ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7108 HOUSE LABOR & COMMERCE

HB

563

FISCAL NOTE NO. 1

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 563
(H) Publish Date: 3-8-92

Revision Date: 3/18/92 Department Affected: Commerce & Economic Dev.

Title: Approval of Disability Insurance Rates BRU: Insurance

Component: Operations

Sponsor: Rules Committee

Requestor: Health Resources & Access Task Force COMPONENT SERIAL NO. 0354

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Joan Brown, Administrative Officer Phone: 465-2597

Division: Insurance Date: 4/6/92

Approved by Commissioner: Glenn A. Olds

Agency: Commerce & Economic Development Date: 4.6.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DSR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

FN & Commerce

COMMITTEE COPY

Alaska State Legislature
Health Resources & Access Task Force
State Capitol • Juneau, AK 99801-1182
(907) 465-2933 • (907) 465-3234 Fax

SPONSOR STATEMENT HB 563
by
Rep. Johnny Ellis, Co-Chair

House Bill 563 provides the Division of Insurance with the authority to approve or disapprove insurance rates for all health insurers. Currently, the Division has health insurance rate review authority for hospital and medical service corporations, the largest is Blue Cross of Washington and Alaska. This legislation would provide the Division with the same authority for all health or disability insurers.

This legislation requires that health insurance rates be subject to approval before they can be used in Alaska. It also establishes standards for those rates including that:

-the rates shall not be excessive;
-the rates shall not be inadequate; and,
-the rates shall not be unfairly discriminatory.

This legislation will enable the Division to establish a statistical systems which will enhance Alaska's knowledge of the health insurance market.

According to the Division of Insurance, 41 jurisdictions have some form of rate authority over disability insurance. The extent of their authority varies significantly. Some of these jurisdictions have authority over groups, some only over small groups, and some over individual plans. Alaska is one of ten jurisdictions that does not have rate review authority over for-profit health insurers.

On numerous occasions, the Health Resources and Access Task Force was frustrated by the lack of information on health insurance sold in Alaska as well as changes in that market. As the proportion of Alaskans without health care coverage increases, it is prudent for the state to have a better understanding of the price of health insurance, its availability and component parts, and health insurance market forces.

Recognizing that most states do have the authority to review health insurance rates; that there are relatively few insurers providing health insurance plans in Alaska; and that the health insurance market has been volatile in recent years, the Health Resources and Access Task Force "supported the concept of providing the state director of insurance the authority to review and approve or disapprove rates filed by all health insurers, both non-profit and commercial, proposing to sell group and/or individual insurance in Alaska" (Final Recommendations to the Governor and Seventeenth Alaska State Legislature, March 14, 1992).

HOUSE BILL NO. 563

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE HEALTH RESOURCES AND ACCESS TASK FORCE

Introduced: 3/18/92
Referred: Health, Education & Social Services, Labor & Commerce, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to approval of disability insurance rates."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.39.020 is amended to read:

Sec. 21.39.020. APPLICABILITY. (a) This chapter applies to all forms of <u>disability insurance and to</u> casualty insurance, including fidelity, surety, and guaranty bonds, to all forms of fire, marine, and inland marine insurance, and to a combination of any of them, or risks or operations in this state. Inland marine insurance includes insurance defined by statute, or by interpretation of statute, or if not defined or interpreted, by ruling of the director, or as established by general custom of the business, as inland marine insurance.

(b) This chapter does not apply to

(1) reinsurance, other than joint reinsurance to the extent stated in AS 21.39.110;

(2) [DISABILITY INSURANCE;

(3)] insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from

(7) HOUSE COMMITTEE REPORT

Date Referred: March 18, 1992 FURTHER REFERRALS: Labor & Commerce
Finance

Date of Committee Action: 4/8/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 563

HOUSE BILL NO. 563 DISABILITY INSURANCE RATE APPROVAL

"An Act relating to approval of disability insurance rates."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[✓] zero fiscal note(s) Commerce 4/6/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓	Chris Davis		✓	
	✓				
Bettye Davis	-				
	✓				

CO-CHAIRMAN'S SIGNATURE

HEALTH INSURANCE RATE FILING REQUIREMENTS IN THE STATES

STATE	CITATION	FILING REQUIREMENT				WAITING PERIOD	HEALTH INSURANCE TO WHICH REQUIREMENT APPLIES
		Prior Approval	File & Use	Use & File	No Provision		
Alabama					✖		
Alaska					✖		
Arizona	Reg. 4-14-607		✖				Individual
Arkansas	§ 23-79-109	✖				30 days	Individual
California	§ 10290		✖			30 days	All
Colorado	§ 10-8-102		✖			30 days	All
Connecticut	§ 38a-481		✖			30 days	All
Delaware	§ 3333, § 2504		✖			90 days	All incl Med Supp
D C	§ 35-517		✖			30 days	All
Florida	Reg. 4-58		✖				All
Georgia					✖		
Hawaii					✖		
Idaho	§ 41-2136		✖				Individual
Illinois	I.C. §355		✖				All
Indiana	§ 27-8-5-1		✖				All
Iowa	Reg. 191-36.9		✖				Individual incl Med Supp
Kansas	§ 40-2215		✖			30 days	Individual
Kentucky	§§ 304.17.380-383	✖					Individual
Louisiana	R.S. 22:211		✖				All
Maine	24-A § 2736		✖			60 days	Individual incl Med Supp, LTC
Maryland	Reg. 9:30:44.02		✖			90 days	All
Massachusetts	Ch. 175 § 108		✖			30 days	All
Michigan	§ 500.3474		✖				Individual
Minnesota	§ 62A.02		✖			60 days	All
Mississippi	Reg. LA&H 73-4		✖				All
Missouri					✖		
Montana					✖		
Nebraska	§ 44-710		✖				All
Nevada	§ 689A.360		✖				Individual
New Hampshire	§ 415:1		✖			30 days	All
New Jersey	Reg. 11:4-18.1		✖				Individual

STATE	CITATION	FILING REQUIREMENT				WAITING PERIOD	HEALTH INSURANCE TO WHICH REQUIREMENT APPLIES
		Prior Approval	File & Use	Use & File	No Provision		
New Mexico	§ 59A-18-13	x					All
New York	§ 3216		x				Individual
North Carolina	§ 58-51-95 & 85		x			90 days	All
North Dakota	§ 26.1-30-19	x				60 days	All
Ohio	§ 3923.021		x			30 days	All
Oklahoma	Tit.36 § 4402		x				Individual
Oregon					x		
Pennsylvania	§ 40-S9-101	x					All
Rhode Island	Reg. XXIII. Part XI	x					All
South Carolina	§ 38-71-310	x				90 days	Individual
South Dakota					x		
Tennessee	§ 56-26-102		x				All except experience rated
Texas	Art. 3.42		x				Individual
Utah	Reg. R540-85		x				Individual
Vermont	Title 8 § 4062		x			30 days	All
Virginia	§ 38.2-316		x				All
Washington					x		
West Virginia					x		
Wisconsin	§ 625.13			x		30 days	Individual
Wyoming	§ 26-18-135		x				Individual

Source: National Association of Insurance Commissioners 2/91

HB

568

(7) [redacted]OUSE COMMITTEE REPO[redacted]

Date Referred: March 25, 1992 FURTHER REFERRALS: State Affairs

Date of Committee Action: 4-7-92

The LABOR AND COMMERCE Committee considered: HB 568

HOUSE BILL NO. 568 APPOINTMENT OF WORKERS' COMP DIRLCTOR

"An Act relating to the appointment of the person who administers laws relating to workers' compensation."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact Labor
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
		Kevin Pat Parmer ✓		✓	
Dave Duncan	✓				
Dave Dudley	✓				

CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO : HB 568

Revision Date:
Title: "An Act relating to the appointment ... person who administers ... workers' compensation."
Sponsor: House Judiciary
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	74.8	74.8	74.8	74.8	74.8	74.8
TRAVEL						
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.5					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	83.3	76.8	76.8	76.8	76.8	76.8
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	83.3	76.8	76.8	76.8	76.8	76.8
FEDERAL FUNDS						
OTHER						
TOTAL	83.3	76.8	76.8	76.8	76.8	76.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

This bill would create a position to administer the provisions of the Workers' Compensation Act which would report to and serve at the pleasure of the Workers' Compensation Board.

Prepared by: John Abshire, Deputy Commissioner — Phone : 465-2700
Division: Commissioner's Office — Date : 4/7/92

Approved by Commissioner: C. W. Mahlen
Agency: Department of Labor — Date: 4/7/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Position Title	No.of Positions	Range/Step	Barg. Unit
Board Administrator	1	22A	XE

Time Status	Staff Months	Location	Election District
Full Time	12	Juneau	4

Type of Expenditure		Amount
1	2	3
Salary	$55,200	
Benefits	19,600	
Premium Pay		
Other		
Total Personal Services		$74,800
Travel		
Contractual		1,000
Commodities		1,000
Equipment		6,500
Other		
Total Cost		$83,300
Funding Source for Total Cost		
Federal Receipts 1002		
G. F. Match 1003		
General Fund 1004		$83,300
GF Program Receipts 1005		
Other		

Justification

This postion will administer the provisions of the Workers' Compensation Act and will report to the Workers' Compensation Board.

Contractual costs include postage, phone, and other average per employee costs.

Commodities cover normal office supplies for this position.

Equipment is for a desk, chair, personal computer, and printer. These are one time costs.

Request For New Position

Agency: Labor

BRU: Workers' Compensation

Component: Workers' Compensation

Revised Date

FY 92

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: Members of the House Labor and Commerce Committee

FROM: Representative Dave Donley DD

RE: HB 568, Appointment of the Workers' Compensation Director

DATE: April 7, 1992

Thank you for hearing HB 568, an act relating to the appointment of the Workers' Compensation Director.

In an attempt to clarify the relationship between the Workers' Compensation Board and the Workers' Compensation Division, the House Judiciary Committee introduced this legislation to provide the Board the authority to appoint and remove the Division Director.

The Director of Workers' Compensation has stated she wants legal opinions clarifying Board powers. This legislation is intended to clarify those powers by providing that the Division Director serves at the pleasure of the Board.

This legislation was sparked by the ongoing controversy over the recent operations of the Workers' Compensation Division. The present state of unrest in the division and between the Board and the Director has put into question the ability of the Board and the Director to optimally serve the public. This controversy indicates a need for a change in the present system to ensure the Board and Director are compatible.

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

BILL NO: House Bill No. 568

DATE: April 2, 1992

TITLE: Appointment of Workers' Compensation Director

CONTACT: Arbe Williams 465-2700

House Bill No. 568 amends the Alaska Workers' Compensation Act to include as part of the duties and responsibilities of the Workers' Compensation Board the ability to appoint an administrator of the Act. However, the bill does not redefine the department's function or the board's function as described in the Act.

The Alaska Workers' Compensation Act assigns specific and separate responsibilities for the department, the commissioner and the board. Additional amendments to the statutes are required in this legislation to clarify the reassignment of duties and responsibilities.

In addition, the bill removes responsibility for the administration of the Division of Workers' Compensation from the department, usurping the commissioner's prerogative to manage the operation of the department.

The Department of Labor does not support this legislation.

APPROVED:

C. W. Mahlen, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

HB

570

Rep. Finkelstein
4/13/92

HB 570 (PRIVATE SECTOR WHISTLEBLOWER PROTECTIONS)

Questions and Answers

WHAT DOES HB 570 DO?

HB 570 would protect private sector employees who report wrongdoing by their employers. Under HB 570, an employee punished for whistleblowing could either appeal to the state Department of Labor or sue in Alaska courts.

WHY DO WE NEED HB 570?

HB 570 would apply to those rare, but critically important situations where Alaskan workers have suffered terrible abuses as a result of whistleblowing. HB 570 would assure the rights of workers to speak freely, so they will speak out to protect the public.

HOW DOES HB 570 WORK?

HB 570 would explicitly prohibit punishment of whistleblowers, provide a choice of administrative or judicial remedies, and provide for possible punitive damages. Employees could sue for compenstion or to be returned to their former job status.

WHICH ACTIONS DOES HB 570 COVER?

HB 570 would define whistleblowing as reporting violations of law, threats to public health or safety, cr misuse of public funds. HB 570 would protect whistleblowers from all discrimination, including firing, demotion, suspension, transfer, unwarranted reprimands, blacklisting, forced psychiatric exams, surveillance, or organized harassment.

COULD HB 570 BE MISUSED?

HB 570 would limit protection to genuine whistleblower situations, not attacks by disgruntled employees. As an added protection, employers may establish a policy requiring all complaints to be brought to them first before whistleblower protections would apply.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM April 8, 1992

SUBJECT: Sectional summary of HB 570 (Whistleblower protection for employees of private employers)

TO: Representative David Finkelstein

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a sectional analysis of the above described bill. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 sets out legislative findings.

Sec. 2 sets out the purpose of the Act.

Sec. 3 enacts new sections creating employment protection for employees who report or participate in hearings concerning matters of public concern.

Sec. 23.50.010 identifies the kinds of actions that are protected under the bill. Under subsection (a), an employer may not discriminate against an employee because the employee or someone acting on the employee's behalf reports a matter of public concern or participates in an inquiry held on a matter of public concern. Under subsection (b), an employer may not disqualify a person protected under the bill from eligibility to receive a right, privilege, or benefit. Subsection (c) sets out areas that are not required by the bill. Subsection (d) requires the posting of notices.

Sec. 23.50.020 states that the employees of subcontractors of an employer are entitled to the same protection as employees of the employer.

Sec. 23.50.030 limits the protection granted by the bill. Under subsection (a), a person is not entitled to the protection of the bill for reporting a matter of public concern unless the person believes the information to be true. Under subsection (b), an employer may require that an employee submit a written report concerning the matter to the employer before initiating a public report. Subsection (c) prohibits

employers and employees from waiving or modifying the protections created by the bill.

Sec. 23.50.040 sets out civil penalties that apply for violating Sec. 23.50.010 and provide immunity from civil liability for actions protected under the bill.

Sec. 23.50.050 permits the Department of Labor to review reports of violations of the bill, issue orders concerning the report, and hold hearings under the Administrative Procedure Act. Appeal from the hearing is by trial de novo in the superior court.

Sec. 23.50.060 sets out the powers and duties of the department.

Sec. 23.50.070 permits the department to enforce the bill by injunction and restraining order.

Sec. 23.50.080 permits the department to seek the enforcement of subpoenas concerning proceedings under the bill.

Sec. 23.50.090 defines terms used in the bill, including "discriminate," "employer," and "matter of public concern."

Sec. 4 is an immediate effective date.

TC:pl:gc
92-249.plm

Oil Reform Alliance

4/29/92

PROPOSED AMENDMENTS TO HB 570

Section 3. AS 23.50.010 (b) is amended to read:

Page 2, Lines 15-17:

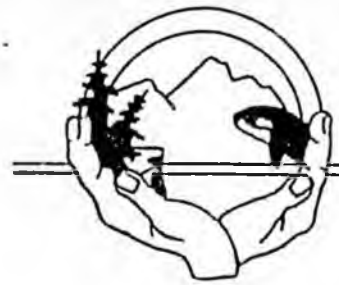
"An employer may not, because of the report or participation, disqualify the protected person, <u>any partnership, corporation, employee, or member of the immediate family with which the protected person is financially involved,</u> from eligibility to bid on contracts with the employer or to receive a right, privilege, or benefit."

Section 3. AS 23.50.190. DEFINITIONS is amended to include:

Page 5:

definitions for "corporation", "immediate family", and "partnership" as used in the above amendment.

519 W 9th, Anchorage, Alaska 99501 • (907) 274-3621



Oil Reform Alliance

4/29/92

PROPOSED AMENDMENT TO HB 570

Section 3. AS 23.50.040 (a) is amended to read:

Page 3, Lines 13-15:

"The person bringing the civil action is not required, before bringing the civil action, to exhaust administrative remedies available under AS 23.50.050 or other law, [OR UNDER A COLLECTIVE BARGINING AGREEMENT UNLESS EXHAUSTION IS REQUIRED UNDER FEDERAL LAW] nor is the person required to file federal claims to pursue state remedies under either federal employment protection provision or collective bargaining agreements. However, should an employee elect to pursue remedies under both federal and state protection statutes, the employee shall be entitled to receive damages as specified under AS 23.50.050 only once."

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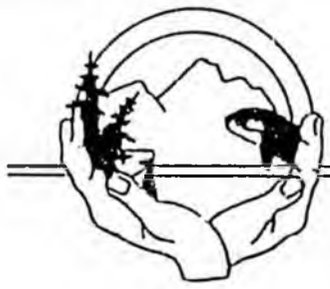

Oil Reform Alliance

4/29/92

PROPOSED AMENDMENT TO HB 570

Section 3. AS 23.50.190 (1)(h) is amended to read:

Page 5, Lines 14-16:

"(H) [WRITTEN OR ORAL] conduct that a reasonable person would find harassing, intimidating, or that would discourage other employees or persons from engaging in actions protected by this chapter;"

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4/29/92

PROPOSED AMENDMENT TO HB 570

Section 3. AS 23.50.050 is amended to read:

Page 3, Lines 22-24:

"A protected person who suffers [RETALIATION] discrimination from an employer for making or intending to make a communication protected under this chapter, or who suffers a threat from an employer to prevent such a communication, may report the conduct of the employer to the department.

4/29/92

PROPOSED AMENDMENT TO HB 570

Section 3. AS 23.50.040 (a) is amended to read:

Page 3, Lines 11-13:

"A person who alleges a violation of AS 23.50.010 may bring a civil action and the court may grant appropriate relief, including punitive damages and full reasonable attorney fees."

4/29/92

PROPOSED AMENDMENT TO HB 570

Section 3. AS 23.50.050 is amended to read:

Page 3, Line 27-28:

"The department may order the employer to pay <u>full reasonable attorney fees, and</u> punitive damages if appropriate."

TESTIMONY OF BILLIE PIRNER GARDE

BEFORE THE

HOUSE OF REPRESENTATIVES

STATE OF ALASKA

LABOR AND COMMERCE COMMITTEE

Submitted by

Billie Pirner Garde
Of Counsel
"HARDY, MILUTIN AND JOHNS
Two Houston Center - 500
909 Fannin at McKinney
Houston, Texas 77019

APRIL 14, 1992

My name is Billie Pirner Garde. I am pleased to have this opportunity to testify before this Committee about Alaska Bill 570. I am in private practice in Wisconsin, and also am "of counsel" to the law firm of Hardy, Milutin and Johns in Houston, Texas. Prior to going into private practice in 1988, I was the Director of the Environmental Employee Protection Project. The Project was a joint effort of two public interest organizations, the Government Accountability Project ("GAP") and the Trial Lawyers for Public Justice ("TLPJ"). In this position I represented numerous employees in industries that affect the environment. I also had the opportunity to work with various state legislative committees such as yours, Governor's offices and professional organizations that were attempting to adjust the laws of the state to deal with the realities of modern technology.

The fact is that employees within industries that affect public health and safety hold the fate of hundreds, [illegible]s, and sometimes millions in their hands. As Justice George C. Edwards, Jr. of the United States Sixth Circuit Court of Appeals recently stated in the case of Rose v. Secretary of Department of Labor, 800 F.2d 563 (1986):

> If employees are coerced and intimidated into remaining silent when they should speak out, the results can be catastrophic. Recent events here and around the world underscore the realization that such complicated and dangerous technology can never be safe without constant human vigilance. The employee protection provision involved in the case serves the dual function of protecting both employees and the public from dangerous radioactive substances.

Although the Rose case was about federal nuclear employee protection provisions, states throughout the country have adopted employee protection provisions in their state statutes to ensure that the first line of defense against conduct that could jeopardize the public are the employees themselves.

Federal administrative remedies are inadequate, time consuming, impose unreasonably short statutes of limitations -- thirty days in most instances -- and in almost every case limit the amount of potential damages an employee may recover to reinstatement and actual lost wages.

The Secretary of Labor, who is responsible for hearing the cases through an Administrative Law Judge, takes years to issue final decisions in pending cases. As a result, there is no incentive for employers to deal responsibly with professional dissent of its employees or ensure that their work place is one in which employees are encouraged to identify safety problems or other types of wrongdoing that could affect the public.

The federal laws are also inadequate because very few, if any, employees are aware of their existence. Other than the nuclear employee protection provision, none of the federal employee protection laws require notifying employees of their rights to be free from harassment, intimidation, or other coercive practices that force employees to choose between their jobs and following the laws of the State of Alaska and the United States. For example, although Alyeska Pipeline Service Company has been in operation since the 1970's, and their employees are allegedly covered under the

federal administrative remedies, the first complaint ever filed against Alyeska was last year after the exposure of the Wackenhut investigation brought national attention to Alyeska's treatment of its employees who provided information about safety violations to the Alaskan Department of Conservation.

