



# Earth First!

## Victory in Pepper Spray Torture Trial

by Terri Compost

On April 28, a jury unanimously found the direct application of pepper spray to protesters' eyes with Q-tips to be excessive force in violation of their constitutional rights. One juror said that the jury helped set a precedent that "nonviolent people should not have violence used against them." When asked if Humboldt deputies would resume using pepper spray on nonviolent protesters, Sheriff Gary Philp acknowledged the defeat, telling the Eureka Times-Standard: "We're not going to do a practice that is just going to put us back in court."

The Pepper Spray Trial has ended, with a unanimous verdict declaring that the insertion of pepper spray by Q-tip into the eyes of peaceful protesters is excessive force. As one of The Pepper Spray 8, the plaintiffs in this case, "I am grateful for this positive outcome." It was a long, hard haul. We went through three federal jury trials and appeals to the 9th Circuit and Supreme Courts. In the end, each of us was awarded \$1.00 for violation of our rights. The county and city insurance companies will hopefully compensate our pro bono lawyers for their costs and fees.

This case was an important challenge to a dangerous new practice, invented by the Humboldt County Sheriff's Department in 1997. For many years, the police had been dealing with protests over the logging of old growth redwoods. Typically, the police had used grinders to cut protesters out of lock boxes. But in 1997, they decided to use torture to force us to unlock. In three incidents when



Plaintiffs' lawyer Tony Serra questioning plaintiff Banca, Sheriff swabbing her open eye on police video in background.

By K. Rudin

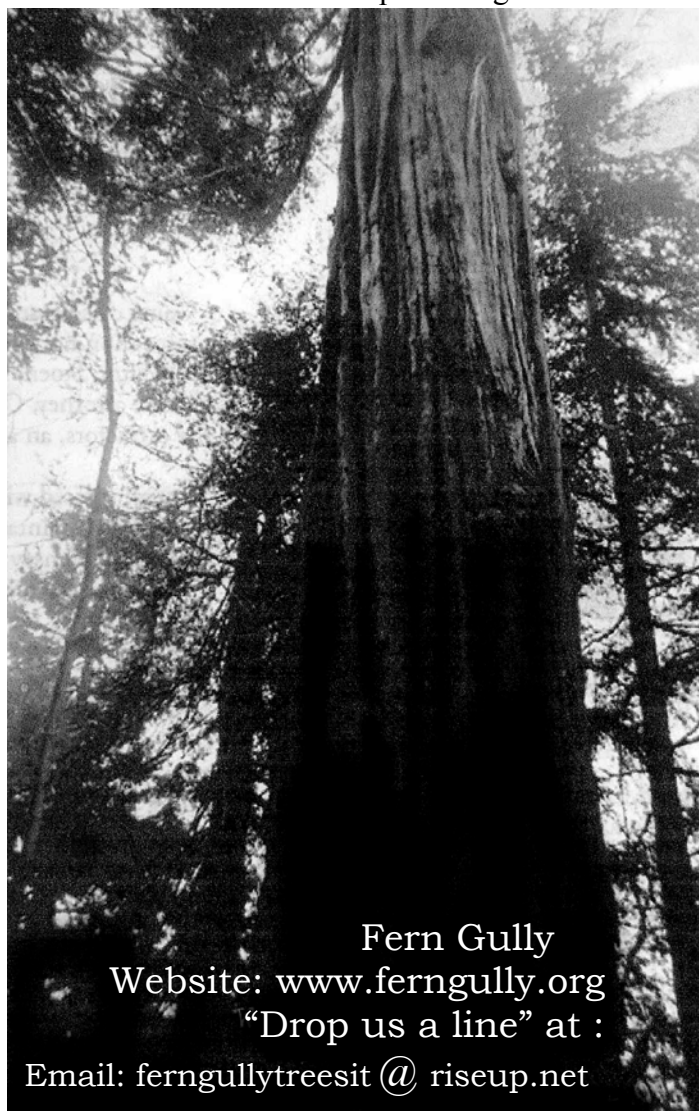
we refused to unlock, the third being my action in the office of then-US Congressman Frank Riggs, the police swabbed pepper spray directly into our eyes with Q-tips. When that wasn't successful, they fired full blasts into our eyes from only three inches away. The police even videotaped themselves doing this, hoping to use the footage for training tapes all over the country.

A line had been crossed. Pepper spray was not being used for self-defense as designed, but in a controlled, non-threatening situation. It was being used to punish protesters, such that they would remain in pain whether or not they complied with the officers. The police even violated the manufacturer's warning not to use closer than three feet away. There are many instances of police violence that are much worse, and most people are not in a position to legally challenge it. We certain advantages, which made

## Fern Gully Tree Sit Protects Freshwater

By Fern Gully Forest Defenders

On New Year's Day 2004, a group of nonviolent activists began the occupation of 1 unit of a 31-acre Timber Harvest Plan in Freshwater, CA. This 3-acre unit, 2/3 of which are scheduled to be clear-cut, was aptly named Fern Gully for the lush, green ground cover and ferns as tall as people. "The Gully" is an integral part of the less than three percent of existing old growth on private land in California today. This fragile ecosystem includes mostly Redwoods, with some Douglas fir and Sitka spruce. We have ten tree sits protecting an area that includes over 20 trees, all tied



