

No. 82397-9

SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SHORELINE, a Municipal Agency; and DEPUTY MAYER MAGGIE
FIMIA, individually and in her official capacity,

Appellants,

v.

DOUG and BETH O'NEILL, individuals,

Respondents.

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BRIEF OF AMICUS CURIAE
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION AND ALLIED
DAILY NEWSPAPERS OF WASHINGTON, INC.

GORDON THOMAS HONEYWELL LLP

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Newspapers of Washington, Inc.

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I. IDENTITY AND INTEREST OF AMICU CURIAE

The Washington Newspaper Publishers Association is an association for community newspapers, freedom of the press and open government. The Association's mission is, in part, to help members advance editorial excellence, financial viability, professional development and in high standard of publication quality and community leadership. The Washington Newspaper Publishers Association represents approximately 130 community newspapers in the state of Washington. Allied Daily Newspapers of Washington, Inc. ("ADNW") is a Washington not-for-profit association representing 24 daily newspapers serving Washington and the Washington bureaus of the Associated Press.

II. INTRODUCTION AND STATEMENT OF THE CASE

If a document, in its native electronic form, contains metadata, then under the Public Records Act ("PRA") an agency must also disclose this electronic information. Here, this appeal involves whether the metadata associated with an e-mail communication is subject to disclosure under the PRA as a hard copy of the email does not include this electronically stored information. For the purposes of this amicus curiae brief, the facts are drawn from the briefing of the parties and the decision of the Court of Appeals.

On September 18, 2006, Deputy Mayor of the City of Shoreline, Maggie Fimia, explained that she received an e-mail setting forth allegations of improper conduct of members of the City Council over a pending zoning issue. Fimia explained that the e-mail was sent to her from a Ms. Hettrick and a Ms. O'Neill. Hearing this, Beth O'Neill made a request of Fimia to see the e-mail she referenced.

After this request was made by O'Neill, Fimia deleted the top four lines on the header of the e-mail and forwarded it from her personal computer to her governmental e-mail address. Subsequently, Fimia deleted the e-mail from her personal computer.

The day after the public meeting, September 19, 2006, O'Neill initiated a series of contacts with the City requesting records. The original e-mail, in its native form, was never produced.

Beth O'Neill and her husband Doug O'Neill filed suit under the PRA against the City and Fimia. Shortly thereafter, the parties submitted briefing to the superior court. Without an actual in-court proceeding, the trial court dismissed the action and awarded costs to the City and Fimia. After the trial court denied the O'Neill's motion for reconsideration, a notice of appeal was filed with the Court of Appeals.

On July 21, 2008, the Court of Appeals issued its published decision affirming in part, vacating in part and remanding for further proceedings in the superior court. On the issue relevant to this brief,

the Court of Appeals concluded “that the electronic version of the e-mail is a public record.” *O’Neill v. City of Shoreline*, 145 Wn.App. 913, 924, 187 P.3d 822 (2008). On this point, the Court reasoned that Fimia “used” the e-mail when she made it the subject of public comment at the City Council meeting. *Id.* Next, the Court of Appeal went on to analyze “whether the metadata associated with the foregoing e-mail is also a public record.” *Id.* On this issue the Court concluded that the metadata associated with the e-mail, “or some portion of it” was a public record. *Id.* at 925. The Court of Appeals reasoned that the metadata fell within the statutory definition of a “writing,” that it contained information that “relates to” the conduct of government, and lastly that the City “owns” the metadata associated with the e-mail at issue. *Id.*

The City of Shoreline petitioned this Court for discretionary review which was granted.

III. ISSUE PRESENTED

Whether the metadata of a public record is also a public record within the meaning of RCW 42.56.010(2)?

IV. SUMMARY OF ARGUMENT

Access and evaluation of metadata is important for journalistic efforts to report on governmental operations. Without this information,

many important stories would remain untold. While the Court of Appeals' ultimate conclusion was correct, the analysis is more basic.

The proper analysis under the PRA is to ask whether the electronic document is a "public record" under RCW 42.56.010(2). If the answer is yes, then the agency should produce the electronic record, including all metadata, absent a statutory exemption. Because there is no exemption at issue in this case, to comply with the PRA, the City of Shoreline should have produced the email in its native form with all metadata intact.

V. ARGUMENT

Our society has replaced the typewriter with "texts" and "tweets." The technology dictating how people communicate has changed. Without a doubt, the use of electronically created documents is the reality of today's communication. Nevertheless, the application of law must remain the same to these electronic documents as it would to a typewritten letter drafted many years ago.

Contained within electronically-created documents is "metadata," which is information detailing how the electronic document was created. The comments to Federal Rule of Civil Procedure 26(f) define metadata as "[i]nformation describing the history, tracking, or management of an electronic file." Metadata can encompass information describing a particular document such as who

drafted it, the date the document was drafted, the history of any modifications, the size of the file and under what name and location the file was stored. *Williams v. Sprint United Management Co.*, 230 F.R.D. 645, 646 (D. Kan. 2005). "Most metadata is generally not visible when a document is printed or when the document is converted to an image file." *Id.* An example of such would be track changes from a Word document that is not visible unless the track changes button is pressed.

Indeed, "metadata varies with different applications." *Id.* As the *Williams* court explained, often documents, such as extensive databases, are useless without metadata:

As a general rule of thumb, the more interactive the application, the more important the metadata is to understanding the application's output. At one end of the spectrum is a word processing application At the other end of the spectrum is a database application where the database is a completely undifferentiated mass of tables of data. The metadata is the key to showing the relationships between the data; without such metadata, the tables of data would have little meaning.

Id. at 647.

Metadata is a critical part of understanding documents and, therefore, investigations. This is true from the criminal law context,

State v. Garbaccio, 151 Wn. App. 716, 729, 214 P.3d 168 (2009),¹ to investigative journalism. Without access to such information, journalists who are reviewing or reporting on governmental operations are without the tools to do their job for the public.

Under the PRA, if a particular file or document is a public record, then any electronic information associated with the document is part of the public record. RCW 42.56.010(2). The analysis is this simple.

A. Metadata Meets the Definition of a Public Record

Washington courts have uniformly held that “the Washington public disclosure act is a strongly worded mandate for broad disclosure of public records.” *Hearst v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). Consistent with its policy of broad disclosure, the PRA states that “[e]ach agency, in accordance with published rules, *shall make available for public inspection and copying all public records, unless the record falls within [a] specific exemption . . .*” RCW 42.56.070 (emphasis added). The policy behind the PRA is one of transparency, accountability of public officials and employees, and

¹ In *Garbaccio*, the Court of Appeals affirmed a conviction for possession of child pornography and noted that evidence against the defendant came in the form of metadata. The Court recounted: “More importantly, as Detective Bergmann declared in the affidavit, evidence of Garbaccio’s possession of contraband, in the form of metadata, would likely be found on his computer hardware, even if the contraband itself could no longer be viewed on his computer.” *Id.* at 729 (emphasis added).

open government. It is clear that the people, in enacting the PRA, unambiguously intended a presumption in favor of disclosure:

. . . mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

RCW 42.56.001 (incorporating RCW 42.17.010 as reproduced above).

Similarly, exemptions to the PRA are narrowly construed. *Hearst*, 90 Wn.2d at 126. “Declarations of policy requiring liberal construction are a command that the coverage of an act’s provisions be liberally construed and that its exceptions be narrowly confined.” *Id.* (citing *Mead School Dist. 354 v. Mead Educ. Ass’n*, 85 Wn.2d 140, 145, 530 P.2d 302 (1975)).

Under the PRA the term “public record” is defined as follows:

[A]ny writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. . . .

RCW 42.56.010(2) (emphasis added).

While the Court of Appeals in this case analyzed whether the metadata itself, or a portion of the metadata, was a public record, *O’Neill*, 145 Wn.App. at 924, the approach more consistent with the

text of the PRA is to ask only whether the documents at issue, in its native form, is a public record. The text of the PRA makes it unmistakably clear that the “physical form or characteristics” of the document is irrelevant. (i.e., it is irrelevant whether the document is a handwritten note, a Word file, an Excel file, an email, or an electronic data base). If the document is a public record, then necessarily all the metadata associated with the document is part of that record. It makes little sense to analyze the document and the accompanying metadata separately. As the Supreme Court of Arizona explained: “[i]t would be illogical, and contrary to the policy of openness underlying the public records laws, to conclude that public entities can withhold information embedded in an electronic document, such as the date of creation, while they would be required to produce the same information if it were written manually on a paper public record.” *Lake v. City of Phoenix*, 218 P.3d 1004, 1008 (Ariz. 2009). This Court should find the *Lake* reasoning persuasive.

B. Excluding Metadata From The Definition Of Public Record Would Judicially Exempt A Complete Category of Information About The Operation Of Government Without A Statutory Basis

The PRA unequivocally limits the exemptions to those statutorily created. The statute provides:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their

public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCWA 42.56.030. This message was not mere verbiage. *Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 260, 884 P.2d 592 (1994) (“the Legislature takes the trouble to repeat three times that exemptions under the Public Records Act should be construed narrowly. . . . The Legislature leaves no room for doubt about its intent.”). As stated more directly in *Ockerman v. King County Dept. of Developmental and Environmental Services*, 102 Wn. App. 212, 218, 6 P.3d 1214 (2000), the courts cannot “modify by judicial fiat the plain wording of the statute.”

This preclusion of judicially created exemptions is consistent with both ordinary rules of statutory interpretation and prior case law on the PRA. For instance, Washington courts will not read new exemptions into the PRA. *Progressive Animal Welfare Soc. v. University of Washington*, 114 Wn.2d 677, 688, 790 P.2d 604 (1990) (holding “courts may not read into the statute matters which are not there.”). Similarly, the PRA directs reviewing courts to carry out its terms as

written. *American Civil Liberties Union of Washington v. Blaine School Dist. No. 503*, 86 Wn. App. 688, 692, 937 P.2d 1176 (1997) (“We will not construe a statute that is clear on its face.”)

In this circumstance, there is no exemption for metadata. There is no provision allowing an agency to redact or eliminate metadata from a document, which is itself a public record.² Here, no one seriously disputes the email is a public record. The email is an electronic file, not a paper printout. If the email, in its native form, is a “public record,” then there is no exemption allowing the City of Shoreline to redact metadata from the email. As directed by the people, this Court should continue its history of PRA interpretation in favor of disclosure.

C. Without Access To Metadata, Important Information About The Function Of Government Will Remain Secret

Journalists, in fact, use metadata to uncover the truth about subjects important to the public. Examples include, the *Miami Herald's* 1998 investigation into mayoral election fraud, the *Wall Street Journal's* investigation into stock option backdating to favor insiders, the *Sarasota Herald Tribune's* investigation into a school system's

² There is no provision within the PRA that would permit a conclusion that only part of a document is a public record. This would be the same as arguing that one sentence from a handwritten note is not a public record while the paper and remaining portions are a public record. This analysis would be erroneous because “[w]hen a public officer uses a computer to make a public record, the metadata forms part of the document as much as the words on the page.” *Lake*, 218 P.3d at 1007-1008.

refusal to address predatory teachers, the *New York Times'* investigation into the cover up regarding fatality accidents at railway crossing, and the *Atlanta Journal Constitution's* investigation into banks' discriminatory loan practices against African-American homebuyers. See Appendix. Without access to this source of information, the public will not have important information about how its government and elected officials are operating. The need to have this type of information is precisely why the PRA exists.

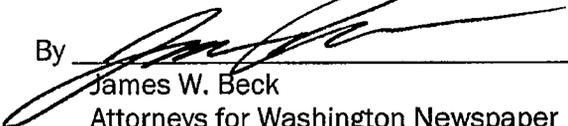
VI. CONCLUSION

The Court should consider the analysis in this brief and resolve the issues accordingly.

