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**DEPARTMENT OF ENERGY'S MANAGEMENT OF  
HEALTH AND SAFETY ISSUES AT ITS GASEOUS  
DIFFUSION PLANTS IN OAK RIDGE, TENNESSEE,  
AND PIKETON, OHIO**

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**HEARING**

BEFORE THE

COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

—————  
MARCH 22, 2000  
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Printed for the use of the Committee on Governmental Affairs





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**WEDNESDAY, MARCH 22, 2000**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:17 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Voinovich, Lieberman, and Akaka.

**OPENING STATEMENT OF CHAIRMAN THOMPSON**

Chairman THOMPSON. The Committee will come to order, please. Senator Lieberman, our Ranking Member, has a matter that is going to take him until about 10:30, so he will be joining us in about 20 minutes. I think Senator Akaka and some others will be joining with us shortly. But we are getting started a little late, so I want to go ahead and begin. We usually like to start these things on time, but we had a vote this morning at 10, so we had to go and vote before we started.

I want to welcome all of those who have come from Oak Ridge, Tennessee, and Piketon, Ohio to attend this hearing. We certainly appreciate you traveling all this way to be here. We know this issue is very important to you. It is very important to us and to many others at both sites who could not be here with us today, but they are well represented.

We are here this morning to discuss one of the more unseemly aspects of the Cold War: The possibility that the Federal Government put workers at its nuclear weapons plants in harm's way without the workers' knowledge.

Now, I have been concerned about this issue for some time, since I started hearing from current and former workers in the Oak Ridge area about a pattern of unexplained illnesses that many believed were related to their service at the Department of Energy site.

In 1997, the *Nashville Tennessean* had extensive coverage and interviews of many people. They had done very impressive work that brought this to the attention of not only people in Tennessee, but in other parts of the country. So in 1997, I asked then-Director of the Centers for Disease Control (CDC) to send a team to Oak

Ridge to assess the situation and try to determine if what we were seeing there was truly unique.

Unfortunately, in the end, the CDC did not take a broad enough look at the situation to really answer all the questions that had been raised. That, of course, has been a pattern at Oak Ridge and at many of these DOE sites over the years. Studies have been done, some on very narrow populations, and some on larger ones, some apparently showing some correlations and some not able to reach any conclusions at all. The data is mixed, some of it is flawed, and we are left with a situation that is confusing and from which it has been very difficult to draw definite conclusions on every aspect of it.

Yet, there is a growing realization that there are illnesses among current and former DOE workers that logic tells us are probably related to their service at these weapons sites.

For example, approximately 150 current and former workers at the DOE complex have been diagnosed with Chronic Beryllium Disease. Many more have so-called "beryllium sensitivity," which often develops into Chronic Beryllium Disease. The only way to contract either of these conditions is to be exposed to beryllium powder. The only entities that use beryllium in that form are the Department of Energy and the Department of Defense.

There are other examples, perhaps less clear-cut, but certainly worthy of concern—uranium, plutonium, a variety of heavy metals found in people's bodies. Anecdotes about hazardous working conditions where people were unprotected both against exposures they knew were there and exposures of which they were not aware.

So it is time for the Federal Government to stop automatically denying any responsibility and face up to the fact that it appears as though it made at least some people sick. The question now is: what can we do about it? And how do we make sure it never happens again?

I want to say that I believe the Department of Energy—and especially Dr. Michaels, who will be testifying here this morning—have taken important steps forward in this regard. Rather than continuing to deny any linkage, they have said that if the Department made people sick, then we should compensate them for it. I look forward to working with the Department and with the Oak Ridge community, and with my colleagues in the Senate to determine the best and fairest way to accomplish that goal.

In the end, we must remember that these workers were helping to defend our Nation and protect our security. They were patriotic and proud of the work that they were doing. If the Federal Government made mistakes that jeopardized their health and safety, then we need to do what we can do to make it right. A great country can do nothing less.

Senator Voinovich.

#### **OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. Thank you, Mr. Chairman. I would like to first of all thank you for holding this hearing this morning. It is very important to the people in Southern Ohio and your own State and I think that this hearing has national implications in terms of how this country treats people that have been injured as a result

of working at nuclear facilities that are important to our Nation's national security.

I would like to thank Sam Ray and Jeff Walburn for your courage in coming here today and relaying their personal experiences to the Members of this Committee.

Since 1954, and the start of the Cold War, the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, has served as one of a handful of our Nation's processors of high-quality nuclear material. The main purpose of the plant at Piketon was to enrich uranium for the use in nuclear weapons and propulsion systems for our naval vessels. Sometimes people forget about the fact that almost all of our major naval vessels are propelled by nuclear power.

Over the years, thousands of dedicated men and women in the civilian workforce at Piketon helped keep our military fully supplied and our Nation fully prepared to meet any potential threat. Their success is measured in part with the end of the Cold War and the collapse of the Soviet Union.

However, their success came at a high price.

Over the years, the *Columbus Dispatch* has run a number of articles dealing with health and safety incidences among the employees at Piketon. The most recent series of articles showed that for decades, some workers at Piketon did not know they had been exposed to dangerous levels of radioactive material, because, until recently, proper safety precautions were rarely taken to adequately protect workers' safety. Even when precautions were taken, the application of protective standards was certainly inconsistent.

For years, few workers dared openly speak about the loss of friends and co-workers to illness, their own diminished health and the increased risk that they had placed on their families. Many employees fear that exposing such health and safety problems would jeopardize the very existence of the plant, and the thousands of good-paying jobs it provided the community, and there are still employees that are still unwilling to come forward.

To a great extent, those who did complain to management were labeled as "malingerers" or "malcontents" and were told that their health complaints were "unrelated" or "all in their head."

Mr. Chairman, to me, it is unconscionable that people who were in management could be so insensitive and uncaring about their fellow workers. If we think about the two great commandments, love of God, and love of fellow man, certainly that second great commandment was broken over and over again at that plant in terms of how they treated their fellow workers and their fellow man.

Our witnesses today representing the workers of the Portsmouth Gaseous Diffusion Plant have legitimate questions: What kind of material was handled? When was it handled? What kind of exposure risk existed at the entire facility? Are there still existing risks? And, what are the long-term health concerns of workers at the facility and for their families?

The government and its contractors must provide clear facts regarding the risks that Piketon's employees have endured, and the same thing at Oak Ridge. Once those facts are known, it is necessary for the Federal Government to provide whatever health care

assistance is needed for those workers who have health problems as a result of their employment at those facilities.

Last July, President Clinton appeared to take this responsibility seriously when he announced a health initiative for DOE workers to help both current and former employees of DOE's nuclear facilities. This health initiative included the administration's intent to propose legislation compensating energy contractors exposed to beryllium and other toxic and radioactive materials. The initiative also directed the White House's National Economic Council to conduct an interagency review to focus on what other illnesses warrant inclusion in this program and how this should be accomplished. That report is due at the end of this month.

The administration has already acted on part of this initiative, having had legislation introduced by Senator Bingaman that would establish a compensation program for employees of the Department of Energy who suffer from Chronic Beryllium Disease, what we call CBD. Beryllium, which is a toxic substance, can cause major health problems if proper precautions are not taken while it is being handled.

Under this bill, S. 1954, CBD sufferers would be entitled to \$100,000 in compensation. The legislation will provide a measure of relief to workers in a handful of States, including Ohio, who are afflicted with CBD. In addition to CBD sufferers, S. 1954 covers a small group of workers at Oak Ridge, and establishes a pilot compensation project for workers whose illnesses may have been caused by on-the-job exposure to radioactive substances at Paducah.

S. 1954 also provides for a shift in the burden of proof from an employee to the Federal Government in proving an illness is job-related. That is a very, very important issue. Under current law, an employee at a nuclear facility who alleges that his or her illness is related to their job must establish a direct link in order for their illnesses to be compensated. The problem is, many individuals were not able to get coverage under State Workers' Compensation because of the latency period of their disease from first exposure to the onset of the illness. Too much time went by, so the statute of limitations was exceeded.

As a cosponsor of S. 1954, I think it will help those workers who suffer from CBD and ensure that workers who have been harmed by the government can get proper and timely benefits. However, this legislation does not address the health concerns that have been raised by the men and women who work at the Piketon, Ohio plant.

I would like to say, for the record, before this legislation is acted upon by the Senate, it must be amended to include all injured workers at the Department of Energy nuclear facilities across the Nation, including Piketon, right across the board, all of them. Let us not do this thing halfway.

I believe once it is amended, S. 1954 will provide relief to thousands of nuclear workers and no longer force them to undertake the difficult task of proving their illnesses were job-related. However, early indications, and I am very concerned about this, are that the NEC's report due at the end of next week, will contain a



recommendation that will take a 180-degree turn from where they are today.

I understand the NEC report will continue to place the burden of proof on proving job-related illnesses on the workers' shoulders by establishing a process that will consider radiation dosimetry records, age, lifestyle, and workplace hazards. Mr. Chairman, I am concerned that if the NEC recommends this burden of proof standard, many employees will find it nearly impossible to prove that their job was responsible for their illness.

At the public hearings in Piketon that I attended last October, many workers stated that plant management not only did not keep accurate dosimetry records, in some cases, they changed the dosimetry records to show lower levels of radiation exposure. They changed them. One of our witnesses here this morning will testify to that effect. If workers at Piketon cannot produce consistent, reliable, and factual data in order to meet this burden of proof standard, their ability to receive Workers' Compensation benefits will be virtually nonexistent.

Mr. Chairman, from everything that I have read, the hearing I attended, and everything I have ascertained about the practices at Piketon, I believe that there was a deliberate effort by management to down play and minimize the risk to workers that were exposed at that facility.

Energy Secretary Richardson has already set the precedent of shifting the burden of proof to the government by way of the administration's bill, S. 1954. It would be unfair to workers who have already been injured and neglected by our government for the administration to back away from their own legislative proposal.

I hope that the Committee will listen closely to the testimony of Mr. Ray and Mr. Walburn and the other witnesses that are here today who represent countless others. This place could be filled, as it was when I was in Piketon, with people that have stories to tell that will break your heart. These individuals have only asked that the U.S. Government, the government that they spent their lives defending, acknowledge that they were made ill in the course of doing their job and recognize that the government must take care of them.

Sadly, because of the government's stonewalling and denial of responsibility, the only way any of these employees will ever receive proper restitution for what the government has done is to file a lawsuit against the Department of Energy or their contractors. Mr. Walburn, I understand you have been forced to do that.

Mr. Chairman, these issues have been around for more than 40 years—40 years. In 1959, there were 6 days of hearings held on the topic of employee radiation hazards and Workers' Compensation. In 1962, there were 4 days of hearings held on radiation Workers' Compensation.

I believe that the brave men and women of Piketon, Oak Ridge, and Paducah—as well as all the others that have served our Nation—deserve to know that the Federal Government was responsible for causing them illness or harm, and if so, to provide them the care they need. The time to act is now. We have had enough hearings over the years. Now is the time to do something to take

care of these people. We owe it to them. They served their country and we have an obligation to them. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. I appreciate your remarks, especially with regard to the legislation. I could not agree with you more. I think that the legislation proposed was a first step. It talked in terms of likelihood, which is a whole lot less than the burden of proof necessary in most lawsuits. I think that was on track.

But the \$100,000 lump sum for a limited group of people is insufficient. It does not cover medical expenses, for example, and that is going to be—it is one thing if you lose a limb or something like that. Most of your medical expenses are over with. Workers' Compensation will give you permanent, partial, or whatever, and pay you out. But in something like this, a disease like this, it is your medical expenses that are going to be the big item from now on, and so that is going to have to be addressed.

I might point out, too, the reason we are in Washington, DC, today instead of in one of these other locations, in Piketon or Oak Ridge or other places that we could be, is because this is a national problem and it should not be limited to the concern of people at these locations and the media in these locations. It should be considered a matter of national concern.

The other reason is that while we want to get a limited amount of additional information on the record with regard to some of these problems, I do not think you have to convince the Members of this panel that where there is this much smoke that there is some fire, that there is some causality there. As Senator Voinovich said, we could fill this building up many times over with people, and I do not want you to feel like you are getting short shrift because just a handful are testifying here today, because we get information from the DOE, we get information from people on the ground, we talk to people individually. We are monitoring these studies. We are already convinced that there is a major problem here.

What we need to concentrate on now is what we are going to do about it. Usually, or ideally, I guess you should say, in solving a problem like this, you have exposure on the one hand and you have illnesses on the other and you see to what extent they go together. The only problem here is that the exposure data is very, very faulty. They did not keep adequate records. They covered up some information. To this day, they are still redacting certain information for national security purposes, which is something we are going to have to look at. So it is a very, very difficult thing to show causality under these circumstances.

So our challenge is what do we do about it? How do we set up a system that is fair, and I think the Department is trying to move in that direction, a system that is fair in order to make this determination. Everybody that has an illness that works in a particular place cannot be compensated simply because they have an illness. There has got to be some kind of connection. But the burden, as you say, the burden of proof should not be on the workers anymore because of this history. You cannot deprive people of an opportunity to make their case and then say, you have not made your case, which is what has happened in some cases.

There should be some presumptions, and I think the Department and the administration is going to come with additional legislation, and what we are here today, I think, to do in part is to tell the administration, when you come with this legislation, there had better be some things in there, some basic things in there or it is not going to go and we are going to have to do something else. I think there need to be some presumptions, shifting of the burdens you have talked about, some presumptions, all taking into account the fact of this history and the fact that we cannot show causation sometimes when perhaps we otherwise could if the records were there and people had dealt honestly.

So that is why we are here. We want to know what the government is doing, how far along are they, where are they in terms of this analysis. It is a big, big job. It is a tremendous job. Nobody has ever tried to do anything like this before. There has not been this kind of testing and sampling going on in the country with regard to anything like this before. There have been some discrete bills passed for particular people, black lung disease and things like that in the past, but nothing of this magnitude. It is a tremendous job. We want to know how far along are they, is Congress doing its job. We are not necessarily providing enough funds to move fast enough to test all these people. We want to talk about that.

Then we want to talk about a compensation, a fair way to go about dealing with a vast number of people and come up with a system of fair adjudication and compensation whereby not everybody who calls in and says they want a check automatically gets one. You have got to be honest about that. But they have a fair chance of saying, if you had this kind of exposure or the government has kept you or contractors have kept you from showing what the exposure is, then the burden is on the government. It is just that simple, and you consider it on a case-by-case basis.

All of that is just to provide some background as to why I thought it was important to have something here in Washington, DC.

Senator Akaka, did you have any preliminary statement?

Senator AKAKA. Yes, I do.

Chairman THOMPSON. Senator Akaka.

#### **OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing today on health and safety issues at the Department of Energy's gaseous diffusion plants at Oak Ridge, Tennessee, and Piketon, Ohio. I will be brief, Mr. Chairman.

It is indeed an honor to receive the testimony of these fine people and I appreciate their willingness to appear before us today. I am hopeful, like the Chairman, that the recently introduced compensation proposal will receive all due consideration.

Mr. Chairman, the issue of government compensation is one with which I am familiar. As you may know, under the 1986 Compact of Free Association entered into between the United States and the Government of the Republic of Marshall Islands, a \$150 million nuclear claims fund was created. The fund is to compensate Marshal-

lese victims of radiological exposure from U.S. nuclear testing in the islands during the 1940's and 1950's. The fund is intended to generate a perpetual source of income for potential claimants, and I thought I would mention this to you and to the folks here.

Again, Mr. Chairman, I am very pleased to be here today with you.

Chairman THOMPSON. Thank you very much.

Our first panel consists of four current and former workers at the gaseous diffusion plants in Oak Ridge and Piketon. The witnesses are Vikki Hatfield, the daughter of a former K-25 and Y-12 worker in Oak Ridge. Thank you for being with us, Ms. Hatfield. Ann Orick, former K-25 worker in Oak Ridge, thank you for being here. Sam Ray, former worker at the Portsmouth Gaseous Diffusion Plant. Thank you, Mr. Ray. And Jeff Walburn, a current worker at the Portsmouth Gaseous Diffusion Plant.

I understand that you have opening statements. Proceed. We have a lot of people to hear from here today, but I am not going to limit you. Say what you have got to say. Ms. Hatfield, would you like to begin?

Ms. HATFIELD. Sure.

Chairman THOMPSON. Excuse me. We have just been joined by the Ranking Member. Senator Lieberman, would you like to make any preliminary comments.

#### **OPENING STATEMENT OF SENATOR LIEBERMAN**

Senator LIEBERMAN. Mr. Chairman, thank you. I would like to very briefly welcome the witnesses and thank you and Senator Voinovich for the work you are doing here.

I have real concerns about the information that you brought to my attention about the environmental safety and health issues at the gaseous diffusion plants and I appreciate the interest and the leadership that you both have shown. Unfortunately, because of scheduling conflicts, I cannot stay here a long time, but I wanted to stop by and express my support for what you are doing here and also to spend as much time as I could hearing the folks who are before us. I thank you very much for your courtesy.

Chairman THOMPSON. Thank you very much.

Senator VOINOVICH. We also have Congressman Strickland here, if we could just—

Chairman THOMPSON. Would you like to introduce him?

Senator VOINOVICH. I understand that Congressman Strickland is here today and I would like to just acknowledge his presence. He represents that district in the State of Ohio.

Chairman THOMPSON. It is good to have him with us.

Ms. Hatfield.

#### **TESTIMONY OF VIKKI HATFIELD,<sup>1</sup> DAUGHTER OF FORMER K-25 AND Y-12 WORKER, KINGSTON, TENNESSEE**

Ms. HATFIELD. Good morning. Mr. Chairman and esteemed Members of the Committee, my family and I appreciate being given the

<sup>1</sup>The prepared statement of Ms. Hatfield appears in the Appendix on page 48.

opportunity to speak to you on a subject that is very important to us.

My father, Leon Meade, began working for the Department of Energy in 1949. During this time, he worked in all the plants in Oak Ridge. The job that we feel has impacted our family the most is the one he had from the years of 1969 through 1985. During this time, he worked in assembly. He was, in fact, assembling the devices that were made at the Y-12 facility, which included the handling and cutting of beryllium and asbestos.

In 1985, the company offered a retirement package, which my father accepted. My parents and grandparents owned a 150-acre farm and my father enjoyed working on it. He retired and had four fairly good years, and then his health began to decline.

The sickness started with a lot of pain with no apparent cause. You must understand that for him to even complain was unusual. He was never sick. He never took medication. We knew something was wrong and we were advised to take him to the Mayo Clinic in Jacksonville, Florida. We did this twice, to no avail. The doctors did not know what was wrong. They found what they thought was evidence of early myeloma, a cancer. They could not find it in his body. They knew something was wrong but could not figure out what.

We also made several trips to Vanderbilt Hospital in Nashville with the same outcome. Yes, something is very wrong, but we do not know what it is. There were repeated trips to doctors and hospitals in Knoxville, Tennessee. He was admitted several times to the University of Tennessee Hospital as well as Baptist Hospital. Each time we made these trips, we always braced ourselves for the worst. We knew that something was terribly wrong, but we still could not get a diagnosis.

The years went on and my father grew much worse. He started having constant pain in his lower abdomen and in his prostate. The pain was constant. He stayed on antibiotics for over a year and nothing changed. The pain has grown and spread.

We finally found the cause of his trouble. After one of our many hospital stays that was for what appeared to be pneumonia, a specialist came to talk to us about where my father had worked and what he had done. He told us that he wanted to test my father for beryllium. Although my father understood what he was saying, the rest of us were in the dark. We did a little research and found that beryllium reacts as a cancer. Without someone knowing what he or she are actually looking for, this disease can be present without being diagnosed. This explained why the apparent cancer was showing up. The test results showed beryllium in his lungs, asbestos coating the outside of his lungs, as well as heavy metal in his body. These heavy metals were partly responsible for the constant pain in his lower abdomen.

During this time, my family's feelings were great. We finally knew what was wrong—let's fix it. We found out there is no fix. We have watched a man who has been in control turn into an invalid. We have had to sell our cattle because he can't take care of them. We have watched his weight fall from 190 pounds when he retired to something less than 120 pounds. He is over 6 feet tall, so you can imagine that he is only skin and bones.

We try to think of things that he can or will eat. Nothing will stay down. He can no longer go out in public. He is embarrassed because he does not know when the vomiting will strike. He cannot get his breath; he must have oxygen. He cannot bathe himself; he must have help. He cannot walk without the aid of a walker. He does not sleep at night because of the pain and because he is afraid to die. He takes over 16 pills a day. Some days, it is hard to get them to stay down, and other days he misses the medication because of the sickness. He does not see the benefit and we have to talk about the need to continue to try to take the medicine.

I have not touched on how this affects my family as a whole. My mother stays with him 24 hours a day. He does not like for her to leave because he is afraid something will happen. My brothers and I take turns getting the medication and groceries. One of us must always be on standby in case of emergency. He knows that he is dying and there is nothing that can be done. There is no cure for Bryillious, Asbestosis, or the heavy medals in his body. We know that his time is short, but it is his quality of life that we are concerned about.

In January, he was sick and in the hospital. When he came home and they needed to give him medication, this medication cost \$500 a day. This was not possible, and the insurance would not cover it. We need help with this. His medical expenses are rising daily. His insurance questions his stays in the hospital because they think the Department of Energy should be paying for his stays due to his diagnosis. Every time we go to a doctor or hospital, we have to go through a mountain of paperwork about who is responsible.

In the first few months of 2000, he has already had several hundred of dollars in out-of-pocket prescriptions. We can assume that by the end of the year, if we are fortunate enough to have him that long, and if things stay the same and he gets no worse, the cost will be in the thousands of out-of-pocket costs. If things worsen, as we suspect they will, the costs could easily go into the tens of thousands of dollars.

A decision by his insurance company has now been made that limits pain medications to cancer patients. He is not diagnosed with a cancer, so therefore his pain medication is limited. I do not believe that my father or any former employees who are in the position he is in can make it through the day without some help.

The bottom line is really very simple. My father did his job for over 31 years. He did it because that is what the Department of Energy asked of him. He was not told that he was in danger and that he was risking his life each day he was there. I believe there was evidence that goes back as far as 1952 that proved the Department had knowledge of the beryllium and how it could affect your health.

In December when I attended my first meeting with Dr. Michaels and his staff, I was surprised at the number of people who came forward to speak. I feel sorry for the people who have just been diagnosed. If they are in their late 30's or even their 40's, they will have a long and expensive road to travel.

We have found the Department of Energy not to be very helpful. They have asked my father to go to Nevada for examination, as well as New Jersey. We have to explain to them that he can hardly

walk through the house. How can he be expected to make a trip like that? As recently as a month ago, we did get him to Oak Ridge because the Department wanted to run more tests. We filled out more paperwork. Every time they want to run more tests, we go through the same paperwork. It is all in his file and it takes a lot of effort to get this paperwork filled out. I realize it is important, but when it is in the file, they would not be asking him to come forward and take these tests if they did not realize it was already there.

My father has been retired for 14 years and 10 of these years he has been sick. During this time, there has not been an increase in his retirement benefits, his insurance coverage, nor has anything been offered to help make this devastating illness easier for my mother or the rest of my family. How can we be expected to give him the quality of life that he deserves?

I would like to leave you with one last thought. You are in the room with your father, a man who never cries, and you watch as tears run down his face and he says, "All I really want is to stop hurting and to have my health back, is that too much to ask?" We know that there is no answer to this. There is no way we can stop or prolong what he is going through. We feel that it is time for the country as a whole to come forward and take responsibility. I do not know that we can do it in my father's time. His time is very short. But it is time to step up to the table and say, look, you did your job. You worked hard at it. What can we do to help you at this?

The expenses, the medicine, just having help within the family, having someone that comes and stays and gives my mom some relief, that would be wonderful, but we need help and it is things that the insurance companies will not help us with. I do not believe that it is fair that my family has to take what they have set aside for their retirement to take care of these problems. I mean, my dad is going to be gone and my mom is still going to have to have something to live on. At the rate we are going, she is not going to have it. It is not going to be there. We are going to wind up selling our farm just to be able to take care of these expenses, and that is not right. That is not the fair way for the government to react or for the government to do business. I thank you for your time.

Chairman THOMPSON. Thank you very much, Ms. Hatfield, very powerful. Mrs. Orick.

**TESTIMONY OF ANN H. ORICK,<sup>1</sup> FORMER K-25 WORKER,  
KNOXVILLE, TENNESSEE**

Mrs. ORICK. Good morning, and thank you so much for the opportunity to be here today. On behalf of the K-25 workers, we have worked this issue now for about 5 years, when we first addressed the medical department and they told us we could not talk about this because it was a sensitive issue and they would not put the things in our medical files that we were finding in our hair and in our blood and in our urine, like the cyanides and the uraniums and the beryllium. They did not want that in there, but they wanted to know every time you clocked out to go to the doctor for a tonsil-

<sup>1</sup>The prepared statement of Mrs. Orick appears in the Appendix on page 63.

lectomy or have your finger taped up where you cut it. They put all that in, but they denied the things that pertained to what was actually happening to our bodies.

I can relate to what this lady has said because my father worked at Y-12 and I remember, growing up as a little girl, watching him die. I would stand and look over the big 4-poster bed and look at him and he would suffer and he could not breathe. At 47 years old, he was dead, and I never did understand what happened to my daddy. I never knew what he did. It was always so hush-hush. You did not talk about it. But I knew he worked hard and I knew things worried him. He worried a lot.

My husband went to work at the K-25 site after being a Vietnam War veteran. He proudly served his country there and came home and went to work at K-25, where he worked as a maintenance mechanic out there for almost 28 years. He was the first person diagnosed at the K-25 site with chronic beryllium disease, and, of course, immediately we were informed that he did not get it there because they did not have any. It is funny they did not have the cyanide, either, that was showing in our blood. They did not have anything that we were trying to talk to them about that was hurting us. We do not have any of that here. You could not possibly get that here.

And so this past 5 years has been a real struggle for us. We have worked hard to get this issue brought forth and we have suffered and our health has gone downhill.

As for me, I would just like to tell you just a little bit of some of the things that have been found, and I would like to do this because, Senator Thompson, you related to the fact of what we can cover and what we cannot. It is unfortunate that most of the things that are wrong with my body may not have scientific and medical evidence, where some gentleman in the 1800's has studied and wrote a book and proved that uranium caused this or cyanide caused that, so I may not have that solid medical proof, but I worked in the very trenches of that site in the uranium, cleaning it up, in the UF-6, transferring it over, in the nickel, moving it from one vault to another, and all the hundreds of chemicals and thousands of compounds that are out there, and we do not even know when they are mixed together in the body, what they do. Nobody certainly has had time to look at that.

But some of the things that I suffer which relate to all of these people back here from K-25 include things like peripheral vision loss. We are losing our peripheral vision. They do not know why, because it is not a specific pattern which relates to a proven eye disease, but yet our eyes are blackening.

We all have chronic fatigue. It was an effort for me just to get here. Even from yesterday morning, leaving, and just one plane ride, I got to Detroit and I was so sick that we had to get a cart to get me to the other plane. I have no energy. I am shaky. I tremble. I have to use a cane to get around.

I do not smell things anymore. I have no smell. We cannot remember things. We cannot concentrate. We have severe bone and joint pain, and my bones are so cold that I just wrap blankets around me all the time and sit in a chair because I am trying to get warm.



Sway balance, all of us have lost our balance. All of us pitch. We have no control of our balance whatsoever. We suffer severe migraine headaches, sleep disturbances. None of us sleep over 3 or 4 hours a night. We hurt. Our bodies hurt. You cannot sleep when you are in pain.

We have heart rate problems. My heart rate at the plant when I had the high thiocyanate readings were up to 180 beats a minute, 180 beats a minute, and still, all of us suffer with a rise in rapid heart rate with no really explanation for them there.

Upper airway disturbances, we cannot get our breath. When the pulmonologist went down in my lungs, he would just touch them and they just break and bleed and they do not know why they are so fragile, but they are, and that is what they find in these beryllium workers.

Tremors, right-sided weakness, elevated nickel levels in my blood, and I have been gone from that plant for 5 years, but I still have elevated nickel and aluminum readings in my blood. Gentlemen, I do not have nickel at home. There is no way I got that at home.

Severe skin rashes—when I left there, I was so broken out with big, huge eruptions on my skin, I looked hideous. I looked like a young teenager with an acne problem, and they would break open and bleed. And they tried all kinds of treatments and they could not heal them up.

Gastrointestinal diseases, I had them make this picture<sup>1</sup> for you because I want you to see that this little pinhole right here is all that is left in my stomach. It should be this size, where they first go in. My stomach cavity has grown together. This is the second time in 2 years this has happened. I already had one major surgery where they cut out a big portion and tried to make a hole for my food. And now they think they are going to take over half my stomach and half my intestines out, which will leave me strictly on liquids which are going to pour directly through my body. I will never be able to leave the house and do anything anymore, if I get through the surgery, and with all the health problems, it is very, very severe for me to face. If I do not have the surgery, in February I was told I would live 3 to 6 months, so 6 weeks of that time has gone. I have chosen not to do it.

I have come here today hoping that I can relay some of these things to you. I cannot keep having major surgeries. They are not even covered. Just yesterday before I left home, I faxed \$9,000 of unpaid medical bills down to the Lockheed Martin benefit plans asking them, please help us with this. Some of this should be covered in some way.

We all have had shut down gallbladders. We all have nausea and vomiting. I have nausea most of the time and am on medication just to sit here this morning because I am so deathly sick. We have colon problems.

We all have been diagnosed with depression. Of course, that is the main thing with the workplace. Oh, you are just depressed. You have a mental problem. Just get yourself a psychiatrist and you are

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<sup>1</sup> Pictures referred to appear in the Appendix on page 71.

going to be just fine. Well, unfortunately, I have not found a psychiatrist yet that can fix the things that are wrong with me.

We have all kinds of other things that I could talk about here, but I am just trying to give you a brief overlay, and this is not just me. This is the bodies of these people that sit here today. And I am not sticking to what I wrote down. I am sorry, but I am just trying to talk to you from my heart. I want you to understand this situation.

We need help. A \$100,000 bill is not going to help us, and do you know why? What happens to us in Oak Ridge is the way the disability is set up, the Lockheed Martin Met Life disability plan takes that entire \$100,000 from us, leaving us with nothing. They recuperate their losses, they say. Well, that is fine. When are we going to recuperate ours? The little bit of a disability check that we are allowed, we still have to pay our insurance and that costs me \$150 a month. We still have to buy our medicines, and we never, my husband and I never buy our medications. We cannot afford it, \$40, \$50 a bottle after insurance pays, and I am on about eight things and he is on three or four. We do not have that kind of money. That takes more than my disability check and part of his.

We lost our home. We had to sell it. We could not do the maintenance, we were not able. Plus, we did not have the funds to keep it anymore. So we do not even have a home. We have worked all these years thinking that we would retire and someday maybe have a little bit of a life, and here we are looking at making funeral arrangements.

You know, I wanted all my life to be an organ donator. I think that is so important. But I, unfortunately, do not have anything in my body that is not so contaminated with uranium and plutonium and all these other things that I can even give anything to anybody else to help them live.

So this right here today is the only thing I can give to help these other people live, and it is not just Oak Ridge and it is not just Ohio, it is the country. And it is really sad, because if you had asked us to come down there and work for this country's national security and you had said, now Ann, I am going to put you in here in this highly enriched uranium and it may damage your health or it may take your life but we need you in here because otherwise the freedom of this country is completely gone, we could be invaded, anything could happen, and unless you do this job, everything we have worked for all these hundreds of years when we established this country is just gone, I would have went. They would have went, if they had just told us.

And they knew. They knew from the early 1940's what they had. We have documentation from the DOE's own reading rooms that show they knew what they had, and to keep worker morale up, they just moved you around in a job. You did not talk. You did not discuss what you did.

But when you place workers in areas and you know they are contaminated, and even to this day, the vent systems in the newest buildings, even outside the security fence, when you swipe them and you run them, they have got nickel and cobalt and strontium in the vent systems in the clean buildings. What do you think we got?

You have got to realize that a bill limited to certain diseases or certain scientific proof is not going to work for somebody like me. I worked hard for all of you to live here in this country, free and secure from whatever. I would do it again. But I would have expected that this country be truthful and tell me what I am facing. They did not have to disclose the classified issues. They could have just said, this may make you sick but we will try to help you. We will try to treat you. We will get you to a doctor. Unfortunately, we do not have doctors in that area that have the expertise to even try to work with us, and if they do, they are run off like Dr. Reed was. They are run off. They are cut off the medical plan.

So it is very difficult for us to go anywhere and we are not even treatable. But maybe we could offer a little bit of help for the medicines or for whatever that we cannot afford to go do, and maybe we could offer a little bit of help for the future for those workers that may still be in that, that we just may go ahead and tell them and right now get them somewhere and get them some help where they will not be in the situation I am in, with 3 to 6 months to live.

I have not said anything I have come here to say, but I hope you will read my testimony.

Chairman THOMPSON. Oh, absolutely.

Mrs. ORICK. I tried to be very, very distinct with it and I appreciate it. Thank you.

Chairman THOMPSON. Absolutely. Thank you. You are a very eloquent spokesman for an awful lot of people, and you, too, Ms. Hatfield.

Chairman THOMPSON. Mr. Ray.

**TESTIMONY OF SAM RAY,<sup>1</sup> FORMER PORTSMOUTH GASEOUS  
DIFFUSION PLANT WORKER, LUCASVILLE, OHIO**

Mr. RAY. Thank you very much. Good morning, Mr. Chairman and Members of the Committee. Hopefully, you can understand me. I am Sam Ray, a former uranium enrichment worker at the Portsmouth Gaseous Diffusion Plant.

I was hired in 1954 and worked as a production operator and instrument mechanic. In May 1994, I was diagnosed with a rare type of bone cancer, chondrosarcoma. As a result, I had to have my larynx removed. At that point, I had no option but to take a disability retirement. My understanding is that there are two things that cause my type of cancer. One is Paget's disease, which I did not have, and the other is radiation exposure, which I did have. It is well documented that certain uranium compounds are bone seekers. I might add, I have never smoked a day in my life. They are two different types of cancers.

But I am not here today to talk about myself. I am here to describe how, with the benefit of Cold War secrecy, the government and its contractors made decisions that traded off our well-being for the convenience of the production and I am here to ask you for your help in passing legislation to help remedy some of these wrongs. And I just might add, basically, the two ladies who are sitting here, this would be beneficial to them if we could get some of this legislation passed.

<sup>1</sup>The prepared statement of Mr. Ray appears in the Appendix on page 72.

From 1961 to 1978, Portsmouth operated a facility that converted highly enriched uranium, HEU, oxides into feed material. Much of this oxide, 87 percent enriched, was shipped in from the Idaho chemical processing plant. A good friend of mine, Robert Elkins, worked in the oxide plant from 1962 to 1965. By 1965, he was placed on permanent restriction due to high internal body counts of radiation. He had enriched uranium, technetium, neptunium, potassium, and cesium in his body. When he retired in 1985, 20 years later, he was still on permanent restriction. In the 15 years since retirement, the plant management has never contacted him to check on his health or suggest that he receive post-retirement monitoring.

However, Mr. Elkins was contacted by an individual from Hanford, Washington, presumably the transuranium registry, who wanted to pay \$500 for his body so the government could study what happened to the radiation in his body after he passed away. His wife would receive the \$500 upon his death. They both declined the offer. It would appear the government is more interested in what happens to Mr. Elkins after he is dead than what happens to him while he is still alive. Other workers in this area were placed on work restriction due to radiation exposures, and unfortunately, many of them have passed away.

DOE knew this facility was unsafe. A 1985 DOE report states, "the oxide conversion facility was not able to maintain adequate containment of the radioactive materials during operating periods. As such, the decision was made in the 1977 time frame to shut down that facility pending modifications to provide adequate containment measures. These modifications were never funded and the facility has not operated since."

The Portsmouth plant's radiation dosimetry programs have been woefully inadequate. For example, NIOSH discovered that between 1954 and 1992, the site never measured for neutron exposures. Uranium deposits in the cascade causes neutron emissions.

When I was hired in 1954, process operators were not allowed to wear coveralls or safety shoes. Your clothing became contaminated. We took this contamination home with us on our clothing and shoes. Sometime in the 1960's, coveralls became operational for process operators. However, it was not until the 1990's when contamination controls were implemented that they became mandatory. In reality, they should have always been mandatory.

Until the mid-1970's, our respirator protection consisted of World War II Army assault masks. It was years later that we learned that these were not adequate to block the radionuclides or toxic chemicals.

Due to the lack of a contamination control program, certain buildings were becoming more contaminated. Equipment would malfunction and process gases, UF-6, would leak to the atmosphere. On one occasion, it was so bad that it looked like a fog moving up through the building. The building is about a half-mile long. After one major release in a withdrawal area, there were green icicles with crystallized uranium hexafluoride hanging from the ceiling and I beams.

While management assured workers there was no hazard at the uranium enrichment facility in Portsmouth, it warned supervisors

in a 1962 memo, "We do not expect nor desire that the philosophy will be openly discussed with bargaining unit employees. Calculations of contamination indices should be handled by the general foreman and keep as supervisory information in deciding the need for decontamination."

Heavy metals were a major hazard at Portsmouth. Between 1981 and 1990, decontamination workers were exposed to mercury up to 175 times the OSHA threshold limit.

Correctly, I am a retiree representative for the Worker Health Protection Program, which is funded under Section 3162 through DOE funding. It gives former workers a one-time complete physical. When I talk to former workers and retirees, I find out how little they knew about what they were exposed to. I get calls from widows whose husbands have passed away with cancers. They want to know if their spouses' exposure in the workplace caused their illness.

I would like to summarize by offering several recommendations for Congress to consider. No. 1, worker compensation legislation must cover radiation-exposed workers at all DOE sites, not just Paducah. The administration's bill does not go far enough.

No. 2, worker compensation legislation, to be of any real value, must shift the burden of proof for causation to the government. The government's failure to properly monitor for radiation and toxic hazards eliminates the evidence to prove causation. This imposes an insurmountable burden of proof on the victim.

No. 3, the current medical training program funded under Section 3162 should go even further, with lifetime annual medical monitoring.

No. 4, we need fully-paid medical insurance for displaced or retired workers. A medigap supplement should be fully funded by the government for retired nuclear workers.

No. 5, workers at Portsmouth and Paducah face a unique problem with retiree health care benefits. Since USEC was privatized, it assumed responsibility for the Lockheed Martin retiree health care benefits program. However, these benefits could be in jeopardy if USEC, as many predict, will fall into bankruptcy or liquidate in several years. Unlike pensions, retiree health care benefits are not guaranteed under ERISA. We need legislation to guarantee that these health benefits will be delivered as intended.

I would like to thank the Committee for the opportunity to express the problems that the workers at nuclear facilities are having. Thank you.

Chairman THOMPSON. Thank you very much, Mr. Ray. I appreciate it. Mr. Walburn.

**TESTIMONY OF JEFFERY B. WALBURN,<sup>1</sup> CURRENT GUARD WITH RESTRICTION, PORTSMOUTH GASEOUS DIFFUSION PLANT, GREENUP, KENTUCKY**

Mr. WALBURN. Mr. Chairman, and Senators, I would like to say that I am glad to be here. John Game, my union representative that sits behind me, had to represent me all week as the company that I worked for, the U.S. Enrichment Corporation, was trying to

<sup>1</sup>The prepared statement of Mr. Walburn appears in the Appendix on page 84.

lay me off under ADA concerns because they no longer wanted to accommodate my disability. When the light of the Senate shown on them, they put their teeth away. They do not bite so hard in the light, and I am here. Through the work of John Game, I am here.

Mr. Chairman, honorable Senators, thank you for allowing me to testify today. My name is Jeffrey Walburn. I live in Greenup, Kentucky. I have worked at the plant for 23 years plus. My job title is Security Inspector. I also served as a councilman from 1987 to 1995 in the City of Portsmouth, Ohio, and I was vice mayor there for 2 years.

I was injured in an industrial accident in the 326 process building on July 26, 1994, which has left me working but restricted. I have permanent injuries to my upper airways and lungs, a condition known as RADS. I feel I did not get proper medical treatment at that time at their clinic, and I had a hospital stay that was very—it stays with me. I will never get it out of my mind. I believe that there have been efforts at the Portsmouth plant to criminally cover up the details of this accident.

Hon. Senators, it is not my own injury that I come here to testify about today. I am here to report the details of illegal actions taken by the subcontractor, Lockheed Martin Utility Systems, surrounding the event. There is a discovery of facts stemming from the independent and long-running investigation by myself, through the efforts of John Game and others in UPGWA, Herman Potter in the Oil and Chemical Workers Union, now known as PACE, and many others, along with the NIOSH.

This investigation is supported heavily by documentation as well as the testimony of two whistleblowers, which we believe reveals criminal activity. I believe it extends into the previous history of the plant under Goodyear Atomic Corporation, and I also believe that the knowledge of these actions are also known by the U.S. Enrichment Corporation management, as well as the DOE.

Our investigation of my injury has revealed the following. Altering of documents—I have two medical diagnoses, one original, and one altered.

Suppressed documentation—there is a 41-page internal report, POEF 150-96-0088, dated February 17, 1996, from Don Butler, Security Investigator, Lockheed Martin Utility Systems, to Dan Hupp, Security Manager, reference management of dosimetry programs. It is my understanding that the Committee has received about 10 of those pages that came to us. The unions, both unions have asked repeatedly in written form and been denied this report. In the depositions of the individuals who were highlighted in this report, they did testify in Federal deposition that because I was going to file a lawsuit, that my dosimetry was ordered to be changed to zero. Then, because someone got cold feet, they came in a back door in the dosimetry program that no one knows how they get in, but they can come and go at will and make your dosimetry a tailor-made reading to read what they want it to read.

Destruction of government documents. The dosimetry records of Jeffrey Walburn were ordered changed to zero because he was going to file a lawsuit.

Falsifying of government documents, lying to government investigators. The day myself and Paul Walton, this individual will

never be back to work. He was not treated. I spent an 11-day hospital stay. My wife happens to be a nurse and I was lucky. I was also lucky that a new pulmonologist came into town, Dr. Ellie Saab, who is a pulmonary specialist. The plant would not divulge what we were exposed to. They still stand and have testified in Federal deposition in December 1994 that we were only exposed to low-level fluorine, and I am here to tell you today that my wife, as she held me in her arms, witnessed my lung linings bubble out my nose and mouth. My hair fell out. I had intestinal insult. I beg to differ with them.

Illegal entry into a secure system of records for the express purpose to present a false dosimetry history at the Portsmouth site. There is a back door, or was. It may have been closed. But the historic fact is, there was a back door in our dosimetry. The records are not accurate or believable. NIOSH's investigation of dosimetry practices at Portsmouth, they threw our dosimetry into an administrative bucket, assigned to no one. They averaged our dose. Say we were in this building and this table was a building and it was a quarter-mile long and an eighth of a mile wide, and where I worked here was very hot, and where Ms. Hatfield and Mrs. Orick worked was not hot, a quarter of a mile away, and I come up with a high reading. They said, oh, my, we cannot have that. Let us average their reading and assign that to Mr. Walburn, and that is the reading I got. And I am here to tell you today that the reading I got during my injury that they zeroed was an average, and then it was changed back through a back door, no one knows how, to an average again. I do not know what my reading is, nor do they or anyone else.

They destroyed badges. They hung a badge on the wall with a bar code that they would bar code and assign to an individual. If they did not like the readings, give them another reading. Assign part of that reading to one person, another person, spread it out. Let us not have a high reading.

Failure to check for neutron radiation—I think that has been explained here by Mr. Ray. Evidence of high doses not reported—there is a Mr. Rensky with the NIOSH that has a report that should be gotten, and the fact that they were reluctant to divulge the fact that this was going on because it is a problem.

I do not know how many reports I have read in the DOE system of investigation that state, there is no evidence of injury because the records do not reflect. Ladies and gentlemen, I am here today to report that dosimetry records at Portsmouth have been altered. Sick workers, but no reason. Dead workers, but no cause. How can this be? I believe there has been deliberate action on the part of the plant subcontractors to defraud under DOE oversight. There has been an absence of checks and balances, and as I said at Piketon, you got a meter to check for neptunium, plutonium. Tyranny is something that is hard to define or see, but it must be stopped.

The DOE wants to offer settlement which makes the worker prove how they were hurt but grants themselves and the subcontractors that work for them immunity from prosecution. I ask you, what did DOE know and when did they know it? Health screenings are a great preventative medicine, but they are not compensation.

I want to know if the privatization agreement was properly struck under the Federal certificate of compliance. Were the workers at Portsmouth and Paducah set adrift in a leaky boat with sick and injured workers by the DOE? Were we indentured to a private group, only to be scuttled later with no survivors and no reparations coming to our widows because the record did not reflect? If those records were falsified, they cannot reflect.

I am here today to call for a full and independent third party investigation of the DOE and their relationship with their sub-contractors. DOE investigating themselves is like asking the fox if all the chickens are well in the henhouse.

We, as a group, have been fought at every turn concerning Workers' Compensation. We have been made to appear as malingerers or just plain whiners. We are neither. We are Cold War veterans and we suffer from nuclear workers' syndrome. We deserve compensation.

So you say, what have we done to bring this to light? We have reported timely, dutifully, and often. I myself have reported to the DOE's Inspector General twice. DOE turned the matter over to USEC to investigate their own subcontractor. They found the evidence of the dosimetry falsification and back door and either did not know what to do or did nothing, but they did nothing. I have notified the NRC Region 3. Now they are the regulators. Now they know what DOE knows.

The Department of Labor is doing currently a glow curve check, and I am not a technician so I cannot explain that. You will have to ask the technical groups. I have contacted the NIOSH. I contacted the FBI. They all point at DOE.

I notified Congressman Strickland from my hospital bed when I was injured. I had to con my mother-in-law to plug the phone in because my wife was scared. She did not want anyone to know, and she said, "My God, do not do that, Jeff." I said, he is a friend, he is a Methodist preacher, he is a psychologist, and he is a Congressman of the United States, and he has stayed with me on this and he has been out of term and came back in. He was in the 103rd Congress and he is still with me on this, and I appreciate that and I want to thank him here today.

I want to thank Senators DeWine and Voinovich for coming to Piketon. They heard some of the most gut-wrenching testimony. It did not sound like something that would come from this country or that would be done against the workers of this country, that defended this country. They were informed at the Piketon hearings.

I gave a hanging file box of evidence backing the information I am providing today to Congressman Strickland. I sent a duplicate copy to Secretary Richardson's personal staff outlining the very wrongs I have presented and have informed the EH-10 Executive staff of the details, intimately of its contents. I am told that the DOE has lost their copy.

Given the gravity of the information, possibly criminal, that was in that box, I cannot understand why they have not asked for a replacement of this information. John Game, my representative, offered. He said, we will give you a copy. Call Congressman Strickland. He would be glad to share that information. In fact, he would like to have some answers about that information.



There is something wrong at the Portsmouth plant, something which may very well point to the cause throughout the industry of why workers are sick and dead. I hope you will find out, Senators. Thank you for allowing me to speak.

Chairman THOMPSON. Thank you, Mr. Walburn.

I do not know when I have heard a more impressive and disturbing group of witnesses. I thank all of you for being here today. I know this is something that you have been living with for a long time, and if I were in your shoes, I would be wondering what has taken so long. This is not a new matter. The evidence has been there for a long time that we have got a severe problem. Sometimes it takes a long time, unfortunately, but I really do believe that we are at a stage now where we are beginning to get the right kind of attention and the right kind of focus and moving in the right direction.

There are people of good will in all branches of government and there are people in all branches of government not of good will. You cannot have a blanket indictment or a blanket exoneration of anybody. It is our job to do the painstaking work of figuring out which is which, and we are committed to that.

I want a little bit more detail with regard to some of your testimony. Ms. Hatfield, your father's situation, indeed, tragic. You have heard him talk about it, I am sure, many, many times. I would like to get from you and from Mrs. Orick, also, what you can tell us about the atmosphere during those years. What period of time did your father work at the plant?

Ms. HATFIELD. He started in 1949 and he retired in 1985.

Chairman THOMPSON. Mrs. Orick, what was your time of service?

Mrs. ORICK. From 1984 until 1996.

Chairman THOMPSON. I would like to get the comparison, really, between the two periods of time. Was your father required to wear protective equipment? Was there discussion about safety issues with regard to the people who were running it at that time? Was your father mindful of those things himself? What was the atmosphere like during that period of time?

Ms. HATFIELD. My understanding is, and Daddy and I have talked about this, and he was not told that what he was doing was harmful. They did just, back in my recollection, when I remember what he would and would not talk about, I mean, it just was not talked about. And even now, he still adheres to that. You know, there are things you just do not talk about. But he was never told that he was in jeopardy in any way. They did not tell him—

Chairman THOMPSON. That was back during part of the time when they had the place just fenced off.

Ms. HATFIELD. Yes.

Chairman THOMPSON. One of my best friends was Senator Baker's person in Tennessee, Bill Hamby from Oak Ridge. He used to talk about that, growing up there and his father and so forth. A lot of people do not understand what it was like back in the 1940's.

Ms. HATFIELD. It was very hard, and they did not—they took showers, of course, but they did also tell us at a later date that they could have even brought it home and passed it on to other members in the family, just by not getting everything cleaned up.

But they did later, not when he first started, but later, right before his retirement, they did have respirators and that type of thing, but not at first. They did not have it at first.

Chairman THOMPSON. I think it is probably fair to say that even the government back in the beginning of all this did not fully appreciate or have the knowledge of really what they were dealing with or the significance of it. But as time went on, they began to learn more and more. By the time Mrs. Orick was there, I think they knew what the deal was. You have heard Ms. Hatfield's testimony. What about the situation when you were there, Mrs. Orick? Did you wear protective gear?

Mrs. ORICK. I did.

Chairman THOMPSON. I understand you worked as a radiation health physics technician, traveling all over the site. And you encountered various situations where the radiation limits were above the DOE limits and so forth.

Mrs. ORICK. Oh, the radiation readings would be in the millions and the DOE limit on beta would be 5,000 and alpha 1,000, and we would be encountering things up in the millions of disintegrations per minute, which is highly radioactive.

At first when I went out there, I was hired as a clerk. I was to do data packages, assemble data packages. I was not even supposed to be associated with any type of sampling, but I was immediately split into a sampling group where I carried and handled all samples that had come in from not only K-25, but Rocky Flats, Hanford, and all the other sites, and they were filthy. They did not have lids on them. They were broken open. And I had to repackage those, gather them up, carry—

Chairman THOMPSON. So you came in contact with whatever was in there?

Mrs. ORICK. I did, and I was—

Chairman THOMPSON. There was no way for you to know what all was in there.

Mrs. ORICK. I was not even given a pair of gloves, and I carried this stuff up next to my body, down the stairs, so I could get it to a big table like this. I ate my lunch on this table with this stuff sitting all around me, and I did that for a couple of years, and I have had six breast tumors—six. And then I would carry that stuff down into one of the old closed process buildings, and I cannot remember if it was 27 or 29 because they adjoined, and I was never given any protective clothing to go in there, either, and that would have been one of the worst buildings on that site.

Then after I went into radiation protection, we were in all the areas. There is not a place out there that I have not been in, and because I was a smaller person, I may have to lay down and crawl up under things or get on top of—buildings are inside of buildings, and you would climb the ladder to get from one rooftop to another to get your job done. And the only time that I ever was offered a respirator was when I did one transfer of UF-6 (uranium hexafluoride). All the other times and all of my work jobs daily, regardless of what I was in, I was never one time offered a respirator.

Now, my husband, who worked there 28 years—I hope they have given you this picture—

Chairman THOMPSON. Yes.

Mrs. ORICK. This is how he looked.<sup>1</sup> This is his protection right here, and if you will notice, it is all over his face. He is dripping wet. This is his clothes. He would go change several times a day. There is no protective equipment here. And he might work next to the person where they were manufacturing certain things and he—

Chairman THOMPSON. Is this him coming off a shift here?

Mrs. ORICK. This is in the middle of one.

Chairman THOMPSON. In the middle of it?

Mrs. ORICK. Yes.

Chairman THOMPSON. And he has got all kinds of things, it looks like, splashed all over him.

Mrs. ORICK. Exactly. The powders would be so full in the air that he did not even see his partner that was working next to him. And the respirators, if they were issued one, would last them for 6 to 8 weeks. They would just put them in their locker, get them back out and put them back on and use them for 6 or 8 weeks. They cost money and they did not want to issue one.

Chairman THOMPSON. So there was never really any discussion or concern or warnings or anything like that, even if—

Mrs. ORICK. There was discussions to a point, but there was—we were trying to do postings at that time, but up until all of those years, there was nothing posted to tell you there was a beryllium area. They kept saying they did not have any. We documented 34 buildings that did. There was never a posting.

Chairman THOMPSON. There was beryllium at K-25 and—

Mrs. ORICK. Exactly.

Chairman THOMPSON [continuing]. Y-12, and 20 sites across the DOE complex. No one uses beryllium in the form that causes this kind of a problem besides DOE and the Department of Defense.

Mrs. ORICK. No, sir, and it is that way with the other compounds that they had there. No one else uses certain materials like what we did. And some of my duties would be to go in some of the places that had been shut down since the early 1940's and 1950's, and I would have to go in and these things would be busted open and I would have to try to clean that up and get a reading on it before I could allow anybody else to touch it. I never knew what it was—

Chairman THOMPSON. If you were required to sit down and list all the things you were exposed to, there would be no way in the world.

Mrs. ORICK. No, sir.

Chairman THOMPSON. You were exposed to everything that came across—

Mrs. ORICK. Yes, sir. That is what I am trying to say.

Chairman THOMPSON. As you say, the combination of things.

Mrs. ORICK. Yes.

Chairman THOMPSON. We have no idea, with all the sophistication we have got—

Mrs. ORICK. We do not know, no.

<sup>1</sup>Picture of Mr. Orick referred to appears in the Appendix on page 70.

Chairman THOMPSON [continuing]. And medical science today, we have no idea of the reaction of the human body with various combinations of things working together.

Mrs. ORICK. No, sir. But those areas that we were in, sir, I really believe that the contractor in the DOE did have knowledge of most of the areas, and they should have been listed on our work schedule. You are entering an area where you need a respirator or a Tyvek suit or a pair of gloves or whatever. But that just did not happen routinely like it should.

Chairman THOMPSON. You mentioned in your testimony that your husband's medical records have been partially redacted.

Mrs. ORICK. They have, sir. They have cut out the main items. It says, he was exposed to, and they blacked them out. The proper thing to have done, if there was an issue with classification, would have been blocked out the area and then maybe we could have sought treatment for whatever the material was. But they did it the other way, so now we cannot even know what that is.

Chairman THOMPSON. Well, I bet we can. [Laughter and applause.]

This means that your husband is unaware of everything that he was exposed to?

Mrs. ORICK. Absolutely, as are all of these other workers.

Chairman THOMPSON. What about his physicians? Were they given access to this?

Mrs. ORICK. No, sir. They have these—

Chairman THOMPSON. Well, how can they treat him properly if they do not even know what they are dealing with?

Mrs. ORICK. Sir, they cannot, and that is one of the issues here. We are not being treated. There is no treatment. We have been tested to death. We have been tested to death for 5 years, 20 tubes of blood at one time here and 20 tubes of blood there, and we still do not know what the results are, and we are never going to have them because they are just dragging on and dragging on and it looks good that we are getting tested. But we are not getting treated, and there is a difference.

Chairman THOMPSON. Absolutely.

Ms. HATFIELD. Could I just say that we have gone through the same thing and the same issues, and for my dad, it is almost discouraging and encouraging to get him to go to the doctor because he keeps saying, why do I want to go, because there is nothing they can do for me. All they are going to do is draw more blood and do more tests and wear me out and I am still not going to know any more than I know right now and we are going to be out the money and we are going to be out all these things and I am going to take 16 more pills a day that are not going to do me any good.

And so it is the same issue. Every time they call you, every time you go take a test, it is the same thing. Let us take bunches of blood, but they still do not give you any answers to any questions. There are no answers.

Chairman THOMPSON. Thank you very much. Senator Voinovich.

Senator VOINOVICH. I think that what I have heard today just builds on what I heard when I was down in the Picketon to hear the testimony of so many of you. What I have tried to do during my life is to try and respond to the real problem. The real problem

right now is that a lot of people need medical care, compensation so that they can at least have some response to the conditions that they now have, and the longer we wait, the worse it gets.

I think that our job in this Committee is to start moving the ball as fast as we possibly can, put the pressure on the administration, get them to step up to the table. We may have to come up with some more money, Mr. Chairman, to get on with this.

One of the things that always bothers me as a new Senator is that we have all kinds of priorities and lots of new ones. We forget about the other priorities that we have. We do not see the people in the homes that are sick. We do not see the families that have had to live with the death of a loved one and the costs that were there that ravaged them so that they have nothing, as you pointed out, Mrs. Orick.

We have an obligation to get on with this. Now, there are a lot of things, criminal, all of this stuff. It is there. That is something that we can deal with, but we ought not to wait until we get all the answers to all the questions because we will be here 6 years from now before we get all the answers to all the questions.

So let us get on with it. Let us respond. Let us come up with something that is fair. I thought that the recommendations here, I think Mr. Walburn in your testimony recommended actions for Congress, or were they from Mr. Ray?

Chairman THOMPSON. Mr. Ray.

Senator VOINOVICH. Mr. Chairman, I think there are some pretty good recommendations here and I think that they go beyond what is in the current legislation.

Chairman THOMPSON. I do, too. I mentioned to staff when he finished that that we need to take those and look at them, because we are going to be apart from where I think and you think the administration is going to come out on this, I am afraid.

Mr. RAY. Well, I would just like to comment that Congressman Strickland's bill, H.R. 3495, would help Mrs. Orick. And also, I would like to follow up on what Mrs. Orick was talking about, going into different buildings. What it is called is contamination control, and apparently most if not all nuclear facilities lacked real contamination control. We are getting better at Portsmouth, but maybe people do not understand when we are talking about contamination.

Maybe as an example, say this room was contaminated and you were not aware of it. We all come in, we sit down. There is no way for us to know that. You cannot smell it. You cannot see it. We are here. We have got it on our hands. It is airborne. And we have had this for a number of years. We are sending craft people onto jobs that they were not familiar with what was involved in a job. It may be a contaminated area they go in. They go ahead and do their job, not knowing it was contaminated.

Senator VOINOVICH. Records have been tampered with, and then at the Mound plant we have in Ohio, DOE has been doing these studies to try and ascertain what the dosage was to figure out whether or not these people were exposed to whatever it was for 5 years. But when you look through a record and you see what has gone on and all of the unconscionable things that went on, the deliberate things to keep people uniformed, tamper with documents,

and so on, that logic finally dictates that you do not wait 5 years to figure out that people have been affected.

I mean, logic tells you that if individuals have been exposed to this and there is a higher, much higher incidence of a particular thing and the only thing that could have caused it would be their exposure to their plant facility, then logic says that the burden should be on the government to prove that it is not connected.

As I say, we do need to get on with this, and that is all I can say to you. We will do what we can to move on and start getting some help out there and not wait 3 years before something happens in this Congress, and I am hoping that the representatives of the administration understand the urgency of this. These are God's children that are there, that are sick, who need help, who are not getting the insurance coverage that they need and medical help that they need, and in some cases, just the money to survive. We ought to get on with it.

Ms. HATFIELD. What we might, and I guess we have kind of skirted it, I talked a little bit about it and I know that Ann did, too, the diseases that my father has, there are no cures for those. He is terminally sick, and that is a very hard thing to look at in your face every single day. My dad knows that he is dying. There is no help for him.

What price do we put on that? What price do we put on the fact that he did his job, he did it the way he was supposed to do it, just as Ann did, just as all these people have done, and these people in the audience, too. What price do we put on that? They have actually, in fact, given up their life by doing their job. That is a hard decision to make and it is a hard thing to have to look at every single day.

As I was writing what I was going to say to you all, I kind of skirted around my father for 2 days and I would not let him read it. I kind of skirted it a little bit and I thought, I really do not want you to read this because I did not want it to impact him or affect, having to read about that, about what I was going to say. And I thought, well, he is going to hear it, so he might as well read it.

But it is very hard to look at that every day and know that he may not make it to another birthday. He may not make it to another Christmas. And I know we all face that every day, but this is through no fault of his own, just like it is no fault that these people are as sick as they are. It is not their fault. It is not something that—they would change it tomorrow if they could. I mean, if he could get his health back and he could go out and do his farm, he would love that. That would be wonderful, and that would be the only payment he needs. But that is not going to happen. So what we have to look at is how to make them as comfortable as we can with the time they have left.

Mr. WALBURN. Senator Voinovich, I think something I would like to say, and I believe that you will follow up those other things, but what we are looking for immediately is some relief in our homes, relief from the day-to-day fight and struggle. If you look at 17 plants and their employees as a class of people, there is bound to be money in the government for research to take us as a class. If you looked at it as a syndrome, the nuclear workers' syndrome, find the money through research.

We need relief in our house, and I have told you this. They have woven theirself into my house. I would like them out.

Ms. HATFIELD. Exactly.

Mr. WALBURN. They do not belong in my house. I deserve to get a chance to get off point and come home and relax. There is no relaxation in my home.

Ms. HATFIELD. That is right.

Mr. WALBURN. My son says, "Dad, do you have a job tomorrow?" I said, the best I know, son, but my wife says she will live in the woods with me, so I said, OK, we could do that if we had to. I do not think we are going to have to. But look at us as a class, because there is not me, not them. It is 17 plants, many thousands of employees that are a class of people that have suffered a syndrome.

Senator VOINOVICH. I think that that is a very good point. I also think that we need to, particularly with Paducah and with Picketon, to look at the financial condition of the company that is there and what could happen in terms of whatever health care coverage that the current workers have and those that are not now working. So that is another issue.

But the point I am making is that we need to get on with this, get some legislation passed, get some help out there to the people that are there. How do you deal with the loss? I do not know. You are never going to compensate that.

Ms. HATFIELD. No.

Senator VOINOVICH. But we do know that there are people that are sick out there and they need help. They need medical care. They ought not to be worrying about giving up, selling their farm and not having the money to pay for the prescription drugs that they need and some of those things. They ought not to have that worry. At least, they ought not to have that worry. So I think we can deal with that.

And then the issue of, maybe in terms of medical response and how do you deal with some of these conditions, Mr. Chairman, we sure increased the budget of the NIH 30 percent this last time. They might be able to take a little piece of that money and say, these are people that gave their lives for their country and they are suffering and maybe we ought to see if we cannot have them look into seeing if there are some things that they can do that will maybe respond to some of these medical problems that some doctors cannot seem to understand how to take care of. That is all, Mr. Chairman.

Chairman THOMPSON. Thank you very much for your leadership in this area, Senator Voinovich, and we are going to work together and we are going to get something done.

Thank you very much for being here today. We again know you represent a large number of people, but you have done it very eloquently and very effectively and you have gotten the ear of a wide variety of people here today that we never had before. So you made a major contribution toward this.

Now we need to move on and talk about doing something about it. What are we doing about it now? What are we doing about it? That is our next panel. Thank you for being with us here this morning. [Applause.]

We are going to proceed immediately to our second panel. The witnesses are Dr. David Michaels, Assistant Secretary for Environment, Safety, and Health at the U.S. Department of Energy, and Dr. Steven Markowitz, Professor and Director, Center for the Biology of Natural Systems at Queens College, City University of New York, in Flushing, New York.

Thank you, gentlemen, for being with us here today. Dr. Michaels, please proceed with your testimony. Your written remarks will be entered into the record, so if you would, summarize those for us. Dr. Michaels?

**TESTIMONY OF DAVID MICHAELS,<sup>1</sup> PH.D., MPH, ASSISTANT SECRETARY FOR ENVIRONMENT, SAFETY AND HEALTH, U.S. DEPARTMENT OF ENERGY, WASHINGTON, DC**

Dr. MICHAELS. Thank you, Mr. Chairman, and Senator Voinovich. I greatly appreciate the opportunity to be here today to discuss the Department of Energy's response to allegations of environment, safety, and health problems at the gaseous diffusion plants in Piketon, Ohio, Paducah, Kentucky, and Oak Ridge, Tennessee.

First, let me thank both of you for your very important leadership on behalf of the workers at Oak Ridge and Portsmouth plants. I know each of you has spent many hours listening to your constituents and working to find ways to help them. Your persistence and your focus over the past several months have been important to the administration, as well.

I would also like to thank the witnesses who are on this panel as well as the people in this audience who came from great distance to tell us their stories. It takes great courage to do that and we are very grateful.

When the concerns of exposures at the gaseous diffusion plants were brought to the attention of Secretary Richardson last summer, he immediately ordered complete and independent investigations. He further committed to determine that if workers were made ill because of poor worker protection, to seek to provide them with fair compensation. Let me emphasize that this commitment extends to workers at all three gaseous diffusion plants, not just Paducah, and across the entire DOE complex.

The Secretary also directed my office to conduct a number of other activities, to expand ongoing worker medical monitoring at the three sites, to determine actual worker doses, and to complete a so-called mass flow study to understand how much recycled uranium was generated over 47 years and where it all went.

As the Committee knows, our independent oversight office has completed its comprehensive review at Paducah and submitted a final report last month, which is another public record. Our team is at the Portsmouth site as we speak and we expect to complete our work there in May. Last week, the team was in Oak Ridge for initial scoping and we expect the Oak Ridge review to be completed in late August.

At Portsmouth, we have had an investigative team of 23 technical experts at the site for more than 6 weeks. In addition to reviewing boxes of documents, they interviewed more than 240

<sup>1</sup>The prepared statement of Dr. Michaels appears in the Appendix on page 86.



workers. While we are not yet in the position to discuss our findings from the Portsmouth investigation, I can share several observations based on these interviews.

As with Paducah, we have heard concerns that, in the past, safety concerns took second place to production, to schedule, and to cost, even when management was aware of safety problems. We have heard concerns that radiation protection practices were sloppy. For example, it was common practice for operators to remove gloves from the glove boxes to conduct some operations.

Just as you have heard today, we have heard concerns about the adequacy of dosimetry programs and possible falsification of dosimetry records. We have heard concerns that radioactive wastes were improperly disposed of in certain areas and were not properly identified.

In particular, I would like to address Mr. Walburn's concerns. I was very pleased he brought that up today. I would like to follow up on that box of materials. I checked into this. The staff person who was sent that is no longer at DOE, but I would like to arrange to get another copy, if I can. I will personally pursue it, and we can certainly arrange for the copying costs, if I can do that with you.

Let me emphasize that we are fully investigating all these allegations and that they relate to the historical operation of the plant, not to current conditions. I know the Committee has expressed interest in seeing certain documents. I assure the Chairman we will share all documents once our analyses are complete in a few short weeks. I know you understand that to ensure the integrity of the investigative process, we need to follow careful procedures and not release information in a haphazard or careless way.

The mass flow project, the exposure assessment project, and the medical monitoring project are all described in my testimony, as well as that of Dr. Markowitz. I will devote my remaining time to discussing the administration's progress on our proposal for sick DOE workers.

The Clinton-Gore administration's commitment to the veterans of the Cold War does not end with workers at Paducah or with workers exposed to beryllium. Last year, Secretary Richardson, along with several members of Congress, announced that the administration would propose legislation to provide compensation, both costs of medical care and the portion of lost wages, for the victims of beryllium disease. The Chairman is one of the original sponsors of this legislation.

Because we already established that Paducah workers had been exposed to radioactive materials without their full knowledge or without adequate protection, we include a provision to provide certain Paducah workers with specified radiation-related cancers a \$100,000 lump-sum payment. This legislation was historic in that it was the first recognition by the Federal Government that workers made ill from exposures in the nuclear weapons complex should be compensated for their illnesses.

At the same time, President Clinton directed the National Economic Council to lead a review to determine whether there are other workers that should be included in the program. To support that effort, the administration has undertaken a number of activities.

First, the NEC assembled a panel of health experts to look at the scientific evidence to determine if there are occupational illnesses among current or former DOE contract workers.

Second, they looked at current State Workers' Compensation programs to see how they are working for DOE workers with occupational illness.

We have also held public meetings at major DOE sites to hear directly the experiences of current and former workers. So far, we have held meetings in Paducah, Piketon, Oak Ridge, Rocky Flats, Hanford, Las Vegas, and Los Alamos. More than 2,800 current and former workers and their family members attended these meetings and more than 370 shared their stories with us, and let me say, Mr. Chairman and Senator Voinovich, they were very similar to the stories we heard today.

We heard from people who are proud of their work to protect national security but feel disappointed that this work may have made them sick and the government has done little or nothing to help them. Most told us they would not file for Workers' Compensation. They were told not to bother to apply because claims were routinely denied. The few who did apply rarely won their claims and many cases lasted years. Those who were able to win their claims did not receive benefits that would cover their cost for medical treatment or lost wages.

Based on the results of these studies and the outcomes of public meetings, we expect the National Economic Council will make a recommendation to the President by March 31 of this year.

I would like to mention and thank the Senators for their help so far in moving this initiative forward. We would love to encourage your help. Our bill has been referred to the Labor Committee and we know they are planning to hold field hearings in Ohio, which we greatly look forward to. We would love also for there to be a focus for this legislation in Washington so we could begin to address some of the issues that were raised earlier today.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions from the Committee.

Chairman THOMPSON. Thank you very much. Dr. Markowitz.

**TESTIMONY OF STEVEN B. MARKOWITZ,<sup>1</sup> M.D., PROFESSOR AND DIRECTOR, CENTER FOR THE BIOLOGY OF NATURAL SYSTEMS, QUEENS COLLEGE, CITY UNIVERSITY OF NEW YORK, FLUSHING, NEW YORK**

Dr. MARKOWITZ. Good afternoon. Thank you, Mr. Chairman and Senator Voinovich, for inviting me here to speak today. I am an occupational medicine physician, which means that I specialize in the dilemma that Senator Thompson mentioned before, relating exposure to disease, hopefully, ultimately with the idea of preventing disease, because once we can identify the exposure, we ought to be able to prevent illness from occurring.

I direct an innovative medical and educational program called the Worker Health Protection Program at the Portsmouth, Oak Ridge K-25, and Paducah Gaseous Diffusion Plants, and I want to speak to you today about that program. My written testimony is

<sup>1</sup>The prepared statement of Dr. Markowitz appears in the Appendix on page 93.

longer. I provide more detail. But I will highlight my comments today.

This program was established under Section 3162, the National Defense Reauthorization Act of 1993. It was established by Congress with a simple idea. That is, that workers at DOE facilities, former workers who had significant exposures and were at risk for occupational diseases ought to have made available to them medical screenings that could detect those diseases early, at a point at which medical intervention could be helpful, and it is under that program that DOE established the Worker Health Protection Program.

We went through a merit-based competitive review process in order to get the contract from the Department of Energy. This program is sponsored by PACE International Union in conjunction with Queens College, City University of New York, which is where I am from. You may wonder why an occupational medicine physician from New York is required to do this work in Oak Ridge, Tennessee, or Portsmouth, Ohio, or Paducah, Kentucky, but some of the comments you have heard from the earlier panel may shed light on that, and that is the union which initiated the program wanted an independent, objective physician with expertise in occupational medicine who was not contaminated by their experience in those communities, not absorbed by the contractors or other employers in the community, and could be trusted to provide an independent, candid, expert opinion, and that is why I am involved with the program.

This is not a research activity. This is a clinical service program meant to be of help to people. In addition to the medical screenings which we provide, which includes breathing tests, chest x-ray, a complete occupational history, medical history, physical examination, blood tests, including tests for beryllium, and urine tests, we also have a 2-hour educational workshop, which I regard as key to our program. It is run by current and former workers, two of whom are here today, Sam Ray, who spoke before, and Ben Taylor in Oak Ridge, and these workers are running the special 2-hour workshops for former workers in order to help people understand what they were exposed to and what medical screening can do for them.

Let me give you some of the preliminary results of our worker health protection program. We have screened 1,000 people to date. I would say our most outstanding result really is the response that we have gotten from former workers to our program. We had a simple press conference at the start of the program last spring in each of the three communities, and since that time, we have done absolutely no outreach except that done by word of mouth by current and former workers. We have done no advertising for the program. We have received 2,000 phone calls to our national toll-free number from former workers who want to be screened, want to participate in our program.

We have screened 1,000 people to date, all of whom—these are former workers—are volunteers for the program. They have called us because they want to participate. They want to find out the answer to their question, their central question, which is did my exposures that I had at that plant, was it deleterious to my health and what can I do about that now? And obviously, this is an important

question, not only to the people in this room but the great numbers of former, and I would say current workers, certainly at the gaseous diffusion plants. Providing the answer to that, at least a partial answer to that question, is what our program is about.

Of the 1,000 workers we have screened so far, about 10 percent have asbestos-related scarring in the chest. That is a non-malignant scarring of the chest due to asbestos. About 20 to 25 percent of workers have chronic bronchitis and/or emphysema, to which I believe their exposures to hydrofluoric acid and other irritants in the gaseous diffusion process contributed to their disease. There is near universal hearing loss, which is in part due to aging and in part due to the fact that the gaseous diffusion plants are very noisy places. Everybody recognizes that.

We found 8 workers out of 245 from K-25, 8 workers, about 3 percent, who have had confirmed positive beryllium sensitivity. This is a higher figure than we expected to find.

We have seen minimal rates of kidney or liver disease, which we were worried about because of heavy solvent exposure, and most of the cases we have seen, I believe are probably related to other medical conditions, such as hypertension or diabetes.

In addition, we have educated almost 800 people through 55 workshops, 55 separate workshops led by Mr. Ray, by Ben Taylor from Oak Ridge, and our other coordinators on the ground, educating people about their exposures and their concerns.

Now, I want to emphasize that ours is not a comprehensive screening program. We do not cover all medical conditions. We are looking at chronic lung disease. We are looking at bladder cancer at K-25. We are looking at kidney and liver disease and hearing loss. Under the mandate of Section 3162, we could not look comprehensively at all medical conditions that might be work-related.

In addition, I would say that a lot of the medical conditions that people have are complicated and really not amenable to screening. What many people need is careful and thorough diagnosis and treatment centers by physicians who are expert in occupational medicine and who are independent enough to be able to give an expert, honest opinion.

Let me say one other caveat about our program, which is that we have seen 1,000 people. That is a lot. There are at least 15,000 or more former workers eligible for our program. The people we have seen are self-selected. They have come to us as volunteers. The numbers I have given you on rates of disease may or may not be representative of the larger population, and we will know more over time.

Let me talk about the future of the program, which is going to change, actually, within a week or two. In August 1999, when the issue of plutonium and the transuranics at Paducah came to light, or at least became public, the Assistant Secretary, Dr. Michaels, called our program and asked us whether we could expand our medical screening program, sooner rather than later, to include current workers, to test former workers at a greater rate, and to do in general a faster, more expanded program. And we said, yes, we could do that, and we submitted a proposal to him within a couple of weeks.

I am happy to announce that our program has been expanded by the Department of Energy. We requested close to \$6 million. They have located \$3.5 million at present and the additional money, I understand, is in a supplemental request to Congress.

There are three changes we will make in the program. One is, we will begin to screen current workers. I do not believe current workers at the gaseous diffusion plants are getting the kind of cancer and other screenings that they need and that those conditions are not being properly related to their exposures. So we will offer our program to current workers.

Second, we are only funded to date to screen 1,200 former workers per year. At that rate, it will take us at least a dozen years to screen all former workers once. So we are going to expand the rate at which we are screening former workers up to 3,000 per year at the three sites, which is a marked expansion of our program.

With full funding, we will be able to screen close to 6,000 workers per year, completing the screening of current workers within 2 years and former workers within a number of years after that because there are so many former workers.

And last, let me say that we are going to add an innovative screening technique, lung cancer screening. Lung cancer is an important problem among gaseous diffusion plant workers. Let me explain why. Gaseous diffusion plant workers work with uranium, and uranium is a lung carcinogen. They work with beryllium, and beryllium is a lung carcinogen. They work with plutonium and neptunium, we find out now, and those agents are plausibly linked to lung cancer. Many of them also smoke cigarettes, and their occupational exposures multiply the risk of the cigarette smoking to produce an excess risk of lung cancer.

Previously, we were not able to screen for lung cancer. Right now, at present, about 160,000 people die per year of lung cancer in the United States. Most of them present late in their disease with symptoms. They come in coughing up blood. They come in with chest pain. They come in with shortness of breath. Their disease is diagnosed at too late a stage to do anything about it.

We can now change this. Last July, there was published in *Lancet*, a major medical journal, a study from New York, Cornell University, showing that use of the CT scan for lung cancer can detect malignant nodules at an early stage when they can be resected. In that study, they screened 1,000 people. One out of 35 had lung cancer, and almost all of the people they found with lung cancer had Stage I disease, had small nodules that could be resected. Those people, most of them will lead normal lives.

I say we should do this, and I proposed this idea to Dr. Michaels and DOE has accepted it. Who else in the country should get this screening test first but the gaseous diffusion plant workers and others within the DOE complex because of their long history of exposure to lung carcinogens. Normally, this kind of medical innovation comes to the metropolitan areas first. In New York, if you walk in Manhattan from East 19th Street, Beth Israel Hospital, up to 168th Street at Columbia Presbyterian, you will encounter no less than five medical centers that will give you this CT scan for early detection of lung cancer. That is to say, if you have about \$1,000 in your pocket to spend.

You cannot get this right now in Paducah or Portsmouth or Oak Ridge, Tennessee. The radiologists are much less aware of it. The machinery may or may not exist. So we propose that it ought to go to Paducah and Portsmouth and Oak Ridge, not waiting 5 or 10 years at the normal rate of diffusion of medical advances, but it ought to go directly from the study published less than a year ago to the facilities and to the people who need it most.

So now DOE has provided us with funding to lease the CT scanner. We will put it on a 40-foot mobile unit and we will drive it between Portsmouth, Oak Ridge, and Paducah. We will provide CT screenings for early detection for lung cancer for as many former and current workers as we can. So that is the new part of our program, which we regard as very exciting. It is very exciting, because I think with this technique, we are going to be able to actually save some lives. We are going to be able to detect lung cancer early, have it resected, and help people lead normal lives.

That is a summary of the Worker Health Protection Program. It is a partial response to, as you said, Senator Thompson, the unseemly legacy of DOE in the past and, hopefully, the beginning of a different kind of legacy for the future. Thank you.

Chairman THOMPSON. Well, thank you very much.

It is kind of hard to get your arms around all this. There are so many studies involved and people and departments and all that, but let me see if I can break it down as to where we are, and I want to thank both of you gentlemen for what you are doing.

Dr. Michaels, you work for an outfit that does not exactly have an illustrious track record in this regard, but you have not been there very long, so my comments are not going to be personal to you. I think you are trying to move in the right direction, not enough and not fast enough, but in the right direction. Of course, it might help if we helped you with some of the monetary parts of that and budgetary parts and we intend to do that. But you have worked with us and we appreciate that.

We are going to get a report on Oak Ridge in August. We have already got a report on Paducah. You are well into the situation there in Portsmouth. Apparently, you are finding some of the same things in Portsmouth you found in Paducah, and I would assume that you are going to find some of the same things in Oak Ridge that you found in the other two. So we will have that in August. We still are awaiting this report from Drs. Byrd and Lockley. It is supposed to be due April 30 of this year. You mentioned the National Economic Council report that is due March 31 of this year.

So we have all these reports coming out that are probably going to say pretty much the same thing, my guess, and that is there is an awful lot of smoke there and it looks kind of bad, but there is no conclusive proof as to anything. I want to talk about that for a minute, because I think we have to start looking at this situation maybe differently than we have in times past.

While the National Economic Council report, Dr. Michaels, is not due out until March 31, we just happen to have gotten hold of a draft of that, which may or may not turn out to be the one that you come up with in March, but let us assume for the moment that maybe it is going to be pretty much in keeping with this draft, and the draft says there is evidence from health studies of DOE work-

ers that suggest that some current and former contractor workers at DOE nuclear weapons production facilities may be at increased risk of illnesses from occupational exposure to ionized radiation and other chemical and physical hazards associated with the production of nuclear weapons. For certain facilities and for certain subgroups of workers within these facilities, some evidence suggests a strong association between employment and adverse health outcomes. Some studies indicate an increased risk of adverse health outcomes with increased levels of exposure to ionized radiation.

Dr. Markowitz, that does not come as any surprise to you, I do not assume, if that turns out to be the report.

Dr. MARKOWITZ. No.

Chairman THOMPSON. That is consistent with what you are running across, I would assume.

Dr. MARKOWITZ. It is consistent from what is known in the published literature, sure.

Chairman THOMPSON. We both alluded to the problem that we have here, because we are getting a whole lot of reports and a lot of activity, but as they say, that does not necessarily feed the bulldog. Let us talk about what we are going to do about all this.

Now, obviously, you have got to get your data together to the extent that you can. It is amazing that the government has taken this long to really do these surveys, because as you point out, they are very complex. There are a lot of different factors. Statistics say different things that do not seem to make sense sometimes.

I noticed here in one of the findings from one of the DOE studies that, overall, DOE production workers had significantly lower age-adjusted death rates compared to the U.S. general population for all causes of death combined, and there were only two exceptions. So that jumps out to you until you stop to consider you are talking about the population in general and people who work at anything probably are healthier than people who are not working. So, statistics can lead you in all kind of different directions, but there is one common theme and that is these workers are clearly having problems that other people do not have in these numbers and they clearly were exposed to things that, we will say, more likely than not have to do with those illnesses.

My problem is that we get all these reports and we wait on all these things and so forth, but we are never going to come to any conclusions and we are going to have to face up to that, and the reason for that is the inherent difficulty and causation, but also the faulty records that have been kept in times past, the fact that the government had an obligation to keep up with exposure and they did not. They in some cases, and some of the things that you have run across, there in Paducah, you had a doctor there that was on the government payroll who said, this is a bad public relations problem so we had better not handle this, I mean, the most terrible things.

And then you point out the fact that these folks for all these years are going to—when I grew up, a doctor is a doctor. They are all the same. But this is a highly specialized area and not a lot of people know what they are dealing with, plus, a lot of times—no reflection on any particular doctor—but the fact is they are work-

ing for the government in some cases, and we have seen what that leads to.

So we are going to have to ultimately say, well, what are we going to do about all this? I do not see any resolution where you are going to say with certainty or beyond a reasonable doubt or beyond a preponderance of the evidence that you can prove in a court of law that there is a cause and effect relationship, and that bothers me.

So the question is, and Dr. Michaels, you are going to come up with something here, a recommendation supposedly in March, but the question is, what kind of system are we going to come up with that is fair in order to do justice, in order to more likely do justice? And I will tell you something, if there is a question of being a little unfair to the government or being a little unfair to these people, guess which side we are going to come down on that in view of the history of this thing?

And I will tell you, Dr. Michaels, if you come up with a proposal that has a lot of legalisms, and I imagine you are over there looking at these numbers now, 55,000 workers or something like that and multiplying that by X-number of dollars and all that is going through your mind, but if you come up with something that puts the burden on these folks that they cannot meet, if you come up with something that does not have the correct presumptions and does not incorporate into it the history of this and the responsibility the government has, it is going to be rejected and we are going to go to the floor of Congress and broaden the discussion and the administration is going to wind up being embarrassed for being so niggardly with its proposal, and I do not think it wants to be that.

I think Bill Richardson is trying to move forward. I am not sure he realizes yet the extent of the problem and the extent of the determination that we broaden this sufficiently and that we have some kind of a system that does not require these people to prove things that the government itself in many cases has made it so that they cannot prove.

And Dr. Markowitz, you probably have a lot of thoughts going through your mind about the things I have said, so I would like to hear from you.

Dr. MARKOWITZ. Let me address some of your earlier comments. I mean, there are a lot of complexities, but some of the problems can be broken down. We have seen about 1,000 people, and about 800 people—I have gone through their records and I have written them letters, individual letters giving them the results of their examination and telling them whether their conditions are work-related or not, at least for the conditions we are looking at.

In fact, for the things that we are looking at it is not very complicated at all. If a fellow was a maintenance mechanic at Portsmouth for 20 year and he has scarring in his lungs which is typical of asbestos exposure, then he likely has asbestosis due, at least in part, to that exposure he got at that plant. I do not have to prove beyond a reasonable doubt. I mean, it is not a murder charge here. I just have to prove that there was likely to be a contribution from that exposure, and that is sufficient. That is the standard in occupational medicine.



For a fellow who worked at Oak Ridge who worked with hydrofluoric acid, which is used industrially to etch glass, and that person now has emphysema, and they smoked cigarettes, likely, I say that hydrofluoric acid contributed to their emphysema. I think I am right about that.

Chairman THOMPSON. When you say, likely to have contributed or contributed and so forth, is that sufficient? Do you think that is sufficient in most State Workers' Compensation cases to get the checks?

Dr. MARKOWITZ. That is the standard.

Chairman THOMPSON. The medical standard might be one thing and the legal standard might be another, and that is the problem that we are encountering a lot of times.

Dr. MARKOWITZ. I am not an expert throughout the country in Workers' Compensation standards, but I can tell you that what I have come across in the States that I have looked at so far is that if there is a contribution from the exposure to the disease, that is sufficient. There are other problems with compensation. I do not think that conceptual problem is the main problem right now.

The problem that Mr. Ray was talking about, chondrosarcoma, a special type of bone cancer, you go to the cancer epidemiology text, the main one, called Cancer Epidemiology, and you look under bone cancer, the first sentence under ionizing radiation is that chondrosarcoma and the other types of bone cancer are caused by ionizing radiation. So that is not rocket science to make that kind of statement about causation. There is a lot of information available that supports a lot of the claims that people are making.

Now, there are other areas that are far grayer. People who have multiple system problems, who have neurologic disease, who have immunologic problems, those are not amenable to screening. Those are tougher to figure out. And my view is that those people need special diagnostic and treatment centers set up in the communities operated by independent expert physicians and others with the full participation of the patients and of people in the community who are involved who will deliver that honest opinion.

In 1987, we at the Mount Sinai School of Medicine did a study of occupational disease in New York State, and we said how much we thought it cost. And after that, the State legislature set up a system of clinics, independent diagnostic and treatment clinics, eight of them around the State. Every worker and every community resident within an hour could drive to a facility which would give them a fair, objective expert opinion about whether their disease was work related or caused by some environmental factors. I do not see why that should not exist in the communities that you are concerned about.

Chairman THOMPSON. I think your information and your technology is probably just ahead of where we are realistically and we need to catch up to what you are talking about. There is no question but there are some cases where exposure is clear, that the cause and effect may be clear with regard to certain diseases. I am not talking about those cases necessarily, although I am wondering from Dr. Michaels, I am going to ask him a little bit later whether or not the compensation system they are going to set up are going to incorporate the standards that Dr. Markowitz mentioned, and

that is a contributory matter rather than—or likely to have contributed, some of that nature, those very important words.

What I am concerned about are those vaguer situations where there is not a clear cause and effect, and part of the reason for that is because the exposure data is insufficient, and the reason for that is the government did not keep it.

Mr.—I started to call you Dr. Voinovich—we have got so many doctors, Senator. [Laughter.]

Senator VOINOVICH. First of all, I would like to say that I have been very impressed with the cooperation and the conscientiousness of Dr. Michaels. Dr. Markowitz, I am not familiar with all the work that you are doing, but you get good marks from Dr. Michaels, and obviously from your testimony you really care about what you are doing and the people that have been affected by this longstanding situation that we have had in the country.

In S. 1954, the administration proposal, does the administration intend to consider compensation for respiratory ailments or is cancer the only covered ailment?

Dr. MICHAELS. Would you like me to speak to actually that bill or to the—

Senator VOINOVICH. What I am interested in is that when we get legislation, let us make sure we cover everything, and you have chemical exposure, for example, fluoride, hydrofluoric acid, trichlorethylene, ethylene, and some of these other chemicals that people have been exposed to. It seems to me that when we are doing this, we ought to cover everything that people have been subjected to and not just restrict it to say if it is not cancer, it is not covered.

Dr. MICHAELS. No, I agree, and Secretary Richardson has been very clear. He wants to cover everybody across the DOE complex. If they have a disease, any disease caused by radiation or toxic chemical exposure, they should be compensated. And certainly that is the direction that Secretary Richardson is pushing very hard to do.

Senator VOINOVICH. So it is going to be a broad-based bill that we are not going to end up saying to somebody, I am sorry but we left you out?

Dr. MICHAELS. I obviously cannot predict exactly what will be in the bill because we are not at the end of the process, but I can tell you certainly what Secretary Richardson and I are committed to trying to get. He certainly said he wants to cover everybody.

Senator VOINOVICH. The other thing is that in preparing for this hearing, my staff has learned of documents that you have in your possession, and I have written to you on them regarding the oxide conversion plant at Portsmouth. The oxide conversion plant, from what I understand, is a plant that recycles spent fuel from nuclear reactors. Is that information going to be coming—

Dr. MICHAELS. Yes. We will release it promptly. We have a number of documents. Some are in my possession. I am told there are additional ones that I will be receiving. Our commitment is to release all documents publicly either at the time of the release of our report in May or before that, depending on—and we will put them on our website and we will give them to you and to the press. No documents will be withheld unless there is some security matter

that requires that, and we will do everything we can to release those, as well.

Senator VOINOVICH. Dr. Michaels and Dr. Markowitz, you have an historic opportunity because of the fact that you are new on board, because of your medical background, because of your experience, to help draft some legislation that will really make a difference in the lives of people in this country that have been affected by all these facilities that we have had. I would really be interested in—following up on your testimony, Dr. Markowitz—of the things that we can do from a diagnostic point of view, I mean, if you had the ideal world, what would you be doing?

Now, you have talked about bringing in the equipment. I know, for example, I have a good friend of mine that is in pretty bad shape from lung cancer, and if he had been diagnosed earlier, I think he was, what is it, stages 1, 2, 3, 4, I think he was at stage 3, and if you get somebody at stage 1, you have a good chance of making sure that the cancer is taken care of.

So the point I am making is that from the point of view of an aggressive action plan by the Department of things that you can do and pay for that would go out and try to identify as early as possible the problems that people have, I would like to know what that ideal plan would be, and then what part of your budget that would be paid for, because Mr. Chairman, we have got to know—we can talk all we want to, but it is a question of coming up with the money to pay for some of these things.

This would be something the Department could do. So now you have got people, you have screened them, you have got a diagnosis. The next issue is, how do you provide compensation for individuals, and there are a variety of—I do not know what insurance coverage these folks have or do not have, but to look at what the average situation is and what is it that in a piece of legislation we could include that would guarantee that once, for example, you diagnose somebody at lung cancer 1, that they have the insurance coverage that they can go in and have somebody take care of it and not have the problem of, I have got it, but how do I take care of it? So that would be the second tier. That would have to be in the legislation.

And then I do not know how you compensate for somebody that has passed away. I mean, I do not know how you can do that, but I think there are some people that can think about that issue.

The point I am making is that we have got this chance to really make a difference right now and I think that I would like for you to come back to this Committee with your best recommendations. I know you are going to be making it to your agency, but we are interested in being helpful. Maybe we can collaborate. But I do not want a minimum thing. I would like to say, this is what we really think would get the job done, and then let us see if we cannot get that taken care of.

In addition, the issue of some of these things that—I would like your opinion, are there some things that you have seen out there that you do not know what it is and where we need some specific research work? Would you want to comment on that?

Dr. MARKOWITZ. Not really yet. We are just getting our data together to begin to figure some of that out. Ours is funded as a 5-year pilot program by DOE. We are starting our fourth year. By

the end of 5 years, we will have screened a lot of people, but by no means exhausted all the people who deserve screening. And so hopefully the program will be continued beyond that.

I would make a strong plea in favor of presumption. When I look at these people's records, their occupational exposure history, I look at their job title, I know what they are exposed to. We have a 1-page checklist for each job. I look at their diagnosis that we make, and for a large proportion of the times, it is an easy association to make, because I know if a person was, again, a maintenance mechanic or a process operator and they have given lung conditions, their exposures likely contributed to that. That is not that difficult.

I recognize that the exposure information going back historically in DOE facilities is in adequacy. I would say in the private sector it is probably no better, having worked with patients at other facilities, like DuPont, Goodyear, etc. There is no difference, I think, historically, between the private sector and DOE except that DOE should have been better, I think, because of accountability and it served the public purpose.

But in any event, those exposure data do not exist and I think we cannot really hope that they will exist or be able to make judgments hoping that there are quantitative data we can rely on. If a person reports exposure, had a job title that we believe exposure was plausible, has a plausible condition, then to me, that is sufficient, and that is where judgment of occupational medicine comes in. I do not understand why legislation cannot reflect that.

Senator VOINOVICH. Good. The other thing, of course, is the stress level. I mean, one of the things that I think that the Department should be looking at right now, we have a lot of people in this room and a lot that are not here are worrying what is going to happen to USEC. Are they going to stay in business, and if they go out of business, then who is going to take care of the insurance for the current workers?

This is a big deal. I think everyone agrees that, in fact, the answer to the question I asked was, do we need to have a uranium enrichment facility, and the answer to that was, yes, we do. So if they do not do it, then somebody has got to do it, and I think the issue of the health coverage of the current workers and then those that have been exposed in the past and what kind of health coverage they are going to have is a big issue.

You cannot put a dollar figure on stress, but in this country, one of the biggest problems people have is whether or not they have insurance or not to cover their health problems. So I think the Department ought to be looking at that issue in terms of down the road decision making about that facility.

When do you think that we will have enough information to put something together?

Dr. MICHAELS. A legislative package?

Senator VOINOVICH. Yes.

Dr. MICHAELS. I am hoping that there will be a proposal within the next month or so. Obviously, Congress can go and do this on their own. We would like to work very closely with Congress and the Members here, especially, in putting this together.

Chairman THOMPSON. You will.

Senator VOINOVICH. I have faith, Mr. Chairman, that we are going to get some good information from these guys, and I really mean that. I think that we ought to do it with the idea that it is going to be something that is not going to only take care of the current situation but something that we can rely upon in the future. Would it not be wonderful to be able to say that we have had all these people that have worked at these facilities, and God knows what is still out there that we do not even know about, and that if it does arise, that we have a plan in place that can respond to the needs of these people. We are looking forward to working with you.

Dr. MICHAELS. Thank you.

Dr. MARKOWITZ. Thank you.

Chairman THOMPSON. Just a couple more things. First of all, Dr. Markowitz, you really are doing the Lord's work and both of you are in trying this early detection. I do not mean to minimize that at all. It is part of the same problem, but it is a different kind of problem from the compensation part. It is extremely important that we fund that and that we do it at a faster rate. You are going as fast as you can with the money you have, but we need to do that at a faster pace.

The other part of that is, though, the more immediate part is all those people who need immediate help, who we know that have major problems. We do not have to worry about trying to find out if they have problems. We know that they do.

So I get back again to the standard that we are going to apply, and I think, Dr. Michaels, I would pay close attention to what Dr. Markowitz said, and what he said is that there are a lot of cases out there that are pretty easy to determine a causal relationship. That is going to come as kind of a surprise to a lot of people who are going to be saying, in a sense, if it was that easy, why have I not gotten a little bit more response or compensation for it, if you are one of those things that fall into the easy category?

I think whatever legislation that you propose needs to take that into consideration. He talks in terms of contributes to the problem and all that. His words are easy to slough over, but if you slugged it out in a courtroom for 15, 20 years, you understand, those are very important words and your people, lawyers over there, all know that. So I encourage you, do not set the standards so high that it is going to be too difficult. Look at some of these other standards, Agent Orange, Black Lung, all these other things. I think if you look back over there, you did not set the standard so high there. Of course, maybe the numbers were not as big, either, but it really should not matter.

I think the language that Dr. Markowitz uses there is good language, but a Workers' Compensation case or something like that requires usually a higher standard of proof and that is not what we should be dealing with here.

Especially from what I hear about what you are going to come out with with radiation exposure, for example, I am concerned about it, because as I understand it, compensation decisions would be based on a number of factors, including dose information. I am not asking you to comment on your report that has not come out yet officially, but if that is the case, again, we know that dose infor-

mation, we have a problem with that. So I would urge you not to rely too much on something like that as you come forward with your proposal.

What about this business of medical records that have been redacted? We are going to have to get around that problem. I would ask you, and I am going to be talking to Secretary Richardson about that and these other things, but that is just lying out there. That will not work. We have got to do something about that.

Now, we can set up a system. We can get some disinterested third parties or go to a court in camera or whatever we need to do to get around that, but we cannot have these people out here not knowing what they have been exposed to if, in fact, there are cases where—these look like cases where you know what they have been exposed to, we just cannot tell you, and that is not going to work. Be thinking about that, because we are going to be talking to you about that.

Dr. Michaels, it has been reported in the press that 417,800 tons of recycled uranium, that is, uranium that had already been used to produce plutonium for weapons and was therefore contaminated with plutonium, neptunium, and other radioactive materials, were sent to the K-25 plant during the 1950's, 1960's, and 1970's. In your testimony, you say that Y-12 received some recycled uranium, as well. That is certainly not as much as Paducah received, but it is, I believe, about three times more than DOE originally estimated when the Paducah story first broke. Can you tell us what you know right now about this recycled uranium that went to Oak Ridge?

Dr. MICHAELS. I do not know much more than what I put in my testimony. We have a team of people from my office leading what we call the mass flow project to actually try to trace through invoices and other records all the materials that could have come from either Hanford or Savannah River, where plutonium was extracted from uranium in the first go-around, so we hope to be presenting that later on in the spring.

We understand the initial estimates were not necessarily accurate. We tried to put them out in that context. We felt at the time of the Paducah, the first open discussion of this, it was important to put out what we knew, even if we knew it would not be totally accurate, rather than have to wait a year. But we are now going through literally thousands of records to try to determine exactly how much went to different locations.

At the same time, in terms of the three gaseous diffusion plants, we have a team of people associated with the University of Utah working jointly with us and the University of Utah to determine what exposures occurred, both to uranium and to plutonium, neptunium, and some of the fission products, because just knowing that the contaminated uranium went there is not enough. We obviously want to know how much exposure occurred and we are working very hard on that, as well, and we hope to be getting—

Chairman THOMPSON. So we can expect a report on that about when?

Dr. MICHAELS. You will be getting lots of reports, sir. I cannot tell you when the—

Chairman THOMPSON. Well, one that will tell us how much of this stuff went to Oak Ridge. That is the one I am asking about.

Dr. MICHAELS. The Oak Ridge one, with the exception of the Y-12 part, we hope to have our final reports by June. Y-12 will take a little bit longer, but the K-25 site will be done by June.

Chairman THOMPSON. All right. And then Y-12 shortly after that?

Dr. MICHAELS. Shortly after that.

Chairman THOMPSON. One more question. The GAO report back as far as 1980 concluded that the Oak Ridge operations office did not conduct adequate oversight of health and safety operations at the plant, did not conduct the required number of inspections and appraisals, did not provide an adequate forum for workers' complaints, relied too heavily on contractors to resolve these issues that arose. Of course, it was often in the best interest of the contractor not to resolve them. This goes back to 1980.

When that report was written, the local field offices were responsible for overseeing the safety and health programs of the facilities under their purview. I believe this responsibility has been moved to DOE headquarters under your supervision, now is that correct?

Dr. MICHAELS. Not really. The field offices have responsibility for overseeing health and safety on a day-to-day basis. My office, and I have a Deputy Assistant Secretary for Oversight, David Statler, who is here, is responsible for general oversight in the complex, and we go and we do periodic inspections to see how the local oversight is going on.

But oversight, there are many of us in DOE who have the title "oversight." Because of the nature of the risks involved, safety and health oversight is done locally and should be done by very highly qualified and powerful staff.

Chairman THOMPSON. What can you say to assure us that it is being done any better than it was in 1980?

Dr. MICHAELS. We have beefed up our oversight investigation, which we oversee the local oversight people, and I think we are doing a much better job issuing pretty hard-hitting reports, and the Paducah report was one that, I think, got a lot of attention. We do not pull any punches. We go and we look and when we see a problem, we call it to the public's attention as well as to our own attention.

Secretary Richardson recently appointed a new field manager for Oak Ridge, Leah Dever, who is very committed to environmental safety and health. In fact, when she began at DOE, she began in the environment, health, and safety unit, working for the office that I currently head. I think her commitment to these issues is unequalled, is unsurpassed in the complex and I think she is doing everything she can, as well, to increase our daily oversight.

On the other hand, we still have—our problems still occur and we have some very difficult procedures and processes to work with, some very, very toxic and hazardous chemicals. We had an explosion in December at Y-12 that was—we identified significant problems associated with that and we have to just keep pushing as best we can.

Chairman THOMPSON. I think that is the problem we are trying to reinforce. You have some very toxic and hazardous materials that you are dealing with there.

Dr. MICHAELS. I know. I do not minimize any of those problems, sir.

Chairman THOMPSON. And I know that you do not. Thank you very much.

Senator Voinovich, do you have any more questions?

Senator VOINOVICH. I just have one question more, Mr. Chairman. In your screening, Dr. Markowitz, thus far, we had testimony by an Anita George in Piketon about the reproductive problems that women were having, miscarriages and—I think she said just about everybody at the place has had a hysterectomy. Through your screening, have you surmised anything about the accuracy of that or whether there is a much higher incidence of, let us say, hysterectomies? If everybody at the place has had a hysterectomy, somebody has got some real worries about what they have been exposed to.

