

## Tab 2

### Declaration of Robert Penchina



from an AP computer-generated report identifying subscribers to AP's PhotoStream service.

5. Attached as Exhibit C hereto is a true and correct copy of a document bearing production number MC 00018, which Plaintiff produced in this action on or around November 15, 2005.

6. Attached as Exhibit D hereto is a true and correct copy of a document bearing production number MC 00185, which Plaintiff produced in this action on or around November 15, 2005.

7. Attached as Exhibit E hereto is a true and correct copy of a document bearing production number MC 00219-21, which Plaintiff produced in this action on or around November 15, 2005.

8. Attached as Exhibit F hereto is a true and correct copy of a document bearing production number MC 00248-49, which Plaintiff produced in this action on or around November 15, 2005.

9. Attached as Exhibit G hereto is a true and correct copy of a document bearing production number MC 00287-88, which Plaintiff produced in this action on or around November 15, 2005.

10. Attached as Exhibit H hereto is a true and correct copy of a document bearing production number MC 00277, which Plaintiff produced in this action on or around November 15, 2005.

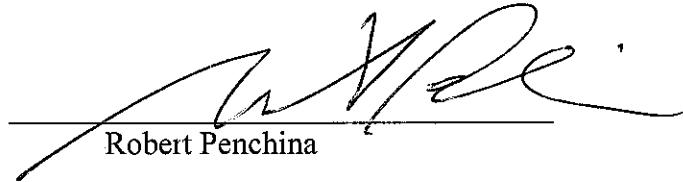
11. Attached as Exhibit I hereto is a true and correct copy of a document bearing production number MC 00278-79, which Plaintiff produced in this action on or around November 15, 2005.

12. Attached as Exhibit J hereto is a true and correct copy of a document bearing production number MC 00280-81, which Plaintiff produced in this action on or around November 15, 2005.

13. Attached as Exhibit K hereto are true and correct copies of documents bearing production number MC 00291 which Plaintiff produced in this action on or around November 15, 2005.

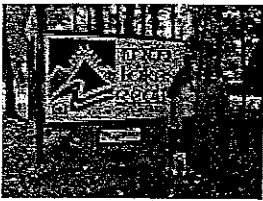
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: New York, New York  
May 12, 2006



Robert Penchina

# Exhibit A



**"End of Serenity" copyright**

Val McClatchey took this photo from her home just seconds after the crash of Flight 93. Prints are available only at the office or by calling Val at Mtn. Lakes Realty, LLC.

