

The Chainsaws of Greed: The Case of Pacific Lumber

Lisa H. Newton

The bare facts of the Pacific Lumber Company chronicle are shortly told and widely known: once, there was a very traditional company, Pacific Lumber, based in its company town of Scotia in Humboldt County, California, home of the legendary 2000 year old Sequoia trees. And it took care of its workers, conserved its giant redwood trees, turned a modest but steady profit, planned for the long term, and, in brief, made none of the mistakes that all the short-sighted lumber companies made. A California Newsreel documentary, "Mad River: Hard Times in Humboldt County," made in 1982, excoriated the entire industry for its miscalculations of its market, its failures toward its workers and its destruction of its trees--but took time out to mention Pacific Lumber, as proof of the fact that good business and good citizenship could, with wise management, go hand in hand. Then came the villains, jetting in from Wall Street: the takeover artists, the sharks, Charles Hurwitz' Maxxam Inc, recently spun out of Federated, soon to be joined with MCO, who gobbled up the company's stock, bought off the management, threatened the workers' jobs and benefits, and immediately doubled the timber harvest to pay down the junk-bond-financed debt. Overtime pay fattened the workers' wallets but threatened long term security; environmentalists were horrified; state and national legislatures contemplated action but took none; the courts, to whom all resorted almost immediately, tentatively fumbled through new territory, not supporting any side consistently.

Despite, or because of, the fairytale quality of its story, Pacific Lumber crystallizes several of the most important ethical issues confronting American Business, in particularly poignant and understandable form: the company is small, the trees are large and well loved, the loggers are folk heroes, the financiers are folk villains, and

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covering it all, the press and the senators are highly articulate commentators and critics of the whole affair, a Greek Chorus with power of subpoena. From the materials available to us chronicling this case, we recognize five familiar issues, and the organization of this presentation will follow them in logical order:

1. At the outset: Is the traditional (paternalistic) American company worth preserving, as the traditional American Family Farm is held to be? Or is profit, return on investment to the shareholders, the only measure of good business practice?

2. Should "hostile takeovers" financed by "junk bonds" be outlawed, in light of the crime they invite and the injury they produce? Or are they just good business, working for the interests of the shareholders and the efficiency of the American economy?

3. What shall we do to save our national natural resources? Can we rely on business to protect them? Or is state regulation absolutely essential for anything of value? If the interests of a single state are not served by conservation, does the country as a whole have a right to dictate such policies?

4. In the present structure of the judicial branch and the corporate sector, it is entirely possible that resources might be irretrievably lost in the process of seeking legal means to protect them. Under the circumstances, are extreme and illegal tactics like those of Earth First! justified? How should a business deal with such tactics?

5. Who speaks for the worker? What courses are open to the employee in this confusion? To form a union? Join with management to drive out the environmentalists? Join with the environmentalists to drive out management? Or try to buy the company themselves?

Old Fezziwig vs. Ebenezer Scrooge: How to Run a Business

No one denies that Pacific Lumber Company was an exemplar of all the virtues traditionally professed by American Business. Founded a century ago, run from the turn of the century by one family, the firm undertook to protect equally the shareholders, the workers and the natural environment, and was doing very well at all of those tasks.

a. From the point of view of the shareholders, the firm had shown profits steadily since its founding, and stood to show profits steadily into the future. Financial statements for the years through 1984 show small cyclical adjustments to demand, but steady earnings on its outstanding shares.¹ Prudent management of its assets, 189,000 acres of the redwood forests of Humboldt County, California, including the largest virgin redwood stands still in private hands, ensured that no more was cut each year than grew, and avoided the boom-and-bust cycle endured by the rest of the lumber industry.

b. From the point of view of the workers, that policy worked out to steady employment; but PL was famous for employment policies that went far beyond the certainty of a job. The town of Scotia, in the center of the lumbering area, was one of the last of the company towns, wholly built and owned by PL; the houses were rented to the workers at rents that were low even for that area, and in hard times the company forgot to collect the rent. No one ever got laid off, or faced retirement or medical emergency without funds to cover them. A worker's children were assured jobs with the company, if that's what they wanted, or a full scholarship to college. Company loyalty came easy, and no union ever got a foothold in PL. "They always treated everyone so well, why rock the boat?" explained a former employee. "You knew you'd retire from there, and if your kids wanted to work there, they would People cared for the company and wanted to see it prosper."² We hear the echoes of Old Fezziwig, Ebenezer Scrooge's first employer in Charles Dickens' *A Christmas Carol*, who ran a business as a service for customers, employees, and the community at large; people came before profits in this operation.

Those employment policies can be examined from perspectives other than that of the workers. From the point of view of the shareholders, all that money paid out to meet the needs of the workers was money that could have been paid to the owners in dividends; on the other hand, in a shareholder-oriented climate, the workers would have joined a union, and paying union wages and union-obtained medical and other benefits might have been considerably more expensive; contractual obligations must be met before any owners get anything. From the point of view of the society at large, PL was a real bargain. When a worker is laid off, the company saves his wage, but the society has to pay unemployment; when a worker is too old or sick to work, if the company does not pay for him, we do, through our taxes. "Paternalism," the bygone policy of placing the company *in loco parentis* for the worker, at least where the satisfaction of his material needs were concerned, simply allocated a portion of all social welfare costs to the last company that employed the recipient of that welfare. Is that the proper role of the corporation? Is that an efficient way of allocating social costs? It may be, from the point of overall efficiency, that there is little to choose from between the paternalistic policy that picks up the costs for the worker and the new "lean and mean" company policy that lets the taxpayer pick up the tab. Some observations on the point, however, may be in order: (1) The company is closer to the worker and his situation than are the taxpayer and his hired agent, and is better able to meet real need and monitor for fraud; (2) Union officials have to be paid, and government agencies have to be paid a great deal; where companies administer these funds directly, there is no need to pay the middlemen, and those unproductive jobs in the bureaucracy are not added to the economy.

c. From the point of view of the environment, PL's record was excellent: not only was the selective cutting good for business in the long run, but it spared the hillsides the devastation wrought by clearcutting. Since the 1930's, it has been known that cutting all the trees on a hillside leads to the immediate dispersal or destruction of the wildlife, the erosion of the soil to the point where new trees will grow poorly or not at all, the consequent silting of the streams and the destruction of the fish, and, from the increasingly rapid runoff of the

rain into the silted streams, the undermining of the downstream forests. The environmental deterioration proceeds quite without limit; and in the very steep and rainy forests of the Pacific Northwest, it proceeds very quickly. Most lumber companies in the area, in the rush to capitalize on the sudden demand for lumber for housing after the second World War, had moved to clearcutting as a more efficient way to get lumber out of the forest quickly, and had severely degraded their lands. PL had not done this; it stood as a living demonstration that prudent business practices equal sound labor relations equal sound environmental practices. Beyond sound conservationist cutting policy, PL had contributed substantially to the State Park system. Pursuant to an agreement with the Save-the-Redwoods League in 1928, PL set aside many of its most scenic groves for purchase by the State of California, for inclusion in the Humboldt Redwoods State Park. When the money was slow collecting, PL "held on to the land it had agreed to preserve, patiently paying taxes on it, letting people use it as if it were already a part of the park," until the money finally came through and the acquisition was complete--in the case of the last parcel, 40 years after the original agreement.³