Dr. MARKOWITZ. Right. Well, we have not asked that specific question. We do collect general medical histories on people. We have only screened about 350 people at Portsmouth, and a small percentage of those would be women, so we really would not have enough data to address that. But over time, we would be able to collect that kind of information.

Senator VOINOVICH. I would really be interested in that, because that to me was shocking, that women who had worked there had miscarriages and obviously somebody advised them to have hysterectomies, and I would like to verify that if it is true.

Dr. MARKOWITZ. OK. As we develop that information, I will get it to you.

Senator VOINOVICH. Thank you, Mr. Chairman.

Chairman THOMPSON. Dr. Markowitz, and this will be final, but you just mentioned something that reminded me of something else that concerned me, and that is it seemed like your studies in large part are studies of other studies that have already been done. You know what my concern is there, that a lot of these studies that have been done historically are lacking and inadequate and incomplete. It points out what a massive job it is. I mean, if you went out and started a new nationwide survey, how long would that take? But it does point out a difficulty, does it not, the fact that you are having to rely in many cases on your surveys on data that may be flawed in some respects?

Dr. MARKOWITZ. At the start of our project, we had a year needs assessment and I looked at all the studies that were published, specifically at K-25, Portsmouth, and Paducah. No one had ever done any work at Paducah. There was some limited work by NIOSH at Portsmouth and some more extensive work at K-25. We read those and critiqued them and took the information of value from them, in particular with a grain of salt. We could recognize the weaknesses, particularly in the exposure measurements, problems with outcome measurements, the problem as you mentioned before, Senator Thompson, about the healthy worker effect, the fact that people who work start out healthier and often, in some respects, stay healthier, at least the large proportion, than people who do not work, so you always see this depression in the overall risk of death for all causes.



But our work really is—first of all, we are not really doing a study. Our work will yield information, but ours is a service to people. We are medically screening and educating people about their risks, identifying health problems. This is not an epidemiologic study. Over time, we will have enough information, I think, to make some statements. But this is intended to be a service to people.

Within the budget we have, within the mandate we have, we try to cast it as broadly as we can to capture multiple outcomes and exposures, but we really cannot do it all, given the limitations. We do not wholly rely on the studies that have been published in the past. We make our own judgments because we know what hydrofluoric acid does. We know what trichlorethylene does. We know what asbestos does. If it did it at insulators working in construction, it will do it at a DOE gaseous diffusion plant. So we use that kind of information, as well.

Chairman THOMPSON. Do we still have a lot to learn about how these various chemicals and other elements interact with each other in the human body?

Dr. MARKOWITZ. Absolutely. Most of what we know about toxic agents and radiation is really limited to several dozen agents—lead, mercury, the ones you hear about, trichlorethylene. Most of the others, we do not know a whole lot about, and mixtures, we know very little about. We know about asbestos and cigarette smoking. We know about uranium and cigarette smoking. But mixtures of toxic chemicals have been really very little studied, very difficult to study, and NIHS, in particular, is interested, but there has not been a long track record on this in the past.

Chairman THOMPSON. Thank you very much.

Gentlemen, thank you very much. We look forward to working with you and we thank everyone for being here and being so attentive today. Thank you very much.

The record will remain open for 1 week after the close of this hearing. We are adjourned.

[Whereupon, at 12:50 p.m., the Committee was adjourned.]



## APPENDIX

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### PREPARED STATEMENT OF SENATOR MIKE DEWINE, SENATOR FROM THE STATE OF OHIO

Mr. Chairman and Ranking Member Lieberman, first let me express my appreciation to you for holding this oversight hearing. I believe that it is important to the people of Piketon, Ohio to know what material the employees of the Portsmouth Gaseous Diffusion Plant were exposed to, why no one has provided complete and accurate information on the health and safety risks associated with working in the Plant, and what progress the Department of Energy is making in providing answers to the community.

Back in August, I was very troubled to learn that plutonium-laced uranium went through the Portsmouth facility. Just as troubling, the Department of Energy was learning about this issue from its own reports. The Department has now had several months to investigate, and I still have questions. For instance, I am troubled that the Department has not responded to a February 15th letter from Senator Voinovich, Representative Strickland and myself that asked whether or not the Department's oversight team would be able to include information on the health and safety risks from weapons system material, if any was ever sent to Portsmouth, in its final oversight report. The fact that there are still unanswered questions on the material that went through the Portsmouth facility may mean that the Department could downplay the health and safety risks to past and present workers.

While I understand that secrecy was necessary throughout the 50's, 60's, and 70's during the Cold War, I believe that the Department needs to move forward and make information known that is important to protect worker health and safety. After all, the health and safety of the workforce should be one of our top priorities. As I hope to show at a field hearing later this year, the Federal Government permitted workers at the Portsmouth plant and other nuclear facilities to be at risk of exposure. These men and women who made their contribution to this country's national defense have suffered not only from the illnesses that they contracted as a result of the risk that the government placed them in but also from the systems set up to compensate these workers for job-related injuries. The Administration has a proposal to compensate a very limited number of Department of Energy contract workers whose health was put at risk, and while I support that effort, I believe that this proposal does not go far enough. It does not include the thousands of Portsmouth employees who were exposed to radioactive and other hazardous materials without adequate protection, and I am committed to ensuring that Ohio workers are treated fairly.

Again, I appreciate the Chairman's interest in an issue that is of great importance to families of the workers in our states. These families continue to have questions and they deserve straight answers. I hope this hearing will give us an opportunity to do just that.

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### QUESTION FOR THE RECORD SUBMITTED BY SENATOR STEVENS AND RESPONSE FROM DR. MICHAELS

*Question:* Mr. Michaels, in the State of Alaska, the United States conducted its largest atomic underground test to date on the island of Amchitka in 1971. This was the last of three underground blasts conducted on the island beginning in 1965. It is my understanding that last year Dr. Seligman made a commitment to a medical screening program for workers who had been employed at the Amchitka nuclear weapons site. This screening was to be conducted over a period of years. I would like to know the current status of that screening process and your plans to complete it.

*Answer:* In September 1999, an Agreement in Principle (AIP) between the State of Alaska and the DOE Nevada Operations Office was executed to support a variety of environmental monitoring and remediation programs. Included in that AIP was a commitment to support a program of medical monitoring for former DOE contractor workers who were employed at the Amchitka site. Funding to initiate the program (\$237,000 in FY 00) has been provided to the State of Alaska, and the Department has asked for funds to support full program implementation as part of its FY 01 budget request.

**Prepared statement of Vikki Hatfield,  
daughter of former K-25 and Y-12 worker,  
Kingston, Tennessee**

Mr. Chairman and esteemed members of the committee: My family and I appreciate being given the opportunity to speak to you on a subject that is very important to us.

My father, Leon Meade began working for the Department of Energy in 1949. During this time he worked in all the plants in Oak Ridge. The job that we feel that has impacted us most as a family is the one from the years 1969 till his retirement in 1985. During this time he worked in assembly. He was in fact assembling the devices that were made at the Y-12 facility, which included the handling and cutting of Beryllium and Asbestos.

In 1985, the company offered a retirement package, which my father accepted. My parents and grandparents owned a 150-acre farm and my father enjoyed working on it. He retired and had four fairly good years and then his health began to decline.

The sickness started with a lot of pain with no apparent cause. You must understand that for him even to complain was unusual. He was never sick and never took medicine. We knew something was wrong. We were told that we should take him to Mayo's Clinic in Jacksonville Florida. We did this twice to no avail. The doctors did not know what was wrong. They found what they thought was evidence of early myeloma (cancer). They could not find it in his body. They knew something was wrong but could not figure out what. We also made several trips to Vanderbilt Hospital in Nashville with the same outcome- yes, something is very wrong but we don't know what. There were repeated trips to doctors and hospitals in Knoxville, Tennessee. He was admitted several times to the University of Tennessee Hospital as well as Baptist Hospital. Each time we made these trips we always braced ourselves for the worst. We knew that something was terribly wrong but still we could not get a diagnosis.

The years went on and my father grew much worse. He started having constant pain in his lower abdomen and in his prostate. The pain was constant. He stayed on antibiotics for over a year and nothing changed. The pain has grown and spread. We finally found the cause of his trouble. After one of our many hospital stays that was for what appeared to be pneumonia, a specialist came to talk to us about where my father had worked and what he had done. The lung specialist that attended to him was Dr. Cherry. He told us he wanted to test my father for Beryllium. Although my father understood what he was saying the rest of us were in the dark. We did a little research and found that Beryllium reacts as a cancer. Without someone knowing what he or she are actually looking for this disease can be present without being diagnosed. This explained why the apparent cancer was showing up. The test results showed Beryllium in his lungs, asbestos coating the outside of his lungs, as well as heavy metal in his body. These heavy metals account for the constant pain in his lower abdomen.

My family's feelings were great, finally we know what is wrong-let's fix it. We have found there is no fix. We have watched a man who has always been in control turn into an invalid. We have had to sell our cattle because he can't take care of them. We have watched his weight fall from over 180 pounds when he retired to something less than 120 pounds. He is over six feet tall, so you can imagine that he is only skin and bones.

We try and think of things that he will or can eat. Nothing will stay down. He can no longer go out in public. He is embarrassed because he doesn't know when the vomiting will strike. He can't get his breath he must have oxygen. He can't bathe himself he must have help. He can't walk without the aid of a walker. He doesn't sleep at night because of the pain and because he is afraid he will die. He takes over 16 pills a day. Some days

it is hard to get them to stay down and other days he misses the medication because of the sickness. He doesn't see the benefit and we have to talk about the need to continue to try to take the medicine. I haven't touched on how this affects the family as a whole. My mother stays with him 24 hours a day. He doesn't like for her to leave because he is afraid something will happen. My brothers and I take turns getting the medication and groceries. One of us must always be on stand-by in case of emergency. He knows that he is dying and that there is nothing that can be done. There is no cure for Bryillious, Asbestosis or heavy metal. We know that his time is short but it is his quality of life that we are concerned about.

In January, he was sick and in the hospital. When he came home they needed to give him medicine that cost \$500 a day. That just was not possible. We need help! His medical expenses are rising daily. His insurance questions his stays in the hospital because they think that the Department of Energy should be paying for his stays. Every time we go to a doctor or hospital we have to go through a mountain of paperwork about who is responsible. In the first two months of 2000, he has already had several hundreds of dollars in out of pocket prescriptions. We can assume that by the end of the year, if we are fortunate enough to have him that long and if things stay the same and he gets no worse, the cost will be into the thousands in out of pocket costs. If things worsen, the cost could easily go into the tens of thousands in out of pocket costs.

A decision by his insurance company has now been made that limits pain medications to cancer patients. Neither my father nor any of the former employees with any of these diseases will be able to withstand the pain without medication.

The bottom line is really very simple; my father did a job for over 31 years. He did it because that is what the Department of Energy asked of him. He was not told that he was in danger and that he was risking his life each and every day. I believe that there is evidence that goes back as far as 1952 that proves the Department had knowledge of Beryllium and how it could affect your health.

In December when I attended my first meeting with Dr. Michaels and his staff, I was surprised at the number of people who came forward to speak. I feel sorry for the people who have just been diagnosed. If they are in their late thirties or even in their forties, they will have a long and expensive road to travel.

We have found the Department of Energy to not be very helpful. They have asked my father to go to Nevada for examination as well as New Jersey. We have explained that he can hardly walk through the house. How can he be expected to make a trip like that? As recently as one month ago we did get him to Oak Ridge because the Department wanted to run more tests. We filled out more paper work (which I have attached). Every time they want to have a test run, you receive more paper work just like the other that has been filled out. Is this really necessary? Everything is in the personnel file or they would not be trying to run the test to begin with.

My father has been retired for 14 years, ten of those years he has been sick. During this time there has not been an increase in his retirement benefits, insurance coverage nor has anything been offered to help make this devastating illness easier for my mother or the rest of my family. How can we be expected to give him the quality of life that he deserves?

I would like to leave you with one last thought:

You are in the room with your father a man who never cries. You watch as tears run down his face and he says, "all I want is to stop hurting and to have my health back is that to much to ask?" There is no answer to this. There is no way to stop or prolong what he is going through.

Meade, Leon A

(do not complete)

OCCUPATIONAL EXPOSURE QUESTIONNAIRE

Please complete the following questionnaire to the best of your ability.

Name: Leon A Meade  
First name Middle initial Last name

CURRENT WORK STATUS

- 1. Please indicate your current K-25 work status (check appropriate box):
  - Retired from K-25 facility and receiving pension from K-25 employment
  - Terminated from K-25 facility and not receiving pension from K-25 employment
- 2. Please indicate your current work status (check appropriate box)
  - Employed
  - Unemployed
  - Retired, not seeking employment
- 3. If you are currently employed, what type of job do you have?
 

Employed by: \_\_\_\_\_

Job Title: \_\_\_\_\_
- 4. If you are permanently retired from working at K-25, what year did you retire? \_\_\_\_\_  
Year
- 5. If you are permanently retired, did you retire due to a disability that occurred while working at K-25?
  - YES
  - NO

WORK HISTORY

We are interested in your work history at any DOE facility in which you have worked.

- 6. In what year did you first begin to work at any DOE facility? 1949  
Year
- 7. In what year did you stop working at any DOE facility? 1995  
Year
- 8. a) How many DOE facilities did you work at? 3  
Number
- b) If you worked at more than one DOE facility, please name these facilities (other than Oak Ridge K25): KID - 412



9a. We wish to learn more about your specific history of work at Oak Ridge, K-25. Please complete one page for each job that you had at K-25, starting with your first job and continuing with each job until you stopped work at K-25. For each job title, please complete the exposure table as it pertains to that job. If you were exposed to the age listed in the shaded columns, please fill in the columns to the right.  
 First Job Title: Converter Maintenance Primary Buildings 14-01

Year Started: 1952 Year Ended: 1958

Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)	Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)
Metals			Fluorine		
Beryllium			Hydrochloric Acid (HCl)		
Cadmium			Hydrofluoric Acid (HF)		
Chromium			Nitric Acid		
Lead			Sodium Hydroxide		
Mercury			Sulfuric Acid (Battery Acid)		
Nickel	<u>14-01</u>		Process Chemicals		
Nickel Carbonyl			Chlorine Trifluoride (Treatment gas)		
Solvents	<u>K-25</u>	<u>1952-1958</u>	Uranium Hexafluoride (UF6 or process gas)		
Acetone	<u>14-01</u>		Uranium Tetrafluoride (UF4 or green salt)		
Acetonitrile			Uranium Oxide (yellow cake)		
Acrylonitrile			UO <sub>2</sub> F <sub>2</sub> (white material)		
Benzene			Other Agents		
Chlorinated Solvents (TCE, TCA, Carbon tetrachloride, others)			Arsenic		
Cutting Oils			Asbestos		
Freon			Bromine Trifluoride		
Methyl Ethyl Ketone (MEK)			Cyanides		
Paint or Paint Thinners			Dusts (Wood, Coal, Fibers)		
Stoddard Solvent			Fiberglass		
Radioactive Materials			Epoxy Resins/Hardeners		
Plutonium			Heat		
Uranium	<u>14-01</u>		Noise		
Technetium			PCBs		
Internal Radiation Exposure			Phosgene		
External Radiation (Gamma, Neutron, X-Ray)			Silica		
Acids/Caustics			Welding Fumes		
Ammonia					
Chlorine					
Chromic Acid					

Meade, Leon A.

9b. For your second job title at ~~825~~, please complete the following table as you did the one on the previous page.

Second Job Title: MATERIAL HANDLER Primary Buildings 999B - BATA-1 / BATA  
 Year Started: 1989 Year Ended: 1985

Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)	Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)
<b>Metals</b>			Filconne	Beta 2/4	
Beryllium	Beta 2 - Beta 4		Hydrochloric Acid (HCl)		
Cadmium	Beta 2 - Beta 4		Hydrofluoric Acid (HF)		
Chromium	Beta 2 - Beta 4		Nitric Acid		
Lead	Beta 2 - Beta 4		Sodium Hydroxide		
Mercury	Beta 2 - Beta 4		Sulfuric Acid (Battery Acid)		
Nickel	Beta 2 - Beta 4		<b>Process Chemicals</b>		
Nickel Carbonyl	Beta 2 - Beta 4		Chlorine Trifluoride (Treatment gas)		
<b>Solvents</b>			Uranium Hexafluoride (UF6 or process gas)		
Acetone	Beta 2 - Beta 4		Uranium Tetrafluoride (UF4 or green salt)		
Acetonitrile			Uranium Oxide (yellow cake)	Beta 2/4	
Acrylonitrile			UO <sub>2</sub> F <sub>2</sub> (white material)	Beta 2/4	
Benzene	Beta 2 / Beta 4		<b>Other Agents</b>		
Chlorinated Solvents (TCE, TCA, Carbon tetrachloride, others)			Arsenic		
Cutting Oils	Beta 2/4		Asbestos	Beta 2/4	
Freon			Bromine Trifluoride		
Methyl Ethyl Ketone (MEK)	Beta 2/4		Cyanides		
Paint or Paint Thinners	Beta 2/4		Dusts (Wood, Coal, Fibers)		
Stoddard Solvent			Fiberglass	Beta 2/4	
<b>Radioactive Materials</b>			Epoxy Resins/Hardeners	Beta 2/4	
Plutonium	Beta 2/4		Heat	Beta 2/4	
Uranium	Beta 2/4		Noise	Beta 2/4	
Technetium			PCBs		
Internal Radiation Exposure			Phosgene		
External Radiation (Gamma, Neutron, X-Ray)	Beta 2/4		Silica		
<b>Acids/Caustics</b>			Welding Fumes	Beta 2/4	
Ammonia	Beta 2/4				
Chlorine	Beta 2/4				
Chromic Acid					

Meade, Leon A.

Subsequent to the completion of the table at the top of this page, complete the following table as you did on the previous page.

Third Job Title: TRUCK DRIVER Primary Buildings \_\_\_\_\_  
 Year Started: 1950 Year Ended: 1952

Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)	Material	Department(s) where material was present	Calendar years worked in department (i.e. 1963-1985)
<b>Metals</b>			Fluorine		
Beryllium			Hydrochloric Acid (HCl)		
Cadmium			Hydrofluoric Acid (HF)		
Chromium			Nitric Acid		
Lead			Sodium Hydroxide		
Mercury			Sulfuric Acid (Battery Acid)		
Nickel			<b>Process Chemicals</b>		
Nickel Carbonyl			Chlorine Trifluoride (Treatment gas)		
<b>Solvents</b>			Uranium Hexafluoride (UF6 or process gas)		
Acetone			Uranium Tetrafluoride (UF4 or green salt)		
Acetonitrile			Uranium Oxide (yellow cake)		
Acrylonitrile			UO <sub>2</sub> F <sub>2</sub> (white material)		
Benzene			<b>Other Agents</b>		
Chlorinated Solvents (TCE, TCA, Carbon tetrachloride, others)			Arsenic		
Cutting Oils			Asbestos		
Freon			Bromine Trifluoride		
Methyl Ethyl Ketone (MEK)			Cyanides		
Paint or Paint Thinners			Dusts (Wood, Coal, Fibers)		
Stoddard Solvent			Fiberglass		
<b>Radioactive Materials</b>			Epoxy Resins/Hardeners		
Plutonium			Heat		
Uranium			Noise		
Technetium			PCBs		
Internal Radiation Exposure			Phosgene		
External Radiation (Gamma, Neutron, X-Ray)			Silica		
<b>Acids/Caustics</b>			Welding Fumes		
Ammonia					
Chlorine					
Chromic Acid					

Meade, Leon A.

DEPT. OF ENERGY - OAK RIDGE

10. Please list below all jobs that you have had in your lifetime other than the jobs that you had at Oak Ridge K-25.

Please list these jobs in chronological order, starting with your first job.  
Please list by calendar years (for example 1963-1985)

Employed by: (company name, type of industry)	Job Title (or position)	Calendar year(s) at job (e.g. 1963-1985)
1. X-10 - Lab.	Truck Driver	1950-1952
2. U-1A	Metallic Handler	1958-1965
3. U-1A	garitor 4 mo.	
4. U-1A	Truck Driver	1966-1969
5. U-1A	assemblyman	1969-1985
6. Retired		1985
7.		

Thank you for completing the questionnaire. Please bring it to your medical screening appointment and leave it with the physician.

**MEDICAL HISTORY**

Have you ever been diagnosed by a physician with any of the following conditions?

CONDITION	Y E S	N O
Anemia (low red blood cell count)		
Benign prostatic hypertrophy (enlarged prostate)		
<b>Cancer of the:</b>		
Breast		
Bladder		
Colon		
Leukemia		
Lymphoma (lymph node cancer)		
Lung		
Prostate		
Skin		
Thyroid		
Other type (please specify):		
Cystitis (bladder inflammation; within the past month)		
Diabetes		
<b>Heart disease</b>		
Angina		
Congestive heart failure		
Myocardial infarction (heart attack)		
<b>Liver disease</b>		
Hepatitis (please specify type, if known):		
Cirrhosis		
Other type (please specify):		
Hypercholesterolemia (high cholesterol)		
Hypertension (high blood pressure)		
Hyperthyroid disease (hyperthyroidism)		
Hypothyroid disease (hypothyroidism)		
<b>Kidney disease</b>		
Nephritis (chronic)		
Kidney stones		
Other type (please specify):		
<b>Lung disease</b>		
Asbestosis		
Beryllium lung disease (berylliosis)      Sept 1999		
Asthma (as an adult)		
Bronchitis (chronic)		
Emphysema		
Other type (please specify):		
<b>Neurologic disease</b>		
Dementia -Alzheimer's disease		
Dementia - other than Alzheimer's disease		
Other type (please specify):		
Stroke		
Urinary tract infection (within the past month)		

NAME:

Meade, Leon A.

**SURGICAL HISTORY**

Please list the type of surgery and the year it was done, starting with the most recent.

TYPE OF SURGERY	YEAR
Hip replacement	1995
Gall bladder removal	1992

**FAMILY HISTORY**

Has anyone in your immediate family (other than yourself) ever been diagnosed by a physician with any of the following conditions? This includes only your father, mother, sister(s), and/or brother(s).

CONDITION	Y	N	O
<b>Cancer of the:</b>			
Breast			✓
Bladder			✓
Colon			✓
Leukemia			✓
Lymphoma (lymph node cancer)			✓
Lung			✓
Prostate			✓
Skin <i>mouth cancer</i>			✓
Thyroid <i>Mother</i>			✓
Other type (please specify):			
<b>Diabetes</b>			✓
<b>Heart disease</b>			
Angina			✓
Congestive heart failure <i>Mother</i>			✓
Myocardial infarction (heart attack)			✓
Hypercholesterolemia (high cholesterol)			✓
Hypertension (high blood pressure)			✓
<b>Lung disease</b>			
Asthma (as an adult) <i>father</i>			✓
Emphysema			✓
<b>Neurologic disease</b>			
Dementia -Alzheimer's type			✓
Other type (please specify):			

**REVIEW OF SYSTEMS**

Have you been experiencing any of the following symptoms within the last 6 to 12 months? Please check the appropriate box.

SYMPTOM	Y E S	N O
<b>General</b>		
In general, would you say your health is: (select one)		
<input type="radio"/> Excellent <input type="radio"/> Very good <input type="radio"/> Good <input type="radio"/> Fair <input checked="" type="radio"/> Poor		
What are your main concerns about your health?		
Weight change ( If YES, select one) <input type="radio"/> gain <input checked="" type="radio"/> loss		
How many pounds? ( 50 )    Over how many months? ( 7 yr )    175 → 120 lbs		
<b>Ears</b>		
Difficulty in hearing	<input checked="" type="checkbox"/>	
Deafness in one or both ears		<input checked="" type="checkbox"/>
Use of hearing aid		<input checked="" type="checkbox"/>
Tinnitus (ringing in ears)		<input checked="" type="checkbox"/>
Earache(s) from infection		<input checked="" type="checkbox"/>
<b>Thyroid/ Endocrine</b>		
Heat or cold intolerance		<input checked="" type="checkbox"/>
Excessive thirst		<input checked="" type="checkbox"/>
Excessive urination		<input checked="" type="checkbox"/>
<b>Breasts (especially women)</b>		
Lumps or masses		<input checked="" type="checkbox"/>
Discharge (from nipple)		<input checked="" type="checkbox"/>
Pain or tenderness		<input checked="" type="checkbox"/>
<b>Heart / Vascular</b>		
Palpitations	<input checked="" type="checkbox"/>	
Edema (swollen hands/legs/feet)	<input checked="" type="checkbox"/>	
<b>Stomach / Intestines</b>		
Change in bowel habits		<input checked="" type="checkbox"/>
Blood in stool		<input checked="" type="checkbox"/>
Hemorrhoids		<input checked="" type="checkbox"/>
<b>Urinary System</b>		
Frequent urination		<input checked="" type="checkbox"/>
Blood in urine		<input checked="" type="checkbox"/>
Painful urination		<input checked="" type="checkbox"/>
Difficulty in urination		<input checked="" type="checkbox"/>
Other problems (please describe):		

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NAME

Meade, Leon A.

**FREQUENT SYMPTOMS QUESTIONNAIRE**

The following set of questions asked about are symptoms and how often you may have them. Please check the appropriate box.

SYMPTOM	FREQUENCY				
	Daily or Almost Daily (3 or more times per week)	Weekly (1 or 2 times per week)	Monthly (1 or 2 times a month)	Rarely if Ever (3 to 6 times a year or less)	Not sure
Joint pain	<input checked="" type="checkbox"/>				
Fatigue	<input checked="" type="checkbox"/>				
Headache					
Memory problems	<input checked="" type="checkbox"/>				
Sleep disturbance	<input checked="" type="checkbox"/>				
Rash	<input checked="" type="checkbox"/>				
Concentration difficulty	<input checked="" type="checkbox"/>				
Depressed mood	<input checked="" type="checkbox"/>				
Muscle pain	<input checked="" type="checkbox"/>				
Dyspnea (difficulty breathing)	<input checked="" type="checkbox"/>				
Diarrhea	<input checked="" type="checkbox"/>				
Abdominal pain	<input checked="" type="checkbox"/>				
Bleeding gums					
Hair loss (circle YES or NO)		<input checked="" type="radio"/> YES	<input type="radio"/> NO		



**BREATHING QUESTIONNAIRE**

The following set of questions are about your breathing function. If you are unsure about whether your answer is YES or NO, answer NO.

COUGH		Y	E	S
Count a cough that occurs with first smoke (if applicable) or when first going outside. Exclude cough to clear your throat.				
Do you usually have a cough?				
Do you usually cough as much as 4 to 6 times a day, 4 or more days out of the week?				
Do you usually cough at all on getting up, or first thing in the morning?				
Do you usually cough at all during the rest of the day or at night?				
<i>If you answered YES to any of the questions above, please answer the next two questions.</i>				
Do you usually cough like this on most days for 3 consecutive months or more during the year?				
For how many years have you had this cough? (18-19) years				

PHLEGM		Y	E	S
Count phlegm that occurs with first smoke (if applicable) or when first going outside. Exclude phlegm from the nose. Count swallowed phlegm.				
Do you usually bring up phlegm from your chest?				
Do you usually bring up phlegm like this as much as twice a day, 4 or more days out of the week?				
Do you usually bring up phlegm at all on getting up, or first thing in the morning?				
Do you usually bring up phlegm at all during the rest of the day or at night?				
<i>If you answered YES to any of the questions above, please answer the next two questions.</i>				
Do you bring up phlegm like this on most days, for 3 consecutive months or more during the year?				
For how many years have you had trouble with phlegm? (18-19) years				

WHEEZING		Y	E	S
Does your chest ever sound wheezy or whistling when you have a cold?				
Does your chest ever sound wheezy or whistling occasionally apart from colds?				
Does your chest ever sound wheezy or whistling most days or nights?				
<i>If you answered YES to any of the questions above, please answer the next question.</i>				
For how many years has this been present? (18) years				

BREATHLESSNESS		Y	E	S
<i>If you are disabled from walking by any condition (for example, a leg injury) OTHER than heart or lung disease, please describe condition and skip this section.</i>				
Nature of condition:				
Are you troubled by shortness of breath when hurrying on a level surface or walking up a slight hill?				
Do you have to walk slower than people your age on a level surface because of shortness of breath?				
Do you have to stop for breath when walking at your pace on a level surface?				

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NAME

Meade, Leon A.

CHEST COLDS AND CHEST ILLNESSES		Y E S
During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?		
<i>If you answered YES to the question above, please answer the following question</i>		
How many episodes of such chest illnesses have you had? ( ) Number of illnesses		

PAST CHEST ILLNESSES		Y E S
These refer to lung diseases OTHER than asthma, asbestosis, chronic bronchitis or emphysema.		
Have you ever had:		
Any other chest illness? ( If YES, please specify):		
Any chest operations? ( If YES, please specify):		
Any chest injuries? ( If YES, please specify):		

TOBACCO USAGE		Y E S
This section refers to current and former users of cigarettes.		
1. Have you smoked more than 100 cigarettes (5 packs) during your entire life?		
<i>If you answered YES to question # 1, please answer questions # 2 and 3. If you answered NO to question # 1, skip this entire section.</i>		
2. How old were you when you started smoking cigarettes on a regular basis? (20) years old		
3. Do you smoke cigarettes now?		
<i>If you answered YES to question # 3, please answer question # 4 and skip # 5 and 6. If you answered NO to question # 3, please skip question # 4 and answer question # 5 and 6.</i>		
4. Over the years that you have smoked, how many packs per day (on average) have you smoked? (1) packs		
5. How old were you when you stopped smoking cigarettes on a regular basis? ( ) years old		
6. When you were smoking, how many packs per day (on average) did you smoke? ( ) packs		

**NOISE EXPOSURE QUESTIONNAIRE**

Please answer the following questions about noise exposure in your job. Answer YES or NO.		Y E S
1. Have you ever been exposed to gunfire repeatedly (while in the military or as a civilian)?		L
2. Do you engage in activities that involve exposure to loud noise (such as operating chain saws, motorcycles, lawn mowers etc.)?		L
3. Have you ever been exposed repeatedly to loud noise when working at a gaseous diffusion plant?		✓
4. Have you ever been exposed repeatedly to loud noise when working at a job other than a gaseous diffusion plant?		✓

Patient Signature: \_\_\_\_\_

Date: \_\_\_\_\_

WRITTEN TESTIMONY ON THE K-25 SITE, OAK RIDGE, TN. ILL WORKERS  
SITUATION BY ANN H. ORICK MARCH 22, 2000

I AM A FORMER WORKER OF THE OAK RIDGE K-25 SITE. I, AS WELL AS MY HUSBAND, AND HUNDREDS OF OTHER WORKERS ARE ILL AS A RESULT OF OUR DUTIES THERE. WE ARE PHYSICALLY AND FINANCIALLY DEVASTATED. WE ARE TRULY "AMERICA'S LIVING DEAD".

I WORKED AT THE K-25 SITE FOR OVER 12 YEARS. I ENJOYED MY JOB. I WAS A HARD WORKER. I TOOK PRIDE IN EVERYTHING I DID. I GREW UP IN THE MOUNTAINS OF EAST TENNESSEE BEING TAUGHT TO WORK HARD - WASHING CLOTHES ON A WRINGER WASHER AND SCRUBBING FLOORS ON MY HANDS AND KNEES. MY REGULAR DUTIES AT HOME ALSO INCLUDED A WEEKLY CLEANING OF ALL WINDOWS INSIDE AND OUT, IRONING ALL THE CLOTHES I HAD WASHED, EVEN SCRUBBING THE PORCHES, SIDEWALKS AND BASEMENT WITH HOT SOAPY WATER, AND MOWING THE YARD WITH A PUSH MOWER.

AT THE K-25 PLANT I WORE STEEL TOED BOOTS AND COVERALLS, CARRIED 2 RADIATION METERS WHICH WEIGHED OVER 10 LBS. APIECE PLUS SUPPLIES, AND WALKED FROM JOB TO JOB IN THE HEAT AND THE COLD. I WORKED NIGHTS AND WEEK-ENDS. MANY WEEKS I WORKED 60 TO 80 HOURS.

I WOULD GO HOME, STILL DO MY HOUSEWORK, THE LAUNDRY, COOK, GO TO THE GROCERY... WHATEVER NEEDED TO BE DONE. I ATTENDED FOOTBALL GAMES, SOCIAL GATHERINGS, AND FUNCTIONS WITH MY CHILDREN. I WENT TO CHURCH REGULARLY - 3 TO 4 TIMES A WEEK....BUT AROUND 1989 I BEGAN GETTING SICK, AND BETWEEN THAT TIME AND 1995 MANY THINGS HAPPENED - MAJOR THINGS - LIKE MY HEART RATE WOULD BE 140 TO 180 BEATS PER MINUTE, I DEVELOPED CHRONIC FATIGUE, SHORTNESS OF BREATH UPON EVEN MILD EXERTION, MY BONES HURT AND MY MUSCLES HURT AND BECAME WEAK, AND I WAS DIAGNOSED WITH A CONDITION CALLED FIBROMYALGIA. SOMETIMES I CANNOT EVEN STAND FOR MY SKIN TO BE TOUCHED IN ANY WAY BECAUSE OF EXTREME PAIN. A SEVERE SKIN RASH ERUPTED ON MY FACE AND NECK WHICH ERUPTED AND BLED, MY GALLBLADDER SHUT DOWN (NO PRIOR TROUBLE) AND MY STOMACH STOPPED DIGESTING MY FOOD. THE OPENING BETWEEN THE STOMACH BULB AND THE INTESTINES CLOSED TO THE SIZE OF A DIME, PREVENTING THE ELIMINATION OF THE FOOD THAT WAS DIGESTED FROM PASSING THROUGH, AND SEVERE NAUSEA AND VOMITING OCCURRED. I DEVELOPED SEVERE COLON PROBLEMS. I LOST 20 POUNDS. AFTER TWO ATTEMPTS TO OPEN THE AREA WITH BALLOON DILATION, A MAJOR SURGERY WAS PERFORMED TO CREATE A NEW OUTLET BETWEEN THE STOMACH AND INTESTINES. I HAVE HAD 6 BREAST TUMORS REMOVED. I DEVELOPED SEVERE MIGRAINE HEADACHES WHICH WOULD LAST 3 TO 4 DAYS AT A TIME, REQUIRING ME TO GO TO BED. I WOULD ONLY BEGIN TO RECOVER FROM ONE WHEN THE NEXT ONE WOULD SET IN. MY VISION BLURRED, AND PERIPHERAL VISION LOSS BEGAN, AND IT IS NOT KNOWN IF THE PROCESS WILL STOP OR CONTINUE WHICH WOULD RESULT IN A LOSS OF EYESIGHT. I HAVE SEVERE LOSS OF BALANCE AND I HAVE TO USE A CANE FOR STABILITY. I SUFFER FROM SHORT TERM MEMORY LOSS. TO ADD TO THE GROWING LIST OF PHYSICAL PROBLEMS I HAVE A 2" FOOT DROP OF THE RIGHT FOOT DUE TO TWO BACK SURGERIES FOR 4 RUPTURED DISKS RESULTING FROM A WORK INJURY, DEGENERATING SPINE AND BONE SPURS, ESPECIALLY HEAVY SPURRING OF BOTH FEET - BOTTOMS AND ANKLES, SCIATICA IN THE RIGHT LEG AND HIP, AND THINNING OF THE BONES OF THE HIP.

AS THESE MEDICAL PROBLEMS SURFACED, I FOUND I COULD NO LONGER ENGAGE IN NORMAL ACTIVITIES. I COULD NOT SIT OR STAND FOR ANY LENGTH OF TIME DUE TO THE HIGH PAIN LEVELS AND THE SEVERE BALANCE PROBLEMS. I WAS PLACED ON MEDICATION BY A NEUROLOGIST USED FOR EPILEPSY TO CONTROL MY MUSCLE SPASMS, HIGH PAIN LEVEL, AND TREMORS. I CAN NO LONGER DRIVE A CAR. I CANNOT EVEN GO TO A GROCERY STORE ALONE BECAUSE I CANNOT LIFT ITEMS LIKE A GALLON OF MILK FROM THE FREEZER TO THE CART. I HAVE NOT BEEN ABLE TO WORK SINCE JANUARY, 1996.

MY DAILY ACTIVITIES EXCEPT FOR GOING TO THE DOCTOR ARE BASICALLY NON EXISTENT. MY ENTIRE LIFESTYLE HAS CHANGED. I LIVE IN PAIN CONSTANTLY. I RARELY DO ANYTHING FOR RECREATION AND EVEN MY CHURCH ATTENDANCE IS DIFFICULT FOR ME. USUALLY ONLY A FEW TIMES PER MONTH. THIS PAST FEBRUARY 2ND FOLLOWING A SCOPE INTO THE STOMACH, I WAS AGAIN INFORMED THAT I WAS IN TROUBLE, ONLY MUCH WORSE THAN BEFORE. THE STOMACH ITSELF HAS NOW CLOSED TOGETHER, AND THE OPENING THAT IS LEFT IS APPROXIMATELY THE SIZE OF A PENCIL ERASER. I WAS SENT IMMEDIATELY TO THE SURGEON, WHO HAS EXPLAINED THAT ALTHOUGH THE FORMER SURGERY WAS MAJOR, THIS ONE WOULD BE MAJOR-MAJOR. OVER HALF OF MY STOMACH WILL HAVE TO BE CUT AWAY AND REMOVED, ALONG WITH THE BULB AREA LEADING FROM THE STOMACH TO THE INTESTINES WHERE THE LAST SURGERY WAS PERFORMED, AND THEN A LARGE PORTION OF THE INTESTINES. ONCE THIS HAS BEEN REMOVED, THE INTESTINES WOULD HAVE TO BE STRETCHED BACK UP TO BE SEWN ONTO THE TOP PART OF THE STOMACH THAT WAS LEFT. I WOULD BE ON LIQUIDS FOREVER WHICH WOULD DUMP STRAIGHT THROUGH MY BODY.

WITHOUT THE ATTEMPTED SURGERY, THE DOCTOR ANTICIPATES THAT I WILL ONLY LIVE 3 TO 6 MONTHS. DUE TO ALL MY OTHER HEALTH PROBLEMS, I HAVE CHOSEN NOT TO HAVE THE SURGERY.

I FEEL YOU SHOULD BE MADE AWARE OF SOME OF THE DISCRIMINATION THAT OCCURRED BECAUSE OF MY ATTEMPT TO REPORT TO THE COMPANY AND DOE HIGH LEVELS OF THIOCYANATE IN MY BODY. MY REPORTS WERE REFUSED BY THE LOCKHEED MARTIN MEDICAL DEPARTMENT WHO CALLED THIS A "SENSITIVE ISSUE", AND SAID THEY WERE TOLD BY THE CORPORATE DOCTOR NOT TO DISCUSS IT. THIS WAS THE FIRST TIME IN 12 YEARS WITH THIS COMPANY THAT ANY MEDICAL PAPERS OR TESTS HAD NOT BEEN ENTERED INTO MY MEDICAL FILES. EVERY WORK UP, EVERY DOCTOR STATEMENT, EVERY DAY OFF WORK HAD ALWAYS BEEN ENTERED INTO MY MEDICAL FILE, INCLUDING THE RECENT REMOVAL OF THE GALLBLADDER AND BREAST TUMORS.

ALSO, I AM PROBABLY THE ONLY PERSON AT THAT SITE WHO HAD THEIR SECURITY CLEARANCE PULLED BECAUSE OF HEALTH PROBLEMS. MY SECURITY CLEARANCE OF 12 YEARS WAS PULLED WHILE I WAS OFF WORK, AND I WAS NOT NOTIFIED UNTIL 6 TO 8 WEEKS AFTER I HAD RETURNED TO WORK, AND WAS BEGINNING TO WONDER WHY MY BADGE HAD NOT BEEN RETURNED TO ME. WHEN SECURITY CALLED ME REGARDING MY NOW "UNCLEARED" STATUS, I WAS ASTONISHED. WHEN I QUESTIONED A SUPERVISOR, SHE STATED THAT SHE HAD MET WITH OUR DEPARTMENT HEAD WHILE I WAS OUT, AND THEY DECIDED THEY COULD "SAVE THE COMPANY MONEY" BY HAVING MY CLEARANCE PULLED....."AFTER ALL, SHE SAID, YOU DON'T HAVE TO HAVE ONE TO WORK HERE". .....BUT THEY DID NOT TRY TO SAVE THE COMPANY ANY ADDITIONAL MONEY BY PULLING CLEARANCES OF THE OTHER 60-80 PEOPLE WHO WORKED IN THE SAME BUILDING, OR EVEN THOSE WHO DID THE SAME JOBS.....NOT EVEN

TWO PART TIME EMPLOYEES I WORKED WITH EVERY DAY, ONE OF WHICH HAD NEVER WORKED OUTSIDE THE BUILDING OR ACROSS THE PLANT AS I HAD.

WHEN A NEW DOE MANDATORY PROGRAM OF TESTING WAS INITIATED FOR HEALTH PHYSICS TECHNICIANS, I WAS THE ONLY TECHNICIAN OUT OF APPROXIMATELY 101 TECHS AT K-25, AND THE ONLY TECH FROM ALL THREE OF THE OAK RIDGE FACILITIES, INCLUDING Y-12 AND ORNL, THAT WAS PULLED FROM THE PROGRAM FOR "HEALTH REASONS". THIS WAS NOT DONE UNTIL I HAD ALREADY COMPLETED AND PASSED WEEKS OF ADDITIONAL SCHOOL AND TESTS WHICH WERE EXTREMELY DIFFICULT AND STRESSFUL AS IT INCLUDED ADVANCED MATHEMATICAL EQUATIONS AND PHYSICS LECTURES AS WELL AS PROCEDURES AND REGULATIONS. AS A RESULT, I WAS THE ONLY HEALTH PHYSICS TECHNICIAN ON THE OAK RIDGE RESERVATION TO NOT BE ALLOWED TO QUALIFY UNDER THE NEW DOE REQUIREMENTS FOR A TECH POSITION.

OVER THE PAST FIVE YEARS, WE HAVE BEGGED AND PLEADED FOR HELP WHICH HAS FALLEN ON DEAF EARS. WE HAVE MANY ILLNESSES AND SYMPTOMS WHICH INCLUDE RESPIRATORY PROBLEMS, VISION PROBLEMS, GASTROINTESTINAL PROBLEMS, CHRONIC FATIGUE, LOSS OF BALANCE, LOSS OF MEMORY, HEART PROBLEMS, SEVERE BONE AND JOINT PAIN, SKIN RASHES, AND SEVERE MIGRAINE HEADACHES. HAIR ANALYSIS' SHOW HIGH LEVELS OF URANIUM, LEAD, NICKEL, BERYLLIUM, AND OTHER HEAVY METALS. BLOOD AND URINE SAMPLES HAVE ALSO SHOWN HIGH NICKEL, PCB, THIOCYANATE, ALUMINUM, AND OTHER MATERIALS TO BE PRESENT IN OUR BODIES. SOME EMPLOYEES HAVE GONE THROUGH CHELATION WHICH HAS RESULTED IN EXTREMELY HIGH LEVELS OF NICKEL BEING ELIMINATED FROM THE BODY.

DOCTORS IN OUR AREA DO NOT HAVE THE EXPERTISE TO DIAGNOSE OR TREAT US; AND THOSE THAT TRY ARE PACKED UP AND SENT AWAY. MEDICAL INSURANCE DOES NOT PAY FOR THE BIZARRE OR FREQUENT TESTS WE NEED; NEITHER DO THEY COVER MEDICATION. MET-LIFE, THE LOCKHEED MARTIN DISABILITY INSURANCE CARRIER, HAS REFUSED TO ACCEPT MOST EMPLOYEE'S DISABILITY CLAIMS. THOSE THEY DO ACCEPT ARE UNDER CONSTANT SPYGLASS SUPERVISION, AND FORMS FOR DOCTORS TO COMPLETE ARE DEMANDED FREQUENTLY, AND AT THE COST OF THE DISABLED/UNEMPLOYED WORKER, WHICH GET MORE AND MORE EXPENSIVE EACH TIME BECAUSE DOCTORS DO NOT UNDERSTAND WHY THEY ARE HAVING TO FILL OUT THE SAME FORM AGAIN AND AGAIN, AND WHY THEIR STATEMENTS ARE NOT ACCEPTABLE. THOSE EMPLOYEES DENIED DISABILITY ARE LEFT WITHOUT ANY INCOME.

MET-LIFE AND LOCKHEED MARTIN ALSO DEMAND FROM DAY ONE THAT EMPLOYEES FILE FOR AND GO TO ANY EXTREME TO GET SOCIAL SECURITY DISABILITY. IF YOU DO NOT FILE FOR SOCIAL SECURITY, YOU ARE CUT OFF THE MET LIFE PLAN. IF YOU RECEIVE SOCIAL SECURITY, THEN MET LIFE QUICKLY DEMANDS THIS MONEY BE HANDED OVER TO THEM TO COMPENSATE THEMSELVES FOR THEIR LOSSES. I PERSONALLY HANDED OVER TO MET LIFE ALMOST \$8,000. SECONDLY, IF A DISABLED EMPLOYEE FROM K-25 RECEIVES "ANY" COMPENSATION OF ANY KIND FROM THE GOVERNMENT OR ANYONE ELSE, LOCKHEED MARTIN AND MET LIFE HAVE ALREADY NOTIFIED US THAT THEY WILL RECUPERATE THIS ENTIRE AMOUNT FOR THEMSELVES 100%. SO K-25 EMPLOYEES ARE IN A NO-WIN SITUATION; LOCKHEED MARTIN AND MET LIFE ARE THE WINNERS HERE. ANY BILL OR ANY HELP THAT CONGRESS MAY PASS FOR THE K-25 WORKERS MUST BE DESIGNATED SOMEHOW THAT IT CANNOT BE TOUCHED BY LOCKHEED MARTIN AND MET LIFE. IT IS THE ILL WORKERS

THAT HAVE LOST THEIR JOBS, AND THEIR FUTURE CHANCE OF A JOB, OR ANY INCOME. IT IS THE ILL WORKER THAT HAS LOST THEIR MATERIAL POSSESSIONS, OWE MEDICAL BILLS, AND NEED MEDICATIONS THAT THEY NOW CANNOT AFFORD. IT IS ONLY FAIR THAT ANY TYPE OF COMPENSATION BE EXEMPTED FROM ATTACHMENT BY THE DOE CONTRACTOR CORPORATIONS.

WE HAVE NEEDS THAT MUST BE MET. SOME OF US ARE DYING. MANY WILL LIVE A VERY HARSH LIFE, ONE WITH NO QUALITY BUT FILLED WITH DAYS OF PAIN AND SUFFERING THAT NO MAN SHOULD HAVE TO ENDURE. IT IS ONLY FAIR THAT OUR MEDICAL NEEDS BE MET. WE NEED TO BE ABLE TO SEE A DOCTOR WHEN WE NEED TO GO, AND NOT HAVE TO WORRY ABOUT A REFERRAL OR A PAYMENT. WE NEED TO BE ABLE TO GO TO THE PHARMACY AND GET OUR MEDICINE WITHOUT THE HIGH COSTS BEING OUR RESPONSIBILITY. THESE ARE THE THINGS THAT WE HAVE REQUESTED FOR FIVE YEARS NOW. SURELY WE HAVE DONE ENOUGH FOR THIS COUNTRY TO QUALIFY FOR MEDICAL RELIEF.

YOU MUST REALIZE THAT SOME FAMILIES HAVE TAKEN BANKRUPTCY. WE HAVE ALL LOST OUR JOBS, WITH NO HOPE OF EVER WORKING AGAIN; THEREFORE, WE HAVE LOST PAST AND FUTURE WAGES. WE HAVE LOST PERSONAL MATERIAL THINGS THAT WE SPENT ALL OUR LIVES WORKING FOR. SOME HAVE NO VEHICLE OR METHOD OF TRANSPORTATION AT ALL. WE HAVE LOST OUR HOMES. WE'VE LOST OUR HEALTH. WE SUFFER PAINFULLY EVERY DAY THAT WE LIVE. THERE IS NO RELIEF FOR OUR BODIES THAT ARE RACKED IN PAIN. NO ONE SEEMS TO CARE ABOUT THE CONSEQUENCES WE HAVE FACED AS A RESULT OF BEING A DEDICATED LOYAL HARDWORKING AMERICAN CITIZENS LABORING OUR LIVES AWAY IN A GOVERNMENT NUCLEAR FACILITY THAT BECOME ONE OF THE NATION'S DUMPING GROUNDS FOR EVERYONE'S MISTAKES AND HAZARDOUS TOXINS.

SO OFTEN WE SEE THIS NATIONS LEADERS TRAVELING IN OTHER COUNTRIES PROCLAIMING THE SHAME AND DISGRACE OF PEOPLE LIVING IN NEED OF FOOD AND MEDICAL ATTENTION. WHY ARE WE DIFFERENT? WHY IS IT A SHAME FOR THOSE COUNTRIES CITIZENS TO LIVE IN ILLNESS AND POVERTY, BUT O.K. FOR US TO DO SO? HOW CAN YOU ALLOW THIS TO HAPPEN? CAN YOU JUSTIFY THOSE TAX DOLLARS SPENT BY OUR OFFICIALS OVERSEAS, WHEN WE COULD USE THAT MONEY HERE AT HOME TO BUY SOME OF OUR MEDICATIONS OR GROCERIES? THERE IS NO EXCUSE THAT CAN POSSIBLY MAKE IT O.K. FOR AMERICAN WORKERS AND FAMILIES TO BE PLACED IN SUCH DEPLORABLE CONDITIONS, AND ALL BECAUSE OF BEING DEDICATED EMPLOYEES UNTOLD OF THE HAZARDS THEY WERE WORKING IN, AND THE POSSIBLE HEALTH AFFECTS THAT WOULD RESULT.

THOSE OF US WHO WORKED AT THIS PLANT KNOW THE TRUTH ABOUT WHAT WE HAVE WORKED IN AND CONDITIONS THAT WE ENCOUNTERED. THE DEPARTMENT OF ENERGY'S OWN DOCUMENTS VERIFY EVERYTHING THAT WE HAVE RELAYED TO OUR ELECTED OFFICIALS OVER THE PAST 5 YEARS, YET NO ACTION HAS BEEN TAKEN. FALSE PROMISES BY DOE WILL NOT SAVE A LIFE. IT IS TIME WE GO FARTHER WITH THE TRUTH.

THIS PLANT CONSISTS OF OVER 50 YEARS OF MISTAKES AND EXPERIMENTS TO ESTABLISH AND PRODUCE NOT ONLY THE WORLD'S FIRST ATOMIC BOMB, BUT SUPPORT OTHER MISSIONS IN THE NUCLEAR DEFENSE OF THIS COUNTRY. I HAVE ATTACHED EXHIBITS TO THIS TESTIMONY OF DOE'S OWN ANALYSIS OF SOME OF THE K-25 SITE, SHOWING THE COMMON PRACTICES OVER 50 YEARS OF SPILLING,

"BURPING" OR VENTING INTO THE ATMOSPHERE, POURING DOWN THE DRAINS, OR BURYING IN THE GROUND THOUSANDS OF SUBSTANCES, INCLUDING URANIUMS, PLUTONIUM, MERCURY, LEAD, BERYLLIUM, LEAKING CYLINDERS, ROTTEN DRUMS OF TOXIC MATERIALS, PIECES OF RADIOACTIVELY CONTAMINATED EQUIPMENT AND PARTS OF TORN DOWN BUILDINGS. THIS LIST GOES ON AND ON, BUT I AM TRYING TO GET YOU TO UNDERSTAND THAT THIS SITE HAS LITERALLY BEEN CONTAMINATED WITH EVERY POSSIBLE SUBSTANCE AND HAS BEEN OPERATED IN A MANNER WHICH HAS ALLOWED THAT CONTAMINATION TO SPREAD OUTSIDE ITS BOUNDARIES. TO TOP IT OFF, A HAZARDOUS WASTE INCINERATOR WAS BUILT ON THIS SITE TO BURN MIXED HAZARDOUS WASTES, AND WASTES BEGAN BEING SHIPPED IN FROM ALL OTHER DOE SITES, AND BURNED IN THIS INCINERATOR. HAZARDOUS WASTES NOT BURNED ARE STORED ON SITE. ACCORDING TO DOE, THERE ARE NO KNOWN MONITORS IN EXISTENCE, NOR HAS TECHNOLOGY YET BEEN ABLE TO DEVELOP MONITORS THAT CAN DETECT WHAT EXACTLY IS BEING EMITTED OUT OF THIS INCINERATOR WHEN BURNING TAKES PLACE.

WHEN I HIRED IN AT THE K-25 SITE I WAS A CLERK. I WAS TO ASSEMBLE DATA PACKAGES FOR THE ANALYTICAL LABORATORIES ON SAMPLES AND THEIR RESULTS TO MEET BOTH DOE AND EPA PROTOCOL. THIS INCLUDED MAKING SURE ALL DATA WAS CORRECT AND REPORTED ON TIME. HOWEVER, MY DUTIES WERE SPLIT BY MY SUPERVISOR, WHO WAS IN CHARGE OF K-25 SAMPLING GROUP. I HAD TO RETRIEVE OLD SAMPLES WHICH HAD ACCUMULATED IN THE RECEIVING ROOM AREA, CARRY THEM DOWNSTAIRS, CLEAN THEM UP, REPACKAGE, LABEL WITH AN I.D., AND BOX AND TRANSPORT THEM TO ONE OF THE CLOSED PROCESS BUILDINGS FOR STORAGE IN A LOCKED CAGED AREA. THE PROCESS BUILDING WAS FILTHY, AND HAD BEEN SHUT DOWN FOR SOME TIME. IT WAS A PICTURE OF TIME STOOD STILL, AS EQUIPMENT, DESKS, CHAIRS, AND BICYCLES NEEDED TO GET AROUND IN THE LARGE BUILDING SET IDLE AND COVERED WITH DUST. I HAD NO IDEAL WHAT HAD TRANSPIRED IN THIS OLD BUILDING, OR WHAT I WAS COMING INTO DIRECT CONTACT WITH AS I MADE MANY, MANY TRIPS UP THE STEPS TO THE CAGE WITH THE SAMPLES I HAD TRIED TO CLEAN UP FOR STORAGE. I NEVER HAD ANY TYPE OF PROTECTIVE CLOTHING OR A RESPIRATOR OFFERED ME. AFTER ALL, I WAS A DATA CLERK. THE SAMPLES THAT I DEALT WITH DAILY VARIED AND INCLUDED AMBER COLORED JUGS OF PCB'S, WHICH I WIPED OFF WITH A PAPER TOWEL AND SECURED THE LIDS, NOT KNOWING PCB'S SOAKED DIRECTLY INTO THE SKIN; THERE WERE SOIL SAMPLES, SAND SAMPLES, SAMPLES WITH SMALL SILVER SHAVINGS, PETRIE DISHES COATED WITH MATERIAL, GLASS JARS OF SOLIDS AS WELL AS LIQUIDS, AND EVEN SAMPLES ENCLOSED IN RUBBER BINDINGS OR CONCRETE. IN ALL THERE WERE HUNDREDS UPON HUNDREDS OF SAMPLES THAT I ARCHIVED AND STORED IN ONE OF THE WORST CONTAMINATED BUILDINGS AT K-25. ALSO DURING THIS PERIOD THAT THESE VERY SAMPLES SAT ON THE LARGE CONFERENCE TABLE WHICH WAS MY DESK AND WORK AREA, PIPES FROM THE ANALYTICAL LABORATORY UPSTAIRS LEAKED, AND THE GOOK DRIPPED IN MY HAIR, AND I WOULD TAKE PAPER TOWELS AND WIPE IT OUT. AT NIGHT EVERYTHING HAD TO BE COVERED WITH HEAVY DUTY PLASTIC BAGS, AND MORNINGS WOULD BE SPENT IN CLEANING UP THE EQUIPMENT, DESKS, AND FLOORS. NEVER DID I HAVE ANY PROTECTIVE CLOTHING, OR KNOW WHAT WAS DRIPPING ON MY HEAD. I DID DEVELOP A VERY RAPID HEART RATE, AND ACTUALLY HAD A COUPLE OF BLACKOUT SPELLS WHICH RESULTED IN MY BEING PUT IN CCU. AFTER I BEGAN TO WORK AS A RADIATION/HEALTH PHYSICS TECHNICIAN, I WORKED ALMOST EVERY AREA OF THIS SITE. I HAVE

ENCOUNTERED MANY SITUATIONS WHERE THE RADIATION READINGS WERE ABOVE THE DOE LIMITS, AND HAVE WRITTEN MANY OCCURRENCE REPORTS. I HAVE WORKED IN EVERY VAULT IN THE K-25 BUILDING. I HAVE WORKED ALL THE PROCESS BUILDINGS, AND I WAS ASSIGNED TO BUILDING 1004L, A PILOT PLANT, WHICH WAS HIGHLY CONTAMINATED. I HAVE BEEN IN AREAS THAT WERE SO SMALL I WOULD HAVE TO LAY DOWN AND CRAWL IN. I HAVE WORKED ON ROOF TOPS, IN BASEMENTS, IN THE BURIAL GROUNDS, AND IN THE SCRAP YARDS. ONLY ONE TIME WAS I EVER GIVEN A RESPIRATOR FOR A JOB, AND THAT WAS DURING A TRANSFER OF UF6, WHICH WAS READING IN THE MILLIONS OF DISINTEGRATIONS PER MINUTE. I NOW HAVE RADIATION READINGS ON SOME OF THE SAMPLES I HAD TO TRANSFER AS A DATA CLERK, AND FIND THAT THESE SAMPLES ALSO READ UP IN THE MILLIONS OF DISINTEGRATIONS PER MINUTE. THESE COUNTS ARE WELL OVER THE DOE LIMITS OF 1,000 DPM ALPHA OR 5,000 DPM BETA/GAMMA REMEMBER, I HAVE HAD 6 BREAST TUMORS, A SHUT DOWN PERFECTLY NORMAL GALL BLADDER, RAPID HEART RATES, AND A MAJOR STOMACH OPERATION. COINCIDENCE? OR CAUSE!

MANY OF THE SAMPLES I HANDLED WERE MILITARY SAMPLES, MANY CAME FROM ROCKY FLATS, HANFORD, AND OTHER DOE SITES. MUCH OF THE RADIATION SURVEYS I DID AS A HEALTH PHYSICS TECHNICIAN WERE IN CLEAN UP OPERATIONS, WHERE WE ENCOUNTERED EVERYTHING FROM ENRICHED URANIUM TO TC99. DUST AND FILTH HAD ACCUMULATED EVERYWHERE, AS HAD COLUMNS OF DANGEROUS MOLDS AND FUNGUS, AND WE BREATHED THIS IN DAILY. VAULTS HAVE ACCUMULATED YEARS OF TONS OF RADIOACTIVE MATERIALS, NICKEL, LITHIUM, AND HUNDREDS OF OTHER SUBSTANCES, AND ROTTED OUT CYLINDERS LEAKED UF6, WHILE BARRELS RUSTED OUT AND LEAKED MATERIALS INTO THE GROUND. THE TEMPERATURES VARIED FROM EXTREME HEAT AND COLD.

K-25 ILL WORKERS HAVE HAD A ROUGH ROAD WHILE BEING SICK AS WELL AS FACING FINANCIAL TURMOIL, AND HAVING TO DEAL WITH DOE-ORO MANAGERS AND OFFICIALS WHO HAVE BEEN EXTREMELY DIFFICULT. WE HAVE CONSTANTLY BEEN RIDICULED, MOCKED, CONFRONTED, LAUGHED AT, IGNORED, CRITICIZED.....AND MATERIAL AND PROCESSES THAT WE KNEW WE WORKED IN AND AROUND WERE READILY DENIED, AND THE SAME ADAGE OF "WE NEVER HAD ANY HERE" CONTINUES TO REIGN REGARDING ALMOST EVERY MATERIAL WE MENTION. BOTH DOE AND CONTRACTOR HEALTH AND SAFETY MANAGERS HAVE PERSONALLY BEEN INVOLVED IN FAILURE TO COMMUNICATE HAZARDS TO THE EMPLOYEES, AND SEEM TO BE IN TOP PAYING POSITIONS WITHOUT THE NECESSARY KNOWLEDGE FOR THE JOB. LOCKHEED MARTIN HEALTH AND SAFETY MANAGER ADMITTED KNOWING OF THE DANGEROUS LEVELS OF MOLDS AND FUNGI IN THE VAULTS, KNEW THERE WAS NO POSTINGS, AND KNEW SO FOR "5 TO 8 YEARS". HIS REPLY WHEN I ASKED HIM WHY HE DID NOT TELL US OF THESE HEALTH HAZARDS AND PROVIDE US PROTECTION, WAS, "IF EMPLOYEES THOUGHT THERE WAS A PROBLEM, THEY SHOULD HAVE COME TO ME (INDUSTRIAL HYGIENE) AND ASKED ABOUT IT". THIS APPEARS TO BE THE REVERSAL OF POLICY: THE EMPLOYEE LINES UP SOME 8,000 DEEP EVERY MORNING AT THE DOOR OF INDUSTRIAL HYGIENE AND ASKS IF THERE ARE ANY HEALTH HAZARDS IN HIS WORK AREA FOR THE DAY. WE ALWAYS THOUGHT THAT AS EMPLOYEES WE WOULD BE INSTRUCTED OF ANY HAZARDOUS WORK SITUATION, AND WOULD BE SUPPLIED ADEQUATE PROTECTIVE CLOTHING FOR THE JOB. OBVIOUSLY, MANAGEMENT DID NOT SEE IT THIS WAY. THIS SAME MAN WAS APPOINTED THE OVERSEER OF THE BERYLLIUM PROGRAM AT K-25 BY DOE IN THE '80'S; HOWEVER, NO PROGRAM WAS EVER ESTABLISHED,



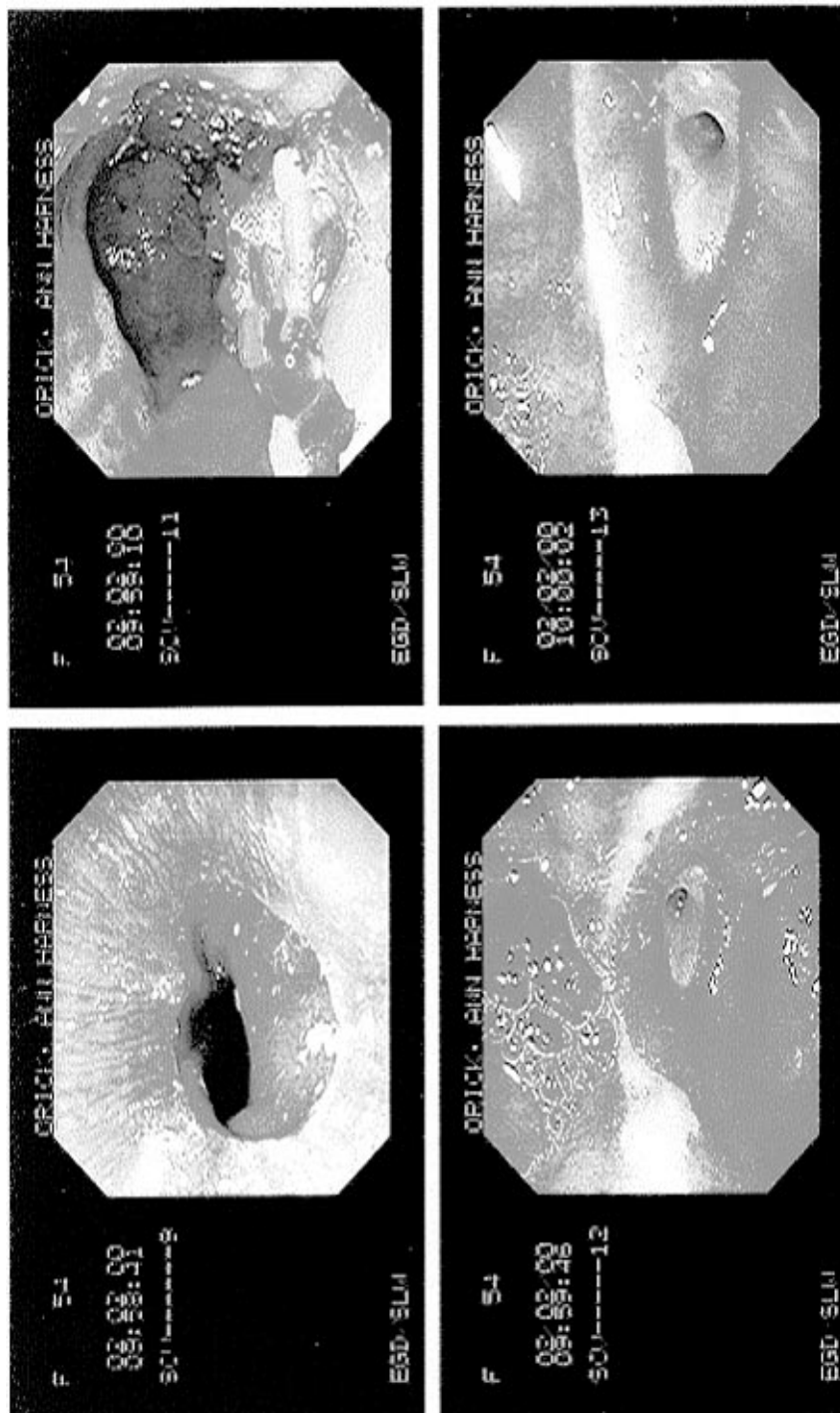
AND NO BERYLLIUM AREAS WERE EVER POSTED AT THE K-25 SITE. REMEMBER, DOE AND LOCKHEED MARTIN TOLD MY HUSBAND THAT HE DID NOT GET BERYLLIUM DISEASE THERE BECAUSE "THEY NEVER HAD ANY". THROUGH DOE'S OWN DOCUMENTS, WE HAVE DOCUMENTED SOME 34 BUILDINGS AT K-25 THAT UTILIZED OR STORED BERYLLIUM IN SOME WAY.

THE LEASING OF SPACES IN BUILDINGS AT THE K-25 SITE IS OF UTMOST CONCERN TO THE K-25 ILL WORKERS. WE FEEL THESE BUILDINGS HAVE NOT BEEN ADEQUATELY CLEANED, AND ALSO, WE FEEL THAT THIS SITE, WHICH IS A SUPERFUND SITE, SHOULD BE POSTED AS SUCH. THERE ARE NO SIGNS SHOWING K-25 TO BE A SUPERFUND SITE. UNFORTUNATELY, WE ARE AFRAID THAT A FEW YEARS FROM NOW THERE WILL BEGIN TO SURFACE A NEW GROUP OF SICK WORKERS, THOSE WHO ARE NOW THOSE EMPLOYEES OF THE SMALL BUSINESSES LEASING SPACE ON SITE. FURTHER, WE FEEL IT ONLY RIGHT AND FAIR THAT A PADLOCK BE PLACED ON THE GATES OF K-25, AND REMAIN THERE UNTIL A PROPER SOLUTION CAN BE FOUND.

I SINCERELY BELIEVE I AM DAMAGED FROM WORK EXPOSURES. I KNOW WHAT I HAVE WORKED IN, AND I HAVE WORKED ACROSS THE ENTIRE SITE IN EVERY BUILDING, VAULT, AND ON THE GROUNDS WHICH INCLUDE THE SCRAP YARDS AND THE BURIAL GROUNDS. I HAVE BEEN EXPOSED TO HISTORICAL CONTAMINATION IN LARGE QUANTITIES, CHEMICALS IN LARGE QUANTITIES, WASTES IN LARGE QUANTITIES, AND RADIOACTIVE ELEMENTS WITH EXTREMELY HIGH READINGS. I HAVE PERSONALLY SCRAPPED IT UP OFF THE FLOORS, HAD IT DRIP IN MY HAIR, WIPED IT UP, REPACKAGED IT, TRANSFERRED IT FROM ONE LOCATION TO ANOTHER.....I HAVE SMELLED IT, BREATHED IT, AND PROBABLY EAT IT. IT IS STORED AND IT IS BURIED. IT DOES EXIST. THESE SAME HISTORICAL WASTES AND CHEMICALS ARE THE SAME ONES THAT WERE USED TO MANUFACTURE A BOMB THAT WAS DROPPED ON THE DESTROYED A NATION. IF YOU THINK THESE ILLNESSES ARE NOT REAL, JUST ASK THE PEOPLE OF JAPAN.

I AM TRAPPED IN A BODY OF PAIN. I HURT. I AM SICK. I AM DYING. MY FAMILY SUFFERS BECAUSE OF ME. MY HUSBAND IS ALSO IN PAIN, AND SUFFERS BREATHING DIFFICULTIES HE SHOULD NEVER HAVE ENCOUNTERED. WE ARE JUST TWO EXAMPLES OF ALL THE K-25 WORKERS. ALL OF US SUFFER ALIKE. ALL OF US HAVE LOST OUR HOPE FOR ANY FUTURE. PLEASE DO THE RIGHT THING. IF DOE CAN SETTLE WITH OTHER SITES LIKE THE MOUND SITE, OR IF THE GOVERNMENT PROVIDES HELP IN ANY FORM TO ANY NUCLEAR WORKER, THEN WE MUST ALL BE AWARDED JUSTLY. IT SHOULD NOT EVEN BE A CONSIDERATION THAT WE WERE WORKED UNDER "DISCRETIONARY FUNCTION". THAT THE GOVERNMENT HAD A RIGHT TO WORK US WITHOUT NOTIFYING US OF THE HAZARDS DUE TO NATIONAL SECURITY. HOW ABSURD THAT SUCH AN IDEAL EVEN EXISTS. WE WORKED FOR THE NATIONAL DEFENSE OF THIS COUNTRY AND WE DEDICATED OURSELVES TO DO OUR JOBS WELL, BUT NEVER DID WE EVER EXPECT TO BECOME DESPERATELY ILL, LOOSE OUR LIFE'S WORK, OUR HOMES, OUR FINANCES, AND ANY CHANCE OF EVER WORKING AGAIN SO THAT ALL OF YOU COULD LIVE A LIFE OF GRANDEUR AND RETIRE HEALTHY AND RICH AT OUR EXPENSE. HOW SHAMEFUL. WE ARE INDEED AMERICA'S LIVING DEAD!





**TESTIMONY OF SAM RAY**  
**BEFORE THE**  
**COMMITTEE ON GOVERNMENT AFFAIRS**  
**U.S. SENATE**  
**MARCH 22, 2000**  
**REGARDING HISTORICAL WORKING CONDITIONS**  
**AT THE PORTSMOUTH, OHIO GASEOUS DIFFUSION PLANT AND REMEDIES**  
**NEEDED TO ADDRESS THE HEALTH OF DOE NUCLEAR WORKERS**

I am Sam Ray, a former uranium enrichment worker at the Portsmouth Gaseous Diffusion Plant in Portsmouth, Ohio. I reside at 128 Overlook Drive, Lucasville, OH.

I was hired in 1954 and worked as a production operator and instrument mechanic. In May of 1994, I was diagnosed with a rare type of bone cancer: chondrosarcoma. As a result, I had to have my larynx removed. At that point, I had no option but to take a disability retirement. My understanding is that there are two things that can cause my type of cancer. One is Paget's Disease, which I didn't have, and the other is radiation exposure, which I did have. I have never smoked a day in my life. It is well documented that certain uranium compounds are bone seekers.

Your Committee's hearing is especially timely. The Administration has proposed legislation to compensate workers nationwide from beryllium, and a remedy for radiation-related cancers at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky. However, uranium enrichment workers exposed to radiation at Portsmouth and Oak Ridge were left out of the Administration's bill. We hope you will make sure Portsmouth and Oak Ridge workers are not left out of the final legislation. I believe my testimony illustrates how we toiled under conditions no less hazardous than Paducah.

**1. PORTSMOUTH FAILED TO PROVIDE WORKERS WITH ADEQUATE PROTECTION FROM RADIATION, HEAVY METALS & TOXIC CHEMICALS**

In prosecuting the Nation's cold war mission, workers at Portsmouth were kept in the dark about the hazards they faced. Information was provided based on a "need to know" basis-- and production imperatives determined what you needed to know. Even to this day, we don't know what we confronted. For example, when we started feeding irradiated recycled uranium back into the process system, we never knew we were introducing contaminants (e.g., technetium, plutonium, neptunium, etc.), nor were we adequately protected. Today we are still learning about the extent to which transuranic elements, such as plutonium, were part of the working environment.

**A. THE PORTSMOUTH OXIDE CONVERSION PLANT (705-E) CAUSED NUMEROUS INTERNAL RADIATION DOSES**

Portsmouth operated a facility that converted highly enriched uranium (HEU) oxides into feed material from 1961-1978. Much of this HEU oxide (87% enriched) was shipped in from the Idaho Chemical Processing Plant, and processed in the 705-E building.

A good friend of mine, Robert Elkins, worked in the oxide plant from 1962-65. By 1965 he was placed on permanent work restriction due to high internal body counts of radiation. He had enriched uranium, technetium-99, neptunium-237, potassium and cesium in his body. When he retired in 1985 he was still on permanent restriction, a situation that confronted many other oxide plant workers. In the 15 years since retirement, the plant management has never contacted him to check on his health or suggest that he receive post-retirement monitoring.

However, Mr. Elkins was contacted by an individual from Hanford, WA (presumably the transuranium registry) who wanted to pay him \$500 for his body so the government could study what happened to the radiation in his body after he passed away. He wife was also offered \$500.

They both declined the offer. It appears that the government is more interested in what happens to Mr. Elkins after he is dead than what happens to him while he is still alive. If the Congress is funding this kind of effort, perhaps it could reorient the Department of Energy's priorities toward caring for the living.

Mr. Elkins' over exposures to radiation were not the exception, it appears. A 1985 DOE report states<sup>1</sup>:

“the oxide conversion facility was not able to maintain adequate containment of the radioactive materials during operating periods.”

“As such, the decision was made in the 1977 time frame to shut down that facility pending modifications to provide adequate containment measures. These modifications were never funded, and the facility has not operated since.”

In vivo body counts (a relatively insensitive method of measuring the amounts of radiation in the lung) taken after 1965 found eight employees with radiation counts above DOE's 15 rem lung standard and two employees had more than 7.5 rem (half of DOE's standard). Since 1972, another 7 were found with more than 7.5 rem.<sup>2</sup> Of the 17 employees listed above, 11 had worked in the oxide conversion facility. This number of overexposed workers actually measured and reported by Goodyear Atomic underscores the point that workers in the oxide conversion facility were subjected to uptakes of excessive levels of radiation.

**B. NEUTRON DOSES WERE NOT MEASURED BETWEEN 1954 AND 1992**

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<sup>1</sup>*The Report of the Joint Task Force on Uranium Recycle Materials Processing*, Department of Energy, 1985, DOE/OR-859

<sup>2</sup>*Information on Three Ohio Defense Facilities*, Fact Sheet for the Ranking Minority Members, Subcommittee on Energy, Nuclear Proliferation and Government Processes, Committee on Governmental Affairs, U.S. Senate, November 1985, GAO/RCED-86-51 FS.

The Portsmouth plant's radiation dosimetry programs have been woefully inadequate. For example, NIOSH discovered that between 1954 and 1992 the site never measured for neutron exposures. Worker dose records, consequently, do not exist for neutrons. "Slow cooker" effects from the concentration of uranium deposits in the cascade causes neutron emissions. Workers called in to clean out "freeze ups" of uranium inside of the cascade would be particularly at risk from neutrons, but there are no recorded doses to document these exposures.

C. **WORKERS INGESTED TECHNETIUM-99—A BETA EMITTER**

Technetium-99, a fission product, was introduced into the cascades from recycled uranium reactor tails, most which had been first processed at Paducah. Worker urine dose records from CY 1976, 1977 and 1978 indicate that 27% of the chemical operators at Portsmouth tested positive for technetium-99 (66% tested positive for uranium)<sup>3</sup>. *In vivo* lung monitoring established that 2 of the 45 maintenance mechanics had positive confirmed doses of technetium-99 to the lungs. Curiously, 563 mechanics were tested for uranium over a three year period, but only 45 were tested for technetium-99 or neptunium-237. Depending on whether the Tc-99 was in a vapor or solid form, special personal protective equipment (such as supplied air respirators) was required, but not provided until the early 1980s. One pregnant worker had a calculated dose 800 millirem to the fetal thyroid<sup>4</sup> of her 10-11 week old fetus, providing further evidence of inadequate worker protection. Amazingly, between 1954 and 1993, the site had no technical

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<sup>3</sup> Response to Freedom of Information Act Request by OCAW to the DOE, July 1, 1982.

<sup>4</sup> A July 22, 1976 letter from Karl Hubner, Oak Ridge Associated Universities to E.V. Hansen, Goodyear Atomic, states: "The dose of .8 to 1.0 rad to the thyroid gland of a fetus is considered to be insignificant, and there is no reasonable chance of damage to this organ in terms of cretinism." The letter qualified this conclusion by stating: "calculations were based on some gross assumptions that had to be made because of insufficient data."

basis document for rad protection, which would have included the protocols for conducting a monitoring program for transuranics.

D. **CONTAMINATION CONTROLS WERE NON EXISTENT OR WOEFULLY INADEQUATE UNTIL THE 1990s**

When I was hired in 1954, process operators were not allowed to wear coveralls or safety shoes. If clothing became contaminated, we took this contamination home with us on our clothing and shoes. To my knowledge, all crafts (such as electricians, maintenance mechanics, etc) were allowed to wear coveralls and safety shoes. Some were mandatory. Sometime in the 60's, coveralls became optional for process operators; however, it wasn't until the 90's when contamination controls were implemented that they became mandatory. In reality, they should have always been mandatory.

E. **DOSE RECORDS HAVE BEEN 'ZEROED' OUT OVER LIABILITY CONCERNS**

As others will testify today, management directed that a guard's radiation dose records be "zeroed" out after he had an uptake and was hospitalized, because of the concern that he would bring a worker comp claim. We have no idea if this was an isolated case or a regular management practice.

F. **RADIATION DOSES WERE ARBITRARILY "ASSIGNED" (INSTEAD OF BEING COUNTED)**

OSHA was called into Portsmouth after complaints filed by the Oil, Chemical & Atomic Workers Union (OCAW) and the Guards union questioned the accuracy of radiation doses. Management directed that doses be administratively "assigned" when the health physics staff had trouble reading dose badges. One practice involved pinning a dose badge to the wall and running a scanner over it and assigning this dose to any person whose dose badge didn't read out on a



scanner. A settlement of this OSHA complaint resulted in a reconstruction of doses between 1993-1995. While management was generally conservative in assigning doses, at least 103 doses were undercounted. We have no idea how far back management was simply administratively “assigning” doses, instead of counting them.

Historically, the Health Physics program did little to investigate high radiation doses, based on the philosophy that high doses were unlikely. Whenever high dose readings were found on badges, they were determined to be equipment failures and summarily discarded. DOE has historically claimed no responsibility for the deficient health physics program and poor record keeping.

G. **CHEMICAL OPERATORS WERE OVEREXPOSED TO MERCURY AND ARSENIC**  
Between 1981 and 1990, decontamination workers in the X-705 (decontamination

process) building were exposed to mercury at up to 175 times the OSHA threshold limit values, largely from open vats of solvents. A 1990 DOE investigation found “workers were exposed at least once per shift, after sodium hydroxide was added tanks” and that Martin Marietta’s plant doctor trivialized the hazards of ingesting mercury in discussions with affected employees.<sup>5</sup>

Arsenic contaminated feed was fed into the Portsmouth cascades in the late 1980’s. Arsenic migrated towards copper instrument lines causing them to plug up. In 1993 after the presence of inorganic arsenic was confirmed, NIOSH conducted a health hazard evaluation. Air samples detected arsenic in excess of OSHA limits.

H. **RESPIRATORY PROTECTION DEPENDED ON WWII-ERA GAS MASKS FOR MANY YEARS AND CONTAMINATION WAS WIDESPREAD**

I worked at the Extended Range Product (ERP) station on and off for a number of years.

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<sup>5</sup> Letter from Gene Gillespie, Site Manager, DOE to Ralph Donnelly, Plant Manager, Martin Marietta, July 20, 1990, Letter EO-221-696.

On one occasion while connecting the production process into an empty cylinder, the copper tubing pigtail ruptured. Although I immediately valved off the system, the room was filled with a thick fog of uranium oxide gases. I donned an army assault mask for protection. After the all clear signal, management sent me to the hospital for urinalysis. Today, we know that you should wait for 3-4 hours to give the material time to get into your system before urinalysis. For that reason, my dose records from this accident is going to be suspect, at best.

Indeed, until the mid 1970's, our respirator protection consisted of World War II army assault masks. It was years later that we learned that these were not adequate to block radionuclides or toxic chemicals.

In the late 50's and early 60's we had big layoffs. Prior to this layoff, the lab took samples to make sure process gases were reduced to a safe level before opening up the process equipment for maintenance work. In the process buildings, operators had to take over the work of lab technicians. Previously, the lab techs used bulb samples that would be taken to the lab and analyzed. The new system consisted of pulling a sample through a tube of salicylic acid (white powder). If the powder didn't change color in three (3) minutes, then it was assumed the system was <10 ppm UF6 (commonly called a "negative").

We now know this was never an approved method, and there wasn't adequate research. In turn, we put maintenance crafts and others in harm's way when we issued a hazardous work permit stating that system was at a "negative".

I. **WORKERS WERE KEPT IN THE DARK ON CONTAMINATION CONTROLS**

Early on, we were told that the buildings would be so clean, we could eat off the floors.

In reality, some eating areas became so contaminated that management had to build designated

lunch rooms that were surveyed on a regular basis and kept clear (1980's).

Due the lack of a contamination control program, certain buildings were becoming more contaminated. For example, leaks from the ERP station had spread contamination in the X-326 building. Compressors would malfunction and process gases (UF6) would leak to the atmosphere. On ONE occasion, it was so bad that it looked like a fog moving up the building, which is approximately ½ mile long. I became personally aware of this contamination problem when working as an instrument mechanic, because we had to work in areas that we knew or suspected were contaminated. I often felt we should have surveys, but at the time it was a hassle to get your supervisor to request a survey. Today, the story is different.

We have had many small releases which were never reported, as well as documented large releases. In side of the withdrawal room we a major release. There were green "icicles" hanging in the room from crystalized uranium hexafluoride. Management had declined to install safety measures to prevent this release.

Goodyear Atomic issued a *Health Physics Philosophy as a Guide for Housekeeping Problems in the Process Areas*, which it distributed to all supervisors on August 27, 1962.

While management assured workers there was no hazard at the uranium enrichment facility in Portsmouth, Ohio, it warned supervisors:

"We don't expect or desire that the philosophy will be openly discussed with bargaining unit employees. Calculations of contamination indices should be handled by the General Foreman and kept as supervisory information in deciding the need for decontamination."

Until the 1980's, there were few or no personal radiation monitors (frisking devices). This technology was available, but apparently for DOE the cost outweighed the risk. In the 90's,

this all changed. Today, in certain buildings and areas, you have to monitor clothing and shoes whenever you leave the building to make sure you aren't tracking radiation into clean areas or off plant site. Primarily, the problem lies in the first 35 years. What were the former workers exposed unknowingly or perhaps even knowingly? We know that they are having many health problems, such as cancers and respiratory problems, and in numbers far greater than would be expected.

**2. INSPECTIONS WERE INFREQUENT UNDER DOE'S SELF REGULATION**

A July 1980 Comptroller General report, *Department of Energy's Safety and Health Program for Enrichment Plant Workers Is Not Adequately Implemented* (EMD-80-78), found that DOE's Oak Ridge Office, which had oversight responsibility for health and safety, had not conducted a safety inspection at Portsmouth for 3 years and was not adequately responding to worker safety complaints. Unannounced safety inspections were supposed to occur annually at each plant, but even when they were inspected, the Oak Ridge Office "does not, as part of an inspection or any other visit to an enrichment plant, monitor for radiological contamination." Oak Ridge explained the absence of inspections on a staff shortage, which the Comptroller General noted was attributable to Oak Ridge paying safety inspectors at a lower grade than elsewhere in the DOE complex.

**3. HEALTH EFFECTS ARE ON THE MINDS OF MANY CURRENT AND FORMER WORKERS**

Currently, I am a retiree representative for the Worker Health Protection Program (WHPP). This program is funded by a grant authorized under Section 3162 of the FY 93 Defense Authorization Act, and administered by Queens College and the Paper, Allied-Industrial, Chemical & Energy Workers Union ("PACE"). It gives former workers a one-time complete

physical. When I talk to former workers and retirees, I find out how little they knew about what they were exposed to. I get calls from widows whose husbands have passed away with cancers. They want to know if their spouse's exposure in the workplace caused their illness.

In 1987 NIOSH reported that Portsmouth workers had experienced excess stomach cancer and hematopoietic cancers (including leukemia). In 1992 the study was updated, in part, due to a request from Senator John Glenn. In 1996, the study summary was presented to the workforce. It indicated that there were no statistically significant elevations of any cancer deaths and the elevations of stomach and hematopoietic cancers identified in the 1987 study had diminished. These results were presented to the media in September 1999<sup>6</sup>. However, the NIOSH officials releasing this information apparently chose to DELETE the page defining the study's limitations<sup>7</sup>, which includes (1) this was a mortality study and not a study of disease

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<sup>6</sup> *Portsmouth Gaseous Diffusion Plant: Study Summary*, Rinsky, Ahrenholz, and Cardarelli, September 1999

<sup>7</sup> Restated below are portions that were deleted by NIOSH before releasing the summary:

"All observational epidemiologic studies have some limitations since they take advantage of naturally occurring events rather than being conducted in an experimentally controlled environment. Here are the biggest limitations that we know about:

1) This is still a very young population and the vast majority of them are still alive. As the workforce grows older, deaths will occur at an increasing rate and of course there is no way to know what these people will eventually die from;

2) this is a study of mortality, not disease incidence. Only diseases that have high case fatality rate are measured well by mortality. Although most cancers have a high case fatality rate, there has been great progress over the past two decades in prolonging the life of persons with hematopoietic cancers. Mortality may not be a good measure of these deaths;

3) SMR analyses are not particularly good at attributing the proper effects of confounding and effect modification. The case control studies that are being worked on are much better in this regard;

4) the exposure response portion of these analyses are only as good as the exposure metrics. Because of the way the plant collected exposure data our algorithms for assigning exposure, while the best that can be done, still have a degree of uncertainty. To the extent that real exposures are over or under estimated, our answers will be in

incidence; (2) the population is still relatively young to conduct an epidemiology study; (3) case control studies would be better at identifying cause and effect; (4) the exposure data is weak; and (5) workers were exposed to a mix of chemicals and radiation and the effects are difficult to disentangle. We obtained the deleted text. These limitations, if incorporated, substantially alter the light in which the findings should be considered. What motivated this apparent censorship is beyond our knowledge.

**4. RECOMMENDED ACTIONS FOR CONGRESS**

- Congressman Ted Strickland and 10 cosponsors introduced HR 3495 to provide workers' compensation for radiation exposed workers at DOE nuclear facilities and suppliers. It lays down important marker, because, unlike the Administration's bill (HR 3418 and S 1954), it expands coverage beyond the Paducah workforce and 55 workers in Oak Ridge to cover the entire DOE nuclear complex.
- Any successful bill must shift the burden of proof to the government in determining causation, because the failure to properly monitor for radiation and toxic hazards imposes an insurmountable burden of proof on a victim. Dose reconstruction is very costly, takes years to accomplish and the results are questionable at best since basic data was never collected in many cases. NIOSH noted in a 1993 report, that "prior to 1981, the amount of quantitative industrial hygiene data is scant to non-existent."<sup>8</sup>
- A single agency, such as the Labor Department's Office of Worker Compensation Programs, should administer a federal workers comp program. We need one stop shopping for addressing occupational illnesses regardless of whether it is beryllium, radiation, toxic chemicals or heavy metals.
- The current medical screening program carried out by DOE under Section 3162 of the FY

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error; and finally,

5) these workers were simultaneously exposed to a number of chemical and physical agents and it is very difficult to disentangle the effects of the concurrent exposures.

Moreover these workers are protected by some other factors associated with their employment at this facility, such as lower alcohol and smoking rates as a consequence of their security clearance requires. This further complicates the interpretation of any harmful effects there might have been suffered."

<sup>8</sup> *Protocol for the Study of Mortality Patterns Among Uranium Conversion and Enrichment Workers*, NIOSH, J. Stebbins, et al, July 1, 1993, pp.15

93 Defense Authorization Act should go even further, with lifetime annual medical screening. We need fully paid medical insurance for displaced or retired workers. A Medigap supplement should be fully funded by the government for nuclear workers.

- Workers at Portsmouth and Paducah face a unique problem with retiree health care benefits. Since USEC was privatized, it assumed responsibility for the Lockheed Martin retiree health care benefits program. However, these benefits could be in jeopardy if USEC, as many predict, will fall into bankruptcy or liquidate in several years. Unlike pensions, retiree health care benefits are not guaranteed under ERISA. We need legislation to guarantee that the funds which the DOE will be giving to USEC to cover the past retiree health care liability are placed in a safe harbor and these health benefits will be delivered as intended.

#### **SUMMARY**

Energy Secretary Richardson acknowledged that "After decades of denial, the government is conceding that workers who helped make nuclear weapons were exposed to radiation and chemicals that produced cancer and early death."<sup>9</sup> In the New York Times article, the Secretary said: "In the past, the role of government was to take a hike,....and I think that was wrong." Nuclear workers have paid a price and deserve a fair remedy.

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<sup>9</sup> *New York Times*, January 29, 2000, pp1.

This the Testimony of Jeffery Blaine Walburn to be given in front of the United States Senate Committee On Governmental Affairs, at 10:00A.M. March 22,of the year 2000.

Mr. Chairman, Honorable Senators , thank you for allowing me to testify today. My name is Jeffery Walburn, I live in Greenup, Kentucky. I have worked at the Portsmouth Plant for over 23 years. My job title is Security Inspector. I also served as a Councilman from 1987 to 1995 in the City of Portsmouth, Ohio and was Vice Mayor for 2 years. I was injured in an industrial accident in the X326 process building on July 26, 1994 which has left me working but restricted. I have permanent injury to my upper airways and lungs, a condition known as R.A.D.S. . I feel that I did not get proper medical treatment at that time and that there has been an effort at the Portsmouth Plant to criminally cover-up the details of this accident.

Honorable Senators , it's not my own injury that I came here to testify about today, I am here to report the details of illegal actions taken by the Subcontractor: Lockheed Martin Utility Systems, surrounding the event. There is a discovery of facts stemming from the independent and long running investigation by myself and by efforts of both U.P.G.W.A. and P.A.C.E. Unions, along with NIOSH. This investigation is supported heavily by documentation as well as the testimony of two whistle blowers which we believe reveals criminal activity. I believe it extends into the previous history of the plant under Goodyear Atomic Corporation, and I also believe that the knowledge of these actions are also known by the United States Enrichment Corporation Management as well as D.O.E. .

Our investigation of my injury, has revealed the following:

Altering of documents ( My Medical Diagnosis was altered. )

Suppressed documentation ( a 41 page internal report POEF 150-96-0088 Dated February 17, 1996 from Don Butler Security Investigator Lockheed Martin Utility Systems to Dan Hupp Security Manager reference management of dosimetry practices.)

Destruction of Government Documents ( The dosimetry records of Jeffery Walburn were ordered changed to zero because he was going to file a Law Suit concerning his accident in the X326 building: reference to whistleblower depositions)

Falsifying of Government documents/ lying to Government Investigators. (Failure to divulge work being performed on 7/26/94 in X326., including AGG alarm (argon gamma graph)indicating the presence of gamma radiation )

Illegal entry into a secure system of records for the express purpose to present a false dosimetry history at the Portsmouth Site.( A back door into the dosimetry records for the purpose of custom tailoring dose records.).

NIOSH's investigation of Dosimetry practices at Portsmouth ( Bucket Dose, Averaging, Destruction of badges and Bar codes on the wall, Failure to check for Neutron Radiation, and evidence of high doses not reported.).

I don't know how many reports that I have read in the D.O.E. system of investigation which state. " There is no evidence of injury because the records do not reflect. Ladies and Gentleman I am here today to report that the Dosimetry records at Portsmouth have been Altered.

Sick workers but no reason. Dead workers but no cause. How can this be? I believe there has been deliberate action on the part of the Plant Subcontractors to defraud under D.O.E. oversight. There has been an absence of checks and balances.

The D.O.E. wants to offer a settlement which makes the worker prove how they were hurt, but grants D.O.E. themselves and the Subcontractors immunity from prosecution. I ask you what did D.O.E. know and when did they know it?

Health screenings are great preventative medicine but not compensation.



I want to know if the Privatization agreement was properly struck under the Federal Certificate of Compliance? Were the workers of Portsmouth and Paducah set a drift in a leaky boat with sick and injured personnel by The D.O.E. ? Were we indentured to a private group only to be scuttled later with no survivors and no reparations coming to our widows because the records did not reflect? If the records were falsified they cannot reflect.

I am here today to call for a full and independent Third party investigation of D.O.E. and their relationship with their subcontractors. Asking D.O.E. to investigate themselves is like asking the Fox if all the Chickens are well in the henhouse.

We as a group have been fought at every turn concerning workers comp. We have been made to appear as malingerers, or as just plain whiners. We are neither. We are COLD WAR VETERANS and we suffer from NUCLEAR WORKERS SYNDROME. We deserve compensation. So, you say, what have we done to bring this to light? We have reported: timely, dutifully, and often. I myself have reported to D.O.E.'s Inspector general on two separate occasions. D.O.E. turned the matter over to U.S.E.C. to investigate their own subcontractor. I have notified N.R.C. region III, Department of Labor, NIOSH, and the F.B.I. . They all point at D.O.E. . I notified Congressman Strickland from my hospital bed when I was injured. Senators Dewine and Voinovich were informed at the Piketon Hearings. I gave a hanging file box of evidence, backing the information I am providing today to Congressman Strickland. I sent a duplicate to Secretary Richardson's personal staff outlining the very wrongs I have presented and have informed the EH-10 executive staff of the details of it's contents. I am told D.O.E. has lost their copy of the box. Given the gravity of the information, possibly criminal, that was in that box, I can't understand why they have not asked for a replacement of this information. There is something wrong at the Portsmouth Plant. Something which may very well point to the cause throughout the industry about why the workers are sick and dead. I hope you will find out. Honorable Senators thank you for allowing me to speak.

**Testimony of**

**David Michaels, PhD, MPH**  
**Assistant Secretary for**  
**Environment, Safety and Health**  
**U.S. Department of Energy**

Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to bring you up to date on the Department of Energy's response to allegations of current and historical environment, safety and health (ES&H) problems at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky, and the other two gaseous diffusion plants (GDPs) in Piketon, Ohio and Oak Ridge, Tennessee.

When these concerns were brought to his attention last summer, Secretary Richardson immediately ordered complete and independent investigations. He further committed to determine if workers were made ill because of inadequate worker protections, and that if they were, to seek to provide them with fair compensation. To help find the answers to these questions, the Secretary directed my office to expand the ongoing worker medical surveillance program at the three sites, conduct a worker exposure assessment project to help determine actual worker doses to radiation, and complete a so-called 'mass flow' assessment to help us understand how much recycled uranium was generated over 47 years and where it all went. My testimony today will describe these activities and our progress to date in meeting the Secretary's commitments.

**Historical Background**

The first full production-size gaseous diffusion plant was built on the K-25 site in Oak Ridge, Tennessee, as part of the original Manhattan Project. The gaseous diffusion process at K-25 started operation at the end of World War II and continued to operate until it was closed in 1985. Lessons learned from operating the process at K-25 were factored into the design of both the Paducah and Portsmouth plants, which were built during the early 1950s.

Although the original mission of the enrichment complex was to produce nuclear weapons-grade enriched uranium, in the 1960s the plants began to produce low enriched uranium for commercial nuclear power plants. The efficiency and capacity of the three gaseous diffusion plants was increased to fulfill the demand for new commercial nuclear power plants, and increasing demand for enriched uranium for the weapons program. A \$1.4 billion cascade improvement plan was initiated in the early 1970s and completed in the 1980s. The program increased the gaseous diffusion capacity of the plants by about 60% and at a substantially lower cost than construction of new facilities.

**How the Gaseous Diffusion Plants Worked**

The Paducah and Portsmouth plants have been in continuous operation since 1952 and 1954 respectively, producing enriched uranium for both commercial and military applications. The plants were constructed and operated in series -- Paducah produced enrichments from 0.7% (natural uranium) up to about 2% (later upgraded to 2.75%). The output of Paducah was sent to Portsmouth for further enrichments. Portsmouth produced fully enriched uranium (>95% U<sup>235</sup>) for weapons, as well as slightly enriched uranium for use in commercial nuclear

power plants. The feed streams at K-25, Portsmouth and Paducah included recycled uranium that was recovered from spent fuel from various sources, which introduced transuranics and other isotopes into process equipment.

Various other operations were conducted at the three GDPs including: smelting and reduction of uranium hexafluoride ( $UF_6$ ) and uranium tetrafluoride ( $UF_4$ ) back to uranium metal; production of nickel and aluminum ingots; classified defense projects that involved the recovery of metals from weapon components; and operation of chemical plating laboratories.

The fuel process begins with the mining of ore that is converted to uranium oxide ( $UO_3$ ) and sent to the gaseous diffusion plants. The  $UO_3$  is converted to  $UF_4$  (also known as green salt) through a hydrogen/fluorination process. Further hydro-fluorination produces  $UF_6$ . The gaseous diffusion process employs a series of compressors and converters to enrich the  $U^{235}$  isotope of the process gas  $UF_6$ . The building block of the process is a single compressor and converter, known as a stage. Several stages are put together to form cells, and then numerous cells are connected into what is known as the 'cascade.' Several hundred stages of successive enrichment are necessary to enrich the uranium to a commercially usable product. The large amount of equipment at the plants (motors, compressors, converters, control valves, instrumentation, piping and support systems) required substantial maintenance, repair, disassembly, decontamination, and cleaning of plant materials. The output of the process is enriched  $UF_6$  that was transported offsite in cylinders, and  $UF_6$  tail gas that is solidified and stored onsite in cylinders.

Hazards to workers were present by exposure to radiation in several forms, including:

- Uranium – Naturally occurs in earth, mined for commercial purposes. Contains several isotopes and when enriched in the  $U^{235}$  isotope, is used for nuclear reactor fuel.
- Transuranics – A series of elements beyond uranium in atomic number. Transuranics were introduced into the GDP cascades when spent reactor fuel was reprocessed and uranium was extracted and recycled. Isotopes of concern include neptunium-237, which concentrates in the bones and liver, and plutonium-239 which concentrates in the bones. Both isotopes have very long radioactive half-lives.
- Fission Products – A series of elements created when  $U^{235}$  (or another fissionable radionuclide) is split by neutron(s) in a nuclear reaction. Many fission fragments (other elements) are created. The significant elements important to health from recycling of spent fuel are technetium-99, which could pose a radiation hazard to the lungs and thyroid, and strontium-90, which concentrates in the bones.

In addition to radiation hazards, workers were likely exposed to a number of other hazardous materials, depending on their work assignments, including:

- Trichloroethylene (TCE) – TCE is colorless liquid with a chloroform odor extensively used as an industrial degreaser. It is an irritant to the respiratory tract and skin and concentrates in the respiratory system, heart, liver, kidneys, central nervous system and skin.
- Fluorine - Nearly colorless, yellowish gas that is a very strong oxidizer and burns all tissues and vegetation on contact. When combined with water, it forms hydrofluoric acid and reacts strongly with most substances, including organics, metal and glass.
- Chlorine – Yellow gases that form strong acids when exposed to water or moist air. Causes skin irritation and burns, eye irritation, and affects the mucous membranes and respiratory system.
- Chlorodiphenyl or Polychlorinated Biphenyl (PCB) – PCBs are an older additive generally used in oil and gasket material to make them more flame retardant. It had been extensively used in ventilation system gaskets and transformer cooling oils at all GDPs. PCBs concentrate in the skin, eyes and liver.
- Mercury – A silver colored shiny liquid at room temperature. Used in control switches and control valves at the GDPs. Mercury can affect motor responses and the central nervous system.
- Uranium hexafluoride (UF<sup>6</sup>) - Used to enrich uranium. Reacts with moisture to form hydrofluoric acid and uranyl fluoride.
- Fungicides – Used in cooling water systems for cooling towers as wood preservatives and to prevent mold and fungus growth in those systems.
- Arsenic/Cyanide – By-product of the plating process used at the GDPs, affect the central nervous system.
- Asbestos - Used in insulation and other industrial applications. Its fibers can cause asbestosis and mesothelioma, a deadly cancer affecting the pleura, or lining, of the lungs.
- Acids (nitric, sulfuric, hydrofluoric, etc) – Clear, colorless liquids that can cause skin irritation and burns and affect the mucous membranes and respiratory system.
- Beryllium - A metal that, if inhaled, can cause serious, and possibly fatal, lung disease, called Chronic Beryllium Disease.

Finally, workers at the three GDPs were also exposed to physical hazards, such as noise, and other standard industrial hazards.

