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GOVERNMENT

TETON DAM CLAIMS

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HEARING

BEFORE THE

SUBCOMMITTEE ON

ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 14328, H.R. 14367, and S. 3542

TETON DAM CLAIMS

JUNE 30, 1976

Serial No. 67



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TETON DAM CLAIMS

WEDNESDAY, JUNE 30, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Walter Flowers (chairman of the subcommittee), presiding.

Present: Representatives Flowers, Danielson, Moorhead, and Kindness.

Also present: William P. Shattuck, and Jay T. Turnipseed, counsel; and Alan F. Coffey, Jr., associate counsel.

Mr. FLOWERS. The subcommittee will come to order. We are, of course, considering very important and urgent legislation this morning. It is urgent to the people of a large part of Idaho and I think that it is important to the rest of us in this country.

We have a bill S. 3542, which has been passed by the Senate. We also have pending before this subcommittee H.R. 14328 and H.R. 14367. We have the sponsors of the House legislation, the gentleman from Idaho, Mr. Hansen, and another gentleman from Idaho, Mr. Symms, here this morning.

[Copies of H.R. 14328, H.R. 14367, and S. 3542 follow:]

94TH CONGRESS
2D SESSION

H. R. 14328

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1976

Mr. HANSEN (for himself and Mr. SYMMS) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To provide emergency relief to persons incurring losses as a result of the collapse of the Teton Dam located on the Teton River in Madison County, Idaho.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) the Secretary of the Interior (hereinafter in this
4 Act referred to as the "Secretary") shall—

5 (1) investigate any claim by a person submitted
6 to the Secretary for damages for death, personal injury,
7 or property loss caused by the collapse on June 5, 1976,
8 of the Teton Dam located on the Teton River in Madi-
9 son County, Idaho; and

10 (2) establish (in accordance with section 2 of this

1 Act) an amount which the Secretary determines will
2 reasonably satisfy such claim.

3 (b) Except as provided in subsection (c), the Secre-
4 tary shall pay to the claimant, at the election of the
5 claimant—

6 (1) 100 per centum of the amount the Secretary
7 determines under subsection (a) (2) will reasonably
8 satisfy the claim, if such amount is in full satisfaction
9 of all claims against the United States which may be
10 made by the claimant in connection with the collapse
11 of the Teton Dam on June 5, 1976, or

12 (2) 80 per centum of such amount, but an amount
13 under this paragraph shall not be deemed to be full
14 satisfaction of all claims against the United States which
15 may be made by the claimant in connection with such
16 collapse.

17 (c) (1) No amount shall be paid to any claimant under
18 subsection (b) unless the claimant assigns to the United
19 States any right the claimant may have against any third
20 party from death, personal injury, or property loss caused
21 by the collapse of the Teton Dam on June 5, 1976.

22 (2) Any amount payable under subsection (b) for a
23 loss shall be reduced by an amount equal to the total of
24 insurance benefits (except life insurance benefits), or other

1 payments or settlements of any nature, paid with respect to
2 such loss prior to the date of any payment under this Act
3 for such loss.

4 (3) In the case of any claim for damages for a death,
5 the amount paid under subsection (b) shall be consistent
6 with Idaho State Insurance Commission laws.

7 SEC. 2. In determining an amount which will reason-
8 ably satisfy a claim under the first section of this Act, the
9 Secretary shall limit such determination to—

10 (1) whether any loss stated in the claim caused by
11 the collapse of the Teton Dam on June 5, 1976;

12 (2) the amount to be paid under this Act as com-
13 pensation for such loss; and

14 (3) the persons entitled under this Act to receive
15 such compensation.

16 SEC. 3. (a) No amount paid under this Act shall
17 be subject to insurance subrogation claims in any respect.

18 (b) No amount shall be paid under this Act for reim-
19 bursement to any insurance company or compensation insur-
20 ance fund for payments made by such company or fund.

21 SEC. 4. (a) Any claim under this Act shall be submitted
22 to the Secretary not later than July 1, 1978, in such form
23 and manner as the Secretary or his delegate may prescribe
24 by regulation.

1 (b) No claim cognizable under this Act may be trans-
2 ferred or assigned except claims transferred or assigned by
3 law or as provided by subsection (c) (1).

4 SEC. 5. The Secretary shall, not later than January 1,
5 1979, submit to the Congress a statement of each claim sub-
6 mitted under this Act including the amount claimed, any
7 amount paid, and a brief description of the losses for which
8 compensation was paid and of the losses for which com-
9 pensation was not paid. In the case of a claim which was
10 not paid in full satisfaction of all claims against the United
11 States which may be made by the claimant in connection
12 with the collapse of the Teton Dam on June 5, 1976, such
13 statement shall also include a brief report containing the Sec-
14 retary's findings of fact and recommendations.

15 SEC. 6. Not later than sixty days after the date of the
16 enactment of this Act, the Secretary shall issue such regu-
17 lations as may be necessary to carry out this Act.

18 SEC. 7. No part of any amount paid on a claim under
19 subsection (b) (1) of the first section of this Act in excess
20 of 10 per centum thereof shall be paid or delivered to or re-
21 ceived by an agent or attorney on account of services ren-
22 dered in connection with such claim. Any person who vio-
23 lates this section shall be fined not more than \$5,000.

24 SEC. 8. For purposes of this Act, the term "person"
25 does not include any State or political subdivision thereof.

94TH CONGRESS
2D SESSION

H. R. 14367

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1976

Mr. SYMMS (for himself and Mr. HANSEN) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton Dam a feature of the Teton Basin Federal Reclamation Project in Idaho, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress finds that without regard to the proximate
4 cause of the failure of the Teton Dam, it is the purpose of the
5 United States to fully compensate any and all parties which
6 have been directly injured as the result of flooding following
7 the failure of said dam. The purposes of this Act are (1) to
8 provide just compensation for the personal injuries and

1 deaths, and loss and damage to property, including the de-
2 struction and damage to irrigation works, caused by the flood-
3 ing following the failure on June 5, 1976, of the Teton Dam
4 in the State of Idaho, and (2) to provide for the expeditious
5 consideration and settlement of claims for such personal
6 injuries, deaths, and property loss and damage.

7 SEC. 2. All persons who suffered personal injury, loss
8 of life, or loss or damage of real or personal property directly
9 caused by the flooding following the failure on June 5, 1976,
10 of the Teton Dam of the Lower Teton Division of the Teton
11 Basin Federal Reclamation Project which was authorized
12 to be constructed by the Act of September 7, 1964 (78 Stat.
13 925) shall be entitled to receive from the United States full
14 compensation for such injury, loss of life, or loss or damage
15 to property.

16 SEC. 3. The Secretary of the Interior, or his designee for
17 the purpose, acting on behalf of the United States, shall
18 consider, ascertain, adjust, determine, and settle any claim
19 for money damages for personal injury, death, or for injury
20 or loss of property asserted under section 2. The measure of
21 damages shall be governed by the laws of the State of Idaho:
22 *Provided*, That determinations, awards, and settlements
23 under this Act shall be limited to actual or compensatory
24 damages measured by the pecuniary injuries or loss involved
25 and shall not include interest prior to settlement or punitive

1 damages: *And provided further*, That no determination,
2 award, or settlement under this Act shall duplicate any com-
3 pensation for personal injury, death, or loss or damage to
4 property received by the claimant under any other Federal
5 law. The acceptance by the claimant of any award, com-
6 promise, or settlement under this Act shall be final and con-
7 clusive on the claimant, and shall constitute a complete
8 release of any claim against the United States by reason of
9 the same subject matter.

10 SEC. 4. Within ninety days after the enactment of this
11 Act the Secretary shall prescribe and publish in the Federal
12 Register such rules and regulations as may be necessary and
13 proper to carry out the provisions of this Act. The Secretary
14 shall also cause to be published in clear, easily understand-
15 able language an explanation of the rights conferred by this
16 Act and the procedural and other requirements imposed by
17 the rules and regulations promulgated hereunder. Such in-
18 formation shall be made available to the public by publication
19 in newspapers with general circulation in the State of Idaho,
20 brochures, pamphlets, and other means likely to reach
21 prospective claimants in the State of Idaho and elsewhere.

22 SEC. 5. To accommodate the needs of prospective claim-
23 ants the Secretary shall establish such offices as may be
24 necessary in the State of Idaho convenient to the area
25 affected by the Teton Dam failure to receive and process

1 claims and provide counseling and information services to
2 prospective claimants.

3 SEC. 6. The claims program established by this Act
4 shall, to the extent practicable, be coordinated with other
5 disaster relief operations conducted by other Federal agencies
6 under the Disaster Relief Act of 1974 (42 U.S.C. 5121)
7 and other provisions of law. The Secretary shall consult with
8 the heads of such other Federal agencies, and shall, as he
9 deems necessary, consistent with the expeditious determina-
10 tion of claims hereunder, make use of information developed
11 by such agencies. The heads of all other Federal agencies
12 performing disaster relief functions under the Disaster Relief
13 Act of 1974 and other Federal authorities are hereby au-
14 thorized and directed to provide the Secretary, or his desig-
15 nee, such information and records as the Secretary or his
16 designee shall deem necessary for the administration of this
17 Act.

18 SEC. 7. In order to expedite the repair and restoration
19 of irrigation facilities damaged by the flooding caused by
20 the failure of the Teton Dam, the Secretary is authorized and
21 directed to enter into agreements with the owners of such
22 facilities to finance the repair or reconstruction thereof
23 either by direct payment or through construction contracts
24 administered by the Bureau of Reclamation. The cost of
25 such repairs or reconstruction shall be nonreimbursable.

1 SEC. 8. Claims under this Act shall be barred unless
2 filed in writing with the Secretary, or his designee, not later
3 than two years after the date on which the regulations re-
4 quired by section 4 are published in the Federal Register.

5 SEC. 9. (a) No action shall be instituted upon a claim
6 against the United States submitted to the Secretary, or his
7 designee, under this Act, unless and until the Secretary, or
8 his designee, has made a final disposition of such claim:
9 *Provided*, That the claimant may, upon fifteen days written
10 notice, withdraw such claim from consideration by the Secre-
11 tary, or his designee.

12 (b) Any claimant aggrieved by a decision of the Sec-
13 retary under section 3 may file within sixty days from the
14 date of such decision with the United States District Court
15 for the District of Idaho a petition praying that such deci-
16 sion be modified or set aside in whole or in part. The court
17 shall hear such appeal on the record made before the Secre-
18 tary. The decision of the Secretary incorporating his findings
19 of fact therein, if supported by substantial evidence on the
20 record considered as a whole, shall be conclusive. The court
21 may affirm, vacate, or remand the claim to the Secretary for
22 such further action as it directs.

23 (c) Nothing in this Act shall be construed to prevent
24 any claimant under this Act from exercising any rights to
25 which he may be entitled under any other provisions of law.

1 SEC. 10. There are hereby authorized to be appropriated
2 such funds as may be required to carry out the purposes of
3 this Act.

4 SEC. 11. For the purposes of this Act, the term—

5 (1) "persons" means any individual, corporation,
6 partnership, company, municipality, township, associa-
7 tion, or other non-Federal entity;

8 (2) "Secretary" means the Secretary of the
9 Interior.

94TH CONGRESS
2D SESSION

S. 3542

IN THE HOUSE OF REPRESENTATIVES

Referred to the Committee on the Judiciary

JUNE 21, 1976

AN ACT

To authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton Dam a feature of the Teton Basin Federal reclamation project in Idaho, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress finds that without regard to the proximate
4 cause of the failure of the Teton Dam, it is the purpose of the
5 United States to fully compensate any and all parties for the
6 losses sustained by reason of the failure of said dam. The
7 purposes of this Act are (1) to provide just compensation for
8 the deaths, personal injuries and losses of property, including
9 the destruction and damage to irrigation works, resulting

1 from the failure on June 5, 1976, of the Teton Dam in the
2 State of Idaho, and (2) to provide for the expeditious con-
3 sideration and settlement of claims for such deaths, personal
4 injuries, and property losses.

5 SEC. 2. All persons who suffered death, personal injury,
6 or loss of property resulting from the failure on June 5, 1976,
7 of the Teton Dam of the Lower Teton Division of the Teton
8 Basin Federal reclamation project which was authorized to
9 be constructed by the Act of September 7, 1964 (78 Stat.
10 925) shall be entitled to receive from the United States full
11 compensation for such death, personal injury, or loss of prop-
12 erty. Claimants shall submit their claims in writing to the
13 Secretary, under such regulations as he prescribes, within
14 two years after the date on which the regulations required
15 by section 5 are published in the Federal Register. Claims
16 based on death shall be submitted only by duly authorized
17 legal representatives.

18 SEC. 3. (a) The Secretary of the Interior, or his
19 designee for the purpose, acting on behalf of the United
20 States, shall investigate, consider, ascertain, adjust, deter-
21 mine, and settle any claim for money damages asserted
22 under section 2. Except as otherwise provided herein, the
23 laws of the State of Idaho shall apply: *Provided*, That deter-
24 minations, awards, and settlements under this Act shall be
25 limited to actual or compensatory damages measured by the

1 pecuniary injuries or loss involved and shall not include
2 interest prior to settlement or punitive damages.

3 (b) In determining the amount to be awarded under
4 this Act the Secretary shall reduce any such amount by an
5 amount equal to the total of insurance benefits (except life
6 insurance benefits) or other payments or settlements of any
7 nature previously paid with respect to such death claims,
8 personal injury, or property loss.

9 (c) Payments approved by the Secretary on death,
10 personal injury, and property loss claims, shall not be subject
11 to insurance subrogation claims in any respect.

12 (d) The Secretary shall not include in an award any
13 amount for reimbursement to any insurance fund for loss
14 payments made by such company or fund.

15 (e) Except as to the United States, no claim cognizable
16 under this Act shall be assigned or transferred.

17 (f) The acceptance by the claimant of any award, com-
18 promise, or settlement under this Act, except an advance
19 or partial payment made under section 4(c), shall be final
20 and conclusive on the claimant, and shall constitute a com-
21 plete release of any claim against the United States by reason
22 of the same subject matter.

23 (g) The Secretary shall require assignment to the United
24 States of any right of action against a third party, including

1 insurers, arising from the death, personal injury, or property
2 loss with respect to which settlement is made.

3 SEC. 4. (a) In the determination and settlement of
4 claims asserted under this Act, the Secretary shall limit him-
5 self to the determination of—

6 (1) whether the losses sustained resulted from the
7 failure of the Teton Dam on June 5, 1976;

8 (2) the amounts to be allowed and paid pursuant
9 to this Act; and

10 (3) the persons entitled to receive the same.

11 (b) The Secretary shall determine and fix the amount
12 of awards, if any, in each claim within twelve months from
13 the date on which the claim was submitted.

14 (c) At the request of a claimant, the Secretary is au-
15 thorized to make advance or partial payments prior to final
16 settlement of a claim. Such advance or partial payments
17 shall be made available under regulations promulgated by
18 the Secretary under section 5, which regulations shall in-
19 clude, but shall not be limited to, provisions for such pay-
20 ments where the Secretary determines that to delay pay-
21 ment until final settlement of the claim would impose a
22 substantial hardship on such claimant.

23 (d) Payments may be made for compensation for direct
24 investments made in on-farm facilities in anticipation of
25 service from the Teton Reservoir to the extent that such

1 facilities are unuseable or are diminished in value by the
2 denial of such service.

3 SEC. 5. Notwithstanding any other provision of law,
4 the Secretary shall within fifteen days after the enactment of
5 this Act promulgate and publish in the Federal Register,
6 final regulations and procedures for the handling of the
7 claims authorized in section 2 of this Act. The Secretary
8 shall also cause to be published, in newspapers with general
9 circulation in the State of Idaho, an explanation of the rights
10 conferred by this Act and the procedural and other require-
11 ments imposed by the rules of procedure promulgated by
12 him. Such explanation shall be in clear, concise, and easily
13 understandable language. In addition, the Secretary shall
14 also disseminate such explanation concerning such rights and
15 procedures, and other data helpful to claimants, in the State
16 of Idaho, by means of brochures, pamphlets, radio, television,
17 and other media likely to reach prospective claimants.

18 SEC. 6. The claims program established by this Act
19 shall, to the extent practicable, be coordinated with other
20 disaster relief operations conducted by other Federal agen-
21 cies under the Disaster Relief Act of 1974 (42 U.S.C. 5121)
22 and other provisions of law. The Secretary shall consult with
23 the heads of such other Federal agencies, and shall, as he
24 deems necessary, consistent with the expeditious determina-
25 tion of claims hereunder, make use of information developed

1 by such agencies. The heads of all other Federal agencies
2 performing disaster relief functions under the Disaster Relief
3 Act of 1974 and other Federal authorities are hereby author-
4 ized and directed to provide the Secretary, or his designee,
5 such information and records as the Secretary or his designee
6 shall deem necessary for the administration of this Act.

7 SEC. 7. In order to expedite the repair and restoration
8 of irrigation facilities damaged as a result of the failure of the
9 Teton Dam, the Secretary is authorized and directed to enter
10 into agreements with the owners of such facilities to finance
11 the repair or reconstruction thereof either by direct payment
12 or through construction contracts administered by the Bureau
13 of Reclamation. The cost of such repairs or reconstruction
14 shall be nonreimbursable.

15 SEC. 8. After January 1 and before January 31 of each
16 year following the date of the enactment of this Act, the
17 Secretary shall transmit to the Congress—

18 (1) a statement of each claim submitted to the
19 Secretary, during the calendar year preceding the year
20 in which such statement is transmitted, in accordance
21 with this Act which has not been settled by him, with
22 supporting papers, and a report of his findings of fact
23 and recommendations; and

24 (2) a statement of each claim settled by him and
25 paid pursuant to this Act during the calendar year pre-
26 ceding the year in which such statement is transmitted.

1 The statement shall contain a brief report concerning the
2 character and equity of each claim, the amount claimed,
3 and the amount approved and paid.

4 SEC. 9. (a) No action shall be instituted in any court
5 of the United States upon a claim against the United States
6 submitted to the Secretary, or his designee, under this Act,
7 unless and until the Secretary, or his designee, has made
8 a final disposition of such claim: *Provided*, That the claimant
9 may, upon fifteen days written notice, withdraw such claim
10 from consideration by the Secretary, or his designee.

11 (b) Any claimant aggrieved by a final decision of the
12 Secretary under this Act may file within sixty days from
13 the date of such decision with the United States District
14 Court for the District of Idaho a petition praying that such
15 decision be modified or set aside in whole or in part. The
16 court shall hear such appeal on the record made before the
17 Secretary. The filing of such an appeal shall constitute an
18 election of remedies. The decision of the Secretary incorporat-
19 ing his findings of fact therein, if supported by substantial
20 evidence on the record considered as a whole, shall be con-
21 clusive.

22 (c) Except to the extent otherwise herein provided,
23 nothing in this Act shall be construed to prevent any claim-
24 ant under this Act from exercising any rights to which he
25 may be entitled under any other provisions of law.

1 (d) Attorney and agent fees shall be paid out of the
2 awards hereunder. No attorney or agent on account of serv-
3 ices rendered in connection with each claim shall receive in
4 excess of 10 per centum of the amount paid in connection
5 therewith, any contract to the contrary notwithstanding.
6 Whoever violates this subsection shall be fined a sum not to
7 exceed \$10,000.

8 SEC. 10. For the purposes of this Act, the term "persons"
9 means any individual, Indian, Indian tribe, corporation,
10 partnership, company, municipality, township, association or
11 other non-Federal entity.

12 SEC. 11. If any particular provision of this Act or the
13 application thereof to any person or circumstance, is held
14 invalid, the other provisions of this Act shall not be affected
15 thereby.

16 SEC. 12. There are hereby authorized to be appropriated
17 such funds as may be required to carry out the purposes of
18 this Act.

Passed the Senate June 17, 1976.

Attest:

FRANCIS R. VALEO,
Secretary.

Mr. FLOWERS. Without further ado on my part, except to reemphasize the necessity that we move ever swiftly here in the House, I will ask you all to come forward to the Chair, so to speak, and let us get started.

Mr. Gude from Maryland, I know, has a special interest and I would be pleased if you would also join our colleagues. I understand you and Mr. Ryan visited the site and can give this subcommittee some valuable insight into the local situation. We appreciate your being here too, although you serve on the Interior Committee and are very busy.

Mr. GUDE. I would just like to say a couple of words. I know that our colleagues have a pressing engagement and want to testify, but I would like to say just a few words.

Mr. FLOWERS. Very good.

Mr. GUDE. Thank you very much.

I would just like to thank you and the subcommittee for consideration in this legislation on compensation to the victims of the Teton Basin. I thank you and I assure you my considerable efforts in the passing of the same legislation when it reaches the House.

Mr. FLOWERS. Thank you very much for being with us. I do understand that you have another engagement and we will certainly excuse you.

We will turn now to our colleague whose district was most affected by this. I know, because Congressman Hansen has been most diligent in pursuing and helping us on this subcommittee by bringing us information on which we can base these hearings. We especially appreciate your understanding of our problems in programs of this sort. Your informed knowledge of the situation and your careful consideration of appropriate legislative action make your testimony most valuable to us.

TESTIMONY OF HON. GEORGE HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. HANSEN. Mr. Chairman, I know that this consideration has come up at a most inopportune and busy time for you and for the members of your subcommittee and for the Judiciary Committee as a whole.

I am most grateful for the consideration you have given it. It has just been a barrage of legislation with most of it being very important legislation and it all must be considered. I realize the pressures you have been under.

As the congressional representative in the House, of the people of Idaho who experienced the devastation of the flood caused by the collapse of the Teton Dam on June 5. I am here this morning to impress upon the members of this subcommittee the urgent need for definitive legislation to assure them of full compensation for their losses.

Although the public works appropriation bill carries a provision for \$200 million to begin processing of claims for replacement of the damage, the people of Idaho in the devastated area know this can only cover a part of the yet inestimable damages. There are also several aspects of the regulations written by the Department of the

Interior to accompany the initial appropriation that I feel are not satisfactory and require discussion by this subcommittee and need to be clarified for the claimants and the authorizing officers.

H.R. 14547 and S. 3542 are very similar bills which would establish an authorization for funds to fully compensate all the victims. Under the present authority in the Bureau of Reclamation statutes, it will be necessary to return to the Congress for additional appropriations and hope they will be passed in the future with the same concern and sympathy that has already been shown by the Congress.

However, my district representative has been advising me that already the initial wave of sympathy that went out to those people is dissipating and some of the agencies are showing the kind of bureaucratism and redtape requirements in order to obtain loans that existed prior to the flood. Some businesses who did not apply immediately for Small Business Administration loans are meeting with requirements for preemergency requirements yet they are still in as difficult a situation to prove losses as they were in the early weeks after the disaster.

I believe action in the form of a definitive authorization bill is essential not only from the legal standpoint but for the well-being of the flood victims, who are still recovering from the severe shock of June 5 and must face the future at the mercy of the Federal Government's actions that will be taken on the proposals before you.

The situation created by the regulations accompanying the \$200 million appropriation allows the Bureau of Reclamation (BOR) and its parent agency the Department of the Interior, which will have to answer for the reasons for the failure of the dam under its construction supervision, to also be the authority under which the claims will be filed, appraised, decided, and appealed.

In addition, the regulations allow the BOR to control the time under which the claim will be completed to a great extent by only allowing the claimant 60 days in which to file an appeal to a determination. The BOR representatives presently instructing claims agents in Idaho are talking of making all appraisals in about a week and settling claims as fast as possible after submission. Of course, this is commendable.

Conceivable claims could be settled in a week or two after being submitted on this crash program, but the individual would have only 60 days in which to file an appeal or forfeit his right to ever claim further unforeseen damages.

Further, if a claimant is dissatisfied with the appeal decision, in order to take the claim to court under the tort claims act, the claimant would have to pay back all emergency or partial payments in order to file a direct suit against the Government. This, of course, puts the claimant in a severe bind if he has obtained partial settlement in order to resume business or farming.

I believe the authorizing legislation should make it clear for future regulations the intent of the Congress in the administration of the claims. Somewhere in the claims process, the citizens should have access to authority of an agency other than the one that is being held accountable for the cause of the damage and will have to live with the extent of the damage that is finally totaled when all claims are in, without being forced into court expenses.

The apparent intent of the Department of the Interior and its Bureau of Reclamation to settle the claims as expeditiously as possible is very commendable and desirable on the surface. For those individuals for whom a quick total settlement is desirable, this will be satisfactory. However, there could be many instances of totally unforeseen flood-related damage that will not become evident to the claimant for many months and could not be foreseen by the writers of the regulations due to the peculiarities of this type of disaster in the Eastern Idaho terrain.

An example of future unforeseeable flood-related damages would be in the Roberts area where much water has not drained from fields and the water table level for many square miles has risen above the frost line and will probably take many months to drain.

Since foundations for buildings are built on the dry ground between the water level and frost line, if the water level is still above the frost level in the fall as many estimates have made it, it is impossible to predict where frost heaves, buckling foundations, and pavement will occur, and many building owners who are tempted to settle early may not be aware of this possible danger.

Not allowing claims to be reopened for this type of unforeseeable damage is not fair treatment of victims. Frost heaves have occurred in some low-lying areas in Idaho in the past due to the underground aquifers that run under much of eastern Idaho.

An aquifer, of course, is a water-bearing stratum of permeable rock, sand, and gravel. As the terrain adjusts to the 250,000 acre-feet of water from the 17-mile-long reservoir behind the dam that descended on the area, building foundations will be adjusting also. I have been informed of three cases where houses that were inspected by Government appraisers and certified as safe, had completely or partially collapsed foundations a week or so later due to shifting grounds.

My purpose this morning is not to present a list of details for action but to point out that although the people of Idaho need money to begin their life's activities as soon as possible, they should not be pressured by restrictive regulations to settle irrevocable too early. In the case of some farms that suffered extensive top-soil damage, it may be years before the soil is returned to the condition it was before the dam failure. The Government should not be so anxious to clear itself of this added administration burden and blight on its record of projects that the people of eastern Idaho are not allowed every reasonable opportunity to be compensated for the severe losses they are suffering.

Mr. Chairman, I am totally convinced the people of eastern Idaho ought to have at least the written detailed commitment of this Congress that they will receive full restitution whenever they are in a position to make final settlement. If some claimants are not ready to settle in a year, they should not be left to hope the Congress will still remember the severity of the disaster and urgency for settlement that is a natural human reaction at the outset of a disaster.

Therefore, I would hope you will give careful consideration to a reasonable postsettlement review period or to my proposal to allow a partial settlement of 50, 60, 70, or more percent of estimated damages and allow the claimants to have more control over the final settlement time instead of the claims officer once the claim is filed.

The flood victims have labored along with many volunteers to shovel mud, pump out water, clear debris, restore machinery, make temporary repairs, et cetera, and many are now ready to look toward a longer range future than just the next day's meal. We must not allow these victims to become the adversary when trying to reach settlements through bureaucratic redtape.

Thank you for your consideration of Idaho's situation by agreeing to hold this hearing this morning.

Mr. Chairman, I would just like to paraphrase a few things. Again, we need a final noncourt authority other than the agency which is directly concerned. I feel, as an arbitrator, to keep people from having to needlessly go to court that we need a lag time on settlement; either an early payment plan or a review plan.

I feel that we need to clarify who pays under the stipulation of attorney's fees, whether it is a share basis, or with elderly people, or where they cannot get final restitution, what they consider a fair way. If they appeal and have to get an attorney, they still end up not getting the full value.

Lawsuits that are outlined by the existing regulations are totally unacceptable. I think that it is a handicap to a lot of low-income people or people who are completely wiped out, it will be almost impossible for a fair and final settlement.

We need to clarify, for insurance companies, the rights and problems of subrogation there. These people, Mr. Chairman, are sitting just like they were out on the Moon in many areas. Their homes and property are completely destroyed. They are barren in certain areas. They need help. Winter is coming; crops need planting and they are pretty much drowned out.

They have gone through the job of bailing out the mud and draining the water. I think that the story out there has been a really remarkable one of self-help and of brotherhood; people getting in and pitching in and not waiting for the Government to come and do it. They have provided, at no expense to the Government, 30,000 meals a day—that is one institution and at no expense to the Government. Thousands upon thousands of people have come into the area to donate, even if it is only a days work. They have rehabilitated and salvaged a lot of things. In fact, I saw one little lady, Mr. Chairman, who was out in her garage and she was actually rewashing fruit jars and bottles with her fruit in them one by one to try to clean the mud off and salvage it. It was a pretty low-income thing to do. Nevertheless, people have been salvaging everything that is possible to salvage.

They need money and they need action at a very early date to get their planting done and lives in order. The longer we wait the more we will get into the problems of extended damages because they are unable to put their lives in order and the amount of money that it will take to get their lives in order and the amount of money that they can claim for having such a handicap.

I do appreciate, again, the opportunity to be here. I would like to point out just two things. I have a letter from the chairman of the Subcommittee on Governmental Operations and Mr. Gude, who is here, and the chairman, of course, Mr. Flowers, who wrote to the White House. I would like to submit, for the record, a letter which makes it very crystal clear where they think that this fault of liability

lies and who should be responsible to help these people. Most of what they witnessed was the normal rehabilitation from a national disaster which would not be the fault of the Government. They felt that because this did seem to be something under which the Government's warranty is justified that we must reimburse the people and do it at a very early date. This is one that we owe them.

[The material referred to follows:]

STATEMENT OF THE HONORABLE GEORGE HANSEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF IDAHO

Mr. Chairman, as the Congressional representative in the House, of the people of Idaho who experienced the devastation of the flood caused by the collapse of the Teton Dam on June 5, I am here this morning to impress upon the members of this Subcommittee the urgent need for definitive legislation to assure them of full compensation for their losses.

Although the Public Works Appropriations Bill carries a provision for \$200 million to begin processing of claims for replacement of the damage, the people of Idaho in the devastated area know this can only cover a part of the yet inestimable damages. There are also several aspects of the regulations written by the Department of the Interior to accompany the initial appropriation that I feel are not satisfactory and require discussion by this Subcommittee and need to be clarified for the claimants and the authorizing officers.

H.R. 14,547 and S. 3542 are very similar bills which would establish an authorization for funds to fully compensate all the victims. Under the present authority in the Bureau of Reclamation statutes, it will be necessary to return to the Congress for additional appropriations and hope they will be passed in the future with the same concern and sympathy that has already been shown by the Congress. However, my District representative has been advising me that already the initial wave of sympathy that went out to these people is dissipating and some of the agencies are showing the kind of "bureaucratese" and red tape requirements in order to obtain loans that existed prior to the flood. Some businesses who did not apply immediately for Small Business Administration loans are meeting with requirements for pre-emergency requirements yet they are still in as difficult a situation to prove losses as they were in the early weeks after the disaster.

I believe action in the form of an definitive authorization bill is essential not only from the legal standpoint but for the well-being of the flood victims, who are still recovering from the severe shock of June 5 and must face the future at the mercy of the federal government's actions that will be taken on the proposals before you.