Fern Gully

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together for inter-village travel without touching the ground. The entire village sits atop a large, steep ridge with grades "in excess of 80% at times" according to SHN Geological Reconnaissance. These Northeastern facing slopes funnel water straight downhill towards Freshwater Creek and Garfield Elementary School. Anyone who has ever been trapped in their home because of an all too frequent road-flooding event knows: clear-cutting above our streams and creeks lead to silt and sediment problems. Extra silt in our creek beds causes the water level to rise as the carrying capacity diminishes. Because of destructive and unsustainable logging that Freshwater has been declared an impaired watershed under the Clean Water Act.

Part of Fern Gully is designated as "class B" Marbled Murrelet habitat. This means it is currently not used but is prime potential habitat

for the recovery of the species, though not protected. There is a historic Spotted Owl nest in this area, and several historic and one current Osprey nest site all within one mile of the unit.

During the inventory of sediment sites in the Little Freshwater Creek watershed, the Pacific Watershed Association, an independent consultant, identified problem erosion sites. Five debris slides already exist along this road. At some locations, large woody debris is all that is preventing the partially repaired fills from becoming mass movements. These trees are an integral part of this hillside. Their removal will likely cause more destruction to this watershed and flooding of homes.

Our tree sit stops loggers from coming in and cutting the ancient trees on this government approved logging site. We call on the citizens of Freshwater, Humboldt County, and all of humanity for their support. Your interest can help bring about the preservation of these beautiful and important trees. Fern Gully tree sit is the largest contiguous tree sit in US history.

# Assaulted Activist Charged with Felony Assault

In May 2005, there was a three day preliminary hearing in a Humboldt County court room packed with supporters for forest activist Ramsey "Phoenix" Gifford. The hearing culminated with presiding Judge Feeny ruling that there was insufficient evidence to support the felony charge. Ramsey, a life-long resident of Humboldt County, had free-climbed an ancient Redwood in Freshwater during the tree sitter extractions of spring 2003. He climbed up to witness a fellow activist being forcibly removed by Pacific Lumber-hired tree sitter extractors 160 feet up.

The extractors' own video camera tapes of most of the interaction with Ramsey, viewed in the courtroom throughout the hearing, clearly showed Ramsey's attempts to avoid the extractors as well as violent acts perpetrated against Ramsey, who sustains injuries from that time. The real issue before the court was whether the prosecutor, Assistant DA Tim Stoen, had evidence to try Ramsey with a felony assault. However, since the DA's office ironically chose to charge Ramsey with the assault, the question framed to the court was whether Ramsey's mere presence in the tree and attempts to stay free from capture by the extractors was justification for the extractors' dangerous, life-threatening actions – and would therefore deem Ramsey's action as a dangerous and life-threatening. The court's decision on Friday will require Ramsey to defend against a misdemeanor assault charge, but the felony and a trespass charge were dropped.

Ramsey's defense lawyer questioned the head tree sitter extractor, Eric Schatz, about the video head cams. The defense offered Schatz the opportunity to point out the exact moment where the alleged assault by Ramsey occurred, yet Schatz was unable to point out a specific moment on any of the footage that supported such a claim. The prosecution offered conflicting testimony by Eric Schatz and no evidence of assault by the defendant, despite the presence of three cameras, two of which were operated by the extractors themselves.

In closing arguments in a case in which many people feel the prosecution has charged the victim and protected the aggressor, the prosecutor, Tim Stoen, moved to eliminate the strike status of the charge. Defense attorney, Omar Figueroa suggested that the court investigate one of the extractors, an alleged victim, for the use of "sadistic torture" on Ramsey.

Though pleased with the reductions of charged, the pro bono attorney team for Ramsey intends to fight the lesser charge and believe that he will be acquitted at trial. Ramsey appeared relieved but shaken after the three-day hearing. He felt that the prosecution's closing remarks contained unfair characterizations as to his state of mind during the date of the alleged assault. However,



presiding Judge Feeny and the Assistant DA both stated that they believed Ramsey was a good person acting out of moral conviction.

Activists, like Ramsey Gifford, have been participating for years in tree sits, aimed at protecting ancient forests from Maxxam/PL's liquidation logging, the same logging that the DA alleges is fraudulent in a high-profile civil case.

Maxxam/PL has hired men to extract tree sitters through force or intimidation, to facilitate the illegal cutting of these trees. Eric Schatz, one of the extractors now being sued by activists for violent offenses, testified in this case that he has done 47 extractions and that his crew is trained in aerial rescue. Under questioning by the defense, Schatz testified about such training. According to Schatz' testimony, most of the tactics employed by the extractors are not taught or approved of by rescue training standards. The defense attorney asserted that Schatz and crew indeed were not performing "rescues" when forcibly removing climber protesters who are protecting the old-growth.

