

The Buffalo Creek Disaster

Book Review

[AARON O'NEILL]

Buffalo Creek was a quiet mining valley in West Virginia. The people worked hard for everything they had, and because of their constant interaction in the mines, they had become a very tight knit community. However, truth be told, despite their hard work they were not really in control of their valley. Questionable dumping techniques implemented by the Pittston Corporation placed their valley on the constant verge of disaster. The only protection the Buffalo Creek Valley had from a flooding disaster was a huge refuse pile that could fail at any moment. Ultimately it did prove as ineffective as feared and its failure caused not only one of the deadliest disasters in West Virginia history but also resulted in a historical tort (lawsuit dealing with injury) case. *The Buffalo Creek Disaster*¹ is a story of an unfortunate accident that occurred on February 26, 1972 in Buffalo Creek Valley, WV, as a result of the collapse of a coal company's waste refuse pile. This book, written by Gerald Stern, the lead prosecuting attorney in the major lawsuit that resulted from this disaster, does a fantastic job of making the reader understand the challenges of working with 600 plaintiffs to sue the most influential industry in West Virginia. The unique circumstances of this case evoked from me a feeling of empathy, in addition to creating a strong sense of appreciation for the significance of this case.

In my experience of studying tort law, when there is a potential option to conduct the case in federal court, the plaintiff will prefer to stay in state court in order to seek support from people of the community who may find themselves on the jury. However, Stern decided this was not in his best interest. Given the controlling economic influence of the Buffalo Mining Company in West Virginia, specifically the Buffalo Creek area, Stern felt that there was potential for jurors to be associated with the Buffalo Mining Company in some capacity and thus unsympathetic to the plaintiffs for fear that an incorrect (from the company's perspective) verdict could cost them

1 Gerald M. Stern, *The Buffalo Creek Disaster* (New York: Random House, 1976).

their jobs.

In addition to contradicting the normal preference of state court, the case possessed other characteristics that make it one of great significance in legal history. Stern was able to pierce the corporate veil of the Buffalo Mining Company, meaning he was able to sue the company's majority stockholder, Pittston, directly and thus enter federal court.² This is an extreme rarity as the law usually protects a company's stockholders from direct lawsuits. However, in this case, Stern was able to show that the Pittston employees were directly involved in managing the Buffalo Creek dam. Also, in his complaint, Stern filed a claim for punitive damages on the basis of nonphysical trauma he called "psychic impairment." Today we know this as post-traumatic stress disorder (PTSD) and it is commonly claimed in lawsuits. However, at this time in the early 1970s PTSD had never been cited in a lawsuit. This phenomenon by itself was enough to make this case one of substantial weight.

The claim of psychic impairment played a significant role in the legal proceedings besides simply making this the first case to cite the claim. It allowed for a demand of considerable punitive damages by the plaintiffs. West Virginia law only allowed for minimal personal recovery damages, capping them at \$120,000. Citing psychic impairment allowed Stern to file suit against Pittston for \$64 million. As you can imagine this significantly boosted the notoriety of the case, the potential reparations that the survivors would be able to collect, and the influence the case would have on regulation within the mining industry.

As a pre-law student, stories like this one present me with a moral issue. On the one hand it is easy to become wrapped up in the numbers and the significance of the case strictly from a legal standpoint. As someone who studies cases frequently, I often immediately put on my legal cap and ask questions such as: How can the survivors claim punitive damages? How can they sue Pittston instead of the Buffalo Mining Company? In doing that, I feel as though I lose some of the real meaning of this case as well as my empathy for the people that were involved in this tragic event. I lose sight of the struggle that the victims faced. Their town was completely destroyed; they lost their houses, their jobs, and loved ones all without any sort of warning. Even so, this information gets pushed to the back and I potentially try to discredit them or argue against their request for compensation. At the end of the day isn't this case about the survivors being compensated as "fairly" as possible by a company who, through an act of negligence, impacted their lives in an unfixable way? In the text, Stern discusses his own battle with this dilemma saying that, "I knew there were some major disadvantages to the plaintiffs in having to go

² Pittston's headquarters are in New York, thus making this case between parties from different states and allowing the case to enter federal court.

through a lengthy and harrowing trial. Still, I couldn't help dreaming about the personal publicity I'd get as the lead counsel in a trial which would be covered daily by the national news media."³ As an individual strongly ingrained in a certain discipline, I believe it is easy to view a situation from the perspective you have been taught (legal view, historical view, etc.), and this lends itself to losing sight of the humanity of a situation. The fact that Mr. Stern explained to me, the reader, how he found himself succumbing to this view is fascinating. Through a majority of the book, given the way he describes the survivors and their stories, one gets a sense that he does have the utmost respect for what these victims have gone through. The fact that he reveals his own personal, and potentially politically incorrect, feelings toward the case demonstrates to me that anyone is susceptible to this conflict and that it is something I should strive to be aware of in my own academic life.

I've talked about how this case matters from a legal aspect—it established historical precedent and sued for astronomical punitive damages—but as was just discussed, this case may be even more significant to society in general because the “good” people won. This was a victory for humanity. People were compensated, at least in the eyes of the law, for the ineptness of an influential company. We've seen this song and dance many times. The little people are overpowered by companies who act with complete disregard for the well-being of the community. Accusations are dropped, or an insufficient sum is paid to the victim to make the case go away. Here we do not see that. We have the privilege of observing the law functioning as it is supposed to by holding people, or corporations, accountable for their actions.

Fortunately this execution of justice caused minimal additional pain to the survivors and resulted in a favorable outcome. I really appreciate Mr. Stern taking the time to tell this story because I believe it is an important one for people to hear for two reasons: first, it is an emotional and thought-provoking story filled with drama that is simply fascinating to read from an entertainment perspective. Second, this is a tremendously influential case that altered the landscape of how tort cases were argued. It allowed psychic impairment to be considered a damage that could be claimed as the result of the defendant's action, which had never successfully been done before. This book does involve legal strategy and jargon that some people may find unattractive, but it also conveys the struggle the victims faced to obtain what was rightfully theirs. Most importantly, Stern provides the reader with an example of the legal system getting it “right.” Stern's description of how the survivors were able to rebuild their lives based on his ability to shape the legal landscape provides some relief to the moral dilemma he and I shared given the magnitude of this case. This relief

3 Stern, 194.

provides a sense of wholeness and allows the reader to enjoy watching the court get it right. I feel as though this is especially relevant at this time when people constantly hear story after story of the courts getting it wrong. In this way the story transcends its generation and provides lessons to those who are far removed from the time of the event. To me, that is that true mark of an influential book.