

HB

168

MAKING THE
WORLD
SAFE
FOR
**WHISTLE-
BLOWERS**

BY ROSEMARY CHALK

STRONGER MEASURES ARE NEEDED TO
ENSURE THAT ENGINEERS AND SCIENTISTS
WHO REVEAL DANGERS TO THE
PUBLIC DON'T HAVE TO MAKE HEROIC
PERSONAL SACRIFICES.



6821

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wrongful discharge, saying that her employer had effectively terminated her responsibilities within the company. Referring to the Hippocratic oath, Pierce affirmed that a professional ethic prohibited her from continuing work on the drug.

The New Jersey Supreme Court acknowledged that Pierce had acted according to her conscience, but refused to rule in her favor since she had failed to demonstrate how her action was based on any specific legislation, regulation, court decision, or professional standard. The court said the Hippocratic oath was insufficient to protect her because "a call of conscience should recognize that other employees and their employer might heed a different call."

In many other cases, individuals who speak up about hazardous conditions are singled out for punitive transfers, demotions, or dismissal. Furthermore, legal protections are fragmentary and even counterproductive, at times imposing additional reprisals on the individuals they are meant to protect.

The evidence on the effectiveness of corporate or agency internal mechanisms is less clear, mainly because reporting procedures are new. Yet it is apparent that in almost every case, two factors weaken the effectiveness of public and private procedures to provide more visibility for disputes over dangers. First, individual employees are not always willing to use the procedures. The second factor compounds the significance of the first: top management is often unwilling to reverse decisions made at lower levels.

Professional support for whistle-blowers is similarly well intentioned but insufficient. Societies have honored individual conscientious scientists and engineers, but focusing on a few heroes leaves all but the most determined and courageous professionals without support.

For these reasons, many groups are moving beyond publicizing heroic individuals to foster formal mechanisms to review dissident claims. Stephen H. Unger, president of the Institute for Electrical and Electronics Engineers (IEEE) Society on Social Impacts of Technology, has written, "If technology is to be used in a beneficial manner, the conditions under which engineers operate must be changed. . . . Decision makers cannot be allowed to overrule engineers' professional judgments in a peremptory

manner. It should not, for example, require heroic behavior to call attention to a situation in which human lives are jeopardized by faulty engineering."

Internal Mechanisms

In their search for internal methods to document and prevent dangerous situations, the supporters of whistle-blowers have found common interests with managers concerned about the costs of correcting mistakes. Recognizing that experts will disagree on the significance of uncertain hazards, managers are exploring alternative channels through which employees could express dissident opinions about product safety and integrity to senior officials.

Harvard Business School professor David Ewing, who is studying workplace systems that entitle workers to hearings when a conflict arises, says perhaps five companies had such guidelines before 1981. Today, almost 50 companies have adopted them. While direct expenses for these mechanisms are often trivial, the real cost lies in the amount of time and attention senior executives spend to assure that lower-level managers do not stifle constructive criticism.

Monsanto has been one of the early proponents of in-house whistle-blowing, motivated in part by a 1976 Food and Drug Administration decision to ban a plastic beverage bottle that had cost over \$100 million to develop. To eliminate future surprises, the company established an early-warning system. According to Ewing, Monsanto relies upon inside and outside experts to serve as devil's advocates in "technology risk reviews." Once a hazard has been identified, management seeks a means to avoid it. If one is not found, product development is stopped.

Monsanto's experience with the herbicide Roundup shows how effective this internal review is. Researchers first formulated the product as a salt that under certain conditions could form nitroso compounds. The risk-review experts discovered that at least one of these compounds had proven carcinogenic in animal tests. The company's research team went back to the laboratory and developed a product that would not form a nitroso compound.

The January 1986 explosion of the *Challenger* shuttle emphasized the federal government's need to expand its own internal mechanisms for avoiding dangerous situations. In its review of the circumstances leading to the explosion, the Rogers Commission expressed shock that higher NASA officials had never heard key technical disputes before the

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RICHARD D. PARKS



One of the engineers responsible for the cleanup following the 1979 accident at Three Mile Island (TMI), Richard D. Parks was first assigned to the project in June 1980. In May 1982 he became a senior engineer at Bechtel, the prime contractor for the cleanup. Part of his job was to ensure that equipment complied with federal and plant safety regulations.

In the fall of 1982 Parks joined the head lift task force, a group of engineers and managers from Bechtel and the operating utility, GPU Nuclear. This group would plan the removal of the reactor vessel's 170-ton lid. He became concerned about a crane needed for the task: if it dropped the shields or reactor vessel, contaminated materials might be released. The crane, weighing about 400 tons, had been repaired fol-

lowing the accident.