## Log Trucks Blocked in Front of Eureka Courthouse

In August 2004, a large, nonviolent demonstration for the protection of old growth and an end to Maxxam/PL's destructive logging practices in Humboldt County was held. As a truck carrying large logs approached the intersection in front of the

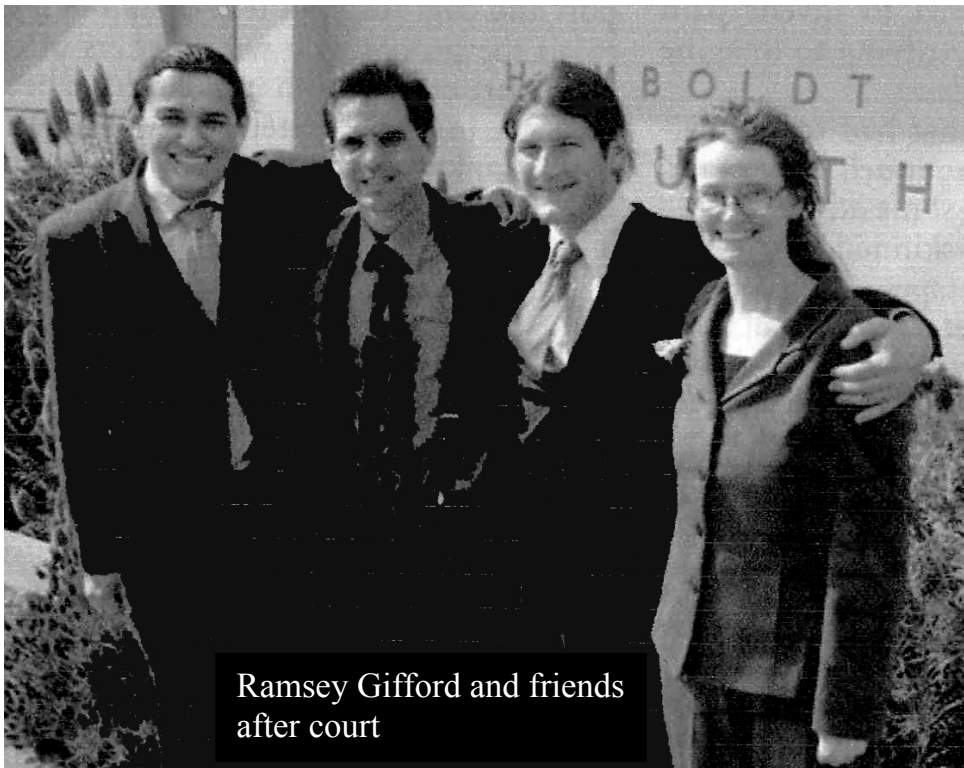
Eureka courthouse, activists carrying banners surged into the street, stopped the vehicle and boarded it. Eureka police and county sheriffs responded some fifteen minutes later, by which time a large crowd had gathered, most expressing loud vocal support for the action.

A fire truck was called to assist in removing two activists from the logs on top of the truck. Three people were arrested in all. No pepper spray or pain compliance holds were used. With the help of the fire department, police officers were able to conduct themselves in a non-violent manner different from the brutal treatment activists have sometimes received from law enforcement.

The two activists who had climbed onto the logs on the back of the truck held a sign proclaiming, "Defend the Forest, Support Forest Defenders". Others surrounded the truck and then stopped a second log truck holding up banners with the messages: "Palco-Cutting Tomorrow's Trees Today" and "Save the Mattole". Traffic in the remaining lane was slowed but allowed to pass.

Several people lay down on the pavement in front of the trucks, the police moved them out of the road, but declined to arrest any of them. Officers also returned a banner used in the blockade to activists after it was ripped from their hands by an angry bystander.

The blockade lasted for an hour and ended when protestors were removed and arrested with cheers of support for the activists coming from the crowd. Three police officers were still on the back of the log truck when it drove off! The log truck was pursued by three police cars who pulled over the bewildered driver allowing the police officers to end their wild ride down Main Street.



Ramsey Gifford and friends after court



Ancient redwood compared to the Statue of Liberty and the Capitol Building in actual scale. The tree is also ten times older!



## Regional Water Quality Control Board Blues

By Sparrow

Eight years ago the residents of Freshwater and Elk River realized that timber harvesting activities upstream of their properties by the Pacific Lumber Company were resulting in greatly increased flooding and property damage. The residents petitioned the Regional Water Quality Control Board (RWQCB) to limit the amount of timber that could be harvested in watersheds such as Freshwater and Elk River that are listed as “impaired”.

The RWQCB requested that the residents and the company enter into mediation. In good faith the residents began the process. After over a year of mediation, the mediation firm recommended that a Scientific Study of the watersheds be conducted in order to determine the cause and possible remedies to the ongoing problems that residents were experiencing. A panel of experts was hired for their expertise in watersheds and watershed restoration. After two years of study the Independent Scientific Panel published their results and recommendations. The report was very clear that the major cause of the damage to the watersheds was the high rate of harvest in the upper reaches of the watersheds in question. The Company to date has failed to follow through on the



### Attention Corporate Timber Executives!

Want to get rid of those pesky Earth First!ers once and for all (and avoid your pending bankruptcies)?

