and other states have left both the president and the public largely unconcerned. Alan Elsner, who discusses Virginia prison abuses at length in his recently published book, *Gates of Injustice: The Crisis in America's Prisons*, points out that a videotape made by Texas correctional officials when Bush was the state's governor in 1996 shows guards using dogs and stun guns to torment naked prisoners as they crawled on the ground.

Bush was not disgusted then. In fact, he presented himself as admirably tough on crime. In a 1999 interview with the now-defunct *Talk Magazine*, he even made fun of a condemned inmate. "Please don't kill me," the future president was reported to have whimpered in imitation of Karla Faye Tucker, "his lips pursed in mock desperation."

Why was Bush forced to react differently to the abuse of prisoners at Abu Ghraib? Jenni Gainesborough, director of the Washington, D.C., office of Penal Reform International, believes a combination of factors is at work. Photos are powerful, she says. And although the occasional videotape of abuse sometimes surfaces here, U.S. prisons, assisted by U.S. courts, are extremely vigilant when it comes to both preventing such documentation in the first place and destroying it when, inadvertently, it manages to see the light of day.

From Gainesborough's perspective, the resultant national discussion about the treatment of inmates is a silver lining of sorts. "Suddenly, people are realizing there are in-

ternational standards, and that there are good reasons to adhere to them," she says. The lesson for Virginia, she says, is one of culture.

"The reason abuse flourished in Virginia is because it was encouraged and tolerated by [former Virginia Department of Corrections Director Ronald] Angelone. The reason it flourished in Iraq is because of [Secretary of Defense Donald] Rumsfeld and everyone else who says the rules don't apply to us and we can do whatever we want to do to certain people."

Angelone, currently a director of the prison contracting company Compudyne, retired from the Virginia Department of Corrections (VDOC) in 2002. Although plagued by allegations of prison brutality throughout his eight-year tenure, he routinely dismissed the charges as the lies of predators and liberals.

While Bush was making fun of Tucker in Texas, Angelone was designing and building supermax prisons, designed to house "the worst of the worst" inmates, in rural western Virginia. When he found, once they were built, that Virginia lacked sufficient "violent predators" with which to fill them, he changed the department's inmate classification system so that more prisoners would fit the bill. In addition, he opened up the supermaxes for business, bringing in prisoners from overburdened facilities in the District of Columbia, Vermont, Connecticut, New Mexico, and Hawaii.

According to testimony cited by Elsner's book, Virginia correctional officers at these prisons routinely punished inmates for minor infractions with "the Ultron II, a handheld device that delivers 50,000 volts of electricity; the Taser, which fires electric darts connected to wires; and the ICE shield that is activated to deliver a powerful electric shock whenever a prisoner touches it." Black and Hispanic prisoners were threatened and made to crawl on the floor.

The Virginia prison system is "one of the worst in the country . . . the most violent, the most racist, the most ready to resort to force. There's no accountability anywhere, no independent oversight, and the prisoners have no recourse."

Larry Frazier, a Connecticut prisoner, was killed by guards who mistook his diabetic convulsions for combative behavior. When a prison contract doctor pointed this out, Angelone had him fired and barred from the prison. When Human Rights Watch issued a report documenting and condemning his policies and practices in the supermaxes, Angelone ignored it. Complaints by out-of-state prisoners, he told members of the Virginia Crime Commission in 2000, were “lies by convicted felons who don’t like being in a tough prison.”

As a result, the Virginia prison system became “one of the worst in the country,” according to Elsner. It is, he says, “the most violent, the most racist, the most ready to resort to force. There’s no accountability anywhere, no independent oversight, and the prisoners have no re-

“Suddenly, people are realizing there are international standards, and that there are good reasons to adhere to them.”

course. The Department of Corrections deems 90 percent of their complaints unfounded. You’re right there with Mississippi, Texas, and Alabama. That’s the company you’re in.”

David Fahti, a lawyer for the National Prison Project who litigated on behalf of the Connecticut inmates sent to Wallens Ridge, was not surprised when he heard that Sgt. Ivan “Chip” Frederick, who tortured prisoners in Abu Ghraib, is a Virginia correctional officer.

“I don’t think it’s an accident,” says Fahti. “Unfortunately, what we’re seeing in the U.S. prisons in Iraq is not qualitatively different from what goes on in American prisons on a fairly routine basis.

Frederick, 38, an Army reservist, was the senior enlisted officer in charge at Abu Ghraib between October and December 2003 (when most of the documented abuses are thought to have occurred). He recently pled guilty to eight charges, including conspiracy to maltreat prisoners, maltreatment of prisoners, dereliction of duty, assault, and indecent acts. In exchange for agreeing to help prosecutors, Frederick received an eight-year prison sentence. In addition, his rank was reduced, his pay forfeited, and he was dishonorably discharged from the Army.

Prior to his tour in Iraq, Frederick spent seven years as a correctional officer at the Buckingham Correctional Center in Dillwyn, Va., where his wife, Martha, still works.

Larry Frazier was killed by guards who mistook his diabetic convulsions for combative behavior. When a prison contract doctor pointed this out, Angelone had him fired and barred from the prison.

When the charges were first filed, both Frederick and his wife insisted he was innocent and that he was being made to take the fall for policies he neither devised nor carried out. But months later, at his October 20 court martial in Baghdad, Frederick admitted attaching wires to a naked, hooded prisoner and making him stand on a box for hours in the belief that he would be electrocuted if he fell off.

Frederick also admitted to sucker-punching a hooded prisoner and to forcing prisoners to masturbate and pile on top of each other naked. He described how he and other soldiers then jumped on the prisoners, stomping on their hands and feet while “sort of laughing.” Military intelligence officers encouraged such acts, he said, in order to humiliate and break detained Iraqis.

“I didn’t think anyone cared what happened to detainees as long as they didn’t die,” the former correctional officer told the judge.

A photo of Frederick, taken at Abu Ghraib, shows him seated on top of a naked and trussed Iraqi detainee, straddling the man’s head with his boots.

Meanwhile, things haven’t changed much in Virginia. Even with Angelone gone, says ACLU of Virginia director Kent Willis, “we continue to be flooded with mail from Virginia prisoners describing everything from poor medical care to physical abuse by guards.” Angelone himself may be headed back to the public payroll. State Attorney General Jerry Kilgore, the Republican candidate in next year’s gubernatorial race, is said to be considering re-installing him as either head of prisons or state director of public safety.

Laura LaFay, a Virginia writer, covered the state’s prisons for The Virginian-Pilot during the 1990s.

TORT REFORM, LONE STAR STYLE

How hard it is for ordinary Texans to get their day in court—and how powerful interests want to make it equally hard for all Americans



Illustration: Ted May

BY STEPHANIE MENCIMER

On June 23, 1999, 24-year-old Juan Martinez and his uncle Jose Inez Rangel were hydro-testing a pipe at the Phillips Chemical plant in Pasadena, Texas. The pipe was about 10 feet from a reactor that manufactured plastic used in drinking cups, food containers, and medical equipment. At a crucial moment, plant operators opened the valves in the reactor out of sequence, sending an excess of a volatile chemical into the reactor, where it mixed with a catalyst to create a vapor cloud—and a fiery explosion. The blast coated Martinez and Rangel with 500-degree molten plastic. They were burned alive.

Martinez and Rangel were not the first workers to die at the Phillips plant. All told, 30 workers had been

killed and hundreds severely wounded at the plant in the previous 11 years. The worst of the accidents happened in 1989, when an explosion killed 23 people at the plant. The chemical company paid out \$40 million to compensate for the death of one of the victims.

In the lawsuit filed by Martinez's widow, attorney John Eddie Williams would write, "No other serial killer in this state has been allowed to go unpunished and virtually unbridled for so long."

A few months after he wrote that line, Williams was downtown taking the deposition of a worker from the plant. Williams looked out the window, he says, and saw smoke. Another explosion at the plant. And another worker dead—a man who had survived the 1989 blast.

Seventy others were hurt, including four men who suffered third-degree burns over half their bodies. The explosion set off car alarms a mile away and closed nearby schools. "The guy being deposed would have been there," says Williams.

"No other serial killer in this state has been allowed to go unpunished and virtually unbridled for so long."

All the pieces were in place for a big verdict—a statement from a jury of average citizens who would punish the company for its long record of death and indifference. After he presented the case to a mock jury, Williams says, the mock jurors were so horrified by the facts some of them began boycotting Phillips products.

But Phillips had little reason to worry. The company didn't even bother to make a settlement offer to Martinez's family. It knew it could come into court cushioned by a series of "tort-reform" measures championed by George W. Bush during his first term as governor of Texas. Among them was a cap on punitive damages, signed into law by Bush in 1995, which limited such awards to the greater of \$200,000 or twice the economic damages, plus up to \$750,000 for noneconomic damages such as pain and suffering.

Bush hailed the cap as way of reducing "frivolous" lawsuits. In order for the jury in the Martinez case to award punitive damages in excess of the cap, it would have to find that Phillips had "intentionally and knowingly" killed Martinez. In layman's terms, the legalese meant that the aggrieved had to prove Phillips murdered Martinez, on purpose—a standard no civil case in Texas has ever met.

The jury, which was not told about the damage cap during the trial, found Phillips had been negligent and acted with malice in Martinez's death. It awarded his widow, daughter, and parents \$7.8 million in actual damages and \$110 million in punitive damages—the equivalent of one month's profits for the company. But state law would reduce the punitive damages to \$3.2 million, making the entire award a fraction of one percent of Phillips's annual profits.

For Texas trial lawyers, awards of that size give mega-corporations like Phillips the green light to make business and safety decision based on life-versus-profit calculations

they term "Pinto math." That's the crude calculation used by the Ford Motor Company in the late 1960s and early '70s when it decided it was cheaper to let hundreds of people die each year than to spend about \$5 per vehicle to prevent Pintos' gas tanks from exploding in rear-end accidents. Without the threat of high punitive damages in wrongful death lawsuits, Texas oil and chemical companies like Phillips have little incentive to spend money to improve unsafe plants and pipelines. Certainly the government isn't going to make an impact: federal officials cited Phillips for serious safety violations in the 1999 explosion that killed Martinez and Rangel, but fined the company just \$140,000. Steven Daniels, a researcher with the American Bar Foundation, says, "Workers are just at the mercy now of their employers and the insurance companies."

It's a state of affairs whose genesis can be traced back to Bush's long-shot run for governor of Texas in 1994. Bush won by running a relentlessly on-message campaign, harping on three or four key issues—among them his proposed limit on "junk lawsuits" by consumers and injured workers. In January 1995, just a few days after he took office, Bush met with members of a corporate-funded group, Citizens Against Lawsuit Abuse, at a salsa factory outside Austin. Declaring a legislative emergency on out-of-control lawsuits, Bush said, "Tort reform is the most constructive and positive and meaningful economic development plan Texas can adopt." Calling the laws a "job creation package," Bush went on to sign a series of measures that severely restricted citizens' ability to seek civil justice.

"Workers are just at the mercy now of their employers and the insurance companies."

As Bush sought his second term in the White House this fall, he and his backers gleefully attacked Democratic vice presidential nominee John Edwards as a parasitic trial lawyer. Bush is "trying to take some of the worst policy with the state of Texas and import it nationally," said Austin plaintiff attorney Mark Perlmutter during the campaign.

The president's reelection gives Republicans control of all three branches of the federal government and puts tort reformers in an ideal position to finally spread their agenda nationwide. Nine years into the transformation

of the Lone Star State's civil justice system, the experience of Texas is a preview of what the rest of the country might look like if corporate interests and their political allies succeed.

THE LIONS OF TORT REFORM

Whether they realize it or not, Americans are constantly hearing pitches for tort reform. A famous example is the case of the too-hot coffee from McDonald's. In 1994, Stella Liebeck, an 80-year-old woman from New Mexico, won a \$2.7 million jury award from McDonald's for burns she suffered after spilling coffee purchased at one of the chain's drive-through windows.

Jay Leno and other talk-show comedians had a blast, riffing on lawyers and hot beverages for monologue laughs. The punch lines, however, wouldn't have worked too well with a more detailed set-up: Liebeck suffered third-degree burns on her private parts. She needed an eight-day hospital stay plus skin grafts to recover from the injury. At first, she had asked McDonalds to simply pay her medical bills, but the company refused. Documents uncovered during her lawsuit showed coffee buyers had filed more than 700 claims against McDonalds alleging that its coffee was too hot for human consumption. When the case went to trial, jurors did indeed award \$2.7 million in punitive damages – to punish McDonalds for failing to remedy the problem that it knew was injuring lots of people. A judge subsequently slashed the award to \$480,000 – a detail that late-night comedians and tort reformers haven't seen fit to mention, either.

In the early 1990s they began a massive PR campaign insisting that Texas was a “plaintiffs’ paradise” and a magnet attracting people to the state to play the “lawsuit lottery.”

Facts and nuance notwithstanding, the tort-reform lobby thrives by convincing the public that courthouses nationwide are passing out multimillion-dollar awards for spilled coffee every day. The real victims, tort reformers claim, are thousands of small businesses that are careening into bankruptcy as they try to defend themselves from frivolous claims. And in the early 1990s, they

began a massive PR campaign insisting that Texas, with some of the best trial lawyers in the country, was a “plaintiffs’ paradise” and a magnet attracting people to the state to play the “lawsuit lottery.” Tort reformers asserted that the legal system needed an overhaul to make Texas more business-friendly. Tops on their wish list was a cap on punitive damages.

“In the same way that Reagan legitimized the Christian right, Bush legitimized tort reform in Texas.”

To push that agenda, Texas's tort-reform pioneers coalesced under the banner of Texans for Lawsuit Reform (TLR), which opened for business in 1994, the year Bush ran for governor. At its kickoff, founder Richard Weekley proclaimed that lawsuit abuse was “the No.1 threat to Texas’ economic future.” Like most other tort-reform offensives, TLR’s seized on a populist notion with adherents from coast to coast—namely, that lawyers are ruining America by bankrupting corporations with outrageous claims against honest companies. Yet some of TLR’s die-hard members hardly seem like innocent, abused entrepreneurs. A sampling:

- Enron CEO Ken Lay gave \$25,000 in start-up funds for TLR. Lay had written to Bush in 1994 that if Texas didn’t do something about its “permissive” legal climate, Enron might just have to leave the state. Today, after more than 4,000 Enron employees have lost their jobs and their retirement funds invested in the company, Lay’s reasons for wanting legal immunity seem pretty obvious. But back then, Lay had more pedestrian concerns about its gas and energy operations. In 1994, one of the company’s methanol gas plants exploded in Pasadena, Texas, injuring several people working nearby. A neighboring chemical corporation sued Enron to block the plant from coming back on line, arguing that it had a long history of flagrant violations that were endangering workers.
- Richard Weekley, the driving force behind TLR, is a strip mall developer whose family owns David Weekley Homes, one of the nation’s largest homebuilding companies. David Weekley Homes is notorious in Texas for shoddy home

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- For the Fund’s second investigation, “Occupation, Inc.,” reporters Pratap Chatterjee and Herbert Docena went to Iraq to investigate charges of fraud and abuse by Halliburton and other companies given billions of taxpayer dollars for “reconstruction” projects. The report helped ignite a firestorm of public outrage over war profiteering, and was used by dozens of leading media outlets including *60 Minutes*, the BBC, and *The New Yorker*.
- The Fund has sponsored three other ground-breaking investigative pieces, including “Tort Reform, Loan Star Style” by Stephanie Mencimer, a look into what the corporate-backed “tort reform” movement did in Texas under then-governor Bush, and a series of reports by Jordan Green on voting irregularities in the 2004 elections.

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Honorable Mention—2003 National Press Club Award, Consumer Journalism

Finalist—2003 *Utne* Independent Press Award, Local/Regional Reporting

construction and a host of worker safety violations. Dozens of homeowners with cracked and shifting foundations have attempted to file suit against the firm, alleging that their new homes began falling apart almost immediately after they moved in.

- James Leininger, founder of the Texas Public Policy Institute, which did the early polling to come up with the term “lawsuit abuse.” Leininger heads up Kinetic Concepts, a company that makes high-tech hospital beds that have prompted a rash of lawsuits from patients and nurses alleging that the rotating beds had dropped or crushed patients.
- Jim “Mattress Mac” McIngvale, another TLR funder, is a furniture store owner who got sued after a 300-pound African lion kept at his Texas Flea Market mauled an eight-year-old girl and tore off part of her skull in 1987. The girl required extensive reconstructive surgery and faced the prospect of permanent brain damage. Her parents, who had no health insurance, sued McIngvale for allowing the lion (which was owned by somebody else) on the premises.

The questionable business habits of many of Texas’ leading tort reformers is one reason their efforts had been mostly unsuccessful before 1994. But Bush changed things. Austin consumer attorney David Bragg says Bush was the friendly face TLR and the others needed to make lawsuit reform palatable to the public. “In the same way that Reagan legitimized the Christian right, Bush legitimized tort reform in Texas,” Bragg says.

Backing tort reformers, the governor endeared himself to a broad coalition of wealthy industry groups that had been attempting to push through limits on civil lawsuits nationally since the mid-1980s, particularly the tobacco industry. The year of Bush’s first gubernatorial campaign, the tobacco industry set aside \$100,000 to underwrite a PR campaign in Texas heralding the epidemic of “lawsuit abuse” in the state. Tobacco money also helped create Citizens Against Lawsuit Abuse and provided \$15,000 in seed money to TLR.

When Bush lined up on their side, that money started flowing his way. People and groups associated with tort reform donated more than \$4 million to his statewide campaigns, more than any interest category other than oil and gas companies. As Bush’s longtime political advisor (and former tobacco industry consultant) Karl Rove explained to the *Washington Post* in 2000, once Bush declared war on “junk lawsuits,” “business groups flocked to us.”

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The number of personal injury suits filed in Texas has plummeted 40 percent, despite a rapid increase in the state's population.

The tort reform campaign also gave Bush a big stick with which to bash trial lawyers like John Eddie Williams, who plow their multi-million legal fees back into the Democratic party. Trial lawyers are, along with unions, one of the biggest sources of funding for the party.

One thing the measures promoted by Bush didn't do was combat frivolous lawsuits. After all, it wasn't the little "slip and fall" suits Enron was worried about. As Williams says, "Frivolous lawsuits by definition are worth nothing." Besides, a state rule had been on the books for 15 years that allowed for sanctions against lawyers who file groundless lawsuits. "What they've done is outlaw big recoveries in good lawsuits," says attorney Perlmutter.

And despite all the rhetoric, Texas never suffered from a "litigation explosion." "There was never a time when Texas juries gave away lots of money all the time," says Steven Daniels, a researcher at the American Bar Foundation who has studied the impact of Bush's tort reforms on Texas. "Juries in Texas are almost always stingy." Bragg, a former lawyer in the state attorney general's consumer protection office, once did a survey of the awards granted under the state's consumer protection act, which allowed defrauded consumers to recover triple damages from misbehaving businesses. It was hardly the major threat to the state's economy that the tort reformers portrayed. Before the law was eviscerated in 1995 by Bush's tort reforms, Bragg found that plaintiffs won their cases less than half the time in Dallas, and even when they did "win," they rarely got any money. "But tort reformers decided there was a problem and mounted a major effort to change that law," he says.