#### **Status of Oversight Investigations**

As the Committee knows, our independent Oversight office has completed its comprehensive review of Paducah and submitted a final report last month, which is a matter of public record. We expect to complete our work at the Portsmouth plant in late May, and have conducted a scoping visit this month to begin our Oak Ridge review. We expect the Oak Ridge review to be completed in late August.

#### Historical Operations at Portsmouth

Environment, safety and health practices improved over the years as knowledge of hazards and controls were gained and new Federal regulations were put in place.

Effects of the presence of the transuranics and fission products from recycled reactor fuels, including plutonium, neptunium and technetium, with higher specific activities and exposure hazards than uranium is being evaluated to determine whether there were significant additional inhalation and ingestion hazards for workers in some locations. Radiological hazards in the Oxide Conversion Facility are also being evaluated.

We intend to conclude our work at Portsmouth this week and issue our final report by May of this year.

#### **Mass Flow Project**

The goal of this project is to reconstruct the historical generation and flow of recycled uranium, determine the transuranic and fission product contamination in the uranium, and where that contamination could have presented significant worker exposure or environmental hazards at our sites. This requires a relatively complete historical reconstruction of the flow of recycled uranium throughout the DOE complex.

To conduct this review, all sites where the recycled feed originated prior to shipment to GDPs for processing are reconstructing their shipments of recycled uranium, and the major receiver sites are reconstructing their receipts, shipments and process histories.

Approximately 131,000 metric tons of recycled uranium were shipped to the three GDPs. Paducah received most of this recycled uranium. In addition to the GDPs, substantial amounts of recycled uranium were also processed at Fernald and Y-12. Each of these sites is within the project scope and should complete a review of potential hazards associated with their recycling. We are tracking all recycled uranium shipments from the separations plants to the GDPs and other sites. After that, we will track those that we believe had significant contamination.<sup>1</sup>

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<sup>1</sup> The benchmark we are using to gauge significant contamination in the recycled uranium is that the contamination contributes an incremental dose of ten percent or more over that of the uranium from the inhalation pathway. Within this ten percent, the uranium itself, not the fact that it was recycled, clearly dominates the hazard.

In general, the material shipped to Paducah and the other sites contained only trace amounts of transuranics, e.g., less than ten parts per billion of plutonium. However, our preliminary work revealed that some shipments from the separations plants may have been higher than this, and we are tracking these down. We are also concerned with processes on the sites that concentrated transuranics to a point where the radiological dose from them would be significant. Knowing these, and their history, would allow us to further pursue potential exposure of workers.

We will continue to champion this work in an effort to document the flow and quantities of recycled uranium transferred between sites across DOE. We hope to have final reports from our major originating and processing sites by June 2000.

#### **Exposure Assessment Project**

The goal of the Exposure Assessment project is to determine the scenarios under which GDP workers were exposed to radiation, those work activities that provided opportunities for radiation exposure, when workers were exposed to radiation, and what levels of worker radiation exposure were received from recycled uranium and its contaminants.

The Exposure Assessment team has received from the contractor a database of all available worker radiation exposure dosimetry information for both Paducah and Portsmouth, transcribed interviews that were conducted by the Oversight investigation team and created a library of critical documents. The team is progressing with their analysis with the goal of a preliminary report on Paducah with initial analysis of Portsmouth and ETPP/K-25 by April 30, 2000. A final report that updates Paducah and concludes the analyses of Portsmouth and ETPP/K-25 will be available by September 2000.

An important part of this preliminary work is to validate the data provided by the contractor. Also, since the urinalysis and whole body counting results provided were only in the form of raw data and were primarily for uranium, complex modeling is necessary to validate and calculate potential internal dose estimates that also take into consideration the transuranic (e.g. plutonium, neptunium) contribution. These internal worker doses will have to be added to worker external doses to estimate total radiation doses to workers. A more complete assessment of the exposure potential at Paducah will be available by the end of April.

#### **Medical Monitoring Program for Current and Former Workers**

In his August 1999 action plan, Secretary Richardson announced the medical monitoring programs at all three GDPs would be expanded and that they would include current workers. The program is conducted independently from the Department and is managed by a consortium including PACE, Queens College, University of Massachusetts at Lowell, and CPS. The screening program is focused mainly on detecting diseases of the lung, gastrointestinal system,

genitourinary system, and hearing loss. All participants receive a core medical exam including medical and exposure questionnaires; physical examination; spirometry; chest x-ray; audiometry; routine blood count and chemistries; and urinalysis.

Screening began in May 1999 at Paducah and Portsmouth, and in June 1999 at K-25. Through mid-February 2000, the project has screened 945 workers -- 355 at K-25, 270 at Portsmouth, and 320 at Paducah. Of those, 11% had emphysema, 27% had chronic bronchitis, and 12% had asbestos-related lung disease. I understand that Dr. Markowitz, who is overseeing the program, will testify today and can give you more detailed and up-to-date results.

#### **Compensation for Sick Workers**

The Clinton/Gore Administration's commitment to the veterans of the Cold War does not end with workers at Paducah. On July 15, 1999, prior to his announcement of actions to be taken at Paducah, Secretary Richardson, along with several Members of Congress, announced that the Clinton/Gore Administration would propose legislation to provide compensation -- reimbursement of the cost of continuing medical care and a portion of prospective wages lost.

Because we established that Paducah workers had been exposed to radioactive materials without their full knowledge or without adequate protections, we also included a provision to provide certain workers with specified radiation-related cancers a \$100,000 lump sum payment. This legislation was historic in that it was the first recognition by the federal government that employers of DOE contractors potentially made ill from exposures in the nuclear weapons complex should be recognized for their contributions to the nation's security and compensated for their illnesses. The Administration proposal was subsequently introduced as H.R. 3418 and S.1954.

At the same time, President Clinton directed the National Economic Council (NEC) to lead an interagency review to determine, by March 31, 2000, whether there are other illnesses that warrant inclusion in this program and how this should be accomplished. In support of that effort, the Administration has undertaken a number of activities to support the President's policy decision.

First, the NEC assembled an interagency panel of public and occupational health experts to assess available scientific evidence to determine if there are occupational illnesses among current, former and retired DOE contractor workers and evaluate the strength of that evidence. This assessment includes a review of existing: 1) epidemiological studies; 2) information on exposures to workplace hazards; 3) special medical monitoring programs for workers with the highest exposures to ionizing radiation; 4) medical screening programs for former DOE contractor workers exposed to radiation as well as physical and chemical hazards.

The second task undertaken by the NEC involves review of the state workers' compensation programs available to DOE contractor workers with occupational illnesses and a comparison the benefit levels of these programs, as well as those available to federal employees

under the Federal Employees' Compensation Act (FECA). Workers' compensation benefits for an injury or illness that a DOE contractor worker sustains on the job are currently paid through a state-run benefits program where the particular DOE facility is located. For the relatively small number of DOE federal employees, workers' compensation benefits are paid by the FECA program, managed by the U.S. Department of Labor, regardless of location of the facility where the injury or illness occurs.

Another important activity to supplement these more formal studies has been public meetings that we conducted at our major DOE sites to hear directly from current, former and retired workers what their experience has been. We have held meetings in: Paducah, KY; Piketon, OH; Oak Ridge, TN; Rocky Flats, CO; Hanford, WA; Nevada Test Site, NV; and Los Alamos, NM. Approximately 2,300 current, former and retired workers and/or their family members attended these meetings and more than 330 shared their stories.

Overall, we heard from DOE contractor employees who are proud of the work they have done to protect our national security. Most have no regrets about their work, but some feel betrayed that the government may have made them sick through needless exposures to the wide variety of hazards found at DOE facilities. Others feel sadness and disappointment that their supervisors, site managers and the government may have lied to them about the dangers of their work.

We saw many workers who are very ill, yet courageously gave testimonies on their work, health, and workers' compensation histories. Some workers with Chronic Beryllium Disease, asbestosis, and silicosis arrived at the meetings with oxygen tanks. Many, many workers reported diagnoses of cancers, including kidney, bone, lymphomas, multiple myelomas, leukemias, and breast cancer. The vast majority of workers told us that they would not file for workers' compensation; most stated that they were told 'not to bother to apply' because claims were routinely denied. The minority of workers who did apply rarely won their claims and many cases lasted for years. The few who were able to win their workers' compensation claims did not receive benefits adequate to their need for medical treatment and lost wages.

Based on input from two task forces and the data and personal information collected by DOE, the NEC will address the issues of whether additional occupational illnesses found in the DOE contractor workforce should be included in the compensation program outlined in the President's July 15, 1999, memorandum, and how this should be accomplished. As I noted earlier, the NEC review is to be completed by March 31, 2000.

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions from the Committee.



**Testimony of Steven B. Markowitz, M.D.**  
**Center for the Biology of Natural Systems**  
**Queens College**

My name is Steven Markowitz, MD. I am a physician specializing in occupational medicine, that is, identifying and reducing workplace exposures that impair or threaten human health. After receiving my undergraduate degree from Yale University and my medical degree from Columbia University, I completed five years of training in internal medicine and occupational medicine in New York City. I had the excellent fortune of training under the late Dr. Irving Selikoff, the noted asbestos researcher at Mount Sinai School of Medicine. I currently serve as Professor and Director of the Center for the Biology of Natural Systems of Queens College and Adjunct Professor of Mount Sinai School of Medicine, both in New York City.

My research interests center on the surveillance and identification of occupational and environmental disease. I recently completed a study commissioned by the National Institute for Occupational Safety and Health concerning the extent and costs of occupational disease and injury in the United States (Attachment A).

I thank you for the opportunity to speak before this committee today. I wish briefly to highlight two central problems in occupational health at the gaseous diffusion plants of the Department of Energy (DOE), at Oak Ridge, Tennessee; Portsmouth, Ohio; and Paducah, Kentucky. Furthermore, I will discuss our response to those problems through the initiation of the Worker Health Protection Program. I will start first with our response and then briefly elucidate the core problems.

**A. The Worker Health Protection Program**

In 1996, we initiated the Worker Health Protection Program (WHPP) at the three Department of Energy gaseous diffusion plants. It is a medical screening and education program established as collaboration between Queens College of the City University of New York and the Paper Allied-Industrial Chemical and Energy (PACE) International Union with the full cooperation of the employers at the plants. This program developed as a result of Congressional passage of Section 3162 of the National Reauthorization Defense Act of 1993. Section 3162 required that the Department of Energy to conduct a medical surveillance program for former DOE workers who a) were at significant risk for work-related illness as a result of prior occupational exposures at DOE facilities, and b) would benefit from early medical intervention to alter the course of those work-related illnesses. We received a contract from the DOE through a competitive, merit-based review process and conducted a careful needs assessment and planning

process (Attachment B). We then instituted the Worker Health Protection Program at the three gaseous diffusion plants in Paducah, Portsmouth, and Oak Ridge as well as the Idaho National Engineering and Environmental Laboratory.

The goal of the Worker Health Protection Program is to detect selected work-related illnesses at an early stage when medical intervention can be helpful. At a broader level, the goal of our program is to help former DOE workers understand whether they have had exposures in the past that might threaten their health and to ascertain whether, in fact, an injury has resulted from these exposures. For the first time, former workers of the DOE gaseous diffusion plants have the opportunity to obtain an independent, objective assessment of their health in relation to their prior workplace exposures by a physician who is expert in occupational medicine. We screen for chronic lung diseases, such as asbestosis and emphysema, hearing loss, and kidney and liver disease. We have not heretofore emphasized cancer screening, because the screening tests available to date for the cancers of concern have been inadequate, and because the gaseous diffusion plants have not historically been considered sites of high radiation exposure. We implement the program based on a common medical protocol through local clinical facilities in Oak Ridge, Portsmouth and Paducah. This is not a research activity, but a clinical service program, intended to be of direct and immediate benefit to participants.

In addition, we provide a two hour educational workshop during which former DOE workers have the opportunity to learn about past exposures and their possible impact on present health. These workshops are run by current and former DOE workers, because they have credibility and expertise. We also believe that a participatory model of education is in and of itself health-promoting. The direct and full involvement of current and former DOE workers in designing and conducting our program has been a key to its success.

#### **B. Results of the Worker Health Protection Program**

The single most important result of the Worker Health Protection Program to date is the outstanding response that we have received from former gaseous diffusion plant workers. Since beginning the screening program only 10 months ago, we have received nearly 2,000 telephone calls from former and current workers to our national toll-free number to request participation in the Worker Health Protection Program. We have medically evaluated approximately 1,000 former gaseous diffusion plant workers during the past 10 months. All of these participants

volunteered for the screening program. We have not publicized our program, except for a single initial press conference in each community. We have not conducted any significant outreach, nor have we pro-actively invited individual workers for screening. Former gaseous diffusion plant workers evidently feel the need for this program, and they are calling us in droves to ask to participate.

Why have we received such a positive response? Without question, the newspaper coverage of the contamination of the Portsmouth and Paducah gaseous diffusion facilities by transuranic materials has helped. More fundamentally, though, the chord that we have struck relates to our mission. Workers in the Department of Energy complex want an answer to a simple set of questions: Have my years of work for the Department of Energy affected my health? Has my exposure to radiation and chemicals at the gaseous diffusion plant, which I performed as a service to my country, caused any illness or injury that I might have? If so, what can I do about this illness or injury? This is a simple yet powerful set of questions, and they deserve a truthful and appropriate response.

Our Worker Health Protection Program is providing such a response to these questions, albeit the response is only partial. Only preliminary screening results are available at present, because our data analysis system is not fully in place. We have seen limited rates of potentially work-related disease. Approximately 10% of participants show scarring of the chest that is consistent with significant occupational exposure to asbestos. 20% to 25% of former gaseous diffusion plant workers have chronic bronchitis and/or emphysema, to which their exposure to hydrofluoric acid and other powerful lung irritants in the gaseous diffusion process played a significant contributing role. Eight of the first 245 former Oak Ridge K-25 workers, or 3.3%, have confirmed beryllium sensitivity based on repeat lymphocyte proliferation testing. There is nearly universal hearing loss, mostly moderate or severe, which is hardly surprising, given high occupational noise levels at the gaseous diffusion plants. We have seen minimal rates of clinically significant kidney and liver disease among the workers tested to date, but most is readily explained by the presence of other disease such as hypertension or diabetes. We have also detected several cases of cancer, specifically of the lung and bladder.

In addition, the educational arm of our program has also been enormously successful. Our current and former worker educational coordinators have conducted 55 two hour workshops in 8 months, through which 780 former workers actively participated.

It is essential to understand that the Worker Health Protection Program is not a comprehensive screening program for all potentially work-related conditions of former DOE workers. Section 3162, which established the Former Worker Medical Surveillance Program, directed the Department of Energy to establish a medical screening program for potentially work-related health conditions for which early diagnosis and intervention would be beneficial. Despite medical advances in screening, however, many health problems are not amenable to screening on a population basis and do not necessarily lead to medically beneficial interventions. Neurologic symptoms, for example, are usually complex and require a careful in-depth diagnostic work-up to provide insight into the nature of the illness. Screening techniques for selected cancers, such as leukemia or lymphoma, have not yet been developed. Thus, for reasons of program design, limited budget, and current medical science, the Worker Health Protection Program does not address all health conditions about which former gaseous diffusion plant workers may be concerned.

There is an important caveat in interpreting our current program results. It is still relatively early in the project to aggregate and interpret results. The former gaseous diffusion plant worker population is large, numbering in the tens of thousands. The first screening program participants are a self-selected group and may not reflect the broader health or exposure experience of the former DOE workforce. They may be more or less ill than the former worker population as a whole. We expect to develop an improved sense of the health of this larger population as we screen additional workers in the coming years.

### **C. Enhancing the Worker Health Protection Program**

Until now, the Worker Health Protection Program has been severely limited by available funding. During the 1999-2000 program year, the DOE provided sufficient funds to screen 1,200 former gaseous diffusion workers, or 400 at each site. Since we estimate that there are at least 15,000 living former gaseous diffusion plant workers who are eligible for our program, we would have needed over 12 years at the current rate of funding to screen each person one time. Clearly, this was inadequate and undermined the intent of Section 3162.

In August, 1999, in response to the newly acquired knowledge that gaseous diffusion plant workers were exposed to transuranic materials with associated heightened health risks, Dr.

David Michaels, Assistant DOE Secretary for Environmental Health and Safety, invited the Worker Health Protection Program to rapidly expand our medical testing and education program.

We responded by proposing three significant improvements:

1. Adding current workers to the screening and education program,
2. Accelerating the pace of testing from 1,200 to 5,750 workers per year,
3. Initiating screening for the early detection of lung cancer through the use of a low-dose computerized tomography (CT) scanning protocol.

We requested a total of \$6.8 million dollars this year to conduct this program.

The Department of Energy has informed us that they will provide \$3.5 million dollars this year and has requested supplemental funds of \$3.3 million (fiscal year 2000) from Congress to fund the remainder of the program. My understanding is that these supplemental funds have been approved by the House Appropriations Committee and will be reviewed this week by the Senate Appropriations Committee

I would like to describe briefly the rationale for and numeric estimates of eligible workers that underlie the enhanced form of the Worker Health Protection Program. We also provide some insight into the ability of an accelerated program to meet the needs of workers, both current and former, at these three facilities in the coming years.

#### **1. Adding Current Workers**

Workers presently employed at the three gaseous diffusion plants do not currently receive the benefits of a medical screening and education program that is (a) specifically designed for early detection of work-related disease, and (b) provided by independent, credible physicians and other professionals with expertise in occupational medicine. They do not universally have access to such a program. Yet they clearly deserve it, based on their many years of service to the nation and the occupational risks that they have encountered during this service.

We estimate that the numbers of current workers at the gaseous diffusion plants are: 1,800 at Paducah; 2,000 at Portsmouth; and 1,700 at Oak Ridge K-25 (Table 1). During the next 12 months, we propose screening one-half of current workers, or 900 at Paducah; 1,000 at

Portsmouth; and 875 at Oak Ridge K-25. This totals 2,750. Workers with the longest duration at the plant (especially from the mid-1950's to the mid-1970's), or who are deemed to have worked in the highest risk areas will be offered screening first. This program capacity, assuming full funding, will allow all current workers to be screened within two years.

## 2. Accelerating the Medical Screening of Former Workers

The Worker Health Protection Program currently screens former gaseous diffusion plant workers at the rate of 400 per year per plant. This rate of testing reflects only budget limitations, not real and expressed need. The estimated number of former workers at the three sites, over 15,000 (7,000+ at Oak Ridge K-25; 5,000+ at Portsmouth; and 3000+ at Paducah), is quite high, indeed much higher than the number of current workers. The above-proposed screening rate for current workers will outstrip the present rate for screening former workers. This is inequitable and contrary to our knowledge of risk, since former workers are at no less risk than are current workers for work-related health problems from having worked at gaseous diffusion plants. We therefore propose to speed up the rate of screening former workers to 1,000 per year at each of the three sites. This totals 3,000 workers per year (Table 1). Since we are currently budgeted to screen 400 per year per site, the requested funds will allow screening of 1,800 additional former workers in the next 12 months. This accelerated screening capacity will enable a higher proportion of former workers to be screened within a reasonable number of years.

**Table 1**  
**Estimated Numbers of Current and Former Workers at Gaseous Diffusion Plants:**  
**Proposed Accelerated Medical Screening Schedule**

Site	No. Current Workers (CW)	Proposed No. CW Screened in Next 12 months	Estimated No. Former Workers (FW) "At Risk"	Proposed No. FW Screened in Next 12 months	Total Proposed No. Screened in Next 12 months
Paducah	1800	900	7000+	1000*	1900
Portsmouth	2000	1000	5000+	1000*	2000
K-25	1700	850	3000+	1000*	1850
<b>TOTAL</b>	<b>5500</b>	<b>2750</b>	<b>15000+</b>	<b>3000*</b>	<b>5750*</b>

\* We are currently funded to screen 400 of these 1,000 at each site, or 1200 workers in total.

### 3. Early Detection of Lung Cancer

Lung cancer is the most important specific cancer risk for workers at the gaseous diffusion plants of the Department of Energy. Occupational exposure to lung carcinogens at the gaseous diffusion plants, including asbestos, uranium, and possibly plutonium and beryllium produce excess risk of lung cancer. If early detection of lung cancer is achievable as a result of medical screening, its implementation should be accorded the highest priority among gaseous diffusion plant workers, especially for those at the highest risk of lung cancer. We do not currently offer such screening in the Worker Health Protection Program. In the enhanced program, we will offer such screening.

An effective and feasible method for the early detection of lung cancer now exists. The *Early Lung Cancer Action Project*, undertaken at Cornell University and New York University Medical Schools, decisively and affirmatively answers the question of whether computerized axial tomography (CT) scans of the chest can identify small malignant lung nodules at a sufficiently early stage that surgery can successfully remove the cancer with the expectation of cure. Henschke and colleagues, who undertook the *Early Lung Cancer Action Project*, published the results of their landmark study in *Lancet* on July 10, 1999.

Undertaken with the support of the National Institutes of Health, this study began in the early 1990's. It enrolled 1,000 people, aged 60 or over, who had a tobacco use history and were sufficiently healthy to undergo chest surgery, if required. All participants underwent a chest x-ray and a low-dose rapid chest CT scan. Lung nodules were identified, and the affected participants were subject to a protocol of conventional chest CT scan and, if relevant, diagnostic work-up.

The study results were remarkable. Low dose chest CT scans detected lung cancer in 27 people (2.7%), or in 1 of every 37 study participants. By contrast, malignant lung nodules were seen on conventional chest x-ray in only 7 participants (0.7%). Thus, low dose CT scans detected nearly 4 times as many lung cancers as did routine chest radiography.

More importantly, low dose CT scanning nearly always detected lung cancers at an early stage that is usually highly curable. Of the 27 CT-detected cancers, 26 (96%) were resectable, and 23 (85%) were in the initial stage (Stage I) of lung cancer. By contrast, only about one-half, or 4 of the 7 (57%) malignant nodules identified by the chest x-ray were Stage I disease. We know

that Stage I lung cancer normally has a 70% to 80% 5 year survival compared to an overall 5 year survival of 12% for all cases of lung cancer combined.

In addition, only 1 study participant underwent a biopsy that was specifically recommended by the study protocol and had benign disease. Thus, low-dose CT scanning, when followed by a proper work-up, will result in few people needlessly undergoing the pain and expense of biopsy for benign nodules. The authors conclude: "Low-dose CT can greatly improve the likelihood of detection of small non-calcified nodules, and thus of lung cancer at an earlier and potentially more curable stage."

The results of this study have been confirmed by other similar studies. Investigators undertaking these studies recently met at the *Second International Conference on Screening for Lung Cancer* at Cornell University Medical School in New York on February 25-27, 2000 and presented current screening program data. The seven studies reviewed were undertaken in 4 different countries and have screened over 13,000 people for lung cancer. Approximately 75% of the cancers identified through screening were Stage I cancers and, therefore, amenable to surgery and presumably cure.

The results of the *Early Lung Cancer Action Project* and similar studies, in combination with current knowledge about the biology, radiology, and epidemiology of lung cancer, are sufficiently convincing to justify the inclusion of low-dose chest CT scanning and an associated follow-up protocol in the medical screening program for gaseous diffusion plant workers. The new lung cancer screening protocol will be offered to gaseous diffusion plant workers who are at highest risk for lung cancer as a result of the occupational exposures to asbestos and uranium and possibly plutonium and beryllium.

We will offer such an early lung cancer detection program to screening participants of the Worker Health Protection Program at the gaseous diffusion plants of the Department of Energy. We will lease a state of the art CT scanner placed in a mobile unit and transport it between Portsmouth, Oak Ridge, and Paducah on a regular basis. The exact number of people we will be able to scan depends on the level of funding that we receive. This component will be offered to individuals, both current and former workers, who meet pre-determined criteria for lung cancer risk, as constituted by age, duration and likelihood of exposure to occupational lung carcinogens, and history of cigarette smoking. This program component will be integrated into the existing



protocol of the Worker Health Protection Program and, thereby, achieve considerable efficiency and costs savings, especially in participant recruitment, baseline testing, follow-up, and overall program administration.

Medical advances typically benefit metropolitan areas of the United States first, since large cities are often the home to the leading medical schools and major medical centers. Lung cancer screening is being rapidly established in New York, San Francisco, and Chicago. Later and perhaps slowly, it will diffuse to rural areas, where DOE facilities are typically located. Through integrating the proposed lung cancer screening method into our Worker Health Protection Program, we have the opportunity to reverse this pattern and make Paducah, Portsmouth and Oak Ridge among the first communities in the nation to receive the potentially enormous benefits of this life-saving screening technique. The United States Congress and the Department of Energy will accrue enormous gratitude from the current and former gaseous diffusion plant workers as a result of literally saving the lives of a significant number of such workers through supporting lung cancer screening and the Worker Health Protection Program.

#### **D. Lack of Access to Occupational Health Care: A Core Problem for Gaseous Diffusion Plant Workers**

The first core problem in occupational health at the gaseous diffusion plants of the Department of Energy problem is the lack of access of former and current DOE workers to objective, expert, independent care in occupational medicine. When any of us develop a heart arrhythmia, a neurologic syndrome, or cancer, we fully expect to see a physician who will bestow upon us his or her candid, specific, expert opinion that is the distillation of many years of specialized training and clinical experience. We further expect that this opinion will be unencumbered by any conflict of interest of the physician, such as a financial interest in a particular medical tool or laboratory, which would influence the opinion of that physician, sometimes to our detriment. These conditions frame a basic standard of care that we have come to expect in our country.

These conditions, however, do not currently exist, and indeed have never existed, for the workers at the three gaseous diffusion plants of the Department of Energy, or probably throughout much of the DOE complex. Such workers have never as a rule had an opportunity for this simple encounter: to have a potentially work-related illness evaluated by a physician who has

the knowledge to determine whether the illness is work-related and is free to make that determination without concern about ramifications to the employer. Instead, workers in Paducah, Portsmouth, and Oak Ridge raise their health concerns with their primary care providers who do not ask about or know about occupational hazards. Or their health concerns arise with physicians who are employed by or under the influence of DOE contractors and thereby have dual loyalties. It is little wonder, therefore, that workers, who are very proud of the service that they have performed for the past 5 decades, nonetheless feel that they have been treated unfairly with reference to occupational illness.

Two immediate consequences result from this failure to provide a basic standard of occupational health care. First, occupational illness is not properly diagnosed and treated. This harms the individual. It also harms co-workers and future workers, because it prevents the return of vital information to the workplace, information that could be used to prevent other workers from becoming ill.

The second consequence is that workers and their families will form their own opinions about whether the workplace is the source of their ills. In the absence of external expert knowledge, workers will use their own expertise to decide about the work-relatedness of their problems. Often they will be correct. Indeed, the history of occupational medicine is replete with examples of occupational diseases first identified by workers and later confirmed by physicians. Sometimes, however, workers will not be correct in attributing their symptoms to the workplace. The result of this error is that the DOE facility may be falsely targeted as the source of a spectrum of diverse and quite unrelated illnesses. We cannot blame people who make this judgment: they do so in a vacuum. The underlying problem is the structural lack of a system that can authoritatively and credibly confirm or refute workers' suspicions about workplace exposures as the source of their ill health.

#### **E. Lack of Accurate Exposure Characterization: A Core Problem for Gaseous Diffusion Plant Workers**

Let me turn to a second core problem in occupational health at the gaseous diffusion plants: the lack of proper, accurate information about exposures that have occurred at the gaseous diffusion plants over the past four or five decades. Ultimately, in occupational medicine, we are called upon to make a judgment about whether a health problem of a particular individual is

work-related. The equation that rules this decision is quite simple. On the one side is information about the exposure or workplace factor. On the other side of the equation is the delineation of the illness. The latter is usually straightforward given the armamentarium of medical tools that we now have to conduct medical investigations.

The weak link in this equation is often the level and quality of knowledge about the workplace exposures. Chronic occupational illness today results from exposures that occurred in the past. We are therefore subject to whatever actions that people who were responsible for the workplace did or did not take to measure those exposures. In 1996-1997, as part of the Worker Health Protection Program, we conducted a one year needs assessment of workplace exposures and the rationale for medical screening at the gaseous diffusion plants (Executive Summary in Attachment B). We concluded, as have others, that workplace exposures have been poorly documented in general at the gaseous diffusion plants, either through failure to measure properly, or through failure to document measurements in a manner that can be properly interpreted. This applies to radiation measurements, but even more so to assessment of hazardous chemical agents such as asbestos, silica, and beryllium.

One important consequence of this failure is that it makes the decision-making about causality between workplace exposures and health problems that occur many years later difficult and complex. When a gaseous diffusion plant worker, or more likely, retiree, develops lung cancer, the likelihood that his prior occupational exposures to asbestos contributed to the development of the lung cancer depends very much on the intensity, duration, and timing of his exposures to asbestos. If information on this exposure does not exist, the amount of judgment that must be used to decide on work-relatedness of that lung cancer increases. And, so too does room for disagreement in formulating that judgment.

A cynical means to "eliminate" occupational disease now becomes apparent. First, on a prospective basis, fail to document exposures in a thorough, reliable, and interpretable manner. Second, overlook communicating meaningful information about those exposures to workers. Finally, decades later, when chronic occupational diseases of long latency appear, claim retrospectively that insufficient data on exposure preclude proper assessment of the causal role of such exposures in the development of the extant illnesses. Note that the premature deaths and diseases suffered by workers do not disappear under such a scheme. But the occupational attribution vanishes.

Let me provide an example relevant to the "discovery" of plutonium, neptunium, and other transuranics at the Paducah gaseous diffusion plant. The same lesson applies to the Oak Ridge and Portsmouth gaseous diffusion plants. A memorandum from 1960 has been recently discovered, entitled "*Neptunium<sup>237</sup> Contamination Problem, Paducah, Kentucky, February 4, 1960.*" (Attachment C) It was written by Dr. C. L. Dunham, a physician who directed the Division of Biology and Medicine of the Atomic Energy Commission (AEC), the predecessor to DOE, and a physician colleague from the same Division. Dr. Dunham was therefore the chief physician of the AEC and presumably took the same Hippocratic Oath that every physician takes upon entering the profession. In this memo, they discuss in some detail how neptunium arrives in Paducah, how it deposits on the inner barrier tubes that are the central component of the gaseous diffusion process, and how workers are exposed to the neptunium. They then refer to urine neptunium levels taken in some workers. These physicians further specify that up to 300 Paducah workers should be tested but that, referring to management personnel "they hesitate to proceed to intensive studies because of the union's use of this as an excuse for hazard pay (p. 3)." Dr. Dunham and colleague further argue in favor of the need to obtain post mortem tissue samples, but state that this was difficult due to "unfavorable public relations." Dr. Dunham and colleague conclude: "Thus, it appears that Paducah has a neptunium problem but we don't have the data to tell them how serious it is." There is a striking absence of any formulation of a plan of how to collect those data and how to reduce neptunium exposure at Paducah.

And now, forty years later, we are asked to judge how significant that exposure might have been, who was the population at risk, and whether a retiree's cancer was caused by that unquantified and, presumably, uninvestigated exposure to neptunium, plutonium, and other materials. And at the end of the current spate of urgent investigations, news reports and hearings, there will be some who will conclude ruefully that "we simply do not have the data to tell them how serious it is" and will thereby be paralyzed by this ignorance. I cannot think of a better way to make occupational disease "disappear."

#### **F. Conclusion**

Clearly, our present obligations to workers who built and maintained our nuclear weapons stockpile require that we move beyond paralysis. Towards this end, we have developed a concrete plan to enhance the Worker Health Protection Program. The Worker Health Protection

Program already in place will be expanded next month as an immediate response to the need of its gaseous diffusion plant workers for appropriate and timely medical screening for work-related disease. For \$6.8 million dollars this year, the scope and coverage of the medical testing and education program can be significantly expanded in a well-targeted and clearly justified manner. With complete funding, we will provide targeted screening for 5,750 current and former gaseous diffusion plant workers. We will bring the most important advance in cancer screening since the advent of mammography. And this will be accomplished at a fraction of the estimated \$1 billion dollar cost that it will take to clean-up the environment at the Paducah gaseous diffusion plant site alone.

In conclusion, our program expansion will allow Congress and the Department of Energy to address the concrete and heightened concerns of former and current gaseous diffusion plant workers. Moreover, and most importantly, the advent of a radiographic screening technique for lung cancer will allow Congress and the Department of Energy, through an enhanced Worker Health Protection Program, to save lives.

## Occupational Injury and Illness in the United States

## Estimates of Costs, Morbidity, and Mortality

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**Objective:** To estimate the annual incidence, the mortality, and the direct and indirect costs associated with occupational injuries and illnesses in the United States in 1992.

**Design:** Aggregation and analysis of national and large regional data sets collected by the Bureau of Labor Statistics, the National Council on Compensation Insurance, the National Center for Health Statistics, the Health Care Financing Administration, and other governmental bureaus and private firms.

**Methods:** To assess incidence of and mortality from occupational injuries and illnesses, we reviewed data from national surveys and applied an attributable risk proportion method. To assess costs, we used the human capital method that decomposes costs into direct categories such as medical and insurance administration expenses as well as indirect categories such as lost earnings, lost home production, and lost fringe benefits. Some cost estimates were drawn from the literature while others were generated within this study. Total costs were calculated by multiplying aver-

age costs by the number of injuries and illnesses in each diagnostic category.

**Results:** Approximately 6500 job-related deaths from injury, 13.2 million nonfatal injuries, 60 300 deaths from disease, and 862 200 illnesses are estimated to occur annually in the civilian American workforce. The total direct (\$63 billion) plus indirect (\$106 billion) costs were estimated to be \$171 billion. Injuries cost \$145 billion and illnesses \$26 billion. These estimates are likely to be low, because they ignore costs associated with pain and suffering as well as those of within-home care provided by family members, and because the numbers of occupational injuries and illnesses are likely to be undercounted.

**Conclusions:** The costs of occupational injuries and illnesses are high, in sharp contrast to the limited public attention and societal resources devoted to their prevention and amelioration. Occupational injuries and illnesses are an insufficiently appreciated contributor to the total burden of health care costs in the United States.

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**M**OST PEOPLE between the ages of 22 and 65 years spend roughly 40% of their waking hours at work. Some risk of injury or illness attends virtually every job held by the 120 million Americans who work.<sup>1,2</sup> Yet few studies<sup>3,4</sup> have assessed or estimated the national incidence or prevalence of occupational injuries or illnesses. Even fewer studies<sup>5,7</sup> have attempted to calculate the costs of either these injuries or illnesses. This is unfortunate, especially since costs have become a critical measure in the health care debate. Knowing costs is important, because it allows comparisons with such disparate health care conditions as acquired immunodeficiency syndrome, Alzheimer disease, circulatory diseases, cancer, and musculoskeletal conditions.

We report estimates of the numbers and direct and indirect costs of job-related injuries and illnesses in the United States in 1992. We summarize a recent report<sup>8</sup> to the National Institute for Occupational Safety and Health on costs of occupational injuries and illnesses. Standard epidemiological, economic, and accounting techniques were applied to national sources of data to estimate incidence and costs of injuries and illnesses incurred at work.

This study appears to be unique in the literature. To our knowledge, no prior study uses national data to generate estimates of the burden and costs of occupational injuries and illnesses in the United States. Only 1 previously published study<sup>9</sup> has attempted to estimate these combined costs of occupational injury and illness, but it was limited to Pennsylvania.

## METHODS

### INCIDENCE OF OCCUPATIONAL INJURIES, 1992

#### Deaths

Several primary and secondary sources of data were used to construct our estimate of deaths from injury. Primary sources included the Census of Fatal Occupational Injuries (Census),<sup>2</sup> the Annual Survey of Occupational Injuries and Illnesses (Annual Survey),<sup>10</sup> and the Supplementary Data System of the US Bureau of Labor Statistics,<sup>11</sup> the National Traumatic Occupational Fatality Study (National Traumatic Study) of the National Institute for Occupational Safety and Health,<sup>12</sup> and the workers' compensation data of the National Council on Compensation Insurance (National Council).<sup>13</sup> Secondary sources included the National Safety Council's *Accident Facts*<sup>8</sup> and reports by Miller<sup>9</sup> and Marquis.<sup>14</sup>

The Census<sup>2</sup> is regarded as a most reliable primary data source since it uniquely requires confirmation of a work-related death by 2 separate sources. However, like the National Traumatic Study,<sup>12</sup> the Census depends largely on death certificates, which are known to undercount work-related deaths by 10% to 40%.<sup>2,15,16</sup> We nevertheless judged that the Census and the National Traumatic Study provided the best data on civilian deaths and weighted them more heavily than all the other estimates in calculating our estimate. To obtain a summary estimate of the number of traumatic deaths in the United States in 1992, we adjusted all the death estimates from the literature except the one derived from the Census. The unadjusted (listed first) and adjusted (listed second) estimates were the following: the Census<sup>2</sup> (6063, 6063); National Traumatic Study<sup>12</sup> (5714, 6346); Annual Survey<sup>10</sup> (2800, 5584); National Council<sup>13</sup> (3306, 8306); Supplementary Data System<sup>11</sup> (5601, 6994); National Safety Council<sup>8</sup> (8500, 10 000); and Miller<sup>9</sup> (11 900, 9678). The adjustments reflected deficiencies such as relying only on workers' compensation data, ignoring murders, ignoring deaths in small firms and among the self-employed, ignoring data from California, New York, and other states, and for our purpose, not reporting data for 1992. Apart from this last point about 1992, the authors of these studies acknowledge these deficiencies. To calculate our global estimates, we assigned different weights to the individual estimates as follows: Census (0.6), National Traumatic Study (0.2), and all others (0.04). We developed an econometric forecasting model to update all estimates in the published literature to 1992.

#### Nonfatal Injuries

For nonfatal injuries we analyzed 3 primary sources—the Annual Survey,<sup>10</sup> the National Council ultimate reports, and the National Health Interview Survey<sup>17</sup>—the same secondary sources identified above as well as studies by Miller<sup>9</sup> and Marquis.<sup>14</sup> Each of the primary sources suffered from serious undercounts, especially the Annual Survey<sup>10</sup>—the primary data source most frequently cited in the literature.

The 1992 Annual Survey<sup>10</sup> reflects questionnaire data reported by employers from a stratified sample of approximately 250 000 private-sector firms. The Annual Survey does not cover government workers, the self-employed, and farms

with fewer than 11 employees. Moreover, the Annual Survey is collected from private firms that face an economic incentive to underreport.<sup>18</sup> All these deficiencies lead to underestimates that range from just less than 50% to more than 70%. For example, the Census<sup>2</sup> shows an undercount of deaths of 71%. Nelson et al<sup>12</sup> demonstrate a 60% undercount for cumulative trauma disorders (conditions that are accounted for in our illness estimates). The data by Rasci<sup>12</sup> indicate an undercount for all nonfatal injuries and illnesses of roughly 53% caused by economic incentives alone. We made adjustments for each of these factors. For example, we multiplied the incidence of work-related injuries among private-sector companies by the population of all civilian persons employed, including government workers, the self-employed, and farm workers. Another estimate that did not receive full weighting was generated by assuming that the percentage undercount of deaths in the Annual Survey would be identical to the percentage undercount of nonfatal injuries. We reasoned that it would be more difficult to ignore a death than a nonfatal injury, hence a percentage estimate of the undercount on nonfatal injuries should be at least as great as a percentage estimate of the undercount of deaths.

The unadjusted (listed first) and adjusted (listed second) estimates as well as the assigned weights (listed third) were the following: Annual Survey<sup>10</sup> 6.3 million, 13.99 million, and 0.4; National Institute for Occupational Safety and Health,<sup>12</sup> 7 million, 17.21 million, and 0.15; National Health Interview Survey,<sup>17</sup> 8.7 million, 11 million, and 0.15; Marquis,<sup>14</sup> 7 million, 13.2 million, and 0.15; and Miller,<sup>9</sup> 11 million, 10.8 million, and 0.15. Again, each of these studies suffers deficiencies that the authors acknowledge. For example, the National Health Interview Survey likely misses a high percentage of assaults. Our adjustments attempted to account for each of these deficiencies.

We categorized injuries as traumatic deaths, disabling injuries, and nondisabling injuries. Disabling means that the injury resulted in at least 1 day of work loss, while nondisabling means no loss of a full workday. Within the disabling category, there are 3 workers' compensation categories: permanent total, permanent partial, and temporary total and partial. Although there are a few legal exceptions, permanent total generally means the person will never work again at any job. Permanent partial is the next most severe category, it means the person will probably never work again at the preinjury job, but, with training, may find a different job. Temporary total and partial means temporarily out of work or working at diminished capacity but fully anticipating returning to the preinjury job. Injuries were split into these workers' compensation categories so that they could be matched to reliable workers' compensation cost data. We did not categorize injuries by type, ie, head injury, amputation of fingers, and so on, since cost data for injuries categorized this way are not uniform, ie, they originate with studies using varied assumptions. Moreover, an accident could have resulted in more than 1 injury and classified by body part, eg, a car crash could cause a concussion and a finger amputation.

The source estimates, Annual Survey<sup>10</sup> through Miller and Galbraith,<sup>9</sup> were used to generate one global estimate of all disabling and nondisabling injuries. The global estimate was then decomposed into workers' compensation categories based on percentages drawn from National Council reports.<sup>13</sup>

## INCIDENCE OF OCCUPATIONAL ILLNESS

## Deaths

An estimate of annual deaths attributable to occupational diseases was obtained by combining 2 approaches. The numbers of deaths attributable to occupation-specific causes in 1992 are recorded in the mortality statistics gathered by the National Center for Health Statistics.<sup>24,25</sup> These occupation-specific causes include mesothelioma and the pneumoconioses, for which all, or virtually all, cases can be attributed to occupational exposures.<sup>26</sup>

Since few diseases are caused solely by occupational exposures, a second approach was used—an attributable risk proportion model. In this method, percentages of deaths in major disease categories are attributed to occupational exposures. Given the uncertainty in knowledge of the exact proportions of deaths attributable to occupation, ranges and point estimates of proportions of deaths were used, including 6% to 10% of cancer, 5% to 10% of cardiovascular and cerebrovascular disease, 10% of chronic respiratory disease, 100% of pneumoconioses, and 1% to 3% of nervous system disorders and renal disorders. In estimating these deaths, we ignored decedents aged 24 years or younger for all categories of deaths, and for circulatory diseases we also excluded decedents older than 65 years.

## Rationale for Attributable Risk Proportion Model

Selection of these ranges of attributable proportions is based on literature in occupational medicine and related disciplines. The estimate of 6% to 10% of all cancer attributable to occupational exposures is grounded in part on specific studies of selected cancers and in part on general trends in human and animal cancer research. At least a dozen case-control studies, after controlling for cigarette smoking, collectively show that 10% to 33% of all types of lung cancer in men are attributable to occupational exposures.<sup>27-29</sup> Applying a narrower range of point estimates, 15% to 20%, to the 91 405 deaths from lung cancer among men in the United States in 1992 yields a total of 13 711 to 18 281 deaths in men from lung cancer caused by occupational agents. These deaths from lung cancer represent 2.7% to 3.5% of all deaths from cancer in the United States in 1992. A similar analysis of deaths from another well-documented occupational cancer, bladder cancer, provides an estimate that 21% to 27% of deaths from bladder cancer for men are attributable to occupation in the United States.<sup>30,31</sup> Since there were 7123 deaths caused by bladder cancer among US men in 1992, 1496 to 1923 deaths caused by bladder cancer, or approximately 0.3% of all deaths caused by cancer, were attributable to occupational agents. Together bladder cancer and lung cancer among men alone accounted for approximately 3% to 4% of all deaths caused by cancer in the United States in 1992.

Four sets of research findings in occupational cancer in the last 10 to 15 years support the proposition that the percentage of cancer caused by occupation is significantly higher than the 3% to 4% specifically caused by cancer of the lung and bladder. First, recent studies have increased the likelihood that a number of well-known toxins or exposures are human carcinogens. Included in this category are silica and fiberglass and lung cancer<sup>32</sup>; electromagnetic radiation and vinyl chloride and brain cancer<sup>33,34</sup>; and

orthotoluidine and bladder cancer.<sup>35,36</sup> For other common agents, limited evidence has accumulated to support a causative role in cancer. Among these agents are formaldehyde, 1,3-butadiene, and perchloroethylene.<sup>37</sup>

Second, a number of studies demonstrate increased risks of cancer for specific occupations without clear identification of the suspect agents. Examples include farmers with lymphoma<sup>38,39</sup> and firefighters with brain cancer.<sup>40,41</sup> Third, toxicological assays in animals completed in the last 2 decades show that a significant number of chemicals tested to date show evidence of carcinogenicity. More than 600 chemical agents have been shown to be carcinogenic in at least 1 rodent species.<sup>42</sup> Among the most important agents that showed evidence of carcinogenicity in experiments conducted by the National Toxicology program are methylene chloride, tetrachloroethylene, and propylene oxide.<sup>43</sup> While there is considerable disagreement about the significance of the results of animal testing for human cancer,<sup>44</sup> demonstration of carcinogenicity in animals is still considered evidence of likely carcinogenicity in humans.<sup>45</sup> Collectively, these studies suggest that the problem of occupational cancer may be larger than is recognized when only established human carcinogens are considered.

Fourth, side smoke from cigarettes is a likely carcinogen in some jobs. Clear patterns exist in occupations concerning cigarette use. Waitresses, bartenders, laborers, auto mechanics, welders, and kitchen workers, among others, report high cigarette use in recent surveys and in surveys from 20 years ago. On the other hand, teachers, physicians, nurses, dentists, clergy, and librarians, among others, report low cigarette use in the same surveys.<sup>46,47</sup>

The estimate of 5% to 10% of cardiovascular and cerebrovascular disease is based on a number of studies showing that job strain or psychosocial stress causes excess morbidity and mortality<sup>48,49</sup> and that selected common chemical exposures, such as lead, carbon monoxide, and solvents, adversely affect the heart.<sup>50,51</sup> We restrict our estimates of occupational cardiovascular and cerebrovascular disease to people aged 64 years and younger, because the long-term effects of cardiovascular exposures are not well studied. Our 5% to 10% range for ages 25 through 64 years corresponds to a 0.6% to 1.2% range for all deaths from circulatory disease for all ages.

A number of large, well-performed, population-based studies<sup>52-59</sup> consistently show that exposure to occupational dusts and, to a lesser extent, gases and fumes is associated with a 30% to 50% increase in symptoms and pulmonary function deficits characteristic of chronic obstructive pulmonary disease (COPD). Other studies relate specific occupational exposures, principally coal, silica, grain dust, and cadmium,<sup>60</sup> and specific occupations to excess mortality from COPD.<sup>60,61</sup> To recognize the likelihood that occupational exposures play a limited but definite role in death caused by COPD, we assign an estimate of 10% mortality caused by COPD to occupational exposures.

Renal toxic effects have been associated with occupational exposure to lead and mercury, glycol ethers, and other organic solvents.<sup>62,63</sup> Neurological disorders stemming from the workplace exposures have been caused by pesticides, heavy metals, many organic solvents, and other organic agents.<sup>72-73</sup> The quantitative burden of renal and neurological disease that these exposures impose is not known. We therefore assign a conservative range of 1% to 3%.

Continued on next page



### Morbidity

To estimate the number of acute and relatively well-recognized chronic occupational diseases (ie, dermatitis, repetitive strain injuries), the following data sources were used: the Annual Survey,<sup>10</sup> the public-sector employee health and safety programs,<sup>14</sup> the National Hospital Discharge Survey, and R. Slighter (US Dept of Labor, oral communication, September 1994).

The limitations of the Annual Survey<sup>10</sup> are well recognized and are believed to produce a significant underestimate of occupational diseases.<sup>15</sup> The Annual Survey data counts illnesses of current employees. Retired persons are ignored. Yet many cancers, respiratory diseases, cases of pneumoconioses, and so on do not manifest themselves until retirement. For example, we estimated 150 000 new job-related cases of COPD, and the Annual Survey<sup>10</sup> counted 717 cases in 1992.

The Adult Blood Lead Epidemiology and Surveillance program,<sup>16</sup> maintained by the National Institute for Occupational Safety and Health since 1992, collects adult blood lead data (blood lead level,  $\geq 1.20 \mu\text{mol/L}$  [ $\geq 25 \mu\text{g/dL}$ ]) from 20 states. Since these 20 states contain 60% of the US population and are among the most heavily industrialized states (eg, California, Illinois, New Jersey, New York, Pennsylvania, and Michigan), it is reasonably estimated that they contain 75% of all individuals who have elevated blood lead levels in the United States. The number of cases of lead poisoning recorded in the Adult Blood Lead Epidemiology and Surveillance program is adjusted upward by one third to allow a national estimate.

To obtain an estimate of the number of new cases of major chronic diseases, including cancer, chronic respiratory disease, and cardiovascular and cerebrovascular disease, we applied the same percentages to morbidity estimates as we did to mortality estimates as noted in the previous section. Numbers of new cases of these diseases in the general population were obtained from established data sources<sup>16-61</sup> and from the American Cancer Society (S. Montgomery, written communication, March 2, 1995). Again, we also restricted analyses to persons aged 25 years and older, and in the case of cardiovascular and cerebrovascular diseases, to persons younger than 65 years.

### COSTS

#### Theory

We adopted the direct and indirect or human capital method for calculating costs. The direct and indirect method is the most widely used method in the medical and legal literature in large part because estimates are available and reliable.<sup>60,61</sup>

Direct costs represent actual dollars spent or anticipated to be spent on providing medical care to an injured or ill person as well as on property damage, police and fire services, and administrative costs for delivering indemnity benefits. Medical costs include physicians' and

nurses' services, hospital charges, drug costs, rehabilitation services, ambulance fees, payments for medical equipment, and supplies. Indemnity benefit costs do not include the benefits themselves, rather they include the administration costs associated with providing workers' compensation indemnity or Social Security disability payments to injured or sick workers and their families. Property damage includes costs of damage to vehicles, machine, buildings, and so on directly associated with the injuries and illnesses.

The largest indirect costs include the injured or sick workers' lost earnings, fringe benefits, and home production. Other indirect costs include employer costs associated with retraining and restaffing, coworker costs of lost productivity, and time delays.

Two approaches can be used in estimating the costs of injury or illness by the direct and indirect method: prevalence and incidence techniques. Prevalence-based costs provide an estimate of the burden in a base year as a result of the prevalence of injury or disease. Included are the injury or illness costs during the base year whether they had their onset in the base year or any time prior to the base year. Incidence-based costs represent the lifetime costs resulting from a new injury or illness originating in the base year. In the aggregate, incidence costs in a given base year reflect the likely course of an injury or a disease and its duration, including survival rates, medical care that will be used, and costs for the duration of the injury or disease. We used the incidence method for all injuries and morbidity estimates of reported incident disease. We used the prevalence method for the estimates of deaths caused by diseases and morbidity obtained by the proportionate attributable risk calculations described earlier.

#### Direct and Indirect Cost Application: Injuries

Estimation of the costs of injuries required multiplying the number of injuries in each category by the average costs of such injuries. Direct average costs for medical care were drawn from the National Council<sup>13</sup> ultimate reports. Lifetime medical costs (1992 dollars) for deaths were valued at: \$20 120, for permanent total at \$132 419, for permanent partial at \$17 920, for temporary total and partial at \$3250, and for no work loss at \$275. The medical expenses were drawn from workers' compensation accounts and did not require adjustment since workers' compensation paid virtually 100% of medical bills in 1992, ie, no copayments or deductibles were charged to clients.

The calculation of the indirect costs was based on a variety of sources, including National Council indemnity data and federal government data on employment, earnings, and mortality. Home production, as well as hiring, training, and workplace disruption, costs were priced in accord with estimates in the literature.<sup>62,63</sup> Indirect costs for fatalities required a present value calculation. We assumed that persons who died would have earned what others of the same age and gender earned.<sup>1,81</sup>

## RESULTS

### BURDEN OF OCCUPATIONAL INJURIES

We estimated that 6529 workers died from workplace-related injuries in the United States in 1992. This point

estimate was drawn from a range of 6063 to 10 000, which was determined by adjustments to totals of deaths caused by injury estimated by the Census,<sup>2</sup> National Safety Council,<sup>9</sup> Supplementary Data System and Bureau of Labor Statistics,<sup>11</sup> National Traumatic Study,<sup>12</sup> National Council,<sup>13</sup> and the National Health Interview Survey.<sup>20</sup> The point

The distribution of deaths by age and sex were estimated with information from the Census.<sup>2</sup> These age and sex data were combined with information of wages, probabilities of survival to age 75 years, as well as the employment within those categories.<sup>44</sup> The present value formula we used was similar to the one used by Rice et al.<sup>41</sup>

$$PV_{\text{death}} = \sum_{s=0}^{75} P_{s,n} \times [M_{s,n} + H_{s,n} + F_{s,n}] \times LFFR_{s,n} \times \frac{(1+y)^{s-y}}{(1+r)^{s-y}}$$

where  $PV_{\text{death}}$  indicates present discounted value of loss because of death from injury per person;  $P_{s,n}$ , probability that a person of a certain sex and age will survive to a certain age;  $y$ , age at which the person was injured;  $s$ , sex of person;  $n$ , age of person;  $M_{s,n}$ , mean annual earnings of employed persons of a certain sex and age;  $H_{s,n}$ , annual value of household production for person of sex and age; and  $LFFR_{s,n}$ , labor force participation rate: proportion of the population by sex and age that are employed in the labor market. The LFFR of 1 was for injured (not ill) persons who were working and older than 65 years;  $F_{s,n}$ , fringe benefits by sex and age;  $r$ , rate of increase in labor productivity assumed to be 1%; and  $r$ , real discount rate assumed to be 4%.

The LFFR requires comment. Most people retire at or before the age of 65 years. We assumed that persons who died before the age of 65 years would have an LFFR of typical persons now older than 65 years, eg, 0.161 for men and 0.803 for women. However, a few of our injury decedents, before death, were older than 65 years and working. For these people we assumed an LFFR of 1.0, ie, we assumed that they would have continued working until the age of 75 years. We assumed no one would work beyond the age of 75 years.  $M$  represents average annual earnings for full-time and part-time employees.  $H$  represents the annual value of household production. Home production included changing diapers, reading to children, home repairs, building cabinets, plumbing repairs, and so on. Estimates on home production were drawn from Douglas et al<sup>45</sup> and updated to 1992 using an inflation index. A rate of fringe benefits of 22% for men and 16% for women was used. The disparity reflects the greater likelihood that men were employed full-time.

The National Council<sup>13</sup> figures also provided indemnity benefits that were used to estimate wage losses. The indemnity benefits themselves were not added to wage losses. The indemnity benefits were adjusted assuming workers' compensation paid to clients for the following rates: 40% of pretax wages for permanent total conditions; 50% for permanent partial conditions and 60% for temporary total and partial conditions.<sup>46-47</sup> Fringe benefits were assumed to be 21% of the pretax wage for men and women combined.

Insurance administrative costs were assumed to range between 10% and 31% of medical expenses depending on the type of insurance. Private workers' compensation was assumed to have the highest<sup>48</sup> and Medicare was assumed to have the least.<sup>49</sup> Estimates on the cost of property damage, time delays, and police and fire services were drawn from Blincoe and Faigin.<sup>50</sup>

#### Direct and Indirect Cost Application: Disease

There are no national studies, to our knowledge, that describe the amount of hospital, physician, nursing, or other medical care required to treat patients with disease attributable to occupational risk factors. We therefore constructed our estimates, using available national expenditure data, and assuming disease-specific treatment patterns similar to the general population.

Using the National Hospital Discharge Survey,<sup>51</sup> we calculated the total number of days spent in the hospital by patients with a primary diagnosis for disease cost for diseases categories included in the attributable risk calculations of occupational diseases. Total days of hospitalization by disease group were transformed to obtain standardized proportions of national hospital utilization attributable to each occupational disease. We applied these disease-specific proportions to the national health expenditure accounts (minus nursing home costs), estimated by disease category by the Health Care Financing Administration,<sup>52</sup> to obtain an estimate of medical direct costs. The direct costs of nursing home care for occupationally related disease were estimated using the National Nursing Home Survey.<sup>53</sup> These cost estimates, using diagnosis-specific nursing home length-of-stay data, were added to medical expenditure estimates.

Indirect costs were estimated using age-specific and sex-specific mortality data from the same sources identified above in the discussion of indirect costs of deaths caused by injury. By applying the occupational attributable proportions for deaths caused by disease, the present value of the indirect costs of premature mortality attributable to occupational disease was estimated for the base year 1992. Finally, we projected national disease-specific trends over time in the ratios of morbidity costs to direct costs and morbidity costs to mortality costs<sup>50,51</sup> to obtain an estimate of the morbidity costs for the occupational disease. All indirect costs estimates are presented in 1992 dollars and apply the same assumptions regarding age-specific LFFRs, discount rates, and administrative costs used to estimate the economic costs of occupational injury with one exception: we did not allow an LFFR of 1.0 for any persons older than 65 years for our disease estimates. Instead, we applied national averages for sex-specific rates for persons older than 65 years with occupational disease.<sup>54</sup> The 1.0 rate was used only for deaths caused by injury to those who before death were older than 65 years and working.

In addition to estimating the economic costs associated with the occupational diseases responsible for major causes of death in the United States, we investigated the costs of specific nonfatal occupational diseases, including skin disease, carpal tunnel syndrome, and others, as reported to the Bureau of Labor Statistics.<sup>55</sup> Industry-specific wage rates were applied to lost work time to obtain an estimate of indirect costs. Direct costs were based on estimates obtained from published data from the National Council.<sup>13</sup>

estimate was closer to the lower bound, reflecting increased emphasis on the Census, which provided the lower-bound estimate.

A disproportionate share of injuries, especially deaths resulting from injury (40%), were caused by transportation accidents, including aircraft crashes, boat and rail

accidents, and most important, vehicle collisions. Other causes of deaths were assaults and violent acts (20%), falls (10%), electrocutions (5%), and fires and explosions (3%).

We estimated 13 247 million nonfatal injuries. Disabling injuries accounted for 6.09 million and nondisabling accounted for 7.15 million injuries. The follow-

Table 1. Estimated Occupational Disease Mortality Attributed to Selected Causes, United States, 1992\*

Causes of Death	No. of Deaths, Ages $\geq$ 25 y, United States, 1992	Estimated Percentage Attributed to Occupation	No. of Deaths Attributed to Occupation
Cancer	517 090	6-10	31 025-51 708
Cardiovascular and cerebrovascular disease	101 846†	5-10†	5092-10 185†
Chronic respiratory disease	91 541	10	9154
Pneumoconioses	1136	100	1136
Nervous system disorders	26 935	1-3	269-808
Renal disorders	22 957	1-3	223-689
Total	761 506		46 899-73 680

\* Adapted from Kochanek and Hudson,<sup>24</sup> and the National Center for Health Statistics.<sup>25</sup>

† Only includes deaths between the ages of 25 and 64 years. Our 5% to 10% range corresponds to a 0.6% to 1.2% range for all ages.

ing percentages of disabling injuries were in each workers' compensation category: 0.18% for permanent total, 12.507% for permanent partial, 30.94% for temporary total and partial, and 56.34% for 1 to 7 days of disability. This last category was necessary because workers' compensation required at least 3 and sometimes 7 days of work loss before any of the 3 categories—permanent total, permanent partial, and temporary total and partial—applied.

#### BURDEN OF OCCUPATIONAL DISEASE

We estimated that 817 000 to 907 400 new cases of occupational illnesses and 46 900 to 73 700 deaths resulted from occupational diseases in the United States in 1992 (Table 1 and Table 2). The midpoints for these estimates were 862 200 new cases of illness and 60 300 deaths.

Table 1 provides the results of applying the attributable occupational proportions ascribed to 5 major categories of disease and pneumoconioses. Cancer dominated these estimates because of its high overall incidence and because of the restriction of occupationally associated cardiovascular and cerebrovascular deaths to persons younger than 65 years.

Table 2 presents data on occupational morbidity. In the top of the table, established data sources provided estimates of readily recognized occupational diseases, including the Annual Survey<sup>10</sup> (457 400 occupational illnesses), the Adult Blood Lead Surveillance program<sup>76</sup> of National Institute for Occupational Safety and Health (14 250 workers with elevated blood lead levels), and public-sector employees (92 010 occupational illnesses). The numbers of cases of occupational disease among federal and nonfederal government workers were obtained by applying an occupational illness rate of 50 per 10 000 full-time workers to the 18 644 000 federal, state, and local workers employed in 1992. This rate was derived from federal and state data<sup>74</sup> and R. Slighter (oral communication, September 1994).

In the bottom of Table 2 estimates are presented based on the proportion model. Assuming that 6% to 10%

Table 2. Estimated Occupational Disease Morbidity, United States, 1992\*

Causes of Disease	Attributable Proportion-Based Data		
	Estimated Annual No. of New Cases in United States	Percentage Attributed to Occupation	Estimated No. of Occupational Illnesses Attributed to Occupation
Cancer†	1 113 100	6-10	66 790-111 130
Coronary heart disease†	730 000	5-10	36 500-73 000†
Cerebrovascular disease†	1 010 000-1 440 000	5-10	50 500-144 000†
Chronic obstructive pulmonary disease	1 500 000	10	150 000
Subtotal			258 340-348 710
Total			817 015-907 385‡

\* Data adapted from the Annual Survey of Occupational Injuries and Illnesses (Annual Survey)<sup>10</sup>, American Cancer Society<sup>24</sup>, Kannel and Thorn<sup>77</sup>, American Heart Association<sup>78</sup>, and Fifer and Schiefelbusch.<sup>79</sup>

† Ages 25 to 64 years, inclusive.

‡ Total excludes estimated overlap among data sources. This includes 1485 cases of cancer, heart disease, stroke, and chronic obstructive pulmonary disease that were recorded in the 1992 Annual Survey and an estimated 3500 cases of elevated blood lead levels that are included in the 1992 Annual Survey.

of cancers in adults aged 25 years and older estimated by the American Cancer Society are occupational in origin, then 66 790 to 111 310 new cases of cancer were caused by workplace factors in 1992.

Data for the national incidence for coronary heart disease are less than optimal, since they are extrapolated from the Framingham<sup>77,78</sup> heart disease sample of approximately 5000 people. Nonetheless, these data have been used to determine that there are approximately 1.25 million new or recurrent myocardial infarctions each year in the United States, including 530 000 myocardial infarctions among individuals between the ages of 25 and 64 years, inclusive.<sup>77,78</sup> Approximately 78 000 of these half million myocardial infarctions are fatal. The Framingham database has also allowed an estimation of approximately 200 000 new cases of uncomplicated angina pectoris each year in the United States among people younger than 65 years.<sup>78</sup>

Applying the proportional 5% to 10% range cited above, we estimated 36 500 to 73 000 new or recurrent cases of coronary heart disease (including new or recurrent myocardial infarctions and new cases of uncomplicated angina) each year in the United States attributable to occupational risk factors.

Applying similar Framingham statistics,<sup>77,78</sup> we estimate that 5050 to 14 400 strokes and transient ischemic attacks among people older than 24 years but younger than 65 years are associated with occupational exposures.

National data on the incidence of COPD are virtually nonexistent. The one estimate we found was 1.5 million new cases of COPD in 1984.<sup>79</sup> Given the rise of COPD mortality from 27.7 per 100 000 in the United States in 1984 to 34.1 per 100 000 in 1992,<sup>24,93</sup> the estimate of 1.5 million is likely to be an underestimate of the annual num-

ber of new cases of COPD in the 1990s. Applying our estimated percentage of COPD attributable to occupational exposures, 10%, yields an estimate of 150 000 new cases of COPD.

Lack of data on the numbers of new cases of renal and neurological disease that occur in the United States each year preclude application of the occupational attributable proportion approach to obtain estimates of occupational renal and neurological morbidity.

**Table 3. Total Direct and Indirect Costs for Injuries, United States, 1992\***

Type of Costs	Costs, \$ in Billions
Total	145.37
Direct	49.17
Medical	25.07
Administrative costs on workers' compensation (31%), private insurance, Medicaid, welfare, Medicare (16%)	5.70
Indemnity administration costs for workers' compensation (31%), Social Security, and private insurance (10%)	8.86
Property damage	8.75
Police and fire services	0.78
Indirect	96.20
Lost earnings	68.16
Fatalities	2.55
Nonfatalities	65.61
Fringe benefits	14.33
Fatalities	0.56
Nonfatalities	13.78
Home production	8.21
Fatalities	0.31
Nonfatalities	7.90
Workplaces training, restaffing, and disruption	5.20
Fatalities	0.04
Nonfatalities	5.16
Time delays	0.31
Fatalities	0.01
Nonfatalities	0.30

\*The primary data sources were from the following: Census of Fatal Occupational Injuries<sup>1</sup>; Supplementary Data System<sup>11</sup> and Annual Survey<sup>10</sup>; National Traumatic Occupational Fatalities<sup>12</sup>; National Council on Compensation Insurance<sup>13</sup>; and National Health Interview Survey.<sup>14</sup>

#### DIRECT AND INDIRECT COST ESTIMATES OF INJURIES

In 1992, injuries in the workplace generated a total of direct and indirect costs of \$145.37 billion (Table 3). Direct costs of fatal and nonfatal injuries were \$49.17 billion. While these costs were clearly substantial, they represented only 34% of total costs, with indirect costs contributing 66%. Costs can be further described within the broad direct and indirect categories as shown in Table 3. Of the \$49 billion in direct costs, \$25.1 billion was spent on physicians, hospitals, drugs, nursing homes, and rehabilitation providers; \$5.7 and \$8.9 billion covered medical and indemnity insurance administration expenses; \$8.7 billion covered property damage; and \$0.8 billion paid for police and fire services. The \$96.2 billion of indirect costs can also be disaggregated (Table 3): \$68 billion in wage losses, \$14 billion in fringe benefits, \$8 billion in home production losses, \$3.2 billion for workplace training, and \$0.3 for time delays.

#### DIRECT AND INDIRECT ESTIMATES OF ILLNESSES

The economic cost of occupational disease in the United States is estimated to be \$25.5 billion (Table 4) at midpoint with a range of \$18.8 billion to \$30.0 billion in 1992 dollars. Deaths alone from the 5 major disease categories generate a midpoint estimate of \$19.7 billion while newly diagnosed, reported illnesses alone generated a midpoint estimate of \$5.8 billion. Of the \$19.7 billion losses because of deaths, direct costs accounted for 34%, mortality costs for 36%, and morbidity costs for 10%. Direct costs included 92% of total losses for reported nonfatal occupational illness. The results are summarized in Table 4.

The distribution by diagnosis of total economic costs for fatal occupational diseases showed the greatest losses were associated with occupational cancer (\$9.4 billion), diseases of the circulatory system (\$5.8 billion), and chronic respiratory disease (\$3.9 billion). These 3 diseases accounted for 97% of the economic costs of fatal occupational illness.

Total estimated costs of deaths caused by pneumoconiosis amounted to \$202 million. Total estimated costs for renal disorders amounted to \$151 million, with a range from \$15 to \$225 million.

**Table 4. Number and Costs of Injuries and Illnesses, United States, 1992\***

Category	No.	Costs, \$ in Billions		
		Direct	Indirect	Total†
Injuries	13 253 529	49.17	96.20	145.37
Deaths	6529	.23	3.46	3.69
Nonfatal	13 247 000	48.94	92.73	141.67
Illnesses‡		16.07	9.47	25.54
Deaths	60 293	10.70	9.00	19.70
Morbidity	858 165	5.37	0.47	5.84

\*The primary data sources were the following: Census of Fatal Occupational Injuries<sup>1</sup>; Annual Survey<sup>10</sup>; Supplementary Data System<sup>11</sup>; National Traumatic Occupational Fatalities<sup>12</sup>; National Council on Compensation Insurance<sup>13</sup>; National Health Interview Survey<sup>14</sup>; Kochanek and Hudson<sup>15</sup>; National Center for Health Statistics<sup>16</sup>; American Cancer Society<sup>17</sup>; Kannel and Thom<sup>18</sup>; American Heart Association<sup>19</sup> and Farer and Schlietelbein.<sup>20</sup>

†May not sum because of rounding off.

‡The number of deaths and illnesses cannot be summed.

Table 5. Ranges for Estimates\*

Category	Lower Bound	Upper Bound
<b>Injuries</b>		
Deaths, No.	6063	10 000
Nonfatal, No. in millions	8.75	19.8
Costs, \$ in billions	96.9	217
<b>Illnesses</b>		
Deaths, No.	46 899	73 681
Morbidity, No.	817 015	907 385
Costs, \$ in billions	18.8	30.0
<b>Total Costs, \$ in billions</b>	<b>115.7</b>	<b>247</b>

\*The primary data sources were the following: Census of Fatal Occupational Injuries<sup>1</sup>; Annual Survey<sup>10</sup>; Supplementary Data System<sup>11</sup>; National Traumatic Occupational Fatalities<sup>12</sup>; National Council on Compensation Insurance<sup>13</sup>; National Health Interview Survey<sup>14</sup>; Kochanek and Hudson<sup>15</sup>; National Center for Health Statistics<sup>16</sup>; American Cancer Society<sup>17</sup>; Kannel and Thom<sup>18</sup>; American Heart Association<sup>19</sup>; Fayer and Schiefelbein.<sup>20</sup>

#### SUMMARY OF COST

Table 4 summarizes the total costs associated with occupational injuries and illnesses in the United States in 1992. The estimated 6500 deaths from injury, 13.2 million nonfatal injuries, 60 300 deaths caused by disease, and 857 500 illnesses resulted in estimated costs of \$170.9 billion in 1992, roughly 3% of the gross domestic product.

#### SENSITIVITY ANALYSIS

Our sensitivity analysis is captured by the ranges of our estimates. These ranges relied on the lower and upper bounds for the number of injuries and illnesses as well as alternative ratio estimates for the costs of illnesses. Lower bounds involved exclusive reliance on the 3 most widely cited surveys: the Census,<sup>2</sup> the Annual Survey,<sup>10</sup> and the National Health Interview Survey. The estimates for each are 6063 deaths and 6.3 million and 8.7 million nonfatal injuries. At a lower-bound minimum, the Annual Survey needs to be adjusted to capture government employees, the self-employed, and farms with fewer than 11 employees. By applying the Annual Survey rate (8.3 per 100 employees) to the number of full-time equivalent employed persons, we estimated 8.8 million injuries. Our lower-bound estimate for deaths was 6063 and our lower-bound estimate for nonfatal injuries was 8.75 million (8.75 was the average of 8.8 and 8.7). Now 6063 is 7% less than our preferred estimate of 6529 deaths and 8.75 million is 34% less than our preferred estimate of 13.25 million nonfatal injuries. Conservatively assuming that 34% is the relevant statistic, our lower-bound cost estimate would be \$96.6 billion.

Upper bounds rely on the National Safety Council's<sup>8</sup> estimate for deaths adjusted for murders: 10 000; the Annual Survey,<sup>10</sup> assuming the same percentage undercount of deaths in the Census applies to nonfatal cases: 19.8 million injuries; and assuming that the percentage difference between the upper-bound nonfatal cases and our preferred estimate applies to costs: \$217 billion.

Ranges for occupational diseases were already estimated with the proportion model mentioned above:

46 899 to 73 681 deaths and 817 015 to 907 385 for new cases of illnesses. To assess the reliability of our disease cost estimates, we (1) estimated morbidity costs using a second technique in which estimates were based on ratios of morbidity costs to direct costs and (2) applied average cost figures to the ranges of disease estimates. We estimated our ratio as a linear function of the 1980 and 1985 ratios calculated by Rice and colleagues.<sup>80,81</sup> Our lower and upper bounds for cost were \$18.8 and \$30 billion. The lower-bound estimate is \$6.7 billion less than our point estimate of \$25.5 for diseases. This \$6.7 billion represents 3.9% of our point estimate for diseases and injuries. That is, if we assume the smallest percentages apply in the proportionate attributable risk model (eg, 6% for cancer and 3% for circulatory disease) and if we apply the lowest average cost estimates, our total costs for both diseases and injuries would decrease by only 3.9% to \$164.2 billion.

The ranges of all estimates are summarized in **Table 5**. Total costs for both diseases and injuries range from \$115.7 to \$247 billion.

The sensitivity analysis did not adjust for varying discount rates for the simple reason that the varying discount rates would not greatly alter the findings. The discount rates used only influenced mortality costs. Our preferred estimates of the costs of deaths caused by injury and illness—roughly \$27 billion—represents roughly 15% of total costs. Moreover, the bulk of these \$27 billion—\$19.7 billion—was attributed to illness. Deaths caused by illness tend to occur later, (eg, 65 years of age) than deaths from injury (eg, 25 years of age). This is important because varying discount rates will result in much greater variation in costs when dollars lost 30 or 40 years from now are compared with 5 to 10 years from now. In our estimates, much greater cost variation was associated with variation of the number and kinds of injuries and illnesses than with variation in discount rates.

#### COMMENT

Identifying the costs of occupational injury and disease in the United States has been an elusive goal. Our study represents, to our knowledge, the first attempt to estimate the national cost of occupational injury and illness using national data. Recent improvements in national data systems such as the Census<sup>2</sup> and the Annual Survey<sup>10</sup> provide increasing confidence that the overall magnitude of the problem can be approximated. Proper interpretation of national surveys, recognition of the deficiencies of workers' compensation reports, extensive examination of National Council cost data, and prudent application of an attributable proportion model to major causes of diseases provided the foundation for our study of the civilian workforce in 1992. Any single source of data, such as the Annual Survey, National Institute for Occupational Safety and Health, workers' compensation, or National Health Interview Survey, underestimated the numbers of injuries and illnesses. Multiple data sources must be combined to provide comprehensive and reasonably accurate national estimates. In all, we considered 14 primary sources and more than 200 secondary sources, each of which had limitations. Indeed, in the medical costs lit-

erature, the heterogeneity of data has been singled out as the most serious of all limitations.<sup>1,8,91</sup>

An advantage of our study is that we implicitly accounted for the severity of injuries by estimating the number of permanent total and permanent partial injuries as defined by workers' compensation authorities. Injuries resulting in permanent impairments are expensive. Future researchers will have even better estimates of severity since the Annual Survey<sup>19</sup> now gathers and publishes data on days absent because of particular injuries and illnesses.

Because of the incomplete data, these estimates have important caveats. They tend to produce an underestimate of burden and costs of occupational illnesses and injuries. Our counts of the numbers of occupational injuries and illnesses tend to be low because they exclude injuries and illnesses among military personnel, use a conservative estimate (53%) of the degree to which workers' compensation undercounts occupational fatalities,<sup>2</sup> restrict occupational cardiovascular and cerebrovascular morbidity and mortality to events among people younger than 65 years, and use data from a year of high unemployment (1992). Costs are concomitantly lowered, since their estimation relies on the counts of injuries and illnesses. In addition, costs tend to be underestimated because they omitted the costs of pain and suffering, used average medical cost data from the National Council database that excluded 2 high-cost states (California and New York), failed to include home care costs provided by the family, ignored the deleterious effect on children of having a disabled or absent parent,<sup>48</sup> and did not include the wage losses suffered by disabled workers hired into new, less lucrative jobs.<sup>47</sup> Other important sources of underestimation are failure to include lost workdays in years other than the one in which the occupational illness occurred, a well-described limitation<sup>98</sup> of the Annual Survey, and exclusion of costs to innocent bystanders, eg, airline crash. Finally, we did not allow for recurring injuries. For example, once the knee has been injured, it is easier to injure it again. If the second injury occurs at home, no percentage of the second one is assumed to be job related.

In calculating our medical expenses for injuries, we relied heavily on cost data from workers' compensation because they were readily available and complete (ie, workers' compensation pays virtually 100% of medical bills). Baker and Krueger<sup>99</sup> have argued that workers' compensation payments to physicians exaggerate true medical costs associated with an injury or illness. Yet the study by Baker and Krueger found that hospital costs (the bulk of all medical costs) were less for workers' compensation than for nonworkers' compensation insurance and did not account for the cost of litigation and paperwork surrounding workers' compensation claims.<sup>100</sup>

While the use of proportions of major categories of disease attributable to occupational exposures may be controversial, we attempted to use ranges that are plausible and consistent with present knowledge. Ranges of estimates of similar magnitudes have been used by occupational health researchers, including ourselves, in studying occupational disease in diverse geographical regions,

including New York, Connecticut, Texas, New Jersey, Pennsylvania, and Canada.<sup>101-105</sup>

Our study methods and results are consonant with the relatively few studies of occupational injury and illness costs that have been conducted to date. Hoskin et al<sup>6</sup> applied an incidence-based approach to National Safety Council data and estimated the total cost for job-related injuries to be \$115.9 billion in 1992. The discrepancy with our estimate (\$145 billion) is largely the result of 2 factors: (1) the National Safety Council explicitly ignored violent incidents (assault, murder, and suicide), and more important, (2) the National Safety Council relied on the National Health Interview Survey estimate of nonfatal work injuries, which only captures roughly 60% of all nonfatal injuries. Interestingly, the relative proportions of the estimates of direct and indirect costs were similar in our study and the study by Hoskin et al.<sup>6</sup>

### *costs tend to be underestimated because they omitted the costs of pain and suffering*

Miller and Galbraith<sup>7</sup> combined occupational injury statistics from 1989 with the National Council medical cost data to obtain an estimate of 11 million occupational injuries (disabling and nondisabling) in 1989. These injuries were associated with costs of \$96.6 billion in 1990 dollars. Adjusting for the inflation rate between 1990 and 1992, their estimate was within 10% of the estimate derived from Hoskin et al.<sup>6</sup> Although many of our methods were similar to Miller and Galbraith,<sup>7</sup> our cost estimates were higher in part because our estimate of injuries, 13.25 million, was higher. In addition, we included occupational diseases, and we also assumed higher administrative costs.

Neumark et al<sup>8</sup> estimated the incidence cost of occupational injuries and diseases in Pennsylvania in 1987 through 1989. They extrapolated to the United States and found a mean estimate of \$54.5 billion for illnesses and injuries. This estimate appears to be too low. Their total cost estimate for injuries alone—\$17 billion for the late 1980s—was less than half the national costs of injury of workers' compensation in the same year.<sup>107</sup>

Marquis<sup>14</sup> estimated that 7 million Americans suffered injuries on the job in 1989, and another 4 million had persistent disability in 1989 as a result of an injury that occurred prior to 1989. She estimated a total cost of \$83 billion in 1989, including 40% for direct (medical) costs and 60% for cost of work loss. The study by Marquis<sup>14</sup> has important limitations. It excluded fatalities, a considerable number of violent incidents, and minor injuries (involving 1-4 days of work loss). Minorities and the poor were also underrepresented—groups that are more likely than other groups to experience injuries on and off the job.<sup>108,109</sup>

Finally, Webster and Snook<sup>110</sup> estimated that the total workers' compensation costs of back injury and pain in the United States was \$11.1 billion in 1986. If we assume (1) workers' compensation only captures 45% of all cases, (2) administrative costs add an additional 21%

for medical (our average of workers' compensation and nonworkers' compensation) and 16% for indemnity (our average of workers' compensation and nonworkers' compensation), (3) related direct and indirect costs (home production and workplace disruption, fringe benefits, and so on) were 27% (our average), and (4) an average medical and wage inflation of 35% from 1986 to 1992,<sup>70</sup> then beginning with Webster and Snook's \$11.1 billion, the adjusted 1992 estimate costs of back pain attributable to job-related factors would be \$49.2 billion. This \$49.2 represents 34% of our total \$145.37 billion. This compares favorably with the National Safety Council estimate of back pain contributing 31%. The close proximity of these 2 estimates provides support for the consistency of our estimates, since we applied our assumptions and results to obtain the \$49.2 billion estimate from Webster and Snook.

The costs of occupational injuries and illnesses are large compared with other diseases. The direct and indirect costs of acquired immunodeficiency syndrome were estimated to be roughly \$30.0 billion in 1992,<sup>111,112</sup> excluding insurance administration costs. Our costs, also excluding administration, were roughly \$153 billion.

Alzheimer disease was recently estimated to cost \$20.6 billion in direct costs and \$46.7 billion in indirect costs, including administration.<sup>113</sup>

Cardiovascular and cerebrovascular disease are common and costly. The most reliable estimate of the costs of all circulatory disease dates to 1980. Rice et al<sup>60</sup> estimated \$32.5 billion in direct costs and \$47.1 billion in indirect costs in 1980. To bring these 1980 estimates up to 1992 requires several assumptions, involving inflation and secular trends in the rates of these categories of disease as well as administration costs. With these assumptions, we calculated that the total costs for all circulatory diseases would be \$164.3 billion in 1992. Similar calculations can be carried out for the costs of cancer.<sup>60</sup> We estimated a \$170.7 billion cost for cancer in 1992.

The direct and indirect costs, including administration, of all musculoskeletal conditions was estimated to be \$149 billion in 1992.<sup>114</sup>

In summary, the medical costs of occupational injuries and illnesses appear to be much larger than those for acquired immunodeficiency syndrome. The total costs of occupational injuries and illnesses appears to be considerably larger than those for Alzheimer disease and are of the same magnitude as those of cancer, of all circulatory disease, and of all musculoskeletal conditions. These costs are high in part because so many people are at risk; 120 million people held jobs in the United States in 1992.

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OCAW/Mt. Sinai/UMASS Lowell Medical Surveillance Program for  
Former DOE Workers at the Gaseous Diffusion Plants

PHASE I SUMMARY

**Purpose** We report the results and analysis of a one year needs assessment study evaluating whether a medical monitoring and risk communication program is justified for former workers at three Department of Energy gaseous diffusion plants.

**Methods** To complete this study, we used available exposure assessment data from paper records and electronic databases and reviewed epidemiologic studies that had been completed at the plants. We interviewed investigators who have completed or are currently engaged in studies at the three plants of concern. We also gathered "expert" former and current workers to conduct risk mapping sessions and focus groups to obtain in-depth information about the plants. We obtained employee rosters and related basic occupational histories, to the extent available, from the contractors and other institutions.

**Findings** Gaseous plant diffusion workers have had significant exposure to pulmonary toxins (nickel, fluorine compounds, uranium, asbestos, silica, beryllium, and acids/bases) bladder carcinogens (epoxy resin compounds), renal toxins (chlorinated solvents, uranium), neurotoxins (mercury, solvents), hepatotoxins (carbon tetrachloride, PCB's), noise, and heat. Epidemiologic and other studies are conflicting, mostly based on location of study. They demonstrate excess risk for bladder cancer at K-25; excess chronic respiratory disease; asbestosis at all three plants; excess lung cancer; chronic nephritis; and cancer of the bone.

Interviews with groups of workers demonstrate the following perceptions among former workers: a strong feeling of personal vulnerability to disease as a result of DOE employment; a sense of shared risk with co-workers, an overwhelming feeling of uncertainty and ignorance about significance of exposures; a deep sense of distrust about communications from and actions of DOE and contractors; and a lack of faith in the ability of current health providers to evaluate presence of occupational diseases. The focus groups were also extremely useful in providing concrete guidance about how to establish effective risk communication and medical surveillance programs.

The target population for a bladder cancer screening program at K-25 would include an estimated 500 to 600 workers. If a preventive pulmonary health program is established, it should be offered to former workers with significant exposures to pulmonary toxins at all three sites. The estimated population was calculated two ways. Ranges of estimates of 2,850 to 4,230 workers and 10,000 to 14,000 workers were obtained by these two methods.

**Conclusion** The findings of this needs assessment study support a targeted medical surveillance program. This conclusion is based on the evidence that large numbers of workers had significant exposures to detrimental agents; the epidemiologic evidence, best developed at Oak Ridge, that gaseous diffusion workers suffer excess rates of selected diseases; and the strong need expressed by former workers for a credible targeted program of medical surveillance and education. A health protection and risk communication program should center on workers at risk for 1) bladder cancer, 2) chronic respiratory disease, including chronic obstructive lung disease and the pneumoconioses, and 3) lung cancer. These conditions are amenable to early intervention (bladder cancer); amelioration (chronic respiratory diseases), and primary prevention (lung cancer via smoking cessation) A risk communication delivered by a credible source will reduce uncertainty and distrust. After participation in the proposed screening program, former DOE workers will have increased real knowledge about their personal health status, what is known about their risks, and how they can promote their own health. We believe that mounting such a program in Phase II will make a tangible improvement in people's lives.

March 11, 1960

Files  
 C. L. Dunham, M.D., Director, Division of  
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NEPTUNIUM<sup>237</sup> CONTAMINATION PROBLEM, PADUCAH,  
 KENTUCKY, FEBRUARY 4, 1960

:HDB

Those contacted were Mr. B. Stiller and Mr. Nietsche of the AEC,  
 Paducah Area Office and Dr. Neal Ward and Messrs. Don Levin, Ed Fair  
 and R. G. Brown of ORNL. Mr. Joe Lenhart of ORNL came up from  
 Oak Ridge and took part in the discussions.

Np<sup>237</sup> seems to be found only in reclaimed feed material provided by  
 Hanford and therefore it is not a problem for the other separations  
 plants.

It is produced by one or both of the following reactions:

- (1)  $92\text{U}^{235} (\text{n}, \text{p.2n}) 93\text{Np}^{237}$
- (2)  $92\text{U}^{235} (\text{n}, \gamma) 92\text{U}^{236}; 92\text{U}^{236} (\text{n}, \gamma) 92\text{U}^{237}; 92\text{U}^{237} \xrightarrow[7 \text{ days}]{\beta^- + \gamma} 93\text{Np}^{237}$

This reclaimed U from Hanford now has about 0.05 g of Np/ton of U.  
 The presence of Np was recognized as far back as 1957. At one time  
 during 1958 this feed material had as much as 1 g Np/ton but it was  
 been lower lately because Hanford is extracting the Np for other  
 purposes; it would not pay Paducah to try to remove completely this  
 residue and in any case their problem comes from the Np already in  
 the cascade units which now must be taken out, repaired, restored  
 and put back in the systems.

The uranium comes to Paducah as UO<sub>2</sub> which is then reduced to UO and  
 treated with HF to get the green salt UF<sub>4</sub>; this is then refluxed with  
 H<sub>2</sub> gas in a hot cyclone type of pipe. The volatile UF<sub>6</sub> so formed  
 goes out the top to be cooled and stored in the solid state in metal  
 "bottles." All contaminants supposedly drop to the bottom of this  
 cyclone pipe and are removed as "ashes," but it appears that Np has  
 sufficiently similar chemical and physical properties to follow along  
 with the UF<sub>6</sub> as UF<sub>6</sub>. The "ashes" show about 15% of Np, the rest  
 entraining with the UF<sub>6</sub>.

Files

- 2 -

March 11, 1960

There is a slight difference in volatility between the  $NpO_2$  and  $UO_2$ , which is enough to result in more  $NpO_2$  than  $UO_2$  remaining behind when the contents of a bottle are fed into the cascades. Thus, the concentration of  $NpO_2$  tends to build up in the "heel" as the bottle is used repeatedly. The fractional retention from a single filling is not known.

The  $NpO_2$  passes into the cascades with the  $UO_2$ , but the differential in volatility at operating conditions (optimal for  $UO_2$  enrichment) leads to fine deposits of  $NpO_2$  in the tubes of the barriers and the inside surfaces of the cascade units. It is found more often at the heel end of a system of cascades and in the  $UO_2$  channels. This  $NpO_2$  can't be predicted with certainty since some units will have much  $NpO_2$  and some none. Probably about 60% of the  $NpO_2$  deposits out here.

The problem arises when one of these cascade units is taken out of its operation sequence and opened for replacement of barriers. There is a definite program for such restoration and in some cases they are replacing the old barriers with new ones of improved design. These cascade units are housed in thick stainless steel tanks about 12 feet in diameter and 15 feet tall; they are welded shut and in general much too large to be handled by conventional industrial hygiene measures. The units have to be moved with an overhead travelling crane, special multi-wheel trucks, etc.

The units must be cut open with torches to get at the barrier tubes; the pieces certainly can't be handled gently or contained very readily because they are too massive.

The workers are supposed to wear special HSA nose-mouth face masks but they are not controlled too closely--I watched one man push up his mask and smoke a cigarette using potentially contaminated hands and gloves. They have devised some air-scoopes to fit around the ends of the unit as it is being torched open, but I would judge them to be of limited effectiveness. There may be a filter on the exhaust line for this air collector but it was not obvious; the exhaust simply dumps air outside the building.

Nevertheless, this ventilation was said to be very helpful. Fortunately,  $NpO_2$  does not diffuse very readily, it having been found only within 8 feet of where the cascade unit had been cut free, or opened.

According to Handbook 69 calculations (where the 200-year biological half-life is used), the MTD is 8.84/min/m<sup>3</sup> of air. There are 1526  $\mu$ /min/ $\mu$ g of  $NpO_2$  so that the MTD equals about 0.0066  $\mu$ g/m<sup>3</sup> of air.

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Also, using the figures in Handbook 69, the maximal body burden would come to 1.3 d/m/24 hr urine sample coming from an 57.3  $\mu\text{g}$  deposit. This, however, is so impossible that they have been using 13 d/m/24 hr urine sample as their standard on the basis that the true body content after being out of contact with  $\text{Np}$  for 6 months to a year, would be of the 48 hour lay-off concentration. (I think I am reporting their logic correctly.) Furthermore, the solubility of  $\text{Np}^{4+}$  is quite different from  $\text{Np}^{5+}$  and it is not known which solubility factor should be used in the calculations.

\* \*

$\text{Np}^{237}$  has a  $T_{1/2}$  of  $2.2 \times 10^6$  years and emits  $\alpha$ -particles (average energy 4.77 mev) which can be differentiated from other probable  $\alpha$ -emitters by pulse height analysis. Gamma rays are also emitted and the 27.4 day daughter  $\text{Pa}^{233}$  emits both  $\beta$ - and  $\gamma$ -rays which can be counted.

Recovery of  $\text{Np}$  from biological samples is poor (30% or less, variable) and Dr. Levin reported trouble in making up standard solutions at concentrations of  $10^{-11}$  or  $10^{-12}$  where the biological material is supposed to fall, a situation similar to the NBE  $\text{Ra-226}$  standards distributed by Dr. Beard.

$\text{Np}^{239}$  with its 2.3 day  $T_{1/2}$  and  $\gamma$ -rays is useful for some work but cannot be satisfactory for chronic biological experiments.

$\text{Np}^{237}$  can now be detected in urine but not consistently and it is not very reliable. With their present techniques, the average is 0.22 d/m/24 hr urine sample for 75 people. The highest was 11 d/m/24 hr sample. Their spiked blank samples ran 25% to 75% of the expected values.

There are possibly 300 people at Radcoah who should be checked out but they hesitate to proceed to intensive studies because of the union's use of this as an excuse for hazard pay.

The whole body burden for  $\text{Np}^{237}$  by Handbook 69 is  $6 \times 10^{-8}$  curies and tests with a  $\text{Np}^{237}$  source on the Y-12 whole body counter put  $7 \times 10^{-9}$  curies as the counting limit so that the whole body counter may have some usefulness. They (Dr. Ward and others) were not receptive to the idea of sending 8 or 10 of the men with highest urine counts to Y-12 for counting.

I pointed out that we were planning to initiate biological distribution and radiotoxicological studies of  $\text{Np}^{237}$  which might have the effect of changing the MPC and burdens, but it would be two years or more before the data would be available. In view of that, I

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urged both Dr. Ward and Mr. Stiller to improve the industrial hygiene measures surrounding the reworking of the cascade units. I don't have too much faith in masks and the dust particles here are about 0.5u, the very worst size, biologically speaking.

I also pointed out to Dr. Ward the need to get post mortem samples on any of these potentially contaminated men for correlation of tissue content with urine output, but I am afraid the policy at this plant is to be wary of the unions and any unfavorable public relations.

Dr. Levin seems to be one of the authorities in the field of Np chemistry (others are: Weinstock, ML; Eugene Leab, ORNL, George Boyd, ORNL) and is interested enough to want to continue with efforts to improve the bioassay techniques. When he succeeds in this we may be better able to tackle this problem of whole body counting.

The potential situation at Paducah is enough to warrant ~~some~~ toxicological studies. In addition, there are the requirements for ~~tests~~ for various devices and the exposures during separation procedures at the Hanford OFF; perhaps Savannah River also is separating this isotope. I was told that the chemical separation of Np from U is very satisfactory, but the human factor in handling ~~large~~ amounts should be considered a source of potential ~~concern~~.

Thus, it appears that Paducah has a Np problem but we don't have the data to tell them how serious it is. They may get into difficulties with the present Handbook 69 numbers and the problem of the body burden will inevitably come more to the forefront.

cc:

Dr. C. S. Shoup, ORCO  
B. Stiller, Paducah, thru C. S. Shoup, ORCO  
Director, Division of Production  
Director, Office of Health & Safety

KMM

DBruner:DKP

3-11-60

From: Peggy Adkins

I was born in Oak Ridge, 1951 and lived there until we moved to the edge of a lake between Kingston and Oak Ridge, Tenn in 1954. Well water. Spring-fed creek on one side of our lot fed into the lake, which touched 2/3 of our property line. The veg garden was 15-20 ft from the lake. We swam, fished (a lot!) and gardened with lake water. Our entire household water supply was from the well located about 30' from the spring, and 30' from the lake.

I am both a downwinder and a downstreamer of the three atomic energy plants in Oak Ridge. The topography of the area creates a valley between the ridges which channels pollutants directly from the plant vents and stack straight to the neighborhood where I grew up, approximately 7-8 miles from Poplar Creek, where mega-tons of toxins were admittedly dumped. I don't know if any tests have been made on the underground aquifer, but I know my family well was closed for some reason by the health department after the neighborhood "got city water".

Every August I can remember, I was treated for giant oozing blisters all over my body. They subsided after a month or six weeks of treatment then recurred again each August after swimming lessons, and recreation.

Before leaving home in '74, I had already noticed the female tragedies around the lake. The neighbor on the other side of the creek and beside us on the lake, Mrs. Duke (Mr. Duke had told us she had stomach cancer.) died during a test with a tube down her stomach, around the age of menopause. Mr. Duke committed suicide. My mom died from cancer soon after reaching menopause. The baby born to the older daughter across the lake had Downe's Syndrome. The mom next door to them and across the lake from me, Mrs. Todd, developed Parkinsen's Disease (which the family believes was Hodgkins' Disease misdiagnosed) at age 48. She died young. Her daughter, Sandra, moved to Atlanta after marriage. She died of cancer at the time menopause began. Mrs. Todd's younger daughter, Marsha, was diagnosed with MS two months ago. Mrs. True, the next neighbor on our cove died young from cancer also. On my street alone, I can also name Dr. Hoffmeister, Mrs. Rylander, and Mrs. Chapman who died from cancer at pre-retirement ages. Cancer seems to strike our women at the onset of menopause.

Also on my street is Mrs. Winsbro, who has spinal cancer and who has had breast cancer. Her daughter, age 52 has already had a double mastectomy for the same disease. Her next-door neighbor, Mrs. Ulrich, is also a breast cancer survivor. The next neighbor, Mrs. Haile, is 89 and healthy, but her husband has Parkinsen's Disease. Both my dad and his X-10 co-worker, Hugh Shelton, who bought our home after my mom died, suffered emphysema-like and Alzheimer's-like symptoms.

After leaving Kingston my health was excellent, except for sinus infections and sun-related skin lesions...until around age 35. Since 1986, I have been diagnosed with Lupus, MS, Lou Gerig's Disease, and Pre-Leukemia. The symptoms all come and go. My hair has fallen out, broken off, changed texture. My skin itches, blisters, peels, and scars. I have no energy, and have felt one eye-blink from fading away altogether. My vision comes and goes. I lose words and thoughts. My bones hurt with deep sharp pains. My face swells and turns red. I choke on food, water, air.

In the 1999 Toxin Dosage Reconstruction Report, I'm awfully close to being identical to the #1 Maximum-exposure example. The report estimated only a few people could be in that category of exposures. Maybe 100% of the families on my lake and 95-90% of the families on my street equals "a few" but those few were everything to me.

If you want to reach me, I'm Peggy Mustain Adkins 408 Olympia Drive, Maryville, TN 37804  
phone: (865) 380-0304 I'm on the Tennessee 4-H Staff at the Univ. of Tenn. (865)974-7432 and Fax (865) 974-1628 e-mail apdkins@utk.edu

March 22, 2000

Mr. Thompson

My Name is Ruby Anderson I live at 193 Old Johnson Valley Rd. Kingston, TN 37763. I would wish you would put my testimony in the hearing record. I was so proud when I got a job as a janitor at K25. I worked so hard, I got a silver dollar award I was so proud to show all my family. I told my mom you making me do things over when I didn't do them good sure helped. Mom taught me to work. I still keep my silver dollar award in the China Cabinet and I'm still proud of it but it is only a reminder now of the work I could use to do. I am total disabled now. I have diffuse organic brain syndrome, ~~difficult~~ Met Life Lockheed Martin Insurance company's Dr. diagnosed that. Another doctor said chemical encephalopathy, Fibromyalgia chronic fatigue, multiple chemical sensitivity, allergic to molds and dust, depression, severe headaches, vision loss, dizziness, shortness of breath, neck + shoulder pain, bone joint pain, osteoarthritis, intestinal problems, sleep problems, my ears ring. Can't smell smells they make me sick. Chest pain and get catches or pain so bad under my ribs it makes me cry. I get numbness + tingling in my face and mostly on right side, weight gain. Sometimes my feet get a blue color.

I guess I am suppose to tell you what I worked in at K25. The problem is some of the places I cleaned I didn't know what was in them. The cleaning supplies I used, the sprayers sprayed the buildings with bug spray don't know what. It was not my job to know what was in the places they sent me to clean. They just told me what to do and I did it and I really



worked hard. I have a whole stack of letters of appreciations for the good work I did in my buildings. I am so proud of them. I worked in all the buildings at one time or another including the vaults, rifle range powerhouse area ~~at the time~~ ~~I had~~ ~~every~~ ~~day~~ ~~was~~ ~~and~~ ~~to~~ ~~see~~

When I first started getting sick I kept having bladder + kidney infections ~~and~~ ~~with~~ ~~Stiff~~ ~~be~~ ~~back~~ ~~s~~. I had at the time kept doing every test she knowed but couldn't figure out what was causing the infections. I have had to have a complete hysterectomy, bowel + bladder surgery. If you all want to know the buildings I was in the most let me know and I will try to get that information for you I can't remember all these numbers. Bob probably knows what buildings I worked in. And what toxic chemicals was in them they or Lockheed martin should have my work records.

My whole family's life has been turned upside backwards because of my illness. My daughter is 13 going on 30, she keeps the house clean, goes in areas of the store I can't go if I even fell like going she mostly takes care of me because of ams,

like she is the mommy and I am the daughter. My son ~~PK~~ takes me to any places I haven't been a whole lot because of my confusion and ~~memory~~ memory problems. I get everything mixed up I get the wrong message a lot of the time from conversations I have on the phone, I can't think of words need to say. The words I mean to say come out different. Can't concentrate, forget where going.

It makes me feel so good when people tell me I'm just like my mom. She takes care of my brother who is paralyzed from the neck down. She has been taking care

of him since 1966, 34 years he's 85. There is no way I could ever be that ~~depressed~~<sup>wonderful</sup> of a mommy. K-25 took that away from me.

it looked like it hadnt been cleaned in yrs

I always trust people till they give me a reason not to. One time we had just swept a vault that had barrels of white grayish looking powder in them and all over the floor. In a day or two there was a meeting where you could bring up your concerns. Someone asked the man that was over K-25 if there was any ~~nickel~~ nickel at the plant. The person who I respected very much because he would always say hi and ask how you were doing no matter where you saw him. He had a good personality. He just said outright that there was no nickel there. Well you know what that stuff we had just swept was written on the barrels powdered nickel. I felt so let down. If they would keep that information from you what else would they lie about. People should never hurt anyone if they know stuff is making people sick they should do something about it. You treat everyone like you want to be treated.

when they were working on the sewer system the bathrooms blew up in 33 building. My supervisor came and got me off my <sup>res.</sup> route and I had to clean up that mess I wasn't offered a respirator I got so sick. The same thing happened again this time they came and got me again but they sent another lady with me. She called the supervisor and refused to do the work until they brought us a respirator.

Since I got sick I have met some of the dearest people on earth. ~~the~~ I only worked there 5 years. Some of these sick people have worked there much longer. Now

is so sick I ask that you all do something for her please before it's too late. Please help all the sick people medically and financially. A lot of people ~~and~~ have been cut off the met life insurance and had to give them there social security back pay money back. ~~At the time~~

The company is not allowing medical ~~insurance~~ treatments through our insurance. Some of my friends have lost everything. We should be allowed to be fully compensated.

I am so proud to be an american, I get tears in my eyes when I hear the Star Spengled Banner and salute the flag. But I am not proud of the people who will not do something for us the sick people. If they could only walk a mile in our shoes and see how our lives are filled with pain.

Thank you for letting  
me write this letter please  
in God's name HELP

Kathy Anderson

March 17, 2000  
Senator Fred Thompson  
Senate Governmental Affairs Committee  
340 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Thompson:

Please accept the following comments on the Health and Safety Issues of the Department of Energy facilities, being investigated by the Senate Governmental Affairs Committee.