The situation created by the regulations accompanying the \$200 million appropriation allows the Bureau of Reclamation (BOR) and its parent agency the Department of the Interior, which will have to answer for the reasons for the failure of the dam under its construction supervision, to also be the authority under which the claims will be filed, appraised, decided and appealed. In addition, the regulations allow the BOR to control the time under which the claim will be completed to a great extent by only allowing the claimant 60 days in which to file an appeal to a determination. The BOR representatives presently instructing claims agents in Idaho are talking of making all appraisals in about a week and settling claims as fast as possible after submission. Of course this is commendable.

Conceivably claims could be settled in a week or two after being submitted on this crash program, but the individual would have only 60 days in which to file an appeal or forfeit his right to ever claim further unforeseen damages.

Further, if a claimant is dissatisfied with the appeal decision, in order to take the claim to court under the Tort Claims act, the claimant would have to pay back all emergency or partial payments in order to file a direct suit against the government. This of course puts the claimant in a severe bind if he has obtained partial settlement in order to resume business or farming.

I believe the authorizing legislation should make it clear for future regulations the intent of the Congress in the administration of the claims. Somewhere in the claims process, the citizens should have access to authority of an agency other than the one that is being held accountable for the cause of the damage and will have to live with the extent of the damage that is finally totalled when all claims are in, without being forced into court expenses.

The apparent intent of the Department of the Interior and its Bureau of Reclamation to settle the claims as expeditiously as possible is very commendable and desirable on the surface. For those individuals for whom a quick total settlement is desirable, this will be satisfactory. However, there could be many instances of totally unforeseen flood-related damage that will not become evident to the claimant for many months and could not be foreseen by the writers of the regulations due to the peculiarities of this type of disaster and the Eastern Idaho terrain.

An example of "Future Unforeseeable Flood-Related Damages" would be in the Roberts area where much water has not drained from fields and the water table level for many square miles has risen above the frost line and will probably take many months to drain. Since foundations for buildings are built on the dry ground between the water level and frost line, if the water level is still above the frost level in the fall as many estimates have made it, it is impossible to predict where "Frost Heaves" buckling foundations and pavement will occur, and many building owners who are tempted to settle early may not be aware of this possible danger. Not allowing claims to be reopened for this type of unforeseeable damage is not fair treatment of victims. Frost heaves have occurred in some low-lying areas in Idaho in the past due to the underground aquifers that run under much of Eastern Idaho.

An aquifer, of course, is a water-bearing stratum of permeable rock, sand or gravel. As the terrain adjusts to the 250,000 acre-feet of water from the 17 mile long reservoir behind the dam that descended on the area, building foundations will be adjusting also. I have been informed of three cases where houses that were inspected by government appraisers and certified as safe, had completely or partially collapsed foundations a week or so later due to shifting grounds.

My purpose this morning is not to present a list of these details for action but to point out that although the people of Idaho need money to begin their life's activities as soon as possible, they should not be pressured by restrictive regulations to settle irrevocably too early. In the case of some farms that suffered extensive top-soil damage, it may be years before the soil is returned to the condition it was before the dam failure. The government should not be so anxious to clear itself of this added administrative burden and blight on its record of projects that the people of eastern Idaho are not allowed every reasonable opportunity to be compensated for the severe losses they are suffering.

Mr. Chairman, I am totally convinced the people of eastern Idaho ought to have at least the written detailed commitment of this Congress that they will receive full restitution whenever they are in a position to make final settlement. If some claimants are not ready to settle in a year, they should not be left to hope the Congress will still remember the severity of the disaster and urgency for settlement that is a natural human reaction at the outset of a disaster.

Therefore, I would hope you will give careful consideration to a reasonable post-settlement review period or to my proposal to allow a partial settlement of 50, 60, 70 or more percent of estimated damages and allow the claimants to have more control over the final settlement time instead of the claims officer once the claim is filed. The flood victims have labored along with many volunteers to shovel mud, pump out water, clear debris, restore machinery, make temporary repairs, etc., and many are now ready to look toward a longer range future than just the next day's meal. We must not allow these victims to become the adversary when trying to reach settlements through bureaucratic red tape.

Thank you for your consideration of Idaho's situation by agreeing to hold this hearing this morning.

CONSERVATION, ENERGY, AND
NATURAL RESOURCES SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 25, 1976.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As chairman and ranking minority member of this subcommittee, we have begun an investigation into the disaster resulting from the collapse of the Teton Dam in eastern Idaho. Last Friday and Saturday, we viewed the remains of the dam, toured the stricken area, and talked with many citizens

affected by the disaster and Bureau of Reclamation officials. We intend to probe further into the question of why the Teton Dam broke.

One fact impressed us above all as we visited Idaho: because a dam burst, thousands of Americans have lost their homes, communities, and farmlands. The Federal Government built that dam and is responsible for its collapse. As officers of that Government, we must do our utmost to restore the lives and livelihood of our fellow-citizens who are affected by this disaster.

The people of eastern Idaho are remarkably optimistic and are working hard to take care of one another and clean up their towns. The Church of Jesus Christ of Latter-Day Saints, to which most of them belong, is playing a heroic role in this effort as well. The Federal officials in Idaho seem to be doing a fine job of providing money and supplies to these volunteers. This work must continue.

Important as the Government's immediate emergency aid is, however, it represents only our routine response to a natural disaster. The destruction in Idaho is not routine; it is not natural. The Federal Government built that dam. Just as in private industry, the Federal Government must warrant its products. For this reason, we must reimburse the people affected for their monetary losses.

To this end, we have joined Congressman George Hansen, who represents the victims of the Teton Dam disaster, in introducing legislation to provide full compensation for losses caused by the dam break and resulting flood. Once this bill has passed both Houses of Congresses, we urge you strenuously to act as expeditiously as possible to sign and implement it. The people of Idaho deserve prompt, efficient, and effective assistance. The conscience of the nation demands it.

Sincerely,

LEO J. RYAN,
Chairman.

GILBERT GUDE,
Ranking Minority Member.

ST. ANTHONY, IDAHO, June 23, 1976.

Congressman GEORGE HANSEN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: The people of this area sincerely appreciate the efforts you and others are making to obtain reimbursement for those who lost their homes and possessions in the recent flood caused by the collapse of the Teton dam.

There has been apparent promises for low interest loans for the people in that area. This may be fine for a young person just starting out. They have a lifetime to pay their indebtedness. My husband's two brothers, one sister and his parents lost their possessions 100% in the Wilford area. The brothers and sister are young, they can start over but Dad is nearly 83 years old. Their home was paid for and comfortable. He has a fixed income that does not allow for a debt. Also, he doesn't have a lot of years left to wait on a possible reimbursement.

I know you are doing everything in your power to get a just reimbursement for these people but whether it happens or not depends on congressmen from the other states and they may not feel the moral responsibility that you feel. I hope that they will take into consideration the elderly of this area and if possible give them first priority if a reimbursement is forth coming, because to them it is important to live out their last years in a home of their own.

Thank you for your help and consideration.

Sincerely,

MRS. KEITH GREENHALGH.

Mr. FLOWERS. Thank you.

I am not going to ask any questions or add any comments at this point. I am going to ask Mr. Gude to give us the benefit of his remarks.

TESTIMONY OF HON. GILBERT GUDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GUDE. Thank you, Mr. Chairman. I, too, would like to thank you for holding this hearing and addressing this problem despite the pressures of a busy schedule.

Congressman Leo Ryan, who is the chairman of the Conservation of Energy and Natural Resources Subcommittee of the Government Operations Committee and I, as ranking member, visited the Teton Dam site and also traveled through the damaged area on the weekend of June 19 and 20.

I would like to associate myself completely with the testimony of Congressman Hansen. He has represented his people well. He has investigated the area thoroughly. I think that the two points that he makes, among others, in his testimony are very important points. He states that there should be a remedy in this legislation so that the people receive prompt compensation for the damages. As he said, some of this damage may not be apparent for a year or so. There is no reason why the people who are victims of this disaster, which is not a natural disaster, it is a man-made disaster, should have to go to court and should have to go through long-range efforts to get what is justly theirs because of this disaster.

I hope that there will be provisions for full compensation. I think that this legislation, which I have cosponsored with Congressman Hansen, goes a long way in that direction.

There is also, at the same time, a great need for a quick partial settlement in order that these people are enabled to get back into the business of farming and running a farm community. As you well know, the season is continuing and we are moving through summer. We are going to be coming into fall planting season and these people must make preparations for next year and the year after if they are going to resume their farming operations. They cannot do this if they do not have the funds to do it with. We do need a system for full and fair compensation and a system for quick partial settlement without a great deal of redtape.

The people of this area have pitched in and gone to work and have cleaned up the damage. I daresay that this Government will never pay for a lot of the cleanup that they have done. They have not just put their hands out and asked for a handout. They want to rebuild and they want to do it as quickly as possible. Their spirit is inspiring and so I hope that we, in Congress, reciprocate with the same spirit.

As Congressman Hansen has pointed out, Leo Ryan and I have written the President and asked him for a special coordinator who could either visit the scene or work here in Washington to cut the redtape and see that there is not a lot of bureaucracy that will stand in the way of these people being able to recover from this disaster.

Leo Ryan would have liked to have been here today.

Mr. FLOWERS. He has talked to me, individually, about it and to other members, I am sure.

Mr. GUDE. I know that he associates himself with my remarks.

Mr. FLOWERS. Thank you very much. There are many things that we can talk about here but I know that you are interested in getting on with the business. I am going to restrain myself from asking any questions and yield to my colleagues and see if they would like to ask questions.

Mr. MOORHEAD. I will not take very much time. I am concerned about the problems that you have been discussing.

Has any rebuilding been done yet? Have they started digging out?

Mr. HANSEN. Yes, that has been entirely what they have been doing. They have spent thousands of man-hours. Volunteers for miles around

have come in by the thousands to help bail out. That is what they have had to do is to just get the mud and water out which has been a tragic experience for them.

There has been a tremendous amount of work done as far as some of the basics are concerned. We are down to a point where we have to do something to put a roof over someone's head. What do we do to put a roof over someone's head?

Mr. MOORHEAD. Is there any estimate of the total damage yet?

Mr. HANSEN. The estimates have varied. Basically they have settled right around the figure of \$1 billion or more.

Mr. MOORHEAD. I know that there is a tight time schedule this morning and we have the two Senators waiting here. So, I am going to forego any further questions.

Mr. FLOWERS. Mr. Danielson, do you have any questions that you would like to ask?

Mr. DANIELSON. Thank you, Mr. Chairman. I am not going to indulge. I am familiar with the problem. My attitude toward it, if it is of any comfort to you, is that we find out what is the best way we might meet the problem and then to go ahead and do it.

Mr. FLOWERS. Thank you, gentlemen.

Mr. GUDE. Mr. Chairman, I appreciate you and the attendance of the committee members. I know that everyone is so busy and to have a good representation here is so gratifying to me.

Mr. FLOWERS. Very good.

I see both of our distinguished colleagues from Idaho and the other side of the Capitol, Senator Church and Senator McClure, here. Would both of you please come forward and let us hear from you?
[The statement of Hon. Frank Church follows:]

STATEMENT OF HON. FRANK CHURCH, A SENATOR FROM THE STATE OF IDAHO

Mr. Chairman and members of the Judiciary Subcommittee on Administrative Law and Governmental Relations, I want to express my gratitude for the interest, concern and compassion which this Subcommittee has already exhibited towards the victims of the Teton Dam disaster. In addition, I appreciate this opportunity to comment on legislation introduced by members of the Idaho delegation which would provide relief and restitution for those who have suffered such great losses. We are joined in this goal of full compensation by the Governor of Idaho, Cecil D. Andrus, who has requested that I present to this Subcommittee his views on legislation which Senator McClure and I introduced and which you are presently considering. The Governor asks that his written statement be made a part of this hearing record.

The rupture of the dam on June 5 and the resulting flood has taken a mighty toll. At least 11 persons lost their lives during the flood, personal injuries were inflicted on scores of people, and damage to real and personal property may reach \$1 billion. Peaceful communities, like Rexburg and Sugar City, once prosperous and active have been scarred and unmercifully ravaged by the rampaging flood waters; homes have been ripped from their foundations, trees have been snapped like toothpicks or completely uprooted, businesses have been demolished, prime Idaho farm land has been robbed of its productive capacity. Having toured the disaster area several times during the last three weeks I can report to you that the extent of damage is almost incomprehensible.

Idahoans have not been beaten by this tragic event; they are exemplary of the Western pioneer spirit and have far too much stamina to weaken from events that might have proven totally debilitating for others.

Even so, while I have no doubts that Idahoans will rebuild their homes and towns and farms as quickly as possible, it is self-evident that those who have suffered this great loss need the immediate assistance of their Government in order to recover.

I am pleased and grateful to note that yesterday the House of Representatives and the Senate gave final approval to legislation to appropriate \$200 million for

establishment of a disaster assistance program meant to help victims of the Teton Dam failure. This appropriation requested by the President has my full support and I consider these funds a downpayment for fully compensating those whose lives were so treacherously torn apart by the bursting of this dam.

The request for appropriations, plus the regulations to be issued to administer a disaster claims program, indicate that President Ford adheres to my own belief that the Federal government must share primary responsibility for the tragic aftermath of the dam break. Indeed, the Teton Dam was owned and operated by the Federal government, construction had just been concluded and the reservoir was filling for the first time when the dam gave way. To my own way of thinking, compensation for damage or loss to life and property is as much a duty of the government as it is a compassionate gesture on the part of all the American people.

Even though the \$200 million assistance program will be forthcoming with the President's signing into law of the appropriations act, I still firmly believe in the necessity of legislation like that which has recently passed the Senate and is under consideration here this morning. If, as it is presently anticipated, additional appropriations are needed to insure just compensation to the flood victims, passage of S. 3542, as amended by the House and Senate, would assure proper authorization for the claims program. Favorable action by this Committee would also assure that no avenue of relief to the flood victims would be overlooked.

Briefly stated, the purpose of S. 3542, as amended, is to provide the Federal government with authority to respond to this tragedy. Without assigning ultimate responsibility for the dam's failure and without making any finding as to the legal liability of any party involved, this legislative proposal merely seeks to assure rapid and responsive relief to Idaho victims. This bill would authorize the Secretary of Interior to review claims and make direct payments to those parties whom he finds to be eligible for such relief.

Upon review of the statement which I have submitted on behalf of Governor Andrus I would also express support for the amendatory language suggested by the Governor to S. 3542 to recognize the losses to the State of Idaho and its local political subdivisions. During your further consideration of these proposals I hope that the question of just compensation to local governing entities might be given every consideration.

Finally, if I may, Mr. Chairman, I would like to comment briefly on four specific provisions of the bill which passed the Senate.

First, sections 3(b)(c) and (d) prohibit unjust compensation to injured parties through double payments from different sources for the same injury. At the same time, however, insurance subrogation claims are prohibited.

Second, the Secretary is authorized to repair irrigation works and to provide some compensation to those farmers who, in anticipation of receiving water from the reservoir behind the dam, made expenditures specifically in conjunction with use of that water.

Third, many people are now homeless, accumulations of a lifetime are gone. They are in need of cash immediately. Section 4(c) of S. 3542 authorizes the Secretary to make advance or partial payments on claims in order to avoid hardship on the claimant.

Finally, with respect to the valuation of damages for property losses, the Senate bill contemplated the use of Idaho law. The regulations issued to administer the \$200 million appropriation which just passed the Congress calls for the payment of damages based upon the cost to repair, the replacement value, or the value placed upon such property in accordance with any Federal loan program already used to obtain funds for repair or replacement. If administration of the program is made easier by adopting the formula used in the regulations then I would support that approach over any reference to Idaho law, although I believe Idaho law is consistent with the regulations.

Mr. Chairman, if I can assist in expediting passage of this legislation, I stand ready to do so. On behalf of the people in Idaho, I want to again thank you and the members of this Committee for your help.

TESTIMONY OF HON. FRANK CHURCH, A SENATOR FROM THE STATE OF IDAHO

Mr. CHURCH. I want to express my appreciation for the rapid way that this bill was passed in the Senate.

I will not repeat what you have already heard about the catastrophe that struck Idaho except to say that, unlike natural disasters, the flood that hit the valley when the Teton Dam burst was not one that entailed water rising slowly. It was one that came like a tidal wave. It swept everything from its path. Some 2,500 families are now homeless.

We investigated the area after the floodwater had subsided—it looked to me like the desolation of a battlefield after a battle. There were parts of houses sticking up from the debris and pick-up trucks and harvesters twisted by the torrent and left like relics; sort of like broken cans so to speak. This was the scene.

The heroism of the people is the most inspiring part of the tragedy. The Congressmen have already spoken to that wonderful spirit. The effort that is being made in each community and the tremendous number of volunteers who have come to help, the work of the L.D.S. Church; all of these things speaks of people who are determined to make a comeback. They would make it on their own if given sufficient time. But, that would be a terrible injustice.

A board of inquiry has been established to determine why the Teton Dam failed. In 75 years of Federal experience, some 300 major dams have been constructed, most of them in the West. And, of that number, approximately 250 have been earthen dams. This is the first, ever, to have failed.

But, whatever the cause, Mr. Chairman, there is no doubt that this newly completed Federal dam, with its reservoir failing for the first time was the cause; its failure was the cause of the catastrophe. So, the general feeling has been that the Federal Government has a responsibility to do justice to these people and special legislation, as you know, is needed.

The ordinary disaster legislation that is on the books does not contemplate a situation of this kind. The relief that is now going forward, under the ordinary emergency disaster laws has been immediate and has been well administered. It has been vital and I must say that the Federal agencies deserve great credit for the way that they moved in to help along with the charitable institutions of the churches and private groups.

But that program as you know, Mr. Chairman, is not designed to provide restitution for thousands of victims who have suffered serious loss of life or property. As far as their private holdings are concerned, in the Senate we tried to move on two tracks. The bill that is before you is to basically eliminate any question about the legal basis for the Government proffering damages to the victims.

The other track involves a waiver of certain language in existing law that requires reimbursement. But, it has been our feeling that that alone would not suffice; that some basic law should be written to eliminate any question along the way first to the legalities of the governmental agencies. Also to take into account some of the specific needs that are not accommodated by the language that has been attached to the appropriation measure.

There are two items that I would like to mention in that connection. One is that the regulations that are purposed that apply to the \$2 million supplemental appropriation to get this program under way, do not provide partial payments. Our bill does undertake to provide for partial payments so that victims who cannot know for certain

what their final damages may be but are desperately in need of money may receive a down payment, which is clearly within what will be owing them so that that money will be made available soon while the balance is then determined over a period of time. I do think that that is a very important provision that the present legislation does not provide for.

Second, the Governor of Idaho calls to my attention to the fact that the State government itself and local government as well have been put to emergency expenses and that they have been victims of a sin as well as the people. The Governor makes a very strong case for including State agencies and local governmental agencies among those who might be compensated for the additional costs that they have been put to as a result of this emergency.

Our bill, as passed in the Senate, in section 10, would seem to accommodate State and local government for it agrees the purpose of this act determines persons, hence any individual, Indian tribe, corporation, partnership, municipality, township, association, or other non-Federal entities. By that we need to include the State of Idaho; if that could be clarified here, in the House language, it would be appreciated.

Mr. Chairman, I would like to submit for the record, an argument made by the Governor of Idaho for including the State amongst those eligible to file claims and ask that be included as part of the record.

Mr. FLOWERS. It will be included as part of the record.

We appreciate you speaking to us. We appreciate your very professional statement. I think that the members of the subcommittee share the feeling of Federal responsibility. As the Congressman said from California, "How it is carried out," that is our purpose, to do it expeditiously, but with one that would take care of all of the ramifications down the line.

[The material referred to follows:]

OFFICE OF THE GOVERNOR,
Boise, Idaho, June 29, 1976.

Telecopied to Office of Senator Church with request that the office hand deliver copies to the following:

Senator Frank Church, Room 245, Russell Office Bldg., Washington, D.C.

Senator James A. McClure, Dirksen Bldg., Room 2106, Washington, D.C.

Representative George Hansen, Longworth Building, Washington, D.C.

Representative Steve Symms, Longworth Building, Washington, D.C.

Representative Walter Flowers, Chairman, Subcommittee on Administrative Law and Governmental Relations, Washington, D.C.

GENTLEMEN: On the occasion of the meeting of the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, Wednesday, June 30, 1976, regarding legislated relief for losses incurred as a result of the Teton Dam disaster, I wish to comment on pending legislation and the needs of state and local government. My specific comments will be directed to S. 3542 which has passed the Senate. I also have a general concern that should be incorporated in appropriate legislation.

I have several concerns about S. 3542, designed to compensate for loss of life, health or property caused by the Teton Dam disaster. It is not at all clear that the State of Idaho or the counties within the disaster area are "persons" under Section 10 of the bill entitled to compensation for losses to improvements and structures. I strongly recommend that Section 10 of the bill be amended to read as follows: "For the purposes of this Act, the term 'persons' means any individual, Indian, Indian tribe, corporation, partnership, district, association, the State of Idaho, any county, municipality whether or not incorporated or chartered, school district, township, or other political subdivision of the State of Idaho, or other non-Federal entity."

Moreover, not only have some governmental entities suffered losses of structures and other improvements, the State of Idaho and general governmental units in the disaster area have incurred and will continue to incur expenses over and above the normal course of governmental operations and services as a result of security, relief and assistance necessitated by the disaster. S. 3542 does not appear to authorize compensation for these expenses. We have not been directed to any other existing federal law that would permit recovery of these expenses.

Accordingly, I suggest that the following definition of "loss of property" be incorporated in the legislation: "As used in this Act, 'loss of property' shall include without limitation any uncompensated extraordinary expenses of the State of Idaho, the counties within the disaster area, and the incorporated municipalities within those counties, that are incurred as a proximate result of the failure on June 5, 1976, of the Teton Dam."

My other major concern at this time is the erosion of the tax base of general local governments and special taxing districts in the disaster area. Loss of tax base will adversely effect the ability of local governments to finance operations at a pre-disaster level, not to mention the additional operating costs associated with disaster relief and recovery.

There is a present inequity in the law between disaster relief for operating expenses to local educational agencies on the one hand and to other units of local government on the other hand. Assistance under the Disaster Relief Act of 1974, P.L. 93-288, 20 U.S.C. 414, for community disaster loans to meet operating expenses will fall short of meeting the needs of some local units of government in the disaster area. These community disaster loans are limited by statute to no more than 25% of the operating budget of the local unit of government and a loan can be made for a single year of operation only. Thereafter, federal assistance is withdrawn.

By comparison, assistance is available under P.L. 81-874, 20 U.S.C. 241-1, from the Commissioner of Education to local educational agencies in major disaster areas for each year over a five-year period. Grants for assistance for current school expenditures (operating expenses) without any dollar or percentage limitation to permit local educational agencies to provide a level of education equivalent to that maintained in the schools prior to the disaster are provided.

There is no reason why local units of government should receive differing treatment from the United States for maintenance of operations following this disaster. Legislation granting relief from losses arising out of the Teton Dam disaster should take full account of the eroded tax base of local government and the reality that it will take a number of years to restore the tax base to pre-disaster levels.

Amendatory language covering these areas of relief to state and local government is required as a matter of legislated equity and fairness. While my paramount concern has been and will continue to remain the compensation of private flood victims suffering direct losses from the disaster, state and local units of government have also suffered and will continue to suffer real monetary losses arising out of the Teton Dam disaster and its aftermath that are uncompensated under present law. State and local governments in Idaho should be compensated for their losses.

If I or my office can be of assistance to you in your deliberations, please do not hesitate to call upon us.

Sincerely,

CECIL D. ANDRUS, *Governor.*

Mr. FLOWERS. I call on our distinguished colleague, Mr. McClure.

TESTIMONY OF HON. JAMES A. McCLURE, A SENATOR FROM THE STATE OF IDAHO

Mr. McCLURE. Thank you very much. I appreciate the chance to be here today not only with my colleague from the Senate but also to say hello to some old friends in the House.

I have a prepared statement which I ask to be included in the record in full.

Mr. CHURCH. May I do that as well?

Mr. FLOWERS. Without objection, they will be made part of the record.

[The material referred to follows:]

STATEMENT OF HON. JAMES A. McCURE, A SENATOR FROM THE STATE OF IDAHO

Mr. CHAIRMAN. The Lower Teton Dam, a Bureau of Reclamation project, failed on June 5, 1976, killing 11 people and causing over \$500 million property damage. Our immediate concern was to protect against losing more lives and to reduce damages from the raging flood. Having spent time with the people in the disaster area immediately after the dam burst, I know the terrifying trauma they went through and their helplessness in seeing the total devastation of their homes and livelihoods. Our sympathies continue to go out to them. While I do not wish to detract in any way from the emotional effects these people are still feeling, I do feel we have a task at hand today, as we have had in the last few weeks, and that is to direct our efforts to try to provide a means for compensating the victims and for allowing the rebuilding process to begin.

The basic premise we are working from today is this: First, the Teton Dam was owned, constructed and operated by the Federal Government. Second, those people who were hurt by the failure of this project are due the total replacement of what they had worked hard for over the years. It is thus the Federal government's responsibility to restore these losses. I believe, as do Senator Church and Congressman Hansen and Symms, that special legislation is imperative in order to guarantee that the Federal Government meets its full responsibility.

For this reason, on June 9th we introduced S. 3542, which provides full compensation for all damages. On June 11, President Ford, also reiterated the government's responsibility by requesting \$200 million in supplemental appropriations to begin covering damages. Congress has acted with deliberate speed on that appropriations bill, and we are hopeful it will be signed by the President today. Unfortunately, that bill is not enough! The President's \$200 million appropriation is strictly an appropriation bill and provides to date only \$200 million. Already the Federal Disaster Administration has estimated damage costs to be well over \$500 million. It is inevitable that additional appropriations will be necessary. S. 3542 helps carry out the President's intention to cover all damages by providing the authorizing instrument for later appropriations. Congress should have some control over this authorization.

While the President's request and subsequent appropriation measure will begin to help toward restoration, the rules and regulations for administering these damage claims are in some instances not as complete as they should be. The regulations allow an individual to file only one claim. I believe this can mean adequate compensation. A good case in point might well occur in the town of Roberts, which is still partially under water at this moment, more than three weeks after the dam failure. The tremendous amount of water settling in this area has pushed the natural underground water table to the surface in some areas. The homeowner in Roberts may well be compensated now for damages to this home. But after the claim has been settled and he is back on the road to a normal life, he might well find the walls of his basement begin to crumble next winter as the water-saturated ground freezes and expands. Under present regulations, as proposed by the Administration, this man would have no recourse. Once a claim is filed and settled, no further claims may be sought. This individual might still be in danger of losing his home as a direct result of the Teton Dam failure with no recourse at all. This is why our legislation allows for the filing of claim up to two years after the passage of this legislation.

Our bill likewise provides for complete rehabilitation or replacement of irrigation facilities affected by the flood—those built in anticipation of the Teton project which are now unusable and those that are vital for the continued cultivation of the rich farmland that is the economic resource for Eastern Idaho. Under the regulations today, there isn't the assurance that the entire irrigation system in Eastern Idaho will be completely restored to a functioning level, and the regulations do not provide for the payment of damages to irrigation systems outside the disaster area outlined by the Administration. For instance, over 400,000 acres of cultivated land were threatened by lack of water when irrigation facilities were torn out and some of these lands irrigated were outside of the immediate flooded area. There is the possibility that these structures could not be replaced or land damaged would not be covered by government funds. Again, our bill does provide for that total protection due these farmers.

There are other instances to cite but more importantly other cases that will arise that we are not even aware of now. These people must have the protection of broad coverage by law in order to gain the full compensation entitled them. S. 3542 gives Congress the authority to direct that the Federal Government does uphold its responsibilities, that the Federal Government gives all victims every opportunity to recover from damages the government has caused. This bill does not grant special privileges or benefits. It merely provides simple justice rightfully due the disaster victims.

I believe it is the moral obligation of Congress to see that the people of Idaho are treated fairly in their claims against the United States Government. Only Congress can provide the impartiality necessary by passing a just law that both the Federal Government and the people of Eastern Idaho can abide by.

The Senate recognizes their duty in this case and has passed S. 3542. The fact that the Senate Interior Committee held hearings on June 15, reported the bill on June 16, and the full Senate passed it on June 17, only brings home my point. It is the Senate's intention that this bill become law immediately. The President, the Senate, and most importantly, the victims of his federal disaster see the need for complete compensation by the Federal government. S. 3542 will guarantee that right!

Mr. McCLURE. I want to simply add to what has been said, without repetition, that there are some peculiar problems that the existing legislation and the regulations issued will not accommodate what Senator Church has made reference to in the State and municipal area; that the existing regulations probably do not cover.

What do you do for a school district whose entire fleet of school-buses have been destroyed? How do you get them back into operation? I think that this is a very, very serious question. I saw one schoolbus out there that was not much larger than half the size of a Volkswagen. It has been run or rolled downstream and rolled into a ball and that is all that remains of it. There is no salvage, no repair. It simply has got to be replaced and the money has got to be obtained to do that.

The second, which Congressman Hansen has made reference to, is the very peculiar situation in which the ground water level is very high and this flood-water went in there and is now just standing. They cannot pump it out of their basements because if they do so the basements could collapse. They are standing in a sea of water and will be for some time until that water evaporates and slowly seeps into the ground.

They have peculiar needs for partial payments to tide them over during this period of time and perhaps a greater need of time to respond to the claim. I think that the single claim requirement and the limitation on partial payment that are under the existing regulations simply do not meet that need as well as the need of some others who, in order to get back into business will need a larger partial payment than the \$10,000 limit under the existing regulations.

But, I think we would not be fair to the Government if, in pointing to their responsibility, we did not also add a word of commendation to the way that the agencies have responded. It has been very heartwarming to see the ability of the Federal agencies to respond in the very sensitive way in which they have. The people in the area are very grateful, at this time, for the assistance that they have gotten from the various Federal agencies. There is a very good feeling in that area right now. I am sure that that will wear off after awhile.

Mr. FLOWERS. I have seen this in action. I lived in tornado country and I have seen communities wiped out by natural disasters. It is nice to behold the Federal Government operating just like it ought to. It helps out back home, doesn't it?

Mr. McCLURE. It certainly does. And on the other side to see a look of amazement on the faces of bureaucrats who find that they are appreciated. That is also rather unique. But they have appreciated it, and I think that that ought to be on the record.

The bill that we have passed in the Senate that is before you now is not totally of our own making. It is largely the drafting that was done by our staff and the staff of the committee and the Senate. But, it also contains in it some features of legislation that was introduced here, in the House, that filled in some of the gaps that flushed out the framework in some areas that our bill did not.

I would be very happy to respond to whatever questions you might have as we thank you for your attention to this problem.

Mr. FLOWERS. Thank you very much. I would like to engage in a conversation with you both, but I am going to do something for my constituents and go punch in over at the House.

We appreciate very much your coming. I know you all have to get back to the Senate side. We will recess for 10 minutes.

[Whereupon, at 10:30 a.m., the subcommittee recessed to reconvene at 10:40 a.m. the same day.]