Under his campaign pledge of bipartisanship, Bush managed to persuade the Democratic lieutenant governor Bob Bullock to go along with a package of measures that severely limited citizens' ability to win damages against corporations, doctors, hospitals, and insurance companies. The tort reformers couldn't have been more pleased. Ralph Wayne, head of the Texas Civil Justice League and co-chair of Bush's 2000 presidential campaign, says, "It is amazing the way someone like George Bush can make a difference. It was a marvelous year for

us. Had it not been for George Bush and his persuasiveness we would not have been as successful."

Those bipartisan "reforms" had their desired effect. Since Bush signed the bill in 1995, the number of personal injury suits filed in Texas has plummeted 40 percent, despite a rapid increase in the state's population. Consumer lawsuits against sleazy car dealers, shoddy mobile home dealers, and other crooked businesses have become almost nonexistent, as have the lawyers who used to handle them. Daniels says lawyers simply can't afford to take cases that don't hold the possibility of punitive damages or awards for mental anguish because the actual amount of money involved in such cases is often so small. "Whether it was intended to or not, it may have the effect of cutting off access to the courts. If [lawyers] don't want to take your case, you don't get into court," says Daniels. The behavior that spawned many of those suits in the past hasn't disappeared. But without the lawsuits, the public simply doesn't know about it.

TORT REFORM CURE-ALL

The first thing President George Bush did this year when he went to meet with newly elected California Gov. Arnold Schwarzenegger was declare his intention to discuss his campaign on frivolous lawsuits. "We need a little tort reform in this great state of California," Bush announced. "Unfair lawsuits harm a lot of good and small businesses. There are too many large settlements that leave the plaintiffs with a small sum and the lawyers with a fortune . . . Job creation will occur when we've got legal reforms."

The behavior that spawned many of those suits in the past hasn't disappeared. But without the lawsuits, the public simply doesn't know about it.

As president, Bush has continued to chat up tort reform at every opportunity. In fact, now that he's passed most of his tax cuts and an education bill, tort reform often seems to be the administration's only domestic policy initiative and its only answer to any of the nation's ills. What's the Bush plan for helping 44 million uninsured Americans? Medical malpractice "reform," a bill

“Tort reform assumes that all plaintiffs are crooks. But if a case gets far enough to get an award, that’s not frivolous.”

in Congress that would impose Texas-style lawsuit restrictions on the rest of the country, capping punitive damages in lawsuits against drug companies, hospitals, nursing homes, and medical device manufacturers. The White House response to the 3 million people who lost jobs in the administration’s first three years? Class action reform, legislation that would federalize most class action lawsuits, essentially eliminating those pesky complaints against Wal-Mart in California alleging that the company stiffed its low-wage workers on earned overtime.

After listening to the rhetoric for the past eight years, at least one Republican small businessman back in Texas is no longer buying it. A few years ago, if you had asked Houston small business owner and Republican Walt Shofner whether he supported Bush and his war on lawsuits, he would have said yes. But in 2000, Shofner discovered the reality behind the PR campaign. His company designed software for insurance companies, and had recently beaten out a larger competitor on a bid to upgrade software at Prudential Life in New Jersey. Afterwards, the competitor, Computer Science Corp. (CSC), accused his firm of violating a nondisclosure contract and asked American Express and Prudential to cancel their contracts with Shofner, which they did. Shofner sued, arguing that CSC, a corporate giant with nearly \$10 billion in revenues in 2000, was simply trying to squelch competition. The jury agreed and awarded Shofner \$8 million in punitive damages.

But after the jury announced its verdict, the judge declared that he had to reduce the award to \$200,000 because of the damage caps Bush signed in 1995. Shofner—as well as the jury—was shocked. Fred Kronz, one of the jurors in the case, says he couldn’t believe the news. Kronz says the jurors took their job seriously and spent a lot of time trying to come up with an adequate punishment for CSC, which they believed was clearly in the wrong. During the trial, everyone in the courtroom knew about the damage cap except the jurors, who only learned of it after they announced their verdict, making their deliberations seem like a charade, says Kronz.

The decision essentially killed Shofner’s business. He says, “CSC had no trouble paying me off. They got two or three million in revenue after I left [the other firms]. I got zapped for chump change by my competition. They have almost a monopoly on the software now.”

Shofner is now a vocal critic of lawsuit restrictions: “Tort reform assumes that all plaintiffs are crooks. But if a case gets far enough to get an award, that’s not frivolous. I was a Republican. I guess I still am. But I’ve seen the light. . . . Any small business person in Texas is at risk.”

Texans may not become fully aware of what they’ve lost through the state’s tort reform until they need a lawyer.

UNLITIGATED, UNPROTECTED

In fact, Texans may not become fully aware of what they’ve lost through the state’s tort reform until they need a lawyer. That’s what happened to Jacque Smith last year. In November 2003, Smith’s 85-year-old mother, an Alzheimer’s patient, was living at the Heritage Duvall Gardens nursing home in Austin. Late one night, a staffer entered Smith’s mother’s room and allegedly raped the elderly woman. Another employee witnessed the assault, but apparently didn’t bother to report it to anyone and went home after his shift finished. Smith only learned about the assault because the witness mentioned it to someone at the home during an unrelated conversation later the next day. After her mother was examined at a hospital, the assailant was arrested and charged with aggravated sexual assault.

Smith then consulted a lawyer about filing suit against the nursing home for poorly supervising its employees. In the past, such a suit might have garnered a multi-million dollar settlement or jury verdict for the victim. Texas has some of the worst nursing homes in the country. A 2002 study by the special investigations division of the U.S. House Committee on Government Reform found 40 percent of Texas nursing homes committed violations of federal regulations that caused harm to nursing home residents or placed them at risk of death or serious injury. More than 90 percent did not meet federal staffing standards. The poor conditions of Texas nursing homes led to a cottage industry in the legal profession, whose lawsuits posed much larger threats than any state sanctions.

A Harvard University study found that nearly nine out of ten nursing home plaintiffs received compensation, a success rate that the study deemed “off the scale” in personal injury litigation, and a sign that the negligence as well as the severity of injuries in the cases was clear-cut. Rather than pledge to clean up its act, the nursing home industry lobbied hard for the passage of legislation that would put the lawyers out of business. The state passed the nursing homes’ favored medical malpractice bill in September 2003, capping pain and suffering awards at \$250,000.

The new law has produced the results desired by its backers. When Smith looked for an attorney, she discovered her first hurdle might be simply finding one willing to take the case. The first attorney she called declined, as few lawyers in Texas will now handle such a complaint. Then she contacted Bragg, who explained to her that the most her mother could win would be \$250,000, because there were no economic damages involved. Smith’s mother, after all, didn’t have a job to lose and she didn’t incur significant medical bills. After taxes and legal fees, she would receive at most \$100,000. That would make her ineligible for Medicaid, meaning the money would end up being funneled back into the nursing home industry that failed her in the first place.

As a result, Smith says she’s unsure whether she will pursue legal action because she worries that any money that might result from it would not be used to improve the quality of her mother’s life. But she is frustrated by the prospect of simply dropping the case. “It feels like somebody should be held accountable,” she says.

According to a study by the *Dallas Morning News*, since the bill’s passage medical malpractice lawsuits in Texas have fallen off by 80 percent. Ironically, in giving advice to citizens on how to choose a nursing home, the Texas Attorney General’s office suggests using the number of lawsuits against a home as a good gauge of quality. Its web site counsels, “A nursing home that gets sued frequently should not be your first choice.” How the public will make these choices in the future? The web site doesn’t say.

Stephanie Mencimer was a finalist for a National Magazine Award for her reporting in The Washington Monthly on the battle over medical malpractice and tort reform. She is the author of “The Price of Confession,” which appeared in the Winter 2003/2004 edition of Southern Exposure. Funding for this story was provided by the Alicia Patterson Foundation and the Fund for Investigative Journalism.

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ARE MINORITY JURISDICTIONS "JUDICIAL HELLHOLES"?

Four days before Christmas in 1999, 12 jurors in tiny Jefferson County, Mississippi, made national headlines when they slapped a drug company with a \$150 million judgement for injuries that its diet drug fen-phen caused to five local citizens.

The headlines, though, weren't about the behavior of American Home Products (now Wyeth), which knew its product was dangerous but aggressively marketed it anyway. (Fen-phen has killed several hundred people and injured an estimated 45,000 others.)

Instead, the news was all about how a group of poor, uneducated jurors in the South had helped a few gold-digger plaintiffs hit the "jackpot" at the expense of a deep-pocketed corporation. The verdict catalyzed the business community, which went on to launch a multi-million lobbying and PR campaign in Mississippi to make sure such verdicts became a thing of the past.

Reporters took the bait and flocked to Mississippi to tell the story of the nation's most generous jurors. In November 2002, viewers of the TV news magazine *60 Minutes* learned that tiny Fayette, in Jefferson County, was a place where "plaintiffs' lawyers have found that juries in rural, impoverished places can be mighty sympathetic when one of their own goes up against a big, rich, multinational corporation." In the story, Morley Safer interviewed a local florist who had received a multi-million dollar settlement in a fen-phen lawsuit. The unnamed florist alleged that trial lawyers were bribing jurors to give big awards. "The jury awarded these people this money because they felt as if they were going to get a cut off of it," he told Safer. Beyond that anonymous comment, the show that bills itself as TV journalism's most respected news organization offered no other evidence about payoffs to jurors.

During the broadcast, Safer interviewed Wyatt Emmerich, a newspaper publisher in Jackson, who explained a few big verdicts there by saying, "Look at the jurors. These are disenfranchised people. These are people who've been left out of the system, who feel like, 'Hey, stick it to the Yankee companies. Stick it to the insurance companies. Stick it to the pharmaceutical companies.' The African Americans feel like it's payback for disenfranchisement. And the rednecks, shall we say, it's like, 'Hey, you know, revenge for the Civil War.' So there's a lot of resentment, a lot of class anger, a lot of racial anger. And it's very easy to weave this racial conflict and this class conflict into a big pot of money for the attorneys."

At the time of the episode, the U.S. Chamber of Commerce was spending \$100,000 on an advertising campaign in Mississippi to push for a cap on damages in lawsuits against corporations, and it had been sued by the state for improperly giving money to judicial elections. Nationally, the Chamber's Institute for Legal Reform had also committed to spend \$60 million lobbying for restrictions on citizens' rights to sue. Those facts weren't included in the story. Meanwhile, the florist, Beau Strittman, went public and retracted his comments about the payoffs, saying, "I just said it as a joking statement." CBS spokesman Kevin Tedesco said the network could not comment on the fallout of the segment because several jurors have sued CBS for libel over the broadcast.

Nonetheless, the day after the program aired, the legislature passed new restrictions on lawsuits, and shortly afterwards, the FBI launched an investigation into the charges of jury corruption. That investigation thus far has not resulted in the prosecution of any jurors or lawyers, but in early September, 12 people were arrested for allegedly filing false claims to the fen-phen trust fund, which was set up after the jury verdict to compensate hundreds of people injured by the diet drug.

The *60 Minutes* episode hewed carefully to the media strategy of the tort reformers by reviving the

old canard that poor and minority jurors are overly generous to plaintiffs—a phenomenon often called the “Bronx effect.” The term was coined back in 1987, when author Tom Wolfe, in his novel *The Bonfire of the Vanities*, described a plaintiffs’ lawyer who files malpractice claims in the Bronx rather than in Westchester County because he believes that the poor, minority Bronx juries were a “vehicle for redistributing the wealth.”

The legend of a Bronx effect has lived on, although the allegedly pro-plaintiff venues tend to change with the political winds. After the Bronx, there was “The Bank,” a heavily minority county in Los Angeles. Then there was Alabama, where in 1999, jurors in mostly black Hale County hit the Whirlpool Financial National Bank (now Transamerica Bank) with a \$581 million verdict for a scheme to defraud elderly and illiterate people on satellite dish sales. And now, thank to the fen-phen verdict, Mississippi is the favorite plaintiffs’ paradise, particularly Jefferson County, which has the highest percentage of black residents and the highest unemployment rate in the state.

Legend notwithstanding, there’s not much empirical evidence that poor black jurisdictions routinely

The news was all about how a group of poor, uneducated jurors in the South had helped a few gold-digger plaintiffs hit the “jackpot” at the expense of a deep-pocketed corporation.

dole out big awards to plaintiffs. In 2002, Cornell law professor Theodore Eisenberg did an empirical study to see whether demographics actually corresponded to jury verdicts. He found that large black populations actually correlated negatively with award levels—i.e., jury awards were lower in areas with lots of African Americans. Duke law school professor Neil Vidmar undertook a similar study in the Bronx and found no statistically significant evidence that jurors in the heavily minority burrough were more generous or more pro-plaintiff than in neighboring jurisdictions.

In Hale County, Alabama, the 1999 verdict against Whirlpool was hardly a trend. According to lawyer Tom Methvin, who litigated the case, the county hadn’t seen a verdict bigger than \$200,000 in 150 years. The Whirlpool case just happened to be particularly egregious.

Salespeople from Whirlpool, some of whom were convicted criminals, went door to door in the state selling satellite dishes to elderly and illiterate customers for \$1,100. The purchases were financed on bogus “Whirlpool” credit cards that carried 22 percent interest rates and an unlimited number of payments—facts that the company didn’t disclose. The same equipment could have been purchased in a retail store for \$199. The company bilked consumers out of millions of dollars through the scheme. “On the right set of facts, the juries get upset,” Methvin says. “They were just tired of being oppressed by these big companies taking advantage of them.”

David Stout, the former head of the New Mexico trial lawyers’ association, says that critics of juries in poor places tend to forget that “big money” is a relative term. “There is a school of thought that people from a poor background think \$100,000 is a lot of money,” and for that reason, some trial lawyers don’t want them on juries where they are aiming for damages in the nine-figure range.

Nonetheless, the idea that poor, minority jurisdictions are hostile to business is actively encouraged by groups like the U.S. Chamber of Commerce and the American Tort Reform Association (ATRA). In 2003 ATRA published a study, *Bringing Justice to Judicial Hellholes*, identifying jurisdictions its members consider “judicial hellholes” because they are “very plaintiff-friendly.” Among the 2003 “hellholes” were all the heavily African-American counties in Mississippi, two mostly Latino counties in Texas, the heavily Latino Miami-Dade county in Florida, and the mostly black Orleans Parish in Louisiana.

Earlier this year, the Center for Justice and Democracy (CJD), the nation’s only anti-tort reform advocacy group, published an analysis of *Bringing Justice to Judicial Hellholes*. Noting that the hellholes

are not selected on any empirical basis (but rather by a survey of ATRA's membership), CJD compared the 12 jurisdictions to census data. Of the 12, nine are in predominantly minority areas, and all but one are areas that have larger minority areas than the rest of the state they are located in. The U.S. Chamber of Commerce has likewise released an annual survey on state litigation climates and of the 18 jurisdictions identified as problematic, 15 are predominantly minority—including Mississippi's Jefferson County, featured on *60 Minutes*.

Despite the obvious racial undertones to the hellholes study, it has been cited authoritatively over the past two years by the *Chicago Tribune*, *St. Louis Post-Dispatch* (which put it on the front page), *Los Angeles Times*, *Philadelphia Daily News*, *New Orleans Times Picayune*, *Dallas Morning News*, *Forbes*, *Business Week*, *Wall Street Journal*, *Washington Times*, and *USA Today*. (None, incidentally, covered the CJD report.) The stories, especially those in a host of smaller news outlets, tend to quote civic leaders like Emmerich wringing their hands over their standing on the list and demanding that the legislature take action by passing restrictions on lawsuits.

Rarely do they take a more nuanced approach to exploring why the verdicts were so large in the

**After passing strict caps on punitive damage awards,
Alabama legislators did nothing to prevent finance companies
from perpetrating fraud on unwitting consumers.**

first place. As Methvin suggests, Southern states like Alabama, where one in six residents is functionally illiterate, are fertile grounds for bad actors looking to make a buck. In Alabama, he says, weak consumer protection laws mean that the only recourse people have against fraud is a lawsuit.

Indeed, the Whirlpool verdict and ensuing publicity prompted Alabama state legislators to pass strict caps on punitive damage awards to make sure juries could never get so carried away again. Meanwhile, those same legislators did nothing, though, to prevent finance companies from perpetrating fraud on unwitting consumers the way Whirlpool and eight other out-of-state finance companies had done in the satellite dish scam.

Methvin says that there are also flip sides to these stories about the judicial hellholes, like the counties where "you couldn't get a dime if the pope was run over by a drunk driver."

According to the U.S. Bureau of Justice Statistics (BJS), many of those types of jurisdictions do exist—such as the entire state of Massachusetts, where in the three largest counties, BJS reports that plaintiffs won only 29 percent of cases that went to trial. (In Worcester County, plaintiffs won only 19 percent of trials.) Or take Lancaster, Pennsylvania, where state court data reveals that out of 17 trials in medical malpractice cases between January 2000 and July 2003, plaintiffs won exactly zero. Nearby Philadelphia, meanwhile, is tagged as a "hellhole" by ATRA for being too plaintiff-friendly. But according to BJS, Philadelphia jury verdicts in 2001 were split right down the middle between defense and plaintiffs.

Indeed, many of the "hellholes" identified by ATRA don't appear all that friendly to plaintiffs when more closely examined. ATRA cites several counties in Texas as hellholes, which is hard to fathom given the radical changes in the state tort law last year, which severely limited citizens' rights to sue, as well as the hard-right conservatives that dominate the state's appellate courts. In the largest counties in Texas, plaintiffs won at trial only 45 percent of the time in 2001, according to BJS data. The *Houston Chronicle* reported recently that in 2002, the median award in Texas was \$25,000, compared with \$41,894 in the nation as a whole.

Meanwhile, Stout finds the presence of New Mexico in the ATRA "hellhole" report puzzling, because, he says, "We had tort reform in the 1970s," he says. "For us to even be on the chart of the tort reform movement is really silly." —STEPHANIE MENCIMER

FELLOW TRAVELLERS



**A year ago, immigrant workers retraced the freedom rides of 1961.
A look at the historic Immigrant Workers' Freedom Ride.**

By Jake Rollow ■ Photographs by Diana Molina

Taking their cue from the black civil rights movement, the AFL-CIO and immigrant groups joined to recruit hundreds of members last fall to traverse the country by bus in an attempt to bring attention to the plight of U.S. immigrants.

And it may have worked. The Immigrant Workers' Freedom Rides, modeled after the freedom rides of 1961, catapulted immigration issues to the forefront of the national discourse—every presidential candidate this year included a stance in his or her platform.