Dated this 12th day of February, 2010.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By 

James W. Beck
Attorneys for Washington Newspaper
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WSBA No. 34208

APPENDIX

1. Brief of Amici Curiae First Amendment Coalition of Arizona, Inc., Society of Professional Journalists, and Arizona Newspapers Association, Ex. B (Declaration of Stephen K. Doig in Support of Brief of Amici Curiae), *Lake v. City of Phoenix et al.*, 218 P.3d 1004 (Ariz. 2009) (CV-09-0036-PR)
2. Dan Keating, *First Major Step to Fight Election fraud: Opening Florida's Voting Roll to Public*, MIAMI HERALD (FL), Mar. 8, 1998
3. Walt Bogdanich, Jenny Nordberg, Jo Craven McGinty and Tom Torok, *Questions Raised on Warnings at Rail Crossings*, N.Y. TIMES, Dec. 30, 2004, at A.1
4. Chris Davis, Matthew Doig and Tiffany Lankes, *Caught. Punished. Back to School. -Vague Guidelines, Secretive Deals Shield Misconduct and Place Students at Risk*, SARASOTA HERALD-TRIBUNE (FL), Mar. 19, 2007
5. Jim King, *Mortgages in Black and White—First of Two Parts: Today: The Problem and Its Causes – Next Sunday: What can be Done—Loan Gap Plagues Atlanta Blacks—Higher Denial Rate for Home Mortgages in City, Nation called "Moral -Disgrace"*, ATLANTA J./ATLANTA CONST., Mar. 15, 1992
6. Jeff Leen, Stephen K. Doig and Lisa Getter, *Failure of Design and Discipline*, MIAMI HERALD (FL), Dec. 20, 1992

Appendix #1

ARIZONA SUPREME COURT

DAVID LAKE,

Plaintiff/Appellant/
Petitioner,

v.

CITY OF PHOENIX, a political
subdivision of the State of Arizona;
FRANK FAIRBANKS, in his official
capacity; MARIO PANIAGUA, in his
official capacity; JACK HARRIS, in his
official capacity,

Defendants/Appellees.

Supreme Court
CV-09-0036-PR

Court of Appeals
Division One
No. 1 CA-CV -7-0415

Superior Court
Maricopa County
No. LC2006-00835-001 DT

**BRIEF OF *AMICI CURIAE*
FIRST AMENDMENT COALITION OF ARIZONA, INC., SOCIETY OF
PROFESSIONAL JOURNALISTS, AND ARIZONA NEWSPAPERS
ASSOCIATION**

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Society of Professional Journalists, and
Arizona Newspapers Association

July 16, 2009

EXHIBIT B

ARIZONA SUPREME COURT

DAVID LAKE,

Plaintiff/Appellant/
Petitioner,

v.

CITY OF PHOENIX, a political
subdivision of the State of Arizona;
FRANK FAIRBANKS, in his official
capacity; MARIO PANLAGUA, in his
official capacity; JACK HARRIS, in his
official capacity,

Defendants/Appellees.

Supreme Court
CV-09-0036-PR

Court of Appeals
Division One
No. 1 CA-CV -7-0415

Superior Court
Maricopa County
No. LC2006-00835-001 DT

**DECLARATION OF STEPHEN K. DOIG IN SUPPORT OF BRIEF OF
AMICI CURIAE FIRST AMENDMENT COALITION OF ARIZONA, INC.,
SOCIETY OF PROFESSIONAL JOURNALISTS, AND ARIZONA
NEWSPAPERS ASSOCIATION**

I, Stephen K. Doig, declare as follows:

1. I am a professor at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University, where I hold the Knight Chair in Journalism specializing in computer-assisted reporting.

2. Prior to joining the faculty of the Cronkite School, I spent more than 19 years as an investigative reporter at *The Miami Herald*. During my years at the *Herald*, I became a nationally known expert on the use of database and statistical software to analyze computer-readable public record datasets. Significant investigative projects on which I worked at the *Herald* have been recognized with a variety of major awards, including the 1993 Pulitzer Prize for Public Service, the Investigative Reporters & Editors' Award, Harvard University's Goldsmith Prize for Investigative Reporting, the American Bar Association's Silver Gavel award, and the Inter-American Press Association award.

3. Since joining the Cronkite School, I have remained active in the journalism profession. I do frequent training sessions for reporters who wish to learn how to analyze public record datasets. I have trained hundreds of reporters around the United States. I also have conducted computer-assisted reporting workshops in Spain, Brazil, Indonesia, Norway, the Netherlands, Belgium, England, Canada and Mexico.

4. I served four years as an elected member of the board of directors of Investigative Reporters & Editors, a professional organization of more than 4,000 members. I also organized and judge the annual Phil Meyer Award for Precision Journalism, which recognizes the best reporting done using social science methods.

5. The metadata of a dataset contains detailed information that is essential for reading and analyzing the data properly. Key elements of metadata include:

- The file layout, which explains how to parse each line of the data into the proper variables.
- The data dictionary, which explains the codes and abbreviations necessary to understanding what the variables mean.
- The relational architecture, which show how different tables of a relational database can be joined on common variables

6. Metadata also can include other information about a computer file, including revision history, contact information for those responsible for managing the data, software used to create it, map projections used in geographic files, etc.

7. Here is a hypothetical example of two records from a very simple computer dataset:

194804211722388500410

195008030691728528121

8. The metadata shown below for this dataset in paragraph 7 above, combines the file layout and the data dictionary:

<u>Column</u>	<u>Variable</u>
1-4	Birth Year
5-6	Birth Month
7-8	Birth Day
9	Gender (0=Female, 1=Male)
10-11	Height in inches
12-14	Weight in pounds
15-19	ZIP Code
20	Race (1=White, 2= Black, 3=Other)
21	Hispanic Origin (1=Yes, 0=No)

9. Applying the metadata in paragraph 8 to the two datasets in paragraph 7, we learn that the first set of numbers describes a White male who was born on April 21, 1948, is 6 feet tall, 238 pounds and lives the downtown Phoenix zip code of 85004. The second set of numbers in paragraph 7 describes a black Hispanic female who was born on August 3, 1950, is 5 feet, 9 inches tall, 172 pounds and lives in the Tempe zip code of 85281.

10. The records in the dataset cannot be interpreted or used without the metadata. Refusal to supply the metadata would be tantamount to denying the

public records request. The purpose of the Public Records Law is to allow citizens to monitor the workings of government. Refusing to include metadata when producing a dataset pursuant to a public records request is equivalent to releasing data in a password-protected file without revealing the password. Attached as an appendix is the metadata for a much more complicated relational database

11. Metadata itself poses no problems of confidentiality or invasion of privacy. The metadata indeed may list one or more variables that themselves contain information that is confidential, such as the identity of confidential informants in a police database. But the variable name (perhaps in this example "CI" or "CONF_INF") reveals nothing damaging itself, and it is a simple matter for the record custodian to export the database so that the problematic variable is excluded. Refusing to produce the metadata for a dataset that contains some confidential variables is similar to refusing to produce any police arrest report that contains the name of a confidential informant, even though those names could readily be redacted with a black marker.

12. Metadata routinely is used by journalists to analyze government data in order to produce reports of vital public interest. A few of the hundreds of examples include:

- Analysis of voting records by the *Miami Herald* in a 1998 Miami mayoral election that proved pervasive election fraud and caused the election to be overturned.
- Analysis of stock option grants by the *Wall Street Journal* that showed dozens of public companies were backdating options for favored insiders to give them inflated profits.
- Analysis of Florida teacher discipline records by the *Sarasota Herald Tribune* showing how predatory teachers were protected by a system that allowed them to move from school to school.
- Analysis by the *New York Times* of fatal accidents at railway crossings across the nation documenting corporate cover-up of responsibility.
- Analysis of mortgage lending practices in Atlanta by the *Atlanta Journal-Constitution* that demonstrated how banks were rejecting loan applications from black homebuyers at much higher rates than whites with similar financial resources.

13. The project for which I won the Pulitzer Prize featured an analysis of the damage patterns to more than 80,000 homes in south Florida after Hurricane Andrew in 1992. I used computer-readable datasets that included the county's property tax roll of more than 600,000 records; more than a million building

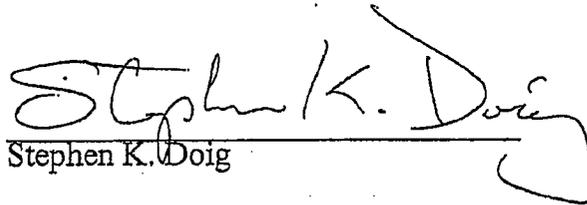
inspection records; and tens of millions of dollars in campaign finance records of showing the influence of housing developers on the county commission. The analysis demonstrated that weakening of county building codes, sought by developers and approved by commissioners, greatly magnified the financial and human disaster of the storm. This project could not have been accomplished without access to the metadata of the various complex datasets I used. The metadata for each of these datasets encompassed many pages detailing how to import the records and explaining the meaning of various codes used by the property appraisers and building inspection officials.

14. Withheld or inaccurate metadata can lead to errors in interpretation. An example of this problem occurred when I did an analysis of how south Florida judges were sentencing people convicted of driving under the influence. The metadata told me there was a variable that showed how much jail time each defendant received and another that showed how large a fine each received. My analysis of the data showed for each judge the percentage of cases that were given jail and the percentage given fines. Every judge also had 1-2% of his or her cases showing no jail and no fine, a finding that was included in the graphic. When the project was published in the *Miami Herald*, the judges complained that the graphic indicated they were breaking the law – all DUI cases must receive punishment. As I

learned later in talking with the court clerks' office, zero-jail-zero-fine defendants actually were indigents on their first offence who were given community service as punishment. Because the metadata was flawed, this fact was not included in the metadata and therefore led to an error that had to be corrected

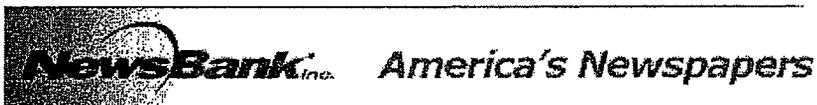
I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 14, 2009 in Phoenix, Arizona.


Stephen K. Doig

29047-0001/LEGAL16474980.1

Appendix #2



FIRST MAJOR STEP TO FIGHT ELECTION FRAUD: OPENING FLORIDA'S VOTING ROLL TO PUBLIC

Miami Herald, The (FL) - Sunday, March 8, 1998

Author: DAN KEATING, Herald Staff Writer

This is a confession.

But there's no remorse.

The Herald vigorously investigated voter fraud, and our work was validated this week by Judge Thomas S. Wilson Jr.'s decision to throw out the city of Miami election results. We uncovered many violations of the law: Voters who live outside Miami. Ineligible felons voting. Voters paid \$10 apiece. And votes cast in the names of people who swear they did not vote.

For us to find the voter fraud, the Herald had to find a way around a Florida law that generally forbids the public to obtain a copy of the list of registered voters. Without obtaining that list, the Herald could not have found the voters who live outside the city, or those who are felons, or those who were paid, or the voters who swear they didn't vote.

Florida is renowned around the nation for its government-in-the-sunshine principles, open government records and open public meetings. Except when it comes to the voting roll.

Florida Statute 98.095 forbids the supervisor of elections from allowing the public to copy the complete list of voters. Under the law, the list of voters can be given only to candidates, political parties, other campaign organizations, government agencies and office holders who want to solicit constituents. They can get it to help them mail fliers, call voters, conduct polls, report to their constituents, and "walk the neighborhoods" to talk to voters. Any time they obtain a copy of the list of voters, they have to sign a form pledging that they are legally entitled to the list and that they will not share it.

The Herald obviously obtained a copy of the voting roll -- and more specifically, the list of people who cast ballots in the Miami mayoral election -- to research and write the stories that we published over the past three months.

Revealing this behind-the-scenes maneuvering is an important disclosure. We felt it's not totally fair to accuse others of breaking voting laws while someone might question how we dealt with the voting roll law.

But this column is not intended as a confession that we think we have done anything wrong. It is a plea to change Florida law to promote efforts to stop voter fraud.