Mr. FLOWERS. The subcommittee will again come to order.

TESTIMONY OF HON. STEVE SYMMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SYMMS. Mr. Chairman, I know that this consideration has come up at a most inopportune and busy time for you and for the members of your subcommittee and for the Judiciary Committee as a whole.

I am most grateful for the consideration you have given it. There has just been a barrage of legislation, and much of it very important legislation, that I know has to be considered.

[The statement of Hon. Steve Symms follows:]

STATEMENT OF HON. STEVE SYMMS, A REPRESENTATIVE FROM THE STATE OF IDAHO

Mr. Chairman, I very much appreciate the speed with which this Subcommittee has taken up consideration of the legislation to compensate the victims of the Teton Dam flood disaster. It must be emphasized that the various federal agencies involved in disaster assistance and the flood clean-up have done an outstanding job. Their work has statutory limitations placed upon it, and we have now understandably reached the end of our ability to handle many of the tasks which must yet be undertaken.

For that reason, I have cosponsored the legislation pending before your subcommittee along with the others who represent Idaho in the congressional delegation. This legislation in no way implies liability on the part of the Federal Government or any other organization involved in the construction of the Teton Dam. It simply proposes that this Government undertake a humanitarian effort to in some way compensate for the tragedy of the loss of lives, property, and—for many—the work and efforts of their lifetime as a part of our Idaho farm community.

My colleague, Congressman Hansen, has provided the statistical information of interest to the subcommittee. I will close, therefore, in an effort to conserve your time by telling you once again how very much our delegation and the people of Idaho appreciate your prompt attention to this legislation. Thank you.

Mr. FLOWERS. Our next witness is from the Department of Justice, the Honorable Irving Jaffe, Deputy Assistant Attorney General, Civil Division.

We will be delighted to hear from you and we welcome you to our subcommittee.

If you have anyone with you that you would like to bring forward, please do so. You may proceed.

**TESTIMONY OF HON. IRVING JAFFE, DEPUTY ASSISTANT
ATTORNEY GENERAL, CIVIL DIVISION**

Mr. JAFFE. Mr. Chairman, I am Irving Jaffe, Deputy Assistant Attorney General for the Civil Division, Department of Justice, and I appreciate the opportunity to appear before this subcommittee to present the views of the Department of Justice on the various proposals submitted to or introduced in the Congress to alleviate the hardships and provide compensation to the victims of the Teton Dam failure.

The Teton Dam failure occurred on June 5, 1976, while the reservoir was being filled for the first time. A breach in the dam released flood waters, causing substantial property damage, personal injury, and some loss of life. Various agencies of the Federal Government, acting under the authority of existing disaster relief acts, immediately undertook to alleviate the hardships being suffered. The cause of the failure has not yet been ascertained.

On June 11, 1976, the President transmitted to the Congress for its consideration a supplemental appropriation proposal for the Department of the Interior in the amount of \$200 million for fiscal year 1976, to be made available, without reimbursement, for the payment of claims for damages to or loss of property, personal injury, or death resulting from the failure of the Teton River Dam.

The payment of these damage claims are to be made in accordance with rules and regulations to be issued by the Secretary of the Interior necessary to administer the claims and to determine the amounts to be allowed and the persons entitled to receive them. Such compensation will be provided without regard to the proximate cause of the failure. A proviso to the legislation declared that nothing therein contained shall be construed to impose any liability on the United States or to allow for payment of claims that are paid or are payable from other sources, public or private.

The President's proposed legislation was attached as an amendment to a Public Works appropriation bill, H.R. 14236, then pending in the House and it was passed on June 15, 1976. The Senate passed the Public Works appropriation bill, including the President's proposal, on June 23, 1976. However, the Senate amended certain provisions of that bill, not the President's proposal, sending the Public Works Appropriation Act into conference. The conferees met and filed their report on June 24, 1976. The Public Works Appropriation Act is scheduled to be considered on June 29, 1976 by each House.

The Department of the Interior has drafted regulations in implementation of the President's proposed legislation which can be published in the Federal Register and can become operative almost immediately after the supplemental appropriation requested by the President becomes law.

Senators Church and McClure of Idaho introduced S. 3542 on June 9, 1976, to authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton River Dam. Hearings thereon were held on June 15, 1976, before the Subcommittee on Energy, Research, and Water Resources of the Senate Committee on

Interior and Insular Affairs. On June 17, 1976, an amendment in the nature of a substitute for S. 3542 was presented on the floor of the Senate and the substitute S. 3542 was passed.

As passed by the Senate, S. 3542 states its purpose to be the expeditious payments of just compensation for the deaths, personal injury, and losses of property, including destruction and damage to irrigation works, resulting from the failure of the Teton Dam without regard to the proximate causes of the failure of that dam.

In general, S. 3542 provides for the Secretary of the Interior to administer claims thereunder in accordance with such regulations as he prescribes. Claims must be filed within 2 years after the date the regulations are published in the Federal Register and such publication is required to be accomplished within 15 days of the enactment of S. 3542.

Determinations, awards, and settlements are limited to actual or compensatory damages measured by the pecuniary injuries or loss involved and does not include interest prior to settlements or punitive damages. In determining the amount to be awarded, the Secretary will reduce such amount by an amount equal to the total of insurance benefits (except life insurance) or other payments or settlements of any nature previously paid with respect to the losses claimed.

S. 3542 provides that the acceptance by the claimant of any award, compromise, or settlement shall be final and conclusive and shall constitute a complete release of any claim against the United States relating to the same subject matter.

Provision is also made for judicial review of a final decision of the Secretary by the filing within 60 days after the date of such decision, of a petition in the U.S. District Court for the District of Idaho. Such review is confined to the record made before the Secretary and the filing of such an appeal to the district court constitutes an election of remedies.

In the view of the Department of Justice, some of the provisions of S. 3542 should be clarified and others modified. Our suggestions follow:

In section 3(a) there should be inserted after "United States" on line 20 the words "is hereby authorized to and".

If I may digress. The purpose of that suggestion is merely to make clear that the Secretary is authorized not only to consider these claims but to pay them.

We regard the use of the word "settle" in the lines that follow as including payment.

Section 3(g) should be amended to read as follows:

Any claim for damages which is payable in whole or in part by a third party, including insurers, shall not be paid by the Secretary unless and until the claimant provides written proof that the third party or insurer has denied the claim and the claimant assigns to the United States his rights against such third party or insurer with respect to such claim.

If I may, I will explain that. S. 3542 now provides that the only deduction by the Secretary for payments made by a third party or an insurer would relate to payments previously made by them to the claimant. That imposes upon the Government the burden of processing against the third party or insurer since the bill does provide for the assignment of the claim to the United States.

However, we believe that the claimant ought to make his demands against the third parties or insurer who owes an obligation to him and he should pursue it. We are willing to pay the damage to the claimant if the third party or insurer denies liability or rejects the claim for any purpose. But, we do not believe that the burden should be thrust upon us in the first instance.

Section 4(d) requires clarification. The phrase "on-farm facilities in anticipation of service" should be defined so that its parameters may be known. It is not now clear whether the provision relates only to changes made to the land which can no longer be restored, or whether it also includes farm equipment or machinery purchased for or in anticipation of the service.

I might add here that other aspects of that section should be clarified because whether or not the facilities, whatever they may be, are used less or have been diminished in value will depend in large measure on whether service on the dam is to be restored or whether it will not be able to be restored at all.

In the latter case, of course, the damage to the claimant is complete. In the former case, that is, if service will be restored, presumably those facilities will, at some time in the future, become useful.

Section 7 provides for the Secretary to enter into agreements with the owners of damaged irrigation facilities "to finance the repair or reconstruction thereof either by direct payment or through construction contracts administered by the Bureau of Reclamation." It is not clear whether irrigation companies are sought to be benefited by these provisions and whether the word "finance" authorizes loans or requires outright grants.

The reports to the Congress which section 8 requires the Secretary to make, are, it is submitted, too detailed and unnecessarily burdensome. It would appear that a report which merely furnishes the name of each claimant, the amount and nature of the claim, and its disposition by the Secretary, would suffice in most instances. Should a more detailed report of a particular claim be required, then such a report can be furnished as requested. Past experience shows that detailed information is sought by the Congress or one of its Members in relatively few instances.

The proviso in section 9(a) should be amended by inserting after the word "notice" on line 9, the words "prior to final disposition" and after the word "designee on line 10 the words "and such claims shall thereupon be deemed abandoned for all purposes."

The reason for that suggestion is that while a claim ought to be able to be withdrawn, the withdrawal should take place prior to the final disposition. After final disposition, the claimant has an election of remedies. He can make that either through judicial review or, if he believes he has an independent cause of action he can pursue it. To permit the claimant to do it after final disposition would be a burdensome waste of administrative time and would allow the claimant to see how it goes. If he doesn't like the administrative determination then he can withdraw it.

It appears to me that a withdrawal of the claim ought to be a binding and conclusive act and constitute an election to proceed in other ways than through administrative claim.

On June 11, 1976, Congressman Hansen, for himself and for Congressman Symms, introduced H.R. 14328 to provide emergency relief to persons incurring losses as a result of the collapse of the Teton Dam. This bill, which is less comprehensive than S. 3542, is objectionable in certain basic respects. First and foremost, it is the only proposal that does not expressly recognize that its provisions for compensation are made without regard to the proximate cause of the failure of the Teton Dam. Indeed, absent such statement, H.R. 14328 may, itself, be construed as creating and granting a right of action against the United States as a result of the Teton Dam collapse.

Inasmuch as the Department has concluded that there is no legal liability on the part of the United States under present law for damages suffered as a result of the failure of the Teton Dam, the omission of such a disclaimer renders H.R. 14328 particularly objectionable.

Moreover, the bill makes no clear provision for the release of the United States where an administrative award on a claim is accepted by the claimant. There is no provision for judicial review of any administrative determination and the bill does not clearly authorize the Secretary to promulgate rules and regulations except as to the form and manner in which a claim may be submitted.

The Department is opposed to the enactment of H.R. 14328.

On June 14, 1976, Congressman Symms, for himself and for Congressman Hansen, introduced H.R. 14367. This bill is identical to S. 3542 as originally introduced. In the opinion of the Department of Justice, the substitute S. 3542, which passed the Senate, is a substantial improvement over the original bill and H.R. 14367.

The legislation proposed by the President is expected to pass both Houses of Congress if it has not already done so and can become law sooner than S. 3542 and certainly before H.R. 14328, which has not yet been fully considered by either House.

The President's bill is the only proposal which contains a specific appropriation of moneys. The stated desire of the Congress and the administration speedily to compensate the victims of the Teton Dam disaster, can most effectively and expeditiously be accomplished through implementation of the President's proposal immediately after it becomes law.

Thank you very much.

Mr. FLOWERS. Thank you, Mr. Jaffe.

I am not sure how much time we are going to have. We are going to have to answer that rollcall.

Let me proceed with a few questions to you. Even though we can assume that there is no legal liability, these members feel, that there is justifiable moral liability on the part of the Government. I think that the Members of Congress generally feel that the United States built the dam and created the condition which caused the damage. Obviously, it was not a natural disaster. It was manmade error that went into the work there or it would not have failed. We have had 250 good ones and one bad one. That is a good record, but it tells me that that there was something that was done wrong on this one.

Your testimony says, if I may summarize it, that the way to proceed is with supplemental appropriations and use that line of attack only.

We have no need for any additional claims legislation like that before us. Is that an accurate summary?

Mr. JAFFE. I do believe that the provision under the supplemental appropriations is adequate to compensate the victims of the Teton Dam disaster.

I do not wish to say that there may not be some problems with respect to it. I do not wish to say that Senator Church's bill, S. 3542, is objectionable especially if some of the suggestions that we made are taken into consideration.

It is true as the Senator says that his bill has more specific authority and authorization which would be especially helpful if we had to defend our authority, should that issue ever be raised. It is merely implicit in the appropriations bill and in the act it supplements, which is Public Law 94-180.

While I believe that the authority is clear in the administration proposal, or at least I feel that we would be successful in establishing the authority, I can not ignore that Senator Church's bill would eliminate the need for any argument.

Mr. FLOWERS. Well, from all of the objections that I have read and heard about, the \$200 million in the appropriations bill, in and of itself, would not be adequate to cover what damages are out there.

I hope that the estimate of \$1 billion is overstated but if it is not, there is still a lot of difference between \$200 million and a little less than \$1 billion.

Mr. JAFFE. That is true, Congressman Flowers.

The President's message, which was transmitted to the Congress, contained the statement that, "If additional funds are required I will request further appropriations latter." Of course, at the moment, assuming that the bill is passed and enacted, there would be \$200 million available immediately. With respect to the other bills, there is an authorization, as I read it, for the appropriation of funds but the appropriation will still have to be made.

My point is, that if the appropriation bill becomes law, we can begin paying the very next day. If we had to rely on the language of the other measures we would be able to process the claims, of course, but I think we would have to get the appropriations in order to make payments.

Mr. FLOWERS. Of course, the appropriations bill passed the House yesterday. I do not know whether the Senate took action yesterday or not.

Mr. JAFFE. We have got a copy of the proposed rules and regulations of the Interior. I do not know whether you have it. I know I do. The last draft that I have, I actually received yesterday.

Mr. FLOWERS. Is this the draft that they proposed to promulgate pursuant to the passage of the appropriations bill?

Mr. JAFFE. Yes; immediately it becomes law. This will be published in the Federal Register probably within 24 hours thereafter.

Mr. FLOWERS. Does it differ in any great detail from the Senate-passed legislation or would the rules be conformed?

Mr. JAFFE. In my opinion, they could be conformed very readily to S. 3542. We do have provisions in it which are different. One of them I alluded to.

These regulations provide for the suggestions that I made that a claim against a third party or insurer must first be derived and as-

signed to the United States before we would pay the claimant for that claim.

Whereas, the Church bill provides for that deduction only if it has been previously paid.

Mr. FLOWERS. May I interrupt? I am going to miss this vote. I will be back in 5 or 10 minutes.

If you will please wait, sir?

[Recess taken.]

Mr. FLOWERS. Thank you for your indulgence, Mr. Jaffe. I am going to ask counsel if they have any questions at this point.

Mr. SHATTUCK, would you like to ask Mr. Jaffe a few questions?

Mr. SHATTUCK. Thank you, Mr. Chairman.

The first question that I have for you, Mr. Jaffe, refer to the suggested language on page 7 of your statement in which you say, "That upon withdrawal of the claim—" I take it that the claim would thereupon be deemed abandoned for all purposes.

It might be assumed that a person withdrawing the claim was doing it because he wished to proceed under the Tort Claims Act. Would he thereby be bound by all purposes? Would that not be an all-inclusive term?

Mr. JAFFE. No. That is certainly not what I intended it to do. The claim that they would file under the program, whether it be the President's or S. 3542, would not satisfy the Tort Claims Act requirement.

When I say "For all purposes," I mean under this act.

Mr. SHATTUCK. Yes; I understand. But, I just wondered if it would not be more proper to say, "under this act"?

Mr. JAFFE. Yes; it would be.

Mr. SHATTUCK. You have given rather well-drafted language that would deal with the insurance situation; that is, the situation in which there is a valid claim by a claimant against an insurance company.

Mr. JAFFE. Yes.

Mr. SHATTUCK. And it has to do with whether you would be forced to proceed against the insurance company in advance of any denial of the claim. Has any thought been given to the situation with regard to that insurance company in the instances where they do pay properly, under their insurance contracts, and thereby becoming subrogated to a portion of the claim?

Let us say that we have received some letters in the committee on this point. The question is, is the subrogated insurance company free to proceed with whatever remedy they have under the subrogated claim, in view of a release that is required of this claimant?

Mr. JAFFE. In my view the insurance company does have that right.

I have difficulty in assuming that any legislation that might be passed could take it away. We have given it thought in the drafting of regulations that we have prepared and have made provision for it. We have provided in our regulations dealing with release upon acceptance of payment by the claimant, that

... no release under this paragraph shall affect the rights of any insurance company with the rights of a subrogee against the United States, its agents and employees to the extent that the insurance company has paid claims arising from the incident prior to payment of a claim under these regulations.

So, we have preserved whatever rights of subrogation the insurance companies may have.

We do provide that they cannot be claimants under this act. If they wish to pursue their rights as a subrogee they would have to establish the liability of the United States.

Mr. SHATTUCK. If they do, what then?

Mr. JAFFE. If they do or if they don't, their rights to attempt it are preserved.

Mr. SHATTUCK. The bill requires a release from the claimant that would release all rights relating to the subject matter of the claim but it would be modified in the way that you have just described.

Mr. JAFFE. We have had this in the same paragraphs of the regulations which deal with release so that I feel that there is no ambiguity at all in preserving the rights of the insurance company. We have a paragraph titled "Release" and we have three subparagraphs (a), (b) and (c), which is the one I just read.

Mr. SHATTUCK. I realize that you have observed, in your estimation, there is no liability under the Federal Tort Claims Act?

Mr. JAFFE. Yes.

Mr. SHATTUCK. As a suggestion, would it be possible for a release to apply as to one tort-feasor and a bar under the Federal Tort Claims Act?

What about the possibility of other persons who might be joined in a tort suit arising from the same occurrence?

Mr. JAFFE. I want to point out, first, that I regard this measure, that is any measure that is before the Congress now, as not involving the Federal Tort Claims Act. So, as to any release that we speak about, please keep in mind that we are not talking about a joint tort feaser. We are talking about, perhaps, the third party who may have an obligation.

If anyone believes that he has a claim against a third party, other than the United States, if he feels that they have a cause of action in negligence against anyone else, let us say, for the sake of argument, the contractor who built the dam, I think that he is free to pursue it.

Mr. FLOWERS. This would set off the amount paid by the United States?

Mr. JAFFE. I think that this will. I do not think that any of our laws allow a person to be paid twice.

Mr. FLOWERS. Mr. Coffey, do you have a few questions?

Mr. COFFEY. Thank you, Mr. Chairman.

Mr. Jaffe, to follow up just a minute on the answer that you gave to Mr. Shattuck's question concerning subrogation. Do you feel that section 3C of the Church/McClure bill is necessary?

Mr. JAFFE. I think that my own interpretation of that provision is merely to eliminate the insurance company as a claimant under this bill in its capacity as a subrogee. Our regulations provide that no insurance company as a subrogee or any third party is an eligible claimant.

As I read section 3(c), I still believe that moneys for claims under this act, S. 3542, or under the supplemental appropriations bill are not available to pay insurance companies.

I cannot analyze the others that quickly, that is, Mr. Hansen's bill. I don't recall offhand what provision that bill makes.

Mr. COFFEY. The legislation before the subcommittee gives the Secretary of the Interior broad discretion to determine the validity of a claim and also the amount.

I was wondering whether or not you had an opinion on the advisability of having a disinterested-party-arbitrator making the decision here. I guess I would say that the Bureau of Reclamation is not exactly a disinterested party. We will have a situation where an individual is dissatisfied with the award amount. I wonder if an intermediary arbitration system might be a better way to handle that?

Mr. JAFFE. I would like to respond in two ways. First, I have a personal type of objection to allowing the expenditure of funds of the United States, that is, the discretionary aspect of the decision, to be determined by nongovernmental officials.

Second, I think we ought to remember that we are not determining damages in the sense of legal liability. I think all of these bills try to keep the damages, to some extent, from getting too far afield.

Senator Church's bill speaks of compensatory damages in terms of pecuniary losses.

Under our regulations, as I believe I indicated, we are going to pay those kinds of damages in full. I think they also reflect that we are not going to go into consequential damages which are not actual damages or compensatory damages. In determining that, we ought to bear in mind that if there is no legal liability, and I think these bills make that assumption, at least by stating that they do not address legal liability, that it must be regarded in some respects as a gratuity. And the Congress should impose such restrictions as it thinks necessary in alleviating the hardship to make or to give full compensation, if it wishes, only for the actual damages that have been suffered.

I see no reason why the Bureau of Reclamation and the Government or the Secretary of the Interior cannot do that fairly and adequately. It is not fair if it is found not adequate on judicial review. I am quite certain that the courts will not tolerate less. The courts have never shown any reluctance to impose standards of fairness if they think that they have not been observed by Federal officials. I actually do not see why there should be any anticipation that there will be any unfairness in the administration of the program.

I think that the Federal Government and its representatives, including the Bureau of Reclamation, which has been praised by the committee, have indicated their good faith and their fairness. I do not share the feelings that are expressed freely now that somehow or other the Government is not acting fairly toward the people or that the Government ought to be distrusted.

Mr. COFFEY. My last question refers to the requirement that any claim submitted be in the form of a single claim, that is, all claims or any type of damage, injury, or loss of income be consolidated as that, under one single claim. Has there been any consideration given to dividing the claim between bodily injuries, personal properties, and real property? I can conceive of an instance where the award decided upon by the Bureau might be acceptable in the area of bodily injury but perhaps not in the area of real property damage. A claimant may want to litigate one and settle the other. Do you have an observation or response?

Mr. JAFFE. I can make some observations. The single claim or the purpose of the single claim—and incidentally there is also provision in the regulations for amendment of the claim from time to time, without any restrictions—was to avoid, or at least to minimize duplicative consideration of related claims.

What we had in mind was not the distinction between claims for personal injury or wrongful death or real property, but to avoid a series of property damage claims being submitted, requiring the investigator to go out to the same place repeatedly. Actually, what we had in mind was that all property damage claims be placed in a single claim. But further on in our regulations we provide not only for emergency payment but for partial payment. We have made provision, where the claims official feels that the property damage claims have been established and the amounts have been determined, that they can separate such claims from the rest of the claims and send them on to the authorized official, leaving the other claims for further investigation and consideration.

I think the whole structure of our regulations meets the requirements for separate payments and for the separate consideration of different kinds of claims.

Mr. COFFEY. Quickly, as I read the regulation, if there is a decision to litigate at the end of that process, the entire claim is then withdrawn?

Mr. JAFFE. Yes. There is that provision in the regulation. It was put in there purposely. We believe that claims ought to be considered either under this act or under whatever other legal remedies the claimant thinks he is entitled to.

I think that Senator Church has the same thought in mind.

Mr. COFFEY. Do not they also have to give back any advance emergency funds?

Mr. JAFFE. Yes, they do.

Mr. FLOWERS. Thank you, Mr. Jaffe. I know that you have indicated your willingness to work with the subcommittee and offer us your expertise in this area.

We appreciate your being with us this morning.

[The prepared statement of Mr. Jaffe follows:]

STATEMENT OF IRVING JAFFE, DEPUTY ATTORNEY GENERAL, CIVIL DIVISION

DEAR MR. CHAIRMAN: I am Irving Jaffe, Deputy Assistant Attorney General for the Civil Division, Department of Justice and I appreciate the opportunity to appear before this Subcommittee to present the views of the Department of Justice on the various proposals submitted to or introduced in the Congress to alleviate the hardships and provide compensation to the victims of the Teton Dam failure.

The Teton Dam failure occurred on June 5, 1976, while the reservoir was being filled for the first time. A breach in the dam released flood waters, causing substantial property damage, personal injury and some loss of life. Various agencies of the Federal Government, acting under the authority of existing disaster relief acts, immediately undertook to alleviate the hardships being suffered. The cause of the failure has not yet been ascertained.

One June 11, 1976, the President transmitted to the Congress for its consideration a supplemental appropriation proposal for the Department of the Interior in the amount of \$200 million dollars for fiscal year 1976, to be made available, without reimbursement, for the payment of claims for damages to or loss of property, personal injury or death resulting from the failure of the Teton River Dam. The payment of these damage claims are to be made in accordance with rules and regulations to be issued by the Secretary of the Interior necessary to

administer the claims and to determine the amounts to be allowed and the persons entitled to receive them. Such compensation was provided without regard to the proximate cause of the failure. A proviso to the legislation declared that nothing therein contained shall be construed to impose any liability on the United States or to allow for payment of claims that are paid or are payable from other sources, public or private.

The President's proposed legislation was attached as an amendment to a Public Works Appropriation Bill, H.R. 14236, then pending in the House and it was passed on June 15, 1976. The Senate passed the Public Works Appropriation Bill, including the President's proposal, on June 23, 1976. However, the Senate amended certain provisions of that Bill, not the President's proposal, sending the Public Works Appropriation Act into conference. The conferees met and filed their report on June 24, 1976. The Public Works Appropriation Act is scheduled to be considered on June 29, 1976 by each House.

The Department of the Interior has drafted regulations in implementation of the President's proposed legislation which can be published in the Federal Register and can become operative almost immediately after the supplemental appropriation requested by the President becomes law.

Senators Church and McClure of Idaho introduced S. 3542 on June 9, 1976 to authorize the Secretary of the Interior to make compensation for damages arising out of the failure of the Teton River Dam. Hearings thereon were held on June 15, 1976 before the Subcommittee on Energy, Research and Water Resources of the Senate Committee on Interior and Insular Affairs. On June 17, 1976, an amendment in the nature of a substitute for S. 3542 was presented on the floor of the Senate and the substitute S. 3542 was passed.

As passed by the Senate, S. 3542 states its purpose to be the expeditious payment of just compensation for the deaths, personal injury and losses of property, including destruction and damage to irrigation works, resulting from the failure of the Teton Dam without regard to the proximate causes of the failure of that Dam.

In general, S. 3542 provides for the Secretary of the Interior to administer claims thereunder in accordance with such regulations as he prescribes. Claims must be filed within two years after the date the regulations are published in the Federal Register and such publication is required to be accomplished within 15 days of the enactment of S. 3542. Determinations, awards and settlements are limited to actual or compensatory damages measured by the pecuniary injuries or loss involved and does not include interest prior to settlements or punitive damages. In determining the amount to be awarded, the Secretary will reduce such amount by an amount equal to the total of insurance benefits (except life insurance) or other payments or settlements of any nature previously paid with respect to the losses claimed.

S. 3542 provides that the acceptance by the claimant of any award, compromise or settlement shall be final and conclusive and shall constitute a complete release of any claim against the United States relating to the same subject matter.

Provision is also made for judicial review of a final decision of the Secretary by the filing within 60 days after the date of such decision, of a petition in the United States District Court for the District of Idaho. Such review is confined to the record made before the Secretary and the filing of such an appeal to the District Court constitutes an election of remedies.

In the view of the Department of Justice, some of the provisions of S. 3542 should be clarified and others modified. Our suggestions follow:

In Section 3(a) there should be inserted after "United States" on line 20 the words "is hereby authorized to and".

Section 3(g) should be amended to read as follows:

"Any claim for damages which is payable in whole or in part by a third party, including insurers, shall not be paid by the Secretary unless and until the claimant provides written proof that the third party or insurer has denied the claim and the claimant assigns to the United States his rights against such third party or insurer with respect to such claim."

Section 4(d) requires clarification. The phrase "on-farm facilities in anticipation of service" should be defined so that its parameters may be known. It is not now clear whether the provision relates only to changes made to the land which can no longer be restored, or whether it also includes farm equipment or machinery.

Section 7 provides for the Secretary to enter into agreement with the owners of damaged irrigation facilities "to finance the repair or reconstruction thereof

either by direct payment or through construction contracts administered by the Bureau of Reclamation." It is not clear whether irrigation companies are sought to be benefited by these provisions and whether the word "finance" authorizes loans or requires outright grants.

The reports to the Congress which Section 8 requires the Secretary to make, are, it is submitted, too detailed and unnecessarily burdensome. It would appear that a report which merely furnishes the name of each claimant, the amount and nature of the claim, and its disposition by the Secretary, would suffice in most instances. Should a more detailed report of a particular claim be required, then such a report can be furnished as requested. Past experience shows that detailed information is sought by the Congress or one of its Members in relatively few instances.

The proviso in Section 9(a) should be amended by inserting after the word "notice" on line 9, the words "prior to final disposition" and after the word "designee" on line 10 the words "and such claims shall thereupon be deemed abandoned for all purposes."

On June 11, 1976, Congressman Hansen, for himself and for Congressman Symms, introduced H.R. 14328 to provide emergency relief to persons incurring losses as a result of the collapse of the Teton Dam. This bill, which is less comprehensive than S. 3542, is objectionable in certain basic respects. First and foremost, it is the only proposal that does not expressly recognize that its provisions for compensation are made without regard to the proximate cause of the failure of the Teton Dam. Indeed, absent such statement, H.R. 14328 may, itself be construed as creating and granting a right of action against the United States as a result of the Teton Dam "collapse". Inasmuch as the Department has concluded that there is no legal liability on the part of the United States under present law for damages suffered as a result of the failure of the Teton Dam, the omission of such a disclaimer renders H.R. 14328 particularly objectionable.

Moreover, the bill makes no clear provision for the release of the United States where an administrative award on a claim is accepted by the claimant. There is no provision for judicial review of any administrative determination and the bill does not clearly authorize the Secretary to promulgate rules and regulations except as to the form and manner in which a claim may be submitted.

The Department is opposed to the enactment of H.R. 14328.

On June 14, 1976, Congressman Symms, for himself and for Congressman Hansen, introduced H.R. 14367. This bill is identical to S. 3542 as originally introduced. In the opinion of the Department of Justice, the substitute S. 3542, which passed the Senate, is a substantial improvement over the original bill and H.R. 14367.

The legislation proposed by the President is expected to pass both Houses of Congress if it has not already done so and will become law sooner than S. 3542 and certainly before H.R. 14328, which has not yet been fully considered by either House. The President's bill is the only proposal which contains a specific appropriation of monies. The stated desire of the Congress and the Administration speedily to compensate the victims of the Teton Dam disaster, can most effectively and expeditiously be accomplished through implementation of the President's proposal immediately after it becomes law.

Mr. FLOWERS. Our next witness is from the Department of Interior, the Honorable Moody Tidwell, Associate Solicitor for Energy Resources.

Would you come forward, sir? We would be delighted to hear from you.

TESTIMONY OF MOODY R. TIDWELL III, ASSOCIATE SOLICITOR FOR THE DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY GILBERT G. STAMM, COMMISSIONER OF RECLAMATION AND JOHN McDONELL, DEPUTY ASSOCIATE SOLICITOR

Mr. TIDWELL. Good morning, Mr. Chairman.

My name is Moody R. Tidwell III and I am Associate Solicitor for Energy and Resources of the Department of the Interior.

With me this morning is Gilbert Stamm, Commissioner of Reclamation and John McDonell, who is the Deputy Associate Solicitor.

My comments and prepared statement pretty much follows Mr. Jaffe's. I had an opportunity to read his yesterday.

With your permission, and in the interest of time, I would like to have my prepared statement entered into the record.

Mr. FLOWERS. It will be entered into the record at this point, without objection.

[The material referred to follows:]

STATEMENT OF MOODY R. TIDWELL III, ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR

My name is Moody R. Tidwell III and I am Associate Solicitor for Energy and Resources of the Department of the Interior. I appreciate this opportunity to appear today to present the views of the Department of the Interior on legislation which would authorize the Secretary of the Interior to make compensation for damages arising out of the failure on June 5, 1976, of the Teton Dam.