More importantly, the rides illuminated the struggle of the U.S. immigrant population, a group on the fringes grappling to attain worker protections and civil rights. Immigrants may have found their answer by fusing with the black and labor movements, revitalizing those struggles in spirit and supporters as well.

U.S. Congressman John Lewis (D-Ga.) was still a college student when on May 20, 1961, he and 20 other black and white freedom riders arrived in Montgomery, Ala. The mob of whites who met them beat a nonviolent Lewis into unconsciousness. The event drew media attention that forced the nation to face its deeply ingrained racism and helped spark the civil rights movement.

Some have said the immigrant movement has essentially the same goal as did the '61 freedom riders. Those riders challenged segregation on interstate buses through the South; immigrants seek to become more fully integrated participants in U.S. life. Recognized as key components of that integration, the immigrant freedom riders called for legislators to guarantee a path to citizenship, expedited family reunification, workers' rights, and civil liberties for all.

Lewis draws parallels as well, saying last fall's freedom rides addressed the fact that a segment of the population is treated differently "because they are immigrants."

In 1961, he adds, part of the method to change the system of overt racial discrimination was to dramatize the need to do so.

Nine hundred immigrant riders bussed across 20,000 miles of highway, spanning the country on nine routes. The ride ended with a mass rally in New York with tens of thousands of supporters. Along the way, the travelers lobbied legislators in Washington, D.C., in meetings coordinated by National Council of La Raza, a national Latino advocacy organization. NCLR was one of numerous immigrant and racial and ethnic advocacy groups that joined the effort.

There are 31.1 million people living in the United States who were born abroad, according to the 2000 census. It is estimated that between seven and ten million of

them are undocumented. Some are recent arrivals, while others have resided here the majority of their lives.

By the time the immigrant ride routes merged in Washington, D.C., "We Are One," had emerged as the dominant rallying call. It represented the solidarity shared by the three movements and celebrated the unity among riders of great diversity.

Like the national immigrant population, 52 percent of which is Latino, the largest group of riders was Hispanic. Many riders also hailed from countries throughout Africa, Asia, and the Caribbean. One of the buses that began in Seattle claimed passengers that trace their roots back to 22 countries.

To show his support, Lewis welcomed the immigrant riders in Washington, D.C., and became a freedom rider again, boarding a bus to New York.

"Some of the issues, some of the concerns, some of the same problems still exist today," he says.

"We must confront those problems head on."

To do so, many immigrants are turning to organized labor, says María Elena Durazo, a California union president and national director of the Immigrant Workers Freedom Rides.

In turn, she notes, some labor heads are reaching out to immigrants.

María Jimenez, a worker in a poultry factory in Texas, complained the constant grueling work once caused her right forearm to swell so badly it pinched her nerve, leaving her arm paralyzed for nearly a week.

"There's not a single industry where there aren't immigrant workers," says Durazo, and some unions are starting to see this.

According to María Jimenez, a longtime community activist hired by the AFL-CIO to help recruit immigrant riders, it's in the interest of unions to organize immigrants because they are the workforce.

"It's a matter of their own survival," she says, noting a decline in union membership in recent years.

The AFL-CIO currently reports about 13 million members, compared to 14 million in 1990. Of the over-



Riders march in Atlanta.

all civilian workforce, it finds 13 percent of workers are unionized, compared to a peak at 32 percent in 1958.

Immigrants make up 11 percent of U.S. residents, 14 percent of the workforce and 20 percent of all low-wage workers, according to the Urban Institute's report on the 2002 Current Population Survey.

The freedom riders embodied the developing relationship, as the majority of them were immigrants, union laborers, or both.

The goal was to show the country the abuses immigrants face, says Durazo. Because they lack the same rights as citizens, workplace abuses hit especially hard among immigrants, particularly the undocumented, according to Durazo.

"I don't think people realize what horrible things are going on every day."

The riders had a multitude of motivations and experiences propelling them to the buses.

Irene, a worker in a poultry factory in Texas, com-

plained the constant grueling work once caused her right forearm to swell so badly it pinched her nerve, leaving her arm paralyzed for nearly a week.

"I've seen a lot of people get hurt," she says. "They'll pay your medical expenses and let you come back, but they'll find a way to get rid of you—if they think you're 'accident prone.'"

After six years with the company, Irene makes \$8 an hour.

Another rider, Nancy, came to the United States when she was four years old, but endures the worry that she and her family could be deported to a country that is foreign to her.

"Now I am in the 12th grade. It's not fair that after being here so many years we are not citizens," she says.

Attending a rally in New Orleans, a group of about 20 men from India explained that they each paid \$10,000 to a headhunter who promised them a green card and a job. Now they are stuck in apartments without food, pay, or employment.



In Selma, Ala., riders cross the Edmund Pettus Bridge, where state and local police attacked black marchers on 1965's infamous "Bloody Sunday."

Many riders considered telling their stories a risk and boarding the media-magnet freedom buses an act of defiance. Although the threat of violence was low when compared to 1961, the immigrant riders knew they faced detention and deportation. They could be sent back to countries they had left due to violent wars, dire economies, or because they hoped they could provide more for themselves and their families in the United States.

Sick of being "second-class citizens," a term borrowed from the black movement, many riders said they felt empowered once they boarded the buses. At 103 cities, they rallied with other immigrants, union members, and supporters, coming out of what some call life in the shadows to demand rights.

There is some debate surrounding what economic and societal rights immigrants actually deserve. University of Southern California law professor Erwin Chemerinsky says that the fact that many immigrants lack citizenship, while blacks did not, creates different legal issues.

"With regard to immigrants, the question is what should their rights be," he says.

Lewis believes that lack of citizenship is a moot point. "There are basic rights of all humankind and no government—state or federal—should be able to deny people those basic God-given rights," he says.

Despite Lewis' argument, many legislators continue to question the rights of immigrants. In states including Colorado and Arizona, voter-led initiatives and bills have been introduced that deny immigrants social and medical services. In California, one of Gov. Arnold Schwarzenegger's first moves was to repeal a law that would have allowed undocumented immigrants driver's licenses. In states including Maryland, Minnesota and New Mexico, taxpayers and lawmakers debate whether undocumented students should pay in-state tuition at colleges and universities.

Durazo urges legislators to focus on the problems immigrants face, rather than policy debates.

"There are people working in hotels, as janitors, in the fields and they work hard every day and they've been here for 15 years... and they're paying taxes and yet they don't have any rights. Any day they could be deported."

In New Orleans, a group of about 20 men from India explained that they each paid \$10,000 to a headhunter who promised them a green card and a job. Now they are stuck in apartments without food, pay, or employment.

The nine-day immigrant ride route that began in Houston, Texas, visited the places freedom buses had stopped in '61 as well as many of the struggle's Southern landmarks. In Jackson, Miss., where freedom riders were jailed four decades ago, the 80 immigrant riders were invited to the capitol building to share dinner with Robert Clark, the first black elected to the state legislature. In Selma, Ala., riders marched across the Edmund Pettus Bridge, where state and local police attacked black marchers in 1965 in what came to be known as Bloody Sunday.

At these and other stops riders were welcomed and supported by primarily black groups of leaders, legislators and union workers. Throughout the South, riders were often provided home-cooked meals and fellowship at churches and union halls.

"We need to turn to each other, not on each other. Black and tan go good together," said Rev. Joseph Lowery addressing riders in a church where Martin Luther King Jr. had been pastor, Dexter Avenue King Memorial Baptist Church in Atlanta, Ga. With King, Lowery co-founded the Southern Christian Leadership Conference, an organization instrumental to the black movement.

Many immigrant riders said they were inspired by the stories they heard of what blacks endured to progress. For Martha Olvera, a wreath-laying ceremony at King's grave in Atlanta, proved overwhelmingly emotional. While the group sang *We Shall Overcome* and other traditionally black spirituals, she burst into tears.

Olvera has lived in Houston since 1974 when she moved from Mexico. In 2001, her brother-in-law, Serafin Olvera, was one of a group of men arrested when immigration officials raided a house in Bryan, Texas. Serafin's neck was broken during the raid, but he did not receive medical attention until seven hours later. The rest of the men arrested were deported the same day.

Serafin would remain hospitalized for nearly a year, until he died.

Olvera says abuses by border patrol are commonplace in Bryan. She helped the U.S. Department of Justice find deported witnesses and build a case against the agents involved. Three were found guilty of civil rights violations two years later, one for using excessive force and all three for deliberate indifference to Serafin's medical needs.

Standing at King's grave, sunlight shimmering on the pool that surrounds it, Olvera thought of her brother-in-law. When she began crying, two women comforted her. They each hooked an arm through Olvera's. One woman was black, the other was white.

"If this man, years ago, had not done all he did, my family would not have found justice," Olvera says.

"The path he left open, we continue."

Many immigrant advocates say that King would have supported the immigrant movement, including Lewis who, as national chairman of the Student Nonviolent Coordinating Committee, often worked with King and the SCLC.

On more than one occasion, King explained what he called the interrelated structure of reality. All groups and people are bound together, he reasoned, and therefore justice for one helps create progress for all.

"One day we shall win freedom, but not only for ourselves. We shall so appeal to your heart and conscience that we shall win you in the process, and our victory will be a double victory," King said.

"There are people working in hotels, as janitors, in the fields and they work hard every day and they've been here for 15 years . . . and they're paying taxes and yet they don't have any rights. Any day they could be deported."

According to Durazo, "The civil rights movement strengthened this country. It wasn't about a particular group of people, everybody benefited."

She points out that women, all people of color, and immigrants progressed because of the black struggle.



Selma, Ala.

Throughout the Southern ride union members rallied with riders. In particular, members of the Laborers union, SEIU, UFCW, UNITE and HERE (before the latter two merged) welcomed riders in large groups, often providing a meal.

“The United Farm Workers was probably the first union that took a strong position to support the rights of immigrant workers to organize” and it did so before 1970, says Bill Chandler, president of the Mississippi Immigrant Rights Association and Houston ride coordinator.

Chandler began organizing in the ‘60s in California where he met César Chávez, whom he followed to work with the UFW.

Just as unions in the South once discriminated against blacks, according to Chandler there continues to be discrimination towards immigrants by labor unions. This may stem in part from the youth of the relationship in some Southern states, where Chandler says the primarily Latino immigrant population is, to many, a “new phenomenon.”

Throughout the South and nation, immigrant communities are developing. In Mississippi alone the immi-

grant population is greater than 100,000, Chandler estimates, far more than the census found. Communities are being built, he says, even though workers are often provided sub-par housing and low pay. Some work in conditions comparable to indentured servitude.

Nearly half of immigrants receive low wages according to the Urban Institute analysis of the 2002 Current Population Survey, earning less than double minimum wage. It finds only a third of native born workers are paid similarly. Of immigrant women 13 percent receive less than the minimum wage, the institute reported.

Some unions have found ways to stop the servitude and prosper simultaneously. The builders’ unions—plumbers, painters, carpenters, roofers, etc.—were some of the first to do so, says Chandler.

“It made their unions that much stronger,” he contends, fortifying it with new members, some of whom had struggle experience in their countries of origin that their colleagues could learn from.

According to Jimenez, one of the few issues unions and immigrants rights groups disagree on is guestworker plans, like the one Bush proposed in January.



María Elena Durazo addresses a rally in Durham, N.C.

While immigrant groups support such a proposal, on the condition that it doesn't bind a worker to one employer, and includes workplace protections and a path to permanent residence, the majority of unions reject temporary plans. Jimenez notes that agricultural unions are the exception.

"There's still this concept of competition with the American worker, particularly when you have a bad situation in the economy," she explains.

For the same reason, Chandler finds some unions still discriminate.

"Racism and the labor movement just don't go together," he says.

Employers may even utilize racism to keep wages low, Chandler suggests, pointing out it wasn't until African Americans unionized that Latino immigrant workers were recruited.

Rather than attempting to exclude immigrant workers, unions should try to organize them, he argues.

According to Durazo, some of the unions that have done so went from handfuls to hundreds of members with many undocumented immigrants leading the fight.

Serafín's neck was broken during the raid, but he did not receive medical attention until seven hours later.

While it may not fly in the labor movement, racism and anti-immigrant sentiment did merge during the freedom rides.

In Doraville, Ga., outside Atlanta, on day four of the Houston route, a march was scheduled from a church back to the union hall where the riders had just finished lunch. The riders were relatively quiet as they walked to the church. For 80 hours they had been going from rally to rally, sleeping only short nights in roadside motels.

As they climbed a shallow hill, the riders looked ahead to see a group of people holding signs. However,



Aboard an Immigrant Workers' Freedom Ride bus.

these signs did not bear the supportive slogans they'd come to know. Instead, the signs read: "Mexicans Go Home," "Protect U.S. Jobs," and, "Stop the Illegal Invasion."

One man explained that they were protesting the federal government's inability to protect the U.S.-Mexico border, not the immigrants themselves. As he said this, another woman laughed at the riders. "They can't even speak English."

"They are invaders," said the man.

Anti-immigration organizations are coming together with white supremacy groups, according to Bob Moser, senior writer for the Intelligence Report at the Southern Poverty Law Center.

In the '50s and '60s, white supremacists were notorious for lynching blacks and bombing their property.

Moser says at many freedom ride events they and anti-immigration groups "were saying essentially the same thing and standing side by side." While he hasn't seen evidence that they are coordinating their efforts, he

says that the two groups share a similar message, often saying immigrants are disease ridden rapists.

In Doraville, the dozen protesters gathered to respond to some 3,000 immigrant supporters who met the freedom riders. The large march inspired and reenergized many of the travelers. Doraville advocates rallied primarily around extending driver's licenses to the undocumented, contending that they helped build the roads and should be able to use them.

Anunciation House in El Paso, Texas, has helped bridge the gaps in international understanding since 1978. It has provided hospitality to 75,000 people, focusing on housing undocumented immigrants, the poorest people in the U.S.-Mexico border city.

Union workers are invited to spend time there, and those that have see the conditions and low wages Mexican workers endure, says Ruben Garcia, one of the house's founders.

"They see that the most important thing that they

In Mississippi alone the immigrant population is greater than 100,000, Chandler estimates, far more than the census found.

can do right now is participate in the unionization of the Mexican worker," he contends.

Their battle is not against those workers, they realize, but against a corporate structure, he says.

Mario, a rider aboard the Southern route, explained that he boarded the bus to tell people that he did not migrate to take a job. "We come here to contribute to this country, to the economy of this great nation."

Durazo agrees, and says that she is proud the AFL-CIO has remained committed to immigrant workers as the economy has taken a dive. In past recessions, she says politicians and employers would often call immigrants the cause of the problem and the labor movement would buckle.

Now the two groups realize they can make great gains in concert.

This summer, the AFL-CIO is planning a voter registration drive targeting immigrants in Arizona and Florida, where the need for immigration policy reform is most dramatic and visible. Border enforcement strategies channel immigrants into the most dangerous parts of the desert in Arizona. There 621 people have died attempting to cross since October, 1998, according to government data. In Florida, many Haitian immigrants are not allowed refugee status and are instead held in detention camps.

Durazo says this summer's effort is intended to keep immigration issues "on the front burner" and to follow-up the freedom rides. Before being sent to work, the 100-200 organizers will attend training sessions in Mississippi at the end of June. There they will be hosted by black leaders who participated in the state's Freedom Summer of 1964. That year numerous organizers held a mock election, pitting Freedom Party candidates against actual candidates to show that blacks wanted and were able to vote. Ballots were cast by 93,000 people.

"We want to make sure that we continue to learn from the civil rights leaders of this country," says Durazo.

One of the central tenets of the black movement, according to both Lewis and King, was that non-violent direct action was key to making gains. Chávez held the same belief when driving the farm workers movement and now the AFL-CIO and immigrant groups may be following suit.

"We've got to figure out ways to make it a part of the culture of organizing," says Durazo, who calls nonviolent resistance "the most important part of the civil rights movement."

According to Jimenez, "nonviolent direct action has to be a part of the long term strategy of the immigrant movement."

She says single actions raise consciousness in the general population, strengthen the immigrants performing the act and produce results.

In the long term it can bring about fundamental change, she contends.

"Nonviolent direct action has to be a part of the long term strategy of the immigrant movement."

Lewis calls the immigrant freedom rides "one of the most moving and meaningful acts of nonviolent protest," for civil, human and workers rights since the '60s.

He urges advocates to continue such action on a local, state and regional level while convincing legislators to pass "necessary" legislation.

"Our past is what brought us here, and it can help lead us to where we need to go," he wrote in his book, *Walking with the Wind*.

As the immigrant and labor struggles merge, they may find their way in the lessons Lewis learned during the black civil rights movement.

"A people united, driven by a moral purpose, guided by a goal of a just and decent community, are absolutely unstoppable," he wrote. "It's not about who wins. It's not even about who is right. It's about *what* is right."

Jake Rollow and Diana Molina were aboard the nine-day Immigrant Workers Freedom Ride from Houston to New York. He is a staff writer with Hispanic Link News Service in Washington, D.C. She is a photographer and writer based in New Mexico.

FEAR AND FLOODING



A house in the low-lying section of Princeville that was inundated by Hurricane Floyd in 1999. Photo: Hart Matthews

Summer morning dawns after a rainy night in Princeville, a small town on the banks of eastern North Carolina's Tar River, and thick fog drifts like ghosts across the swampy landscape, obscuring a sign at the crossroads of Main Street and Mutual Boulevard telling visitors they've arrived in the oldest community chartered by blacks in America. Storms and floods have long haunted this part of Edgecombe County, a former capital of the state's cotton economy where today the majority of residents are African-American and almost one in five live in poverty. A peal of thunder here has power to strike fear in people's hearts—and their worry is not unfounded, according to those who divine the river's mysteries.

Scientists warn that flood-prone U.S. communities, which like Princeville tend also to be poor and minority communities¹, face an increased risk of disaster due to a dangerous combination of global warming and ongoing human alteration of land for profit. And they say future flooding has the potential to be just as or even more devastating than what happened five years ago this September following Hurricane Floyd, which killed 35 people, destroyed 8,000 homes and caused some \$1.9 billion in damage in North Carolina alone. The

**A hurricane-harried
African-American
town lives with
the specter of
future disaster
by SUE STURGIS**

IN NORTH CAROLINA

storm hit eastern North Carolina, the state's most impoverished region, especially hard.

"That was a very socioeconomic flood that disproportionately impacted the poor," says Dr. Stanley Riggs, an East Carolina University geology professor and Floyd expert who blames the disaster's magnitude on human recklessness. "It's inexcusable, in my opinion. We're supposed to be an educated society, but we're just too greedy."