The remedies provided by federal law are inadequate. They provide only limited damages and are conducted in front of federal administrative law judges, whose expertise is the Department of Labor rules and regulations. Most importantly, they do not allow access to a jury trial. The ALJ's cannot and do not function in the role of a state civil jury which can send a message to Alaska companies or corporations that conduct such as wrongful discharge, harassment or other actions that intimidate an employee trying, in good faith, to resist or expose wrongdoing will not be tolerated.

Finally, the federal statutory protections are too narrowly written to anticipate the needs of Alaskan private employees. It is simply impossible to foresee what employee is in a position to avert disaster. Who could have known that the contract O-Ring engineers or inspectors on the Challenger shuttle should have risked their jobs to save the lives of the astronauts? A crew was lost and the advancement of the space program was jeopardized by the consequences of the intimidation of those engineers. How different history would have been had the engineers picked up the telephone and called the New York Times.

Similarly, I represent thousands of victims of a tragic accident in Texas City which resulted from the release of tons of

hydrofluoric acid vapors into the surrounding community. There was no warning to the public from employees that the rules and procedures for the dangerous activity that was being undertaken was ignored. Discovery has revealed that at least one manager strongly objected to the conduct of the dangerous operation. He was ignored. This scenario is not limited to environmental wrongs -- financial havoc and waste present economic hardships that often could have been avoided if individual employees refused to go along with questionable or illegal practices.

Narrowing the protection of employees effectively enhances the risks of all of us that someone will have to choose between their job and feeding their family, or protecting us from danger, abuse, waste or fraud. It is simply impossible to anticipate that employees in any particular job or industry need protection from retaliation while others do not.

House Bill 570 is a very good bill. It provides the basic mechanisms to insure that Alaska's private employees who refuse to commit a crime, ignore a law, or who choose to expose wrongdoing within an industry or company are not forced to choose between their jobs or protecting the public.

I strongly recommend that this Committee pass this bill into law. Thank you for giving me the opportunity to testify about H.R. 570. I will be pleased to answer whatever questions you may have.

HR.570

Testimony of the Government Accountability Project

on

Whistleblower Protection for Private Sector Employees (HR 570)

before the

House Labor and Commerce Committee

Alaska State Legislature

April 14, 1992

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Mr. Chairman and Members of the Committee:

My name is Mary Alice McKeen. I am a corresponding attorney with the Government Accountability Project (GAP). On behalf of GAP, I would like to thank you for soliciting our testimony on H.R.-570, the Private Sector Whistleblower Protection Act. GAP is a non-profit, non-partisan organization that provides legal support and policy advocacy for whistleblowers -- those employees who challenge illegal, dangerous, abusive or wasteful misconduct where they work.

GAP represents a wide range of both public and private sector employees, from USDA food inspectors to Star Wars scientists, from nuclear weapons lab technicians to assembly line workers. Typically, whistleblowers come to GAP after suffering retaliation from their employers. Prominent cases of workplace reprisals against federal employee whistleblowers led to the unanimous passage by Congress of the Whistleblower Protection Act of 1989.

Today's testimony will focus on the need to extend some of these same protections to private sector employees who report violations of law, public health and safety threats, or abuses of power. If approved, HR-570 will represent a breakthrough in the law of dissent for corporate employees. This bill end the "at will" doctrine, in which private workers can be fired at the employer's whim.

In most instances, corporate workers cannot defend themselves against these reprisals under the current legal system. With the exception of piecemeal whistleblower provisions tucked into sixteen statues, federal law provides no relief for private employees who dissent against public health and safety violations. Employees in food, airlines, aerospace, pharmaceutical, medical, shipping and other industries proceed at their own risk if they attempt to defend the public.

Second, even when employees are covered, their rights frequently are

cancelled by unrealistic thirty-day statutes of limitation. In our experience, most reprisal victims do not even know of those laws before the 30-day period expires.

Third, even if they manage to file timely complaints, whistleblowers are hampered by the lack of corporate accountability during pre-trial discovery. With impunity, employers refuse to provide necessary information or even critical witnesses to be deposed. The result is a minor league legal system for cases involving major league public policy stakes.

Fourth, more often than not, the U.S. Department of Labor fails to provide timely decisions within the current 90-day deadline in many of the piecemeal statutes.

Fifth, whistleblower retaliation cases often are regarded as low priority and are not actively pursued by the enforcing agency. The most invoked federal whistleblower protection is that of the Occupational Safety and Health Act (OSHA). Despite the fact that employment reprisal cases reported under OSHA outnumbered cases involving whistleblower retaliation under all other statutes combined, the record of enforcement in this area has been dismal. The most recent figures supplied by the Department of Labor (DoL) for the past three reportable years indicate that in FY 1988 a total of 3324 reprisal complaints were made to OSHA. Of those DoL, found evidence of discrimination in 484, and filed suit in only 14. In FY 1989, 3342 complaints were lodged, of which 559 were found to have merit and 23 of these cases were filed in U.S. District Court. In FY 1990, 3526 complaints were made and 539 were found to have merit while only 21 cases were filed.

These figures indicating that only about 3% of complaints are successfully investigated and only one-half are 1% are judicially enforced suggest a fairly dismal record of whistleblower protection under OSHA.

In order for a whistleblower to successfully take a reprisal complaint through the federal process takes the patience of Job, the strength of Hercules, and the stubbornness of a mule.

The unmistakable signal being sent to workers is to keep quiet, to not report violations, and to avoid speaking with an OSHA inspector at all costs. And that message has been received. A 1989 survey of OSHA inspectors by the General Accounting Office (GAO) found that about 22% of the inspectors said that workers were not free to exercise their rights to speak confidentially to an inspector. A similar percentage (26%) said that workers have little or no protection when they report violations to inspectors. Inspectors said that workers have even less confidence in these protections. Almost half of the inspectors thought that the workers themselves believe they would have little or no protection if they reported violations. With respect to reporting of OSHA violations, the perception of workers that there is no effective protection against retaliation is more of a reality than any DoL statistics.

Consequently, workers will not talk to OSHA inspectors even, in some cases, when their lives literally depend on it.

Equally significant to all the other reasons combined is that ultimately the public loses, regardless of the litigation outcome. This is because, the reason for reprisal -- disclosures of and challenges to alleged public health and safety threats -- gets lost in the shuffle. Unfortunately, in order to fight retaliation, the whistleblower is overwhelmed by the struggle for self-preservation -- of career, family, finances and even sanity -- until the point of dissent is forgotten or put behind weightier survival priorities. As a result, frequently the current legal structure at best directs systematic attention to helping the individual, while the

public' s interest is recognized only erratically through investigation of the whistleblower's charges.

HR-570 offers solid solutions to the structural flaws described above. It replaces piecemeal protection with comprehensive free speech protection for those workers currently overlooked by current law. It restores accountability for pre-trial discovery in administrative law hearings by providing enforceable subpoena authority.

We would offer two suggestions to improve the implementation of HR-570:

1) <u>Specify the filing period</u>

Workers who are fired for reporting a health or safety violation are often unaware of their rights and in a state of shock for days after their sudden loss of livelihood, and thus, fail to comply with the current 30-day federal filing period. One OSHA supervisor interviewed in the GAO survey state that, in his region, more than half the regional cases rejected would have been appropriate cases if the filing period had been longer that 30 days.

A 1987 study by the Administrative Conference of the United States found that significant percentage of whistleblowing cases brought under various statutes to DoL Administrative Law Judges are dismissed for untimeliness. The Conference urged the adoption of an uniform 180-day whistleblower filing period, noting the complexity of such cases and the fact that employers are unlikely to tell an employee that he or she is being dismissed as a reprisal for whistleblowing, leading to a substantial number of days before the worker discovers evidence of the employer's motivation and becomes aware of his or her own rights in the matter.

As introduced, HR-570 does not specify how long a worker may wait before

reporting the employment retaliation to the State Department of Labor. Without a specification, the department may be free to administratively impose an unrealistic short filing period

2) Delineate the Burden of Proof

In most whistleblower cases, the sole evidentiary controversy is whether the employee was fired because of his or her reporting a violation or because of some other, independent and legitimate reason. The governing standard for establishing a *prima facie* case under OSHA and most other statutes with whistleblower provisions was articulated by the U.S. Supreme Court in *Mt. Healthy v. Doyle* (429 U.S. 274 (1977)). This case established that the employee must prove that the act of whistleblowing was a "substantial" or "motivating" factor in the adverse personnel action.

By contrast, the test that the Congress unanimously adopted for whistleblowing case involving federal employees under the Whistleblower Protection Act of 1989 is that the reporting of the violation was a "contributing factor" in the personnel action. Once the employee has established the *prima facie* case be a preponderance of the evidence, the burden of proof would then shift back to the employer to demonstrate by clear and convincing evidence that the employer would have taken the same action against the employee in the absence of the whistleblowing activity.

This far more realistic division of burdens eliminates the need for the employee to demonstrate that the precise mix of all of the employer's underlaying motivations and instead to merely draw a single and simple causal link between the protected activity and the ensuing employment discrimination.

Indeed, without these burden of proof reforms, it is almost impossible for a whistleblower to win. Through 1990, only six whistleblowers in seven years have won cases under the environmental statutes administered by the U.S. Department of Labor.

In closing, let me note that the issue of corporate whistleblower protection is not a labor versus management issue. Rather, it is an issue of public protection. One way to look at the issue is to ask how many crimes could be successfully prosecuted if witnesses feared they could lose their job for testifying in court?

In order to dispel concerns that this legislation would burden small business, I have attached a list of over 50 small businesses that have registered support for similar corporate whistleblower legislation. Also attached is a list of over 130 citizen groups who endorse these protections.

The public policy need for this legislation should be beyond serious dispute, from any perspective except profits dependent upon lawlessness. From a standpoint of law enforcement, without the human factor of cooperation from courageous witnesses, government agencies do not have a realistic chance of detecting health and safety crimes unless the lawbreakers make mistakes and expose themselves. Government investigators cannot intuit illegality; they're dependent upon witnesses. As a result, GAP strongly believes legislation should protect workers who challenge corporate crime.

In conclusion, I would again like to thank the committee for inviting this submittal and for considering our views on these important issues of labor law. GAP will gladly continue to work with the committee and its staff to further develop the record in order to improve the legal protections for whistleblowers.

Employee Health and Safety Whistleblower Protection Act
189 Petition Signers
November 14, 1991

134 grassroot organization supporters and memberships:

ORGANIZATION	MEMBERSHIP	STATE OR NATIONAL (US)
Abalone Alliance	400	CA
Alliance for Justice	30 organizations	US
Alliance for Survival	1500	CA
AFL - CIO in Vermont	20,000	VT
American Civil Liberties Union - San Francisco Chapter	4900	CA
American Federation of Government Employees, AFL-CIO	220,000	US
American Federation of State, County and Municipal Employees	1,200,000	US
American Legion (Tri State) Post #553	62	MO
American Society for the Prevention of Cruelty to Animals	400,000	US
Animal Rights International	coalition of organizations with membership in the millions	
Appalachia - Science in the Public Interest	3500	KY
Association of Forest Sevice Employees for Environmental Ethics	2500	OR
Association of Professional Flight Attendants - American Airlines	17,000	US
Audobon Society	N/R	
Blue Ridge Environmental Defense League	950	NC
Californians for Alternatives to Toxics	2000	CA
Campaign for Ratepayers Rights	500	NH
Center for Auto Safety	12,000	US
Center for Science in the Public Interest	200,000	US
Center for Women Policy Studies	N/R	US
Center for Women's Economic Alternatives	N/R	NC
Central New York Council on Occupational Safety and Health (CNYCOSH)	60 unions and 20 other organizations	NY
Children's Foundation	5000	US
Church of the Brethren	155,000	US
Citizens Against Nuclear Weapons & Extermination	525	ID
Citizens' Environmental Coalition	500	NY
Citizens for Alternatives to Chemical Contamination	N/A	MI

Citizens for a Better Environment	10,000	IL
Citizens for Tommorow, Inc.	40	WI
Citizens' Local Environmental Action Network	coalition of 30 South Carolinan Communities	
Citizens within the Ten Mile Radius	8000	NH
Clamshell Alliance	6000	NH
Coalition Against Toxics	100	NY
Coalition for Alternatives in Nutrition & Healthcare, Inc. (CANAH)	N/R	PA
Coalition on West Valley Nuclear Wastes	25	NY
Committee for Children	N/R	US
Community and Labor Coalition	200	
Community Nutrition Institute	2,000	US
Concerned Consumers League	349	WI
Consumer Affairs Association, Inc.	statewide	KS
Consumer Federation of America	240 groups representing 50 million Americans	US
Dakota Resource Council	500	ND
Dakota Rural Action	N/R	SD
Doris Day Animal League	400,000	US
Ecology Center of Ann Arbor	2,000	MI
Eco-Justice Project & Network	3,500	NY
Ecumenical Task Force	25 denominations in Western New York	NY
Environmental Action, Inc.	20,000	US
Environmentalists, Inc.	75	SC
Farm Animal Reform Movement	10,000	MD
Farm Sanctuary, Inc.	8,000	NY
Food and Allied Service Trades Dept. (FAST), AFL - CIO	3.5 million	US
Food Animal Concerns Trust	18,000	IL
Fran Lee Foundation	2	NY
Friends of Animals	120,000	CT
Friends of the Earth	50,000	
GE Stockholders'Alliance	nationwide	US
Green Coalition of Western New York	250	NY
Greenpeace Action	600,000	US
Health & Energy Institute	7000	MD
Health Care Consumer Network	800+	US
Healthy Harvest	35	US
Home for Peace and Justice	N/R	MI
Humane Farming Association	60,000	CA
Humane Society of the United States	1,286,519	US
IATSE - Local 919	60	VT
Independent Federation of Flight Attendants (IFFA) - TWA & Pan Am	7000	US
Inside & Out: Employees For A Better Living Environment	N/R	
Institute for Southern Studies	N/R	NC

Interfaith Center on Corporate Responsibility	55 Protestant and Roman Catholic Institutions	NY
Jesuit Social Ministries	N/R	US
18 professors from John Marshall Law School	N/A	IL
Knolls Action Project	750	NY
League of Woman Voters of Georgetown County	67	SC
Louisiana Consumers League	790	LA
Maryland Safe Energy Coalition	35 organizations	MD
Missouri Coalition for Quality	187	MO
National Alliance Against Racist & Political Repression (NAARPR)	3000	NY
National Alliance for Animals	24,000	US
National Association of Civil Service Employees	50,000	CA
9 to 5, National Association of Working Women	14,000	OH
National Center for Environmental Health Strategies	N/A	NJ
National Coalition for Nursing Home Reform	N/R	US
National Committee for an Effective Congress	N/A	NY
National Consumers League	12,000	US
National Family Farm Coalition	40 organizations in 35 states	
National Network to Prevent Birth Defects	150	US
National Toxics Campaign	100,000	MA
National Wo[illegible]n's Health Network	12,000	US
Native Americans for Clean Environment	600	OK
New England Green Alliance	400	VT
New Hampshire Citizens vs. Price-Anderson	100	NH
New York Comm. on Occup. Safety & Health	200 union locals	NY
New York Environmental Institute	N/R	NY
Northeast Ohio Sierra Club	3,000	OH
Northern Plains Resource Council	6,000	MT
Nuclear Free America	2,000 subscribers	MD
Nuclear Information & Resource Service	1500	US
Ohio Citizen Action	400,000	OH
Ohio Citizens for Responsible Energy	N/A	OH
Organizing Media Project	10,000	US
People for the Ethical Treatment of Animals	250,000	US
People's Action for Clean Energy	250	CT
Pesticide Action Network (PAN) of North America	N/A	CA
Physicians Committee for Responsible Medicine	20,000	US
Powder River Basin Resource Council	610	WY
Public Citizen's Congress Watch	70,000	US
Public Law Education Institute	N/A	US
Radioactive Waste Campaign	1000	NY
Redwood Alliance	2,600	CA
Republicans Against Seabrook Station	N/A	NH
SANE/FREEZE Campaign for Global Security	170,000	US

Save Our Lake Environment	87	NY
Save our State from Radioactive Waste	20	OH
Seacoast Anti-Pollution League	2000	NH
Society for Animal Protective Legislation	16,000 correspondents	US
Southeast Alaska Conservation Council	3,000	AK
Sunflower Alliance	24	OH
Tennessee Committee on Occupational Safety and Health	44,000 workers	TN
Tennessee Valley Energy Coaltion	2,000	TN
Texas Committee on Occupational Safety and Health (TEXCOSH)	17,000 workers	TX
Three Mile Island Alert, Inc.	500	PA
Union of Flight Attendants - Continental	6,000	US
United Auto Workers	1,000,000	US
United Food and Commercial Workers International Union	1,300,000	US
United Poultry Concerns	1,000	MD
United States Student Association	2,000,000	US
VFW Post 4257	42	MO
Victims of Fiberglass	6,000	CA
We the People, Inc.	3,000+	MA
Western Colorado Congress	1,300	CO
Western North Carolina Alliance	700	NC
Work on Waste	1,000	NY
Workers Against Toxic Chemical Hazards	250	OH

The following are the 55 businesses which support the Employee Health and Safety Whistleblower Protection Act and their locations:

Aardvark Word Processing Services	Kettering, OH
Annie Kay's Whole Foods	Blacksburg,VA
Burley Design Cooperative	Eugene, OR
Cherry Hill Cannery, Inc.	Barre, VT
Chrysalis Money Consultants	Arlington, MA
Clear Eye Natural Foods	Savannah, NY
Common Good Loan Fund	Silver Spring, MD
Co-op Publishing Ltd.	Allston, MA
Cooparative Alumni Association	Richmond, KY
Cooperative Fund of New England	Hartford, CT
Co-opportunity	Santa Monica, CA
Deep Muscle Therapy Center, Inc.	King of Prussia, PA
D.L. Enterprises	Longmont, CA
Exeter International, Inc.	Hampton, NH
Fairhaven Wood Works	New Haven, CT
First Affirmative Financial Network	Colorado Springs, CO
Four Walls Eight Windows	New York, NY
Gaia Bookstore & Catalogue	Berkeley, CA
Gardener's Supply Company	Burlington, VT
Glade Chemical	Scottsdale, AZ
Goodfellow Publishers'	Berkeley, CA
Hoboken Farm, Inc.	Hoboken, NJ
Home Education Press	Tonasket, WA

Institute for Alternative Agriculture	Greenbelt, MD
Intermediate Technology Development Group of North America	New York, NY
Jawz, Inc.	Fallbrook, CA
The John Rossi Company	Briarcliff Manor, NY
Landscape Lady Ltd.	Milwaukee, WI
Learning Materials Workshop, Inc.	Burlington, VT
Life Tools Co-op	Green Bay, WI
Lighthouse Associates	Steamboat Rock, IA
Linda Q. Perrin & Associates	Omaha, NE
Merical Computing & Publishing	Ventura, CA
Necessary Trading Company	Newcastle, VA
The Networking Institute, Inc.	West Newton, MA
New Leaf Distributing	Atlanta, GA
New Society Publishers	Philadelphia, PA
NextStep Publications	Seattle, WA
North Star Toys	Questa, NM
Northern Sun Merchandising	Minneapolis, MN
Odyssey Tours	Santa Monica, CA
Orange Blossom Press	Cleveland, OH
Ozark Cooperative Warehouse, Inc.	Fayetteville, AR
Professional Press	Santa Barbara, CA
Rocky Mountain Medical Corp.	Sedona, AZ
Seaboard Marketing and Development	Richmond, VA
Secretarial Services	Big Rapids, MI
Smith Holmquist, Inc.	Brattleboro, VT
The Social Responsibility Investment Group, Inc.	Atlanta, GA
Sunflower, Compositers	San Francisco, CA
SunWatt Corporation	Addison, ME
Tel-Effective Securities, Inc.	Encinitas, CA
Travel Horizons	Newport Beach, CA
Volcano Press, Inc.	Volocano, CA
Wisdom House	Wilson, WY

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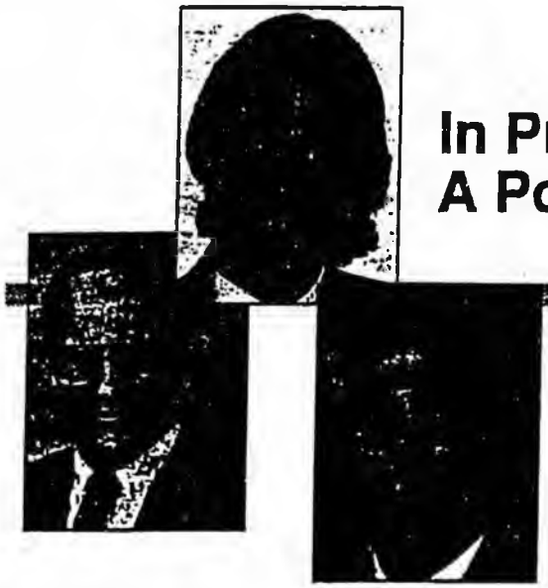

In Praise of Difficult People: A Portrait of the Committed Whistleblower

Philip H. Jos, College of Charleston
Mark E. Tompkins, University of South Carolina
Steven W. Hays, University of South Carolina

Critics of large organizations have long regarded principled individual dissent, including "whistleblowing," as important for insuring accountability in otherwise unresponsive bureaucracies. It is widely reported that whistleblowing is a costly act for the whistleblower, which many regard as further evidence of the need for improved legal protections and greater external control over the organizations involved. The conflict engendered by internal dissent involves high stakes for the organization as well. In addition to challenging several societal taboos (don't be a "stool pigeon," never air "dirty laundry" in public), blowing the whistle often pits loyalty to one's clients or colleagues against loyalty to the public and includes an accusation that one's superiors and/or fellow employees have neglected or abused the public trust (Bok, 1980). As a result, whistleblowing represents one of the most threatening forms of organizational dissent, likely to prompt considerable hostility and various forms of organizational retaliation.