As your office is aware, I am one of over a hundred present and former ORO workers to be diagnosed with Chronic Beryllium Disease or Beryllium sensitization. I have forwarded your office a large volume of information explaining the battle that those of us diagnosed with this disease have had with both a potentially fatal disease, and an often uncaring system. Secretary Richardson's announcement last July of a compensation proposal gave a glimmer of hope to our struggles. However, the effort has not resulted in an acceptable offer of compensation and treatment for the Beryllium victims. The details of the proposal are still unclear, and the either/or choice between a lump sum settlement or medical coverage is quite unacceptable in its present form. The affected workers, who have sacrificed so much, need adequate coverage to make their lives as near normal as possible, had they not contracted this disease. Had the lump sum been offered at the time of my diagnosis in 1993, it would have been exhausted by now, leaving me with no income, and no medical coverage. This is with those of us in the most provable of the ill health effects resulting from the DOE sites.

The March 2 announcement of the hearings states, "If the federal government put workers in harm's way without their knowledge, we need to know about it, and we know what we can do to make it right." Reading the transcripts from the public meetings hosted by Dr. David Michaels over the past few months should leave no doubt as to the fact that the workers and public were adversely impacted by the operation of these sites.

The announcement continues, "The Department of Energy has acknowledged that problems exist at several of its sites, and has proposed legislation to compensate certain workers." This being a given, it is unfair to include only certain sites and certain workers, at the expense of hundreds, if not thousands, of workers and residents who have suffered the loss of health and even life, due to the operations of these sites. To borrow a phrase from our counterparts in the Western states exposed population, "We need a JUSTICE, not JUST US, solution."

Realizing that this will be an extremely expensive undertaking, no doubt stymied by legal and classification issues at every turn, we, the casualties of the Cold War, call on the Senate Governmental Affairs Committee to seek a truly fair resolution for the affected workers and other citizens who have given so much. Trillions of dollars were spent on the Cold War effort, thousands of citizens contributed to winning it. We ask only that the same amount of dedication and commitment goes into repairing the damage to those of us wounded in the effort.

Glenn Bell   
504 Michigan Ave  
Oak Ridge, TN 37830

March 18, 2000  
Senator Fred Thompson  
340 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Thompson:

The enclosed correspondence is offered to the Senate Governmental Affairs Committee as documentation of the personal struggle I have had with "the system" in dealing with my occupational illness which resulted from work at the Oak Ridge Operations. I would request that these records be made a permanent part of the comments on the hearings of the Committee on the health impacts of the Department of Energy plants.

Regards,

Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830

A. G. BELLChronology of Beryllium-Area Work Assignments

<u>8/26/68 – 8/3/70</u>	Began work at Y-12 in 9201-5E Machine Shop, primary Be production shop, as a Machine Operator in the Machinists Seniority Group. Hands-on machining and grinding of Beryllium and Beryllium Oxide.
<u>10/23/78 – 4/9/79</u>	Transferred back to 9201-5E Shop. Basically same job tasks and conditions as previously.
<u>8/6/79 – 10/29/79</u>	Again transferred to Beryllium Production Shop.
<u>1/31/83</u>	Transferred into Dimensional Inspection Department
<u>1/86</u>	Assigned to 9201-5E Inspection Area (Beryllium Inspection)
<u>1986 – 1994</u>	Worked in Be Inspection areas regularly, periodically inspecting Be/BeO parts. Last batch card documentation of hands on work with Be was 12/19/91. However, frequent, occasional work with Be continued. I was working with Be Oxide inspection the week I received confirmation of CBD.

Breathing problems began to develop around 1978-79, to the extent to be noticed as more than frequent colds, etc. Wheezing, shortness of breath, and fatigue led to consultation with Dr. Michael M. Miller in around 1980. Diagnosed as Asthma/allergic Rhinitis, and treated as such. Symptoms worsened gradually, so that by 1984, they were sometimes significant. Began exercise program in 1984 as a direct result of breathing problems. Journal kept in 1985-88, noted several periods of difficult breathing and significant attacks, as well as hospitalization. Concerns were expressed to then-Medical Director, Dr. Geno Zanolli, when assignment was made to Be Inspection Area in January 1986. Was advised that risks were minimal, even given my pulmonary problems. During this timeframe I was advised that I could not donate blood due to my medical condition and medicines which by now were being taken regularly to control the symptoms. Began training in upstairs Inspection Area, another Be area 3/21/86. Changed pulmonologists to Drs. Bruton and Parrish, East Tennessee Pulmonary Associates in February 1987. First noted negative side effects of steroid treatment in February 1987. Hospitalized a week in June 1988 for pulmonary distress. Had cataract surgery November 7, 1989, and June 12, 1990, with both Dr. Bruton and operating surgeon Dr. Elliot E. Kaebnick concurring that prolonged steroid treatment caused or accelerated the cataracts. Diagnosed with Hiatal Hernia in 1987-88; stomach problems are common with steroid treatment. Hospitalized 1-3 times a year since 1988 to get breathing problems under control, usually four to eight days.

Problems became more persistent during 1992, when Dr. Bruton, on my suggestion, wrote MMES Medical suggesting further testing in the ongoing ORISE Beryllium Workers Study, despite an earlier negative blood screening in the study. Conference shortly thereafter with Y-12 Medical Director Otis W. Jones led to arrangement for testing in late February 1993, at the University of Pennsylvania Hospital. Confirmation of CBD was made in a letter from Dr. Milton Rossman of the U of P Hospital, dated April 2, 1993. Serious attack was experienced in May 1993; emergency room visit was needed (blood gasses were at 60, where 80 to 90 are normal); spent four days in hospital, two weeks off work. Fatigue, depression, irritability, and mood swings from dyspnea and steroid side effects continued throughout much of 1993. From mid-summer on, breathing problems continued in varying degrees almost daily. Had laser surgery for repair of cataract surgery, right eye, on October 15, 1993. Worry of medical, legal, and missed work problems began to take their toll in stress. The Be Support Group helped a great deal. Spent April 4-11, 1994, in hospital due to worsening pulmonary problems, off work two weeks. Severe attack in mid May prevented planned weekend trip to Birmingham, Alabama with friends, although I did drive down a day late. Pulmonary Rehab classes were attended in May and June. Prednisone (steroid) dosage was increased again in late May, resulting in the return of muscle aches, sleeplessness, nightmares, and minor depression. In late June, Dr. Bruton and Dr. Jones agreed to approve disability leave to try and get symptoms under control. Laser surgery on left eye on September 8, 1994, developed inflammation, requiring steroid treatment at 80mg. - twice the highest dose prescribed to that date. Began seeing Y-12 Psychologist and Be Support Group Chairperson, Dr. Friedman, on an individual basis for counseling on dealing with mounting stress. Sessions were very positive, and Dr. Friedman referred me to Dr. Marvin Weninger, a local psychiatrist, for evaluation and possible pharmaceutical treatment. First met with Dr. Weninger on September 23, 1994, which was a very productive and enlightening session. Dr. Weninger explained the chemical interference of long-term steroid use, with psychological receptors, and the resultant stress, depression, mood swings, and other unwanted side effects. Effexor, a relatively new anti-depressant with near-zero side effects, was prescribed, and is being continued to date. Of importance, I believe, was Dr. Weninger's assessment that I would not be experiencing the severity of stress, depression, or touch of paranoia at times were it not for the prolonged steroid use. There have been three sessions to date with Dr. Weninger, in my opinion, very positive sessions, and the plan is to continue as long as they are helpful or needed. The Effexor appears to be lessening the stress and depression, but the fatigue and breathing problems continue. The ideal treatment program is to replace the oral, systemic steroids with the less effective, but far less side effect causing inhaled steroid treatment, in addition to the conventional bronchial dilators and antihistamines used in pulmonary therapy.

I have missed at least ninety working days in 1994 due to pulmonary problems. Treatment continues.

A.G. BellCHRONOLOGY OF WORK AREA ASSIGNMENTS, UPDATE

1995 / January 2000 Job assignment remained in Oak Ridge Metrology Lab. with Beryllium restrictions continuing.

Treatment and symptoms continued sporadically from 1995 until present update. Exercise program was continued, with several periods of extreme difficulty in maintaining, due to fatigue and breathing difficulties. Dr. Weninger retired and I was referred to Dr. Roger Burress, who replaced Dr. Weninger's practice. We never developed the closeness and openness in the patient/physician relationship that I had with Dr. Weninger, and the anti-depressants were only adding to the side effects of the other medications, and were discontinued. I began to devote my time to collecting information on beryllium history and disease, and eventually allied with other ill workers through personal and Internet contacts. I became acquainted with several DOE professionals who were making a strong effort to overcome the negative DOE image and include impacted workers in decision-making. I quickly learned that there are, indeed, those in the DOE system who do not fit the "evil empire" concept which permeated DOE for so long. They are few, but growing in number, as the interaction with impacted stakeholders increases. In 1997, I became more involved with other local ill workers, attending public meetings, speaking on issues that had affected me personally, the frustration of dealing with illness and an often uncaring system at the same time. I have since attended several major DOE health conferences, at DOE and contractor expense, because both have come to realize the importance of worker/victim input. All has not been positive or easy. There have been several hospital stays, many adjustments in medication and treatment regimens to better control symptoms. Anti-depressants were tried again, without success, and again discontinued. I seem to cope better by diverting my time into projects, such as my artwork, networking, and records collection, than from chemical intervention. While my attacks do not seem to be any more severe than several years ago, I am still missing considerable time from work due primarily to early morning attacks that leave me too exhausted to reach work on time. There have been several periods of absence of a few days to several weeks, to stabilize symptoms. Some problems with Workers' Comp have been encountered, but usually worked out, either personally, or through contacts through the Beryllium Support Group.

The disease itself continues to control much of my daily life. It is difficult to plan ahead for outings, vacations, even local social events, because of the uncertainty of symptoms. As a single person, I would welcome a committed, one-on-one relationship, but this has been very elusive. I have seen the loss of two potential relationships, due to the partner's being unwilling or unable to cope with a potentially fatal disease, and the uncertainties of ongoing symptoms. I continue to work, although absences are frequent. Frustration is very hard to control. I'm sure this is common with any serious condition, but is compounded, knowing the illness was probably preventable, and the government and contractors knew the dangers as long ago as the 1940's and 1950's. I have developed a commitment to do what I can to bring some harmony between the ill workers and the government entities, and strive to develop a dialogue that will insure that the past sins will not be repeated in the next generation.





U. S. DEPARTMENT OF ENERGY  
OAK RIDGE OPERATIONS

Public Affairs Office  
P. O. Box 2001  
Oak Ridge, TN 37831

Phone: (865) 576-0885  
Fax: (865) 576-1665

DATE: 3-9-00

TO: Glenn Bell

(P) \_\_\_\_\_

(F) 574-2802

FROM: ( ) Steven Wyatt (  ) Walter Perry  
( ) Frank Juan ( ) David Page  
( ) Linda Bowers ( ) DiAnn Fields

Other \_\_\_\_\_

Number of Pages Excluding the Cover Sheet: 1

REMARKS: Per Conversation.

Walter Perry  
576-0885

*If you have any problems with the transmission of this message,  
please contact the DOE Public Affairs Office at (865) 576-0885. Thank You.*



## Meeting Notification *Health Groups*

**TOPIC:** To allow key community leaders to offer input to the Independent Oversight Team examining environment, safety and health practices at the former K-25 Site.

**DATE:** Monday, March 13, 2000  
5:45 - 6:45 p.m.

**PLACE:** Einstein Conference Room, Jacobs Technical Center, 125 Broadway Avenue, Oak Ridge

**DOE PARTICIPANTS:**  
Office of Environment, Safety and Health, DOE Headquarters  
Dr. David Stadler, Senior DOE Manager  
Dr. Pat Worthington, Team Leader, ES&H Oversight Team  
Brad Davy, Group Leader, Management and Worker Safety Group  
Bill Eckroade, Group Leader, Environmental Management Group

Oak Ridge Operations Support  
Walter Perry, DOE Public Affairs

**HEALTH GROUPS REPRESENTATIVES:**  
Harry Williams, President, Coalition for a Healthy Environment  
Sandra Reid, Oak Ridge Health Liaison  
Mack & Ann Orick, K-25 Sick Workers  
Jackie Kittrell, American Environmental Health Studies Project & Oak Ridge  
Communities Allied  
Janice Stokes, Citizens for Better Health  
Glenn Bell, Affected Beryllium Worker  
Linda Harper, EITP Plan Neighbor

**FOR FURTHER INFORMATION:**  
Walter Perry, DOE Public Affairs Office, 576-0885, email: [perrywn@oro.doe.gov](mailto:perrywn@oro.doe.gov)

March 8, 2000  
Department of Health & Human Services / ATSDR  
Ms. Loretta Bush, Communication Specialist  
Ms. Maria Teran-MacIver, Community Involvement Specialist  
1600 Clifton Rd., NE (E-56)  
Atlanta, GA 30333

Dear Ms. Bush, and Ms. Teran-MacIver:

First of all, Ms. Bush, I am sorry to hear of your accident, and wish you a full and speedy recovery. Our thoughts are with you.

This letter is in response to the March 2, 2000 ATSDR meeting in Oak Ridge. I was in attendance, and while I felt the meeting was well structured and well presented, I came away with many of the same feelings of disappointment that were felt at both the October '97 and September '99 meetings. Toward the end of the '97 meeting, a small and ill former ORO worker approached the microphone timidly, and looking around at the various state and national group representatives, asked, "Is anyone here who can help us, now?" She received silence as an answer, thanked them, and returned to her seat.

While the ATSDR panel may seem a good idea, some of us simply do not have the time for more meetings, more studies, and more recommendations. We are ill, we need medical evaluation and intervention, we do not need another panel which will "study the poisons, not the people". We, both as individuals, and organized groups, are in daily communication with similarly affected workers and communities across the country. As such, we have heard of the results of panels such as the ATSDR proposes, and the dissatisfaction that has come from these efforts. Why should we expect this outcome to be different? I have a progressive disease, I do not expect to have the time for panels, concurrence, recommendations, legislative wrangling, and resolution to be completed, in order to see the fruits of labor in my lifetime. There are alternatives, which we, the ill workers and residents, have asked from the beginning.

I was to have presented the enclosed letter, which was published in the October 11, 1999, Oak Ridger, at the beginning of the ATSDR meeting, but was told questions and comments would be held until the end of the meeting. This made my presentation pointless. The decision was made, it seems, without the most important stakeholders being able to first comment. We know our health problems, we know what is in our bodies, and we know at least much of what we worked with. We also know much of what is in the neighboring environment.

If your panel is compromised of those who would minimize the health effects of the workers and residents (I am both), for the sake of the image of the city and area, and preservation of property values, it will not serve the ill, they will not participate, and will be held in the helpless limbo seen since the first meeting.

There is no ill will toward you or the ATSDR, only ill people asking "Why?", and wanting relief.

Regards,

Glenn Bell, Y-12 Machinist & CBD Victim  
504 Michigan Ave.  
Oak Ridge, TN 37830

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Here is the letter as published:

Monday, October 11, 1999

Your Views

Explaining why ill workers walked out

To The Oak Ridger:

Why did the majority of the ill people and their supporters walk out of the multi-agency public meeting on Sept. 9, 1999? Many may be wondering why these people appear to be rejecting an attempt to address health concerns in Oak Ridge.

1. We are totally frustrated with endless meetings, with the same people, which produce no results and we can only see more of the same in the future.
2. The agencies have never responded to recommendations that were made after over 100 citizens interacted in a workshop format for two days in October 1997. We all recognize that DOE is the responsible party, but DOE refuses to be accountable to our community. They have the money, and they control the issue.
3. We are disturbed and frustrated with having our well-articulated concerns and recommendations repeatedly ignored by the agencies.
4. The agencies have already said they cannot address our greatest need: diagnosis and treatment in the context of clinical research.
5. The agencies have already decided the process and structure of the health advisory committee -- that of a federal advisory committee. This is counter to all principles of participatory planning, which would have the community involved from the very beginning of the discussions, rather than after pivotal decisions have been made.
6. Community members on the SSAB made the recommendation for an environmental health clinic through the prescribed process more than three years ago. DOE refused to honor that recommendation. Our experience with a FACA board has not been good. Why would we want another one?
7. The structure chosen gives the agencies the most control, instead of the control being shared by those most directly affected.
8. We do not feel that the government is yet capable of working alone on these issues, from the point of view of those who would be most affected by the research. If the government is the one in control, and is the one

inviting people to participate in a "done-deal," then those who are most affected and most needed at the table, will refuse to come. Unfortunately, the affected people have more natural authority and expertise than anyone else in these matters.

There is a great need for a public health initiative in this community, but this current attempt is not the way to go. Once again, what we need is a world-class environmental health clinic staffed with independent physicians and researchers whom we trust, and who can examine, diagnose, and treat patients. We also recognize the need to gather the needed data on exposures, biomarkers, and treatment plans.

Medical intervention and research can occur simultaneously. Under the present system with the contractor and its HMO controlling health care, we are denied medical diagnosis, treatment, and intervention.

The affected people need to feel comfortable "at the table" and the only way for that to happen is for the planning process to be fully participatory and collaborative. We are not the first citizens to leave the agencies' table.

The downwinders in Utah and Nevada have long expressed the same concerns and are refusing to be parties to any more of these affairs. We all want a full partnership at the table with the final decisions concerning what is, or isn't, going to be done about our health concerns left up to the affected people themselves to decide.

There is a growing unity among the nation's affected communities that there must be justice for all, not a few crumbs tossed here and there to shut up whomever is currently screaming the loudest or whose community has just been given a DOE "surprise package," as Paducah was recently. The federal agencies must develop solutions for and acceptable to all of the nation's affected communities. They must address the whole problem as a whole and not isolated parts of it.

For once and all, we want a true partnership for everyone and not just one solution that is done to shut up a few and done only to look good on paper!

Coalition for a Healthy Environment (CHC)  
Harry Williams, president  
Janet Michel, secretary  
2106 Holderwood Lane  
Knoxville 37922

Scarboro Community Oak Ridge Empowerment (SCORE)  
Fannie Ball, president  
51 Houston Ave.  
Oak Ridge

Oak Ridge Health Liaison  
Romance Carrier  
Sandra Reid  
10 Asbury Lane  
Oak Ridge

American Environmental Health Studies Project

Jacqueline O. Kittrell  
Cliff Honicker  
318 Linwood  
Knoxville 37918

Downwinders  
Preston J. Truman  
P.O. Box 111  
Lava Hot Springs, ID 83246-0111

Save Our Cumberland Mountains (SOCUM)

Beryllium Victims Alliance

Oak Ridge Communities Allied

Center for Government Accountability

March 4, 2000  
The Honorable William B. Richardson  
Office of the Secretary of Energy  
Forrestal Building  
1000 Independence Ave.  
Washington, DC 20585

Honorable Secretary,

I feel it necessary to contact your office once more in regard to the legacy health issues of the Department of Energy sites. While I appreciate the efforts of your administration in bringing the stories of individuals to light through the series of public meetings, we, the victims of decades of poor decisions and outright cover-ups need to see results of the promises made at these meetings. You have heard the stories, the outrage, the cries for help. Daily publicity continues, in printed, telecast, and Internet form, of more discoveries of the waste of money, resources and lives, all under the umbrella of "national security".

Since the end of the Cold War, and the era of Admiral Watkins, there have been consistent acknowledgements of inadequate procedures and bad practice confirmed by DOE HQ and various government and private groups. Yet nothing has been done to hold those in charge accountable, or to remove the persons responsible for the decision making, or lack thereof. The new DOE/ORO manager reportedly has said she was quite satisfied with her staff, and would not change them in spite of all the reported problems.

Please try to imagine yourself in the victims' position, knowing our government is using every resource at its disposal- lawyers, judges, doctors, and scientists- to do everything that they can to deny you justice. As a matter of fact, while you sincerely apologize, your General Counsel continues to scorch the earth in denying us ill workers any kind of realistic, well-deserved relief. We cannot change the past, but we ask you to make good on your commitment to rectify the wrongs to keep a tight rein on the Department and its contractors, and to insure no more horror stories from future generations of workers and residents.

The recent dismissal of the Federal Tort cases, which were brought by sick workers, resulting from Beryllium exposure at Oak Ridge Operations was a disappointment, but not unexpected. This decision repeats what many victims have received in other segments of the exposed population. The discretionary function clause has stymied many legitimate claims in the past, and was designed to do so. The purpose of this function should not be to condone manslaughter or reckless disregard for human life. I realize the judge was acting within the strict limits of his interpretation of the law, and even footnoted his discomfort in regarding its 'policy use'.

The compensation plan proposed by your office has been pointed out to be insufficient at every public meeting to date, and by several professional organizations and insurance

representatives. While we appreciate the efforts, victims need adequate money to live on, plus appropriate medical care. I have mentioned my own inability to obtain mortgage or life insurance due to my diagnosis of Chronic Beryllium Disease, and I am still actively employed. Some have lost almost everything, because of their sacrifices in the line of duty. Injustices have been inflicted on workers and other citizens, by exposures to toxic and radioactive materials, then dealt a blow not unlike a rape victim, by the legal system. We implore you to take steps to end this persecution, and replace it with real justice.

Attached is a list of suggestions from local and national contacts, which we feel would adequately provide relief. Anything less will force us to take more extremes of publicity and legal action to seek amends. I would rather history to remember us as allies, who achieved a humane solution by working together, than as adversaries, having to fight our own government for the bare minimum of medical attention and compensation. We beg of you to scuttle the legalistic and misguided wrangling of your General Counsel and the Justice Department, and work with us toward a just conclusion.

Alfred Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830



## Comments and proposed actions

"DOE has once again put us over a stump. Here we have a problem of justice denied for over a half century. DOE could have fixed this problem a half dozen different ways that would not involve a national law being proposed, and ratified by half the House, half the Senate and signed by the President. Please stop worrying about the "lobbying" issue. The larger action to address it to craft a very concise statement of the problem, as well as a clear statement of the solution to DOE."

"DOE's "solutions" that have been proposed reach almost the point of the "theater of the absurd." Can you imagine in any other government agency where a worker is poisoned and the agency officials saying, "I'm sorry. I cannot help you. You will have to go to Congress to get a bill passed if you want any relief?" Or, having a poisoned worker go to a DOE-crafted "health evaluation" and the doctor saying, "Come back next year and I will test you, then wait three years, and I will then give you the results of that test."

"A common suggestion is for outside oversight of DOE. The self-policing results are evident. No accountability will be believable without independent oversight. This could do wonders for restoring DOE's trust problem."

"If Secretary Richardson and Assistant Secretary Michaels have strong, moral leadership skills, and if they truly believe the stories of the massive numbers of people who have testified before them in Portsmouth, Paducah, Oak Ridge, Nevada, Hanford, and Rocky Flats, they will use their power as a cabinet level Department to have DOE's legal counsel craft an internal DOE order that will do 11 things to fix these problems without having to go to Congress."

"If the attorneys present at the meeting disagreed with the Executive leadership, then he should (and could) fire them on the spot and replace them with attorneys who would "make it so."

"Here are some suggestions for 11 things that Secretary Richardson could do in the Year 2000 to fix these problems. They are actions that the bill before Congress does not address and that DOE could do without involving a single legislator on the Hill.

Rather than the facile apologies that Secretary Richardson has made in carefully constructed press shows, the Secretary will issue a formal written apology that states the systematic abuses that DOE has heaped on the affected workers and residents over the years.

(1) Secretary Richardson should state in writing, "I'm sorry we have:

(A) knowingly poisoned people with exotic heavy metals, radionuclides, and chemicals;

(B) known all along that these poisons could easily hurt people and are hard to detect by company and private doctors. We used the fact that it was hard to prove people had been injured by exotic toxins to our advantage, as a shield to protect AEC/DOE operations, managers, and programs;

(C) systematically denied hurting people in order to perpetuate the weapons program;

(D) systematically covered up, destroyed, hid, documents that would substantiate people's injuries;

(E) falsely used the national security classification tools in order to cover up non-classified instances of hurting people;

(F) mobilized an army of experts and lawyers whenever an individual tried to seek compensation through the courts.

We, the DOE, used a "Scorched Earth" legal strategy against the individual, so as not only to defeat them, but to discourage other individuals and other attorneys from ever taking or filing such cases." A testament of past wrongs from the Secretary could then be used by anyone filing a case to show to a jury and judge the inability of anyone to get a truly fair trial on these issues.

(2) DOE will re-direct some of the \$15 Billion dollars spent on DOE contracts towards these issues. DOE has "throw-away money" called "Bonuses" and "Award Fees." Some of these millions of will be re-directed to these problems. DOE will fine the contractors for past and ongoing wrongful actions. If independent reports conclusively find that people have been poisoned, at the least we will fine the contractor for the lifetime costs associated for taking care of the exposed people.

All the time that people were sick and suffering, DOE was awarding the contractor millions of dollars in bonuses for "excellent performance in environmental health and safety programs." They should demand a refund on those bonuses and divert that money to taking care of the exposed. This is at a minimum.

(3) DOE will immediately move some of the \$26 million that Deputy Assistant Secretary Dr. Paul Seligman, M.D has spoken about in public meetings and direct that money to be spent in the ways that have been suggested several times in the past, i.e., truly independent medical and environmental investigations.

(4) DOE will direct the insurance carriers of DOE contractors and DOE itself to immediately allow for 100% coverage of all environmental health related testing for

heavy metals, chemicals and radiation, as well as for treatment; so that individuals may go to the doctors of their choice and have their own individual investigations.

(5) DOE will order the benefits offices of DOE and its' contractors to immediately give full compensation packages to the affected people under the maximum terms of their contracts.

(6) DOE will fire all the top General Counsels at HQ and each operations office that have perpetuated the environmental poisoning problems by fighting, to the death, literally, every toxic-related claim of injury at each site. Put in their place attorneys who are driven to defend the rights of the Constitution, rather than protect government agencies and their contractors.

For justice to prevail, the "presumption" of injury would have to weigh in favor of the injured Like the Black Lung cases of the past, move from fighting them tooth and nail, to "presumption" based rulings within DOE and in the Courts.

(7) Re-define internally the "proof" that is required to determine injury, and then compensate people on those new definitions. DOE already has it's own policies on these issues. Those policies can be changed without having to go to Congress to do it.

(8) DOE will create a mediation board at each site that would be staffed by public-interest attorneys who would help facilitate people's claims of injuries between the DOE, contractors, and the affected people. That mediation process would be open to the public and press (with the affected person's permission). Taxpayer's money should be spent in support "of the people, by the people, for the people." At DOE, it is used to protect "of the corporation, by the corporation, for the corporation."

(9) DOE will completely reform its' Health and Safety and Programs, in terms of care, protection, and records keeping. DOE will insure that health studies are driven by those most affected, and that the best people in the country are employed to do the work and that the work is done right. DOE will insure that "single" toxicants are not the subject of studies, to the exclusion of ALL the poisons that a person has been potentially been exposed to at these facilities.

(10) DOE will also create a worker-based economics board that would be paid for by DOE. This board will study the economic impact of each sick person and independently calculate the cost of that person's toxic-related health problems on their future loss of earnings, the medical expenses to the family, and the costs of the pain and suffering of that person and his/her family will have to go through over the years as the health problem progressively deteriorates;

(11) In order to reduce benefits paid from the national treasury, once the person has been healed and made whole again through independent medical intervention, DOE will allow for DOE funds be used to create an independently-controlled and community-based health clinic that would actually help cure (to the extent that it is possible) the health

problems created by DOE sloppy operations. When people are well and back on their feet, there should be a mechanism for them to voluntarily give up the health-based benefits, and say "Thank you for taking care of me. Now that I'm back on my feet, I am ready to return to work." There should be a program to help get those people back to work, given the difficulty that they will have getting work and insurance, based on their past illnesses and exposures."

Enclosures:

ORAU Letter on Incomplete Exposure Data, 10-11-91  
Letter, Bell to Secretary O'Leary, 12-30-94  
Constitutional Mass Torts: Sovereign Immunity & the HRE, 4-11-95  
Letter, Seligman to Bell, 12-15-97  
Rachel's Environment & Health Weekly #586 (Precautionary Principle) 2-19-98  
Deposition of Honorable Hazel R. O'Leary, 5-14-98  
ANA response to Health Care Proposal, 11-24-99  
Letter, Bell to General Accounting Office, 1-25-00  
ORHL Response to DOE HQ Risk Communication Proposal, 1-12-00  
Letter, G. Foster to M. Pavlova, 2-15-00  
A.G. Bell, Work Chronology, 1968-2000

January 25, 2000  
General Accounting Office  
441 G Street, N.W.  
Washington, DC 20548

Dear GAO Representatives:

I have been prompted to contact your office because of the recent flood of information, as well as misinformation, concerning Beryllium and Beryllium disease around the nation's nuclear weapons plants and private corporations contracting for them. The knowledge of Beryllium's dangers goes back almost as far as the use of the toxin. This is documented in the enclosed 1949 document from the Atomic Energy Commission archives. There are many others, the DOE Public Reading Room in Oak Ridge lists over 9500 titles of Beryllium-related documents. The allegations and knowledge are not new, these issues have been fought and defeated by the DOE/DOD and contractors for years. Production was put above worker safety. We do not need to expose another generation to these practices.

My interest is not simply passive. I was diagnosed with symptomatic Chronic Beryllium Disease in 1993, after several years' misdiagnosis as asthma. A chronology of my work history and some of the presentations I have made are also included for documentation. I have been quite involved with both the Department of Energy, and ill worker groups, in trying to better educate each other of the needs and expectations of those of us who are casualties of the Cold War.

Do not allow special interest groups to hide the true scope of this problem. Secretary Richardson is conducting, through Dr. David Michaels, a series of public meetings to air the health issues of the communities affected by the legacy contamination. These have focused sharply on Beryllium, as it is the most provable ill effect, with the largest number of confirmed victims, over a hundred in Oak Ridge Operations, twice that at Rocky Flats. The transcripts of these meetings are being posted on DOE's Occupational Health website at <http://tis.oh.doe.gov/benefits>. These testimonials are heart-rending, and the American public should be aware of the sacrifice of these veterans. We are looking to your office for support in reasonable education, enforcement, and compensation for the victims of Beryllium disease, and other ill effects of the government and industry's failure to protect us.

Regards,  
Glenn Bell  
Beryllium Victims Alliance  
504 Michigan Ave.  
Oak Ridge, TN 37830  
865-482-7641 (Home)  
865-574-2712 (Work)

January 13, 2000  
Dr. Maria Pavlova, M.D., Ph.D.

Maria:

I would like to add the following comments to your Risk Communication Proposal. My opinions and suggestions on DOE-related health issues are a matter of record, and feel free to use any of the communications we have had in the past.

I commend the work of you and your staff and supporters for this effort to overcome the negativity of DOE's not-so-open past. The frustrations resulting from this resultant lack of trust has shown up in the health conferences, public meetings, and other interactions between DOE and the workers and public. Fifty years of secrecy, deception, and the revelation of the magnitude of the health problems will not be easily overcome.

I will stress again what I, and others, have said repeatedly, that I believe one of the major keys in the role of communication is the removal of the legal constraints and inclusion of Legal Counsel in any discussion of improving the system. We all know the power of Legal Counsel, through indemnity rights and sovereign immunity. These factors alone hinder most progress, and allow DOE and contractors a shield to progress. A level playing field must be allowed, where the unlimited resources of DOE and contractors being pitted against us peons, is not a factor. Reprisal, or fear of reprisal, should not be an issue. Unfortunately, this is not so, as was revealed just this week in reports from Portsmouth. DOE must prove, by co-operative action, that it means what it says. Those guilty of infractions should be held accountable, to show the workers and public that DOE is indeed serious about protecting those who speak out. Legal Counsel can become a valuable, contributing ally, instead of a source of continuing conflict. I believe this can be done, and maintain the rights of both sides. Which, indeed, should be one side, if true harmony is achieved.

The proposal's strongest point, I believe, is to include the stakeholders who have the most at stake in the outcome. These are the workers, residents, and ill individuals under the DOE umbrella. Since my own participation in these issues, I believe there has been a wealth of information, openness, and, more importantly, trust, established between myself and the individuals involved from DOE HQ and a number of sites. Inclusion of more of the public, patients, and concerned employees will give an even better balance and understanding of the issues.

These, points, if addressed and implemented, will, I believe, contribute to the accomplishment of the intent of the Risk Communication Proposal. Failure to do so may mean a continuance of the distrust and friction of the last fifty years.

Respectfully,

Glenn Bell  
Machinist, Oak Ridge Y-12 Plant  
Chronic Beryllium Disease Victim  
504 Michigan Ave.  
Oak Ridge, TN 37830

December 10, 1999  
Comments for 12/08/99 Public Meeting

Thank you to Dr. Michaels and Staff, and the representatives of our legislators who are here. Thanks especially to the impacted workers and residents who have told their stories tonight. I am Glenn Bell, a machinist at Y-12 since 1968. I was diagnosed in 1993 with Chronic Beryllium Disease, after several years' misdiagnosis as asthma. I have breathing difficulties that range from mild, as tonight, to quite severe, as when I was hospitalized this summer. There are almost a hundred cases of CBD and Beryllium Sensitization at ORO, sensitization has a strong probability of developing into CBD. It can be fatal. There are handouts here which describe the disease and history, as well as websites and other resources. Probably the best is the Denver Beryllium support Group's site at [www.beryllium.org](http://www.beryllium.org).

The hazards of beryllium have been well known since the late 40's. I have two AEC documents here from 1948 and '49 which describe deaths and advise precautions to even minute quantities of the toxin. These are available from the Oak Ridge Public Reading Room. Despite the known dangers, the information did not make it to the shop floor. "You could eat the stuff" has to be in a DOE training manual somewhere, because we have heard it from every site. The dangers were minimized, production was maximized. We were encouraged to take breaks on the machines, no respiratory protection was provided, air and smear sampling was often inadequate. Areas were systematically cleaned before sampling was done, so the true contamination was not known. None of my co-workers can ever remember being told of readings over the limits, but sampling documents obtained covering from about 1969 to 1995 show many far exceeding the action value. Working with uranium, thorium, lead, trichloroethene, perchloroethelene, and other toxins, I have no idea what's in my body besides beryllium.

"Need to know", classification, and a belief that we would not be put in harm's way, contributed to a false sense of Safety. When concerns did arise, they were minimized, or we were told to "not rock the boat". Persistence would almost guarantee a transfer. Some who spoke out found themselves on the next layoff roster.

I have attended several DOE health conferences as an affected worker, and have found some caring allies. Secretary Richardson's proposal is a step in the right direction, but falls far short for proper compensation. I have submitted a proposal, prepared by a financial advisor, which would show the monetary needs. But we have to have full medical and life insurance. I can't even get mortgage insurance on my house now, and I am still working. We need access to qualified occupational physicians, and referral and treatment for those confirmed to have occupational-related conditions. I have not even heard the issue of long-term care coverage addressed. Legal oppression and Comp denials should be investigated, and the process improved. Contractors should be held liable if found to have harmed employees, or illegally denied them of their rights.

The communities should be educated and included in the process. I am a stakeholder on both sides, as a property owner, and an impacted worker. I want to see the ill treated, while preserving what's left of the integrity and property values of the community. We can only do this by working together.

Dr. Michaels, thank you again for this opportunity, and I hope to continue our positive relationship in the future.

Thank you.

November 24, 1999  
Mr. Richard Meserve, NRC Chairman  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn.: Rulemaking and Adjudications Staff

Dear Chairman Meserve and Staff:

I am writing to comment on the Nuclear Regulatory Commission's intent to approve historically contaminated nuclear and legacy waste for release in recycling. I find this concept unacceptable, based on past mistakes, incompetency, and the growing revelation that rad contamination, at any level, can be hazardous to human health. Murphy's Law- "If something can go wrong, it will"- is especially true in the rad arena.

For background, I am a 51-year old machinist at Oak Ridge's Y-12 Plant, where I have been employed since 1968. I was diagnosed with Chronic Beryllium Disease in 1993, after several years' misdiagnosis as asthma. My symptoms range from mild to quite severe. Since being diagnosed, I have immersed myself in educating myself in the historical blunders of DOE/DOD throughout the 50 years of nuclear development. In the last few years, I have attended several DOE and local health conferences, as an affected employee, and the relationship has resulted in much better communication for both sides. But much more work needs to be done.

I would cite several examples as reasons for my opposition to recycling the contaminated metals. Locally, there are two former salvage yards, the DuPont Smith yard in Oak Ridge, and the David Witherspoon yard in nearby Knoxville. Both acquired salvage materials from Oak Ridge Operations, both were later found to have contaminated equipment.

Last year, a large piece of equipment, I believe a vertical turret lathe, was purchased at auction from ETP (the former K-25 site), and was found to have internal contamination, despite being "green-tagged" for public release.

About two years ago, barrels of rad waste, destined for out-of-state shipment to a proper disposal site, were found to have been misdirected to Y-12's burial grounds.

The well-publicized destruction of documents at INEEL and other sites (including Y-12) make verification impossible.

The acknowledgement of plutonium at Paducah, the cancer clusters around Brookhaven Lab, and the almost unbelievable contamination releases from Hanford solidify the assertion that we haven't done a very good job of containment to date, even at the site level. Heaven help us if we release these materials to the unsuspecting public. This is not the proper approach to population control.

I would call on the NRC to extend its comment period on this action at least a year, as more facts such as these examples are surfacing almost weekly. The workers at these sites are your most valuable resource. I beg you to use them in any final decision.

Regards,

Glenn Bell  
Beryllium Victims Alliance  
504 Michigan Ave.  
Oak Ridge, TN 37830  
865-482-7641  
Wheezin2@aol.com



September 30, 1999

Ms. Leah Dever, Manager  
USDOE ORO  
Oak Ridge, TN 37831

Ms. Dever:

I had hoped to meet you at the August 5<sup>th</sup> meeting, but was unable to attend. I am one of the 80-plus present and former employees confirmed with beryllium disease or sensitization. I was diagnosed with Chronic Beryllium Disease in 1993, after several years' misdiagnosis as asthma, am symptomatic, and have missed a great deal of work due to my condition. I am a member of the LMES-sponsored CBD support group, an advocate of the efforts of the Coalition for a Healthy Environment, and am in daily contact with like groups at Rocky Flats, Paducah, Pantex, and the beryllium victims' group (NABER) in Ohio. I have been quite vocal on both beryllium issues, and those more difficult to prove as work-related, such as the CHE group are experiencing. I have amassed several thousand pages of documents on beryllium, its health effects, and the history of minimizing the risks, which has permeated the DOE / contractor history since the '40's.

About four years ago, I allied myself with a few of the DOE HQ people who I felt I could trust- you will hear the term "trust with caution" regularly, I think I coined the term. I have attended many DOE and community health meetings, and feel much progress has been made since the first efforts the beryllium group made to collect data and learn how we came to contract this probably preventable disease. This summer I attended the DOE Bioethics Conference in Washington, and the DOE Occupational Medicine Conference in Albuquerque. I spoke at both meetings as an affected worker, and attempted to present the need for DOE to bring better communication and credibility to the workers, the ill workers in particular. Sadly, I have found more sympathy at the HQ level than locally. Without going on a name-calling spree, suffice to say that I no longer bother with a DOE ORO Employee Concern, but go to my HQ contacts. I, and others, have given up on the rubber-stamp answer of "We find no wrongdoing", or "no danger to human health or the environment". One of our first concerns filed locally received an answer comparing CBD to "measles, mumps, and chicken pox". We have witnessed the deaths of two of our support group members, in which CBD was at least contributory. Families of other deceased workers now feel beryllium, or other workplace toxins, may have led to premature deaths, loss of health and financial security, and quality of life in general. I have witnessed the "chilled atmosphere for safety" and reprisal for some who dared speak out.

Removal of the stumbling blocks of sovereign immunity, and compliance with the agreement of the Precautionary Principle would help immensely. The multi-million dollar defenses of the past are a disgrace to those who needlessly suffered because of them.

I believe I can speak for a majority of the ill workers and residents by repeating what I wrote to Dr. Michaels' office recently. We do not want to win the lottery. We simply want a life as near normal as possible, had we not contracted these diseases and conditions. We want the needed medical care and insurance, and a livable income. Many have lost health, homes, even life. As Susan Rose, of DOE Office of Science said in a conference call just yesterday, "We (the present DOE administration) are not the ones who caused these (health) problems, but we are challenged to do our best to correct them, while maintaining the privacy and respect of the affected individual." More commitment to this philosophy, and action to back it up, is what we need. The workers and community are a valuable resource. Draw on us and you will find some powerful allies. Our community cannot survive otherwise.

Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830  
423-482-7641 (Home)  
423-574-2712 (Work)

TYPICAL HANDOUTS  
OVERHEADS



**RESOURCES  
FOR  
COMMUNITY / WORKER INVOLVEMENT**

Denver Chronic Beryllium Disease Website  
<http://www.beryllium.org>

The Nashville Tennessean's articles on toxic exposures:  
<http://www.tennessean.com/special/oakridge/part3/frame.shtml>

Coalition for a Healthy Environment --  
<http://che-or.8m.com/che.html>  
(Please, "sign" our Petition to the U.S. Government --  
<http://members.xoom.com/CherDyer/10-30-98Petition.html>)

"Deadly Alliance" Beryllium Series From the Toledo Blade  
<http://toledoblade.com/deadlyalliance/intro.html>

Arizona Daily Star Beryllium Series  
<http://azstarnet.com/beryllium/0509n07.html>

The U.S. Nuclear Weapons Cost Study Project  
<http://www.brook.edu/fp/projects/nucwcost/weapons.htm>

Report of the Commission on Maintaining U.S. Nuclear  
Weapons Expertise ("The Chiles Report")  
<http://www.dp.doe.gov/public/chilesrpt.htm>

DOE Oak Ridge Operations Public Reading Room  
[http://www.oakridge.doe.gov/foia/doe\\_public\\_reading\\_room.htm](http://www.oakridge.doe.gov/foia/doe_public_reading_room.htm)

DOE Environment, Safety & Health  
<http://www.eh.doe.gov/portal/topics/topics.htm>

**November 28, 1950**

DOE/NV 0720589(request #16)  
Newspaper account dated 11-28-50

*Atomic Physicist Dies*(Oak Ridger 11-28-50)

Word was received here today of the death of Dr. Eugene Gardener, wellknown atomic physicist who formerly worked in Oak Ridge. He died Sunday in Vallejo Cal: He had been ill in a hospital since shortly after he left Oak Ridge in 1945. He blamed his illness on lung poisoning contracted while doing atomic work at University of California before coming to Oak Ridge.

He was one of that University's foremost nuclear physicists. While at work on the war time atomic project he had inhaled Beryllium dust at the University radiation laboratory from 1941 to 1943 (etc.)

(Dr. Gardener was 37 years old)

(LAURA  
FRANK,  
NASHVILLE  
TENNESSEE  
REBALTER  
12-99)

Laura:

Our conversation yesterday started the gray matter churning. I had never stopped to do a rough estimate on "what beryllium disease costs", in my particular case. As you probably know, symptoms with CBD range from negligible to life-threatening. My own are range from mild to quite severe at times. I did a quick "guesstimate" as to what the cost of my having CBD has meant in dollars since I was diagnosed in '93. This does not include the intangibles of stress, depression, and insomnia that most CBD victims experience.

These are best-guess figures, based on present symptoms and conditions, unless stated otherwise.

Medicine: \$150 / Month	\$1800 / Year
Hospital Confinement (Based on 4-day stay x2)	\$9000
Doctor Visits x8	\$ 480
Emergency Room x2	\$ 600
Lost Overtime Due to Beryllium Area Restriction	\$3000
<u>Total Yearly</u>	<u>\$14,880</u>
Total of average since '93 x6 years	<u>\$89,280</u>
1999 Absences from LMES Database 1-1-99/11-14-99 424hrs.x \$20.56 (Code 32 Machinist)	\$8738
Hourly Rate Code 32 1993 = \$17.02 1999= \$20.56 Average \$18.79	
Approximate Comp wages, Based on -200 hours average, @ \$18.79, x6 years	\$22,548

## *Web sites*

DOE Protecting Human Subjects Program home page:  
<http://www.er.doe.gov/production/ober/humsubj/>

DOE Human Subjects Research Projects Database:  
<http://www.eml.doe.gov/hsrd/>

DOE News and Hot Topics, including DOE Directives and Orders:  
<http://www.explorer.doe.gov:1776/htmlis/directives.html>

*Former workers program is for former employees at DOE sites.*  
<http://tis.eh.doe.gov/workers/>

DOE Chronic Beryllium Disease Prevention Program.  
<http://tis.eh.doe.gov/be/>

DOE Occupational Medicine and Medical Surveillance Program.  
<http://tis.eh.doe.gov/med/>

DOE Epidemiologic Studies  
<http://tis.eh.doe.gov/epi/>

A genomics lexicon, a searchable database of terms and definitions, from the Pharmaceutical Research and Manufacturers of America and the Foundation for Genetic Medicine, Inc.  
<http://www.pfma.org/genomics/lexicon/index.html>

A primer on Molecular Genetics, Human Genome Management Information System, Oak Ridge National Laboratory, U.S. Department of Energy:  
<http://www.ornl.gov/hgmis/publicat/primer/intro.html>


A glossary from the primer:  
<http://www.ornl.gov/hgmis/publicat/primer/prim6.html>

**Summary  
Affected Sites**

Site	Location	Mission	Approximate Total Population of Workers
Argonne East	Chicago, IL	Research and development to support development of energy-related technologies	4,500[a]
Argonne West	Idaho Falls, ID	Technology development for spent nuclear fuel and waste treatment, reactor fuel cycle, safety, and facility decommissioning	
ETTF (K-25)	Oak Ridge, TN	Environmental restoration, waste management, technology development and demonstration, education and training, and technology transfer	6,290
Fermilab	Batavia, IL	High-energy physics research	2,080
Hanford	Richland, WA	The site originally produced plutonium for U.S. nuclear weapons. The site is currently involved in environmental restoration.	10,500
Kansas City	Kansas City, MO	Manufacturing plutonium components for nuclear weapons	3,300
LANL	Los Alamos, NM	National security focus continues with several areas of high-tech research (e.g., space nuclear systems, controlled thermonuclear fusion, lasers, biomedicine, environmental management)	10,000
LBL	Berkeley, CA	Energy-related research activities	3,400
LLNL	Livermore, CA	Research, testing, and development that focus on national defense and security, energy, the environment, and biomedicine	9,700
Mound	Miamisburg, OH	Environmental restoration for conversion to commercial industry site	5,100
Pactex	Anarillo, TX	Fabricating high explosives for nuclear weapons, assembling and disassembling nuclear weapons	2,400
SNL	Bernalillo County, NM	Research and development in a wide range of scientific and technical fields (e.g., fundamental energy research, energy conservation, nuclear reactor safety)	6,600
Stanford	Menlo Park, CA	High-energy accelerator research	4,400
Rocky Flats	Rocky Flats, CO	Cleanup and restoration	4,000
Y-12	Oak Ridge, TN	Nuclear weapons processing technologies	4,080

Source: Office of Environmental Management, 1996b.  
[a] Includes workers at the Argonne-West site.



<b>OSHA Chemical Sampling Information</b>	
<b>Beryllium and Beryllium Compounds (as Be)</b>	
 <a href="#">OSHA Chemical Sampling Information - Table of Contents</a>	
<b>General Description</b>	<b>Field Definitions</b>
<p><b>NAME:</b> Beryllium and Beryllium Compounds (as Be)</p> <p><b>INS:</b> 0360</p> <p><b>CAS:</b> 7440-41-7</p> <p><b>NIOSH:</b> RTECS DS1750000</p> <p><b>DOT:</b> 1566 53</p> <p><b>DESCRIPTION:</b> Solid.</p>	
<b>Exposure Limits</b>	
<p><b>OSHA GENERAL INDUSTRY STANDARDS:</b> 2 ug/m<sup>3</sup> TWA; 5 ug/m<sup>3</sup> Ceiling for 30 min; 25 ug/m<sup>3</sup> Peak (Table Z-2)</p> <p><b>OSHA CONSTRUCTION INDUSTRY STANDARDS:</b> 0.002 mg/m<sup>3</sup> TWA</p> <p><b>THRESHOLD LIMIT VALUE:</b> 0.002 mg/m<sup>3</sup> TWA; 0.01 mg/m<sup>3</sup> STEL; Appendix A1 (Confirmed Human Carcinogen)</p> <p><b>RECOMMENDED EXPOSURE LIMIT:</b> 0.0005 mg/m<sup>3</sup>; Carcinogen</p>	
<b>Health Factors</b>	
<p><b>IARC:</b> Group 2A, probably carcinogenic to humans</p> <p><b>SYMPTOM(s):</b> Respiratory symptoms; weakness; fatigue; weight loss; (carcinogenic)</p> <p><b>HEALTH EFFECTS:</b> Suspect Carcinogen (HE2); Cumulative lung damage (Berylliosis)(NE10)</p> <p><b>ORGAN:</b> Lungs, skin, eyes, mucous membranes</p>	
<b>Monitoring</b>	
<p><b>SLC1:</b></p> <p><b>MEDIA:</b> Mixed Cellulose Ester Filter (MCEF) 0.8 microns</p>	



**toledoblade.com**  
*Introduction*

Beryllium at a Glance  
 > Introduction  
 Table of Contents  
 Part 1  
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 Part 5  
 Part 6  
 Further Developments  
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Bradner, O., resident Marilyn Miller would die soon after this photograph was taken. She died of beryllium disease, a lung illness that has affected scores of workers locally and nationwide. Government and industry records show that many of these illnesses and deaths have not been strictly accidental.

### **How government and industry chose weapons over workers**

It is a substance many people have never even heard of. Yet for more than 50 years it has been one of the most critical materials to the U.S. government.

The substance: beryllium, a magical metal that is lighter than aluminum and stiffer than steel.

It makes missiles fly farther, jet fighters more maneuverable, and nuclear weapons more powerful.

But there is a catch: Workers who manufacture this rare material often contract a deadly lung disease from inhaling the metal's dust.

An estimated 1,200 Americans have contracted the disease, and hundreds have died - some in the Toledo area.

And many of these illnesses and deaths have not been strictly accidental.

A 22-month investigation by the Blade shows that the U.S. government and the beryllium industry have knowingly allowed thousands of workers to be exposed to unsafe levels of beryllium dust. This has occurred year after year, for more than 40 years.

And it continues today.

At the local beryllium plant outside Elmore, O., workers continue to be overexposed to beryllium and continue to be diagnosed with beryllium disease.

A recent study found 1 in 11 workers at the plant either have the disease or an abnormal blood test - a sign that they may very well develop the illness.

Some of these workers, documents show, were clearly overexposed and inadequately warned.

Time and time again, plant owner Brush Wellman Inc., America's leading beryllium producer, misled its workers - and deceived safety regulators.

When safety regulators tried to protect workers, they ran up against an overwhelming alliance: the beryllium industry and the U.S. defense establishment.

This alliance, records show, slowly undermined the regulators' safety efforts, and before it was all over, the government had cut a secret deal with Brush Wellman. The government got its valuable beryllium for years to come, and Brush got more money and a virtual monopoly.

Workers got more of the same: overexposure to beryllium dust.

The Blade investigation was based on tens of thousands of court, industry, and recently declassified government documents. In this series, we detail our findings.

- In [Part 1](#), we show how the government has sacrificed workers' health in the name of national security.
- In [Part 2](#), we document how industry and defense officials twisted a plan to protect workers into a deal protecting themselves.
- [Part 3](#) and [Part 4](#) lay out Brush's actions - how the company has downplayed hazards, concealed documents, covered up its checkered past, and systematically tried to control the public's knowledge of beryllium.



**1999 DOE Contractor Occupational Medicine Symposium  
Albuquerque, New Mexico  
July 19-22, 1999**

**Worker and Community Expectations in Risk Communication  
'Stumbling Blocks and Paper Fences'**

*Glenn Bell, Machinist, CBD Victim  
Lockheed Martin Energy Systems  
Y-12 Plant, Oak Ridge, Tennessee*

*(Ziggy Overhead)* This is the way much of the worker and resident population views DOE's efforts to date. I hope we can do some things here this week to change this.

I am Glenn Bell. I have been a machinist at the Y-12 Plant in Oak Ridge since 1968, presently assigned to the Oak Ridge Metrology Lab, where we do ultra-precision measuring and calibration for the National Institute of Science and Technology, or NIST (the former Bureau of Standards), and for private industry. Our lab has the most precision measuring equipment in industry and are accredited by NIST to certify and calibrate primary measuring equipment for industry. We calibrated the equipment responsible for correcting the lenses on the Hubble Telescope.

As a machinist and quality inspector, I worked with Beryllium metals and ceramics during much of my career, and as a result have symptomatic Chronic Beryllium Disease. This was diagnosed in 1993 after several years' misdiagnosis as asthma, before Beryllium-specific testing was begun. My symptoms include shortness of breath, fatigue, insomnia, mild depression, anxiety attacks, and range from mild to quite severe, sometimes requiring hospitalization. Side effects from medication is often worse than the disease itself. Oak Ridge Operations alone has over 80 cases of CBD and beryllium sensitization. (Site Overhead) Here is a near-complete listing of DOE sites where Be is known or suspected.

I have been referred to as both an activist and a whistleblower, and while I do not take offense to either description, neither is a reflection of what I have tried to do since my diagnosis. I consider myself a grassroots, layman educator. I try to prepare other victims for what may, or may not happen as the disease progresses, as it is treatable, but not curable. I relate my own experiences of living with the disease to others, and it serves as a sort of self-therapy for me. I have written dozens of letters to government, newspapers and other victims to increase awareness of the disease. The word is getting out. (Website/resources Overheads) Several newspaper series' have picked up on the beryllium and other illness problems at the sites, and URL's are listed in your handouts.

**What Influences and Forms Worker and Community Expectations?**

1. Historically, secrecy and 'need-to-know' hampered real knowledge- practically eliminated communication. This destroyed trust as negative incidents, such as worker exposures and environmental releases became known, despite the 'veil of secrecy'.
2. Lack of the government and contractors providing information, made requests confrontational.

Despite the huge amount of declassification, this remains a problem.

3. Litigation. I personally feel this is the biggest stumbling block to progress and open communication between the agencies and affected communities. We repeatedly hear of those in government trying to help the ill and affected workers being given the Miranda warning- "Whatever you say WILL be held against you..." by legal counsel. Counsel for the workers is also often counter-productive. Informed, free and open communication, without fear of legal ramification from either side is essential.

4. Perception of affected workers that they are being appeased or ignored- Efforts are presently underway to correct this, but again, trust has been lost. Communication, updates of progress, or lack of same would greatly help.

III. What's the Cure? Most important is to build Communication and Trust..

1. Follow up on promises, explain any that can't be met, or any setbacks.
2. Make communications more accessible, more understandable, less technical. Communicate the importance of the stakeholder participation- there is valuable information on all levels. Protect the privacy of participants, make sure they understand informed consent, risks involved, and that some of the testing and intervention is not 100% certain and may be considered research.
3. Be sensitive to concerns of non-participants- information may be widely available to a stakeholder, whether he or she chooses to participate or not, Beryllium information is now widely known to workers, even if they decline testing.
4. End the "inconclusive by design" studies and those that never get past the draft form- so information, proper conclusions, and resolution cannot be reached.

I'll end with some comments from fellow affected workers and residents, which reflect the perception of the community:

(at a public health meeting)"The most important players are not here at all- they are the lawyers covering up liability for criminal activities, mismanagement and waste of taxpayers' money"

"Accountability is long overdue."

"We need action and enforcement, not more rules and studies."

"Genetic testing, while it may help some who may be predisposed to workplace toxins, may also preclude employment, career advancement, and insurability. It's a tough choice" (this one's mine- I've been denied mortgage insurance by three major carriers due to CBD)

"Point that seems not to have been addressed is that if one had not received an exposure, the gene would not have been activated."

(And from a recent Oak Ridge public meeting)

"We are disturbed that most of our suggestions have been ignored. We are disturbed that our motivation and integrity have been questioned. We are very disturbed that everything is a fight, and we are the least able to fight in terms of resources, energy and health."

I suggest that we Cold War Veterans are your greatest resource. Draw upon our experiences, minimize the confrontations.

We are all neighbors- let's act like it....

Thank You.

July 18, 1999, 2:50 AM

It must be the Beryllium. Or the medication. Or the insomnia that goes with both. I am having a lot of mixed thoughts of Sec. Richardson's Compensation announcement from Thursday, and the video conference with Dr. Michaels on Friday. Was my tunnel-vision returning? I'm the one who has been saying "Give Peace a Chance" with DOE, and still believe there are those who are sincere and deserve that chance. But...

Why now? This really isn't new news. Hazel O'Leary's Openness Policy released documents that showed whomever looked that the gov't / corpo alliance had damaged people and the environment for years. From Sec. Moler, Feb. '98- "To the extent allowable by law, DOE field counsel and contractors are not to contest the "work relatedness" for workers' compensation claims of confirmed cases of Chronic Beryllium Disease and, in those jurisdictions that allow such claims, of sensitization to beryllium." The recent newspaper series' and TV spots have raised public awareness of primarily beryllium-related diseases, but other site related health problems as well. The community health meetings with the multi-agency health groups haven't been exactly a resounding success, so what is really going on?

First of all, the good news- some are taking responsibility in the admission of, duhh.. we made some people sick, maybe killed a few. If I sound callous, blame it on the prednisone and lack of sleep. And again, I have made some lasting friendships with DOE HQ personnel, and I don't take that lightly. Five years ago, there would not have been a chance of this.

On the downside, I have been thinking a bit more globally. While I agree that the disparity of State Comp laws have left many in the cold, I think options should be offered. My present coverage, as long as I'm working, is better than the plan Sec. Richardson unveiled. Others with lesser coverage should be allowed to choose between the programs. If they want to remain in the State system, and pursue Toxic Tort cases, I think it should be allowed. As for the Friday statement that "DOE doesn't think we (victims) will ever win such a case, it depends on whether the facts are in, and the moral and ethical implications of our ills and their 50-year cover-up should be brought immediately to a jury trial. As in the recent Arizona case, facts do not seem to make it to the judge's chambers. And the choice of Comp coverage itself is too undefined. Is it fair for an asymptomatic CBD victim, who may even still be working, walk with \$100,000, while those of us who are symptomatic, and may be having trouble holding on to our homes, struggle to pay bills as our conditions worsen? \$100,000 grand may seem like a lot if you only plan to live a year or two.

And what of the GAO investigation into "who knew what, and when"? All this is readily available to them through Denver's excellent website, plus many of us have archives in addition to this, as well as the Public Reading Rooms. I smell a smokescreen, with the GAO and public clamoring for more information, it seems the Congress wants to push the legislation through before a thorough investigation is completed, effectively killing Tort suits and barring more important information from the public. I feel that the suits presently 'in the loop', as some have been for four to five years, should be stepped up on priority, and the DOE held accountable, even to the extent of the criminal prosecutions that have been mentioned. A quick and easy settlement now would effectively make any more discovery a moot point. Court cases, if allowed to

fruition, would at least provide a public record of what should have been known long ago. DOE and Congress are probably realizing the impact financially, if CBD cases continue to surface, as they will, and litigation drags on. I also propose a cap on what gov't and contractors can spend on defending such cases- I don't like MY tax money being spent to defeat MY case. If we do the Beryllium cases right, it will make the other, "non-specific" illnesses easier to pursue. Let's don't drop the ball on this, although I admit I am very tired and frustrated over the progress made up to this point.

The 'good guys' at DOE know who you are, and that you are appreciated. To the others who could give a damn whether I have enough wind to make it to the Albuquerque OccMed conference and back next week, I wish you the best of luck in your next career... it's becoming obvious where the lines are drawn.

I have sent the GAO several posts of historical data and links, to help in their quest for the truth. We must also hold them to accurate and honest assessments. I encourage others to do the same. There's a chance for co-operation here, and I would like both sides to contribute, and remain as non-confrontational as we can. To the government agencies, your best resources are those of us most affected by the Toxic Burn. Rely on us, and earn back the trust.

This fiasco is starting with Beryllium, because the diagnosis and proof of workplace exposure are undeniable. Let's make this part of the solution as fair for the victims as if they had never had the disease, and quickly move on to the other clusters of illnesses. Washington- are you listening? We are your best resource, and we want to help.

To the mailing list, and supporters, please give me some feedback on this- I know it's not perfect, so hit me with some constructive criticism.

Glenn Bell  
Beryllium Victims Alliance  
Oak Ridge, TN



Mikki Dawn  
 ORISE  
 P.O. Box 117  
 Oak Ridge, TN 37831-0117

(Presentation for the DOE "Workers as Research Subjects: A Vulnerable Population?"  
 June 24-25, 1999, National Library of Medicine, Bethesda, Maryland)

I am Glenn Bell, have been a machinist at the Oak Ridge Y-12 Plant since 1968. I'm 51, divorced, ride a Harley-Davidson, and have a hobby of airbrush art. I also have symptomatic Chronic Beryllium Disease, which puts a damper on all my other activities. I'd like to share a few thoughts on how I feel about the disease, how I cope, and my concern for others in my situation.

**\*\*(Ziggy Overhead)\*\*** Humor helps get me through some of the down times associated with this, as any serious health condition. This shows the attitude I, and others, encountered when we first began collecting historical information on Beryllium. This has improved considerably, and I only hope the declassification moratorium will soon be rescinded.

**\*\*(Marilyn Miller Overhead)\*\*** This is the tragedy of CBD, when it reaches its terminal level. This lady was a secretary who never worked directly with Beryllium. The Toledo Blade series from which this was taken is in the handouts. It is somewhat sensationalized, but almost had to be, to emphasize the seriousness and severity of the problem.

**\*\*(Gardner Overhead)\*\*** This is from a DOE OpenNet release of a 1950 Oak Ridge newspaper report, of a physicist who died of beryllium exposure at age 37. The truth has been out there for years. We as workers were "protected" from this information by the "need to know" and "national" security catch-alls.

<Since being diagnosed with CBD in '93, I have dedicated a large amount of my personal time and resources to educating myself and others of the history, hazards and heartbreaks of this "orphan disease". As Dr. Lee Newman of National Jewish Hospital mentioned in an information seminar in Oak Ridge this Spring, CBD does not have the number of victims, the publicity, the or most importantly, the funding, of more common maladies in our society, such as heart disease or cancer. I have tried to bring the human, day-to day- coping to friends and co-workers. This is the message I will bring to the conference.>

'I developed breathing problems around 1980, which were diagnosed as asthma. I continued to work off and on in beryllium areas, although I questioned reassignment to a Be area in 1986. I was told the risk was minimal, even though my symptoms were quite significant, sometimes requiring hospitalization, even then. This, I found out much later, from a contractor medical director who had attended the first Beryllium conference in 1958, and published articles on beryllium disease in 1963 and '64. The true diagnosis did not come until Be-specific testing began in Oak Ridge in 1992, and I was confirmed as Oak Ridge's fifth case in 1993. There are now over 80 cases, 29 CBD and the rest

sensitized, with a strong probability of developing the disease at some point. I often relate my own experiences, as a single person, living alone, and facing the fear of waking at 4:00 AM with a serious attack of dyspnea, disoriented, not knowing immediately how serious the attack may be, and whether I should treat myself, or hit '911'. I have had to cancel social outings, family reunions and even grocery shopping due to breathing and fatigue problems. I have had two potential relationships deteriorate and disappear because the partner could not or would not cope with the frequent health problems, and the potential of their worsening. When first diagnosed, I was shocked, then angered, and my emotions still run full-circle. I am disappointed in being diagnosed with a disease that was probably preventable. I am disappointed that the workers were not told of the true dangers, or that the Dept. of Defense and Dept. of Energy did not do more for the workers when the DOD cases of Beryllium disease appeared in their facilities in the late '70's- early '80's. Beryllium disease has been found at every DOE site where specific testing has been done, and a contact in Washington state reports the finding of readings of beryllium in a fertilizer plant of over 200 ppm, where normal background in the soil is 3-5 ppm in most of the country. Locally, the only licensed toxic materials incinerator in the nation was found to have erroneously received mixed waste containing beryllium. Be is used in the tiles on the nose of the shuttle to prevent it burning on re-entry- it's doubtful that the incinerator would be effective, especially regulated for normal mixed waste burns. The positive side of my experiences, and there have been a few, have been to make the acquaintance of some truly caring people within the DOE and health care complex, and with other victims. I have learned to trust... with caution, something I once thought I'd never say about DOE. I have learned a wealth of information, which I try to pass on to others who may not have the time, energy, or resources to search out this information. I speak from the knowledge I have gained from these friends, and from fellow victims. Others have not been able to cope as well.

Other fellow CBD-victims have related the strains on marriages, due to a lack of understanding of the disease, combined with the affected spouse's involvement in the support groups, litigation, and self-education. For all the victims, as with all health problems, it is a family disease. These are issues non-affected individuals cannot fathom, until it happens to them. A huge plus, in my opinion, would be to minimize the legal entanglements, which would lessen the stress for victims and their families. An informational video, with victim/family interviews has been stifled by attorneys on both sides because of fear it would hurt their tort or comp cases. This is inexcusable, with lives and mental and physical health on the line for the victims.

Awareness of CBD / BeSensitization has been escalating as more testing and publicity is done. This is a list of Beryllium Sites in the DOE complex- seems to include about all of them... \* Be Sites overhead\* Newspapers have had both individual reports and series' dedicated to the issues and the victims. Some examples are provided in the handouts, and most major stories are carried on the [www.beryllium.org](http://www.beryllium.org) website. This address is also on one of the handout sheets.

**Chiles report / "Atomic Audit" overhead.\***

These websites have a tremendous amount of historical and informational data, for those who have time to sort through them.

Chiles report: Commission on Maintaining U.S. Nuclear Weapons Expertise  
<http://www.dp.doe.gov/public/chilesrpt.pdf>

Atomic Audit, Stephen Schwartz

<http://www.brook.edu/fp/projects/nucwcost/weapons.htm>

Questions?

Glenn Bell  
 504 Michigan Ave.

Oak Ridge, TN 37830-5345  
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 Work Ph: 423-574-2712  
 Work E-Mail: [agz@ornl.gov](mailto:agz@ornl.gov)

TO SAM DOE  
10LEED SLADE  
4-20-99

Sam:

This is one of the most callous responses we have had since our ordeal began. I'm still looking for the original, but these notes taken from my Journal Notes can be verified. Oak Ridge DOE concerns manager Rufus Smith compared the seriousness of CBD with "measles, mumps and chicken pox." Have him go tell Marilyn Miller's family that! I'll eventually find the original and send to you. More than one of the health groups from the Oak Ridge area have strongly suggested to DOE HQ that Mr. Smith be removed. He's slick- "ORO could find no evidence of impropriety", is one of his rubber-stamp answers. Hell, if you don't look, you certainly won't find!

Glenn 4-19-99

9-11-95 More persistent breathing problems all last week. Appt. With Dr. Bruton on Friday. Still gaining weight, weigh more than I've ever weighed. Bruton insisted is because of the Prednisone, since I've maintained 30mg to try to keep the breathing difficulty at a minimum. He said that dosage was enough to cause the weight gain, the fatigue and the sleeplessness I've been having. He suggested trying 10mg daily if I can do it without a lot of breathing difficulty. I called the office today and asked about switching to inhaled steroids again. He's supposed to let me know tomorrow. The weekend was uneventful (except for locking my damned keys in the Avanti at Kroger's!), with some fatigue and wheezing Saturday. Stayed in bed much of afternoon... this is getting old! **Talked with McKinney in PM, he had received a partial answer to one of his concerns to DOE, in which Rufus Smith of DOE had responded that McKinney's 5000.3B report did not meet the seriousness level requiring a Level IV report, comparing CBD to measles, mumps and chicken pox in its seriousness to health. Another example of brushing us aside.**

Subj: Beryllium Bill  
Date: 4/1/99 6:23:20 PM Eastern Standard Time  
From: david.boslego@mail.house.gov (Boslego, David)  
To: wheezin2@aol.com (Glenn Bell)

Dear Mr. Bell,

Thank you for your March 12th email message. I am assisting Congressman Kanjorski with the Beryllium legislation and appreciate your interest. I was speaking with Al Matusick yesterday and he mentioned that you were very involved with the group in TN.

On Tuesday, Congressman Kanjorski requested a hearing on Chronic Beryllium Disease in the Defense Industry. He is seeking to gather experts to help improve his bill, H.R. 675.

I understand you may have some thoughts on how to improve the bill. I would be very interested in receiving your suggestions. Since the bill was introduced in February, we have received a number of ideas which appear to have merit.

Please do not hesitate to contact me with your thoughts. I have included my email and phone numbers below.

I would also like to stress the importance of making your feelings about this bill known to your elected officials in Congress. Every year, thousands of bills are introduced but only a few are enacted. It takes a broad base of support for even the best bills to become law.

Again, thank you for your message. I hope to hear your recommendations and will help you out in any way I can with information.

David Boslego  
Ofc of Congressman Paul E. Kanjorski  
(202) 225-6511  
david.boslego@house.mail.gov  
>>

Mr. Boslego:

Thank you very much for your response on behalf of Congressman Kanjorski. I was diagnosed withh CBD in '93, and only now am begining to see interest and actions begin to take fruit in a struggle I, and many other Cold War victims have been persuing from the begining. My condition was treated as asthma until specific Be testing was begun in Oak Ridge in 1992. I was one of the first tested, resulting in a false-negative, which was quite common at that time. Worsening breathing problems prompted my pulmonary doctor to ask that the LPT be repeated, and the Lockheed Martin Medical Director opted to send me to the University of Pennsylvania Hospital, where Dr. Milton Rossman and staff performed the testing which confirmed my condition. I am now steroid-dependent, and have to be hospitalized sporiadically to bring my conditions under control.

I was the fifth victim of what has now grown to over 80 cases of CBD/BeS at the Oak Ridge Operations. We have three DOE/contractor plants, and only one, Y-12, where I continue to work, has had widespread testing. The recent testing at East

tennessee Technology Park has resulted in five cases of sensitization in less than fifty tested. I'm not certain if the first case of CBD at ETP is included in this number, but this case was found before formal testing began. I am told by a friend and contact at DOE HQ that there has been found a case of sensitization at Oak Ridge National Lab, which to my knowledge, also has not begun testing. The problem is real and growing.

I was pleased to see the direction that Rep. Kanjorski is taking with H.R.675. Although I believe the bill needs much improvement, it is a very good start. I, along with a vocal few of our own support group here, have asked legislators, DOE officials, DNFSB reps and others for congressional hearings into the Beryllium problems locally for over five years. We have been ignored and/or stonewalled. But as more publicity of the problems of legacy contamination, especially Beryllium, surface, they can no longer be ignored. As for suggestions to take before Congress, my first would be for strong, nationwide organization of the many existing victims' groups- and there are many-, along with labor groups, affected contractors, Beryllium research groups, as well as Congress. There is a wealth of information and expertise already in place, if it can be pulled together for the benefit of all. The knowledge of affected workers is becoming one of the most powerful contributions to the seminars and conferences I have attended. Many health studies are going on simultaneously without the benefit of each other's knowledge, as seems to be the case in the investigation by Congress. If these can be united, we will have a great resource of people with varied interests. I personally have over 15,000 documents on Beryllium, the diseases, and health-related correspondence. Others probably have more. We are willing to share our resources and experiences to make sure this is not an issue in the next generation of workers.

I applaud the offer in H.R. 675 for an apology from the government. This is no small token for those of us who have felt betrayed and victimized by cover-ups. This language should stay. Worker trust has been destroyed, and like all trust, is difficult to restore. But to work together, we must have that trust. This statement of apology will aid in restoring that trust.

I must repeat what I have found from the beginning of my own battle with the system- I believe our biggest stumbling block in an equitable solution is the legal system. Get the lawyers out of this! I am emphatic in my opinion of this. While I see the need and importance of protecting the rights of both sides, this can be done properly through a well-founded legislative process. When I read of millions of dollars and countless years wasted in the defense of legitimate claims, I am sickened. It is difficult to fight a debilitating disease and an uncaring legal system at the same time. Few of us victims want to file law suits, but have no choice if we are to recover any compensation at all. This is what makes Rep. Kanjorski's bill more humane than the present system, which simply does not work for the victims.

I have attended several DOE and contractor conferences in the last few years, and progress is being made. But the victims need to see results in the form of more and better testing, medical intervention, beter education, and reasonable compensation, which will include full medical insurance, not just for Beryllium-related problems. The pre-existing condition of CBD will prevent most of us from obtaining other insurance- I have been denied mortgage insurance by three major companies, due to my condition. We victims did not ask for a debilitating and potentially fatal disease in our line of work. We feel that we are deserving of as normal a life as our conditions will allow, and compensation to assure that we will not lose everything we have spent a career accumulating. This is already a reality for some.

Thank you again for your interest and for Rep. Kanjorski's efforts. Please look at the scope of this problem nationwide, and pull together the people and resources necessary to find a solution. Contact me anytime, and feel free to share the opinions expressed here with colleagues and others who may be able to further our efforts.

Regards,

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**Written Comments on 10 CFR 850  
February 25, 1999**

**Alfred Glenn Bell  
Y-12 Plant  
Oak Ridge, TN**

As a machinist and 30-year veteran of ORO's Y-12 Plant, I appreciate the efforts of those responsible for the draft of CFR 850. I was diagnosed with CBD in 1993 and with Y-12 now confirming over 80 cases of CBD and sensitization, and our sister plants also beginning to make confirmations of their own, I emphatically want to see future workers better protected. I was unable to present oral comments at the Oak Ridge Public Meeting, because of CBD-related illness, but an abbreviated version of my comments (without the benefit of an overhead projector for my presentation, I'm told) was made by a fellow CBD victim. I wish to expand on those comments and address specific points of CFR 850.

I agree with the growing consensus that possibly *no* exposure limit will be acceptable. The 'taxi cab' standard of 2 ug/m<sup>3</sup> has proven unacceptable in providing protection, as the mushrooming number of cases nationwide proves. With most sites realizing this, and further reducing exposure limits as well as implementing better monitoring, CFR 850 affords a chance to achieve the opportunity missed in the late '70's (Markey Files / DOE Forrestal), due primarily to legal obstacles. With the 'veil of secrecy' mostly removed, and mountains of declassified documents available, we now have a clearer picture of where we missed the boat in the past. Records show that the Government / contractors were highly concerned that more stringent limits would threaten production, hazards were minimized, over limits samplings were not reported to workers, procedures were not stressed, employees were encouraged to take breaks on machines and a prevailing sense that AEC / DOE would take care of its workers was the norm. AEC / DOE monitoring and inspection of operations and records did not result in the reporting and correction of deficiencies, continued production would not have allowed it. Now as production ceases, or is reduced, these practices must cease. This includes the destruction of pertinent records that has been documented even recently.

I agree with the BRAC and 440.1 recommendations to (1) minimize the number of workers exposed to Beryllium, (2) minimize the level of beryllium exposure and the potential for Beryllium exposure, and (3) to establish medical surveillance protocols to ensure early detection of CBD. I especially agree with (4), assist affected workers who are dealing with Beryllium health effects. This should include any and all testing and treatment, as well as any needed education and / or counseling for the affected workers and their families, for life, and without charge. This should be uniform across the complex.

I would like to see the establishment of a national case registry for beryllium victims, per 850.39, similar to the old Beryllium Case Registry maintained by Massachusetts General Hospital, then

'lost' in NIOSH. This would show all parties any national trend and numbers and seriousness of the CBD problem.

I question the validity of spending time and money on animal studies, which, from my research of data, have proven unreliable, and shift any such efforts to those of us known to have the disease. I would encourage further development of a genetic biomarker program, provided the participants have full and informed consent. Having attended DOE Bioethics forums, I understand and stress the importance of workers knowing exactly what the implications of such testing may be.

Present limits, both OSHA and the new DOE Administrative limits, can be shown to be non-protective. Anything above detectable should require respiratory protection. However, training should reflect the 'false sense of security' attitude often accompanying such protection. ACGIH is proposing a TLV-TWA of 0.2 ug/m<sup>3</sup> in their present draft, and even this may not be protective, given the historical 'neighborhood cases' contracted at supposedly less than half this limit. As with Rad and other hazardous controls, too much is better than too little. The Japanese study showing T-cells responding to levels above 0.01 ug/m<sup>3</sup> shows how very little of this toxin can cause damage. Also, restrictions for CBD/Sensitized workers based on smear rather than air sampling should be reconsidered, given the inadequacy of the correlation of surface contamination to airborne. I understand research to better understand this link is ongoing, and should continue.

Under 850.33, I believe aggressive efforts should be made to inform and educate private physicians, pulmonary specialists and occupational health professionals of the particulars of this 'orphan disease'. Dr. Lee Newman of NJMRC has addressed this issue by conducting seminars in Oak Ridge with the CBD Support Group, contractor management, and local physicians, and was very productive. This should continue, and possibly expand to include the knowledgeable professionals at the Hospital of the University of Pennsylvania, and any other accepted experts in the field of Beryllium disease and treatment.

I find the two-year pay and benefit provision of 850.34 unacceptable. This is seen by many of the Be-affected victims as a way to be 'put out to pasture' at the whim of DOE. While I agree with removal, retraining, and transfer (even to another site), I feel lifetime Workers' Comp benefits, with disability pay and no reduction in *any* insurance coverage, Be-related or not, should be provided. This issue is presently being addressed by Dr. David Michaels' office of DOE EH, to provide consistency in treatment and benefits of all victims of occupational illnesses, and this input should be considered in the implementation of CFR 850. A concern has been raised that benefits of retirees are often cut, and this should not be allowed to happen to persons diagnosed after leaving the workforce.

Companion to the consistent benefits mentioned, I, and others, believe litigation is our worst enemy. We victims do not relish fighting a debilitating disease and the system at the same time. A system similar to the Coal Miners' Black Lung Fund has been suggested by workers, as well as State Legislators. Establishment of such a system would remove the trauma, cost, and longevity of extended court battles, and offer a much more reasonable and humane solution. We have all heard of the outrageous litigation costs, and many of us do not have the time or the money for such circus acts. Establishment of reasonable settlement based on a degree of disability would be both acceptable and cost-effective. Testing, documentation, and legal monitoring by both parties would protect the rights of each.

Ongoing training should remain a priority, with emphasis on the dangers, even with minimal exposures. This should be done in the context of 850.36, in an easily understood format.

Again, I appreciate the efforts of all involved in this exercise, and truly hope the result will be protective of the present and future generations of Beryllium workers and their families.

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November 17, 1998  
Mr. Robert L. Bartley, Editor  
The Wall Street Journal  
200 Liberty Street  
New York, NY 10281

Mr. Bartley,

Please consider this a letter to the Editor:

This is in response to a recent opinion essay by Michael Fumento, which attempted to debunk the Nashville Tennessean's ongoing investigation into illnesses among workers and residents near America's nuclear sites. Mr. Fumento was quite emphatic in the denial of any of the allegations being true. I beg to differ.

I am a 50 year old machinist at the Oak Ridge (TN) Operations Y-12 nuclear weapons plant, where I have been employed since 1968. I began to experience breathing difficulty around 1980, which was diagnosed as asthma. I did not have asthma as a child. After specific testing, I was diagnosed with Chronic Beryllium Disease in 1993. CBD is an occupational disease, resulting from exposure to Beryllium, an element used in metallic and ceramic form in the nuclear and other industries. CBD affects mostly the lungs, and is considered to have an approximately 25% fatality rate. My own symptoms range from mild to quite severe, and often require hospitalization. CBD is treatable but incurable. Y-12 has over 80 cases of Beryllium disease and sensitization, and testing continues. One of our sister plants, East Tennessee Technology Park (the former K-25 Plant) which is featured prominently in the Tennessean's articles, has documented Beryllium disease cases, and has only begun to test. The Rocky Flats site, near Denver, has over a hundred such cases. Hanford, WA, released confirmation of its first cases only recently. Every site which has worked the toxic material and has done specific testing, has found the disease. Much can be learned about the disease on the Rocky Flats Beryllium Support Group homepage at <[www.beryllium.org](http://www.beryllium.org)>.

The ill workers and residents featured in the Tennessean's articles have not had the fortune of such specific testing, so their symptoms are brushed aside as "non-specific", or having "no proven work-relatedness". As I mentioned, my own case was misdiagnosed until specific testing proved otherwise. These other victims of the Cold War deserve the same.

The post-Cold War nuclear sites are undergoing multi-million dollar cleanup and remediation operations. If there is no threat to the environment or human health, why is all this effort and money being expended? And if the threat is real, is it not possible that it is, and has been a reality already?

Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830  
423-482-7641



October 2, 1998  
The Honorable William B. Richardson  
Office of the Secretary of Energy  
Forrestal Building  
1000 Independence Avenue  
Washington, DC 20585

Honorable Secretary,

I am Glenn Bell, a machinist at the Oak Ridge Operations Y-12 Plant, and another of the victims of Chronic Beryllium Disease as a result of occupational exposure to the toxin. I was diagnosed in 1993, after several years' misdiagnosis as asthma. I have since devoted much of my time and energies to learning about this elusive disease, and why every DOE site which has tested has found cases of CBD and sensitization. The dangers and need for controls have been noted, dating back to the late 1940's, yet proper precautionary steps were not taken to protect workers. I have participated in several Beryllium-related conferences and committees in the last several years, and have found many caring and devoted individuals in DOE, research and contractor groups who truly want to help those of us who must battle an incurable disease and an often uncaring system. Unfortunately, these trusted friends are in the minority. The Cold War's veil of secrecy persists.

There are now over eighty cases of Beryllium disease and sensitization at ORO, with cases diagnosed at East Tennessee Technology Park, the former K-25 Plant, even before formal testing began. As more records are discovered, the scope of the use and inadvertent spread of Beryllium is becoming more evident. Many workers never knew they worked with, or in proximity to the toxin. The hazards were downplayed, with multiple sites repeating the phrase, "You could eat the stuff." This laxity across the DOE complex has caused crippling pulmonary conditions and at least contributed to deaths of workers. We will never know the true scope of the problem, because the return rate on questionnaires has been less than fifty percent, and of that group, only about forty per cent have continued with the full series of testing. ORISE (Oak Ridge Institute of Science and Education), which heads the testing, has done an admirable job with the numbers they have had to work with.

I am another who takes issue with the blatant disregard for Deputy Secretary Moler's directive earlier this year, that DOE and contractor counsel would not contest the work relatedness of the disease to sites which had worked Beryllium. At the Argonne Beryllium Conference in June, I found that other sites' counsel, as well as ORO, were indeed contesting cases, to the point of even denial that Beryllium had been present at ETPP, despite evidence to the contrary. I wrote Ms. Moler's office of my concerns, I believe in mid-July, and as expected, the issues were referred back to ORO Employee Concerns. While this is normal and should be proper protocol, no progress has been made. I believe the largest single stumbling block in solving the health issues is legal maneuvering, and to minimize DOE and contractor counsel to the point of some sort of mediation, such as the Black Lung Fund set up for coal miners would greatly aid this situation. This has been suggested by state legislators, but could take years. I do not want to see a repeat of the Downwinders' battle, where DOE spent in excess of \$40 million defending the cases, yet denied a few million for the verified victims of exposure.

I have contacted local and State representatives with little success. I have appealed to the Centers for Disease Control, both through messages to their website and to Dr. Steve Redd, who is heading up the local health concerns of workers and residents. There has been no response. My interest in the CDC's involvement stems from the similarity of the health problems of Oak Ridge's Scarbro Community, a predominately black community, found to have a high respiratory incident rate, which mimics the so-called "neighborhood cases" of Beryllium disease in Ohio in the late '40's, when residents who never worked at the Be production plant contracted the disease at less than allowable emissions limits, and at least a quarter mile away. Scarbro also has been found to have a high enriched uranium sampling- enriched seldom occurs in nature, but we had plenty a quarter mile away at Y-12.

I feel strongly enough about the so-called "chilled atmosphere for safety" at ORO that I declined my 30-year service award recently in protest. I did not take this action lightly, as I have had a full and rich career at Y-12, learning and working with some of the most sophisticated equipment and processes in existence. But I, and others like myself, will not remain silent as we see more and more colleagues lose health and hope as time runs out for some. I realize my own condition is incurable and carries a 25% death rate. This is the future I see as my 50th birthday passes by.

The workers and residents desperately need a champion to aid in our battle with the system and the illnesses. I implore you to visit with us, most sites have support groups which would welcome sharing experiences. I have found in the conferences that I have attended, that once you put a face and circumstances to the statistics, both sides win. Just keep the attorneys (on both sides) at bay.

Thank you for your time, and I hope that we may meet in the near future. You have inherited a difficult job, but perhaps working together, we can make it better for all.

Sincerely,  
Alfred Glenn Bell  
Beryllium Victims Alliance  
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423-22-7641  
e-mail: wheezin2@aol.com

LETTER TO OAK RIDGE  
8-90

Oh, no... another Bellagram!

The debate goes on surrounding the Oak Ridge health issues, and the sides seem to be getting further apart. On one hand, the ill workers, and some ill residents, feel most, if not all, of their ailments can be linked to the Oak Ridge plants. On the other hand are those who debunk these notions, fearing lower property values and bad public image. As in most debates, the truth is probably somewhere in the middle.

I am usually reserved with my comments, and base any statements on the best knowledge and facts I can find. Perhaps this is why I have never been criticized or questioned on the validity of my own frequent letters to the Editor. But with the growing rift in the community over these health issues, I feel I must state my own case and that of others a bit more strongly. I am both an Oak Ridge resident and a documented casualty of a system that I have been told for thirty years is "within the limits". I am a stakeholder on both sides of the issues.

Comments have been made recently to which I take personal offense. Some of these have been made as a vendetta toward others who have spoken out on the health issues, and made with some glaring flaws. First of all, I object to the insinuation that Chronic Beryllium Disease is "politically correct", because it is proven, and occupational. Any search of the production of beryllium will show that the hazards were known in the 1940's, disease and deaths recorded, but little done to further protect the workers. The limits have been known for years to be non-protective. To everyone, it seems, except the workers. Oak Ridge Operations, not just Y-12, have been using beryllium since at least as far back as 1950, most of the 80-plus cases of disease and sensitization occurred after that point in time. My own first exposure came two decades later. Diagnosis of the disease was not made until Y-12's first case in 1992, with my own misdiagnosed case coming the following year. Specific testing revealed the true, occupational nature of my illness. Most of the ill workers from ETPP have not had that questionable luxury.

A mention has been made that the CBD patients are receiving benefits. While it is true that my myriad of medicines, treatments, hospital stays, and doctor visits are covered by insurance, the "benefits" of near-constant breathing difficulty, midnight trips to the ER, side effects of medicines, and ineligibility for most insurance tend to be quite irritating, in the very least. Those who have not had the benefit of specific testing and are denied coverage will have much stronger reactions to a system and a public that does not understand or does not care.

This is the situation that I found myself in before the true nature of my disease was found. All the while contractors, beryllium producers and DOE were fighting more stringent controls which OSHA/NIOSH wanted implemented (Markey Files, 1977-79). I questioned, in 1986, being reassigned to a beryllium inspection area, despite often significant breathing problems, then diagnosed as asthma. The occupational experts at Y-12 advised me that

there was little danger, only 1-2% of those exposed to beryllium were likely to develop the disease. Specific testing has now shown an over 10% rate in machinists, my craft group. So I continued to 'wheeze' along until the CBD diagnosis in 1993, continuing to work with the very toxin which caused my problems to begin with.

My patience wears thin, after six years of knowing my problems are occupational, and seeing the denials at other sites that beryllium was ever used there, then proof readily available in DOE's files to the contrary. If this is the case with a recognized, proven illness, how can there be denial that the other illnesses are work-related? This rationale sounds much like saying that, since I have never been in a serious auto accident, they must not be a problem. The truth is much clearer when you deal with it every day.

For more education on beryllium disease and its impact, check out the links from the Denver Beryllium Support Group at <http://www.beryllium.org>. Those without Internet access may check at the library. The proof is there. The same can be said for much of the other, as yet 'non-specific' exposures.

Glenn Bell	
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Oak Ridge, TN 37830	423-574-2712 (Work)

Re: Beryllium Workshop Reflections  
Date: 98-06-10 08:14:22 EDT  
From: PAUL.SELIGMAN@ch.doe.gov (PAUL SELIGMAN)  
To: Wheezin2@aol.com

Glenn,

Thanks for copying me on your note to Maria. With some increasingly rare exceptions (as you indicate), the message about beryllium seems to working its way into the minds and souls of managers and health professionals in the DOE complex. Even though I could only stay for one day, I noted that all the presentations except one dealt with how to recognize and fix the problem, rather than arguing about whether beryllium really is a problem. To me, it reflects the progress that is being made.

It was good to see you again. As always, appreciate your vital role in bringing "ground truth" to everything we're trying to do.

Best wishes.

Paul

Reply Separator

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Subject: Beryllium Workshop Reflections  
Author: <Wheezin2@aol.com> at INTERNET  
Date: 6/9/98 10:29 PM

Maria Pavlova, DOE/EH-61  
19901 Germantown Rd.  
Germantown, MD 20874

Dear Maria:

I want to thank you for once again including me in another of the Beryllium workshops. The Argonne conference was probably the best "meeting of the minds" I have attended since I became involved as an affected worker. The better I get to know the persons involved as individuals, instead of simply representatives of some special interest group, the more I learn and respect most of the knowledge and opinions that are presented. There are differing viewpoints, as we saw in the presentation from the doctor from Pantex. I agree

with your description of a "chill" going through the audience when he made his presentation. I do not know the gentleman, or his background, but the presentation had a militaristic tone which dehumanized the potential victims and basically implied that certain casualty rates were acceptable. In looking over his handout, almost everything in it runs counter to the 18,000 or so pages of documents I have collected in the last four years. But differing opinions do make these conferences much richer. No single individual is an expert in all fields. We have a rare opportunity to educate ourselves and each other, and I do see that happening. I think one of the most important presentations was the one from the MK Ferguson rep, who stressed the importance of protecting and informing the smaller sub-contractor personnel, who have less resources than the major contractors. There is a strong possibility of a break in the chain of communication by the time it trickles down to those most at risk. There will be more hurdles ahead, with litigation, comp claims, and disagreements over testing. But we must continue to find the answers to the complex issues surrounding this and other unpleasant legacies of the Cold War, and protect the next generation of workers from these mistakes. We need more of the informed education that has come out of meetings such as these, and I am again thankful that you were ordained to be a major player in this serious arena. Thanks to all of the friends and acquaintances I have made- we are making a difference.

Glenn Bell  
Beryllium Victims Alliance  
504 Michigan Avenue  
Oak Ridge, TN 37830

gore.2

Mr. Vice President:

The letter below was submitted to the Oak Ridger, the Knoxville News-Sentinel and the Nashville Tennessean to reinforce the perception of of the "chilled atmosphere for safety" noted in my letter of 5-6-98. The posting was published in the Oak Ridger and the Sentinel, but i am uncertain of publication in the Tennessean. I feel I speak for many in my opinions, and received several supportive phone calls after the publication. We sincerely need the assistance of the Executive Branch help solve the multitude of problems at ORO.

Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830

The Oak Ridger Online - Opinion -  
Thursday, April 16, 1998  
Your Views  
Last modified at 1:28 p.m. on Thursday, April 16, 1998  
Refuses award in protest  
To The Oak Ridger:

(Copy of letter to Todd R. Butz, Lockheed Martin Energy Systems manager of the Oak Ridge Y-12 Plant.)

Today I received the award form to choose from a selection for my upcoming Thirty Years of Service Award at Y-12.

This is to inform you that I am refusing this award in protest of the Oak Ridge Operations' "chilled atmosphere toward safety," the continued reprisal of whistleblowers and others who come forward with health and safety issues; the ongoing denial of site-related health problems, despite confirmation in cases such as chronic beryllium disease, where specific testing has been done; growing reports of reprisals of employees who report sexual harassment; and reluctance of management to correct these and other employee concerns, some of which have dragged on for months or years, such as traffic safety, OSHA reporting, disability issues, insurance problems, and procedural compliance.

I regret my token action being necessary, as I have had a very interesting and productive career at Y-12 in the last 30 years. I have had the pleasure of knowing scores of wonderful

gore.2

I people, and I am saddened that the perception and realities in the workplace are often very different.

This week's Ridgelines, the LMES newsletter, shows a portion of the results of last fall's Ethics Survey. Most of the selected answers are disheartening, and show no improvement over the survey of about three years ago, which was reportedly seen by management as a red flag for improvement and better management/employee relations.

I repeat what I have said publicly and privately for some time, this confrontational atmosphere cannot continue if ORO is to survive.

In the many health conferences I have attended, I have met many caring and committed contractor and Department of Energy personnel who want to see change and make a difference. The employees certainly want this also.

Please help put the past differences behind, and perhaps I will accept my next 30-year award.

Glenn Bell  
504 Michigan Ave.



April 6, 1998  
The Honorable Albert Gore, Vice President  
1600 Pennsylvania Ave.  
Washington, DC 20500

Dear Vice President Gore:

Today's Knoxville News-Sentinel reported the award and recognition of Oak Ridge DOE Manager Jim Hall for "outstanding leadership". I am personally disappointed in this action, given the growing negative atmosphere at the Oak Ridge Operations. The ever-growing health issues, the reprisals against whistleblowers, the FBI involvement in the DOE couriers scandal, and DOE's refusal to bring these issues to a positive resolution, all contribute to a negative air of distrust and confrontation between ORO management and the affected individuals and community. While it is true that strides have been made in some areas, the "chilled atmosphere for safety", as the perception has been called, makes one wonder if Washington is as in touch with the health disasters at the DOE sites as with the natural disasters of recent weeks. I have personally contacted Mr. Hall's office several times for assistance, after being diagnosed in 1993 with Chronic Beryllium Disease, contracted in my work at ORO's Y-12 Plant. I have never received a response, either from Mr. Hall personally, or from his subordinates. DOE and contractor attitude seems to be to ignore the problem, hoping it will go away. I feel Mr. Hall's monetary award should be contributed toward resolution of some of the unanswered health issues at ORO. We, the affected and ill workers, desperately need the cooperation of both local and national DOE leadership, as well as that of your office. Please learn of our concerns and lend your assistance.

Sincerely,

Alfred Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830

Date: February 7, 1998  
To: Rufus Smith  
USDOE  
P.O. Box 2001 M-5  
Oak Ridge, TN 37831  
Subject: Scarbro Community Study Comments

Mr Smith and Study Panel Members:

I attended the public meeting at the Scarbro Community Center on February 5, and offer the following observations and comments:

Although I am not a Scarbro resident, I am an Oak Ridge resident, an employee of Y-12 for twenty-nine years, and the victim of a sometimes-fatal occupational disease contracted in the course of my employment. I agree with the need for the study and characterization of any possible links to Scarbro community health problems and the ongoing and legacy contamination from the ORO facilities. Since Scarbro is probably the closest residential community to any DOE / DOD facility, I think it is paramount that wide-ranging, independent studies be given this valuable community. The suggestion of working as a combined group with other agencies, such as the CDC and the State would aid in more resources and personnel, and I support the idea. Experienced occupational physicians, both locally and from outside the area would be welcomed.

I also agree with attendees that the proposed surveillance, in its present proposed form, does not go far enough. While the known contaminants of mercury and several forms of uranium are obvious needs for concern, they are far from the most toxic potentials. Lead, thorium, beryllium, cyanide, acetonitrile, tungsten, and a host of other materials worked at the Y-12 site have been historically "misplaced" or discharged. I am finding almost weekly of some toxin I may have worked with or around years ago, and did not have a clue of its presence. Some of these materials are quite deadly in small quantities, and may have found their way into the community through discharge or by employees unknowingly taking traces of the toxins into their homes and the community on clothing and shoes. These would not show up in your studies.

"Acceptable limits" is a term I have problem with, also. Y-12 now has in excess of seventy-five cases of Beryllium sensitization, according to a recent ORISE (Oak Ridge Institute of Science and Education) draft report. Rocky Flats has over twice that number of cases. These were contracted with the contractor supposedly operating "within acceptable limits". I believe any testing should be done to the lowest detectable level, and reported accordingly.

A thorough survey of the *people* would seem to be a vital part of any study. Symptoms consistent with exposure to the known toxins, and any synergistic effects of a combination of such toxins, should be sought out and verified or dismissed. My own case of Chronic Beryllium Disease was misdiagnosed as common asthma, before specific testing was done to verify the true nature of my sometimes severe breathing problems.

Thursday night's meeting was sparsely attended, and I am told ill-publicized. Communication with the community, and the importance of their attendance and input should be improved.

I viewed the meeting, at times confrontational, which could be expected of a community wanting answers and solutions. However, the presenters should not add to the confrontation, as I saw in the responses at times. DOE and its contractors have a very real credibility problem. This was admitted by Dr. Paul Seligman of DOE Washington's Health and Safety Office, and much effort has been seen to correct this. But confidence and trust are hard to build in a confrontational atmosphere. There will, no doubt, be other such confrontations and tough questions, as more dialogue develops. DOE must attempt to maintain a poise and neutrality through this, if trust is to be built.

I sincerely hope that this is a positive start to mending some of the strained relations and identifying any potential or real problems of Oak Ridge, starting with Scarbro, and hopefully expanding to Woodland, the Blair Road community, and any other areas where concerns are raised. It is hard to believe "there is no health problem in the area related to the plants", yet several decades and millions of dollars are being dedicated to clean up- what?

Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830

January 26, 1998

Subject: Support of Joseph Carson

Dear Sir / Ms. :

I would like to offer my support to Joseph Carson in his efforts to correct the very real perception of a "chilled atmosphere" toward health and safety in the Oak Ridge Operations.

I am a 49-year old machinist and 29 year veteran of ORO's Y-12 Plant. I was diagnosed with Chronic Beryllium Disease in April 1993, as a result of occupational exposure to the toxin in the course of my employment. My asthma-like symptoms range from mild to quite severe at times. CBD has an approximately 25% death rate, and ORO has identified about fifty confirmed or sensitized cases of the disease. Since being diagnosed, I along with other CBD victims, have attempted to collect data and information concerning the elusive disease from DOE and contractor sources. There have been a number of frustrations and stumbling blocks, as we have been denied records that were, as we later found, to be public record. Many of us feel we have been given the "revolving door" treatment by DOE and contractor management, and the confrontational atmosphere continues today.

I wrote the office of Secretary Pena on November 15, 1997, voicing my support of Mr. Carson's allegations, and again on December 21, 1997, to again show support, and speak out on the unfair treatment I believe he has received. Mr. Carson has shown to be a moral and ethical person, who has chosen to put his career on the line in the interest of persons like myself, who have been frustrated and misguided by a system which we did not understand. The approximately 18,000 pages of records I have collected since my own investigation began has given me more of an education than I ever wanted. Mr. Carson has helped unravel some of the web of confusion I have encountered, and has been an inspiration for me to continue a seemingly unwinnable struggle. To force him to leave ORO is to deprive persons like myself of a valuable resource, and would only confirm the allegations that he makes. Enough lives have been damaged by the health effects legacy of the Cold War. The focus now should be on solving and treating the problems, not creating more. Anything less will be criminal.

Sincerely,

Alfred Glenn Bell  
504 Michigan Ave.  
Oak Ridge, TN 37830

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**Department of Energy**  
**December 15, 1997**

Mr. Alfred Glenn Bell  
504 Michigan Avenue  
Oak Ridge, Tennessee 37830

Dear Mr. Bell:

I am writing in response to your electronic mail message of November 15, 1997, to the Secretary of Energy Fredrico Peña. I enjoyed our discussion at the Oak Ridge Workshop and your previous correspondence to me about this workshop.

The Department of Energy (DOE) continues to strive for an open and honest airing of health and safety problems at all our sites. The perception that the Department is not honest and open is one of its biggest problems. The Secretary has made it clear to all of us that a more open DOE is one of this Administration's top priorities. To this end, we are working to make it clear that DOE is open to criticism by airing its problems openly, working to solve those problems, and not retaliating. Messages like the one you sent to the Secretary are helpful to DOE in pointing out areas where we need to improve. Testimony at the Beryllium Rule Advisory Committee meetings also made clear the need to be more proactive in assisting employees with chronic beryllium disease in obtaining the medical coverage and compensation they are due.

Thank you for your concern in this regard. DOE will continue to make every effort to encourage workers to identify what they believe to be health and safety problems either openly or through existing employee health and safety concern programs where such issues can be raised anonymously. Employees who identify problems and suggest solutions are contributing to making the DOE workplace safer. We will continue our efforts to ensure that such concerns can be brought to management's attention without fear of retaliation.

Sincerely,

Paul J. Seligman, M.D., M.P.H.  
Deputy Assistant Secretary  
For Health Studies

cc: Robert W. Poe, DOE/OR

March 9, 1995

Paul J. Seligman, M.D., M.P.H.  
Deputy Assistant Secretary for  
Health Studies

Dr. Seligman:

I feel further communication is in order involving the issue of Chronic Beryllium Disease at DOE installations, including, but not limited to, Oak Ridge Operations. I appeal to the Health Studies Office for any assistance or education it may be able to provide.

At the risk of sounding callous or bitter, I feel your office has not talked with the right people, or at least not enough people. To my knowledge, none of the CBD victims themselves have been contacted for input. Those of us who are most affected by the symptoms, stress, and uncertainty of the disease have much to contribute. Most of this contribution cannot be seen on a report or spreadsheet.