Despite the havoc it wreaked, Floyd was actually not that severe a hurricane. When it made landfall on Sept. 16, 1999, near North Carolina's Cape Fear, it was a Category 2 storm on the Saffir-Simpson Scale of 1 to 5, with winds of about 100 miles an hour. The system dumped 15 to 20 inches of rain on eastern North Carolina, hardly a record rainfall for a hurricane. However, the region was already saturated from earlier storms including Hurricane Dennis, which hit the North Carolina coast as a tropical storm a week earlier. Furthermore, tampering with the land—including sprawling development in upstream communities—resulted in a tremendous amount of stormwater running off hardened surfaces, turning the normally placid Tar and its tributaries into raging monsters.

Though fortunately none of Princeville's 2,000 residents lost their lives in the flood, they lost almost everything else—homes, churches, cars, pets, family treasures. The deluge submerged the town for weeks under water and mud stinking of human waste, rotting animal carcasses, oil, gas, and pesticides. It even disturbed Princeville's dead, uprooting hundreds of caskets from local cemeteries and sending them floating through town.

Princeville's plight captured the nation's attention, in part because of its devastation and also because of its special place in U.S. history. When Floyd's floodwaters finally receded, government agencies, private organizations, and thousands of volunteers poured into town to help residents, who ultimately opted to rebuild rather than accept the offer of a federal buyout and relocation. The Federal Emergency Management Agency set up temporary trailer parks in the nearby town of Tarboro and the upstream city of Rocky Mount while new homes were built. Church groups showed up by the busload to help, and then-President Clinton established a council to coordinate reconstruction efforts.

So far, more than \$30 million has been spent to rebuild Princeville alone. New factory-built houses line the mostly one-lane streets, and all but a few dozen pre-

flood residents have permanent homes. FEMA officials have said it was one of the quickest disaster recoveries they had ever seen, given the extent of the destruction.

But Floyd's specter still casts a shadow over the town. Abandoned businesses and boarded-up homes stand empty, warped by water damage. On Mutual Boulevard, a chain link fence encircles the old town hall, with missing windowpanes, a rusting tin roof, and peeling white paint. Local leaders plan to turn the structure—which was built as part of the early 20th century Rosenwald School movement to educate Southern blacks—into a welcome center and museum, with construction set to begin this fall.

Meanwhile, around the corner on Main Street, in Princeville's modern new municipal building, Town Manager Samuel Knight promotes a decidedly cheerful view of Floyd. "Personally, I think the flood was a blessing to the town," says Knight, a retired military man who had to be rescued by helicopter from the Princeville truck stop he owns when the water began rising. Since the disaster, the town's housing stock has improved markedly: All residents now have central heat and cooling, he says, and the average value of a home has climbed from \$50,000 to \$80,000. Pleased with the changes Floyd brought, Knight waves off the concerns of those who say the town remains at risk or severe flooding in the future. He places his faith in a higher power.

"Floods happen," says Knight. "If another comes, we'll do what he have to do. And we just pray to God there won't be another one."

A MAN-MADE CATASTROPHE

In the five years since Floyd, Riggs has attended conferences and other gatherings of policymakers, urging people to stop blaming God and Mother Nature for disastrous floods and face their own role in creating them. A resident of Greenville, a city that lies 25 miles downstream from Princeville along the Tar, he has spent decades studying the river system, an ecological treasure and habitat for 14 federal and state rare and endangered species including *Elliptio steinstansana*—the Tar River spiny mussel, a mollusk that can be found nowhere else on earth and is one of just three spiny freshwater mussels on the planet.

Riggs examines geologically recent rocks to understand the relationship between rivers and human civilization, and he has concluded that it is a deeply troubled one. In a plenary address delivered to an East Carolina



Princeville is the oldest community chartered by blacks in America. Photo: Sue Sturgis

conference on Floyd in May 2000², he challenged the notion that there was anything natural about the scope of the disaster.

"The rivers were doing exactly what they were supposed to do—carrying the surface water off the land," Riggs told the gathering. "This was a human catastrophe."

In the case of Princeville, the original problem was locating a permanent settlement there at all. The town was established after the Civil War by freed slaves who fled surrounding farms and plantations and sought refuge at the Union Army encampment across the river from the county seat of Tarboro. They first called their home Freedom Hill—ironic considering there's no hill to be found there. Carved out of two plantations, the community lies on the river's southeast lowland side, a floodplain that extends for miles. To make matters worse, the Tar makes two 90-degree bends just northeast and then west of the town, creating a bottleneck. And Fishing Creek, the Tar's largest tributary, empties into the river immediately upstream of Princeville. Consequently, the area

where the town is now located has flooded repeatedly since records have been kept: in 1775, 1791, 1800, 1863, 1887, 1908, 1924, 1928, and 1940. In the big flood of 1919, the worst before Floyd, the water rose as high as the Seaboard Coast rail line that crosses the Tar at Princeville.

Though the floods followed storms that were beyond earthly control, human tampering with the land has exacerbated the damage storms cause. Soon after the white settlers drove the Tuscarora people from eastern North Carolina in the early 1700s, they began ditching and draining the region's extensive swamps and upland coastal dismals known as "pocosins," an Indian word for "swamp on a hill." By the 1980s, North Carolina had lost half of its original wetlands, which act like sponges to absorb rain into the earth. Also in the mid-20th century, the U.S. Soil Conservation Service and Army Corps of Engineers began artificially channeling streams with the intention of improving marginal agricultural land and controlling upland flooding. But as a result, stormwater now pours off the earth and jeopardizes downstream communities like Princeville.

Road building has also intensified flooding by contributing to stormwater runoff and impeding the natural flow of rivers and streams. Nicknamed the "Good Roads State," North Carolina in the 1920s launched an ambitious economic-development effort to connect every sizeable community to a state highway with four-lane roads wherever possible. As a result, absorbent land was transformed into surfaces that shed stormwater. Meanwhile, the state built bridges to carry roads across rivers, and

The flood even disturbed Princeville's dead, uprooting hundreds of caskets from local cemeteries and sending them floating through town.

during heavy rains the structures—which were typically erected in the floodplain—acted like dams. According to Riggs' count, the river has about 50 such road dams between its headwaters and the town of Washington, N.C., where the freshwater Tar joins the Pamlico River estuary. One of those dams carries Highway 64 across the river immediately west and downstream of Princeville.

Land development also contributes to flooding by removing trees and increasing hard surfaces. American Forests, a Washington-based nonprofit, has documented a worrisome trend of urban areas throughout the Southeast losing trees at an alarming rate while impervious surfaces expand dramatically.³ Over the past 30 years, tree canopy cover in the region has declined about 30 percent, worsening the stormwater runoff problem, according to Cheryl Kollin of the group's Urban Forestry project.

During the 1990s alone, North Carolina's forests and other open spaces were developed at a rate of more than 156,000 acres a year—a 67 percent increase over the previous decade. The state lost more than a million acres of forests over the last 12 years, largely due to urban sprawl.⁴ Development is occurring at an especially fast pace in the state's rapidly urbanizing Piedmont region, where the Tar originates. Because of the runoff from this expanding civilization, the Upper Tar today has one of the highest rates of sediment pollution of any river in the state, putting the Tar spiny mussel as well as other species at risk of extinction.

And mollusks are not the only things imperiled. All of these risk factors—natural geology, wetlands loss, stream channeling, road building, urban sprawl—combined forces to create serious flood problems for Princeville. By the mid-1960s, the town was experiencing high water almost every year and major flooding every five or six. Families that could leave the area did, and local leaders worried about a dwindling tax base pressed for help from above. That's when the Corps came up with a plan to build a levee around Princeville—a plan that Riggs says was so flawed it actually aggravated the impact of Hurricane Floyd.

"They didn't take into consideration the area's flooding characteristics," Riggs says. "They just didn't understand how water moves."

THE SOLUTION BECOMES THE PROBLEM

It was 1967 when the Army Corps of Engineers completed its 2.5-mile, \$370,000 levee between the Tar River and the west and north sides of Princeville, part of the 8,500 miles of levees and floodwalls built by the agency since its founding in 1802. Some 30 feet tall at its highest point, Princeville's grass-topped earthen structure gradually slopes down to meet Mutual Boulevard at the northwest end of town. At the time it was built, local leaders expressed hope that the levee would finally allow the community to flourish.

"Everything should fall into place then," Mayor Roy Matthewson told the *Raleigh News & Observer* at the time. "It's fear of that river that has held us back."

Indeed, the levee transformed Princeville, giving it



Photo: Sue Sturgis

greater confidence in its future. Residents built houses and opened small businesses—garages, grocery stores, a car dealership, beauty parlors. The town constructed a water and sewer system. And at a time when the population of many places in eastern North Carolina was shrinking, Princeville actually grew, from 900 residents in 1960 to about 2,000 by the time Floyd hit. As decades passed without a severe flood, residents' fears began to fade.

Unbeknownst to most of the townspeople, however, flaws in the levee's design not only left them vulnerable to future floods but would actually worsen the damage when such disasters occurred. Such serious problems with Corps projects are not unusual: the Army Inspector General, the National Academy of Sciences, the General Accounting Office and other federal and state agencies have uncovered flaws in a "shocking number" of the agency's undertakings, according to a report released earlier this year by the National Wildlife Federation and Taxpayers for Common Sense.⁵

The report argues that the agency's flood control ef-



A house in the low-lying section of Princeville that was inundated by Hurricane Floyd in 1999. Photo: Hart Matthews

forts have complicated the very problem they set out to fix. “The Corps’ traditional approach to reducing flooding largely relies on straight-jacketing rivers with levees and floodwalls, and quickly funneling floodwaters to downstream areas,” it states. “These approaches sever hydrologic connections with wetlands and floodplains, and destroy their natural ability to store floodwater.”

That’s precisely what happened at Princeville, where the levee altered the Tar’s flow to disastrous effect. As the storm’s floodwaters began inundating the river, the levee did protect the town for a time. But when the Corps built the structure, it left a 4.5-foot-deep opening for the railroad along its north side, a cut as deep as the peak of the 1919 flood, the worst on record at that time. Its calculations did not protect against the possibility of even worse flooding in the future. The agency also left the town vulnerable to flooding by sloping the structure down to Mutual Boulevard at a spot that’s just several hundred yards from the river’s edge.

“The Corps says the structure is anchored in high ground at that end,” says Doug Rader, a biologist and former state environmental regulator who now works as an attorney with the North Carolina office of Environmental Defense. “That’s just baloney.”

Floyd’s rains began falling on eastern North Carolina on Tuesday, Sept. 14, and continued for two days. By noon on Sept. 16, the sun was out and Princeville residents breathed easier, believing they had escaped the storm unscathed. But as the hours passed, the Tar began rising frighteningly fast—six to eight inches an hour. By 9 p.m., it looked like the floodwaters might spill through the railroad cut, and about 100 townspeople launched a desperate sandbagging effort. Around 1:30 a.m., then-Mayor Delia Perkins sent everyone home to get their families out, as authorities expected the river to crest three feet over the levee.

Later that morning Floyd’s floodwaters began pouring into town—but they did not spill over the top of the

Floyd's specter still casts a shadow over the town. Abandoned businesses and boarded-up homes stand empty, warped by water damage. On Mutual Boulevard, a chain link fence encircles the old town hall, with missing windowpanes, a rusting tin roof, and peeling white paint.

levee, according to Rader. "The dike did eventually fail," he says, "but that wasn't the cause of the flooding."

Walking along the structure after the flood, Rader found sediment patterns showing Princeville was already underwater when the Tar topped the levee—a finding Riggs confirms. What happened instead was that the river spilled through the railroad cut and poured around the levee's low end, flowing down Mutual Boulevard into town. And once the town was submerged, the levee did the opposite of what it was supposed to do: rather than keeping water out, it held it in with help from the Highway 64 road dam. So altered was the Tar's natural flow that the water had to be artificially pumped back into the river.

"I think the lesson of Princeville is that there should be fewer of these structural solutions, not more of them," says Rader. "We need to be looking at making flows more natural and less subject to human intervention."

RISING FLOOD RISKS

While Princeville has been largely resurrected since Hurricane Floyd, little has been done to protect the town from future floods. Meanwhile, the likelihood of flooding is increasing due to manmade climate change that's expected to heat up annual temperatures in the Southeast by four to ten degrees over the next century and raise sea levels by as much as a foot by 2030, according to a recent report from Environmental Defense.⁶ And as sea levels rise, storms can move further inland, exposing more of the population to potential disaster.

Since Floyd, the Corps has repaired damage to Princeville's levee and built a stoplog structure to be placed at the railroad cut should high water threaten the

town again. It also discussed extending the levee to encircle the town, but Knight, the town manager, says residents rejected that proposal. "It scares the average citizen half to death," he says. "If the drains stop up, the town would become a cesspool when it rains."

If Knight had his druthers, the Corps would dredge the Tar to deepen its channel, but the agency refuses to do that because of the damage it would cause the river's ecosystem. The Corps is currently studying other protective actions such as shoring up the levee's low end, but it is not considering big new structural solutions. It is also in the early stages of conducting a broader study of the entire Tar-Pamlico basin that will look at restoring natural upstream environments as well as building flood control structures.

"The Corps has moved away from thinking that if there has been a flood, there must be a dam," says Penny Schmidt, a spokesperson with the agency's office in Wilmington, N.C. "We're also considering nonstructural solutions such as habitat restoration for better filtering and runoff control."

But while the Corps is looking at ways to restore land to prevent floods or at least lessen their severity, other forces continue to alter the earth in a way that continues to put Princeville and other flood-prone communities at heightened risk—and state officials have been slow to address the mounting threat.

"Personally, I think the flood was a blessing to the town," says Knight, a retired military man who had to be rescued by helicopter from the Princeville truck stop he owns when the water began rising.

Though North Carolina imposed tough rules against wetlands draining before Floyd, swampland in the Tar-Pamlico watershed again faces the threat of development, this time from the federal government. The U.S. Navy wants to build a landing field for fighter jets near the Pocosin Lakes Wildlife Refuge in eastern North Carolina's Washington and Beaufort counties, about 80 miles east of Princeville—a plan that involves filling hundreds of acres of ecologically sensitive wetlands in the river basin. A federal judge earlier this year issued a temporary injunction to



A trailer park near the breached Tar River dike, Princeville, after Hurricane Floyd, 1999. Photo: Hart Matthews

halt the project after the Southern Environmental Law Center (SELC) filed a lawsuit on behalf of the National Audubon Society, N.C. Wildlife Federation and Defenders of Wildlife; the lawsuit cites the government's failure to document impacts on wetlands, among other things. But while project opponents have asked Democratic Gov. Mike Easley and state lawmakers to call on the Navy to halt the project, they have declined to do so.

"Of all the places to put this kind of facility, the government has chosen one of the worst," says SELC attorney Derb Carter.

And it's not only wetlands in North Carolina that are under threat from the federal government: a recent report by four leading environmental groups describes how a January 2003 Bush administration policy directive ordered the Corps and Environmental Protection Agency to withhold protection from tens of millions of acres of wetlands, streams, and other waters unless they first get permission from their national headquarters in Washington.⁷ As a result, wetlands and streams throughout the South—including Florida, Georgia, Kentucky, Tennessee, Texas, and West Virginia—are at risk of serious impairment, to the detriment of downstream communities.

"It is ironic that while the President is touting his goal of a net gain of wetlands, his administration's policy is exposing millions of acres of wetlands, rivers, lakes and streams to destruction," says Julie Sibbing of the National

Wildlife Federation, one of the groups behind the report.

Meanwhile, North Carolina continues to lose natural forests and other open space to urban sprawl at a fast rate, and the state's land conservation efforts are chronically underfunded. In its latest session, the legislature did give the state's public land trust funds financing authority to purchase parkland and to create open-space buffers around military installations. However, it declined to provide the Clean Water Management Trust Fund with the \$38 million boost it requested to help meet its land protection goals. In all, the fund estimates that it needs about \$10.5 billion to carry out its mission, but its latest appropriation was only \$62 million.

Also in the recent legislative session, state lawmakers failed to adopt tough stormwater rules that would have provided strict flood protections for downstream communities, instead catering to wealthy pro-development interests⁸ by adopting a compromise measure that will not regulate runoff in many of the fastest-growing parts of the state. The stormwater rules ended up on the legislative agenda after the state's Environmental Management Commission (EMC) crafted regulations that were rejected by the Rules Review Commission (RRC), an obscure body granted veto power over administrative rules by lawmakers pursuing an anti-regulatory agenda. The SELC and the EMC have both filed lawsuits over the RRC's decision that are still pending.

Todd Miller, executive director of the N.C. Coastal Federation, helped craft the rejected stormwater rules. "The rules commission's action ignores years of hard work and dedication by local governments, state agencies, university scientists, and interested citizens to create stormwater rules based on sound science and practical solutions," he says. "It looks like the rules commission doesn't listen to anyone but the developers."

But at least North Carolina has a rule in place pro-

The levee plan was so flawed it actually aggravated the hurricane's impact. "They didn't take into consideration the area's flooding characteristics. They just didn't understand how water moves."

tecting its wetlands. Some of the states with the largest at-risk wetland acreages offer little or no state protection, including Georgia, Louisiana, Mississippi, South Carolina, and Texas.

“Of all the places to put this kind of facility, the government has chosen one of the worst.”

At the same time North Carolina is failing to do all it can to ease stormwater runoff, the state is taking other actions that could further impede the Tar’s flow. The N.C. Department of Transportation is pursuing plans to build yet another highway bridge across the river just upstream of Princeville in Tarboro. Officials with the Pamlico-Tar River Foundation in Washington, N.C., oppose the project but have called on highway officials to at least completely bridge the 100-year floodplain to keep from worsening the flood risks. While state transportation officials have said they would consider that more costly option, they have not yet made a final decision.

Pamlico-Tar Riverkeeper Heather Jacobs says she hoped Floyd would open officials’ eyes to the risks of such projects, but that’s not the case. “It’s amazing how quickly people forget,” she laments.

But the people of Princeville have not forgotten what happened five years ago, and they live in dread of the next big storm. As summer morning gives way to afternoon, the fog obscuring the town’s welcome sign lifts and the sun shines briefly. But as evening approaches, storm clouds once again begin to gather overhead, and children dash to the safety of home across gravel streets still pocked with deep puddles from last night’s downpour.

Inside her new white trailer on Tyson Street, Louise Latham—a senior citizen like almost half of the town’s residents—recalls what happened that day five years ago when she woke to find the river pouring into the trailer she had bought just a month earlier. Struggling through fetid, waist-deep water, she made her way to a nearby rooftop where she was rescued by boat, only to face living in temporary housing for months on end, until she was able to purchase a new home with insurance money.

As Latham tells her story, thunder rumbles in the distance. She leans back on her sofa, pushes aside the curtain and nervously peers out the window.

“It was devastating,” she says in a quiet voice. “Now every time it rains, you start thinking.”

Sue Sturgis is a freelance writer who lives in Raleigh, N.C.