Mtn. Lakes Realty, LLC  
(814) 754-5282

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A0545

# Exhibit B

CTTOR	Torrington	The Register Citizen	1200	PHOTOSTREAM
CTVER	Manchester	Journal Inquirer	1200	PHOTOSTREAM
CTWAR	Waterbury	Republican-American	1200	PHOTOSTREAM
DCPOS	Washington	The Washington Post	1200	PHOTOSTREAM
DCTIM	Washington	The Washington Times	1200	PHOTOSTREAM
DCUSA	McLean	USA Today	1200	PHOTOSTREAM
DCUSN	Washington	U.S. News & World Report	1200	PHOTOSTREAM
DEWIN	Wilmingon	The News Journal	1200	PHOTOSTREAM
FLBOC	Boca Raton	Boca Raton News	1200	PHOTOSTREAM
FLBRA	Bradenton	Bradenton Herald	1200	PHOTOSTREAM
FLDBJ	Daytona Beach	Daytona Beach News-Journal	1200	PHOTOSTREAM
FLFLS	Fort Lauderdale	South Florida Sun-Sentinel	1200	PHOTOSTREAM
FLFTM	Fort Myers	The News-Press	1200	PHOTOSTREAM
FLFTP	Fort Pierce	The Tribune	1200	PHOTOSTREAM
FLFTW	Fort Walton Beach	Northwest Florida Daily News	1200	PHOTOSTREAM
FLGAI	Gainesville	The Gainesville Sun	1200	PHOTOSTREAM
FLICC	Crystal River	Citrus County Chronicle	1200	PHOTOSTREAM
FLJAT	Jacksonville	The Florida Times-Union	1200	PHOTOSTREAM
FLKEY	Key West	The Key West Citizen	1200	PHOTOSTREAM
FLLAD	Lady Lake	Daily Sun	1200	PHOTOSTREAM
FLLAK	Lakeland	The Ledger	1200	PHOTOSTREAM
FLLEE	Leesburg	The Daily Commercial	1200	PHOTOSTREAM
FLLKC	Lake City	Lake City Reporter	1200	PHOTOSTREAM
FLMEL	Melbourne	Florida Today	1200	PHOTOSTREAM
FLMIH	Miami	The Miami Herald	1200	PHOTOSTREAM
FLNAP	Naples	Naples Daily News	1200	PHOTOSTREAM
FLOCA	Ocala	Ocala Star-Banner	1200	PHOTOSTREAM
FLORE	Orlando	El Nuevo Dia Orlando	1200	PHOTOSTREAM
FLOGR	Orlando	Orlando Golfweek	1200	PHOTOSTREAM
FLORM	Orlando	Orlando Sentinel	1200	PHOTOSTREAM
FLPAL	Palatka	Palatka Daily News	1200	PHOTOSTREAM
FLPAN	Panama City	The News Herald	1200	PHOTOSTREAM
FLPEJ	Pensacola	Pensacola News Journal	1200	PHOTOSTREAM
FLPOR	Charlotte Harbor	Charlotte Sun	1200	PHOTOSTREAM
FLSAR	Sarasota	Sarasota Herald-Tribune	1200	PHOTOSTREAM
FLSPT	St. Petersburg	St. Petersburg Times	1200	PHOTOSTREAM
FLSTA	St. Augustine	The St. Augustine Record	1200	PHOTOSTREAM



PAHEN	Hanover	The Evening Sun	1200	PHOTOSTREAM
PAHUN	Huntingdon	The Daily News	1200	PHOTOSTREAM
PAHZE	Hazleton	Standard-Speaker	1200	PHOTOSTREAM
PAIND	Indiana	The Indiana Gazette	1200	PHOTOSTREAM
PAJOH	Johnstown	The Tribune-Democrat	1200	PHOTOSTREAM
PALAN	Lansdale	The Reporter	1200	PHOTOSTREAM
PALEB	Lebanon	Lebanon Daily News	1200	PHOTOSTREAM
PALEH	Lehighton	Times News	1200	PHOTOSTREAM
PALEV	Levittown	Bucks County Courier Times	1200	PHOTOSTREAM
PALEX	Lewistown	The Sentinel	1200	PHOTOSTREAM
PALNE	Lancaster	Lancaster New Era	1200	PHOTOSTREAM
PAMCK	McKeesport	The Daily News	1200	PHOTOSTREAM
PAMEA	Titusville	The Meadville Tribune	1200	PHOTOSTREAM
PAMIN	Monessen	Monessen Valley Independent	1200	PHOTOSTREAM
PANEW	New Castle	New Castle News	1200	PHOTOSTREAM
PANOR	Norristown	The Times Herald	1200	PHOTOSTREAM
PAOIL	Oil City	The Derrick	1200	PHOTOSTREAM
PAPDN	Philadelphia	Philadelphia Daily News	1200	PHOTOSTREAM
PAPHB	Philadelphia	The Evening Bulletin	1200	PHOTOSTREAM
PAPHI	Philadelphia	The Philadelphia Inquirer	1200	PHOTOSTREAM
PAPHT	Philadelphia	The Philadelphia Tribune	1200	PHOTOSTREAM
PAPOM	Pottstown	The Mercury	1200	PHOTOSTREAM
PAPOR	Pottsville	The REPUBLICAN & Herald	1200	PHOTOSTREAM
PAPPG	Pittsburgh	Pittsburgh Post-Gazette	1200	PHOTOSTREAM
PARET	Reading	Reading Eagle	1200	PHOTOSTREAM
PASAY	Sayre	The Evening Times	1200	PHOTOSTREAM
PASCE	Scranton	The Scranton Times	1200	PHOTOSTREAM
PASHA	Shamokin	The News-Item	1200	PHOTOSTREAM
PASHH	Sharon	The Herald	1200	PHOTOSTREAM
PASOM	Somerset	Daily American	1200	PHOTOSTREAM
PASTA	State College	Centre Daily Times	1200	PHOTOSTREAM
PASTP	Stroudsburg	Pocono Record	1200	PHOTOSTREAM
PASUN	Sunbury	The Daily Item	1200	PHOTOSTREAM
PATAR	Tarantum	Valley News Dispatch	1200	PHOTOSTREAM
PATOW	Towanda	The Daily Review	1200	PHOTOSTREAM
PATYR	Tyrone	The Daily Herald	1200	PHOTOSTREAM
PAUNI	Uniontown	Herald-Standard	1200	PHOTOSTREAM