Keeping a veil over the voter list helps the cheaters. It would be much harder to scheme for phony ballots if the voting roll were in the sunshine.

The election supervisor's office has no investigators for tracking down fake addresses or people who lied about being felons. As they've said repeatedly, they run an honor system.

As The Herald has shown, if the public can obtain a copy of the voter roll, the liars can be quickly found out.

In other states where the voter roll is publicly copied, news organizations regularly check the list for any problems. The Philadelphia Inquirer scoured over the voter roll in 1994 and found dead voters, nonexistent voters, phony voters at nonexistent addresses and people who were pressured into signing forms that turned out to be ballots. Last year, The San Jose Mercury News found hundreds of duplicate voter registrations and hundreds of dead voters signed up to vote.

Historically, a key purpose for passing the law was to protect blacks who wanted to exercise their right to vote.

Today, the law is outdated.

The main argument on behalf of keeping the law today is almost laughably backward. The theory is that keeping the voting roll away from the public helps to "prevent" vote fraud.

Sure, a secret list might make it hard to fake votes. But the organizations allowed to get the list -- candidates and campaign committees -- are the exact groups who would stand to gain from vote fraud. So the only people allowed to copy it are the ones who could be tempted to abuse it. That's no safeguard.

There are proposals pending in the legislature in Tallahassee to correct problems in the voting system. One of the most important actions that could be taken would be to make it possible to publicly display the voting roll. Remember: WHOM you voted for would always remain a secret. Publishing the voter roll would only reveal who voted -- not for whom they voted.

There also might be concern that the list would be used by junk mailers. Maybe so. But given how much junk mail we already get, that issue seems insignificant compared to the scope of voter fraud.

It's easy to sneak around in the dark. Let's shine the light. Cheaters can't hide dead voters or out-of-town votes if the neighbors can all see the voting roll at the public library or on the Internet. The benefits of public scrutiny far outweigh any advantage of keeping this list secret.

Making it possible to copy the voter roll like any other public record is a painless, inexpensive way to restore faith in the foundation of our participatory democracy.

The author is the Herald's Research Editor. He handled computer analysis of data for the newspaper's stories on vote fraud.

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Appendix #3

Databases selected: New York Times

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The New York Times

Questions Raised on Warnings at Rail Crossings

Walt Bogdanich, Jenny Nordberg, Jo Craven McGinty and Tom Torok contributed reporting for this article. **New York Times.** (Late Edition (East Coast)). New York, N.Y.: Dec 30, 2004. pg. A.1

Abstract (Summary)

Last week, after The New York Times began asking questions about signal problems, federal regulators disclosed that since a fatal accident in Michigan in the spring, they have been investigating whether a "type of Amtrak train" might be failing to trigger warning signals properly. And an examination of reported signal malfunctions indicates that they may constitute a wider problem, also involving freight trains.

An Amtrak spokesman said he was unaware of the Illinois short signals until The Times asked about them. The passenger service, he added, does not keep records of signal malfunctions that involve its trains. Amtrak's president, David L. Gunn, said in an interview that he believed that freight railroads tried their best to maintain warning signals.

In several fatal accidents, signal problems were reported before and after the accidents. For example, at the Bourbonnais crossing where 11 Amtrak passengers died, four false activations were confirmed in the year before the crash and two short signals occurred within a month afterward, records show. (Canadian National Railway did not, at the time, own that track, so it had no maintenance responsibility for that signal.)

» [Jump to indexing \(document details\)](#)

Full Text (2290 words)

Copyright New York Times Company Dec 30, 2004

It was late afternoon on July 14, 2002, when Amtrak train No.391 pulled out of Union Station in Chicago, bound for Southern Illinois. Several hours later, the train began to run a gantlet of hazardous highway crossings where gates and warning lights malfunctioned, endangering both passengers and motorists.

The first problem arose at a crossing in Cumberland County. Eight miles down the track, it happened at another crossing. Then another. And another. By the time Amtrak 391 reached the small town of Odin, signals at seven crossings had failed to give drivers proper warning of at least 20 seconds, according to federal records.

And on the same day in the same general area, northbound Amtrak train No.392 encountered "short warnings" at another four crossings. Two days later, the trains ran through a total of seven more short signals.

No one was injured on either day. But three years earlier, on the same track north of these crossings, 11 Amtrak passengers were killed and 89 injured when a train slammed into a truck loaded with steel at a crossing in the town of Bourbonnais. Federal investigators blamed the truck driver for ignoring a proper warning signal, but the state police, witnesses and most recently a judge concluded that a short warning was a factor in the crash.

The railroad industry and its overseer, the Federal Railroad Administration, have long maintained that signal malfunctions pose little danger and that accidents caused by them are "extremely rare."

But last week, after The New York Times began asking questions about signal problems, federal regulators disclosed that since a fatal accident in Michigan in the spring, they have been investigating whether a "type of Amtrak train" might be failing to trigger warning signals properly. And an examination of reported signal malfunctions indicates that they may constitute a wider problem, also involving freight trains.

A Times computer analysis of government records found that from 1999 through 2003, there were at least 400 grade-crossing accidents in which signals either did not activate or were alleged to have malfunctioned. At least 45 people were killed and 130 injured in those accidents, according to the records, although in most cases the role of signal malfunctions was unclear. Federal rules require that railroads maintain signals on tracks they own.

The accident reports, all prepared by the railroads, also raise questions in many cases about whether unsafe behavior by drivers contributed to the accidents. In addition, since 2000, railroads filed about 2,300 reports of the most serious types of signal malfunctions: short signals or no signals at all. Most of these malfunctions did not involve accidents.

"My concern is that this is just the tip of the iceberg," said James E. Hall, a former chairman of the National Transportation Safety Board. "If we had that type of record in aviation, it would be unacceptable."

In February, after a husband and wife were killed near Rochester, at a

crossing where the signal had been disabled for maintenance, the Federal Railroad Administration inspected 199 area rail crossings maintained by the railroad company CSX. The agency found that nearly half had defects. Though most of the defects were deemed "relatively minor," they were found to be serious at 12 crossings, the agency said. CSX has since made major repairs to crossings in the area.

The railroad administration's investigation of Amtrak began after a woman and her 15-year-old daughter were killed by a train in Charlotte, Mich., in April when, the police say, a warning signal activated too late. The same railroad that owned the Illinois tracks in the 2002 incidents -- Canadian National Railway -- also owned the tracks in Charlotte and was responsible for maintaining the signals in both areas.

Canadian National said in a statement to The Times that it did not believe that the short signals in Illinois showed "a significant or persistent problem, or otherwise reflected systemic issues regarding CN signal performance, inspection, maintenance, or repair." The railroad declined to comment on the Charlotte fatalities until the railroad administration completed its investigation.

Warning signals are triggered when an approaching train causes an electrical current to pass from one rail to the other. Last week, the railroad administration said its preliminary investigation of the Charlotte crash had concluded that the warning signal malfunctioned, possibly because Amtrak's braking equipment and practices, along with accumulated material on the tracks, had impeded the electrical current.

The agency said there was no connection between the short signals in Illinois and the Charlotte accident, though both appear to have involved a buildup of different substances on the tracks.

"Passenger locomotives are generally lighter than freight locomotives and use different types of braking equipment," a government official involved in the Michigan investigation said. He added that the problem was "very intermittent" and had been detected only "regionally."

In a statement, an Amtrak spokesman, William Schulz, said that all of its locomotives and most of its cars had the same kind of brakes, and that there have been "no instances" where Amtrak trains have been found to cause short signals. But with an "abundance of caution in mind," Mr. Schulz said, the passenger service changed some braking equipment and procedures on the Michigan line after the Charlotte accident.

The frequency of signal malfunctions is difficult to assess, because railroads do not have to report all malfunctions and because proving that an error occurred is often difficult after an incident.

According to government data, some 9,500 calls about signals were lodged in 2003 in Texas, which has the only statewide government hot line for problems at grade crossings. Several Texas crossings have been the subject of scores of complaints in recent years. Some callers were reporting the same problem.

Chronic signal malfunctions are not only hazardous, but also burdensome for police departments, especially smaller ones, because they must often send officers to safeguard motorists at problem crossings.

Peggy Wilhide, a spokeswoman for the Association of American Railroads, played down the significance of signal malfunctions, saying a

recent federal report found that the great majority of crossing accidents were caused by unsafe drivers. Ms. Wilhide also emphasized that most of the reports of signal malfunctions could not be confirmed.

"I would put our safety record up against any industry," she said.

A spokesman for the Federal Railroad Administration, Steven W. Kulm, said his agency's efforts had "contributed to the dramatic decrease in the loss of life and injury at highway-rail grade crossings." The federal authorities "aggressively review" all reports of signal failures, Mr. Kulm said, adding, "More than 9 of every 10 accidents occurred when the grade crossing warning system was functioning properly."

Federal rules define signal malfunctions as those that give drivers a warning of less than 20 seconds, or that activate when no train is approaching. The latter, called a false activation, is potentially dangerous because drivers may be led to ignore signals that they believe are not working. False activations are the most common signal problem, officials say.

"Americans are impatient, they are only going to sit for so long," said George Gavalla, a former top safety official with the railroad administration. "They will say the gates or lights are not functioning, and they are just going to go."

For that reason, Mr. Gavalla said, after accidents the agency requires railroads to report any possible or confirmed signal that lasts more than 60 seconds without a train entering the crossing. "That's outside what is considered to be a reasonable time frame," Mr. Gavalla said.

Mike Stead, who oversees rail safety for the Illinois Commerce Commission, said he was unaware of any warning system in his state that was designed to operate longer than 60 seconds with no train present.

Warning signals can fail for various reasons, experts say. Salt, dirt, heavy rain and other substances can interfere with electrical conductivity and wiring. Poor maintenance by the railroads contributes to the problem. So does aging equipment, said Tom Woll of the railroad administration.

In some cases, records show, railroad workers have accidentally disconnected the warning system, or disabled signals during maintenance without providing alternate ways to warn drivers, like flagging them at the crossing. The latter issue was the subject of a 2002 agency advisory.

Even so, the problems have continued. In the crash near Rochester this year, CSX disabled a signal while trying to learn why it was malfunctioning. With no warning signal, trains were supposed to stop at the crossing, then have crews flag motorists, but on the morning of Feb. 3, a CSX train failed to stop, striking the car of John O'Connor and his wife, Jean, killing them.

Of the grade-crossing accidents in the Times analysis, roughly 17 percent involved rail maintenance or inspection equipment that, according to the rail industry, is not designed to activate the warning signals. Most of this equipment, the railroad administration said, weighs too little and has too few wheels to trigger the warning signal. Nearly 30 people were injured in these collisions from 1999 through 2003, government records show.

Proving that a signal malfunctioned can be difficult. In the more than 400 accidents in the Times analysis, 30 percent of the signal problems were listed as confirmed. The rest were listed as "alleged," meaning that a technician checked the signal later and found no problem, said Ms. Wilhide, the spokeswoman for the Association of American Railroads.

But determining what happened at the time of an accident is possible only at those signals equipped with devices to record when a warning is activated and the position of the gates when the crash occurred. Most signals lack such devices. More often, the determination comes down to what witnesses say, and their accounts may differ.

Even when no accident occurs, the Federal Railroad Administration requires railroads to report to a separate database when signals fail to give drivers a sufficient warning. The required 20 seconds are necessary because gates do not descend instantly. They typically begin to lower four to five seconds after signal activation and take about five seconds to be fully deployed. The reports in this federal database, however, often provide few or no details on the signal malfunctions.

This database does not reflect every signal that fails to operate properly. The most common problems, false activations, are not included. Also, according to the rail industry, if a malfunctioning signal is taken out of service so it can be worked on, it does not have to be reported separately to the signal problem database -- even if an accident occurs -- because the signal did not technically fail; it was simply out of service.