Parks believed that Bechtel was violating procedures and taking safety shortcuts to reduce delays and costs. In particular, Bechtel wanted to combine mandated performance tests with the actual cleanup operation. The company's managers suggested that the crane lift five heat shields, each weighing about 40 tons, as part of the qualifying load tests for the head lift. Nuclear Regulatory Commission (NRC) officials gave the go-ahead to this approach, but Parks and others refused to approve the use of the crane for the 170-ton lift.

The complaints delayed the head lift, but in mid-February 1983, after Parks had disagreed internally with the company's handling of the crane issue, Bechtel

suddenly removed him from many of his key duties. Parks went public with his dis-

sent, and a week later Bechtel suspended him, firing him one month later.

Congressional inquiries and a review by the NRC Office of Investigations followed. In September 1983, the NRC report criticized the shortcuts adopted by Bechtel and the failure of GPU to responsibly monitor its contractor's work performance. NRC fined GPU almost \$60,000 for harassing Parks. Currently the utility is appealing that decision.

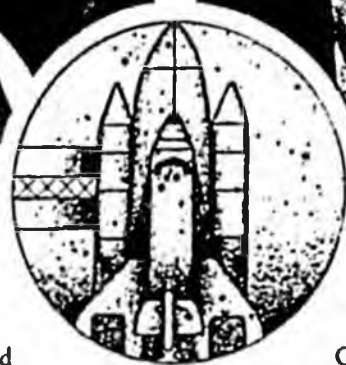
Parks also filed a claim with the Department of Labor (DOL) under the employee-protection clause of the Energy Reorganization Act, alleging that his superiors had harassed him for

raising safety concerns. In May 1983 the DOL ordered Bechtel to reinstate Parks in his former position, and to let him resume his responsibilities for the cleanup. Bechtel did so, but soon transferred him. Parks was ultimately laid off, but negotiated a settlement with Bechtel after filing a civil suit against the company.

In May 1986, the IEEE Society on Social Implications of Technology gave Parks an award for outstanding service in the public interest. Part of the citation reads, "Richard Parks followed his best engineering judgment and acted from his sense of engineering responsibility, knowing that he risked his chosen career. His courageous adherence to the highest standards of professional ethics deserves the respect and admiration of the engineering profession."



MORTON THIOKOL ENGINEERS



Following the tragic explosion of the *Challenger* shuttle in January 1986, investigators revealed that several Morton Thiokol engineers had questioned the adequacy of the booster rockets' performance at low temperatures. Roger Boisjoly (right), seal specialist at Thiokol, and Allen McDonald (left), manager of the solid rocket motor program, had argued for many months with upper management about the criteria used to test the joints and gaskets that caused the explosion.

The engineers became even more concerned the

day before the shuttle launch, when unusually cold weather was predicted. Fourteen Thiokol engineers "fought like hell all day to get permission for a presentation to NASA," an anonymous senior engineer later told reporters. That evening, mid-level NASA officials and the Thiokol engineers reviewed the effects of low temperature on the gaskets. All 14 engineers and 4 other Thiokol employees recommended postponing the launch.

NASA officials Larry Mulloy and George Hardy challenged the recommendation. Mulloy, the manager of booster programs, questioned the engineers' technical judgment, and Hardy, Marshall's deputy director for science and engineering, said the recommendation "appalled" him. Hardy later explained that he is "likely to probe and sometimes even challenge either a pro position or a con position. The objective of this is just simply to test the data, test the degree of

understanding." Thiokol's management reversed the initial recommendation for a postponement.

Roger Boisjoly testified five times before investigating agencies—four times at the Rogers Commission and once at the House Science and Technology Committee. Partway through his testimony, Morton Thiokol reassigned him. Following intense criticism of this move, Boisjoly was reinstated in his position, but his responsibilities were altered. He is now on long-term disability leave and is suing his employer and NASA.



RECENT STUDIES SUGGEST
THAT THE WHISTLE-BLOWING CASES RECEIVING
MEDIA ATTENTION ARE A SYMPTOM
OF DEEP DISSENT.

strengthening the rights of whistle-blowers is a "National Employee Protection Act"—one that would protect *all* employees. Model legislation, proposed by GAP, would allow people to sue their employers if reprisals occur and would establish a two-year period within which they may initiate such actions.

In the Public Interest

In the absence of uniform legislation, GAP and others concerned with strengthening the legal structure for employee rights must rely upon the complicated tangle of existing complaint procedures. Formed in 1977, GAP provides a range of services. Teams of lawyers and students investigate and evaluate claims of retaliation, and assist in prosecuting the most significant cases. In addition, GAP's Kohn has authored a litigation manual *Protecting Environmental & Nuclear Whistle-blowers* to aid whistle-blowers and their attorneys.