So from the point of view of the usual list of "stakeholders" in the operations of any corporation, then, PL exemplified that "excellence," of which we made so much in the early 1980's, when the new breed of management consultants started writing their bestsellers.⁴ But should management be working for "excellence"? The New Greed has driven anything approaching that description off the Bottom Line in fashionable circles. Scrooge's singleminded approach to business was not new in Dickens' time. Since Adam Smith, those who stand to profit from massive financial transactions have argued that capital is "most efficiently put to use" in that employment where it yields its highest monetary return in the shortest possible time, and that therefore the general welfare is best served by leaving financiers free to seek such a return.⁵ Even the notion of the "stakeholder" is disagreeable to Scrooge's children, the defenders of the new business orientation: John Boland, writing in the *Wall Street Journal* in February, 1988, complains that shareholders have a right to protest the "diminished status" of "stakeholders" assigned to them by the community-oriented managers of the companies whose shares they

hold; "the only direct, clear legal obligation of corporate fiduciaries (beyond obeying civil law and contractual constraints in general) is to corporate owners who pay them."⁶ If return to shareholders can be significantly increased by management practices which are not to the advantage of the workers, or the community, or the natural environment, are the corporate fiduciaries--the officers of the corporation--obliged to adopt them?

Such a question is ordinarily academic: a company which has undertaken to consider the welfare of workers, community, forests and future, in all its decisions for a century and more, will not suddenly change to suit the new imperatives from the business Right. But in the Reagan-era climate of hands-off regulatory policies, there arose another way to direct cash into the shareholders' pockets: the hostile takeover. In the "takeover," for those who have been in the Amazonian jungle for the last ten years, a "raider" (elsewhere "shark") with truly astonishing amounts of cash, most of it borrowed at very high interest from investment banks that specialize in this sort of transaction, offers to buy up the stock of a corporation (the "target") at a level well above the market price. The shareholders of the moment get a much better price for their stock, should they tender it for sale, than they might have expected. Where the stock is held by institutional funds, and most outstanding stock is these days, the fund manager is under a fiduciary obligation to the fund's owners to get that price, and to tender the stock; loyalty to the company whose shares are in question is nowhere on the manager's possible list of obligations. Having (therefore) obtained a majority of the stock with rather little effort, the raider takes control of the company, then pays down the debt with the assets of the target. Of course, once in control, he can do anything else he likes with the assets. And the attractiveness of that control, especially where the assets are large and surely profitable, may tempt the raider to marginally legitimate means in pursuit of his ends. Such, at least, were the allegations in PL's case.

2. *Shady Deals in the Canyons: Michael Milken and the Sharks*

In 1985, Pacific Lumber was debt-free, cash-rich (including a workers' pension fund overfunded by \$50-\$60 million), resource-rich beyond the

knowledge of the Board of Directors (it had been 30 years since the last timber cruise, or inventory of its timber resources), and complacent in the knowledge that its practices were sound and well accepted by the community. Meanwhile, merger mania was in full swing, and Michael Milken was riding high at Drexel Burnham Lambert. On October 2, 1985, backed by Milken's "junk bonds"--the high-risk, high-yield notes that were Milken's specialty--the New York based Maxxam Group, led by Charles Hurwitz, an investor from Houston, Texas, made a tender offer of \$38.50 per share for the company, almost \$10 more than the then current market price of \$29. PL's Board of Directors, led by CEO Gene Elam, obviously stunned by the attack, rejected the offer as not only "inadequate" but "unconscionable." Two weeks later, they accepted a Maxxam offer just 4% higher than the first, or \$40 per share. Many analysts were surprised by the acceptance; they had reckoned the company as worth far more than that, and indeed, the entire increase from the first offer was funded, with change left over, from the pension plan. What had happened? Speculation turns on the following questions:

a. How was the Board of Directors taken by surprise? Were the infamous arbitragers Ivan Boesky and Boyd Jeffries involved with a scheme to "park" stock in friendly parking lots while the motives of all concerned were concealed from those who were charged with protecting the company? (How come, just as the deal got under way, Jeffries sold about 439,000 shares of PL stock to Maxxam at \$29.10 per share, when the market was closing at about \$33 per share?)

b. What kind of advice did they get? They hired Salomon Brothers to advise them, on a curious arrangement whereby Salomon would receive 2.25 million to keep PL independent but almost twice that if PL was sold at any bid higher than the \$38.50 per share then offered. Maxxam was clearly willing to go higher; what incentive did Salomon Brothers have to oppose them?⁷

c. The major new provision in Maxxam's final offer of \$40 per share included agreement to indemnify the Board of Directors against shareholder lawsuits, and to fund severance packages of up to two years' pay for 34 middle managers and "key people." When President Elam quietly left the company in June, 1986, he took with him \$400,000 in such severance. Were all those people really thinking about the interests of the company when they hastily agreed to a friendly merger?⁸

Lawsuit after lawsuit challenged the takeover: from Stanwood (Woody) Murphy, grandson of the last CEO, and his brother and sister, contending that the supermajority required by the company charter (80% of shares) had not been obtained; from shareholders, contending that the Board had been negligent in failing to inform itself of the true value of the company, and had sold out much too cheaply; from other shareholders, contending that Article 10 of the company charter required that the Board take into account the social, environmental and economic effects on the employees and the communities before accepting any merger agreement, and that no such determination had been made. In what is possibly a bureaucratic first, the SEC was petitioned, by the Northcoast Environmental Center, to submit an Environmental Impact Statement--since the terms of the merger were such that, if approved, it would inevitably lead to vastly accelerated logging practices, and thus would have a major impact on the environment. But the legal climate is as chilly to traditional companies as the Canyons of Wall Street; by the end of February, 1986, most of the claims had been rejected and the way was open for the merger to be completed.⁹ (One remains open, and when the SEC investigation of Drexel Burnham Lambert advanced to consider the PL case, another was instituted, brought again by dissident stockholders; if they are successful, the acquisition will be declared illegal and the ownership of the company will have to be renegotiated.)

How does a financier run a lumber company? Everyone knew, by the time the last suit was settled, that Hurwitz would abandon the old careful schedule of cutting in order to raise cash. Of the \$840 million he had spent for the company, \$770 million was debt, of which \$575 million was financed through Milken's junk bonds; that debt had to be

paid, with predictable results for the workers and for the environment; see below. It is doubtful that even the Board of Directors foresaw the financial transformations that were to follow. For a start, Hurwitz terminated the employees' pension plan. Of the total \$90 million in assets in the plan at the time of the takeover, Maxxam took \$50 million for the debt and spent the remainder to buy annuities for the 2,861 plan participants. In a move that alarmed some of the executives covered by the plan, Hurwitz chose to buy those policies from the Executive Life Insurance Company of Los Angeles, which has, according to *New York Times* writer Robert Lindsey, "provided annuities to employees at several companies taken over with Drexel Burnham financing. According to investigators, that insurance company was chosen for the annuities contract despite missing a bidding deadline." The executives were alarmed because "a large proportion of its assets are in high-risk securities, among them a significant share of the bonds issued for Maxxam's takeover of Pacific Lumber."¹⁰

Sometimes a page of history is worth a volume of logic. Had anyone chosen to investigate, it would have been found that Hurwitz had an established career in controversial financial deals. "Indeed," chuckled *Barron's* in a review of the PL deals, "his career has been a bonanza for the legal fraternity: Everything he touches seems to turn to litigation."¹¹ Throughout the 1970's, his holding company--SMR Holding Corp.--had been involved with questionable and sometimes disastrous deals, and he had had to defend himself from charges of improper practice and civil fraud brought by the SEC, New York State, and the Texas Securities Board.¹² In the course of his acquisitions, he had picked up Federated Development, whose financial resources he employed to take over McCulloch Oil Co., which he restructured into MCO Holdings in order to buy United Financial Group and take over Simplicity Pattern, whose cash he raided for his next ventures. Through many of these dealings, Drexel Burnham Lambert had been the underwriter, making cash available for these extensive, and very profitable, transactions. From January 1985 through the summer of 1987, Hurwitz paid Drexel "more than \$48 million in fees, expenses and commissions, some \$46 million of that through Maxxam."¹³ Bear, Stearns also figured in Hurwitz' financial history, managing a

discretionary account with \$44.6 million of Maxxam's money and acting as broker for its other accounts. As a matter of fact, Bear, Stearns and Hurwitz had been partners in a run at Alamito Company in March 1986.