In the summer of 2002, 27 short signals on the Canadian National tracks in Illinois were reported to the federal database. Some signals were short by only a second or two, but most reports did not specify the length of time. Records show that after the malfunctions were discovered, Canadian National temporarily lowered the allowable train speed for all railroads using the affected tracks. The railroad administration said the problems "were primarily related to deposits from freight spillage that caused a buildup of material on the rail surface." Since then, it said, steps have been taken to improve the sealing of railroad cars that carry grain.

An Amtrak spokesman said he was unaware of the Illinois short signals until The Times asked about them. The passenger service, he added, does not keep records of signal malfunctions that involve its trains. Amtrak's president, David L. Gunn, said in an interview that he believed that freight railroads tried their best to maintain warning signals.

Even so, Mr. Gunn said he found the apparent breakdown in Illinois troublesome.

"Absolutely," he said. "Any failure like that will put somebody in danger."

In the Michigan crash last April, that danger proved fatal to Melanie Pouch and her daughter, Meghann, according to witness accounts. Ten people said the train had entered the crossing when the warning gates began to descend. About a month later, the police officially concluded that the signal malfunctioned.

Nonetheless, Canadian National's accident report still states that the signal is only alleged -- but not proved -- to have malfunctioned.

"It's clearly inappropriate of the railroad to call this an alleged malfunction," said Bryan J. Waldman, a lawyer representing Mrs. Pouch's estate. "Corporations speak about how injured people need to

take responsibility for their own actions, and corporations need to take responsibility for their actions."

In several fatal accidents, signal problems were reported before and after the accidents. For example, at the Bourbonnais crossing where 11 Amtrak passengers died, four false activations were confirmed in the year before the crash and two short signals occurred within a month afterward, records show. (Canadian National Railway did not, at the time, own that track, so it had no maintenance responsibility for that signal.)

The Rochester-area crossing where two people were killed had also been the subject of repeated complaints. And in the month after the Michigan crash, the police received two reports of Amtrak trains going through the crossing without the gates being properly lowered, records show. In that same period, two other crossings with signals on the Amtrak line in the area were reported to have malfunctioned.

A Canadian National spokesman denied that those malfunctions occurred.

[Photograph]

In Charlotte, Mich., a memorial to Meghann Pouch, 15, who died along with her mother, Melanie, in a car-train crash in April. Witnesses said the Amtrak train had entered the crossing when the gates came down. (Photo by Becky Shink/Lansing State Journal)(pg. A20)

Chart/Map: "Signal Disorder"

On a single day in July 2002, 11 different warning signals failed to activate properly at grade crossings for Amtrak trains in Illinois.

Map of Illinois highlighting location of signal malfunction.

(Source by Federal Railroad Administration)(pg. A20)

Indexing (document details)

Subjects: [Railroad accidents & safety](#), [Signaling](#), [Public safety](#)

Locations: [Illinois](#)

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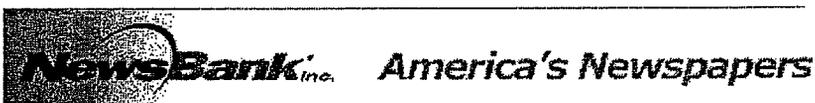
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Appendix #4



CAUGHT. PUNISHED. BACK TO SCHOOL. - Vague guidelines, secretive deals shield misconduct and place students at risk

Sarasota Herald-Tribune (FL) - Monday, March 19, 2007

Author: CHRIS DAVIS, MATTHEW DOIG and TIFFANY LANKES STAFF WRITERS

DAY TWO: HOW ABUSIVE TEACHERS DODGE CONSEQUENCES

- * Suspicions and allegations go unreported, and misconduct is kept secret
- * When teachers agree to quit, their new schools are not always told why
- * Young accusers are sometimes discredited, and their stories are doubted

Rumors dogged Aubine Lee Batts for more than 20 years before the truth finally did him in.

At least four of his bosses in two Florida school districts warned Batts that he was too friendly with his female students.

Two principals banned him from coaching but left him in the classroom. Another principal asked a teacher at Godby High School in Tallahassee to keep an eye on him.

It wasn't until 2001, when a teenage girl came forward with the love notes and pink lingerie Batts gave her, that school officials fired him and turned him over to the state regulators.

Before the state took his teaching certificate in 2002, Batts had slept with or harassed at least three of his teenage students, state records show.

The Herald-Tribune's review of more than 14,000 investigations into teachers across Florida found that by the time a case reaches the Department of Education, violent and predatory teachers often have been allowed to stay in classrooms for years while allegations rack up.

But the scope of the problem is impossible to determine because many instances of teacher misconduct go undocumented.

In addition, there is no consistent standard guiding when school districts must report suspicions about teacher behavior to the state.

Sometimes school administrators want to fire a teacher but feel they cannot overcome union protections, so they agree to drop an investigation if the teacher quits, enabling the teacher to get a job in another district.

Some educators acknowledge that the practice, known as "pass the trash," is a common tactic. Questionable teachers are forced out of one school only to turn up in another classroom.

"That happens a lot," said Mary Helen Fryman, human resources director for the Escambia County school district. "A deal is made for a person to resign with the agreement no one says anything. We come across stuff like that all the time when we're hiring, and we're held hostage by it.

"There's this attitude, 'So long as it's not our problem.'"

The inability or unwillingness of principals and superintendents to fire questionable teachers stems from a haphazard system of regulations that favors teachers and handicaps efforts to hold abusive teachers accountable.

The problems can start from the moment a student reports physical abuse or sexual misconduct.

School administrators' first response sometimes is to question the child's motive and look for ways to discredit him or her.

Through interviews and in reviewing case files, the Herald-Tribune found dozens of educators who doubted students' stories and tried to weigh their honesty by their grades, their attitudes or how they dressed.

This bias permeates every level of Florida's education system, from front-line teachers to the Department of Education. In an interview last month, former Education Commissioner John Winn told the Herald-Tribune that children regularly fabricate stories about their teachers and "there are far, far more allegations than there are guilty parties involved," he said.

Even when students make the most serious accusations against teachers, the person most likely to do an initial investigation is a school principal, not a trained investigator.

And if principals do a cursory review and dismiss the charges as unfounded, they often leave no trail if similar accusations come up later.

Some teachers are allowed to keep their jobs under the condition that they never touch a student or spend time alone with children of the opposite sex.

The rules governing teachers are vague and hard to decipher, requiring teachers, among other things, not to commit acts of "moral turpitude," and leaving the severity of questionable behavior -- such as writing love notes to students -- open to interpretation.

The vagueness is in stark contrast to rules of student conduct.

All these factors conspire to keep teachers such as Batts from losing their jobs before they have the chance to hurt other students.

For years, Batts' bosses noticed questionable behavior but did not launch an intensive investigation. Instead, they told themselves there was little they could do because there were only suspicions.

At least four administrators confronted Batts and ordered him to behave but failed to report him to education or law enforcement authorities.

When the allegations caught up with him at the state level, there were no records of the earlier reprimands in his school files.

Even when one principal acquired evidence -- about two dozen love letters Batts wrote to a female student in the early 1990s -- his bosses did not feel the letters were enough to fire him or report him to authorities, state records show.

Then in 1999, Batts forced his advances on a 16-year-old girl at his school, state investigative documents say.

"I'm scared to be at school, because I could feel him watching me all of the time, and it's sickening," the girl told state investigators after she reported him in 2001.

Investigators ultimately found about a dozen school employees or parents in Leon and Wakulla counties who had heard rumors that Batts was involved with students.

A guidance counselor warned a mother about Batts when her daughter joined school government, which Batts oversaw.

In an interview with the Herald-Tribune, the victim's father said the evidence was readily available to stop Batts from abusing girls.

"Yet it takes two years to go through this whole process and the attorneys kept making (his daughter) feel like she was the guilty one," he said. "It had a tremendous effect on this family."

In 2002, the state revoked Batts' teaching certificate.

Failure to report

Florida laws are supposed to prevent adults from turning a blind eye to the abuse of children.

Anyone, including a teacher, who suspects a child is being abused is required to call a hot line run by the state Department of Children & Families.

School districts also are required to forward all "legally sufficient" allegations to the education department, which regulates certified teachers and does its own investigations.

But the laws requiring educators to report their suspicions are at odds with reality.

When a bad teacher is allowed to stay in the classroom, it is almost always because suspicions are not reported.

Sometimes, principals or district administrators investigate allegations and do not tell police or the Department of Education.

Other times, it is teachers who look the other way when they see something unusual.

Almost every day during the 2002-03 school year, a group of Boca Raton High School teachers stepped outside to take smoke breaks.

Day after day, as they looked out over the school parking lot, they watched teacher Michael Holland appear with a female student.

State investigators later learned the teachers had heard rumors about Holland's sexual involvement with students.

But none of them reported Holland's odd ritual, even when they watched him drive the girl off-campus or climb aboard an empty school bus with her.

Nothing happened to Holland until the girl went to a school administrator, and the police and the Department of Education got involved. Ultimately, the state took Holland's teaching certificate for molesting several female students.

The Herald-Tribune found dozens of cases investigated by districts that were not initially turned over to police or to the education department.

Among them, records show:

* Walton County Principal Hazel Collinworth was told that one of her teachers had slapped a boy so hard his mouth bled, and had ordered her classroom aides to punish another student by leaving his diapers wet. She never investigated or reported the abuse.

* For three years, Harvey Bullock's staff warned him that one of his teachers might be molesting children at Croissant Park Elementary. The Broward County principal dismissed the warnings and tried to intimidate his staff into supporting the teacher. The state reprimanded Bullock.

* Alachua County Principal Robert Schenck would not return calls from a mother who wanted to complain about a male teacher making inappropriate advances toward her high school daughter. When the district got involved and pushed the accused teacher out, Schenck wrote a recommendation letter that helped him get a job teaching in Duval County.

Local school officials set their own rules for when to report a teacher to the state.

A Herald-Tribune analysis of cases reported to the Department of Education from 2000 to 2006 hints at the discrepancies.

The newspaper reviewed the number of complaints forwarded by each of the state's 67 school districts and factored in the size of the district.

The reporting rate varied widely. Manatee County's reporting rate was half the state average and far below neighboring Sarasota County.

Manatee County school district officials said they could not explain why their numbers were so low, but conceded their investigative practices were inadequate until wholesale changes were made more than a year ago.

Bias favors teachers

Keeping quiet is a natural reaction.

Society says to distrust rumors, disregard unproven theories and, unless you know for sure, mind your own business.

But those rules don't apply to teachers, says Charol Shakeshaft, a Hofstra University professor and leading researcher in how schools handle abuse allegations.

"Most people don't know how to respond and believe they have to really know for sure before they tell someone," she said. "We need to tell them it's not your job to know whether there is or isn't something going on. It is your job to report it."

While most Florida school districts preach that message, they maintain policies that undermine it.

For starters, laws and policies at the state level and in individual school districts are vague and do not make it clear when a teacher will lose his or her certificate.

Some policies actually encourage teachers to keep quiet. In Hillsborough County, every school administrator gets a checklist that says child abuse by someone outside the school should be reported to police. But child abuse by a teacher is to be reported to district administrators, the list says.

The state and many districts do not specifically ban teachers from asking children on dates or giving them romantic gifts. And the Herald-Tribune found examples where such behavior went unpunished.

Former Alachua County English teacher Fleeta Harris wrote a series of love letters to one of her male teen students, state and district records show. When he rebuffed her advances and asked to be treated like the other students, she wrote him another letter that reads like a threat.

"If you fail this class will it 'prove' that you are just like everybody else -- no special treatment??" she wrote. Harris signed the note, "I still love you."

The student's mother later complained, but she found district officials dismissive.

According to a 1998 letter she wrote to the district, a top administrator told her: "What is it you are trying to prove? It isn't like she committed lewd and lascivious acts."

Despite having copies of Harris' letters, the district dismissed the complaint and left Harris in the classroom.

A powerful lobby

Principals have broad authority to screen allegations against their own teachers.

In many school districts, they conduct interrogations and gather evidence. Then, people trained as educators, not investigators, are left to decide whether enough proof exists to pursue allegations against a teacher.