NOTES

1 See *African Americans and Climate Change: An Unequal Burden*, Congressional Black Caucus Foundation, July 2004.

2 Riggs’ talk, titled “Anatomy of a Flood,” was published in the book *Facing Our Future: Hurricane Floyd and Recovery in the Coastal Plain*, edited by J.R. Maiolo, J.C. Whitehead, M. McGee, L. King, J. Johnson, and H. Stone. Coastal Carolina Press, Wilmington, N.C., 2001.

3 For summaries of American Forests’ urban ecosystem analyses for Montgomery, Ala.; Mecklenburg County, N.C.; Knox County, Tenn.; Atlanta; and other Southern communities, visit www.americanforests.org/resources/urbanforests/analysis.php

4 *North Carolina Forests at a Crossroads*, Environmental Defense, March 2004.

5 *Crossroads: Congress, the Corps of Engineers and the Future of America’s Water Resources*, National Wildlife Federation and Taxpayers for Common Sense, March 2004.

6 See *Understanding Climate Change for North Carolina: Our Choices, Our Children’s Future*, Amber Munger and Michael Shore, Environmental Defense, October 2003.

7 See *Reckless Abandon: How the Bush Administration Is Exposing America’s Waters to Harm*, Earthjustice, National Wildlife Federation, Natural Resources Defense Council and Sierra Club, August 2004.

8 See “N.C. Home Builders Association & the Sprawl Lobby,” Democracy North Carolina, October 2003. Made up of the N.C. Realtors and the N.C. Home Builders Association, the “sprawl lobby” contributed about \$478,000 to state lawmakers in the 2002 election cycle. That’s more than any other interest group and far more than environmental political action committees, which contributed a total of only \$23,500 to legislative candidates in the 2000 and 2002 election cycles combined.

PORTRAITS

A PHOTO ESSAY BY HART MATTHEWS



Repairing N.C. Hwy. 12 north of Buxton on Hatteras Island after Hurricane Dennis, 1999. This stretch of road gets washed out nearly every time the Outer Banks get hit by a major storm. The state spares no money in getting these beach communities up and running.

OF DISASTER

**In 1999, Hurricane
Dennis ravaged
North Carolina's
Outer Banks, raising
questions about the
sustainability of
beach communities
in the face of
extreme weather.**



Homeowner risks downed power lines and snakes trying to unclog a storm drain in Kitty Hawk after Hurricane Dennis, 1999.



Above: What used to be N.C. Hwy. 12 north of Rodanthe on Hatteras Island after Hurricane Dennis, 1999.

Top right: Beach and an overturned Jeep where there used to be dunes and a road (N.C. Hwy. 12) north of Buxton on Hatteras Island, Hurricane Dennis, 1999.

Bottom right: A beach house in Nags Head falls into the sea during Hurricane Dennis, 1999. This one probably wasn't salvaged.





Two places in the Hatteras National Seashore washed out by Hurricane Dennis, 1999. This shows the natural overwash process of the barrier islands that has been stopped (or slowed, in this case) by dunes, roads, and the resulting vegetation.



Above: A worker uses a sledgehammer to break up concrete from a damaged driveway in Nags Head after a storm.

Below: There are rules about refilling under homes that have been separated from the dunes by a storm, but the policies are convoluted and variances on sandbags have become common. Sandbags are not supposed to be placed without special permits, but homeowners sometimes place them right after a storm before inspectors can assess the damage.





Water pours over a bulkhead in the Colington Harbour subdivision of Kill Devil Hills during a storm. These waves are from the Roanoke Sound, not the open sea, and have taken a toll on the land that used to support this seawall.



What's left of N.C. Hwy. 12 in the Pea Island National Wildlife Refuge (Hatteras Island) after Hurricane Dennis, 1999.

DELUGE



WITHOUT END

Four years of unprecedented rainfall left much of West Virginia devastated. Now residents, activists, and regulators struggle to reform the logging and mining industries that bear much of the responsibility.

Above: Steps to nowhere.

By Penny Loeb | Photographs by Bob Gates

On a sunny Thursday afternoon in early July 2001, Mary Coleman stood in her backyard at Scrabble Creek in southern West Virginia, gazing at treasured knick-knacks drying in the sun. A few feet away, church volunteers ripped flood-soaked carpeting out of her living room. When asked whether mountaintop removal mining had made the flooding worse, she looked straight into the camera. “You had better believe it,” she said. “They took the whole mountaintop off. We’ve never ever had nothing like that.” She started to cry.

The floods of July 8, 2001 devastated a huge swath of the coalfields. The sky had darkened just after dawn on Sunday. Rain came hard—as much as 5.32 inches in a few hours. The storm’s fury stretched 70 miles north to south and 30 miles wide, from Fayette County east of Charleston to McDowell County at the bottom tip of the state. The final damage tally was huge. Losses totaled more than \$700 million. At least one-fifth of the 100,000 residents were hit hard, losing homes, businesses, and water for weeks.

Many flood victims told reporters that logging and surface mining had worsened the floods. People who live near mines seem unable to escape the brooding nightmare of the 1972 flood at Buffalo Creek. On the morning of Feb. 26, millions of gallons of black water surged 17 miles down the creek, sweeping away hundreds of homes and killing 125 people. A shoddily built dam had broken at a coal impoundment that stored grimy water left behind after cleaning coal.

I had seen flooding from mine operations while reporting an investigative article on mountaintop removal mining for *U. S. News & World Report* in 1997. Runoff from one of these gargantuan mountaintop mines had washed out White Oak Creek hollow at Artie and killed a woman and teenage boy. So in July 2001, I was drawn back to the coalfields to investigate the claims of flood victims. Over the next few months, Charleston documentary filmmaker Bob Gates and I drove more than 3,000 miles, visiting two dozen flooded communities.

Bob also examined paths of runoff in helicopter flyovers. At virtually every badly washed out area, we found some sort of natural resources extraction—mountaintop removal mining, logging, or remnants of old mining—had worsened the flooding below.

What we could not imagine was that we would return to the coalfields for three more years as storms repeated in unprecedented frequency. Like Charley, Frances, Ivan and Jeanne, they hammered the vulnerable hollows that supply at least 7 percent of the nation’s energy. And each time, we would find where logging and mining had exacerbated storm runoff. Damages and clean-up for the four years approached \$1.5 billion.

Many West Virginia public officials view flooding as unstoppable. The narrow hollows just can’t contain the heavy rains, they say. In fact between 1960 and 1996, the state had by far the highest number of deaths per capita from flooding, with 252 people drowning. Only far larger Texas (619) and California (258) had more total deaths. Now climate change appears to be causing more unpredictable, heavier rains.

Yet most officials in this independently-minded state are afraid to order extractive industries to curtail storm runoff—or to require vulnerable residents to protect themselves. After the 2001 floods, public officials and environmental activists missed an opportunity to use public outrage to push through strong flood protections that could have saved tens of millions of dollars in damages and cleanup in subsequent years. A far-reaching study of how to protect West Virginia citizens from floods had actually been funded in 1998—but wasn’t begun until the fall of 2001. As 2004 draws to a close, few of the study’s dozens of well-considered proposals have been enacted.

So as Bob Gates and I wound through the coalfields these four years, we actually watched parallel stories unfold. In front of us, were lives in disarray, houses and mementos of lives swept away. Back in the conference rooms, we heard flood victims put their hopes in the hands of government officials. A few officials fought



Oceana, W.Va., was one of the communities hit hard by the July 2001 floods.

hard for change, with limited success. Most shrugged off concerns, assuming each big flood was the last. Every time it rained, we prayed it wouldn't be hard and wished better flood controls were in place—instead of on paper.

Four days after the flood—as soon as some roads were cleared—Bob and I set out on our investigation. Our

first trip was to Scrabble Creek, southeast of Charleston in Fayette County. This sunny Thursday, we crawled along Route 60 as road crews cleared away mounds of dirt. Gullies had been ripped out of the hill jutting steeply up the north side of the road, and piles of logs had washed down to edge of the road. We passed half a dozen towns walloped by the flood. Toys, clothes, furniture were heaped in yards, drying in the sunshine. Bridges over creeks were swept away or splintered.

“They took the whole mountaintop off. We’ve never ever had nothing like that.”

National Guardsmen lugged boxes of bottled water up porch steps.

These floods bore no comparison to the 1997 Red River flood in North Dakota or the 1993 Missouri River floods, where the rivers surged over their banks and spread into nearby towns. In the coalfields, the onslaught came down the mountains in the form of lava-like flows of mud and rocks. The millions of tons of gunk filled tiny streams and sent them surging out over homes crowded along the narrow strips of flat land along the banks.

As we started up Scrabble Creek, we saw the bald knob signaling a mountaintop removal mine. In search of thin, horizontal seams of coal, huge shovels and bulldozers cut off the mountains and push that rock and dirt into the valleys, filling hollows for up to two miles. This valley fill was farther back than usual—and had two sediment ponds to contain storm runoff at the bottom. But its condition was remarkably similar to the one at White Oak four years earlier. Mud and rocks filled the sediment pond nearest the fill. The hillside above the second pond had been timbered, probably in preparation for more mining. For some reason, the road to the logging had been built across the spillway from the lower pond. It wouldn’t be the only time we would see how drainage from various sources could work at odds and exacerbate runoff.

As we drove back down the creek, we saw a small house near a church where damage seemed especially bad. Mary Coleman and her companion, Donnie Laing, had recently finished redecorating the home she had inherited after her husband died. They were still in bed Sunday morning when a neighbor knocked on their door at about 9 a.m. Water rushed in. They escaped out the back door and climbed the hill, where they sat for six hours. The water came up three feet in the living room.

The flooded area contains some of the poorest counties in the nation. Personal income rates vary from 48 percent of the national average of \$24,819 in Fayette, to 38

percent in Wyoming and 30 percent—\$7,482—in McDowell, the poorest county. Population has been dwindling and aging in these counties as mines close or become more mechanized. About a third of the residents are over 50. The top jobs are mining and working for the government, mostly the schools or county. In McDowell County, 20 percent of working age residents are on disability, while about 10 percent are in the other counties.

Despite the bleak statistics, most of the homes are tidy, though small, often decorated in country themes, with ample vegetable and flower gardens. Accustomed to hard times, coalfield residents are endowed with an ability to endure—a trait their descendants sometimes carry away to success. The grandparents of New York Jets star quarterback Chad Pennington were among the flood victims in Oceana. “We are cleaning up,” Maude Pennington told a minister. “Better days are coming.”

We would visit valley fills at six more mines in the flooded areas. Bob Gates decided the worst devastation was at Buger Hollow, in Dorothy in Raleigh County. Above the community lies the Princess Beverly mine, owned at the time by AEI Resources. Everywhere Bob pointed his camera he found a horror story. A new, well-built Colonial, worth \$250,000, was torn apart, and the owner had spray painted: “Allstate here we are.” The owner told Bob that the flood waters were actually sucking him upstream while he hung onto a fence to keep from drowning. One woman was standing on her deck at about 9:30 that morning when she turned around and saw a tidal wave. The water came from the valley fill and had swept the closest house down the hill, into the creek, where it formed a dam. High water pooled behind the house—now dam—and spread over the community of two dozen homes.

Many flood victims told reporters that logging and surface mining had worsened the floods.

Just as we were nearing the end of our explorations of the flooded areas, rains came again on Thursday, July 26. They hit White Oak Creek, which had been spared July 8.



In 1997, runoff from a gargantuan mountaintop mine washed out White Oak Creek hollow at Artie, killing two.

Fortunately, there had not been any deaths this time. Amazingly, the pattern of the flood mirrored 1997, the same lawns covered with rocks, the same parts of the road washed away. Someone had put out a white toilet with a cardboard sign reading “White Oak,” with an arrow pointing to the toilet bowl. The valley fill was an amazing sight—totally collapsed and slithered into the sediment pond, now a pool of black goo.

Over the next few months, Bob was able to photograph the flooded valley fills from a helicopter. He saw

Scrabble Creek, Seng Creek, Buger Hollow, Armstrong Creek, Jim’s Branch at Oceana, and White Oak Creek. In each case, the photos show the path of the heavy rain and where the erosions and collapses occurred. At Seng Creek near Whitesville in Boone County, the Catenary Coal mine, a subsidiary of Arch Coal, had filled the head of the hollow with a valley fill. A moat-like, horizontal ditch near the top was supposed to divert water from the face of the fill. Instead, the middle of the ditch had collapsed, and sent water ripping down the side of the fill

with such force it swept away trees and cut a ditch five feet deep and 15 feet wide.

How could massive collapses happen at virtually every unfinished valley fill in the flooded areas? State and federal mining regulations requiring extensive drainage controls of ditches and ponds are intended to prevent such collapses, but they weren't always broad enough, or enforced. When the federal surface mining law was enacted in 1977, fills were much smaller. No one expected the huge shovels now used to remove mountaintops to appear in West Virginia, since they wouldn't fit on the narrow roads. Most importantly, fills were in those days carefully built from the bottom up, with each layer stabilized before the next was added on top.

Over the next two decades, roads widened, thanks to funding from the Appalachian Regional Commission's plan to open up the coalfields. The large shovels arrived, partially financed with tax credits intended to stimulate business development in the 1980s. The state environmental agency quietly relaxed fill standards and allowed the rubble to be just pushed over into the hollows. Fills are now not so much built as simply piled up, often haphazardly.

Two important state regulations governing sediment ponds were only laxly enforced under the Republican administration of Cecil Underwood in the late 1990s. The ponds at the ends of valley fills were supposed to control runoff from a 25-year-storm. But the state Department of Environmental Protection (DEP) had been letting mines get by with ponds that only controlled for 10-year storms, despite repeated admonitions by the federal Office of Surface Mining. In addition, the ponds were supposed to be only 60 percent full of sediment, leaving room for severe runoff. In looking at mine inspection reports, I found numerous notations that the ponds were more than 60 percent full.

At the time of the flooding, state and federal agencies were studying storm runoff from valley fills. In 1998, at-

Between 1960 and 1996, 252 people drowned in West Virginia floods, by far the highest figure per capita in the nation.



A valley fill at Armstrong Creek after the July 2001 floods.

orney Joe Lovett had gone to federal court and charged that valley fills were illegal because the Clean Water Act prohibited land disturbances within 100 feet of any but the tiniest ephemeral streams. Though the district court ruling upheld Lovett's argument, the decision was overturned upon appeal. An early settlement of portions of the case did require an Environmental Impact Statement, which included an examination of flooding. However, no recommendations had appeared before the July 2001 floods.

Mountaintop mines and valley fills affected only part of the flooded area. In sections of Fayette County and much of Wyoming and McDowell Counties, there was far more logging than mining. We would also find old deep mines, hillsides of loose bits of leftover coal, and roads to gas wells. In fact, there is little virgin land left



Homes washed into the river in Anawalt, July 2001.

on the scores of squat, cone-shaped mountains, squeezed ever tighter as you travel south.

Anawalt, in McDowell County near the Virginia border, is a quaint crossroads with a handful of old brick and frame store buildings accented by a trapezoidal three-story, yellow-brick town hall at the edge of Tug Fork. Mayor Eva Sue Rash, with a disposition as sunny as her froth of blond hair, held hot dog sales to buy the building. The Sunday morning of the flood, the mayor watched a mobile home float down the river and then

explode. Quickly, she set up a command center at the town hall. Her car was jammed with watermelon, cantaloupe, and strawberries intended for a baby shower for her clerk. With roads into town blocked, the fruit became breakfast for hundreds the next morning. Ironically, she had just applied for a grant for three flood walls a week earlier.

On the road from Anawalt to nearby Leckie was a small, but certainly flood-prone, logging operation. In total violation of the state's best management practices,

loggers had cut the haul road straight up from the edge of County Route 84. The hard rain had washed out tons of loose earth, blocking the road. A week after the flood, a yellow bulldozer, green logging tractor, and winch sat on the hill, mired in dried mud.

A little further toward Leckie, one hollow seemed to be particularly hard hit. A rundown white house was closest to the road. John Wilson was sitting on the front porch. He had worked in the deep mines of McDowell County when he was young in the 1950s, and also had experience in metal mines out west. Wilson spent many hours prowling the hills of southern McDowell County searching for ginseng, black cohosh, yellow root, and other herbs. He often encountered logging that couldn't be seen from the roads. Sometimes, Wilson told me, he thought the herbs were more valuable than the logs. Wilson believed both logging and old mines contributed to the flooding and offered to take us into the mountains.

With Wilson as guide, we observed how a variety of land disturbances—old and new—intensified runoff. We drove along a road built to provide access to gas wells, more and more of which have been drilled in recent years in the coalfields. Gas roads and timber roads can cause landslides, experts have found, because water can pool there and weaken the hillside below. Roads can also funnel water faster down the hills.

Wilson pointed out wet spots on the hillsides about every 1,000 feet. Seepage from abandoned mines, he explained. Wilson also noted something we had not considered. In the 1960s and early 1970s, surface mining had been done by scraping earth off the sides of mountains to expose coal seams that then could be drilled horizontally. The earth taken off was dumped on the down sides of the mountains, making them even steeper—thus accelerating runoff. Finally, we found the timbering: A new haul road had been cut down the mountain. Again, the loose tan earth had eroded and washed down the hill. Further on, we found four or five roads on one hill. Not necessary, Wilson said, just laziness.

But flood-plain maps were mostly two decades old and didn't cover the outlying hollows, so many victims didn't even know they were in danger.

When he got home and watched the television footage and saw the newspaper photos, they didn't touch the depth of desperation he had just left.

About 75 percent of West Virginia, over 12 million acres, is forest. Of that, 1.2 million acres form part of state or federal parks or forests, and 2.6 million acres are owned by wood product corporations like Georgia Pacific. The rest is in the hands of private landowners and family trusts. In the coalfields, the rights to timber and minerals are leased to extractive corporations, such as Arch Coal, Georgia Pacific, Gilbert-PLC Lumber, and Cranberry Hardwoods. Forest fires destroy about 50,000 acres a year, while 300,000 acres a year are logged, frequently by small, local contractors who operate on narrow profit margins.

Research by the U.S. Department of Agriculture's Forest Service at three eastern hydrology laboratories has determined how forests absorb rainfall. About 10 percent is caught by trees, another 3 percent by dead leaves on the ground. The forest floor, with its network of roots, animal burrows, and holes left by toppled trees, takes the rest, as much as 50 inches of water an hour. Logging and fires, however, greatly reduce absorption. In the first few years after a fire severe enough to destroy humus ground cover, forests floors take in only one quarter of the rain. A forest area logged of 25 percent of its trees will see increased runoff for about five years. Roads, it turns out, are the worst enemy of absorption, compacting the soil and channeling water downhill.

Timbering in West Virginia is not regulated as tightly as mining. For example, loggers are not legally obligated to issue advance notice of new operations to residents—the Division of Forestry asks only that loggers notify authorities within three days *after* beginning work. Loggers are given a set of best management practices to control sediment runoff into streams. Streams should be untouched for 100 feet on either side so the brush can filter runoff from the logging site. Roads should not be too steep, and should turn often because long straight stretches increase the velocity of runoff. Water-bars—horizontal ditches across roads—should be used to slow



Wrecked homes near Pineville.



and divert runoff. Within seven days after logging ends, roads and landings must be reseeded. Importantly, Forestry guidelines recommend the fewest roads possible.