So there were complaints when Hurwitz announced, late in the summer of 1986, that he intended to merge MCO holdings and Maxxam into one company, "in the best interests of both companies," and called in both Drexel and Bear, Stearns to help with the deal--there was, indeed, an immediate shareholder protest, arguing that the shares of Maxxam, supported by the enormous cash and resource holdings of Pacific Lumber, were worth between twice and three times what MCO was "offering" for them. It seemed to the angry shareholders that the merger was simply a device for funneling all that wealth into a shell holding company where Hurwitz could get at it more conveniently. Delaware law required that the "negotiations" for purchase be carried on by two "independent committees" of the two organizations, advised by separate investment banking firms. So such committees were formed, of the only members of the Boards of Directors of MCO and Maxxam not on the other Board or with other connections to Hurwitz, and Drexel Burnham Lambert and Bear, Stearns were retained by the "two parties" to determine whether the deal was "fair" to all. With Hurwitz the largest shareholder of both firms, and his long-term business associates advising on both sides of the table, fairness was rapidly determined all around. When, in the middle of all the dealings, Drexel (representing MCO) leaped across the table to help sell off a few pieces of Maxxam's PL holdings for about 50% more than their accepted evaluation, the appearance of conflict of interest--not to mention sheer double-dealing on the part of all parties--became overwhelming.¹⁴ Despite legal protests, the merger went through--with disastrous effect on the Standard and Poor rating for Maxxam's takeover bonds.

For reasons beyond lay comprehension, and with consequences that will become evident in section 4 of this case, legal delays do not appreciably slow down business operations. Hurwitz explained to his public that the cash generated from the accelerated harvest was to be used to pay down PL's debt. But tremendous amounts of cash can be generated from an established company with uncounted timber

resources, and the New Finance avoids such tedious uses as payment of debt when new opportunities present themselves. By early 1988, Hurwitz was on the move again, this time against KaiserTech (formerly Kaiser Aluminum), paying \$224 million for a large portion of their stock. At least half that will be paid in cash, apparently (despite denials) straight from the coffers of Maxxam's biggest moneymaker, Pacific Lumber. Of course, if the shareholders' suits are successful, all that cash would be taken away from Hurwitz; but not if he spends it first. Plaintiffs in the suits were predictably outraged, but it is not clear what legal action is possible to block the payments.

3. Who Speaks for the Trees? The Logger and the State

The Law has already figured largely in this case, as the vehicle for private parties to express, and attempt to validate, their conviction that their rights have been violated. There is another place for the law, of course: not as instrument of the remedial rights of offended private parties, but as creator of primary rights for the society as a whole, to protect what we value as our common inheritance and to provide for the common good in the future. Presumably our elected representatives are the authorized determiners of that public interest, and ultimate protectors of the resources of the nation. Presumably, to come to the point, when we are dealing with unique and irreplaceable resources like stands of 2000-year old redwoods, we might expect that the public authorities will determine what policy for those redwoods best serves the public, and private profit-oriented enterprises will operate within the guidelines set down in accordance with that policy.

That expectation is not generally fulfilled in a country dedicated to Free Enterprise. On the contrary, the presumption has been that anything that can be privately owned, like land, will be privately owned; and that whatever owners have traditionally been permitted to do with their land, like cut down trees and sell the lumber, the owners shall be permitted to do. The burden is on the public to prove that private control of the uses of land is so contrary to the public safety that the situation cries out for regulation and public control. On the question, who speaks for the trees?, the lumber industry has answered with a

single voice: we do, and we need no public regulation and environmentalist criticism to teach us how to protect our resources.

This voice can be heard in the lumber industry's publications from the origins of the industry, and especially since 1970, when the nascent environmental movement descended upon logging operations with renewed energy. When Maxxam took over PL, with obvious plans to go after the older stands of timber protected by the old owners, the debate over the need for state protection of the lumber took on new urgency. An ecologist with the Northcoast Environmental Center, Andy Alm, summarized the areas of danger from the new practices: depletion of the timber supply, erosion of the watershed areas, increased sediment loads on area streams (endangering the fish, all species that depend on the fish, all species that depend on the streams), and the possible extinction of many endangered wildlife species such as the spotted owl.¹⁵ A cautious scientist, Alm conceded that at that point, the projected impact on the environment "is speculative." More assertive was Earth First's Greg King, who advocates the complete cessation of harvest of old growth timber. The spokespersons for PL, predictably, immediately presented views in opposition to the environmentalists: statements from a consulting firm hired by Maxxam reassure that PL "could easily continue to harvest its timber at the current doubled rate for the next 20 years," and that "PL is just helping to fill in the gap left by the other companies whose capacity in production was reached shortly after World War II." The county should be happy, the consultant concluded ominously, that there was a company like PL who was "there to fill the gaps when other companies are not only dropping off production but laying off workers."¹⁶ David Galitz, the company's manager of public affairs, was similarly reassuring, concluding on the familiar note:

We're here to protect the land. Our resource is that land and we know it. The trees are a crop, and they keep coming back. If you want to meet a group of environmentalists, come within the Pacific Lumber Company . . . I think we practice more environmental protection methods and have more concern for the environment than the Greg Kings of this world.¹⁷

The dispute inspires reflection, to be conducted, very briefly, in three questions: First, where, if anywhere, does private enterprise get the right to speak for the trees? aren't they naturally suspect in such a case? Second, if the trees are to be guarded for the sake of the people, where do the people stand on the issue? and if the people are divided, do those on the spot have more right to vote than the others? Third, given that the California Department of Forestry is supposed to be appointed especially to speak for the trees, where is its position on the issue and why don't we just listen to it?

a. Private enterprise's claim derives from the ancient truth of Galitz's statement: "our resource is that land and we know it. The trees are a crop, and they keep coming back." We come from a long line of farmers and herdsmen--about 800 generations, probably. Only since the last century, three or four generations, has it become possible for any but a tiny percentage of us to live any other way. The imperatives of the farmer and herdsman are abundantly plain: conserve the land, the flock, the ability of the farm to produce more in future, or die. Owners and caretakers of property in land or livestock, whether or not they were the same persons, had interests in common, closely tied, on a daily basis, to obedience to those imperatives. Cultures which disobeyed the imperatives died out; cultures which obeyed them well flourished, and produced us, who carry the same commands by now in all our understanding of our cultural inheritance. For the best of economic reasons, then, in that inheritance, the property owner has properly been trusted with the care and preservation of his property, and barring a few municipal regulations to preserve residential peace and quiet, the legal system has incorporated few restrictions on how he may use that property.