## Exhibit C

Valencia McClatchey

From: "Val McClatchey" REDACTED  
To: "Mercanti, Michael" REDACTED  
Sent: Wednesday, August 14, 2002 6:33 AM  
Subject: Re: Flight 93 photo

Good Morning Michael,

Thank you for requesting the use of the photo. I don't have a "set" fee due to the different types of use & size that has been used. The fee varies. If you would tell me how large of space you planned, it would help. The fees that I have gotten so far have ranged from 250-500+. I'm sure we can work something out for us both.

I can be reached at work: REDACTED or my cell is REDACTED Home # is REDACTED after 5pm.

Thanks,  
Val

Val "stooge" McClatchey, Realtor@  
COLDWELL BANKER RITA HALVERSON, REALTOR@

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S REDACTED

F REDACTED  
[www.coldwellbanker.com](http://www.coldwellbanker.com)

Phone REDACTED Fax: REDACTED REDACTED  
email: y REDACTED

[www.somersetparealestate.com](http://www.somersetparealestate.com)

PA CONSUMER NOTICE

<http://www.dos.state.pa.us/bpoa/LIB/bpoa/20/10/reconsnotice.pdf>

----- Original Message -----

From: "Mercanti, Michael" REDACTED  
To: REDACTED  
Sent: Tuesday, August 13, 2002 3:54 PM  
Subject: Flight 93 photo

- > Val, My name is Michael Mercanti and I am the photo editor of the
- > Philadelphia Daily News. I would like to reprint your crash photo, one
- > time
- > use only that day, in our 9/11 issue. It is quite an astounding
- > photograph.
- > Please get back to me on the cost and how I can obtain the image. Thanks.
- > Michael Mercanti ( REDACTED photo desk number)

CONFIDENTIAL

9/18/2005

MC 00018

## Exhibit D

Philadelphia  
Newspapers, Inc.

Paving Agent:  
P.O. Box 530698  
Livonia, MI 48159-0698  
Tel: REDACTED

MCCCLATCHY, VAI

KR27  
Page  
Seq 781

Account No.	Vendor No.	Invoice Reference Number	Invoice Date	Invoice Amount	Discount Amount	Check No.	Check Date	Check Amount	Adjustment Amount	Net Amount
25-SEP-2002 9/11 PHOTO		REDACTED	09/25/02	\$200.00		REDACTED	09/26/02	\$0.00		\$200.00
		Total Amount		\$200.00						\$200.00

CONFIDENTIAL

MC 00185

## Exhibit E

Secrets of A+ Parents

Reader's Digest



Candice Bergen  
'I'm still a work in progress'  
PAGE 86

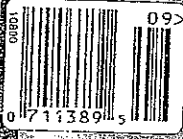
FLIGHT 93

THE  
UNTOLD  
STORY

'Let's Roll' PAGE 158

Hidden  
Power of  
Friendship  
PAGE 112

September  
2002  
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PLUS Will Your Extra Weight Trigger Diabetes?  
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**Let's Roll: The Untold Story of Flight 93**

done on September the eleventh. Yet after America was attacked, it was as if our entire country looked into a mirror and saw our better selves. We were reminded that we are citizens, with obligations to each other, to our country and to history. We began to think less of the goods we can accumulate and more about the good we can do. For too long our culture has said, 'If it feels good, do it.' Now America is embracing a new ethic and a new creed: 'Let's roll.'

Jack Grandcolas, the husband of Lauren Grandcolas, said of the passengers: "They were the ultimate patriots. They did the most dramatic thing they could do. They gathered information, they voted to do something. They knew there's a ninety-eight percent chance we're not going to make it, but let's save others. That's what Americans are all about. Lauren's bravery has given me hope. All their bravery has given me hope."