Compliance is mostly voluntary, however, and the guidelines are frequently ignored, as I found visiting dozens of logging sites. Plans for logging and roads do not have to be submitted to Forestry. Inspectors can only write violations if they personally witness runoff from improperly designed operations. With 3,200 logging operations a year in the state and only about 90 inspectors, actually catching logging erosion is unlikely. That is not to say all miscreant loggers have escaped. Forestry has taken several blatant bad operators to civil court. One other, rarely used enforcement tool is provided by DEP water regulations: A landowner is legally responsible for logging or other land disturbances that increase stream sedimentation.

Over the next few months, we saw a dozen other communities where logging appeared to have contributed to the flooding. From a helicopter, Bob photographed timbered areas, especially in Wyoming County. Above Glen Fork, the hillside was honeycombed by logging roads. The superintendent at the 4-H Camp showed us photos of cut logs that had washed down the hillside into the swimming pool and onto the lawns. In Glen Jean, a historic community near the entrance to the New River Gorge in Fayette County, both sides of a hill had been clear cut—one of the few places we found complete removal of timber. Bob Evans lived highest on the hill, yet he got the worst flooding as water cascaded down the road from the logging site.

The hillsides above Shumate Hollow in McGraws, near the northeast border of Wyoming County, had been extensively logged. Here the flood took a life. Until July 8, about 15 families had lived along the creek, anchored by the small Pentecostal Church and its pastor, Lincoln Shumate, and his wife Elsie. Their home and all their belongings washed away.

The first person I came upon was Lawrence Tilley, who had lost his home and was living in a blue tent attached to his car. His description of chaos and death sounded like the diagram of a traffic accident. He recounted how a log came rolling down in the high water and struck the home of Bonnie Shumate, Lincoln's sister, knocking it off the foundation. Her house floated down the river until it collided with the bridge. A mobile home slid down the hillside while another house on the

Freddie Steele watched as his home filled up with five feet of rocks and mud in 17 minutes.

flatland washed into the river, and the two structures slammed into Bonnie's home, squeezing it between them. Bonnie, 58, stood on a bed, frozen with terror. Several neighbors attempted to stretch ladders from the two homes on the sides. Before the men could reach Bonnie, the force from the squeezing structures on either side caused the floor to buckle, and she fell into the violent water below and was swept away. They found her body nearby a few hours later, the hair caught on a wire fence.

Reimbursement for losses varied widely. Some people ended up with better homes and belongings than they had. On Seng Creek, Baptist volunteers built a new home for one family for just the \$13,000 they got from the Federal Emergency Management Agency (FEMA). People with little income were given mobile homes by FEMA with only minimal payments required. However, some people with moderate incomes or disability pensions from mining accidents were refused aid from FEMA. Some took out low-interest loans of over \$100,000 from the Small Business Administration, requiring many years of payments. Many flood-victims had no flood insurance. Only homeowners in flood plains with mortgages were required to have insurance. But flood-plain maps were mostly two decades old and didn't cover the outlying hollows, so many victims didn't even know they were in danger.

Lawyers jumped in within a week of the flood. First to file was Stuart Calwell of Charleston who brought a case against eight coal companies and two land companies, a group of defendants that would later expand to nearly 100. Calwell's suit alleged that the companies should have known that mining and timbering would divert water onto the properties of flood victims. This case, and others like it, were still pending in late summer 2004. Lawyers for both sides awaited a state Supreme Court of Appeals ruling on whether plaintiffs' lawyers

could argue coal and logging companies had caused damage by failing to control runoff—or whether they must prove the industries were negligent. More than 3,500 flood victims are counting on the lawsuits for reimbursement of uncovered losses.

Soon after the flood, government officials took on another task. They would try to answer two questions: 1) How can we prevent damage from future floods? and 2) What was the role of logging and mining in causing or exacerbating the damage? Actually, a study of flood protection had been launched more than a year earlier with a 1998 federal grant obtained by Sen. Robert C. Byrd. Headed by the U.S. Army Corps of Engineers and the state Conservation Agency, 26 state and federal agencies were to offer input on far-reaching questions of improving storm warnings, how much development should be allowed in flood plains, and whether to dredge streams and build dams. Prompted by the July disaster, the study group got down to business with a series of seminars in the Fall of 2001. In conjunction, a disaster recovery board was established and hired a consultant to study whether to move much of Wyoming and McDowell Counties out of the hollows and onto mountaintops.

The task of examining mining and timbering fell to DEP's Matt Crum, who had been director of mining and reclamation for just 18 days when the floods hit, and John Ailes, former mining director and now special assistant to the DEP secretary. As a National Guard mem-

I saw the first glimmer of hope that flood damage might not be inevitable. "These mountains don't give up their secrets easily."

ber, Ailes had spent weeks helping clean up after the flood. Crum had been an attorney for environmental issues in the justice department under President Bill Clinton. His wave of dark blond hair and youthful, movie-star looks belied his quick grasp of issues with a sensitivity and integrity rare among mining officials. He spent two weeks flying over the flooded areas and crawling up hollows in DEP Jeeps. When he got home and

Even after four years of devastating floods, the state lacks the political will—and the funds—to fight flooding aggressively.

watched the television footage and saw the newspaper photos, they didn't touch the depth of desperation he had just left.

In the wake of Sept. 11, 2001, the coalfield floods were all but forgotten. DEP missed the Dec. 31 deadline for its study. The majority leader of the state House of Delegates, whose law office in Mullens had been destroyed, submitted a bill to require sediment control measures on logging operations. It never got out of committee. The coalfields did get noted in late October in a *Wall Street Journal* article as Jonathan Eig sought tragedies to match 9/11, writing of Man, W. Va., that "this poor coal-mining town has become a leading laboratory for the study of posttraumatic stress disorder...A conclusion common to all those reports sounds as if it were torn from today's headlines: along Buffalo Creek, nothing will ever be the same."

On May 2, 2002, the rain started in the afternoon, a brief shower followed by another—and then a deluge of more than five inches in less than 24 hours. The band of the storm was smaller than in 2001, hovering mainly over McDowell County and parts of Virginia and Kentucky. Northfork was hit hard again, as were Kimball and the other towns along Route 52. Anawalt was spared. The storm stretched through Welch to Iager, and swept down into Caretta and Coalwood, which was made famous by native Homer Hickam in his memoir *Rocket Boys*, the basis for the film *October Sky*. Six people died, 197 homes were destroyed, and 2,925 were damaged. Clean up and repairs cost at least \$47 million in public money. But losses were much greater, at least \$200 million, which made for close to \$1 billion in losses for the two years of floods combined.

One of the first places Bob and I went was Northfork. The scene was like the rerun of a bad movie. Again,

National Guard members were clearing debris and rebuilding bridges across the creek. Piles of coal had washed down in the same yards as the previous July. I knocked at a brown clapboard house at a bend in the road. Lucinda Robertson, a doll-like 72-year-old woman, hadn't believed what she saw on May 2. Here came a river of water, mud, and coal swirling by her front porch—for a second time. Robertson's neighbor had carried her to safety. Friends wanted her to move, but she refused to leave the house, which was an inheritance from her husband, one of the local enclave of African-American miners.

The coal came from the numerous old slate dumps in the hollows along the river. Much of McDowell County is riddled with hills of old coal, which are slowly being reclaimed under the federal Abandoned Mine Lands program. When DEP had held a hearing in McDowell County during the flood study, a local man warned that the slate dump up Carswell Hollow east of Kimball would collapse in the next big storm. He was right. We found Alice and David Rotenberry outside their large yellow house below that slate hill, attempting to clean mud out of what had been a yard resplendent with flowers. The worst spill of all was the collapse of a slurry impoundment near Gary. Tens of millions of gallons of black coal slurry had cascaded out, destroying a nearby house and spilling black goo into the Tug Fork as fast as 5,000 gallons a minute. A conscientious DEP inspector had actually warned of impending problems in March. The next day, mining director Matt Crum had ordered a thorough evaluation—but fixes did not come in time.

We arrived at Ritter Hollow above Avondale as sunset's golden light spread over broken lives: waves of rocks covered lawns, cars were mangled and tossed at the edge of the creek, half the earth was washed out from under a house. A mile up on the right side, white paint on a new grey mobile home, raised on concrete blocks on a hill out of flood range, read: "NYC got theirs on 9-11-01. We got ours on 5-02-02. May God Bless You." On the other end of the house were the orange numbers signifying impending demolition. The deluge came *down* the hill, not up from the creek. Freddie Steele, a miner who walked with a limp after crushing his leg and

Overwhelmed by timbering lobbyists, legislators had no interest in flood controls on timbering.

The flood waters were actually sucking him upstream while he hung onto a fence.

back in a mine collapse, watched as his home filled up with five feet of rocks and mud in 17 minutes. Like many others, he knew where the water had come from: the gas company had cleared a 100-foot-wide path for a new gas pipeline. The cut trees were tossed into a ravine, forming a crude dam, behind which water pooled. During the storm, the force of the water behind the ruptured dam had ripped the narrow stream into a ravine and rained rocks on Steele's home.

This time, more people quoted in newspaper stories were blaming timbering for the flooding. There are no large valley fills in this flooded area, but 87,087 acres had been logged between 1993 and 2001. When Sen. Jay Rockefeller, who had been governor when floods nearly wiped out Williamson in 1977 in neighboring Mingo County, visited Coalwood, he said timbering may have worsened the flooding. Before the storm, Coalwood, population about 280, could have been considered the Scarsdale of McDowell County. A half-mile of neat clapboard homes lined the road to the machine shop, clubhouse, and other massive brick buildings that had once housed Olga Coal Company. The flood damaged or destroyed at least three-quarters of the homes.

Ernest "Red" Carroll, father of one of the "Rocket Boys" in Hickham's memoir, was our guide. "I've been here 84 years, and never saw anything like this," he said. "It's all the timbering." He directed us up a hill a little ways from his house, past the field where the historic flights had begun. Soon we saw two logging roads. A large leftover stump had washed down, blocking one road. The other road went nearly straight up the mountain, and bore much of the blame for the washouts below. Piles of cut branches and tree tops had sluiced down the road, landed in heaps in the creek, with bunches washed out into Clear Fork in Coalwood, where they blocked culverts and caused the water to spread out over banks and into homes.

This time, Forestry officials did check all the timbered areas near flooded areas. However, they placed more blame on the forest fires that wiped out trees and undergrowth on 20,728 acres in 2001.

Officials had begun to realize the enormous toll of multiple floods. By mid-June 2002, findings of the long-delayed studies started appearing, with DEP first. Did mining and timbering worsen the flooding? The simple answer was yes, by as much as 21 percent at one place in the three watersheds studied.

The percentage didn't matter to mining director Matt Crum or special assistant John Ailes, who wrote most of the recommended rule changes. Absolutely no increase in runoff from mining or timbering should be allowed. DEP called for valley fills to be built from the bottom up so they would not meltdown in heavy rain. Even more importantly, new mining could not increase runoff in a watershed. In what DEP calls Storm Water Runoff Analysis, the condition of the entire watershed would be reviewed before creating a new valley fill. Timbering should be limited by the steepness and soil conditions of a watershed. Previous forest fires could also limit the amount of logging activity. Cut tree tops and branches would be removed from roadways so as not to be washed out in storms. Proposed logging sites would be reviewed by inspectors before cutting began.

DEP's computer study of Scrabble Creek and Seng Creek produced groundbreaking insights into how flooding happens in the southern West Virginia coalfields. Storms that start at the top of a mountain and move down, as happened on July 8, increase flows in the hollows. Shape is important. The higher the mountains and the steeper the slope, the more runoff. Short and narrow watersheds have less room to slow down the runoff. The impact of a logging operation will depend on where it is in a watershed. North-facing slopes get less sun and have less vegetation that can slow runoff. The depth and type of soil is very important because that determines how much water can be absorbed and not run off.

Destructive floods are not inevitable in the coalfields.

SAVING THE COALFIELDS

There is no shortage of ideas for flood-proofing the coalfields. Some control runoff from mining and logging. Others control placement of buildings in flood plains. Still others deal with insurance and education. Here are key proposals from DEP, the Flood Protection Plan, disaster recovery officials, and flood victims, and what has been done (or not done) so far.

MINING

Recommendations: Prohibit any additional runoff from new mining. Build valley fills from the bottom up.

Status: Runoff controls approved by state legislature in 2003, implemented June 30 on large mines, subsequent years for smaller mines. Compromise valley fill construction requires long run-off area to stop erosion from fills.

LOGGING

Recommendations: Limit logging in individual watersheds based on soil conditions, degree of slope, and any burnt area in order to minimize runoff. Inspect and approve logging plans before work begins. Prohibit logs in or near streams. Increase inspection staff.

Status: Legislature has not acted.

FLOOD INSURANCE

Recommendations: Agents must sell flood insurance or refer clients to those who do. Agents must make property owners sign a notice that they have accepted or declined flood insurance.

Status: State Insurance Commission is considering mandatory disclosure of flood insurance status on each homeowner's policy. Of 110,000 structures in flood plains, only 20,000 are insured.

FLOOD PLAIN MAPS

Recommendations: Update maps and cover previously unmapped areas.

Status: Preliminary maps have been completed for McDowell County; Wyoming nearly complete. Maps for all counties expected by 2012. Smaller hollows remain unmapped since few homes are at risk. Buildings in unmapped areas have lower rates for flood insurance.

STREAM CROSSINGS

Recommendations: Require standards for culverts, bridges, and other stream crossings. Often these are too small or incorrectly designed, which allows debris to catch and form dams, spreading high water into communities.

Status: Legislature has not acted. FEMA Region III office created general guidance for placing new stream crossings and replacing those destroyed by floods.

FLOODPLAIN MANAGEMENT

Recommendations: Require owners of all new structures to obtain a permit certifying whether or not the structures are in the floodplain. Minimize construction in floodplains and require all buildings there to be above flood elevation and adhere to building codes. Buy and demolish existing structures in flood plains. Prohibit gas tanks, old cars, or anything that could wash away in floods from being kept near stream banks.

Status: All counties have regulations for flood plain construction, but many don't enforce. Wyoming County has adopted stringent standards. Office of Emergency Services is helping local governments understand the laws on flood plain management. Not enough state and federal funds for most buyout requests.

DREDGING

Recommendations: Stop dredging local streams as a way to reduce flood damages. Channel modifications should be made if they are economically and environmentally justified.

Status: A number of stream banks have been shored up. But each flood adds to the list of needed repairs. Never enough funds to complete all the work.

STORMWATER MANAGEMENT

Recommendations: All counties implement a stormwater ordinance to control quantity and quality of stormwater and guide development and new roads. A state agency should oversee local enforcement.

Status: County prerogative. Few have considered it.

DAMS AND WATER-RETENTION BASINS

Recommendations: Evaluate major watersheds for opportunities to construct upstream retention facilities for flood control and water supplies.

Status: Would require bond issue and/or federal monies. Not yet considered by legislature.

WATERSHED ASSOCIATIONS

Recommendations: Encourage establishment of watershed groups, such as the Lower Paint Creek Association which was credited with limiting flooding in southeastern Kanawha County. Members could petition government for more flood protection.

Status: State funding available. A few new groups formed after the 2004 floods, but not enough residents of coalfields are aware of the program.

RELOCATION TO MOUNTAINTOPS

Recommendations: Gradually encourage residents to move to previously mined land on mountains.

Status: Some residents want to preserve their tiny communities. Others increasingly see mountaintops as safe havens. Settlement of Joe Lovett's valley fill lawsuit required mines offer homesteading as legal use of land after mining, but complicated regulations have prevented adoption so far. Meanwhile, FEMA and the state Housing Development Fund established more than a dozen temporary mobile home parks, housing several hundred families out of flood range. Some have become permanent communities.

EDUCATION

Recommendations: Encourage state and local officials to educate citizens about flood protection. Include flood protection in school curriculums.

Status: Widespread outreach begun after 2004 flood with information available at construction supply stores and county fairs. Extensive outreach to home builders. Nevertheless, most residents have not read mining and logging regulations, and most do not know about the Flood Protection Plan.

Her body was found nearby a few hours later, the hair caught on a wire fence.

The DEP study of mining was supported by findings from the environmental impact statement on mountaintop mining. Examination of three valley fills showed that one fill could increase flooding as much as 13 percent. A USGS study of two years of storm runoff in two watersheds, one mined and one unmined, concurred: during heavy storms, runoff increased from the fills, while the fills actually absorbed water and slowed runoff in lighter rains.

The flood protection studies focused on other ways to prevent flood damage, with more emphasis on removing people from flooded areas than on controlling runoff. The statewide Flood Protection Plan, the one funded by Sen. Byrd, produced dozens of strong recommendations—from more rain gauges to flood proofing all buildings remaining in flood plains. The plan also confirmed the problems we had seen with bridges and culverts. Often these were too small, or too low, and debris piled against them, pooling water into nearby homes.

The consultant to the Disaster Recovery Board recommended widespread buyouts and relocating much of the remaining population. In Wyoming and McDowell County, resources would be focused on the four viable towns. Small communities, including Anawalt, Northfork, and Kimball, would gradually die out, with residents given incentives to move to new developments atop former mountaintop removal mines and near the two new four-lane highways, King Coal Highway and Coalfields Expressway, neither expected to be completed for at least a decade.

JULY 19, 2002: It had been a month since the DEP report and still no word from Gov. Bob Wise, who needed to accept the findings. Once again, it appeared the push for better flood controls had died as the floods of 2002 faded from memory.

I was driving to McDowell County to talk with people about recovering from the floods. The news talk show on my car radio was interrupted by a field report from Logan County about a flood. Again, said the reporter who had been up the hollow, a valley fill has collapsed. How different from a year before, when the press challenged residents' allegations about timbering and mining. The valley fill at Lyburn, in Logan County, is in your face: the largest valley fill visible from a populated area. It looms over Route 10, seeming a mile wide, as you drive from Logan to Man, at the bottom of Buffalo Creek. I had watched it grow for five years, and had only recently seen small areas of green ground cover. Pittson Coal had built the fill, but sold the mine to Massey Energy's Bandmill Coal Corp. in 1998. A long list of violations showed Massey's attempts at reclamation had fallen far short. The storm had dropped several inches of rain on the unstable fill, which had collapsed into the sediment pond—much like the washout of the fill at White Oak Creek. Fortunately, only about a dozen homes lay in the hollow between the fill and Route 10. Two were completely destroyed, the rest damaged. Several cars and trucks were washed away or mangled. To avoid a lawsuit, Massey replaced homes and bought residents new cars and trucks, then celebrated with a picnic.

