

"Sharon LaFraniere got it Wrong!"
Response to the coverage of the Pigford Settlement in the
April 26, New York Times

Note: *We at the Federation of Southern Cooperatives/Land Assistance Fund are deeply concerned about the inaccuracy and misleading statements made in Sharon LaFraniere's article "[Federal Spigot Flows as Farmers Claims Discrimination](#)". We are also concerned that the reporter never interviewed those who have been involved in addressing the discrimination Black farmers have experienced since the 1960's. Further, LaFraniere never reported in detail the discriminatory behavior of the USDA staff toward minority farmers during the 1981-1996 claims period of the lawsuit much less since the beginning of the farm programs in the 1930's. Nor did she focus on what the USDA staff polices are and how USDA staff were supposed to assist and encourage farmers in their farming needs and concerns. Consequently, she did not report on the violations of government regulations and policies by the USDA staff. Instead, Ms. LaFraniere chose to critique the Black farmer victims and those at the USDA who were attempting to correct this injustice. From the 1930's until now, this has been a sad chapter in the American history of discrimination that, thankfully, is being somewhat addressed in the Pigford lawsuit. Below is a listing that corrects some of the misinformation in the LaFraniere article.*

Article: "From the start, the claims process....encouraged people to lie"

Response: *False. Claimants and the attorneys had to sign the claim form under penalty of perjury. Frivolous claims by underage individuals were screened out by the claims facilitator. While few documents existed, every claim was subject to scrutiny by a team of USDA officials. The claims were decided by experienced neutrals and, in the end, 30% of all claims were denied.*

Article: "But critics, including some of the original black plaintiffs, say that is precisely what the government did when it first agreed to compensate not only those who had proof of bias, but those who had none."

Response: *Every claimant had to prove bias to prevail on a claim, including identification of a similarly situated white farmer who received more favorable treatment than the black farmer.*

Article: "Justice department lawyers worried about false claims....it was better to err on the side of giving money to people..."

Response: *This was no giveaway. Initially 40% of all claims were denied. Some of these people appealed and, in the end, 30% of all claims were denied.*

Article: "Claimants described how, at packed meetings, lawyers' aides would fill out forms for them on the spot, supplying answers..."

Response: *This never happened at the 250+ meetings conducted by class counsel. They were instructed not to sign claim forms under penalty of perjury unless they believed that the individual had a valid claim. On average, they turned away 25% of the claimants and were criticized by many who believed that the claim process was too rigorous.*

Article: "Accusations of unfair treatment could be checked against department files if claimants had previously received loans...but there was no way to refute what they said."

Response: *Local USDA did refute claims even where no documentation existed. They often submitted affidavits disputing a claim that the person had applied for loans.*

Article: "In Maple Hilldozens of other families shared addresses, phone numbers or close family connections."

Response: *All claims were carefully screened by the EPIQ Systems, one of the foremost class action administrators in the country. Only one claim per farming operation was allowed. Multiple claims by family members were consolidated into one claim. Claims with same last names, same addresses, same telephone numbers were carefully screened to enforce the limit of one claim per farm operation.*

Article: "But four-fifths of successful claimants had never done so [previously received loans]."

Response: *What basis does the reporter have for making this claim? There is no data analysis on this issue. By implying that those persons are unworthy of relief or should be disregarded to avoid the possibility of fraud, that statement strikes at the very heart of this claims process-its goal of providing compensation to farmers who were excluded from USDA's programs. Of course, people who were excluded would not have previously received loans.*

Article: But some critics, including some of the original black plaintiffs, say that is precisely what the government did [open up a Pandoras box] when it first agreed to compensate not only those who had proof of bias, but those who had none (emphasis added).

Response: *That is incorrect. Each claim in Pigford I, to be successful, had to establish sufficient facts by the claimants own declaration (which is proof in court like any testimony) that he or she suffered discrimination, including the names of white farmers who got the specific farm loan benefit he or she was denied. Then, USDA could, and in many cases did, submit evidence that it believed contradicted the claimants declaration. All this evidence was evaluated by a trained adjudicator. This process simply cannot be described as one in which the farmer can win without any proof of bias.*

Article: Just five months after the lawsuit was filed, and without the investigative step of discovery, the Justice Department opened settlement negotiations.

Response: *That statement suggests there was no discovery or litigation after five months. That is wrong. Both sides engaged in discovery and typical pre-trial motions practice for a year before substantive settlement negotiations commenced in August 1998. And the negotiations really got serious only after plaintiffs won their motion for class certification in October 1998, some 14 months after the case was filed.*

And finally,

- *The story is largely anecdotal - sure there are people at USDA who are vested in the system who refuse to admit the undeniable legacy of discrimination at the department.*
- *The presentation of data is misleading. The number of farms operating in 1997 is essentially irrelevant. The case covers a 16 year period during which there were over 125,000 African Americans engaged in farming at one time or another.*
- *Minimal documentation was required because 1) USDA destroyed the denied loan applications and civil rights complaints; 2) the case went back to 1981 so many folks had lost or destroyed their own records. It went back to 1981 because USDA shut down its civil rights office in the*

early 80's so minorities were denied the opportunity to present their claims at a time when they would have had records.

- *Out of 503 cases referred to the FBI, they chose to investigate 60 - 3/10 of 1 percent of the 22000 claims. That is miniscule.*
- *The denial of credit and benefits has had a devastating impact on African American farmers. According to the Census of Agriculture, the number of African American farmers has declined from 925,000 in 1920 to approximately 18,000 in 1992. CRAT Report at 14. The farms of many African American farmers were foreclosed upon, and they were forced out of farming. Those who managed to stay in farming often were subject to humiliation and degradation at the hands of the county supervisors and were forced to stand by powerless, as white farmers received preferential treatment.*
- **The Network of Black Farm Groups and Advocates** was created at the beginning of the Pigford lawsuit. Tom Burrell, mentioned in the April 26 New York Times article, was never a part of the Network. His Black Farmers and Agriculturalists Association (BFFA) in Tennessee is not the same as the group in North Carolina. Burrell speaks for himself.

· Thomas Burrell and his organization never served as representatives of class counsel in the *Pigford* settlement or the *Black Farmers Discrimination Litigation* (BFDL), known as Pigford II.

· Burrell and his organization were not active in the Pigford claims process, and class counsel in BFDL has not worked with him or his organization on claims nor accepted any claims he or his organization might have prepared. In fact, class counsel had reported his activities to the U.S. District Court in an effort to prevent him from spreading false information about the claims process, and in opinions rendered on January 3, 2005 and September 6, 2005, District Court Judge Paul L. Friedman charged that Burrell had "given false hope to thousands of African American farmers."

· What Burrell has done, but which the article does not make clear, is hijack the claims process for his own self-interest. Burrell's actions have been detrimental to the legitimate claims process, yet the New York Times would have readers believe that those who oversaw the claims process condoned his efforts to undermine the integrity of the process. This is blatantly false. By indicating a connection between Burrell and the claims process, the New York Times is showing a grave disregard for the truth and seriously misleading the public.

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