Teton Dam, as I am sure you are aware, is a principal feature of the Teton Basin Project, Lower Teton Division, located near the confluence of the Henrys Fork and Teton Rivers, in southeastern Idaho, 44 miles northeast of Idaho Falls. It was designed by the Bureau of Reclamation and constructed under its supervision.

Teton Basin Project was authorized September 7, 1964, by Public Law 88-583, to provide supplemental irrigation for more than 110,000 acres of farmland in the Upper Snake River Valley; power from two 10,000 kilowatt hydroelectric generators; flood control; recreation; and fish and wildlife benefits.

S. 3542 as amended and passed on the floor of the Senate would provide authority for the payment of compensation to cover claims for personal injury, loss of life, or damage to or loss of real or personal property resulting from the flooding without regard to the cause of the failure of the dam. It would require the Secretary of the Interior to administer the settlement of claims and to prescribe and publish such rules and procedures as would be necessary and proper to carry out the provisions of the act. It would also authorize the Secretary, through direct payments or through construction contracts administered by the Bureau of Reclamation, to accomplish repair or reconstruction of irrigation systems and facilities damaged by the flooding. Further, it would require extensive reporting by the Secretary. S. 3542 also authorizes the appropriation of such funds as might be required to carry out the purposes of the bill, and provides that such funds shall be nonreimbursable.

The Administration as you are aware has requested separate legislation by letter to the Congress dated June 11, 1976, in the form of a proposed nonreimbursable supplemental appropriation request for \$200 million for F.Y. 1976. The requested supplemental appropriation would provide immediate funding, also without regard to the cause of the dam failure, for the relief of victims of the flood damage in accordance with rules and regulations to be promulgated by the Secretary of the Interior. Such money would complement ongoing Federal disaster assistance to provide further relief for personal injuries and damages to property not otherwise covered by disaster assistance. Authority for this appropriation is contained in Public Law 94-180 of December 26, 1975, the Public Works for Water and Power Development and Energy Research Appropriation Act, 1976. I understand the Administration bill was close to final passage by the Congress yesterday afternoon. In anticipation of passage of this bill, the Department, in conjunction with several other Federal agencies, has prepared a comprehensive set of regulations to implement the Appropriation Act procedures. The regulations are very close to being finalized and can be published in the Federal Register and made effective in the very near future.

I believe the major differences between the present S. 3542 and the Administration bill is that payments under the appropriations act would be limited to damages *directly* caused by failure of the dam, while payments under S. 3542 would be for losses simply resulting from failure of the dam, which is a broader measure. In addition, the Administration bill does not contain the very extensive reporting to Congress requirements of S. 3542. These differences are of major concern to the Department, and we suggest that the pertinent provisions of

S. 3542 be modified. For example, the original version of S. 3542 (June 9) stated, in Section 2, that compensation would be made to all persons suffering loss *directly caused* by the Teton Dam failure. The amended version (June 21) as passed by the Senate changed this measure to provide compensation for loss simply resulting from the failure. We suggest, in effect, retreating to the language of the original version of S. 3542, which is synonymous with the language of section 419.9 of the Department's draft regulations which states that "claims shall be paid only for damages directly resulting from the incident (the Teton Dam failure) and which occurred within the major disaster area."

As to the reporting requirement, we suggest a scaled-down information process which we believe will be much more meaningful and useful to the Congress. If a detailed report on any particular claim or class of claims should become necessary, it can be prepared.

Mr. Jaffe of the Department of Justice has several additional comments on S. 3542, the Administration's bill, and the three House of Representatives' bills. I am familiar with his testimony and agree with his views.

This concludes my prepared testimony, Mr. Chairman. I will attempt to answer any questions that you or the members of the subcommittee may have.

Mr. TIDWILL. Thank you.

We do appreciate this opportunity to appear today to present the views of the Department of the Interior on legislation which would authorize the Secretary of the Interior to make compensation for damages arising out of the failure on June 5, 1976, of the Teton Dam.

Teton Dam, as I am sure you are aware, is a principal feature of the Teton Basin project, Lower Teton Division, located near the confluence of the Henrys Fork and Teton Rivers, in southeastern Idaho, 44 miles northeast of Idaho Falls. It was designed by the Bureau of Reclamation and constructed under its supervision.

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S. 3542, as it was amended on the floor and passed the Senate, would provide authority for the payment of compensation to cover claims for personal injury, loss of life, or damage to or loss of real or personal property resulting from the flooding without regard to the cause of the failure of the dam.

It would require the Secretary of the Interior to administer the settlement of claims and to prescribe and publish such rules and procedures as would be necessary and proper to carry out the provisions of the act. It would also authorize the Secretary, through direct payments or through construction contracts administered by the Bureau of Reclamation, to accomplish repair or reconstruction of irrigation systems and facilities damaged by the flooding.

Further, it would require extensive reporting by the Secretary. S. 3542 also authorizes the appropriation of such funds as might be required to carry out the purposes of the bill, and provides that such funds shall be nonreimbursable.

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The requested supplemental appropriation would provide immediate funding, also without regard to the cause of the dam failure, for the relief of victims of the flood damage in accordance with rules and regulations to be promulgated by the Secretary of the Interior. Such

money would complement ongoing Federal disaster assistance to provide further relief for personal injuries and damages to property not otherwise covered by disaster assistance.

Authority for this appropriation is contained in Public Law 94-180 of December 26, 1975, the Public Works for Water and Power Development and Energy Research Appropriation Act.

I understand the administration bill was close to final passage by the Congress yesterday afternoon. In anticipation of passage of this bill, the Department, in conjunction with several other Federal agencies, has prepared a comprehensive set of regulations to implement the appropriation act procedures. The regulations are very close to being finalized and can be published in the *Federal Register* and made effective in the very near future.

I believe the major differences between the present S. 3542 and the administration bill is that payments under the appropriations act would be limited to damaged directly caused by failure of the dam, while payments under S. 3542 would be for losses simply resulting from failure of the dam, which is a broader measure.

In addition, the administration bill does not contain the very extensive reporting to Congress requirements of S. 3542. These differences are of major concern to the Department, and we suggest that the pertinent provisions of S. 3542 be modified.

For example, the original version of S. 3542—June 9—stated, in section 2, that compensation would be made to all persons suffering loss directly caused by the Teton Dam failure. The amended version—June 21—as passed by the the Senate changed this measure to provide compensation for loss simply resulting from the failure. We suggest, in effect, retreating to the language of the original version of S. 3542, which is synonymous with the language of section 419.9 of the Department's draft regulations which states that "claims shall be paid only for damages directly resulting from the incident—the Teton Dam failure—and which occurred within the major disaster area."

As to the reporting requirement, we suggest a scaled-down information process which we believe will be much more meaningful and useful to the Congress. If a detailed report on any particular claim or class of claims should become necessary it can be prepared.

Mr. Jaffe of the Department of Justice has several additional comments on S. 3542, the administration's bill, and the three House of Representatives' bills. I am familiar with his testimony and agree with his views.

This concludes my prepared testimony, Mr. Chairman. I will attempt to answer any questions that you or the members of the subcommittee may have.

Mr. FLOWERS. Thank you very much.

Let me ask you this; what would be an example? Give me one where you think that one would apply and the other would not, and vice-versa.

Mr. TIDWELL. I am concerned about the consequential damage question. It is hard to come up with an example.

To me, "directly resulting from" would include death of a person caused by drowning caused by the flood water. Loss of a piece of farm equipment which was torn apart by the flood water and so on.

Mr. FLOWERS. What resolutions would you have?

Mr. TIDWELL. Resolutions from me would include—I don't know if it is a true story or not. But people in Philadelphia died of a heart attack upon hearing of his son's death. His death was a result of the Teton Dam.

To me "resulting from" includes that kind of damage whereas "directly resulting from" would not.

Mr. FLOWERS. I do not quite agree with your conclusions; I was a lawyer for the plaintiff, anyway. It is an elusive term; I would agree with you on that. But I do not know if that would accomplish anything different in a law suit. For instance, if there was a plow or tractor and the plow was destroyed by the flood, obviously there would be direct damage to farm equipment, resulting from the dam break. If the farmer had fields that were not able to be cultivated because he didn't have a plow, I don't think that there would be any damage caused there because he could easily make other arrangements. It may be that that needs some refinement or explanatory language in the report. I am not sure that would not take care of it.

Mr. TIDWELL. I would agree with that. We need a little bit of history with it also.

Mr. FLOWERS. What are we talking about in terms of damage of personal injury or death? What sort of perimeters do we have here?

Mr. TIDWELL. Do you mean total dollar figures?

Mr. FLOWERS. No; I mean death payments. How are you figuring death payments?

Mr. TIDWELL. Our recommendations require that State laws be used. I am not familiar with the State law myself, but I understand that workmen's compensation and other State laws would be the guidelines for the claims.

Mr. FLOWERS. Does the staff know whether Idaho has a punitive death statute or a general death statute?

Mr. SHATTUCK. I believe it is general. It is my understanding that there is not a limit on death claims in Idaho.

Mr. FLOWERS. Are you talking about general damages? You could have a variety according to the ages of the individual, the income production capability of the individual—all kinds of things.

Mr. TIDWELL. My only comment there is, I think whatever we do in this area, although the preponderance of the claims are property damage claims, what you do in terms of personal injury and/or death are the kind of things you can get a lot of criticism for. There is a great difference between one and the other.

Mr. FLOWERS. I have no further questions. We have just had another call. I am going to yield to my colleague from Ohio.

Mr. KINDNESS. I do not have any questions at this point.

Mr. FLOWERS. Staff, remembering that we do not have a lot of time—I have made my last trip at 90 miles an hour down the hall——

Mr. SHATTUCK. I have no questions.

Mr. COFFEY. I have no questions.

Mr. FLOWERS. Thank you. Hopefully you will remain available to us in our Nation's Capitol as we work on this legislation. We will bend your ear at another time about this same matter.

Mr. TIDWELL. That is fine, Mr. Chairman.

Mr. FLOWERS. We now have Hon. Thomas P. Dunne. I will ask you to come forward at this time, sir.

Mr. Dunne, if you have a statement, we would be delighted to receive it at this time. If you could make a short summary, we would appreciate that.

From one who has seen some of your agency's work on a personal basis, I commend you for the quick action that we do receive from the Federal disaster people. I think that your diligence results in a lot of good "P.R." for the Federal Government.

**TESTIMONY OF HON. THOMAS P. DUNNE, ADMINISTRATOR,
FEDERAL DISASTER ASSISTANCE ADMINISTRATION**

Mr. DUNNE. Thank you, Mr. Chairman. My statement is a page and a half long so I will try to summarize a page and a half.

Mr. FLOWERS. Please do.

Mr. DUNNE. I think overall, as Senator Chrch said and Senator McClure pointed out, the Federal effort has been going along as smoothly as possible under the circumstances.

It now appears that the biggest problem we have will be temporary housing. There are about 2,500 families that need temporary housing, and it appears that about 1,600 mobile homes will have to be brought in. About 550 have already arrived.

Our biggest problem is that people are most reluctant to allow debris to be removed from their property and have a mobile home located there until they have their loss appraised.

But there is a terrific cooperation from the representatives of the Latter Day Saints Church. They have been most helpful to us in working with the people to provide them with temporary housing.

Our current estimate is that \$33.2 million will be expended from the President's disaster relief fund, under the authorities of the Disaster Relief Act of 1974, which my agency administers. It further appears that other Federal agencies will be expending about \$48.5 million under their own legislative authorities, including \$36 million in loans by the Small Business Administration and Farmers Home Administration. These estimates do not include, of course, the cost of claims which may be submitted under the special legislation covering this incident.

While each of the Federal agencies operating in the area has been extending itself to assure that those affected by the disaster receive all of the benefits to which they are entitled under current law as rapidly as possible, I must also note the magnificent response of the victims of this incident. Their strong sense of self-sufficiency and their demonstrated concern for one another are inspiring. I assure you that we will continue our efforts to assist them to recovery as rapidly as possible.

Mr. FLOWERS. Thank you, Mr. Dunne. We will put your entire statement into the record as well as your oral summary before us.

Where in the world do you get 1,500 trailers and get them to Idaho?

Mr. DUNNE. Mr. Chairman, here is a national mobile home storage plan under which we have about 7,500 mobile homes stored in various parts of the country. Unfortunately, not in that part of the country. The closest storage area is Rapid City, S. Dak.

The cost of temporary housing is going to be about \$10 million. It has been an expensive effort because before mobile homes can be set

up, you have to get the debris removed. It is going to take a considerable amount of time.

Mr. FLOWERS. There are probably some of those that started off in Wilkes-Barre, Pa., and made it all of the way to Albany and are in Idaho now.

Mr. DUNNE. Quite possible.

Mr. FLOWERS. I have no further questions. Mr. Kindness, do you wish to ask any questions?

Mr. KINDNESS. I have no questions.

Mr. FLOWERS. The staff may very well want to get in touch with you. We will appreciate whatever you can supply us and we will keep the record open, gentlemen, for that purpose. It may very well be that we may want to reopen the entire proceeding after the recess.

Thank you, Mr. Dunne.

We have three additional witnesses scheduled to testify during this morning's proceedings, but I see that bells have rung for attendance in the House. Gentleman, I apologize to you on behalf of the subcommittee for being unable to hear your presentation and beg your forgiveness. Your prepared statements will be incorporated into the record at this point.

[The prepared statements referred to follow:]

STATEMENT OF RAFE POMERANCE, ASSOCIATE LEGISLATIVE DIRECTOR, FRIENDS OF THE EARTH

Good morning. Thank you for allowing me to testify this morning. I am Rafe Pomerance, Associate Legislative Director of Friends of the Earth, a national conservation group. My remarks will be very brief.

Reports indicate that damages from the Teton Dam Disaster may add up to more than a billion dollars. The bills you have before you authorize the payment for damages and if sufficient funds are appropriated the cost to the federal government could be very substantial.

This Committee would probably like to avoid having to authorize such expenditures again. There are hundreds of federal dams both constructed and in the planning stage. Some of these dams are safer than others but all have a potential for breaking and causing immense damages although the likelihood of such an occurrence is quite low for most dams. Yet the Committee could face a repetition of this type of disaster and the responsibility for authorization of further funds. Indeed it seems to me that if the Committee is willing to authorize the payment of several hundred million or perhaps a billion dollars then it has an obligation both to potential victims and to the taxpayers to require that steps be taken to minimize the possibility of such disasters. I believe that processes ought to be included in this bill which will minimize the possibility of disasters occurring again and reduce potential costs to the federal government. Such processes which evaluate the risks of dams should be adopted now since the safety of a number of federal dams has been questioned.

A brief example might illustrate. One of our Idaho leaders has informed us that the Ririe Dam near Idaho Falls has certain geological conditions which give it a higher degree of risk than a typical dam. The reservoir of the dam is now filling. In fact, a geologist apparently raised serious questions about the risks of this dam when the House Government Operations Subcommittee visited the disaster area a couple of weeks ago. I hope that the responsible agencies are looking into it now, but I would trust that the Committee would want to have complete proof that the risks and safety issues have been thoroughly reviewed.

I would like to make one last point. Reforms in dam planning and construction procedure are necessary to insure that such disaster do not occur again. Interest in such matters and pressure for reform often fades with the lack of headlines. Unless the committee acts to insure that such reforms are forthcoming, there may not be any. Thus the Committee may be put in the same unhappy position again.

STATEMENT OF BRENT BLACKWELDER, WASHINGTON REPRESENTATIVE,
ENVIRONMENTAL POLICY CENTER

INTRODUCTION

My name is Brent Blackwelder and I am a Washington Representative of the Environmental Policy Center which is a national conservation organization with offices at 317 Pennsylvania Avenue SE in Washington, D.C. I have worked for the Center for the past four years examining the federal water resources programs of the Bureau of Reclamation and the Army Corps of Engineers. We appreciate the opportunity to testify.

GENERAL REMARKS

H.R. 14367 and H.R. 14328 make provisions for the compensation of victims of the Teton Dam disaster which occurred June 5, 1976. We think it essential that the Federal Government help relieve the suffering and tragedy that followed the bursting of Teton Dam. Section 3 of H.R. 14367, however, limits the payments of damages to pecuniary injuries which neglects the severe psychological damage and suffering which inevitably takes place in the aftermath of such disasters. We also cannot find any provision in the legislation which would insure an equitable distribution of funds in a timely fashion. What is to prevent, for example, large landowners taking the cream of the compensation while others go unhelpt? There may be a need to set a ceiling on the amount of money any individual can receive.

There should be some requirement in such claims legislation which requires tabulation and publication of the total damages associated with this disaster. It is essential that the public know the liabilities associated with dam projects and their possible failure as a result of an act of God, sabotage, or human error.

We urge this Committee to look into the ways in which these disaster relief bills go beyond the ordinary steps taken by the Federal Government in the aftermath of a tragic event. For example, Section 7 of H.R. 14367 would allow the actual rebuilding of irrigation facilities under the auspices of the Bureau of Reclamation. How does this differ from loans which flooded businessmen obtain from the Small Business Administration following damaging floods?

This legislation may be setting a precedent in disaster relief for individuals all across the country who have been damaged by federal flood control projects malfunctioning. For example, farmers below the Stockton Dam in Missouri and the Carlyle and Shelbyville Dams in Illinois have been damaged by the operation of these projects. Farmers along the Ohio River have filed a \$144 million class action suit against the Army Corps of Engineers whose new navigation dams have greatly accelerated erosion damage along the river. An August 1975, article in Science magazine entitled "The 1973 Flood and Man's Construction of the Mississippi River" charges that the Corps' navigation works and levees have made big floods out of moderate ones. The Federal Government may be facing more and more lawsuits for the damages resulting from its projects. We raise this point not because we are against such federal relief. On the contrary, we feel that such relief is a federal responsibility and that it is time that the Federal Government lived up to its responsibility for compensation and recognized the liabilities involved in its many water projects.

ADDITIONAL MEASURES NECESSARY TO PROTECT PUBLIC SAFETY

This Committee is considering legislation which would authorize several hundred million dollars of tax dollars to take care of damages. We believe that this Committee also has a responsibility to take steps to minimize the amount of claims that will occur in the future as a result of unsound dam projects. It would be a serious shortcoming to provide for compensation of victims of the Teton disaster without simultaneously taking steps to insure that future disasters will not take place. We urge the Committee to consider adoption of the amendments which we have listed on the attached sheet.

The amendments which should be attached to this legislation are as follows: (1) an amendment to require the Federal Disaster Assistance Administration to determine what the effects would be in the case of failure or sabotage of federal dams now being planned or constructed; (2) an amendment to require the U.S.

Geological Survey to conduct a safety analysis of federal dams now being planned or constructed; (3) an amendment to require the federal dam building agencies to include as a project cost the mutually shared costs for expected failures of their projects (such failure rates have been estimated to be 1 in every 10,000 dam years); (4) an amendment directing the U.S. Geological Survey to determine those dams which constitute an above-normal safety risk and to place a moratorium on those projects until an in-depth safety analysis is completed and assurance given that a safe project can be built; and (5) an amendment directing the U.S. Geological Survey to determine which federally funded dams now in operation are unsafe and requiring the managing agencies to drain these dams as expeditiously as possible.

We propose these amendments because we believe that the Federal Government should be willing to live up to the same standards which it required of private dams in the wake of the Buffalo Creek disaster in West Virginia. In the rapid inspection of dams which followed that tragedy, four coal company dams were found to be unsafe and were ordered drained. This is the sort of action which should now be occurring with respect to federally funded dams.

This Committee may feel that it does not have the statutory authority to pass on such amendments. We would argue that it does have such authority to include these measures as an integral part of claims legislation. These amendments simply incorporate an "ounce of prevention" into the "pound of cure" being authorized by the Committee.

We also call this Committee's attention to the fact that the House Interior Committee has been derelict in its oversight duty on the Bureau of Reclamation and to the best of our knowledge has conducted no oversight investigation into Bureau of Reclamation projects in the 1970's. It is therefore up to this Committee to exercise leadership to protect the public safety as it deals with the pending claims legislation.

AMENDMENTS NECESSARY TO AVOID A REPEAT OF THE TETON DAM DISASTER

(1) *Disaster analysis by FDAA.*—On all federally funded dams now receiving planning or construction funds, a disaster analysis shall be carried out by the Federal Disaster Assistance Administration to determine what the effects would be in the case of failure or sabotage of the dam. In the case of projects in the planning stage, this analysis shall be completed prior to appropriation of funds for construction or land acquisition. In the case of projects now under construction, this analysis shall be completed prior to the filling of the reservoir.

(2) *Safety analysis by USGS.*—On all federally funded dams now receiving planning or construction funds, a safety analysis shall be conducted by the U.S. Geological Survey. In the case of projects in the planning stage, this analysis shall be completed prior to appropriations of funds for construction or land acquisition. In the case of projects now under construction, this analysis shall be completed prior to the filling of the reservoir.

(3) *Incorporation of damages from dam failures as cost of all dam projects.*—The Army Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service, and the TVA shall incorporate as a cost into the benefit-cost analysis of projects under their jurisdiction the costs of damage from failures of federally funded dam projects. The benefit-cost ratios of all federally funded dam projects now receiving planning or construction money shall be recomputed to include as a cost, the mutually shared costs for failures of federally funded dam projects.

(4) *USGS survey of dams and moratorium on high-risk projects.*—Within 90 days of enactment of the Act, the U.S. Geological Survey shall carry out a survey of all federally funded dams now receiving planning or construction funds to identify those projects over which there is a serious question of public safety. No further funds shall be spent on those projects identified by the U.S. Geological Survey until an in-depth safety analysis be done by the Survey and a determination has been made by the Survey that a safe project can be built.

(5) *Drainage of unsafe federal dams.*—Within one year of enactment of this Act, the U.S. Geological Survey shall determine which federally funded dams now in operation are unsafe. Agencies managing these dams shall proceed to drain these dams as expeditiously as possible. (Precedent: The drainage of numerous *private* dams after the Buffalo Creek Disaster in West Virginia.)

STATEMENT OF GERALD STERN, WASHINGTON, D.C.

Mr. Chairman and members of the committee. I appreciate this opportunity to appear before you this morning to testify in connection with the bills presently pending before this Committee to provide full compensation for all those who have suffered personal injury, property damage or wrongful death as a result of the Teton dam disaster.

My name is Gerald Stern. I appear only in my capacity as a private citizen concerned about full compensation for the survivors of the Teton Dam disaster, and because I feel my experience in representing the survivors of a similar dam disaster, the Buffalo Creek disaster, may be of some help to this committee in its deliberations. I am the author of a book entitled *The Buffalo Creek Disaster*, which describes my efforts as the lead counsel for over 600 survivors of the Buffalo Creek dam disaster of 1972. Because of my work on behalf of those survivors of the Buffalo Creek disaster, and, in particular, in obtaining compensation for the mental suffering of the survivors of that disaster, I feel I am qualified to testify today about the provisions of the bills presently before you which have as their stated purpose full compensation for the survivors of the Teton dam disaster.

First I applaud the intent and purpose of these bills as set forth in the preamble of H.R. 14367 "to fully compensate any and all parties which have been directly injured . . . to provide just compensation for the personal injuries."

However I am concerned that the specific provisions of these bills may fail to carry out this worthwhile purpose. From the Buffalo Creek disaster we learned that the most significant damage suffered by the survivors was mental suffering sometimes identified as "survival guilt" or "survival syndrome" or "psychic impairment" or, as described in the *American Journal of Psychiatry*, "Buffalo Creek syndrome."

We learned that the survivors of that dam disaster developed intense fears of rain and water; traumatic neurotic reactions involving unresolved grief; survival shame and feelings of impotent rage and hopelessness. These feelings were endemic found in almost all the survivors as the numbing effects of the flood wore off and the reality of the destruction of their lives and their communities became more apparent. In fact, one of the psychiatrists who studied the Buffalo Creek survivors likened their mental suffering to that of the survivors of Hiroshima or that of the survivors of Nazi concentration camps.

The mental suffering of the survivors of the Buffalo Creek dam disaster has been identified and written about in the *American Journal of Psychiatry* (in a special section on the Buffalo Creek disaster), in *Psychiatry* magazine and in my book, *The Buffalo Creek Disaster*. (I have attached to my testimony today copies of these articles from the *American Journal of Psychiatry* and *Psychiatry* magazine. [See appendix at p. 61 for attached articles.]

The significance of this mental suffering as an element of the damages suffered by the survivors of the Buffalo Creek disaster is highlighted by the fact that 60 percent of the damages obtained in our lawsuit was for the mental suffering of these survivors. The remaining 40 percent was for property damage and wrongful death. Thus, there can be no question that mental suffering may be the most important damage suffered by the survivors of a dam disaster, not only the survivors of the Buffalo Creek disaster, but also the survivors of the Teton dam disaster.

Although both of the bills presently before you specifically provide for recovery for personal injury, and therefore mental suffering, there is a requirement that damages be "measured by the pecuniary injuries or loss involved." The choice of the words "pecuniary injury or loss" may be an unfortunate choice of words. Although mental suffering is not something that comes with a price tag, or something normally thought of as being a "pecuniary injury," it is possible to compensate those who have suffered mental injury through the payment of monetary damages.

Nevertheless, "pecuniary injury" is really more relevant to calculating property losses and may be a confusing term in connection with personal injuries such as mental suffering.

Accordingly, I submit that the Committee should strike the words "measured by pecuniary injuries or loss involved" or specify that the damages to be meas-

ured by the "pecuniary injuries or loss involved" shall only refer to property damages. The Committee should make it very clear that all personal injuries, whether they be physical or mental, are to be fully compensated for, if they were, in fact, caused by the Teton dam disaster, and should ensure that the bill as adopted does not preclude any such recovery, especially since the psychiatric evidence with respect to survivors of a dam disaster indicates that the most significant injuries in the long run may be mental suffering.

Second, Report No. 94-963 which accompanies Senate bill S. 3542 refers to only one Idaho case in connection with the measurement of damages. That case is a 1907 Idaho case, *Young v. Extension Ditch Co.*, 13 Idaho 174, 89 P. 296, and it deals only with damage to land. I submit that in connection with the personal injuries, this Committee's report should refer also to the federal decision which resulted from the Buffalo Creek disaster, and which permitted recovery for the mental suffering of the Buffalo Creek survivors, i.e., *Prince v. Pittston Company*, 63 F.R.D. 28 (1874). Although this case interprets West Virginia law, it is still relevant to demonstrate the necessity for permitting recovery for the mental suffering of the survivors of dam disasters.

Third, I am also concerned by the specific limitation set forth in the damage section of the bill, the limitation which prohibits the recovery of interest prior to settlement. Idaho law specifically permits recovery of such interest. Thus, I do not understand why the limitation is included in this bill, unless there is some concern that the \$200 million appropriated may be insufficient. If there is any such concern, I do not believe that survivors with legitimate claims should be prohibited from recovering interest. A more appropriate way to ensure that the \$200 million is not quickly used up, I submit, would be to place a maximum on any individual or corporate recovery so that the large corporate groups and land owners do not immediately deplete the \$200 million. For this purpose, I would recommend the placing of a \$150,000 maximum and permit the recovery of interest as provided by Idaho law.

Finally, and of most critical importance, I am concerned that there have not been immediate efforts to inspect federal dams in the Teton area or to order inspection of all federal dams to ensure that a similar disaster with other federal dams does not soon occur. Immediately after the Buffalo Creek disaster various inspections were undertaken of dams similar to the Buffalo Creek dam, and despite everyone's immediate assumption that the Buffalo Creek dam might be unique, it was soon learned that there were other dams just as dangerous, dams which then had to be drained immediately as a result of these inspections. Thus, the experience of the Buffalo Creek disaster indicates that every effort should be undertaken as soon as possible to inspect other federal dams to ensure that a similar Teton dam disaster will not occur.

Caution requires no less.

Mr. FLOWERS. In addition, I would like to include in the hearing record a statement from the American Insurance Association, a joint statement submitted by the American Mutual Insurance Alliance and the National Association of Independent Insurers, and a telegram from the Farm Bureau Mutual Insurance Co., of Pocatello, Idaho.

[The material referred to follows:]

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and members of the subcommittee, the American Insurance Association is a voluntary trade association of 138 insurers writing property and casualty insurance throughout the United States. We appreciate the opportunity to comment on the captioned bills, which are appropriate and humane responses to a terrible and apparently man-made disaster. Our comments are directed to the subrogation rights of insurers who have paid policyholder claims arising out of the disaster.

Our Property Claims Service has estimated that there will be approximately 5,500 insured losses totalling over \$16.9 million in claims as a result of the failure of the Teton Dam. These include six dwellings insured through the National Flood Insurers Association; 1,200 mobile homes and campers; 100 inland marine

claims for \$2.5 million in merchandise lost; 100 agricultural equipment floaters with losses over \$5.2 million; 27 heavy equipment floaters; and 4,000 automobiles.

We have two major concerns about the way the proposed legislation treats insured losses. Our first concern is the possibility of legal and/or constitutional impairment of our members' contractual rights to assume their policyholders' remedies against a negligent third party to the extent of their payment to their insureds. Our second concern is whether it is good Congressional policy to treat insured losses differently from uninsured losses, as the bills before the subcommittee currently propose.

As an example, Section 3(c) of S. 3542, which recently passed the Senate, appears to change our members' contractual relationship with the policyholders. Not only does it prevent an insurer from claiming reimbursement under this act, thereby discriminating between insured and uninsured losses, but it also appears to prohibit an insurer from pursuing his contractual right of subrogation against a potentially liable, negligent third party, particularly if that third party turns out to be the United States government.

This subsection raises legal and constitutional questions of the impairment of contract rights by the Congress. A standard clause in every insurance contract gives the insurer the same rights as the insured to pursue a claim against a third party to the extent of the amount paid the insured. This subsection appears to preclude that claim both to the victim of the Dam collapse and to his insurer. The proposed legislation not only demands that victims use their insurance coverage instead of the Federal Disaster Relief Fund, but would then prohibit the insurer from attempting to recoup those funds from the person responsible for the collapse of the Dam.

Subsection 3(d) of S. 3542 raises an important policy question. Since 1957, the Congress has been trying to minimize the need for ad hoc federal disaster relief by requiring those who are exposed to a predictable peril to help defray the cost of their losses through the purchase of insurance and through efforts to minimize those losses. The Federal Flood Insurance Program best exemplifies this Congressional policy.

While the unpredictable nature of the Teton Dam disaster can be said to justify the *ad hoc* relief proposed in S. 3542, there is no justification for section 3(d), which is comparable in its effect to section 3(a) and (b) of H.R. 14328. This subsection penalizes the prudent individual who purchased insurance by forcing him to utilize his insurance coverage while his less prudent neighbor obtains free disaster relief from the Federal Government. A precedent of this nature would erode previously established policy aimed at relieving the Congress of having to compensate the victims of preventable and insurable disasters.

If the Congress believes that everyone who suffered a loss in the Teton Dam disaster should be compensated by the Federal Government, the legislation should allow insurers who have made payments to disaster victims to recover *pro tanto* from the Federal Government. Otherwise, prudent insurance purchasers will be penalized.