Knowledge of whistleblowing is generally anecdotal, however, limiting understanding of those who sound these alarms, their motivations, and their subsequent fate. This study addresses several of the more fundamental concerns raised by the legislative debate and academic research regarding whistleblowing. First, what becomes of those who choose to blow the whistle? Is retaliation as severe as many have suggested? Second, what motivates whistleblowers? What is it that prompts these few individuals to risk ostracism, career sanctions, and other forms of retribution while most of their colleagues remain complacently silent?[1]

Ideally, studies of whistleblowing would incorporate measures of employee attitudes and conduct taken before wrongdoing is observed, externally validated observations of malfeasance, externally validated observations of employee responses and evolving attitudes, and an account of the organization's response. Such a study would be very costly and may not be feasible. Absent such comprehensive studies, efforts to understand whistleblowing must involve a multimethod strategy (as advocated by Near and Miceli, 1985), which employs less robust methods whose weaknesses can be addressed through the use of several complementary studies. In this case, two methodological approaches are valuable: broadly based employee surveys and "capture samples" of populations of known whistleblowers.

Broadly distributed surveys of all employees in an organization can be useful in developing understanding of how often wrongdoing is acknowledged and reported (but not necessarily all that is observed) and the frequency of organizational retaliation, where it is acknowledged (MSPB, 1981, 1983; Miceli and Near, 1985; Near and Miceli, 1986). Such surveys, however, neglect those who have been dismissed or forced out of the organization as a result of their whistleblowing effort, i.e. *committed* whistleblowers who have persisted in the face of substantial opposition and despite strong retaliation. Moreover, existing employee surveys have not been designed to assess individual personality characteristics, decision making styles, or the moral beliefs of the respondents. Understanding the motivations and perceptions of actual whistleblowers is crucial for developing a more comprehensive model of whistleblowing behavior (Dozier and Miceli, 1985; Miceli and Near, 1985).

The authors analyze the results of a survey questionnaire completed by 161 whistleblowers, 80 percent of whom were or are government employees. They examine the consequences of whistleblowing and explore the organizational position and personal attributes of whistleblowers. The authors report severe retaliation against this group of whistleblowers and find that they are in many ways exceptional and tend to exhibit a distinctive approach to moral issues and decision making.

With few exceptions (e.g., Soeken and Soeken, 1987), however, in-depth research on committed whistleblowers has been limited to case studies (Peters and Branch, 1972; Nader *et al.*, 1972; Weisband and Franck, 1975; Perrucci *et al.*, 1980; Glazer, 1983; Glazer and Glazer, 1986, 1989; Chalk, 1988). Case materials are limited by the "uniqueness paradox" (Martin *et al.*, 1983), the bias toward viewing personal experience in an organization as unique, even if these experiences are repeated in many other settings accessible only to an outside analyst. The analysis of these case materials is also confounded by their anecdotal nature, which can create a "good stories" bias. Cases may be chosen as especially important exemplars or because they involve especially serious wrongdoing. Do these cases typify the experience of committed whistleblowers?[2]

This study is based on a survey, conducted under conditions of anonymity by a university-based group, of the largest group of committed whistleblowers yet contacted regarding their experiences. The analysis explores and extends the insights developed by Glazer and Glazer (1989) and by Soeken and Soeken (1987), in studies based on smaller populations. These earlier studies raise many questions: What sorts of people engage in whistleblowing? Does whistleblowing have any impact on the organizations involved—or is it a futile gesture? Does whistleblowing carry the high cost that many argue it involves? Do whistleblowers regret their actions when retaliation is severe?

Survey Procedures and the Nature of the Group

Unless problems inherent in the independent identification of whistleblowing can be overcome, research will continue to rely on the reports of those who seek legal, political, and emotional support. In an effort to reduce the problems associated with self selection, this analysis was not confined to particularly well-publicized cases of whistleblowing or to a single list kept by a particular individual. Instead, six groups of people were contacted who were identified as whistleblowers. The first three groups consisted of 213 individuals who had in one way or another identified themselves as whistleblowers to one of two whistleblower support groups (the *Government Accountability Project* and the *Coalition Against Government Waste*) or with a prominent whistleblower correspondent. An additional 47 people were identified through another whistleblower's list of contacts and were included in the study. Another group of 52 people whose cases were still sensitive to disclosure were identified by the *Government Accountability Project* and incorporated into the study under conditions which assured their anonymity. Finally, an additional 17 people were identified by other respondents and contacted directly. In all but a few unusual cases, an initial mailing was followed by three follow-up mailings (lasting over about a four-month period in each case) as a part of the survey process. The survey was conducted between November of 1987 and September of 1988, and it reached 329 people, more than any previous survey of this kind. In all, 161 surveys were returned (producing a response rate of 56 percent).[3] This response rate is also higher than the rates reported in all of the similar studies reviewed.[4]

Fifty-five percent of the respondents worked for the federal government, 9 percent for state government, 10 percent for counties and cities, 5 percent for quasi-public agencies, and 20 percent for private firms. Many of these people held positions with significant responsibilities in their organizations, but their responsibilities and experiences varied widely. As a result, this group of respondents provides no evidence that committed whistleblowers are drawn disproportionately from any one role or rank in organizations.

While this group is surely not representative of *all* those who observe and report organizational wrongdoing, it does provide a more detailed picture of the experiences of a large group of strongly committed whistleblowers. The study involves only those who chose to contact an identified whistleblower support group or another whistleblower; thus it treats a group of people who have for some reason been dissatisfied with the formal mechanisms of protest or appeal and, perhaps as a result, have generally paid a particularly heavy price for their dissent. The fact that this study focuses only on those who have blown the whistle and become dissatisfied with the response to their allegations, and who chose to respond to the survey, limits its value for drawing conclusions about the experiences of *all* whistleblowers. The focus of this study on *committed* whistleblowers also precludes direct investigation of the factors influencing those who consider whistleblowing, but reject it (since it excludes them from the pool of respondents). These respondents can shed light, however, on their own motivations, understandings, and experiences, and, since they represent those who persisted in the face of serious opposition, it is especially important for students of whistleblowing to understand the perspective of these committed whistleblowers. Many of these respondents, moreover, are excluded from studies of whistleblowing by current employees, since a majority of the respondents have lost or changed their jobs as the result of their experiences.

Consequences of Blowing the Whistle

Various case studies, first-hand reports, and survey data have indicated that many forms of retaliation are used against whistleblowers, including bureaucratic isolation, character assassination, and dismissal.[5] The responses of these committed whistleblowers will not resolve the ongoing debate over the extent of retaliation against whistleblowers, nor can they be used to evaluate the effectiveness of agencies with formal responsibilities for protecting whistleblowers. However, a large group of respondents who have experienced particularly severe retaliation was contacted in this research. Their responses provide additional evidence of the overwhelming personal and professional hardship that some whistleblowers endure and of the need for legal protections for this group.

Table 1
Most Serious Form of Retaliation Experienced By Whistleblowers*

Form of Retaliation	Percentage	
	All	Federal Employees
Loss of Job	62	59
Job Responsibilities or Salary Reduced	11	15
Harassment, Transfer	18	19
Job Responsibilities Changed	2	4
Work More Closely Monitored	1	1
No Retaliation	5	1

* This reports only the most serious form of retaliation experienced by the respondents. Most whistleblowers who experienced severe forms of retaliation, such as the loss of their job, also experienced lesser forms of retaliation as well.

Findings

As Table 1 indicates, retaliation against those responding was especially severe. Approximately 60 percent of the respondents reported losing their jobs. They were either fired or forced to resign or retire. Retaliation against public employees was almost as severe as in the private sector. Of the 32 private sector whistleblowers included in this study, 69 percent lost their jobs, while 59 percent who worked in public or quasi-public agencies reported losing their jobs.

Respondents who were employees of the United States government were extremely dissatisfied with the performance of the Merit Systems Protection Board (MSPB) and the Office of Special Counsel (OSC) (see Table 2). Indeed, the three groups rated as the least helpful by the respondents are all executive branch organizations of the United States government whose official responsibilities include handling complaints of waste, fraud, and abuse. Some caution is indicated, however, in interpreting this result, since this study is focused on those who viewed the initial response to their allegations as unsatisfactory. The respondents' dissatisfaction may reflect poorly on the OSC's investigatory procedures, or it may indicate that their complaints did not meet the difficult burden of proof established by existing law. A 1985 study prompted by the controversy regarding the performance of the OSC [6] found that 99 percent of all whistleblower complaints are closed by the OSC without initiating disciplinary or corrective action (U.S. GAO, 1985). Some have attributed this record to the fact that the OSC is not an independent agency and may lack incentive to pursue investigations of other executive branch agencies (Devine and Aplin, 1986). Others have suggested that the OSC's record of dismissing the vast majority of complaints after an initial screening is reasonable given the legal obstacles to proving retaliation (U.S. GAO, 1985, pp. 20-26).

In either case, most whistleblowers are left to fend for themselves in an environment where whistleblower support groups can handle only a fraction of the cases brought to them. This explains why the former head of the OSC, K. William O'Connor, observed that if he were asked his opinion as a private attorney regarding whistleblowing, "I'd say that unless you're independently wealthy, don't do it. Don't put your head up, because it will get blown off" (*Washington Post*, 7/17/84).

Table 2
Resources Used by Whistleblowers and Their Helpfulness

Resource	Percentage of Respondents Using Resource	Average Helpfulness Rating
Family	84	5.0
Other Whistleblowers	50	5.0
Government Accountability Project	47	4.6
Psychological Counseling	31	4.3
Legal Advice	79	3.9
Medical Consultation	26	3.8
Relatives	32	3.4
Coworkers	78	3.3
Congressional Committees	45	3.1
Professional Organizations	41	2.6
Home State Congressperson	55	2.5
Merit System Protection Board	31	1.9
Internal Ombudsman	20	1.7
Office of Special Counsel	31	1.4

*Respondents are asked to rate the helpfulness of those they used on a scale ranging from 1 to 7, "where 1 means 'not at all helpful', 4 means 'somewhat helpful' and 7 means 'very helpful'"; means are reported.

This research confirms that the committed whistleblower faces protracted legal battles, often waged at considerable personal expense. Over half of those contacted reported that the controversy over their actions lasted more than two years. A majority of those responding reported spending their own money (an average of $28,166) in defending themselves. Of those who reported receiving financial help from other groups, the average amount spent was $42,504.

Harassment, loss of job, and legal entanglements also take a personal toll. Thirty one percent of the respondents sought psychiatric counseling, and 26 percent consulted medical personnel. A majority of respondents reported significant disruption in their family lives as well.

Despite the heavy price these people paid, when they were asked, "If you knew what the results of your whistleblowing would be, before you attempted to report these

Table 3
Reported Effects of Whistleblower Actions on the Organization*

Changes Within Organization	Percentage
Total Reporting Changes Within Organization	62
Managerial Changes	37
People Transferred/Replaced/Not Reappointed	37
Personnel Practices	24
Departmental Reorganization	17
Safety Improvements Made	11
Policies Changed	32
External Investigations	**Percentage**
Total Reporting External Investigation	51
Outside Agency (e.g. FBI, EPA, NRC)	31
Congressional Hearing/Investigation Held	28
Criminal Investigation	22
Indictments Resulted	11
Convictions Obtained	12

*Respondents could report more than one effect. The total reporting changes within the organization and the total reporting external investigations thus includes those reporting more than one example of each outcome

incident(s), would you have done what you did?", an overwhelming majority (81 percent) reported that they would do it again. An even larger proportion (87 percent) indicated that they would blow the whistle again if presented with a similar situation in the future.

Part of the explanation of this rather striking result may be that the respondents feel a need to rationalize their actions. It would be difficult to acknowledge a mistake in judgment given the extraordinary hardships that they (and their families) have endured. On the other hand, at least according to the respondents, their actions were not futile gestures that brought about unnecessary personal suffering. Table 3 shows that 51 percent reported that their actions prompted some form of external investigation of the organization. Sixty-two percent of the respondents saw evidence of changes within the organization.[7]

While after-the-fact rationalizations may account for some of the zeal with which whistleblowers defend their actions, their willingness to risk their careers and subject themselves to harassment and intimidation is extraordinary. What kind of employee is willing to take these risks and make these kinds of sacrifices when so many others are not?

Who Blows the Whistle and Why?

Several noteworthy attempts have been made to model the whistleblowing process and to account for the factors which may influence the choices made by those who observe organizational wrongdoing (Near and Miceli, 1985; Graham, 1985). Three sets of interrelated variables might influence decisions of whether and how to blow the whistle: particular characteristics of the issue at hand, the employee's power relationship to the organization, and the employee's personal characteristics and motivations.

For the most part, employee surveys have emphasized issue characteristics and organizational power relationships. There is reason to believe that position in the hierarchy, tenure in the organization, and alternative employment opportunities may help to explain whistleblowing, but a number of theoretical and methodological problems make the exploration of these issues difficult. A bureaucratic account of organization, for example, might predict that younger employees with few years of service would be more likely to blow the whistle insofar as they have not yet been rendered uncritical functionaries (e.g., Hummel, 1982). However, this approach makes the questionable assumption that public organizations are "fully rationalized" in the Weberian sense (Jos, 1988). Moreover, as Hacker (1978) observes, younger employees may be especially concerned with career advancement and therefore be *less* likely to blow the whistle and jeopardize their future (a possibility that illustrates the unresolved interplay between individual personality and motivation and organizational socialization). Miceli's and Near's (1985) analysis of MSPB survey data supports this latter view, but further progress in assessing organizational influences depends on a more complete specification of the power relationship between the individual and the organization. Extending such a "power-dependency framework" (Miceli and Near, 1985) requires attention to how individuals perceive their power within the organization, the likelihood of retaliation and their own ability to secure other employment. Similarly, assessing the influence of situational variables such as the seriousness and relative clarity of the events which might occasion whistleblowing (e.g., "Is my superior really propositioning women in the office or is it just good-natured teasing?" "How serious a moral or legal problem is this?") requires an account of how individuals come to perceive wrongdoing as clearly objectionable and serious enough to warrant blowing the whistle. Thus, as noted earlier, assessing the motivations and personality characteristics of whistleblowers is of great importance to any comprehensive account of whistleblowing.

Given the limited empirical research on whistleblowers, it is appropriate to use caution and to explore competing explanations (Graham, 1985; Dozier and Miceli, 1985). A number of theoretical perspectives on the motivations and personal characteristics of whistleblowers may prove helpful. Kohlberg's (1981, 1984) account of an invariant and age-related process of moral development would imply that whistleblowers are particularly adept at "higher level" moral reasoning, a trait that Dozier and Miceli (1985), following Rushton (1980), associate with altruism. Braybeck (1984) offers experimental evidence that whistleblowing behavior is more common among those who have reached higher levels of moral reasoning, but this has not been confirmed among a population of actual whistleblowers. Moreover, significant doubt remains regarding the construct validity of tests of moral development (Emler *et al.*, 1983; Kurtines and Greif, 1974; Nassi *et al.*, 1983). Such measures may overstate the importance of cognitive reasoning abilities. Acquiring the sensitivity to recognize moral issues in the workplace

may require strengths of character that are not primarily cognitive in nature (Gilligan, 1982; Benhabib, 1988; Jos, 1988).

Alternatively, Dozier and Miceli (1985) make the case that whistleblowing is appropriately viewed as "prosocial" behavior, that is behavior that involves both egoistic and altruistic motives. Perhaps the most significant implication of this view is that it would lead one to expect some balancing of advantages and disadvantages (for oneself and for others) on the part of the whistleblower. This kind of rationality is quite different than the Kohlbergian ideal of deliberation on rational moral principles. Miceli's and Near's employee survey finds "some evidence of a 'subjectively rational' decision process, in the sense used by March and Simon (1958), whereby observers of wrongdoing weigh costs and benefits . . . [which] . . . suggests that, to the extent organizations and individuals can influence these costs and benefits, the level and nature of whistleblowing activity will change " (Miceli and Near, 1985, p. 542). In this view the level of moral reasoning ability is less important than the array of incentives and disincentives experienced by observers of wrongdoing. Dozier and Miceli (1985) suggest that bystander intervention studies (especially Schwartz, 1970) may provide insight into conditions which will affect the perception of these incentives or disincentives.

Dozier and Miceli (1985) acknowledge that it is not clear that whistleblowers engage in this kind of calculation. Studies done on small samples of whistleblowers (Near and Jensen, 1983) have found no relationship between comprehensiveness of retaliation and the willingness to blow the whistle again, and more or less stable personal characteristics (e.g., "locus of control" and feelings of personal efficacy) may condition how the whistleblower weighs his or her decision. In addition, at least one experimental study (Fritzsche and Becker, 1984) found that whistleblowers were far less likely to employ a decision-making strategy based on calculating costs and benefits as is assumed by the prosocial account of whistleblowing. Instead, they are far more likely to rely on moral theories that emphasize *rights*. Still, Dozier and Miceli remain appropriately skeptical, given the paucity of empirical research, and reluctant to conclude that whistleblowers do not calculate the costs and benefits of their actions. Their account suggests that both egoistic calculations of costs and benefits and altruistic motives should be considered in studying whistleblowing behavior.

Are whistleblowers typical employees who happen to confront especially egregious cases of malfeasance and conclude that they have enough power within the organization to put an end to organizational wrongdoing without sacrificing their careers? Do they weigh costs and benefits? Do those who blow the whistle exhibit a set of personality characteristics distinct from other employees? Until the methodological obstacles to a comprehensive study of the sort described earlier are overcome, an organizational and psychological profile of committed whistleblowers can offer some clues.

Table 4
Personal Characteristics and Organizational Responsibilities of Whistleblowers

Personal Characteristics	Percentage
Male	78
White	90
Received at least Bachelor's Degree in college	62
Ever married	82
Have children	80
Worked for organization for more than three years	67
Worked in job where incident that prompted whistleblowing took place for more than three years	54

Organizational Responsibility	Percentage
Managerial	48
Managerial Support	9
Other Professional Services	20
Technical Services	18
Political Liaison	4
Support Services (e.g., secretarial)	5
Other	19

Findings

Consistent with the findings of an earlier survey (Soeken and Soeken, 1987), the group surveyed in this study is overwhelmingly male, white, and relatively well educated (see Table 4). The underrepresentation of women and minorities probably has more to do with their underrepresentation in positions of responsibility than with gender differences. Almost half of the respondents reported that they held managerial positions. The majority of this group exercised significant discretion on the job (50 percent reported that they were "allowed to decide what I would do and how I would do it") and occupied the kinds of managerial or professional positions which would give them knowledge of significant policy decisions. Whistleblowers in this group do not appear to be concentrated in any particular position in the organizational hierarchy nor do they share common organizational histories.