The result is a cycle of allegation and investigation with little or no punishment, because the principal is unable or unwilling to gather enough evidence to substantiate the charge.

Investigations often end up stalemated by "he said, she said" accusations, with a tie going to the teacher.

But even when principals and districts want to pursue cases, they often feel intimidated by teachers' unions, especially

if evidence is shaky or a victim will not testify.

Teachers can call on union lawyers to tie up cases in court for years.

Court battles can easily top \$100,000, as the Sarasota County School District found out when it fought appeal after appeal from former Riverview High School Assistant Principal David DeWitt.

In 1999, DeWitt was accused of having sex with several students, but an administrative judge found that his accusers were not credible.

The district fired DeWitt and spent three years fighting appeals.

Beyond providing attorneys, union-negotiated contracts with school districts create a discipline process that some principals say is too arduous.

Teachers accused of relatively minor infractions must be warned twice and then suspended before they can be fired.

Susan Lyle, principal at Gulfstream Elementary School in Miami-Dade County, said she just got rid of one of her most problematic teachers.

But Adrienne Cohen -- who now lives in Sarasota and has applied for teaching jobs at the Sarasota YMCA -- did not get fired. She was allowed to retire in January after years of allegations that she physically attacked students.

In 2001, state officials put her on one year of probation after a string of incidents with students that ended in her arrest on battery charges. Prosecutors dropped the charges after she agreed to attend a pretrial program.

The education department also found there was evidence to believe Cohen had kept a school nurse from treating a student's diabetes and had tried to bribe student witnesses by giving them food and gifts.

Lyle said Cohen kept her job because she was protected by her union contract.

"This lady has a file inches thick," Lyle said. "It's unbelievable."

But Cohen said she was allowed to stay because she is innocent, and her principal was unable to find evidence otherwise.

"Ms. Lyle is a liar," Cohen said.

Union officials deny that their punishment procedures help keep abusive teachers in classrooms.

Anytime a superintendent believes misconduct is serious enough, districts can forgo warnings and simply fire the teacher, said Pat Gardner, president of the Sarasota Classified/Teachers Association.

What is indisputable is that teachers have a built-in support system with lawyers at the ready.

School districts regularly leave teachers in classrooms and simply order them not to repeat their behavior. Sometimes principals feel compelled to ban teachers from even touching students, but they don't fire them.

At least three students accused Suwannee High School band teacher Jason Hilliard of sexual misconduct, from asking for kisses to giving a girl a picture of his crotch. Each time, the principal investigated but either did not believe the accusers or could not find proof.

Hilliard kept teaching for years but had to remove paper from the windows that blocked the view into his office. He was later criminally charged with having sex with a student.

Karen Halpern, a teacher at Fulford Elementary in Miami-Dade County, has been accused of abuse so often she is not supposed to touch her students.

Jean-Baptiste Guerrier had already been accused of fondling a teenage girl when three girls accused him of making

lewd comments in 1993.

Miami-Dade County School District investigators found him guilty of "conduct unbecoming of a school board employee." His punishment: write out the district's sexual harassment policies.

The district tried to fire him in 1996 when another girl accused him of fondling her. Guerrier sued for discrimination and the county settled.

Today, he is teaching at Miami's D.A. Dorsey vocational school, an adult school to which he says he was unwillingly moved.

"I was told I did a bunch of things. I didn't even know the students," Guerrier said. "I try to leave the past in the past. It's sad when you're condemned for something that you didn't know happened."

TAKING A RISK FROM THE START

Many school districts fail to protect against hiring teachers with a history of abusive behavior.

Districts may require references from a teacher's previous school district, but do not review personnel files that may contain allegations and investigations.

School district administrators also rely on questions posed on applications. Teachers are asked if they have ever been investigated or fired.

"We are trusting that these people are going to be up front and honest," said Pat Lucas, interim personnel director for the Sarasota County School District. "We feel that we have an airtight process. Do people ever slip through? Occasionally, but only if they lie."

Many school districts maintain multiple files on teachers, and low-level reprimands are stored separate from serious allegations.

The separate files increase the possibility that a teacher could be accused of abuse without administrators realizing it.

THE SERIES

SUNDAY: Hundreds of teachers accused of abuse are allowed to continue teaching.

TODAY: Even before state regulators hear about an abusive teacher, districts often have issued warning after warning with few repercussions for the teacher.

TUESDAY: Those who investigate teachers often have little time to do their job and even less training.

WEDNESDAY: Changes are on the way. But will they be enough?

ONLINE

DATABASE: The Herald-Tribune took 30,000 pages of complaints that led to teacher punishment and turned them into a first-of-its-kind database you can search by school, teacher name or keyword.

www.heraldtribune.com/brokentrust

REPORT ABUSE:

Contact authorities about physical or sexual abuse at www.heraldtribune.com/brokentrustreport

Caption: PHOTO 6

'HOW DO I LOVE YOU...'

When she was an English teacher in Alachua County, Fleeta Harris wrote a series of love letters, including the one shown here, to a student. The boy's mother complained, but Harris kept her job.

(Illustration of note)

GODBY HIGH SCHOOL (TALLAHASSEE) YEARBOOK / 1993

Aubine Lee Batts, center, pictured in the 1993 Godby High School yearbook, was the center of rumors for nearly 20 years before he was fired and stripped of his teaching certificate in 2002. Records show the teacher slept with or harassed at least three teenage students.

When a student's mother complained about this note sent to her child from teacher Fleeta Harris, right, she said she was told, "What is it you are trying to prove? It isn't like she committed lewd and lascivious acts." Harris stayed in the classroom.

(Illustration of note)

MARY HELEN FRYMAN, human resources director, Escambia County schools

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Appendix #5



MORTGAGES IN BLACK AND WHITE - FIRST OF TWO PARTS - -Today: The problem and its causes - -Next Sunday: What can be done - Loan gap plagues Atlanta blacks - Higher denial rate for home mortgages in city, nation called 'moral - disgrace'

The Atlanta Journal and The Atlanta Constitution - Sunday, March 15, 1992

Author: KING, JIM, Jim King STAFF WRITER: STAFF

Black families in metro Atlanta are more than 2 1/2 times as likely to be denied a home mortgage as white families - even when they're neighbors and have the same income. And as income increases, so does the disparity in loan denials, according to new numbers released by banks, savings and loans and mortgage companies. Now the newspaper has taken an in-depth look at the new numbers as well as their impact. This series is based on more than 200 interviews and the analysis of 34,372 mortgage applications filed in 1990 with 253 lenders doing business in the 18-county Atlanta metropolitan statistical area.

Black families in metro Atlanta are more than 2 1/2 times as likely to be denied a home mortgage as white families - even when they're neighbors and have the same income.

And as income increases, so does the disparity in loan denials, according to new numbers released by banks, savings and loans and mortgage companies.

"It is a moral disgrace," said Rep. Joseph P. Kennedy II (D-Mass.), who sponsored legislation that last fall forced lenders to disclose the numbers that show the racial disparity. "If, simply because of the color of your skin, you can't get a loan, then . . . we need to force [lenders] to do something."

Mr. Kennedy's legislation followed a 1988 Pulitzer Prize-winning investigation by The Atlanta Journal-Constitution that found that the city's banks and S&Ls made five times as many loans in middle-class white neighborhoods as in comparable black ones.

Now the newspaper has taken an in-depth look at the new numbers as well as their impact. While it appears that progress has been made since 1988, similar conditions still exist. However, the new analysis provides a more detailed look at the issue than was possible four years ago.

This series is based on more than 200 interviews and the analysis of 34,372 mortgage applications filed in 1990 with 253 lenders doing business in the 18-county Atlanta metropolitan statistical area. It showed:

- Q More than one in four black applicants was denied a mortgage, compared with about one in 10 white applicants.
- Overall, banks rejected blacks 2.08 times more often than whites. S&Ls rejected blacks 2.55 times more often, and mortgage companies 3.28 times more often.
- Among middle-income applicants - those with an annual income of more than \$36,000 - blacks were three times as likely to be denied.
- As the number of blacks living in a neighborhood increased, so did the denial rate for both blacks and whites. The overall denial rate was 10 percent in neighborhoods where the population was at least 90 percent white. It climbed to 27 percent when the population was at least 50 percent black. - Whites who applied for mortgages in middle-class neighborhoods that were 50 percent or more black were twice as likely to be rejected as whites who applied in middle-class neighborhoods that were 80 percent or more white.
- When a reason for denial was stated - which the law does not require - poor credit was cited 65 percent of the time for blacks, 35 percent for whites.

The data include no financial information about applicants other than income, making it nearly impossible to determine if

loan denials and approvals were justified. But enough questions have been raised that Congress plans to revisit the issue Thursday when it holds hearings on the 1990 numbers.

"That data shows some alarming discrepancies," said Rep. Esteban Edward Torres (D-Calif.), chairman of the House banking subcommittee on consumer affairs. "I hope we can shed some light on the issue and put pressure on people to find a reason for the disparity."

Causes are complex

Why is the gap so wide?

Looming over the entire issue are deep-rooted stereotypes.

When asked why blacks had a harder time getting a mortgage, many lenders referred to people who can't read, pay their bills, or keep a job - this despite Atlanta's large black middle class and statistics that show the lending gap increases as income goes up.

And, for their part, many blacks continue to believe banks and S&Ls don't want their business.

Additionally, many charge that the lending standards of the nation's mortgage system are geared to serve white middle-class suburbanites.

But even if the system were the fairest possible, blacks simply haven't been rich enough, long enough, to give them as good a chance of owning a home, say many who have studied the problem.

Lenders are starting to realize that things must change.

"We can't force-feed everyone into a nice little box," said Hugh L. McColl Jr., chief executive officer of NationsBank. "That's what bankers have tried to do in the past, and it just won't work."

To the extent that the lending gap can be closed, however, no one is quite sure how to do it. From college campuses to Capitol Hill, people are scrambling for solutions.

They realize the stakes are high.

Not only will an answer help blacks achieve economic equality, but it also could help reverse decades of urban decay, since blacks historically have been more willing to invest in intown housing. And businesses, both large and small, could benefit from a new base of customers if the hundreds of local applicants now being turned away could manage to buy a home.

"This is not a simple issue and there is not a quick fix," said Earl Shinhoster, Southeastern regional director of the NAACP. "But we want to find answers, and I think many of the banks want to know if their loan officers are harboring a bias against certain people. I think they want to find innovative approaches of getting at the problem."

Opposing views

On their face, the mortgage numbers imply that lenders are discriminating, especially since middle-and upper-income black families are denied more often than their white counterparts.

It's a charge the lenders vehemently deny.

"I can't fathom a loan officer or a company walking away from a loan just because a person is black," said Robert A. Goethe, president of Gulf States Mortgage. "Maybe I'm naive, but I can't imagine it. In the environment we're in, everyone is sales-oriented and commission-based."

While lenders follow standard underwriting guidelines, such as acceptable levels of debt versus income, those guidelines are open to interpretation. For example, in 1990 Prime Bank denied 3 percent of its white applicants and 7 percent of black applicants. Using the same criteria, C&S/Sovran (now part of NationsBank) denied loans to 7 percent of its white applicants and 32 percent of blacks.

It is in that gray area - where a borrower may exceed some guidelines and fall short in others - that housing and black community activists say they are sure discrimination comes into play.

"The benefit of the doubt will always go more often to the white applicant," said Chris Lewis, legislative director for ACORN, the Association of Community Organizations for Reform Now, which has been active in trying to combat housing discrimination in Atlanta. "Our belief is that if you have otherwise equal candidates for a loan, the black applicant is going to have to demonstrate a cleaner record."

That's true, in part, because too few institutions have black loan officers, or anyone else on their staff who can identify with black customers, Mr. Lewis said. The lack of bank and S&L branches in black neighborhoods also leaves the perception that those institutions aren't interested.

"If banks aren't in the neighborhood, how do you have access?" asked the Rev. Tim McDonald, executive director of Concerned Black Clergy. "You've got to be there if you want applications."