*Try our Seven Simple Solutions:*

1. Maintain and restore biodiversity and ecological processes.
2. Protect all old-growth.
3. Maintain and restore forest structural complexity.
4. Keep the water in the creeks and the soil on the hills.
5. Maintain and restore landscape diversity and connectivity.
6. Do away with herbicides.
7. Create sustainable restoration logging jobs.

duh.

recommendations made by the Independent Scientific Study. On April 5<sup>th</sup>, the Company offered to hire a new, local monitoring group called Stillwater Sciences to come up with recommended remediations for the problems that the residents continue to experience. That Company has a delay policy and in the meantime they keep cutting. In 1987 the Company had 6.5 million board feet of timber inventory. Only ten years later in 1997, the Company had just 3.2 million board feet remaining. Palco’s own data shows that there has been a 500% increase in landslide activity in areas that have been recently harvested.

In early 2004 the RWQCB notified the Pacific Lumber/Maxxam Corporation that they would need to complete a Watershed Wide Waste Discharge Report (WWWDR) by August 2004. The new requirements were necessary because PL’s sediment levels were so off the chart that they exceeded the old regulation’s assessment limits. When the data was not forthcoming by August, the RWQCB notified the Company that they would need to receive the WWDWR by Jan 1<sup>st</sup> 2005 in order for the company’s 2005 Timber Harvest Plans to be approved.

Jan 1<sup>st</sup> 2005 arrived and the promised WWDWR were not completed. At the beginning of January, Pacific Lumber asked the RWQCB for an extension and a waiver from the WWDWR requirement, and were completely stunned when the board refused to grant the waiver. The RWQCB held a public meeting to address the issue of WWDWR. The company packed the Warfonger Building on the waterfront in Eureka with their employees and supporters. After hearing many impassioned pleas from both impacted residents and the company, the board deliberate briefly then released 50% of the company’s Timber Harvest Plans.

In March this process was repeated at a hearing in Santa Rosa. This time the board released an additional 25% as a “consideration” to the company. No environmental considerations were given.

## Hurwitz Stalks the Land

By Naomi Wagner

“Oops! Could those scruffy tree-sitters and redwood huggers, with no expertise in economics, but with common sense and an emotional passion about right and wrong, have been on target all along? They claimed that Maxxam/ Palco’s speed and greed was doing itself in, and devastating any sustainable future for Humboldt County’s forest workers. Seems as if the report from the State Water Resources Control Board researchers is conclusive: Charlie Hurwitz’s siphoning millions off to Texas from constant over-cutting – and not environmental regulations – is the cause of Pacific Lumber’s financial plight. The experts have spoken. And they have endorsed what those “radicals” at Earth First! have been saying for fifteen years.” Jared Rossman, Redway

Jared Carter, chief lawyer and CEO for Maxxam, Pacific Lumber Company, Scotia Pacific, Salmon Creek, and Maxxam Group Inc. (MGI) Corporation sees things differently. When *that* Jared slammed his fist on the table demanding that the company be allowed to cut still more trees in the sediment impaired watersheds of Freshwater and Elk River, he wanted the Regional Water Quality Control Board (RWQCB) meeting to know he meant business: business as usual, or else. Mr. Carter’s claimed that if the Company couldn’t get 100% of their Timber Harvest Plans (THP) released immediately, Palco would go bankrupt, lay off its workers and default on its debt payments. This would leave its creditors in the lurch and could allow the company to renege on its obligations under the 1998 Headwaters Forest Acquisition agreement. If Palco was put into bankruptcy, Carter threatened; Humboldt County’s economy would pay. Meanwhile Maxxam/ Pacific Lumber had missed, perhaps deliberately, every deadline for submitting data so it could be evaluated for the Watershed Wide Waste Discharge (WWWD) permit it needed in order to log.

The Regional Water Board, with three brand new Schwarzenegger appointees sitting on it, went against staff recommendations to accommodate the corporation with an another 25% of the THPs they wanted, on top of the 50% they had received earlier. Still not satisfied, on March 15, 2005 Carter appealed this decision to the State Water Quality Control Board, staking Maxxam/ Palco’s claim to the maximum return on its’ money with a “White Paper”. The White Paper blamed all of Palco’s

**Continued on page 7**

## Pepper Spray from page 1

it possible to succeed in our legal system. We were light-skinned, somewhat educated, able to commit time out of our lives, and we had video documentation of the pepper-spraying. We had lawyers willing to try the case on contingency. Yet even with all these advantages, I knew it would be hard to convince eight average US people to decide that the police did something wrong.

The legal system is, unfortunately, not a healing process. But an injustice occurred that needed to be brought to light. We the plaintiffs offered twice to settle for no money, instead focusing on discontinuing the use of chemical weapons on nonviolent protesters. The county stonewalled, rejected our proposals and continued to waste taxpayer money by defending police brutality. Perhaps this had something to do with the county's lawyer also representing Maxxam/Pacific Lumber in their ongoing SLAPP suit against forest activists. The collusion between government and big business has remained quite clear in Humboldt.