■ To order this book, call 800-835-2212 or purchase online at [booksnow.com/frd](http://booksnow.com/frd).

The British Royal Automobile Club came up with a list of what a car's color says about its owner. Here is what your vehicle is telling people about you:

- Black: You're ambitious and status-seeking.
- Green: You're very traditional and an elitist.
- Blue: You're a team player and very sociable.
- White: You're aloof, dutiful and methodical.
- Gray: You're understated and cautious.
- Silver: You have a sense of style, but you can be pompous.
- Red: You're outgoing, impulsive and easily bored.

the U.S. Capitol. He expressed gratitude for the passengers' disruptive actions.

Six days after the crash, families of the passengers and crew members gathered on a bluff above the soft, cratered soil where Flight 93 had been entombed. They cried and prayed and left remembrances of their loved ones, flowers, photographs.

On September 24, the families were invited to the White House, where President George W. Bush and First Lady Laura Bush met with them. The President spoke plainly, hugging family members, letting them cry in his arms, assuring them that those aboard Flight 93 were heroes and that they had not given their lives in vain. The families were then greeted by a line of White House staff members in the East Wing.

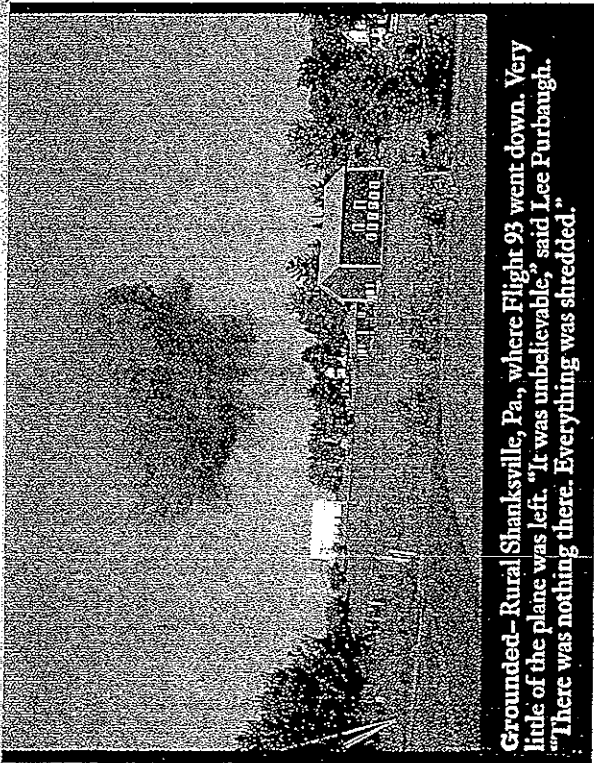
The President began to regularly incorporate Todd Beamer's call to action into his speeches. In the State of the Union address on January 29, 2002, President Bush said, "None of us would ever wish the evil that was

**WHOSE HUE?**

The British Royal Automobile Club came up with a list of what a car's color says about its owner. Here is what your vehicle is telling people about you:

- Black: You're ambitious and status-seeking.
- Green: You're very traditional and an elitist.
- Blue: You're a team player and very sociable.
- White: You're aloof, dutiful and methodical.
- Gray: You're understated and cautious.
- Silver: You have a sense of style, but you can be pompous.
- Red: You're outgoing, impulsive and easily bored.

—Chicago Sun-Times



**Grounded—Rural Shanksville, Pa., where Flight 93 went down. Very little of the plane was left. "It was unbelievable," said Lee Purgaugh. "There was nothing there. Everything was shredded."**

terror manual that the Associated Press obtained after September 11. The manual recommended hitting buildings "with high human intensity" such as skyscrapers, airports, nuclear power plants, monuments and sports stadiums.