Language specifically allowing insurance companies which have paid the claims of their insureds to recoup these monies on a subrogated basis from the Interior Department will provide equal treatment for all losses, avoiding the higher insurance rates prudent purchasers might otherwise have to pay.

Finally, section 3(f) of S. 3542 is of concern to us because, like section 3(c), it could be construed as prohibiting an insurer from pursuing his contractual right of subrogation against a negligent third party, particularly if there is liability for the collapse of the Teton Dam. Again, the acceptance of an insurance company settlement for the economic loss suffered by a claimant should in no way interfere with the legal, contractual rights an insurance company may have against a negligent third party, nor should it prohibit an individual from seeking whatever additional redress the courts may allow.

Although the American Insurance Association feels that the intention of these proposals to compensate those who suffered losses as a result of the collapse of the Teton Dam is humane and just, we hope the final language will remove the discriminatory provisions against insured losses and, at the least, will not attempt to prohibit insurance companies from pursuing their contractual rights of subrogation against any negligent third party, including the Federal Government.

Our concern can best be met by making the following changes in the three sections of S. 3542 noted above. First, sections 3(c) and 3(d) should be deleted in their entirety from the legislation. While language specifically precluding a double recovery by either a victim or his insurer might be appropriate, we would hope that the Congress would eliminate the distinction made between insured and uninsured losses by allowing our members to recover those sums paid to their policyholders from the Secretary of the Interior.

At the least we would hope that the Congress will not prohibit our members from pursuing their contractual rights against a negligent third party.

In this regard, subsection 3(f) should specifically exclude insurance payments from being a bar to any further claims against the United States.

We thank you for your consideration.

STATEMENT OF THE AMERICAN MUTUAL INSURANCE ALLIANCE AND THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

This joint statement is filed in behalf of The American Mutual Insurance Alliance and the National Association of Independent Insurers. Together, these two trade associations represent over 700 fire and casualty insurance companies which write over 25 billion dollars of fire and casualty insurance each year.

We are filing this joint statement to call to the attention of the Committee provisions of S. 3542 and H.R. 14367 which we believe could be subject to misinterpretation and result in the denial to insurers of their customary rights of subrogation.

It is our understanding that the money authorized by these bills is intended for the sole benefit of the victims of the Teton Dam Disaster. Where a victim is insured, these funds would be available to him after he recovers from his insurance company under the terms of the policy. Insurance companies would not be entitled to make a claim against the monies appropriated by this Act, but would, to the extent of payments under their policies, retain all rights of action against negligent parties.

Section 3(f) of S. 3542, provides "The acceptance by the claimant of any award compromise or settlement under this Act shall be final and conclusive on the claimant and shall constitute a complete release of any claim against the United States by reason of the same subject matter." Section 3 of H.R. 14367 contains the same language.

It is submitted that this language is too broad and may be erroneously interpreted so as to deny to insurers the rights of subrogation provided under the terms of their contract with the insureds. We propose that Section 3(f) of S. 3542 and Section 3 of H.R. 14367 be amended by adding at the appropriate place the following language:

"Such a release shall not, however, prevent an insurer under its own name or that of the claimant, from exercising any rights of action against The United States or any party to which the insurer may be entitled under any other provision of law for payments made to the claimant for a loss arising from the subject matter."

H.R. 14328, which is also before the Committee, does not appear to contain any language casting doubt on the subrogation rights of insurers.

We appreciate the opportunity to express our views on the Teton Dam Disaster legislation and urge the Committee to give due consideration to the clarifying amendment which we have proposed.

[Telegram]

IDAHO FALLS, IDAHO,

June 30, 1976.

Representative WALTER FLOWERS,
House of Representatives,
Washington, D.C.

We are a small insurance company with a large portion of our customers in the area hit by the Teton Dam flood. We estimate our total claims to be paid because of the flood would run up to \$500,000. We feel it is a great travesty and direct

discrimination to preclude insurance companies their subrogation rights in the bill currently being considered. Our losses are as directly related to the failure of the dam as the other injured parties. There is no way such a loss could have been anticipated in setting premiums. The end result will be the necessity of charging the losses paid to customers in future premiums. Thus many of the same people will be paying for the losses through increased premiums. We therefore urge amendment of the bill to allow subrogation rights.

FARM BUREAU MUTUAL INSURANCE CO.

Mr. FLOWERS. With that, this subcommittee stands in adjournment, subject to the call of the Chair.

[Whereupon, at 11:55 a.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

THE AMERICAN JOURNAL OF PSYCHIATRY

(Vol. 133, No. 3—March 1976)

Special Section: Disaster at Buffalo Creek

FAMILY AND CHARACTER CHANGE AT BUFFALO CREEK*

(By James L. Titchener, M.D., and Frederic T. Kapp, M.D.)

Psychiatric evaluation teams used observations of family interaction and psychoanalytically oriented individual interviews to study the psychological aftereffects of the 1972 Buffalo Creek disaster, a tidal wave of sludge and black water released by the collapse of a slag waste dam. Traumatic neurotic reactions were found in 80% of the survivors. Underlying the clinical picture were unresolved grief, survivor shame, and feelings of impotent rage and hopelessness. These clinical findings had persisted for the two years since the flood, and a definite symptom complex labeled the "Buffalo Creek syndrome" was pervasive. The methods used by the survivors to cope with the overwhelming impact of the disaster—first-order defenses, undoing, psychological conservatism, and dehumanization—actually preserved their symptoms and caused disabling character changes.

On February 26, 1972, an enormous slag dam gave way and unleashed thousands of tons of water and black mud on the Buffalo Creek valley in southern West Virginia. This Appalachian tidal wave destroyed everything in its path, killing 125 people and leaving 4,000 homeless and carrying away human bodies, houses, trailers, cars, and other debris. It expended its force in no more than 15 minutes at any one point in the 18-mile-long valley.

Just below the dam and the tippie of the Buffalo Mining Company stood the town of Saunders; there was no trace of this town minutes after the black water broke through the dam. The sides of the valley are steep at this point, and the wall of water and mud caromed from side to side, miraculously sparing some homes but destroying many others as it slammed down the valley.

The wall of water sped through 14 mining hamlets with names like Crites, Becco, Lundale, and Pardee, hitting their schools, churches, taverns, stores, and homes, leaving no trace of some and damaging nearly all. The sides of the valley became less steep and it spreads out, so the black sludge and water became more of a "flash flood" at Amherstdale and just an overflow at Man, where it reached the Guyandotte River.

None of the settlements in Buffalo Creek, which had a total population of 4,000-5,000 inhabitants, were incorporated. There was no governmental organization beyond the commercial structures provided by post offices, schools, and churches. There are five deep mines in operation and evidence of stripmining is everywhere. In spite of the stripping, the ugly tipples, the dozen or so huge black heaps of waste, the railroad and highway construction, it is still a beautiful valley, and young adults there will tell you it was once much more beautiful, with pleasant homes and gardens where there are now primarily mobile homes. It was and is a middle-class area. Nearly all families are supported by employment in the coal mines or in the supporting industries and services. There is an accepted (but not documented) belief that this valley had not had the degree of emigration of young people that typified others like it since the Depression.

There had been rumors for years that the dam would give way, but hundreds

*Presented at the 128th annual meeting of the American Psychiatric Association, Anaheim, Calif., May 5-9, 1975.

of people reported they did not believe it had really happened until a few moments after the fearsome sight and sound of the advancing water. All the survivors know that the time of the dam break (8:00 a.m. on a Saturday morning) was fortunate. Few people were down in the road, and the children were not in or waiting for the school buses. Nevertheless, 125 were killed, and most lost their homes and possessions.

Subsequently, a group of 654 survivors of this disaster from 160 families began a legal action against the company that owned the dam. This group contacted the law firm of Arnold & Porter in Washington, D.C., and a legal team headed by Mr. Gerald Stern traveled to the area to interview survivors. His observations of the psychological effects of the disaster and a summary of the litigation are presented in "From Chaos to Responsibility" in this section. The law firm first contacted Robert J. Lifton, M.D., who assessed "The Human Meaning of Total Disaster" (1), and Kai Erikson, Ph. D., whose observations of the situation in the community are presented in "Loss of Communitarity at Buffalo Creek." The suit was settled in July 1974 for \$13.5 million of which \$6 million was for psychological damages.

The legal team then retained one of us (J.L.T.) to organize a group of experts to interview the survivors and assess for the court the psychological impairment they had suffered as a result of the flood. This paper presents our findings on the severity and duration of these psychological effects, a symptom complex we have labeled the "Buffalo Creek syndrome." The size and composition of the evaluation teams varied with the nature of the families assigned to them. A full-sized team consisted of a general psychiatrist, a child psychiatrist, and two psychologists or case workers. These teams did their work in the valley itself, visiting the respondents' mobile homes and those houses that were still standing.

We conducted a pilot study consisting of interviews of 50 survivors in June of 1973. The court then directed that all of the survivor-plaintiffs be interviewed, as all were bringing suit separately. These evaluations were carried out on several long weekends in the spring of 1974.

We began each evaluation with a family interview in which we asked the survivors to talk about their experiences on the "day of the black water" and during the weeks and months that followed. As they talked, we were able to see beyond the immediate clinical phenomena to these people's underlying feelings and their ways of coping with them. The family sessions were followed by psychoanalytically oriented individual interviews with each family member, conducted in backyards, living rooms, or on porches.

EVALUATION FINDINGS

Disabling psychiatric symptoms such as anxiety, depression, changes in character and lifestyle, and maladjustments and developmental problems in children were evident more than 2 years after the disaster in over 90% of the individuals we interviewed. We asked ourselves whether we were examining people who were presenting major symptomatology and character problems that resulted from basically weak ego structures and who were using the disaster in order to win a large settlement from the mining company. Our answer was and is "no." In our evaluations, we witnessed difficult and prolonged struggles with powerful feelings and ideas aroused by the traumatic experience of the disaster and the very uneven attempts of the survivors to reorganize themselves and redevelop shattered coping and adaptive mechanisms. The affects associated with the catastrophe and its aftermath, as well as the psychological and social ways these people chose to deal with them, must be seen against the background of the universal crises of human development. The attendant threats of separation, abandonment, castration, and death—residuals of the developmental crises of separation and individuation—provided the context for the meaning of the catastrophe to the survivors (2, 3).

We found a definite clinical syndrome in the survivors of the Buffalo Creek disaster that arose from both the immediate impact of the catastrophe on each individual and the subsequent disruption of the community and that affected everyone living there. We are all predisposed by previous experiences to be traumatized by pathogenic forces as destructive and awesome as the Buffalo Creek catastrophe. Variations in the clinical picture resulted from individual differences in modes of processing and reorganizing the traumatic experience (4).

A clear pattern emerged from our evaluations and analyses. A traumatic

neurotic syndrome was diagnosed in more than 80% of the survivor-plaintiffs, and changes in character structure were equally widespread. These changes, although they were attempts at readjustment, occasionally resulted in maladjustment in the social sense and always went in the direction of psychologically disabling limitations.

Character changes represent the stabilizing neurosis, the psychologically hardening and fixating consequences of the catastrophe. We found conscious and latent meanings and understandings and misunderstandings of the disaster and its aftermath, all of which were associated with the feelings and conflicts aroused by the trauma. The result of this was changes in object relations and attitudes toward the self. We delineated various processes of reorganization—attempts at putting personality functions back together—that we directed toward reintegration and resumption of a nontraumatized life.

We shall indicate below how this personality reorganization, which was so aimed at prevention of recurring experience of the traumatic state, actually *interfered* with flexible and effective recovery and thus preserved symptom patterns and forced changes in the way of life.

SYMPTOMS AND CHARACTER CHANGES

During the first days and on into the weeks and months after the disaster, the survivors reported disorganization and sluggishness in thinking and decision making. They complained of having difficulty controlling their emotions. These problems ranged from emotional outbursts to the simple inability to feel anything. Some described transient hallucinations and delusions. Almost all reported anxiety, grief, and despair, with severe sleep disturbances and nightmares. Later, the anxiety was manifested in obsessions and phobias about water, wind, rain, and any other reminder that the disaster could recur. Occasionally these obsessive disturbances coalesced and became a group phenomenon. For instance, the wife of a community leader never slept when he was asleep so that one of them would always be on the alert. On rainy nights, this man received phone calls regarding rumors that another dam was about to give way. He would then take his rifle and spend the night sitting on the supposedly weakened dam, guarded by others to protect him from attack.

Grief over the loss of relatives, friends, possessions, and mementos such as family Bibles, as well as the loss of the feeling of community discussed by Dr. Erikson, was widespread. For many, unresolved grief turned into depressive symptoms, ideation, and behavior, and some developed a depressive lifestyle (5). In some individuals, depression was channeled into a wide range of somatic complaints, with probable increases in the incidence of duodenal ulcer and hypertension.

Many of these people have become listless, apathetic, and less social since the disaster. They cling to their families, lack ambition, and are disinterested in former hobbies and sports. These changes have led to an overall limitation of essential expression, a lack of zest for work and recreation, and despair about ever again resuming the lifestyle they once had.

THOUGHTS, FANTASIES, AND FEELINGS AROUSED BY THE DISASTER

The survivors referred to the disaster as "the end of time" or "the end of everything," and noted that "No one who was not there could ever really know what happened." They were haunted by visual memories and emotions associated with the drownings of relatives and friends and of blackened bodies and parts of bodies that were uncovered for weeks after the flood.

All of the survivors had to confront the loss of a sense of personal invulnerability. The former feeling of comfort and assurance about the continuity of life had depended partly on magical beliefs that horrible things like this disaster do not happen to one; that they could not occur in nice sane communities in this country. Then the impossible happened. The shock was overwhelming and a new outlook took form that reflected a swing from the former sense of invulnerability to pessimism, emptiness, and hopelessness. We heard such comments as "Nothing counts anymore"; "What's the use now?" and "Since we lost everything, what's to be gained by trying?" The disaster took on the meaning of chaos, helplessness, and death, giving rise to feelings of personal insignificance.

Three other reactions contributed to depressive symptoms and lifestyles. The

first was a feeling of impotent rage over the destruction to life, property, and a way of life. This rage is an explosion of feeling against the attack on the self. The victim has little outlet for his anger or hope of satisfaction. This feeling had special intensity because the destruction in Buffalo Creek was man-made; it was caused by the inexplicable inhumanity of a powerful corporation that gave terrible evidence of not caring about its employees or their community. The survivors' guilt was expressed in a wide variety of derivative feelings about the self, in symptoms, in character change, and in behavior through self-denial and lack of hope. These conflicts were not resolved, and their persistence took form in identification with the dead in dreams, actions, and attitude toward life (6).

No one behaves exactly as he thinks he should in a hazardous situation, particularly in a situation he is powerless to influence. Memory becomes clouded and feelings of helplessness influence the way one looks back on the traumatic event. Many people in Buffalo Creek manifested "survivor shame." One of the actual heroes of Buffalo Creek, who had been extraordinarily effective in mobilizing and leading rescue efforts, was able to fend off depression and anxiety in the first four weeks after the flood while he worked relentlessly to help others. When he attempted to return to his former work, he was overwhelmed by anxiety and depression connected with feelings of inadequacy. He developed a phobia connected with his job, began drinking heavily, and became clinically depressed.

We noted in many people a sense of isolation and feelings of alienation combined with an increased need for vigilance and a tightening of the ring around the family. Former feelings of self-assurance, sociability, trust in neighbors, and enjoyment of community activities disappeared. The isolation we observed clinically can be explained by the depressive reactions, the chronic anger, the loss of a way of life, and the dissolution of self-confidence and basic trust.

It has been hypothesized that the emotional disturbances aroused in the victims of disaster quickly disappear after the stress has subsided. Our work at Buffalo Creek suggests that this is rarely the case; the manifestations of a traumatic neurosis do not subside with the receding flood waters. The effects may seem to disappear quickly if one is not alert to the subtle covering-up behavior of the victims of a psychic trauma.

Lifton and Olson (1) explain the persistence of traumatic effects on the basis of an analysis of the nature of the disaster itself and the special psychological effects of such an experience. Our study complements their work by showing how the effects of a traumatic event are preserved by the modes of adaptation to overwhelming fears and hopelessness. The very attempts to protect self, family, and community from a recurrence of helplessness and loss are responsible for the individual and societal neurosis and restrictive character change. Our combined approach has been to show what occurred, the nature of its impact on the psyche, and why its effects became chronic.

One can analyze the sequential formation of the "Buffalo Creek syndrome" as follows. The disaster activated intense effects, including fear, rage, and helplessness. These waves of external and internal overstimulation overran the stimulus barrier and the ego's capacity to integrate the traumatic experience and control and discharge the effects. There was temporary ego collapse and the ego was damaged. We estimate that reorganization of the ego in whole or in part required 6 to 24 months. The course of the reorganization and the way individuals processed these effects, memories, and the associated conflicts made the ultimate difference in outcome. The survivors' course of ego reorganization and their manner of processing the disaster experience were reflected in their symptoms and character change (2, 4, 7, 8). The variables in the reconstitution of the personalities of the survivors we studied can be divided into four categories.

PERSONALITY RECONSTRUCTION

First-order defenses

There was a continuous and steady deployment of a coordinated system of character-shaping first-order defenses (9), i.e., projection, externalization, and denial. Projection defended against feelings of guilt and shame aroused by the disaster. The constructors of the dam, state and federal agency representatives, and intrusions from the society outside of the valley became objects of increasing anger and fear. Externalization blocked awareness of this anger and fear as well as feelings of helplessness. Individuals became sensitive to and acutely observant of the anxiety and unrest in their families, coworkers, and the social group. Denial defended against recognition that the self had been changed in

any way; it disavowed the feeling of helplessness and the awareness of psychological scarring (10). Denial enabled people to believe that while much had happened to them and to those around them, they had not been affected in an *essential* way, and that they were the same people they had been before the flood. This defensive complex protected against emotions that would have otherwise reactivated memories and feelings of fright and helplessness. It was oriented to the present and functioned continuously, preventing the gradual recollection and discharge of the feeling of helplessness and blocking recognition of the irrationality of shame and guilt. Although one can never be the same after an experience with disaster, this defensive system provides a desperate sort of status quo that substitutes for personal regrowth.

Effort to "undo" the disaster experience

Undoing consisted of efforts to change the past by reliving the disaster in dreams and other ways, giving it a different outcome. Survivors' memories of the early postdisaster period contained fantasies of magical reliving of childhood stresses. Attempts at undoing also appeared in strange, symbolic reenactments of the trauma, sometimes leading to violence to the self or others. Freudian repetition compulsion was often replaced by the mechanism of undoing, which is a defense against facing the anxiety associated with the trauma.

The dreams of the survivors during the period of initial shock and (in many cases) for months thereafter were fantasied attempts to relive the disaster, but with a less painful outcome. At first, such dreams were unsuccessful and people awoke from them in terror. As time passed, the dreams were modified. Although the affects remained frightening, the subject matter shifted from the flood to previous, often long-past, images of chaos and threats of annihilation. The dreams no longer involved direct reliving of the disaster but instead depicted stressful episodes that represented repetitions of normal developmental crises such as separation, abandonment, castration, and guilt (1, 8).

The regressive process in these traumatic neuroses differs from that in other psychoneuroses. The goal is not gratification or mastery of infantile conflicts, but rather an attempt to work through recent traumatic anxiety. The anxieties of infantile and childhood phases of personality development become the focus of undoing because these problems had been successfully contained or overcome; dreams of long-past stresses that had been mastered provided reassurance to the survivors that they could overcome the recent trauma. Just as "examination dreams" attempt to deal with anticipatory anxiety by fantasizing a past stress that had been overcome, dreams that are characteristic of traumatic neuroses attempt to neutralize the overwhelming anxiety of the traumatic event by recalling successful past adaptations to difficult situations. Each of these phases of dealing with normal stress, reproduced in the survivors' dreams, is common to all persons as part of human epigenesis. Each past crisis included not only a deprivation of instinctual demand but also a threat to the continuity of life. The latter aspect is what makes them particularly suitable for undoing the threat of annihilation experienced in a trauma like the Buffalo Creek disaster.

Because undoing relies on omnipotence and magic, it prevents recognition of the influence of guilty, shameful attitudes toward the self. The undoing process—aimed at fending off fearful anticipation of a recurrence of the traumatic experience—is a continuing obstacle to the relatively nonanxious acceptance of human vulnerability that is necessary for readaptation.

The psychological emphasis on survival

Psychological conservatism consisted of avoidance of situations that might rise the level of excitation either internally or externally. It is the defensive and ego psychological counterpart of the psychic numbing described by Lifton and Olson (1). We perceive psychic conservation as mental activity designed to control behavior by banking energies, surrendering ambition, reducing enthusiasm, dampening socializing and lovemaking, and discouraging novel experience (11). Psychological conservatism accepts survival as the only goal of existence. It is a trade-off: the individual accepts hopelessness in the present to prevent helplessness in the future, as if to say, "Better to live without hope than not to live at all." Psychological conservatism functions as if the disaster will recur tomorrow, thus totally distorting an individual's view of the future. If you live as though the dreaded uncertainty is certain to occur, you become a psychic conservative.

Dehumanization

Dehumanization affects one's view of life and human relationships and has a direct toxic effect on personality function. Every disaster places man at the mercy of forces beyond his control. The feeling of being a pawn of fate is dehumanizing—people feel without appeal, beyond empathy, and cannot be persuaded or assuaged. When the catastrophe is manmade, dehumanization is magnified. In Buffalo Creek, there was the terrible realization that other human beings had planned, built, and maintained an unsound dam and then acted irresponsibly and uncaringly after the resulting disaster. The defense of dehumanization is an example of identification with the aggressor. It destroyed pride and joy in being human.

Dehumanization may be mitigated by corrective experiences with empathic people in the helping professions and private and public institutions. Collaboration with other sufferers in a law suit against the dehumanizing aggressor may also be useful in that it can ensure that it will be more difficult for such organizations to risk human life in the future.

CONCLUSIONS

It is our belief that the reactions we have described are not those of individuals with weak egos who were exaggerating their complaints in order to win a law suit. These people, by and large, did not exaggerate their complaints; the majority minimized or denied them. If their reactions were merely exacerbations of old neurotic symptoms and problems, we would have encountered a wider range of psychoneurotic reactions. Although there were differences in modes of response, the uniformity of the psychological reactions comprising the Buffalo Creek syndrome was striking. Our analyses of dreams and early memories, reported elsewhere (12, 13), support the consistency and severity of this syndrome.

We found a definable clinical entity characterized by a well-delineated group of clinical symptoms and changes in character and lifestyle that were related to clear-cut psychopathogenic factors precipitated by the disaster. All of us have in our unconscious memory systems encounters with the various forms of dread that a disaster reawakens. There need not be any preexisting neurosis for the Buffalo Creek syndrome to become disabling and chronic. All of us are susceptible to traumatic neurosis and the "death imprint."

To be successful in treating these traumatic neuroses, we must substitute active recall and working through of the painful memories of helplessness and separation for counterphobic behavior, passive reproduction of the experience in dreams, and magical ways of living out and reenacting the trauma. The change from passive to active experience, from reproduction to re-creation is the essential thing. By linking longpast and previously worked-through childhood anxieties with the overwhelming anxieties aroused by the recent disaster, we may be able to strengthen the ego of the individual with a traumatic neurosis. Through his relationship with helping and capable persons and institutions, the disaster survivor is given an opportunity for regrowth, much like the ego development that came about as the individual met and dealt with the normal crises of growing up.

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FROM CHAOS TO RESPONSIBILITY*

(By Gerald M. Stern, L.L.B.)

The litigation initiated by the 625 survivors of the Buffalo Creek flood who refused to settle with the coal company claims office was a landmark case. For the first time, individuals who were not present at the scene of a disaster were allowed to recover for mental injuries. Psychic impairment, the term coined for these injuries, was found in virtually all of the survivor-plaintiffs. In an out of court settlement, the survivors were awarded \$13.5 million, \$6 million of which was distributed on the basis of a point system as compensation for the psychological damages.

The destruction of the Buffalo Creek community gave rise almost immediately to the creation of a new kind of group—a community of 625 survivors from 160 families who joined together to sue the coal company that owned the dam. These individuals, unlike the majority of the survivors, refused to settle their cases at the coal company claims office. Instead, they sought legal help outside the state of West Virginia.

This group contacted Arnold & Porter, a law firm in Washington, D.C., and we agreed to represent them.¹ We immediately went to Buffalo Creek and spent many days interviewing survivors at Charlie Cowan's gas station, one of the few buildings remaining in the Buffalo Creek valley. Mr. Cowan was the leader of the citizens' committee that called to ask for our legal help. The survivors' legal right to sue for traditional damages was clear; they could sue for lost property, for their homes and all their possessions, for physical injuries, or for the death of family members. However, it soon became apparent that they also had significant mental injuries, and it was not so clear whether the law would permit recovery for these damages.

The magnitude and significance of these mental and emotional damages hit me personally when I interviewed a coal miner who had lost his 22-month-old son and his pregnant wife in the disaster. The flood waters caught his family asleep in their home. As the wife disappeared in the black water, she cried out to her husband to save their son. He held the child tightly and tried to struggle to safety, but houses and debris battered him and the child as they washed miles down the valley. Somewhere in this maelstrom, he lost his grip on his son, who disappeared forever into the black waters. Eventually, this man was able to struggle to safety, although his body was badly lacerated by the jagged wood in the water. At the time I interviewed him, my own son was exactly 22 months old. I was terribly upset by his story and decided to try to expand the lawsuit to recover for his mental agony and for the mental suffering of others like him.

We contacted Robert J. Lifton, M.D., who had studied the survivors of Hiroshima. He agreed to interview a number of our clients and to help us explain to the court in lay terms the common psychiatric injuries of these survivors. He also suggested that we ask Dr. Kai Erikson, whose findings are reported in this section, to study the sociological aspects of this disaster. With these two men as our principal experts, we articulated for the court and for the coal company defendant what we called the "psychic impairment" damages suffered by every one of our survivor-clients.

We coined the term "psychic impairment" to include both the psychiatric damages identified by Dr. Lifton and the loss of communality found by Dr. Erikson. We wanted to avoid alleging that the survivors suffered mental illness and felt that the phrase "psychic impairment" had a less negative connotation.

Eventually we also employed a team of psychiatrists from the University of Cincinnati, some of whose findings are also presented in this section, to interview each of our clients. The coal company also retained a psychiatrist—actually, a physician whose primary field was neurosurgery—and a young psychologist in training, who also examined each of the 625 men, women, and children involved in the lawsuit.

* Presented at the 128th annual meeting of the American Psychiatric Association, Anaheim, Calif., May 5-9, 1975.

¹ Stern G. M.: *The Buffalo Creek Disaster*. New York, Random House (in press).

Our psychiatric studies indicated that almost all of the survivors were suffering from psychiatric damage of varying degrees as a result of this disaster. In contrast, the physician retained by the coal company determined that the survivors generally suffered only transient situational disturbances that he felt should have abated soon after the disaster. The fact that the survivors still had disturbances when he examined them some 18 months after the disaster led him to presume almost invariably that these people were suffering primarily from preexisting mental conditions.

Under traditional legal principles, if the survivors had been physically injured by the flood waters and, as a result, had suffered psychiatric damages, they could recover full monetary damages unless their current mental conditions were merely the result of an aggravation of preexisting mental conditions. Our physicians indicated that the survivors' psychiatric damages were caused *solely* by the disaster. The coal company physician disagreed. This is a dispute juries must often resolve in cases involving psychiatric damages.

The more interesting and more difficult legal question presented by this case was whether the survivors could recover monetary damages at all, even if the jury found that all of the survivors' present psychiatric injuries were caused by the disaster. Traditionally the law does not permit recovery for psychiatric injury on the sole ground that the injury can be proven to have been caused by another person or persons. For example, a mother who sees a truck run over and kill her child may suffer severe psychiatric trauma, but the law traditionally has denied the mother recovery for her own suffering, terming her a mere bystander. Needless to say, an individual who sees a friend killed has even less chance in the courts of recovering for mental suffering.

In this case, most of the survivors were not seriously injured physically. Many of them had run up the side of the valley just ahead of the flood waters, and some of them were not even in the valley at the time of the disaster. For example, one survivor was visiting in New Mexico, another was in Florida, some were in jail, and others were in hospitals in nearby towns outside the valley. Nevertheless, we insisted that all of the survivors were entitled to recover for their mental suffering, even if they suffered no physical injury, saw or heard no relative or friend in peril, or were absent from the valley on the day of the disaster. We argued that each resident of the valley, even those who were not there during the flood, was a direct victim of the coal company's reckless conduct and not merely a bystander.

The court agreed with this contention and held that all survivors—even those who were outside the valley at the time of the disaster—could collect for mental injury if we could convince the jury that the coal company's conduct was reckless (i.e., more than merely negligent), and that this reckless conduct caused the survivors' mental suffering.²

Once the coal company realized that the court would not dismiss the psychic impairment claims of any of the 625 survivor-plaintiffs in this lawsuit, we reached a settlement for a total of \$13.5 million, to be divided among the survivors by their own attorneys. We first calculated the payments for real and personal property losses, for wrongful deaths, lost wages, other miscellaneous claims, expenses, and legal fees. This left approximately \$6 million to be distributed for psychic impairment. We distributed this money to the 625 plaintiffs using a point system based on their immediate involvement with the disaster, their medical disability, their loss of community ties, and the disruption of their way of life. Each survivor received between \$7,500 and \$10,000 after all expenses and legal fees were deducted. Approximately \$2 million of the \$6 million was placed directly in a trust fund for the 224 children under the age of 18 who were plaintiffs in the case.

The court's approval of this substantial monetary settlement for survivors' psychic impairment established a significant legal precedent for recovery in cases of mental suffering. The court was not bound by concepts of space and time. Instead, the court recognized that it is the permanence of loss, rather than the witnessing of the disaster, that causes mental suffering. In other words, the court (and eventually the coal company) was persuaded that the relief provided by the law should be determined not by narrow traditional legal principles but by fairly modern psychiatric and sociological principles.

² Prince, et al. v. Pittston, 63 Federal Rules Decisions 28 [S.D., W. Va. (1974)].

LOSS OF COMMUNALITY AT BUFFALO CREEK*

(By Kai T. Erikson, Ph. D.)

The survivors of the Buffalo Creek disaster suffered both individual and collective trauma, the latter being reflected in their loss of communality. Human relationships in this community had been derived from traditional bonds of kinship and neighborliness. When forced to give up these long-standing ties with familiar places and people, the survivors experienced demoralization, disorientation, and loss of connection. Stripped of the support they had received from their community, they became apathetic and seemed to have forgotten how to care for one another. This was apparently a community that was stronger than the sum of its parts, and these parts—the survivors of the Buffalo Creek flood—are now having great difficulty finding the personal resources to replace the energy and direction they had once found in their community.

The trauma experienced by the survivors of the Buffalo Creek disaster can be conceptualized as having two related but distinguishable facets—the individual trauma and the collective trauma.