Throughout the litigation struggle, we continued to bring the dialogue back to the real travesty: the looting of Humboldt County's resources by Maxxam/Pacific Lumber Corporation (PL). As we faced off in court, PL continued its destruction, ripping apart forests and families. It is a tragic loss, and most people know it. How can this injustice continue?

I feel joy and relief when I remember that we have won a small part of our struggle. I have such warmth in my heart for all the hard work of all the good people who brought this success. Our legal team, the same team that won the Judi Bari vs. FBI trial, was truly made up of righteous, amazing people who put their soul into this struggle. I thank them all profusely. My co-plaintiffs were also a fine collection of beautiful people, and it was an honor and pleasure to stick it out with them. The support of people who came to the trial and filled the seats day after day really made a big difference, both to the outcome and in the sense of support and community that I felt throughout. Humboldt County was well represented! And thank you to all the people who wrote letters or contributed money and whose taxes paid for this case. At least we still have the jury trial system to fall back on for some justice. Sometimes it even works.

For more information on the trial victory contact [info@nopepperspray.org](mailto:info@nopepperspray.org), check out: [www.nopepperspray.org](http://www.nopepperspray.org) to support the activists.



Judge Illston's federal court room above



Federal Judge Susan Illston above

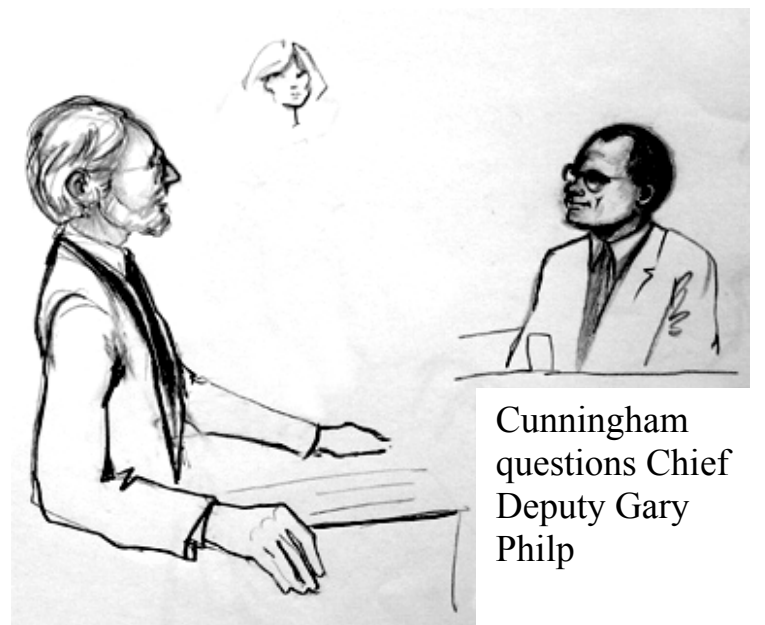
Plaintiff attorney Tony Serra at right



Plaintiff Attorney Dennis Cunningham demonstrates a lockbox to the jury below



All courtroom art by K. Rudin.



Cunningham questions Chief Deputy Gary Philp



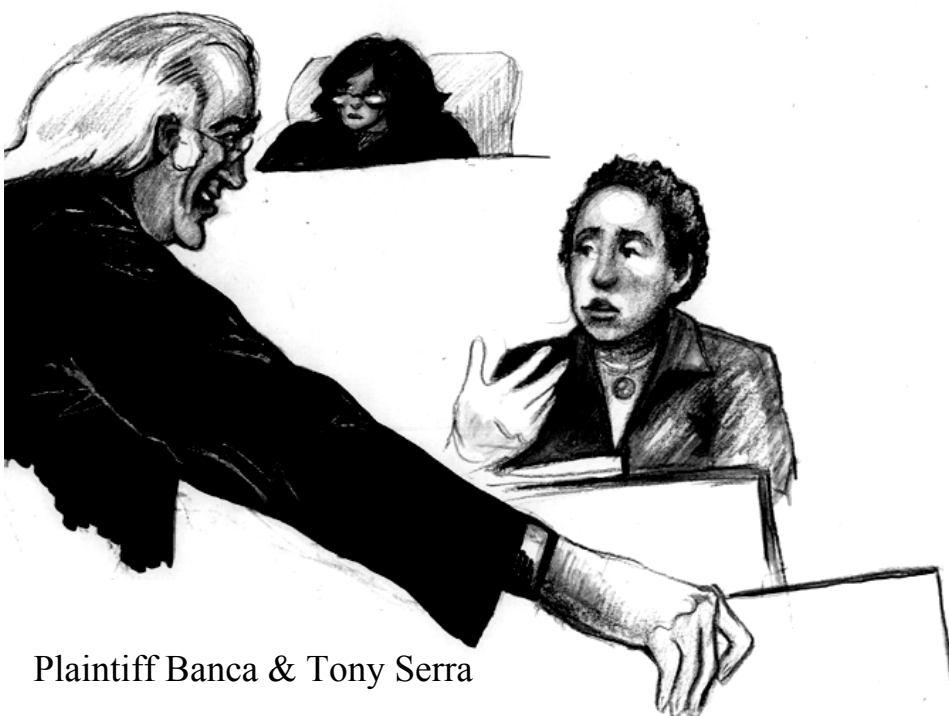
Defense Attorney Nancy Delaney pleads with jurors