Lyburn made flooding from valley fills impossible to ignore any longer. Matt Crum persevered with the flood study recommendations, though he only had jurisdiction over mining. Understanding that support of the coal industry is usually a prerequisite for legislative approval, Crum hosted a presentation of an alternative valley fill design by Arch Coal five days before Christmas 2002. Arguing that bottom-up fills would be too costly and sometimes pose dangers to workers driving trucks of rocks down to the bottom, Arch officials asked for fills built with long level areas after the sediment ponds so storm water would slow and be contained at the bottom of the fill. After a couple of weeks of study, DEP finalized an alternative to bottom-up: an erosion protection zone, essentially that long flat area, would have to be built and vegetated before the fill could begin, thus appeasing the industry.

Still, the next two months were nail biters for Crum, whose heart was clearly invested in the improved flood controls. They passed two days before the session ended, and Crum was so thrilled he called me at home. The fill

design was the focus of news stories. However, Crum considered the storm water runoff analysis far more important. This plan to prevent any additional runoff is required of all operating mines, regardless of their start date. All mines with fills larger than 400 acres must have a plan to prevent increased runoff by mid-2004; smaller fills will have to comply in subsequent years.

Logging was a different story. The logging industry had harshly criticized the DEP study, submitting critical letters from at least 40 loggers, foresters, and corporations, including Georgia-Pacific and Weyerhaeuser. It had countered the DEP study with a paper concluding that "normal forest management activities do not seriously increase flood flows in major streams." Overwhelmed by timbering lobbyists, legislators had no interest in the flood controls on timbering proposed by DEP.

JUNE 15-17, 2003. This storm made selective strikes. Charleston got the national media attention with video of a Federal Express truck floating away. But my interest was in the coalfield communities of Dingess in Mingo County and along Route 85 in Boone County. On June 24, Bob and I set off, wondering why government hadn't moved faster with better flood protections. Again we found flooded areas below hills bared by forest fires, stripped in preparation for valley fills, and logged.

About eight miles east, past Van in Boone County, we saw a wave of rocks behind a grey mobile home that reminded us of Freddie Steele in Ritter Hollow. John and Christine Gunnoe had moved out of a flood plain near Van to what they thought was higher ground. John estimated it took two hours to submerge the hollow in a quarter mile of rocks. The swath nudged a small shed behind the trailer, but fell short of the home. Yes, he told us, they had logged up the hollow. And cut logs lodged in the rocks were the evidence.

Maria Pitzer's one-story rambling ranch with sky-blue siding is tucked into the hillside above Bob White, at least 20 feet above Pond Fork—surely safe from floods, one might think. Not so.

The evidence was a 75-foot-wide, 12-foot deep crater in her yard, where Big Branch Creek had changed course temporarily. The ground in front of her garage was crumbling away each day, with less than 10 feet to the edge of the hole. The 20 acres up the hillside had belonged to her grandfather, a Cherokee, and then her father. In recent years she has watched the valley fill

creeping down the hollow, the logging nearby, and a few slides resulting from old mining. She and a DEP inspector walked up to the ponds. They had overflowed, she said, but the inspector did not blame the mines since the slips were below the ponds. A year later, the crater remained in her yard.

Floods came again in November 2003. At year's end, West Virginia had more federally declared disasters than any other state. As the state climbed atop disaster statistics, rainfall, too, approached record levels. Much of the southern coalfields had record rains in 2003. The town of Wayne, about 30 miles northwest of Dingess, had 75 inches, compared to an average of 44.71 inches of rain. And measurements back to 1948 in Pineville in the center of the flooded areas, showed its four wettest years had come between 1999 and 2003, with 16 days with more than 1.5 inches of rain.

MAY 30-JUNE 13, 2004. The rain started in Mingo and Logan Counties around midnight Memorial Day 2004—and never seemed to end.

The worst came Friday night, June 4, when a storm stalled out over the head of Pigeon Creek, between Pie and Varney, dumping about three inches in a few hours. Then a short, heavy storm hit Mingo County late in the afternoon of June 13, and walloped historic Matewan during the Hatfield-McCoy reunion festival, a national tourist attraction. The three floods swept a couple dozen houses off foundations and damaged nearly 7,000 others. With extensive road and bridge damage, 80 percent of Mingo County was affected by the floods. By July 4, FEMA had received 2,122 applications for assistance from Mingo County and 944 from Logan County. Federal and state aid totaled nearly \$50 million—more disaster spending than any state through the end of July.

I made three trips to the flooded areas. Again I clearly saw how many of the worst landslides could be traced to specific mining or logging disturbances up on the hills. However, I also saw the first glimmer of hope that flood damage might not be inevitable.

Many West Virginia public officials
view flooding as unstoppable.

Emblematic of the influence of extractive industries was the August 2003 firing of Matt Crum, the mining director who so passionately fought for reform. Though he was never given a reason, he believes he was too aggressive an enforcer.

Much of the mountaintop mining damage came from Massey Energy's Alex Energy permits, which stretch from Whitman in southern Logan County to Holden about 10 miles west and over the mountain to Riffe Branch in northeastern Mingo County. Residents and inspectors found serious erosion below several valley fills, and a lawsuit is already being considered in Whitman. On the Kentucky side of the Tug River, below Matewan, new mountaintop mines dumped tons of silt into the Tug.

Residents' fears of blowouts from old deep mines came true—twice. The worst was at North Matewan on June 13, when water burst out of a deep mine high above the community. Rocks and water rushed down a steep hillside, flooding 17 of the 35 townhouses at the bottom.

Logging, though, was the bigger culprit. I found seven hollows that had been logged in the past few years. Four were along Pigeon Creek, which had about the worst flooding. Residents of Shady Woods described a wave of water coming all of a sudden June 4. I found more than 30 acres logged on both sides of the head of that hollow. About a mile west along Route 52, Ronnie Smith's house, which he had bought just four months earlier, was inundated by a river of rock that piled on the backside, then spilled down to the front yard. Across the street, an acre of rocks disgorged from a small ravine and covered Mallard Lester's garden along Pigeon Creek.

Smith, who has worked for the railroad for nearly three decades, went up his hill expecting to find a valley fill. Instead he found a network of logging roads. Smith was curious what was on the opposite hill, above the Lesters' house. So up we went, Smith dubious about my running shoes and lack of a walking stick. "These mountains don't give up their secrets easily," Smith commented as I struggled upward.

We found new logging, old logging roads, old deep

mines, a half a dozen land slides—possibly below old logging—all draining towards the ravine that had vomited rocks. At the very top, a steady stream of water from an old surface mine spilled over boulders left after mining. A former DEP inspector told me the mine had produced a smaller flood at the Lesters' in 1996—before the hill had been logged. Now the mine has been released from DEP authority, so the agency can't make the coal company correct the drainage.

Amid the despair, I found a few signs of hope. While DEP's storm water runoff controls for larger mines did not go into effect until June 30, DEP officials said they had already seen improvements in valley fill drainage controls. Jim Pierce, who helped lead the DEP study, said coal companies were actually eager to implement the plans—which prevent any additional runoff from mining—as protection against lawsuits. In June, I did see a valley fill at a medium-sized mine that went undamaged in the storms—and a nearby resident credited it for controlling runoff.

Residents along Pigeon Creek thought storm warnings came much earlier, and they were able to flee to emergency shelters and up hills before waters rose. This was one of many well-considered recommendations of the Flood Protection Plan in late 2002.

Still, much remains to be done. "Damage from flooding can be reduced," the Flood Protection Plan stated, "by taking several common sense steps that will divert flood waters away from existing communities, remove man and his creations from the path of the flood water, eliminate new structures in the path of future floods and/or reduce the elevation of the flood water."

Yet after four years of devastating floods, the state still lacks the political will—and the funds—to fight flooding aggressively. Even officials who wrote the Protection Plan foresee several years of wrangling with the Legislature. Emblematic of the influence of extractive industries was the August 2003 firing of Matt Crum, the mining director who so passionately fought for reform. Though he was never given a reason, he believes he was too aggressive an enforcer.

Money has also been an obstacle. Residents of flood plains whose homes are prone to flooding can ask FEMA to buy their homes—but have at best a one in three chance of approval. FEMA gives about 15 percent of the total cost of a disaster for mitigation, and the state adds a smaller amount. Over the four years, there have been \$178 million in buy out requests—and only \$42 million

in funds, according to Barry Maccioca, the hazard mitigation officer.

Even when government does act—and provide money, the state has failed to follow through. In 1986, Congress authorized funds to flood-proof parts of Island Creek in Logan County. Work never began, and the area was severely damaged in the floods of 1996, 2003, and 2004.

Perhaps the best hope are those who live in the coalfields. This summer a group formed along Island Creek south of Logan. They want the creeks dredged, the bridges raised, and money paid to flood-proof their homes.

But residents need to do more than petition government. They need to find what land disturbances lie up the mountains behind their communities, and upstream from their creeks. Then they need to protect their homes from uncontrollable runoff, whether with berms and diversion ditches, or simply by moving their treasured possessions above flood level. And they need to get flood insurance, which costs only a few hundred dollars—unless they have been flooded before or are in a flood plain. Finally, they need to remember that the condition of the hills is not static: new mining, logging, and gas roads appear regularly. Constant vigilance is necessary.

Destructive floods are not inevitable in the coalfields. Flood protection should be viewed as opportunity: a chance for coalfield residents to learn about watersheds and water flow. A chance for them to work with public

officials and mining and logging corporations to protect and rebuild their communities, whether in the hollows or on the hilltops. A chance to entice new industries into helping build safer communities. A chance to become a model of success, rather than desperation.

Mary Coleman has moved away from flood-prone Scrabble Creek. Hopefully, someday soon all coalfield residents will be as safe.

A journalist for 25 years, Penny Loeb has been a member of the investigative team at Newsday and U.S. News & World Report. She has won the Scripps Howard and Society of Professional Journalists public service reporting awards, and has been a finalist for the Pulitzer Prize and National Magazine Award. Loeb is now writing a book and screenplay about mining in southern West Virginia.

Bob Gates is a photographer and award-winning documentary filmmaker living in West Virginia. His film In Memory of the Land and People, a documentary on strip mining, has been credited with helping cause passage of the 1977 Surface Mining Control and Reclamation Act.

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LAST CALL FOR



JUDGMENT DAY

By TED STEINBERG

**An earthquake in South
Carolina? It happened in
1886, devastating Charleston
and shaking faith in the
economic promise of the
New South**



LEFT: African Americans left homeless by the 1886 Charleston earthquake camped for weeks on Washington Square. Photo courtesy of Duke University's Rare Book, Manuscript, and Special Collections Library.



Photo courtesy of Duke University

When three massive earthquakes occurred along Missouri's New Madrid fault in 1811 and early 1812—unrivaled in the continental United States in severity and scope—they were interpreted by many as a sign of God's power. They also seem to have inspired those who had somehow lost their faith in God to return to the fold. James Lal Penick notes that in the Midwestern and Southern states, where the quakes were felt most forcefully, membership in the Methodist church increased from 30,741 in 1811 to 45,983 in 1812. Methodist membership rose by only 1 percent in the rest of the country. Many citizens of the young republic, explains Penick, sought moral lessons in natural calamities, seeing them as signs and portents.

Today, if one believes the pollsters, only about one-fifth of Americans derive such moral lessons from extremes of nature. What the remaining population thinks

on the matter is unclear. Many no doubt see natural disasters as simple acts of nature, a view that reflects the increasing secularization of 20th and 21st-century American society. To most people these events probably lack any clear moral imperative or lesson. Natural calamity has become, if you will, demoralized, except of course in the sharply confined circles of the superfaithful.

The demoralization of calamity has resulted in a new set of rhetorical opportunities for those in power. Once, the idea of invoking God in response to calamity was a strategy for eliciting moral responsibility. In the 20th and 21st centuries, however, calling out God's name amounted to an abdication of moral reason. With the religiously inclined less disposed than ever to take acts of God seriously, the opportunity has arisen over the last century for some public officials to employ God-fearing language as a way—thinly veiled though it may be—of denying their own culpability for calamity. In this sense

It is hard to find a place more disaster-struck than Charleston, S.C.

the “act of God” concept has become little more than a convenient evasion.

We can see the start of this shift in post-Reconstruction South Carolina, part of a nascent New South in which boosters and entrepreneurs were trying to revise traditional religious outlooks in order to build a new business culture—when nature rudely interrupted.

DISASTER-STRUCK

It is hard to find a place more disaster-struck than Charleston, S.C. Founded in 1670 on a narrow peninsula at the confluence of the Ashley and Cooper rivers, Charleston remained disaster-free in its early years. Then in 1686 a hurricane, “wonderfully horrid and destructive,” wreaked havoc on the city, which is barely 10 feet above sea level. Smallpox erupted in 1697, killing “200 or 300 persons.” The following year an earthquake rocked the town, causing a fire to break out that destroyed one-third of the settlement. In 1699, yellow fever surfaced, followed by a hurricane that ripped apart wharves and flooded streets.

In 1713, another hurricane swept through, causing extensive flooding and washing ships ashore. The year 1728 brought drought, yellow fever (“multitudes” died), and yet another hurricane, which sent residents scurrying to the top floors of their homes. A fire broke out in 1740, gutting some 300 houses and reducing the merchant William Pinckney and his company, the Friendly Society for the Mutual Insuring of Homes against Fire at Charles Town, to bankruptcy. One of the fiercest hurricanes in Charleston’s entire history blew ashore in September 1752, killing more than 15 people and at one point inundating the city to a depth of nine feet.

Storms struck again in 1783, 1787 (drowning 23 people), 1792, 1797, and 1800. In 1804, a hurricane swept up the coast of South Carolina, putting “a great part of Charleston under water . . . in some places breast deep.” Seven years later came a tropical cyclone combined with a tornado. Two years after that a hurricane took at least 15 lives and destroyed a newly built bridge over the Ashley River. A “violent tempest” struck the city in 1822, blowing down houses and drowning eight people. In March 1838, a fire started in a fruit store near the intersection of Beresford and King streets, obliterating an estimated \$3 million worth of buildings. The year 1854

brought another hurricane, followed by yellow fever, which killed 600.

Then came the Civil War. In 1861, while Gen. Robert E. Lee inspected the city’s defenses, a fire roared through town, burning more than 500 acres. Damage was estimated at between \$5 million and \$8 million. There were hurricanes in 1874, 1881, and 1885, the last a storm so severe that it caused the deaths of 21 people and destroyed or damaged 90 percent of Charleston’s private homes. So many trees fell that it took 10,000 cartloads to haul the mess away.

Yet since virtually all these disasters were either weather-, disease-, or war-related, the events of 1886 proved surprising to many. Several minor earthquakes—largely unnoticed—occurred in the city that summer. But on August 31, near 10 p.m. on a humid night, what began as a barely perceptible tremor became a monstrous earth-shaking roar that lasted for more than half a minute. The earthquake had two epicenters: one near Rantowles, roughly 13 miles west of Charleston, and one in Woodstock, 16 miles northwest of the city. The magnitude (*M*) of the earthquake was later estimated to be 7.0—the largest seismic event in recorded history on the eastern seaboard.* Ten severe aftershocks rattled the Charleston area over the next month. In all, a huge expanse, equivalent to two million square miles, experienced the disturbance. Tremors were felt in such far-flung places as Boston, Milwaukee, Cuba, and even Bermuda, 1,000 miles away.

Because of the time of night at which the earthquake struck, no major loss of life occurred. A few died as buildings collapsed around them, but the vast majority of deaths happened outside, where people were struck by flying debris. Mrs. Jacob Middleton lost her life when the wall of the police station on Meeting Street collapsed on her. Ainsley Robson was killed by a falling piazza on Coming Street. In all, as many as 110 Charlestonians died.

Property losses, however, proved even more devastating. Most of the damage resulted from the main quake in August, which destroyed more than 12,000 chimneys and caused a total of \$6 million in repair work. Twenty-five percent of the total value of all buildings in the city vanished in less than a minute. Destruction was especially bad near the intersection of Broad and Meeting streets, the very heart of Charleston. One of the city’s most fa-

* The Richter scale for measuring earthquake magnitude was developed in 1935. However, in the 1980s seismologists turned instead to a better way of measuring the size of earthquakes called seismic moment. Moment magnitude (*M*) takes into account area, fault offset, and the rigidity of the rupturing rocks. Unless indicated otherwise, all figures for earthquakes are based on the moment magnitude scale.

Twenty-five percent of the total value of all buildings in the city vanished in less than a minute.

mous and beloved structures, St. Michael's Church, nearly toppled; its enormous portico had been ripped from the body of the church. The city hall suffered bad cracks in two of its walls. The main police station had been turned into a Greek ruin, the roof and entablature caving in around its huge Doric columns. Nearby, the Greek Revival Hibernian Hall lay in a steep pile of rubble. The devastation was so spectacular that visitors descended on Charleston from all over the East Coast. And they were not disappointed. Some tourists, noted the *Charleston News and Courier*, were so "forcibly impressed" with what they saw that they elected to take an early train back home.

The monstrous destruction created an incredible demand for labor, driving up wages. One report issued just a few days after the calamity noted that "there was a pressing need for laborers, a fact which nobody appreciated more than the laborers themselves. . . . Colored men. . . wanted 50 cents an hour for their services at odd jobs."

In truth, the earthquake could not have come at a worse time for the city. Charleston had risen to power and commercial dominance in the 18th and 19th centuries as cotton and rice plantations expanded through the hinterlands. An excellent system of navigable rivers penetrating the interior allowed crops to enter Charleston after which they were shipped out of the city's well-protected harbor. But in the years after the Civil War, the port's commercial prospects began to wane. In the 1880s, railroads crisscrossed the region, bringing crops overland to markets in the north and eclipsing Charleston altogether. When the quake struck, the city's commercial empire—once dominant over the stretch from Savannah to Wilmington, North Carolina—was badly damaged.

"THEY HAD THE ASSURANCE OF NUMBERS"

In the eyes of the white business class, the only thing more shocking than the earthquake was the way Charleston's blacks responded to it. According to the *News and Courier*, two days after the quake, as the sun went down on Washington Square—itsself a ragtag collection of boards, canvases, old carpets, and anything else that could serve as shelter—a large group of "half-grown negroes, men and women, began to play base ball, and for a time took com-

plete possession of the place, rushing about indiscriminately over every one and filling the air with shouts and curses."

Although many of the blacks who filled the square were, as one press report noted, "respectable people," a contingent of poorer blacks from the "lowest classes" and "slums" seemingly did their best to stoke the anxieties of Charleston's whites. The day following the earthquake two black men "were preaching and exciting the colored women to frenzy. . . . They had the assurance of numbers and refused to desist, or to conduct their exercises in moderation." Within several more days, the *News and Courier* reported, the square had "been completely occupied by the colored people, who seem to enjoy camping out as they would a picnic. . . . At night the religious orgies of the colored people were so boisterous and maddening that many of the white people were unable to stand it and were driven off, preferring to risk their lives in their ruined houses than to undergoing the tortures to which they were subjected by these exercises."