To explore the motivation and decision-making styles of respondents, this study employed the Ethics Position Questionnaire, developed by Forsyth (1980) and first used with whistleblowers by Soeken and Soeken (1987). The scale is designed to measure differences in the extent to which individuals accept or reject the idea that there are *universal* moral rules. Of the whistleblowers responding, 74 percent had an average score of at least "slightly disagree" on the EPQ Relativism scale (meaning that they rejected relativistic claims about morals). This indicates that the large majority expressed support for the idea that universal moral rules exist that ought to guide one's judgments. [In contrast, the average response of the college students used by Forsyth to establish his norms was more positive than the response "slightly agree" (1980, p. 179).] In addition, 58 percent of the respondents not only expressed support for universal moral rules but responded that such rules ought to apply without exception.

This finding is consistent with many case studies and with the experiences of those who work with whistleblowers. Those who provide legal and psychological help to whistleblowers often describe them as intensely committed and uncompromising, often to the point of being rather rigid. Ironically, these are people who are often the most intensely committed to the organization's goals (Glazer, 1983). Far from being politically radical or marginal, they are often described as patriotic and very traditional. Louis Clark, Director of the *Government Accountability Project*, notes that whistleblowers are usually not "children of the 1960's, but children of the 1950's." They exhibit little of the cynicism and disillusionment that often go along with political activism or dissent. They are, if anything, too trusting of the organization's willingness to respond to their concerns. To pursue these expectations further, Berkowitz's and Lutterman's (1968) "social responsibility" scale was used to assess the degree to which respondents embrace traditional values. A person who scores high on the "socially responsible personality" scale "believes in finishing tasks he has started, and in doing as well as possible the jobs assigned to him. More than this, he indicates he wants to meet his obligations: he says he sticks to the duties given him even though temptations might come along; he is strongly opposed to letting his friends down, and strongly in favor of working for the good of the team rather than for his own good; he insists people should vote, participate in community activities; and not cheat on their income taxes" (*ibid.*, pp. 170-171). Seventy-three percent of the whistleblowers contacted in this survey had an average score of stronger than "agree" on the five-point ("strongly agree" to "strongly disagree") SRS scale. These are individuals who take their obligations seriously.

It is also clear that those who are willing to blow the whistle are not only committed to certain values but that they are capable of *acting* on this sense of obligation even when there are strong organizational and situational pressures to the contrary. As Gary Carbone, Director of the GAO Fraud Hotline, observes, those who use the hotline are usually not privy to inside information that is hidden from their coworkers. Typically, wrongdoing is known to virtually everyone in the workplace but few will report such behavior. Similarly, according to a 1981 MSPB study, less than one-third of those federal employees who observed organizational wrongdoing reported the incident. When those who reported the incident only to coworkers and those who reported the incident because it was a regular part of their job are excluded, the percentage of those reporting wrongdoing drops to 20 percent (U.S. MSPB, 1981; Miceli and Near, 1985).

This suggests that committed whistleblowers may be far less responsive to social cues which define "appropriate" behavior than most people. Snyder (1974, 1979) argues that there are systematic differences among people in their responsiveness to social cues. Respondents were asked to complete Snyder's scale of "self-monitoring" in this study (Snyder and Gangestad, 1986). The scale was developed to detect differences in the extent to which people are willing and able to exercise conscious control over the image they present to others through "self monitoring." Thus, the "high self-monitoring" individual is keenly attentive to the nature of particular social settings. They are flexible in their presentation of self, and in different social settings often act like very different people. They "tend to define their identities in terms of characteristics of the situations in which they find themselves" (Snyder, 1979, p. 101). When confronted with an occasion for choice, the high self-monitoring person is cognitively and behaviorally guided by the question "Who does this situation want me to be and how can I be this person" (*ibid.*, p. 102). By contrast, low self-monitoring individuals show little behavioral differences across a variety of situations since they are guided by internal beliefs and values ("who am I and how can I be me in this situation").

The overwhelming majority of whistleblowers contacted are apparently uninterested in regulating their behavior to conform to particular situations. Ninety-one percent of the respondents surveyed scored low on the self-monitoring scale.[8] They are unlikely to look to others or to aspects of the situation for cues to appropriate behavior. Instead, their behavior is consistent across situations because they rely on their own attitudes and beliefs, which include a strong endorsement of universal moral standards as a guide.

This is not to say that whistleblowers necessarily feel good about themselves or that they are confident that their actions will succeed. The respondents scored somewhat lower than the norm on Rosenberg's (1965) measure of self-esteem. This is consistent with Leventhal's finding that those with low self-esteem were least likely to be influenced by a communication that aroused fear, while those who had a good opinion of themselves were more likely to change their behaviors (Leventhal, 1970). Also, the scores of the respondents on Rotter's (1966) "locus of control" scale indicate a slight tendency to attribute the course of events to external sources such as luck and the power of others rather than to their own actions. (These last two findings, however, are more likely to reflect their recent experiences than is true of the earlier measures.)

These findings are generally consistent with earlier research (Near and Jensen, 1983; Near, Miceli, and Jensen, 1983; Fritzsche and Becker, 1984) which found little evidence of the kinds of cost/benefit calculations implied as a step in the decision-making process by "prosocial" accounts of whistleblowing. While none of the studies can claim generalizability, the present research casts further doubt on this theoretical perspective. To the extent that this study has reached a distinctive group of especially "difficult people," the findings suggest that employee surveys will fail to take account of the committed whistleblower if they assume that those who observe organizational wrongdoing will act only after considering the seriousness of the issue, their power vis-a-vis the organization, alternative employment opportunities, etc. The decisions made by those contacted in this research seem to have less to do with weighing costs and benefits than with strong commitments to moral principle and resistance to social pressure or manipulation. At least some whistleblowers, as Ralph Nader has claimed, seem to be "born, not made."

Conclusion

This survey found evidence of severe retaliation among the 161 whistleblowers who responded. The majority of those responding reported that they had lost their jobs and an even larger proportion said that they had been harassed or transferred and faced reductions in salary and job responsibilities. For those able to procure legal representation, the costs were often overwhelming and personal hardship was common.

While these respondents varied in their organizational tenure and experience, they did tend to share a belief in absolute moral standards, a strong sense of individual responsibility, and a fierce commitment to upholding moral principles. These respondents generally do not look to aspects of particular situations or to others for cues to appropriate behavior.

These committed whistleblowers may not be representative of all those who blow the whistle or all those who experience wrongdoing in an organizational setting. This study involves only those who chose to contact a whistleblower support group; thus it treats a group of people who have for some reason been dissatisfied with the formal mechanisms of protest or appeal and, perhaps as a result, have generally paid a particularly heavy price for their dissent. Whether or not these respondents are representative, their experiences have important implications for organizational leadership and for bureaucratic accountability.

First, the people studied here are unlikely to be dissuaded from reporting wrongdoing by the subtleties of organizational socialization and peer pressure or by more obvious threats of reprisal. Furthermore, once wrongdoing has been reported, even swift and severe retaliation may not deter this particular kind of employee. This is because these whistleblowers do not appear to be rational calculators weighing the various costs and benefits of dissent. If they were, they would not blow the whistle at all.[9] From the narrow perspective of means-ends rationality, whistleblowing is irrational. It may often be principled and admirable, but the consequences for the whistleblower can be devastating and the personal rewards, although not insubstantial, are uncertain. This is why so many of those who represent whistleblowers feel an obligation to engage in "reality therapy" with their clients, urging them to acknowledge the probable consequences. Many of those surveyed also advised others to be realistic about what they will face.

Second, the kind of severe retaliation this group reported only heightens concern over the adequacy of existing legal protections in both the private and public sectors. Retaliation against those who report wrongdoing is not only a threat to the individual dissenter but to bureaucratic accountability. For, while alternative mechanisms of accountability are available, their effectiveness depends on individuals and groups willing and able to alert them to administrative wrongdoing.[10] While this study suggests that some people will undertake whistleblowing whatever the costs, this does not permit a determination of how many *other* employees will be deterred by significant sanctions. Insofar as employees themselves are best able to scrutinize government performance at close range, punishing or intimidating those who dissent not only violates the rights of the individual employee but compromises an important check on the abuse of the public interest. This is so both because some employees are less likely to alert others and because the less credible the threat of public disclosure by one's fellow administrators, the less likely it is that officials will resist the temptations of corruption or scrutinize their conduct in light of broader expectations and standards.[11]

The vulnerability of whistleblowers under the current legal framework and the importance of ensuring administrative accountability to ethical and legal standards is being more widely recognized. On April 10, 1989, President Bush signed a whistleblower protection bill, similar to one pocket vetoed by Ronald Reagan in 1988. The Act makes the OSC an independent agency, specifies that its mandate includes protecting whistleblowers, and gives the OSC the authority to issue a 45-day stay prohibiting an agency from demoting or firing a worker who has filed a complaint. The new law also modifies the existing burden of proof by requiring only that the whistleblower show that his whistleblowing was a "contributing" factor in his dismissal or harassment, rather than a "significant" or "predominant" factor.[12]

Although too late to affect the respondents in this study, these legislative initiatives provide tacit recognition of the difficulties that some whistleblowers have encountered. Whether or not these measures stimulate more whistleblowing activity or better protect those who blow the whistle, this study suggests that at least some committed individuals will continue to call attention to wrongdoing with little regard for the personal consequences.

* * *

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Notes

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1. While some suggest that the incidence of whistleblowing is increasing (Ewing, 1983), it clearly remains extraordinary behavior. MSPB data suggests that the percentage of federal employees who observed some type of wrongdoing and chose not to report it was approximately 70 percent in 1981 and 1983 (U. S. MPSB, 1984).
2. The most recent and most impressive report of interviews with whistleblowers has been conducted by Glazer and Glazer (1989). Their work treats 64 whistleblowers, following many of their cases over the entire period of the controversy, albeit through the eyes of the whistleblowers and their records. Still, their report remains generally anecdotal. For example, in a fascinating chapter entitled "The Power of Belief Systems for Ethical Registers," they report on three cases involving strongly religious whistleblowers whose convictions apparently sustained them though protracted and costly controversies. They offer little systematic evidence that would allow one to determine whether these cases involving people with strong convictions are typical.
3. Janice Rio of the *Committee Against Government Waste* and William Bush of Huntsville, Alabama, contributed to List #1. In the case of List #2, the staff at *GAP* did the actual mailing of the surveys; letters to them were not personally addressed as they were in all other cases of these people whose cases were still sensitive. List #3 was provided by Janice Rio at the *CAGW* and consisted of those who had corresponded with Marie Rhaggianti, a whistleblower whose case was widely publicized, and indicated that they had similar experiences. List #4 involved people who were identified by other respondents as potential participants in the survey (although they had not necessarily contacted one of our primary whistleblower support organizations). The table below provides more detailed information on the sample and response rates.

Responses to Survey

List	Total	Excluded*	Declined to Participate**	Number Participating	Response Rate
#1	213	40	9	90	58%
#2	52	0	0	28	54%
#3	47	3	1	36	82%
#4	17	0	1	7	41%
All Lists	329	43	12	161	56%

*Includes bad addresses, deceased persons, and those who reported that they were mistakenly included in this sample. These were excluded when computing the response rate.

**Includes those who objected to responding and those who expressed a desire to participate but declined on advice of counsel. These were included when computing the response rate.

4. For example, Soeken and Soeken (1987) contacted 233 whistleblowers and received 87 completed questionnaires, for a response rate of 40 percent.
5. For an account of such strategies, see Devine and Aplin (1988). Also, recent efforts have been made to explain organizational retaliation (Parmerlee *et al.*, 1982; Near and Jensen, 1983; Near and Miceli, 1986). Parmerlee *et al.* observed that organizations seem to retaliate against whistleblowers who are relatively powerless in their relationships with their employers, but that "employers also seem to retaliate strongly against more valued whistleblowers who are rather powerful" (1982, p. 30). Near's and Miceli's (1986) findings suggest that retaliation may have less to do with the whistleblower's lack of power than with the degree of damage the organization expects the complaint to cause. The retaliation experienced by the respondents in this analysis, however, was so uniformly severe that it was not possible to distinguish among these competing accounts.
6. As the authors of the 1983 GAO report pointed out, "In its 6-year history, OSC has been the object of criticism from federal employee representatives, GAO, and the Congress. OSC has been described as administratively inept, ineffective in prosecuting violations, and of little benefit to federal employee complainants such as whistleblowers alleging management reprisals for their disclosures" (U. S. GAO, 1985, p. 6).
7. When asked to give advice to other whistleblowers, many respondents emphasize the need to be aggressive and contact some external agent early on in the process. However, among the respondents in this study, the efficacy of whistleblowing does not appear to be related to whether or not the whistleblower contacted an external agent immediately or whether they used internal channels first.
8. Based on an extensive series of validating studies, Snyder and Gangestad (1985, p. 437) report a scale score which divides "high" self-monitors from low self-monitors—this value, a score of 11, was used.
9. Recall that most of these people report that they would do it again, knowing the consequences, and that they would do it in the future in a new situation. Even allowing for retrospective justifications of their answers, the results seem overwhelming on this count.
10. As McCubbins and Schwartz (1984) observe, Congress does not ignore its oversight responsibilities but exhibits a preference for "fire-alarm" oversight rather than "police-patrol" oversight. Instead of examining a sample of administrative decisions, looking for violations of legislative goals, Congress establishes a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine individual decisions (sometimes in retrospect), to charge executive agencies with violating congressional goals, and to seek remedies from agencies, courts, and Congress itself" (p. 166). The attention of the press is similarly episodic. The whistleblowers who responded to this inquiry were often frustrated in their attempts to attract and maintain press attention to their allegations.
11. Experimental work by Tetlock (1985) has shown that demands for accountability can, under certain conditions, "motivate people to become more vigilant, thorough, and self-critical information processors" by placing subjects in a "self-critical mental set in which they actively try to anticipate the objections or counter-arguments that might be raised to their positions. As a result, subjects pay close attention to the evidence, are careful to refrain from judgment on the basis of incomplete information, and make persistent efforts to integrate contradictory or inconsistent information into their overall impression of the evidence" (Tetlock and Kim, 1987, pp. 706, 701). Accountability may do more than motivate thought, it may function as a "social brake on judgmental biases that occur in less reflective moments" (*ibid.*, p. 708). It is not clear what kind of

accountability demands produce this result, however. Under some conditions, demands for accountability may have no effect or even inhibit judgment (see also Romzek and Dubnick's (1987) discussion of various "accountability systems" and their effect on the decision to launch the space shuttle Challenger).

12. A measure aimed at strengthening protections for private employees reporting health and safety violations was also receiving serious consideration in 1989. It is expected that the "Uniform Health and Safety Whistleblower Protection Act" introduced in 1988 will be reintroduced this session. The bill would have increased the statute of limitations on reporting violations, required more timely action on employee complaints, and strengthened the Occupational Safety and Health Administration's (OSHA) employee protection provisions.

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BRIDGING the GAP

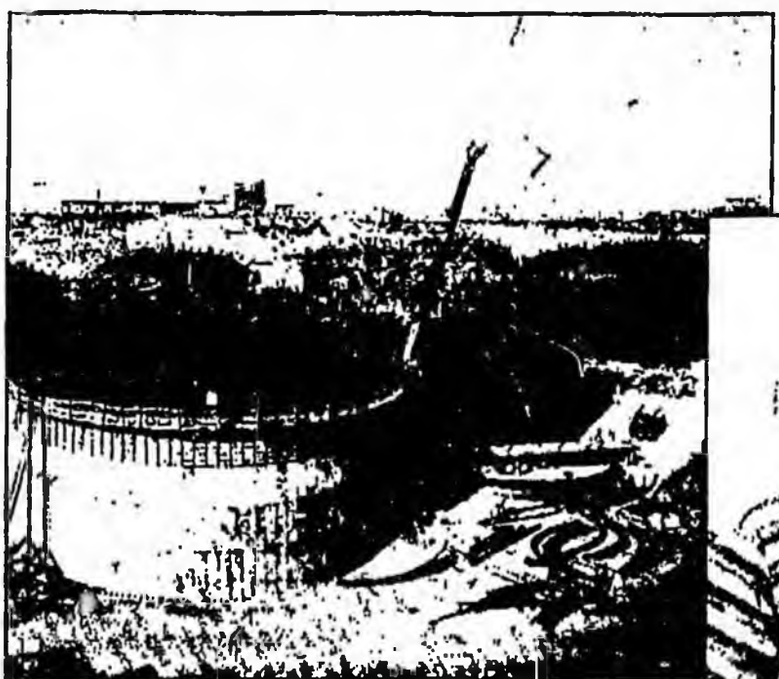
Government Accountability Project

Spring 1991

The Fight for Reform at Hanford

The Government Accountability Project is currently spearheading a campaign to expose and end a forty-year legacy of environmental and safety abuses at the Hanford nuclear weapons plant, in Washington state.

Inez Austin got in the way of a deadline. As acting chair of the "readiness review board," she was charged with certifying the safety of tank cleanup procedures at Hanford, the nation's premier nuclear bomb factory in Richland, Washington. After more than four decades of plutonium production, Hanford has become the most contaminated site in the United States: two-thirds of the nation's radioactive defense wastes are stored there, in acres of million-gallon storage tanks. A massive and shoddy cleanup effort is now underway--a process as deadly dangerous as the production of nuclear weapons. And whistleblowers like Inez, armed with evidence of serious health, safety and environmental threats, are getting in the way.



Nuclear waste storage tanks under construction at Hanford.

Last June, Inez was told to write a statement certifying that it would be safe to pump liquid waste out of five waste storage tanks. Her studies showed that pumping the tanks dry could lead to a disastrous chemical explosion. She refused to authorize the procedure and reported her concerns to a high-level U.S. Department of Energy investigative team conducting a review of Hanford safety. Her concerns, she said, fell on deaf ears. But that wasn't the worst of it. Her refusal had thrown a wrench into the cleanup schedule engineered by the Department of Energy (DOE) and Westinghouse Hanford Corporation, the plant's managers. Inez Austin was sent a harsh written reprimand, threatened with dismissal and the loss of her security clearance, ordered to undergo a "psychological evaluation," and subjected to repeated verbal harassment. Her home has been broken into. Her children have received death threats. And her work life has become unbearable.

GAP attorney Tom Carpenter

Yet Inez Austin is not alone. Evidence of unprecedented health, safety and environmental hazards is mounting, and the record of reprisals against those who blow the whistle is growing. A steady stream of Hanford whistleblowers continues to contact GAP from diverse disciplines at all levels of the plant's hierarchy. They include security specialists, senior engineers, health

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Nuclear Reform

The Case of Ed Bricker

Ed Bricker is a nuclear process operator at the Hanford nuclear weapons facility in Washington state. Over the past ten years, he has raised numerous safety and health complaints about plant operations. He called attention to dangerous transfers of plutonium, inaccurate blueprints for the plutonium processing plant, and dilapidated 'gloveboxes,' in which highly toxic and radioactive materials are handled. He reported the removal of radiation warning signs before Governor Booth Gardner was led through a contaminated area. Bricker's reward has been a campaign of harassment involving the highest levels of management and the Hanford security department.

Ed Bricker brought his own and his fellow workers' safety concerns before management in 1984 and 1985. His actions led to an unfounded negative performance appraisal at the end of 1985. More harassment followed, including denied requests for transfers and job training, compelled visits to psychologists and a management-backed campaign to remove him from his union steward position. Documents obtained through a Freedom of Information Act request reveal that in early 1987, after management became aware of Bricker's contacts with the press and Congress, the contractor's vice president initiated a security department investigation that was designed to result in the "timely termination" of Bricker.

GAP attorney Tom Carpenter helped Bricker file a complaint with the DOE in October 1988 requesting an investigation into his harassment. The DOE stalled on his request for a full year before apointing an independent federal agency to investigate.

That investigation, by the Department of Labor's Occupational Safety and Health Administration, concluded that Hanford management discriminated against Bricker because of the safety and health complaints he had filed with management, Congress and the DOE. The report chastised the DOE for not responding to the complaints. "The reprisals were in the form of an investigation by security officials of his protected activities which were designed to result in his termination," the report states. "Although Bricker was not terminated, the investigation itself had the effect of stirring management and employee sentiment against Bricker, as evidenced by his being sent to a psychologist against his will, unfavorable performance appraisals and general workplace hostility."

In August of last year, Ed Bricker and his wife, Cindy, filed a civil rights law suit alleging violations by the contractors of their privacy and of Ed's first amendment right to free speech. GAP's Tom Carpenter and Mike Withey, a trial attorney in Seattle, are co-counsel for the Brickers. GAP will continue to press for a fair resolution of Ed Bricker's case–and of the problems he exposed at Hanford.