Judge watches Plaintiff Attorney Bob Bloom confront Eureka Police Sergeant 'Butch' Manos, the cop who gave the pepperspray order, with a lockbox



Head torturer Deputy Marvin Kirkpatrick with his lawyer, William Bragg, and Judge Susan Illston



Plaintiff Banca & Tony Serra

## SLAPP Update

Two more tree sitters who had been forcibly removed from threatened ancient redwoods in North California have filed lawsuits against Maxxam Corporation, Pacific Lumber, and the men hired to seize them high above the ground. Amy Gershman and Jamie Kohler joined fellow tree sitters Jeny Card, Lindsey Holm, Kristi Sanchez, Scott Petersen and Anna Farnem in filing counter suits January 14, 2005 related to the string of tree sit evictions that occurred in the forested hills above the tiny hamlet of Freshwater, California in the spring of 2003.

The seven tree sitters, along with more than twenty other local residents and protestors were slapped with a lawsuit by PL that charged trespass and conspiracy. A SLAPP suit is a Strategic Lawsuit Against Public Participation. The activists counter suits include allegations of assault, battery, negligence, infliction of emotional distress, false imprisonment, and violation of their civil rights.

Unlike most of the other redwood giants formerly occupied by activists to protect them, the trees Gershman and Kohler sat in are still standing. Kohler was the third tree sitter to be evicted from the ancient redwood "Jerry," from which Card (better known as marathon tree sitter "Remedy") and Sanchez were also removed. Gershman who spent seven months aloft, was removed from a giant, double-trunk redwood dubbed "Everlasting Life."

The SLAPP goes back to court May 26-27 following months of legal limbo following disqualification Judge W. Bruce Watson by the PL-hired extractors. Judge Quentin Kopp was assigned the case in April 2005

## Upper Village Freshwater Cannot Legally Be Cut!

Greenwood Heights Road was put in right beside the bases of ancient trees and the Freshwater watershed began to be logged. In 2001, a timber harvest plan (THP) was filed by Pacific Lumber (PL) that included these trees, along with many other old-growth trees also along the side of the road. In March 2001, a tree sit was set in one of the trees who was then dubbed Jerry because the hanging moss on the branches resembled Jerry Garcia's beard. Jerry's long-time resident Remedy climbed up shortly thereafter.

A platform was set in a neighboring tree named Everlasting Life also called Everstine. Two months later Wren moved in. Remedy and Wren became beacons for the movement. Their voices reached a wide audience with the truth about PL's unsustainable logging practices and the effect it was having on Freshwater. They were interviewed by the Today Show and the NY and LA Times, among others.

A third tree sit was put up in a tree nearby named Anastasia for the "13 sisters" action that involved 13 women in 13 trees for 13 days. Other tree sits were put up along Greenwood Heights Rd. for this action as well. After the "13" action in Freshwater, tree sits started springing up all over. Jerry, Everstine, and Anastasia became known as the Upper Village for their ridge-top position. PL hired arborists to climb trees and forcefully extract tree sitters from the Freshwater trees. Remedy and Wren were the first to be extracted on March 17<sup>th</sup> 2001, a few days short of Remedy's one-year anniversary in Jerry. But first sheriffs had to remove two women, Naomi and Sparrow from their lockboxes at the base of Jerry. This action caused the delay that ended the window of daylight to cut Jerry that day. The trees were re-occupied that night.

Greenwood Heights Road was blocked all that morning with an illegal road closure enforced by the Humboldt County Sheriff Department (HCSD) and California Highway Patrol. The road closure kept concerned citizens and legal observers from witnessing the dangerous extractions. By the afternoon, the road was opened, and hundreds of people thronged at the base of the trees, chanting and singing. It was nighttime before Wren was lowered to the ground, which was teeming with sheriff's officers and protestors, some of whom were pepper-sprayed.

Continued on page 6



## Upper Village Freshwater from page 5

Three days later, the climbers returned to Jerry to remove another sitter, Am'D. In this very dangerous extraction, Am'D had climbed to the top-most branches of Jerry. Extractor Eric Schatz climbed up beside her and told her that if she fell, he and his crew would testify that she committed suicide. He then precariously tied a harness around her and belayed her down, flipping her upside down in the process. After Am'D was arrested on the ground, climber Eric Schatz took it upon himself to cut most of Jerry's branches off. Perhaps this spiteful act was done to prevent activists from reoccupying the tree. Nonetheless, Jerry had yet another sitter by that night.