As the number of victims increases, a glaringly obvious pattern of stress, depression, and distrust develops. In dealing with specifics, I repeat my affirmation that I have had little problem in my dealings with co-workers below middle management level when asking their assistance. Industrial Hygiene data workers have been co-operative in the monumental task of collecting years of information from a blotched system. The problem remains of up to ten-year gaps in some of the monitoring records. Yet employees were told there were no high readings. This, with hundreds of samples missing. How do they know none were high?

I think those of us who have the disease know how we came to contract it. The first Beryllium project at the Y-12 Plant, in 1950, was conducted under extremely strict controls, as documented in the 1952 report of the project. No records of confirmed cases of CBD have been unearthed from this project. However, a decade later, when the Beryllium Production Shop was set up in Building 9201-5E, the controls went out the window. Full-scale production would have been impossible under the restrictions of the 1950 Project. When I began work in the Be/BeO Production Shop in 1968, the area was as wide open as any non-toxic machine shop. Engineers, secretaries, and security personnel came and went at will. Construction workers by the dozen were constantly in the area, some working, some merely passing thru. How many of these incidental contacts may have been Beryllium sensitive, but were not categorized as Be Workers, and thus not included in the ORISE study? As machinists in the Be Shops, we were encouraged to take snack, coffee, and smoke breaks on the machines. Beryllium metal was machined on open lathes, dry, with only a hose from the shop's house vacuum system taped to the tool post at the point of contact. Neither respirators nor breathing zone monitors were in use or required in the machining or inspection of Be products. Monitoring stations were checked for each machine in the area, then averaged, altho' only a few of the machines may have actually been running. In-depth background checks of employees' pulmonary histories were apparently not done. The Be Patch Test,

developed in the mid-fifties, was not offered. Granted, the patch test had a slight possibility of sensitizing at-risk employees, but the option was not made available. Training in Beryllium's potential hazards was supposed to have been in place, but no one seems to remember implementation. My own attempts to locate any training records at all, prior to 1988, have proven fruitless. Review of DOE(AEC) and MMES(Union Carbide) proceedings shed more light on a multitude of travesties that were simply not supposed to happen.

As my asthma symptoms increased, I questioned Plant Medical Management as to my fitness to work in any Beryllium areas, specifically, Product Inspection, in early 1986. Had a serious attempt been made at that time to confirm or reject CBD as an issue, I would have had an almost eight year head start on specific treatment, which may have lessened the frequency and severity of symptoms.

I have been in sporadic contact with ORISE to try and find more information about their studies and any new news of the malady and its spread. Donna Kreigle of Orise has been helpful, and promises a report of the recent Beryllium Disease Conference as soon as it becomes available. Her brief address to our Be Support Group on 11-30-94 projected more uncertainties than enlightenment on the findings of the participants, but was educational, nonetheless.

The negativism from upper management is probably the most frustrating issue in the CBD ordeal, other than the physical symptoms themselves. Questions are ignored, minimized, or explained away. Comments from Plant Manager Jeff Bostock, responding to alleged inaccuracies in a CBD victim's Occurrence Report elicited the comment "what does it matter?" that the report was not accurate, the author of the report might not have all the facts (the employee was not allowed input in preparation of the Occurrence Report). In my case and others, no report was even generated, despite persistent requests on my part. The report is mandatory under DOE Order 5000.3B, as I interpret the Order, even at its lowest level of classification. As our network expands, we are finding similar happenings in other DOE operations, such as Rocky Flats, and in the private sector. Conspiracy? Cover up? We don't know. Yet.

More cases of CBD are being confirmed. More questions are being asked by more victims who need and deserve less evasive and more complete answers. Our plant was recently shifted into a "stand down" mode of operations by the Defense Nuclear Safety Board due to gross operating and procedural deficiencies. Y-12 as a whole has been on "needles and pins", almost afraid to do even minor operational and maintenance tasks for fear of more scrutiny. Mandatory meetings and training sessions stress the need to fully understand and execute our job requirements(can you spell LIABILITY ?). Upper management meetings and videos to the plant population stressed, in part, that "This plant, perhaps this company, does not follow procedures"- Gordon Fee, 10-94. He also emphasized the negative public image and credibility gap. Plant Manager Jeff Bostock affirmed, "we're not following our own procedures", "not doing what we say we're doing", "we must live within the bounds of our safety envelope", "people don't believe managers are serious"(comments like his own "what does it matter?" statement do little to improve this view). He continues, "We are going to do

things the way we say we are.", "we are not going to violate our safety envelope", "we will encourage attention to detail". I really think upper management needs to introduce themselves to us peons, and find out what goes on in our world. Lip service to the masses that we must change our attitudes and way of business mean little if management don't know who "we" are on a personal basis, and the "why's" of our attitudes. One CBD victim aptly stated this in one of his letters to MMES management, when he said, "I have been told that I have made some people mad (in his persistence to locate and document records and events). They will get over being mad. Will I get over Chronic Beryllium Disease?"

Apathy, personality, and fear of reprisal have prevented all but a few of us from publicly expressing our fears and concerns of the CBD issue-and "publicly at this point, means within the MMES/DOE Operations. Adverse national publicity is not my goal. I hopefully have several productive years at ORO, and do not want to see Y-12 padlocked. But in talking with both present workers and retirees, the song remains the same-too little was done in the past, and not enough is being done now, once diagnosis is made, to seriously address issues we believe important. I want to again emphasize my appreciation for those who have helped-ORISE, Departmental Management, the numbers-crunchers in Industrial Hygiene, most (but not all) of Y-12's Medical Staff, Plant Records, and others who have been there for me with a sincerity and compassion. Their efforts show me there is hope. From the other side, the appeasement of a quick fix, "God's in His Heaven, and all's right with the World", is not entirely true. To use a crude comparison, if a prison system is corrupt, the warden may not be the best choice to ask what's wrong.

Understanding that some of these issues are outside your office's jurisdiction and expertise, I ask that my concerns be channeled to appropriate areas of Secretary O'Leary's control. The CBD victims need more and dedicated help in our ordeal. Thank you for any help or direction you may provide.

Sincerely,

Alfred Glenn Bell  
504 Michigan Ave.  
Oak Ridge, Tn 37830



December 30, 1994  
The Honorable Hazel O'Leary  
Secretary of Energy  
Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Ms. O'Leary:

As a 26-year veteran of the Oak Ridge Operations, I wish to ask your assistance and that of your Department in resolving an issue at the Y-12 Plant which has become a frustration to those of us involved.

In April, 1993, I was diagnosed with Chronic Beryllium Disease with an asthmatic component, as a result of occupational exposure during my course of employment. CBD is a rare and sometimes fatal pulmonary disease caused by the combination of exposure and hypersensitivity to microscopic particles of Beryllium, a toxic, but quite useful element used in metallic and ceramic form in nuclear weapons production. I was the fifth Y-12 employee to be diagnosed with the disease; there are now twelve; and testing continues. Documentation and a chronology of my work history in Beryllium areas is included for your information.

Once diagnosed with the malady, several positive steps were taken by Martin Marietta Energy Systems to lessen the blow, as it were, in dealing with a potentially serious health problem. The Company's Workers' Compensation carrier assumed the medical expenses and wages for CBD-related absenteeism; a support group has been established, and is invaluable in terms of mutual support and information exchange. Classes were provided, as an option, at the Methodist Medical Center of Oak Ridge for Pulmonary Rehab, which stressed education and exercise for persons with pulmonary problems. These have all served to make a stressful situation a little easier, and are truly appreciated.

Problems have arisen, however, as the CBD victims attempt to gather records and information relating to our exposures, and how they were allowed to happen. Records supposedly available under Public Laws, OSHA and NIOSH regulations, DOE and MMES Orders, are increasingly out of reach. Once discoveries were made that possible mistakes, oversights, or non-compliance to established procedures had occurred, the information became harder to obtain. While most is not outright denied, it is very difficult to receive in a timely manner. The problem, I want to emphasize, is not with immediate or Departmental management, or the various informational departments, such as the Technical Information Office, Plant Records, Health Services, or Benefit Plans, but somewhere above Middle Management. Letters and meetings with both DOE and MM Plant Managers have thus far gone largely ignored. No information requested is classified, or is intended to heighten scrutiny of an already unpopular dinosaur of the Cold War era.

My career at Y-12 has been a mostly rewarding experience. As the downsizing resulting from Washington cutbacks and winning (?) The Cold War continues, it saddens me to see the technology we have in the Oak Ridge Operations stagnate and falter. The bright side of the picture is the ongoing

Technology Transfer and Work for Others projects, of which I am proud to be a part. I am presently assigned to the NIST/Oak Ridge Metrology Center, which is employing phenomenal, State-of-the-Art measuring accuracy. This is some of the most intriguing and satisfying work I have done in my career at ORO. I do not wish to jeopardize this uniqueness by putting Oak Ridge under a public microscope. I do want the mistakes of the past rectified for myself and others who have been placed in harm's way as certainly as any of our troops in combat.

I was impressed with the positive and definitive approach your Department, and you, in particular, took regarding the Human Radiation Experiments. I sincerely solicit the same compassion, understanding, and pursuit in the issue of the Chronic Beryllium Disease victims.

Yours truly,

Alfred Glenn Bell  
9737 Metrology Lab MS 8091  
Y-12 Plant  
Oak Ridge, TN 37831  
615-574-2712/2713 (Work)  
615-482-7641 (Home)

March 25, 2000

Senator Fred Thompson  
Chairman  
Senate Governmental Affairs Committee  
340 Dirksen Senate Office Building  
Washington, DC 20510

Attention: Libby Wood

Subject: Comments for the record of the Committee's March 22, 2000 Hearing on DOE health issues

Dear Senator Thompson,

I had the privilege of attending the hearing on Wednesday and applaud the leadership you and Senator Voinovich are bringing to this tragic issue.

You and your staff have given my situation as a "whistleblowing" DOE safety engineer much time and attention over the years. I truly wish I were wrong in my allegations, that DOE had an objective basis for its ad hominem attacks on me as "unbalanced," "a threat of workplace violence," "disgruntled," etc, if it meant that the DOE workers I'm paid to help protect weren't sick or deceased due to unsafe and unhealthy conditions in DOE.

My ten years as a DOE safety engineer and "six-time prevailing" DOE whistleblower have given me some hard-won perspectives. In my opinion, Congress, GAO, citizen groups, the media and senior DOE management have yet to put their finger on an essential part of DOE deficient ES&H programs - DOE (and its contractors) safety professionals in the past and continuing into the present largely suborn their professional duty when they perceive duty might entail economic risk to them (i.e. the possibility of workplace retribution).

There is no acceptable resolution to the very sobering ES&H issues in DOE that does not presuppose DOE's being characterized by a safety conscious work environment and trustworthy - ethical, competent and accountable - safety professionals. Neither a safety conscious work environment nor trustworthy safety professionals have ever been adequately present in DOE. I realize that Congress cannot legislate morality. Clearly there is a moral component when a safety professional puts his/her professional duty - to hold paramount the health, safety and welfare of the workers and public in the performance of their professional duty - ahead of job and career in DOE by voicing concerns (even if done precisely as DOE requests) about deficient safety programs and conditions.

But Congress can, even if it can't fix the problem by legislation, recognize the problem exists - DOE safety professionals have not been and still are not adequately trustworthy by the objective

standards of the codes of ethics/rules of professional conduct of the safety professions.

I think the most relevant requirements of these codes are:

- o hold paramount the health, safety and welfare of the workers and public in the performance of professional duty.
- o inform responsible people and organizations as well as impacted or potentially impacted parties when one's professional judgement is overruled in a matter involving worker and/or public safety.
- o report knowledge of violations of the code of ethics by other safety professionals to the appropriate professional body.

I think you'll agree that if DOE safety professionals had exhibited more trustworthy professional performance over the years, Wednesday's hearing and all the tragic human cost that necessitated it, would not have occurred. If you agree that DOE's safety professionals were not adequately trustworthy in the past, I think you'll also have to agree that there is little objective basis to claim that they are adequately trustworthy now.

Everyone who has the privilege of being a safety professional (in DOE and elsewhere) is responsible - not because of employment law, but as a condition of membership in a safety profession - to adhere to the above rules. Unfortunately, DOE and its contractors are so jealous of their prerogatives as employers that they don't acknowledge, let alone support, any safety professional who is foolhardy enough to appeal to his/her profession's code of ethics when their supervision doesn't want to hear it. That's as true in DOE in March 2000 as it was 10, 20, 30 and more years ago. Conversely, no safety professional in DOE has any real reason to fear professional repercussion for unethical/incompetent professional performance - DOE stakeholders (including Congress) are largely ignorant of the explicit duty of safety professionals how it distinguishes them for all other DOE/DOE contractor employees - others may be "free" to voice safety concerns, but only the safety professionals are "obligated" to - and how to report knowledge of a professionally blameworthy behavior by a safety professional to the appropriate professional body.

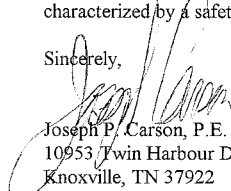
I think this situation can be fairly readily improved with some intentional effort, but I don't think this will happen without greater recognition of the unique role, responsibility and accountability of DOE safety professionals - both by the safety professionals themselves and other DOE stakeholders. This may be controversial and contrary to the present mood of Congress, but I think the emphasis on bringing external oversight of DOE is somewhat misguided. External oversight, in and of itself, will not result in DOE being characterized by a safety-conscious work environment and trustworthy safety professionals - which is essential to real improvement of DOE's ES&H programs.

I make no pretense of my reasons for risking and paying so much to adhere to my profession's code of ethics in my job as a DOE safety engineer. I'm a Christian, I believe one's work matters to God and I know that I, as most other professionals, will spend the greatest portion of my conscious hours in life preparing for or pursuing my career in my chosen profession. Wanting to be ethical and competent in my profession logically follows. Being an ethical and competent engineer may be a modest career goal, but I want it very much.

It doesn't require an act of Congress for DOE to establish policy that encourages, if not requires, DOE (and its contractors) safety professionals (and safety technicians) to be independently licensed or certified. I don't think it would require a law for OPM to phase-in a requirement that all federally employed engineers in entry level positions will be registered as an "engineer-in-training (EIT)" while those in mid-career positions or above will have attained the status of licensed professional engineers (P.E.s). Lawyers and medical doctors who work for the federal government are required to be licensed, federally employed engineers should be also.

The financial and human cost of incompetence and negligence on the part of DOE safety professionals, past and present, is what Wednesday's hearing was all about, in my opinion. I hope Congress, in its efforts to compensate the victims of DOE's unethical, negligent and incompetent safety professionals, also takes steps to facilitate positive change in DOE to where it is characterized by a safety conscious work environment and trustworthy safety professionals.

Sincerely,



Joseph P. Carson, P.E.

10953 Twin Harbour Drive

Knoxville, TN 37922

(865) 675-0236

<jpcarson@mindspring.com> <<http://www.carsonversusdoe.com>>

Attn: Darla Cassell, Committee Clerk  
Subj: Whistle Blower reprisal  
Date: 3/26/00  
To: libby\_wood@thompson.senate.gov  
From: Richard Coen, [bajabum1@aol.com](mailto:bajabum1@aol.com)

Senator Fred Thompson  
Chairman  
Senate Governmental Affairs Committee  
340 Dirksen Senate Office Building  
Washington, DC 20510

Attention: Libby Wood

Subject: Comments for the record of the Committee's March 22, 2000 Hearing  
on DOE health issues

Dear Senator Thompson,

I have been working in the nuclear industry for 18 years. Starting out at Sandia National Laboratory, I was very proud of the work I and my colleges accomplished. As I gained experience, I began working in support of the DOE production facilities. I discovered a completely different mind set. As a young idealist, I thought my experience and unique abilities would make a difference in the safety environment at these production facilities. I was sadly mistaken. After 18 years I have watched my career as a Nuclear Criticality Safety Specialist come to a close. I have been forced to blow the whistle at an exDOE facility over a safety issue. Although the Paducah Gaseous Diffusion Plant is now an NRC regulated facility, the same personnel and mindset still exist from the DOE days.

I have found it very interesting that teachers and beauticians are required to be certified/licensed, but those professional involved in the nuclear criticality safety of our government affiliated nuclear facilities are held accountable only to there management. Management decides who survives in the profession.

In the past, their was a group of us that passed a safety problem management was trying to circumvent on from professional to professional. As we were being removed from the project, we would pass our information on to the next group charged with handling it. The problem would usually be passed to a new inexperienced engineer. We would monitor the issue until it was properly resolved. This group of professionals is dying off or retiring. Some of us are being terminated and blackballed.

We are losing the original design safety bases at many of the facilities. The consequences for future generations will be severe. I, for one, have grandchildren. I have done my best as a professional to make a better world for them with my knowledge.

However, since my knowledge of nuclear criticality safety is no longer welcomed at key facilities vital to our national security, I am offering my insight into to the management and political environment which have led to my professional demise. I am currently awaiting the results of the NRC and OSHA investigation of my situation.



March 22, 2000

To the United States Government

RE: Senate Hearing on DOE Illnesses

I am Linda Cox and I worked at the K-25 plant for 20 years. I started out as a janitor, worked my way up to a supervisor in that department and was over the laundry for awhile. When I was laid off, I was a compliance officer and building operator. It was my job to take care of the maintenance for six buildings. I did the paperwork and got rid of contaminated waste for custodial, laundry and the respirator department. I was also a relief supervisor for those three departments and for another building operator when needed.

My husband, Lynn Cox, also worked there for 20 years and was a Captain in the Security Department at the time he was laid off. He, too, had worked his way up the ranks and besides his normal duties he was assigned to special DOE projects.

I started getting sick in 1994, although, some time before that I was experiencing extreme tiredness and could not do what I used to do. I chalked that up to working two jobs most of my adult life, hard work and just age. It was in late 1994 when I had to start going to the doctor with the question, "What is wrong with me?" After many different doctors and many tests, I was diagnosed with fibromyalgia, which is an incurable disease of the muscles and joints. At that same time, I found out that I had high levels of cyanide in my body. I am a non-smoker and my level should have been "4" but, it was "33". Needless to say, I was scared. I worried: "What's going to happen to me? Am I going to be all right? Is my family going to have to go on without me?"

I started talking to people at work and found out that I wasn't the only one with these concerns and problems. I started meeting with some of these people and we were known as "The Exposed." Several of us were vocal about our concerns. By that I mean we talked to other people in the plant, co-workers, supervisors, management, friends and family, and were even on television and radio several times about the health concerns at K-25 and other surrounding plants. Many political officials were contacted over and over. During this time, I was just getting worse and worse. I called the DOE hot-line many times and never heard from them. I went out on "short-term" disability in June of 1996.

While I was off work, one of my doctors told me I had to have one to two weeks of complete bed rest. In just a few months I had lost four people in my family. One was my father. My husband was in the hospital several times and my son shot himself while I was on the phone with him. Now, on top of this, I was extremely sick and still had all the questions I mentioned earlier. So, Lynn, my husband, went to his supervisor to ask for a week off work to take care of me. He was going to use vacation for the week. He had

Linda Cox P1 of 3

been keeping his supervisors informed about my health and he jokingly asked if when he returned from vacation would he still have a job since there was lay-offs going on. He was told he had nothing to worry about because his projects were of the utmost importance and he had too much time in for him to worry about being laid off.

Now, let me back up to about a week before we left for vacation. "The Exposed" group had a public meeting in Oak Ridge. The purpose of the meeting was to inform the public about hazardous materials concerns in the area, about people with health problems that their doctors may have said to them "There is nothing wrong with you. Maybe it is in your head or it could just be nerves." We wanted them to know that there may be something wrong with them and it is not "just in your head." We wanted them to know that there are people they can talk to. The meeting was never meant to slam the company.

We went on vacation and when we returned, the first day back home, I received a phone call from my boss informing me that I was laid off work. I was on "short-term" disability. Lynn had stayed home with me that day and the next day he returned to work and received a lay-off notice as well. There were four levels of supervision in his boss's office that day because they knew that Lynn would ask why he was being laid off after he was told he wouldn't be. In the history of the plant, there had never been a husband and wife laid off at the same time. One job was always saved. We feel both of our jobs were terminated because of my being vocal. For months after we were laid off, even really sick people would not say anything about the problems. The comment was heard over and over: "You see what happened to Lynn and Linda. I've got a family and I can't say anything." A very chilling effect was all over the plant because of this. Lynn nor myself were the lesser senior people in our departments. We should have not been the ones to receive lay-offs.

Let me breeze through quickly about one of Lynn's health problems. He has a back problem which was partly from birth. He had to have a morphine pump put in and it pumps morphine to his back every hour. This was done surgically in 1995. In 1999, he had to have it taken out because of staph infection. The medication he has to take costs \$980 every month. We pay \$116 for this drug because we have insurance right now. This medication is only one prescription we pay for each month. His other medications cost us over \$300 every month.

Lynn left the plant because of the lay-off. He received \$200 per week for unemployment and I received 60% disability insurance. Finally, Lynn started receiving Social Security Disability because of his back problem. Met Life Disability kicked me off of the disability after two years because "I was, according to their doctor (who would not know me from Mickey Mouse), able to return to work and even gave four or five jobs that he says I can perform. Well, I have news for you, I can't hold down a job for eight hours much less 40 hours a week. Social Security has deemed me totally disabled and I receive Social Security Disability but the Met Life Insurance refuses to acknowledge my disability. My point is we were up to \$90-100,000 a year income between the both of us. We now live on two Social Security Disability checks.

Linda Cox P2 of 3



Since we have lost our jobs, we have to "rob Peter to pay Paul", as the saying goes. One month it is our phone being cut off and the next month it is the electric and the next it is something else. We have had to sell what we could. We've had two vehicles repossessed since we lost our jobs, one of which was back in December of 1999. We continuously get foreclosure notices on our home. Our son has had to quit college and come home because I was so sick and we could not afford to pay for him to stay there. The list goes on.

Since we have left work, Lynn has a lot of the same symptoms as the rest of us. We both have been tested and tested and tested to find out what is wrong with us. Vials upon vials of blood has been taken. We went to Kentucky for testing, to Cincinnati, Ohio for testing. Dr. Kaye Kilburn from the University of Southern California has diagnosed me (and several others) with chemical encephalopathy, which is brain damage. Now the doctors DOE has hired want us to go through more testing. How much more testing do we need? These doctors have even put in Lynn's report that he is suicidal. There is no reason for that and we do not know why they put that in the report. We both have aluminum, beryllium, bismuth, lead, nickel, tin, titanium, and others I cannot even pronounce, which were found in hair analysis.

Please, we do not need more testing or studies. We have lost our health and everything we have worked for is gone or going. What does the government want from us? We gave them the best 20 years of our lives and we can't get any help. If we do get help, 80% is taken back because the insurance company takes it away from us. I am sorry, but, there is something wrong with this picture. We need to be compensated without it being taken away.

Sincerely,



Linda Cox  
500 Melton Hill Drive  
Clinton, TN 37716  
865-463-0270

Linda Cox P3 of 3

March 21, 2000

To the United States Government  
RE: Senate Hearing on Oak Ridge Illnesses

My work history includes:

- 1972-1975: Anderson County Ambulance Service -  
Emergency Medical Technician
- 1975-1976 Kress' Department Store - Store Manager
- 1976-1996 K-25 Plant - Security  
(my brother, dad and uncle also worked there)

My job at K-25 started as a security inspector (guard) which required me to go into every building in the plant for security checks and clock-keys, etc. Two of the buildings that I went into - K-1420 which was a decontamination facility and known as one of the "hottest" radiological buildings in the plant and K-25 (known as the "IJ"). Both of these buildings were entered numerous times during the shift without any protective equipment whatsoever. Supervision assured us that there was nothing there to hurt us. K-1420 was checked with radiological meters and the meters pegged to the highest levels in the areas we were required to go. The K-25 building contained several vaults that had materials "unknown" to us stored in them. We were required to go to the back of these vaults where dripping material, powdered material and other materials we had no knowledge of what it was to check for security reasons. We also went into these buildings without any protective clothing or equipment. Sometimes, we even went in with our personal (street) shoes and nothing more than a uniform and clock. I went into these buildings for approximately fifteen years with no protective equipment or information from management that there was any harm present requiring such in these buildings. I know that we were exposed to mercury, nickel powder, technetium, uranium hexafluoride, and yellow-cake powder was abundant. When we walked through the areas, we stirred up the dust and breathed the different chemicals and metals in these areas. Supervision reminded us often that "there is nothing here that will hurt you. You can even eat the yellow-cake and no harm will come to you."

I also was privy to the destruction of barrels and cylinders that were hung over a pond area and then shot by high-powered rifles to puncture and release whatever chemical was in the drum. Nobody knew exactly what was in these barrels or cylinders at the time we were shooting them to destroy them. The barrels were then dropped into the pond area and several colors emitted from the barrels indicating the probability that several chemicals were emptying into the pond area. The plant management told us that this material could not go into Poplar Creek, which runs beside K-25. During heavy rain seasons, the pond would overflow and the chemicals that were in the pond, flowed into Poplar Creek which, in turn, flowed into the Clinch River and on into the Tennessee River. It is known today that heavy sediment is in the water supply, as far down as Watts Bar, is contaminated with materials from K-25, Y-12 and ORNL. It has been proven by state tests that heavy metals are indeed settled in the water supply in this area.

I am also aware of "supposedly" DOE audits and to my knowledge, no audits were ever a surprise because we were informed days beforehand to be ready for the audit. We were instructed to move things so that DOE couldn't see and to show them only certain areas. On several occasions, DOE Orders were ignored or falsified just to pass the audit and get a higher rating to increase their monetary reward.

I worked on several "special projects" concerning proposals on how to get certain contracts from DOE. My immediate supervisor tried to give me a "Excellent" performance rating. Since he was the one who knew the work I had done, should have had the final word. But, upper management informed him that I was not to get the "Excellent" rating for my performance appraisal, which would have increased my pay, and they never gave a reason

Lynn Cox P1 of 3

why. On several occasions, we informed the contractor that they were not going to meet the DOE regulations and their reply was "Don't worry about it, we'll take care of it." When the audit was performed no mention of the possible violations was made.

I eventually was promoted to Lieutenant in my department and then to Captain, with the responsibilities of writing procedures for the Security Department to coincide with DOE Orders. One of DOE's stringent orders was resolving the absence program. I was assigned the task of working this project and was told by supervision that I was doing an excellent job. I know for a fact that documents were altered to meet DOE requirements. On several occasions we were required to respond to releases (UF6 venting from the system), often times without any protective equipment. We were required to set up road blocks and direct traffic even though the wind may be blowing the release in our direction. Several of these releases were never recorded or documented because of fear of getting a poor performance report from DOE.

The K-25 building was entered three to four times a shift without protective equipment and now requires "Tyvek" suits, shoe covers, respirators, and personnel monitoring devices. While this same building we entered without protective equipment now requires head-to-toe protection, why were we not warned of the hazards when we were doing our security checks without protection?

I am also aware of a burial ground that highly radioactive items were buried and the drainage ran through areas of the plant when heavy rains came. The plant did nothing to stop the runoff of contamination from this.

My wife found high cyanide levels in her system and became involved with a group of people with similar testing results. The plant denied any knowledge of cyanide on the worksite. She became vocal and was on television to state what she believed had happened to her and others. She was a supervisor in the Laundry and Maintenance Departments as well as being a Compliance Officer for her department. Her responsibility was making sure contaminated waste was being disposed of properly. While she was a Laundry Supervisor, she was instructed to pour hazardous chemicals down the drain because of a pending audit.

After 20 years of giving my life and the best that I could do, I started to go on vacation and jokingly remarked to my immediate supervisor that "I might not ought to go because I may not have a job when I come back." His reply to me was, "You've got 20 years of service and you've done a good job. You have nothing to worry about." I returned from vacation and the first day back was told to meet my immediate supervisor in the Division Head's office. There I received my lay-off slip with four levels of management at the meeting. They admitted this many levels of management had never been involved in a lay-off procedure but could not give a satisfactory answer as to why it was done this time. They said my job was no longer required. However, a Lieutenant took over my job and continued to do it for quite some time.

In approximately 1995, I noticed that my ability to focus, recall and remembering things began to become very troublesome. I have sleep apnea, periods of panic attacks. Many times, I will go from one room of the house to the other and forget why I went there. I have no energy level. I cannot do anything or any projects like I used to be able to seven or eight years ago. I have Chronic Fatigue Syndrome and toxic levels of heavy metals - including nickel. These metals do not belong in my body and cannot be obtained at my house! I have a thyroid problem and testosterone level that is lower than, according to the doctor, anything she has seen and have to take shots for it every two weeks. My testosterone level is continually low. I take prescription drugs for my thyroid. I have to take something to help me sleep at night because without it, I would not be able to sleep.

The only explanation I have for what has happened to me is the exposures I have had at the worksite. I would like to have my old life back in order to be the person I think I should be and used to be. To do the things that need to be done around the house, I cannot perform normal duties without being completely exhausted and hurting for two to three days afterwards if I do them.


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The strange thing about it was, my wife and myself received our lay-off slips the very same day. This put a fear factor in the workforce at the plant - as it was meant to - because several people made the comment "You see what happened to Lynn and Linda. I am not going to say anything to anyone." They knew what they were doing when they laid us off. They knew folks who could support our allegations might talk public about it and this prevented them from coming forth. I would like to have continued medical care to resolve the health problems that I have. My energy level being at zero, drive and desire being at zero.

Most of all I would like to see some relief for my wife because it hurts me deeply to see her in the situation she is in. She can be fine one minute and completely lifeless within the next ten minutes.

We cannot get any help from anyone in the position to do the right thing. You can do the right thing by providing monies for medical treatment and helping us to become healthy again.

Sincerely,

  
Lynn Cox  
500 Melton Hill Drive  
Clinton, TN 37716  
865-463-0270

Lynn Cox P3 of 3

March 18, 2000

To the United States Government  
RE: Senate Hearing on DOE Illnesses

My work history includes:

- 1980-1983: College student, part-time secretary at RSCC- Oak Ridge Campus
- 1983-1984: Secretary at Herron-Connell Insurance Agency - Oak Ridge
- 1984-1985: Secretary at various companies in Oak Ridge and Knoxville for a temporary placement organization
- 1985-1988: Secretary in Knoxville for State of Tennessee, Department of Health and Environment (2 years) and Department of Labor, TOSHA (1 year)
- 1988-1990: Secretary at ORNL (4500N - Executive Office Building)
- 1990-1991: Health Physics Technologist Certification Program - provided by Martin Marietta and Roane State Community College - 6 months intensive (8 hour days/five days a week)
- 1990-1995: Sr. Health Physics Technician at K-25
- 1995-1996: Sr. Health Physics Technician at Y-12

While at K-25, I worked in EVERY building and area on site. Some of the things I absolutely know I was exposed to are:  
**lead** (handled them with bare hands while surveying, some were dropped and broken creating airborne dust), **nickel** (surveyed drums of nickel compound in several vaults at K-29 and K-25 buildings where we were locked up with two fork-trucks and five laborers. Several times while I was on duty, drums were dropped and clouds of material was dispersed into the air. While surveying, we were "dressed out" in yellow coveralls, two pair of latex gloves and rubber shoe covers. When we would come out of the vaults after the shift, our noses would be black. Every time I would blow my nose for the next two days, the tissue would be black. When I questioned what was in the drums, I was told it was classified information and that I shouldn't worry about it. These drums were being prepared for shipment off-site and as soon as the trailer left the site, it was no longer classified information. I could not get a Material Safety Data Sheet (MSDS) from management, Industrial Hygiene or Industrial Safety to be posted in the vaults for the employee information. I was eventually taken to the top of a hill with my supervisor and told that the material in the drums was not dangerous and that I should stop asking questions and posing problems as the drums were needed to be off-site as quickly as possible because there was a tremendous amount of money to be made from them. I refused to go back into the vaults to survey any more. The management then had the subcontractors go in to survey. The subcontractors (for the most part) would not question what was in the drums for fear of losing their jobs, **PCBs** (surveying ballasts of every type with only two pairs of latex gloves on until I threw a fit and demanded some adequate protection for us - the industrial hygiene department came in and swiped one "clean" ballast for sampling purposes (which, of course, came back as negative) but, yet, they still provided us with neoprene gloves and tyvek suits

to wear for the remainder of the job as well as a staging area laid out with paper so no "possible spills" would damage the area), **vapors from wood burning** (pallets were placed in rings inside the fire training facility and ignited with gasoline. I was one of the two Health Physics Techs on that job. There were also four laborers who were responsible for the burning. We placed air monitors on the employee performing the igniting and at one of the doorway entrances. The doors were kept open for control of the flames. Therefore, the fumes and smoke were blowing in all directions (wherever the wind would take it). The purpose of our air samplers was for radioactive materials. Industrial Hygiene and Industrial Safety did not perform any sampling for health or pollutant effects. During the winter, we would go into the building to "warm up by the fire". The pallets being burned were surveyed for radioactive contaminants but nothing else. These pallets were used for storage of hazardous material drums, as well as routine delivery pallets from outside vendors.), **mercury** (while draining the pipes at K-1004A,B,C labs, we often found mercury behind lab counters, in the pipes, etc. At this time, no one told us that mercury was dangerous to us. We would roll the mercury around with our instrument probes in order to survey it but we did not wipe our probes off afterward (thus, any mercury remaining on the probe inevitably found its way to our skin during the course of the day.), **asbestos** (we were required to survey asbestos pipes that were to be replaced. Some of these were damaged and dust would fall. Others were bagged and we were required to open them for surveying (but were told that it was not asbestos "just looks like it"), **mixed fumes from aerosol cans** (thousands of aerosol cans were disposed of into 55 gallon drums throughout several years in the effort to rid the site of them. These drums were then placed in a shed (1036A) for storage. Four Health Physics Techs and six chemical operators were involved in opening the drums to survey each aerosol can inside each drum. Protective clothing included cloth coveralls, latex gloves and rubber shoe covers. Upon opening the drums, lids were not on all cans and liquid had collected from them at the bottoms of the drums where the cans had exploded due to the pressure from the atmosphere - contraction/expansion due to heat and cold. The drums were turned on their sides in order to retrieve the aerosol cans. A major portion of the drums emitted fumes upon opening which caused several of us to "fall out", invoked headaches and nausea. I was one of these people. When this happened the second time, I reported this to the supervisor in charge and the job was shut down until Industrial Hygiene could come out to sample. The results were that from the mixture of aerosol cans stored in the drums, toxic fumes were combined and therefore, Supplied Air SCBA would be worn to complete the job), **fumes from sludge drums** (in sampling drums that contained sludge from various operations, the fumes from these drums upon opening were extremely noxious. Industrial Hygiene was called in and it was determined that respirators would be worn for the remainder of the job. Exactly what was in the fumes was not provided to us), **uranium hexafluoride** (at Y-12, I would perform smear samples using IBM cards instead of cloth smears in the building I was assigned to. The smears were taken above my head, at floor level as well as at breathing level. I found out that the **dust contained uranium hexafluoride and acetyl nitrile** as these were two of the elements that were used extensively in the building. By smearing with the IBM cards, I created airborne dust that I promptly inhaled. Also, there was a denitrator on the second level which was located on a mezzanine. Whenever someone would go up there, the dust and contamination would be kicked down to the first level where other people were located and breathing.

There are so many things that go on it is hard to think of all of them at one time. I have done well to have gotten this far today, although, it has taken me three hours to compose this along with the help of my husband who also works at K-25. While I worked out there, I was the Health Physics Tech for his department in Waste Management.

I worked the night shift (8 p.m. to 8 a.m.) four nights on and three off, the day shift (7 a.m. to 3:30 p.m.) five days a week, the off-shift (7 a.m. to 7:30 p.m.) eight days

on and six days off. The night shift I worked for three months in 1991. The off-shift I worked for two years (1992-1994). The rest of the time I worked the day shift. There were lots of releases that happened during the night shift that were never reported officially. We would go clean up the area and go on with the shift. When the plant was actually operating, who knows how many planned releases were held at night.

Before I became ill from the exposures at the facilities, I enjoyed riding my bike, walking, hiking, camping, canoeing, and playing softball. When I began to get ill, it came about with such a force that I didn't know what was happening. The last straw in changing my health and mental well-being developed at Y-12. I did not know where I was or what I was doing. I got lost going from one building to another. I got lost at home going from one room to another. I got lost going to work in the mornings. I would sit at work for hours without knowing where I was. Anytime someone would even look at me, I would begin to cry. I eventually was tested for cyanide poisoning which showed high levels. When my doctor had me off work for a week and tested again, it was lowered dramatically. Then, the occupational physician sent me back to work to see if it would happen again and the cyanide level rose after being back at the worksite for three days. After this time, I was forbidden by my doctors to go back to the worksite and was placed on short-term disability leave and eventually long-term disability due to chemical encephalopathy and major depression as well as acute anxiety and panic disorder.

It took a year of oral and I.V. chelation in order for my mind to function well enough for me to talk without having to stop after each word. When everything had mounted up in my body, I was no longer able to talk with fluency due to the fact I no longer knew how to form words and my thought-process was so jumbled that nothing I said made sense. I was tested for heavy metals and nickel was a major component in my toxicity. I felt I had no choice but to undergo chelation in order to remove these substances. The occupational physicians that Lockheed Martin has hired to evaluate us do not agree with the chelation method. They have determined that it would cause more harm than good for a person in my condition to undergo such treatment. However, I felt that my life was such that I had no choice if I wanted to regain any type of normal attributes and functions that I had once enjoyed. Just being able to talk was such a relief. For more than a year I felt as if I had incurred a stroke. Not being able to talk to people was one of the most frustrating experiences I had ever experienced. Unfortunately, I was only able to pay for a few I.V. treatments due to the fact I was no longer receiving disability benefits from the insurance. The treatments are rather expensive at \$160 per treatment. The oral chelation is two prescriptions that insurance will pay for but the doctor who prescribes them is not compensated by the insurance. Thus, I ran up a bill with that doctor that I just paid off a few months ago.

My memory and energy level still suffers to this day. If I choose to do something outside of my home, I must rest for several days beforehand and several days afterward. If I wash clothes and run the vacuum in the same day, I am on the couch for two days after. If I go to Knoxville, I usually end up in the house for the next three days. If I go to Nashville, I must stay for four days in order to rest enough to come back home and once I reach home, I am in the house for the next week. I still have to write myself notes and place them everywhere in order to "remember" what I must do every day. There are post-it notes all over my dash in my vehicle, in the bathroom on the mirror, on my desk and on my computer, on the refrigerator and on the table. I feel so child-like having to have these notes everywhere just to remember what it is I must do for the day. However, if I didn't have these notes, my life would be much worse as things I must do would never be accomplished and I would get lost if I went out of the house. My body pays in hurt when I attempt to go out of the house on errands or even do minor house-cleaning. I can't hold my grand-daughter for more than a few minutes because the

energy it takes isn't there and the muscles get sore very quickly.

This is not a life that we are living. It is merely existing. I can no longer do the things (including cleaning the house) that I used to be able to do. It is very depressing to not even be able to run the vacuum cleaner without having to "pay for it" later. What has happened to me and others that have worked at the Department of Energy Nuclear Facilities should not have happened. We should have been protected as much as we were working to protect the United States. We took for granted that what we were doing at our workplace was safe for us to perform our duties. The trust we had for our government protecting us has been shattered beyond repair. For five years we have fought for someone to listen to us and help us with our medical conditions and to stop the damage to others lives that continues to this day at those facilities. This is all we have wanted! We were forced to file lawsuits against the Department of Energy as a recourse since we could not get the contractors to help us with our medical conditions. Such a shame. If it had been a private business, we would have received medical treatments but since it was the government, they have been deemed not responsible. For three years I have been unable to receive medical treatments because there has been no money to do so. What does this tell you? That we gave our lives, literally, for our government and that same government could care less. All we want is for our own government who owns the nuclear facilities where we worked to be accountable and responsible for what they have done to their workers - us! We need continuous medical treatment by doctors of our choice paid for by our government until we are deemed "cured" and can regain control of our physical being well enough to allow us to work in the world again. It hurts both physically and mentally to have to plan a day out to the store and doctor knowing that you have to rest beforehand and will be in bed for two days following the outing. It hurts physically and mentally knowing that doing the laundry will end up costing a day afterward because the muscles and joints hurt so bad from standing and bending. Please, help us. You know what is right for the people who worked so hard giving all they had to their jobs in order for the people of the United States to enjoy the freedom they have today. We worked behind the scenes and we still feel as if we are behind the scenes and nobody with the authority to help us will. You have the power to do what is right for us. Please, order the Department of Energy to compensate us for medical bills, provide funding for continued medical bills and compensate us for lost wages from the last five years and until we can return to a physical state that will allow us to work again. We deserve to be taken care of as we have literally given our lives to our government without our knowledge or consent.

Sincerely,



Cheryll A. Dyer  
1120 Melton Hill Circle  
Clinton TN 37716  
423/457-8322



March 20, 2000

To the United States Government (LLC)

RE: Senate Hearing on DOE Oak Ridge Illnesses

Let me start by saying that I am not a doctor, lawyer, politician or college graduate. But, I do know there is something wrong with my wife's health.

After working at K-25 for nine years, I have learned there are a lot of things inside the fence that can harm a persons health. I also know that not everyone's system is the same, as far as what one can and cannot take physically.

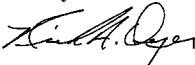
My wife has also worked at K-25 and Y-12 and a few years ago I started noticing a change in her that I did not know how to take or explain. We used to ride bikes, trail walk in the mountains, swim and do most things normal people do outdoors. But that has all changed, including our sex life (or lack thereof). Like I said in the beginning, I am not a doctor but I am not stupid either. Something is wrong and I believe it has something to do with the exposures to materials while she was working at the Oak Ridge DOE plants. There are doctors that have stated this to be the case, but, yet, the Government does not want to own up to the fact that they are in any way responsible for what happened to her and the others.

Subcontracts are just another way for the Government to hide from the fact that they are responsible for the illnesses of my wife and so many others. For example, I now work for WESKEM, LLC (Limited Liability Company). How convenient. Just another way to get out of responsibility for making people sick. The subcontractors will be responsible for their employees while the Government gets away scott-free because they turned it over to the subcontractors.

It makes no sense to me how the Government can send billions of dollars a year overseas to help other countries before they take responsibility and help our own people here in the United States that are suffering because they worked for a Government that could care less and proves it everyday.

Just once I would like to see the Government (LLC - Low Life Cowards) own up to what has happened and make right by it. After all, whose money is it anyway? "The Taxpayer's", that's whose.

Thank you.



Rick A. Dyer  
1120 Melton Hill Circle  
Clinton, TN 37716  
865-457-8322

**Testimony of Sherrie Graham Farver**

(Ill Oak Ridge K-25 Site Former Worker)

Remnants of the Department of Energy (DOE) and of the Oak Ridge K-25 Site will be with me for the rest of my life. I can run (which I fully intend to do), but I cannot fully hide. Not only will the memories of retaliation and blatant degradation of human health and safety follow me, but so will the contaminants that reside within my body. Mercury, cyanide, lead, cadmium, nickel, beryllium, and arsenic are a few of those that have been confirmed. No doubt there are more. Medical science cannot predict what will happen when a mixture of these poisons and heavy metals is taken into the human body. Acting alone, each one of these contaminants can be devastating even deadly. Together, the effects are multiplied and intensified.

At age 46, my body feels like that of a very old person. My muscles and joints are sore and ache. The pain is always present. I live in a perpetual state of chronic fatigue with rarely if ever a day that I feel energized or refreshed. I tolerate the pain better than I do the fatigue because the fatigue robs me of motivation and the basic zest of life. I am treated with a hefty dose of antidepressant medication twice daily for ongoing and recurrent depression. The depression has been severe in the past, and I have been told that without the medication I can expect to return to a clinically depressed state again. I have existed this way for many years. I was one of the few who continued to work and did not resort to disability leave from my job. It did become necessary for health reasons to work part-time. My employer Lockheed Martin Energy Systems (LMES) accommodated my part-time status at first but later unleashed its ugly hostility upon me.

I began my chosen field of study and career path as a young wife and mother of two school-aged sons. I focused on the love that I had always held for science. Like most new students, I changed majors a couple of times but continued down the science path. When my junior college announced a new program for radiation protection, it was like a match made in heaven for me. I thrived on the courses and excelled.

Most of my employment was at the K-25 Site although I have been "full circle" in that I have worked at all three Oak Ridge DOE sites. The duties of a health physics technician or as later called a radiation protection technician simply stated is, *to protect man and the environment from the harmful effects of ionizing radiation*. My career saw me in the trenches and on the rooftops. I worked in basements, attics and everything in between. I was all over the K-25 Site as a field technician. One of my managers referred to me as a "super tech". I had ability and was often put in jobs that were meant for someone at the professional level instead of the technician level. I answered the call and was proud to do work that was higher than my actual job level. I taught radiation safety classes, and I served as the embryo/fetus representative at the site. Pride in my work was apparent and those around me respected my competence. How did this scenario turn into one of a destroyed career, retaliation, and a firing? Please bear with me as I continue my story.

## Brief Job History:

1985 - 86	Two health physics student internships at Oak Ridge National Laboratory
June 1986	Associate of Science, Health Physics Technology, Roane State Community College, Magna cum Laude
July 1986	Health Physics Tech, International Technology Corporation Provided job coverage at Oak Ridge National Laboratory
October, 1987	Health Physics Tech, Martin Marietta later to become Lockheed Martin
October 1991	Earned certification from National Registry of Radiation Protection Technologists
February 1996	Removed from K-25 Site due to cyanide concerns
September 1996	Transferred to Oak Ridge Y-12 Nuclear Weapons Plant
April 1997	Began part-time schedule due to health
March 1999	Terminated due to "security reasons"
Today	Unemployed and unemployable in my field

I want you to revisit the year 1989 with me. That is the year that fatigue and depression came to live me with me, and neither has left me since. That is also the year that the Toxic Substances Control Act Incinerator (TSCAI) came on line at K-25. To this day, it is categorized as "experimental", and it is the only incinerator in this country that is permitted to burn hazardous waste that is both chemically and radioactively contaminated in addition to polychlorinated Biphenyls (PCBs). Sadly, this incinerator is located near housing developments and communities of people. Monitoring of the incinerator stack is done for oxygen and carbon dioxide content to determine what degree of incineration has been achieved. There is no continuous or real time monitoring for contaminant emissions from the stack. DOE and LMES defend the incinerator by saying the emissions are within permitted guidelines. How do they know this? They rely on trial burn data and calculations that were done many years ago under ideal operating conditions. What happens when one figures in operator error, aging equipment malfunction, and the burning of unpermitted and even unknown contaminants? I think the answer lies in my body and the bodies of so many others. A route of emissions and subsequent exposures manifests itself in the air that the workers and nearby residents breathe. If you look at the list of emissions from hazardous waste incineration, you will see the same list as what is found in our bodies.

Many of the ill K-25 workers mention the year 1989 as being a critical year with their health. Former K-25 staff physician, Dr. Timothy Oesch, also noticed the flaring of symptoms around 1989. At first, I blamed my health problems on aging (I was 35 at the time). I realize now that people shouldn't feel like I do at my current age of 46, nor at 56, 66, or even 76. It's not normal. If you look at the harmful effects of chemical exposures to humans, some become readily apparent. This is not "rocket science" and it doesn't take a genius to understand what happens. Headaches, respiratory problems, numbness of the extremities, sinusitis, extreme fatigue, heart palpitations, sweating, loss of sex drive, depression, blurred vision/loss of vision, depressed immune systems, rapid heart rate, and muscle/joint pain are among the common symptoms. Most of us cannot point to an acute occupational exposure. In contrast, our poisoning was slow and chronic in nature. Yes the body can do a lot to repair itself but as the exposure continues, the body becomes "sensitized" to the point of reacting to smaller and smaller levels of exposure.

My health problems continued to intensify. In 1991, I was diagnosed as clinically depressed and I was suicidal. The combination of fatigue and depression was so severe that I felt as if I was in a long tunnel, crawling and clawing desperately to get out but never finding the end of it. I virtually ceased to live. Very little of anything brought me joy or pleasure. That's when I began treatment with Prozac. Within weeks the change in me was obvious to those around me. There was a bounce in my step and a twinkle in my eyes where none had been before, and life was once again precious and treasured. This time period saw me through an agonizing divorce. Just as I had tried to blame my health problems on aging, I found myself blaming them on the divorce. As time passed, I adjusted and my life became stable and secure. I remarried in 1994 after a two year courtship which was smooth and without upset. Why then, did my health problems (including the depression) keep worsening? Life was good again, why wasn't my health?

The fall of 1995 brought the answers to my questions. I worked in the same department with Ann Orick, the same Ann Orick who testified before you at the hearing on 3/22/00. Ann said that one of the doctors at K-25 (Dr. Oesch) had been noticing symptoms of cyanide poisoning in many of his patients. She had been tested and suggested that I might want to do the same. I acquired some literature about cyanide poisoning and was amazed to see my main complaints of depression, fatigue, and muscle/joint pain described as symptoms. At that very moment, I began to suspect that my debilitating problems had been caused by my workplace. I went to my private physician who sent a urine sample to the laboratory to be analyzed for thiocyanate, a metabolite of cyanide. A few days later, he called to say that my results were 16 mcg/ml and that normal results for a nonsmoker such as myself were only 0 - 4 mcg/ml. I hung up the telephone and for a split second, I smiled and told myself that this was wonderful because after all these years, I finally had an answer to what was wrong with me. The elation quickly eluded as the harsh reality of cyanide poisoning and levels that were four times greater than the highest range for normal set in. I was afraid, and I cried.

A few days later, I had the urine thiocyanate test repeated. This time, my husband who worked at Y-12 also left a urine sample. The results were staggering. My sample was even higher than the first one, and my husband's sample was "none detected". **That was my turning point.** There

was absolutely no doubt in my mind that the cyanide poisoning was coming from my workplace, the K-25 Site.

I went to the K-25 Medical Department to provide a copy of my lab report just as we were expected to do with medical tests. I had also jotted down a page full of questions to ask Dr. Oesch. When the nurse asked the purpose of my visit, I told her that I had a lab report showing cyanide exposure for her to put with my plant medical records and that I wanted to talk to Dr. Oesch about it. She looked at the lab report and shoved it back into my hands as she told me that she could not put that report in my records. When I asked why, she said because Lockheed Martin Corporate had determined this to be a “controversial” and a “sensitive issue”. She proceeded to tell me that I could not see Dr. Oesch because he was not supposed to be “discussing or treating” cyanide intoxication on the job. She even said that she was just “trying to keep both of you out of trouble”. I was shocked and left with the lab report and questions in hand without seeing Dr. Oesch. Another turning point for me, what kind of company was this that I worked for? What was so wrong here that a physician was suppressed and medical data was ignored? Was a cover-up in progress? My fear of the cyanide and of my workplace continued to escalate.

Ann Orick and I consoled each other daily. We read everything on cyanide that we could get our hands on. We reported the actions of our medical department to local and corporate Lockheed Martin Ethics representatives. We called and met with K-25 industrial hygiene personnel and begged them to order urine tests for the other people who worked in our building. Their response was, “no, we do not want to *alarm* anyone.” We met with our division manager who was the site manager of health and safety. We went together to meet with Dr. Ann Roberts, the director of K-25 Health Services with our lab reports in hand. She was cold and rude to us as she quickly glanced over the reports and quipped, “I see nothing remarkable about these.” A few days later, Ann and I returned to health services to file a medical incident report on cyanide. We spent most of a day there even to the point of staying after our shift had ended. The way we were treated there was traumatic to the point that both of us were terribly nervous and upset on our jobs the next day. Ann and I have the experiences described here well documented and can readily make this documentation available if anyone from the committee requests it.

In fear for our health and for our jobs, Ann Orick and I continued our struggle. We realized that we had become “whistleblowers.” Looking back, I don’t know how either of us would have endured without the support of each other. I say the rash of large sores that appeared on Ann’s face and head. Dr. Oesch had told her that in his opinion it was a “cyanide rash”. We had read about such a thing. I also had a mysterious rash all over my scalp that my doctor had no idea of what it was or what caused it. It did not respond to the ointment he prescribed and took many weeks to go away. I remember the day well that I sat in Ann’s office with her and watched a heart monitor record “120” beats per minute while she sat in her chair. I also remember the day that I sat in the same office with her as she suffered chest pains. I begged her to let me call the site medical department or even to let me drive her into the Oak Ridge to the hospital. She refused as she explained to me that Dr. Roberts had threatened to take her job if more medical

events happened. Ann needed her job and did not want to risk losing it. Against my better judgement, we sat and waited and waited until finally the pain subsided.

I implore you, believe the testimony that you heard from Ann Orick. I have known her for many years and we have remained in close contact by telephone since both of us left K-25 in early 1996. Ann is telling you the truth. Her suffering and pain has been and remains immense coupled with the plight her husband Mack, who was the first diagnosed case of chronic beryllium disease from K-25. Her courage and determination in the face of adversity is immeasurable. Whether these efforts will be recognized favorably in Ann and Mack's lifetime remains to be seen. Her ultimate concern is **do not allow these things to happen to anyone else**. That sentiment was echoed by all four of the witnesses who testified before you in the hearing. I share that sentiment. **Our health is sacred; no one or no establishment has the right to take it from us**. For when you have lost your health, you have indeed lost almost everything.

Together Ann and I went to meet with our site manager, Harold Conner, to ask him and to beg him to initiate a health hazard evaluation on cyanide by the National Institute of Occupational Health and Safety (NIOSH). We told him that if he did not initiate it, that we would. Both of us told him that it would "look better" on the site if he did it instead of us. He told us that we as workers could not request the evaluation from NIOSH, and he would have to discuss any action of requesting the evaluation further with management. We returned to his office a few days later on a snowy morning in January as a follow-up. We were aware that one of our coworker, Rhonda, had been seriously injured that morning in an automobile accident as she tried to report to work. After short while in Mr. Conner's office, he took the phone call with the news that Rhonda was dead. Ann and I fell to pieces and quickly left his office. I will never forget Ann and I standing outside in the cold and the snow as we held each other with tears streaming down our faces and saying over and over again, "it's just not worth this - none of this is worth it."

Ann, myself, and several other workers signed the petition to request a NIOSH health hazard evaluation. Mr. Conner was wrong. We did have the right and the power to request and to get the evaluation. Unfortunately, NIOSH failed miserably in their efforts. No blood, urine, or tissue samples were taken from any worker. Additionally, field sampling was only done for compounds of hydrogen cyanide. Many of us urged NIOSH to investigate for other compounds to include nitriles. Very important, a nitrile compound converts to cyanide after entering the body. Through our studies, we knew this. Through our own investigations, we also knew that mass quantities of acetonitrile had been stored and incinerated at K-25. Once again, this is not rocket science. NIOSH would not sample for nitrile compounds. We were left with their report that no source of cyanide exposure was found at K-25, knowing full well that their report was inaccurate and *inconclusive by design*. Ill workers petitioned NIOSH a second time to broaden the scope of their investigation to cover other heavy metals and contaminants. Our request was refused on the basis of it being such a large and costly investigation. NIOSH denied having the resources to take on this task.

I was totally convinced that Ann's condition and the continued exposure to cyanide had become **life threatening** to her. Personally, I was experiencing major tingling and numbness of my hands and arms and was fearful of permanent nerve damage. How can DOE or LMES ethically put this type of risk on someone's life and health? This is not an acceptable risk, and the mere thought of such risk still is beyond my realm of understanding. I filed an "Employee Concerns Report" with DOE (see attachment I) only to receive no contact for several weeks. I also filed an "Employee Concern/Response Program" complaint with my employer, LMES (see attachment II). In this complaint I detailed my concerns for Ann and myself and provided possible solutions. I was thorough in detailing the problems and the solutions only to receive a short written response weeks later from LMES that was typed on a blank piece of paper with no date and no signature. Ann and I waited almost six weeks for that meager response. The mental strain and our fear was incredible.

Thankfully, Ann left K-25 on disability leave soon after the mishandling of our cyanide concerns. As for me, I continued to ask, and beg, and plead, and even demand to be removed from K-25 until it could be proven that I was not at any risk of being harmed from cyanide exposure. I met personally with Gordon Fee who was then the president of LMES and Fred Mynatt, the then vice-president of LMES. This was as high as I knew to go. I asked that they remove me from the site immediately. No, it did not happen again. I was removed within a couple of weeks later following these two events. First, I put it in writing to management that I suspected permanent nerve damage was occurring with my hands and arms and that I held management personally responsible for this damage. Second, confidentiality was violated by management as a frightened group of lab workers came to my building to meet with a nurse from NIOSH. I had contacted these workers to speak with the nurse and fully assured them that their confidentiality would be protected. It wasn't. The events and the fears of the past couple of months culminated, and I broke down into an uncontrollable crying spell that lasted close to two hours. Was it any wonder? I was and probably still am a strong willed person, but there is only so much that a person can be expected to endure. My division manager was called. He transported me to medical where I sat in the office of the site psychologist until my tears were under control. After returning to my office the phone call came to say, "take what you can carry with you and go to Mitchell Road in Oak Ridge now." That is how I left K-25. My cyanide concerns began in October of 1995. I struggled and fought to be removed from K-25 until February of 1996 when I received that phone call. This was unacceptable. **DOE nor LMES had no right to leave me in harm's way for weeks that evolved into months.** Damn them both as well as their unethical, corrupt, and criminal actions.

I apologize for the emotion. Please, please understand that these memories are hard to relive. These memories not only anger me but hurt me very deeply. It's similar to what a rape victim must feel when remembering or telling of her rape. I was violated in many ways during the remainder of my employment. I will try to briefly recall some of those events for you which did progress into the day that I was fired on 3/26/99 after eleven and a half years of company service. Bear with me just a bit more on the cyanide issue please.

As ill workers clung together and shared experiences and medical data and conducted extensive research, we realized that we had many talents among us. We formed a group late in 1995 which we named "The Exposed." That group is now called "The Coalition for a Healthy Environment." Many of us sat before you and witnessed the hearing on 3/22/00. **We learned that cyanide was only a small piece of the puzzle.** We were dealing with a much bigger problem with poisoning from heavy metals and the synergistic effects of their combination in our bodies. To this very day, it is difficult for us to get medical help.

You see, an example was made of a local physician who questioned disease and heavy metals that he was finding in his patients who worked at the DOE plants in Oak Ridge. Dr. William K. Reid was attacked to the point that he was ran out of town by then Martin Marietta and he was forced to defend his credibility as a physician. These events bestowed by a large and powerful company are still emblazoned on the minds of area physicians. Most will treat us for a sore throat and common ailments but want no part of the occupational realm of heavy metal poisoning. Dr. Reid is now in Franklin, Tennessee. He is certified in hematology, oncology, and occupational medicine. Many of us journey there to see him. I have never met a more humble man or a physician who cares so deeply about his patients. What a shame and a what a tragedy that was bestowed upon Dr. Reid, wife Sandra, their four children, and the patients in the Oak Ridge area who so desperately needed and continue to need a competent, honest physician. Sandra Reid works actively to clear the damage that was done years ago. If ever given the chance, please listen to her and please help to right the wrongs that were done.

A couple more things, before I finish telling my cyanide story. I am one of the few, perhaps the only worker, who has conclusive evidence of cyanide poisoning that implicates the K-25 Site. A local occupational physician drew blood from me on a Monday morning before I went to K-25 to work. The same test was repeated on the following Friday afternoon after I had been at working at K-25 all week. The Monday morning sample showed "none detected" for cyanide in my blood. The Friday afternoon sample showed "0.4 mcg/ml" of cyanide in my blood. The normal level for cyanide in the blood is "up to 0.05 mcg/ml. The toxic threshold is 0.5 mcg/ml which means that any person would be symptomatic. A level of 1 microgram/milliliter is considered to be "acutely toxic." As you can see, **my cyanide blood level on the Friday afternoon after leaving K-25 was 8 times the highest range for normal.** Very important, cyanide only stays in the blood with a half-life of 20 minutes. To detect cyanide in the blood indicates a recent exposure due to the relatively fast clearance time from the blood. On that Friday afternoon, I went straight from work to get the blood drawn at the doctor's office in Oak Ridge. There may have been time elapsed of 30 minutes or so. I will not bore you here with the ridiculous and feeble answers that NIOSH and Doctors Lockey and Bird have provided in trying to downplay the cyanide found in my blood. Once again, this is not rocket science!

After I left K-25 in February of 1996, I spent the next 9 months off-site. During that time, I was given only one small job assignment that took less than 2 days to complete. The rest of the time, I sat idle as a full-time employee. I was isolated from coworkers and given no work to do. I volunteered to answer phones and do filing, but nothing was given to me. **This is classic treatment of a whistleblower.** There is a distinct pattern of isolating the employee, removing



job duties, and then retaliating against the employee for being unproductive. Often the retaliation escalates into being singled out for a lay-off or into a termination.

Incidentally, I repeated the urine thiocyanate test after the nine month period of being away from the K-25 Site. As expected, that test showed "none detected" (see attachment III). I will stop my discussion of cyanide now other than to say that I know in my heart of hearts that I and others were being poisoned by a cyanide or a nitrile compound while at K-25. I have my laboratory reports, and I have the knowledge of what happened to my body. Can I ever prove this in a court of law? Maybe not, but I know with a full degree of certainty and others know. I believe with all my being that I and others were exposed to acetonitrile and that the TSCA Incinerator was the culprit. By the way, I failed to mention that **cyanide is a known by-product of incomplete combustion and that acetonitrile is one of the most difficult waste products to achieve complete combustion**. Once again, this doesn't take a genius to figure out and it's not rocket science. For all we know, the private sector who is now leasing land at the K-25 Site may be receiving chronic exposure to cyanide today. No one has taken blood or urine samples to find out. The industrial sector and those who strive for economic development and growth would probably rather just not know.

One last thing on cyanide though, I recently sat in a court of law and witnessed sworn testimony by former K-25 staff physician, Dr. Timothy Oesch. He testified that during the cyanide controversy, he was called to a special meeting with then LMES corporate medical director, Daniel Conrad, and then K-25 health and safety manager, Larry Perkins, and given instructions on how he would be allowed to practice medicine at the site pertaining to cyanide intoxication. He was told, actually ordered, by Conrad and Perkins to not even let the word "cyanide" cross his lips when dealing with patients. He testified that the consequences of talking about cyanide to his patients at K-25 would impact his job. Dr. Oesch received a poor performance rating the following year and was eventually laid-off from LMES. Dr. Oesch also testified that a patient was brought to K-25 medical and was convulsing. Blood drawn from the patient's vein was bright red in color. Once again, we're not dealing with rocket science here, it doesn't take a genius to research medical literature on cyanide poisoning to learn that bright red venous blood can be an indication of acute cyanide poisoning. Dr. Oesch testified that the then K-25 medical director, Dr. Ann Roberts forbade him to have the blood analyzed for cyanide. The patient was transported to the hospital in Oak Ridge. With the passage of time and with the lack of knowledge of treating emergency room physicians there, it is more likely than not that the patient was not checked for acute cyanide poisoning. **Medical malpractice? Cover-up? Criminal activity?** I will ask you these questions. Personally, I was labeled as "psychotic and paranoid delusional" by a DOE consultant psychiatrist by assuming such things. And yes, this did result in a competent and ethical radiation protection technician being fired from her job one year ago.

I went into the cyanide issue at some length in this testimony. I did that because cyanide opened the door to understanding and involvement with health and safety issues for so many of the ill workers. Cyanide was only the tip of the iceberg. But cyanide brought about the discussion of health and the bonding of concerned workers to question and scrutinize the practices of DOE and LMES. Cyanide concerns were the very beginning of what took years to progress into the

hearing that you conducted last week in Washington D.C. Did cyanide harm us? We may never know. Obviously it is a lethal poison and is undesirable in the human body. Mixed with other toxins and heavy metals, who knows what it has or hasn't done to us. Medical literature tells us that a small percentage of cyanide is now stored in our bodies. What effect does that have on us and what effect does that have on us when mixed with the other contaminants? I'm not sure that medical science has those answers. I and others may not ever have those answers.

What is important with my elaboration on the cyanide events here is for you to see and try to understand the incompetence, the unprofessional behaviors, the lack of ethics, the negligence, and the deplorable way that the cyanide issue was dealt with. I could go on and on. I failed to mention the "cyanide working groups" formed by management in conjunction with the ill workers. Weeks of meetings progressed with many logical, reasonable, and achievable recommendations agreed upon and brought forward to deal with the cyanide issue. These recommendations were developed with management's assistance and upon their request; however, none of the recommendations were ever acted upon. One of the most important recommendations called for the biological sampling of ill workers for cyanide along with control group sampling of the ill workers' families and area residents. The answers were there. DOE and LMES just didn't want those answers though; they only wanted the positive press that efforts were being put forth to address the cyanide concerns.

Enough on cyanide. I hope that I have somewhat conveyed to you the fears, the struggles, the impact to our jobs, the impact to our health, the frustrations, the physical and the emotional strain and toll that was caused by the prospect of being chronically exposed occupationally to a poison. I may not have done justice to it, but I assure you that myself and others like Ann Orick will carry the cyanide legacy and the mishandling of it with us for the rest of our lives. This issue was felt ever so strongly as it progressed in 1995 and 1996, and many of us still feel that issue boiling strongly within us today. It opened our eyes to the lack of ethics by physicians, both company and private, and to the lack of ethics by many of those DOE and LMES personnel who hold health and safety professional titles. It also opened our eyes to cover-up, to medical malpractice, and to criminal behavior. For that awareness, I guess I must somehow be ironically thankful to all things a poison because DOE or LMES would have never imparted that awareness to me. It blows my mind to realize that the ill workers themselves had to bond together and scrape and study to achieve the truth and some degree of answers to our resulting health problems from heavy metal toxicity.

I grow weary of writing this testimony, and as I pointed out before, each time I go into the gory details of this mess, it takes an emotional toll. I will conclude my testimony with a brief attempt at listing significant instances for you here. This is brainstorming, and I know I will recall a lot but will also leave out a lot. I will give it a go with the time and the energy remaining today:

- **James Lockey, MD, MS and Richard C. Bird, Jr., MD, MPH**
- LMES contracted these physicians to determine if illnesses are occupational.
- First meeting with ill workers, September of 1996..
- Brief physical examinations of workers, early in 1997.

- Interim medical reports issued months later with recommendations for tests.
  - Doctors find significant number of group sensitized to beryllium.
  - Lockey states at meeting with ill workers, "anyone who has worked at the site has been exposed to beryllium - it's just a matter now of who contracts the disease."
  - Doctors take it upon themselves to study validity of urine thiocyanate tests.
  - Ill workers tested for heavy metals and PCBs even though doctors say these it is unlikely these will show up due to time elapsed and deposition in bone and organs.
  - LMES secretly tape records private meeting of doctors with the ill workers.
  - Workers showing elevated test results asked to repeat tests to be sent to other laboratories.
  - Workers with neuropsychological findings asked to repeat tests.
  - Today, most workers are finished with testing and waiting for final reports.
  - Medical evaluations that should have taken only a few weeks, have now taken years.
  - Doctors ignore significance of immune system compromise from exposure to heavy metals.
  - Testing of workers is inconsistent.
  - Workers do not have faith or confidence that health issues have been evaluated adequately
- **K-25, now known as East Tennessee Technology Park, remains an EPA Superfund Site**
    - There are currently 165 Federal facility sites on the National Priority List.
    - EPA has never done the required inspection of the K-25 Site.
    - Workers are not instructed or informed of Superfund status.
    - Plans are being made for a railroad museum to be built at the K-25 Site.
    - Plans are underway for a computer training center to be built close to the K-25 labs.
    - Contaminated buildings are leased and staffed with untrained private sector workers.
    - What's wrong with this picture?  
Innocent and unsuspecting newcomers will be health problems of tomorrow.
- **TSCA Incinerator continues to burn hazardous waste even from out-of-state**
    - Unresolved health issues, surrounding controversy, lack of emissions monitoring.
    - Why can't this monster be shut down? My lawyer once said that the incinerator should be preserved as a crime scene, and I laughed. In reality, was there some logic to this remark?
    - Workers tell of the steam flow down from the incinerator stack and of walking through it.
    - TSCAI is allowed to release .6 pound of beryllium to the air per year. Why? Sensitization and disease can result from minute quantities of beryllium. Is it thought that no one breathes any of the beryllium that is released from the stack? What comes out, has to come down somewhere!
    - TSCAI has a *thermal release vent* that opens and vents directly to the atmosphere when there is a malfunction. Workers are not told of this. I have stood there after an accident to do my job and was never told of this. There are many documented thermal release vent occurrences.
    - I worked a lot at the TSCAI and was never provided training on hazardous chemicals
    - I often smelled a sweet, fruity smell at TSCAI. I was always told that it was probably carbon tetrachloride. I was never told and did not know until recently that this is a carcinogen.

\* **The right to know**

- Never were workers warned or told that there was a possibility of exposure to beryllium, or cyanide, or heavy metals simply by being at the K-25 site.
- I was aware there could be some radiation exposure and wore a dosimeter. DOE nor LMES ever informed me that there could be chemical exposure and I was not monitored for such.
- DOE and LMES took **no biological samples from workers** to prove/disprove concerns.
- Because I and others accepted employment at the K-25 Site, that did not give anyone the right to poison us with heavy metals. I do not buy the *discretionary function* defense.
- Workers were lied to and told there was no source of cyanide at K-25. We beg to differ.
- Workers were lied to and told there was no beryllium at K-25.
- We have office workers at K-25 who are sensitized to beryllium. Were they ever made aware of the risk to their health by even just sitting in an office? This is so wrong.
- Classification is still used flippantly to cover-up what the workers are not wanted to know even though such things are not national security issues.

• **My personal experience as a radiation protection technician at K-1420**

- This was a mostly shut down facility when I worked there in the late eighties/early nineties
- I asked several times if there were transuranics, only to be told there were none. Today I know there are transuranics in the areas where I worked. I was lied to by management.
- The limits for beta/gamma contamination was and remains 5000 disintegrations per minute. I removed the cord to a coffee maker in an office hallway that read 220,000 dpm. I shut down the lunchroom with readings of 9000 dpm on water fountain intake vents, 6000 dpm on floor tiles, light fixtures, and window brackets, 6000 - 9000 dpm on door vents. The lunchroom was reopened after many decontamination efforts, and removal/installation of a new floor.
- I and my coworker contaminated our work boots on a daily basis. We begged for the building to be established as a shoe cover area. Our repeated requests were denied.
- I would have challenged anyone to take a geiger counter into the high bay area and find even one spot that did not have elevated radiation readings.
- I often found contaminated sections of asphalt outside of the building. My management told me to ignore this type of thing because we didn't have enough personnel to deal with it.
- I watched the build-up of radioactive contamination progress weekly on the arms and seats of conference room chair until they surpassed the limit and had to be removed. The contamination was being carried out to clean areas by the workers.
- We were not required to wear protective clothing in the contamination area. I wore company issued khakis or my personal jeans from home.
- Air sampling was practically non-existent. Results took days to get from the lab. There was no real time air monitoring.
- Radiation protection was grossly understaffed. There was usually only two technicians to cover K-1420, TSCAI, and another large facility K-1037. We did the best that we could.

\* **The tragedy of my father**

- My father worked as an engineering aid at Y-12 from 1953 - 1969.
- I can still remember the marks on his face from wearing a respirator. The marks didn't fade away until long after he was home for the day.
- I remember the hair loss that happened very quickly.
- I remember him telling my mother repeatedly to make sure that an autopsy be done on his body if he were to die as he told her over and over there was something out there hurting him.
- I remember him mentioning glove boxes and beryllium, but he would never really tell us details about his work.
- I still remember the cold, hard feel of his face as I kissed his cheek good-bye for the last time.
- My father died of a massive heart attack at the age of 41 March 22, 1969. He left a young widow, a 15 year-old daughter, and a 12 year-old son. Our lives were changed forever.
- My mother refused to have an autopsy done. She was advised by a local mortician not to bother with it because she would never know what was really found.
- Do I blame Y-12 for the premature death of my father? Indeed I do. I will always believe his work there took his life.

\* **Tennessee and Homegrown**

- I am 46 years old and live in Oak Ridge, Tennessee. I have never lived any further away than a 30 minute drive from here.
- My mother lives within minutes, as does my 90 year-old grandmother, as does my brother and his children, as does my aunts and uncles and cousins, and as does my two grown sons.
- My family's love of home is apparent. We do not leave this area or each other.
- After witnessing the pain and the suffering due to the health crisis from the Oak Ridge Reservation, I will break the chain; I will leave Oak Ridge and East Tennessee far behind me.
- *Death and disability are not acceptable costs for doing business or for making a living.*
- Unfortunately, there is a complacency here and an acceptance. We were raised with these plants around us. Guess we fail to realize that it is not common across the country for a nuclear weapons plant to be located right behind the local K-Mart and Kroger.
- I know too much and have seen too much to be able to stay here. This is not a healthy or a safe place to live.
- I cannot make the choice to leave for others, but I look forward to the day that I am financially able to leave here. With a healthier environment and with the passing of time, maybe I will reclaim some of my health that has been taken from me.

\* **Concern for others**

- Did you notice that all 4 witnesses who testified at the 3/22/00 hearing stressed that their testimony was not to help themselves so much but to help others? That is the prevailing sentiment among the ill workers. I have heard it and said it myself time and time again. Please do not allow what has happened to us to happen to anyone else.
- My telephone rings often with anonymous calls from workers who are now ill but afraid to let their concerns and illnesses be known. *Retaliation does happen regardless of how hard DOE and LMES will deny otherwise.* Examples are made of workers who are outspoken.

- I also receive calls from former coworkers who are now ill. They ask - "Are there doctors to help me? Why did it take so long to affect me? What happens when I can no longer continue to work?"
- I have seen lives shattered by occupational disability, former vibrant and energetic people reduced to the pace of a turtle, homes lost, savings depleted, bankruptcies, and the loss of all that some of these people have worked for all of their lives.
- I challenge your committee to secure the ages and the numbers of people who were employed at K-25 who are now disabled and depend on disability insurance or social security to sustain them. Where else would you see such a large group of young men and women who have been struck down in the very prime of life?

\* **Whistleblower retaliation as experienced firsthand**

- After my relocation to Y-12 in the fall of 1996, I was amazed that job duties assigned to me were solely clerical and did not call upon my skills as a radiation protection technician.
- I worked in the radiological training group but was never allowed to prepare or conduct training even though I had been a trainer for 3 years at K-25.
- I kept brought my DOE certification as a radiation protection technician up to current status but was still denied work as a technician. I had permanent medical restrictions that made field survey work impossible, but there were many other duties less physical in nature that could have drawn upon my skills in radiation protection.
- I was allowed to go to part-time status on 4/1/97 due to health. I worked extra hard to keep my job current with less hours.
- Unexpectedly, I was told by my supervisor to complete paperwork about my job duties and that my job was to be evaluated to see if I was doing work consistent with my pay. I thought to myself, "no - I'm doing clerical work and being paid as a technician - but it's not my fault as I have asked for more assignments more consistent with my skills - and I do my job as I am told."
- I was keenly aware that I was the only person in a division of over 200 people who had been singled out for this job scrutiny.
- After the powers that be had evaluated my job duties, I was suddenly given notice of an impromptu meeting. I was amazed to see that 3 levels of supervision were present in addition to a human resource person.
- I was told that they had a job for me. I was told that I could no longer work part-time. I was told that if I did not accept this job, that I would never be offered another job in radiation protection and that I would not be allowed to keep my certifications current by attending radiation safety training that is required of all technicians. I was told that if I refused the job they were offering, that *my job level would be demoted and there would eventually be a cut in pay.*
- At this point, they had my full attention. "What is the job?", I asked. The job was a full-time radiation survey job in a warehouse with very little heat and air conditioning. It violated all of my medical restrictions such as no exposure to temperature extremes, no bending, no lifting, no squatting, and etc.
- I explained that there was no way I could hold down a full-time job and no way I could meet the physical demands with my medical conditions and restrictions.

- I chose to remain in the job that I was doing against their threats of demotion and salary cut.
- After that choice, I was ordered out of radiation safety classes.
- I tried to make an issue of the unfair treatment and even thought that I would be covered by the Americans with Disabilities Act (see attachment IV). Was this ever an eye opener for me!
- I was fired before the demotion and salary cut took place.

\* **Psychiatric fitness for duty and retaliation**

- Shortly after I was sent to Y-12 in 1996, my division asked me to submit paperwork for an upgrade from an "L" clearance to a "Q" clearance. I complied and noticed that everyone in my division had a "Q" clearance whether they needed it or not.
- I worked in an uncleared area, scheduling and tracking training. There was no hint of any type of work that would be classified. Staff meetings were often held in the "Q" cleared area though.
- I was summoned to DOE for a security interview. I expected this because of my treatment for depression which included counseling and a psychiatrist.
- The interview was tape recorded and conducted by a fast talking, nervous security investigator. This was in January of 1997.
- I had just learned from my friend Ann Orick that her husband Mack had serious lung problems and that some of his medical records had been blacked out making it impossible for him or his doctors to know what he had been exposed to. I shared her concern, and I viewed this action as deplorable.
- During the security interview, I vented my frustration and told the interviewer that I would reveal the name of a substance if that information was necessary for a doctor to be able to help someone. "Even if that substance was classified?", I was asked. I replied that I would reveal it even if it were classified.
- This was all a hypothetical situation. In reality, I only knew of one part of something that I was told was classified. My work history of eleven plus years did not have me dealing with classified information or materials.
- The investigator was pleased. I felt like a fish that had just been hooked. He never asked me if I knew of special precautions for medical situations or if I knew about declassification procedures. I know of these now, but I didn't then.
- I was scheduled for a psychiatric interview with DOE consultant psychiatrist of 15 years, Dr. Kenneth Carpenter. He was to determine if I had a "defect in judgement and reliability." The interview took place on 4/23/97.
- A report dated 5/1/97 and prepared by Dr. Carpenter conveyed his diagnosis of me to DOE. Wrote Dr. Carpenter, "I would (be) concerned about her in a security setting because of her poor common sense, logic and judgment, and because of her paranoid delusion symptoms."
- My security clearance was suspended after that diagnosis. I went through the formal appeals process with DOE which resulted in a 2 day hearing and a subsequent appeal to that hearing..
- Almost one year after the psychiatric interview by Dr. Carpenter, I filed a medical malpractice lawsuit against him in Anderson County State Court. It was almost another year before I was given a court date for a jury trial.

- Meanwhile, my DOE appeals process was exhausted. I received a letter in early March of 1999 to notify me that my clearance was being revoked. My sworn statements that I had no malice or no reason to divulge classified information didn't matter. My explanations that I would do everything humanly possible to get the name of a substance declassified before considering revealing it didn't matter. It also didn't matter that the name of a substance was no longer a classification issue as long as the name of a process or a building was not used in conjunction with the substance. Remember, my statement in the security interview was all just a hypothetical.
- On Friday, March 26, 1999, my supervisor called me to say she had just been notified to take me to the Y-12 Visitor Center. Immediately, I called my attorney. His response was spontaneous, "Sherrie, they are going to fire you."
- He was right! A DOE representative was there to give me the same paperwork that had been mailed to my home two weeks earlier. He said the decision about the fate of my job would now be up to LMES.
- Didn't take LMES long to decide what to do with me. I was fired for "security reasons" within a matter of minutes.
- Two armed guards escorted me out where I sat with them in their vehicle for close to an hour waiting for my supervisor to bring my wallet and car keys.
- To my surprise, she drove up with her supervisor and I not only got my wallet and car keys but boxes of my things from my office. This was right at shift change time on a Friday afternoon. Everyone saw the spectacle that was being made of me as the boxes were unloaded into my car. I believe this was deliberate.
- I requested several times to go with an escort back to my office to retrieve the rest of my personal items. The requests were met with hostility, and I later received two boxes by mail. I never did get everything, and I do know that others are allowed to return in order to get their things. Oh well, just goes along with being "special" I suppose. I had evolved to expect "special" treatment at work. I'm not saying that I was immune to the pain from "special" treatment, just that I had grown somewhat used to it.
- I failed to mention that the labor relations man, Charlie Miner, who fired me was the same man who dealt some very questionable treatment to me only a few months before the firing. I had complained about the mysterious weekend appearance of 37 B-25 boxes and 2 drums of PCB contaminated solids that had were being stored in the training building where I worked. I had reported this to the Environmental Protection Agency and to the Tennessee Department of Environment and Conservation. To make a long story short, I was carted to Y-12 medical to for a psychological interview after I had supposedly exhibited "aberrant behavior." The psychologist was not there so and would not be there the following week, so Mr. Miner forbade me to come to work until after the psychological interview. That's all another story in itself!
- My firing was on Friday, March 26, 1999 and the medical malpractice trial against Dr. Carpenter had already been scheduled for the following Wednesday.
- ON MONDAY, APRIL 6, 1999 (LESS THAN 2 WEEKS OF MY FIRING) AN ANDERSON COUNTY JURY CONVICTED DR. KENNETH CARPENTER OF MEDICAL MALPRACTICE AND AWARDED A \$600,000 JUDGEMENT.



- Dr. Carpenter appealed the verdict and today he and I are awaiting notification of the date and time for oral arguments before the Eastern District Court of Appeals. All legal briefs have been submitted.

As for me and my future. I fully expect that the malpractice verdict will be upheld. As I stated at the beginning of my testimony, I can run but I cannot hide. I do intend to run, and I hope I can hide somewhat. My husband and I plan to make a new home for ourselves in Sarasota, Florida with the money from the medical malpractice that took my job. Only time will tell if ocean breezes and sunshine will aid as I try to recover from the torment and the illnesses that were bestowed upon me by DOE and LMES. I have seen a small degree of improvement to my health since my firing a year ago. I am thankful every day of my life that I no longer have to go to K-25 or Y-12. I look forward to the day when my husband can also be free. Freedom to flee comes to mind. The bad memories that still hurt so deeply will fade with time. In my new home, I surely won't be tormented daily by reading of the atrocities that take place with DOE and LMES. And, I surely will see healthier and happier people than those I experience daily here in Oak Ridge. I will leave family and friends behind. There will be no regrets. I have fought with full conviction over the past several years to fully expose the ugly face of DOE and LMES to the workers and to the community.

For the sake of my health, it will be time to move on. As my husband tells me, "You will never put this fully behind you until you leave here." Part of me grieves because where I used to see beauty here in East Tennessee and in Oak Ridge, I now see hardship, illness, and suffering. It is no longer beautiful to me, and I very anxiously await the day that I leave it behind. No, I cannot fully escape because I literally will be carrying a part of K-25 with me, deep within my body in the form of toxic contaminants. I hope and pray that my condition does not worsen and that my health will improve. Regardless, I owe it to myself and to my husband to strive for the best quality of life possible. There is no doubt in my mind that neither of us will attain that pursuit in Oak Ridge, Tennessee.

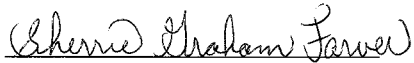
**Suggestions for Solutions:**

- 1) Conduct field hearings in the communities affected by DOE operations.
- 2) Conduct full and independent third party investigations of DOE sites.
- 3) Establish independent environmental health clinics for diagnosis and treatment in Oak Ridge and other affected communities across the nation.
- 4) Abolish the regulation of DOE operations by the DOE. An agency cannot regulate itself.
- 5) Shift the burden of proof from the worker. Interim presumption should prevail.

- 6) Model a compensation program after the Black Lung Program.
- 7) Enforce contractor fines and penalties.
- 8) Safety is paramount. Shut down unsafe operations regardless of economic consequences.

Thank you for your time and your attention. Thank you for considering my written testimony. Please contact me if further information or clarification is desired.

Respectfully Submitted to the Senate on Governmental Affairs, this 29<sup>th</sup> day of March, 2000.




Sherrie Graham Farver  
106 Gordon Road  
Oak Ridge, Tennessee 37830

Telephone (423) 482-5023  
E-Mail: [dfarver@sprynet.com](mailto:dfarver@sprynet.com)

Attachment I

**U. S. DEPARTMENT OF ENERGY OAK RIDGE OPERATIONS OFFICE**



**EMPLOYEE CONCERNS REPORTING FORM**  
**HOTLINE NUMBER: 1-615-241-ECMS (1-615-241-3267)**  
**or 1-800-ORO-ECMS (1-800-676-3287)**

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**USE THIS FORM TO REPORT SAFETY, HEALTH, AND ENVIRONMENTAL CONCERNS**  
**MAIL FORM TO: US DOE, SE-331, FEDERAL BUILDING, PO BOX 2001, OAK RIDGE, TN 37831**  
**OR FAX FORM TO: 615-876-3725**

DOE has established the Employee Concerns Management System (ECMS) for DOE Federal and contractor employees to help identify and resolve nuclear & non-nuclear safety, health, and environmental concerns relating to DOE programs. Your assistance in notifying us about such concerns is essential to the success of these programs. However, to give your employer an opportunity to respond to your concern, you should first report it to your supervisor. Contractor employees are also requested to first use your own organization's established Employee Concern or Complaint Reporting Procedure; if no resolution can be made, if you fear reprisal, or if you want to request confidentiality, you may use the DOE ECMS.

Please fill out this form as completely as possible and mail it to the address shown above, or call the 24-hour Hotline number. If you call, please be prepared to provide the same information as requested on this form. Your name will be kept confidential if you request. If you choose to remain ANONYMOUS, please insert any 3 letters of the alphabet below the signature line, so you can check its status later, and record the date and the 3 letters separately for your reference. After reporting a concern, you may check on its status by calling the ORO Employee Concerns Coordinator during normal working hours at 615-576-0832. Your report must not contain any classified information. Thank you for your cooperation.

Please fill in appropriate spaces and check ALL items below which apply to your concern.

THIS CONCERN IS:  Immediate  Recurring  Unique

DOES THE CONDITION IMMEDIATELY THREATEN DEATH OR SERIOUS HARM?  Yes  No

NATURE OF CONCERN: (Check all that apply)  
 Violation  Willful  Price-Anderson Violation  Industrial Safety Hazard  Health Hazard  
 Environmental Concern  Nuclear or Radiation Concern  Construction  Other (specify): Willful Endangerment

EXACT LOCATION OF CONCERN: Oak Ridge K-25 Site

SUPERVISOR IN CHARGE OF WORK: Harold J. Conner SUPERVISOR'S PHONE NO. 576-0129

WHAT DO YOU BELIEVE MAY BE THE CONSEQUENCE(S) OF YOUR CONCERN IF IT REMAINS UNSOLVED?  
 Loss of life or injury  Personnel Health Hazard  Damage or loss of facilities or equipment  
 Damage to the Environment  Other(specify):

WHERE ELSE AND WHEN HAVE YOU PREVIOUSLY REPORTED THIS CONCERN? (See Attached)  
 Immediate Supervisor  Union/Mgt. Grievance  DOE  IG  Nowhere  Other (specify): \* When? 12/11/95  
Jerry R. Jamison 574-9806 Employee Concern/Response Program (mo./day/yr.)

WHAT EFFORTS WERE MADE TO CORRECT IT?  
Incomplete and inadequate survey by K-25 Site Industrial Hygiene

WHO IS YOUR EMPLOYER? (Name of company)  
 DOE  Contractor (specify): Lockheed Martin Other (specify):  
 If this is your former employer, check here

IF YOU ARE A REPRESENTATIVE OF EMPLOYEES, GIVE YOUR POSITION AND THE NAME AND ADDRESS OF YOUR ORGANIZATION: N/A

(Continue on Reverse Side)  
 OR P 5480.29B (2-94)

\* K-25 Site Health Services, Medical Incident Report, 12/11/95

CONFIDENTIALITY REQUEST/RELEASE: (Check one)

 DO NOT WANT MY NAME DISCLOSED  DO WANT MY NAME DISCLOSEDSIGNATURE: Sherrice G. Farver DATE: January 23, 1996  
(include your name only if anonymity is NOT desired)

YOUR 3 LETTER CODE \_\_\_\_\_ (include if you wish to remain anonymous; enter any 3 letters to identify yourself and keep a separate note of them for yourself; see instructions on reverse)

YOUR NAME (Please print): Sherrice G. Farver YOUR JOB TITLE: Sr. Health Physics Tech.  
(include your name only if anonymity is NOT desired)YOUR DIVISION, DEPT. OR WORK GROUP: K-25 Site Health & Safety Division (#16), Radiological Control, Organization (#1207)YOUR WORK MAILING ADDRESS: K-25 Site, P.O. Box 2003CITY, STATE, ZIP: Oak Ridge, TN 37831-7404  
(Building K-1020, MS 7404)YOUR TELEPHONE NUMBER (work): (423) 576-4562BEST DAYS AND TIMES TO CALL: Any day - Shift is 7:00 AM - 3:30 PM**DESCRIBE YOUR CONCERN HERE**

Describe your concern as fully and explicitly as possible. Answer any of the following questions you think are important. What is the unsafe or unhealthful condition or practice and how often does it occur? What kind of work is being performed there? Have injuries, illnesses, property damage accidents, exposures, incidents, near-misses, or nonpermitted environmental (air, water, waste) releases occurred (what, when, and how often)? How many people are exposed to the condition and how often? How close do people work to the hazard? Include what you believe really caused the problem, and what actions can be taken to both correct it and prevent a recurrence. Is personal protective safety equipment available and used when needed? Is the condition a violation of a DOE, OSHA, EPA, State, contractor, or other requirement (Be specific)? What is your role with regard to the area of concern? What other people may be contacted regarding your concern? Are other serious hazards present? (Attach additional sheets to form if

Many K-25 site personnel have elevated levels of urinary thiocyanate. These personnel range from clerical workers to maintenance workers and are located in several different buildings. Some of the spouses of those involved have been tested with no detectable levels of thiocyanate present in the urine.

A partial list of symptoms experienced by those affected:  
fatigue, depression, shortness of breath, eye irritation, confusion, heart palpitations, dizziness, muscle/joint pain, headaches, short-term memory loss, extremity numbness/tingling

I am one of the personnel affected, and my husband was one of those who showed no urinary thiocyanate. I have above normal levels of urinary thiocyanate. Additionally, I have shown a toxic level of cyanide in my blood. The prospect of chronic exposure to cyanide and/or cyanide compounds in my workplace is extremely frightening. I have asked to be moved off-site until the source of exposure can be determined and evaluated. No one seems to care about the physical and mental toll that this situation is taking upon me. My health and the quality of my life is at stake. I suspect that I am hypersensitive to cyanide and/or cyanide compounds. I fear that I may be at risk for permanent, non-reversible health effects.

Please relocate me from the K-25 Site.

I have included the following items for your information and review:

- \* Employee Concern/Response Program (UCN-19937)
- \* Ethics complaint, "Oak Ridge/Medical/Ethics?"
- \* Letter, "Sampling Results for Building K-1020"
- \* Original sampling data for building K-1020 / Sample #444301 / Sample #444302

Please feel free to contact me at which time I will work with you to explain this dilemma more fully and provide additional sources of contact. For the sake of myself and my coworkers, this situation must be fully addressed and resolved.

Handwritten notes: 2/11/95, 10:50am

Attachment II



Sherrie G. Farver  
12-11-95

EMPLOYEE CONCERN/RESPONSE PROGRAM

DATE 12/11/95

EMPLOYEE CONCERN OR SAFETY SUGGESTION: (Summarize from the back side of the form).

INITIATED BY  
SHERRIE G. FARVER

CONFIDENTIAL (Check Yes or No)  
 Yes  No

DEPARTMENT  
1207

FACILITY  
K-25 SITE

TRACKING NUMBER

SCHEDULED COMPLETION

REPORTABLE (Check Yes or No)  
 Yes  No

SUPERVISOR SIGNATURE

PLEASE SEE ATTACHMENT I, ITEMS #1 THROUGH #13

PROPOSED CORRECTIVE ACTION

Closed 1-16-96  
See last page and

PLEASE SEE ATTACHMENT II, ITEMS #1 THROUGH #13

COMPLETION VERIFICATION AND CLOSE OUT

DATE OF FEEDBACK WITH INITIATOR

SIGNATURE

SEND TO THE FOLLOWING ADDRESSES AS APPLICABLE:

- HS&E: Received by HSC on 12/11/95. Per call from Jerry Jamison on 12/11/95.
- Human Resources:
- Ethics:
- Other:

EXHIBIT  
P-6B

TIME CONSTRAINTS: All concerns must be

ll  
3-11-95  
7:55 AM  
E/M/S

Sherrie Farver Employee #28222 12/11/95

As per Lockheed Martin Employee Concern/Response Program please consider this a formal submission of UCN-19937.

**Employee Concern or Safety Suggestion:**

Due to levels of thiocyanate in my urine (and urine of coworkers) and levels of cyanide in my blood which are elevated and above normal:

- 1) Imminent concern for my own health, safety, and well-being.
- 2) Imminent concern that cyanide intoxication is life threatening for my coworker, Ann Orick.
- 3) Concern that source(s) of toxin(s) be determined.
- 4) Concern that source(s) of toxin(s) be eliminated.
- 5) Concern that the K-25 Site does not have in-house technical ability or resources to alleviate items #2 and #3 above.
- 6) Concern that the scope of the K-1020 survey for cyanide was extremely limited and inadequate.
- 7) Concern for availability of a clinical toxicologist to evaluate past, present, and future health implications.
- 8) Concern that toxins or heavy metals from past occupational exposure may still be stored in my body.
- 9) Concern that past and present occupational exposure to toxins may have resulted in permanent damage to my person.
- 10) Belief and fear that my health is being continually jeopardized and damaged at the K-25 Site.
- 11) Belief that management of health, safety, and medical disciplines of the K-25 Site and of Lockheed Martin Corporate are involved in a cover-up due to the magnitude of the problem and legal implications.
- 12) Concern and outrage of the ethics and "concern for people" exhibited by the K-25 Site Health Services Department.
- 13) Concern as to why Lockheed Martin will not allow me an open and documented consultation with Dr. Timothy Oesch.

Sherrie H. Farver  
12-11-95

12-11-95  
10:55 AM  
JMF

Shazris Farver Employee #28222 12/11/95

## Proposed Corrective Action:

- 1) I should be immediately removed from the K-25 Site.
- 2) Ann Orick should be immediately removed from the K-25 Site.
- 3) Lockheed Martin should locate the source of cyanide intoxication and determine whether it is at the workplace, at the home, or a combination of both.
- 4) If the source of cyanide intoxication is occupational, Lockheed Martin should remove employees at risk and eliminate the source.
- 5) Industrial, environmental, medical, and toxicological professionals should be subcontracted by Lockheed Martin to assess cyanide intoxication.
- 6) Not limited to but to include - Pesticides? Wood? Concrete? Sewer? Drains? Ambient air? Occupational work history? Urine tests for other K-1020 occupants? Trending of affected personnel at the site? Sampling other buildings? History of disposal methods for cyanide and cyanide compounds? Inventory of all cyanide and cyanide compounds now at the site?
- 7) Lockheed Martin physicians should be assisted in this matter by other physicians who are expertised in clinical toxicology.
- 8) I and all employees suspected of cyanide intoxication should be sent for a medical/toxicological evaluation to determine body burdens of metals, toxins, chemicals, and etc.
- 9) A complete evaluation by physicians (occupational and toxicological) who are competent to make this determination should be done as soon as possible.
- 10) Remove me to an alternative work location, off-site, such as Jackson Plaza, 105 Mitchell Road, or 701 Scarboro while further evaluation of the K-25 Site continues.
- 11) Medical and Health/Safety disciplines should address the subject of cyanide intoxication openly and honestly.
- 12) Resolve the unethical and unprofessional behavior which was exhibited to me by the K-25 Site Health Services Department on 11/2/95. My laboratory reports and associated medical data should be placed in my medical file at the site.
- 13) Dr. Oesch has a published paper on cyanide intoxication. He is a resource that I should be allowed to consult with on the record.

Shazris Farver  
12-11-95

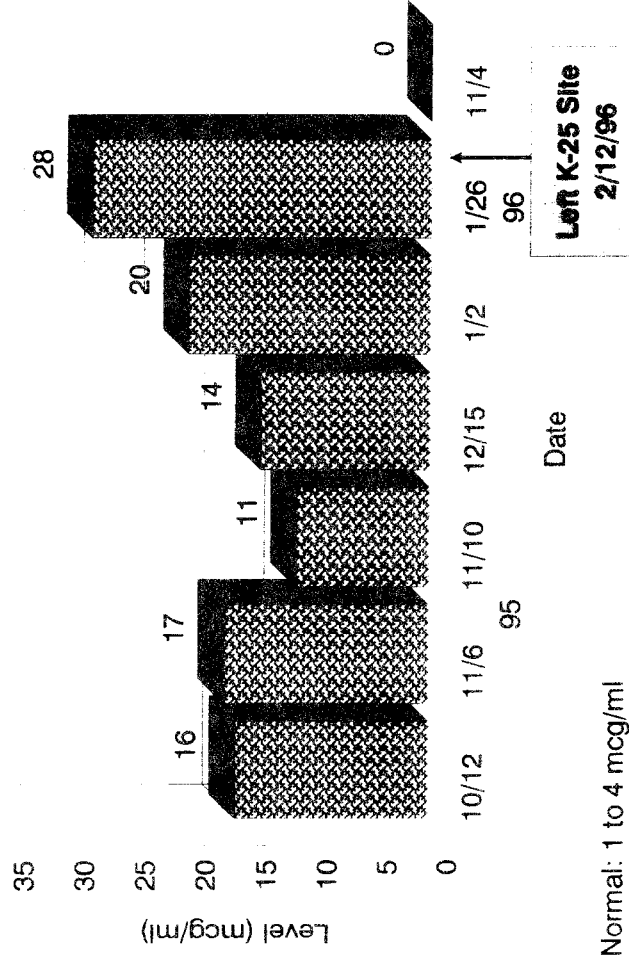
As noted in a letter to the employee dated November 20, 1995, there is no evidence that cyanide compounds exist in the employee's work area. The survey performed for cyanide compounds in the K-1020 building was appropriate and included sampling of air, water, and soil. In addition to the initial survey, the Operational Safety and Health Department is continuing to evaluate whether cyanide compounds could exist at the K-25 Site.

The K-25 Site has a very knowledgeable and technically competent staff working on this issue. The site also has additional certified staff and other resources available to assist with this evaluation or any other health and safety matter, when needed. The K-25 Site Health and Safety Division (H&SD) has always operated in an open and honest manner and will continue to do so. Similarly, the H&SD conducts operations in an ethical manner and is committed to maintaining the highest standards of excellence.



Attachment III

# Thiocyanate Levels in Urine



Attachment IV

*Sherrie Graham Farver*

Home: 106 Gordon Road, Oak Ridge, TN 37830, (423) 482-5023  
 Work: Y-12 Plant, Building 9709, MS - 8093, Oak Ridge, TN 37831, (423) 576-4560

September 4, 1998

Dr. James H. Barker  
 Manager, RADCON Division  
 Y-12 Plant  
 Building 9115, MS - 8219  
 Oak Ridge, TN 37831

Dr. Barker:

This correspondence is to clarify and correct the erroneous information contained in your memorandum, "Job Assignment", dated 8/11/98. After performing my assigned job duties with the RADCON training group for approximately fourteen (14) months, I was suddenly singled out for a review of my job duties. I was told this request was initiated by D.P. Rowan and yourself during December, 1997. Since that time, Lockheed Martin Energy Systems (LMES) has announced the scheduled review of all non-exempt employees to commence January, 1999. I am a non-exempt employee. I am also well known to have engaged in protected activity ("whistleblowing") regarding the environmental health and safety problems created by the Department of Energy (DOE), LMES, and the Oak Ridge Reservation and inflicted upon workers and area residents. This status has afforded me "special" and undesirable treatment in the past from my employer and the DOE. I perceive your recent actions to me as retaliatory not only from a whistleblower's perspective but from the perspective of a known physically ill worker with known disabilities and known medical restrictions. How dare you!

You offered me a job assignment/position in RADCON that you knew I could not perform due to my health and permanent work restrictions specified by LMES Health Services, March 1990. I am not to be exposed to extreme temperature conditions, lift more than five pounds, bend, reach overhead, crawl or squat. How do you justify the offer of a job located in a warehouse with no air conditioning and no heat with assignments to require that I physically survey all surfaces of discarded office equipment stacked head high? You even specified that I would not be allowed to work part-time even though you have accommodated me with part-time employment since 4/1/97 due to my health problems and even though you were well aware that my original request for part-time employment was to avoid leaving on disability. Do your actions make sense to you Dr. Barker? Your actions make sense to me in that you set me up to refuse a job that I could not perform due to disabilities or to accept a job with all expectations of my failure to perform it. **Because I refused your job offer due to my physical disabilities, you have now plotted an employment course for me which will drastically demote my job level and significantly decrease my salary.** Surely, I don't have to tell you this is wrong, unfair, and unethical. Very possibly, I do need to tell you that your actions toward me are not only illegal, but unreasonable, unacceptable, and will not be tolerated.

As a government contractor, LMES is required by certain federal laws to do more than just refrain from illegal discrimination. Specifically, the Presidential Executive Order setting up the Office of Federal Contracts Compliance, and Section 503 of the Rehabilitation Act of 1973 requires companies who do business with the federal government, such as LMES, to take affirmative action to employ and promote

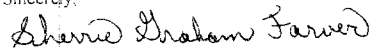
individuals with disabilities. In addition, I would respectfully and wholeheartedly recommend that you review Title I, Section 102, of the Americans with Disabilities Act of 1990. Perhaps you (or others) perceive LMES and yourself to be above the law. If that is the case, you are wrong, and I do not share that perception.