Nagging stereotypes

Lenders themselves often give their critics all the fodder they need. When asked about the denial rate to blacks, most of the 35 local lenders interviewed for this series turned the discussion to their outreach efforts to the poor - despite Atlanta's large black middle class.

"Inner-city groups know that our heart is in the right place and that we have tried," said C. Edward Asbury, senior vice president of Georgia Federal Bank, which had 1.6 percent, or nine, of its mortgage applications filed by blacks in metro Atlanta in 1990 (all the loans were approved). "It's hard to make loans to people who are concerned about putting supper on the table."

He and other lenders said they use objective criteria to decide who gets a loan and who's denied. They say forces beyond their control cause more blacks to be disqualified than whites. They blame socioeconomic factors - blacks' lower average income, lower net worth and higher unemployment rates - for the problem.

When last measured, the median net worth of whites was more than 10 times greater than that of blacks. The unemployment rate for whites is half the rate for blacks.

"Banks can't change everything in society," said Darrell Pittard, chief executive officer of Prime Bank, whose record of lending to blacks is one of the best in metro Atlanta. "The availability of credit is not the question."

Some sociologists and economists agree, adding that even some middle-class blacks are at a disadvantage because they are less likely than white counterparts to inherit wealth. As a result, they may have too much debt to buy a home or may not have an adequate down payment.

But others scoff at the notion, saying that can't fully explain the disparity.

"Even if one were to say that the creditworthiness of blacks is not as good as that of whites, it would be hard to say it's only half as good," said Bart Landry, a University of Maryland sociologist and author of a book titled "The New Black Middle Class." "That would be the only rational explanation if blacks are turned down for mortgages twice as frequently as whites."

Secondary factors

In trying to defend their decisions, most lenders also stress that they don't always make a lot of the rules by which they play.

About 54 percent of all mortgages are packaged and sold almost immediately as investment securities, usually to the Federal Home Loan Mortgage Corp. (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae), the biggest players in the so-called secondary mortgage market. Those agencies decide what percentage of an applicant's income may be devoted to a house payment and to total debt payment.

Quite simply, if an applicant doesn't meet the standards, the secondary market won't buy the loan. And if the

secondary market won't buy it, a lender usually won't make it. Eventually, about two-thirds of all mortgages wind up in the secondary market.

"It's an incomplete debate if you hold up the lenders in the primary market as the big evil guy," said Kristin Siglin, an aide to Sen. Christopher "Kit" Bond (R-Mo.), ranking minority member of the Senate banking subcommittee on consumer affairs. "There's this additional layer. And my gut feeling is that [Fannie Mae and Freddie Mac] can do a lot better."

Even the government-backed companies concede that changes are needed.

"We view it as a very serious problem," says David Jeffers, Fannie Mae's vice president of corporate relations. "We consider it a problem that that system does not work as well and, in many cases, not good at all for a large number of people."

While relaxing the criteria would allow more people to qualify for loans, there is a downside. Lower the standards, and delinquencies go up - at least that's what happened with the Atlanta Mortgage Consortium and a number of individual lenders in Atlanta.

The consortium was established by a group of banks and S&Ls in 1988, after the Journal-Constitution's investigation into mortgage lending.

Initially, it had perhaps the most lenient lending standards in the nation, allowing half a borrower's gross monthly income to be used to pay monthly debts - excluding things such as groceries, utility payments and medical bills. By comparison, for conventional mortgages total debt cannot exceed 36 percent of an applicant's gross monthly income.

The result of the consortium's standards was a delinquency rate of 15 percent, almost five times that of most conventional mortgage portfolios, and twice that of government-backed programs such as FHA and VA.

Consequently, the consortium tightened its standards. Total debts can now equal no more than 42 percent of gross income. The delinquency rate was cut in half.

"If you make a loan to someone who has no business getting a loan in the first place, you just tarnish that individual further," said Robert McMahan, chairman of Decatur Federal Savings and Loan Association. "If their scenario falls or teeters, everything comes tumbling down. It's a disservice. It's just as wrong as denying a person a loan just because of their race."

Education is key

In all the discord, there is one point on which nearly everyone agrees: Education is key.

When the Atlanta Mortgage Consortium tightened its lending policies, it also began requiring applicants to attend an eight-hour seminar on homeownership and credit. Its officials say the seminar has been vital in lowering delinquency rates.

At the same time, several of the city's largest lenders began offering classes to teach potential homebuyers how the mortgage process works and to stress the importance of good credit. While the classes often draw large crowds, they usually result in few, if any, mortgage applications.

The biggest problem, according to bankers and teachers, is that many participants discover they have credit problems that will take months or years to fix. In some classes, most of those attending have never seen a copy of their credit record. Many don't know they have one.

"Education has got to be ongoing; it can't be the one-shot deal that the banks are offering," said the Rev. McDonald of Concerned Black Clergy. "It makes good business sense for banks to have a serious educational component. It has to be their responsibility. I don't have the expertise of a banker."

And there is more to education than sponsoring classes, the Rev. McDonald said. Lenders must be more sensitive to the needs of a population they only now admit has been underserved for years, he said.

"This is a very complicated situation, and it doesn't do any good to find a race-based cause for this," said the NAACP's Mr. Shinhoster. "The analysis has to look at what can be done to remedy the disparity. [But] there is a perception problem for [banks]. When you don't have a lot of messengers out there, you don't get any good will built up. Banks are just going to have to do things differently."

Caption: It's easier to get a loan if you're white A Journal-Constitution analysis of more than 34,000 metro Atlanta mortgage applications submitted in 1990 shows that applications from blacks are more likely to be rejected than applications from whites with equal incomes. Map: NEIGHBORHOODS WHERE MORTGAGES ARE HARDER TO GET. Chances that a mortgage application will be denied, compared with the local median. Map of seven metropolitan counties (Cobb, Fulton, Gwinnett, DeKalb, Rockdale, Clayton and Douglas) with shaded areas denoting lower and higher denial rates and black neighborhoods*. *More than 50% black residents. Source: Atlanta Journal-Constitution study of data filed under the Home Mortgage Disclosure Act, 1990. Graph: Bar graphs show HOW METRO ATLANTA MORTGAGE APPLICANTS FARED IN 1990. Whites Blacks Number of mortgage applications* 24,930 5,450 Percent rejected 10.9% 27.9% If a census The rejection rate for all tract was . . . mortgage applications was . . . 0 - 20% black 11.2% 20 - 40% black 18.7% 40 - 60% black 21.9% 60 - 80% black 26.7% 80 - 100% black 28.5% *Includes those that were incomplete or withdrawn. Source: Home Mortgage Disclosure Act data for 18-county Atlanta metro area for 1990 (latest available year) Color photo: The Rev. Tim McDonald Color photo: mug of Darrell Pittard MIKE GORDON, KEN MOWRY, HAL STRAUS / Staff Chart: Where blacks are treated best, worst Denial rates show how often blacks' and whites' mortgage applications were rejected in 1990. Disparity ratio compares the denial rates for blacks and whites. The higher the disparity ratio, the wider the lending gap between blacks and whites. DISPARITY IN ATLANTA IS WORSE THAN NATIONAL AVERAGE . . . Denial rates for: . . . Disparity

City	Whites	Blacks	rate	Disparity
Miami	15.91%	22.77%	1.43	Los Angeles
12.82%	19.80%	1.54	New York	15.01%
29.20%	1.95	Birmingham	17.38%	35.20%
2.03	NATIONWIDE	13.84%	29.94%	2.16
New Orleans	18.33%	40.25%	2.20	Washington
6.33%	14.28%	2.26	Charlotte	10.76%
25.02%	2.33	ATLANTA	10.91%	27.89%
2.56	Columbia, S.C.	11.20%	31.84%	2.84
Boston	10.98%	34.46%	3.14	Chicago
7.30%	23.41%	3.21	Among top lenders,	most fall way below average

15 TOP LOCAL LENDERS FALL BELOW METRO AVERAGE In 18 metro counties, the average mortgage lender is 2.5 times more likely to reject applications from blacks than from whites. Here is how local lenders handling at least 400 mortgage application in 1990 compare to that disparity ratio. The higher the disparity ratio, the more likely black applicants were to be rejected than whites. . . . Total. . . . Black. . . . Denial rates: Lender. . . . appli- . . . appli- . . . Disparity . . . cations* . . . cations* . . . Whites. . . . Blacks. . . . rate

Lender	Whites	Blacks	rate	Disparity
Georgia Federal Bank	575	9	3.0%	0.00%
Great Western Mortgage	1,009	187	18.2%	25.1%
1.38	United Savings Association	810	44	21.9%
31.8%	1.46	Barnett Bank of Atlanta	438	32
3.7%	6.3%	1.70	Mt. Vernon Federal Savings Bank	492
43	6.5%	11.6%	1.80	Security Pacific Housing Services
816	21	43.4%	81.0%	1.87
Market Street Mortgage	565	40	5.1%	10.0%
1.96	Prime Bank	1,385	201	3.4%
7.5%	2.20	Cobb Federal Savings Bank	482	8
5.3%	12.5%	2.36	Entrust Funding	974
48	18.1%	43.8%	2.42	Prudential Home Mortgage
429	27	10.7%	25.9%	2.43
Allatoona Federal Savings Bank	485	26	7.8%	19.2%
2.47	Metro average	34,372	5,450	10.9%
27.9%	2.56	United Savings Bank	818	47
10.0%	29.8%	2.99	Liberty Mortgage	435
97	4.4%	13.4%	3.06	Sunshine Mortgage
983	388	14.1%	43.0%	3.06
Liberty Savings Bank	449	29	3.3%	10.3%
3.15	Collateral Mortgage	1,003	399	10.8%
34.6%	3.19	Bank South Mortgage	1,043	277
5.8%	20.6%	3.56	SunTrust Mortgage	727
169	9.6%	35.5%	3.69	Decatur Federal S&L
1,219	183	8.2%	30.6%	3.72
Gulf States Mortgage	2,073	826	9.7%	38.5%
3.98	Colonial Mortgage	1,030	57	13.2%
52.6%	3.98	HomeBanc Federal Savings Bank	1,908	298
4.3%	18.1%	4.20	C&S**	2,679
330	6.7%	31.8%	4.76	Griffin Federal Savings Bank
837	102	1.0%	4.9%	4.85
First Wachovia Mortgage	440	49	4.1%	22.5%
5.42	Sun America Mortgage	1,514	537	1.7%
17.1%	10.26	* Includes incomplete and withdrawn applications. ** C&S, now part of NationsBank, did not submit data to the federal government by the law's deadline. Sources: Home Mortgage Disclosure Act data; NationsBank		

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Appendix #6

NewsBank^{inc.}

America's Newspapers

FAILURE OF DESIGN AND DISCIPLINE

Miami Herald, The (FL) - Sunday, December 20, 1992

Author: JEFF LEEN, STEPHEN K. DOIG and LISA GETTER Herald Staff Writers

Like a latent fingerprint found at a crime scene, a clear pattern has appeared in the vast sprawl of destruction left by Hurricane Andrew.

The storm's deadly imprint emerged from a three-month Miami Herald investigation that used computers to analyze 60,000 damage inspection reports.

A computer created a color-coded map showing how 420 neighborhoods weathered the storm. When a map of estimated wind zones was superimposed over the damage, the pattern became unmistakable:

Many of the worst-hit neighborhoods were far from the worst winds.

The damage wasn't consistent -- some ravaged neighborhoods sat next to others with much less destruction.

The analysis turned up another startling fact: Newer houses did worse than older ones.

A lot worse, in fact. Houses built since 1980 were 68 percent more likely to be uninhabitable after the hurricane than homes built earlier.

The age pattern settles a debate that erupted after Andrew's winds died: What was responsible for most of the damage? Only the wind? Or shoddy construction, faulty design and flimsy materials?

For most newer homes, how they were built was more important than where they were located -- and thus how they were affected by the wind -- in determining the extent of destruction. In other words, man is to blame for a considerable part of the damage.