Throughout the next months, all the trees surrounding the Upper Village were clear-cut. Exactly three months from the first extraction at Jerry, PL climbers returned. This time they found a tree sitter named Smokey locked to an 800-lb., concrete-filled barrel lockdown device on a specialized platform to support its weight 100-feet up in Jerry. PL climbers performed an unprecedented and extremely dangerous extraction of a tree sitter attached to an 800-lb. weight. They attached chains around the barrel and a harness around the tree sitter and lowered them simultaneously. Once on the ground, it took hours for HCSD to cut Smokey out of the barrel. There was another tree sitter on the high traverse between Jerry and Everstine during Smokey's extraction. He remained in place for 10 hours and was not taken down. Again Jerry could not be cut and was reoccupied during the night. In November 2003, a tree sitter name Willow decided to make Jerry his home, and there he stayed for one year and five months. Willow has also become a media beacon, reaching out on the radio waves throughout the US and Canada. He was visited by a TV journalism crews, Ali G, and Tom

Green from the Jay Leno Show. During Willow's time in Jerry, Jerry has recovered tremendously. The places where Jerry's limbs had been cut have sprouted new growth and are looking considerably greener and healthier. The THP that the Upper Village is in expired at the end of March 2005. After a 5-year period a THP could be refilled for the same area, but for now the trees of the Upper Village cannot legally be cut!

## In Memory of Aradia

On Saturday, September 25<sup>th</sup>, 2004, Aradia had the longest continuously occupied tree sit in Humboldt County. On that day, three forest activists were forcibly removed from high in the enormous radial branches of the 700-year-old redwood tree by Maxxam/Pacific Lumber (PL) hired climbers. The activists were then lowered 150 feet to the ground, placed under citizen's arrest by PL employees, and taken into custody by Humboldt County Sheriff's Department. Immediately after the tree sitters' removal, the grove of five ancient redwoods and the massive giant known as Aradia were tragically felled in a rush to cut the last ancient redwoods.

Aradia was first climbed by forest defenders six years ago. Hundreds of people have climbed into Aradia's branches over the years and experienced life in the canopy of an old-growth redwood grove. Hundreds more have hiked the steep skid trail up Gypsy Mountain to the base of Aradia, bringing food and water to the tree sitters.

The area is known as Gypsy Mountain in memory of David "Gypsy" Chain who was killed on the mountain on Sept. 17, 1998 when an irate PL logger fell a tree directly onto him. Gypsy was one of the first people to climb Aradia and helped set the original tree sit there.

PL climbers had ascended Aradia on two previous occasions and removed platforms and supplies but had been unable to remove any tree sitters. Two hours before sunset, all three tree sitters had been brutally removed and the loggers began to cut the tree. The enormous girth of Aradia took the loggers 45 minutes to cut all the way through before she fell with an earthshaking boom that could be heard and felt throughout the valley.

The Aradia grove contained endangered Marbled Murrelet habitat but lay just outside the state park boundaries. It was not included in the 1999 Headwaters Forest Agreement acquisition that more than tripled the size of Grizzly Creek Redwoods State Park. Proposals to incorporate Aradia and Gypsy Mountain into the neighboring Grizzly Creek State Park went as far as the Maxxam shareholders meeting in Houston, Texas earlier last year. David Chain's

mother also traveled from Texas to northern California to lobby PL president Robert Manne for the grove's preservation.

6



Stump of Aradia above. David "Gypsy" Chain above. Old growth flower: Indian pipe blooms at right



## Hurwitz Stalks Land from page 3

troubles on environmental regulations, rising production costs and low log prices, these are the very symptoms associated with well known cycles of boom and bust in the timber industry, caused by unscrupulous cut and run logging. The White Paper states that, "Maxxam has not cut and run" yet these are the very symptoms associated with well known cycles of boom and bust in the timber industry, caused by unscrupulous 'cut and run' logging. Ominously, the White Paper predicts that "if Palco is put into bankruptcy Humboldt County will suffer severe economic harm".

Dire warnings notwithstanding, the Water Board found the courage to deny Maxxam's demands! It rescinded all 75% of the THP areas in question, imposing a virtual stay on cutting in the both watersheds. The relief of the residents, who have been petitioning the Water Boards for years, was tempered by the ongoing destructive impacts. These residents have experienced diminished water quality and trouble accessing their properties due to major flooding from even minor storm events. Better late than never. By the time the Water Board ruled, 80% of the trees in these areas had already been cut.

Michael W. Gjerde, a professional geologist with degrees in ecology and economics analyzed Pacific Lumber's White Paper for the RWQCB. On April 27, 05, he published a scathing response, concluding that Palco's plight was caused by the deliberate business decisions its' parent company, Maxxam, that have kept it saddled with some \$868 million in long term debt plus the interest payments required on these amounts.

The Palco White Paper poses the question: "Was a profit made?" after the selling off of the assets including Old Palco's profitable Cutting and Welding Division and the workers' pension plan, plus three rounds of refinancing, and answers "no". But directly contradicting it, the Water Board's report states "Maxxam has taken money out of Palco in subtle and complex ways and has directed Palco to harvest trees at rates that greatly exceed sustainable forest practices. Maxxam has put Palco at risk by borrowing large sums of money, not paying down its long-term debt, and thereby keeping Palco a highly leveraged company. Palco is so highly leveraged that its debt to equity ratio cannot even be calculated. This is because the company has a *negative* equity, with twice as much debt as assets (200% of assets). Ultimately, the trees in the forestlands owned by Scotia Pacific secure this mountain of debt.