The day after the crash of Flight 93, as he spoke to reporters in a tent placed in a cornfield near the site, U.S. Representative John P. Murtha of Johnstown said that the target undoubtedly had not been a reclaimed strip mine in rural Pennsylvania. Arlen Specter, the U.S. Senator from Pennsylvania, later proposed the Congressional Gold Medal for those who had thwarted the hijackers' apocalyptic intentions. And Rick Santorum, the junior Senator, presented workers at the crash site with a flag that had flown over

**CALL TO ACTION**

**T**WENTY MINUTES longer, and Flight 93 would have reached Washington in a finale of suicidal fireworks. "The strikes must have a wide impact on the population of the nation," read an al Qaeda

## Exhibit F

JANUARY 2002 VOL 37 NO 1

# Penn Times

Your Cooperative Newsmagazine

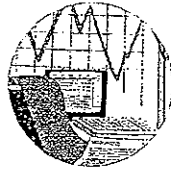
SOMERSET REC NEWS  
Page 12a



\*\*\*\*\*CAR-RT LOT\*\*R-003  
40021 4191605 SOMER  
JOHN MCCLATCHEY  
107 OSAGE PATH  
STOYSTOWN, PA 15563-9055



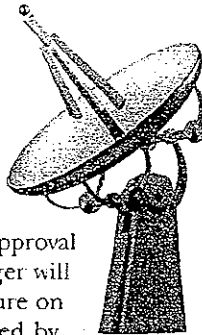
## END OF THE LINE FOR TRAPPING?



NEWS BRIEFS

compiled by Perry Stambaugh  
Editor

## Satellite TV Merger Could Harm Rural Areas



The acquisition of Hughes Electronics Corporation's DIRECTV service by chief rival EchoStar Communications (DISH Network) could have a devastating impact on rural consumers who depend on satellites to receive TV signals in a clear, quality fashion. So declares Stan Kozlowski, senior vice president of sales and marketing for the National Rural Telecommunications Cooperative (NRTC). NRTC distributes DIRECTV (small dish direct broadcast) and Rural TV (large dish C-band) satellite programming to 1.45 million rural subscribers.

The regulatory approval process of this merger will focus in large measure on rural areas not served by cable TV," Kozlowski notes. "While the union of these direct broadcast satellite giants could for the first time offer real competition to cable, it could also create a monopoly that ignores rural interests."

Kozlowski relates that the merger is likely to hit rural households in the pocketbook by forcing half to purchase new set-top boxes — DIRECTV and the DISH Network use different technologies. In addition, he says that

merger worries go beyond video and into the chilling effect it might have on other competitive satellite offerings notably high-speed Internet access.'

Right now there are 55 million homes without cable or digital subscriber line options for receiving broadband services like high-speed Internet," he points out. "These are rural consumers. Satellite offers them the best way to gain instant access to the world."

The merger of the two direct broadcast satellite carriers must first clear the U.S. Justice Department and the Federal Communications Commission. Pennsylvania Attorney General Mike Fisher (R) has taken the point for state attorneys general in reviewing this issue. NRTC is working with electric cooperatives to develop an appropriate legislative response.

"The deal will bear a heavy burden of proof because it significantly reduces competition in an already concentrated market," Kozlowski states.

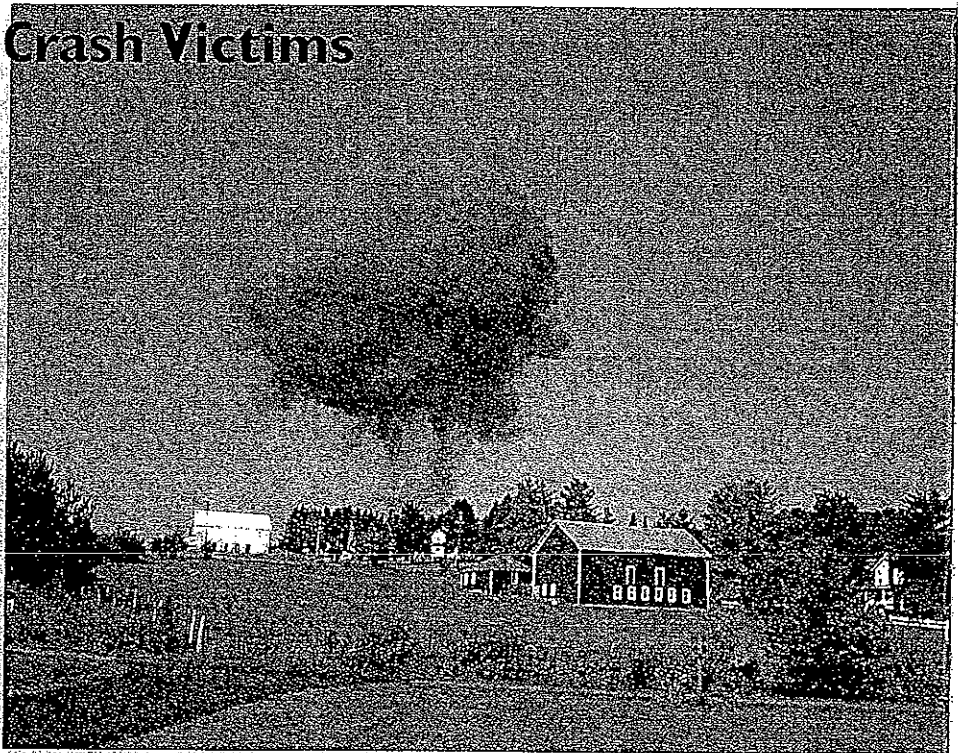
Approximately 375,000 Pennsylvania households subscribe to satellite TV.