But ancient truth does not mean present workability. The business community took note of the "separation of ownership and control" of the modern corporation earlier in this century, largely to call attention to the troubling fact that those who run the corporation (management) may, on occasion, reprehensibly deviate from the desires of the proper owners (shareholders). Of more interest to the environment, specifically to the owned land and livestock, is the fact that, once separated from control and daily management, the owners

may have no interest at all in the care of the property, which will be consigned to hired stewards. Such stewardship has itself a long tradition, and becomes problematic only when the steward is given responsibility, not for land or stock or factory or corporation, but for a sum of money, or fund, which owns property only to use it to make more money. This is the position of the institutional funds, mentioned above, whose stewards must, on pain of breach of fiduciary responsibility, tender shares to raiders on evidence that they are likely to see no higher price. When the raider himself, as is usually the case, has no interest in the property except to drain it of cash for his next ventures, his own future welfare disappears from the imperatives above, and the property is no longer safe in its owner's hands. Ought we to take it away from him? Do we have the legal structure to do so? We know that under the doctrine of "eminent domain" we can seize the redwoods for a new park; but can we seize all that land just to continue a more conservative commercial logging operation? Or is that choice necessarily Owners' Option, a case of "different management philosophies and needs which need to be addressed," as David Galitz put it?¹⁸

b. What do the people want? Most of the people in the area are employees of Pacific Lumber. Almost by definition, they want their jobs, and they want wages as high as possible. The rest of the people are the shopkeepers, craftsmen and service personnel who take care of the employees and the towns in which the employees live. Their interests are as intimately tied to the company as those of the loggers. The very limited options of the loggers will be taken up in section 5 below; for the present, we may ask how the people affected by these policies see the issue, without taking specifics of employment into account.

One indication of the will of the people turned up in May 1987, in the California State Legislature in Sacramento. State Senator Barry Keene had submitted a bill, SB1641, which would "limit sudden increases of timber harvesting and clear-cutting brought on by potential change of ownership of logging companies."¹⁹ No one who favored, or opposed, the bill had any doubts about whose ownership was being discussed. PL's executive vice president was one of those who spoke

against it, predicting a "whole new round of timber industry layoffs" should the bill be adopted. It was not; it had some support, especially from environmentalist groups like the Sierra Club, but was voted down in Committee.

Legislatures can be influenced, of course, by persistent popular effort. As is typical in such political exchanges, the corporations organized first: the sawmills, logging and trucking companies got their representatives to the May 1987 meetings and defeated the Keene bill. The environmental groups, all volunteer, organize much more slowly. As Summer turned to Fall, these groups got an unexpected publicity boost from the Congressional investigations into Maxxam's tangled financial history. By Spring of 1988, the country had begun to notice what was happening in Humboldt County. An article by Richard Lovett in the *Sacramento Bee* in February told the PL story to a statewide audience. "While the future of old-growth forests is very much in doubt, one thing is certain," Lovett concluded, "The Pacific Lumber takeover is a frightening cautionary tale--an example of how progressive business management can be replaced virtually overnight, with decades of conservationist practices likely to be erased in only a few years."²⁰ Alarm went nationwide with an article by Robert Lindsey, dramatically entitled "They Cut Redwoods Faster to Cut the Debt Faster," in *The New York Times* in March, citing not only the extensive environmental damage caused by the new logging policies, but also the dubious financial maneuvers behind the take-over.²¹ And in April, Earth First! staged some very public demonstrations on PL land, getting themselves headlines in California newspapers.

By May, 1988, Byron Sher, Chairman of the Assembly Natural Resources Committee for the California State Assembly, was able to launch a campaign to get PL to stop clearcutting (at least) the remaining stands of virgin redwood (at least). The demand seems minimal; yet even this would have been impossible without the negative publicity of the last six months. Under those circumstances, he was able to muster enough clout (he thought) to enforce a reasonable agreement. Such an agreement was made, on May 26, 1988, and proudly announced by Sher, Assemblyman Dan Hauser of Humboldt County, and Pacific Lumber: "Pacific Lumber has agreed to stop clearcutting its remaining stands of virgin redwood . . . This is the

practice it followed for decades and earned it a reputation as a model timber company in the eyes of many Californians . . . "22 Sher's office simultaneously released a hopeful statement on the agreement, as did PL's public relations office (" . . . the agreement reflects the Company's sensitivity to concerns expressed by Assemblymen Sher and Hauser, as well as others, over the aesthetic effect of clear-cutting in virgin old growth redwood stands.") *The New York Times* found the agreement sufficiently newsworthy to record--and recorded also the scepticism of local environmentalists and Woody Murphy: "If the wolf tells you that he no longer wants to eat chickens, who are you going to believe?" Indeed, with time, the volunteers go home and the paid agents return to the saw. By January, 1989, Sher was sponsoring a new bill calling for the whole industry to stop clearcutting older trees or face \$50,000 fines for each incident. "Pacific Lumber has reneged on last year's agreement," said Sher. "They are moving as quickly as they can to destroy the old-growth characteristic of their virgin redwood holdings." In hindsight, he regretted the May 1988 agreement that had ended his pursuit of similar legislation.²³

Letters to local newspapers during the period in which it was pending overwhelmingly opposed the bill. One letter, chilling in its naivete, shows how much the new owners relied on the old for their early support:

Inasmuch as the cutting of trees is the timber companies' main source of revenue, surely Senator Keene does not think that they would purposely shorten their own existence by clear cutting their timber without a definite re-forestation plan in mind. As far as the Pacific Lumber Company is concerned, they would not have been so attractive an acquisition were it not for the fact that, through careful timber management, they have built a solid reputation spanning a hundred years or more for good business practices which include long range goals benefiting both themselves and their community. In conclusion, I feel that we need to have enough faith in the experts of the timber industry to allow them to continue to make the necessary,

intelligent decision regarding the future of the logging in this area."

This was four months before Hurwitz's move to merge Maxxam and MCO, stripping the cash from PL to feed more takeover attempts, was made public. Another, from the owner of a local sawmill that purchased logs from PL, pointed out that his sawmill would be out of business if PL stopped cutting, and that "there will be less jobs!" if the sales should stop. "Instead of kicking a good neighbor and generous community supporter, let's get behind Pacific Lumber and give them all the support we can." A third, to finish this quick sampling of local sentiment, had

a few thoughts on the Barry Keene 'Maxxam-shutdown' bill. . . . As we all know by looking at a map of California, a majority of the land is owned by some form of government, i.e. national parks or state parks. Now that Maxxam owns The Pacific Lumber Company 'private land,' Maxxam should be able to use it in the way the present guidelines are set up. They were good enough for everyone else, why not Maxxam? We don't need government harassment in Humboldt County! The county has been hurting enough these past few years. Is the Barry Keene bill another 'land grab' by the government? By forcing Maxxam into bankruptcy, are they going to buy the land for yet another rotting park? I am really tired of government and their 'screw up of everything they touch' record. My only consolation is that when Pacific Lumber closes down, my family and I can mooch off the government instead of paying taxes, and I'll have a lot of time to get involved in demonstrations to shut down other private industries.

