

BOOK REVIEWS

Gerald M. Stern. *The Buffalo Creek Disaster*. New York: Vintage Books, 1977, 308 pp., \$ 2.45 (paperback edition).

Gerald M. Stern's book, *The Buffalo Creek Disaster*, is not, primarily, a book about a disaster. Rather, it is a book about a class action lawsuit arising out of a disaster. Stern is a lawyer who, not having been involved in disaster studies per se, saw no need to incorporate into his story statistical details or observations of institutional and sociological patterning. Instead, Stern does graphically and grippingly present illustrative experiences suffered by various of his clients as a consequence of the February 26, 1972 failure of the earthen dam constructed in Logan County, West Virginia, to filter the waste water from the coal cleaning plant of the Buffalo Mining Company.

Stern's career and his book provide refreshing evidence that idealism and a sense of social justice do exist within the legal profession and that the judicial process can responsively serve society. He makes it clear, however, that the economic and attitudinal support which he received from the prestigious law firm with which he was associated was an essential prerequisite to Stern's being able to effectively respond to his motivations. To Stern, as a lawyer, the important thrust of his story is that the legal system was adequate to serve the ends of justice in spite of some precarious passages en route. To the student of social problems inherent in catastrophic deprivations, Stern's book is important reading primarily because it does relate in considerable detail the trek through the risk-infested legal jungle, demonstrating how precarious and indistinct is the trail to "justice." The tale is one which depends, for its major significance, on the

reader's understanding the many legal technicalities and the fine points of distinction affecting choices among alternative strategies and tactics, and the difficulties of implementing successfully the decisions made. Stern does a superb job of explaining not only the technicalities but their significance in a style both understandable and interesting to the lay reader.

This lawsuit was one which never went to trial. Thus it cannot provide the reader with a romanticized, unrealistic "Perry Mason" tale of a last minute brilliant save by irrepressible counsel. Nor will it serve up, in the classic spell-binding style of notable greats such as Melvin Belli, Percy Forman, and F. Lee Bailey, a matrix of fascinating tactics and persuasive talents by which jury determinations are shaped for the benefit of precariously-situated defendants. What it does do is to take the reader backstage to where most of the critical decision-making takes place in the process that leads up to the trial which in most instances, at least on the civil side, will never occur. It will expose the reader to the back-breaking drudgery, the tenaciously-pursued details, the almost myriad procedural traps that must be skirted in order to generate the leverage that only a credible potential for putting on a solid case in the courtroom can exercise on the pre-trial settlement proclivities of one's legal adversaries. The mark of Stern's genius is that he can impart the sense of excitement as each critical decision-point is approached, maintain an awareness of the continuing arduous task ahead, and give the reader a sense of one-ness with the author as he works up his case. Stern does a good job of making the reader aware that it is not all that easy even at the fundamental levels for a good lawyer to know how

to proceed. He recounts: "Many legal questions had to be asked and answered before we could file the complaint which would signal the beginning of this lawsuit. The most obvious question was, "Whom do we sue? ..." As he so aptly demonstrates, that crucial question presented, throughout, one of the major problems with which he had to cope. Another was whether to file in state or federal court, and once that was decided, how to get the case before the judge who, by his demonstrated reasoning in other written opinions, should in theory be most receptive to the legal reasoning critical to a favorable resolution of the plaintiff's case. Stern is able to ease the reader out onto the same mental balancing board that he must perform on in making the crucial decisions upon which his lawsuit ultimately turns, and to share with the reader the tension, if not the agony, that often pervades such decision processes.

It should be interesting to the social scientist and the social psychologist, among others, to observe how much and in what ways the lawyer in Stern's situation must sense and apply some of the tools of their professional understanding in order to build a solid and credible legal case for a client. It should be thought-provoking to all who study disasters and who believe that a meaningful distinction can be maintained between "Acts of God" and "man-made" disasters to note the reaction provoked by the early post-disaster categorization by the Pittston Company, sole stockholder of the Buffalo Mining Company, that the event at Buffalo Creek was an "Act of God" because it was an aftermath of the heavy rains that had occurred. Stern quotes West Virginia's state climatologist: "Act of God is a legal term." Stern adds the suggestive observation: "There are other legal terms – like 'involuntary manslaughter because of stupidity' and 'criminal negligence.'" In the Buffalo Creek catastrophe the "Act of God" defense was never seriously pushed by the defendant. But it should not be ignored that it is the catastrophically depriva-

tional consequences upon man and his works, and not the "natural events" themselves, which constitute disaster. To the extent that man can and should foresee adverse consequences of both private and public decision processes allocating and regulating land-use, it is primarily a matter of how the social mores of the period and the jurisdiction limit or assess "fault" which determines whether man or God will be held accountable. The long term trends of our common-law system and our legislative and judicial responses to the needs of an increasingly complicated and inter-related society clearly point to accountability as the preferable alternative to letting "disaster losses" lie where they fall. The more recent trend is to institutionalize across a broad segment of society the ultimate economic costs of such events, though strong voices are now heard arguing for shifting such costs to the private sector and away from the public fisc. That question is inherent in Stern's book only because he raises the prospect of the "Act of God" defense. But while he tracks the efforts which ultimately produced what must within legal standards be termed a successful representation by plaintiffs' counsel, and a reasonable settlement by defendant, one may be left with the nagging question of whether the result was as satisfying to the needs of society as it was to plaintiffs' attorneys. The West Virginia statutory limit of \$ 10,000 for wrongful death actions was circumvented and exceeded to a degree. But, given a more munificent legislative standard, the question remains whether it can ever be either adequate or dependable. The brief illustrations of the socially barren but technically functional (even if belated) housing efforts by the federal disaster relief process too typically represent the many deficiencies inherent therein. If catastrophic risks are too expensive for the federal government to continue to relieve, one wonders how the various proposals recently advanced for private insurance protection can be afforded. If, as it now seems, our world is too complex to allow the

concept that “I am my brother’s keeper” to function dependably and consistently, perhaps Stern has illustrated at least that the legal process holds as much promise for effective response as any within the ever-changing sector wherein we recognize accountability, while demonstrating the weaknesses and pitfalls which must condition reliance on that process.

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