## Photo Benefits Crash Victims

Electric cooperative consumer Val McClatchey of Indian Lake, Somerset County, is selling 8 x 10 prints of her gripping photograph "End to Serenity" (October 2001 issue of *Penn Lines*, page 14). The shot — first published in *Penn Lines* — was taken moments after hijacked United Airlines Flight 93 crashed near her home on September 11. The plane went down after passengers thwarted plans by Muslim terrorists to slam the aircraft into the U.S. Capitol or White House.

Cost for a print is \$20, with \$18 donated to the Todd Beamer Foundation. The remaining \$2 covers shipping and handling. The Todd Beamer Foundation — named for one of the heroic passengers aboard Flight 93 — benefits families of those who perished in the tragedy.

To order, please send a check or money order to: Val McClatchey, 107 Osage Path, Stoystown, PA 15563.



## Exhibit G

# 9/11

## SPECIAL REPORT

# WHILE WE WERE SLEEPING

**WHAT BUSH KNEW BEFORE 9/11  
WHY SO LITTLE WAS DONE  
HOW THE SYSTEM IS STILL BROKEN**

04001

\$3.95US 21>



0 925679 8



THE VIEW FROM SHANKSVILLE

# At Pennsylvania's Ground Zero

plan to schedule which ranking mode from a family-sponsor will "town as unus, who n out. A vice s the open to "We ere we But we call the

thority, operates ea port tunnels ous for achieve- it in ar- er mat- er P.A. in who asaki to wers ter, the o, blew ach de- housing crowd cheer n the er Sept. simply to show flow by ed that respect, At their already imperial an-scale erected as. Sept. 11 he past g types through y Right f long- pay very nal plan l linking

the Manhattan subways with suburban commuter rail systems. It will also probably re-establish several city streets that were covered over by the much despised 'superblock' of the Trade Center plaza.

The towers were symbols of "the mid-century arrogance of architects," says architect David Childs of Skidmore, Owings & Merrill. "What they did to lower Manhattan was an act of vandalism just as complete as Sept. 11." Childs, a well-regarded figure in the architectural world, has been commissioned by Larry Silverstein, the developer, to draw up proposals for the Trade Center site. The Port Authority and I.M.D.C., of course, are shopping for their own design team. How their eventual plans will be reconciled with Silverstein's remains to be seen. But for now the project has Childs thinking big. Granting that very tall skyscrapers are out of fashion these days, isn't there still an impulse, he asks, to see something tall and triumphant at the site? So what about, say, a 70-story office tower with a sculptural steel lattice at the top that climbs to the 110-story height of the original Twin Towers? And what if it becomes more delicate as it rises, suggesting spirits released into the sky?

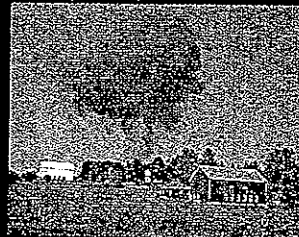
Then again, where will you find a developer willing to pay for 40 stories of unprofitable frosting on his cake? Great architecture requires a great client, one who is committed to excellence in the design, even when other factors, like cost or convenience, stand in the way. Does anyone in this process have the willingness—and the authority—to assume that role? Stay tuned.