From a sociological perspective, that letter is a delight. All the notes of blue-collar conservatism are there: anti-parks, anti-welfare, anti-government in general, pro-private industry, above all pro-jobs. The next section of this paper discusses the environmental movement; this

letter shows as clearly as may be shown the agenda that the environmentalists faced in their public education activities.

Simultaneously, the Fortuna Town Council convened a special meeting, ostensibly to debate the Keene bill, but actually (in the absence of any supporters) to denounce it and pass a resolution to that effect. The participants in the denouncing were not, significantly, employees of PL, but residents of the town and officers of local trucking companies and sawmills; the entire area's dependence on the logging industry, and on the freedom of that industry to bring in cash, could not have been more emphatically underlined.²⁴

Yes, but what of all the *other* people, like me, here on the East Coast, or in the South, or anywhere at all except in Scotia, or Fortuna, Eureka, Arcata, or Humboldt County generally? Don't we have an interest in the redwoods? If the people of the area only want to speak for Maxxam, can't we speak for the trees? Whose are they, anyway? Can't our ownership, as Americans, be taken into account somehow? How should it be balanced against the need in Humboldt County for jobs, security, a steady economic and political setting in which to raise children and carry on communities with a hundred years and more of settled existence? Their interests are more immediate, but there are a lot more of us. Do we have a way to allot votes in such situations? Do we even have a candidate for a way?

c. Recognizing some years ago that redwoods were sort of special, California had passed legislation requiring the lumber companies to file Timber Harvest Plans (THPs) with the state, and charged its Department of Forestry (the CDF) with the task of reviewing these THPs for environmental soundness and compatibility with the long-term benefit of the industry and the state of California. This the Department had done, without much controversy, for years, until the takeover of PL.

The CDF makes an early appearance in the PL affair, as participant in the debate, quoted above, between Greg King and David Galitz on the wisdom of trusting private enterprise with the care of the trees. The CDF's position might surprise those accustomed to chilly relations between industries and the state agencies appointed to regulate them: "To date, the department has found no significant

impacts to the various biological or environmental resources as a result of The Pacific Lumber Company timber harvesting. Whether it be clearcutting or selection, this harvesting has been ongoing since the turn of the century. Hopefully, it will continue on indefinitely into the future. The actions of The Pacific Lumber Company are not expected to deter this prospect." So said Tom Osipowich, the forest practice officer with the CDF. One wonders why Maxxam felt it had to hire private consultants to present its case.²⁵ When the new PL started submitting THPs, the issue revived. Shortly after the Keene bill failed in Committee, the Environmental Protection Information Center, one of numerous environmental organizations active in this case, brought suit against PL and the CDF to oppose state approval of some of those THPs. In company with other environmental organizations, EPIC was worried not only about the amount of timber that would be taken, but about the old-growth dependent wildlife that would be displaced. "You have specific species of wildlife that are dependent upon old-growth stands," explained John Hummel, a wildlife biologist attached to the California Department of Fish and Game to a public meeting on the THPs. "If their habitat is taken away from them you're going to lose a significant number of the population of certain species."²⁶ Specifically, EPIC wanted to send its own experts into the forests to see if matters were as the company said they were, and to see if damage to the environment would be as slight as the CDF said it would be. On that issue, Judge Frank Peterson of the Superior Court ruled in favor of the company: no independent experts traipsing through private property second-guessing the authorized foresters. But on the larger issue, of the methods used by the CDF to reach its determinations, the judge was unsparing:

. . . one can conclude that no cumulative impact study or findings were adequately made and no alternative to clear-cutting was considered. It appears that the CDF rubber-stamped the timber harvest plans as presented to them by Pacific Lumber Company and their foresters. It is to be noted, in their eagerness to approve two of these harvest plans (230 and 241), they approved them before they were completed. . . . As to the effect on wildlife, there was no evidence presented except the conclusion of the Foresters

that there were no *concerned* or endangered species affected. Both the Water Quality personnel and Fish and Game relied on the information provided by the professional foresters hired by Pacific Lumber and the Department of Forestry. Fish and Game's position was, if the forester saw something that needed their attention, he or she would inform them. That is not compliance with the law. That is not only naive, it was a total failure to exercise any discretion by those agencies who by law are to make findings and recommendations upon which the director is to base and exercise reasonable discretion What is most distressing to the Court is the position of the Water Quality and Fish and Game personnel, that any suggestions by them would not be considered by Forestry, and in fact Forestry would consider it to be ill advised In this case it is apparent that California Department of Forestry, the State Board of Forestry, its resource manager and director, as the *lead agency* does not want Fish and Game or Water Quality to cause any problems or raise any issues which would deter their approval of any timber harvest plan. Again it must be emphasized, this is not following the law; it is not only an abuse of discretion, but an absolute failure to exercise discretion, which the law demands²⁷

The CDF was not a little miffed by the public scolding, but promised reporters that the whole matter would be straightened out soon: "We'll just change the documentation of what we do so the judge will have less difficulty in understanding it," said staff forester Harold Slack.²⁸

The story of the CDF is familiar, almost a paradigm for American politics. Underfunded and understaffed, the CDF cannot monitor the forests it is supposed to monitor even if it wanted to, which it does not. Given the leg-hold restraints on its operation, it cannot keep the bright young idealists that periodically pass through its doors, but settles for career government men who know that satisfaction in life depends on not rocking the boat. The boat, of course, is the huge and rich industry that they minister to, source of colleagues, support in the legislature, and jobs when they retire from government work. As long as the

industry is kept happy, the only threat to their existence is turf infringement by other government agencies in the same line of work. So we find the CDF, like any typical "regulatory" agency, dividing its time between pacifying its legislature (to avoid scandal), adjusting its delicate relationship with its industry (attempting to balance its eager cooperation with a show of control in the public interest), and fighting turf wars with other agencies, like Fish and Game and Water Quality.

Why did we ever expect anything better? When we set up task forces within a company to get a job done, we know enough to structure the incentives so that it will at least be to the interests of the task force members to do the job. But in the CDF, we have an agency, and again, not an unusual agency, whose employees are rewarded both in daily dealings and in long term career prospects for *not* doing their job: for ignoring what they are supposed to know, for concealing what they are supposed to reveal, for handing over for destruction what they are supposed to protect, and in general, for serving as advocate, not for the people, but for the industry the people hired them to control. Is there a better way to get the people's business done? What?

No doubt political pressure can help. The agencies, after all, have to maintain at least the public appearance of right-doing. Judge Peterson's opinion effectively tarnished that appearance. The following months, then, show signs of diligence. The following April, the State Department of Forestry, for the first time, actually turned down two THPs proposed by PL. Ross Johnson, a program manager for the Department, cheerfully admitted that their decision was due to pressure by environmentalists. "Because we've had so many lawsuits, we're being more thorough in our review of these timber harvest plans," he explained to a *Times-Standard* reporter. "I guess you could give credit to these environmental groups. If we keep getting beat up on, we'll continue to do a better job." And PL will continue to keep the pressure on from its side: the company immediately appealed the ruling to the State Board of Forestry, to which the Department reports, and the Board saw things the company's way, overturning the Department's decision and giving PL permission to carry through the original THPs. So EPIC went back into court to sue yet again to force the State to do its job.²⁹

The unfairness of it all brings tears to the eyes. The state appointed and taxpayer bankrolled agencies openly admit that only public exposure and humiliation brought about by pressure from private groups will make them do their jobs; for the rest, they serve the industry. Let them actually be frightened into conscientious action for a change, and their action can be overruled by a taxpayer-financed but politically sensitive Board, well aware of where the votes are next election day. And so, having paid for the Board, and paid for the agency, to protect the trees, if we really want, after all, to save the trees, we must sue as private citizens the very same public servants, and pay the tab for the private litigation as well. There has to be a better method—a more direct and effective method.