The Radiological Control Organization has positions in dosimetry, instrumentation, or training that a Radiological Control Technician (RCT) can perform without constant and frequent lifting, bending, squatting, or exposure to temperature extremes. Yet, the only RCT position that you considered me for was a junior position carrying survey meters in the heat and cold. Admittedly, many of the assignments that I been given since my transfer to Y-12 RADCON two (2) years ago have been menial and well below my technical capabilities. This is not my fault as I have reminded my supervisor on several occasions of my qualifications and the fact that I am willing to do more challenging assignments as would be expected of an RCT.

I will take a moment to remind you and those who read this message of my credentials. I have thirteen (13) plus years of experience in the discipline of Health Physics, i.e., radiological health and safety. I am rapidly approaching eleven (11) years of company service, working in some of the most contaminated areas of the plants, as is well documented in my Federal Tort Claims Act case. In addition, I hold an Associate of Science Degree in Health Physics Technology. A two-year degree may not particularly impress you as a Ph.D., Dr. Barker, but most of your RCTs do not have this level of formal health physics training. Out of approximately one hundred and twenty (120) RCTs in Y-12 RADCON, less than ten (10) have excelled to achieve national registration as a technologist. I am proud to say that I successfully completed the recognized standards of the National Registry of Radiation Protection Technologists (NRRPT), December 1, 1991 and became fully registered as a Radiation Protection Technologist. Additionally, I was a radiological health and safety instructor for 3 years while employed by LMES at the Oak Ridge K-25 Site. I was an integral, successful part of the K-25 training group and gained a wealth of skills and experience. I have a high level of technical skills that could be applied here at Y-12 in the training group that I have been a part of for almost two (2) years now. Unfortunately, my supervision repeatedly emphasizes to me that my training job was at K-25 and that an RCT cannot do this job at Y-12. This is at best perplexing, particularly considering that I performed the training job at K-25 for LMES which is the same company I am employed with now at Y-12.

Hopefully you can see that there is a window of opportunity that exists for both of us by utilizing my technical abilities, experience, and skills as an RCT. I ask that you reconsider and plot a different career path -- one that not only benefits me but the RADCON organization that you strive to serve and to promote. **I will reiterate that any demotion of job level and subsequent pay decrease is unacceptable, immoral, and contrary to both law and Lockheed Martin "values."** It is preferable that you and I come to an equitable agreement regarding my future job assignment; however, please be advised that I will pursue all legal avenues available to me if this is not possible. **I request that any future information related to my job assignment be communicated fully to me in writing.** Thank you kindly, and best wishes for Labor Day.

Sincerely,

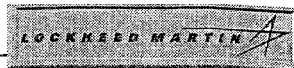


Sherrie Graham Farver

Attachment: Memorandum, "Job Assignment", J. H. Barker to S. G. Farver, 8/11/98

Page 3	Barker	9/4/98	Distribution:
Todd R. Butz		Y-12, 9704-2, MS 8013	(423) 241-2925
Coalition for a Healthy Environment (CHE)			
Larissa Brass		The <u>Oak Ridger</u>	
<u>Dateline</u>		NBC News	
Don Dare		WATE News	
Lew Felton		Y-12, 9704-2, MS 8011	(423) 574-7930
Laura Frank		The <u>Tennessean</u>	
Senator Bill Frist			
"Gus" Gustavson		Y-12, 9704-2, MS 8003	(423) 574-2527
John T. Harding, Esquire			
Suzanne A. Herron		701 Scarboro, MS 8241	(423) 576-1900
Robert I. Van Hook		Y-12, 9704-2, MS 8001	(423) 574-3620
Jacqueline O. Kittrell, Esquire			
David C. Lee, Esquire			
JoEllen M. Meredith		Y-12, 9704-2, MS 8004	(423) 574-1612
Frank Yfunger		The <u>Knoxville News Sentinel</u>	
T. Larry Pierce		Y-12, 9109, MS 8019	(423) 574-1533
Connie A. Polson		Y-12, 9109, MS 8018	(423) 576-4448
Danny P. Rowan		Y-12, 9112, MS 8203	(423) 574-3548
Edward A. Slavin, Jr., Esquire			
Susan Thomas		The <u>Tennessean</u>	
Senator Fred Thompson			
Scott A. Wical		Y-12, 9983-66, MS 8221	(423) 574-1791

## INTERNAL CORRESPONDENCE



LOCKHEED MARTIN ENERGY SYSTEMS

Date: August 11, 1998  
To: S. G. Farver  
cc: T. R. Butz, T. L. Pierce, C. A. Polson, D. P. Rowan, S. A. Wical  
From: J. H. Barker, 9115, MS-8219, 574-3547 - RC *James Barker*  
Subject: Job Assignment

This memorandum summarizes the activities related to the desk audit of your current part-time position and the offer of a full-time position as a Radiological Control Technician (RCT).

Based on the July 28, 1998, review of your medical restrictions, your expressed doubts about your ability to perform the job duties of an RCT, and your request for part-time work, I have concluded you cannot perform the essential functions of such a position.

You have been able to function in your current assignment as a part-time Senior Training Assistant; and based on our current needs and funding, I conclude that continuing that employment is the best alternative.

This current assignment is not an accommodation related to your former position as an RCT. It is a job that exists on its own merit. Should your physical condition improve, you will be free to apply for an RCT position if one becomes available.

JHB/bjs

Linda Gass

## COMMENTS TO BE INCLUDED IN THE RECORD OF THE SENATE GOVERNMENT AFFAIRS COMMITTEE HEARING (22 MARCH 2000) ON THE HEALTH OF WORKERS AT OAK RIDGE DEPARTMENT OF ENERGY FACILITIES

In preparing my comments I have relied primarily on these sources: 1) my personal knowledge, having lived and worked in Oak Ridge for many years and having many friends and relatives who have worked there since World War II; 2) the archived papers and testimonies of numerous scientists and medical doctors who have dealt with the issues of health effects of ionizing radiation and hazardous materials. In particular I have studied the lifetime papers of Karl Z. Morgan, the "father of health physics"; 3) the database documents which have been made accessible electronically to the public by the Department of Energy (DOE) via what DOE calls Open Net (doe.gov/opennet) and those of Argonne National Laboratory (ANL), (hrex.dis.anl.gov). The latter database has some 250,000 records from not only DOE, but also from the Nuclear Regulatory Commission (NRC), Department of Defense (DOD), and many universities and agencies. 4) environmental data on soil, water, and air which I have researched since 1990, primarily data on the Oak Ridge area. Some of this is at the DOE Reading Room in Oak Ridge. I have read widely among secondary sources and abstracts, but I go to as many primary sources as possible and analyze them judiciously before assessing weight.

There have been several House and Senate Committee and Subcommittee Hearings over many years which are relevant to the present hearing. The issues have been revisited numerous times in various forums. I offer some relevant historical information.

Dr. Tom Mancuso's University of Pittsburgh research project was cancelled by DOE in 1977 after his preliminary findings indicated elevated cancer levels associated with low-level radiation exposure among nuclear workers.

In early 1978 the House Subcommittee on Health and the Environment, after hearing testimony from DOE and others indicating suppression of research by DOE, concluded, "The testimony I have outlined here, all received from DOE witnesses or uncovered in DOE's own files, makes me question whether DOE properly ought to engage in ANY HUMAN HEALTH EFFECTS STUDIES WHATSOEVER."

I incorporate here the entire letter from Paul Rogers, Chairman of that Subcommittee to the Chairman of the House Subcommittee on the Environment and the Atmosphere, recommending that the two Subcommittees work together to rectify this egregious conflict of interest.

\*\*\*\* Letter, pgs. 2-4

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Congress of the United States  
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 of the  
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 Washington, D.C. 20515

February 10, 1978

The Honorable George E. Brown, Jr.  
 Chairman  
 Subcommittee on the Environment and  
 the Atmosphere  
 Committee on Science and Technology  
 2319 Rayburn House Office Building  
 Washington, D.C. 20515

Dear George:

Over the last several weeks the Subcommittee on Health and the Environment has conducted oversight hearings on the health effects of ionizing radiation. Last Wednesday we received testimony from the Department of Energy which raises serious questions about the management and the integrity of that agency's human health effects research efforts.

In exploring circumstances surrounding the decision of Dr. James Liverman to terminate a Department of Energy (then Atomic Energy Commission) research contract with Dr. Thomas Mancuso involving a study of health effects of low-level occupational ionizing radiation exposures, several administrative irregularities emerged.

- (1) Contrary to Dr. Liverman's testimony that a major reason for terminating the contract was the negative peer reviews, the reviewers of Dr. Mancuso's project were not negative. In fact, according to the Department of Energy's own internal documents obtained by the Subcommittee, "Four (of five) reviewers enthusiastically recommended continuation of the study." Moreover, three of those actually favored expansion of the study.
- (2) In earlier DOE statements the decision to terminate the contract was said to be based on "Dr. Mancuso's imminent retirement." Dr. Liverman admitted that this story was "in error"; that Dr. Mancuso's retirement was not then imminent or even scheduled. In fact, as a research professor, he need not retire until 1982.

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- (3) Despite these revelations and admissions, the Subcommittee has no evidence that Dr. Liverman has made or is now making any effort to uncover the facts in this dispute. In fact, Dr. Liverman continues to defend as correct and proper his decision to end Dr. Mancuso's contract.
- (4) In 1974, a decision was made, again under Dr. Liverman, to transfer the Mancuso study to Oak Ridge Associated Universities. DOE witnesses testified that this decision was made with no project design or protocol having been solicited or received, with no other researchers having been given an opportunity to compete for the contract, with no scientific or peer review of the competency and capability of the new research institution and without any idea of whom the project's principal investigator would be (since that position was not filled until nearly two years later).

Moreover, Dr. Liverman and the other DOE witnesses told the Subcommittee they did not know who made the decision to transfer the project to Oak Ridge.

- (5) In September-October 1977, the portion of the Mancuso project relating to employees of DOE's Hanford, Washington facilities was transferred to Battelle Northwest Laboratories in Hanford. The above criticisms of the original decision to move the entire project to Oak Ridge apply in this case as well. In addition, Battelle Northwest is a major nuclear power research and development contractor to DOE. In essence, therefore, Battelle has been asked by DOE to investigate the health effects of radiation on its own employees. Moreover, Battelle Northwest has never conducted a human epidemiological study of this nature. This decision apparently was made by one man, Dr. Walter Weyzen, and concurred in by Dr. Liverman, his supervisor. When challenged on the propriety of both the process and the decision in which it resulted, Dr. Weyzen's only defense was, "I trust my own judgement."



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The testimony I have outlined here, all received from Department of Energy witnesses or uncovered in DOE's own files, makes me question whether the Department of Energy properly ought to engage in any human health effects studies whatsoever.

With your subcommittee's authorization hearings on Department of Energy environmental research efforts beginning this week, I urge you to probe the Department of Energy witnesses on the scope, emphasis, management and scientific integrity of its entire human health effects research program. We plan to continue our examination of DOE's health research efforts and our files are available for your review. In addition, I propose that our two subcommittees cooperate in investigating and rectifying what appear to be very serious problems.

Kind regards.

Sincerely yours,

PAUL G. ROGERS, M.C.  
Chairman

PGR:scdp

Unfortunately, that conflict of interest has never abated and DOE has continued on as the major funnel of government funding for all nuclear related matters from health effects research to environmental cleanup. The loss of public confidence in DOE is a fact; that the loss has been well-deserved is an opinion shared by many, including myself. Organizations and government agencies, like individuals, are born, develop "personalities" stamped by their early years and the people and events surrounding them. Then, as we have witnessed with the FBI, the IRS, the CIA, HUD, USDA, the EPA, et.al, there frequently comes a time when Congress must exercise some oversight in the public interest and rein in or redirect agencies which have become a source of waste, fraud, mismanagement, and/or lack of accountability.

The Mancuso suppression galvanized a number of his professional colleagues as well as environmental organizations into action around this issue. After a protracted controversy, Karl Morgan resigned in 1977 as Editor-in Chief of the prestigious Health Physics journal, a position which he had held since its inception in 1955. Morgan concentrated his efforts for many years in helping victims of radiation-related illnesses in their attempts to prove their cases in court. He testified in approximately 150 cases.

Among a few of the nationally known organizations, in addition to the host of local grassroots organizations, which publicized the outrageous facts of the Mancuso suppression and wrote letters to Congressmen, the President, and the Secretary of DOE, were: The Environmental Policy Center, Friends of the Earth, the Environmental Defense Fund, Public Citizen, the Union of Concerned Scientists, the Natural Resources Defense Council, the Public Interest Research Group, the Sierra Club, and the union of Oil, Chemical, and Atomic Workers.

Two months after the House Subcommittee documented the nefarious actions of DOE in the above-cited letter of 10 February 1978, a third Subcommittee hearing was held on 10 April 1978. Bob Alvarez of the Environmental Policy Center testified before the House Appropriations Subcommittee on Public Works Relative to DOE's Budget for Health Effects Research for Fiscal Year 1979. I quote parts of his testimony relating to DOE's request for more funding for health effects research:

" The fox is asking for even more chickens to watch. The first step needed to restore public confidence in federal nuclear programs is for this Committee to seek the reinstatement of Dr. Mancuso... These funds should be channelled through an agency having a public health orientation... The burden of proof that nuclear technologies are unsafe cannot continue to fall upon the victims. "

Unfortunately, that is exactly what has continued over the past 22 years.

I call attention to the "freedom to express concerns without reprisal" or whistleblower regulations which are in effect for nuclear workers, both DOE and contractors. I expressed concern regarding the direction of an environmental cleanup project I worked on as a DOE contractor employee in 1991 - that we would be out of compliance and that the prior studies cited by DOE did not support the conclusion to go ahead with the project as directed by DOE. I went to extraordinary lengths

to get my hands on the prior studies and check out the sources cited by the DOE reports. What I discovered and wrote in my report revealed intellectual dishonesty - that is, the prior studies were either non-existent, inadequate, or did not support the manner in which they were cited. At that time, there were indications within the company and DOE that the time had come when DOE would indeed begin to take environmental compliance seriously. I received encouragement from several coworkers to stand my ground in meetings as well as in my report. The Elza Gate removal project was quite well-publicized in the local newspapers because the public would have access to the site after the cleanup. Unfortunately for me, although the project took a better turn and I was instrumental in stopping the long-term storage of hazardous waste, my budding career ended. I was functionally demoted (silently) and spent years going through the company channels in vain attempts to regain my previous functions.

I had been idealistic, believing that I was having an opportunity to make a difference in the way we would routinely do business. It appeared that the juncture was imminent in which we, the contractors, would stop playing "catch us if you can prove we're out of compliance" and that we would save taxpayers the burden of added costs of flawed projects and hiring independent consultants after the regulators rarely caught us. The report I wrote was a trial balloon to see how such a critical report would be received within our department. As others observed, the trial balloon, and my career with it, was the Hindenburg.

New employees, some with lower qualifications, were hired for the functions which I previously did and/or functions within my job title. I was increasingly marginalized, idled, and ignored over time. Ultimately, after layoff from that department, I filed a complaint which languished for years.

In the aftermath of my demise, I found corroboration of patterns of coverup and suppression of unwelcome information. "Killing the messenger" and "the fox watching the henhouse" are constant themes which emerge in the documents I have examined as well as in the common parlance of workers who have experienced or witnessed reprisals. Virtually any means has been considered justifiable toward the end of keeping the funding flowing and the work going. By the same token, virtually any means has been justifiable toward eliminating any perceived threat to that ongoing funding.

Among the common patterns that workers and former workers, and researchers have testified to:

- 1) destruction of documents - usually directing subordinates to get rid of significant information, either because the content might come back to haunt someone or in order to perpetuate funding for doing the same work over again.
- 2) deliberate contrivance to make documents inaccessible, either hidden away, such as in a physically remote area if the data was kept in paper form prior to electronic storage, or hidden away electronically behind convoluted gatekeeper computer systems with password access and management control.
- 3) pressure by management to skew reports in order to mislead and give the appearance that all is well in the areas of health, safety, and environmental compliance. Citing "studies show" when

no such evidence exists.

4) pressure to ignore relevant material facts of non-compliance; a prevalent attitude that it is up to the regulators to do their job and prove non-compliance rather than up to DOE and the contractors to be proactive and design toward compliance. In some cases, pressure from management for subordinates to sign and even falsify that all is well.

5) management targeting of a worker, researcher, or other person who poses a threat by influencing others in a manner reminiscent of blacklisting - suggesting to that person's peers or supervision that the person's work is suffering, that they need to be observed more closely, that they are becoming an administrative problem, etc. Namedropping of higher-level management or funding sources, and suggestions as to what that person wants, in the same conversation or on the same day as the targeted person is discussed, is tantamount to an invitation for an ambitious or cooperative employee to malign a rival.

Although these targeting tactics are common in all workplaces, the culture of national security has two added techniques at its disposal which are easily abused for the purposes of targeting employees and/or persona non grata:

- a) questioning one's personal life and fitness for a security clearance;
- b) misusing the badge reader system to allege a tardiness problem.

The decision to employ legal counsel and embark on a tortuous, unpredictable journey of unknown years and ramifications is not one which anyone undertakes lightly. Breaking ranks is not done except at great cost, financial and psychological. The esteem of our peers and the social support afforded by our livelihood are valuable commodities. There is a fragility of identity associated with leaving the known and taking an oppositional role, knowing one is risking at least ostracism, castigation, and mutual feelings of betrayal and mistrust. My role was a minor one in the Elza Gate project, but it was my life and my career, extremely important to me, which were harmed. Years later I began to look at why others chose the road less travelled. After wide reading, I came to admire Karl Morgan and John Gofman, two imminent scientists of sufficient stature to continue their careers in their respective fields of health physics and medical research even after breaking ranks with their colleagues and publishing findings unwelcome by DOE.

As I immersed myself in the thousands of documents in the Morgan Collection, I noted the similar stages in his life to those which I experienced. First, there is the stage of the loyal, conscientious employee within the Oak Ridge bureaucracy, with only the normal amount of frustration which one may attribute to a necessary working climate of secrecy. Then there is a prolonged period of believing that things are getting better and that one's efforts are bearing fruit in a good direction. Gradually one prods the giant bureaucracy along, still caring about how one's coworkers' lives and careers and families are progressing, still making small conversation with them, still believing that one can make a living within the organization and accomplish something worthwhile to the public. Doubts arise. But then comes an event so egregious that one can no longer maintain any

illusion. It may be the suppression of information or opinion, or it may be a reprisal. The enormity of the implication is shocking. A conscientious person with a sense of social responsibility may attempt to sound the alarm, even knowing the deep pockets of coverup and reprisal and whitewashing at taxpayer expense.

Consider the experience of John Gofman, M.D., in the 1960's at Livermore National Laboratory, where he and Arthur Tamplin concluded from their research that radiation is more dangerous to human health than had previously been accepted. The ensuing controversy pitted the two courageous researchers against the established powers for several years. Gofman's research was defunded; Tamplin went to the Natural Resources Defense Council (NRDC), and Gofman returned to teaching at the University of California at Berkeley. Gofman also assisted victims of radiation related illnesses with court cases.

Karl Morgan identified two health physicists, Arthur Tamplin and Tom Cochran, as among the earliest to break ranks and publish reports demonstrating the seriousness of the health problems associated with DOE facilities. The NRDC published their 1974 reports as well as many subsequent ones along these lines. Cochran has remained associated with NRDC and continues writing on the nuclear industry.

Karl Morgan's story is told in his book, The Angry Genie: One Man's Walk Through the Nuclear Age, which is favorably reviewed in the 22 March 2000 Journal of the American Medical Association, p. 1621-22. I incorporate this review and quote from it that the "vast radiation cover-up continues to this very day."

\*\*\*\* JAMA Review, pgs. 9-10

JAMA Review of Morgan, *The Angry Genie*

BOOKS,  
JOURNALS, NEW MEDIA

March 22/29, 2000, p. 1621

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**Radiation**

**The Angry Genie: One Man's Walk Through the Nuclear Age**, by Karl Z. Morgan and Ken M. Peterson, 235 pp, \$24.95, ISBN 0-8061-3122-5, Norman, University of Oklahoma Press, 1999.

IT WAS HEADY WINE DURING THOSE EARLY days of the super-secret project that would change the world forever, but when he boarded the train on April 30, 1943, and headed for Chicago from the ivy clad halls of Lenoir Rhyne, Karl Morgan, PhD, could not have imagined he would find himself in the company of Alvarez, Bohr, Compton, Einstein, Fermi, Franck, Rabi, Urey, and Wigner—all Nobel laureates. In Arthur Holly Compton's Metallurgical Laboratory (a deceptive name to hide its true intent) Morgan joined four other cosmic ray physicists under a newly conceived health physics section with a charge to develop instruments that could measure worker radiation exposure, find techniques to dispose of radioactive waste, and set levels of maximum permissible body burden to "prevent radiation injuries." Nine months later he would become director of health physics at the hastily constructed Oak Ridge National Laboratory, a post he held for 29 years.

This memoir, coauthored by his friend and noted trial attorney Ken M. Peterson, is Professor Morgan's firsthand account of scientific "prostitution" and political machinations surrounding issues of research, maximum permissible exposure methodology, and the decision to drop the atomic bomb on heavily populated areas. The book gives us a rare glimpse into the Manhattan Project's sanctum sanctorum by an insider who managed to maintain his independence and scientific objectivity despite tremendous pressure to ignore or trivialize the health hazards of low-dose radiation, from his post at Oak Ridge and a subsequent professorship at Georgia Tech where he continued his opposition to the liquid metal fast breeder reactor.

Morgan admits that when he began his work at Oak Ridge he was unaware "that there is no 'safe' level of exposure to radiation. . . . We accepted the threshold hypothesis: that so long as we avoided the skin-reddening threshold dose, all of us were safe." Since the words "radiation" and "plutonium" were classified, as was all weapons research (it was "born secret"), the work of other scientists could not be accessed. Frustrated over the extreme secrecy measures instituted by Manhattan Project Director Major General Leslie R. Groves, Morgan penned a study describing how to dispatch a pesky fly. Entitled "A Preliminary Report on the Low-Draft Fly Swat," it was immediately classified and remained in a secret file for 11 years!

Chapter 2, subtitled "The Truman Administration's Greatest Mistake," briefly chronicles events leading up to the decision to drop the bomb on heavily populated cities. It was General Groves who withheld poll results showing that 83% of 150 scientists (including Morgan) favored some type of military demonstration of the weapon before full use, and he kept in hand a petition signed by 67 scientists, who also called for a demonstration of the A-bomb, until after President Truman signed the final order. Based upon declassified documents, and thoroughly researched elsewhere (see books by Gar Alperovitz, Lifton and Mitchell, and Peter Wyden<sup>1-3</sup>), Morgan charges the military with using Nagasaki "as an opportunity to determine how the plutonium weapon rivaled the uranium device" used at Hiroshima.

With characteristic candor the author cites "the biggest mistake of my life." Shortly before he was to deliver a paper before an international meeting of health physicists in 1971, Morgan received an urgent call from the Oak Ridge director informing him that revised copies of his paper had already been mailed to Germany and he should

not criticize the liquid metal fast breeder reactor. The president had just announced a \$30 million grant for a demonstration project, and Oak Ridge was in line to receive it. Morgan's team had been working on a molten salt thermal breeder that was considered safer and more economical to operate. Fearing destruction of his reputation by management, he acquiesced but later regretted his decision to go along.

Since radiation studies were discouraged throughout the entire phase of nuclear weapons development, physicians had little knowledge of low-dose health hazards. Even though there was ample evidence in medical journals that should have raised red flags, the Atomic Energy Commission and the Pentagon funded about 1400 radiation experiments involving thousands of human subjects from 1945 to 1975, all of them classified. Morgan summarizes some of the most egregious cases, one example involving "the atomic soldiers" who sat in trenches near ground zero at the Nevada test site. Instructed to cover their eyes during the countdown, they saw the bones in their hands as the blast scattered its potent gamma dose. Morgan became directly involved in several of these cases, offering testimony and making dose calculations for scores of GIs "who suffered radiation injury or who had died from radiation exposure." These experiments are a grim reminder of the ease with which many physicians accepted the Cold War mentality that led to official secrecy on a grand scale and what may be considered a vast radiation cover-up that continues to this very day. (The 1998 Brookings study "Atomic Audit" noted that "the DOE [Department of Energy] alone possesses at least 280 million pages of classified docu-

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## BOOKS, JOURNALS, NEW MEDIA

ments,"<sup>4</sup> and Associated Press reporter Deb Riechmann has written that "nearly one billion more pages must be reviewed."<sup>5</sup>)

Two chapters contain accounts that have particular relevance to clinicians and medical researchers. Chapter 7 documents Morgan's early attempts to elevate the status of health physics and train students in the basic physics of ionizing radiation and its biological effects. He was the point man in organizing the Health Physics Society and the International Council on Radiation Protection and was elected president of each organization. The council recommends radiation standards and sets maximum permissible concentrations for all radionuclides, and Morgan chaired the internal dose committee from 1950 to 1971. But he now charges, "Since the mid-1970s, most of its members have had as a major objective the preservation of the floundering nuclear power business," and he then gives some examples to support his contention that health physics "has sacrificed its integrity." For instance, in his inaugural address, a president of the Health Physics Society said, "Let's all put our mouth where our money is," which Morgan interpreted as meaning that the society "would focus on protecting the AEC [Atomic Energy Commission], DOE [Department of Energy], and the nuclear industry from liability. . . ."

Chapter 9 contains excerpts from two high-profile trials, *Silkwood v Kerr-McGee Corporation* (1979) and *Allen vs United States* (1984), cases that brought together Morgan and his long-time friend, John W. Gofman who with Glenn Seaborg discovered uranium-233 and founded the Lawrence Livermore Laboratory's Biomedical Research Division (Morgan calls Gofman "one of the leading scientists of the twentieth century"). Their expert testimony resulted in a record \$10.5 million judgment in the *Silkwood* case, but the authors claim the most important outcome was that it struck fear in the nuclear industry because it educated the public about scientific evidence "that

there is no such thing as a 'safe dose' of radiation." The *Allen* case gave Morgan the opportunity to offer proofs that the government knew of the hazards of fallout from the Nevada tests but failed to inform downwinders and communities of "well-known and inexpensive methods to prevent, minimize or mitigate the known or foreseeable long-range consequences . . ." Judge Jenkins issued a 225-page opinion upholding plaintiffs but was overturned on appeal.

*The Angry Genie* is an inspiring account of Karl Z. Morgan's accumulated wisdom and his life dedicated to protecting the public health and safety. Having penned his final words in his ninetieth year, on June 8, 1999, this titan of the Atomic Age, the father of health physics, passed from the scene.

Lynn H. Ehrlé, MEd  
Plymouth, Mich

1. Alperovitz G. *The Decision to Use the Bomb and the Architecture of an American Myth*. New York, NY: Knopf; 1995.

2. Lifton RJ, Mitchell C. *Hiroshima in America: Fifty Years of Denial*. New York, NY: GP Putnam's Sons; 1995.

3. Wyden P. *Day One: Before Hiroshima and After*. New York, NY: Simon & Schuster; 1984.

4. Schwartz S. *Atomic Audit*. Washington, DC: Brookings Institution Press; 1998, p 436.

5. Riechmann D. Does classified data hold nuclear secrets? *Ann Arbor News*. August 25, 1999:86.

Morgan's story is so riveting in his revelations regarding Oak Ridge and DOE patterns and practices, and his personal knowledge is so relevant to the present hearing, that I am donating the book so that interested persons may read parts of it. I have corroborated in detail many portions of his disclosures among the thousands of documents in his archived personal papers.

I quote part of his section "Rivers of Radioactive Waste" from chapter 6, p. 90:

"In 1944, the engineering division asked me to set the [radioactivity] level for water in White Oak Lake, which impounded essentially all the liquid radioactive waste from [Oak Ridge National Laboratory], at 100 R per day. We constructed ponds, trenches, and pits to retain this waste... The requested limit would be double the limit set by the International X-Ray and Radium Protection Committee (IXRPC) in 1934. Stubbornly I held out for a level 1000 times lower. The limit of 100 R/day would have been more than 9 million times the level of 0.004 mrem/year set for potable water by the U.S. EPA in recent years. I deserve no credit for my stand, however, because even the level I set would have been over 9000 times the current EPA level. The engineers, for their part, argued that 100 R/day was reasonable since White Oak Lake would be fenced off and no one would be permitted to drink water directly from the lake or swim in it or fish there. I was concerned that there might be concentrating factors in the food web of which human beings are a part or that "hot fish" could escape into the public domain of the Clinch River...

After about 12 years the lake reached a state of equilibrium where as much radioactive material left the lake as entered it. Our engineers informed us that we could expect a cloudburst of rain every 25 years that would wash out the dam. This, together with the fact that a large fish population had developed in the lake, prompted us to drain the lake and build a much better reinforced dam. Before draining the dam, we killed the fish and determined the concentration factor of the various radionuclides in bone, liver, and muscle. We found concentration factors as high as 10,000 for some of the radionuclides - a sobering result indeed."

DOE's 1994-95 interviews with scores of scientists who worked in the fields of nuclear energy and nuclear medicine are replete with emphasis on the ease of DOE funding in the early years after World War II. Also emphasized is the lack of accountability due to secrecy. A few other than Morgan and Gofman note the deliberate pressure to come to the desired conclusions.

A declassified 25 September 1962 memo revealing how DOE approached the issue of fallout around the Hanford plant states:

"It was agreed that current levels of radiation from fallout were too low to impose a practical problem in public health. It was suggested that the Public Health Service come up with its views as to what levels would correspond to enough of a health risk to JUSTIFY DIVERSION OF RESOURCES in order to provide protection. If any reasonable agreement on this subject can be reached among the agencies, the basic approach to the report would be to START WITH A SIMPLE, STRAIGHTFORWARD STATEMENT OF CONCLUSIONS. WE WOULD THEN IDENTIFY THE MAJOR QUESTIONS THAT COULD BE EXPECTED TO BE ASKED IN CONNECTION WITH THESE CONCLUSIONS. IT WOULD THEN BE A STRAIGHTFORWARD MATTER TO SELECT THE KEY SCIENTIFIC CONSULTANTS



WHOSE OPINIONS SHOULD BE SOUGHT IN ORDER TO SUBSTANTIATE THE VALIDITY OF THE CONCLUSIONS OR RECOMMEND APPROPRIATE MODIFICATIONS." - Paul C. Tompkins, Deputy Director, Division of Radiation Protection Standards, cited in Morgan, p. 114.

Gofman continues publishing. The review of his latest 699-page work in Scientific and Technical Book News, March 2000, p. 75, states, "Medical X-rays, including fluoroscopy and CT scans, are a major cause of both cancer and coronary heart disease, according to this new study...Startling conclusions are supported by detailed reviews of medical studies from the 1940's through the 1990's. The author recommends X-ray procedures at much lower dosage levels."

I incorporate the Executive Summary of this publication, Radiation from Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease, noting the Editor's History of Gofman's accomplishments on p. viii. Note that Gofman shares three patents on uranium and plutonium processes as well as holding numerous prestigious medical honors bestowed upon him by colleagues, including the distinction of being named one of the 25 leading researchers in cardiology by the American College of Cardiology. Also note that his 1990 book concludes, in agreement with Karl Morgan's repeated independent conclusion, that there is no threshold level (no harmless dose) of ionizing radiation with respect to mutagenesis and carcinogenesis.

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The Executive Summary of the publication referred to above: "Radiation from Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease," is retained in the files of the Committee on Governmental Affairs.

To summarize my comments: Since the 1978 hearings, conflict of interest and reprisals and harmful health effects continue. Amended regulations since then creating hotlines for waste, fraud, and abuse have not solved the problems. Mandatory ethics training has not solved the problems. Whistleblower protection regulations have not solved the problems. An apology from the President to victims of radiation experimentation have not solved the problems. Exposure-related illnesses are real. It is my considered opinion that most of DOE's essential functions could be more efficiently conducted by other agencies - the Department of Defense, NRC, EPA, and others. An immediate objection to this approach is that DOD has been just as nefarious in covering up exposure-related illnesses. However, the taxpayers and the persons with suspect illnesses would be better served contending with fewer agencies.

Rationalizations that the scientific community did not know as much "back then" will not stand up to scrutiny. Nor will rationalizations that radioactive health effects are no worse than those of chemical exposure and other sources of manmade harm. We have heard these excuses through the tortuous years of tobacco industry litigation. The synergistic effects of radiation and other cofactors are likely to be confirmed by more and more medical research. We have lost 22 years and a produced another generation of ill workers while the burden of proof gradually mounts.

Sincerely,

*Linda Gass 28 March 2000*

Linda Gass  
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HARRY EDWIN GRAY K-25

MY NAME IS HARRY EDWIN GRAY(EDDIE), I AM 53 YEARS OLD AM A DISABLED WORKER FROM K25 LOCKHERD MARTIN OAK RIDGE TN. I FIRST STARTED WORK FOR UNION CARBIDE FEB 1971 AS A FIREMAN, THEN AS CHEMICAL OPERATOR, AND OPERATOR. I AM NOW ON TOTAL DISABILITY 1997. I AM A COLD WAR VETERAN. AS A COLD WAR VETERAN WORKING IN THE DEPARTMENT OF ENERGY GASEOUS DIFFUSION PLANTS. AT K-25 OAK RIDGE TN. I AM DISABLED BECAUSE OF MY HEALTH PROBLEMS, CHEMICAL ENCEPHALOPATHY, DEPRESSION, ANXIETY, TREMOR, ASTHMA, OSTEO ARTHRITIS IN BOTH KNEES, POOR HEARING, HYPERTENSION, CHEMICAL SENSITIVITY, PROSTRATE PROBLEM, AND HAVE KNOWN ENERGY. MY LIFE IS NOT WORTH LIVING LIKE THIS, BUT MY WIFE DIANE OF ALMOST 30 YEARS KEEPS ME GOING. I THINK IT IS IMPORTANT FOR YOU MY GOVERNMENT TO TAKE CARE OF ALL THE SICK WORKERS. WE HAVE BEEN STUDIED MUCH TOO LONG WE NEED HELP, WE KNOW LONGER HAVE ANY MONEY TO LIVE ON MY WIFE WORKS BUT DOESN'T MAKE GOOD MONEY AT HER JOB AS ACTIVE DIRECTOR AT A HOME FOR THE AGED. WE ARE THANKFUL FOR THE JOB THAT I HAD AS WE RAISED OUR FAMILY OF

TWO CHILDREN. BUT WE ARE VERY UNHAPPY THAT WHERE I WORKED MADE ME SICK. AS A COLD WAR VETERAN. I HAVE WORKED IN VERY DIRTY BUILDINGS IN THE PLANT. I HAVE WORKED IN SOME OF THE MOST HIGHLY CONTAMINATED BUILDINGS DOWN THERE, SOME ARE ON THE SUPER FUND LIST TO BE CLEANED UP. I HAVE BEEN EXPOSED TO VARIETY OF HAZARDOUS MATERIALS, THAT I BELIEVE THAT AS AFFECTED MY HEALTH. THINGS LIKE ACETONE, ACRYLONITRILE, ARSENIC, ASBESTOS, BENZENE, BERYLLIUM, CADMIUM, CARBON TETRACHLORIDE, CHLORINE, CHLORINATED SOLVENTS, CHROMIUM OR CHROMIC ACID, COPPER, CUTTING OILS, FLUORINE, FREON, HCL, HF, LEAD, MERCURY, MEK, METHYLENE CHLORIDE, NICKEL, NITRIC ACID, PAINT AND PAINT THINNERS, PHOSGENE, RADIATION, EXTERNAL (GAMMA, XRAY, NEUTRON), RADIATION, INTERNAL EXPOSURE, REPETITIVE MOTION VIBRATIONS, SILICA, SODIUM HYDROXIDE, SULFURIC ACID, TRICHLOROETHANE, WELDING FUMES, NOISE, HEAT, UF4, UO2F2, UFG, PCBs, CHLORINE TRIFLUORIDE, PLUTONIUM, URANIUM, NICKEL CARBONYL, INTERNAL RADIATION EXPOSURE, ACETONITRILE, MEK, TCE, TCA, CARBON TETRACHLORIDE, THERE IS SOME OF THE BUILDINGS I WORKED IN, K-25 PROCESS, K-27 PROCESS, K-29 PROCESS, K-33 PROCESS, K-101, K-413, K-303-1 THUR K-312-3, K-402-1 THUR K-402-9, K-413, K-502-1 THUR K-502-3, K-601, K-602-1 THUR K-602-6, K-631, K-633, K-701, K-702, K-704, K-709, K-710, K-711, K-722, K-723, K-724, K-725, K-725, K-726, K-731, K-732, K-735, K-736, K-761, K-762, K-791, K-792, K-801, K-801-A&B, K-802, K-822, K-822A&B, K-832, K-832H, K-861, K-862, K-892, K-892A THURB-C & G-C, K-896, K-902-1 THUR K-902-8, K-1004-A THUR K-1004-D, K-1004-H, K-1004-N&N1, K-1004-P, K-1006, K-1008A THUR K-1008D, K-1008E THUR K-1008F, K-1010, K-1020, K-1021, K-1023, K-1024, K-1025A THUR K-1025E, K-1034A, K-1037 K-1045, K-1045A, K-1052, K-1055, K-1061 K-1064, K-1066-A THUR K-1066-K-1099, K-1098E&F, K-1101, K-1131, K-1132 & K-1133, K-1200, K-1201, K-1210, K-1210 A, K-1211, K-1216, K-1220, K-1231, K-1231A, K-1232, K-1233, K-1234, K-1301, K-1302, K-1303, K-1403, K-1405-6, K-1407, K-1407C&C, K-1410 K-14116, K-1420, K-1423, K-1501A, K-1513, K-1514, K-1528, K-1529, ETC.

THE VAST MAJORITY OF CHEMICALS AND CHLORINATED SOLVENTS IN USE HAVE NOT BEEN TESTED. UNFORTUNATELY, WE PRODUCE CHEMICALS FIRST AND ASK QUESTIONS LATER. IT IS TIME TO STOP PRODUCING AND FIND OUT ANSWERS. THERE IS NOT ENOUGH INFORMATION ON HOW MIXING CHEMICALS AND SOLVENTS, ARE AFFECTING THE HEALTH OF WORKERS. BUT WE KNOW FROM WORK AT THE K25 SITE MY HEALTH AND MANY OTHER WORKERS HAS BEEN AFFECTED. IT IS TIME FOR ACTION NOW NOT 25 YEARS FROM NOW. HELP IS NEEDED IN YOUR PASTING THE BILL THAT IS BEING FOR YOU NOW, WE ASK THAT IN THIS BILL YOU WOULD PUT, IN IT THAT WE DO NOT HAVE TO PAID BACK TO THE INSURANCE COMPANIES OR ANY ONE ELSE, ALSO TO KEEP MEDICAL COVER FOR THE RESET OF OUR LIVES (MY WIFE ALSO). THANK YOU FOR YOUR HELP HARRY EDWIN GRAY

To Whom It My Concern:

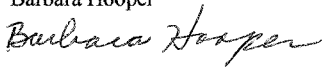
My Dad was a Process Chemical Operator for 32 years. He passed away in 1999. He tried for a long time before he passed away to get some compensation to help with medical expenses after being sick for 23 years, knowing that his exposure was due to working at K-25 had caused his illness. He was unable to get any kind of help from Oak Ridge. We saw his life taken away from him. He was unable to enjoy his retirement because he was ill. It was very hard on the family who helped and took care of him, to see him suffer and smother and live for 13 years with a tube in his back. His illness was showing up on his x-rays, EKGs, and exams that was taken by the doctors at the plant back in 1950's. Why would they let him retire like this without sending him to the best specialist in the country. By local doctors he was treated for everything except the cause, which was exposure while working at K-25. It is too late for him but who is going to get the message to the doctors that it is now O.K. to treat their patients for exposure that they received while working in the plants at Oak Ridge.

I feel like the family should be compensated for the list below.

1. Compensation for length of employment and years of illness.
2. Hazardous pay for years of employment.
3. All Medical Bills and Medication.

Please consider this in the legislation.

Thank You,  
Barbara Hooper



2014 Bradshaw Dr.  
Knoxville, TN

Why were these workers and future workers in 1950,  
1960, and 1970's not protected from exposure when  
the doctors at the infirmary were detecting problems  
on exrays, exams, and EKg's????????????????????

Barbara Hooper

2014 Bradshaw Dr.  
Knoxville, TN 37912

What kind of recognition is going to be shown to the families of the former workers who gave their lives and health for the safety of this country?

Barbara Hooper

2014 Bradshaw Dr.  
Knoxville, TN 37912

**To Whom It May Concern:**

We have a large interest in Employees who worked at K-25 in Oak Ridge. One of the Employees was our Dad who suffered an illness for around 25 years. He started to work at K-25 in 1944 and retired in 1976. He died February 8, 1999. Our mother called and asked if they could receive some help with his medical expense. She was refused any help other than his small pension. What a crime was committed by the doctors in Knoxville who would not admit to any illness that would be job-related due to working in plants, such as K-25 and other buildings.

On behalf of former employees who are still living and those who have died, because of job-related illness, we would like to see someone show some interest on their behalf. Without a doubt in our minds, and also the statements our dad make before his death, make us believe that his illness was caused due to exposure he received while working at K-25. If you need further information on why we believe this, we are willing to make statements and would be able to furnish medical records as to why we believe this.

On behalf of future employees, a study of the past could prevent future illnesses for them. We will appreciated any help you can give us in this matter.

Sincerely,  
Barbara Hooper

2014 Bradshaw Garden Drive  
Knoxville, TN 37912

To Whom It May Concern:

I worked at Oak Ridge K-25. I worked there in 1952 and 1953. I was exposed to uranium and possible other metals. I remember one day I was sent over to K-1131 to tear out some sheet metal conduit. There were three of us, but once we were at the work site, there was a call for two of the crew of three to go to another job and I was alone there tearing out sheet metal conduit with common hand tools I had to work with. We knew the place there was contaminated because of Geiger counter test that showed the place was hot--that is contaminated. I didn't realize at the time that I had been exposed to so much uranium dust and radiation, but I actually got myself into a hot bed of uranium and other particles. I have been sick through the years. I have not been able to work at a labor job for many years because of my poor health. I am under the care of four doctors. I can't even afford to buy the proper medication that I need.

**PLEASE  
HELP!!!!!!!!!!**

Thank you,  
Roscoe Hooper

2014 Bradshaw Dr.  
Knoxville, TN 37912



First of all, I am a 56-year-old medically retired male from Oliver Springs, Tennessee. I worked for Union Carbide until Martin Marietta took over the operations at K-25. I have been a resident of this area all my life. I have enjoyed living here.

When I was just a young man, I often dreamed that some day I could work in one of the plants here in Oak Ridge. When I graduated from High School, I joined the Navy to serve my country because the Vietnam War had just started and I felt that I would honor my country and serve in the war. I was hoping that after my time in the service it would help me in getting a job with Union Carbide at that time.

After my tour of duty, I went into a trade school hoping this would help me in getting me one of these wonderful jobs that everyone was talking about. I was hired in February 12, 1973, as a Security Inspector. A few years later, I attended Roane State Community College in a Fire Science program. I knew this would help me to get in the Fire Department. Shortly after that, I was promoted to Lieutenant in the Fire Department. From there, I was promoted up in rank to Shift Commander.

In April, 1985-1986, I was responding to a fire call for Building K-31. The fire was in the Southwest end of the building. Little did anyone know it was a uranium hexafluoride (better known as UF<sub>6</sub>) release. I and three of my fire fighters were in the release for several minutes looking for a fire, when a Cascade supervisor came up and told us that he thought it was a UF<sub>6</sub> release. Wearing no protective clothing, we left the building and put on full turnout equipment (SCBA; i.e., Self Contained Breathing Apparatus). The next day, we were instructed to report to medical for urine tests. I did so. The doctor on staff instructed me to come back each day for a few days so that they would be sure had urinated the UF<sub>6</sub> out of my system. But after checking for 4 to 5 days, I still had a large dose in my system. The doctor assured me at that time that everything would be all right with me.

After this incident, instructions were given to all Fire Department personnel that a full SCBA was to be used any time smoke was reported in any situation. Never before this time were we ever instructed to wear this equipment unless we knew for sure that the situation was hazardous.

Of the firemen that were with me, one (Ken Beets) died without any previous knowledge of heart problems. Another is in a similar condition to mine. I talked to him and told him to see a neurologist. He was placed on the same medication that I was taking. He doesn't know how much longer he will be able to continue working for he is getting worse each day. Another person, Harry Gray, is in very bad health now, also growing worse with each day. Three or four other personnel who were in the Emergency Squad and were also exposed never went to the medical division for evaluation after this incident.

Due to the nature of our responsibilities to other personnel in the plant, we have been instructed time after time that if an incident occurred where a person was in a contaminated area, it was our job and responsibility to take care of the injured person.

regardless of our own safety. They said they would check us out later. This ruling put my personnel and me in a dangerous situation time after time. I can't count the times we have disregarded our own safety to give someone else medical treatment.

I feel sure that due to the situation of placing other persons' safety and health above mine is the reason I am in the shape that I am in now. I have been diagnosed as having rheumatoid arthritis, kidney problems, diabetes, skin disorders, urological and breathing problems, loss of memory, constant heart problems, as well as others, and am unable to cope with everyday problems. I know without any doubt that my health is a direct result of being exposed to all those hazardous metals that were in the K-25 complex.

In closing, I would like to say that I hope and pray that others who work at one of the surrounding plants will not go through what my family and I have gone through in the last few years.

Sincerely yours,

J. D. Hunter

Subject: To the United States Government  
Date: 18 Mar 2000 17:49:09 -0800  
From: ehutch33@worldspy.net  
To: Cheryl Dyer <cheryll@netzero.net>

This letter is an explanation of what I know has happened to my daughter, Cheryl Anne Dyer, due to working in the plants at Oak Ridge, Tennessee. We began noticing a great deal of difference in her as far as memory loss and the lack of energy. She used to be a robust young woman and able to outdo any of us as well as her own children. Then she started downhill, with headaches, memory loss, and a drastic loss of energy which she has never to this day recovered. She is continuously fatigued, and on the GOOD days when she feels like doing something, she does, and then pays for it for several days afterwards. It tires her out to do what you and I would consider simple, mundane tasks that we do all the time without even thinking about whether we are tired or not. She breaks out with a rash for no reason (at least no reason that doctors can pinpoint) and was at one time very confused and didn't even know what she was doing. For instance, one day she left to go to the doctor and ended up at the post office, and when she arrived there, she couldn't remember what she was even there for. She sat in her car for quite awhile trying to remember why she had come there. The physicians she has been to have performed many specialized scientific examinations on her and have discovered that her body is full of heavy metal and chemical contamination. There is absolutely nowhere she could have gotten these poisons except at her workplace in Oak Ridge.

I believe that the government should take responsibility for this catastrophe that my daughter (and others like her) are experiencing by, at the least, paying for her medical expenses that she has already incurred in an attempt to get well, and any additional medical expenses that she will have to incur in the future for the same diagnosis. It is hopeful that since she is no longer at that facility, that perhaps with the proper medical care she will at least recover to some extent, and be able to function as a responsible adult again.

BUT, if the government wanted to be totally fair about this whole thing, they really should pay her for her lost pay, due to inability to work, as well as provide for her until she is able to once again provide for herself. She was making substantial wages prior to becoming ill, and it was a drastic life style change that she had to adopt to be able to survive once she was unable to work anymore due to the contaminations that she was exposed to in the plants.

In addition, the surrounding area of the plants which I assume would include any population within at least a 50 mile radius, should be made aware of the problems stemming from the plants, and should be assisted if they become ill in such a way that it is also diagnosed contamination poisoning from the plants.

However, I guess I am selfish right now, and if the government cannot help all those needing the assistance due to the problems at the Oak Ridge plants, then I would sincerely hope that it would at least consider aiding and continuing aid to those that have brought this to light and who truly need the government to admit and accept responsibility, and for the government to come to their aid by monetary and medical assistance until they are cured completely and able to function normally once again (if ever).

Elizabeth Hutchins  
615.834.7367  
3338 Johnakin Drive  
Nashville, TN 37211

Rose Marshall  
2323 Wilson Road  
Apt. J22  
Knoxville, TN 37912

Senator Fred Thompson  
Chair, Senate Governmental Affairs Committee  
United States Senate  
523 Dirksen Senate Office Building  
Washington D.C. 20510

March 18, 2000

Senator Thompson,

I have been informed that your Oversight Subcommittee will be holding hearings in Washington, D.C. on March 22, 2000. I am not able to attend the hearings due to ill health and cost. If possible, please include this letter in the official record of the hearing.

As a disabled former employee of Lockheed Martin Energy Systems at both the K-25 Site and the Y-12 Plant, I have definite concerns about illnesses caused by my employment. While employed at the K-25 Site during the period 2 December 1991 - March 1996 I was employed as a Computing Technician for the Analytical Services Organization. The buildings where I had offices included K-1004 B, C, and D and K-1006.

My office in K-1006 was directly above the Asbestos Labs. In K-1004-B I worked in the basement directly beside a lab and an old shower facility that was contaminated and later refurbished into a lab. In K-1004-C our break room was directly beneath a Plating Lab (which required the workers to wear protective garments). The break room (where the building employees ate lunch) was shut down several times during my employment due to Radiation Contamination and at one point even the fixtures (sink, etc.) and all the furniture replaced due to the contamination.

During the period that I had an office in K-1004-D, my office was located in the area of the Organic Chemistry Gas Chromatography (GC) and Gas Chromatography Mass Spectrography (GCMS) Labs. These labs analyzed PCBs, Herbicides, and Pesticides. In these labs heat was a major factor due to the machines running 24 hours per day and on MANY occasions the doors were left open to the labs to cool down the room. On these occasions fumes permeated the building, and my office was located amongst two prep labs and one GC, one GCMS, and one Prep lab.

All of these labs used a variety of acids, bases, and solvents in processing and prep and the fumes were almost constant occurrences. The break room in this building was previously a plating lab. The hoods in the K-1004-D building were so old that they only operated at 30% capacity and were vented to the attic; thus, allowing dangerous fumes to spread throughout the

building.

The GC machines in these labs were vented to room air. For example, when PCBs are heated to high temperatures to allow them to be analyzed as gases, those gases contain Dioxin.

As a result of my daily exposures to this environment I am on Long Term Disability. The conditions that have been diagnosed to this point are: Chronic Obstructive Lung Disease, Chronic Asthmatic Bronchitis, Asthma, Fibromyalgia, Chronic Inflammatory Arthritis, Dementia, Depression, and Hypertension. Also I was diagnosed with Bi-Lateral Carpal Tunnel Syndrome due to my job. I am participating in the Worker Health Protection Program at DOE Gaseous Diffusion Plants being conducted by Dr. Steven Markowitz, M.D., Queens College, NY.

I have received a preliminary report from Dr. Markowitz which states that I have decreased sensations in both legs, breathing test was abnormal, hearing test was abnormal. The results indicate that my Chronic Bronchitis can be caused by occupational exposure to certain agents, my hearing loss could also be attributed to noise exposure at the Gaseous Diffusion Plant. I still have not received my Beryllium blood test and x-ray results as both tests had to be repeated. My breathing abnormalities were mixed. They cannot determine the exact nature of the problem from the screening. Dr. Markowitz recommended that I see a Pulmonary Specialist to help ascertain, based on exposure levels, if the COPD is work related.

Previous to my employment at K-25, I had no asthmatic conditions, lung problems, fibromyalgia symptoms, carpal tunnel problems, or hearing loss. I am firmly convinced that my illnesses are a direct result of my workplace exposures. I am also convinced that the age of the buildings in which I worked were also a contributing factor due to "sick building syndrome".

I filed for Workmen's Compensation and Social Security Disability. My Workmen's Compensation Claim for Carpal Tunnel was denied and the Workmen's Compensation Claim for my general health problems wasn't even responded to by Lockheed Martin's Workmen's Compensation representative agency. Due to the non-response in this matter I was forced to file a lawsuit for Workmen's Compensation. My Social Security Disability claim was denied twice, the last time as a result of an administrative hearing, and is under appeal.

My Lockheed Martin Long Term Disability is reviewable every year and many folks are losing it. I am a single mom, with one child in college and this is my only source of income. I am presently on 20 separate medications, which are very costly despite the fact that we have insurance coverage, which are simply to keep me stable and functioning.

I appreciate you holding these hearings. I sincerely hope that they are the first steps in resolving the problems and health issues that all workers at DOE sites face. I look forward to a favorable outcome for those of us who are not only fighting health problems, but also being forced to fight for the rights that we should already have and financial stability.

Thank you for this opportunity.



Rose M. Marshall

Subject: To the Government of the United States  
 Date: Wed, 15 Mar 2000 23:23:16 -0600  
 From: Brandon Massey <bmassey6@bellsouth.net>  
 To: Mom <Cheryll@netzero.net>

I am writing to plead with you to do what is right. For many years now, I have been watching my mother come closer and closer to death. My mom used to be an active person who was able to go outside and play with her children. She used to be able to have fun, take trips, laugh and just live a normal life. She was a hard worker who dedicated herself to her job as well as her family. Then, ever so slowly, her energy declined. She began to forget things; simple things such as the fact her children needed to be picked up from school. She became confused, tired and sick. Her body suddenly became ravaged with illnesses and rashes for no reason. She also became depressed. My mother, a young, beautiful, loyal and energetic person, was dying for no apparent reason.

Searching for answers, my mother, and others suffering the same symptoms as her, began to undergo extensive testing. She visited doctor after doctor, doing only what you and I would do to learn why we were sick. Finally, some answers were given. My mother and her coworkers were told they had such high levels of chemicals and metals in them, their bodies couldn't function. But how could this be? According to the bosses of all these loyal, hard working people, none of the chemicals or metals in their bodies existed anywhere near the plants in which they worked! So they were told that they were all making it up. All of these symptoms they "claimed" to have must be in their minds. The doctors they had gone to said they were all lying; the workers were all wrong. Later, the plants in Oak Ridge sent these workers to doctors appointed to "diagnose" these problems. Some were told it was all in their mind while others were told the contamination came from the Bull Run Steam Plant. I found it odd that the plants claimed none of these workers were legitimately ill, but on the other hand, the contamination must have come from the steam plant?!?! I know that the plants didn't want to accept responsibility for their part in my mother's sickness, but did they ever stop to think about how unethical the things they do are? I know the government made a mistake, and they know they made a mistake. Why won't they just admit it? Don't all adults tell their children that mistakes can be fixed, and that it'll be okay as long as they don't lie about their wrong-doings? How are these bosses at the plants looking themselves in the mirror or looking their children in the face?

How can you go home at night and enjoy your family when you know you are taking dozens and dozens of parents away from their children? DO YOU NOT CARE????????????? I feel very blessed by God to even have had my mother at my graduation. I now have a three month old daughter, and I want her to be able to know her Nana. I want my mother, who is only 40 years old, to be able to play with my daughter in the years to come. Is that too much to ask? Don't you enjoy playing with your children and grandchildren? Would you sit back and let someone take that from you? You might lose some money by admitting what you have done, and you might lose some credibility, but won't you gain some peace of mind? Besides, it's easier to build back peoples trust in you once you have admitted your wrong doings. People know what has been done, and by denying it, you cause everyone to lose faith in the government. Do you want people to scorn you for something you can so easily fix? I know it is your responsibility to protect the government and it's funds, but wasn't it the responsibility of the people my mom worked for to protect her and her life? She worked hard for these people, and I think it was her right to know what she was working with. She wasn't allowed to make an informed decision about the work she did. She knew of certain dangers, but not all of them. That was not fair. Isn't our government about fairness and justice? Did my mom not deserve to make a choice based on ALL the facts, not just part? I know most people would not have chosen to work for DOE, if given all the facts. I know DOE would have been short-handed, but was having enough employees worth taking their lives? Is that moral or ethical? Would you want someone to allow you to work in an environment that would take your health, happiness and life away without your knowledge? I sincerely do not believe that you would. If you deserve the right to know what you are working with BEFORE you work with it, don't all the employees of DOE? The people who volunteer to serve in the military are given the facts and make an informed decision. Do the people who work for the government in these plants not deserve the same opportunity to decide based on the facts?

Page 1 of 2

As if it wasn't bad enough that DOE exposed my mother and her coworkers to these dangerous chemicals in their workplace, there are tons of innocent people getting sick every day just because of where they live. The people who live in Oak Ridge go about their daily lives not knowing they are exposed every day to something that can seriously hurt them, if not eventually kill them. Why are these innocent people paying for the after-effects of the wars fought in the past? Why should these employees of the government and these innocent civilians become casualties of wars that have long been over? Is this right or fair? Do these people not, at the very least, deserve the opportunity to decide where to live based on ALL the facts? If you ever found out the place you lived in exposed your family to harmful contaminants, would you not be furious beyond means? There are many children in Oak Ridge who have become ill, and I think almost every person who was born in or has lived in Oak Ridge has some type of illness or problem resulting from the contaminants. Is all this part of the wars of the past? Are we to all be "casualties of war"? I have lost two children and had a highly difficult pregnancy with my daughter, and I believe this is due to the exposure I received while I lived in Oak Ridge. And I am obviously not alone. Are you aware of the children suffering every day in Oak Ridge? Do you care? Are you human enough to want them to get well? Do you realize their parents will have to pay tons of money for the rest of their lives to try to get their children well? Is this right, since the parents did nothing but choose to live in a place they viewed as safe? Is it right that my mother and others like her are not well enough to work? Is it right that they all have doctor bills they can't even begin to pay? Is it right that these bills will only continue to grow, and it is not their fault? If we can pay for drug treatment programs for people who voluntarily destroyed their bodies, can the government not pay for treatment for these employees who worked so hard for them and got sick by means beyond their knowledge? And can't they do the same for the innocent children and adults in Oak Ridge who never knew what was in the water they drank or the air they breathed? The Toxic Waste Incinerator continues to burn hazardous, radioactive waste without the provision of monitors to make sure they aren't releasing these contaminants into the air around Oak Ridge and the surrounding communities. Nobody knows what is coming out of those stacks when they burn these elements!!

If you choose not to allow my mother, her coworkers, and the innocent civilians of Oak Ridge some type of compensation, I would like to know why. I would like for you to look into the eyes of my child and tell her how her Nana got sick and what will eventually kill her. I would like for you to explain to her how the government can pay those who got ill from choosing to smoke, but won't help her Nana with her medical expenses and living expenses, since she can't work. Explain to her that you think it is okay to smoke and destroy your lungs, because the government will make sure you are compensated for the damages. But she shouldn't work somewhere and be loyal, because the she could get sick and nobody will help her!!!! I want you to take a trip to the hospitals of Oak Ridge and look at all the people ill with contamination. I want you to tell them they have no right to choose where to live based on where they will be healthy. I want you to explain to the world that to live in the United States of America, where you can be free, you must give up your right to know how dangerous your workplace or home can be if you work for the government or live near one of their nuclear facilities. Then go home and explain to your children and grandchildren what you have done. Explain to them that you have destroyed their future by telling the world it's okay to expose unknowing people to harmful contaminants. Tell them that they could possibly become victims of their own government and the selfish actions thereof.

Please, do what is right and take care of these people. They deserve medical treatments of their choices to be paid for by the government for the rest of their lives. They deserve to be compensated financially for the loss of wages they have incurred over the past five years and will continue to incur into the future as long as they are unable to work due to their illnesses resulting from the work they did at the DOE Oak Ridge Facilities. Thank you for your caring consideration of my mother's and others cases and the well-being of the innocent people involved.

Sincerely,  
 Karen Renee' Dyer Massey  
 615-874-4180  
 529 B Raleigh Drive  
 Hermitage TN 37076

*Testimony for the  
U.S. Senate Government Affairs Committee  
Hearing on Safety and Health at  
DOE's K-25 and Portsmouth Gaseous Diffusion Plants  
March 22, 2000  
By Janet R. Michel  
Knoxville, Tennessee*

\* \* \*

**My Story**

My name is Janet Michel. I was born and raised in Oak Ridge, Tennessee. My parents both worked on the Oak Ridge Reservation. My Mom worked at K-25 during the war in a laboratory and in office buildings, including K-1001. She worked there until she was a few months pregnant with me in 1951. When her children were older, she returned to work at ORNL. My Dad worked as a chemical engineer at K-25 from 1944 until about 1960 and then at ORNL until he died in 1986. He was assigned to the Australian Atomic Energy Commission to help them build a research reactor in the mid-1960s and we lived in the suburbs of Sydney for 1.5 years. We regularly had professionals from all over the world coming home for dinner, both in Australia and in Oak Ridge. I was always so proud of my Dad and proud to have grown up in Oak Ridge. The schools were very good and it was a safe place in some ways. There wasn't much crime and we were allowed to ride our bikes everywhere. We had woods and streams (like East Fork Poplar Creek where millions of pounds of mercury was lost) to play in. We caught tadpoles, built dams and went wading in East Fork Poplar Creek during the years that had the highest readings of mercury. We ate snow cream every time it snowed, only to discover later that this snow probably had arsenic and chromium in it, and "who know what else." But, I loved my hometown and was proud of it. I feel differently now.

I graduated from the University of Tennessee and lived in Knoxville off and on since then. I have also lived and worked in New Orleans, Cleveland, northern New Jersey, and the Washington, D.C. area. I taught 7th grade science in Oak Ridge and worked for Oak Ridge Associated Universities in an energy education program where I traveled around the country, teaching, lecturing, and doing science demonstrations for people from kindergarten to senior citizens. I covered all aspects of energy, from modes of electricity generation, politics and economics, and technical aspects, always tailored to my audience. I worked as a project manager and consultant for utilities in New Jersey. I worked as a program manager and consultant to utilities in New Jersey. Later, I worked as a DOE consultant "translating" technical on high level radioactive waste, alternative uses of nuclear energy, transportation documents written by scientists and engineers at DOE facilities and re-writing them to be understood by managers or the public. I was frequently called upon to travel for DOE



meetings across the country. Consequently, I personally gained a very broad perspective on the DOE operations. Then I came to Martin Marietta (later Lockheed Martin) as a pollution prevention project manager where I worked for six years. Part of that time was at the Department of Energy K-25 site. I also worked 2.5 years at DOE headquarters in Washington, DC. Basically, I supported the building of the Department's pollution prevention (P2) program. Again, I traveled and toured extensively around the DOE complex, managed the production of technical pollution prevention DOE-wide conferences, wrote technical documents, as well as many other duties including strategic planning for the Department's P2 program. For a year and a half, I was housed at K-25 in an office located on a former industrial shop floor in a building where nickel and beryllium had been processed. It was an industrial operation building and I was housed in an area that was never designed to be office space. My job did not require that I am at the K-25 site every day, but as a "cost-cutting measure," office workers were housed in old buildings, instead of clean office space off-site.

One night, I was working later as was typical, and a custodian came by a huge HEPA vacuum cleaner and asked me to leave my office for a few minutes. He told me he was vacuuming out nickel dust from the air handling vents in my office. I then began to notice that my office was quite dusty especially after a weekend. Every surface was covered with a very fine gray dust, including my desk where I often ate lunch! When I moved to an off-site office, the security folks vacuumed out my computer's CPU. I still did not connect any health problems with these activities.

Prior to working in this building, my health was excellent. I was an athlete working out in the gym several times a week. I was an avid whitewater kayaker, cross-country skier, and bicyclist. I was a certified whitewater kayak instructor, president and newsletter editor of the local clubs, and manager of canoe and kayak school (with over 100 students). My vacations were spent kayaking in Costa Rica and out west and cross-country skiing in Yellowstone. At work, I was an awarded and rewarded employee. I worked many hundreds of hours of uncompensated overtime. I traveled frequently and on demand. I got the highest possible rating for employee performance and got raises and promotions during the time of downsizing AND during the time that I was getting more and more sick. The wall in my office was covered with P2 awards, from the Federal Environmental Executive, the Secretary of Energy, the Operations Office Manager, and at all management levels in between to my immediate supervisor.

I don't tell all of this to brag. It is presented here only to show that I was not a couch potato, a malingerer, or a disgruntled employee!

While at K-25, I became more and more ill, but continued to work for three years. My supervisor even took me aside one day to say in a half joking/half serious way that if I didn't find out what was wrong and do something to get better, he was going to "kidnap" me and take me to the Mayo Clinic to get help! Through speaking with work colleagues, I discovered that I had all of the symptoms of cyanide poisoning. I asked my family doctor to test for it and we discovered that I had slightly elevated urine thiocyanate levels. When I reneged on an agreement with my Division Director to write a P2 paper for a conference because of my failing health, she said "Janet, get out of there; get your --- back over here" (to an off-site

office). Even several months later after moving off site, I was not feeling better although the thiocyanate levels had dropped to zero. More tests were conducted and I discovered that I had nickel and mercury poisoning and a host of other medical problems.

In 1996, I missed one third of the year due to illness and doctor's appointments, but my work did not suffer because I worked even harder at nights and on weekends to keep up. On my last business trip, I became so ill that I ended up in the emergency room and missed about half of the event. After becoming extremely ill when a large report was due, I realized that I was becoming a burden on my work colleagues. My doctor took me out on short-term disability at the end of 1996.

I exhausted those short-term disability benefits in June 1997 and applied for long term disability. But after eighteen months of denials and appeals and no income, I began to be suspicious that the denials may have been retaliation for my open questioning and criticism of DOE's operations. Lockheed Martin's insurance carrier, Metlife, had denied my application for the last time (I had no appeals left) and I was told to report to Y-12 Medical for a determination as to whether I was "fit to return to work." I asked the Benefits Manager for a copy of the records Metlife had so I could assemble any missing pieces. I was told that these records had already been sent to Y-12 Medical WITHOUT my permission! I remarked that I was not happy with this action. We agreed to go ahead and set up an appointment for me. About a week later, I received a phone call with the news that Y-12 Medical had reviewed everything (but not seen or examined me) and yet had determined that I was, in fact, disabled. I received a check retroactive for 18 months. It was wonderful to pay off the credit cards that I had been buying food and medicine on!

It was really difficult for me to acknowledge that my workplace could have made me sick, because I had believed without a doubt that my employers were providing me with a safe workplace. In some instances, managers were those folks who went to our church, who were guests in my parents' house, and were parents of my best friends. Consequently, I was in denial and it took me almost a year to accept that I did not get my illness anywhere else but at work. It also took a lot of research on my part and with the help of friends on the health effects of toxicants to convince myself. As a white-collar worker, I SHOULD HAVE NEVER BEEN PLACED IN HARM'S WAY! I believe that it is criminal that I was allowed to work in a toxic environment.

My immune system is dysfunctional; I am autoimmune. I have had elevated white blood cells and low immune factors which no one can explain. I have chronic, debilitating fatigue. I have a hypersensitive central nervous system that causes chronic, constant pain. I have right frontal lobe brain damage and memory loss. I have been diagnosed with sleep disorders and asthma. In 1995, I was found to have 40% pulmonary function. I have frequent migraine headaches. I have an unexplainable skin condition. My dermatologist calls me "the mystery lady." The last time a 24-hour urine test was performed, it was found that I had nickel 26 over the normal range. I have had three lumps removed from my breasts. I have had thyroid antibodies and vitiligo (an autoimmune condition). The only other blood relative to me who has vitiligo is an aunt who worked on the calutrons at Y-12 during World War II.

The schedule I must follow to avoid collapse is as follows. If I spend 30 minutes on housework, I must then lie down and rest for 30 minutes. If I go for a very slow walk in my neighborhood to try to get some exercise, I must immediately rest for an equal period of time. I am able to do 3 or 4 of these cycles of activity followed by rest in one day. If I try to push myself beyond that I literally collapse.

Needless to say, I am now unable to work or play. My life is one of almost constant frustration with days spent seeing doctors, fighting the medical and disability insurance companies, filling out forms and writing appeals for payment and compensation, and trying to maintain a semblance of a normal life. The smallest daily chores and errands exhaust me. Vacations are fruitless. About half of the time, I end up in urgent care. Any recreational or social activity must be preceded and followed by several days of rest and a lot of assistance from family and friends. There is very little in my life that is fun or brings me happiness. I have to believe it is all for a reason - that I will learn from this and be a better person. I have always been a very happy, optimistic person and I would like to be a productive one some time in the future or what is the use in living?

In January 1996, I heard through a work colleague who was also a sick employee about a support group and I began attending meetings. We became the Coalition for a Healthy Environment. CHE is incorporated as a non-profit in the State of Tennessee. We are a group of employees, former employees, area residents and other concerned citizens who meet on a regular basis to assist each other with all the burdens associated with declining health, disability, and whistleblowing. We have had over 300 people contact our organization for help and information. The educational and technical background of our core membership includes a diverse background-from blue-collar lab technicians; security guards; secretaries; hazardous waste samplers; supervisors; health physicists technicians; to white-collar managers; public information specialists; engineers; scientists in the disciplines of toxicology; biology, and physics; environmental science; exercise physiology; environmental sociology; law; nursing; technical writing; etc. Our organizational abilities are challenged by our disabilities, of which many people suffer similar symptoms. For many of our members, there are only a few hours in the day that we are able to function at our full physical and mental capacity. Because of that, we have been forced to "work smart," rather than work hard.

When I began attending the CHE meetings, I was primarily concerned with my own health problems. However, I soon began to see a wider array of unexplained health problems, such as cancer, emphysema, multiple sclerosis, autoimmune disorders, birth defects, Lou Gehrig's disease, lupus, hyper and hypothyroidism, cardiac problems, chronic beryllium disease, the list goes on and on. It only seems reasonable to ask, "Is there a connection between the toxic materials used at the Oak Ridge sites, the toxic waste generated in epic proportions and disposed of for decades using antiquated disposal methods, and the onset of unexplained health problems both inside and outside the gates of the DOE facilities?"

When I began to suffer illnesses that appeared to be a result of my workplace, I began to ask questions. And I saw what was happening to others around me when they started asking the same question, mainly "is some thing in our workplace hurting, if not killing us?" Colleagues were taken off jobs, reassigned, harassed, ridiculed by fellow workers, shunned, isolated, and

some eventually fired. I began to see that questioning, even the most basic, simple questions, was seen as a threat to the authority of those running the plant. I also saw that fellow workers quickly picked up on that and that they, in fear of losing their jobs, kept their mouths shut. I even knew people who were sick and had lab evidence confirming toxicants in their bodies, but who refused to report this out of fear for their jobs.

In terms of retaliation and harassment, I was in the minority and was truly blessed to have sympathetic and supportive management and colleagues. (See the earlier testimony on Page 2.) No one ever questioned or criticized me when I missed work for illness or doctor appointments. They knew I was a conscientious employee who was doing everything I could to maintain high work standards and get well.

Before I was sick, when faced with inadequacies in the workplace, I was more apt to say "never assume malevolence when incompetence will do." I have now changed this view. It doesn't matter whether you call it incompetence, complacency, ignorance, or the remnants of the compartmentalization of the work effort for security purposes, it all results in the same: hurt people and even dead people.

I went through a period of denial about my illnesses. I couldn't believe that the men who were friends of my parents, who went to my church, who came to our home could have allowed me to be put in harms way. But it happened and there are many reasons why it did. I loved growing up in OR and it hurts deeply to see the community poisoned physically and spiritually. There is deep division and controversy there now. I feel that I have been betrayed by my hometown and country and I am deeply disturbed that these things I have told you about have been allowed to happen.

I wish more than anything that I were healthy and working again. It is depressing to go from an independent, extremely active, athletic hard worker to being disabled and a burden on my family and society.

I never dreamed I would still be unable to work 3 years after I left the workplace. But there's a very good reason why I am still out of work. LMES is self-insured and has real interest in avoiding liability. LMES medical insurance is atrocious. It is a huge battle and next to impossible to get diagnosed and treated. Local doctors are uninformed about the possible hazards and afraid to act given what has happened to one of their colleagues. Specialists who may find the answers are not being allowed to investigate our illnesses thoroughly. This was different before 1990 and the end of the Cold War.

## My View of the Situation in Oak Ridge

### I. Sources of Potential Exposure on and around the Oak Ridge Reservation

We fear that the regulations are not protective of human health and the environment and here are some of the reasons we believe it. The following are a FEW examples that all is NOT well and safe in Oak Ridge.

- Metals in the Clinch River exceed state water quality criteria, although this information is not posted. Mercury levels exceed the criteria for fish and aquatic life. Arsenic levels exceed the criteria for human recreation.
- Uranium hexafluoride cylinders stored at K-25 are leaking as documented by the DNFSB.
- The K-25 main plant is contaminated and this contamination is migrating as acknowledged by DOE.
- Neither LMES nor DOE have provided data to show that the incinerator is not a health hazard. Lack of monitoring ensures that emissions remain unknown.
- Sludge from the City of Oak Ridge sewage treatment plant contains metals and radionuclides. Consequently, it is disposed of on the Oak Ridge Reservation.
- Sediment containing mercury from East Fork Poplar Creek was used as fill under schools and the Civic Center. Warning signs on the creek have been removed, yet floods continue to rinse mercury out of the Y-12 buildings and into the creek, which has been declared "clean."
- There have core samples taken outside of K-25 office buildings that were found to contain beryllium above the EPA Region 4 Action Limit. But Lockheed Martin attorneys told us that there was no beryllium on the site! We now have at least two employees with chronic beryllium disease and one office employee with beryllium sensitization.
- There have been barrels of waste that were mistakenly sent to the Y-12 burial grounds (not licensed for type of waste) instead of Envirocare in Utah.
- The quantity of metals "burned" in the TSCA incinerator increased five-fold in 1995-1996. The Combustion and Air Toxics Research Lab at UCLA's Center for Clean Technology has stated that "Most risk assessment studies performed in conjunction with siting hazardous or municipal waste incinerators identify emissions of such heavy metals as cadmium, lead, and mercury as having relatively high potential for harming the surrounding population. These elements are usually emitted in the form of oxide aerosols, which are formed in the flame. Further, a significant fraction of the aerosol is in the sub-micron size range, which is both very difficult to handle with conventional particulate control devices and easily respired into the lungs. Once in the lungs, these metal oxides can lead to cancer and other health problems."
- The Toxic Substances Control Act Incinerator permit has been changed 64 times. Some of the changes have been because the all of the sudden discovered it was burning illegal waste and to be legal, they had to have the new wastes added to the permit. The point is, that these wastes were not part of the trial burn or the model that calculates efficiency and emissions. So, they really don't know what it is coming out!
- There have been 12 thermal relief vent events. This happens when there is a problem in the feeding of the waste, or in the combustion chamber or in some other part of the facility. The entire process shuts down and a relief valve opens and undestroyed wastes are vented to the

atmosphere. There were 4 of these events in 1996 - coincidentally the year that many sick people started showing up!

- There have been hundreds of Notices of Violation - where the state or EPA put DOE on notice that they are in violation of the law or the permit. There are Covenants of agreement between DOE and EPA whereby EPA has agreed not to sue DOE even in DOE is found committing illegal activities. There have been ridiculously low fines levied by the state because DOE "self reports" the violations. More deal making to keep DOE out of trouble!

- TSCAI is still experimental. There is no technology for continuous monitoring of unburned and newly formed chemicals and metals. Incineration is often described as the "preferred alternative", a proven technology" or the "only feasible answer" to the toxic waste crisis. In reality, it merely provides an opportunity for DOE to avoid responsibility for their wasteful practices, dilute its wastes with large quantities of air and disperse it into the environment. This is convenient, liability-free and masks the problems and passes them to the next generation.

- There have been "weekend runs" of materials from Y-12 to TSCA without proper documentation.

Note: We have documentation on all of these. You may request it from DOE.

DOE has admitted that the animals, trees, water, soil, and buildings are contaminated, BUT there's no way a human could be unless it is beryllium or a few radiation-induced cancers at Paducah!

We are dealing with a larger and larger toxic burden in our community. Even though some operations have ceased, clean up activities are releasing even more toxins into the air and water. When is enough enough?

When you hear that DOE is always in compliance and everything has been checked out to be safe, don't believe it! DOE's mantra is "we are always in compliance" and yet we continually find that they are NOT!

DOE continues to miss milestones in the clean up of the site and millions have been wasted on studies and technologies that have failed.

Granted DOE has an astronomical problem with the wastes and contamination and should NEVER be let off the hook for clean up. But this clean-up can and should be conducted safely. But it is scary when it is in the hands of someone who continually lies and denies, and makes mistakes all of the time, and has deals cut everywhere to avoid liability

DOE's credo is to only admit what the public is likely to already know or might find without much effort.

There is an 800 lb. gorilla alive and well in Oak Ridge. We are not entirely sure of the faces of the beast, but we suspect it is the power structure at DOE, the contractors, and the local government.

## II. Outside Occupation Physicians Were Hired to Help in September 1996

- At the request of employees and under pressure from DOE HQ, LMES hired outside physicians in September 1996 to evaluate employee health problems. They were asked to determine what had made us sick and direct us to get medical help.
- The evaluation was closed to anyone beyond the original 53. Dozens more have presented with similar symptomology and lab results.
- The physicians have violated the Hypocratic Oath and the Occupational Medicine ethics.
- The physicians have been accountable to no one.
- Local physicians, elected officials, attorneys have delayed treatment, determination for disability, and other actions.
- The physicians spent resources on a poorly executed study to create a new urine thiocyanate reference range study that was neither peer reviewed or published.
- Interim reports were filled with many unconscionable errors and, for some, were received 22 months into the study.
- The physicians are ignoring the recommendations of world-class experts on beryllium testing and refusing to allow workers to proceed with additional testing.
- The occupational physicians hired by LMES to support the workers did not conduct any biological testing until almost two years after their initial contact with the workers. Now that the workers have been off-site for almost two years, biological sampling is being performed. Given the extensive delay, we are convinced that little or no positive findings will be identified from any of the testing. We perceive this to have been a delay tactic by LMES in order to produce documentation that these employees received no exposures. Acute exposures will not be found. There is little medical data in the literature on effects of chronic exposures.
- There has been no testing for metals or immune factors and very inconsistent testing overall.
- The scope of industrial hygiene sampling was extremely limited. Workplaces had a VERY limited investigation.
- A few workers have had diagnoses that we are aware of: 2 with CBD, 3 with Beryllium sensitization and a few with cardiac problems due to chemical exposures.

42 MONTHS LATER THERE ARE STILL FEW ANSWERS

**NOTE:** It is extremely important to understand this particular situation. The reports from these occupational physicians will be the first "filter" for which K-25 employees may receive compensation in the proposed legislation. As I understand it, DOE would have the final say after reviewing the doctors' reports. This entire activity is fraught with bad science, malpractice, and unethical behavior.

### III. The Medical Dilemma

- There is evidence of environmentally-induced disease clustering in Oak Ridge and no rigorous clinical studies have ever been done. Most studies involved documenting off-site releases, were directed by company officials, or did not include physicians.
- In 1987, the Institute of Medicine identified the need to learn more about chronic exposures and very little has been done about that.
- Few physicians have any experience with clinical toxicology—none in Knoxville or Oak Ridge area and none in LMES insurance providers' networks. So, even if the hired Occupation Medicine physicians give us recommendations, we still are unable to get help from our local physicians.
- Requests to LMES for workers compensation benefits have been denied.

The Workers Compensation (WC) system was put in place almost 100 years ago to protect corporations from lawsuits. It is not there to protect the employee. The WC process is controlled by LMES and NEVER proceeds if the injury involves toxicant exposure.

- Some physicians have refused to test employees for toxins and have refused to refer employees to appropriate specialists.
- Local physicians cannot diagnose and treat the unexplained illnesses, and many have dismissed them as psychological disorders.
- A Tennessee Health Department official has stated that local physicians will not diagnose anything that will hurt DOE.
- Problems with classification of information have hindered our ability to help and get help. In some case, employees are still unable to discuss with their doctors what they may have been exposed to.
- There have been problems with specimen samples being lost and/or contaminated.
- LMES's insurance providers refuse to honor referrals to physicians with experience in, expertise in or a willingness to investigate toxicology, hence effectively denying treatment to sick workers and rendering their insurance virtually useless. [Because LMES is self-insured, all decisions and policy pronouncements by the insurance providers are being directed by LMES.]
- Employees have had a very difficult time obtaining a copy of the LMES agreement with insurance providers. There are two providers and only one contract exists.
- LM has limited the physicians we can see, the tests that may performed, the medicines we can take.
- DOE has directed LM to reduce benefits' costs, especially long term benefits.
- Retired employees' health benefits have been cut by 50%.
- DOE reluctant to release data and do anything which may imply or admit liability.
- Little or no action while health deteriorates.
- There have been many insurance problems.

The ill workers requested specific testing nearly three years ago. The management and physicians at K-25 did not heed these requests. Workers were forced to proceed on their own for specific testing and have had to pay for it out of their pockets. Insurance will not



pay for many of these tests nor will they pay for the treatment options that are available. The insurance company states that, in many cases, the illnesses should be covered under Worker's Comp. Other times, they state that the testing or treatments are not covered under the company insurance plan. The company refuses to acknowledge that the exposures and illnesses resulted from the workplace. Thus, workers are left without an income and with having to pay for their own medical attention and treatment. Many workers are without long-term Disability benefits because the insurance company refuses their benefits.

- More of the usual DOE studies are NOT needed.

We do not need any more dose reconstructions, epidemiological studies, or risk assessments, governor's panels (i.e., political solutions), mortality studies, or doctors who are afraid. We need real symptom surveys, people tested, diagnosed and treated by experts who are independent. We need the current "safety and health" attitude of reprisal, fixing blame on those least able to fight, complacency, and negligence at DOE facilities fixed NOW. We need all health and medical records from the beginning of Oak Ridge declassified NOW.

We have politically incorrect illnesses. We have experienced political science not good medical science. We have been forced into a position of proving the cause of illnesses when DOE owns the proof and it is still classified as secret. We are not even allowed to talk with our doctors about the materials we have been exposed to and our doctors cannot find out about the pathways of exposure. We have experienced unethical, incompetent science, withholding and falsification of data. Our requests for information are forwarded to the Department of Justice.

Teams of the nation's best physicians worked hard on developing treatment for leukemia. If the patients had had to prove how people got leukemia before they were treated, new leukemia treatment modalities would have never happened.

When someone is raped or shot, but not killed, the victim is not required to find the culprit and prove they have been injured. We have been placed in that very position and have been forced into lawsuits in order to receive compensation.

When someone has cancer or needs a knee operation, everyone understands: family, friends, doctors, insurance companies. We acknowledge that what we have is "apparently" new and unique, although we don't believe it is new or unique. However, it is indescribably frustrating and it is no wonder we see people depressed, committing suicide, and angry. Imagine yourself in our position, fighting these barriers daily and wondering:

Will we ever get treatment?  
 Will we ever get well?  
 Will we ever be able to work again?  
 Does America care?

#### IV. Problems with Interactions with the Department of Energy

##### Secrecy

The most important element in our interactions with DOE is information. We are constantly battling with a host of unknowns. What are the chemicals, heavy metals, and radionuclides that the plant generated and released into the workplace and the environment over the years? How much? Through what pathways? What is the human body's response to the exposure of any one of those toxins, and, in our cases, what are the synergistic effects to multiple exposures to multiple toxins? How relevant are "official" dose estimates and dose assessments to our own possible exposures? What are the medical, scientific, legal, and economic paths to take in dealing with our conditions?

There is scant evidence of health effects from DOE activities because DOE's own record keeping is abysmal. They have even admitted their radiation exposure records for employees is flawed and unreliable prior to 1989 and we know they are since then because of "tests" that employees have done with their dosimeters in hot areas. DOE's health studies have been continually "inconclusive by design" and those epidemiologists who shown any positive correlation at all are now black balled from further research and having to shutdown their businesses and work groups.

Since the creation of the Manhattan Project in 1943, when the government town of Oak Ridge was first created, we have been totally dependent on the officials in Oak Ridge for the answers to these questions. Growing up in Oak Ridge, I trusted our government leaders whole-heartedly. Oak Ridge is a town of secrets; a town built on secrecy. I always thought the secrets that hid the details of how to build a nuclear bomb were ones that were best kept in the interest of national security. Growing up in Oak Ridge, it came natural to me not to ask questions. You did not ask what your friends' mother or father did at the plant, because it was most times a secret. I can remember for decades the billboards around the plants admonishing the workers not to talk about or take their work home with them. The secrets stayed inside the fences and walls of the Atomic Energy Commission/Department of Energy facilities.

It is not unreasonable to pose questions linking pollution, health, and DOE's safety practices and other activities? Congressional hearings on the pollution problems in the early 1980's found that the DOE Oak Ridge facilities had (according to an independent expert) "State of the art waste disposal-for 1943." Millions of pounds of low-level radioactive waste, along with heavy metals and volatile organic compounds were simply dumped into unlined trenches that were dug into the ground. These trenches often penetrated the groundwater level, which in many places in very shallow, sometimes only three feet below the surface of the earth.

It was revealed in the mid 1980's that more than 2.4 million pounds of mercury could not be accounted for at the Y-12 plant. I learned that hundreds of thousands pounds of mercury had slipped through the cracks in concrete floors and found its way into streams, groundwater, as well as ventilating into the air. Organic solvents have been found in the ground in concentrations of thousands of parts per million, hundreds if not thousands of times above EPA acceptable levels. White Oak "Lake," an impoundment built to contain radioactive run-

off from waste trenches, is considered by experts to be the most radioactive "lake" in the country.

The reservation is considered to be one of the largest CERCLA Superfund sites in the country. In addition to the legacy waste generated over a half century of nuclear bomb building, uranium enrichment, and research, we also have the TSCA incinerator, which over the last half decade has been burning up over a million pounds each year of waste contaminated with both radioactive and hazardous substances such as PCBs. DOE calls "experimental" and it is the only one of its kind in the world. There is no acceptable (to EPA) monitoring equipment for monitoring metal emissions. It is located close to where people work and live. I worked about 100 yards from it and walked past it everyday to the parking lot.

The Cold War and the secrecy mentality still permeate the thinking of most people. MANY are still afraid to speak out for fear of violating their oath to keep the secrets and also afraid of losing their jobs. We have had people fired and retaliated against for whistleblowing.

I think a lot of our problem stems from the fact that the culture of secrecy bled over into every aspect of our work place at these facilities. If a person has any question in their own mind whether something is a national security secret or not, they will often make the safe choice and say nothing at all. The management running these facilities have taken advantage of that natural tendency to be circumspect about our work, and have enforced an unspoken, but well recognized code of silence about anything that may threaten not only national security, but anything that might potentially threaten the way the management operates these facilities. It is production first, health and safety something in the distant background.

#### **Harassment**

But, when I began to suffer illnesses that appeared to be a result of my workplace, I began to ask questions. And I saw what was happening to others around me when they started asking the same question, mainly "Is there something in our workplace that is hurting, if not killing us?" Colleagues were taken off jobs, reassigned, harassed, ridiculed by fellow workers, shunned, isolated, and some eventually fired. I began to see that questioning, even the most basic, simple questions, was seen as a threat to the authority of those running the plant. I also saw that fellow workers quickly picked up on that, and that they, in fear of losing their jobs, kept their mouths shut. I even knew people who were sick and had lab evidence confirming toxins in their bodies, but who refused to report this out of fear for their jobs.

Because of that heightened awareness in the workers not to challenge the authority of their superiors, we have sadly found that that affects the quality of the scientific integrity of the data that has been generated at the facilities. That is particularly true when the data has to do about the environmental monitoring conditions at the plant and the medical monitoring of employees. We have been really concerned about the reliability of the documents created by DOE because they are self-regulating. We are forced to live with the monitoring data that they give us as there is no independent monitoring of the DOE facilities. What we have seen

time and time again is that when a professional, be they a technician or a nuclear engineer, challenges the quality, validity, reliability of any facet of work within the DOE environmental, safety or health programs, that they run the very real risk of jeopardizing their careers.

There truly is a "chilled atmosphere for safety" here at Oak Ridge. What is meant by that term is that Oak Ridge employees who make protected disclosures about safety and health hazards are often the victims of retaliation by DOE and its contractors? This is a widely known and frequently observed pattern, where workers who give voice to their ethical concerns do so under the threat of losing their livelihood.

We have all sorts of employee programs on the reporting of ethics, health and safety violations, but heaven help you if you spoke out. The hypocrisy was incredible. As a project manager there were so many rules and procedures on the one hand, and on the other hand, there was the pressure to get the job done. The hypocrisy was that often people did not even follow their own procedures. It seemed as though the procedures were window-dressing, only to be followed in case of an IG audit.

All hazardous workplaces will occasionally have accidents, but in private industry, accidents are intolerable because of lawsuits and the bottom line. While government agencies may worry about the Congressional control of the purse strings, but they must give citizens the opportunity to sue them and guess what? Mostly, they don't! We have seen too much retaliation against those who have been courageous enough to ask questions and speak publicly about these issues. Workers are afraid to report incidents and have even been ordered to NOT report them.

**V. Problems with toxicology and regulations and the regulatory agencies**

- Limits of exposure set with lethal doses, not chronic, long-term exposures (testing protocols don't mimic the real world) tests build on the end point of cancer, not immune, neurological, endocrine, and developmental diseases.
- Tests and studies are inconclusive by design
- Testing for one compound does not look at the additives in the materials in actual use.
- Testing only looks at a single route of exposure
- no knowledge of synergistic exposures
- politics reigns over science: revolving door between industry and agency executives.
- Elected officials dependent on financial generosity of industry. Laws are being weakened not enforced and strengthened.
- Economics reigns over science: Costs of studies is extraordinary. 71% of these 300 high production chemicals have no basic health data on them. People with a vested interest have funded 95% of the published studies interested in the product.
- Government and industry uses "Risk Assessments" to overcome scientific uncertainty. It is a method originally developed to analyze non-organic problems, such as bridge building. With a lack of information on chemical toxicity and genetic susceptibility, RA fails miserably to adequately protect human health and the larger environment. It becomes an economic decision based on "educated guess" as to the "acceptable" number of people that may die or be harmed by a chemical exposure.
- What the government loves to call "health studies" are really nothing more than engineering exercises - studying DOE's own records which are highly suspect and trying to calculate doses, guessing at disease and death causes.

**THE SOLUTION****HEALTH**

Uninterrupted, comprehensive medical coverage for affected workers' lifetimes

Compensation for lost jobs and careers.

Comprehensive testing, e.g. wider testing of Oak Ridge employees and residents and comparative sampling of spouses of children (particularly those who do not come into Oak Ridge) of affected employees. This would help to determine whether DOE is the major source of contamination.

Community-led, research-driven medical intervention funded by DOE that involves the affected people and their advocates in the decision-making process with no competition between other communities affected by the DOE's activities.

Immediate compliance with occupational physicians recommendations for entering K-25 vaults with proper respiratory protection.

Aggressively upgrade all DOE, on-site medical clinics.

**ENVIRONMENTAL**

Thorough and independent evaluation of the K-25 Site and environs to identify, contain, and monitor ALL the hazards that endanger the citizens of Tennessee

Aggressive and thorough clean up of Oak Ridge and environs. Ensure that all DOE sites are safe for employees and near by residents

Install monitors for the assessment of heavy metals released from burning of toxic metals in the TSCA Incinerator. We also ask that the monitors be maintained in a properly working condition and that they accurately record/report emissions. Also, we ask that continuous "real-time" air emission monitors be installed so that months do not pass before knowing the content of emissions.

The Tennessee Governor's Blue Ribbon Panel had an expert testify that there should be this "real-time" continuous air monitoring. The "models" used in permitting the Incinerator do not inform of current emissions from the stack, nor whether or not they are hazardous to human health and the environment. There is no conclusive evidence as to what extent the PCBs, beryllium, heavy metals, various chemicals, and radioactive materials are being destroyed nor as to what new compounds are produced by the incineration process and disbursed into the atmosphere. By DOE/LMES's own admittance, the TSCA Incinerator is an EXPERIMENTAL Incinerator. Workers and citizens should not be exposed to possible contaminants if the appropriate safety levels have not been established.

**INSTITUTIONAL**

Aggressively de-classify health-related documents and STOP the destruction of classified documents. Documents recently declassified significantly alter the risk assessment models that are the foundations of the standards used to define operational parameters.

Ensure prompt and thorough compliance with Worker's Compensation laws.

Institute a moratorium on leasing of any K-25 facility until such investigation and mitigation are complete. Businesses that are leasing the buildings at the K-25 Site are not being informed about contaminants as a result of past practices in those buildings. The buildings have not been adequately characterized as to their hazards. Healthy workers are being exposed to contaminants including radionuclides, heavy metals, PCBs, Beryllium, and chemical, without their knowledge. Several times businesses have taken down the Radiological Control Postings warning of contamination in the area because they didn't want to worry their employees or potential clients.

Make CROET accountable to the public since it operates on public funds. This DOE/EM funded group is bringing in businesses to lease the buildings at K-25 in return for cleaning the buildings up. In many cases, there are known hazards that are ignored because the companies want to get rid of the "scrap" or "waste" within their building. There have been instances where radioactive contaminated scrap has been sent over a public road to the "contaminated scrap metal yard" without the proper Radiological Controls or surveys. There have been instances where employees have been radioactively contaminated due to improper Radiological Controls being enforced and because they were not told of the radiological hazards in the areas they were working. CROET is in a rush to lease and make money for DOE. CROET itself is also profiting. Government regulatory agencies need to look into the CROET Board and stop their "business-behind-closed-doors" policy. Members of the public are unable to attend CROET meetings because they are not informed of the dates/times. CROET Board members are even being excluded from decisions.

Recognize and comply with the Hall Amendment USC Title 42. DOE must recognize and comply with the Hall Amendment USC Title 42 - The Public Health and Welfare, Chapter 84 - DOE, Subchapter VI - Administrative Provisions, Part C, 42 USC 7256 (01/16/96)? The EPA recognizes this Amendment, but DOE refuses to follow it. The leasing of contaminated buildings at the K-25 Site is proceeding without proper requirements being followed: specifically, Section C, Subsection (e), number 1 and 2.

Accelerate independent oversight of DOE by EPA, NRC, and OSHA.

Follow through on commitments made by DOE employees to the communities. (E.g., Dr. Seligman was here two and one-half years ago and we have heard nothing from him.)

Promote and fund much-needed research on the health effects of hundreds of that are in use in commerce today that have never had research on them before. This research must include effects of long-term, low-dose exposures and the synergistic effects and additive effects.

Murphy, Floyd Glenn, Ann Walzer, and Dennis McQuade were in positions designated expressly to protect the workers. They are no longer in these positions because of management's judgement to either impair their functionality or eliminate them by firing them from the system. Workers are entitled to protection under the Occupational Safety and Health Administration laws and regulations. DOE is self-regulatory and does not do its job in protecting employees where money is concerned.

Fatalities and injuries have resulted due to negligence by LMES/DOE and its subcontractors. These fatalities and injuries could have been avoided if the "whistleblowers" were allowed to conduct their duties in protecting the health and safety of the workers.

#### **THE BOTTOM LINE**

DOE must transcend the fear of liability and allow:

"Real" science to occur.

Researchers and those who advise DOE must be allowed to ask questions and raise issues without fear of retaliation.

Affected workers and "downwinders" must have access to the best in medical care immediately and compensation for lost wages and careers.



Testimony of J. E. Phelps to the Senator Thompson gas diffusion plant hearing of 3-22-2000

March 27, 2000

To:  
Senator Fred Thompson  
Senate Governmental Affairs Committee  
340 Dirksen Senate Office Building  
Washington, DC 20510

Testimony of J. E. Phelps to the Sen. Thompson gas diffusion hearing of March 22, 2000

Dear Honorable Senators:

Let me begin with thanking Senators Thompson and Voinovich for raising the worker health problems to open senate committee process and receiving written testimony in order to accurately address the extent of the problems and seek more effective remedies.

I submit my testimony as a former senior staff development engineer of the Oak Ridge National Laboratory (ORNL) working in the areas of radiation detection and measurements and site remediation, and with knowledge of problems at the K-25 site and DOE sites in general.

During the mid 1980s at ORNL, layoffs at the K-25 plant brought workers from K-25 to my engineering section at ORNL and from this process many of us learned of the dangerous operation of K-25. We heard of a great many uranium hexafluoride (UF-6) releases that concerned us due to the toxicity of the hydrogen fluoride (HF) generated in such releases. Also, during this period of the 1980s members of my work section were asked to investigate SR-90 detected in the waters near K-25, which is a very mobile fission product that indicates nuclear problems. I and my section have expertise in nuclear spectroscopy and process equipment and the concern was that a nuclear slow cooker criticality was generating toxic air and water releases, so this investigation came to this section. These investigations into these problems was shared knowledge in my ORNL engineering work section.

A perceived problem seen at ORNL was many persons were being noticed with thyroid conditions and it was first suspected that releases of I-131 might be generated by a slow cooking nuclear criticality in drains, sumps, ponds, or other areas of K-25 with unmonitored highly enriched uranium (HEU) deposits, as well as several fissile slow cooking problems at ORNL. It was later found that the K-25 SR-90 presence was coming from upstream of K-25 and coming from inside the Y-12 nuclear weapons plant and was then suspected of coming from the Chestnut Ridge burial ground where HEU and water migration could set up such a problem and allow SR-90 to get into this creek. Y-12 guards had seen flames shooting from the Y-12 Chestnut Ridge burial ground and trees died nearby, which suggested a nuclear criticality in this area. A fission problem would make hydrogen that easily ignite rising from the burial ground. This problem has been suppressed to the public.

We, at ORNL, also noticed high emissions of UF-6 from all kinds of release points from the explosive testing of 12 ton cylinders in gas fires, to process leaks in hundreds of areas running at positive pressures, the operation of a uranium fluoride burning incinerators, to the leaks of storage cylinders valves and perforations produced concerns of the high emissions of HF gases and oxyfluoride (OF<sub>2</sub>) gases into both the workers areas and the regional air. It was well known that fluorine is a halogen element and thus in the body is mistaken for iodine and from this harm can come to the thyroid gland, and even endocrine processes, from the releases of HF into air. Damage to the thyroid is also connected to immune diseases, heart disease, and metabolism of every cell in the body. Thyroid disease is now recognized by the state to be high in this region.

I raised this K-25 HF toxic release concern with my ORNL section in the mid 1980s and members of my ORNL engineering section were sent into the communities near the K-25 plant to get samples of vegetation, milk, and well water to test for the concentrations of K-25 toxic releases-----primarily fluorides. They also tried to suggest to folks to get off well water and onto public water to mediate the potential for health harm. The ORNL staff collecting these samples in the community were under the management of Hugh Brashears and they were engineers like Martin Bauer and Barbara Hoffheins. Dozens of community persons recall these ORNL folks wearing white lab coats coming to their homes and farms in this area, but when they asked ORNL for the data, ORNL claims no knowledge. This information is being suppressed in the public.

The ORNL management well knew of the health concerns from the K-25 UF-6 releases in the mid 1980s and suppressed this information. I believe this played a strong role in the decisions to close the plant after the cold war ended to lessen the harm to the area.

This is not the only thing this engineering group at ORNL investigated and suppressed. These same ORNL engineers and managers were well aware that a reactor called the Molten Salt Reactor Experiment (MSRE) at ORNL had a severe problem with generation of HF and fluorine from the radiolysis effect with U-233 based UF-4. The corrosive nature of these effects produced leaks in the fuel storage piping valves that released fluorine, HF, oxyfluorides, and UF-6 into the building air space. This was further made a problem because the basement exhaust fans were not well maintained and had broken belts, as evidenced to me by ORNL maintenance workers like Mr. A. E. Massengill. The leaks at the MSRE were allowed to persist so long that a pile of uranium dust accumulated near a valve and caused a nuclear criticality explosion and a reportable event, which was also suppressed. One of the workers at MSRE, named Richard Mathis, ended up with detectable levels of U-233 in his body due to exposures. ORNL technician V. C. Miller cleaned up the criticality mess and the building was painted to entrap the U-233, with toxicity effects like plutonium. Many of the workers at this MSRE building are sick from ills much like those seen at the K-25 site and these exposures were due to persistent low level fluoride emissions into the building air resulting in cumulative fluoride toxicity.

This same ORNL section also covered up nuclear criticality problems in the ORNL gunnite tanks over concerns that these dangerous reactions and emissions might result in the closing of the central laboratory area of ORNL. These issues were carefully suppressed as well and a sluicing device used to physically get to the slow cooking areas of the high level fissile containing wastes in these tanks. As these nuclear reacting slow cooking zones were being disturbed, the fast gas,

xenon and krypton isotope, off gassing was so extreme that it came out the top of the tanks and flooded a wide area around the tanks with fallout of SR-90 and CS-137, which is well documented and shown in area surveys of this area. I was contaminated in this release and one of my section technicians overdosed with internal contamination. These same gases also blanketed the area from stack gas release for the many years that this was allowed to occur as the tank stirring failed to control the problem.

The ORNL Division that I worked in also designed much of the K-25 Toxic Substance Control Act (TSCA) incinerator and my input was also included in the designs of the incinerator. K-25 and Oak Ridge had a huge problem from the need to store the huge volume of fissile liquid uranium fluorides around the site and one way to address this was to run them into the incinerator. For this reason, the TSCA incinerator has the highest emissions of uranium and with this also the burn products of fluorine. The fluorides cause the dominate toxicity issues, similar to that of burning chlorine compounds in municipal waste incinerators making dioxin. The incinerator was designed with controlled burn temperature and also a triple stage filtering system to try and keep down the fluorine emissions. TSCA incinerator was also designed to burn things together with multiple feeds that would form less toxic compounds of fluorides and metals due to catalytic like effects. Even with this the toxic emissions of the TSCA incinerator were rated to kill the pine trees downwind of it after a few years of operation. Before the 1982 TSCA legislation, older incinerators at K-25 and Y-12 burned toxic materials with no restrictions, filters, or temp controls.