Hanford: The Allegations

Through recent whistleblower disclosures–many not yet public–GAP has learned that managers at Hanford are operating the facility without regard for environmental, health orsafety requirements. These practices began when the Hanford plant opened; current operations, however, are as flagrant and dangerous as activities in the 1940s and 1950s. The allegations include:

- The suppression of scientific studies indicating that conditions at the Hanford storage tank sites are similar to the situation at a Soviet nuclear weapons tank site prior to a massive explosion that killed thousands and decimated an area the size of Delaware.
- The buildup of extremely explosive hydrogen within several of the million-gallon single-shell storage tanks.
- The dumping of high level waste onto the desert floor and into the Columbia River in years past.
- The illegal burial of high-level waste in shallow, unlined waste dumps.
- Breaches of security throughout the Hanford complex.
- The failure to report abnormal events in the storage tanks, including massive leaks and powerful "bumps and burps" from tanks that have shaken the ground and could lead to an eruption equal to the Chernobyl disaster.
- The deliberate and illegal destruction of documents showing waste storage problems, leaks, and other dangerous conditions.
- The creation of an alliance between the Department of Energy's Inspector General Office and Westinghouse Security to identify and discredit potential or actual whistleblowers.
- The unexplained and threatening phenomenon of expanding waste within storage tanks.

HANFORD, continued from page 1

physicists, and auditors. The revelations are devastating.

According to the informed assessments of many of the whistleblowers and GAP attorney Tom Carpenter, the dangerous operations at the 580 square-mile Hanford facility have created the gravest environmental and health hazard in the nation and threaten to turn thousands of square miles into an uninhabitable "national sacrifice area." For forty years, the managers of Hanford placed production over health and safety. Deliberate releases of harmful levels of radioactive iodine-131 were permitted, despite the direct threat to thousands of residents. High-level waste was dumped onto the desert floor and into the wild Columbia River. Nuclear waste was produced by the ton–and then recklessly stored or simply dumped on the ground. Over one-third of the high-level waste storage tanks have sprung leaks; mixed hazardous waste in other tanks has led to the buildup of flammable hydrogen and explosive chemicals.

Information on the abuses at Hanford has only recently begun to surface, through whistleblower reports, lawsuits, and investigations by Congress, the press, citizens' groups and GAP. "The place is a powder keg. It's no exaggeration to say that an accident at Hanford could mean the greatest peacetime catastrophe we've ever known, even worse than Chernobyl," said GAP attorney Tom Carpenter. "Residents downwind of the plant have been unknowingly paying the price in radiation-related illness and death for decades; unless an honest cleanup effort is begun soon, we may see much worse."

GAP has worked with whistleblowers at Hanford for years. Two early GAP clients–Jim Simpkin and Casey Ruud–were fired or forced from their jobs after helping congressional investigators expose critical safety problems in the N-reactor and other parts of the Hanford facility. Their revelations led to the permanent shutdown of the reactor. Another GAP whistleblower, Ed Bricker, has been harassed continually on the job for his disclosures about safety problems. (See "The Case of Ed Bricker.")

The recent flood of revelations from Hanford whistleblowers belies the much-publicized Department of Energy "reform program" launched in 1989. Government officials have acknowledged the poor safety record of DOE plants like Hanford. The Secretary of the DOE, Retired Admiral James Watkins, has called for "a new culture of accountability within the Department" that would place environmental and safety concerns ahead of production. Hanford whistleblowers, however, attest to the bankruptcy of the reform. Westinghouse and DOE are running the cleanup effort with the same reckless disregard for safety that marked the forty-year weapons production process. The climate at Hanford, far from open and accountable, is one of fear, repression and psychological abuse.

GAP's campaign to expose and end the abuses at Hanford is building steam. The mounting evidence of health, safety and the environmental abuses, combined with the record of harassment and intimidation of whistleblowers, may finally turn the tide at Hanford. GAP's goal is to ensure an uncorrupted, thorough evaluation of Hanford's problems and the beginning of a genuine cleanup effort. Given the record of abuse and corruption, Westinghouse's contract must be terminated, asserts Tom Carpenter, and the Department of Energy should not be permitted to oversee cleanup or corrective action.

GAP will continue to work with whistleblowers and local citizens groups to build national recognition of the growing devastation and risks at Hanford and the need for a real solution. For more information or to find out what you can do to help, please write or call.

TVA Whistleblower Zapped Again, Fights Back

photo by Michael Patrick, Knoxville News-Sentinel

Whistleblower Dan DeFord

GAP won a major victory in August 1990, when the U.S. Department of Labor found that the Tennessee Valley Authority intentionally discriminated against GAP client Dan DeFord for reporting his concerns about nuclear safety to the TVA Chairman and a senior nuclear official.

The United States Tennessee Valley Authority (TVA) is the world's largest electrical utility, established

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Environmental Protection

GAP Leads Citizens' Fight Against Incinerator

In 1988, residents of Bloomington, Indiana turned to GAP in their fight against a proposed solid waste incinerator planned for their community. As part of an illegal Environmental Protection Agency (EPA) cleanup plan for a chemical contamination problem near Bloomington, the proposed incinerator would burn poisonous PCB chemicals, causing untold risks to the community and local environment. Bloomington residents are outraged that the decision to build the incinerator was made behind closed doors, arguing that their rights to review the plan and alternatives prior to the formal decision were violated.

The grassroots campaign against the proposed incinerator is gaining momentum. GAP and local citizens' groups have now uncovered evidence that city officials, EPA and Westinghouse Corporation won approval of the PCB incineration plan only by misleading the court--falsely claiming, for example, that garbage-fueled incineration is a safe, effective and time-tested cleanup remedy, and that there was little public opposition to the planned incinerator. GAP and two local groups--Citizens Opposed to PCB Ash (COPA) and Indiana Public Interest Research Group (InPIRG)--are seeking to dissolve the "consent decree" authorizing the deadly incineration through legal action. COPA and InPIRG are confident they can show that the decree and cleanup plan selection process were illegal. If so, the decree would be void.

The story of the Bloomington incinerator begins in the 1960s and 70s, when Westinghouse Corporation used PCBs, or polychlorinated biphonyls, in manufacturing--and then dumped the waste at various sites in Monroe County. EPA investigations led to a court order that the company clean up the hazardous sites. In 1985, Westinghouse Corporation and EPA officials, along with the city, county and state, signed an agreement on the terms of the cleanup. Westinghouse was ordered to construct an incinerator that would be fueled by the county's municipal solid waste--a dangerous and experimental waste disposal scheme.

In 1988, Bloomington resident Sarah Elizabeth Frey and People Against the Incinerator (PATI) filed suit against EPA. Frey claimed that the EPA did not produce required studies on the possible dangers posed by incineration to the environment and citizens of the community. The studies also would have provided alternative solutions for consideration. EPA officials argued that the agency had performed the functional equivalent of these studies before approving the cleanup, and that the results were located at the local public library. A careful search, however, failed to turn up the alleged surveys. In 1991, GAP learned that EPA had initiated these studies, only to cancel them mysteriously some time later.

The District Court dismissed the suit, stating that Congress only intended to allow citizens to sue the EPA *after* clean-up action was completed. In 1989, the suit was brought before the Court of Appeals. In support of Frey's position, GAP filed a friend-of-the-court brief on behalf of Indiana Public Interest Research Group (InPIRG). When the Appeals Court upheld the previous ruling, GAP brought the case all the way to the Supreme Court, filing a petition that challenged the lower court rulings. The Court declined review, but GAP's Richard Condit and Mick Harrison continue to lead the charge against the proposed incinerator.

GAP serves as legal counsel to COPA, one of the citizens' groups spearheading the community's fight against EPA and Westinghouse. Community opposition to the incinerator is almost unanimous, and growing steadily.

The risks posed by the proposed incinerator are unprecedented. There are countless concerns about the use of solid waste to fuel the incinerator. The burning of PCBs and garbage releases harmful toxins into the air. The proposed location of the incinerator, moreover, is upwind from the city. This presents a direct threat to its residents, with the added risk of even more dangerous windblown dioxins if the incinerator were to fall below operation standards. Westinghouse also has plans to bury the incinerator's toxic ash at a Monroe County landfill.

Bloomington residents have good reason for concern. The Indiana Board of Health has announced that a health study on Westinghouse workers in the 1960s and 1970s indicates that they face a higher risk of brain and skin cancer than the general population. The study has left a "legacy of worry," as former workers wonder if mysterious aches and pains are linked to their handling of PCBs.

Local citizens have learned that Westinghouse stands to benefit from the cleanup proposal. Residents will be charged a "tipping" fee of fifteen to twenty dollars per ton for the waste that Westinghouse uses to fuel the incinerator. Over the estimated fifteen-year period in which the PCBs will be disposed under the plan, Westinghouse will take thirteen to sixty million dollars out of the community's pocket--an amount that some argue would cover the cost of a proper cleanup of the mess created by the corporation.

To add insult to injury, Westinghouse could earn millions of dollars by selling incinerator-produced steam as a source of electricity. Approval of this incinerator also would allow the company to market the Bloomington incinerator design. The result would be a blueprint for disaster for communities around the nation.

GAP's EPA Watch coordinators Richard Condit and Mick Harrison are confident that the court will recognize the illegality of the Bloomington PCB consent decree and require compliance with the law. They are also pressing for a congressional investigation into the abuses. For more information, contact the EPA Watch Program at GAP.

EPA Employee Harassed for Environmentalism

Jeff van Ee is a twenty-year veteran of the EPA's Environmental Monitoring Systems Laboratory in Las Vegas, Nevada and has been an environmental activist for years. On January 22, 1990, he attended a local Sierra Club meeting on his own time. Soon after, Mr. van Ee received a formal reprimand and was threatened with dismissal.

Four months ago, GAP filed a complaint for Jeff van Ee with the Office of Special Counsel charging that the Environmental Protection Agency (EPA) and the Department of Interior (DOI) violated his rights under the First Amendment and the Whistleblower Protection Act when they attempted to harass him and silence his environmental activism. Mr. van Ee is a member of his local Sierra Club chapter, among a range of other environmental groups. At the January meeting he voiced concern for the future of the endangered desert tortoise. The topic of the meeting involved the Sierra Club's plan to sue the U.S. Department of Interior under the Endangered Species Act. Mr. van Ee and the Sierra Club had focused their concerns on the dangers posed to the desert tortoise, especially at a nearby heavy industry site. Kerr-McGee Corporation had acquired land at the site from DOI in order to build a plant to manufacture a component of rocket fuel.

GAP attorney Richard Condit (r) and director Louis Clark (l) discuss strategy on the van Ee case.

At the January meeting, Mr. van Ee blew the whistle on a plan by DOI to obtain $400,000 from Kerr-McGee to "study" desert tortoises. Charging that the proposed study was a poor use of funds, Mr. van Ee and the Sierra Club proposed that the money be used to purchase new and more suitable habitat for the tortoises elsewhere in Nevada. A settlement between the DOI and the Sierra Club was reached one month later, establishing that most of the Kerr-McGee money would go to the Nature Conservancy for habitat acquisition.

A few months later, however, an attorney who had represented the DOI at the January meeting told the EPA Inspector General that Mr. van Ee had violated conflict of interest statutes. The EPA initiated an investigation of Mr. van Ee, but the agency's request for criminal prosecution was rejected by the U.S. attorney's office. The EPA, however, pursued the investigation on its own. Mr. van Ee received an official reprimand in August, threatening further disciplinary action including termination if he continued his environmental activism.

"In our opinion, Mr. van Ee was reprimanded for the exercise of his First Amendment free speech rights, and for helping to expose shortcomings in the Kerr-McGee/DOI plan to study the tortoises," stated GAP attorney Don Aplin. "Employees do not lose their right to speak out on matters of public concern merely because they have chosen a career of public service."

Mr. van Ee's involvement with the Sierra Club's case against DOI, GAP attorneys argue, was wholly outside EPA's responsibility and mission. EPA did DOI's dirty work by harassing Mr. van Ee with the investigation, reprimanding him, and chilling his lawful dissent with the threat of termination, explains Aplin.

Under this distorted view of conflicts of interest, Mr. van Ee and possibly other EPA employees risk their jobs anytime they engage in environmental activism that may be perceived as challenging the government. As GAP attorney Richard Condit said, "this is a simple case of DOI officials losing their tempers because they lost several hundred thousand dollars for a study that was more academic pork barrel than useful scientific analysis. DOI successfully recruited the EPA IG to harass, investigate, and threaten Mr. van Ee." GAP's goal is to expose EPA and other officials involved in the illegal intimidation, and to restore Mr. van Ee's First Amendment rights.

Food Safety Showdown Looms

1991 may be the turning point in the long struggle over federal meat and poultry inspection.

For decades, the safety and quality of meat and poultry carrying the U.S. Department of Agriculture (USDA) inspection label was guaranteed by federal food inspectors. In the early 1980s, however, the USDA launched a campaign to deregulate the industry. GAP has gathered evidence from over two hundred meat inspectors, scientists, and veterinarians confirming that the deregulation has occurred at the expense of public and worker health and safety.

The USDA has now developed a massive public relations campaign for its deregulation programs, entitled the Hazard Analysis Critical Control Point inspection system (HACCP). HACCP may in fact be little more than a new wrapper on an old product--reliance on a corporate "honor system" to ensure food safety, with federal inspection reduced to mere window dressing through programs such as the Streamlined Inspection System (SIS).

The streamlined inspection model was introduced in poultry plants in 1983. The results were abysmal: whistleblowing USDA inspectors renamed SIS the Streamlined *Infection* System, because salmonella contamination rose from thirty-seven percent to eighty percent after its implementation. In 1989, after an overwhelming public backlash spearheaded by GAP, the USDA's Food Safety and Inspection Service withdrew a similar "Discretionary Inspection" plan to eliminate daily inspection of processed foods for the first time since 1906.

Building on this success, a Washington-based coalition of food safety organizations, including GAP, is battling the proposed Streamlined Inspection System for cattle. We are also carefully monitoring the development of HACCP, billed as the agency's newest and most comprehensive inspection reform. Unless USDA abandons the disastrous deregulation policies of the 1980s, however, HACCP will effectively institutionalize 19th century food processing procedures well into the 21st century.

The USDA proposals seek to replace trained, qualified federal inspectors--whose right to speak out against health and safety hazards is protected under federal whistleblower statutes--with untrained, unqualified company workers who can be fired at will for interfering with company procedures or profits. USDA inspectors will focus attention largely on paperwork rather than on food under the proposed SIS plan: fewer inspectors will spend fewer hours looking at more carcasses moving at faster line speeds. The plan will strip federal workers of the authority to intervene as the companies double line speeds, despite the serious health consequences posed by increased fecal and other contamination. USDA calls this "modernization" and promises industry it will increase productivity by forty percent. But only the profit levels will be "modern."

Based on the SIS track record with poultry, the new inspection programs are a formula for increased food poisoning. From two to four million Americans now contract food poisoning every year. For many of us, the symptoms are miserable. But for the very young, the very old and those with immune deficiencies, the threat is deadly serious. Half a million are hospitalized annually and 9,000 die. Since the implementation of SIS, poultry has become the number one killer. It is amazing, therefore, that the USDA wants to apply the same procedures to beef this spring, and later to pork. The first test will be whether the USDA is successful in its attempts to implement an SIS-Cattle system in April, despite the fact that the National Academy of Sciences flunked the plan on public health grounds.

Last September the National Academy warned that SIS would be the "single most important change in bovine [cattle] inspection since 1906," but concluded that "[f]rom a food safety standpoint, SIS-C alone probably is no better and in some cases can be less effective than traditional inspection because the reduced oversight by government inspectors is not compensated by a total commitment to product quality on the part of industry." NAS found that at best, SIS could detect aesthetic defects, concluding that the program would be hopeless in curbing health threats.

This marks the third time since 1985 that NAS has warned of an impending food safety crisis. The Academy repeatedly has concluded that even traditional federal programs are inadequate due to the limitations of visual inspection, and has called for the development of rapid laboratory tests to improve inspection. But USDA continues to press for less stringent inspection, seeking to replace federal visual inspection with visual oversight by the companies themselves. The Academy concluded, "SIS-C does not integrate very many of the previous [NAS] Food and Nutrition Board recommendations either in whole or in part. Its design predated these reports, and there is no evidence that it was redesigned to incorporate aspects of these recommendations that would have improved the public health focus of meat inspection."

The results to date are disturbing. Federal inspectors at SIS pilot test plants report daily discoveries of carcasses with company-vouched USDA seals of approval despite fecal contamination, abscesses, grizzle, and inflamed drug-injection sites. Under SIS, the federal seal of approval is regularly granted to cattle carcasses known as "pukeheads" (so diseased that the mucus oozes out of their skulls) and "water bellies" (animals afflicted with kidney disease in which urine backs up and soaks the brisket, then leaks out by the gallon during slaughter). An inspector recently displayed a bag of USDA "approved" buckshot pulled out of a cattle carcass that passed as "wholesome" under SIS.

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Inadequate Border Inspection Jeopardizes Meat Safety

Vast quantities of Canadian meat contaminated with feces, hair, grease, bone fragments, tumors, cysts and other spoilage are crossing the border with USDA approval for public consumption in the United States, according to GAP client and USDA inspector William J. Lehman.

GAP is currently championing a food safety campaign aimed at restoring the competence and integrity of the government's meat inspection program. New "streamlined" inspection procedures promoted by the U.S. Department of Agriculture (USDA) favor increased meat production and importation over the health, safety, and confidence of consumers.

Bill Lehman, a USDA Inspector in Sweetgrass, Montana, has exposed deficiencies in import meat inspection at the U.S.-Canadian border. The 1989 free trade agreement between Canada and the United States inspired "streamlining" of import inspection procedures. The new procedures, however, have effectively reduced inspection and increased the exposure of American consumers to diseased or toxin-carrying Canadian meat. Mr. Lehman has been inspecting meat and poultry products for twenty-five years and claims that he has never seen levels of contaminated or diseased meat as high as those he has witnessed since "streamlined" procedures were implemented in 1989.

USDA Food Inspector William Lehman

USDA regulations state that meat inspection should guarantee a wholesome product free of foodborne health hazards, including hormones, residues of toxic chemicals and metals, and micro-organisms that may cause disease in humans. Under these guidelines, Mr. Lehman has routinely rejected large quantities of Canadian meat. In 1989, Mr. Lehman refused the entry of 1.9 million pounds of Canadian meat unfit for human consumption due to extreme contamination; he rejected another 2.5 million pounds in 1990.

Before the Canadian-U.S. free trade agreement, 100 percent of imported Canadian meat was inspected at the border. U.S. regulations now require that only seven percent of Canadian meat bound for the U.S. market be inspected. A few samples from one in fifteen trucks are inspected and presumed to be representative of the whole shipment. Yet even of this small sampling--which is hand-picked by the Canadian meat shippers--forty to forty-five percent of the meat is rejected. During some weeks, Mr. Lehman has refused entry to as much as eighty percent of the meat selected for exhibition to the import inspector.

The meat contained on the fourteen unexamined or "skip" truck lots is likely to be of even poorer quality than the handpicked samples provided for inspection. The "skip" lots, however, continue to their destinations, regardless of whether the samples from the inspected truck are refused entry. Canadian shippers can also easily resubmit rotten or unwholesome meat by simply loading it onto one of the "skip" lots. On several occasions, Mr. Lehman has seized Canadian meat that has already been rejected once.

Despite the dismal record of the "streamlined" meat inspection program to date, the USDA proposed further deregulation on June 29, 1990. Citing the need to eliminate trade barriers between the two countries, the USDA proposed to establish an "open border" on meat trade between Canada and the U.S. Intense lobbying and media campaigns, led by GAP and others have shelved the proposed rule until later this year.

Open Government

Victory Scored for Open Government

Since July 1987 GAP has led a campaign against executive branch attempts to force millions of federal employees to sign unconstitutional "secrecy pledges." Last November brought the decisive battle, and freedom of speech won out. President Bush signed a new law that cancelled the repressive provisions of nondisclosure agreements or "gag orders" known as Standard Forms (SF) 189 and 312.

The victory has been a long time coming. In November 1986, just after the Iran-contra scandal broke, the Reagan administration issued an executive edict requiring 3.5 million government and corporate workers to sign the pledges to keep or obtain their security clearances. Because security clearances are a job prerequisite for these positions, the employees faced the choice of signing or losing their jobs.