Childs has already completed much of the design work on 7 World Trade Center, the other office tower that caught fire and later collapsed on Sept. 11. Excavation on that site began last week. Unlike the Twin Towers, that structure was built by Silverstein, so he had a freer hand to begin construction there. But he and Childs have adjusted the design in important ways in response to concerns from the other players.

Silverstein has never been known as a patron of architecture: 7 World Trade Center was one of the uglier buildings in lower Manhattan, which is saying something. But this is a historic undertaking; it brings out the visionary in everybody. And at age 71, Silverstein knows what the word legacy means—or what it might mean. "I want this to be a timeless development," he says. Then again, who doesn't? All that we need now to achieve real greatness—to produce something that does honor to the people who died there, to the people who loved them and to all the rest of us—is for everyone to live up to those sentiments. ■

**Y**ou would have to leave the country to find a place further in spirit from downtown Manhattan than Shanksville, Pa., the rural hamlet where United Airlines Flight 93 crashed on Sept. 11. It is a town with no stoplights or sewers or banks. It's home to just 245 residents—244.5 of them white—who attend three lively churches and are embarrassingly nice to strangers. The closest Starbucks is a two-hour drive.

Yet on any given day, a steady stream of cars find their way there. On weekends, more than 1,000 visitors may show up to look at the little town that taught us that no place is beyond terrorism's reach. They come from every state in the union, climbing to the crest of Skyline Road to see what remains of the now legendary Flight 93: absolutely nothing. With the crater long ago filled in, they can only gaze out on a rolling field that protrudes like a bald spot from a grove of hemlocks. "The horror of the event and the beauty of the place are so stark," says Edward Linenthal, the author of *The Unfinished Bombing: Oklahoma City in American Memory*, who visited



Shanksville in December. "It reminds me of the extermination sites the Nazis built in such magnificently beautiful forests."

The pilgrims to Shanksville still exude the same manic patriotism that swept the U.S. immediately after Sept. 11. On a recent afternoon, 150 members of Rotary International, brandishing small American flags, descended on the site in three four buses. The Rev. Duane Slade paid homage to the passengers who went down fighting: "We must recognize those who died to save our country from even greater loss," he intoned, before leading the crowd in a rendition of *God Bless America*.

The Rotarians then solemnly affixed silk tulips to the chain-link fence that has become a thriving impromptu memorial. Well-wishers have left everything from origami cranes to a United Airlines uniform. The offerings are fiercely

**THEN AND NOW** At the site of the crash, above, visitors pile up mementos

protected by Shanksville's residents, who eight months after the crash are still finding shreds of airplane in their backyards. "We see this as our calling, to make sure this final resting place is well kept," says Kim Friedline, who has cut back her hours at the county courthouse to stand sentry at the site several days a week. "The families can't be here every day, but we can."

Plans for a more permanent memorial are beginning to take shape, and as in New York City, passions are running high. Seven landowners share the 400-acre site, which was long ago strip-mined for coal. In March a bill was introduced in Congress to designate it a national memorial, which would bring a much needed infusion of funds to the community. A formal planning committee will be named in the next few months.

The announcement can't come soon enough for the locals, who find the whole process maddeningly bureaucratic. Meanwhile, a garishness is sweeping into town. Flight 93 tinkets are popping up everywhere, including

Ida's Country Store on Main Street, and visitors talk of touring the nation's "disaster circuit"—ground zero, the Pentagon, Oklahoma City and Columbine.

The families of victims consider Shanksville first and foremost a mass grave. When they speak of the site's future, some invoke Arlington or Gettysburg; others want their own private place to mourn. But to most, a memorial conveys a measure of finality that is still too much to bear. "The shock keeps me living in perpetual rawness," says Kimi Beaven, whose husband Alan perished on Flight 93. "As much as I would love to put my heart and mind around my husband's final resting place, I would far rather just let it be the peaceful place that it is; just let it be until I'm ready to honor him." —By Jodie Morse