GAP has been involved in over one-third of the almost 300 cases brought under federal environmental whistle-blower laws since 1980, most of which have been filed in recent years. Since 1985, GAP attorneys have won four cases outright, and they have contributed to significant victory through *amicus* presentations in two other cases. GAP is representing Fitzgerald and other air force civilian employees who have refused to sign a new government order prohibiting unauthorized disclosure of classified or "classifiable" information. GAP is also assisting computer engineer Pat Crosby in litigation against Hughes Aircraft in the first defense-industry wrongful-discharge case. The attorneys have settled 19 cases out of court with monetary payments totaling over \$700,000; 25 other settlements have resulted in reinstatements or positive job references.

GAP publicizes cases through extensive media contacts. It recently assisted *60 Minutes* in exposing corruption in the U.S. Department of Agriculture's meat-inspection division. More than 70 inspectors had contacted the organization, concerned that relaxed regulations no longer required chickens contaminated with feces to be trimmed—an action needed to kill some bacteria, including salmonella. As a result of the publicity, Congress is reviewing meat-inspection regulation amidst allegations that senior USDA officials are guilty of corrupting the inspection program through political appointments and relaxed contamination standards. Ironically, the

public attention has also fostered forced lay-offs and re-assignments of inspectors. Many of these reprisals have been successfully resisted, though.

Professional associations have also increased their activity on behalf of whistle-blowers. They have sent witnesses to job-discrimination hearings and have published reports of whistle-blowing incidents. Various symposia sponsored by scientific and engineering societies, most notably the American Association for the Advancement of Science (AAAS) and IEEE, have highlighted the reprisals and other problems selected individuals have encountered.

In 1982, the AAAS presented its annual scientific freedom and responsibility award to Morris Baslow, a whistle-blower who revealed that his employer, a small consulting firm under contract to Con Edison, had withheld scientific data about adverse environmental effects during government regulatory hearings. Similarly, the Institute for Electrical and Electronics Engineers recognized the efforts of Richard Parks, an engineer who exposed wrongdoing in the Three Mile Island cleanup (*see sidebar, page 52*).

On the whole, however, professional support for scientists or engineers who experience retaliation has been inconsistent. Professional groups lack both experience and access in handling individual cases and have limited resources for investigating and evaluating conflicting or ambiguous claims. More important, association members often remain divided about the appropriate role for professional groups in defending employees who challenge management decisions.

Ending the Need for Heroes

One reason for the ambivalence among professionals may be the widespread and continuing belief that problems are related more to the personalities of individuals than to a basic conflict between professional and managerial practices. To determine how often technical employees encounter situations that violate professional integrity, the Educational Fund for Individual Rights, a nonprofit firm directed by Columbia University professor Alan Westin, conducted a major study in 1983.

Through phone and mail surveys, the study team discovered that 12 percent of respondents "reported that, in the past two years, they have been in situations in which they voiced objection to, or refused to participate in, some work or practice because it

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act relating to protection BRU: Personnel
 for public employees.
 Sponsor: House Labor and Commerce Committee Components: Centralized Administrative Services
 Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not require an additional appropriation.

Prepared by *Diana DeSimone*
 Division: Personnel

Phone: 465-4430
 Date: 1-21-88

Approved by Commissioner: John M. Andrews
 Agency: Department of Administration

Date: 1/23/88

Distribution (by preparer):
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 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 168
Publish Date: HOUSE 3/18/87

REQUEST

Revision Date: March 16, 1987
Title: An Act Relating to Protection
for Public Employees

Agency Affected: A11
BRU: A11

Sponsor: House Labor and Commerce Committee Components: A11
Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONNEL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

This bill would not require an additional appropriation.

Prepared By: Diana DeSimone
Division: Personnel

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Phone: 465-4430

Date: March 16, 1987

Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Garrey Peska

Date: 3/27/87

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- Senate Secretary

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

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January 22, 1988

M E M O R A N D U M

To: Senator Tim Kelly, Chair
Senate Labor and Commerce Committee

From: Representative Dave Donley, Chair **D**
House Labor and Commerce Committee

Re: Request for hearing on HB 168

I am writing to request a hearing before the Senate Labor and Commerce Committee on HB 168, the "whistleblower bill".

HB 168 was introduced by the House Labor and Commerce Committee. It passed each of its House Committees and the House Floor by a wide margin. Our Committee would appreciate it greatly if you could schedule HB 168 for a hearing at your earliest convenience.

Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
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542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

10 March 1988

Senator Tim Kelly
Capitol Room 101


Dear Senator Kelly:

Enclosed is a recent article by Rosemary Chalk entitled, "Making the World SAFE for Whistle Blowers." I would like you to enclose this article in HB 168's back-up.

As you are aware of, HB 168 passed the House floor by a vote of 38 - 1. I look forward to participating in your Committee hearing on HB 168. The enclosed article confirms the importance of passing legislation in this area.

Thank you for your attention to this matter.

Sincerely,


Representative Niilo Koponen
nk/sp