The emissions of fluorides are well known to affect pine trees and there are many aluminum plant operations that not only killed pine trees, but affected the health of farms and cattle and even honey bees for miles downwind. This same section at ORNL also came up with a pine beetle plausible denial story to hide the fluorides toxicity killing the downwind pine trees of K-25 and TSCA, and this was patterned right after these same techniques used by the aluminum industry to deny environmental damages. ORNL prefabricated this lie to cover up the extensive damage to the reservation trees from the decades of HF releases and even further problems from the TSCA incinerator emissions and cutting open the process stages in dismantlement.

Near Oak Ridge is also the ALCOA aluminum works and it is known to have caused damages to the nearby farms, and its releases also involve HF. The combined effects of all the sources of HF affect the region.

As it came to be known that the K-25 plant would be closed and go thru D&D there were also concerns about opening so much of the process that had trapped UF-6 in the system and square miles of UF-6 surface contamination, that could put tons of HF into the regions air. In closing the plant, the stages were purged with dry nitrogen gas, but there is still much UF-6 trapped in valves, square mile area surfaces of metals, flanges, and diffusion barrier tubes. The K-25 building is at the center of a lot of the health effects of the workers at the K-25 plant and this appears to stem from the removing of enriched uranium deposits and failing to weld up the holes, which let in moist air, and let HF evaporate into the building air. The building high volume air systems were turned off to allow this effect to happen, just like a similar effect seen at the MSRE problems at ORNL.

Workers that spend much time in the K-25 building come down with lung problems and lung infections. As the exposures accumulate they seem to have increasing bone and joint problems, foggy thinking, low energy, and debilitating fatigue---characteristic of being exposed to poison HF gas at low levels for years. They also get other ills like asthma and arthritis that is well known to occur in related HF exposures for aluminum pot line workers exposed to low level HF day after day. HF is both a bone seeker and thyroid seeking chemical oxidant that damages cells and its cumulative in the bone over time. HF causes health problems like exposures to SR-90 and I-131 because of this effect and resembles a radiologic exposure with oxidation effect.

The problems of HF exposure also occur at the Y-12 nuclear weapons plant because HF is used in that process to make UF-4 or "green salt." There are also emissions from those process stacks that can affect the nearby community of color named Scarboro. The ORNL engineers also well knew these effects in the 1980s from simple observations of the MSRE and K-25 emissions problems. ORNL engineers and managers even put in some things to confuse the issues there. They intentionally planned to blank out a large part of the aerial survey of Y-12's 40 million pounds of uranium chips buried in the dirt to attract attention to that, so that the plants HF emissions would be off the prime RADAR screen of the Scarboro community public interests. While the Scarboro Community has been found to have detectable levels of enriched uranium in its soils, there is an even greater level of fluorides, which will biologically concentrate (bioconcentrate) in garden plants, much like I-131 effects. The children of Scarboro are believed to have elevated rates of asthma and other ills. A recent report from the Joint Center also found bone breaks in the community to be high and other ills that fit the effects of HF and fluorides exposures. The releases of HF and the correlation to the health effects are also being suppressed here, and the management at these plants fully knows this problem exists.

The most disturbing part of all this, is that, it was fully known at ORNL in the mid 1980s and was totally suppressed and still is suppressed. Many of these cover ups were totally illegal, harmed workers as well as communities, and ORNL managers and DOE-ORO managers have acted to suppress this information. Such actions are totally criminal in nature and this speaks for the need for criminal prosecution in this entire matter. These types of coordinated cover ups speak to the need to use the RICO laws. The plants manager acted irresponsibly and they harmed workers, community children, and thousands of acres of environment with full using deliberate sets of planned lies to the public, which is criminal and does need prosecution and those harmed deserve to see justice done.

A number of the K-25 fire protection workers are also ill and this is really simple to connect the reason why. Today, firemen use supplied air respirators to go into burning homes because of the presence of Teflon fry pans and Freon cooling systems that the fires turn into poison gases. They also use this to protect from burn PVC and other chlorine bearing compounds used in modern housing that tend to form dioxins. These same toxic effect occur with fires at the K-25 plant processes and can involved uranium fluoride compounds, PCB's, and even Freon breakdown products into poison gases. We also see these same effects come into effect in airplane crashed which often use Teflon insulated wiring, PVC plastic interiors, and even DU counterweights and these too are well known to cause long lasting toxic impacts and illnesses for both the firefighters

and communities. Both Teflon and Freon were inventions for use with UF-6 in the Manhattan Project. Neither Freon or Teflon are inert in fires. Freon is not inert in the atmosphere as it breaks down with UV-b irradiation into toxic fluorides and chlorides that provide a new form of global chemical fallout that affect the health of the world to an extend due to it not being inert observed too late.

The halogen elements are becoming an increasing problem in national health partly because of their extensive use in the last 50 years in home items like Teflon fry pans, and Freon cooling systems, but also because they are increasing used in the pesticides. When sprayed on fruits and produce they do kill bugs and blight, but after years of use these toxic products increase in soil concentration and have uptake and bioconcentration into the plants, which in turn puts more of these cumulative toxins in the human food chain. It is made worst with the inclusion of toxic metal wastes in fertilizers as well. These same toxic halogen exposure situations happen for the gas diffusion workers and they do have health impact.

Another issue that is often omitted with the operations of gaseous diffusion plants is that of the use of huge amounts of electric power and CO-located coal burning plants at or near these sites contribute to the air toxic exposures. These coal burning plants often produce high levels of NOx and SOx compounds that are acid products that harm lungs, and they also emit levels of toxic metals and fluorides that further contribute cumulative immune system health effects. In many areas these coal fired plants alone are acknowledged to cause health problems with lungs, fatigue, and other illnesses. Adding in these emissions near the gas diffusion plants causes even greater indication of the health harm to be expected from multiple sources. The effects of coal emissions in other states are already admitted as being health risks, but they appear to be not included in the gas diffusion issues. Their emissions cause cumulative toxic health effects. The connections of burning fluorides is well known to the fire fighting community and well known downwind of fissile fuel plants and these same simple connections to health damages are equally well known in connection to gaseous diffusion plant releases of HF or burning of fluoride compounds, and not clearing stating these connections to sick workers and communities is pure deception and deceit on the part of DOE and the Government.

In the early 1980s, some of the research into beryllium disease pointed to facts that the beryllium concentrations were highest in the lung's lymph nodes and in the 1980s also came the immune mechanism reasons that produced this effect from the actions of T-cells and macrophages. This same effect happens with any oxidative metal, like beryllium, nickel, chromium, or uranium, or chemical oxidative effect, like that from fluorine, chlorine, bromine, or ozone. When these effects involve internal contamination with these toxic materials they do bioconcentrate in the lymph nodes and this causes the maximum toxic stress to this part of the immune protection cells. The most sensitive DNA in these cells is the mtDNA, or mitochondrial DNA that supplies the energy conversion used to power cells. These toxic damage effects lie at the very root of the issues of internalized toxic contamination slowing the immune protective response and allowing viral, fungal, and bacterial problems to affect the body. Slowing these process also produces greater risk of uncontrolled cancer cells and the transmissions of viruses like HIV or Legionaries bacteria. It is interesting to note that most of the African countries most devastated with HIV are the ones with endemic high level fluoride concentration in the natural water supplies. These simple

observations and well known mechanisms as they related to toxic exposures at the gaseous diffusions plants also directly connect to many of the rising health plagues in the greater US and the world. The DOE cover ups of these gaseous diffusions plant health issues and their simple mechanisms for disease and cancer risk increase are at the root of a lot of things that involved liabilities and profits for industry and medicine. What we need is a total end to all the national security deceit, all the facts on the table, and the public given right to decide which way to go here; after they are fully informed. Giving the workers and the affected communities the run around is not the way to have gone. Neither is allowing the NEC to make these decisions in a slow piece meal fashion for each affected group, this is a far larger issue that needs a larger and more inclusive long term solution.

All the information above is nothing new, as I knew all this in the mid 1980s and so did the engineers that I worked with at ORNL and the managers of these plants in Oak Ridge. In late 1987, I tried to the ethical and moral thing and report these issues and address these problems, which would have fully prevented the crisis situations with many of the workers and communities we have today. Instead, I am now a graying whistleblower, after 13 years, of trying to get the issues into the public, asking DOJ to investigate, asking congress persons to help, and finding; there was no help, only control, only Government denial. I am one of many whistleblower at the Oak Ridge site now, as DOE has failed to address them. Our Government is not working and this is a large part of the problem with the gas diffusion illness. The problem does not stop there as this same system of denials holds millions of sick persons in limbo, examples being NTS and Hanford downwinders, dozens of DOE plant workers, families, and even communities, not to mention related issues with GWV's.

An aside note on the Gulf Veterans. Modern warfare, case in point Iraq, needs to be carefully considered for its environmental and health impacts. Today use of new materials makes war much more serious in terms of long term human health. The use of HF in both improving oil well production and in the process of oil refining both released huge amounts of burning extremely toxic cumulative HF compounds into the regions air. These effects even showed up on the NASA "ozone hole" tracking satellite, where the ozone hole effects are largely from Freon, a fluorochlorocarbon compound. Local problems also exist from the use of DU munitions as they aerosol and contaminate soils. Infrastructure destruction also targets buildings with chlorine based materials that form dioxins and have air conditioning systems that make poison gas from the burning Freon. These are entirely new processes as compare to W.W.II era toxic effects. We can begin to see the long term effects of dioxin from the Vietnam era Vets and the use of Agent Orange as a forest defoliant. The Atomic Vets also have long term internal contamination from the nuclear fallout. The involvement of toxic releases that bioconcentrate in the body and cause DNA cell damage is quite clear. The warning signs of this now predominate the health of the world. These mistakes don't need to continue in war, in industry, food production, or national security. It is way past time to stop. If DOE were not so intent on hiding its serious problems those in the Gulf War and those additional sick at gas diffusion plants did not have to happen, they were preventable. Sad, but true. It is a tremendous cost these national security cover ups, they now threaten the very citizens they were suppose to protect.

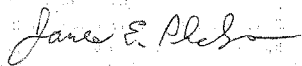
Senators and Government persons, it is time for a real change in the way of doing business in the

national security uranium and nuclear weapons business. It is time for real ethics, total facts on the table, inclusion of all sick and affected in a democratic open process, and time for deeper congressional hearings and returning the government to the citizens. It is time to end the piece meal approach to limit and contain these health problems that are common to so many industrial situations today. We the people need a fully effective solution that includes everyone and the US needs to care for its citizens and provide directions toward a nationalized health care solution that depends on common sense and not that of lawyer litigation practices that fall short of what is needed.

I and others would like to see more of these congressional hearings that include all the health affected workers and communities from the Manhattan Project's mistakes, hearings that seriously inquire into the constitutionality of these cover ups and information denials at the hands of national security, and hearings that notice the commonality off all these health issues, and hearings that seek long term, effective solutions for the betterment of the nation and its' people.

What "We the people" expect of you in congress is honesty and Government accountability, and with that all the broad based simple truths, followed with common sense total solutions. We're not getting that from DOE, and not from this single hearing, and this needs to change.

Sincerely,  
James E. Phelps



Subject: Testimony  
Date: Tue, 28 Mar 2000 00:15:21 -0500  
From: "M. K. Pinckard" <elusive@icx.net>  
To: "Cheryl" <cheryll@netzero.net>

March 25, 2000

To the United States Government  
RE: Senate Hearing on DOE illnesses

My name is Mary Pinckard and I am a 54 year old former K-25 and Y-12 worker. I began working at the K-25 site in 1979 as a Engineering Technician in the Centrifuge Division, first in K-1004-J and then to K-1220 Test Stands. Some of the job duties included standing by while maintenance mechanics performed maintenance on equipment. Many times 'smoke' could be observed coming from the pumps as the oil was changed out. At least one occasion, 'sludge' was thrown from the pump as they attempted to clean it. The feed and withdrawal stations were located underneath the control room floor. Sampling stations were underneath the first level of the catwalk or outside the door. If the lines weren't pumped down adequately, the lines would 'smoke' when disconnected. Our control room/lunch room was directly above. We ate in the control room. As rotating shift workers, we had no official lunchtime where we could leave the area to eat. Later, a kitchen was built in one end of the control room. There was no place for us to wash our hands. We would laugh at some of the old-timers remarks that you could 'eat the stuff and nothing would happen to you' yet that is what we were doing unknowingly. There was no radiation monitors to check our hands or our work areas. The only articles of PPE (Personal Protective Equipment) that we were made to wear were our safety glasses and hard hats. We were fitted for respirators. The respirators were stored in a cabinet closed by a plastic strip that would break when the cabinet was opened. I can't remember why this was so. I just remember that I didn't want to be the one that opened it. We didn't have dosimeters. I have no idea of how much radiation I was exposed to at K-25.

We were later moved to work at K-1600 and the two buildings on either side of it and K-1052. The walk from the portal to K-1600 (located inside the U) was long and I was shown a short cut through the basement of the U, up the stairs and down a long hall before exiting out the other side, close to the building. I have since learned that this area was extremely contaminated.

I moved from this job to one in the Project Engineering Office, located in a trailer outside of K-1200 and K-1225. My job required that I spend much of my time in assembly areas and test areas.

When the centrifuge program was terminated in 1986, I went through the Labship program at Roane State CC and went to work at the Plant lab (building 9995) at Y-12. One of the first jobs I did was preparing Beryllium (Be) samples for analysis. This involved sitting at a small 'glove box', the glove area was open (no gloves) and measuring out samples or control powers. The 'protective' technique was to cover the samples with water before bringing them out of the box. The PPE consisted of safety glasses and thin cotton glove liners. Once weighed, the samples were put into solution and analyzed. There were no areas designated for hand washing only. Hands were washed in the same sink that samples were prepped in. Other samples included machine turnings of depleted uranium. These metal turnings would have to be cleaned with chemicals to remove contaminants before being weighed. Sometimes these would spark or catch on fire.

Next stop was the environmental lab at 9769. My initial job there was weighing out samples of building materials from torn down buildings. Many were labeled 'asbestos'. The samples were weighed out inside a hood into beakers that were placed on a dolly. After weighing samples, the front of our lab coats would be covered with material. The samples were taken down the elevator to a makeshift work area. We never changed our lab coats after sampling. We ate lunch down there.

pl of 3



I worked in the fluorescence lab in 9995. We would prep a wide variety of samples for analysis of uranium. We never knew what else was in them. This was supposed to be a clean lab but sometimes samples would come in that had a higher amount of uranium. One such 'unknown' sample contaminated the muffle hood and equipment and everything had to be replaced. None of these samples were weighed in a hood. This was also the area where urine samples were plated and, in a back room, the dosimeters were read and new ones assembled. This group also had a lab on the 5th floor of the old ORNL Biology building and another one at the east end of the plant that was known as the 'clean room'. The lab in the Biology had one hood that was so inadequate that acid would drip from the top and collect on the bottom on the hood. I also remember seeing 55-gallon drums of sample trash being laid out on plastic bags so that the material could 'dry'. The elevator would also break down on a regular basis and we would have to ride up another one, cross over a roof and walk down a flight of stairs to get the lab. I was working in these labs when I began having thyroid problems.

I worked in the spectrometer lab inside a Materials Access Area (MAA) in building 9995. This is the first area where I had access to hand monitors. Uranium machine turnings would be cleaned and oxidized for analysis. The samples would be fired in a spectrometer, the plates developed, and analyzed for quantity of impurities. This process was performed in a room that was kept dark because of the instrument. There was a humidifier blowing water vapors across the room to maintain the humidity at a proper level. Ceiling tiles were falling and were suspected of having asbestos. The plates were developed in a dark room in chemical baths. This was not done under a hood. In this area, I first began noticing health problems, sinus problems and allergies. (After I left the area, my sinus problems ceased.)

To go to the break room, we would wash our hands at a sink where sample prep was done, use a scanner, take off our lab coats (contaminating our hands again), put on a clean lab coat and go into the break room or leave the MAA area. The process was reversed to go back in. The clean lab coats were hung on a rack and reused. The dirty lab coats we took off before going into the break room were hung up on the same rack - clean coats next to contaminated coats. There was not enough coats to put on a clean one each time. I began asking questions. Why wasn't there a designated hand-washing sink? Why were lab coats being contaminated on the racks? The sink was eventually designated for that although it was not enforced.

I was moved to the Chem lab. I was replacing a woman who was having health problems. She was moved to the CP lab where she worked for a short time before having to take disability for CFS. Another woman who had worked in the area took a disability due to respiratory problems. Another analyst began losing phosphorus from her bones and another developed myasthenia gravis. All these people worked in the same area, the same corner of the chem lab.

I worked on several procedures in this lab. One of the analyses called for weighing out a specific amount of sample on a balance. At that time, it was not done under a hood. Several samples would give off yellow fumes similar to nitric fumes. I worked on the AA instruments, one of which was used specifically for mercury samples. I never knew what was in the samples. Only that they were being analyzed for a specific element. Much of our equipment and dclies were contaminated. There were NO hand monitors there and no hand washing sinks even though procedures called for them. I was told that they knew about the problem but just didn't have the funds to do it yet. To wash our hands, we would have to go through a set of double doors, down the hall, through another door and then wash our hands in the bathroom sink.

Behind the chem lab is where chemicals and sample preps were disposed of. The sample waste was poured together. We would take our chemical waste there and pour it into the bottles. We never knew what was in there already other than the organics were kept separate. Who knows what fumes were generated there. When full, the bottles were wheeled through our area. It was later discovered that the floors were highly contaminated. We did not wear shoe scuffs and many of us worked in our personal shoes.

I had gotten what I thought was a cold and I was having trouble breathing. I had a doctor's appointment to check my thyroid. She didn't examine me but admitted me immediately to the hospital and arranged for a pulmonary doctor to

examine me. They both asked me what had I been exposed to but I couldn't answer them. I didn't know. It could have been anything. I was in the hospital for 10 days on intravenous steroids and antibiotics. When I was well enough that I began to question why this happened, the doctor wasn't interested in finding out. He said to 'bring in what I worked with' and he would test me with them. This was impossible to do. I returned to work and it wasn't long before I got sick again. My illness didn't come on immediately which would help pinpoint what was causing it. It built up over a few weeks and then I would be back in bad shape again. Then I would be treated again with steroids. Each time I got sick, I got weaker and weaker.

My pulmonary doctor sent a letter requesting that I be moved to an area without chemicals. I almost lost my job because of it.

I have respiratory problems that are not controlled by inhalers. I have muscle weakness and my hands shake. I am losing dexterity in my fingers. I am losing sensation in my hands and feet. I have migraine headaches, TMJ, and skin rashes. My legs and feet swell. The skin on my lower legs is hot, red and very tender to the touch. Diuretics aren't effective. I've had a total hysterectomy. My thyroid was removed after getting numerous nodules. My gallbladder was removed. I have sleep apnea and must sleep with a CPAP. I have an acquired IgG deficiency. I've had pneumonia several times, and I'm prone to lung infections. I have trouble remembering things. I have trouble concentrating and comprehending what I read and hear. My thinking is slow. I have pains in my legs and knees, my back and shoulders and sometimes my arms and hands. I have been diagnosed with Type II diabetes. I have been very anemic. I took iron supplements for 6 months with no improvement. I have been taking weekly iron injections for the last couple of months. My iron level is still below normal. I have had colon polyps removed. I have anxiety and panic attacks. I am sensitive to chemicals, cleaning products, automobile exhaust, perfumes, smoke, and anything that puts off fumes or has a strong odor. My vision blurs and I have difficulty reading and retaining what I read. My muscles are weak. I bruise easily and it takes a long time for the bruises to fade. I have a chronic low-grade temperature and night sweats. I have heart palpitations. I am frequently dizzy and always short of breath. I cough all the time. I am losing my sense of taste and smell. I have had weight gain. I have had legionnaire's disease. I am easily disoriented and easily confused.

For the last couple of years, I have been on a downward spiral. I am so tired. I have trouble walking any distance. I am short of breath. Sometimes I don't have the breath to talk. I can't take care of my house any longer. I can't shop for myself. I rarely leave the house except to go to the doctors. And I keep getting sicker. You need to do something to help us or it will be too late!

Sincerely,

Mary Pinckard  
101 East Drive  
Kingston, TN 37763

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WRITTEN TESTIMONY OF MACK A. ORICK MARCH 22, 2000

TO THE UNITED STATES OF AMERICA CONGRESS  
WASHINGTON, D.C.

I AM NOW AN ILL FORMER WORKER OF THE K-25 SITE, OAK RIDGE, TENNESSEE. AFTER WORKING THERE FOR 28 YEARS, I AM NOW A VICTIM OF CHRONIC BERYLLIUM DISEASE, AND OTHER ILLNESSES SUCH AS PERIPHERAL NEUROPATHY, REACTIVE AIRWAY DISEASE, TOXIC ENCEPHALOPATHY, SWAY BALANCE ABNORMALITIES, VOCAL CORD DYSFUNCTION, PERIPHERAL VISION LOSS, AND HEARING LOSS WHICH HAVE BEEN DETERMINED TO BE OCCUPATIONAL DISEASES.

PRIOR TO GOING TO WORK AT OAK RIDGE I HAD NEVER BEEN UNDER THE CARE OF A PHYSICIAN. I WAS DRAFTED INTO THE ARMY IN 1967 AND AM A VIETNAM WAR VETERAN. WHEN I WAS DISCHARGED FROM THE ARMY IN 1969 I WAS GIVEN A PHYSICAL AND FOUND TO BE IN PERFECT CONDITION. I WENT TO WORK AT K-25 IN JULY, 1972. I WAS GIVEN A PHYSICAL AT THE DISPENSARY WHEN I HIRED IN, AND I WAS FOUND TO BE IN PERFECT CONDITION THEN ALSO.

WHEN I STARTED MY JOB AT K-25, I WORKED AS A LABORER AND MY WORK DUTIES TOOK ME TO EVERY AREA OF THE K-25 SITE. I WORKED IN ALL THE VAULTS, THE "PROCESS", LABS, POWERHOUSE, AND ACROSS THE GROUNDS, INCLUDING THE BURIAL GROUNDS, AND I WAS NEVER INFORMED WHAT I WAS WORKING IN OR AROUND. I NEVER WAS ISSUED A RESPIRATOR OR ANY TYPE OF A PROTECTIVE CLOTHING.

AFTER SIX MONTHS AS A LABORER, I WORKED AS A BARRIER OPERATOR, WHERE I MADE "TUBES" FOR PROCESS OPERATIONS. DURING MOST OF THE WORK SHIFT, OUR WORK AREA WOULD BE SO CLOUDED AND THE AIR FILLED WITH SO MUCH DUST OR POWDER THAT WE COULD NOT EVEN SEE THE WORKER STANDING NEXT TO US. WE NEVER HAD A RESPIRATOR OR ANY PROTECTIVE CLOTHING OR EQUIPMENT. I BEGAN TO BREAK OUT IN A RASH, AND THE COMPANY DOCTOR(S) REMOVED ME FROM THE WORK AREA TO SEE IF THE RASH RESIDED. AFTER A FEW DAYS, THE RASH WOULD IMPROVE, AND I WOULD BE RETURNED TO MY JOB AND WORK AREA. THE RASH WOULD REAPPEAR. I WORKED IN THIS ENVIRONMENT APPROXIMATELY 9 MONTHS.

I THEN WENT TO WORK AS A MAINTENANCE MECHANIC, WHICH I DID FOR 25 YEARS. MY JOB DUTIES INCLUDED WORKING IN THE CASCADE UPGRADE PROGRAM WHERE I CHANGED OUT EQUIPMENT SUCH AS COMPRESSORS, CONVERTERS, VALVES, AND WHERE I WOULD BE

SUBJECTED TO SUCH MATERIALS AS ENRICHED URANIUM AND PROCESS GASSES. I WORKED IN ALL PROCESS BUILDINGS, AND I WORKED DURING THE ACTUAL TIMES AND IN THE AREAS WHERE THE GASEOUS DIFFUSION PROCESS WAS BEING CONDUCTED. I HAD TO CHANGE OUT SEALS IN THE PROCESS EQUIPMENT WHICH WOULD CONTAIN "YELLOW CAKE" (URANIUM) THAT WOULD ACTUALLY DRIP OUT. WHEN WE WOULD ASK ABOUT THESE LEAKS OR DRIPS, WE WERE TOLD THAT THERE WAS NOTHING THERE THAT WOULD HURT US, AND THAT YOU COULD "EAT THAT STUFF." I HAVE ALSO WORKED IN HISTORICAL CONTAMINATION. I WORKED IN THE CENTRIFUGE PROGRAM, WHERE I WOULD ALSO HAVE BEEN IN HIGHLY RADIOACTIVE MATERIALS, AND I WORKED IN THE "AVLIS" PROGRAM WHERE THE URANIUM WAS MELTED DOWN AND WE COULD ACTUALLY SEE THE PROCESS HAPPENING IN THE VESSELS WHICH WE MAINTAINED. AFTER THE PROCESS WOULD BE COMPLETED, I WOULD HAVE TO OPEN UP THE VESSELS AND CLEAN THEM OUT.

I WORKED IN THE DRAINING OF THE PONDS THAT WERE USED OVER THE YEARS TO DUMP AND COLLECT THE MATERIALS AND WASTES FROM THE DIFFERENT PLANT PROCESSES AND THE LABS. THESE PONDS HAVE BEEN IDENTIFIED AS HAVING SUCH SUBSTANCES AS PCB'S, MERCURY, URANIUM, AND OTHER HEAVY METALS AND TOXIC WASTES. I WAS NOT INFORMED AT THE TIME I WAS WORKING THESE PONDS THAT THESE TOXINS WERE KNOWN TO BE PRESENT IN THE WATERS. I WOULD HAVE TO GET DIRECTLY DOWN IN THE WATERS AND REPLACE DRAINAGE HOSES, AND MAINTAIN THE PUMPS THAT WERE REMOVEING THE WASTES. THIS MATERIAL WAS BEING PUMPED THROUGH A CONCRETE BATCH PLANT WHICH WAS SUPPOSED TO HARDEN THE MATERIAL WHICH WAS BEING POURED INTO METAL 55 GALLON DRUMS. THE RECIPE FOR THE HARDENING PROCESS DID NOT WORK, AND THE THOUSANDS OF METAL DRUMS RUSTED AND LEAKED TOXINS BACK ONTO THE GROUND, WHERE EMPLOYEES WERE AGAIN EXPOSED TO THE LIQUID WASTES. I HAD TO WORK AGAIN ON THE REPACKAGING OF THIS SAME MATERIAL INTO DIFFERENT DRUMS FOR STORAGE. I WORKED IN AND AROUND THOUSANDS OF TANKS CONTAINING THE TOXIC COMPOUND URANIUM HEXAFLUORIDE WHICH ACCUMULATED OVER THE YEARS. THOUSANDS OF THE CYLINDERS OF UF6 CONTAINING LITERALLY TONS OF THIS MATERIAL LEAKED DUE TO RUST AND CORROSION.

AFTER BEING DIAGNOSED WITH CHRONIC BERYLLIUM DISEASE, I WENT TO THE DOE'S READING ROOM IN OAK RIDGE, AND BY RESEARCHING RECORDS THAT WERE AVAILABLE THERE, AND BY THE FREEDOM OF INFORMATION ACT, I HAVE FOUND OVER 30 BUILDINGS AT THE K-25 WHICH USED OR STORED BERYLLIUM IN SOME FASHION. THOSE BUILDINGS INCLUDE: K-1401, K-25 VAULTS, K-725, K-724, K-1004A, K-1004B, K-1004C, K-1004D, AND K-1004L, K-1008-C, K-1015, K-1025C, K-1035, K-1415, K-

1417 POND SLUDGE, K-1419 CNF, K-1430, K-1435, K-1036A, K-1037, K-1006, K-1098E, K-1058, K-1070A AND 1070-B, K-1220, K-1420, K-1407 B POND AND K-1407-C POND, K-1435 AND K-1423. DOE AND LOCKHEED MARTIN MANAGEMENT CONTINUED TO REFUSE THAT I DID NOT GET BERYLLIUM DISEASE THERE, THEY "NEVER HAD ANY". THERE WAS NEVER ANY AREAS POSTED FOR BERYLLIUM, NOR ANY PROTECTIVE EQUIPMENT ISSUED FOR BERYLLIUM.

THIS IS JUST AN EXAMPLE OF SOME OF THE WORK DUTIES AND AREAS I WAS IN DURING MY 28 YEARS. ANOTHER FACT THAT NEEDS TO BE TOLD IS THAT EVEN OUR CHANGE HOUSES WERE CONTAMINATED, AS WERE VENTILATION SYSTEMS THROUGHOUT THE BUILDINGS. IN ONE CHANGE HOUSE, NICKEL POWDER WAS THICK ON TOP OF OUR LOCKERS WHERE OUR PERSONAL CLOTHING AND POSSESSIONS WERE KEPT, AS WELL AS ON TOP OF FILE CABINETS AND IN VENTILATION SYSTEMS. RECENT FINDINGS FOR CONTAMINATED VENTILATION SYSTEMS AND TOPS OF FILE CABINETS WOULD BE THE RESULTS OF OUTSIDE LABORATORY TESTS IN 1998 WHICH SHOWED ONE OF THE NEWEST BUILDINGS AT THE SITE, K-1007, THE FINANCE BUILDING, WHICH IS LOCATED OUTSIDE THE SECURITY FENCE, IDENTIFIED NICKEL, CHROMIUM, ARSENIC, LEAD, AND COBALT IN BLACK DUST SWIPED FROM THE TOPS OF BOOKCASES. THE AIR VENTS CONTAINED ACETONITRILE, ACETONE, AND AN UNIDENTIFIED HYDROCARBON. THE K-25 VAULTS WERE SHOWN TO CONTAIN VARIOUS TYPES OF MOLDS AND FUNGI, WHICH INCLUDED ASPERGILLUS VERSICOLOR, CLADOSPORIUM, AND PENICILLUM WHICH CAN BE VERY DANGEROUS TO THE LUNGS. INDUSTRIAL HYGIENST COMMENTS WERE THAT THERE WAS A "POTENTIAL FOR HIGH EXPOSURE". ALSO WHEN ASKED HOW LONG THEY HAD KNOWN ABOUT THESE VAULT CONDITIONS, THE ANSWER BY THE COMPANY HEALTH AND SAFETY MANAGER WAS "OH, ABOUT 5, 6, 7 OR 8 YEARS"; YET NEVER HAD THIS BEEN POSTED AS A DANGER, NOR WAS RESPIRATORY PROTECTION EQUIPMENT PROVIDED. I WORKED IN THE VAULTS FOR 28 YEARS!

OTHER FACTS ARE THAT BREAKROOMS WHERE WE TOOK OUR BREAKS AND ATE LUNCHES AND WHERE THERE WERE NEVER ANY CONTROLS, POSTINGS, OR REGULATIONS, ARE NOW AREAS THAT HAVE BEEN CLOSED DOWN, AND IF YOU ENTER THEM AT ALL YOU MUST DRESS OUT IN FULL PROTECTIVE CLOTHING BECAUSE OF THE CONTAMINATION PRESENT.....AND ALL THOSE YEARS WE WERE EATING IN THEM! HEALTH PHYSICS SURVEYS OF SEVERAL SHELVES OF LIBRARY BOOKS IN K-1002 WERE FOUND TO HAVE HIGH RADIATION READINGS FOR BOTH ALPHA AND BETA/GAMMA.

I WORKED AT THE TOXIC SUBSTANCE CONTROL ACT INCINERATOR (TSCA) WHERE HAZARDOUS WASTES FROM OAK RIDGE AS WELL AS DOE

SITES ACROSS THE COUNTRY ARE BURNED. THE DOE ACKNOWLEDGES THAT THERE ARE NOT ANY MONITORS IN EXISTENCE THAT CAN DETERMINE WHAT IS EMITTED FROM THE STACK OF THE INCINERATOR WHEN IT IS BURNING THE MIXED WASTES FROM OTHER SUPERFUND SITES; THEREFORE, WE ACTUALLY DO NOT KNOW WHAT IS COMING OUT OF THAT STACK . I HAVE WORKED IN ASBESTOS REMOVAL ALL OVER THE SITE WHERE THE ASBESTOS MATERIAL WOULD ACTUALLY FALL OF THE PIPING OVERHEAD ONTO THE WORKERS.. I DID GENERAL MAINTENANCE IN THE LABORATORIES ON THEIR EQUIPMENT. I WORKED OVERTIME WHENEVER I WAS NEEDED. I HAVE BEEN CALLED IN ALL HOURS OF THE NIGHT FOR EMERGENCY SITUATIONS. I WAS ALWAYS AVAILABLE TO DO WHATEVER WAS NEEDED TO MAINTAIN AND KEEP THE PLANT OPERATING TO THE BEST OF MY ABILITY. I HAVE WORKED WITH MANY PEOPLE WHO HAVE DEVELOPED CANCERS AND OTHER SERIOUS DISEASES AND ILLNESSES, AND MANY WHO HAVE DIED AT YOUNG AGES. I HAVE WORKED WITH OTHERS WHO HAVE DEDICATED THEIR LIVES TO WORK AT K-25 ONLY TO FIND THEMSELVES LAID OFF FROM THEIR JOBS DUE TO DOE'S CUTS IN FUNDING.

I LEFT THE PLANT DECEMBER, 1997 ON SHORT-TERM DISABILITY. THE LOCKHEED MARTIN/MET LIFE DISABILITY PLAN THAT IS PRESENTED TO EMPLOYEES AS A BENEFIT IF YOU BECOME SICK OR DISABLED IS NOT WHAT IT IS PRESENTED TO BE. ILL WORKERS HAVE HAD A MULTITUDE OF PROBLEMS WITH MET LIFE INSURANCE. MANY ARE REJECTED FROM THEIR CLAIMS AND ARE LEFT WITH NOTHING. THOSE THAT DO FINALLY GET APPROVAL ARE IMMEDIATELY REQUIRED TO APPLY FOR SOCIAL SECURITY BENEFITS WHICH MET-LIFE AND LOCKHEED MARTIN RECOUPERA TE 100% AND DEDUCT FROM THE EMPLOYEE'S BENEFITS. YOU QUICKLY LEARN THAT THIS SYSTEM IS NOT A BENEFIT AT ALL. IT IS A SHAM. EMPLOYEES ARE MANUEVERED AND HARASSED BY THIS INSURANCE COMPANY. LOCKHEED MARTIN AND MET-LIFE HAVE INFORMED DISABLED WORKERS THAT THEY WILL TAKE AWAY ANY MONEY THAT ILL WORKERS RECEIVE, NO MATTER WHAT THE SOURCE. THEY SAY THEY WILL TAKE 100%. THEY ALSO TELL YOU THAT IF HAVE OBTAINED LEGAL ASSISTANCE, THAT NOT ONLY WILL YOU OWE MET-LIFE/LOCKHEED MARTIN 100%, BUT YOU WILL BE ENTIRELY RESPONSIBLE FOR THE ATTORNEY FEES, COURT FEES, AND EXPENSES THAT YOU HAVE ENCOUNTERED. ALSO, MET-LIFE CONSTANTLY REQUIRES THAT YOU TAKE THEIR FORMS TO YOUR PHYSICIANS TO "UPDATE" YOUR MEDICAL FILES; HOWEVER, THE ILL WORKER HAS TO PAY ALL COSTS TO PHYSICIANS/HOSPITALS/ ETC. TO GET THESE FORMS AND FILES, PLUS, MET-LIFE HAS A HABIT OF NOT ACCEPTING A PHYSICIANS RECERTIFICATION, AND INSTEAD OF HAVING A PRIMARY PHYSICIAN OR A SPECIALIST CARING FOR YOU COMPLETE ONE FORM, THEY WILL MAKE YOU GO TO EVERY DOCTOR YOU HAVE EVER SEEN OR DOCTORS OF THEIR

CHOOSING TO GET THE FORMS FILLED OUT. THIS HAS GOTTEN VERY EXPENSIVE FOR EMPLOYEES, AND DOCTORS ARE FED UP WITH THESE REQUIREMENTS OF CONSTANTLY REPORTING ON A WORKER WHOM THEY HAVE DECLARED TOTALLY DISABLED, AND NOT ABLE TO WORK ANY JOB ANY TIME.

MY ONE MEDICAL RECORDS WERE OBTAINED FROM THE K-25 SITE MEDICAL DEPARTMENT, AND WERE FOUND TO HAVE BEEN GONE THROUGH, AND ACTUAL EXPOSURES THAT I HAD AT THE PLANT WERE 'BLACKED OUT'. MY RECORDS WOULD HAVE A DOCTOR'S STATEMENT SAYING EMPLOYEE WAS EXPOSED TO ..... AND THE MATERIAL WAS BLACKED OUT. ALSO, BOTH MY AND MY WIFE'S PERSONNEL FILES WERE OBTAINED THROUGH THE FREEDOM OF INFORMATION ACT, AND UPON RECEIPT OF OUR PERSONNEL FILES, WE FOUND THEM TO CONTAIN MANY PAGES OUR MEDICAL RECORDS WHICH WE THOUGHT WE CONFIDENTIAL RECORDS, AND NOT SEEN BY ANYONE OUTSIDE OF MEDICAL. IN THIS INSTANCE, OUR MEDICAL RECORDS COULD HAVE BEEN READ BY ANY ONE IN THE PERSONNEL OFFICES, OR POSSIBLY USED TO PREVENT OR MONITOR OUR WORK SITUATION DUE TO OUR RELAYING OF WORKER ILLNESSES TO MANAGEMENT.

ONE OF THE WORST PROBLEMS THAT WE AS ILL K-25 WORKERS HAVE FACED IS THE WORKER COMPENSATION SYSTEM IN TENNESSEE. AS FAR AS WE KNOW, OUT OF 55 ILL WORKERS WHO HAVE BEEN EXAMINED BY A TEAM OF DOCTORS FROM BOSTON AND CINCINNATI FOR THE PAST 4 YEARS, NOT ONE CASE HAS GOTTEN INTO COURT. MY WORKER COMPENSATION CASE SHOULD HAVE GONE THROUGH WITHOUT THE NECESSITY OF LITIGATION DUE TO THE DETERMINATION BY THESE PHYSICIANS THAT I HAVE MANY OCCUPATIONAL ILLNESSES AND AND DECLARED TOTALLY DISABLED. ONE OF THE MAIN DIAGNOSIS FOR ME IS CHRONIC BERYLLIUM DISEASE, WHICH DOE HAS ACKNOWLEDGED AS BEING AT FAULT, AND HAS INSTRUCTED THAT CBD NOT BE FOUGHT; HOWEVER, IN FEBRUARY WHEN I WAS CALLED TO GIVE A DEPOSITION, AFTER ALMOST 6 HOURS OF EXAMINATION BY LOCKHEED MARTIN AND UNION CARBIDE CORPORATE ATTORNEYS, THE LOCKHEED MARTIN ATTORNEY ANNOUNCED THAT HE WANTED TO SEE ANY "BERYLLIUM DOCUMENTS" THAT I HAD, AND SO INSTEAD OF GOING TO COURT OR SETTling MY CASE IN FEBRUARY, MY COURT DATE WAS POSTPONED AND RESET FOR NOVEMBER. THIS IS TYPICAL OF HOW MOST OF OUR WORKER COMPENSATION CASES ARE BEING DEALT WITH - POSTPONED AND FORGOTTEN - WHILE WE SUFFER THE CONSEQUENCES OF THE ILLNESSES AND LOSS OF WORK.

ANY PROPOSAL FOR COMPENSATION FOR THE K-25 ILL WORKERS WILL HAVE TO BE WRITTEN AS SOMETHING OTHER THAN "COMPENSATION". IT

WILL HAVE TO BE WRITTEN AS A SUBSIDY OTHER THAN SALARY, OR A PAYMENT FOR FUTURE MEDICAL EXPENSE OR PAYMENT FOR SERVICES TO THE NATION ABOVE AND BEYOND THE CALL OF DUTY WHICH IS EXEMPTED FROM ATTACHMENT OR RECOUPERATION FROM ANY CONTRACTOR OR THEIR INSURANCE CARRIERS. IF YOU DO NOT WORD THE COMPENSATION IN SOME MANNER, THEN LOCKHEED MARTIN AND MET-LIFE INSURANCE WILL BE THE RECEIVERS OF HUNDREDS OF THOUSANDS OF DOLLARS, AND WE WILL NOT SEE ONE PENNY OF IT. THIS IS A TRADEGY IN THE WORKS, AND MUST BE STOPPED!

DURING THE HISTORY OF THE PLANT, THERE WAS A HEALTH PHYSICS STAFF AND AN INDUSTRIAL HYGIENE STAFF OF APPROXIMATELY 3 OR 4 PEOPLE IN THESE DEPARTMENTS, AND THESE PEOPLE WERE SUPPOSED TO BE RESPONSIBLE FOR THE HEALTH AND SAFETY OF OVER 10,000 WORKERS. AT ONE TIME, I KNOW THAT WE HAD OVER 800 MAINTENANCE MECHANICS ON SITE. NOTHING WAS EVER SURVEYED. YOU CAN SEE THAT THERE WAS NO WAY THESE DEPARTMENTS COULD POSSIBLY COVER ALL THE JOBS THAT WERE IN PROGRESS AND PROPERLY MONITOR FOR RADIATION AND OTHER HAZARDS. IT WAS ONLY IN THE EARLY '90'S THAT THESE STAFFS WERE INCREASED, AND THE NUMBER OF EMPLOYEES HAD GREATLY DECREASED.

ILL WORKERS HAVE REPEATEDLY ASKED THAT MANAGEMENT AT DOE- OAK RIDGE OPERATIONS BE REPLACED WITH PEOPLE WHO COULD EFFECTIVELY AND OBJECTIVELY DO THEIR JOBS. WE HAVE HAD MAJOR PROBLEMS WITH DENIAL, REJECTION, RUDENESS, AND FALSE PROMISES. WE HAVE MET WITH GREAT DIFFICULTY IN ALL ASPECTS OF OUR TRYING TO WORK WITH DOE IN OAK RIDGE. WE HAVE EVEN BEEN LAUGHED AT TO OUR FACE, AND HAVE BEEN PUBLICLY ADDRESSED IN SUCH FASHION AS TO MAKE US LOOK LIKE MENTALLY DISTURBED, LYING PEOPLE.

LASTLY, I WOULD LIKE TO ADDRESS THIS "DISCRETIONARY FUNCTION" RULING THAT DOE AND THE FEDERAL GOVERNMENT IS TRYING TO USE TO COVER THEIR ACTIONS. THIS SEEMS TO BE THE OUTLET THAT THE GOVERNMENT IS USING TO BAR OUR CASES FROM COURT, AND TO ENSURE THAT WE ARE DENIED ANY COMPENSATION CLAIMS. IT ALSO APPEARS THAT THIS RULING ONLY APPLIES TO US, THE K-25 WORKERS, OR TO OUR AREA OR REGION. OTHER SITES' WORKER CASES HAVE NOT BEEN AFFECTED BY THIS RULE. TO EVEN IMPLY THAT THIS COUNTRY HAS THE RIGHT TO TAKE A LIFE OF A DEDICATED, HARD WORKER AND THEN CLAIM IMMUNITY BY USING THIS DEFENSE OF NATIONAL SECURITY AND "IF WE HAD TOLD THEM WHAT THEY WERE WORKING IN, THEY WOULDN'T HAVE WORKED". WHO HAS THAT RIGHT TO TAKE A FEW PEOPLE, WORK THEM IN HIGHLY TOXIC MATERIALS, MAKE THEM SICK OR CAUSE THEIR DEATH, AND NOT BE RESPONSIBLE? THERE IS NO JUSTIFICATION HERE. NO ONE



HAS THE RIGHT TO TAKE SOMEONE'S LIFE. THERE IS A RESPONSIBILITY HERE. WE KNOW THAT IN THE '40'S WHEN THE MANHATTAN PROJECT STARTED, AND WORKERS STARTED SHOWING SIGNS OF HEALTH PROBLEMS, THAT THE LEADERS OF THIS PROJECT WHICH INCLUDED THE MILITARY AND OTHER GOVERNMENT LEADERS, MADE THE DECISION NOT TO TELL WORKERS OF THEIR ILLNESSES TO PREVENT LAWSUITS, AND TO KEEP EMPLOYEE MORAL UP. THESE VERY DECISIONS ARE DOCUMENTED AND IN THE READING ROOM. OVER 50 YEARS THIS PRACTICE WAS CONTINUED. THIS WAS A TRAGIC MISTAKE AND A BLACKMARK FOR AMERICAN HISTORY. WE HAVE BEEN NO MORE TO THIS COUNTRY THAN PRISONERS OF WAR .....A WAR AGAINST NOT ONLY THE WORLD, BUT A WAR AMONG OURSELVES. THERE IS NOT A VALID REASON FOR WHAT HAS HAPPENED, AND WE ARE THE VICTIMS OF AN AMERICAN GOVERNMENT COVERUP.

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**DOE's Toxic, Hostile  
Working Environment  
Violates Human  
Rights**

*Prepared for  
United States Senate, Committee on Governmental Affairs,  
Hearing on Safety and Health at DOE Oak Ridge K-25, Piketon and  
Paducah Gaseous Diffusion Plants*

*by  
Edward A. Slavin, Jr.*

*March 22, 2000*

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## 1

## **Overview: DOE's Enduring "Legacy" of Toxics, Disease and Whistleblower Retaliation**

Senator Thompson, Committee members, I am Ed Slavin. Thank you for inviting my testimony. Some 19 years ago, as a new East Tennessee weekly newspaper editor, I began investigating Department of Energy Nuclear Weapons Pollution, winning in 1983 DOE's declassification of a dirty "national security" secret: the largest mercury pollution event in world history, now said to involve 4.2 million pounds. Oak Ridge is smeared, bleared and teared in a "witches' brew" of toxics. For ten years, I have advised and represented DOE site workers. I was counsel for the plaintiff, Sherrie Graham Farver, in a medical malpractice case where an Anderson County jury awarded \$600,000 last year against Dr. Kenneth Carpenter, M.D., DOE's consultant psychiatrist, for his misdiagnosing an Oak Ridge worker health activist as "paranoid, delusional and psychotic."

DOE, its managers and contractors are probably guilty of federal and state crimes, including environmental and workplace air, water and land pollution and routine retaliation against whistleblowers. Congress long ago identified DOE sites like Oak Ridge as "pockets of resistance" to whistleblower laws.<sup>1</sup> After

<sup>1</sup> See, e.g., U.S. House of Representatives Report No. 101-474(VIII), reprinted in 1992 *U.S. Code Cong. & Admin. News* 1953, 2296-2297 re: Title V -- Whistleblower Protection:

**This title broadens and deepens protection of nuclear industry whistleblowers against harassment and other retaliatory treatment....** The ability of nuclear industry employees to come forward to either their employers or to regulators with safety concerns without fear of harassment or retaliation is a key component of our system of assuring adequate protection of public health and safety from the inherent risks of nuclear power. **Recent accounts of whistleblower harassment at both NRC licensee (e.g., Millstone Nuclear Plant in Connecticut) and DOE facilities (e.g., Hanford, Oak Ridge, Rocky Flats) suggest that whistleblower harassment and retaliation remain all too common in parts of the nuclear industry. These reforms are intended to address those remaining pockets of resistance.**

(continued...)

years of empty promises, DOE is *still* a national disgrace. Oak Ridge's treatment of whistleblowers has been recognized as at best "sadistic."<sup>2</sup> DOE and its contractors still function as a "hate group," with a network of blacklisting, intimidation and harassment. In terming Oak Ridge and other DOE sites "pockets of resistance" to whistleblower law in 1992, Congress was acknowledging the fact that there is a climate of fear and repression at DOE sites<sup>3</sup> Eight years later, federal administrative remedies for whistleblower retaliation are **not** being enforced adequately. Attempted government intervention in the bomb factory management "culture" of retaliation, intimidation and surveillance is a model of failure, a farce without force. Retaliators grow bolder and the chilling effects grow colder as we all grow older. The DOE complex has not changed.

DOE now admits toxic materials have killed workers<sup>4</sup> at its facilities. In response to the Oak Ridge health crisis, DOE proposes only flummery. DOE's "pilot" compensation bill, S. 1954 and H.R. 3418, the Energy Employees Beryllium

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<sup>1</sup>(...continued)

(Emphasis added). *See also* Department of Labor District Chief Administrative Law Judge Theodor von Brand's June 7, 1993 Recommended Decision and Order finding the "old culture" of retaliation was still "alive and well" in Oak Ridge, slip op. @ 75. *See* Recommended Decision and Order of District Chief Administrative Law Judge Theodor von Brand in Varnadore v. Oak Ridge National Laboratory, 92-CAA-2,5 (June 7, 1993), reversed based on narrow reading of 30 day statute of limitations by Labor Secretary and Administrative Review Board (ARB) in 1996, affirmed by Sixth Circuit in 1998, Rule 60(b) Motions to reopen case are currently pending before ARB. *See also* Deposition of Hazel O'Leary in Joseph Carson v. Dept. of Energy, U.S. District Court for District of Columbia Case No. 1:98CV00368 (Judge Sporkin), May 14, 1998 re: pattern and practice of discrimination by DOE and its contractors; Carson v. DOE, April 29, 1999 MSPB Initial Decision, finding DOE retaliated against DOE whistleblower raising Oak Ridge K-25 environmental, safety and health concerns. Former Secretary of Energy Admiral James Watkins found retaliation was common throughout the DOE complex, with generic "management culture" problems, fostering worker fears to report concerns and management hostility to protected activity in Oak Ridge. Likewise, Lockheed Martins own consultant, former FBI and CIA Director William Webster, found such "culture" problems in his otherwise tame 1992 report for the law firm of Milbank, Tweed, Hadley & McCloy.

<sup>2</sup> Editorial, "Don't shoot the messenger," Chattanooga Times, February 10, 1992 at A4, stating treatment of Mr. Varnadore had "sadistic intent."

<sup>3</sup> Ed Slavin & Tom Devine, "The Government's Secret War on Whistleblowers," ABA Young Lawyers Division (YLD) Barrister Magazine (Spring, 1991).

<sup>4</sup> *See, e.g.*, Matthew L. Wald, "U.S. Acknowledges Radiation Killed Weapons Workers -- Ends Decades of Denials -- Compensation is Possible for Survivors of Cancer Victims Who Worked on Bombs," The New York Times, January 29, 2000 at 1; F. Josef Hebert, Associated Press, "Feds finally admit exposure sickened nuclear arms workers," St. Augustine (Florida) Record, January 30, 2000 at 7A.

Compensation Act is, at best, a **Kafkaesque nuclear compensation bill that is defective by design** -- long on rhetoric and short on fairness, with no medical benefits, no independent health clinics, no hearings, no Administrative Procedure Act rights, no independent Administrative Law Judges, no appeal rights, and no Due Process. DOE proposes a flawed and phony form of "alternative dispute resolution." DOE does so without the decency of an apology in its bill, as is set forth in Rep. Kanjorski's bill, H.R. 674, the proposed Beryllium Exposure Compensation Act. The DOE bill is a snare and a delusion, not Due Process.<sup>5</sup> It should be rejected by the United States Senate. The Senate should draft a fair bill modeled on Black Lung and Longshore compensation legislation. The Senate should also reform the whistleblower laws to provide genuine protection, not just empty promises.

**WHY DOES DOE WANT TO "RATION JUSTICE"  
AND TO DENY OPEN PUBLIC HEARINGS OR  
APPEALS ON WORKERS' COMPENSATION?**

Oak Ridge is a "Company Town," one with employment dominated by one major employer.<sup>6</sup>

Anderson County DA Jim Ramsey has testified that Oak Ridge has a complex hierarchical, military-style management, one where workers fear to raise concerns out of fear, reluctance and second thought. As DA Ramsey testified, "Oak Ridge is known to have excreted quite a lot of waste in the process of ingesting materials to make nuclear products."<sup>7</sup> Ironically, in 1995 DA Ramsey was publicly pressured by a DOE attorney in an Oak Ridge church over his 1994 "Company Town" testimony, thereby proving the point beyond doubt.<sup>8</sup> In 1998

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<sup>5</sup> See, e.g., DOL Associate Chief Judge James Guill & Edward A. Slavin, Jr., "A Rush To Unfairness -- the Downside to Alternative Dispute Resolution," *American Bar Association Judges' Journal* (Summer 1989).

<sup>6</sup> *Varnadore v. Oak Ridge National Laboratory*, (*Varnadore II*), May 14, 1994 testimony of Anderson County, Tennessee District Attorney General Ramsey, transcript pages 74-75 (hereafter abbreviated as "Tr."); ORNL Associate Director Murray Rosenthal, Tr. 397-398.

<sup>7</sup> *Varnadore II*, Tr. 93.

<sup>8</sup> In *Shelton v. ORNL*, 95-CAA-19, General Ramsey testified about contacts by DOE attorney Ivan Boatner, whose wife is a lawyer who worked for Mr. Ramsey at the time. Ms. Shelton's complaint quoted Anderson County District Attorney General James Nelson Ramsey's testimony in *Varnadore II* (about Oak Ridge's hostility to protected activity). DOE attorney Ivan Boatner and his wife -- an Assistant DA who works for General Ramsey, *Shelton v. ORNL*, Tr. 1442-43 -- sat next to General Ramsey and his wife at an Oak Ridge wedding in June, 1995. *Id.*, Tr. 1440. Mr. Boatner commented that you had used my name in numerous pleadings... I asked him what

(continued...)



testimony, Lockheed Martin Energy Systems Medical Director Dr. Daniel Conrad denied that Oak Ridge is a "Company Town" because there are subcontractors there and a department store and a mall.<sup>9</sup> This is specious.

There is a great deal of irrationality in Oak Ridge regarding matters of toxic pollution. This allows problems to persist while failing to protect legitimate national security secrets. In response to the mercury declassification, Oak Ridge's first response was to assert that national security exempted all of Oak Ridge's pollution, a proposition that Judge Robert Taylor roundly rejected in a decision from which DOE did not appeal.<sup>10</sup>

As DOE longtime consultant psychiatrist in Oak Ridge put, people have known about Oak Ridge toxics "for a long time" -- it is "not news to anyone."<sup>11</sup> This is an obvious statement.<sup>12</sup> Yet workers have been retaliated against for

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<sup>8</sup>(...continued)

pleadings, and he said, several, eight to ten. I said, will you send them to me, he said he would and he did.... This was in church after the organ music had stopped, we were walking out, the wedding was over, in a throng, up the aisle, out through the lobby, out to the parking lot to our cars, I hardly had an opportunity to discourse.

*Id.*, Tr. 1440 (Mr. Ramsey). General Ramsey had already received copies of several of these complaints from Ms. Shelton's counsel before Mr. Boatner's approach. *Id.*, (T-1446-47, 1453). Mr. Boatner mailed General Ramsey copies of complaint cover pages and "boilerplate," beginning with the words "**The Old Culture of Retaliation Persists in Oak Ridge**," with a yellow Post-it note saying "These sections appear in all of the attached complaints." *Id.*, Tr. 1445-6; Exhibits CX-63-64. After Mr. Boatner's approach at the wedding, General Ramsey wrote a letter attempting to wriggle out of ever testifying in DOL whistleblower proceedings. *Id.*, CX-41 (June 5, 1995 letter from Anderson County District Attorney General James Nelson Ramsey" Re: Whistleblower Cases," **threatening to resist further testimony and objecting to his sworn testimony being "quoted" in DOL complaints**). In May, 1998, DA Ramsey faced a tough re-election race in the Democratic Primary; according to Mr. Ramsey's re-election web site, DOE attorney Ivan Boatner and DOE Security Manager James Ware both held Ramsey fundraisers at their Anderson County residences.

<sup>9</sup> Dr. Conrad told the DOL judge that he thought a department store was an "industry." *Mr. and Mrs. Delibert Lynn and Linda Jayne Cox v. LMES*, 97-ERA-17, Tr. 1608.

<sup>10</sup> *Legal Environmental Assistance Foundation v. Hodel*, 536 F. Supp. 1163 (E.D. Tenn. 1984).

<sup>11</sup> *Farver v. Carpenter*, Anderson County, Tennessee Circuit Court Case No. 98LA0168, Tennessee Court of Appeals Case No. E1999-01840-COA-R3-CV, Transcript page number 323 (hereafter "*Farver v. Carpenter* Tr."), Jury Trial of Twelve, March 31, April 1 & 5, 1999: \$600,000 compensatory damages for medical malpractice by DOE's consultant psychiatrist in attacking whistleblower's security clearance on the basis she was "paranoid, delusional and psychotic."

<sup>12</sup> See, generally, "The Impact of the Mercury Losses in Oak Ridge," Hearing Before the United States House of Representatives Science & Technology Committee, Subcommittees on Oversight (continued...)

<sup>12</sup>(...continued)

and Investigations and Subcommittee on Energy Research and Development, July 11, 1983 (co-chaired by then-Reps. Albert Gore, Jr. and Marilyn Lloyd). See also, Elliott Marshall, "The Lost Mercury at Oak Ridge, *SCIENCE*, July, 1983, discussing the long-secret history of the millions of pounds of mercury "lost" in Oak Ridge, the largest loss of mercury in world history, which was emitted day after day from some 50-100 unpermitted discharge pipes at the Y-12 Nuclear Weapons Plant, with DOE plants also emitting:

- a. arsenic
- b. cyanide
- c. PCBs
- d. uranium
- e. thorium
- f. plutonium
- g. tritium
- h. cesium
- i. cobalt
- j. strontium 90
- k. zirconium
- l. cerium
- m. iodine
- n. niobium
- o. nitric acid
- p. hydrochloric acid
- q. hydrofluoric acid
- r. lead
- s. cadmium
- t. methylene chloride
- u. beryllium
- v. halogenated and non-halogenated solvents
- w. stripping, cleaning and plating solutions
- x. perchlorethylene
- y. acid coal pile runoff
- z. sewage effluent

Oak Ridge managers subjected their own children to playing in creeks full of these substances, without posting, warnings or fences. Behind the fence, managers exposed Oak Ridge workers to toxics without warnings or respirators or basic industrial hygiene and health physics protections. See Karl Z. Morgan, *supra*, at 60, 55, 59-60, 84-102, regarding "lax health physics regulations at Y-12" compared to ORNL, racist attitudes of scientists toward who should cleanup spills (African-Americans), criticality accidents due to racist attitudes and lax training, and *de facto* and *de jure* human experiments, including the deliberate pollution of White Oak Lake with radiation on assumption it would be diluted by Clinch River, serious waste problems ignored by AEC for years, with modest funding for waste disposal repeatedly rejected. Dr. Morgan was told:

Why not just dilute the radioactive waste to the occupational maximum permissible concentration, discharge it into White Oak Creek where it will seep into Clinch River, and forget it?

*Id.* at 85. President Clinton has quoted one definition of "insanity" -- "doing the same old things and (continued...)"

raising concerns. They have been fired and transferred and demoted and sent to psychiatrists and security clearance hearings. They have been obliged to struggle for medical care from the Company Town's physicians, enduring ostracism and harassment. They have been frustrated in getting information.

In that Company Town, DOE's powerful multinational corporate contractors brag of their influence over government policy decisions. Lockheed Martin, for example, contributed \$2.5 million to Democrats and Republicans in 1996 -- its Oak Ridge managers openly boast and brag that their PAC contributions result in Oak Ridge funding decisions.<sup>13</sup>

Until 1991, there was not even a DOE representative stationed at Oak Ridge sites. The year the Cold War ended is also referred to in Oak Ridge as "when DOE came on site." Until the DOE "Tiger Teams" and Resident Inspectors were appointed, DOE did not know (or even want to know) how bad things were.

For years, DOE, contractors and friends at Oak Ridge Associated Universities (ORAU) maintained a mask for their "Company Town," a proverbial "Potemkin village." "A little nukie never hurt anybody," was the myth that the DOE complex promoted. Oak Ridge K-25 and other DOE site workers were told they could eat uranium with no ill health effects.

Workers and citizens at DOE nuclear installations were told that radiation was no worse than riding in an airplane, or lying on a beach. Meanwhile, pollution was pumped into the air, land and water without monitoring or controls. Workers and residents breathe that pollution every day. People are sick and dying as a result of that pollution.

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<sup>12</sup>(...continued)  
expecting different results."

<sup>13</sup> Lockheed's Political Action Committee (PAC) solicited contributions of hundreds of Oak Ridge National Laboratory (ORNL) managers. In letters signed by ORNL Director Alvin W. Trivelpiece and other ORNL officials, the parent company's PAC sought contributions to win government favors. Referring to the proposed \$3 billion Advanced Neutron Source at ORNL, ORNL Director Dr. Alvin W. Trivelpiece and the Martin Marietta PAC admitted:

Some of you may doubt that contributing to the Martin Marietta PAC is of any benefit to the Lab. We believe that it is of benefit to the Lab. For example, it is clear that the Advanced Neutron Source **would not be an element of this year's presidential budget without help from both Martin Marietta Corporation and from its PAC fund.**

Frank Munger, "Some at ORNL see PAC letter as pressure," Knoxville News-Sentinel, July 8, 1994 at 1 (Emphasis added). See also Judge John Noonan, Bribes (1994)(Ninth Circuit Court of Appeals Judge John Noonan documents the nuances of bribery in all its varied historic forms). Lockheed's many forms of political pressures on DOE have had longstanding effects on allowing Lockheed to continue retaliation against whistleblowers, spending millions of dollars to fight free speech.

DOE and its contractors lied to Congress. They lied to the President. They lied to the American people. They lied to the workers in these unsafe facilities. They kept medical information from workers as a matter of government orders.<sup>14</sup> They probably violated the False Claims Act, the Racketeer-Influenced and Corrupt Organizations Act (RICO) and other federal criminal laws. DOE's recent admissions now render all the decades of AEC/DOE sophistry "inoperative," as Ron Zeigler put it during the Nixon Administration. As former Senator Howard H. Baker, Jr. puts it best, "**coverups never work!**"

DOE's chickens are coming home to roost. The *Nashville Tennessean* has exhaustively catalogued illness, disease and death surrounding DOE's Oak Ridge and other facilities, and the nature of the badly-run Superfund Site. See <http://www.tennessean.com/special/oakridge/part3/frame.shtml> Still, the Oak Ridge special interests have attempted to attack or ignore the sick workers.

Local politicians have joined plant managers and the Oak Ridge Chamber of Commerce in an effort to isolate, minimize and marginalize the sick workers and residents.<sup>15</sup> This disdainful effort has been unsuccessful: efforts to silence dissent and frustrate prevent change failed.<sup>16</sup> The City of Oak Ridge has bought

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<sup>14</sup> See, e.g., Clifford T. Honicker, "The Secret Files," *New York Times Magazine*, November 19, 1989 (cover story regarding Atomic Energy Commission Order 0521 and government orders setting forth procedures for concealing from nuclear weapons employees information on their own diseases, etiology, and relations to exposure to radioactive and toxic materials); see also § 3 of this testimony, *infra*, regarding Oak Ridge K-25 medical coverup in the 1990s, where information on cyanide was concealed from Oak Ridge employees by DOE and its contractors.

<sup>15</sup> See Bob Fowler, "Ridge workers on its image -- Mayor says DOE legacy, media reports hurt city," *Knoxville News-Sentinel*, August 24, 1997, stating that "If we could keep *The Tennessean* from writing these articles, I'd be a whole lot happier," then-ORNL Public Relations Manager Joe Culver's "Guest column: The numbers speak for themselves," *Oak Ridger*, September 11, 1997; "Caldwell seeks community aid to combat 'bad press,'" *Roane County News*, September 8, 1997; "Articles pose true threat to area, Caldwell says," *Nashville Tennessean*, September 7, 1997; Laura Frank, "Lawmaker seeks letters defending Oak Ridge community," *Nashville Tennessean*, September 7, 1997; Scott Barker, "Minter urges fighting against 'biased' series -- *Tennessean*'s articles damaging to city, he says," *Knoxville News-Sentinel*, September 7, 1997; State Representative Gene Caldwell, M.D., "Tennessean ignored facts in articles on children," *Oak Ridger*, August 29, 1997; Former State Rep. David Coffey, "The sometimes abusive power of the press," *Oak Ridger*, August 29, 1997; Mark Newbold Neal, "Hall disputes Tennessean series -- Scheduled interview canceled," *Oak Ridger*, August 21, 1997 (DOE Oak Ridge Manager refused to meet with *Nashville Tennessean* reporters about Oak Ridge pollution, breaking scheduled interview appointment on spurious grounds; Mr. Hall is now the top manager for Westinghouse in Oak Ridge).

<sup>16</sup> See, e.g., United States Senator Fred Dalton Thompson of Tennessee, November 17, 1997 letter to Dr. David Satcher, Director, United States Centers for Disease Control re: Oak Ridge illnesses; Susan Thomas, "It's like nobody really cares -- Ill K-25 workers have lost their health," (continued...)

and aired fancy TV commercials with bucolic scenes, while engaging in denial when it comes to sick workers and residents.

The Oak Ridge boosters' oft-expressed assumption is that criticism of DOE is "bad for business," and that this is Oak Ridge's "darkest hour."<sup>17</sup>

<sup>16</sup>(...continued)

homes, savings and their faith," Nashville Tennessean, November 3, 1997; Cheryl A. Dyer, "Concerned about toxins at K-25, Oak Ridger, August 19, 1996; Frank Munger, "We believed what we were told," Knoxville News-Sentinel, September 4, 1996, quoting Mr. Glenn Bell re: beryllium disease; Glenn Bell letter to the editor, "City cares more for image than its own," Oak Ridger, September 18, 1997; Dick Smyser column, "Care for city's image needn't mean insensitivity to workers," Oak Ridger, September 23, 1997; Frank Munger, "Cyanide probe starts at K-25 -- NIOSH checks air, employees to be tested for exposure," Knoxville News-Sentinel, June 5, 1996; Frank Munger, "K-25 workers may be checked for cyanide -- Some employees say concerns overlooked," Knoxville News-Sentinel, June 4, 1996; Inside Energy Systems -- Thursday, June 6, 1996, Quote of the Day: "The squeaking wheel doesn't always get the grease. Sometimes it gets replaced." (indicating management's humorous view of retaliation against workers raising cyanide concerns); Leo Williams, "Workers attack LMES cyanide plan," Oak Ridger, June 14, 1996; Ron Bridgeman, "Workers urged to be activists [i]n seeking support for study of illness," Oak Ridger, August 16, 1996; "Illness, link to pollutants to be discussed Thursday," Knoxville News-Sentinel, August 14, 1996; Leo Williams, "Workshop to examine environmental illnesses," Oak Ridger, August 14, 1996; "Public Meeting For Citizens With Health Concerns," August 1996; Associated Press, "DOE worker claims suspension because of his whistleblowing," Oak Ridger, October 3, 1996; Frank Munger, "DOE worker says whistleblowing was cause for suspension," Knoxville News-Sentinel, October 3, 1996; Frank Munger, "Blowing whistle at Oak Ridge branded job risk," Knoxville News-Sentinel, October 22, 1996; Frank Munger, DOE reprisals unsafe, whistleblower claims," Knoxville News-Sentinel, October 15, 1996; Laura Frank & Susan Thomas, "State refusal to get CDC help a 'sin' -- Congresswoman says she'll ask about kids Oak Ridge ailments," Nashville Tennessean, November 17, 1997; Oak Ridger, July 31, 1996, letters from Norma G. Allred (Lockheed management) and Mrs. Sandra Reid, R.N. (public health advocate) regarding NIOSH health hazard evaluation re: cyanide. If Oak Ridge burghers are ashamed of the Oak Ridge citizenry, our Founders would be proud. See The Federalist Papers.

<sup>17</sup> See Gene Joyce column, "OR must seize the moment," Oak Ridger, September 10, 1997, stating *inter alia* that due to pollution and public criticism, "we are indeed involved in the darkest hour in Oak Ridge's history." Compare, Gene Joyce column, "Could Oak Ridge be suffering from the 'white fume' culprit," The Oak Ridger, February 25, 1998, proposing federal compensation. See also <http://www.dimensional.com/~mh/es1.html>, letter reprinted on berllium victim website at "Federal compensation for nuclear weapons town workers and residents?" by Edward A. Slavin, Jr., stating *inter alia*:

With people in the Oak Ridge community sick, dying or dead from illnesses believed to have been caused by toxins flowing from the Company Town's biggest employer, it makes a great deal of sense to let both workers and residents who are injured have a fair remedy, with fair rules, in a neutral DOL forum that adjudicates workers' cases full-time, with greater independence and expertise.

Mr. Joyce, thank you for speaking out, and I salute you on your statesmanship.

(continued...)

<sup>17</sup>(...continued)

Federal compensation for Oak Ridge nuclear workers was first proposed by Senator Albert Gore, Sr. and the Oil Chemical and Atomic Workers, as a result of the 1958 Y-12 nuclear criticality incident, AEC's insisting on exposing Oak Ridge workers to more radiation at other plants, and *sequelae*. See Highlander Center, *Our Own Worst Enemy: The Impact of Military Production on the Upper South*, (1983), Chapter 6, The Atomic Quandary: Oak Ridge," written by Jaqueline O. Kittrell and Clifford T. Honicker, pp. 145-148.:

Testifying before a Joint Committee on Atomic Energy subcommittee, Local 9-288 President John Bates attacked Carbide's many "undesirable >radiation safety practices and procedures," including the company's penchant for deprecating the radiation problem. Bates recalled that in a 1952 arbitration case, company negotiators told the union that "an 'employee >would need to lick completely clean' approximately 50 square feet of surface per day which is contaminated to the extent of our plant allowable limit to ingest the tolerance amount of the most hazardous uranium materials at K-25." Bates' union had advanced numerous recommendations for safety improvements through ORGDP's labor-management safety committee. But Carbide gave most >union proposals the runaround. The company's reaction to the union's safety suggestions was part of an aggressive take-back campaign launched in 1956 when the company and the AEC raised the "plant allowable limit" (PAL) for radiation levels on clothing and hands to eight times the previously existing limit. With this change, ORGDP's (and Paducah's) PAL exceeded those in other atomic installations such as Rocky Flats and Fernald by eight to sixteen times. .... Three years after Bates' testimony, some members of the JCAE sponsored legislation to create a federally run compensation program for radiation workers. The proposed system would have >been considerably more equitable than Tennessee's, which ranked among the >most niggling and exclusionary in the country with its one-year statute of >limitations. But opposition from the AEC (which decried the singl[ing] >out...of one of the safest industries in the Nation"), the insurance >industry, the Chamber of Commerce, the National Association of >Manufacturers, the Southern Interstate Nuclear Board and the Atomic >Industrial Forum sunk the bill.

See "Employee Radiation Hazards and Workmen's Compensation," Hearings before the Subcommittee on Research and Development of the Joint Committee on Atomic Energy, 86th Congress, March 10, 1959, pp. 205-257; "Hearings on H.R. 1267 and H.R. 2731" before the Select Subcommittee on Labor of the House Committee on Education and Labor, 87th Congress, January and February, 1962. See also, "The Atom's Peaceful Soldiers," *Industrial Union Digest*, Summer, 1962, pp. 9-19. Mr. and Mrs. Lynn and Linda Cox co-chaired the initial public meeting of CHE, held in Oak Ridge in August 1996. *Cox v. LMES*, Tr. 636. This August 1996 first public meeting was widely announced and publicized in the news media. *Id.*, Tr. 438-39; Exhibit CX-7. Oak Ridgers are afraid to raise environmental, health and safety concerns because of the possibility of retaliation. *Id.*, Tr. 441, 787. There were some 50-150 people in attendance at the Oak Ridge Public Library. *Id.*, Tr. 485, 770. **Holding the public meeting was a proud and historic accomplishment.** *Id.*, Tr. 485, Commander J.D. Hunter; Mrs. Farver, Tr. 636; Ms. Dyer, Tr. 770. Democracy and public debate should be cherished, not feared. The sick workers who have organized the Coalition for a Healthy Environment (CHE) are heroes, and should be appreciated as such by Oak Ridge "leaders," many of whom have never engaged in any dialogue of any kind with the very intelligent and skilled workers critical of Oak Ridge Operations. Oak Ridge's putative leaders fear and loathe dissent, a phenomenon as old as John of Arc, who was burned at the stake for disagreeing with authority figures. Compare, John F. Kennedy, *Profiles in Courage* (1956), regarding Americans of diverse ideologies, whom he celebrated in his Pulitzer Prize winning

(continued...)

As the former editor of a local newspaper and longtime observer, it is my considered opinion that what we have seen is Oak Ridge's finest hour.

Where else in the world does one find such a diverse group of local community members from all walks of life thinking for themselves about toxic materials and their *sequelae* -- researching, investigating, organizing and activating others to protect public health and the environment from dangerous depredations?<sup>18</sup> Why do people who never worked a day in their life in the Oak Ridge plants insult and ignore the people who worked there and played by the rules, only to get sick?

Such public scrutiny is precisely what the *Appalachian Observer* sought to encourage over twenty years ago. I am delighted on every return visit to see that the Berlin Wall has indeed finally fallen in Oak Ridge.

Like Big Tobacco, the Nuclear Weapons industry has lots of influence. The Nuclear Weapons industry hires former members of Congress. It hires "prestigious" law firms. It has a seat at the cabinet table, held by a Secretary of Energy under active consideration to be Al Gore's vice presidential running mate. In fact, if it were a single company with combined assets, the U.S. Nuclear Weapons industry would be the Nation's 20th largest corporation. Like the tobacco and asbestos industries, the Nuclear Weapons industry carefully and skillfully cultivated "uncertainty" about health effects through interminable scientific studies, seeking to baffle workers and lawyers and judges in the fog.

For a long time, toxicological, epidemiological and technological termagants spewed misleading data. They censored critics. They skewed debate on public issues. They even tried to shout down and silence dissent in public meetings.

The Mangano study was published in 1994, identifying statistically higher levels of cancer in counties near Oak Ridge. A public presentation on the Mangano report was made at the Oak Ridge Public Library. A rump group led by "Friends of Oak Ridge National Laboratory" -- a group of ORNL Ph.D. retirees and elected Oak Ridge public officials -- peppered the lone Ph.D. presenter with hostile

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<sup>17</sup>(...continued)

biography precisely because they dared to stand up for their beliefs and principles rather than bending in the political winds. See also Robert Bolt, *A Man For All Seasons*, celebrating Saint Thomas More for refusing to knuckle under to Henry VIII. Henrik Ibsen's play, *An Enemy of the People*, is especially evocative of the Oak Ridge experience, where a doctor is pilloried for raising concerns about health issues, which could adversely affect tourism.

<sup>18</sup> See, e.g., Frank Munger, "Sick OR workers need help -- panel: Illnesses mirror Gulf War," *Knoxville News-Sentinel*, September 26, 1997; Mark Newbold Neal, "Workers seek public help to resolve illnesses," *Oak Ridger*, September 24, 1997.

<sup>10</sup> DOE's Toxic, Hostile Working Environment: Violates Human Rights

technical questions, mostly obscure statistical questions, attempting to monopolize the discussion. Their manner of speaking (and dominating) was similar to the ways in which political meetings were overtaken by the extremists in the 1930s. I had to speak out to tell the gang of Ph.D.s. to let the workers get a word in edgewise. That unruly gang of Ph.D.s in the Oak Ridge Public Library -- and their friends' prior studies -- have one common theme: "surely we never hurt anyone or made anyone sick -- you must believe us." But we don't.

The citizens of the Oak Ridge area no longer believe DOE. ORNL Director Dr. Alvin W. Trivelpiece said in his State of the Laboratory Address in 1992 -- the year of the Varnadore case at ORNL, which was widely covered by local news media and initially by the New York Times and CBS Evening News:

The American public is more concerned about the environment than ever before. **Today, the public does not trust DOE.** Members of the public want independent verification of the many facts we generate, and their demand for more audits and oversight will continue. Such audits are **intrusive, invasive** and a fact of life. We are going to have to learn to work in this climate and compete for scientific and technical programs at the same time. It is not easy now, and it is not likely to get any easier.

As Dr. Trivelpiece admits, **DOE has no credibility.** DOE has now admitted the Nuclear Weapons industry killed Americans.

Yet DOE and the Justice Department want to sweep sick Oak Ridge workers under the rug, while ignoring sick Oak Ridge residents with illnesses caused by toxics. In proposing S. 1954, they set their agenda: they want to deny workers Due Process, in hopes of minimizing the scope of the problem and minimizing the effects upon their budget and prestige.

Meanwhile, DOE and DOJ managers don't want anyone in the DOE Complex to be prosecuted for homicide, assault and bribery, conspiracy, perjury and pollution. Defense Department managers at the Aberdeen Proving Ground were convicted of crimes involving water pollution. Oak Ridge DOE managers and their friends in Washington have long felt that they have nothing to worry about: their influence will "fix" the problem and prevent prosecution.

Judge Learned Hand said, "If we are to keep our democracy, there must be one commandment: **thou shalt not ration justice.**" Rationing justice is what DOE proposes to do. DOE proposes to "give" nuclear weapons workers very few rights -- rights that are vastly inferior to those Congress has granted to coal miners, longshoremen and offshore oil workers under Longshore and Harbor Workers' Compensation legislation dating back to 1928.

DOE, Justice Department and Office of Management and Budget (OMB) lawyers'



purpose in drafting the Administration compensation bill, S. 1954 and H.R. 3418, is to "ration justice." These are cruel bills, with cynical goals.

**DOE CONTRACTORS MUST PAY FOR  
COMPENSATION AND POLLUTION AND STOP  
SUPPRESSING DISSENT**

Seattle plaintiffs' lawyer Leonard Schroeter writes:

Much like the tobacco industry, the nuclear industry, which was **wholly indemnified by the United States government, has a policy of full-scale war** against any person with the temerity to suggest that radiation might be bad for their health. Thus, despite the new O'Leary policy of disclosing what a half century of nuclear secrecy, questions still remained as to whether the United States government continued to be committed to no accountability, no responsibility, and no compensation for the powerless victims. (Emphasis added)<sup>19</sup>

The late Dr. Karl Z. Morgan, the father of health physics, writes that anyone who challenges the nuclear industry:

must be prepared to withstand political, economic and professional attacks. For example, when I publicly criticized the majority of health physicists (for not stepping forward to assist injured workers in cases during a keynote speech in 1985 before union workers, Dr. Clarence Lushbaugh promptly responded in the *Oak Ridger* by equating that with the lowest species of "animals that befoul their own nest."<sup>20</sup>

Mr. Michael Mitchell, Lockheed Martin Energy Systems's late Vice President of Compliance Evaluation Policy, Environment, Safety and Health, stated to toxicologist Ms. Ann Walzer that raising concerns about health effects of toxics had "implications," to wit, "He said if we tell DOE that there's something out here making people sick, they're going to lock up the doors and we can all go home."<sup>21</sup> This statement was after Ms. Walzer requested to be moved and was denied. Ms. Walzer stated, "It started to become very clear to me that that

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<sup>19</sup> Leonard W. Schroeter, "Human Experimentation, The Hanford Nuclear Site and Judgment at Nuremberg," 31 *Gonzaga Law Review* 147,161 (1997).

<sup>20</sup> Karl Z. Morgan, *The Angry Genie: One Man's Walk Through the Nuclear Age* (Oklahoma University Press 1999) at 82-83.

<sup>21</sup> *Id.*, *Cox v. LMES*, Tr. 194.

statement was his way of telling me that I needed to be quiet about it."<sup>22</sup> Other workers were told that their actions were going to close the plant.<sup>23</sup> Former Lockheed Martin Fire Dept. Commander J.D. Hunter testified, "It's notorious for Lockheed Martin to move people around when layoffs are coming around. So they could get rid of some of the other people that they don't like or whatever."<sup>24</sup>

Those who retaliate against whistleblowers threaten public health and welfare and destroy democratic values.<sup>25</sup> Retaliation is Oak Ridge's legacy. Ordinarily, a legacy is something that we leave our children. In DOE argot, a "legacy" is defined as old radioactive contamination that has been around for a long time. Another legacy of Oak Ridge is retaliation against whistleblowers and unkept promises of reform, repeatedly made by both public officials of political parties.

DOE and its contractors must be held accountable for their massive pollution and suppression of dissent, using layoffs, security clearance reprisals and psychiatric referrals. Vice President Gore has compared environmental whistleblowers to World War II anti-Nazi "resistance fighters" in Europe.<sup>26</sup>

DOE security clearance reprisals will not be swept under the rug. For over ten years, DOE has been on notice of Congressional concerns about security clearance reprisals using psychiatry, and previously admitted before Congress that it did not use a system of precedents in deciding security clearance cases.<sup>27</sup>

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<sup>22</sup> *Id.*, Tr. 194.

<sup>23</sup> *Id.*, Tr. 1160.

<sup>24</sup> *Id.*, Tr. 480.

<sup>25</sup> See, e.g., Edward A. Slavin, Jr., "ALJ Independence Undermined -- What the Department of the Interior is Doing and Why," *ABA Judges' Journal*, (Spring, 1992); Slavin & Devine, *supra*. "The Government's Secret War on Whistleblowers."

<sup>26</sup> Albert Gore, Jr., *Earth in the Balance* (1992) at 262.

<sup>27</sup> See, e.g., Matthew L. Wald, "Retribution Seen in Atom Industry -- 4 Who Cited Safety Say They Were Told to See Therapists," *New York Times*, August 6, 1989 at 1:

The workers all say the implications in the orders that they were suffering from mental problems was part of a long campaign of harassment that included tactics like demotions, ridicule in front of co-workers, and threats to revoke the security clearance required for their jobs. They were sent to the psychologist or psychiatrist at least once; one refused but fears retaliation for his refusal.... Workers who have made public allegations of wrongdoing by the Government and its contractors have been punished for calling attention to problems. The Department of Energy has previously acknowledged to Congress that it has done a poor job of protecting whistleblowers in its own plants.... Representative Ron Wyden, an Oregon Democrat who has become a specialist on Hanford, said, "This is an old strategy that goes on in totalitarian countries. It's incredibly (continued...)"

Such disrespect for constitutional rights led the American Bar Association to pass resolutions in 1989 and 1990 calling for protection of whistleblowers and protection of employees' Due Process rights on security clearances.

As a 20 minute CNN special report concluded in 1993 -- which your Committee ought to take the time to view during these hearings -- Oak Ridge suffers from a "Poisoned Atmosphere" -- it is a place where pollution, workplace contamination, disease and death are a part of life.

Oak Ridge is a place where there has been frequent retaliation against both employees and physicians for raising concerns about environmental health and safety concerns. The DOE Company Town's management routinely threatens and fires workers for raising concerns or in the words of management about at least one employee it disciplined, "leaking information to DOE." Likewise, Hanford whistleblower Ed Bricker was termed "a spy for the government" by Rockwell and Westinghouse.<sup>28</sup>

Prejudice is "an averted or hostile attitude" toward perceived members of a group, based on perceived characteristics of members of that group.<sup>29</sup> Despite token attempts at "diversity," discrimination and tyranny still reign. Diversity has to do not just with external characteristics, but overcoming internal prejudices against who people are, what people think, their right to think, and their right to express their differing views publicly, particularly on scientific and technical matters that can affect human health and the environment. Whistleblower retaliation is an illegal form of management mind control: it must be banished at last from Oak Ridge and other DOE sites.

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<sup>27</sup>(...continued)

grotesque that it's being used here.  
 See also, Statements of DOE and Edward A. Slavin, Jr. in Standards and Due Process Procedures for Granting, Denying and Revoking Security Clearances, Joint Hearings before the House Subcommittee on the Civil Service of the Committee on Post Office and Civil Service and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, 101<sup>st</sup> Congress, Committee on the Judiciary Serial No. 85, Post Office and Civil Service Serial No. 101-57 (October 5, November 2 & 16, 1989; February 28 & March 8, 1990). It is axiomatic that the security clearance decisions may be based upon "malice, vindictiveness, intolerance, prejudice, or jealousy." Greene v. McElroy, 360 U.S. 474, 496-97 (1959). DOE and its contractors turn this viciousness into an art forum. Despite jury verdicts against two DOE consultant psychiatrists -- one in Oak Ridge and one in Albuquerque, DOE still uses their services, exercising chilling effects upon ethical employees. DOE should be required to show this committee why it has not instituted suspension and debarment investigations against the wrongdoing psychiatrists.

<sup>28</sup> See Slavin & Devine, *supra*.

<sup>29</sup> See Gordon W. Allport, The Nature of Prejudice (1954).

President Franklin Delano Roosevelt promised "freedom from fear." Fear is a fact of life in Oak Ridge. Lack of "academic freedom" in Oak Ridge was noted by the *New York Times* in 1983, when Dr. Stephen Gough compared Oak Ridge to an "intellectual ghetto" where one could not criticize management. Even Ph.D.s fear to criticize the DOE/contractor "party line." Whistleblower retaliation is rampant in Oak Ridge. Dr. Karl Z. Morgan, the father of health physics wrote before his death:

**No society that severely restricts freedom of speech will ultimately survive.<sup>30</sup>**

My father is 86 years old and is alive in no small part due to the role of Oak Ridge in winning World War II. He jumped three times in combat in the 82nd Airborne and was awarded three bronze stars; he gets VA benefits as a result. He would likely have jumped in Japan were it not for Oak Ridge, "Fat Man" and "Little Boy." Like my father, Oak Ridge and other Manhattan District/AEC/DOE workers have sacrificed for our country. Unlike my father, Oak Ridge workers receive no honors; they don't get VA benefits.

Like my client Sherrie Graham Farver of Oak Ridge, some nuclear workers have been called "paranoid" by DOE and its contractors. All these sick workers have gotten for their efforts in our national defense is a kick in the teeth, and an insulting \$100,000 bribe offer from DOE.<sup>31</sup> The sick workers have rejected the insulting proposal. So should the United States Senate.

Few workers can testify at today's hearing. Some are submitting written testimony, probably to gather dust like the testimony I gave when I first testified on Oak Ridge, nearly 17 years ago, before then-Rep. Albert Gore, Jr.

The Tennessee Supreme Court last year wrote in *Jordan v. Baptist Three Rivers Hospital*, (January 25, 1999) at p. 10 rejecting an appeal to *stare decisis* (the

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<sup>30</sup> Karl Z. Morgan, *supra*. See also, U.S. Constitution, Amendments. I, IX; *Tennessee Constitution*:

"Government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of humankind." Art. I, § 2.

"....The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject...." Art. I § 19.

If our Constitution had followed the style of Saint Paul, it would have said, "But the greatest of these is speech." In the darkness of tyranny, this is the key to the sunlight. If it is granted, all doors open. If it is withheld, none.

--- Robert F. Kennedy, January 22, 1963, Center for Study of Democratic Institutions.

<sup>31</sup> See also Judge John Noonan, *Bribes* (1994).

legal notion that "we've always done it this way):

The defendant urges this Court to decline revisiting the issue of the availability of [spousal and parental] consortium damages [in wrongful death actions] under Tenn. Code Ann. § 20-5-113 on the basis of *stare decisis*. "Were we to rule upon precedent alone, were stability the only reason for our being, we would have no trouble with this case. . . . In so doing we would have vast support from the dusty books. But **dust [from] the decision would remain in our mouths through the years ahead, a reproach to law and conscience alike. Our oath is to do justice, not to perpetuate error.**" Montgomery v. Stephan, 101 N.W.2d 227, 229 (Mich. 1960):.

DOE's "error[s]" are known around the world. On May 17, 1983, I won declassification of the Oak Ridge mercury losses, as the then-Editor of the Appalachian Observer, then a weekly newspaper in Clinton, Tennessee, in Anderson County, upstream from Oak Ridge. It turns out that this was the largest loss of mercury in world history. In my July 11, 1983 testimony before then-Rep. Albert Gore, Jr., I called for Congress to prevent a potential environmental health disaster. Those words gathered dust. The workers are sick. They have been abused by DOE and their employers. They need your help. They need the thoughtful consideration of every member of the Senate.

As you know, I represent some of the victims of DOE Oak Ridge Operations, including workers like Mrs. Sherrie Graham Farver, who I hope will be testifying live on the day of the hearing. Mrs. Farver has eight (8) times as much cyanide in her as a healthy non-smoker should have. Yet these workers have been treated as objects by DOE and its Chamber of Commerce allies, vilified, maligned, and marginalized, with the aim of running them out of town, too. Their free speech rights must be protected.

**WORKPLACE FREE SPEECH MUST BE  
PROTECTED AND ENCOURAGED AMIDST  
DOE'S HISTORY OF TOXIC EXPOSURES AND  
CONCEALMENT OF INFORMATION**

Firings, transfers, demotions, retaliatory fitness for duty examinations, investigations, surveillance and other reactionary practices must stop. They are a restraint upon the human spirit in the mist of the world's largest Superfund Sites. Dr. Karl Z. Morgan, the father of health physics, writes in his 1999 memoirs about how free speech was (sometimes) treasured in the early days of Oak Ridge, as when Dr. Alvin Weinberg was Director of Oak Ridge National Laboratory. The late Dr. Morgan writes that Dr. Weinberg

**not only tolerated but sought employees who had the guts to disagree with them.** They did not behave like so many other [ORNL] directors who

only want to look in the mirror and see a reflection of their own views.<sup>32</sup>

(Emphasis added). Sadly, the AEC/DOE/ORNL system did not follow Dr. Weinberg's example. DOE prefers "yes people" who will not disagree or report problems. Even top-level ORNL officials must be "team players" and toe the line or be fired for disagreeing with nuclear industrial management. In 1969, Dr. Weinberg wrote that "We in Oak Ridge [are] living in a sheltered and pleasant scientific lotus-land."<sup>33</sup> In 1972, Dr. Alvin Weinberg raised concerns about nuclear reactor safety in a meeting with then-Representative Rep. Chet Holifield, a nuclear industry zealot, who said:

"Alvin, if you are concerned about the safety of reactors, then I think it may be time for you to leave nuclear energy." Dr. Weinberg succinctly states, "I had never been fired before."<sup>34</sup>

When Dr. Karl Morgan prepared an unclassified talk discussing the pros and cons of the Liquid Metal Fast Breeder Reactor (LMFBR) and nuclear proliferation concerns, his paper was withdrawn, destroyed, censored and resubmitted by Oak Ridge National Laboratory management without his permission, while he and his wife were on vacation.<sup>35</sup> Dr. Morgan was told he was "jeopardizing the welfare of the laboratory" by criticizing management and thereby risking contracts for LMFBR work.<sup>36</sup> Dr. Morgan was retaliated against by ORNL directors for criticizing the LMFBR: they continued their blacklisting campaign even when he left Oak Ridge and taught at Georgia Tech: they wrote the President, "deploring my stand and shaming the university for having me on its faculty." The next day, Dr. Morgan was told his contract was not being renewed, denying him his pension after 9.5 years teaching graduate engineering, on six months short of pension eligibility.<sup>37</sup>

Consistent with Dr. Morgan's experience are the September 1997 remarks of ORNL Director Dr. Trivelpiece to the Tennessee legislature to the effect that if the State of Tennessee pushed too hard for environmental cleanup in Oak Ridge, it could mean less money for research projects and cost jobs. State Senator Lincoln Davis (D-Pall Mall), stated "That sounded somewhat like a

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<sup>32</sup> Karl Z. Morgan, *supra*, at 66.

<sup>33</sup> *ORNL Review*, Nos 3& 4 (1992)(50th Anniversary Edition) at 146.

<sup>34</sup> *Id.* at 72.

<sup>35</sup> *Id.*, 67-72.

<sup>36</sup> *Id.* at 71.

<sup>37</sup> *Id.* at 73-74.

threat... I don't know if it was a threat. It just didn't sound right.<sup>38</sup>

In 1997, Oak Ridge National Laboratory Director Dr. Alvin W. Trivelpiece, Ph.D., President of Lockheed Martin Energy Research, gave his State of the Laboratory Address, in which he *used the word "threats" some seventeen (17) times* in discussing the "threats" to the future of Oak Ridge National Laboratory.

Too many Oak Ridge managers like Dr. Trivelpiece perceive all internal and external criticism as "threats." Dr. Trivelpiece's main concern was losing his own highly paid position and perquisites, e.g., in the event that the Department of Energy selected another organization to operate Oak Ridge National Laboratory. Dr. Trivelpiece stated his view of criticism and debate about Oak Ridge institutions, which reflects the views of Oak Ridge management:

We must collectively and **aggressively defend** ORNL against those **forces** that would seek to **diminish** or **destroy** it.

(Emphasis added). Whether the concern is "jobs" or criminal law violations, the "old culture" in Oak Ridge exists to suppress information about environmental, safety and health problems.

***"EQUITY DELIGHTS TO DO JUSTICE, AND NOT BY HALVES."***

It is an ancient equitable maxim that "equity delights to do justice, and not by halves."

DOE nuclear weapons plant victims are frozen out under current law. DOE's charade of a compensation bill, S. 1954 and H.R. 3418, requires a total redraft, as discussed in § 2 of my testimony. Congress should enact remedial legislation,<sup>39</sup>not DOE's masquerade. This is neither the first or the last hearing on Oak Ridge pollution and its effects. Future hearings should be held on DOE-related issues.

Health care independent of DOE must be assured, as discussed in § 3, *infra*, to

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<sup>38</sup> Laura Frank, "Cleanup push may cost jobs, lab's chief says -- Is that a threat, asks lawmaker from Oak Ridge," Nashville Tennessean, September 5, 1997, 1p.

<sup>39</sup> Congress should create nuclear workers' compensation legislation that is "remedial, and in aid of the preservation of human liberty and human rights." See, e.g., Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 686 (1978), quoting Rep. Shellabarger during the enactment of the 1871 Civil Rights Act (the Ku Klux Klan Act), in turn citing Justice Story, 1 Story on Constitution §429: "Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws."

make Oak Ridge and other DOE sites more like "normal communities."

Whistleblowers are not provided with full and fair remedies when they come forward with information and engage in protected activity. Government funds are being extravagantly doled out to fight whistleblowers.

Meanwhile, whistleblower laws are not working well at DOL: this must be changed, as discussed in §§ 4 & 5 of my testimony. In fact, DOE and its entrenched contractors are the major beneficiary of the Department of Labor's ongoing refusal to enforce whistleblower laws (desuetude). The reorganization of both investigative and appellate functions in the Department of Labor since 1996 has been a disaster, resulting in:

- (a) inept OSHA investigators instead of experienced Wage-Hour investigators handling cases filed by East Tennesseans; and
- (b) continuing long delays in appeals from Department of Labor Administrative Law Judge decisions..

Environmental and nuclear whistleblower cases are supposed to take 90 days under federal law. DOE treats the law as precatory, and that never happened. Finally, State and Federal crimes have probably committed involving pollution in Oak Ridge: those crimes should be investigated, indicted and prosecuted, as discussed in § 6 of my testimony, as it was in my 1983 testimony before then-Reps. Gore and Lloyd.

## 2

### ***DOE's Flawed "First Draft" Proposal for Compensating Toxic Victims of Nuclear Weapons Production***

#### ***INTRODUCTION***

In August 1986, I was sworn in as a law clerk for the United States Department of Labor Office of Administrative Law Judges. After a few months, I was assigned to spend most of my working and waking hours assisting The Chief



Administrative Law Judge, the Honorable Nahum Litt. Chief Judge Litt was responsible for assuring that American workers received the full benefit of Due Process adjudications under whistleblower statutes and the DOL compensation system for coal workers' pneumoconiosis (Black Lung) and Longshore and Harbor Workers. Other federal agencies -- like Social Security -- often violated Due Process due to pressures during the Reagan years.<sup>1</sup> At DOL, Chief Judge Litt protected workers' rights under the Administrative Procedure Act, standing as a bulwark of democracy against the worst the Reagan and Bush Administrations had in mind. One could not ask for a better mentor than Chief Judge Litt, or a better introduction to the attempted pressures of agency officials and the need for independent adjudications, guaranteed by the Administrative Procedure Act.

I have studied the Administration proposal on workers' compensation for nuclear workers and compared it to the rights available to coal miners and Longshore workers. The Administration's proposal envisions a compensation system like the Office of Workers' Compensation Programs (OWCP) and its Federal Employees Compensation Act (FECA) cases, which has no Administrative Law Judges and no appeals. DOE refuses to follow the precedent of the Black Lung and Longshore Programs, also administered by OWCP, which have hearings before independent Administrative Law Judges and full rights to appeal. It is my considered opinion that the DOE would deny Due Process, and lacks protections for worker rights. The Administration's proposal is deeply flawed, at best, and fails to guarantee the basic Due Process provided to American coal miners and longshoremen. There is no principled reason why two Tennessee brothers should have differing rights when one gets sick from beryllium disease at the Y-12 Nuclear Weapons Plant in Anderson County, and the other gets lung disease from working in a neighboring Scott County coal mine.

**This Committee should demand answers to key questions:** Who pays? Who gets benefits? Who controls the program? What is being paid? What rights are being taken away? Are benefits reduced based on other workers' compensation benefits? Who decides? Is there any appeal? What physical and mental conditions are being compensated? How many would receive benefits. Answers to these questions ineluctably lead to the conclusion that Congress should write its own proposal, based upon legal principles established in the Longshore and Harbor Workers Compensation Act (LHWCA) of 1928 and in the Black Lung Benefits Act of 1969.

### ***DOE's ILLUSORY COMPENSATION BILL, S. 1954: QUESTIONS AND ANSWERS***

#### **Who would pay?**

DOE does **not** propose Congress enact a tax on DOE's contractors to pay for

compensation, as Congress did on coal companies in passing Black Lung compensation. Instead, the benefits will be paid out of general revenues, making budget concerns tower over public health *ab initio*, and using the budget mechanism to effectively limit the number of persons awarded benefits.

This is an unfair, regressive subsidy from every American to DOE's contractors. Shame on DOE for its insensitive approach, which makes compensation look more like a bribe or welfare than compensation for workplace injuries. This sends the wrong message to government contractors: make enough workers sick and the Government creates a bailout. This is obscene and absurd.

Vice President Al Gore has long favored a pollution tax to "internalize external costs." A pollution tax should be levied upon every DOE operating contractor ever to operate a DOE site. The tax should be proportionate to the pollution and sick workers left behind. Funding should be based on taxing DOE's contractors, not innocent Americans. Then Congress will be more likely to grant full rights to fair benefits for all injured workers and residents (and less to trying to limit the number of beneficiaries). The Black Lung program is a pay-as you go program, based on the Longshore and Harbor Workers' Compensation Act of 1928.<sup>2</sup> As Gene Joyce has suggested, Black Lung should be our model here.

By making compensation part of DOE's budget -- instead of taxing contractors -- DOE managers ask Congress to create a built-in conflict of interest: budgetary pressures that would be known to decisionmakers who lack judicial independence.

DOE sites have a history of conflict of interest<sup>3</sup> -- environmental monitoring, radiation protection, self-policing -- leading to legislation calling for "external regulation."

Supreme Court Chief Justice Earl Warren and the Bible both agree on one thing: "A [person] cannot serve two masters."<sup>4</sup> Conflict of interest standards are intended to "prevent dishonor."<sup>5</sup> To do so, the DOE budget should **not** be tapped for nuclear worker benefits, because this would give DOE personnel an incentive to deny benefits for their own agency's benefit. DOE contractors should be taxed to pay for the benefits, with a tax system taking its cue from the Black Lung Benefits Act per ton coal tax or Vice President Al Gore's proposed pollution tax.

### ***Who would receive benefits?***

In DOE's first draft, only a subset of the most activist sick workers -- the beryllium workers, Oak Ridge and Paducah workers -- would receive benefits. Local residents and all of the workers and residents from all of the other sites are left behind.

Why?

DOE has targeted the most vocal workers, hoping it won't have to do anything if they take its bait. This is a cynical approach to workers compensation and public health. Not even the coal industry lobby dared propose such a cynical bill. No coal company ever proposed that only those persons active in the Black Lung Associations (BLA) should have received compensation in 1969. Buying off DOE weapons site pollution critics is *not* an appropriate basis for writing legislation. In America, we call it bribery.<sup>6</sup> The sick workers see through this plan, and have roundly rejected it -- every single one of them. DOE should apologize for this attempted manipulation.

***Who would control the program?***

DOE and not DOL. This is the "control game." This control by DOE over its own compensation program is contrary to the now well-established principle of "external regulation" of every aspect of DOE. What other organization has its own in-house workers' compensation system? Would outspoken DOE critics be targeted for benefit denials in retaliation for criticism? Why should DOE being given a choice by "contracting" with DOL to have DOL run the program. External regulation should be assured and assumed.

***What would be paid?***

\$100,000 per person, tax-free. There is no strong commitment for money for lifetime medical care and treatment. Legal fees come out of awards, and are limited to 10%. In contrast, under the Black Lung legislation, monthly benefits are paid to the miner and his or her surviving spouse and children, along with lifetime health care and attorney fees based on hours worked and reasonable hourly rates. By capping legal fees and making them come out of the awards, DOE seeks to discourage zealous legal representation. In a true "compensation" system, workers should not have their awards reduced by any percentage for fees -- legal fees should be calculated separately. (Under the Federal Tort Claims Act, fees are capped at 25% of awards). Total Black Lung compensation can reportedly reach \$500,000, including medical bills, in a typical Black Lung case.