The first version of the secrecy agreement, SF 189, made it a crime for an employee to disclose any "classifiable" information without prior approval. Realistically, the administration boasted, "virtually anything" was classifiable. Employees who signed effectively promised never to reveal any information to anyone–including members of Congress–unless specifically authorized to do so by a superior.

The gag order was later cosmetically modified and renamed SF 312. In direct violation of free speech laws, it held employees liable for disclosures of any information. An employee's supervisor had to approve the release of information and determine whether the recipient was "authorized" by a "need to know" the information. There were no exceptions, even for members of Congress. This made effective public and congressional scrutiny impossible: few government officials guilty of illegal activity would agree that Congress "needs to know" the evidence to prove their misconduct.

Moreover, dissenting employees lost the chance to act anonymously. As the authors of the Whistleblower Protection Act warned, "It is unrealistic to expect whistleblowers to help in the struggle against waste if they risk exposure of their names and possible retaliation."

After 1.7 million workers had sacrificed their rights by agreeing to sign the coerced contract, veteran Pentagon whistleblower Ernie Fitzgerald "just said no." His courage was the backbone behind a legislative counterattack by GAP that resulted in three successive legislative "appropriations riders" that cut off funds to implement or enforce the secrecy agreements.

The administration defied Congress, asserting that the riders were unconstitutional infringements on the President's power–and effectively arguing that the President was permitted to cancel the constitution for Americans with security clearances. A three-year standoff ensued in the courts.

Last summer GAP and key legislative leaders developed a new appropriations amendment that would cancel portions of any nondisclosure rule contradicting free speech protections. Under the new amendment: "If it's not marked, it's not classified." In other words, workers would be free of the obligation to ask their bosses if unmarked information is secret before disclosing it.

The Justice Department rejected the new approach, and the CIA lobbied against its passage. But Congress unanimously approved the amendment, and President Bush later thanked Congress for the new amendment and embraced it as his own. In January the administration published new regulations incorporating the congressional amendment into all existing nondisclosure agreements.

Whistleblowers and concerned citizens can thank Ernie Fitzgerald and a handful of congressional champions for this victory. The bi-partisan coalition that led the fight in Congress included Senators David Pryor (D.-Ark.) and Charles Grassley (R.-Iowa), as well as Representatives Don Edwards (D.-Cal.), Jack Brooks (D.-Tex.), Barbara Boxer (D.-Cal.), Gerry Sikorski (D.-Minn.), John Dingell (D.-Mich.) and John Conyers (D.-Mich.). Leaders of the court battles included GAP, Public Citizen Litigation Group, the American Federation of Government Employees, American Foreign Service Association and National Federation of Federal Employees.

Unfortunately, our work is not over. While the executive branch wasted little time training employees to stay silent or lose their jobs under SF 312, it has failed to inform them that they are no longer bound to secrecy. The only notice to date was buried in the *Federal Register*. Anyone who missed pages 2,644 and 2,645 in the January 23, 1991 issue may mistakenly believe s/he still faces loss of job or jail for telling the truth without prior permission. GAP and other citizens' groups concerned with open government must work to get the word out, and to press Congress to persuade the executive branch bureaucracy to inform and educate employees on their restored rights to free speech and dissent.

Moreover, the appropriations rider did not end an equally repressive 1980s directive imposing prior restraint through prepublication review for those who want to blow the whistle as authors. Finally, the appropriations amendment only applies for fiscal 1991. It must be made part of a permanent statute, or re-introduced and passed every session. Reinforcing this need for a permanent solution, the executive branch has already begun to develop new "Son of SF 312" gag orders, such as a restriction for computer security.

Not surprisingly, the price of First Amendment freedom remains eternal vigilance. GAP will keep you informed as developments unfold.

Protecting Whistleblowers in the Private Sector

Under current law, private employers may fire workers "at will." Airline pilots can be--and are--fired on the spot for refusing to fly unsafe aircraft. Slaughterhouse employees are fired for exposing contaminated meat. Workers at nuclear weapons plants are harassed or demoted for protesting when defense facilities bombard local citizens with radiation.

These are the conditions and consequences facing millions of workers on whom we rely to protect our health and safety. GAP attorneys and organizers are now redoubling efforts on Capitol Hill to change all of this, by expanding protection for whistleblowers in the private sector. The Department of Labor administers perhaps a dozen environmental laws with some piecemeal free speech protections--but these are the exception, not the rule. And few workers, GAP has learned, will defend the public by exposing health, safety, or environmental hazards if they cannot defend themselves. GAP is therefore fighting for passage of legislation to extend free speech to workers in the private sector. The premise behind GAP's campaign is that all employees deserve the right to do the right thing.

Legal director Tom Devine is leading GAP's campaign to protect whistleblowers in the private sector.

We won the first round in 1989, with the unanimous passage of the Whistleblower Protection Act for public employees. The Act gave federal workers the strongest free speech rights on the books, for the first time permitting federal employees to be vocal public servants rather than compliant bureaucrats. But this is only half the story. Our current challenge is to extend the same protection to private employees, through the Employee Health and Safety Whistleblower Protection Act.

In October we passed an important test. Despite powerful opposition from industry, the House of Representatives approved a fish inspection bill that gives seafood workers the protections specified under the Employee Health and Safety Whistleblower Protection Act. The message was clear: whistleblower protection for private sector employees is badly needed and politically feasible.

Yet we continue to face all-out opposition from big businesses reluctant to grant workers the freedom to tell the truth. Unethical businesses fear the Employee Health and Safety Whistleblower Protection Act will mean the active enforcement of health and safety laws long ignored by industry and unenforced by government. Employee eye witnesses to health and safety violations pose a serious threat to industries engaged in illegal activity, if employees no longer remain silent out of fear of losing their jobs. Passage of this bill could mean the end of such corporate travesties as the illicit dumping of harmful substances in our rivers and the production and sale of filthy meat.

The Employee Health and Safety Whistleblower Protection Act provides that an employer may not discriminate against an employee for reporting a violation of federal health and/or safety laws, for participating in an investigation of such violations, or for refusing to violate health and safety laws. GAP is also working to expand the scope of the legislation to encompass *all* federal laws, not just those protecting health and safety. Equally as important as creating new legal protections is ensuring that whistleblowers are granted a fair hearing and a chance to win when they feel these rights have been violated. The bill therefore extends to private workers the reformed legal burdens in the federal whistleblower law.

In the last congressional session, the bill was co-sponsored by Senators Howard Metzenbaum and Charles Grassley, and Representative William D. Ford in the House. The bill will be reintroduced this session, and with your help, enacted into law. For further information on what you can do, please contact Christy Law at GAP.

Nuclear Reform

DEFORD, continued from page 3
by Congress in 1933 to bring electric power and economic development to Tennessee and parts of six other Southern states. Over the past decade, however, TVA has become a threat to the public interest. TVA management has turned the agency into an enterprise tightly allied with the nuclear industry: the agency has gutted quality assurance and laid off twenty thousand people. TVA is now the focus of ninety percent of the whistleblower complaints filed in the country under the nuclear power plant whistleblower statute. The agency has been fined hundreds of thousands of dollars by the Nuclear Regulatory Commission for harassing whistleblowers.

One of the most significant whistleblowers at TVA is GAP client Dan Deford, a high-level nuclear engineering manager. Mr. DeFord wrote a memo in March 1989 detailing serious engineering safety and management problems that could force TVA to shut down several nuclear power plants. He also reported millions of dollars in waste by TVA contractors. Management's response was to get rid of Dan Deford.

Mr. DeFord, with the help of GAP, took his case to the Department of Labor (DOL), filing a discrimination complaint against TVA. In June 1989, Dan Deford was the victim of a retaliatory "reduction in force" (RIF). Over a year later, in August 1990, the DOL ordered the engineer restored to a suitable management position, along with backpay, lost benefits, compensatory damages, interest and attorneys' fees. TVA appealed the decision to the Department of Labor; the case was tried in December 1990. A decision is expected this spring.

Dan DeFord stated from his Knoxville home, "My family has lived in Tennessee for 200 years. The DOL finding--and our pursuit of the case--is in pursuit of our fundamental rights to free speech about professional matters, and the right not to be pushed around by TVA managers who behave as if they were 1940s hosiery mill bosses, abusing employees at will, and acting as if they own TVA."

The August decision by the DOL Wage-Hour Division marked the second time in a decade Labor Department officials have found discrimination by TVA against Mr. DeFord. In 1981, Mr. DeFord was the first whistleblower to win a case against TVA.

At trial in December, GAP Legal Counsel for Constitutional Rights Ed Slavin and co-counsel David Stuart and Christopher Van Riper of Clinton, Tennessee faced a pitched battle with what Ed Slavin termed "the largest law firm in Knoxville"--the well-financed TVA General Counsel's office. TVA resisted efforts to obtain all relevant documents, and destroyed key evidence.

Evidence produced in the trial demonstrated the TVA custom of harassing whistleblowers. Former TVA Nuclear Power Manager Admiral Steven White testified candidly that he found management at TVA hostile to professional dissent by engineers, and to Mr. DeFord in particular. "I found him to be an honest, forthright engineer who always told me the way things really were," Admiral White said about Mr. DeFord earlier. "He didn't necessarily tell me what I wanted to hear. He was always correct when he would report to me a problem area."

A GAP investigation resulted in release of censored portions of a TVA Inspector General report that showed that top TVA officials destroyed evidence of harassment. The censored portion, submitted in evidence at trial, revealed a May 1, 1989 meeting in which two TVA nuclear power officials met with at least two TVA lawyers, agreeing to tone down and rewrite a file memorandum to remove remarks made to Mr. DeFord that TVA lawyers considered "damaging" to TVA, "injudicious and inflammatory," and "abusive and abrasive." The original, accurate memo was destroyed. TVA has termed the charges about destruction of evidence "outrageous," and told reporters it suppressed the complete Inspector General report "to protect the privacy of the individuals involved."

Unknown to his harassers, Mr. DeFord taped the meeting during which he was harassed. On March 26, 1990, Mr. DeFord and GAP lawyer Ed Slavin played the tape for two Inspector General agents. The next day, Vice President Fred Moreadith, the TVA official responsible for the harassment resigned or was fired (subject to a resignation agreement in which he received $50,000). When the tape was played at trial, both sides gathered around while the judge listened, carefully checking a draft transcript to make sure every word was understood.

GAP was initially encouraged by a July meeting with TVA Director John B. Waters, in which Director Waters apologized to Mr. DeFord for his firing. However, TVA has not yet offered Dan DeFord a responsible management job using his talents and skills.

Mr. DeFord said, "TVA uses heavy-handed tactics to manage its engineers and other employees through threats of layoffs, transfers, intimidation and harassment. TVA managers--and I don't mean mid or lower levels--are not held accountable for their actions. Instead, excuses like 'they don't mean no harm' are used to explain their misdeeds."

GAP attorneys note that the DeFord case shows the length that some employers will go to suppress employee concerns about nuclear safety matters--even firing a key management employee after he had won his whistleblower case and returned to work as a top manager. The fact that TVA is a U.S. Government corporation is all the more reason for alarm and concern at its managerial malice and disrespect for freedom of conscience on critical issues of nuclear safety.

A brief Government Accountability Project report on the DeFord case, *Double Indignity*, is available upon request.

Marketplace

Citizen's Handbook of Environmental Rights

GAP's EPA Watch staff is now producing a handbook of citizens' environmental rights, scheduled for release this fall. The handbook is designed to help citizens wade through the complex morass of environmental statutes in order to become more sucessful advocates for the environment. Specifically, the handbook will summarize and explain the rights of citizens to participate in:

✔ state and federal environmental decision-making

✔ petitioning to EPA for changes in environmental regulations

✔ public hearings on studies of alternatives and environmental impacts under Superfund

✔ public hearings on hazardous waste facility permit applications

✔ suing industry, local governments and EPA itself for violation of environmental laws

✔ suing EPA to compel the agency to perform its duties under federal laws

Environmental laws will be summarized in clear, accessible terms, including the Superfund Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act and related procedural statutes including the Administrative Procedures Act, and the Freedom of Information Act.

The exact price of the handbook will not be set until publication but is expected to be $25.00 or less. Advance orders will be accepted and notices for payment will be mailed upon publication.

Shopping for a Better World

The Council on Economic Priorities has released the 1991 edition of its publication, *Shopping for a Better World*. The shopping guide is a quick reference for socially-responsible supermarket shopping. The guide rates 180 companies and over 2,000 products this year. The guide costs $5.45, shipping and handling included. To order a copy, please call toll-free: 1-800-822-6435. Or, write:

Council on Economic Priorities
30 Irving Place
New York, NY 10003-2385

GAP Resources

☐ *The Whistleblowers*
Authored by Myron and Penina Glazer, *The Whistleblowers* is a thoughtful study of whistleblowers who put their careers, marriages, and even their lives on the line to alert the public to illegal and/or dangerous situations. Includes interviews of GAP attorneys and several GAP clients. (Hardback, 250 pages) $20.00.

☐ *Courage without Martyrdom: A Survival Guide for Whistleblowers*
This 35-page GAP publication is designed to help whistleblowers protect themselves from retaliation by their employers and ensure that their broader concerns about health, safety and environmental hazards are addressed. $10.00.

☐ *GAP T-shirt*
GAP's four-color t-shirt is made of 100 percent cotton. Beautifully-designed graphic with text reading "Whistleblowers Help Keep Industry Clean!" on the front. The back has our name and whistle logo. $12.00

☐ *PCB Blues: A Cassette Tape*
PCB Blues is an album created by Bloomington, Indiana citizens who are fighting the proposed toxic waste incinerator planned for their community. The cassette features sixteen songs, ranging in style from folk to rap. Proceeds benefit the Indiana groups fighting the incinerator, Citizens Opposed to PCB Ash (COPA) and People Against the Incinerator (PATI), and GAP. $14.00

Please send me the materials checked above.

I have enclosed $____ plus $2.00 for shipping and handling, for a total of $____.

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Phone

FOOD SAFETY, continued from page 6

Inspectors are strictly barred from condemning contaminated meat, even when it falls on the floors workers must use to relieve themselves when plant managers refuse to allow them to leave the line to use the bathroom. Federal inspectors no longer record sanitation violations, such as the handling of beef parts in gloves caked with feces. Inspectors report that over eight times as much contaminated meat now passes inspection with USDA approval, and independent laboratory testing has confirmed bacteria counts ten times higher than under traditional inspection.

Federal personnel have been instructed not to interfere when they see their replacements, company quality control inspectors, threatened, verbally abused or slapped by production foremen. Not surprisingly, federal inspectors regularly catch company workers completing records on inspections never performed. When USDA inspectors complain, agency management simply looks the other way.

The stakes in the struggle over SIS are high. Top USDA officials have promised that HACCP will be the model for the 21st century and have assured industry leaders that SIS will be a centerpiece of the new system. SIS is USDA's latest attempt to carry out the policy shift announced in a 1981 memorandum: "The political climate is such that the special interest groups supporting the meat and poultry industry have won and now have the ear of Washington. They 'paid their dues' and are now in the drivers' seat. . . . The consumer base has disintegrated. We must be versatile and adjust to this new challenge."

But the bureaucratic sellout is not inevitable. Since the 1981 memo, over 150 federal inspectors have blown the whistle on food safety breakdowns resulting from SIS so far. Their warnings--aired in affidavits, open letters, CBS' *60 Minutes*, congressional hearings, front page *Wall Street Journal* stories, and elsewhere--have sparked a consumer counterattack. Since 1984 whistleblowers have blocked the expansion of SIS beyond poultry and forced the withdrawal of the Discretionary Inspection plan for processed foods. Last fall USDA was prevented from pushing a USDA-proposed seafood inspection system sought by the industry as a precedent for statutory approval of industry self-inspection.

USDA and the industry have not given up, however. The plant-by-plant SIS and HACCP plans will be classified as company information, depriving consumers of the right to know the specific inspection procedures behind the USDA seal of approval. USDA plans to implement SIS nationally as soon as it can get away with it--unless we stop them.

A top government scientist recently predicted that "unquestionably, food safety will be the issue of the '90s." If we act on the whistleblowers' warnings, we can restore or even improve on traditional safety levels. If not, USDA will "modernize" us back to the days of Upton Sinclair's *The Jungle*. Call for more information on how you can help.

The Government Accountability Project (GAP) is a nonprofit, public interest organization based in Washington, DC. GAP provides legal and advocacy assistance to concerned citizens who witness dangerous, illegal or environmentally unsound practices in their workplaces and communities and choose to "blow the whistle." Since its founding in 1977, GAP has helped hundreds of public and private employees and grassroots organizations expose threats to public health and safety and the environment.

Bridging the GAP is the Government Accountability Project's quarterly newsletter, edited by Eva Bertram and Christy Law. GAP fellow Paul Higgins, staff associate Gregory Vigue and GAP interns Kate Howard and Susan Petro contributed articles to this issue. Carl Sublett coordinated production.

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BRIDGING the GAP

Government Accountability Project

Fall 1991

The Struggle for Worker Safety

She has been called another Karen Silkwood. Threatened, harassed, fired from her job and in declining health, Linda Porter won't stop talking about the extreme worker health and safety violations she experienced as an employee at the Comanche Peak nuclear power plant in Texas. "As long as I'm alive, I'm not going to shut up," she says. "They couldn't shut me up in '88. They're not going to shut me up now."

Linda Porter: "For my own grandchild, Michael, I continue."

Born and raised within eighty miles of the plant, Linda--along with hundreds of others in the depressed Fort Worth area--looked to the Comanche Peak facility as a source of economic opportunity. She went to work in the paint department in 1984 as an employee of Brown & Root, Inc., a construction contractor at the Texas Utilities plant. Her job was to apply, strip and replace heavy paint coatings on the plant structures. Designed to make them impermeable, the paints are used to line concrete walls and floors to prevent any release of radioactivity in the event of an accident. Linda was quickly promoted to a supervisory position, and received training in quality control and occupational safety.

Her problems began when she tried to apply her safety training on the job. She began to raise questions when she saw concrete supports begin to crumble. Her concerns were met with ridicule and verbal attacks. She and her crew were assigned to the dirtiest and most difficult jobs. Eventually, Linda was demoted and fired.

Yet Brown & Root needed good workers, and Linda was skilled at what she did. Within months, she was recalled to work at the plant. She needed the job; she returned and tried to keep out of trouble. In late 1987 she discovered, however, that she and other painters were being exposed routinely to asbestos--without their knowledge. She pressed and learned that workers were not adequately protected from a range of toxic materials they used daily. The coating materials, she discovered, contain several chemicals rated by government agencies as among the most dangerous for workers and the environment.

Once word reached management that employees were asking about asbestos, Brown & Root moved quickly. Information on the contents of the coating materials was

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Worker Safety

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made inaccessible. Despite the cover-up, Linda managed to obtain documents confirming the presence of asbestos in some of the coatings used by workers. Worse, she knew that the health risks were not limited to Comanche Peak employees. Plant managers disposed of thousands of containers of excess coatings by dumping them in unlined pits near Squaw Creek Lake, a recreational reservoir near the plant. The entire community was at risk.

Linda reported her findings to management--and then brought her concerns to the Nuclear Regulatory Commission (NRC) and to the Occupational Safety and Health Administration (OSHA).

Brown & Root's response to her reports would permanently change her life. In early March 1988, Linda was ordered to participate in a test to determine the asbestos content of coatings applied to the walls of one room in the plant. Her refusal to participate, she understood, would mean her termination. She and a few other workers were issued respirators with filters for their protection. They were sent into an enclosed room, where they were to remove the coatings from the walls with sanders and grinders. The room quickly filled with dust, making it impossible to see the other workers. Then her respirator failed, and she ingested large amounts of the dust through her nose and throat.

Gagging and choking, her throat and nasal passages burning, she left the room and told supervisors that the equipment was failing. She was told to replace the filter and return to work. Finally, Linda had to leave the room. Barely able to speak above a whisper, she said she was unable to complete the test. "What's the matter, Linda, do you smell asbestos?" taunted one manager as she left. Since the asbestos test, Linda's voice has never returned to normal. Her voice is low and raspy, and it takes effort to push her words out. Doctors have found numerous tumors in her neck and throat.

At Comanche Peak, meanwhile, a dozen high-level officials from Brown & Root and Texas Utilities met to consider Linda's reports. They sought to convince her that conditions were safe, and asked that she formally agree that all was well. Linda attempted to explain the flaws in their arguments and expressed her disappointment in their judgement. Two days later she was fired.

Since her termination, Linda has learned that she suffers from acute neurotoxic exposure. Pain throughout her body keeps her from sleeping more than a few hours a night. She suffers from tremors in her limbs and occasional blackouts. She has developed sores throughout her body that erupt as blistery bruises. She doesn't know how long it will be until she is unable to walk or breathe properly.