4. *Do Earth's Ends Justify Extra-Legal Means? Enter Earth First!*

Who, then, speaks for the trees? Once, the lumber companies, but no more. Legitimately, the people, but with no single voice. Authoritatively, the California Department of Forestry, but not well. Yet the trees need protection now, immediately, not in some rosy future when we will have responsible business practices and an enlightened people and dedicated public agencies. Each day that goes by means that responsibility, enlightenment and dedication will arrive too late for yet more groves of redwoods. And a grove of redwoods is not like other things your bulldozer might accidentally run over. It's more like you.

Ordinarily we will stop the bulldozer if you are in front of it. The reason we will stop it is complex: it is not just a matter of law, not just a matter of prudent use of resources, and certainly not just a matter of tender feelings for you—it is more a perception of the dignity of the unique in life, and some permanent injunction against destruction of that uniqueness, an injunction to be breached only prayerfully and in strict necessity. The point is worth examining further.

It is not just a matter of law. Law forbids me to chase you down the sidewalk with a bulldozer, or ram through your house on your lot. But if you should place some construction on my property, blocking the legal and appropriate work of my bulldozer, I will knock it down with no qualms at all. The law provides no protection at all for your stuff

on my property against my will, and precious little formal protection for your body. What legal right you might have is easily removed by legal injunction, forbidding you to block my bulldozer with your body. Yet if you defy the injunction and show up in front of my bulldozer, I will stop. Why?

Certainly not because human beings are irreplaceable, or even endangered. On the contrary, they're replacing themselves faster than the biosphere can adapt, and we run the danger of flooding the surface of the earth with their bodies. No matter how many we run over, we can always grow more, and we could really do with less. Any cost-benefit analysis of the choice to stop or to keep going when you place your body in front of my bulldozer will yield an immediate solution: keep going.

I might decide to ignore the results of the cost-benefit analysis if I were particularly fond of you, of course. But what if I am not? Typically, the people that plant themselves in front of bulldozers are not the type that those bulldozer drivers would even like, let alone love. In the hardest case imaginable, that might be Charles Hurwitz in front of my bulldozer. Would I stop even for him? I probably would: the prohibition against placing the bulldozer in forward gear, opening the throttle, holding the steering levers in place until the human face disappears, first beneath the scoop, then beneath the treads, of the oncoming machine, goes beyond any feelings I may have. Where does it come from, then?

It seems to have something to do with respect for that which we cannot create, a totally unique center of life and spirit which, once gone, is gone forever. I can grow other human beings to replace you, of course, but they just won't be the same; there is no combination of individuals that will ever add up to, or duplicate you, do what you did or be what you were. This uncreatable uniqueness properly inspires in us reverence and respect, and leads us to agonize over every deliberate taking of human life, no matter how justified by law and conduct (witness, for instance, the extreme reluctance of the states to bring back capital punishment, and their even greater queasiness at applying it in an instant case).

Now, by this criterion, an old grove of redwoods has all the bulldozer-, or chainsaw-, stopping rights of a human being. (We will

adopt as correct the environmentalists' assumption, that from the point of view of the environment, it is the ecosystem as a whole, not the individual tree, that is the viable unit, including all its soil mass, wildlife, water, air, even its insects, as well as flowers, moss, trees. By "grove," then, we will understand a stand of trees of sufficient size to support itself indefinitely, barring interference from outside.) It is unique and uncreatable, certainly uncreatable by us. We can plant redwoods, but we cannot plant 1000-year old redwoods. We can plant trees, but we cannot restore the soil that has been washed away after the last clear-cutting, and therefore we cannot replace the floral ground cover, nor bring back the animals that lived on that assortment of plants dependent upon the shade and moisture of that grove. It is very difficult to create any ecosystem, let alone to recreate a particular ecosystem, and I think it could be argued that it is by definition impossible to recreate one that has been slowly coming to be over a millennium. When we are dealing with groves of this complexity and antiquity, we do not need to ask for the solution to a cost-benefit analysis, although some interesting analyses of the cost of extinction of species have been presented. We need only note that the grove in front of the saw can in no way be created or recreated by us, that it deserves our respect, and that we have no right to destroy it.

All of the above is by way of philosophical background to spikes in the trees. Earth First! (the punctuation is part of the name) is not one of your polite conservation-minded groups. Its specialty is "monkey-wrenching," tossing monkey wrenches into or otherwise fouling up any and all activities that destroy the environment. In addition to the usual suits and injunctions, the group's program includes burning billboards, pulling up developers' landmark stakes, and crippling bulldozers with nasty substances like maple syrup.²⁰ It should be noted that Earth First!'s actions on PL property were restricted to sitting in trees, talking to loggers, and occasionally serenading the company with guitar-accompanied renditions of "Where Are We Gonna Work When the Trees Are Gone," led by folk singer Darryl Cherney. (Cherney was at that time a candidate for the state legislature.) Occasionally arrested and sued at least once by the company, Earth First! quietly settled the suit and volunteered for community service instead of jail.³¹ But they are not always so

nonviolent. In their efforts to prevent other logging operations, their activities have been known to include spiking roads to cripple the logging trucks, and tree-spiking, driving a twenty-penny nail into a tree. The nail is easily concealed, and the operation doesn't hurt a living tree. But it does render the tree useless for lumber, because the nail chews up the blades of the saws. If the authorities are informed that a grove is spiked, and tells the logging company about it, a prudent company would not log that grove, until the spikes could be removed. If the spiking is sufficiently persistent, it may be impossible to log the grove.

Is this good environmentalist activity? "They are outlaws," says Jay Hair, President of the National Wildlife Federation, of Earth First!, "they are terrorists; and they have no right being considered environmentalists." "A terrorist organization," echoes Michael Kerrick, supervisor of the Willamette National Forest in Oregon; Cecil Andrus, former Secretary of the Interior, calls them "a bunch of kooks."³² It is hard to find supporters for these tactics in the ranks of the traditional conservationist organizations, and even harder in the ranks of the government agencies charged with enforcing environmental regulation. But has anything else worked, for individual groves or ecosystems? Sometimes we can get tradeoffs--we agree not to press the matter on 15 or 20 acres of old-growth redwoods, and they will preserve some particularly desirable stretches in Alaska. But if it is a grove of trees more than a millennium old that is slated for destruction today, and the lumber company is in the hands of a Wall Street financier who wants only cash now, and local councils and legislatures are dominated by sawmill owners and the like, and the CDF approved the THP even before it was drafted, what other than terrorist tactics will work to preserve it?