According to Gjerde, since its hostile takeover of the old Pacific Lumber company in 1986, Maxxam Palco has "tripled the old harvest rate to unsustainable levels, nearly doubled the operating income, and still lost an average of \$20 million a year". Old Palco, by stark comparison, averaged over \$20 million a year in net income and had a long-term debt of only \$30 million in its last four years as an independent family-owned business. But the White Paper even tries to deny that Pacific Lumber was a family-owned company at the time of the take over. This is a tiny technical point, since Maxxam took over the PL board of directors in stages, but one that seeks to rob the Old Palco of its last shred of identity.

So, where *did* all that money go? No, wait! Just let me guess! To Maxxam and the big boss, Charlie? The Water Board's expert

confirms that "None of the profit from accelerated harvesting has been used to pay off this company [Palco's] debt. Instead, Maxxam has removed at least \$724 million funds for its' own use... through sales of Old Palco's assets, net proceeds of complex financing deals, and excess dividends and profits received from Palco... Maxxam has netted at least \$600 million from its operation of Palco. This represents a 500% return on the money Maxxam used for purchase" of the 205,000 acre forestlands.



This high risk approach has produced excellent payments to the company owner (Maxxam) over the last 19 years, but has put the future of the company (Palco/Scotia Pacific) at risk", says Gjerde. This highly leveraged, risky, unsustainable model is a business choice for Mr. Charles Hurwitz, as owner, CEO, and controller, with family members, of over 68% of the aggregate voting power of Maxxam."

Hurwitz himself received \$9 million from Maxxam for his role in the Headwaters Forest agreement. Never satisfied, the White Paper asserts that Maxxam/ Palco/ Scotia Pacific sold the Headwaters and Elkhead Forests to the United States and California governments for "less than appraised value." Gjerde does not believe this can be true, stating that "Palco gave up 5,600 acres in the Headwaters forest and received in money and property an equivalent of \$532 million dollars...an equivalent of \$95,000 per acre for its' Headwaters transfer".

Additional sales by Palco to the government of between 2,000 and 3,000 acres from the sale of the Grizzly Creek and Owl Creek groves have netted Palco another cool \$83.7 million. Together with the Headwaters, these sales have totaled \$616 million and have returned over 70% of the initial \$874 million price Maxxam paid to buy Old Palco and its 205,000 acres in 1986. Put another way, Maxxam was able to get the

## Criminal at large, Charles Hurwitz



taxpayers to fork over 20 times the amount for which it had mortgaged its 205,000 acres to bond holders after the 1998 Scotia Timber Note sale in 1998 at a rate of only \$4300 per acre.

Old Palco, with its' conservative harvest level, could have lasted another 125 years. Gjerde estimates Palco's life expectancy at less than 10 years. About bankruptcy, Gjerde says it may, or may not happen, at least to Palco itself. "All long term debt is now held in Scotia Pacific, a wholly owned subsidiary of Palco...set up specifically to hold the Timber Note Debt. Scotia Pacific has mortgaged all the timberlands to secure that debt and would be the most likely to go bankrupt." Maxxam could bail out Palco/ Scotia Pacific if it wished. But even bankruptcy would not change things all that much on the ground, as operations would continue more or less the same, under the direction of either the bondholders or a federal judge—or even of Maxxam, as the parent

company! In any case, all these entities would still have the same financial incentives compelling them to keep pillaging the forests, destroying economy, ecology and community in Humboldt County.

## Support NCEF!

If you appreciate the work that North Coast Earth First! does and would like to receive future editions of this newsletter, please send your check, gold bullion or supplies to: NCEF! PO Box 219, Bayside CA 95524 Send us a note with contact info if you want to get involved with Humboldt forest defense.

North Coast Earth First!  
PO Box 28  
Bayside, CA 95524



## **Our Nonviolence Code**

1. Our attitude will be one of openness, friendliness, and respect toward all people and the environment around us.
2. We will use no violence, verbal or physical, toward any person.
3. We will not damage property.
4. We will not bring firearms or other weapons.
5. We will not bring or use illegal drugs or alcohol.

North Coast Earth First! is outspoken in its opposition to violent methods. Because only 3% of the old-growth redwoods remain standing, NCEFF! Adopted a popular "No Compromise" stance in protection of the last ancient redwood ecosystems a decade ago. Judi Bari's advocacy was largely what led North California's Earth First movement to adopt a nonviolence code denouncing tree-spiking and equipment sabotage. Throughout a decade of confrontational timber protests, not a single injury has happened to our opposition. This is despite over a thousand arrests, pepper spray, pain compliance, police brutality, and other forms of violence suffered by nonviolent protesters.

**N O R T H C O A S T**

# **Earth** **First!**

## **Protecting**

## **Humboldt**

## **Forests**



**Newsletter**

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