By individual trauma, I mean a blow to the psyche that breaks through one's defenses so suddenly and with such force that one cannot respond effectively. As the other papers in this section make abundantly clear, the Buffalo Creek survivors experienced just such a blow. They suffered deep shock as a result of their exposure to so much death and destruction, and they withdrew into themselves, feeling numbed, afraid, vulnerable, and very alone.

By collective trauma, I mean a blow to the tissues of social life that damages the bonds linking people together and impairs the prevailing sense of communality. The collective trauma works its way slowly and even insidiously into the awareness of those who suffer from it; thus it does not have the quality of suddenness usually associated with the word "trauma." It is, however, a form of shock—a gradual realization that the community no longer exists as a source of nurturance and that a part of the self has disappeared. "I" continue to exist, although damaged and maybe even permanently changed. "You" continue to exist, although distant and hard to relate to. But "we" no longer exist as a connected pair or as linked cells in a larger communal body.

The two traumas are closely related, of course, but they are distinct in the sense that either of them can take place in the absence of the other. For instance, a person who suffers deep psychic wounds as the result of an automobile accident, but who never loses contact with his community, can be said to suffer from individual trauma. A person whose feelings of well-being begin to wither because the surrounding community is stripped away and no longer offers a base of support (as is known to have happened in certain slum clearance projects) can be said to suffer from collective trauma. In most large-scale human disasters, of course, the two traumas occur jointly and are experienced as two halves of a continuous whole. For the purposes of this paper, however, it is worthwhile to insist on the distinction at least briefly, partly because it alerts us to look for the degree to which the psychic impairment observed in settings like Buffalo Creek can be attributed to loss of communality, and partly because it underscores the point that it is difficult for people to recover from the effects of individual trauma when the community on which they have depended remains fragmented.

I am proposing, then, that many of the traumatic symptoms experienced by the people of Buffalo Creek are as much a reaction to the shock of being separated from a meaningful community base as to the actual disaster itself.

It should be noticed that "community" means much more in Buffalo Creek than it does in most other parts of the United States. Much has been said in the literature on Appalachia about the importance of kinship and neighborliness in mountain society. Although it is true that coal camps like the ones along Buffalo Creek differ in many ways from the typical Appalachian community, the people of Buffalo Creek were nonetheless joined together in the close and intimate bonds that sociologists call *gemeinschaft*. The rhythms of everyday life were largely set by the community in general and governed by long-standing traditions, and the social linkages by which people were connected were very strong. In

*Presented at the 128th annual meeting of the American Psychiatric Association, Anaheim, Calif., May 5-9, 1975.

Buffalo Creek, tightly knit communal groups were considered the natural order of things, the envelope in which people live.

Long stories must be made short in a presentation like this, so I will simply summarize my theme by stating that the human communities along Buffalo Creek were essentially destroyed by the disaster and its aftermath. The flood itself forced the residents of the hollow into a number of nearby refugee camps from which they were, for a variety of reasons, unable to escape. The result was that the majority of the Buffalo Creek survivors remained in the general vicinity of their old homes, working in familiar mines, traveling along familiar roads, trading in familiar stores, attending familiar schools, and sometimes worshipping in familiar churches. However, the people were scattered more or less at random throughout the vicinity—virtually stranded in the spots to which they had been washed by the flood—and this meant that old bonds of kinship and neighborhood, which had always depended on physical proximity, were effectively severed. People no longer related to one another in old and accustomed ways. The threads of the social fabric had snapped.

A year after the disaster (which is roughly when most of the authors represented in this section first encountered these people) visitors to Buffalo Creek were struck by a number of behavioral manifestations that seemed to be exhibited by almost everyone in the valley and, for that matter, continue to this day. Several of these manifestations are discussed elsewhere in this section. I would like to mention three by way of illustrating a larger point.

DEMORALIZATION

First, the survivors clearly suffer from a state of severe demoralization, both in the sense that they have lost much personal morale and in the sense that they have lost (or so they fear) most of their moral anchors.

The lack of morale is reflected in a profound apathy, a feeling that the world has more or less come to an end and that there are no longer any sound reasons for doing anything. People are drained of energy and conviction, not just because they are still stunned by the savagery of the flood but because activity of any kind seems to have lost most of its direction and purpose in the absence of a confirming community surround. They feel that the ground has been pulled out from under them, that the context in which they had worked, played, and cared for others has more or less disappeared. One survivor said,

"I don't know. I just got to the point where I just more or less don't care. I don't have no ambition to do the things I used to do. I used to try to keep things up. But anymore I just don't. It seems I just do enough to get by, to make it last one more day. It seems like I just lost everything at once, like the bottom just dropped out of everything."

I suppose the clinical term for this state of mind would be depression, but one can hardly escape the impression that it is, at least in part, a reaction to the ambiguities of postdisaster life in the valley. The survivors are literally out of place and uprooted. They had never realized the extent to which they relied on the rest of the community to reflect a sense of security and well-being, or how much they depended on others to supply them with a point of reference.

The people of Buffalo Creek are also haunted by a suspicion that moral standards are beginning to collapse all over the valley, and in some ways it would appear that they are right. As is so often the case, the forms of misbehavior people find cropping up in their midst are exactly those about which they are most sensitive. The use of alcohol, always a sensitive problem in Appalachian society, has apparently increased, and there are rumors everywhere that drugs have found their way into the valley. The theft rate has also gone up, and theft has always been viewed in the mountain as a sure index of social disorganization. The cruelest cut of all, however, is that younger people seem to be slipping away from parented control and are becoming involved in nameless delinquencies. This is an extremely disturbing development in a culture so devoted to the family and so concerned about generational continuity.

This apparent collapse of conventional morality has a number of curious aspects. For one thing, observers generally feel that there is much less deviation from community norms than the local people seem to fear. Moreover, there is an interesting incongruity in these reports of immorality—one gets the impression that virtually everyone is coming into contact now with persons of lower moral stature than they did formerly. This, of and by itself, does not make very much logistical sense. One survivor said flatly,

"The people of Buffalo Creek tended to group themselves together; therefore the breaking up of the old communities threw all kinds of different people together. At the risk of sounding superior, I feel we are living amidst people with lower moral values than us."

Perhaps this is true—but where did all these sordid people come from? Whatever else people may say about their new neighbors in the refugee camps, they are also from Buffalo Creek, and it is hard to avoid the suspicion that their perceived immorality has as much to do with their newness as with their actual behavior. It may be that relative strangers are almost by definition less "moral" than familiar neighbors. To live within a tightly knit community is to make allowances for behavior that might otherwise look deviant. New neighbors do not qualify for this clemency—not yet, at least—and to that extent, their very unfamiliarity may seem to hint at vice all by itself.

The collapse of morality in Buffalo Creek thus seems to have two edges. We have sufficient evidence to believe that certain forms of deviation are actually on the increase, although this is a difficult thing to measure accurately. However, we also have reason to believe that the breakdown of accustomed neighborhood patterns and the scattering of people into unfamiliar new groupings has increased the level of suspicion people feel toward one another.

DISORIENTATION

The people of Buffalo Creek are also clearly suffering from a prolonged sense of disorientation. It has often been noted that the survivors of a disaster are likely to be dazed and stunned, unable to locate themselves meaningfully in time and space. Time seems to stop for them; places and objects suddenly seem transitory. They have trouble finding stable points of reference in the surrounding terrain, both physical and human, to help fix their position and orient their behavior. All of this can be understood as a natural consequence of shock, but the people of Buffalo Creek seem to have continued to experience this sense of dislocation for months and even years after the crisis. "We find ourselves standing, not knowing exactly which way to go or where to turn," said one individual. Another survivor noted, "We feel like we're living in a strange and different place, even though it is just a few miles up Buffalo Creek from where we were."

Professional observers who have gone into the valley on medical or research errands have noted repeatedly how frequently the survivors seem to forget simple bits of everyday information—the names of close friends, their own telephone numbers, etc. People are often unable to locate themselves spatially, even when they are staring at fixed landmarks they have known all their lives. It is not at all uncommon for them to answer factual questions about time—their own age or their children's grade in school—as if history had indeed stopped on the date of the disaster. In general, people all over the valley live with a lasting sense of being out of place, disconnected, and torn loose from their moorings, and this feeling has far outlasted the initial trauma of the catastrophe itself.

People normally learn who they are and where they are by taking soundings from their fellows. As if employing a subtle form of radar, we probe other people in our immediate environment with looks, gestures, and words, hoping to learn something about ourselves from the signals we get in return. But when there are no reliable objects off of whom to bounce those exploratory probes, people have a hard time calculating where they stand in relation to the rest of the world. In a very real sense, they come to feel that they are not whole persons, not entirely human, because they do not know how to position themselves in a larger communal setting:

"Well, I just don't feel like the same person. I feel like I live in a different world. I don't have no home no more. I don't feel normal anymore. I mean, sometimes I just wonder if I'm a human being. I just feel like I don't have no friends in the world, nobody cares for me, nobody knows I even exist."

LOSS OF CONNECTION

A third manifestation of the disaster's psychosocial effects is a condition that might be described as loss of connection—a sense of separation from other people. For better or worse, the people of the hollow were deeply enmeshed in the tissues of their community: they drew their very being from them. When those tissues were stripped away by the disaster, people found themselves exposed

and alone, suddenly dependent on their personal resources. The cruel fact is that many of the survivors proved to have few resources—not because they lacked the heart or the competence, but because they had spent so many years placing their abilities in the service of the larger community that they did not really know how to mobilize them for their own purposes.

Many people feel that they have lost meaningful connection with themselves. Much of their apparent former strength was actually the reflected strength of the community, and they are learning—to their very great discomfort—that they cannot maintain an enduring sense of self when separated from that larger tissue. They find that they are not very good at making individual decisions, getting along with others, or establishing themselves as separate persons in the absence of a supportive surround. “Lonesome” is a word many of them use, and they do not use it to mean the lack of human company. One woman who has moved to the center of a large neighboring town said of her new home: “It is like being all alone in the middle of a desert.” A man who continued to live in his damaged home on Buffalo Creek said:

“Well, there is a difference in my condition. Like somebody being in a strange world with nobody around. You don’t know nobody. You walk the floor or look for somebody you know to talk to, and you don’t have nobody.”

In addition, the inability of people to come to terms with their own individual isolation is counterpointed by an inability to relate to others on a one-to-one basis. Human relations along Buffalo Creek took their shape from the expectations that pressed in on them from all sides like a mold: they were regulated by the customs of the neighborhood, the ways of the community, and the traditions of the family. When that mold was stripped away, long-standing relationships seemed to disintegrate. This is true of everyday acquaintances, but it is doubly—and painfully—true of marriages. Wives and husbands discovered that they did not know how to nourish one another, make decisions, or even to engage in satisfactory conversations when the community was no longer there to provide a context and set a rhythm. There has been a sharp increase in the divorce rate, but that statistical index does not begin to express the difficulties the survivors have relating to their spouses. It is almost as if communal forces of one sort or another had knit family groups together by holding them in a kind of gravitational field, but when the forces of that field began to dissipate, family members became scattered like aimless individual particles. Each individual nurses his or her own hurts and tends to his or her own business. They do not know how to care for one another or to coordinate emotionally, because the context that lent substance and meaning to their relationships has disappeared. Two survivors put it this way:

“Each person in the family is a loner now, a person alone. Each of us is fighting his own battles. We just don’t seem to care for each other anymore.”

“The family is not what they was. They’re not the same people. I don’t know how you’d put this, but before there was love in the home. But now it seems like each one is a different person, an individual by himself or herself, and there’s just nothing there.”

Finally, the difficulty people experience in sustaining warm relationships extends beyond marriages and families, out into the rest of the valley. In places like Buffalo Creek, relationships are part of the natural order—being inherited by birth or acquired by physical proximity—and the very idea of “making” friends or “forming” relationships is hard for these people to understand and harder still for them to achieve.

One result of all the problems I have described is that the community (what remains of it) seems to have lost its most significant quality—the power it gave people to care for one another in moments of need, to console one another in moments of distress, and to protect one another in moments of danger. In retrospect, it is apparent that the community was indeed stronger than the sum of its parts in this regard. When the people of Buffalo Creek were clustered together in the embrace of a community, they were capable of remarkable acts of generosity; when they tried to relate to one another as separate individuals, they found that they could no longer mobilize the energy to care. One woman summed it up in a phrase: “It seems like the caring part of our lives is gone.”

CONCLUSIONS

To end with an oversimplified metaphor, I would suggest that the people of Buffalo Creek were accustomed to placing their individual energies and resources at the disposal of the large collectivity—the communal store, as it were—and then drawing on those reserves when the demands of everyday life made this

necessary. When the community more or less disappeared, as it did after the disaster, people found that they could not take advantage of the energies they once invested in that communal store. They found themselves almost empty of feeling, devoid of affection, and lacking all confidence and assurance. It is as if the cells had supplied raw energy to the whole body but did not have the means to convert that energy into usable personal resources once the body was longer there to process it.

CHILDREN OF DISASTER: CLINICAL OBSERVATIONS AT BUFFALO CREEK*

(By C. Janet Newman, M.D.)

Most of the 224 children who were survivor-plaintiffs of the Buffalo Creek disaster were emotionally impaired by their experiences. The major factors contributing to this impairment were the child's developmental level at the time of the flood, his perceptions of the reactions of his family, and his direct exposures to the disaster. The author focuses on children under 12, describing their responses to fantasy-eliciting techniques and their observed behavior after the flood compared with developmental norms for their age and reports of their previous behavior. These children share a modified sense of reality, increased vulnerability to future stresses, altered senses of the power of the self, and early awareness of fragmentation and death. These factors could lead to "after-trauma" in later life if they cannot make the necessary adaptations and/or do not receive special help to deal with the traumas.

As part of the psychiatric evaluation of the survivors of the Buffalo Creek flood, 224 children were interviewed and evaluated; most were found to be significantly or severely emotionally impaired by their experiences during and after the flood. In this paper I will focus on children under the age of 12, using as a sample 11 of the children I assessed personally.

As has been described elsewhere in this section, the evaluation procedure began with an interview of the total family and proceeded to individual interviews. In interviews of mothers, outlines of each child's developmental history and functioning before and after the disaster were obtained. This information was passed on to the child psychiatrists in order to help us place each child in his parents' developmental perspective. Children were usually seen in their own rooms. They were encouraged to recall their own experiences of the flood; such expressions had often been submerged or inhibited amidst the outpourings of more vocal family members. The issues we discussed included past and present family life, personal feelings, school experiences, and the children's perceptions of future hopes, the nature of the disaster and the meaning of the lawsuit.

We used such fantasy-eliciting techniques as "three wishes," "draw a person," and story telling. Preadolescent children were asked to draw a picture of the flood as they remembered it. Special educators from the Children's Psychiatric Center obtained school data to confirm or correct parental impressions of major losses of academic achievement that persisted long after the disaster.

The effects of the disaster on children can be attributed to three major factors: 1) their developmental level at the time of the disaster, 2) their perceptions of the family's reactions to the disaster, and 3) their direct exposures to the disaster. This paper illustrates each factor and examines their numerous interactions.

DEVELOPMENTAL LEVEL

The developmental factor will be illustrated by contrasting the clinical evidence gathered from 3 latency age children and 2 preschoolers. A depressed, hopeless, and guilt-ridden 11-year-old boy who had discovered human remains in his immediate environment after the flood drew a starkly realistic picture of a completely submerged trailer that contained two people screaming for help. A house above the trailer was half filled with water, and a panic-stricken figure tried to keep afloat amidst the waves and debris of the flood waters. Drawings by 2 younger children showed a possible symbolic meaning of mountains to Appalachian children, i.e., the provision of humanlike functions of cradling and life

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sustenance (this contrasts with Lifton and Olson's remarks about the "overall environment, including nature itself, as threatening and lethal" [1]). An 8-year-old boy with a chronic anxiety reaction drew the "house-mountain" depicted in figure 1 as life-saving compensation for his temporarily lost and helpless parents. The drawing represents a traumatic regression to a wishful merging of parental security into a house-mountain in a partially beneficent environment. A 7-year-old child also indicated security in nature in a picture of himself climbing a steep hill behind his mother and aunt. He drew a tree below him, saying, "This is a tree I can hang onto if I slide down." Nature offers support when human beings suddenly seem helpless. In Appalachia, the mountains represent not only slag heaps and flood threats but tangible, reassuring security.

The experiences of 2 younger boys will be described to isolate developmental factors at the preschool level. Henry, who was 3 years old at the time of the disaster and 5 at the time of our interview, was the only son and favorite child of his mother's second marriage. He was the first to awaken on the morning of the flood. Looking out his window, he viewed the uncanny and perplexing sight of a house moving down the creek. Unsure whether this was real or a dream, he awakened his parents, conveying more cognitive bewilderment than fright or anxiety. He remembered saying, "Come and look!" The parents rose instantly and managed to evacuate the family to safety on high ground just in time.

Two years after the flood, his mother told us that Henry frequently slept in the same bed with her and loved to be rocked, although he had rarely needed this type of attention before the disaster. She reported that he often talked about the houses and cars that had floated by in the flood and how they "went boom!" I felt that because Henry was the first to awaken and, in a sense, rescued his family, they regarded him with special gratitude and admiration. During the family interview Henry was hyperactive—he was friendly but restless. In his individual interview, he recalled seeing the house going by his window and asking his parents to come and look. He denied being scared, but said, "I didn't like it." Henry also remembered seeing a screaming baby on top of an upside-down store that was floating downstream. He said, "I didn't like that either, I hated it."

Henry's flood picture started with a creek as an almost perfect circle. Then a curving line showed "how the creek goes here." A rounded object near the path of the flood conveyed its force; as he explained, "The flood threw this rock." Then Henry spontaneously drew a 3-sided rectangular but bottomless form nearby with "windows" for eyes, explaining that this was a person killed in the flood. Most children Henry's age, drawing their first human figures, use crude circles for heads or head-and-body combinations: in a precircle phase they use primitive scribble-strokes to indicate human figures. Henry had already manifested a capacity for drawing circles but had applied this skill only to his representation of the flood, using a bottomless rectangle with windows for eyes as a human figure. Such faces or human figures were interpreted as condensations of humans with buildings, stimulated by this 3-year-old's view of a peculiarly and perhaps awesomely floating house and other buildings, including the one the screaming baby was on. His flood experience started as he awakened from sleep, and sorting dream from waking perception and reality is typically difficult for young children. Developmentally, Henry was at a stage of tenuous differentiation of dream from reality and animate from inanimate objects, and motility is the first characteristic differentiating living from inanimate objects.

To summarize, Henry's drawing showed the human figure as dehumanized and fused with a seemingly animated building. The bottomlessness of the human face-figure suggests his lack of security, which was shown clinically by hyperactive and an excessive need to be closer to his mother than he had been before. The circular flood moving huge rocks suggests the projection of superhuman powers to nature. His barely developed abilities to separate animate from inanimate and actuality from fantasy or dreams help to explain his current bewilderment, excessive anxiety, and hyperactivity. His favored position in the family and his role as "rescuer" have accentuated his sense of narcissistic omnipotence, which allays his underlying feelings of helplessness and anxiety. It is likely that his problems of immaturity, anxiety, and developmental deviations in cognition will become more evident when he starts school.

Peter was interviewed 2 years after the disaster, which occurred when he was 26 months old. His parents reported that he had been a happy baby, developing at normal rate. His father, a chronically disabled miner, described how the family scrambled up the side of the mountain behind their home and watched as their house was swept away and a nearby bridge crumpled from the force of the flood.

A frantic passerby yelled to Peter's father to aid in the rescue of two children clinging to a floating mattress. As he ran to help, his wife screamed for him to come back. Realizing the danger, he ran back to his own children and led them to higher ground, carrying Peter on his chronically weak back.

Since the disaster, Peter cannot take a bath without screaming, and he still wets the bed frequently and screams in his sleep. He gets mad easily and always wants his own way. Peter's memories of the flood involved concerns over the safety of his friends and an older brother's loss of his best friend. He referred to the "two kids on a mattress" and worried aloud whether "their daddy, he might just not want them." This must have represented his own fears at the hands of his own father, who did not save all the children, limiting his efforts to the rescue of his own family. When asked about troubles or worries he said, perhaps stoically, "I don't be sad, that's all." When asked what would make him happy he said, "I don't know, maybe if my daddy was handy."

Peter's response to the three-wishes question was touching and highly original and was probably related to a 4-year-old's determination to hold on to reality, with a resulting fear of pretending, even for a moment: "I don't wish," he said proudly. His drawings, made at age 4, about his flood experience when he was 2 years old, should remind the reader of Henry, who, although he was perfectly capable of drawing good circles, drew a person as a house with a rectangular bottomless face. Peter, although younger, is involved with deeper, more sophisticated, more human views of the disaster.

Peter's first flood picture included irregularly round or oval outlines of what he then chose to call windows—an "ugly" window, a "shoe" window, and a "big" window. (Windows with views of the creek became highly important for many families.) As an afterthought, Peter drew a longer shape and told me to write "two kids on a mattress in the creek" within it. I then said, "Let's do that one again on a bigger page." Peter drew a mattress and started to draw the 2 children in the form of lines. However, in the process, he appeared to convert the children into 2 legs (one barefoot and one with a shoe)¹ and then drew a body and a head labeled "top," creating a total human figure. He was influenced by the fact that his siblings were drawing people. Figure 2 is Peter's second drawing: the writing is that of the interviewer during the process of drawing and records Peters' words. This is a powerful condensation of a traumatic scene, combining his father's failure to save all of the endangered children, particularly those on the mattress. These 2 children became the 2 legs of the larger total human figure in the picture. As with Henry, we see a variety of serious developmental interferences and emotional distortions in the development of perception and cognition as manifested in body image concepts.

REACTIONS BASED ON DIRECT FLOOD EXPERIENCES

Marie was the cute, articulate daughter of a strong father and a dominating hypertensive mother; she was 8 years old at the time of the disaster. During the flood Marie's mother bundled her in blankets and carried her to shelter, never allowing the child to see the acute stages of the flood.

During Marie's interview, her "draw-a-person" picture was of smiling, child-like parents in flowered clothing. Her flood picture, drawn from hearsay, seems traumatic at first glance. However, the bubbly clouds she drew were duplicates of the floral prints of the father's shirt and the mother's skirt in the draw-a-person picture. The houses stood high above the languid flood, and the many bodies appeared mostly in cheerful upright positions. Only 2 small figures yelled, "Help!" Marie exemplifies a child reacting to maternal anxieties, reminding us of the children described by Anna Freud and Dorothy Burlingham in *War and Children* (2), who reacted far more strongly to maternal emotions than to bombs.

The major clue to the anxieties underlying the facade of Pollyannaish denial was Marie's response to the Despert Bird Fable, which elicits a child's story of what a baby bird who can fly a little will do if a strong wind blows the family nest from the tree, scattering the mother and father and baby bird. Marie asked, "Were they all close together or were they far apart?" I then said, "What do you think?" Marie replied,

"Mother makes another nest, with twigs, on a stronger branch. The little bird grows up to have a family. Or, maybe the mommy bird might get sick or die, or a

¹ Many children were barefoot or half barefoot in the escape from the flood and suffered frostbite.

cat might eat her. Or maybe the little bird might get sick or poisoned. It might mistake weed-killer for seed. That *could* happen. Oh well, the little bird probably got old and then died."

This story reveals a rapid descent from superficial health into violent and even paranoid ideation, involving the death of both mother and baby by violence and poison. This rapid weakening of defenses reveals Marie's vulnerability to and identification with a chronically anxious mother, whose exacerbated anxieties she had been intimately exposed to in the apparent service of being protected herself.

Richard, who was 7½ years old at the time of the disaster, was the middle child of 3, born to mature parents. On the day of the disaster, as soon as the water level fell, Richard and his father searched for relatives. They were concerned about the safety of Richard's older sister, who had stayed overnight with a girl friend. The sight of the mutilated body of a boy Richard's age was shocking to both the child and his father. Richard was described as a changed boy since the flood, having become tense, nervous, talking little to his parents, and suffering from terrifying nightmares of someone coming back from the black water to take him to the spirit world. When interviewed, he said that he usually slept with a blackjack under his pillow.

Richard's flood picture conveyed a firm sense of reality, a strong sense of form combined with creative sensibility. He drew a truck carrying 5 bodies wrapped in sheets, set against a background of a burning slag pile and a house with a large chunk missing. The sky was overcast and it was raining. His draw-a-person picture, a clever, strutting, colorful comic book character drawn in profile, shows color, movement, and detail and indicates creativity and ego strength. Despite enduring strengths in peer relationships, good school performance, and basically warm family ties, Richard has a chronic traumatic anxiety reaction manifested by trembling hands, tension, inner tremulousness, difficulty sleeping, and nightmares. In contrast to Marie, who looks deceptively healthy and self-assured but whose reawakened inner problems stem from close ambivalent ties to a chronically anxious mother, Richard's symptoms represent more purely a chronic overt traumatic reaction to the disaster, in the context of considerable ego strength.

David, 7 years old during the flood and 9 when interviewed, was apparently well-adjusted before the disaster. Afterward his grades fell, he tended to keep to himself, and got into fights. His most severe symptoms, however, were crying in his sleep, sleep-talking (saying he wants to "get home again"), and somnambulism—he seems to be walking *out* of the house. Although others direct him back to bed, he does not wake up during these episodes but appears frightened. Since the disaster he has been wetting his bed several times a night, something he did not do previously.

In his interview he appeared attractive and cooperative but quiet and somber. He did not recall the content of his sleepwalking episodes, although he vividly remembers people screaming while they were drowning during the flood. David drew a bizarre person with a strange colorless face looking backward and a brightly multicolored body with feet pointing in the opposite direction from the face (figure 3). Diagnostically, he had symptoms of a traumatic neurosis with a dissociative-type hysterical neurosis (exemplified by his somnambulism) encapsulated within it. It seemed likely that his trancelike sleepwalking was a repetition of the original escape; this interpretation was supported by his grotesque drawing of a person whose profile, while colorless, had a fixed smile and slightly quizzical or puzzled eyes. Facial distortions and poor fit to the body are evident in the picture.

David's pathology was focused and severe. Sleepwalking usually occurs in stage 4 sleep when central nervous system motoric inhibition of REM dreams cannot occur (3). Certain types are called "somnambulistic trances" and may represent physical reenactments or abreactions of traumatic situations (4). David's bizarre picture suggests an unconscious connection between his sleepwalking state and his conscious imagery.

Marie has become subtly but severely traumatized through her direct relationship with a chronically anxious and flood-traumatized mother, while Richard and David's more conspicuous and overt traumatic reactions stem more directly from their flood experiences. The contrasts in the symptom choices of Richard and David are probably multiply related to their constitutional backgrounds, developmental experiences preceding the trauma, and the exact circumstances of the moment of greatest trauma each experienced in the disaster.

OBSERVATIONS ON OTHER AGE GROUPS

I have not mentioned another group of children, those who were in utero during the flood. Often, their preciousness lies in having survived the pregnancy of a frantic mother. Among their future stresses may be the never-ending tales or the silent allusions of the family about the disaster these children never experienced. The parents may see them as magically and profoundly linked with the flood. These children, as well as those born later (who will also feel left out, yet involved), will be unpredictably but importantly influenced by the catastrophe.

Although this paper has focused on preadolescent children, a few words must be said about adolescents' special vulnerabilities to the psychological effects of the disaster. Because the almost total community destruction, the loss of communality described elsewhere in this section by Dr. Kai Erikson, was so disruptive, especially to adolescents, they often had to choose between rebellious predelinquent behavior or compliant social withdrawal. They suffered deeply but privately when their parents broke down under stress. For example, in one family, the favored older brother, who had been the "good one" before the disaster, changed his behavior markedly—he missed 68 days of school, threatened the teaching staff, was suspended five times, and is currently on probation because of his behavior. At home he sat up at night apprehensively listening to rain or roared away on his motorcycle. However, his next younger brother continued to attend school regularly and made every effort to concentrate. The contrast between his very chaotic flood picture and a carefully drawn pink dove of peace that his teacher had praised as "best in the class" shows the range and conflict of his inner experiences, which he has internalized, but with unknown emotional strains.

Creative expressions emerged in many cases. Out of a highly disturbed large family living in two trailers in a state of chaos came a touching picture drawn by an 11-year-old boy (figure 4). Denying the turbulence of the flood, he drew an intellectually complex picture with excellent perspective that showed a trestle, road intersections, and a quiescent creek. He labeled one "the road to where we used to live." In the background, brightly colored idyllic homes in red, blue, and orange nestled among the woods on the hillside. There were no people in the picture, but there were possibilities for human reconstruction. The three dramatically split roads suggest important choices to be made, and the colorful homes in the background suggest hope.

Finally, some older children did follow the lawsuit and psychiatric interviews with great interest and sophistication. They recounted hopes of being lawyers and nurses, even though they were often having problems in their basic school courses. They wrote themes on safety regulations and dam construction as school projects and tried to master their experiences emotionally and intellectually. They will never forget this experience, and they will be watchful of all the adults who have participated in it; they either idealize or are disillusioned with parents and other adults. When they grow up, they will watch the world closely. They will have learned enormously both in and out of school.

CONCLUSIONS

Children in traumatized families within a shattered community form their own theories of a disaster from their own reactions and their perceptions of the reactions of their parents and other adults. Their conceptions are also influenced by the social and legal processes associated with the disaster. All of these factors permanently affect their sense of self in growing up. The common heritage of most children of disaster is a modified sense of reality, increased vulnerability to future stresses, an altered sense of powers within the self, and a precocious awareness of fragmentation and death. In contrast to most of their parents, some of the children manifested clear and enduring evidence of hopefulness and creativity, despite obvious current limitations in their ability to achieve specific goals. Their sense of hope existed side-by-side with serious signs of developmental limitations and serious pathology. Indeed, the widening discrepancies between social sensitivities and academic achievement could lead to a severe "after-trauma" in later life. They would require unusual life adaptations or special help to respond constructively or creatively to the traumas they had undergone.

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DISCUSSION OF THE BUFFALO CREEK DISASTER: THE COURSE OF PSYCHIC TRAUMA*

(By Leo Rangell, M.D.)

The specific contribution of the psychiatrist to the team study of the human disaster at Buffalo Creek focuses on the course of psychic trauma. The initial violent intrusion by the flood waters was followed by a second phase of the traumatic cycle, the physical dislocation of the survivors, with disruption of their "ground" and "surround." During this long subsequent period the level of trauma did not recede but kept rising, although at a slower pace. Distant effects of the trauma may succeed the more immediate ones. The finite psychic space of the survivors is encroached upon by traumatic memories for an indefinite period of time, leaving fewer resources available for normal effective living. The absorption and merging of traumatic stimuli into a traumatophilia poses still another potential problem. The unprecedented legal decision as to the linear effects of psychic trauma on a succession of connected individuals will need further interdisciplinary clarification.