But Linda has lost no time or energy in her efforts to ensure that the problems she exposed are addressed. In January 1990, she contacted GAP. For nearly two years, GAP attorneys have worked with Linda and several local grassroots organizations to investigate and expose the toxic threat at Comanche Peak. The effort has triggered inquiries by the Texas Water Commission, the state Attorney General, the EPA, the NRC, and OSHA.

Investigations by Linda and GAP attorneys led to alarming evidence last June of a still wider public threat. Thousands of gallons of the toxic paint--much of it in unlabeled or corroded cans--had been sold to the public at reduced prices. GAP attorneys concluded that the expired coatings were sold hurriedly just before an investigation by the NRC.

GAP alerted the local media. Within days, reports began to pour in from citizens who had purchased the paint--and suffered adverse physical effects after using it. Pressure by Linda and GAP attorneys led the state Attorney General to force Texas Utilities to buy back the materials, and to run recall advertisements in newspapers in an effort to track down unknowing buyers. "The fundamental irresponsibility of Texas Utilities is the way they chose to get rid of their hazardous waste problem by dumping it in someone's backyard or telling someone to paint their barn with it," said Assistant Attorney General Steve Gardner. "We believed TU when they said it had been taken care of. The only way we found out about this is that one lone lady came forward and told us."

GAP attorneys are also working with Linda and local groups including the Citizens Association for Sound Energy, Texas Citizen Action, and Citizens for Fair Utility Rates, to ensure that the toxic chemicals are removed from unsafe landfills near the plant. Linda's persistent efforts have succeeded in derailing--at least temporarily--a dangerous plan to "cap" the illegal landfills without adequate environmental safeguards.

Linda has joined hundreds of her co-workers in suing the company for damages and injuries suffered on the job. And GAP is pressing to prosecute a claim on Linda's behalf against Brown & Root, for firing her after she questioned the conditions under which she and her coworkers were forced to work. "What I'm seeking is for industry to understand that we're not going to be throwaway workers," Linda explained, "and I want a message sent to regulators that they're not supposed to let this happen."

Her message has reached policymakers and others with the power to make a difference. In June, the former crew supervisor and painter was awarded the prestigious Cavallo Prize for Moral Courage in Washington, D.C. The prize is awarded to individuals who "have chosen to speak out when it would have been far easier to have remained silent." Linda used the opportunity to re-state her mission: "It is imperative that the fight continue to protect employees throughout the construction industry," she said at the award ceremony, adding quietly, "The children of our future world only have us to fight for them. For my own grandchild, Michael, I continue."

'Like Rats In a Trap. . .'

On September 3rd, a fire ripped through the Imperial Food Products poultry-processing plant in Hamlet, North Carolina. Twenty-five workers were killed and fifty-five injured. Doors were locked and blocked from the outside, survivors reported. Safety violations were rampant: the plant had never been inspected in its eleven years of operation.

The fire and its aftermath are a grim reminder of how little things have changed for some American workers since a tragic fire at the Triangle Shirtwaist Company claimed the lives of 146 women and girls eighty years ago. Workers in that plant, too, were unable to escape the blaze because company managers had kept doors locked. The Triangle fire led to a wave of reforms to guarantee workplace safety. Today, these laws are all too often disregarded by industry and unenforced by government regulators. The poultry industry is among the worst violators.

For years, GAP has worked with local unions and advocacy organizations in North Carolina to expose and reform plant conditions. Below are the testimonies of two former poultry workers. Loretta Goodwin, a survivor of the recent Imperial plant fire, was interviewed by GAP legal assistant Elba Santos. Former GAP whistleblower Donna Bazemore now works for the Center for Women's Economic Alternatives, a North Carolina advocacy organization for women in the poultry industry; her statement is excerpted from her 1989 congressional testimony.

Loretta Goodwin:

The day that the plant caught fire my job was [to work as] a scaler, [to] weigh the chicken. At around 8:35 a.m. I looked at the clock and I saw women running. They said that they couldn't get out of the door. I was about two feet from the door and behind me everyone was pushing and shoving. When I looked behind me there was fire about two feet behind me. Everything became like night and you couldn't see a thing. The only thing that one could inhale was the smoke and the fire. I attempted to take my smock off to cover my face about three times and then I was knocked onto the floor. [After the door was bulldozed open,] I was the second one to get out. When I looked around I saw that they began to take the dead out of the plant. They were taking out more people from the packing room where I worked. There was a man and a woman who were placed in a body bag before they were dead.

Donna Bazemore

Chris Seward

I now have difficulty sleeping; [I keep] seeing these people running. My arm was injured, my back and my legs and my eyes hurt. Now it has been a little over three weeks and I am still coughing up soot. If only someone would have come to us and told us that there were no fire extinguishers, no alarms and no smoke detectors; there was nothing. Nobody told us anything about the safety of the plant. Nobody had told us that the exits were blocked. We were like rats in a trap.

Donna Bazemore:

Women at poultry plants need rights, both to defend themselves and to defend the public. To start with, the plants are filthy. The floors are covered with grease, fat, sand and roaches. The waste is not always even from the chickens. The company won't allow workers to leave the line when they have to go to the bathroom. Usually the workers just suffer and put a strain on their bodies, but sometimes they have to relieve themselves on the floor. Chickens regularly fall off the line and into all the muck on the floor. The supervisors have workers put them back on the line.

Perdue's main goal [is] maintaining line speeds as fast as possible, now frequently at ninety birds per minute. Workers don't have any choice but to follow orders. Workers don't even have the right to get hurt. The conditions are very dangerous generally, and workers aren't well-trained for the machinery.

One machine in particular is used to clean the gizzards of the birds. It has a whirring blade that catches people in it. Workers lose fingers. One woman's breast got caught in it and was torn off. Another's shirt got caught and her face was dragged into it. In one instance, a man was caught in the grinding machine that makes animal feed out of all the parts people don't eat, like feet. He was way up in the air and must have been there for some time,

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Nuclear Reform

Covert Surveillance at Hanford

For years, GAP has documented the systematic abuse of employees who expose health and safety threats at the Hanford nuclear weapons facility. "The pattern is clear," according to GAP attorney Tom Carpenter. "Workers who commit the crime of dissent receive pretty much the same sentence at 'Gulag Hanford' –forced mental examinations, intensive investigation by security, isolation from others at the plant, having friends turned into informants, and kangaroo-court justice. Invariably, their crime was to report some of the most serious environmental and safety problems facing this nation."

The harassment and intimidation of workers at Hanford is not news, but recent congressional testimony from the Department of Energy's Inspector General has generated new questions about just how far such abuse has gone. Last August, Congress held hearings probing the illegal procurement and use of surveillance and eavesdropping equipment by officials at Hanford and other DOE weapons facilities--at an estimated cost to taxpayers of millions of dollars.

The Inspector General's report does not mince words: DOE regulations "preclude DOE and DOE contractors from procuring, installing, or using wiretapping and/or eavesdropping devices in any building, installation or real property owned or leased by the U.S. Government for the use of DOE. However, we found the [Hanford] contractors have purchased, installed, and used eavesdropping equipment, which is prohibited . . ."

Fourteen instances of "covert video surveillance" were documented, and 120 telephone lines capable of recording conversations were identified. Both Westinghouse Hanford Corporation and the local DOE office denied any improper or illegal recording of telephone conversations at Hanford, but a July 1991 *Seattle Times* article details the 1986 taping of a *Times* reporter. The reporter heard a beep and asked if he was being tape-recorded. Hanford officials confirmed the recording, and the reporter later obtained a copy of the tape under the Freedom of Information Act.

The DOE IG report and testimony comes in the midst of several hard-fought legal battles waged by GAP on behalf of Hanford whistleblowers who have been targets of harassment, surveillance and intimidation. Hanford security officials have repeatedly denied in sworn testimony to GAP that they possess surveillance equipment or that they have conducted surveillance of various GAP clients.

Mr. Bright Bowe, for example, is a Westinghouse security investigator who conducted an extensive investigation of GAP whistleblower Ed Bricker. Mr. Bowe met several times with the local DOE Inspector General agents for briefings. He testified in a GAP deposition in February 1991. Asked, "What sorts of surveillance equipment does your office have?" he answered, "Absolutely none." His answer to the question, "Has anyone in your office ever taped telephone calls?" was again, "no."

GAP will continue to investigate and expose abuses at Hanford. Congress, the FBI, and other governmental bodies have launched inquiries into the issue. New evidence developed by GAP and others indicates that these revelations may be only the tip of the iceberg.

A Call to Congress

A federal district court dismissed the case of a nuclear weapons whistleblower last month, arguing that Congress had deliberately chosen not to protect DOE contractor employees who blow the whistle on egregious environmental and safety hazards. According to Judge Alan A. McDonald,

The congressional record is clear that Congress is and has been aware of the situation regarding "whistleblowers" at [government-owned, contractor-operated] facilities, but has failed to enact a comprehensive remedial scheme. It is difficult to imagine a stronger case of what this court shall term "deliberate inaction."

The court ruled that it was bound to defer to Congress' will, and therefore refused to extend a remedy to the whistleblower for violations of his constitutional rights.

GAP filed the case in August 1990 on behalf of Ed Bricker, a nuclear operator at the Hanford nuclear facility. Bricker had reported numerous health, safety and environmental violations at the plant. According to a Department of Labor report, Bricker was spied upon, harassed, and ordered to undergo a psychiatric evaluation. The rationale for these activities was that Bricker--who was referred to as a "mole"--was communicating with a congressional subcommittee and the news media. Bricker was never accused of leaking classified or proprietary information.

The district court relied on an earlier circuit court decision in another nuclear whistleblower's case, filed under the Energy Reorganization Act of 1978. The circuit court noted that although the Act applies to both nuclear weapons plants and nuclear power plants, the whistleblower provisions are found only in the section on power plants.

The ironic result of both courts' decisions is that nuclear whistleblowers at some of the nation's most polluted sites are left without any effective protection against vicious reprisals for exposing health and safety hazards.

It is time for Congress to prove these courts wrong: lawmakers must demonstrate that Congress is concerned with protecting DOE contractor workers who raise issues affecting the safety and security of workers and the public.

GAP is advocating legislation that would protect DOE contractor employees from retaliation. The best way to achieve this goal, GAP believes, is to amend the Energy Reorganization Act to explicitly include DOE contractor employees. To support this effort, please contact GAP for more information, and write your representatives to voice your concerns.

The Hazards of Nuclear No-Smoking Zones

In October of last year, Hanford employee Paula Nathaniel was disturbed late at night by a single ring on her telephone. On the fifth night of this occurrence, she lifted the receiver quickly to hear successive electronic beeps--commonly indicative of a wiretap. Days later she came home from work to find that her home had been entered. The television she had left on had been switched off; her cats were terrified. Her building manager confirmed that maintenance had not entered her apartment that day.

The unnerving pattern of incidents marked the start of a long campaign of harassment waged against Nathaniel by her employers at the Hanford nuclear facility in Washington state. Nathaniel learned the hard lesson of other Hanford whistleblowers: to report the truth about safety violations is to risk one's career and peace of mind.

Spokesman Review and Spokane Chronicle

Paula Nathaniel

Nathaniel began her career at Hanford in October 1988, when she was recruited by Westinghouse Corporation, the plant's contractor, for a position as a chemist. One of her responsibilities was to monitor the dangerously unstable 101-SY nuclear waste tank. On October 24, 1990, she reported that a radiation protection technician had lit a cigarette in a no-spark zone, in direct violation of company policy against smoking within these areas. Because of the dangerous levels of highly explosive gases in the storage tank area, a lit cigarette could mean large-scale disaster. Every three months hydrogen gas builds up in the 101-SY tank until the pressure results in an explosion within the tank, expelling explosive gases through the tank's venting system. If hydrogen gas were to come into contact with a spark, a massive explosion could spread radioactive and toxic waste over hundreds of miles.

Nathaniel tried unsuccessfully to notify her manager about the violation. Eventually she was able to reach the radiation technician's supervisor. He advised her to file a safety complaint with her manager and others involved. She promptly wrote a report, sending it to all relevant supervisors through the computer mail system. Later that day, she received an urgent call from her supervisor, David Dodd. Dodd demanded that she withdraw her report. He argued that bad publicity would result if the press found out about the violation. "How would you like to see your name and that letter on the front page of the L.A. Times?" Dodd demanded. She told him it was too late; she had already sent the letter through the computer network. Regardless of the timing, she added, she "couldn't lie" and felt bound by her obligation to protect the public's safety.

Nathaniel subsequently received an unfair performance evaluation. When she discussed it with Dodd, he told her that she was "not a team player," and insisted that she seek a position elsewhere in the company.

The harassment escalated. Several times, Nathaniel observed she was followed when not at work. During a visit with her parents in Ohio, she noticed the same late-night single ring on their phone. Co-workers told her she was being set up to be accused of destruction of government property; management was asking employees to remove files from her computer. The files were her work product, owned by Westinghouse and the government.

In November 1990, Nathaniel received an ultimatum from management. She could: 1) take a six month minimum leave of absence without pay; 2) quit, after writing a letter of resignation; or 3) find a different position within the company. Nathaniel eventually chose instead to go on disability, due to the stress and medical problems she believes resulted from her harassment.

Finally, in late 1990, Nathaniel turned to GAP for help and legal counsel. GAP has taken depositions and obtained over 1500 pages of documents related to her case. She was represented by GAP attorney Elaine Dodge in hearings before the Department of Labor in October. GAP intends to prove that Westinghouse discriminated against Nathaniel for blowing the whistle on a safety hazard.

GAP continues to compile evidence gained from whistleblowers like Paula Nathaniel to press for sweeping reforms at Hanford. The Nathaniel case adds to the disturbing record of flagrant safety violations at the weapons site. Equally troubling, the case reflects yet another instance of Westinghouse harrassment of employees brave enough to speak out against breaches of safety at Hanford.

Environmental Protec

Rigged Computers Lead to Excess Clear-Cutting

Until March 9, 1990 Don Kern was a U.S. Forest Service technician in Montana charged with measuring environmental damage from clear-cutting in national forests. Kern's job was to assess whether erosion caused by water runoff threatened endangered species or violated other environmental laws; he also served as the office's computer specialist.

A former newspaper reporter, Kern has long been an environmentalist active in numerous local and national organizations. Kern's views have placed him within a distinct minority in the Forest Service bureaucracy. Like many government agencies, the Forest Service has a dual mission that creates an inherent conflict of interest. The agency is simultaneously responsible for protecting America's national forests *and* for generating profits as the government's timber company. Not surprisingly, the former function is systematically sacrificed in the relentless pursuit of the latter.

From the time he was hired in 1986 until last year, Kern endured routine, unpleasant but relatively non-threatening harassment at the Forest Service because of his environmentalist perspective. The work was significant and the job tolerable; Kern's direct supervisor in the environmental unit was highly impressed with him. He received outstanding performance ratings and was nominated for a Sustained Superior Performance Award.

An Oregon clear-cut.

Things began to fall apart in early 1990, when Kern became an employee who "knew too much." Kern's calculations revealed that something was fundamentally wrong with the computer's extrapolations of field survey results. When he unraveled the program, he discovered that the computer was rigged to underestimate by twenty percent the overall environmental damage represented by

Not In Anyone's Backyard

"Please help us," Reverend John Henry Bailey pleaded with South Carolina legislators considering tough new controls on hazardous waste facilities. His congregation at Rock Hill's Nazareth Baptist Church was alarmed by the fumes from the ThermalKEM toxic waste incinerator located a mere ninety-seven feet from their church, he explained: "Our children were forced indoors from their Easter egg hunt by burning odors."

Doris Lewis lives only a quarter-mile up Robertson Road from Nazareth Baptist Church and the ThermalKEM facility. A soft-spoken grandmother, Mrs. Lewis makes an unlikely activist. She spent the last few years fretting over husband Jack's outspoken opposition to ThermalKEM's contamination of their community. She worried about her husband's declining health. But when Jack Lewis died of liver disease this February–in part due to his prolonged exposure to the incinerator's fumes, some believe--Doris stepped in to carry forward his crusade.

Reverend Bailey and Mrs. Lewis are leaders of Citizens for Clean Air and Water. They and hundreds of their neighbors meet in the Nazareth Church and travel the highways to the state capitol in Columbia and beyond to fight the planned expansion of toxic waste incinerators in communities like their own.

The Rock Hill citizens have placed themselves at the heart of an explosive national debate over where and how the nation's mounting toxic wastes are to be disposed. With two of the nation's fifteen commercial hazardous waste incinerators and expansion plans for at least three more, South Carolina bears a heavily disproportionate burden of the toxic waste threat. The state receives more than four times as much hazardous waste for disposal as it sends elsewhere. The multi-national waste management industry--including the German-owned ThermalKEM--has aggressively targeted the American South because of its traditionally lax environmental regulations. Moreover, the Environmental Protection Agency has a long record of backing the waste-management industry in battles over industry permits and enforcement of environmental laws.

With GAP's support, the Rock Hill citizens are fighting in the courts, legislative chambers, and city halls. Their goals are to strengthen environmental protection, force accountability by federal, state, and local government, and compel sound solutions to the toxic waste problem.

Chris Seward, News and Observer Publishing Co.

Jack Lewis organized efforts to stop hazardous waste incineration in his South Carolina town until his death in February.

Their immediate target is ThermalKEM, which has developed a plan to expand its current operations and construct a second incinerator in the area.

GAP attorney Robert Guild and the Rock Hill group challenged ThermalKEM's permits before the state Department of Health and Environmental Control (DHEC), questioning the suitability of the site, the health risks and the inadequate design of the planned incinerators. The company was forced to turn over its records for public scrutiny and undergo an on-site inspection.

The citizens group scored a victory as the expansion plans were ordered to a halt. Their education and organizing

continued on back page

Food Safety

USDA Ploy Would Double the Deregulation Damage

Whistleblowing meat inspectors have warned GAP of a secret deal between the meat industry and the Department of Agriculture to further deregulate meat inspection. Industry officials want permission to wash rather than trim contamination from beef carcasses--and then charge consumers meat prices for the excess water weight.

The plan would bring "streamlined inspection" procedures used in poultry processing into the beef industry. The "streamlined inspection system" (SIS) for poultry was launched in 1988. Since the program was adopted, salmonella contamination has increased from thirty-seven percent in the late 1970's to eighty percent last year. Streamlined inspection largely replaces USDA government inspectors with corporate quality control inspectors--effectively allowing the meat industry to use its own discretion in granting the USDA seal of approval. One of the most notorious aspects of the program is the use of high-pressure poultry carcass washes, which spread and bury rather than remove contamination.

Under current regulations, contamination must be trimmed from beef carcasses and any water added to beef by washing is considered an illegal adulteration of the food. The behind-the-scenes plan is to quietly include new regulations reversing these requirements as part of a package granting an American Meat Institute petition to begin "cattle-washing." Under the scheme, USDA would approve beef carcass washes at an early stage of slaughter, before the guts are removed--eliminating any means of detecting the increased water weight. The washing procedures would be falsely advertised as a food safety reform to make beef more wholesome. Whistleblowers within USDA suspect that the plan may be a way to win back-door approval of a streamlined inspection system for beef, a continuing goal of both industry and government deregulation advocates. As a condition of carcass-washing, USDA would require corporate "quality control" programs. Combined with further cutbacks in USDA inspectors, the result would be the effective implementation of streamlined inspection for cattle.

If the Department of Agriculture succeeds, consumers will lose twice. Diseased meat will routinely receive the USDA stamp of approval, and consumers will pay beef prices for water if washing replaces trimming. USDA has promised the meat industry a double profit boost--a forty percent increase in output through SIS, and added water weight through carcass sprays.

If you have questions or concerns about this plan, contact Christy Law at GAP, and write to USDA Secretary Edward Madigan and Senate Agriculture Committee Chairman Patrick Leahy. Please send copies of your letters to GAP.

Debra Nesmes

Attorney Elaine Dodge is spearheading GAP's efforts to win health and safety protections for poultry workers.

POULTRY WORKERS, continued from page 3.

because he was in shock. The plant officials couldn't just disassemble the machine and get him out of it. They had to call Perdue corporate headquarters for special permission to interrupt production. The worker survived, but his arm had to be amputated.

Another time a woman who had been complaining of headaches wasn't allowed to leave the line. She passed out and died. Maybe she died right there on the line, or maybe she hit her head when she fell. I don't know. All I know is that there was blood coming out of her eyes and ears. It was the worst thing I ever saw.