The historian Don Doyle describes late 19th-century Charleston as a "privileged white minority [holding] onto its precarious position amid a sea of impoverished blacks." This situation became even more pronounced after the Civil War, as freedmen—mostly poor agricultural workers from the Sea Islands—flowed into the city in enormous numbers. Between 1860 and 1880, Charleston's black population swelled from roughly 16,000 to more than 25,000. In 1880, blacks made up more than half the city's population. "We very rarely go out, the streets are so niggery and Yankees so numerous," wrote one white woman not long after the war ended.

The Fourth of July was especially galling to whites, who stayed home while blacks dominated the festivities. Such behavior was not an overt act of resistance the way a riot or strike would have been; it might be construed all the same as an act of symbolic opposition. In this sense, the dramatic intervention of nature in 1886 allowed blacks to appropriate public space and to disrupt everyday social norms and behavioral codes.

When the quake struck, Charleston's commercial empire—once dominant over the stretch from Savannah to Wilmington, North Carolina—was badly damaged.



Photo courtesy of Duke University

In part, such transgressive behavior flowed from the blacks' interpretation of the earthquake calamity as an act of God. Gabriel Manigault, a museum curator and son of a wealthy rice planter, wrote that the city's black citizens were more unnerved by the quake than were white people such as himself, who understood it as resulting from natural forces. Blacks, he asserted, "were absorbed in prayer during the continuance of the minor shocks, under the belief that this was a punishment visited upon them for their sins." A white bookkeeper named J.B. Gladsden complained that the religious meetings of "the ignorant coloured people, as they huddled together in their terror, were among the most annoying circumstances we had to contend with."

At least one bona fide black account of the disaster does exist. Norman Bascom Sterrett, a minister in nearby Summerville, South Carolina, close to one of the earthquake's epicenters, admitted being quite terrified. "I have no apology to make for my fright," he wrote, "for every one present was frightened, and I believe I am frightened yet." Sterrett also noted, however, that in Summerville at least, both blacks and whites had assem-

bled in the wake of the disaster, "mingling their voices together in supplicating the Great Ruler of all events to spare us from such a horrible death, which, without his interposition, seemed inevitable."

Why were whites so troubled by what they saw as the black reaction? How exactly *should* they have behaved during the calamity? The white Episcopal minister Anthony Toomer Porter, of the Church of the Holy Communion, offered an answer. In place of frenzied religious activity and living outdoors, Porter instead prescribed bed rest, so that one would be fresh for work the next day. "What your people want, as do our people, is absolute rest after the excitement incident to the unusual scenes they have witnessed—I mean rest at night—that they may work steadily in the day." Undoubtedly, the earthquake had empowered blacks, however briefly, to escape from the normal routines of wage labor, something that struck at the heart of white economic interests in the Jim Crow South.

Although Porter agreed that God was behind all things that happened on earth, he thought it wrong to see the calamity as a punishment for human wickedness. The disaster was instead simply the result of Charleston's particular

The concept of an act of God implied that something was wrong, that people had sinned and must now pay for their errors. But the idea of natural disaster may have implicitly suggested the reverse, that the prevailing system of social and economic relations was functioning just fine.

location—the product, in short, of amoral nature. Porter's colleague, the Rev. Robert Wilson of St. Luke's Episcopal Church, also criticized those who understood the disaster as an act of God. As he put it, “the man who calls this a ‘visitation of God’s wrath for sin’ is a fanatic who ought to be silenced.” Porter and Wilson thus became spokesmen for the official city position, an unsurprising development given that the Episcopal church was the principal religious affiliation of Charleston’s commercial elite.

Mayor William Courtenay also argued for the quelling of religious frenzy. A former cotton farmer and conservative Democrat elected in 1879, Courtenay sought to modernize the city by putting its finances in order, improving public services, and helping to impose the work discipline needed to create the proper business climate. Immediately after the earthquake, he observed, “our colored population, whose very natures are emotional,” resorted to song and prayer. But the best route to recovery, he explained, was to get back to work. The future of the city “is based on *work*, not idleness, and I call upon every one to seek *work* in any and every way possible.”

Courtenay also advised citizens to return to their homes: “What our people want is relief, immediate, permanent relief from the terrible nervous strain to which they have been suddenly subjected, and which will certainly continue in the tent life which many are leading in the streets and public squares.” It was but one step from living in the streets to perhaps leaving town altogether, a point that must have severely troubled Courtenay and the rest of the white business class, who were certainly cognizant of the fact that mobility was a central form of black working-class protest.

Under the leadership of editor Francis Dawson, the influential *News and Courier* had long sought to spur Charlestonians to shed their plantation heritage and

preindustrial ways and move forward to a new economic order—the New South—with a new understanding of work discipline and a new vision of calamity as well. According to Dawson’s paper, seeing the earthquake as a form of divine punishment was “entirely opposed to anything like helpful labor.” The paper continued:

“People who spend most of their nights shouting and exhorting at ‘experience’ meetings have little strength and no inclination for work next day. To assist the community in trouble by taking up a daily routine of honest industry seems useless to them, while they are constantly looking out for the devil in his own proper person, horns, hooves, and all.”

It was better instead to interpret the calamity as simply an impersonal natural event, devoid of any overriding moral meaning. That way one could stay calm, get plenty of rest, and be ready for work the next day. “The work, we are told, is to pray, and this together with courage, duty, and discipline, form better watch-words than ‘Down in the dust;’ ‘It is the wrath of God!’ ‘A visitation.’”

A LITTLE SUGAR PLEASE

Back in the 1820s, city authorities in Charleston had a bright idea. They installed a treadmill in the city’s workhouse where slaves were sent for “a little sugar,” meaning a whipping. In the “Sugar House,” black slaves had their arms strung up above them and were forced to keep up with the treadmill while being flogged. The idea was to make slaves suffer pains worse than those related to their labor, so that work and docility would seem preferable to life on the mill. This practice of using suffering as a tool to rein in blacks did not disappear with the end of the slave system and the rise of the free market in labor. It reared its head again in the relief campaign that the Charleston business class organized to get the working poor back on the job after the earthquake. Under capitalism, explains historian Wilbert Jenkins, Charleston’s “blacks were free to work, if they could find work, and free to starve if they could not. The whip of slavery was being replaced with the lash of hunger in an economy that could provide few subsistence-level jobs.”

Since the very idea of relief aid threatened the maintenance of work-discipline, many city leaders would have preferred not to raise and dispense such funds. Soliciting outside aid was especially problematic because it could be construed as a sign of weakness and thereby serve to undermine the city’s self-reliant image. Indeed, just the year before, when a powerful hurricane struck Charleston and caused perhaps \$2 million in damages, Mayor Courtenay declined offers of outside assistance from other cities (a common practice in the years before the federal government became a major provider of re-

**“There must always be some suffering
in a city of about 60,000 inhabitants.”**

lief). Dawson’s *News and Courier* supported Courtenay in this decision: words of “discouragement and dismay,” wrote the paper, would only have convinced “the commercial public . . . that Charleston was so injured as to be incapable of handling properly the business which was wont to be confided to her.” The paper concluded that “there must always be some suffering in a city of about 60,000 inhabitants.”

The economic impact of the 1886 earthquake, on the other hand, was far too devastating for Charleston’s business class to consider turning away outside financial support. But very close attention was paid to the effect on work-discipline of distributing rations and other forms of aid. Charity was not “intended for those who can work,” warned one relief official. “The [relief] committee wish it distinctly understood that none but the actually needy and those incapable of self-support need apply for aid, as there is abundance of work, at extra pay, to be gotten in Charleston.”

In a calculating move, Courtenay and Dawson, who dominated the relief effort, cut off subsistence relief just a month after the disaster. Courtenay explained that food relief was ended because of “great abuses” that developed as black farm workers came from far and wide, “to the great neglect of their crops, in order to get ‘free rations.’” A month after subsistence aid ended, the black pastor W.H. Heard reported still plenty of misery in the city, at least among his own congregants: “The condition of the people beggars description—no fire, save a little out doors, poorly clad and living in damp districts. The death rate is nearly double.”

Not content simply to withhold immediate aid, those managing the relief effort also saw to it that only the most persistent would receive funds to rebuild their homes. Anyone seeking reconstruction money, for example, was required to complete a daunting three-page application. “If every blank in the form is not filled up, the application will be returned,” would-be applicants were warned. The complexity of the application drew criticism from around the country. In a letter to the editor appearing in the *New York Herald*, one observer noted that “in the history of the world there never has been a more prohibitory system of ‘red tape’ imposed upon applying beneficiaries where a public charity fund was to be disbursed.” To make matters worse, more than

four-fifths of black South Carolinians age 21 and older were unable to write.

In the end, the bulk of the burden of repairing buildings fell on property owners themselves. Only 2,200 of the close to 8,000 buildings in need of repair received funds from the city’s relief committee.

If Charleston’s leaders were unwilling to share their resources with the city’s poor, it was because such stinginess fit in with their interpretation of calamity. For the business class, the earthquake disaster constituted not an act of God, but a natural event and an obstacle to economic progress. The concept of an act of God implied that something was wrong, that people had sinned and must now pay for their errors. But the idea of natural disaster may have implicitly suggested the reverse, that the prevailing system of social and economic relations was functioning just fine. No elaborate morality tales need be proffered in the aftermath of such an event, as had long been the case in the past. Instead, people were to remain calm and disciplined as they restored things to normal—effectively legitimating the prevailing social system in the process. In this view, natural disasters were not worthy of any deep or considered thought. They simply happened from time to time. Thinking about their larger meaning could only help to distract people from the task of restoring normality—with all its assumptions about the need to maximize the value of both human and natural resources. Ultimately, a view of the seismic shock as *only* a natural disaster amounted to little more than a thinly veiled attempt to return the poor back to the city’s economic treadmill.

IT COULDN’T HAPPEN HERE . . . COULD IT?

Given the great lengths to which Charleston’s leaders went to keep the earthquake disaster from interfering with the city’s commercial agenda, one imagines that they would not have been disturbed to learn that 100 years later it had been all but forgotten. In the century after the quake, construction went on, and builders for the most part were utterly unconscious of the seismic

**“The condition of the people beggars
description—no fire, save a little out
doors, poorly clad and living in damp dis-
tricts. The death rate is nearly double.”**

The whip of slavery was being replaced with the lash of hunger in an economy that could provide few subsistence-level jobs.

hazard, functionally reproducing the same fatalism inherent in the act of God interpretation.

As late as 1983, according to civil engineers James Nau and Ajaya Gupta, the majority of the city's buildings and facilities were "still without adequate seismic resistance." In the early 1980s, metropolitan Los Angeles had some 12,000 buildings lacking in seismic adequacy; yet Charleston, despite being a much smaller city, had even more such compromised structures. "With the exception of building inspectors and structural engineers," a report by the U.S. Geological Survey observed, "few of the respondents currently incorporate awareness of an earthquake hazard into their decisions." Although nearly all those questioned were familiar with the 1886 disaster, few "took seriously the possibility of an occurrence of a future earthquake" of a similar magnitude.

The earthquake is thus seen as a unique event, with little meaning beyond its value as a quaint episode in the city's past, a fact mentioned on horse-and-buggy tours otherwise consigned to the dustbin of history. Perhaps that is why it took Charleston until 1981 to pass an amendment to the building code requiring adequate seismic design.

To the extent that the 1886 quake was seen as a problem, it was understood for nearly a century to be Charleston's problem alone. Throughout the East, very little attention has been paid, until very recently, to the threat of earthquakes. John Lyons, the director of the engineering laboratory at the National Bureau of Standards, observed as late as 1984 that despite the lack of detailed surveys "it is fair to say that seismic design is simply not practiced" in the eastern and, for that matter, even central United States. To be sure, the East is much less seismically active overall than the West. But although the probability of an earthquake is lower, the risk of a major seismic calamity is actually very high. This is because seismic energy tends to travel greater distances in the East. Compare, for instance, the 1886 earthquake with the 1971 San Fernando quake. Both were of roughly the same magnitude. But the Charleston quake

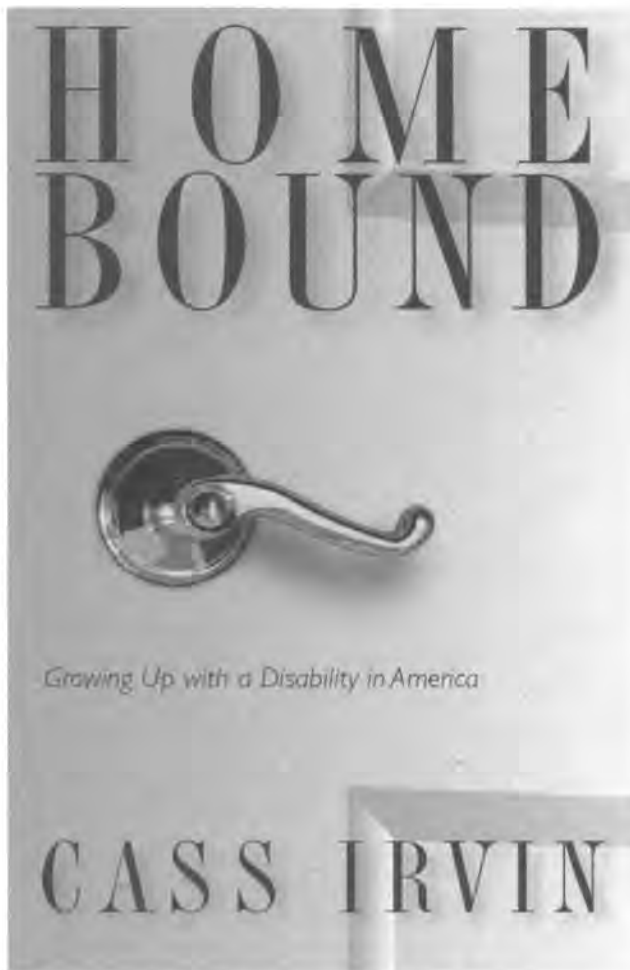
made itself felt over an area 10 times as large, cracking walls in places as far away as Harlem.

Why have earthquakes not been seen as a problem in the East? In part, the lack of awareness stems from the failure to locate the geological formation responsible for the Charleston disaster. Unlike California, where the source of seismic activity is routinely identified—correctly or not—with the famed San Andreas fault, no such structure has been discovered in the South. As late as the early 1960s, scarcely more was known about the 1886 quake from a scientific perspective than at the time it happened. Even in the 1970s, the dominant scientific view of the disaster held that unique conditions existed at Charleston, localizing the earthquake problem. Hence in its decisions regarding where to locate nuclear reactors, the Atomic Energy Commission ruled that while design requirements in the Charleston area were to be in keeping with the risk of another 1886 earthquake, along the rest of the eastern seaboard the seismic history of this Southern city would not influence the blueprints one bit. The significance of the 1886 disaster has thus been minimized—interpreted as a singular event of only localized importance.

The Charleston calamity, starved of its meaning for future generations, is little more than a footnote in the annals of disaster, a very poor cousin to the famed San Francisco earthquake 20 years later. Cordoned off as a unique—shall we say freak—event, the Charleston experience has been ignored by developers and planners as they have forged ahead in the building of such projects as Manhattan's Battery Park City, which was constructed on a quake-prone landfill. Yet as the most deadly and destructive quake ever to strike the East, the 1886 Charleston disaster should stand as a symbol of what the denial of seismic risk might lead to, a reminder that earthquakes are not a concern for Californians alone, a warning of just how important it is that we examine the geography of risk and how it is produced and, most of all, a prediction that the coming eastern earthquake calamity—whenever it occurs—will not be an act of God.

Ted Steinberg is a professor of history and law at Case Western Reserve University and the author of Acts of God: The Unnatural History of Natural Disaster in America, from which this essay is adapted.

REVIEW



HOME BOUND By Cass Irvin

Temple University Press, 2004 | 223 pages

Reviewed by Harriet McBryde Johnson

Louisville, Ky., sits on the cusp of the Midwest. It's in the South but you never know whether you'll get grits or hash browns. But there's no question about Louisville writer and activist Cass Irvin. Her new memoir clearly speaks from a Southern sensibility.

There are the usual themes of family, home, and place. What's different is that Irvin's very traditional girlish expectations were derailed by polio in 1954, when she was nine. Unable to walk and with limited use of her hands and arms, Irvin suddenly needed help to get dressed and get up. Not wanting to burden her marginally coping family, she spent years of her youth mostly at home in bed.

Ironically, Irvin had enjoyed her first taste of freedom at an institution in Warm Springs, Ga., where she went for rehabilitation; every day there, she got out of bed and rolled out into an accessible place. At home,

Irvin's personal liberation was facilitated when Chris, an African-American woman, came to work for the household. The story of Chris and Cass might easily have become the stuff of Southern myth, but Irvin understands the Southern—and human—reality that rescue often comes not from love or heroic sacrifice but from someone hired to do a job.

With a paid worker, Irvin no longer felt that her needs were an imposition. She could begin her quest for a "regular life," from isolation in her parent's house to her own place: from home-bound to home bound. Irvin gives us the personal details: the nuts and bolts of organizing personal assistance in a college dorm, the logistical complications of work and life on wheels, the ebb and flow of love.

This personal story is also very political. Reading *The Feminine Mystique* was a pivotal event for Irvin. Seeing how women are confined by oppression and stereotypes opened her eyes about disability; she saw the same forces at work. She could have made herself "a regular life" by taking advantage of the family privilege that could afford to hire Chris—and even, as her father did, require Chris to wear a white uniform when the family traveled to Georgia, to look "more professional, less like just another Negro." Instead, first tentatively, then all-out, Irvin joined the nascent disability rights movement. She got radicalized. She decided that getting out of bed shouldn't depend on class and race privilege. It shouldn't even depend on earning power. Such basic, necessary help should be a civil right.

That radical perspective sets this book apart from the disability stories most familiar to general readers—stories of cure, overcoming, or stoicism in the face of tragedy. *Home Bound* is virtually unique in seeing the movement through Southern eyes. Irvin comments: "Too often the attitude is 'we take care of our own', which means, 'don't tell us what to do'. Too often, as Southerners, we don't want to make people angry. I wanted to be nice and polite, but nice and polite doesn't get you very far very fast."

As a frequent contributor to *The Disability Rag* magazine (now *Ragged Edge*), published in Louisville for 25 years, Irvin is known in the movement as one of its true voices. With deft use of story and detail, this memoir makes accessible a little-known part of people's history. With luck, it will find readers who need it as Irvin once needed Betty Friedan, and will set some of today's home-bound home bound.

Harriet McBryde Johnson is a lawyer and disability rights activist in Charleston, S.C. Her memoir in stories, Too Late to Die Young: Nearly True Tales from a Life, will be published by Henry Holt & Company in April 2005.

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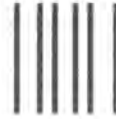
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