In offering opinions on the overwhelming human experience of the Buffalo Creek disaster, the challenge is to separate our reactions of empathy and horror (which, as Lifton and Olson [1] have pointed out, were quickly and painfully shared by all mental health professionals who came to the valley after the disaster) from the potential contributions of our specific professional expertise. Toward this end, I will focus on the realm of psychic trauma (2), its nature and its effects, to complement the findings of the interdisciplinary team of sociologists, psychologists, attorneys, and others who took part in the evaluation of the effects of this experience on those who survived it.

The articles in this section range from the individual to the collective, from the child to the adult, and from the deepest inner effects to the widest outer consequences of this sudden, unassimilable disruption of man's relationship to his physical world. These studies address not only the inundation of psychic structures in a horizontal sense but also the longitudinal effects of the flood—the disturbed continuity with the past, the shattering of the present, and the inescapable portents for the future.

The work of the interdisciplinary evaluation team retained by the law firm representing the 625 survivor-plaintiffs to assess the psychological impact of this catastrophe has profound implications, reflected in its effects on the social decision-making process. The unprecedented legal decision, reported elsewhere in this section by Mr. Gerald Stern, permitted people who were not on the scene of an accident to be awarded reparations for the psychic damages they suffered. The principle acknowledged in this case could well shake all existing rules of the social order about the responsibility of man to man.

THE FIRST PHASE: PSYCHIC NUMBNESS

To turn to the central focus about which psychiatrists can reflect and from which other observations will stem, the Buffalo Creek flood was a violent intrusion into the peaceful psychic life of the community massively beyond the "average expectable environment" (3). This eventuality was not, however, completely unexpected—the people in the valley had long lived with this possibility and knew it could be prevented, but they said they had put it out of their minds. Actually, it had been put not out but deeply in, had become part of their living unconscious. It was in some ways like the earthquake situation in California but worse and more constant. The dam that finally broke physically existed just above the valley and was visible and ever present. Another difference, which added the makings of a latent inner eruption to the potential external occurrences, was that there were in the minds of valley residents people

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(the owners of the dam) who could and should have done something about the situation. Like the cave-in of a coal mine in a community that has always lived in dread of such an occurrence, the flood had been part of the mental as well as the physical geography of Buffalo Creek, a feared event buried in the minds of the people. The massive convulsion of the physical world that took place on February 26, 1972, was a mental imprint come true. It was a nightmare from which this time they did not awake.

The black waters that roared through Buffalo Creek valley when the fantasied, feared, and repressed event became reality could be said to have flooded the egos of those who lived through the disaster. All control functions were overrun by the sudden influx; it was a maximum dosage per unit time, a psychological overkill. The result was universal and with a common base to all, the traumatic state, the condition of psychic helplessness that the anxiety signal presages and that all of the ego's defenses constantly work to prevent (4, 5). This was the phase of psychic numbness observed in all of the studies of the survivors. The goal was merely to live through it, to survive. Each individual held on to whoever or whatever was left. "Psychological conservatism," which Drs. Titchener and Kapp describe in "Family and Character Change at Buffalo Creek," served to reduce excitation; no further stimuli were wanted.

This stage of psychic numbness, of apathy, withdrawal, and sluggishness, was still visible when the evaluation teams arrived in Buffalo Creek 2 years later. Some of the observers were surprised that the traumatic neurosis was still visible, but what evidence is there to assume that the residual or even basic effects of so massive a trauma would not last a lifetime? Psychological testing of survivors of the Nazi holocaust has shown that after 30 years they still show such lasting effects as impairment in perceptual-cognitive functioning, withdrawal from objects, inability to sustain close relationships, and other subtle and overt sequelae.

While the legal experts perhaps needed to be concerned about the claim of preexisting states, I would prefer to maintain clarity and not to have to use the word "impairment," to blur the fact that there *was* loss, injury, and illness. The effects of the disaster were as ravaging as an epidemic of typhus or plague, which is similarly visited upon a city from without, and the preexisting vulnerabilities in the hosts to receive the invading organisms are not an issue. The traumatic neuroses overshadowed psychoneuroses. I do not mean to say that there were no preexisting psychoneuroses, but rather that they no longer had a chance to assert themselves. This is an issue that has plagued every psychiatrist who has served in the military. Combat neuroses in their acute phases are more uniform than different in their presenting syndromes; only later can individual differences reappear and assert themselves again. During the years to come, as normalcy returns to the Buffalo Creek survivors, they will have the luxury of becoming individually neurotic again.

THE SECOND PHASE: "GROUND" AND "SURROUND"

What happened to this community in terms of incoming traumatic stimuli did not stop with the cataclysmic events of that Saturday morning. As disorienting and time-stoppings as the flood was, it was only the first phase. An individual who suffers a loss, however shattering, generally returns to his home to start the long and difficult process of repair. His "ground," the background into which the self can merge, is the base for his security, the source of the nurturing supplies that sustain the processes of reparation. This was not possible in Buffalo Creek. The dazed survivors were returned not to their familiar ground but to new and strange surroundings. This may have been the only possible course, but it was still depriving and further threatening. Rather than nurturance, the survivors continued to face challenges, for a long time and during a raw and vulnerable state.

In this double and almost death-dealing blow, these survivors repeated the experiences of other holocausts known to our generation. Those who survived and escaped from Nazi Germany wandered into new lands. The survivors of the atom bomb returned to craters where their homes had been. Many South Asians have had to leave their land after having left their dead. In all of these cases, the survivors' earth is also gone after their fellow humans have disappeared.

Years ago, writing at another level and about more comfortable aspects of human troubles, I described "attachment to ground" as the psychic prerequisite for the maintenance of the social state of poise (6, 7). The opposite condition,

a wavering hold on one's surrounding psychic ground, results in a basic anxiety with the threat of crumbling and even annihilation of the self. This is the source of the primitive anxiety that people feel at the first threatening tremor of an earthquake. In the more mundane case of seasickness, the fear has been said to be not that one will die, but that one might not. Underlying both of these disturbing states is an elemental anxiety that stems from a disorientation in the relationship of the organism to the earth under its feet.

In the course of ontogenetic development, this relationship extends from the ground beneath one to the space around him, to people, institutions, atmosphere, and the culture. This is the common background in the phenomena described by Freud in the oral stage (8), in the attachment studies of Bowlby (9), in Mahler's contributions on separation-individuation (10), the effects of motherlessness on the primates studied by Harlow (11), and in the natural experiments on human infants studied and documented by Spitz in cases of marasmus resulting from early and massive deprivation (12).

Not only did the ground of the Buffalo Creek valley literally sink beneath the feet of its inhabitants, initiating the most primeval regression man can experience, but when the survivors reached solid high ground, they were again deposited on an insecure terrain, into a social "envelope,"—an intriguing term used by Dr. Kai Erikson—of unfamiliar space. The trauma thus did not end, it merely changed. There are strain traumata (13), shock traumata (14), cumulative traumata (15), and sudden overwhelming disruptive events. The stimulus barrier can be bent as well as rent (16). At this point, the trauma of the survivors changed from sudden to cumulative. The flood receded, but the level of trauma did not; rather, it kept rising, although at a slower pace.

This was the phase studied intensively by Dr. Kai Erikson, described in this section from the sociological standpoint as a loss of communality, the social tissue that binds people together. While this loss was universal, we should not overlook the fact that it was an individual trauma as well. Just as the original traumatic state, although universally shared, was individual in suffering, so was it with this second phase of the traumatic cycle. The change from the familiar to a strange surrounding during the period when rest and nurture were needed superseded the initial trauma and prolonged and compounded its effects in each survivor.

THE THIRD PHASE: FUTURE EFFECTS OF THE TRAUMA

The articles presented in this section survey the effects of the disaster to date. Less measurable are the future effects, especially those which are more subtle and internal. Are the children, Dr. Newman interviewed who are now getting along well in school less vulnerable to future stresses than those who are currently more turbulent and disturbed? Or is the reverse the case? Only long-term longitudinal studies (which are not likely to be practical or feasible) would answer this and similar questions.

There are subtle and far-reaching issues facing the survivors. In spite of the vastness of the unconscious, psychic space is limited. There is room and time in any individual psyche for only a limited amount of cognitive ideation and a finite number of memories, fantasies, and accompanying affects. The product of such space and time comprises the psychic life of an individual, the amount already spent and the amount still left. Mourning is a model of such an occupation of psychic space, a paradigm of how obsessive thoughts and memories related to psychic work that needs to be done crowd and consume the psychic capacity. Traumatic memories of any kind encroach on this psychic time-space and reduce its available quantity; this is why psychic traumata age people.

I have been treating a woman in her mid-seventies and have discovered that her apparent senility is due not to an organic aging process but to the repression of decades of a traumatic life. She had told herself—she brought this out with clarity through her foggy memory in sessions that had a hypnotic quality—that she did not want to remember any part of her married life of close to 50 years. The volume and intensity of the traumatic memories being repressed left her almost no room for normal living. She had by now assumed the posture, both mentally and physically, of a diffuse cortical atrophy, without evidence, either neurological or radiological, of any organic syndrome nor even convincingly of cerebrovascular disease. She was like a young, acute, traumatic amnesia, except that this was chronic, old, and massive. Her mental state undulated dramatically with the emergence and rerepression of forbidden thoughts. This poignant clini-

cal experience has made me wonder about the general psychopathology of "old age."

How much space will the Buffalo Creek experience occupy in the minds of the survivors in their future lives? We routinely treat patients who react to a deprived childhood by sacrificing a certain percentage of their psychic lives. I have treated a patient who has occupied perhaps a quarter or a third of her free associations with obsessive preoccupation over her screaming mother; her thoughts are similarly occupied outside of the analysis. Another of my patients has been unable to enjoy his current life because of the constant crowding of his psychic space by the coalesced memories of the threats of castration that pervaded his tortured childhood. I have pointed out elsewhere (17) the role of such chronic traumata in producing the cacophony of human relationships in ordinary life.

These situations represent fairly common developmental traumata. How much of a role do cataclysmic traumata like the Buffalo Creek disaster play? What will be the long-term effects of the vivid, massive "death imprint" described by Lifton and Olson (1)? What will be the effects on children in whom death anxiety has been violently added to the normal anxieties of separation and castration? It seems likely to me that their memories will repeat the accumulated traumata over time like a long-acting timed-release capsule.

There was an element in this disaster that is not present in truly natural catastrophic events, which serves to explain further why the "Buffalo Creek syndrome" is not limited to reactions to external events, but rather reflects added internal idiosyncratic forces. I am referring to the human element, the thought and the accusation that this horrible occurrence could have been prevented. Unlike a natural disaster such as a tornado, where inanimate forces of nature are solely responsible, the human object was involved in the Buffalo Creek Flood, which arouses impulses of aggression and retaliation. Channels for discharging these impulses do not keep pace with the amount and quality of the impulses aroused. The ego is bombarded from two directions, and feelings of rage, impotence, anxiety, guilt, and depression are added to the usual responses to disaster.

The more external normalcy returns, the more will traumatic neuroses and psychoneuroses be in a reciprocal relationship to each other. The residual trauma will stimulate individual neuroses, and latent neuroses will feed upon and perpetuate the traumatic state. Such restitutional movements are already evident in the survivors and will increase with passing time. Phobias, obsessions and depressions, and private anxieties and conflicts have already been noted by various observers, and survivors' dreams are beginning to reveal their predisaster concerns.

There are other more subtle unknowns to cloud the future. What happens when a traumatic effect merges over time into a traumatophilia? Such an outcome can represent a repetition compulsion not in the service of mastery but to satisfy a sense of guilt or a need for punishment, a trauma that is absorbed and utilized by the psychic forces "beyond the pleasure principle" (18). Or what will be the result when the pleasure formulae or safety mechanisms themselves become altered and individually fashioned as a result of the traumatic experience? I am reminded of a patient who was traumatically raped and now finds her husband and all other men to whom she turns passive and weak. Or a patient who, from the traumatic rejection in her first love, has come to no longer believe in love. Another patient, similarly hurt, now feels "I'll never again have a best friend." What will be the effects of the life-threatening insult at Buffalo Creek, seen by the survivors as a result of neglect by people in authority, on trust, love, and object relations? One can hardly begin to tell, but one can be prepared so as not to be surprised.

In surveying this event and the reports that have been presented in this section, we should not overlook the effects of the studies themselves on the 625 survivor-plaintiffs evaluated. Aside from the legal result, the interest displayed by caring individuals from the society outside the valley probably introduced a therapeutic influence, however circumscribed. This influence might be compared to the effects on a therapeutic ward of the mere announcement of a program of treatment. However, there may also be negative effects: divisiveness has been introduced in the valley. Just as the untreated "control ward" suffers by comparison with the therapeutic community, those survivors who were not among the litigants may feel left out and discriminated against.

While an important and unprecedented legal decision has been achieved that greatly extends the definition of psychic trauma following an external event, the full implications of the human phenomenon described in this section cannot be estimated. Anyone who is lost, hurt, or otherwise affected under traumatic circumstances affects others in an endless chain that is attenuated only by emotional distance. It would be illusory to believe that it is within our power or professional expertise to accurately describe ethical guidelines for the rectification of the linear progress of traumatic effects. I recently knew of an elderly couple who were being displaced from their home for the building of a federal project. During the process, the husband, distraught over the dislocation, suffered a fatal heart attack. What can we say or what should we do about the effects on his wife? Or the children? Or a chain of others? There are more questions than we can answer. We must work side by side with the law, with sociology, philosophy, and all thinking and feeling people. No one or no group has a corner on ethics or on wisdom.

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THE HUMAN MEANING OF TOTAL DISASTER—THE BUFFALO CREEK EXPERIENCE

(By Robert Jay Lifton and Eric Olson)

In late 1972 we were asked by lawyers from the Washington, D.C., firm of Arnold and Porter to consult on the psychological effects of the Buffalo Creek, West Virginia, flood disaster. At that time a case claiming damages for "psychic impairment" was being prepared on behalf of more than 600 people who had survived the February 1972 flood. The flood resulted from massive corporate negligence in the form of dumping coal waste in a mountain stream in a manner that created an artificial dam, resulting in increasingly dangerous water pressure behind it. After several days of rain the dam gave way, and a massive, moving wall of "black water" (containing the coal waste), more than 30 feet high, roared through the narrow creek hollow, devastating the mining hamlets along the 17-mile valley. In less than an hour the water reached the foot of the hollow at Man, West Virginia, and in that time 125 people were killed and nearly 5000 made homeless.

The ensuing days and weeks after the flood constituted what Kai Erikson called a second trauma, the deepening awareness that the fabric of community life had been irreparably destroyed.* The claim of "psychic impairment" in the lawsuit against the Pittston Company, whose Buffalo Mining Company subsidiary had built the dam, was based on the effects on the survivors' psychological well-being of the flood experience itself as well as the destruction of the community. The lawsuit was settled out of court in August 1974 for 13.5 million dollars, approximately half of which was based on "psychic impairment."

In connection with our consultation in the case we made, together and individually, five trips to Buffalo Creek between April 1973 and August 1974 and have conducted a total of 43 interviews involving 22 Buffalo Creek survivors. In addition we have talked with several ministers and volunteer workers in the area, and read through the extensive documentation of the disaster compiled by a variety of observers and professional consultants working with the survivors.

The psychological impact of the disaster has been so extensive that no one in Buffalo Creek has been unaffected. The overwhelming evidence is that everyone exposed to the Buffalo Creek disaster has experienced some or all of the following manifestations of the general constellation of the survivor (Lifton, 1968, pp. 479-541).

DEATH IMPRINT AND ANXIETY

The first category of these survivor patterns is that of the *death imprint* and related *death anxiety*. The death imprint consists of memories and images of the disaster, invariably associated with death, dying, and massive destruction. These memories were still extremely vivid during interviews conducted 30 months after the flood, so that one can speak of them as *indelible images*. The memories of destruction were all-encompassing, so that a sense very close to the feeling that "it was the end of time" was present in many survivors. As one man whom we interviewed in May 1974 put it: "Everything came to an end—just stopped. Everything was wiped out."

Over the period of our visits we could observe the extent to which the anxiety and fear associated with these images took on chronic form—fear so strong in many as to constitute permanent inner terror. The fear tends to be associated with flood and disaster, with nature and the elements, and especially with rain and water. As one man put it in May 1974:

"When it rained hard last week it was like the past came out again. I took the family down to the cellar and [at times like this] I just know the whole flood is going to come back. . . . it's like you might step out of the trailer and get caught in something. Everytime it rains I get the feeling that it's a natural thing for the floods to come."

In other words, what is ordinarily "unnatural" destruction has become, psychologically speaking, "natural"—what one expects to happen. The same man, like many others, is unable to sleep when it rains, because "I don't want to be caught in bed with the flood." He goes on to recognize that the fear is irrational: "Knowing that the water couldn't get to me now doesn't help." He feels compelled to "keep checking the river" and to "keep pacing the house." For water has become the enemy—"I used to love to swim but I can't go back to water no more"—and "The weather more or less controls my thoughts."

And many others expressed similar feelings about the weather 27 months after the flood. One woman particularly troubled with insomnia stated: "When it starts raining I get afraid. I didn't use to be that way but now I am. I'm afraid of thunder and lightning." Another woman (interviewed at the same time): "I have a real scary feeling when it rains—even though there's no danger up there." And still another, greatly troubled by insomnia and general anxiety: "If it rains I get a very uneasy feeling. The clouding up now makes me feel uncomfortable."

A related symptom, also widespread, is a fear of crowds. Gatherings of large numbers of people become associated with the disaster. One man (in May 1974) told us that he avoids crowds because he imagines another disaster and "if there are 12 people in the crowd only some people would escape and some would be lost. If I was there by myself I could get away." He was expressing a character-

*See Kai T. Erikson, "Loss of Communality at Buffalo Creek," and James L. Titchener and Frederic T. Kapp, "Family and Character Change in Buffalo Creek," both presented at the Amer. Psychiatric Assn. meetings, Anaheim, Calif., in May 1975, at a symposium, "Disaster at Buffalo Creek: Studies of 160 Families," jointly sponsored with the Amer. Psychoanal. Assn. We worked closely with Erikson and Titchener throughout.

istic feeling that his survival was a matter of luck, perhaps a fluke, and that in the grotesque competition for survival created by such a disaster he would be better off on his own. Involved here also is the shattering in the survivor of the illusion of invulnerability we carry with us in both ordinary and dangerous situations, and a related sense of having been rendered precariously vulnerable to the next threat. Another man said that he stays away from crowds because "I get nervous when I get with a crowd—all that feeling comes back," and added that "If you get around a crowd it seems like somebody will bring up the subject and I just don't like to hear it. I can't keep from crying like a baby."

Terrifying dreams, still recurring regularly 27 months after the disaster, are especially vivid expressions of death anxiety. Two such typical recurrent dreams we encountered were:

"I dream I'm in a car on a pier surrounded by muddy water—or else in a pool of muddy water. I feel like I've got to hold on to the side of the pool. If I do I'm all right. I know that I can't get out. I have to stay in it."

"I've never been to no funerals except the ones right after the flood. . . . In the dream there is a big crowd at the funeral—the whole family is watching. I'm being buried. I'm scared to death. I'm trying to tell them I'm alive but they don't pay no attention. They act like I'm completely dead but I'm trying to holler to them that I'm alive. They cover me up and lower me down, but I can see the dirt on me. I'm panicked and scared. I become violent trying to push my way through the dirt. . . . I think I'll suffocate if I don't fight my way out. I feel like I'm trying to shout that I'm alive."

In both cases the dreamer is threatened by a disaster-related form of death, and must struggle desperately to remain alive. The first dream suggests being locked in a continuous struggle without being able to leave the lethal environment (the muddy pool). The second dream reflects the state of being "as-if dead"—both dead and alive—characteristic of the most severe kinds of survivor experience. Both dreams reflect the survivor's perpetually fearful anticipation. As one man put it, "Sometimes me and my wife don't go to bed at all. . . . It's hard to live under a dread all the time."

That dread, moreover, tends to become a collective family experience in ways that further stimulate fear in each individual—as a father of four children told us in May 1974:

"We all want to leave. . . . Me and my oldest son stayed in the house right after the flood. The boys [now ages 18 and 16] say, 'I can't go to sleep in this bedroom.' My youngest daughter [age 11] won't go upstairs by herself, even in the daytime. She seems afraid. The whole family seems afraid. They get most shook up when a storm comes up. Their nerves are already on edge. It don't take much to get everyone shook up. After a bad storm it's a couple days before they sleep. During the tornado warnings they were all shook up and I wanted to go to the school [on higher ground and the place where survivors congregated after the flood]."

The tornado warnings (of April 1974) he mentions were especially traumatic to Buffalo Creek survivors, intensifying dread and reactivating the entire disaster experience. This phenomenon of reactivation contributes greatly to the survivor's sense of permanent vulnerability. As a Baptist minister explained in May 1974:

"I told you [in a previous interview] people had quieted down a bit. But when they announced all those hurricanes people came to the church and stayed all night. . . . Just let something blow up and they flare up again."

This diffuse, death-related anxiety comes to pervade the Buffalo Creek environment to the point of contagion. As in other overwhelming disasters (such as Hiroshima), outsiders coming in, such a mental health professionals and clergymen, describe experiencing some of the fear and dread described by people exposed to the disaster.

We may sum up this first category by saying that Buffalo Creek survivors remain haunted not just by death but by grotesque and unacceptable forms of death; feel ever vulnerable to these forms of death; and perceive their overall environment—including nature itself—as threatening and lethal rather than life-sustaining.

DEATH GUILT

The second category is that of *death guilt*—the survivor's sense of painful self-condemnation over having lived while others died. Survivors we spoke to 30 months after the disaster were still plagued by the feeling, however irrational,

that they could or should have done something to save close relatives who perished. One of the plaintiffs, who made a series of desperate efforts to save his wife before she went under, has since experienced a mixture of preoccupation with memories of her and his failure to save her, and anger at the coal company because "they killed my wife." Psychologically the two emotions merge, and like other survivors of extreme situations, he inwardly experiences a certain amount of personal responsibility for having "killed her." Also involved is the survivor's characteristic feeling that his life was purchased at the cost of another's—that the other person's death permitted him to live, that had he died the other might have lived instead. These feelings, very widespread in Buffalo Creek, are inseparable from the death-related fears already described and are among the most painful emotions known to humankind.

Death guilt is reflected in the preoccupation of survivors with dead relatives—for example, one plaintiff's constant thoughts about his many dead cousins, and another's brooding over his dead mother, sister, and three brothers. The latter, Mr. T., in addition to his persistent feeling that he should have done something to save them, told us in May 1974 that he would still "sit and study and wonder" because "so much happened at one time," asking himself again and again: "Why didn't the family get out after they were warned?" He would conclude that "You can't ever get that answer . . . as if there's something left out, and maybe it's better that I can't figure it out." Contributing greatly to that sense is his continuous struggle to fend off a sense of guilt and responsibility for those unacceptable deaths.

Death guilt is perhaps most vivid in recurrent dreams. Some of these dreams include the reappearance of dead relatives, either in everyday situations or in uneasy reunions in which it is not clear whether they are or are not actually alive. Much more disturbing, and still frequent after 27 months, were dreams in which death guilt was more direct. The wife of Mr. T. had been unusually close to his dead mother:

"I dreamed we know the dam was going to break. In the dream Mrs. T. had a white dress on. She asked me to follow her out in the yard. She just kept going back into a hole that looked like a mine. I don't know why she wanted me to come with her—she held out her hand, but I was afraid."

The dream suggests the dreamer's sense that she should have shared the disturbing fate—the death—of her mother-in-law.

Still more characteristic were recurrent dreams of actual disaster events or scenes resembling them in depicting grotesque death, as described by a survivor in May 1974:

"I dreamt about the baby I found with half its face torn off, and the truck full of bodies. Sometimes in those dreams you're running, or trying to get hold of someone to help them out of the mud. Just last week I had that dream. I woke up pulling on my wife. After that you just can't go back to sleep. That was about 3:00 A.M. last Friday night. There's nothing you can do at that time of night until 7:00 or so in the morning when you see people out."

In such dreams the survivor experiences an image of ultimate horror—a single image that comes to exemplify his entire disaster experience in the combination of fear, pity, and guilt that it evokes in him. Such images are especially likely to include children or women whose grotesque death one witnessed or failed to prevent—since in most cultures, ours included, those two groups (especially children) are viewed as particularly helpless and vulnerable, as beings whose lives the physically stronger members of society are particularly responsible for maintaining.

One survivor contrasted his capacity to absorb his World War II combat experience with his total inability to deal with residual guilt from the flood disaster, as expressed in an image of ultimate horror involving a mother pleading with him, while herself drowning, to save her baby:

"When I was on the battlefield in World War II I was expecting the worst, and it didn't bother me at all like this. When my buddies got killed I knew I was no part of their getting killed. But when the flood came I didn't have time to help that lady and her baby who cried for help."

He went on to explain that "feelings about not helping people during the war went away after I came home," but those related to the flood had stayed with him for 27 months, both in his waking life and his dreams:

"In my dreams I never get caught in the water. What hurts is the people calling for me to come and help them but I can't do it. The ending of the dreams is always the same—hitting my back on the railroad cars where I hid from the water."

People who have gone through this kind of experience are never quite able to forgive themselves for having survived. Another side of them, however, experiences relief and gratitude that it was *they* who had the good fortune to survive in contrast to the fate of those who died—a universal and all-too-human survivor reaction that in turn intensifies their guilt. Since the emotion is so painful, the sense of guilt may be suppressed and covered over by other emotions or patterns, such as rage or apathy.

But whether or not suppressed, that guilt continues to create in Buffalo Creek survivors a sense of a burden that will not lift. They feel themselves still bound to the dead, living a half-life devoid of pleasure and with limited vitality.

PSYCHIC NUMBING

The third category is that of *psychic numbing*—a diminished capacity for feeling of all kinds—in the form of various manifestations of apathy, withdrawal, depression, and overall constriction in living. Psychic numbing is perhaps the most universal response to the disaster, and the essence of what has been called the “disaster syndrome.” Partly it is an extension of the “stunned” state experienced at the time of the flood. That state was a defense against feeling the full impact of the overwhelming death immersion. The numbing persists at Buffalo Creek because people still need to defend themselves against the kinds of death anxiety and death guilt discussed above. Numbing, then, is an aspect of persistent grief; of the “half-life” defined by loss, guilt, and close at times to an almost literal identification with the dead. As one of the plaintiffs put it: “I feel dead now. I have no energy. I sit down and I feel numb.” Survivors withdrew from groups, from activities of various kinds, from one another. They describe being disinterested in seeing friends or in many cases in doing anything. Even in intimate relationships their capacity for both emotional and physical feeling—including sexual feeling—tends to be greatly diminished. Their withdrawal may be accompanied by a wide variety of psychosomatic symptoms, such as general fatigue, loss of appetite, gastrointestinal difficulties, and aches and pains and dysfunction that can involve just about any organ system. The pattern has been described in other disasters as a breakdown in the ordinary psychosomatic balance or equilibrium, resulting in what used to be called neurasthenia. At Buffalo Creek one can observe a vicious circle of withdrawal and abandonment—as one survivor made clear in an interview in May 1974: “I want to be left alone. Now you don’t care so much about other people; it’s like everything is destroyed. It’s like you’re left alone. That is, his sense of having been abandoned and his tendency to withdraw reinforce one another.

Very common aspects of numbing at Buffalo Creek have been such things as memory lapses, general sluggishness and unresponsiveness, and confusion about details of one’s immediate surroundings and about the passage of time in general. Those lapses, as one survivor makes clear, tend to be specifically associated with the disaster: “I can remember things from 1932 to 1972 better than I can the past two years. This past two years I can’t remember what I do—weeks and months just go by.” Numbing or avoidance of feeling can also be expressed in overreactivity. Thus one woman said of her very troubled husband: “He works all the time. He gets himself overtired. He says, ‘If I just sit down I’d die.’”

Numbing is closely related to the psychological defense of denial, and people said again and again in a variety of ways: “It’s hard to believe that all this happened” or “I still can’t accept that it happened.” Numbing and denial are sustained because of the survivor’s inability to confront or work through the disaster experience. He is thus left psychologically imprisoned in death- and guilt-related conflicts that can neither be dealt with nor eliminated. Feeling stays muted; psychological pain remains silent; and life experience in general is drastically reduced.

In recent years, authorities on disaster have come to recognize that psychic numbing occurs not only in survivors but in observers and evaluators of disaster. Medical and psychological professionals have been known to experience strong tendencies to ward off anxieties of their own around death and guilt aroused by their contact with survivors, which has in turn led them to deny the existence of these emotions and ignore or underestimate the psychological cost of disaster.

COUNTERFEIT NURTURING AND UNFOCUSED RAGE

A fourth category is that of *impaired human relationships*, and consists especially of *conflict over need or nurturing as well as strong suspicion of the counterfeit*. So much of their lives having been so suddenly and totally destroyed, sur-

vivors feel themselves in great need of love and support but at the same time unable to accept as genuine whatever affection or nurturing may be offered to them. While some have been able to help one another, there have also been instances of breakdown of the closest human bonds. One such case is that of two of the plaintiffs, a young married couple. Both remember their relationship prior to the flood as "calm and peaceful and loving." Now, according to the wife, her husband is "touchy about everything. Things with me and him are at a kind of halt, a standstill. . . . Something is always bothering him—it's constant—it never seems to stop." They very rarely have sexual relations or even sleep in the same room. The husband's perception is that life in general, since he lost many relatives in the flood, has consisted of "one aggravation after another." He says that his wife "has no desire for me. She's hateful and doesn't want to turn toward me." Yet each realized that the other was suffering. The wife said of the husband that "He's still grieving—he cries out in his sleep. He still sees pictures of his relatives. He still says he'd like to kill Jim V. [the former manager of the Pittston mining operation at Buffalo Creek] because Jim said the dam wouldn't break." And then she added:

"I still grieve too. It hurts me awful bad that you can't walk down the road and see them [she too was very close to her husband's relatives]. Sometimes I think I see one of them. It hurts when you suddenly realize that they're dead."

And she could conclude: "A big part of my touchiness does seem to be related to my grieving." Both, in other words, were so enmeshed in unrelieved grief reactions—unresolved death anxiety and death guilt—that neither could reach out to or even trust the other. They would go through brief periods of slight improvement in their relationship only to find the post-disaster pattern of mutual estrangement and distrust reasserting itself and still predominating 27 months after the flood.

Survivors have special need for family closeness, but also a particularly strong tendency to grate on one another in a way that intensifies each other's resentment and fear. As one man put it, "My kids seems to be doing all right but when I go to pieces now they go to pieces too."

Over the period since the disaster, the problem of anger and unfocused or unexpressed rage has increased. One woman, talking about the problem, said: "It's like that all over—everybody is angry and touchy." Often the touchiness is expressed toward fellow survivors in the various forms of envy, jealousy, and resentment that have been frequently observed following disasters, and are characteristic of people who feel themselves weakened and victimized. At public meetings or in casual conversations, even seemingly positive suggestions for better help and support are sometimes received with suspicion—either because they are reminders of weakness or because of a tendency among survivors, bound as they are to the dead, to view any sign of energy and vitality on the part of fellow survivors—any strong affirmation of life—as somehow inappropriate or immoral.