The most common and dreaded hazards are repetitive motion problems like carpal tunnel syndrome. Carpal tunnel syndrome means painful swelling and can partially paralyze a person. When women can't hold a scissors, the foremen give them forks to pick meat off the floor. As soon as carpal tunnel syndrome starts to interfere with production the worker starts to get punished.

I also know of sexual harassment from firsthand knowledge, but so do most of the women at the poultry plants. Foremen regularly pinch and feel workers. Women who go along get easier loads or promotions to supervisor. Those who don't go along get the dirtiest jobs at the plant. I know that from experience, too.

It would be natural to ask why the workers take this type of abuse, or allow gross threats of food poisoning. It's because there is no other choice besides total poverty. Perdue pays $5.45-$5.75 per hour, and you get to work a forty-hour week. Single mothers can just support their families that way, and there's nothing else close. The company knows that, and supervisors threaten employees who get in the way.

Judges Sue for Judicial Independence

GAP's fight for accountability in government has led to a wide-reaching campaign to ensure the integrity and independence of administrative law judges working in dozens of federal agencies. GAP's efforts have focused on the Department of the Interior, where officials are escalating efforts to crush judicial independence at the agency.

Sometimes called the "hidden judiciary," over 1,000 administrative law judges are employed by thirty-three executive departments and federal agencies. They rule on cases ranging from regulatory environmental violations to disputes over disability benefits. While they are technically protected from interference and retaliation by the 1946 Administrative Procedure Act, administrative law judges are in fact subject to greater pressures and interference than traditional judges because they are directly employed and can be influenced by the agencies whose cases they decide.

For nearly a year, GAP has represented a majority of the administrative law judges in the U.S. Department of the Interior. Led by attorney Ed Slavin, GAP is seeking to halt agency interference with judicial independence, harassment, intimidation, and threats to fire the judges.

GAP represents Judges Keith Burrowes, William Hammett, Frederick Lambrecht, Elmer Nitzschke, Vernon Rausch, Sam Taylor, and Sally Willett. The judges live and work in seven states, from Minnesota to California. Known as "Indian Probate Judges," they travel to remote Indian reservations to hold hearings and probate--or divide property from--the estates of deceased Native Americans. Two of the seven judges are part-Cherokee.

The probate judges are regarded as second-class citizens by the Department of Interior, GAP has found. Judges who decide the Department's resource cases are granted higher salaries, a different title--"Departmental ALJs"--and more staff and support than the Indian Probate Judges. GAP has charged that this "dual nomenclature" and unequal resource allocation reflect discrimination, and have no legitimate business purpose.

For over ten years, the probate judges have fought to prevent interference with their judicial independence. In 1989, the judges brought a grievance challenging the Interior Department's decision to begin rating their performance. The Department's Grievance Examiner ruled for the judges in April 1990, after Chief Administrative Law Judge Parlen McKenna testified about threats from top agency management to fire the judges if they won their grievance. A month later, Congress passed reform legislation clarifying the judges' independence under the Administrative Procedure Act.

DOI responded to the ruling by escalating its harassment and discrimination, denying the judges a pay raise and removing Chief Judge McKenna, who supervised the Indian Probate Judges. McKenna maintains that his position was eliminated because of his support for the probate judges. "We do operate in a wholly vindictive and retaliatory environment," one administrative law judge told the *ABA Journal*. "McKenna threatened the political status quo at the agency and lost."

The pattern of harassment and judicial interference at the Interior Department continues. Some of the Department's practices are now under scrutiny by the General Accounting Office, and GAP has helped GAO investigators in their probe.

Three GAP clients--Judge Willett, Judge Hammett and Judge Nitzschke--testified before the Merit Systems Protection Board during the first week of August about the effect of the retaliation on them and their ability to decide Indian law cases.

The cover story of the November 1991 *American Bar Association Journal* scrutinizes DOI's firing of Chief Judge McKenna. During the McKenna trial, Judge McKenna's lawyers (Joseph Scott and Rick Salzman) revealed the hostility toward McKenna for his testimony about the threat to fire the Indian Probate Judges.

In June of this year, GAP filed a detailed complaint with the Office of Special Counsel on behalf of the probate judges, backed by a five-inch stack of evidence. After a cursory review, the office decided to do nothing, forcing GAP's seven clients to file charges with the Merit Systems Protection Board, the government agency charged with hearing federal employee challenges to adverse personnel actions. GAP filed a lengthy MSPB complaint in September.

In addition to providing support and representation for the judges, GAP is promoting legislative reforms to ensure the integrity of the administrative judicial process. GAP supports passage of the Administrative Law Judge Corps Act, which would remove all 1100 federal administrative law judges from agency harassment, placing them in an independent and separate agency. The bill is sponsored by Senator Howell Heflin, former Chief Justice of the Alabama Supreme Court, and was approved by the Senate Judiciary Committee last Congress.

Concerned members of Congress have noted that administrative law judges at other agencies--such as the Social Security Administration--have also been subject to inappropriate interference. House Administrative Law Subcommittee Chair Barney Frank (D-Mass.), for example, has accused the Social Security Administration of harassing judges who rule against the government too often.

GAP attorneys believe that the integrity of the judicial process itself is under fire, and together with seven Indian Probate Judges, GAP is leading the effort to protect administrative law judges from harassment, intimidation, threats and dismissals.

GAP News

Educating for Advocacy at GAP

The Government Accountability Project's advocacy training and education program provides a unique hands-on learning opportunity for both undergraduate and law students. Over 600 students have completed the program since it was launched thirteen years ago.

Student interns are assigned to supervising attorneys who direct students' work and serve as mentors. Interns are encouraged to become involved in every aspect of their assigned cases and projects.

"I try to ensure that each student is assigned to a supervisor whose work excites the student," said program director Don Aplin.

"I believe we live up to our promise not to 'pigeonhole' interns into limited administrative roles. The only things that restrict an intern's work are his or her personal level of skill and the amount of time s/he has to devote to GAP projects. Some student interns have ended up virtually becoming partners with their supervising attorneys."

Student interns are currently involved in all dimensions of GAP's work--from representing individual whistleblowers in litigation, to pressing Congress for meaningful legislative reform for private-sector whistleblowers, to exposing problems with Department of Energy nuclear weapons facilities and the safety of the nation's food supply.

Until 1988, GAP offered a "clinic" for students from Antioch School of Law. Antioch students received academic credit for working at GAP during a semester. Four of those clinic students have since become members of GAP's permanent attorney staff.

In January 1989, GAP was chosen as one of five required clinics for the newly-created District of Columbia School of Law (DCSL). DCSL students are required to conduct at least one GAP intake, engage in both legal and factual investigation, and produce substantial written work to complete the clinic.

During the semester the students attend clinic "rounds"--classroom instruction sessions in legal advocacy skills and substantive legal issues led by GAP attorneys on a rotating basis.

Throughout the year, GAP accepts interns from a variety of colleges and law schools. From January 1987 to January 1991, GAP received over a thousand applications for internship positions from a total of forty-five states. GAP accepted 225 interns from these applicants, representing twenty-eight law schools, twenty-three undergraduate schools, and twenty-three states from California to Maine.

GAP actively seeks women and minority students for its education program. Since January 1989, fifty-seven percent of GAP's interns have been women, and thirty-four percent have been racial minorities.

In late 1988 GAP added a fellowship position to its educational program. Fellows are usually selected from applicants who have completed their undergraduate work and are taking time off before entering graduate or law school. Fellows work full-time for six to nine months for a small stipend.

Debra Nomes

GAP's Mick Harrison (center) works with fellow Dana Gold (left) and intern Sandy Lewitsky (right).

Former GAP fellow Paul Higgins commented, "The program has taught me first-hand how public interest groups promote legislation before Congress and has taken me across the country to assist the GAP legal team in a First Amendment lawsuit." Higgins is now GAP's intake coordintator.

To apply or learn more about GAP's education program, write to Don Aplin at GAP.

GAP News

Border Inspection Victory

On October 17, 1991 the U.S. Department of Agriculture (USDA) announced that it would withdraw its proposal to eliminate border inspection of meat imported from Canada. GAP whistleblower William Lehman was instrumental in forcing USDA to cancel its controversial proposal. Lehman, a USDA Food Inspector, has rejected vast quantities of Canadian meat under the current reduced inspection system, due to abscesses, fecal contamination and metal shavings in the meat. Lehman and GAP have argued vigorously that to eliminate all border inspection would turn a bad situation into a potential disaster. GAP and Mr. Lehman will continue efforts to restore full inspection at the Canadian border.

Austin Wins Two Prestigious Awards

GAP whistleblower Inez Austin, a senior engineer at the Hanford nuclear weapons facility in Washington, has been selected to receive the American Association for the Advancement of Science award for scientific integrity. Earlier this fall, she was selected for the 1991 Hugh M. Hefner First Amendment Award in the category of individual conscience. Austin blew the whistle on Hanford's attempts to cover up reports documenting the dangers of improperly disposing millions of gallons of radioactive wastes.

Thanks!

GAP would like to extend our sincere thanks to you, our members. Without your support, we would be unable to press for reforms in the nuclear industry, to protect the environment, to safeguard our nation's food supply or to defend free speech. Countless whistleblowers would have less access to expert legal advice on how to blow the whistle and keep their jobs. Thanks for caring and making our work possible.

We would like to convey our special thanks to the foundations and organizations who have committed grants this year in support of GAP's work:

Boehm Foundation, Columbia Foundation, CS Fund, Dear Creek Foundation, Fund for Constitutional Government, Janiela Fund, J.R. MacArthur Foundation, Peace Development Fund, Ploughshares Fund, Rockefeller Family Associates, Ruth Mott Fund, Scherman Foundation, Stern Family Fund, Town Creek Foundation, and United Food & Commercial Workers

GAP Loses a Friend

We are sad to note the passing of Jim Pope, a former Federal Aviation Administration whistleblower. Jim Pope came to GAP in 1985 with concerns about his agency's failure to implement existing technology to prevent mid-air collisions. The American flying public has Jim Pope to thank for his tireless work in advancing air safety and whistleblower rights.

GAP Resources

❑ ***The Whistleblowers***
Authored by Myron and Penina Glazer, *The Whistleblowers* is a thoughtful study of whistleblowers who put their careers, marriages, and even their lives on the line to alert the public to illegal and/or dangerous situations. Includes interviews of GAP attorneys and several GAP clients. (Hardback, 250 pages) $20.00.

❑ ***Courage without Martyrdom: A Survival Guide for Whistleblowers***
This 85-page GAP publication is designed to help whistleblowers protect themselves from retaliation by their employers and ensure that their broader concerns about health, safety and environmental hazards are addressed. $10.00.

❑ ***GAP T-shirt***
GAP's four-color t-shirt is made of 100 percent cotton. Beautifully-designed graphic with text reading "Whistleblowers Help Keep Industry Clean!" on the front. The back has our name and whistle logo. Small and medium sizes only. $12.00

❑ ***PCB Blues: A Cassette Tape***
PCB Blues is an album created by Bloomington, Indiana citizens who are fighting the proposed toxic waste incinerator planned for their community. The cassette features sixteen songs, ranging in style from folk to rap. Proceeds benefit the Indiana groups fighting the incinerator, Citizens Opposed to PCB Ash (COPA) and People Against the Incinerator (PATI), and GAP. $14.00

Please send me the materials checked above.

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CLEAR-CUTTING, continued from page 6.
Kern's dissent in a hardhitting attack on Forest Service environmental practices. Kern was unsparing in his criticism of agency mismanagement, and of internal bias to increase clearcutting regardless of the environmental consequences.

One half hour before the close of business on Friday, March 9, Kern received a telephone call from a Personnel Officer to inform him that his appointment would not be renewed as scheduled the following Monday due to "budget" constraints. He was to turn in his keys and have his desk cleared out in thirty minutes.

Kern decided to fight back, and turned to GAP for help. The evidence of reprisal against Kern for blowing the whistle was overwhelming: despite the alleged budget constraints, the Forest Service was hiring more employees while Kern was laid off, and in fact spent more to replace him with two workers than would have been required to keep him on the job. But for Kern, the evidence of unjust reprisals was not enough. An administrative judge held that the Whistleblower Protection Act did not extend to temporary employees seeking renewed appointments. The ruling meant that at the end of their terms, temporary workers were subject to the "at will" doctrine: they had no rights and could be let go for any or no reason.

Since seasonal and temporary workers form the backbone of the Forest Service's environmental staff, the decision had ominous implications. GAP appealed to the Merit Systems Protection Board (MSPB) on behalf of Kern. The Board overturned the administrative judge's decision. The ruling guarantees that temporary employees are now fully protected under the Whistleblower Protection Act, reflecting a major victory for whistleblowers and the environment.

Once the Forest Service realized it would have to defend its actions before the MSPB, Kern's case was settled quickly and favorably. Kern and GAP attorneys will now shift their attention to the environmental coverup Kern had begun to expose. If you have any information about computer programs that are being rigged to cover up environmental, health or other hazards, please call Paul Higgins at GAP.

INCINERATOR, continued from page 7.
efforts had shifted the political climate in Rock Hill, and the company's permit for another incinerator was denied. As a result of citizen pressure, DHEC also began inspections of ThermalKEM facilities--and uncovered numerous violations of health, safety and environmental regulations. The company was cited for seventeen violations and fined $90,000. A full-time on-site inspector was assigned to the facility and the state agency has begun a much more stringent enforcement program.

Citizens for Clean Air and Water and GAP has also seen a significant victory in the state legislature. Despite heavy lobbying by the waste industry, the South Carolina legislature responded to Rev. Bailey's plea and adopted strict new incinerator siting standards.

But the battle is not over: these victories were immediately attacked by ThermalKEM in federal court challenges to the state's new environmental laws. And ThermalKEM is looking north for new sites. Members of the Rock Hill group have travelled extensively to lend support and strategic assistance to other citizens' groups, particularly those in six North Carolina communities who are now threatened by another planned ThermalKEM toxic waste burner.

The efforts of the Rock Hill citizens expose the bankruptcy of the industry's oft-cited charge that its critics are driven solely by "Not in My Backyard, or N.I.M.B.Y." obstructionism. Not in anyone's backyard, the ThermalKEM opponents respond, as they promote efforts to reduce the production of hazardous wastes--and the need to burn or bury them in any community.

The Government Accountability Project (GAP) is a nonprofit, public interest organization based in Washington, DC. GAP provides legal and advocacy assistance to concerned citizens who witness dangerous, illegal or environmentally unsound practices in their workplaces and communities and choose to "blow the whistle." Since its founding in 1977, GAP has helped hundreds of public and private employees and grassroots organizations expose threats to public health and safety and the environment. Bridging the GAP *is the Government Accountability Project's quarterly newsletter, edited by Eva Bertram and Christy Law, and produced by Carl Sublett.*

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BRIDGIN the GAP

Billions Lost in Star Wars Boondoggle

Aldric Saucier has devoted his career to advancing the U.S. space and defense program. He was among the elite team of space scientists that put the first Americans on the moon. A supporter of Ronald Reagan, he was an enthusiastic proponent and a chief architect of the "Star Wars" program unveiled by the former President in 1983. Today, however, Aldric Saucier is high on the Army's enemy list.

SDI scientist Aldric Saucier poses in front of a Soviet

A high-level physical scientist for the U.S. Army Strategic Defense Command since 1982, Mr. Saucier is Chief Scientist for Advanced Technologies and Architectures for the Strategic Defense Initiative. He maintains fervently that the threat of a nuclear attack on the U.S. merits a strong anti-missile defense.

But slowly, reluctantly, he has come to believe that SDI--with its $26 billion price tag--is undermining rather than strengthening our national security.

As the highest-ranked government scientist to voice dissent over Star Wars, Mr. Saucier has generated intense controversy in Washington. His credentials and record make him a formidable internal critic. Aldric Saucier joined the U.S. space program in 1959, serving as a leading scientist on the historic Saturn/Apollo moon program through the 1960s and 70s. Over twenty-five years of government service have yielded an impeccable performance record--until, that is, Mr. Saucier began questioning the viability and management of Star Wars.

National Security

STAR WARS, continued from page 1

mismanagement in the SDI program.

But the Army, he learned quickly, does not take criticism well--particularly from the "civilians" within its ranks. His job performance rating plummeted as his record of internal dissent mounted, and efforts to silence him intensified. Mr. Saucier was ostracized--and on several occasions was cursed, spat on and even physically assaulted by his superiors. In one instance in 1991, Major John Killian slapped and shoved Saucier. "The Major is known for having a bad temper, and I was concerned that he could kill Mr. Saucier," said an SDI secretary who was present at the time. "I saw Major Killian push Mr. Saucier against the wall. The major used his open hand to shove Mr. Saucier by the shoulder with enough force to cause Mr. Saucier to fly into the wall."

Finally, Aldric Saucier came to GAP in the spring of 1991--armed with extensive, unclassified documentation of scientific problems in the SDI program compounded by extreme waste, mismanagement and outright fraud. Over $10 billion of the $26 billion invested in the Star Wars program, Saucier found, had been squandered. In the last eight years, an estimated $1 billion had been sunk into duplicative research. One of his biggest concerns was that project managers refused to use existing technology, preferring to explore new technologies, however fantastic. Mr. Saucier drew up a list of studies funded by SDI that never proved viable and are now gathering dust, virtually worthless. "I got up to $10 billion in waste and I stopped counting," he said. Information on existing, proven technologies, in contrast, remained unused or were destroyed. "There was a feeling that they never would field a system," he said later, "that it would always be just research."

Gross cost overruns were commonplace, and inaccuracies in cost projections treated lightly. Mr. Saucier recalls an incident in which a top SDI official ordered a secretary to simply alter one figure on the computer screen--and a cost

continued on page 3

Star Wars: The Allegations

Whistleblower Aldric Saucier has provided inside evidence that $10 billion out of $26 billion spent on Star Wars has been squandered, and that the Pentagon has misled Congress about the total cost and effectiveness of the program. The following are specific incidences of SDI's abuse of public money and trust:

■ **The X-Ray Laser** is a nuclear device that explodes in space, directing concentrated laser beams toward a target. Officials from the University of California's Lawrence Livermore National Laboratory falsely informed the government that the system had proven itself, when they knew genuine data did not exist due to instrument failures during testing. Mr. Saucier's warnings were ignored, and his written critiques destroyed.

■ **Brilliant Pebbles** are kinetic energy devices, designed to be launched from space to collide with and destroy their targets. The concept has been falsely advertised to the government as an effective defense against threats such as the SCUD missiles used by Iraq during the Persian Gulf war. Pentagon officials are publicly predicting that the project will cost a total of $40-$60 billion, when they know the more realistic pricetag is $60-$90 billion to build and another $300 billion to $1 trillion to maintain the project. Brilliant Pebbles, moreover, is roughly half as efficient at stopping enemy threats in space as SDI officials have claimed before Congress. Further, the "pebbles" can only remain in orbit a limited number of days--rather than the ten years SDI officials have claimed.

■ **Patriot-type T-Thomis Missile Defense Systems**, in contrast to other SDI defense systems, have proven to be a cost effective, readily available and potentially superior fire control technology, to be used against non-nuclear missile attacks. Yet the agency shelved this research to advocate and develop unproven and more expensive alternatives that will not be available for years.

■ **The Ground-Based Free Electron Lasers** are electrically-powered accelerators that concentrate laser beams onto space mirrors, where they are directed back toward a target. This readily available missile defense was suppressed in order to finance research and development on an unproven, significantly more expensive alternative serviced by a linear accelerator that will not be available for the foreseeable future.

■ **Duplicative research** in the Star Wars program has cost the public hundreds of millions of dollars. Mr. Saucier has documented unnecessary, excessive reliance on nearly all major defense contractors to prepare duplicative paper architecture studies and technology studies that were never used. Thousands of scientific reports, paper studies, records and data costing hundreds of millions of dollars have remained unread. At least 3,000 documents from unread studies were destroyed when more space was needed to store new, unread studies.

■ **Boondoggles, hidden costs and gross over-runs** characterize the Strategic Defense Initiative. Costs for SDI components were underestimated by amounts ranging from $222 billion to over one trillion dollars. The program is riddled with off-the-books expenditures and diversions of appropriated funds.

For example, one general maintained a "toy museum," a showcase of 200-400 missile and other models, constructed at a cost of $500-$20,000 apiece. Most, if not all, disappeared when the general left to work for Hughes Aircraft.

In addition, Mr. Saucier has not discussed the billions of dollars that have been wasted in black budget programs designated as classified, which cannot be reported to the public.