Perhaps the notion of a "tradeoff" is not entirely appropriate to the situation of the irreplaceable grove. If we trade off a grove for another today, what shall we trade tomorrow? For it is impossible to grow something of equal value to satisfy the appetite of the company. Only complete preservation will preserve the status quo ante, the balance that trades try to maintain. We do not, after all, always insist on tradeoffs in all matters, even in the political system. We never tried to get the Ku Klux Klan to lynch fewer Blacks, or only rural Blacks or

Blacks in the Deep South states. Sometimes we had to endure lynchings, but the notion of a legal and accepted compromise on the numbers of lynchings never came up. It may just be that when we are dealing with fragile ecosystems, as when we are dealing with human beings, the rule of compromise, applicable elsewhere in environmental matters and in political matters generally, will have to be scrapped in favor of a rule of strict preservation, and no lobbying or legislative efforts should be spent in attempts to reach "compromise solutions." If this is the move of the future for the environmentalist community, we will owe, perhaps, more of a debt than we are willing to acknowledge to Earth First!

Meanwhile, how should a legitimate business react to terrorist tactics? If PL by now does not seem to be legitimate, the question can be raised about any other company or industry. How should we react to Pro-Life threats to smash all windows in the pharmacies that sell abortifacients? to Vegetarian threats to poison the cattle herds? to Muslim threats to firebomb the bookstores? The usual counsel, and indeed, *my* counsel, under all other circumstances, is to take the strongest possible measures to arrest and disable the terrorists, while conducting business as usual to show that terrorism is unavailing. Should that be our advice to Maxxam in its dealings with Earth First!?

5. *Tell Me, Which Side Are You On? The tragic options of the loggers*

While the well-oiled machines of finance whir on Wall Street, and the salvos fly between environmentalists and the industry, what is the worker to do? The communications identifiably from loggers and their families in the local newspapers reveal above all a sense of loss for the destruction of the company they knew, and which they expected to take care of them until retirement and beyond. Above all, they want to preserve the lifestyle and security they had. But that, of course, is the one thing they cannot do. Beyond that loss, all other options lead to more loss.

a. *Onward and Upward with Private Enterprise.* They can side with the company, and applaud the wasteful acceleration of the logging.

After all, it leads to plenty of work now, including overtime, and that feeds the wallet enough to block out that empty feeling in the soul when the clearcut hillside is finished and abandoned. Loggers prefer to drive pickup trucks; now the PL loggers drive new pickup trucks. It could be argued that the job, now so secure, will evaporate 20 years down the road, just as the jobs did at other companies, when the timber is gone. But 20 years is a long time; indeed, if you are a young father, raising four children between the ages of two and seven, 20 years is forever, or as long as you need, which is the same thing. In many respects, this is the most rational option for the logger, and certainly it was the one most taken. By June, 1988, PL employees had even founded a pro-industry anti-environmentalist newsletter, "a cooperative effort to gather support against radical environmentalists that are attempting, and in some cases succeeding, in halting our attempt to make a living." The editors maintained that the publication was "not company supported," inviting cynicism; the first accomplishment claimed for the effort was a successful letter-writing campaign to the State Board of Forestry, that brought about the approval of those THPs temporarily held up by the CDF.³³

b. *Save the Trees.* The loggers can side with the environmentalists and try to get the trees, especially the old growth, preserved forever under some state umbrella. This course is not so immediately unlikely as it sounds; most loggers genuinely love the woods and streams among which they live, and enjoy outdoor recreation by choice. But it was never a real option for the PL loggers. First, there was the visceral hatred of the environmentalists: long-haired, dirty, foul-mouthed, middle class and instinctively contemptuous of workers, to all appearances Communist and drug-abusers, these hippies repelled the loggers from the day they bumped into town in their Volkswagens. Even Stanwood Murphy, their natural ally, found them repulsive. "I agree with them that the accelerated harvesting is the wrong way to go at it," he told *L.A. Times* staff writer Ilana DeBare, "But Earth First! is a radical group, and a lot of that I just can't associate myself with. [They look like] a bunch of college kids with ponytails . . . You've got to look like the people you're trying to convince."³⁴ Second, and more enduringly important, saving the

trees meant instant unemployment and the necessity of leaving the area for a very uncertain future elsewhere. The loggers were never for one minute unaware of this; as the sampling above indicates, PL spokespeople never opened their mouths without reminding the workers that if the environmentalists had their way, there wouldn't be any jobs. To a young head of a family, without any educational qualifications, such forced relocation is equivalent to suicide; environmentalism had very few friends among the ranks of the loggers.

c. *Solidarity Forever.* There had never been a union at Pacific Lumber. Was it worth a try after the takeover? One article, filed two weeks after the takeover was announced, reported that Local 3-98 of the International Woodworkers of America, AFL-CIO, was considering an organizing effort in response to a few requests from frightened workers. About all the union could do, its business agent conceded, was make sure that layoffs took place in an orderly manner, respecting seniority. Given the way the company had always been run, he foresaw a great deal of difficulty in convincing the workers of the need for a union: "The employees have to understand they can't deal with management as individuals anymore, particularly if they find themselves with an owner who lives thousands of miles away and doesn't know the lumber business. . . . They're going to have to deal with the company as a group with some power."³⁵

Unions happened in America because men like Hurwitz took over industry from men like Stanwood Murphy. In the vast impersonality of the factory, reduced to an impersonal cog in an impersonal machine, laborers found support, identity and confirmation of their own worth, as well as political and economic power, in the union. Is it too late for PL workers to go that route? I suspect it is. I found no follow-up to 3-98's "consideration" of their case.

d. *The Dream of Ownership.* By September of 1988, the extent of the destruction of the timber lands was evident to everyone, and the workers had begun to talk about alternatives to unwavering support of present management. Could they take over the company? The ESOP, or Employee Stock Ownership Plan, was a new idea for the workers, but organizer Patrick Shannon assured them it was feasible. The

appeal was undeniable: to be the boss, to be the owner, to be in control of one's destiny! Woody Murphy immediately came out in favor of it, but pointed out that with the large, and undiminishing, debt accumulated by Maxxam, there might not be enough money in the company any more to afford it. Hurwitz and William Leone, his CEO, immediately published an ad in the Eureka *Times-Standard*, insisting that the company was not for sale--but then, Shannon pointed out, it hadn't been "for sale" when Hurwitz and Maxxam acquired it in 1985.

It is not actually an ESOP that is contemplated; such plans are usually initiated by management and never give the workers actual control. Shannon is urging a hostile takeover by workers, requiring that they raise hundreds of millions of dollars to buy up shares on the open market until they have a majority. Is this even remotely possible? Hurwitz did it in 1985. But he had access to Drexel Burnham Lambert, and Boesky and Jeffries and Michael Milken and all of the creative financing of which Wall Street is capable. Above all, he had the assets of Pacific Lumber--the corporate headquarters in California, now sold, a valuable welding company, now sold, the extensive virgin timberlands, now stripped or soon to be so, and all the good will in the world--to serve as equity for those loans. "Employees who want to pursue the dream of an ESOP takeover have every right to do so," editorialized the *Times-Standard* in October, 1988, "Circumstances, however, suggest it's an impossible dream--one fraught with the potential for great disappointment and financial loss."³⁶

6. Conclusion

Whatever facet of this case we have under consideration--the traditional company, with its rich inheritance of social responsibility and compassion for its workers and its land, the loggers, once secure in a relatively carefree existence, the community, once assured of a prosperous future, the financial institutions, once reliable custodians of conservative fiscal practices, or the giant redwoods themselves, that we always assumed would last forever--"great disappointment and financial loss" seem to be among the outcomes. At this point it is not clear whether criminal acts were involved in the takeover that opens our

story, whether shameful betrayal is the correct characterization of the acts of the Board of Directors, whether the government agencies charged with regulating the timber industry are up to the job, whether the radical environmentalists are right in their employment of extreme measures, and whether, eventually, the workers will be able to get off the rollercoaster and take control of their situation. In these and other unclaritys, the case raises questions about the conduct of a business in every one of its areas of constituent relations, and serves as a prism through which a multitude of issues may be seen in exemplar.