But the hostility tends to be very diffuse, and many survivors told us of the frequent experience since the flood of violent impulses toward anyone who irritated them, and of enormous intensification of whatever difficulty they had experienced in the past in controlling their tempers. One of the plaintiffs put the matter characteristically:

"It used to be I could control my temper. Now my temper just goes. I just can't control it. When some little thing happens that seems unfair I get touchy."

And he added a bit later in the interview:

"Since I lost my wife I can't get what I want. Nothing satisfies me." Anger, that is, continues to cover over grief and loss. And another male survivor: "I'm 46 years old. I've never been in jail. But if I could have got to some of those officials I probably would have hurt somebody. . . . I still get angry at times. I get all blurry and it flares up real quick. Before the flood if anything came up it seems like I could sit down and think and work things out." The quotation suggests the difficulty survivors have in finding adequate targets for their anger. Many select the former manager but seem to sense even as they do so that he as an individual is not an adequate target. Nor is it easy to personify an alternative target—as another man makes clear: "I can't say I feel angry at the people who built the dam, because I've never seen one of them. . . . And I've never seen Jim V., the general manager, since the flood." A good deal of anger is directed toward the mine company but it too ends in frustration:

"There's a lot of people that's angry. They just don't care because what they worked on for years was completely destroyed. Then Pittston offers you just a

little for all that. It makes you angrier than hell. To think they could treat old people that way, it makes you want to go out and fight somebody."

This inability to find a satisfying outlet or target tends to lead people either to suppress their anger or express instead their continuous grief—as another survivor explained in May 1974:

"I feel angry at the coal company, but I don't feel like taking it out on someone. When the kids come in late I get upset, but the kids don't cause any trouble. If my wife gets upset she sits and cries. She doesn't get angry."

Some come to recognize, as one woman did, that anger too can be a painful burden:

"I don't like to feel so angry. I don't like to lose control. I don't even like to talk about the road [a new road being built that angers many people]. The anger, a lot of it, is still there."

Later in the interview the same woman added: "Anger, if not vented in the right way, will only hurt yourself. . . . The Church of God has helped me to control my anger. I feel I can cope more. If I let myself get pressured then I get upset." Generally speaking, the fundamentalist religion that most of the survivors have some connection with tends to teach that anger is bad and is not a proper response.

Thirty months after the disaster, survivors are left with diffuse anger they themselves disapprove of, rage they cannot express, and an overall sense that everything (and everyone) is suspect and that life itself has been rendered counterfeit.

INNER FORM: THE STRUGGLE FOR SIGNIFICANCE

The fifth category has to do with the significance or meaning surrounding a disaster, the capacity of survivors to *give their death encounter significant inner form or formulation*. At issue here is the survivor's capacity to find sufficient explanation for his experience so as to be able to resolve the inner conflicts described under the other four categories. Only by coming to some such meaning and significance is he able to find meaning and significance in the rest of his life. In many disasters, survivors are able to find some comfort, or at least resignation, in the deep conviction that what happened was a matter of God's will or of some larger power that no mortal could influence. No such comfort or resignation can be found among the people of Buffalo Creek. Some of them have attempted to understand the experience within a religious context, and in a church service attended by one of us (E. O.), the minister (not a survivor himself) declared almost boastfully that he had predicted the flood as a punishment for sin in the valley. Survivors we interviewed did not express any such concept but could well be unconsciously affected by a related sense that their own evil or sinfulness had something to do with their miserable fate. That feeling would be consistent with one interpretation of their religion and with inner feelings about disaster and illness prevalent not only in Christian societies but in many non-Western cultures as well. Mostly, however, the Buffalo Creek survivors are left without any acceptable or consoling explanation for the disaster. Instead they expressed a bitter awareness that the disaster was man-made and a conviction that God had nothing to do with it. Those feelings have become increasingly intense and unshakeable. Some, for instance, make an angry point about terminology, in bitter response to public statements that God's will was involved—as the following quotations from three different people suggest:

"I call this a disaster, not a flood. This wasn't a natural flood."

"A few individuals in charge of the coal company are responsible for this. God didn't put the dam up there."

"They call it a flood. I call it a dam that Pittston built up there that broke loose. . . . Governor Moore said it was an act of God but God wasn't up on that slate dump with a bulldozer."

Similar feelings were expressed to us by a Freewill Baptist minister: "I believe the dam was made by man, not by God, and it collapsed because it was not made right." The same man, able to observe large numbers of survivors closely, concluded that because of the disaster, "People are much more suspicious of God's justice." That last statement is of considerable importance because it suggests the extent to which people can no longer trust even a deity to put the moral world back in order. Precisely such a sense of the disruption of the moral universe occurs characteristically in the most severe forms of disaster, and is evident in every single survivor I interviewed in Buffalo Creek. That sense of moral inversion—of wrong-doing going unpunished and responsibility unacknowl-

edged while innocent victims undergo pain and suffering—further prevents psychological resolution and leaves people embittered and confused. They remain locked in their death anxiety, survivor guilt, numbing, and impaired human relationships, bound to the disaster itself and to its destructive psychological influences.

TOTALITY OF DISASTER: SPECIAL CHARACTERISTICS OF BUFFALO CREEK

These five categories of course overlap, and together constitute Buffalo Creek's particular version of the "survivor syndrome." No one exposed to the disaster in Buffalo Creek, whatever his or her diagnosis, could escape from significant psychological suffering associated with the patterns and conflicts described above. Indeed, the great majority of people we interviewed showed evidence of most or all of these major patterns and conflicts. This impressive impact of the Buffalo Creek disaster is related to certain characteristics specific to this situation:

(1) The *suddenness* of the Buffalo Creek flood (as opposed to more gradual flooding or other kinds of disaster in which there is significant warning). Survivors were still, 27 months later, preoccupied with the abruptness of the transition from normal existence to the grotesque scenes of the disaster. They relate that suddenness to their inability, even now, to understand or accept what happened. Commenting on both suddenness and intensity, Dwight Harshbarger (1973) of West Virginia University has pointed out that "Unlike other flood disasters, this flood more resembled the destruction of a tornado or earthquake than a flood." He reports estimates of workers in the disaster area that during the first 24 hours after the flood "88% of the 4000 persons displaced by the water exhibited shock and incoherent thinking." Psychiatric authorities have now recognized that the nature of a disaster—"and particularly its suddenness, which gives the ego no time to prepare its defenses"—is a "significant determinant of the post-traumatic states" (Leopold and Dillon, 1963, p. 919). Those findings confirmed an earlier conclusion by Alexandra Adler, who compared survivors of the Coconut Grove fire in Boston in 1942 with a group of patients who had undergone head injuries, that "Terrifying events . . . have a higher incidence of neurosis traceable to the circumstances of the accident than the everyday head injuries" (1945, p. 240). There is no doubt that the Buffalo Creek disaster qualified as such a "terrifying event." The general principle, in Buffalo Creek and elsewhere, is that the suddenness and terror of a disaster intensify both its immediate and long-range human influences.

(2) *The relationship of the disaster to callousness and irresponsibility of other human beings.* Beyond the confusion and bitterness we already noted around the recognition that the disaster was caused by other men, the survivors have, over time, expressed their sense of profound humiliation at the low value that the neglect seemed to place upon their own lives. For they knew that not only was the dam man-made but also it was widely understood (for some time prior to the flood) to be dangerous. Their inevitable conclusion was that they, the residents of Buffalo Creek, were looked upon by the company as less than human. One man told us that when it was suggested to the company before the disaster that they put a pipe through the dam to relieve the water pressure, the company's spokesman said that it would not be a good idea to do so because if they let the water [full of coal waste] out it would "kill the fish in the creek." The miner then looked up with a bitter smile and said, "Hell, I ain't got nothing against taking care of the environment but there wasn't all that many fish in the creek . . . and besides I reckon one human life was worth the whole batch of them."

He was trying to say that the company either was making a hypocritical excuse for not doing what it should have done, or, if sincere, considered the lives of the fish more valuable than those of the human beings in the valley. In either case the survivor's sense of worth and dignity was radically undermined. A related kind of callousness is described by another survivor:

"I think the company is responsible. They'd been warned. They disregarded the danger as the coal companies always have in Appalachia. They should be tried under criminal law. If you and I did something like that we'd be in jail. A friend of mine found a baby dead in the mud on his back porch. His house had been torn down. Island Creek Coal Company that I work for is not one bit better. They would do the same thing if it weren't for the government. They started work back right after the flood. It was hard on the employees. They

had coal trains going down the hollow while they were still picking up bodies. That don't look a bit good. Of course it's their business, and they had a right to do it. But it was a hardship on the men."

This kind of perception confirms the feeling of the people of Buffalo Creek that the company cares only about coal and the dollars it brings and views the miners and their families, living or dead, as expendable. We would stress the relationship of this awareness of human callousness to survivors' specific psychological suffering. This was true in Hiroshima (Lifton, 1968), and an important study by the sociologist E. G. Luchterhand comparing the effects of an "ordinary" tornado, the Irish famine, and the Nazi holocaust came to the conclusion that "as the source of stress shifts from discriminate violence by nature to the discriminate oppression by man, the damage to human personality becomes less remediable" (1971, p. 47). The psychological principle involved, tragic in its effects at Buffalo Creek, is that people who feel their humanity violated and unrecognized by others internalize that diminished sense of themselves in ways that impair their capacity for recovery or even hope.

(3) *The continuing relationship of survivors to the disaster.* We would stress the psychological significance of the fact that the people of Buffalo Creek for the most part still work in the mines of the company whose policies and actions led to the flood, and thereby remain dependent for their livelihood upon the agents of their destruction. That situation has created a combination of bitter resentment and unrelieved dependency—a sense of counterfeit nurturance—which survivors have experienced as demeaning and psychologically painful. Those emotions were intensified by certain actions of the company in getting people to sign agreements for small financial settlements soon after the flood, which many Buffalo Creek people, and outside observers as well, perceived as taking advantage of survivors' numbed, confused, and suggestible post-disaster state. Some thought the company took special advantage of those who were most helpless, such as the elderly. In any case, survivors tended to view their present situation as part of a very old story—as one man in particular made clear:

"At one time the coal companies ruled this part of West Virginia. Then when that ended they took to piling up stuff all over. . . . Before the union they done men awful bad. Then the miners and the workman started to get a decent living out of it. It's like the coal company is bound and determined to take advantage of people one way or the other."

What is of considerable psychological importance (even apart from questions about the accuracy of that perception of the company) is the force of this combination of abuse, resentment, and dependency, a combination that is both specific to the post-disaster period and has roots in the historical past.

The survivors are also affected by the fact that the physical environment has never really been restored or repaired. There are physical reminders of the disaster everywhere. As one man said in May 1974, "Everything in the area brings all this [painful memories of the disaster] back to me." More than that, the extensive strip mining now taking place is perceived by survivors as further destruction of the land on which they live. "They're tearing up everything" is the way that one of the survivors described the situation, while fearing that "I could be next," meaning that he might actually be forced to move in order to make way for the strip mining because "the company's going to do what they want to do or else." So great is the discomfort caused by the dust produced by the process that another of the plaintiffs, in describing her simple desires for herself and her family, said: "All I want is four rooms and a bath and no dust."

People perceived the disaster to have altered the area permanently in ways that impoverished their lives, as another survivor explained:

"The things that I could do, there is nothing to do them with. I'm in debt now—trailers are everywhere, where I leased some land for horses, 90 acres or so up above where Green Valley Trailer Camp was. And it's all account of the flood. I don't hold it against the people in the trailers—they had to have somewhere to live. But you can't raise a garden on that land now. I raised about all the vegetables you could raise. I put all the vegetables in the freezer for the winter. I gave vegetables away to friends. . . . I don't have enough room to grow a garden now."

Others found, even when a plot of earth was available, that these various physical insults to the land had rendered it difficult or impossible to grow things that grew readily before. Overall, there was a sense that the land itself had ceased to be a source of life. Nature could no longer be relied upon to symbolize the experience of renewal, so crucial for victims of all forms of disaster. (Even

in Hiroshima, the appearance of cherry blossoms during the spring following the disaster symbolized to many the possibilities for such renewal and rebirth.) As rural people with unusually strong attachments to the outdoors and to nature in general, Buffalo Creek survivors are uncomfortably sensitive to alterations of the landscape, as one of the plaintiffs makes clear:

"If you were somewhere else and you had some pretty grass and pretty flowers to look at, at least you could feel a little happy. But up there [where he lives] you open the door and there's nothing but a rock pile."

It is felt not only that one's natural surroundings no longer sustain life but that they have been permanently impaired by the disaster. One of the plaintiffs spoke of "snakes coming back now, many more snakes than before the flood, black snakes and rattlers." Many other survivors had similar impressions, and a number have observed that unusual matings between different species of poisonous snakes have been taking place. Whatever the actual impact of the flood on the ecology of snakes in the area, the combination of their real dangerousness and their traditional (Biblical) symbolization of evil contributes to survivors' sense that the disaster turned nature against them so that the very land that nurtured them in the past is no more than a "disaster area" now. "Before, when I lived there it seemed like home to me, and warm. And now I don't even feel like I was born and raised there. It's still a disaster area to me," is the way that one of the plaintiffs put it.

(4) *The isolation of the area and community.* The Buffalo Creek community has long been rather isolated geographically, and inbred, strongly attached to its immediate land and surroundings, and placing enormous significance on home, family, and kin. Hence, after the disaster, it had only very limited connections with outside groups, very limited sources of outside support, and few possibilities for involvement of a life-enhancing nature that could help the survivors move beyond the disaster itself. This isolation looms very large in the widespread conflict among survivors over whether to remain in Buffalo Creek or to leave. Many express a strong desire to get away from the area and from its ever-present reminders of the disaster. But even those with the strongest desire to leave are likely to experience strong doubts about doing so. A typical statement was:

"We all want to leave. My wife don't have the heart to do nothing. I think I would like to get out of the valley . . . so the kids can go to school [in another place]. It's hard to pull up and move out when things are so hard."

Few have any other place to go and most are fearful about possible alternatives. As one very troubled survivor put it, "I have to give up what I've got here without knowing that what I was getting would be better." Or, as in the case of another, they convey partial recognition that their conflicts have been so internalized that moving cannot help: "Some people I know have left the valley, but they're not satisfied." The combination of lack of outside connections and severe economic limitations is likely to result, even for those who express the strongest desire to get away, in little more than a utopian dream without foundation in their lives:

"It seems like some day we'll find a little hollow with hills on both sides and we'd build a little house and we'd be all right."

But there are powerful emotions that hold disaster survivors to the place where they have suffered. These include the complex of psychological ties to people and place that we call "roots," but also the impulse to remain close to the dead. Thus, the survivor quoted above who spoke of wanting to leave but finding it difficult "when things are so hard," added later in the interview, with considerable anxiety: "If I move out of the valley I'm not running from nothing. I hope I'm moving *toward* something." He seemed to fear that he *was* running from something, broadly speaking from the horror of the experience, always epitomized for survivors by their images of the dead. To leave the dead can be still another source of guilt and fear.

The nature of the isolation of the people of Buffalo Creek, then, is such that they are trapped in the place of their suffering midst evidence and reminders of the disaster, held by ties to the living, the dead, and the land in ways that provide no solace.

(5) *Totality of communal destruction.* The Buffalo Creek disaster was unique in its combination of suddenness, destructive power within a limited circumscribed area, and resulting breakdown of community structure. Harshbarger has stated the matter well in comparing Buffalo Creek with other disasters and explaining his use of the term "*total loss disaster*":

"I . . . feel that the Buffalo Creek disaster was, while smaller in the value of property lost, a more intense disaster than the later floods of hurricane Agnes,

or other large disasters. It takes a considerable amount of searching to find this combination of *total loss*, i.e., of lives, properties, and the basic structure and social fabric of communities themselves. The San Francisco earthquake and the Chicago fire are reminiscent of larger, but comparable, *total loss* disaster. While there may be more recent examples, none come to mind (Rapid City [South Dakota, where a large flood took place], while comparable in some ways, retained its basic community structure; Buffalo Creek did not). [Harshbarger, 1972, p. 10]

Important factors in creating this totality of impact were the suddenness described earlier, the geography (narrowness of the hollow), and the demography (closely-bunched community) of the area. As Harshbarger also states, "Virtually no one who lives in the Valley was untouched by the disaster" (1973, p. 8). And a survivor puts the matter still more simply: "This thing destroyed and hurt just about everybody in this hollow."

Also contributing to the destruction of the community were certain policies of federal and state relief agencies, notably the first-come-first-served basis for assigning people to the trailers in the mobile home parks rather than placement according to prior communal patterns; and the high population density of the new trailer parks, which resulted in a further sense of dislocation and an unrelieved feeling of temporariness. At the same time people live close enough to their former homes and landmarks to be reminded, frequently and painfully, of what they have lost. Survivors lack the human structures we all require to maintain orderly rhythms and consistent values in our lives. Since they still live more or less in their pre-disaster environment, it is as if a vast, destructive force decimated the elements of community, totally removing some and shaking up all the others so that they now exist in distorted and incoherent relationship to each other. On the basis of many psychiatric, psychological, and sociological studies (including those of Hinkle and Wolff, Cassel, Lindemann, Parkes, and Selye), there can be no doubt that this communal breakdown results in severe stress and contributes greatly to a wide variety of medical and psychiatric illnesses and disorders.

The totality of the Buffalo Creek disaster, then, encompasses this communal breakdown as well as the survivor conflicts described earlier. Both in fact merge in a final common pathway of individual suffering.

Throughout this discussion we have made an overall assumption, now well established by extensive observations, that every disaster shares certain common patterns with all other disasters; but that each disaster, in its overall combination of characteristics, becomes unique. Thus, one can find various combinations of the five characteristics listed above—suddenness, human callousness in causation, continuing relationship of survivors to the disaster, isolation of the community, and totality of destruction—in a number of other disasters. But the occurrence of *all* of them in a single disaster is highly unusual, and helps us understand the extensive human impact of the Buffalo Creek flood.

PATTERNS OF DESPAIR

The consistent psychological pattern in Buffalo Creek has been a sequence beyond protest or hope, coalescing into a lasting despair. Although philosophers have long emphasized the significance of despair, psychiatrists and psychoanalysts have also recently come to emphasize its clinical importance and the debilitating nature of its combination of chronic depression, unconnectedness, and hopelessness. Erikson, for instance, speaks of despair as the "lack or loss of . . . ego integration," and emphasizes its relationship to fear of death, and to "the feeling that . . . time is now short, too short for the attempt to start another life" (1963, p. 269). Despair has a close relationship to an impaired sense of connectedness and of continuity beyond the self, and to an inability to find meaning in relationship to one's past and imagined future (Lifton, 1973a). In Buffalo Creek we found despair to be especially widespread and to include a chronic form of depression and a sense that things would never change—one would never get over the disaster. As the minister-survivor quoted earlier put it, People seem to be afraid that they are not going to recover, that they are going to be crazy forever." Survivors themselves come to be impressed by the length of time their symptoms have persisted, as one man made clear: "I feel like these fears should have left me after 27 months—there's hardly any illness that lingers on this long. The passing of time since the flood doesn't seem to help." He sees his life as prematurely over, precisely confirming the observation by Erikson quoted above:

"I'm 52 years old now. My life is just about lived out now. I don't know what I could do now to begin a new life."

Another man expressed similar sentiments: "It's been two years since this happened. You'd think I'd be able to talk about it without crying." Still another man said: "I don't think I'll ever get back to where I was. I don't think that's possible." And one of the plaintiffs summed matters up for herself and others: "There ain't nobody who's going to get over that loss."

People contrast the relatively hopeful movement of life existing prior to the disaster with the hopeless stagnation after it—as expressed here by an incapacitated miner:

"It's a split decision. There's the life you lived before and the life you live after. Before the disaster it seemed like you got up and you looked forward; there was something I was going ahead to—the garden, the horses, the job. The garden is gone; there are trailers where the horses were; there's no job left."

Also contributing to despair is the burden of anger and bitterness mentioned earlier, which eventually takes the form of a sense of being overwhelmed by the negative and destructive aspects of all human beings. One survivor, in her associations to a dream about a trailer, talked about "the feeling of evil in the dream—it's like people are mean—I feel like I've been disillusioned with the government and everything else. . . . I never felt before that people had anything against me—but now I have to fight myself to keep from feeling that."

Another survivor expressed his despair still more generally: "You get the feeling. What the hell's the use of trying to do anything? It's like you really don't have any freedom—nobody don't pay any attention to you. . . . The little man is just stepped on and walked on." One is again reminded of the general principle mentioned earlier that the more a survivor of a disaster perceives the experience to reflect human callousness (rather than an act of nature or God), the more severe and long-lasting are the psychological effects.

This despair exists within a survivor bind—wanting very much to be able to dismiss the entire disaster from their minds and knowing that they are unable to do so. As one man put it, "You can keep the things down in your mind but not out." And he went on to say: "I feel the least I can talk about this the better off I am, and just let this be forgotten." Others at the same time (May 1974) expressed similar emotions. Nonetheless, all were extremely aware of the ways in which the disaster was still working on their minds—through nightmares, depression, fears, and the whole gamut of symptoms we have discussed. One could say that the overall solidity of this Appalachian subculture contributed to their sense that they simply had to carry on and not dwell on past horrors—just as their religion taught them that nurturing too much resentment was "un-Christian." The difficulty has been that the suppression of feeling has never been more than partially successful (because of the particularly malignant features of the Buffalo Creek disaster), and genuine healing has not taken place. The slightest symbolic reminder of the disaster propels the whole constellation of its images and emotions into the center of people's awareness. For as Leopold and Dillon have pointed out, "rather than time being a healer, psychological damage incurred in life-threatening trauma, if untreated, tends to grow worse with time" (Italics ours; Leopold and Dillon, 1963; 1960, p. 385; 1961, p. 86; Leopold, 1962). That observation is consistent with a statement by J. S. Tyhurst that the posttraumatic period of a severe disaster lasts "for the remainder of the person's life, and includes the period of rehabilitation" (1950, p. 766).

Indeed, psychiatrists throughout the world have come to recognize post-traumatic neurosis as a condition that can take the most serious and incapacitating forms. Kardiner states that "Traumatic neurosis is a disease very closely related to schizophrenia [generally considered the most malignant of all psychiatric syndromes], both from the point of view of central dynamics and from the ultimate withdrawal from the world which is set in motion. The deteriorations undergone in both conditions have a striking resemblance to each other" (1959, p. 256). Grauer, writing from Canada, states similarly that "in reactions due to extreme environmental stress we are dealing with a condition akin to psychosis or a borderline [psychotic] state" (1969, p. 621). Parkes and Bowlby in England, and many others making use of their work, have presented convincing evidence that various kinds of experiences of grief, separation, and loss are causative factors in a wide variety of mental and physical illnesses (Parkes, 1972; Bowlby, 1969, 1973). Lacey draws upon that work in his Aberfan research on children and concludes that, in view of the evidence that "many psychiatric problems of adult life appear to be connected with childhood bereavement . . . it seems very likely that many of the Aberfan children may

experience psychiatric problems in later life" (1972, p. 259). Child psychiatrists examining children in Buffalo Creek have had similar impressions, and have noted that young children are particularly susceptible to the despair and other symptom manifestations of their parents.

We should hardly be surprised at the finding of Bennet that for survivors of the Bristol floods of 1968 (in England), "in all aspects studied the health of the flooded people was worse during the twelve months after the floods than the health of the not flooded; and for the older people there was an increased likelihood of dying within twelve months" (1970, p. 455).

There is, in fact, mounting evidence that the effects of disaster can extend over generations, and that adverse effects of significant proportion can occur in children of survivors, even when the children are born some years after a particular disaster. That has been true of children of concentration camp survivors, as Rakoff and his associates (among others) have demonstrated, because "there is not only a sick member, but the family itself is a collection of severely disturbed and traumatized individuals" (1966, p. 24). There was evidence of a similar phenomenon in Hiroshima, and while one cannot as yet speak of future generations at Buffalo Creek one can certainly observe many families to be "a collection of severely disturbed and traumatized individuals," who could well transmit various disaster-related conflicts to subsequent generations.

Still, many in Buffalo Creek continue to struggle to overcome their despair. One woman put it simply (in May 1974): "I just want to start living again." And a number of survivors expressed related aspirations toward restored vitality and renewal—whether through moving away from Buffalo Creek, adopting a child, being helped by family members, or in a few cases through medical, psychiatric, or psychological assistance. But many of the survivors, because of their limited educational and social background and equally limited financial resources, lack the capacity to take any significant steps toward renewal. Moreover, there are very limited community and professional facilities in the Buffalo Creek area. Ideally, survivors should have extensive community rebuilding in which they could have an active voice.

Survivors' overall psychological health could also be somewhat improved by any outcome in the situation which recognized their suffering, recognized also the responsibility of those whose actions or inaction caused the disaster, gave people who wished to leave the opportunity to do so, gave those who wished to rebuild on their land the opportunity to do so, and in a general sense conveyed to survivors the sense that at least a step had been taken to put the moral world back in order. Also of great psychological importance would be the capacity of people to embark upon a collective "survivor mission," consisting of actions or policies that might provide something of a sense of meaning and "survivor wisdom" from a situation that was otherwise totally destructive. Survivors of Hiroshima, for instance, have been able to benefit somewhat from the sense that conveying the horrors of their experience to the outside world could enable man to learn something about the effects of nuclear weapons and possibly avoid using them again. And at an individual level, parents whose children die of leukemia can derive solace from a "survivor mission" of energetically supporting scientific research that might prevent such tragedies in the future. Buffalo Creek survivors could, in a parallel way, derive some benefit from contributing to policies and programs that would insure greater safety and protection for mining areas and miners and prevent such disasters from occurring again.

The range of variations of the flood's effects upon survivors is difficult to estimate precisely. We can say that it brought about an extraordinary number of psychiatric disturbances, and that even those in the very small minority without formal psychiatric diagnoses, despite exposure to the disaster, tended to experience significant degrees of psychological suffering and conflict. The range of variation had to do with differing individual flood experiences and also with available postflood resources, both in terms of psychic resilience and material and social support. Without denying the existence of significant variation in psychological vulnerability, we have been far more impressed (as have other observers) by the degree to which the massive character of the trauma subsumed individual differences and produced strikingly consistent forms of impairment. We have also been impressed by the persistence of these expressions of psychological impairment, which in many cases increased rather than diminished over time.

BUFFALO CREEK AND THE WORLD.

Our observations were all too consistent with a body of recent experience with "massive psychic trauma" of war, revolution, concentration camps, and severe

disasters (Lifton, 1961, 1968, 1970, 1973b; Krystal, 1968; and Grosser et al., 1964)—psychiatrists have regularly observed that psychological impairment can result in virtually anyone, independently of estimates of predisposition. These observations have led a number of investigators to examine closely the nature and impact of massive trauma. Kardiner, for instance, beginning with observations on war, generalizes to explain that "The traumatic event breaks up . . . [the] balance between the ego and the environment by overwhelming the coping devices which the ego has at its disposal. The anxiety is overwhelming, and the ego shrinkage can be so complete that death can ensue. The entire adaptive equipment is thus disintegrated" (1959, p. 252). These conclusions agree with many observations made in relationship to both world wars, the Korean War, and more recently the Vietnam War (Van Putten and Emory, 1973; and Lifton, 1973b). Hence the insistence of researchers working in these areas on such terms as "traumatic neurosis," "posttraumatic neurosis," or "the traumatic syndrome." Observations on those surviving Nazi concentration camps, and Lifton's work on survivors of Hiroshima (1968) have strongly confirmed the hypothesis that massive psychic trauma—that is, extreme stress, involving life-and-death situations, undergone by large numbers of people—always takes precedence over issues of predisposition. Hence Koranyi rightly observes that, under such conditions, "pre-existing pathology [predisposition] appeared to be obliterated in the final outcome and become buried under the unvaried likeness and monotony of the survivor syndrome" (1969, p. 172).

Putting that observation in simpler words, if the stress is great enough it can produce strikingly similar psychological disturbances in virtually everyone exposed to it. For as another psychoanalytic observer put it, "One can say that the regenerative powers of the ego are not limitless, that the human spirit can be broken beyond repair . . ." (Rappaport, 1968, p. 730). And Hocking, an Australian, has reviewed a number of situations of extreme stress and concluded that "There was no correlation between the symptoms of the survivors and the pre-existing personality or any other factor in the patients' earlier life" (1970, p. 544), therefore suggesting that "when the duration and degree of stress are severe, pre-existing personality characteristics do little more than determine how long an individual can tolerate the situation before the onset of neurotic symptoms" (p. 542). Brüll makes a general statement very relevant to the Buffalo Creek situation: "The conception of trauma really conveys that time which has flowed on without meaning assumes a particular meaning in the sense of burden, pain, disappointment, injury, anxiety, fear, challenge" (1967-70, p. 97). And in a more immediate way, with specific reference toward disaster, Leopold and Dillon emphasize the importance of giving "cognizance to the role of the accident itself in producing a discrete illness, which in all likelihood, would not have occurred had there been no accident" (1963, p. 920). All of these observations have been amply confirmed in Buffalo Creek.

The categories of survivor response within which we have here described the Buffalo Creek experience derive from a more general depth-psychological perspective or paradigm which emphasizes symbolization (rather than instinctual expression) as the essence of human mentation (Lifton, 1973a, 1976, 1976 in press, 1968, 1973b; Lifton and Olson, 1974). Impairments to the process of symbolization result in various forms of numbing—decreased capacity to feel and to give form to experience. Beyond its centrality for the survivor syndrome, numbing is an overall manifestation of psychic impairment, and provides a broad context for examining specific forms of psychopathology.

The most fundamental symbolizations, those from which what we call motivation essentially derives, have to do with images and inner forms around life, being alive, and maintenance of life continuity. These symbolizations mediate between the immediate involvements of the self in day-to-day activity and the more ultimate expressions of the self's participation in ongoing collective life—its ties to continuing human community, to nature, and to intense forms of experience of self-renewal. This experiential dialectic between immediate-proximate involvements on the one hand, and ultimate-immortalizing continuity on the other, is radically interrupted by the experience (and in some degree the anticipation) of disaster. Overwhelming moment-to-moment conflict and debilitating loss of faith in human continuity combine and reinforce one another to produce the loss of vitality, the depression, and the despair of human beings no longer able to give inner form to their lives.

The Buffalo Creek disaster had a profound effect on all symbolization of life-continuity, and the persistence of resulting psychic numbing had to do with the collective inability to overcome imagery of disintegration, separation, and stasis,

or to achieve any new sense of purpose that might reactivate imagery of integrity, connection, and movement. One sees with great clarity in Buffalo Creek the close relationship between communal viability and individual psychological process; and one becomes witness there to the anguish of people struggling to begin again, but without adequate grounding in symbolizations that might sustain hope. In all of these ways, Buffalo Creek epitomizes the tenuousness of so much of contemporary existence—our combination of survival of old and anticipation of new holocaust, and our struggles, equally inadequate, to confront that death-dominated precariousness as a source of new vitality and of transformation.

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