"We're talking about \$100,000 to \$150,000 losses which should have been \$25,000 to \$50,000 losses," said Dean Flesner, a State Farm vice president.

"We're talking about families whose lives have been totally destroyed because their home is uninhabitable, versus families who probably could have remained in the home while repairs were made."

Why did houses built since 1980 do so poorly in the storm? To find out, The Herald investigated scores of building and design failures, as well as the county's system for preventing them.

There was ample evidence of breakdowns in the construction and inspection safeguards meant to protect the public from exactly the sort of devastation dealt out by Andrew.

* A close examination of eight storm-damaged subdivisions built by some of Dade's largest developers revealed houses shot through with so many construction and design flaws they became easy targets for the hurricane.

* Building inspectors, faced with a boom in construction, were pressured to perform up to four times the number of inspections that should properly be done in a day.

"You don't build a bad house or a bad building except on purpose," said Harley Lasseter, 87, a member since 1959 of the county Board of Rules and Appeals, which oversees the building code. "They don't go up accidentally. Sorry workmanship and the supervision is bad, or someone has found some way to get around the code."

Builders angrily deny that shoddy construction was a significant factor in determining hurricane damage. For them, the hurricane alone was the culprit.

"Why are we still picking on the hurricane when we have so much rebuilding to do?" said William Delgado, executive director of the Latin Builders Association. "Why are we nitpicking on the little things? For how long is the media going to try to crucify the builders who really had nothing to do with a hurricane that exceeded code?"

But the computer analysis shows widespread destruction in areas where the sustained wind appears to have been far below the 120-mile-per-hour standard mandated by the South Florida Building Code, according to preliminary determinations by scientists working for the National Oceanic and Atmospheric Administration.

The findings are supported by an independent engineering study obtained by The Herald. The study, commissioned by a major insurance company, estimated maximum sustained wind above 120 mph in only a relatively small area south of Cutler Ridge encompassing Princeton, Naranja Lakes, Homestead and Florida City.

The insurance company's engineers inspected 121 houses in areas where the sustained winds were estimated below 120 mph and concluded that 70 percent had damage traceable to code violations.

"Up until the storm the criteria for acceptance was whatever you got by with on the last job because the inspector didn't catch it or there wasn't an inspector," said James Marks, a Coral Gables structural engineer who has inspected about 100 homes damaged by Hurricane Andrew for homeowners making repairs and insurance claims. "And that became the standard of the industry.

"The builders are far from being adequate. Why was this horrible construction done? Who allowed it and who permitted it to happen? Let's face it. It's there."

The Dade grand jury, assigned to investigate what went wrong after Andrew, came to the same overall conclusion:

"While we, as a community, have suffered greatly as an unavoidable result of Hurricane Andrew, this suffering was aggravated by the systematic failure of our construction industry and building regulation process," the grand jury stated last week in its final report. "Had the failures not existed, much of this suffering would have been prevented."

WHY US?

Much damage occurred in areas where wind was under 120 mph

After the storm, many victims could only stare at their ruined houses and wonder why their neighbors nearby fared so much better.

Bad construction or big wind? Poor design or weak building materials?

Experts rushed forward to explain. Meteorologists talked of 200 mph wind "streaks" that tore certain houses apart. Engineers saw numerous construction flaws in the rubble.

In each case, the expert was forced to draw quick conclusions from a scant sampling of data. No one knew the overall pattern. No one had hard data to back up scores of impressions from the field.

After a peak gust reading of 163 mph was registered at the National Hurricane Center in Coral Gables, many believed that a killer storm simply flattened South Florida, like a 160-mph rolling pin.

"My personal opinion, when you're hit with winds of up to 160 miles per hour, something's got to give," said Eduardo Roca, a general contractor and former Dade building inspector.

Metro Mayor Steve Clark: "There's nothing we could build today with home construction that would stand. I suspect the wind was over 200 miles per hour."

It wasn't.

"This was not a killer storm as the weather bureau would have you think," said Marks, who has run his own engineering firm for 21 years. "The engineering committee on wind, who are the experts in the world, said it was 110 to 125 miles per hour. Almost all of the damage I saw occurred well below 120 miles per hour."

In fact, except for a few isolated areas, most of South Dade experienced nothing like sustained winds of 120 mph.

The National Hurricane Center has determined that Andrew's maximum sustained wind -- one minute average -- was 145 mph. The maximum peak -- two-second average -- is believed to have been 175 mph. But these maximums were restricted to small parts of the county.

"The higher the wind, the smaller the area it affects," said Peter Black, a scientist with NOAA's Hurricane Research Division on Key Biscayne.

GREAT DEBATE

Even the scientists can't agree on how strong the wind was

Still, the wind debate will continue long after all the hurricane debris has been cleared away. Part of the problem is that no one has any definitive wind data -- Andrew's wind profile was not captured on any Doppler radar that would show more precisely where the worst winds blew.

Instead, wind scientists must try to measure the storm's strength by analyzing a wide variety of partial radar images, pressure readings and a patchwork of wind readings from a collection of anemometers that differ greatly in quality.

That process is still going on, and won't be completed until sometime next year.

Scientists have another way of measuring the strength of storms: carefully studying the damage on the ground, a process known as F-scale analysis. By looking at houses that lost their roofs or walls, the scientists can gauge the speed of the wind that did the damage.

NOAA-supported scientists Greg Forbes and Roger Wakimoto conducted such a study of South Dade after Andrew, along with Ted Fujita, the University of Chicago professor who invented F- scale analysis.

The analysis allowed them to map zones showing the differing intensity of Andrew's wind.

After the storm, another and quite different damage analysis was launched as a small army of Dade County building inspectors went door-to-door recording whether houses were habitable. The inspectors did not visit mobile homes, which were almost uniformly destroyed in the storm.

The massive inspection process is now nearly two-thirds complete. To conduct its computer study, The Herald purchased the completed data from the county, more than 60,000 inspection reports, and ran them through its own computers. The damage reports were merged by address against other county data, such as the property tax roll and the building and zoning database.

NEWER HOMES HIT HARD

Homes built since '80 more likely to be found uninhabitable

The Herald computer analysis compared the frequency of uninhabitable homes against all available variables: price, house size, lot size, and so on. When the computer printouts were examined, the only variable that showed a consistent pattern was the year the house was built.

To check that this age pattern wasn't caused by some quirk in the selection of houses for inspection, The Herald performed a test computer run using the unlikely assumption that every home south of Kendall Drive that hadn't been inspected so far was habitable. Even if that assumption were true, the computer showed homes built since 1980 still would be 63 percent more likely to be uninhabitable as older homes.

The Herald analysis took into account the wide range of wind speed across South Dade by looking at damage frequencies within each wind zone mapped by NOAA.

For instance, in the highest-wind zone, a relatively small elliptical region of a few square miles centered near Naranja Lakes where three-fourths of the homes were left uninhabitable, the age difference is relatively narrow: 84 percent of

homes built since 1980 were left uninhabitable, versus 70 percent of those built earlier.

Significantly, the age pattern of inspected homes becomes clearer as you move away from the storm's strongest winds. In the zone where NOAA scientists determined the wind was weakest, between Kendall Drive and Southwest 184th Street, 33 percent of the inspected homes built since 1980 were uninhabitable, compared to only 10 percent of the older ones. That means the newer homes there were more than three times as likely as older ones to be heavily damaged.

Compare that striking difference, for instance, with the narrower damage gap for price: 35 percent of inspected homes assessed at under \$100,000 were uninhabitable, compared to 21 percent of more expensive homes. Even that gap is affected by age: inspected homes built since 1980 and valued at more than \$100,000 were more likely to be uninhabitable than were older and less expensive homes.

There are, of course, exceptions to every rule, instances where tiny variations in wind or design or materials led to the destruction of small groups of houses while homes on the same street went unscathed. Such small wind phenomena are extremely difficult to trace.

But wind patterns that devastate entire subdivisions over square-mile-sized areas are another matter entirely. Such a large-scale wind effect could be accomplished only by a extremely high sustained wind or a tornado. Both leave marks that are easy for scientists to trace.

To find how the wind affected larger areas, the computer rated subdivisions according to the percent of uninhabitable homes reported by inspectors. Using this method, The Herald was able to produce a map showing how 420 subdivisions fared in the storm.

HARDEST HIT

Three areas had at least 90 percent of homes ruled uninhabitable

With two key anomalies, the map shows that, moving south, subdivisions generally sustained more damage the closer they were to the center of Andrew's eye.

Three areas were hardest hit, with 90 percent or more of the homes uninhabitable over square-mile-sized areas: the Naranja Lakes-Princeton area, nearest the storm's center, and the two anomalies: the area off Old Cutler Road south of the Deering Estate and the Country Walk area.

Naranja Lakes was no surprise. Shortly after the storm, Hurricane Center Director Robert Sheets declared it the high wind area. The NOAA scientists doing the wind-damage analysis agreed, rating the area F-3, meaning peak winds -- the "streaks" that have received so much attention -- gusted to more than 175 miles per hour, Black said.

This extreme high wind area was relatively small -- about three square miles, and the high-wind streaks within it were even smaller -- lasting up to 15 or 20 seconds and cutting tiny swaths roughly 50 feet wide and 200 feet long.

"We don't want people to think that the whole area was swept by 175 mile per hour winds," Black said. "It's just in the streaks where you get winds that high."

From the peak wind, scientists like Black are able to calculate an equivalent maximum sustained wind in Naranja Lakes of above 133 miles per hour. A fatal design flaw compounded the wind's havoc for much of Naranja Lakes: missing were vertical steel rods that would have greatly strengthened hundreds of concrete-block condo units.

Another of the high-damage areas, the section off Old Cutler Road, was near the high point of the 16-foot storm surge that hit Dade County, where the storm's winds hit South Florida's coastline with their greatest energy. The highest confirmed wind reading occurred here -- 177 mph for 2.5 seconds -- just before the anemometer atop a 33-foot pole collapsed at a private home near SW 162 Street and 85th Court.

The Old Cutler Road area, like most of the region in the storm's eyewall path -- the swath of South Florida that took the hardest hit -- was rated F-1, peak winds up to 151 mph and sustained winds equivalent to 97 to 114 mph.

COUNTRY WALK

Why was Country Walk devastated, while some nearby homes weren't?

But in devastated Country Walk, the winds were even weaker, rated F-0 by the scientists: sustained from 64 to 96 and gusts to 127 mph.

Yet here the damage was the second greatest of any area in South Dade, according to the computer analysis.

Why?

Some residents looked at Country Walk after the storm and immediately thought the houses, nearly all of which had extensive roof damage, had been hit by tornadoes. But the NOAA scientists, who are experts at spotting the paths of tornadoes in wreckage, found no such evidence.

"In a tornado, these kind of houses would just be flattened," Black said. "If there had been any tornado features here, you would see some kind of departure, some curvature to the debris paths. What you should be able to see is a curved path of destruction, and the debris from the houses flung out at an angle from the wind."

Since Country Walk is largely a collection of wood-frame houses, some have speculated that the destruction there came, if not from a tornado, then from hard wind hitting weak wood.

The NOAA scientists who visited Country Walk did not see any evidence of extremely high wind like the streaks that devastated Naranja Lakes, though an unconfirmed anemometer report of 144 miles per hour did emerge from the area after the storm.

Black carefully studied an aerial photograph of Country Walk and estimated the peak winds at no higher than 100 to 110.

"There are some older Florida-style houses in that area out there that are just as exposed as Country Walk," Black said. "And they're not totally devastated like Country Walk was."

The Herald hired an engineer, Eugenio Santiago, to inspect four houses in Country Walk. He found them especially ill-equipped to fight off the hurricane. The weak point was the "storm bracing" -- two-by-fours that strengthen the gable ends, the sides at either end of a pitched roof that provide an extremely exposed flat face to the wind.

A chronic lack of bracing allowed head-on and suction winds to rip apart the towering gable ends in Country Walk. The few braces found were often sloppily attached. Entire rows of nails missed trusses on the roofs.