Notes

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1. In the third quarter of 1984, for instance, less than a year before the takeover, PL reported that its net earnings rose 50 percent over the previous year (\$11,337,000, or 47 cents per share, compared to \$7,547,000, or 31 cents per share, for the third quarter a year ago). Sources include annual reports from the years 1981 through 1984.

2. Ilana DeBare, "Old Redwoods, Traditions Felled in Race for Profits," *Los Angeles Times* 4/20/87.

3. The source for this statement is a brochure published by Pacific Lumber, no date visible.

4. See Thomas J. Peters and Robert H. Waterman, Jr., *In Search of Excellence*, New York: Harper and Row, 1982, Daddy of them all; then progeny, Terrence E. Deal and Allan A. Kennedy, *Corporate Cultures*, Reading: Addison Wesley, 1982; John Naisbitt and Patricia Aburdene, *Re-inventing the Corporation*, New York: Warner Books, 1985; Tom Peters and Nancy Austin, *A Passion for Excellence*, New York: Random House, 1985; Buck Rodgers, *The IBM Way*, New York: Harper and Row, 1986; Robert H. Waterman, Jr., *The Renewal Factor*, New York: Bantam Books, 1987.

5. The orthodox capitalist approach is possibly best captured by Milton Friedman, in his oft-reprinted "The Social Responsibility of

Business is to Increase its Profits," *The New York Times Magazine*, September 13, 1970.

6. *Wall Street Journal* February 10, 1988.

7. Testimony of William G. Bertain, Attorney at Law, attorney of record for the Murphy greatgrandchildren in the suit to retain control of the company, before Congress, on October 5, 1987; investigation of Drexel Burnham Lambert's major customers.

8. "Pacific Accepts Maxxam Bid," *The New York Times*, October 24, 1985; "PL agrees to buyout deal: New York firm's offer of \$40-a-share accepted," *Times-Standard*, Eureka CA, October 23, 1985; "Money Talks," *Wall Street Journal* November 13, 1985; "PL chief quits; gets \$400,000," *Times-Standard* June 10, 1986.

9. "PL-Maxxam merger hit by second lawsuit," *Times-Standard*, Eureka CA, November 1, 1985; "One PL suit dismissed, another filed locally," *Times-Standard* November 2, 1985; "Pacific Lumber Bid Is Studied," *The New York Times*, November 8, 1985; "Ecology Interests question PL deal," *Times-Standard* November 11, 1985; "Pacific-Maxxam Link Is Fought by a Family," *The New York Times*, November 11, 1985; "Maxxam Gets 60% Of Pacific's Shares," *The New York Times* November 12, 1985; "Judge clears way for merger of Maxxam, PL," *Times-Standard*, February 13, 1986; "Another suit filed to block PL takeover," *Times-Standard* February 23, 1986.

10. Robert Lindsey, "They Cut Redwoods Faster to Cut the Debt Faster," *The New York Times*, March 2, 1988. Attempts to secure PL comment on the allegations were unsuccessful; Mr. Hurwitz was "not available" for comment. The company lawyer, however, Howard Bressler, "said the company had complied "meticulously" with all applicable laws in the merger," and that there was "nothing improper" about the handling of the pension plan.

11. Diana Henriques, "The Redwood Raider," *Barron's*, September 28, 1987, pp. 14 ff.

12. *Ibid*, p. 14.

13. *Ibid*, p. 34.

14. *Ibid*, p. 34.

15. Enoch Ibarra, "Pacific Lumber Timber Harvest Causes Concern," *The Humboldt Beacon* (Fortuna, California) January 27, 1987.

16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. *Times-Standard* of Eureka, California, May 5, 1987.
20. Richard A. Lovett, "The Real Costs--to All of a Corporate Buyout," *The Sacramento Bee*, February 21, 1988.
21. Robert Lindsey, "They Cut Redwoods Faster to Cut the Debt Faster," *The New York Times* March 2, 1988.
22. Statement on Pacific Lumber Old-Growth Agreement, Governor's Press Conference Room State Capitol, May 26, 1988.
23. See also "Company Eases Its Policy on Logging of Redwoods," *The New York Times* Friday May 27, 1988; PALCO news release, The Pacific Lumber Company, PO Box 37, Scotia, CA 95565, May 26, 1988; "Bill to Stop Clearcutting in the Works," *San Francisco Chronicle*, January 28 1989; "Bill would restrict PL clearcutting of virgin redwoods," *Times-Standard*, Eureka CA, January 31, 1989.
24. Letters to *Times-Standard*, May 5, May 13, and June 4, 1987. "Timber bill opposed," *Times-Standard* May 2, 1987.
25. Enoch Ibarra, "Pacific Lumber Timber Harvest Causes Concern," *Humboldt Beacon*, January 27, 1987.
26. Greg King, "Fish and Game Says Pacific Lumber/CDF Eliminating Wildlife," *Humboldt News Service* May 11, 1987.
27. Superior Court of the State of California for the County of Humboldt, case # 79879, Ruling on Petition for Writ of Mandamus, Nov. 5, 1987.
28. See also "Judge sides with PL and CDF," *Times-Standard*, Eureka CA, July 10, 1987; "Suit Against Pacific Lumber To Be Fought On PL Terms," *North Coast News*, July 16, 1987; "CDF won't appeal ruling," November 13, 1987, "CDF upset by court's decision," *Times-Standard*, November 15, 1987.
29. "Pacific Lumber Harvest Denied," *San Francisco Chronicle*, April 21, 1988; "P-L plans for cutting old growth under fire," *Times-Standard*, Eureka CA, April 22, 1988, "PL temporarily blocked from harvesting old-growth again," *Times-Standard*, April 28, 1988; "Protecting Redwoods," *Los Angeles Times* editorial, April 26, 1988; "PL appeals ruling on timber harvests to forestry board," *Times-Standard* Friday, May 6, 1988; "Judge lifts restraining order; PL allowed

to log old growth," *Times-Standard* June 3, 1988; "Environmentalists file new suit over PL logging plans," *Times-Standard*, June 16, 1988.

30. David Foreman, *Ecodefense: A Field Guide to Monkeywrenching*, 1985; cited in Jamie Malanowski, "Monkeywrenching Around," *The Nation*, May 2, 1987.

31. *Times-Standard*, Eureka CA April 8, 1988; May 1, 1988; *Times-Standard*, April 14, 1988 ("20 Arrested in Kneeland Anti-Logging Protest"); Publications from Darryl Cherney for Congress, PO Box 9, Percy CA 95467.

32. Malanowski, *op. cit.* p. 569.

33. Save The Employees Newsletter (Box 128 Scotia, CA 95565) June 13, 1988.

34. DeBare, *op. cit.*

35. Lewis Clevenger, "Local Union Considers Trying to Organize at Pacific Lumber," *Times-Standard* of Eureka, November 8, 1985.

36. *Times-Standard*, Eureka, California, October 11, 1988.