Despite mounting evidence of structural weakness, others continue to blame the wind. They point to the severe damage to Homestead Air Force Base and the Turkey Point nuclear power plant, as well as the reinforced concrete utility poles that broke in the storm.

"In some cases, the wind was so bad, even if the house was built perfectly it would be the same result," said Roberto Pineiro, Dade's chief building inspector. "You see outside Country Walk huge Florida Power & Light poles snapped in half. That's reality. That's for everyone to see."

But tall and slender light poles are exposed to higher winds than houses, and they lack the ability to efficiently distribute wind forces throughout their structure, like houses do.

MAKING HOUSES SOLID

Study: Materials to strengthen houses would have cost \$200 to \$300

Built correctly, lower-profile houses can resist high wind forces, as box-like concrete-block-style 1960-era houses demonstrated all over South Dade after Andrew.

"What you've got to do is transmit those forces into the ground," said Crane Miller, a Washington lawyer who did a study of Hurricane Hugo for NOAA. "The only way to do it is to make sure everything is tied securely together. It is easy."

"To me, the catastrophe is the materials you would need to strengthen those houses would have cost about \$200 to \$300 per building and are insignificant in the total capital cost."

The Air Force base and Turkey Point also have much higher wind profiles than houses. And they were exposed to the full force of unobstructed winds along the coastline.

Most houses further inland faced weaker winds because wind generates friction and slows down after it hits land. Open fields and lakes might allow the wind to speed up a bit, but trees slow it down.

"Having trees in the neighborhood creates a little boundary layer," Black said. "It's like having a shock absorber for the wind."

Country Walk was perched at the edge of open fields, but it was also thick with trees. And the computer analysis shows that the interior areas of Country Walk fared just as badly as the edges that were more exposed to the wind.

Some comparisons are worthwhile to put Country Walk in context.

In the computer analysis, 18 Country Walk subdivisions and condos encompassing 936 units were rated 98.2 percent uninhabitable with 90 percent of the inspections completed. South Miami Heights Manor, a subdivision of 765 concrete-block houses built in the early 1960s, was only 2.5 percent uninhabitable with 68 percent inspected. And the NOAA scientist rated the wind higher in South Miami Heights.

Another comparison lies in the number of destroyed houses per subdivision. A house was rated destroyed if the damage was so extensive that the remnants had to be bulldozed and the house totally rebuilt.

The two-square-mile area containing Naranja Lakes, an area known as "Ground Zero" centered roughly on Southwest 280th Street and 145th Avenue, had the most destroyed houses -- 368.

The square mile containing most of Country Walk had 70 destroyed houses -- by far the most of any area north of Southwest 260th Street.

South Miami Heights Manor had six.

The large uninhabitable area off Old Cutler Road, where the homes were built in the early 1970s and are assessed at about \$170,000, had only three destroyed houses.

NARANJA LAKES

3 died here, but damage was much lighter at nearby Sunny Haven

Naranja Lakes had by far the worst damage of any area in South Dade. It was the site of both the worst wind and perhaps the worst design flaw, according to an engineer hired by The Herald to study the hurricane damage.

Naranja Lakes was built in the early 1970s by a Mafia-associated builder who put up concrete-block condominiums with large, overhanging flat roofs. The one-ton concrete tie-beams that braced the walls and connected the roofs to the houses were not anchored to the foundation by vertical steel rods.

The result: the normally wind-resistant concrete-box design became a deathtrap. When the wind streaks hit Naranja Lakes, the roofs took off, tie beams in tow, like flying wings. Three people died as the heavy beams toppled walls and drove through roofs like giant javelins.

One subdivision near Naranja Lakes fared much better: Sunny Haven, a late-1950s development of 99 houses with an average assessed value of \$29,000. Barely 1,000 feet from the utter devastation of Ground Zero, Sunny Haven rated only 26 percent uninhabitable.

"They're all very small houses with pitches about what they're supposed to be in Dade County, as opposed to the large, flat roofs of Naranja Lakes," Black said. "I don't see any reason why those places didn't experience the same kind of winds that Naranja Lakes did."

Black, the NOAA scientist, has studied several concrete-block houses that lost their roofs and tie-beams in similar ways during Andrew. The common link: none had vertical steel holding the tie-beams down.

"All the houses that I've looked at that were destroyed had that problem," Black said. "It appears that no matter how high these winds were, a lot of these houses would have survived if they had these vertical columns."

County-wide, flying concrete tie-beams were a relatively small problem, restricted to Naranja Lakes and a few isolated areas.

The bigger problems were the smaller-scale failures that proliferated in Country Walk and other neighborhoods in weaker winds zones: garage and double doors that blew in and staples and gables that gave way.

"Those shingles are stapled on with a staple that didn't hold," said Marks, the engineer. "The felt that was stapled on didn't hold. The (particle board) and the plywood didn't hold."

When the shingles, felt and particle board or plywood went, the roof went. When the roof went, the house became uninhabitable. And the high-pitched gable ends that were all the architectural rage in the 1980s helped the roofs go.

"The lack of understanding of how to build a gable caused as much damage as the staple problem," Marks said.

At the heart of the roof failures was confusion among truss manufacturers, architects and contractors about who was responsible for the complex engineering involved in bracing the gable ends.

"If you look at the building code, it's deficient," Dade Building and Zoning Chief Carlos Bonzon said. "It's not clear who's responsible. The engineer for the truss manufacturer or the architect of record?"

Bonzon admitted that his building inspectors had to rely on the contractors to build the gable ends correctly because the inspectors "didn't have training in wind-resistant construction. There is a deficiency in all levels in wind-resistant construction."

UNMISTAKABLE LESSON

Scientist: Damage was 'proportional to the kind of construction used'

The Country Walk area provides one of the starkest contrasts in the entire hurricane-ravaged landscape. Seen from an aerial photograph, like the one on the cover of this special section, the lesson is unmistakable. The aerial shows five neighborhoods, all constructed differently.

"The damage is directly proportional to the kind of construction used," said Black. "It was astounding for me to see that."

The northernmost neighborhood in the photograph, Country Walk Section 2, was the hardest hit area of Country Walk. The 184-home development, built in the early 1980s, had 100 percent of its inspected homes rated uninhabitable and 33 houses destroyed.

But the destruction immediately south of it was even worse. Here, the Dadeland Mobile Home Park, was a shredded mass of total devastation.

Next to the park, Roger Homes, a 38-home development put up in the late 1980s, was also heavily damaged, 100 percent uninhabitable.

Below the park, Mediterranea, a 111-home subdivision built in the late 1980s, was rated 99 percent uninhabitable. It did poorly, but not quite as badly as Country Walk.

Next to Mediterranea and about a third of a mile south of Country Walk sits a success story: The 71-home Munne Estates project, built in 1989 and 1990.

The red-tiled-roofed, concrete block houses look almost pristine in the aerial photograph.

"Maybe the storm went around my project," said Raul Munne, 51. "Either that or we did something right."

He did a lot right. In stunning contrast with the surrounding subdivisions, nearly all of the roofs held on the \$80,000 to \$95,000 Munne homes. Munne built his roofs with plywood, not the weaker particle board, and he used thicker plywood than the code allowed. Then he used nails driven in by hand, not staples, to hold it down.

"Munne should definitely get credit for building good houses," said Dawn Mareno, a resident of Munne Estates. "All we lost were tiles."

LONG DRY SPELL

Avino: Long spell between storms helped foster complacency

How did things get so bad that homes built with pride and craftsmanship can become a cause for celebration -- instead of the rightful expectation of any home buyer?

Many blame the long dry spell between serious hurricanes in South Florida. By the 1980s, builders could put up houses with no memory of what it is like to be tested by 120 mile per hour winds.

"I think people got very complacent," said Santiago, the veteran engineer hired by The Herald. "People were just oblivious to things, as if they thought we never were going to have a hurricane in this area."

"Without a doubt, complacency plays a role in it," said County Manager Joaquin Avino, who ran Dade's Building and Zoning Department in the early 1980s. "Look back in the '60s, '50s, and 40s. Materials tended to be heavier."

Adds Flesner: "I think it's just the cost pressure that builders find themselves under. I think you see it more with the large tract builder. If they can save \$100 to \$200 a house, that's big dollars when you're putting up a lot of houses."

To save money, builders pushed for the acceptance of cheaper materials, like staples, thinner plywood and particle board. The 1980s homes that did so poorly in the hurricane were built during a period when the South Florida Building Code was weakened to allow for the inferior materials and techniques.

"To reduce costs and maximize profits, they were able to get certain building materials approved by using attorneys," said Andrew Allocco, an engineer who inspects homes for prospective buyers.

The Herald found that Dade's builders had a considerable influence in the department that inspected them. At the height of the building boom, the building industry contributed one of every three dollars to Metro commission campaigns.

"Lo and behold, the argument that these contractors and developers used will work in the long run against them," Allocco said. "They had to prove to the board (of Rules and Appeals) that products would withstand a hurricane. Lo and behold, they didn't."

The board was warned twice -- in 1983 and again by roofers in 1984 -- that staples weren't working, but did nothing to change the code.

INSPECTIONS

System broke down as new construction proliferated

At the same time that the building materials were becoming cheaper and construction was increasing, the county's building inspection system was failing to enforce the South Florida Building Code. Through overwork, oversight or outright corruption, county building inspectors allowed the flaws to proliferate.

The number of inspectors did not keep up with the pace of construction. Inspectors were pressured to perform up to four times the number of inspections that could properly be done in a day. A computer analysis of building inspections revealed 194 times since 1987 in which inspectors were sent out on more than 50 inspections in one day, more than double the 20 inspection- limit recommended by a grand jury.

"It's one of the toughest codes, but so what if you don't enforce it or if people don't build to it," said lawyer Miller.

State Farm's Flesner concurs: "There are things in the code that need to be fixed. But the bigger concern is enforcement."

Grand juries exposed inspectors who didn't get up on roofs and took time off work to go to a bowling alley. A 1986 police investigation found widespread bribery of inspectors.

"I had a concern about whether or not they were doing a totally honest job in the field," said Ray Goode, who was Dade's county manager in the 1970s.

"Always in the back of your mind you worry because you have this small army of people out in the field every day checking houses. Do you know or not know if someone is giving them an envelope? Or passing along a case of Coors?"

Sergio Pereira, Metro's manager from 1986 until 1988, said it was impossible for inspectors to spot every construction problem.

"That's very hard to police," Pereira said. "I don't think you can blame government for it. When you had the kind of building boom you had, what are you going to do? Leave an inspector at the building site forever?"

After Andrew, Metro-Dade officials swiftly took action in what was in effect a telling admission of the deep flaws in the system.

In short order, the county banned staples and particle board and required building inspectors to start checking whether gable-ended roofs are properly braced.

Nonetheless, the county can only do so much.

"I do believe inspection is the second line of defense in this industry," said Ronald Zollo, an engineering professor at the University of Miami. "You may blame it all you want, but it's supposed to be built right in the first place."

Herald Staff Writers Luis Feldstein Soto and Don Finebrock contributed to this report.

CUTLINES: RUINED HOMES

An aerial view of storm destruction near SW 152nd Street and SW 144th Ave. Despite being far from the area of strongest winds, these five subdivisions were battered by Hurricane Andrew. In each of these neighborhoods, more than 86 percent of the homes were declared uninhabitable after the storm -- including every home in the River Bend subdivision. A Herald computer analysis compared the frequency of uninhabitable homes against all available variables and found that the only consistent pattern was the year the house was built.

DAMAGE AT COUNTRY WALK

A storm-ravaged cul-de-sac in Country Walk, which a computer analysis showed suffered the second greatest level of damage -- despite being in an area well away from Hurricane Andrew's strongest gusts.

Caption: color photo: aerial of Country Walk and Dadeland Mobile Home Park leveled after Hurricane Andrew (n); photo: ruined homes (n), cul-de-sac in Country Walk (HURRICANE ANDREW DADE); map: subdivisions and Country Walk

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