***What would be taken away?***

All rights to sue DOE, the United States, DOE contractors and subcontractors and employees, by the employee, representative, spouse, dependents, survivors, next of kin, hospitals, doctors and insurance companies in any civil action. DOE retains the right to sue whoever made you sick to recover its costs, but you give up all rights.

***Would benefits be reduced based on other workers' compensation benefits?***

**YES.** Benefits would be reduced by payments under any state or federal workers compensation system, excepting medical expenses.

***Who would decide who gets paid?***

DOE and DOE doctors. This is a blatant conflict of interest, and "tempts dishonor."<sup>7</sup> DOE doctors getting DOE performance reviews will perform what should be an adjudication function performed by independent Administrative Law Judges appointed pursuant to 5 U.S.C. § 3105. Why should the polluter's own personnel decide who the polluter has made sick? This is an outrage.

Under the legislation, DOE could hire DOL to do its decisionmaking for it (presumably, a contract to pay the DOL Office of Workers Compensation Programs to handle paperwork). In contrast, Black Lung benefits are decided by independent Administrative Law Judges, protected by lifetime tenure, free to decide cases based on medical evidence and legal precedent.

Government physicians have bosses and would serve on "panels." This is reminiscent of the NRC Atomic Safety and Licensing Board (ASLIB), where "panels" of technical "experts" were presided over by "judges" who are not independent Administrative Law Judges. The purpose of those panels was to approve every nuclear powerplant license ever placed in front of them by the NRC staff. This is not "science." It is "junk science."<sup>8</sup> This is not "adjudication." It is yet another administrative law "kangaroo court." This is not democracy -- it is autocracy, or what Max Weber first called "bureaucracy" or "technocracy." Congress should find that it would violate Due Process<sup>9</sup> and reject the DOE bill.

DOE's bill sets up not an administrative-judicial process but a medical lottery. Government physicians have been harassed and intimidated in the past for their outspokenness on medical conditions ranging from Gulf War Syndrome to the Tuskegee, Alabama syphilis experiment. The "panels" could be filled by DOE clone physicians who pretend that there is not enough "data" -- after DOE for years concealed death rates by epidemiological flummery.

DOE employee should ever be involved in making compensation decisions. If DOE decides who gets compensation, it could use its power to punish those who are its most vocal public critics, while buying off persons who agree to gag orders. See *infra*. It is a conflict of interest for DOE employees who gets compensation at DOE sites.

The bill provides no principles of balance or neutrality in selection of government

physicians to sit in judgment on workers' compensation claims, which are ultimately legal, not medical, determinations for Congress to make, just as in the Black Lung interim presumption. Government physicians vary in quality and integrity. Dr. Michaels will not always be there: his successor could be Dr. Philip Edelman, M.D. who examined workers for Lockheed Martin without testing their blood or urine, and who arrogantly opines in workers' compensation cases about data not being available. Whoever hires, pays, evaluates and promotes the physicians can influence the number of decisions awarding benefits be paid.

It is all too common in Government for agencies to try to influence the awarding of benefits to save money. In the 1980s, the Social Security Administration kept sending its "independent" judges back to what U.S. Rep. Barney Frank (D. Mass.) called "remedial judging school" if they ruled too often for disabled workers. Congress wrote the Administrative Procedure Act in 1946 to protect citizens' rights to fair treatment by their Government in administrative law. DOE asks Congress to exempt DOE from these provisions.

Any worker seeking compensation for injuries from working at DOE sites should have an absolute right to an open, public hearing before truly independent Administrative Law Judges from DOL -- where workers' witnesses can testify about actual working conditions while they are all still alive, putting the facts on the record forever. In contrast, DOE's bill shows a marked preference for "kangaroo courts," which is all that federal employees have under the FECA compensation system. (Ask a DOE or TVA employee how they like FECA).

### ***Would there be any appeal?***

**No.** In DOE's bill, DOE's decision is final and unappealable. Why? DOE wants to maintain control, and despite lawyers and courts.

In contrast, DOL has appeals to the Benefits Review Board (BRB). BRB is subject to change with administrations, but bases its decision on precedents and evidence. Anyone dissatisfied with a BRB decision can go to the Court of Appeals and the Supreme Court, which has actually decided a few Black Lung appeals in the past 25 years. This assures a uniform body of precedents that the Government will have to follow. DOE's purpose in denying worker appeals is to "ration justice." As Judge Learned Hand said, "If we are to keep our democracy, there must be one commandment: thou shalt not ration justice."

Under DOE's unfair "alternative dispute resolution" system for compensating sick nuclear workers, DOE's contractors would have more Due Process rights to appeal from an unreimbursable party expense than a worker and his/her family would from denial of compensation for sickness and death.

In contrast, DOE could deny one worker benefits while giving benefits to another

with the same condition from the same plant, with no right of appeal. This is the litigation system DOE preferred for years in security clearances, eschewing Anglo-American system of precedents for "secret law."<sup>10</sup>

If anyone believes this autocratic, no-appeal system will produce just and fair decisions, s/he has not been paying attention. DOE's almost diabolical opposition to appeal rights shows that DOE expects "the control game" to continue. DOE wishes to run the system the same way it runs nuclear weapons plants. (Of course, under DOE's no-appeals system if you get cancer or die, you or your heirs could always request reconsideration and reopen your claim.)

***What physical or mental conditions would be compensated?***

Only a very few of the conditions known to be associated with nuclear weapons plants, namely certain beryllium disease, leukemia, multiple myeloma, lymphomas (but not Hodgkin's disease), primary cancer of the bone and lung (except for heavy smokers), and a list of other cancers with other words of limitation. No mental conditions are listed, not even depression due to chemical exposure. The bill has, in effect, adopted the idea of an "interim presumption," entitling people to benefits based on specified conditions, as under the Black Lung benefits law. Yet not enough conditions are listed. It is a narrow "interim presumption." This is a *start* for discussions, not an finished work product.

Congress should draft a more humane "interim presumption" to benefits. It should be not unlike the early Black Lung "interim presumption," but applied to a complex set of chemical and radiological conditions. Physicians should help refine the accompanying DRAFT interim presumption, which is my conceptual approach to the problem, but does not reflect the doctors' knowledge and expertise that will be required to make it FINAL.

***How many people would receive benefits?***

Probably not very many people. This is a public relations device without a conscience. It creates false hopes, is intended to divide sick workers into groups with different interests, and to "reward" with minor amounts of money only those who have been most active in raising concerns, apparently in hopes that a real reform will never be adopted. This bill could help a few workers with a few conditions in a few places. But it would not help any of the sick local residents. It would not help most sick workers. It would not help people in most places.

Meanwhile, the DOE compensation bill would (like zero in math) be a "placeholder." This bad bill would occupy the field, and allow Congress to say it passed a "reform" when it did no such thing. This is known as "political

pandering." It is an insult.

Why should two disabled brothers with lung diseases have radically different federal rights and benefits, based merely on the fact that one worked in the coal mines and the other worked at K-25?

DOE is cruelly rejecting 30 years of experience with Black Lung benefits, proposing to give sick nuclear workers unequal rights to benefits, health care, Due Process, independent judges, a fair appellate process, legal fees and an "interim presumption" based upon medical science.

A fair compensation system would apply the valuable lessons learned from Black Lung disease compensation, rather than invent the proverbial "camel designed by [DOE] committee." This is not a reasonable proposal. This bill is a political football intended to solve political problems -- environmental concerns about nuclear weapons plants and sick and dying workers. It is inadequate.

#### ***Who would choose physicians?***

Following the DOL OWCP Federal Employee Compensation Act model, doctors would be picked by government employees and government contractors, not workers, and workers would be shuttled on a "Grand Tour" of biased physicians attempting to argue that they should not receive compensation. In contrast, California law recognizes the right of workers to have medical examinations before doctors of their own choice, with full reimbursement of expenses establishing entitlement to benefits.

#### ***Who would pay lawyers and how?***

Lawyers would receive up to a 10% contingency for representing claimants, capping fees at \$10,000 under the \$100,000 payoff plan. This reduces workers' recovery to only \$90,000, while paying lawyers very little for what could be development of complex medical evidence and causation. This provision discourages lawyers from taking DOE workers' cases while reducing the amount of work that they can afford to do proving occupational disease causation.

In contrast, under Black Lung and Longshore, DOL pays Claimants attorneys a reasonable hourly rate for a reasonable number of hours' work. Not one penny of benefits is taken away from workers' compensation claimants to pay their lawyers. Lawyers are assured that if they take and win a complex occupational disease case, they will be paid fees that compensate them for their work. That is the preferred alternative, to encourage lawyers to take occupational disease cases. The other alternatives -- a 20% or 25% contingency as in state workers' compensation or Social Security disability cases -- is harsh, taking away the workers' benefits to pay lawyers fees.

***Would "gag orders" be allowed on settlements?***

There is no provision in the legislation that prohibits DOE from asking for a "gag order" or confidentiality agreement in exchange for receiving benefits. DOE's "bait-and-switch" whistleblower scheme has attempted to use "gag orders" to suppress information. In contrast, gag orders are prohibited by Department of Labor nuclear and environmental whistleblower precedents.<sup>11</sup> Unless the DOE and the Justice Department want to make the case publicly for why gag orders should be allowed on bomb factory worker and neighbor compensation, Congress should find and declare that gag orders are illegal in nuclear worker compensation settlements, and make them a felony.

***NUCLEAR WORKER COMPENSATION SHOULD FOLLOW BLACK LUNG AND LONGSHORE COMPENSATION LAWS AND PRECEDENTS***

Based on the foregoing comparisons, there is no contest: DOE nuclear workers should have the protection of the Department of Labor Longshore and Harbor Workers' Act, which has been applied to offshore oil platforms, defense contractor employees in places like Vietnam, and coal miners who develop coal workers' pneumoconiosis. There is no principled reason why an East Tennessee DOE contractor worker who develops lung disease should get nothing but empty promises, and not have equal rights with his neighbor the coal miner, who develops Black Lung should have a right to independent judges, administrative judicial appeals, and if found entitled to benefits, compensation for himself, his spouse and his children, and a lifetime of medical care.

The Department of Labor provides independent Administrative Law Judges, with an appeal to the Benefits Review Board. Instead of having no precedents under the DOE system, there would be a national system of precedent on who receives nuclear worker compensation, based upon thorough hearings and review of the medical evidence.

***CONCEPTUAL DRAFT OF AN INTERIM PRESUMPTION FOR DOE WEAPONS WORKER COMPENSATION THROUGH DEPT. OF LABOR***

What follows is a conceptual draft of language to consider on the Interim Presumption to Benefits, modeled after the Interim Presumption in Black Lung law. Of course, the Committee should thoroughly vet the proposal with comments from physicians before Committee Markup:

**DEFINITIONS** section -- definition of "interim presumption"  
 (     ) An "interim presumption" in favor of eligibility to full benefits, final



and rebuttable only by substantial evidence that the worker is not fully or partially disabled, arises IF the DOE nuclear worker or neighbor (or decedent) was:

- either employed in a listed nuclear plant or employment or lived in a surrounding community; AND
- worked or lived five years in or around such DOE employment or surrounding community;

AND qualifies under at least one of the following conditions:

- was found upon medical examination to have levels of one or more qualifying toxins in his or her body that are 2 standard deviations above the mean on hair samples;

OR

- suffered two or more heart attacks before age 50;

OR

- suffered one or more strokes before age 55;

OR

- suffered loss of at least five IQ points after toxic exposures;

OR

- suffered cancer or required surgery due to cancer;

OR

- was found to have been exposed to toxics above safe limits;

OR

- has dosimetry or medical records said to have been "lost" or "misplaced" for more than one week;

OR

- has biopsy samples, surgical removals or other live or dead body parts that have been unaccountably destroyed, removed or lost;

OR

- suffer from chemically induced depression;

OR

- was hospitalized, or had his/her parent, spouse or child hospitalized, at a hospital conducting experiments for the AEC, NASA, ERDA or DOE without proper knowing and voluntary consent;

OR

- died of cancer, heart disease, or stroke prior to age 60.

**ALSO, PERHAPS THE LEGISLATION NEEDS TO DEFINE:**

- SURROUNDING COMMUNITY
- NEIGHBOR
- QUALIFYING TOXIC MATERIAL
- HOSPITALIZED (?)
- LOST (?)
- MISPLACED (?)

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# 3

## ***NEED FOR INDEPENDENT HEALTH CARE FOR OAK RIDGE***

It is now undisputed that Oak Ridge plants have caused disease and death. Sick Oak Ridge workers and residents require Independent health care. Their health care must no longer be under the thumb of DOE and its contractors. For too long, DOE and its contractors have used their clout to control medical information, diagnosis, treatment and care in Oak Ridge.

It is time that Oak Ridge become more like a "normal American community," supposedly the Government's goal<sup>12</sup> -- e.g., one where independent physicians not under the thumb of the Nuclear Weapons industry are ready, willing and able to practice the scientific method without fear or favor, morally and intellectually capable of diagnosing and treat work-related diseases without fear of retaliation, blacklisting and recrimination.

In contrast to the Black Lung Benefits Act, DOE offers a flawed compensation bill with money payouts but no health care. While DOE proposes to spend money buying off individual sick workers in places like Oak Ridge, it has done nothing to provide treatment. It ignores the sick residents, who also require treatment. DOE and its contractors have long controlled health care in Oak Ridge, and they have done nothing to let up.

## ***ATOMIC ENERGY COMMISSION ORDER 0521 AND ITS SEQUELAE***

Atomic Energy Commission Order 0521 required that anyone injured by radiation or "special hazards" (toxic materials) was not to be told the cause, but that AEC and contractor medical personnel were to follow the worker's treatment and communicate with the worker's doctors. There were even agreements with doctors, hospitals and funeral homes to obtain body parts to analyze for toxic materials. The purpose was to discourage litigation over toxic hazards, not to protect national security secrets. These facts were well documented by Cliff Honicker wrote in the New York Times Magazine over ten years ago.<sup>13</sup> DOE has

never disputed these facts.

Information on what toxicants made specific workers sick was tightly restricted. The word "mercury" itself was "classified" in Oak Ridge. Workers were not permitted to tell their spouses or doctors that they were working around mercury, for example. The only "national security" interest expressed in AEC memos was preventing litigation, not preventing the Soviet Union from using lithium to enhance atomic yields, since they already knew and used the process that required the huge quantities of mercury in Oak Ridge.

**PLANT MEDICAL DEPARTMENTS AND LOCAL HOSPITALS ARE DOMINATED AND CONTROLLED BY DOE AND ITS OPERATING CONTRACTORS**

For years, the Medical Department at Oak Ridge plants was under the thumb of DOE's Oak Ridge prime contractor. In contrast, Hanford had the Hanford Environmental Health Foundation (HEHF), a non-profit paid by DOE to provide health care to DOE Richland Operations plant workers. While HEHF is by no means perfect, the use of a separate contractor is to be preferred.

A corporate Medical Department's purpose is somewhat Orwellian to begin with: as the *Wall Street* Journal has documented, corporate medical departments document everything about a worker's health to use in fighting later litigation (mainly workers' compensation cases). If you smoke and get a lung disease, any occupational disease claim will be fought with your smoking history, dutifully told over the years to company medical personnel. If you hurt your back gardening and tell a Medical Department nurse, it will be duly noted on your patient chart. If you hurt your back at work several years later, expect to hear about the gardening injury in any workers' compensation claim.

In Oak Ridge, the plant medical department concept went to extremes with its effort to control information, including destruction and concealment of evidence. In Oak Ridge, sick workers' medical files have a way of disappearing into lawyers' offices for multiple months, endangering health and complicating care in the event of a stroke or injury.

In Oak Ridge, Lockheed Martin flexed its muscles with shocking results. In 1991, Dr. William K. Reid, M.D. came to Oak Ridge and was hounded out of town after he started asking questions about heavy metals and toxics.<sup>14</sup>

Dr. Reid telephoned Dr. Daniel Conrad, Lockheed Martin Medical Director, asking about heavy metals. Though Dr. Conrad well knew they were a problem, he denied the existence of any problem or any studies. Then Dr. Conrad called Methodist Medical Center management and asked "who is this quack?" Dr. Reid

was told, “you need to let more of your patients die” and “you spend too much money” on tests and computer research. A retaliatory peer review procedure persecuted Dr. Reid. The hospital’s profit-making Tennessee Medical Management subsidiary canceled his contract. As documented by CNN and NBC News Dateline, the pressures resulted in Dr. Reid having to work in Franklin while his family remained in Oak Ridge.

In 1992, DOE paid Lockheed Martin to pay the law firm of Baker, Donnelson to sue the Secretary of Labor, seeking to bar Dr. Reid from even having an Administrative Law Judge hearing. A Federal Judge in Knoxville denied this unseemly Lockheed request, but refused to order Rule 11 sanctions against Lockheed. [In contrast, in 1999, after Lockheed filed a SLAPP suit against a whistleblower lawyer for return of interim attorney fees in a case he seeks to reopen based upon new evidence and changed law, a Federal Judge wrote a pejorative order granting Rule 11 sanctions, ordering an apology to Lockheed and one of its lawyers, and excoriating him for criticizing Lockheed, DOE and DOL, and threatening a \$10,000 penalty.<sup>15</sup>]

Judge Jeffrey Tureck, the Department of Labor Administrative Law Judge, appointed to hear Dr. Reid’s case dismissed it without allowing any discovery or evidentiary hearing, supposedly on the basis that Dr. Reid was an “independent contractor.” This decision was upheld by Secretary of Labor Robert Reich, who pointedly refused to reach or discuss the issue as to whether it was protected activity for Dr. Reid to raise concerns about high levels of heavy metals and certain cancers among his Oak Ridge patients.<sup>16</sup>

For years, Oak Ridge has been dominated by the former Army hospital, Methodist Medical Center, which controls some 30 medical practices through its profit-making subsidiary. Methodist is now owned by “Covenant,” which controls numerous other local hospitals, health care providers, HMOs and health insurance, including:

- Methodist Medical Center of Oak Ridge
- Fort Sanders Loudon Medical Center
- Fort Sanders West
- Fort Sanders Parkwest Medical Center
- Fort Sanders Sevier Medical Center
- MedCenters HomeCare
- Patricia Neal Rehabilitation Center
- Peninsula Healthcare
- Overlook Center
- Thompson Cancer Survival Center
- Fort Sanders School of Nursing
- PHP Companies, Inc.
- Cariten Healthcare
- Maternity Center of East Tennessee.<sup>17</sup>

DOE and its contractors have and share computer data bases that enable them to follow workers' medical care, learning whether workers believe their health problems are health related, and monitoring doctors' treatment and testing. Workers are discouraged from seeing doctors or lawyers about work-induced medical problems.<sup>18</sup> Physicians in Oak Ridge are run out of town if they diagnose and treat patients open to the possibility of Oak Ridge workplaces causing diseases. Workers have been "fired" for their physicians for persisting in seeking to learn the etiology of disease, or to have testing done for cyanide, heavy metals and other toxicants. Workers have been told that doctors "will not muckrake Lockheed Martin" or that they "don believe in heavy metals."

When Dr. Reid was being harassed, three of twelve Methodist Medical Center of Oak Ridge directors were Lockheed Martin executives. There had never been a worker or a union leader on the Board of Methodist Medical Center in the entire history of Oak Ridge.

In discussing the formation of the Coalition for Healthy Environment, Lockheed Martin Energy Systems Medical Director Dr. Conrad said he had "no objection" to its forming, but labeled as "completely fallacious" the idea that there could be chronic environmental cyanide poisoning.<sup>19</sup>

Referring to some of the very sick workers who would like to testify before this Committee, Dr. Conrad said "my main concern is that these folks are not obtaining the appropriate care that they should for whatever condition they have by wasting their time on this fictitious illness."<sup>20</sup>

There has been a great deal of turmoil among Lockheed Martin managers in Oak Ridge about their future under new contractual arrangements<sup>21</sup>, with Lockheed no longer the prime contractor at K-25 or ORNL. Dr. Conrad stated that Oak Ridge managers are "eager to try to come to a conclusion about whatever was going on" in Oak Ridge.<sup>22</sup> Dr. Conrad stated, "I don't think anyone likes to be criticized over a period of time. I don't think our managers are any different from the rest of the human race, no."<sup>23</sup> Dr. Conrad was concerned that the cyanide issue persisted and did not go away.<sup>24</sup> After Dr. Conrad limited the work of staff physician Timothy Oesch, the cyanide issue did not go away. *Id.* The issue did not go away after the NIOSH investigation.<sup>25</sup> The issue was very much alive in August and September of 1996 at the time of the Coxes' layoff notices.<sup>26</sup> The issue remains alive today.

In the ordinary course of business, an employee filing a medical incident report needs to go to the medical department "[j]ust once."<sup>27</sup> Having to return to the medical three times to file a medical incident report is outside the ordinary course of business.<sup>28</sup>

In the ordinary course of business, employees wishing to file outside medical

reports on anything about their health would be placed in the Lockheed Martin medical file.<sup>29</sup> Employees filing medical incident reports on cyanide in Oak Ridge on cyanide poisoning encountered "difficulties" in filing the reports.<sup>30</sup>

Mr. Conner, the K-25 Plant Manager, "said repeatedly if we can identify an occupational exposure to a chemical that would cause a symptom for any worker that I would shut it down," something the company would need to be doing if we're hurting people."<sup>31</sup>

### **COVERUP OF K-25 CYANIDE AND OTHER TOXIC HAZARDS**

It has been said that whenever there is a need for someone to blow the whistle, there has first been a failure of organizational ethics.<sup>32</sup> Oak Ridge is a monstrous failure of organizational ethics, with even the TVA Chairman joining in blowing the whistle on Oak Ridge coverups. In 1983, after the Y-12 mercury losses were finally declassified, Tennessee Valley Authority Chairman S. David Freeman said, "there has been a damned coverup in Oak Ridge."<sup>33</sup> Noting much has changed in 17 years.

*There has been another "damned coverup" in Oak Ridge, this time at K-25.* At least 55 employees at the K-25 plant in Oak Ridge, Tennessee filed medical incident reports as a result of cyanide being present in their bodies.<sup>34</sup> K-25 presents high risks of uranium, cyanide and hydrogen fluoride exposures.

DOE and Lockheed planned to test workers for cyanide, but mysteriously dropped their plans.<sup>35</sup> The University of Alabama report of March 8, 1996 looked at cyanide concerns in the industrial hygiene context.<sup>36</sup> Mr. Conner agrees with the findings of the report<sup>37</sup>, which included the statements that:

- A. "The lack of a solution to the cyanide issue has been frustrating to all parties. Based on our interviews, we conclude that this frustration has been exacerbated by inadequate communication, miscommunication and/or no communication between employees, supervisors, managers, medical personnel and industrial hygiene representatives."<sup>38</sup>
- B. There are "constraints" upon industrial hygiene at K-25, including "organizational factors [such] as the chargeback system, restricted methodologies and current mandatory workloads."<sup>39</sup>
- C. "At least initially, the medical group refused to accept urine test results for thiocyanate for inclusion in the employee's health file."<sup>40</sup>
- D. "The physicians agree that the employees that have been seen are ill and that most have been in poor health for a number of years."<sup>41</sup>

In 1997, then-K-25 plant manager Harold Conner and other Lockheed Martin managers testified that the cyanide issue had consumed and obsessed K-25 management. Dozens of people and millions of dollars have been spent.<sup>42</sup>

Lockheed Martin never considered moving K-25 office employees to offices that are not located on a Superfund site while decontamination and decommissioning are occurring.<sup>43</sup> During 1996 there were some 2500 to 3000 workers at the K-25 site.<sup>44</sup>

Ms. Walzer is a toxicologist with a Master's degree. Ms. Walzer was never informed that Oak Ridge and K-25 were Superfund site until a year after going to work for Oak Ridge National Laboratory. *Id.*, Tr. 254. Though he worked in all areas of K-25 for twenty years, Commander Harry L. Williams did not learn that K-25 was a Superfund Site until circa 1995. *Id.*, Tr. 293. When starting to work at ORNL, Ms. Walzer "was told that the Oak Ridge reservation was a 29,000 acre Environmental Research Park."<sup>45</sup>

Ms. Walzer was told by LMES manager Conrad Stair, later Lockheed's Environmental Compliance Director, told her that she needed to get "tough" in response to her request to be moved.<sup>46</sup> When Ms. Walzer got sick, Lockheed Martin Vice President Michael Mitchell and Mr. Stair told Ms. Walzer that "they were going to let me go offsite but that I was going to have to come back and they were going to see if I got sick."<sup>47</sup>

Ms. Walzer was laid off in January 1996, the only person in her division to receive a layoff even though she had received the highest level ("distinguished service") of Lockheed Martin performance reviews and won numerous awards for superior performance.<sup>48</sup> A DS rating (like Ms. Walzer earned) is rare in Lockheed Martin Energy Systems.<sup>49</sup> For a time, Ms. Walzer's layoff was extended. Ms. Walzer prevailed in a Department of Labor whistleblower complaint and settlement.

Ms. Walzer stated her informed conclusion that:

Definitely based on my situation, I think that Lockheed Martin deals with these issues in a retaliatory nature. I believe that they want their employees to be scared and fear for their jobs. In doing so, they could keep issues like this muddled.<sup>50</sup>

Dr. Timothy R. Oesch, M.D. is a licensed physician employed by Lockheed Martin since 1987 at the K-25 plant as a staff physician.<sup>51</sup> Dr. Oesch has read many scholarly and scientific articles regarding cyanide.<sup>52</sup> Dr. Oesch is the former President of the Roane-Anderson County Medical Society and its disciplinary arm, the Board of Censors.<sup>53</sup> Dr. Oesch believes that some physicians may be reluctant to share information with patients about

environmentally caused diseases and might not share such information.<sup>54</sup>

After seeing some 13 patients he believed had cyanide intoxication, and after a number of medical incident reports were filed regarding cyanide, Dr. Oesch was instructed in July 1995 by Lockheed Martin Energy Systems Medical Director Dr. Daniel Conrad, in the presence of Mr. Larry Perkins, **not to use the word "cyanide" or share information on pain of serious job "repercussions."**<sup>55</sup> Dr. Oesch was ordered under threat of termination:

**not to test anyone for cyanide or treat anyone for cyanide and not to have an outside practice where I would treat anyone employed by Lockheed Martin or test anyone employed by Lockheed Martin.**

\* \* \*

**Not to test any Lockheed Martin individuals for cyanide, not to treat any Lockheed Martin individuals for cyanide and not to, in any outside -- any outside practice, test or treat any persons employed by Lockheed Martin for cyanide, sir.**<sup>56</sup>

Dr. Oesch was told he had used "poor judgement" in diagnosing cyanide intoxication among K-25 workers:

To the best of my memory he indicated that it would be poor legal judgment to do so, sir.

Dr. Oesch was told:

that I should not let patients know about this or that was suggested, at that meeting I basically expressed that I thought it would not be wise to not at least let the patient know something might be suspected in some way. And in going back and forth it was decided at that very meeting that a patient could be informed about something environmental may be going on and that I could give information to their private physician, sir.<sup>57</sup>

Dr. Oesch testified that to an extent Dr. Conrad came to his defense against Mr. Perkins when Dr. Oesch "brought up my objection to not even letting a patient know I think they might be ill."<sup>58</sup> Dr. Conrad concedes that he told Dr. Oesch not to tell patients he thought they had conditions related to chronic exposures to cyanide.<sup>59</sup>

Dr. Conrad admits that there is a "tension" between the company doctor's duty to his patients and his duties to his employer.<sup>60</sup> Dr. Conrad denies that he treated sick workers as objects.<sup>61</sup> However, Dr. Conrad stated:

**They're not patients.** They're employees of whom I have a concern for their general health and well-being.... Patients is one that has a one-on-one

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relationship with me whom I've established a relationship so I can treat them on a one-to-one basis. That's a patient.<sup>62</sup>

This reveals bias, animus and shows Lockheed's contempt for human rights of its employees. The dictionary defines a patient as "one who is under medical or surgical treatment."<sup>63</sup> Dr. Conrad's definition is more narrow than the dictionary definition. Dr. Conrad admits personally treating some employees.<sup>64</sup> Dr. Conrad's odd semantics suggest that he has in mind the legal defense of medical malpractice actions, not answering questions candidly in this case.

Dr. Conrad states, "I expected [Dr. Oesch] to cease and desist treating any more employees."<sup>65</sup> There is "no need to be doing testing for a substance that supposedly was obtained in the plant if there was no exposure."<sup>66</sup>

Before the 1995 meeting with Dr. Oesch, Dr. Conrad's reviewed the medical literature in a cursory manner, and did not include computer searches.<sup>67</sup> Dr. Conrad "didn't use" computer searches "very much."<sup>68</sup> "I didn't feel any need to" conduct a literature search, Conrad admits.<sup>69</sup> The provincial Dr. Conrad condescendingly noted that Dr. Oesch's references included "foreign literature."<sup>70</sup>

Dr. Conrad complains that Dr. Oesch was "treating people on our (sic) **company (sic) premises** (sic) with sodium thiosulfate for a condition that had no basis in the scientific literature.<sup>71</sup> Of course, Lockheed Martin does not own the K-25 "premises," and the alleged "company premises" to which Dr. Conrad refers are owned by the people of the United States, through the Department of Energy.

To the extent that it was possible in that short time I reviewed my test and I reviewed the -- my books on toxicology. And I found no evidence for such a condition as chronic environmental cyanide poisoning.

\* \* \* \*

I did not feel any need to follow up on this any further.<sup>72</sup>

Dr. Conrad admits that medical science will probably identify illnesses and causes of illness that are unknown today, and that people are probably suffering from conditions that are not in today's medical textbooks.<sup>73</sup>

Dr. Conrad claimed, "There was no exposure that we knew of. There was no need to do such samples."<sup>74</sup> Dr. Conrad stated, "I certainly wouldn't have condoned his testing" for cyanide because "[t]here is no source. We had no source in our occupational setting."<sup>75</sup> Dr. Conrad protests, "thiocyanate is a result of cyanide and thiocyanate occurring in lots of areas. You can get those in cabbage. You can find them in fruits. Beans.... smoking cigarettes."<sup>76</sup> Workers at K-25 did not get their cyanide from fruits, beans, or smoking cigarettes. In fact, there were exposures, there was acetonitrile (a cyanide

compound) burned at the TSCA Incinerator and there was cyanide and cyanide products present at the K-25 site.

The K-25 Hazardous Materials Information System shows that there was **9,876,543 pounds** of acetonitrile present at K-25 on May 9, 1996. That is a "source." Dr. Conrad may have committed perjury before DOL in his testimony.

In addition, a December 1999 report on K-25 by the DOE Office of Oversight for Environment, Safety and Health found that, at K-25:

- there is over 91,000 gallons of acetonitrile in mixed sludges; and
- K-25 worst case scenarios include the unmitigated release of "significant quantities of chlorine gas," as well as nuclear criticalities from uranium remaining in process equipment.<sup>77</sup>

These facts were concealed from the K-25 workers. This is fraudulent concealment, and should probably toll the statute of limitations on any criminal investigations or tort actions.

After discussion with Dr. Conrad and Mr. Perkins, Dr. Oesch wrote a paragraph about what he could say to patients he suspected of having cyanide intoxication. This paragraph is fully consistent with Dr. Oesch's recollection that he was forbidden to use the word cyanide:

I believe there may be the possibility that you are suffering from symptoms secondary to exposure to a common environmental pollutant which is produced in vehicular exhausts, etc. I have experience with environmental pollutant research and would like to supply information to your private physician so that this may be considered in the differential diagnosis of your symptoms. I do not know if you are suffering from exposures to pollutants but I believe it is a possibility which is worth considering. Would you like me to send information to your doctor?<sup>78</sup>

Dr. Oesch was told to refer patients to outside physicians, and not to specialists.<sup>79</sup> There are no written procedures that order doctors not to use the word cyanide, or to test for cyanide, or not to treat or diagnose cyanide intoxication.<sup>80</sup> Dr. Oesch made a record of what he was told.<sup>81</sup> Dr. Oesch was never previously barred from using any non-classified word in Oak Ridge. Dr. Oesch was never previously given general instructions not to test for any other substance or compound.<sup>82</sup> However, he was once told in one specific case not to test for fluoride or fluorine.<sup>83</sup>

Dr. Oesch was also told not to give medical or toxicological literature to patients.<sup>84</sup> Dr. Oesch was informed "that might be -- implying that we are stating

this is an occupational problem."<sup>85</sup>

During the disciplinary meeting, Mr. Perkins stated, "that perhaps if I had a patient I thought might be suffering with cyanide intoxication it might be best not to mention it."<sup>86</sup> These instructions were given at a specially called *ad hoc* meeting held in the K-25 medical department library.<sup>87</sup> The meeting was disciplinary in character.<sup>88</sup> Dr. Oesch had some concern about losing his job as a result.<sup>89</sup> Dr. Oesch was told to consider it a "warning."<sup>90</sup> Dr. Conrad agrees.<sup>91</sup> Dr. Oesch testified, "It seemed to be a warning that my services might be terminated, sir."<sup>92</sup>

Dr. Oesch was concerned about losing his job and having to move, with adverse effects on his children being able to attend their current school in Oak Ridge:

I have children now and I like my job. I like my company, I like my location and I like the school they're in, and I did not want to offend my management.<sup>93</sup>

Dr. Conrad was at the time the boss of Dr. Oesch's boss, or his second level supervisor. Mr. Perkins was the third level supervisor, who was Dr. Conrad's boss.<sup>94</sup> Mr. Perkins reported to K-25 site manager Harold Conner.<sup>95</sup> Dr. Conrad reported to Dr. Fred Mynatt, Executive Vice President of the company.<sup>96</sup> Neither Dr. Mynatt nor Mr. Perkins are physicians.<sup>97</sup> Dr. Conrad was responsible for supervising medical directors,<sup>98</sup> at five sites under DOE Oak Ridge Operations, including three in Oak Ridge, one in Kentucky and one in Ohio, with a combined total of some 20,000 workers.<sup>99</sup> Dr. Conrad is a team player. *Id.*, Tr. 1512. The significance of a "team player" is that they will tolerate wrongdoing.<sup>100</sup>

Dr. Conrad claims that Dr. Roberts was out of town on military maneuvers during the meeting, and so was not present.<sup>101</sup>

The meeting had a "serious tone" and lasted some thirty minutes.<sup>102</sup> Dr. Conrad said to consider this a warning.<sup>103</sup> Dr. Conrad claimed the treatment might be "considered experimental and result in large lawsuits."<sup>104</sup>

Dr. Oesch stated that "I was given the impression that this was a very sensitive and dangerous subject, sir, as far as my future employment went, sir."<sup>105</sup>

The only treatments Dr. Oesch ever considered are harmless agents such as vitamins and sodium thiosulfate.<sup>106</sup> At the time, only one of the treatments required a prescription.<sup>107</sup>

Dr. Oesch encountered a worker-patient at K-25 who had acute cyanide poisoning, as evidenced by bright red venous blood showing cyanide intoxication. Dr. Oesch was forbidden by K-25 Medical Director Dr. Ann Roberts

to have the blood tested for cyanide.<sup>108</sup> The cyanide poisoning patient was rushed by hospital to the emergency room.<sup>109</sup> Meanwhile, measurement of the blood was hampered by virtue of the transport time to Oak Ridge Hospital (about ten minutes) short half-life of cyanide in the human body, some twenty minutes to one hour.<sup>110</sup> Dr. Conrad claims not to recall being told about the event.<sup>111</sup>

Dr. Conrad claimed that Lockheed does not "have that kind of equipment on site"<sup>112</sup> required to analyze cyanide. Dr. Conrad concedes that electron mass spectrometers" at the K-25 site could have been used to analyze for cyanide.<sup>113</sup> Dr. Conrad claims that "I did not lie" in saying that Lockheed "does not have that kind of equipment on site" required to analyze cyanide."<sup>114</sup>

K-25 Medical Director Dr. Robert Bernstorf stated of the cyanide issue, "There's nothing to it."<sup>115</sup> Based on his knowledge and literature review, Dr. Oesch disagrees.<sup>116</sup> Dr. Oesch heard the prior K-25 Medical Director, Ann Roberts, speaking with workers about cyanide issues and after such meetings noted that the workers were "upset."<sup>117</sup>

Dr. Oesch was never told by Lockheed Martin that he cannot be retaliated against as a result of his testimony before the Department of Labor. *Id.*, Tr. 1248. After Dr. Daniel Conrad's July 1995 cyanide medical censorship meeting, Dr. Oesch has received bad performance appraisals of "Needs Improvement" or NI, and has been denied raises.<sup>118</sup> Dr. Oesch knows of no one else who was denied a raise that year.<sup>119</sup> Dr. Oesch previously received "Consistently Meets" or "CM" performance appraisals and annual raises.<sup>120</sup> Dr. Oesch was laid off by Lockheed Martin after his protected activity.

The K-25 and Lockheed Martin medical departments are governed by OSHA regulations.<sup>121</sup> In the ordinary course of business, they accept medical reports from patients on any subject.<sup>122</sup> "Normally we would want that information in the records, even if we don't treat it."<sup>123</sup> Mrs. Farver testified that she was interfered with in filing a medical incident report and told that:

it had come down from Lockheed Martin Corporate that Dr. Oesch was not to be treating or discussing cyanide intoxication on the job and that this was a **sensitive and controversial issue** was the way that she phrased it.<sup>124</sup>

Likewise, Mrs. Ann Orick testified by deposition:

I had results showing I had elevated levels of thiocyanate in my body. And I tried to work with the medical department, who refused to take my results and place them in my file like they had done everything else that had happened to me out there, or off-site or whatever. They would not accept them. They told me it was a sensitive issue and not to be discussed.<sup>125</sup>

When high levels of cyanide appeared in workers who filed medical incident reports, Dr. Conrad never repeated the tests.<sup>126</sup>

Dr. Conrad is not an expert in toxicology, health physics, hematology, immunology or oncology.<sup>127</sup>

In the Cox case, Lockheed and DOE managers failed to produce some 23 withheld Exhibits that help establish that they:

1. Knew of and disagreed with the protected activity<sup>128</sup> and orchestrated a medico-legal “strategy” and spin control to manage cyanide issues by concealing and misrepresenting information.<sup>129</sup>
2. Knew Oak Ridge plants, including K-25 and Y-12, had acetonitrile and other cyanide compounds in use for years,<sup>130</sup> yet denied that there was any “source,” as Dr. Daniel Conrad, M.D., former Lockheed Martin Medical Director testified.
3. Consciously chose not to look for acetonitrile or test bodily fluids as planned. The University of Alabama study:  
**Only looked at hydrogen cyanide**  
**Only looked at inhalation**  
**Only looked at office space<sup>131</sup>**
4. Knew that the LMES management system created “Hazards Recognition Constraints”<sup>132</sup> and did nothing about them. (The undated summary of the University of Alabama draft report on cyanide further admits the LMES Industrial Hygiene Department’s focus on looking only for hydrogen cyanide).
5. Know the accuracy of Dr. Oesch’s testimony regarding the disciplinary character of LMES management’s censorship of Dr. Oesch’s use of the word cyanide<sup>133</sup> with LMES admitting in its “Fact Sheet” that Dr. Conrad’s warnings to Dr. Oesch was on referring patients to private physicians and not for “experimenting,” and that Dr. Oesch was given the first step of positive discipline by Dr. Conrad. This document contradicts the testimony of Dr. Conrad in several respects.
6. Kept detailed records on protected activity, down to the precise hour and minute that concerns were expressed, including on Mrs. Ann Orick and Mrs. Sherrie Farver, two radiation protection technicians who testified (by deposition and at trial, respectively) regarding their difficulties in filing a medical incident report and having to return to the medical department multiple times to do so (and being obliged to file an Ethics complaint to get the cyanide readings filed in the medical department). Mrs. Orick and Mrs. Farver are repeatedly discussed in the company’s history of the cyanide controversy.
7. Intended to lobby NIOSH to get NIOSH to appoint investigators to LMES’

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liking.<sup>134</sup> This shows Lockheed Martin Energy System's consciousness of guilt and the desire for special interest influence.

8. Hired Doctors Lockey, Freeman and Byrd, et al. because workers continued to seek "legal and political redress,"<sup>135</sup> with plans for the "physician(s) [to be] temporary (sic), independent (sic) part of our site health services to deal with the employees' concerns and *bring closure (sic) to the issue.*" (Emphasis added). LMES admits in its own White Paper that its hiring Dr. Lockey et al. was in response to the employees' protected activity in raising concerns and exercising "political and legal" rights to seek "redress." Hiring the physicians with this intent shows the Respondent's animus toward the workers raising concerns. Corporate "White Papers" are normally about an important matter affecting a corporation, and may reflect alarm and animus to employee protected activity.<sup>136</sup> Here, DOE and Lockheed long withheld from DOL and the workers both their White Paper and Fact Sheets developed in response to protected activity, showing an intent to deceive, e.g., to target worker activists and keep them in the dark about monitoring of protected activity.
9. Failed to produce the "White Paper" and "Fact Sheets" in discovery, or under FOIA in response to a request made two years ago.<sup>137</sup> This establishes Respondents' state of mind to deprive DOL of the whole truth.

### **OCCUPATIONAL HEALTH MEDICAL ETHICS PRINCIPLES**

Dr. Conrad's *curriculum vita* shows an affiliation with the American College of Occupational and Environmental Medicine (ACOEM).<sup>138</sup> The Code of Ethical Conduct of the American College of Occupational and Environmental Medicine (ACOEM):

This code establishes standards of professional ethical conduct with which each member of the American College of Occupational and Environmental Medicine (ACOEM) is expected to comply. These standards are intended to guide occupational and environmental medicine physicians in their relationships with the individuals they serve, employers and workers' representatives, colleagues in the health professions, the public, and all levels of government including the judiciary.

Physicians should:

1. accord the highest priority to the health and safety of individuals in both the workplace and the environment;
2. practice on a scientific basis with integrity and strive to acquire and maintain adequate knowledge and expertise upon which to render professional service;

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3. relate honestly and ethically in all professional relationships;
4. strive to expand and disseminate medical knowledge and participate in ethical research efforts as appropriate;
5. keep confidential all individual medical information, releasing such information only when required by law or overriding public health considerations, or to other physicians according to accepted medical practice, or to others at the request of the individual;
6. recognize that employers may be entitled to counsel about an individual's medical work fitness, but not to diagnoses or specific details, except in compliance with laws and regulations;
7. communicate to individuals and/or groups any significant observations and recommendations concerning their health or safety; and
8. recognize those medical impairments in oneself and others, including chemical dependency and abusive personal practices, which interfere with one's ability to follow the above principles, and take appropriate measures.

Adopted October 25, 1993 by the Board of Directors of the American College of Occupational and Environmental Medicine.<sup>139</sup>

The 1989 Position Statement on Medical Surveillance in the Workplace of the American College of Occupational and Environmental Medicine (ACOEM) states:

**Medical Surveillance in the Workplace**

The American College of Occupational and Environmental Medicine supports establishment of medical surveillance programs for employees exposed to hazardous agents and believes that, in addition to optimal engineering controls and personal protective measures, medical surveillance is a valuable tool for assuring and maintaining a healthful workplace environment. The primary activity of medical surveillance involves collection of specific exposure data, **familiarity with routes of exposure and toxic doses**, and selection and application of appropriate medical examinations. Special skills and knowledge are needed to formulate, interpret, and make recommendations regarding risk-based occupational medical surveillance. The College therefore adopts the position that:

- **Medical surveillance should be done primarily for the benefit of the individual employee and immediate coworkers and employees should be informed by a knowledgeable medical professional of the surveillance results.**
- **Programs for medical surveillance should not be substituted for**

**collection of exposure information.**

- Medical surveillance should not be used for employment purposes such as hiring and firing.
- The employer should be responsible for the cost of medical surveillance and the conduct of the program to include maintenance of medical records.

In such circumstances the employer should be responsible for developing a unique medical program for related specific hazards and exposures utilizing a physician qualified and experienced in the practice of occupational medicine.<sup>140</sup>

***NEED FOR REFORM OF PLANT AND COMMUNITY HEALTH CARE***

DOE and its contractors must get out of the medical coverup business.

No longer should DOE and its contractor be permitted to control health care and obstruct care, diagnosis and treatment.

DOE's plant physicians should be hired by another federal agency, and should work for a non-profit organization with scrupulous independence.

There must be an independent clinic to treat workers and residents, with no ties that bind to DOE or its contractors.

Those responsible for the medical coverup of K-25 health problems should be investigated by a Special Counsel appointed by the Attorney General in Washington, D.C. -- the Special Counsel should be thoroughly independent of the U.S. Attorney and local government offices with ties to DOE.

Doctors, nurses and all other medical personnel should have the full protection of DOL whistleblower laws for any concerns about environmental or health issues.

Never again should a physician in private practice be subjected to retaliation for diagnosing work-related conditions in his patients. The "independent contractor" loophole in whistleblower law must be ended.

Plant medical departments should be strictly regulated to protect against conflict of interest and abuses of power like those seen at the K-25 site.



## 4

## ***Flawed Federal Administrative Remedies for DOE and Contractor Nuclear and Environmental Whistleblowers***

### DESUETUDE --

“Disuse, cessation, or discontinuance of use -- especially in the phrase, to fall into desuetude. Applied to obsolete statutes.”

*Black's Law Dictionary*

“The state of being no longer used or practiced.”

*Random House College Dictionary*

You are an ethical employee who raise environmental or nuclear safety concerns, a “whistleblower,” working for a U.S. Government contractor. First you suffered workplace harassment, the slow torture of a hostile working environment. Now you are fired. If you seek justice from the Department of Labor, you may wait multiple years for one of its “90 day” whistleblower decisions, to see whether you might win a final order in your favor. You suffer greatly from stress: you wait and wait and wait.

The Department of Labor Inspector General (DOL IG) has found that DOL, the federal agency examining your case, has intentionally delayed whistleblower cases for most of its whistleblower adjudication history.<sup>141</sup> The DOL IG condemns these delays as “unconscionable” and says they violate Due Process. As if to add insult to injury, **all** legal defense costs of your government contractor employer adversary is 100% compensated by Uncle Sam, a direct subsidy to the alleged discriminators.<sup>142</sup>

Yet if a worker complains to DOL about delays today and DOL shrugs its shoulders and often gets a flippant response from the person responsible for the delays, not from DOL upper management. DOL follows “Total Quality Management,” a theme of which treats the worker as a “customer.” Yet where whistleblower cases are concerned, DOL seems to take the position that “the

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customer is always wrong.”

In passing the Clean Air Act whistleblower law, Congress said:

The best source of information about what a company is actually doing or not doing is often its own employees and this amendment will ensure that an employee could provide such information without losing his job or otherwise suffering economically from retribution from the polluter.<sup>143</sup>

Representative William D. Ford (D. Mich), in supporting the Federal Water Pollution Control Act (FWPCA) whistleblower provision reinforced this view

Mr. Chairman, in offering this amendment we are only seeking to protect workers and communities from those very few in industry who refuse to face up to the fact that they are polluting our waterways, and who hope that by pressuring their employees and frightening communities with economic threats, they will gain relief from the requirement of any effluent limitation or abatement order.<sup>144</sup>

Past Administrations whistleblower adjudication created delays by design. The current Administration has shown no great love for whistleblowers whistleblower laws, and may be doing the same thing, by default. This leads to the question, “is the whistleblower safety net “designed to fail?”

### ***SWIFT “90 DAY” WHISTLEBLOWER REMEDY NOW A TOOTHLESS “PAPER TIGER”***

“Whistleblower protection” laws are supposed to protect workers from retaliation<sup>145</sup> for reporting concerns to governments and their employer. Commencing with the Federal Coal Mine Health and Safety Act<sup>146</sup>, Congress has adopted strong legal remedies for persons reporting concerns under environmental, nuclear and trucking and government contracts whistleblower law. A covered employee is protected for expressing her concerns as well as for “doing his job too well,”<sup>147</sup> for refusing to do improper work, and for refusal to work in unsafe working conditions.

In proposing environmental whistleblower laws, Senator Edmund S. Muskie (D-Maine), Senator Gary W. Hart (D-Colo.) and other sponsors of whistleblower laws chose to bypass busy U.S. District Courts. The sponsors set a “90 day” time limit, a queer novelty for U.S. administrative law, whose pace is often glacial, where long multi-year delays are commonplace and accepted by business and regulators.

The DOL environmental whistleblower law system was divided, like Caesar’s Gaul, into three parts: investigations, hearings and appeals. Thus, the “90 day”

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whistleblower statutes provide just 90 days for DOL to investigate, hold a hearing and hear an appeal. The reality is that DOL can take 5-7 years (or more) to adjudicate the worker's case,<sup>148</sup> without *bona fide* justification or excuse.

These long delays truly matter, because workers are fired and often lack adequate state law remedies. Only some whistleblowers (in nuclear and trucking whistleblower cases<sup>149</sup>) have provisional remedies (which make them whole swiftly after OSHA or an ALJ rule). Much of the delay is waiting for DOL to act on Administrative Law Judge decisions. The DOL Inspector General (IG) agrees that these delays constitute desuetude<sup>150</sup> and violate litigants' Due Process rights. Yet some other DOL managers vehemently deny that there is desuetude (if they know what it means). Why do whistleblower cases take years when the whistleblower laws each promise 90 days? The Reagan attack on government regulation hit the Labor Department particularly hard. DOL managers delayed whistleblower cases and sometimes intervened in particular case decisions.<sup>151</sup>

For two decades, DOL has weakened its enforcement of laws against discrimination against working men and women, reducing manpower and funding. Workers have been denied prompt adjudications through deliberate choices made by former Secretary of Labor Elizabeth Dole and other Reagan-Bush era Labor Secretaries, also including Clinton Secretary Robert B. Reich. The morale, numbers and budgets of DOL adjudicators and investigators plummeted.

### ***EVisCERATION OF DOL LABOR LAW ENFORCEMENT SINCE 1981***

DOL was eviscerated under Presidents Reagan and Bush and has not recovered under President Clinton. The Lawyer's Committee for Civil Rights Under Law reported in 1993 that DOL "made a mockery" of the DOL Office of Federal Contracts Compliance Programs (OFCCP) during twelve years marked by "a climate of official hostility" to civil rights.<sup>152</sup> A 1998 USA Today investigation found DOL is still greatly reducing child labor law fines, even after deaths occur: a DOL manager told one family that a higher fine would not bring back their son.<sup>153</sup> Secretary of Labor Alexis Herman has stated that while the economy is booming and unemployment is "the lowest in a quarter century" --

occupational fatality rates remain unchanged. **Over 6200** working men and women died on the job [in 1997]. No workers should be forced to choose between their lives and their livelihoods.<sup>154</sup>

### ***DOL'S "UNCONSCIONABLE" DELAYS***

The Department of Labor Inspector General and U.S. General Accounting Office have found that DOL whistleblower cases take too long to adjudicate. This

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results in DOL's inability to protect "First Amendment values" in the workplace.<sup>155</sup> Delays help make any DOL remedy meaningless, often years after the fact.

The DOL IG found that the DOL Office of Administrative Appeals was a graveyard for discrimination cases, with cases up to 10 to 20 years old found by the DOL IG. Amidst these delays, what once were one day or half-day whistleblower "mini-trials" are now turning into week-long and longer trials, with large organizations spending millions of dollars on lawyers to fight reinstatement, backpay and damages for fired whistleblowers, taxing the resources of whistleblowers and their counsel. After often complex whistleblower trials, there are often multi-year waits for appeals DELAYED BY DESIGN! The undisputed evidence of this fact comes from the DOL IG.

The Reagan Administration's first Labor Secretary was Raymond Donovan, formerly of Schiavone Construction Company. Under Secretary Donovan and his successors, corporate interests were exalted in DOL. Under Secretary Donovan, the DOL whistleblower case appeals process became biased and political, openly and notoriously biased in favor of employers. Secretaries of Labor Ray Donovan, Elizabeth Hanford Dole, Lynn Martin, Ann Dore McLaughlin, William E. Brock III and Roderick D'Arment were all involved in DOL's oppression of whistleblowers. The same can be said for President Clinton's first Secretary of Labor, Robert Reich, 1993-1997. Finally, under Alexis Herman the current Secretary of Labor, very few final whistleblower decisions have been issued, and the Administrative Review Board has taken to posting its briefing orders on the Internet to give the illusion of activity.

***DOL INSPECTOR GENERAL FOUND INTENTIONAL DELAYS OF WHISTLEBLOWER CASES***

The DOL Inspector General found intentional political appointee orders not to issue decisions in pending DOL worker rights adjudications.

In the 1980s, the Tennessee Valley Authority (TVA) was the most frequent defendant in DOL nuclear powerplant whistleblower cases: at one point, 90% of all cases in the country were filed against TVA. In 1985, a former TVA lawyer, Ms. M. Elizabeth Culbreth, was named DOL Office of Administrative Appeals (OAA) Director. Soon thereafter, a Tennessee Valley Authority lawyer allegedly bragged, "we've got someone right outside the Secretary's door."

TVA and other employer lawyers could count on OAA delays to coerce lowball settlements. A deliberate "tilt" against whistleblowers was implemented by M. Elizabeth Culbreth, controversial Director of OAA during 1985-93. During Ms. Culbreth's years, political appointees delayed decisions by design. The DOL IG found that several Secretaries of Labor gave orders that Ms. Culbreth willingly carried out. Ms. Culbreth was fingered by her Deputy, Gresham Smith, another

Schedule C appointee. Mr. Smith wrote a memorandum purporting that DOL OAA staff wanted to protect workers and was unable to do so.

Employers delighted in the delays in whistleblower cases during Ms. Culbreth's reign, as well as her series of very narrow rulings on statute of limitations and evidence. Ms. Culbreth is now a whistleblower law adviser for Lockheed Martin. Ms. Culbreth's career at DOL from 1985-1993 left American whistleblower law careening in its wake, saddled with an enormous backlog of decisions delayed by her design as the willing spear carrier for the political agendas of successive Secretaries of Labor.

### ***DOL'S HISTORY OF MISHANDLING APPEALS***

DOL has fumbled appellate adjudications of all kinds for decades, unwilling and unable to provide either prompt decisions or independent decisionmakers.

#### ***LACK OF INDEPENDENCE AND COMPETENCE***

In 1986, the DOL Inspector General recommended moving the Office of Administrative Appeals out of the Solicitor's office "for reasons of independence."<sup>156</sup> By comparison, the Interior Department made this change in its Office of Hearings and Appeals in the 1970s.<sup>157</sup> The IG also found that OAA lacked a docket system and adequate case management reporting system. *Id.* As a result of that report, the OAA was moved under the Secretary of Labor.<sup>158</sup> DOL ALJ decisions were still being reviewed by staff attorneys, not ALJs whose independence is protected.<sup>159</sup>

#### ***IG FOUND CASES SHOVED IN "BURIAL GROUND"***

Critical 1993 and 1994 Inspector General audits found that the Secretary of Labor's Office of Administrative Appeals had "served as a burial ground for cases on which the Secretary and other Departmental officials did not issue a final decision."<sup>160</sup> The DOL IG found that OAA "functioned to keep some matters from ever reaching final decisions."

Looking at the 26 oldest cases, DOL IG found that "the average elapsed time for these cases from receipt by OAA to the time of our audit work was 7.5 years and the range was from 5.3 years to 10.5 years."<sup>161</sup> In a number of cases, draft decisions were written and never issued, one as early as 1984,<sup>162</sup> but no final decision was issued.

In the *Honeywell* sex discrimination case, over 1000 defense contractor employee women waited a fifth of a century for the Secretary of Labor and OAA to act: "This case is 20 years old," the IG reported in 1994.<sup>163</sup> The case began in 1972 and was decided by Reich in 1994. The women worked in Minneapolis-St.

Paul area offices, warehouses and factories making guidance systems for aircraft, weapons and other weapons systems as well as HVAC controls. The women were subjected to a workplace in which there were men-only jobs and a denial of fair promotions.<sup>164</sup>

### ***POOR DOL MANAGEMENT RESPONSE TO AUDIT***

The DOL Inspector General (IG) contends that OAA management failed to respond responsibly to the 1993 audit, leading to a critical DOL IG 1994 memorandum to the Secretary of Labor.<sup>165</sup> The DOL IG found "major deficiencies" in OAA workload management and productivity "to a degree that constitutes denial of due process to some parties awaiting final decisions from the Secretary of Labor and other Departmental officials."<sup>166</sup>

### ***LACK OF TIMELINESS STANDARDS***

In May 1993, the DOL IG recommended that OAA establish "timeliness standards," develop workload management information and "focus the planning and budgeting processing on identifying the operational changes and the resources required to meet the standards." OIG maintains OAA did not do so.

### ***OAA ADMITS NEED TO "RESTORE INTEGRITY" TO DOL ADMINISTRATIVE PROCESS***

In the view of the IG, after the IG's 1993 OAA findings and request for action, OAA did a desultory job for months coming up with an action plan to address all of the IG's findings. OAA noted in the short "plan" its perennial Reagan-Bush era budget, personnel and "morale" problems,<sup>167</sup> and the lack of a permanent OAA Director<sup>168</sup>, protesting that OAA employees:

are conscientious, and dedicated to the vindication of employees' rights in our cases and were not responsible for the decision to delay work on some of the oldest cases. I believe that I can represent that they were uniformly thrilled about the issuance of Honeywell and the prospect that these other old cases will be issued.<sup>169</sup>

Eleven days after Acting OAA Director Gresham Smith's memo, Secretary Reich responded in writing:

... Beginning June 18 and biweekly until completion of the last case, please submit a status report of case progress.

In response to issues raised in your June 4 memo, Betty Bolden, Associate Deputy Secretary will be your direct contact in the Secretary's Office secondly, you and [DOL Solicitor] Tom Williamson should prepare a joint

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recommendation concerning delegation of signature authority for OAA cases.<sup>170</sup>

Mr. Smith thereupon bragged to his staff that OAA's winning the Secretary's "delegation of authority" was "an arduous struggle," claiming it was:

for the benefit of the parties and the **restoration of the integrity of the administrative adjudicatory process**, to wit justice delayed is justice denied. I know this may sound corny, but I am even more confident that every one of us is firmly committed to the goal of expeditiously vindicating individuals' rights in cases where the records supports that conclusion.<sup>171</sup> (Emphasis added).

**LABOR SECRETARY ROBERT REICH BRAGS ABOUT HIS PROGRESS "DISPOSING" OF CASES**

In 1994, Secretary of Labor, Robert Reich issued a glowing 1994 public press release claiming that OAA made "commendable progress" in OAA's "effort to guarantee swift and efficient results."<sup>172</sup> This release was materially false and misleading. The IG found later that year that OAA had an "absence of responsible management" that will "tragically impact its customers, with the continuing prospect of substantial prejudice to the parties involved in the cases."<sup>173</sup> The DOL OIG said that DOL OAA "demonstrated a high disregard for service" to its "customers,"<sup>174</sup> with no "significant change,"<sup>175</sup> causing "unconscionable delays in providing justice to American workers."<sup>176</sup>

Secretary Reich's 1994 news release lauded DOL OAA's work "disposing" of cases.<sup>177</sup> After years of directed DOL OAA delays directed by the Secretary, this was an unfortunate choice of words. This is particularly insensitive language by a Rhodes Scholar and published author on labor economics<sup>178</sup>, speaking about workers' discrimination cases. It was not only insensitive and bureaucratic -- it was perhaps a Freudian slip, for on the whole, Secretary Reich proved to be just as pro-business as his predecessors, with labor law enforcement still not pursued and emphasis placed on appeasement of employers.

**UNKEPT PROMISES FOR TIMELY DECISIONS**

In 1995, DOL OAA and the DOL Solicitor promised Oak Ridge National Laboratory (ORNL) whistleblower Bud Varnadore a decision on his 1991 whistleblower case, where the cancer patient was placed next to radioactive waste barrels, mercury and toxins in retaliation for raising environmental concerns. The case was fully briefed to OAA in 1993 and involved an eight foot record. DOL OAA missed its promise to decide the case by October 1. Mr. Varnadore sued for a writ of *mandamus* and DOL broke its promise to the Court. Then Secretary Reich issued a decision that extravagantly twisted the law on

statute of limitations against Mr. Varnadore, on January 26, 1996, a partial decision on part of his claims, leaving the rest to be decided by his newly created ARB on June 14, 1996.

***DOL ADMINISTRATIVE REVIEW BOARD (ARB)  
CREATED IN SECRECY IN 1996***

In April 1996, an Administrative Review Board (ARB) was established on Secretary of Labor orders.<sup>179</sup> DOL then ignored whistleblowers' request to utilize notice and comment rulemaking regarding ARB.<sup>180</sup> With no public involvement whatever, with no notice-and-comment rulemaking, with no legislative hearings, Secretary Robert Reich handed off whistleblower cases to the Administrative Review Board. Secretary Reich created ARB in secrecy and appointed its first members without benefit of legislation, rulemaking or Senate confirmations. Reich substituted a political board of short-timers to sign decisions signed by the Secretary for twenty years. It appears that this was merely an effort to make a structural-functional change to temporarily divert criticism. (Reich stepped down in 1997.)

After being scolded by the DOL IG to take "customer views" into consideration, top DOL managers did not do so. Instead, Reich created the ARB in 1996, proceeding from his 1993 memorandum ordering work on delegation of authority.

There was a 100% turnover of the ARB membership from 1996 to 1998, with none of the first three political appointees staying for a second term.

For the most part, ARB lacks open governance and healthy debate -- dissents are rare, oral arguments have not been held, and basic information such as a detailed biography or photographs are not available.<sup>181</sup>

ARB has jurisdiction over Administrative Law Judge and Wage Hour decisions under over 40 federal laws.<sup>182</sup> Not one of these laws is subject to the military exemption from the Administrative Procedure Act. None of these laws requires secrecy. The secretive creation of the ARB was a reflection of DOL's diffidence toward worker free speech and whistleblowers. The secrecy was an insult to workers, failing to give them a chance to comment, with DOL taking the position before the Sixth Circuit that creating ARB was merely "procedural" and hence required no public comment. DOL is still withholding information on the creation of ARB,<sup>183</sup> and it is also loathe to provide detailed biographical information on Board members or their photographs.<sup>184</sup>

ARB was created in secrecy. Documents on the circumstances of secrecy still being kept secret. This reshuffling of deck chairs on the *Titanic* deck of DOL's notorious case "graveyard" is unconvincing as to DOL's intentions. DOL

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whistleblower law enforcement will lack reliability until it has a Congressional charter and becomes a permanent institution with Senate-confirmed, Presidentially-appointed personnel -- independent agencies.

Secretary Reich compared this administrative appeals function to being "an appellate judge."<sup>185</sup> Yet the members of the ARB are not judges. They are not selected like judges, but like politicians. Not one of the ARB members since 1996 has been an Administrative Law Judge. Each ARB member has come from outside DOL -- with the sole exception of Ms. Cynthia Attwood, a career government lawyer and manager, whose ARB service is very troubling.

Ms. Attwood's Administrative Review Board service violates the Secretary of Labor's 1996 order requiring that ARB members be "Public Members." Ms. Attwood should be asked to step down as an ARB member, because she is a Government lawyer, not a public member. ARB members are required to be "Public Members."<sup>186</sup> Ms. Attwood does not meet the requirements because she is a Government employee. Ms. Attwood's ARB service violates the Secretary's Order. DOL knows better. DOL knows the difference between a public member and a Government employee, as under the prior Wage Appeals Board and Board of Service Contract Act Appeals. The term "public member" means non-Government employee. This term has been specifically defined, as with "Public Members" of the Administrative Conference of the United States, 1962-1994.<sup>187</sup> Ms. Attwood is thus not qualified by Secretary of Labor to be an ARB member. Ms. Attwood's ARB appointment was improper, is in violation of the Secretary's authority and she should be terminated. Ms. Attwood's serving as a "public member" is extremely troubling, and requires full and candid disclosures and a hearing and answers to questions that ARB has refused to answer since June 10, 1999.<sup>188</sup> Cynthia Attwood's ARB membership as a "public member" is illegal and must end. The Secretary of Labor should declare Ms. Attwood's seat to be vacant. The 70 questions of June 10, 1999 must be answered in a public forum, e.g., a hearing for ARB's "customers" -- the parties in all DOL ARB cases. No Complainant should be required to drink from a poison well. Ms. Attwood's illegal service has "poisoned the water in the reservoir."<sup>189</sup> ARB members should either be Administrative Law Judges or persons appointed with the advice and consent of the United States Senate. Environmental and nuclear whistleblower cases should not be heard by a political body lacking in judicial independence, when other workers have cases heard by independent agencies.

Whistleblowers are entitled to a "working instrument of government."<sup>190</sup> Instead, DOL is trying to return to the days before 1986, when the Inspector General recommended moving OAA out of the Solicitor's office, which decided appellate adjudications in-house.<sup>191</sup> Ms. Attwood's presence on the ARB shows the Solicitor's attempt to control the ARB. There is no evidence that DOL has ever advertised or posted ARB vacancies: instead they are used as political patronage, like any other Schedule C job. This is unacceptable.

Like his predecessors, Secretary Reich was an unjust steward of whistleblower law. Secretary Reich placed adjudication of Department of Labor whistleblower cases on an inferior basis and an unequal plane compared to other agencies adjudicating protected activity, namely the National Labor Relations Board (NLRB), Federal Labor Relations Authority (FLRA), Federal Mine Safety and Health Review Commission (FMSHRC), Occupational Safety and Health Review Commission (OSHR), and Merit Systems Protection Board (MSPB). Every member of those five protected activity adjudication agencies are confirmed by the Senate after appointment of the President.<sup>192</sup>

Secretary Reich assigned whistleblower cases to a "temp" organization staffed by the Solicitor's office and decided without oral arguments or dissent by political appointees -- all non-judges, with two year terms (ARB members actually serve at the Secretary's pleasure under the Secretary's Order creating ARB). DOL's shoddy, disparate treatment of whistleblower cases with lack of independence shows continuing disrespect for or lack of interest in whistleblower cases. This lack of statutory independence has not been justified by DOL or industry groups.

ARB succeeds to the OAA, Wage Appeals Board, Board of Service Contract Appeals, two of which had no expertise on discrimination. ARB is at best a hastily created political creature that lacks respect by the Administration and the whistleblower community. The first constitutional challenge to the creation of ARB failed in the Sixth Circuit.<sup>193</sup> Further challenges are possible and oversight and investigation are required of the surreal and secretive circumstances through which this allegedly unconstitutional and illegal body was created.

ARB has received mixed reviews from the whistleblower bar. On its first day it issued a setback for whistleblowers<sup>194</sup> and a major whistleblower victory.<sup>195</sup> On the one hand, the Clinton Administration took steps to reduce the backlog, which was intentionally created under Reagan and Bush. On the other hand, the quality, compassion and depth of DOL whistleblower appellate decisions are uneven and inconsistent, despite OAA's 1994 Mission Statement to produce "a large number of well reasoned, high quality decisions while complying with mandated deadlines and giving special emphasis to reducing the average amount of time a case is on the docket."<sup>196</sup>

Some decisions show real understanding and legal scholarship. Other decisions are based on a minimal reading of the record and written in an administrative judicial fog of unfairness and pique at being bothered, occasionally with a tone of smarminess to boot. The outcome before OAA and ARB reflects the personality of the holdover DOL staff attorney assigned to write the case. For years OAA was used as a dumping ground for unwanted lawyers who DOL wanted to keep on its payroll but out of litigation: these included a Carter-appointed Benefits Review Board Chair fired for being too pro-worker and a Bush appointed BRB Chair who encumbered an OAA position while on sick

leave for two years: DOL's choice of slot for the lawyers' sinecure contributed to the delay in whistleblower cases.

Whether before ARB or OAA, whistleblowers still wait for years for often inscrutable decisions by the Secretary of Labor's unvetted political appointees and their staff. ARB's first crew of political appointees began with its first Chair, the former Director of Iowans for Clinton (David O'Brien) and the man who recently provided the third vote in the Federal Election Commission (FEC) to reject a staff audit finding Democrats and Republicans abused corporate soft money (Karl J. Sandstrom). Mr. Sandstrom was noted as the swing vote among three FEC members voting not to regulate soft money (the only Democrat to do so). Mr. Sandstrom and his Republican colleagues were termed "political hacks" by *Wall Street Journal* reporter Albert R. Hunt in a CNN "Outrage of the Week."<sup>197</sup> A new group of ARB members was appointed in 1998 and there has not yet been enough work produced to judge their performance.<sup>198</sup> One of the three 1998 ARB appointees is Cynthia Atwood, former Associate Solicitor in charge of defending the Occupational Safety and Health Administration and the Mine Safety and Health Administration.

### ***BROKEN PRESIDENTIAL PROMISES ON PROTECTING WHISTLEBLOWERS***

DOL ARB is **not** the "office" President Clinton called for in 1992:

Workers who come forward with reports of violations of the law should be protected. .... **The worker needs to have an assurance that somewhere in the federal government is an *office* that will act effectively to protect the worker. Swift action ... to ensure that reprisals will not be tolerated will send a clear message on this issue.....** I will send a very clear message to senior officials throughout the federal government.... employees must feel comfortable in sharing their concerns with their own [employer]. We must view these internal criticisms as something to learn from and to gain from, not as attacks that must be quashed..... Whether it concerns the safety of drugs or food, the dangers of hazardous waste at a certain site, or which particular projects most deserve[] federal funds, we are better served as a nation if dissenting views are given a full and fair hearing. Credible positions by scientists should be able to withstand dissenting views of other scientists.<sup>199</sup>

Presidents Reagan and Bush also praised and promised to protect whistleblowers. No one should take any of these promises seriously. DOL whistleblower adjudications have been decided by proverbial "team players," persons lacking in independence.

To date, President Clinton's 1992 promise remains just "pie in the sky in the sweet bye and bye," as the late UMW and CIO President John L. Lewis put it best. President Clinton has not yet kept his 1992 promise on whistleblower protection. Similar mellifluous whistleblower protection promises were made about whistleblowers by Presidents Reagan and Bush and their cabinet members and managers. Despite these promises, government managers continue to abuse whistleblowers, which at so many large employers is an expected part of their management culture. Such Presidential promises are viewed by some whistleblowers as no more reliable than the promises that were contained in numerous broken United States treaties with Native Americans (or every broken treaty ever signed by the former Soviet Union). Whistleblower laws are too weak and are being weakened daily by delay and desuetude.

***DOL'S NEGLIGIBLE/NEGLIGENT DOL  
WHISTLEBLOWER LAW ENFORCEMENT***

**"What kind of place is this?  
Where you almost mean what you say?  
Where your laws almost work?  
How can you live like that?"**

-- The African Cinque, in Steven Spielberg's film, Amistad

By law, DOL must enforce anti-discrimination laws. By law, DOL must follow its own rules, including the 90 day time limit.<sup>200</sup> This DOL delay has consequences for everyone. Taking multiple years with administrative delays denies equal justice, making a mockery of the "90 day" whistleblower remedy. Whistleblower law is now slow and unresponsive to crises involving violations of freedom of speech at dangerous facilities, ranging from nuclear powerplants and weapons plants, incinerators, construction sites, military bases, NASA facilities and hospitals. If whistleblower law kept its promise and DOL issued final orders swiftly, it would give workers the information they need to know in real time before ever considering whether to risk a career by disclosures of environmental, safety and health concerns. Under current cumbersome procedures, it can take seven years and longer from start to finish -- longer than World War II -- to decide whether one worker was discriminated against in one workplace for raising environmental, health or safety concerns!

Under three consecutive Presidential Administrations and their Secretaries of Labor refused to enforce basic worker protection laws, with orders given under Reagan and Bush not to issue decisions. That's what the DOL Inspector General found in 1993 and 1994. The DOL IG recommended to the Secretary that DOL change its procedures in response to "customer concerns." There is no evidence DOL has ever done so.

Whistleblower rights to remedy discrimination with backpay, reinstatement and

damages are not being enforced adequately by the Department of Labor. The public is at risk due to systematic lax-enforcement of laws meant to encourage protected disclosures (whistleblowing) about nuclear powerplant, trucking and environmental problems. Laws on the books are not being enforced and are inadequate. Congress has not passed reforms recommended by the American Bar Association, which found whistleblower laws protect the environment and public health and safety.

To this day, doctors, nurses, pilots, ground crews and other essential workers are not covered, while nuclear workers and truck drivers are covered: there is no rhyme or reason. Since the 1970's; under a random, *ad hoc* patchwork quilt of statutes supposedly protecting "whistleblower" worker rights to raise environmental health and safety concerns, the Department of Labor, Department of Energy and Nuclear Regulatory Commission, and corporate and government lawyers have erected a series of barriers that defy description. A tragic combination of delays and outright hostility by the last three Presidential Administrations has left whistleblowers bereft of meaningful protection. The result is a clear and present danger to public health and safety. Laws are not enforced. Nonenforcement of whistleblower law enforcement results in a chilling effect that lets employers fire, harass, intimidate and coerce protected activity at dangerous plants and management offices around the Nation.

It is no secret that powerful people in business and industry hate whistleblowers. President Richard Nixon fired whistleblower A. Ernest Fitzgerald, who got his job back in large part because the discriminatory conspiracy was caught on Nixon's taping system. The anti-whistleblower policies under Presidents Reagan, Bush and Clinton have been contrary to the publicly stated aims of those Administrations, all of which make statements about their purporting to support and treasure whistleblowers. The truth is the reverse: despite rhetoric. DOL and DOE process delays and paperwork, with little of the swift justice that the late United States Senator Edmund Muskie's amendments to environmental laws contemplated.

Since 1981, DOL has failed to make corporate and governmental wrongdoers accountable for discrimination and intimidation, and encourage power law firms to spend huge amounts of money defending against what they purport to be "small" claims, with the purpose of crushing whistleblowers, as Ralph Nader so eloquently writes.<sup>201</sup>

Under Presidents Reagan and Bush, environmental whistleblower decisions were deliberately delayed, the result of a covert policy, as found by the Department of Labor Inspector General in a 1993 report. Whistleblowers like Carolyn Larry, a Detroit Edison Company security employee, waited five years and longer for decisions that are supposed to take 90 days from filing to Secretary of Labor decision.<sup>202</sup> This was not always the case -- it appears as

late as 1983, whistleblower cases were being adjudicated promptly.<sup>203</sup> Then came Elizabeth Culbreth and the “graveyard” of whistleblower cases.

Secretary of Labor Robert Reich “passed the buck.” In a stroke of the pen in April 1996, Secretary of Labor Reich undid 20 years of whistleblower law. In June of 1996, a politically appointed DOL Administrative Review Board was appointed to decide whistleblower cases on appeal from Administrative Law Judge decisions. With this ill-advised stroke of the pen, Secretary of Labor Reich substituted a faceless board for the Secretary himself as the reviewer of ALJ decisions. The Secretary ended his role in whistleblower cases without notice and comment rulemaking<sup>204</sup> or appointment by the President and confirmation by the Senate.

### **EMPLOYERS’ “HARDBALL” TACTICS**

**Hardball defense of whistleblower litigation is common, as Ralph Nader argues.** Employers that pollute and retaliate are bullies. They behave that way. Many Respondents in whistleblower cases show emotional problems toward worker protected activity. Some engage in controversial, rude and crude “hardball” tactics. DOL typically shrinks from taking any actions on alleged ethical lapses of attorneys who represent rich and powerful corporations. Yet DOL regulations do not allow the disqualification of house counsel for an employer.<sup>205</sup> Hardball employer tactics in DOL whistleblower cases include:

- illegal inducements, including EPA Inspector General John Martin’s offer to pay for the cost of his deposition if Mr. Robert E. Tyndall yielded his right to have the deposition videotaped;
- advising managers not to sign statements made to DOL investigators and to request “confidential” treatment of such statements to keep them from use by whistleblowers in their DOL OALJ trials;
- workplace harassment of whistleblowers and witnesses, including assigning employees to hazardous duties in hazardous locations without relief;
- soliciting untrue statements about the whistleblower by fellow employees;
- provocative employer lawyer and management contacts with employees represented by counsel, denying the right to have an attorney present, including an improper interview with an employee during document copying, although the employer knew he was represented by counsel<sup>206</sup>;
- assigning several managers to meet with the employee to intimidate him or her during performance evaluations, etc.<sup>207</sup>;

- threats of criminal prosecution for protected disclosures and for using FOIA to learn about workplace harassment issues;
- sending FBI agents to visit whistleblowers and their counsel;
- setting up a phony “environmental group” and use of other surveillance and theft techniques to identify Alaska environmental whistleblowers and fire them from oil company employment -- incredibly, Wackenhüt, the corporation involved in this action, has been chosen again and again by DOE to run security operations and training, including a new contract to run Oak Ridge security operations;
- electronic surveillance, e.g., covert audio tape surveillance of Oak Ridge worker meetings with physicians and overt video surveillance of a worker meeting with the National Institute of Occupational Safety and Health (NIOSH);<sup>208</sup>
- wrongful threats to seek monetary sanctions, when such do not exist in DOL and were rejected by the Secretary of Labor in Rex v. EBASCO, with such threats even made by a Dallas corporate lawyer representing EBASCO, which lost on the issue, after remand of the Smith v. ESICORP case;
- material misrepresentations to the Secretary of Labor about the merger and acquisition of a respondent employer, designed to keep the new owner, a Fortune 500 Company, from being named as a Respondent;
- personal surveillance, including workplace “snitches” and “stool pigeons” to report instances of criticizing management.
- *ex parte* filings with DOL investigators withheld from complainants for months, including filings making scurrilous attacks on attorney and client<sup>209</sup>;
- threats to employees not to talk to whistleblowers or be seen talking to them in the workplace<sup>210</sup>;
- retaliatory referrals to psychiatrists and efforts to revoke security clearances<sup>211</sup>;
- branding of whistleblowers as “paranoid” and spreading any preposterous lie the mind can imagine, such as accusing workers of wanting to shut down nuclear powerplants where they work,<sup>212</sup> and other derogatory, defamatory and blacklisting information about whistleblowers and their lawyers (e.g., accusing them of wanting to “shut down the plant”, “yelling and screaming and cursing,” being “dangerous,” “racist,” “Communist,” etc.);

- attempted FOIA fee-grabbing in response to whistleblower litigation FOIA requests, with NASA seeking to charge nearly \$1 million, based on the fallacy that whistleblowers are “commercial requesters”;
- *pro forma* frivolous motions to dismiss and stay discovery in every case;
- *ad hominem* and false attacks on whistleblowers and their counsel;
- yelling, screaming, insults and threats by defense lawyers;
- sending in-house lawyers unfamiliar with the documents in a case to defend managers’ depositions, thereby delaying discovery as in-house counsel fails to bring promised documents located by outside counsel and demands to be educated by opposing counsel on the record of expensive expedited depositions ordered because of previous discovery abuse;
- making frivolous discovery objections on every request and deposition in every case, ranging from the sublime to the petty and childish (e.g., withering objections to the court reporter’s “instrumentality” of a tape recorder, used in plain view to tape Public Service Electric & Gas Company Senior Vice President’s deposition, requiring DOL District Chief Judge Robert D. Kaplan to take time from his day to rule that tape recorders are allowed in 1998 and the deposition must proceed), wasting everyone’s time;
- filing a federally-funded SLAPP suit against Secretary of Labor Robert Reich; (The suit was brought with some \$159,000 of Department of Energy funds) by Lockheed Martin; this defense tactic was in *Reid v. Methodist Medical Center of Oak Ridge et al.* and was brought by the law firm of former United States Senator Howard Henry Baker, Jr., former White House Chief of Staff and Senate Majority Leader. Senator Baker is the former employer of OAA Director M. Elizabeth Culbreth, who has guided Lockheed’s anti-whistleblower efforts.
- offering settlement agreements containing illegal “gag orders,” years after the Secretary of Labor declared these agreements to be illegal and unenforceable in DOL whistleblower cases, and contrary to public policy;<sup>213</sup>
- offering settlements whereby whistleblowers would receive nothing, but their attorney would be paid a fee;
- interfering with a protected DOL witness when a DOL lawyer leaned on a local District Attorney because his statements regarding Oak Ridge being a Company Town with severe chilling effects on whistleblowers (which remarks were made by the DA as a witness in open court in *Varnadore II*) were being quoted in DOL whistleblower litigation, embarrassing the DA in front of his



wife and friends at an Oak Ridge society wedding in hopes of severing his ties with counsel for DOE and contractor whistleblowers;

- a demeaning lack of professional courtesy toward whistleblowers and their counsel, ranging from refusal to negotiate discovery and other issues in good faith to refusal to shake the hand of a whistleblower lawyer upon first meeting;
- refusing to allow plaintiff attorneys to use telephones, with one Houston power lawyer once threatening to order a Texas nuclear powerplant's security guards to bodily remove an attorney representing a whistleblower when she asked to use the nearest phone to call the ALJ about employer obstreperousness;
- routinized workplace provocations and intentional employer "baiting" of both whistleblowers and their attorneys, intended to induce adverse reactions;
- in the context of putative settlement discussions, stating that "we've got the gold -- you've got to come and get it";
- requesting the psychiatric file of a whistleblower's wife, stating that "I have always wanted to know what was going on the mind of a red-headed woman," remarks that were at best prurient (causing a DOL District Chief Administrative Law Judge to issue a protective Order preventing in-house counsel and other corporate employees from seeing the lady's file);
- unfounded allegations of "unauthorized practice of law" for out-of-state whistleblower attorneys who are entitled to represent persons in administrative agency adjudications;<sup>214</sup> and
- effrontery. (To try to prevent a hearing on the first Space Shuttle whistleblower case, NASA's General Counsel even wrote the DOL Chief ALJ enclosing an initial NASA filing printed on paper bearing NASA's familiar letterhead, seeking to use NASA's government status and influence to win summary dismissal, later writing heated letters to the Secretary of Labor.<sup>215</sup> )

These are truly "disgruntled employers," threatened by the accountability that DOL is supposed to provide. They would probably not treat Title VII plaintiffs this way. Such disgruntled employers and their counsel are often fiercely anti-whistleblower, and openly rebellious toward the idea of federal intrusions over antebellum-style workplaces where workers are not permitted to be "uppity" and ask questions and raise concerns. (One DOL judge warned lawyers to stop using their thesauruses).

Such defense work in whistleblower cases, committed by both in-house counsel

and “prestigious” law firms, reflects primal fears of employers who want employees to keep their mouths shut so prison, fines and loss of government contracts for violations of environmental, safety, health, fraud and other laws. Such histrionic defense work is *sui generis*, resembling the hostility of racists toward African-American civil rights plaintiffs in a bygone era.<sup>216</sup> Like segregation, whistleblower retaliation is an ugly thing, defended by managers and lawyers who are in the words of Thomas Hobbes, “nasty, brutish and short.”

As Thomas Paine said, these are truly “the times that try [people’s] souls.” While there are whistleblower defense lawyers who are statesmanlike and dignified, too many whistleblower defense lawyers’ behavior is beyond the pale of employer lawyer norms in their Title VII and state law employment discrimination cases.

In America (except possibly for a few big cities), there is usually a professional norm of collegiality, cooperation and courtesy among Title VII plaintiff and defense lawyers who live and practice in the same community. In American whistleblower law, defense lawyer obstreperousness is a fact of life,<sup>217</sup> at times exceeding in one case anything that most plaintiff’s lawyers encounter in decades of legal practice, even inviting comparisons to John Grisham novels.

Often, defense lawyers in hotly contested DOL whistleblower cases work for national law firms and travel to defend such cases all over the country. Likewise, a few DOL plaintiffs’ lawyers also “ride circuit.” Defense attorneys whose practice is nationwide may have no compunctions about what offends a DOL judge or counsel they may never see again. Most lawyers, who practice in one community, are hesitant to do anything that will earn them a bad reputation with local judges and lawyers. Whistleblower defense lawyers with national firms often have no such compunctions.

Secretary of Labor Robert Reich wrote in a hotly contested Oak Ridge environmental whistleblower case about the duty to act with professionalism in dealing with opposing counsel in whistleblower cases. It was issued after some 75 pages of screeching arguments were filed by Methodist Medical Center of Oak Ridge and Lockheed Martin, fighting a mere *amicus curiae* brief filed by the Solicitor of Labor. Secretary Reich wrote of these intimidation tactics that:

the adversary process does not require attorneys to be clothed in a suit of armor and fight to the bitter end. The parties, the profession and the public all lose when the attorneys fail to [act] with common courtesy.<sup>218</sup>

The price of suppressing truths that can help protect the public at large is high. Employers are wasting tens of millions of dollars in fees that are dutifully included in the Gross National Product.<sup>219</sup> Vice President Gore has compared environmental whistleblowers to World War II anti-Nazi “resistance fighters” in

Europe.<sup>220</sup> The Government needs to enforce the law and protect whistleblowers, instead of acting like the Vichy France government (or worse).

### ***DOL TOO OFTEN REFUSES TO ENFORCE THE WHISTLEBLOWER LAWS***

#### ***DOL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION INVESTIGATORS***

Too often, DOL whistleblower investigations and conciliation efforts are ineffectual and inadequate. Whistleblower rights are poorly publicized by DOL. DOL investigations are mandatory under the law. Investigators are supposed to conciliate cases if possible, and investigations are supposed to take 30 days. Investigators are too often slow or incompetent, with investigations ineffectual or non-existent.

Some investigators sit on cases for as long as a year.<sup>221</sup> Some investigators are openly prejudiced against whistleblowers' rights. Some openly discourage whistleblowers from pursuing their cases.

In 1994, Travis Campbell, a DOL Baltimore investigations manager told EPA Inspector General Senior Special Agent Robert E. Tyndall, "you've got a tough row to hoe, Mr. Tyndall." Campbell tried to discourage Mr. Tyndall from pursuing the whistleblower case he settled in 1996, after winning reversal of two DOL judges and winning an important precedent.<sup>222</sup> Like Campbell, many DOL investigators discourage whistleblowers, give workers incorrect information and pressure them to settle on unfair terms.

Workers don't know their rights and too often DOL management abuses those rights.<sup>223</sup> When DOL investigators doggedly pursue cases, they are sometimes transferred, chastised and punished by DOL higherups. The result is less thorough investigations today than when Wage-Hour had the program.

Without a thorough DOL investigation to obtain witness statements and documents, employees must go through lengthy whistleblower litigation to win judgments or fair settlements. The policy of conciliation is undermined. As a result, workers often can't find lawyers willing to take their whistleblower cases. Trials are prolonged because workers are deprived of the investigations to which they are lawfully entitled. (No worker is obligated to take depositions, and when DOL fails to conduct good investigations, ALJs may spend longer in trial). Sadly, some DOL investigators and managers:

- refuse to investigate whistleblower cases on specious grounds, requiring Administrative Law Judges to order a remand for investigations<sup>224</sup>;

- falsely tell union employees that OSHA whistleblower complaints can't be filed in conjunction with their unions, despite Secretary of Labor statements that "the Department recognizes the valuable role played by employees and their representatives in enforcement"<sup>225</sup>;
- pressure unrepresented employees to settle cases without disclosing their rights and remedies, abusing the investigator's power and the worker's *pro se* status to keep down workloads and create phony *indicia* of success for statistics;
- pressure unrepresented employees to settle cases on the basis that their former employer is very angry with them;
- threaten employees that their cases will be dismissed if they don't name a settlement figure;
- provide employees disinformation or misinformation about whistleblower laws, such as statements that DOL does not enforce whistleblower laws<sup>226</sup> and that government agencies cannot be sued;
- emit repeated management affectations of ignorance of worker rights under environmental and nuclear whistleblower laws -- ironically, this includes not only DOE, but also top-level EPA appointees -- who refuse to provide badly needed whistleblower rights training ordered by DOL;<sup>227</sup>
- contact employees without permission of their attorneys;
- informed a whistleblower it was not in his best interest to be represented by his attorney, whom DOE does not like (during a conference call the investigator convened with the attorney to take the whistleblower's statement);
- conducted interviews of employee-witnesses in management offices;
- allowed themselves to be rebuffed by employers from going onto plant sites to view records and physical evidence;
- fail to obtain signed statements from managers, complicating trials, while erroneously accrediting such unsworn statements as true<sup>228</sup>;
- allowed discriminatory managers to assert "confidentiality" on their witness statements, complicating trials before DOL ALJs<sup>229</sup>;
- fail to utilize DOL's power to inspect and copy documents;

- accept almost any pretext from employers to close out cases, without examining files and interviewing relevant witnesses;
- refuse to afford employees an opportunity to rebut management pretexts;
- resist mandatory production of investigative records under FOIA of the investigative file (minus confidential statements), asserting inapplicable law enforcement exemptions.

Some of the worst OSHA investigations are in the Atlanta and Dallas regions. The portions of the country with Right-to-Work laws and a history of slavery and human rights violations are saddled with OSHA personnel who don't believe in the whistleblower laws and try their best to sidestep them, particularly when government agencies and facilities are involved.

### ***DOL ADMINISTRATIVE LAW JUDGES***

DOL judges are appointed pursuant to rigorous procedures adopted by the Office of Personnel Management pursuant to the Administrative Procedure Act<sup>230</sup> with the expectation of impartiality and honesty. A DOL Administrative Law Judge is appointed to decide cases promptly, based on the facts and evidence of record. He or she is designated by the administrative law system to be the "impartial, experienced examiner" -- the person whom the Supreme Court expects will "observe the witnesses and live with the case" in order to make findings of fact and conclusions of law about whether or not there was discrimination and retaliation.<sup>231</sup> Sadly, some DOL adjudicators have breached the standard of care, committing judicial malpractice, including judges who:

- made an illegal order that a whistleblower and his public interest attorneys pay an employer sanctions payment of \$77,468.53<sup>232</sup>
- delayed making decisions in "90 day" whistleblower cases for a year or more;
- placed arbitrary limits on time available for trial<sup>233</sup>;
- arbitrarily limited the ability to put on evidence<sup>234</sup>;
- took some 18 months to rule on a simple motion to remand for investigation, while four DOE security clearance workers raising concerns about giving felons, drug dealers and other unsuitable persons access to bomb-grade uranium and nuclear secrets, while they suffered from discrimination and a hostile working environment. The judge had been criticized by the Secretary for her inexcusable delays.<sup>235</sup> The judge recommended barring counsel from appearing before her for having raised concerns about her delay with GAO and Vice President Gore.<sup>236</sup> The judge committed suicide in December 1997.

- substituting their own superficial (possibly hierarchical and authoritarian values), beliefs and standards for the correct legal standards, deciding cases on the spurious basis of whether they like the whistleblower or consider his protected activity important to them (in the ALJ's often provincial worldview, say, as a former agency defense lawyer): this pattern helps produce chauvinism, not jurisprudence, and penalizes worker diversity, ignoring the Supreme Court's ruling that Courts do not sit to decide whether "litigants are nice."<sup>237</sup>
- angrily stated that it was somehow improper to use FOIA to obtain discovery from NASA, a Respondent in a DOL whistleblower case;
- angrily stated that it was somehow improper to use the legal term "SLAPP suit"<sup>238</sup> to describe an employer's lawsuit against an employee in state court, directing counsel not to use the term again;
- angrily stated it was somehow improper to name NASA's "Johnson Space Center" as a Respondent when DOL case names have often contained the names of military and other government facilities;
- stated it was somehow improper for a Hanford nuclear weapons plant chemist to tape record her retaliatory managers retaliating, holding it against her in a recommended decision that referred to her derisively as "this young woman."<sup>239</sup>
- referred to facts not in the record in a decision denying discovery and a hearing (later reversed)<sup>240</sup>;
- expressed concerns that if he found the complainant EPA IG investigator had a right to bring a whistleblower case, he would be besieged by a long line of other government investigators filing environmental whistleblower cases<sup>241</sup>;
- held an *ex parte* conference call with employers only after he said he was "unable" to reach Complainant's counsel, after giving only three days written mailed notice of a conference call with lawyers representing three parties in two noncontiguous distant states, without checking the parties' schedules or availability in advance;
- summoned whistleblower plaintiff and defense lawyers to a distant city for in-person conferences that lasted less than two hours, instead of using the telephone conference call method or scheduling a trip by the ALJ to the hearing location, then forbade the two whistleblower plaintiffs their right to testify before the ALJ about surveillance concerns leading to their discovery requests, categorically denying the right to information on anything other than surveillance on the date *in quo* and *sua sponte* raising national security

issues not raised by the Respondent Department of Energy.<sup>242</sup>

- in the context of a whistleblower case that would be tried in Knoxville, Tennessee made snide remarks about time spent holding hearings in Appalachia and Alaska and not wanting to “waste” three weeks in trial if he could avoid it, and asking whether or not a courthouse in Knoxville, Tennessee would have “air conditioning”;
- spread news of an attorney requesting “confidential” DOL OALJ “peer review” proceedings to all judges, breaching the lawyer’s right to confidentiality and creating bad feelings among judges who do not like to be criticized;
- *sua sponte* dismissed a complaint of post-hearing retaliation (DOE’s sending a dispositive motion in a DOL whistleblower case to a whistleblower lawyer by mail five days after the document was sent by DOE by FedEx to the ALJ), by damning the complaint as a “**red (sic) herring (sic), an attempt (sic) to raise issues where none (sic) exist, simply (sic) to attempt to support the serial filings of the same (sic) cause of action (sic)**,”<sup>243</sup> blasting undisputed allegations where no motion to dismiss was filed and responses pending Complainant’s discovery requests were overdue as “**so patently (sic) absurd (sic) that [a Show Cause] order would serve no (sic) purpose.**”<sup>244</sup>
- repeatedly used the pejorative word “ludicrous”<sup>245</sup> in at least two of his whistleblower decisions to describe workers’ valid legal positions, including one expressed by the Solicitor of Labor on behalf of a truck driver who was found to be a discrimination victim.<sup>246</sup>
- showed disdain toward and prejudice against whistleblowers (one ALJ was reversed three times in the same case for refusing to grant the first-ever NASA Johnson Space Center whistleblower complainant discovery and a hearing).<sup>247</sup>
- signed decisions containing asserted “facts” not present in the record -- raising ethical questions about whether *ex parte* contacts have occurred.<sup>248</sup>

There is too often an attitude of coziness toward corporate law firms. Under President Bush and his controversial DOL Solicitor Marshall J. Breger (former Chair of ACUS), the Solicitor’s office directed the DOL Office of Administrative Law Judges to serve copies of all whistleblower decisions on the Washington, D.C. law firm of Steptoe & Johnson, supposedly to avoid a lawsuit under the Administrative Procedure Act. The Solicitor’s office in effect demanded that judges show an appearance of impropriety and bias toward a “prestigious” large corporate law firm that represents employers, including oil companies. (Steptoe had threatened to sue under the Administrative Procedure Act because DOL did

not publish its decisions, which are now on the Internet). When several whistleblower plaintiff attorneys asked for equal treatment with the special service sheet treatment accorded to the Steptoe firm, the DOL OALJ Front Office issued a memo ending the practice, creating a special box for Steptoe in the DOL OALJ mailroom. (For several years, some DOL ALJs *continued* to mail Steptoe & Johnson copies of all whistleblower orders at taxpayer expense, despite the instruction to end the practice, even when the memo was called attention to them by counsel.) Whistleblowers and their attorneys have been heaped with scorn by some Judges.<sup>248</sup> When DOL ALJs do so, they have sometimes been eventually reversed by the Secretary.<sup>250</sup> In contrast, DOL ALJs seldom if ever criticize defense attorneys, and in-house employer defense attorneys are immune from DOL rules on attorney disqualification.<sup>251</sup> However, one employer defense firm was disqualified for improper contacts -- an attorney interview with a foreign-born employee represented by counsel during document production and copying.<sup>252</sup>

### ***DOL ADMINISTRATIVE REVIEW BOARD***

For twenty years, whistleblowers waited for final decisions signed by the Secretary of Labor. Since June 14, 1996, whistleblowers now wait for decisions signed by three GS-15 political appointees -- decisions from a body called the Administrative Review Board (ARB). DOL created ARB and changed the identity of the final decisionmaker without either legislation or rulemaking. In 1996, Secretary of Labor creating an agency and appointing its members. There was no notice-and-comment rulemaking and no legislation. DOL drastically altered the process for whistleblower appeals, removing the Secretary's signature from decisions.

The DOL IG reminded OAA to involve its "customers" (litigants) in OAA policymaking. Yet no opinion was sought from the whistleblower community before creating the Administrative Review Board. Were opinions provided by others? The answer is not known, for the DOL Solicitor has withheld nearly 100 pages of documents on the ARB's creation. The defense contractors and others defending DOL whistleblower cases include such well-connected companies as the world's largest defense contractor, Lockheed Martin, a major contributor of soft money (\$2.5 million) to both parties in 1996 Presidential campaigns. ARB was chaired by a former Clinton campaign official. Whatever the hidden process, 1996 produced a sea change for whistleblower law, substituting three unknowns for the Secretary of Labor in deciding whistleblower cases.

From the 1970s until 1996, the Secretary of Labor decided whistleblower appeals, signing decisions drafted by DOL attorneys, all subject to performance appraisals (unlike the ALJs whose decisions are considered). At least the Secretary was responsible to the people and the President. In the Presidential Election year of 1996, Secretary of Labor Robert B. Reich in April 1996



established an Administrative Review Board, appointed by the Secretary of Labor, with two year terms, serving at the pleasure of the Secretary of Labor. There are no background investigations of ARB members. There are no Senate confirmation hearings. There are no Presidential appointments. Never has one of the political appointees who have served on the ARB filed a dissent. Like its predecessor Office of Administrative Appeals, the ARB has, consistently, demonstrated inconsistency. On June 14, 1996, ARB's first day in business, after supposedly reviewing an eight foot record, ARB shredded Mr. Varnadore's rights, finding his complaint to be untimely. Yet that same day, the ARB also issued its decision clarifying rights of environmental law enforcement personnel, protecting criminal investigators' right to be free from punishment for refusing to conceal government wrongdoing.<sup>253</sup> ARB, like OAA, has held that workers "waived" issues, even though Draconian page limitations have been imposed for briefs filed before DOL in appeals, and sometimes after trials.

### ***BENDING AND TWISTING WHISTLEBLOWER LAW***

Here are a few more examples of whistleblower law being bent and twisted to help powerful parties, particularly government agencies and large corporations:

#### ***SECRETARY ROBERT REICH EXEMPTED PUTATIVE "INDEPENDENT CONTRACTORS" FROM WHISTLEBLOWER PROTECTION.***

Secretary of Labor Reich denied whistleblower protection to millions labeled "independent contractors" and not "employees."<sup>254</sup> Reid v. Methodist Medical Center involved a doctor recruited to practice in Oak Ridge for his cancer expertise, who found high levels of cancers and heavy metals in his patients in Oak Ridge, Tennessee, a "Company Town" nuclear weapons plant community.

Dr. Reid asked one too many questions of the Lockheed Martin Energy Medical Director. Congressman John Dingell's 1992-93 House Energy & Commerce Committee investigation found that Dr. Daniel Conrad called Methodist Medical Center and said "who is this quack?" A hostile working environment with tight controls was put on Dr. Reid's practice, which was controlled by the Medical Center's profit-making subsidiary. Dr. Reid was discharged from his position but denied the opportunity for either discovery or a hearing on independent contractor status. This ruling denied discovery to allow a physician to prove his practice was controlled by the Company Town's hospital.

Even Judge Tureck acknowledged that

Under the contract **TMM was to run the business, financial and administrative aspects of Dr. Reid's medical practice**, while he was solely responsible for his medical practice.<sup>255</sup>

The contract includes purported TMM "rights" to patient medical charts.<sup>256</sup>

It is no secret that employment contracts are being written as "independent contractor" contracts, to try to resist *respondeat superior* and other forms of liability.<sup>257</sup> By inviting employers to hire more "independent contractors," Secretary Reich's *Reid* decision is one of the greatest injustices in DOL history, inviting "manipulation" of government contractor contracts.<sup>258</sup> Secretary Reich's decision in *Reid* elevated form over function and encourages employers to proliferate "independent contractor" status to conceal wrongdoing. All "persons" should be covered by environmental whistleblower laws, no matter what their labels.

### ***NEW ARB LOOPHOLE EXEMPTS FEDERAL PRISONERS***

Several administrative law judges, including DOL Deputy Chief Judge Earl Thomas, a retired Air Force officer courageously ruled that federal prisoners in Federal Prison Industries (UNICOR) facilities could file whistleblower complaints.<sup>259</sup> The decisions were widely hailed principled. Other DOL judges followed his precedent. There never was any "flood" of prisoner suits in DOL, and the provision worked to protect workers from retaliation for raising environmental health concerns.

Throughout the 1980s and 1990s, there was unyielding political pressure on the Secretary of Labor from the Department of Justice. The DOL ARB finally overruled that reasonable judgment, finding prisoners beyond environmental whistleblower rules because of the mandatory nature of their confinement, holding prisoners were not "employees" even though they are paid low wages and exposed to toxics on the job -- the people whom DOL is supposed to protect. The Justice Department was furious at DOL enforcing environmental whistleblower laws in its prison factories. The Meese-era Justice Department refused to allow Justice Department witnesses appear in some DOL OALJ hearings held at prisons -- a sign of disrespect and "hardball" resistance to DOL whistleblower law from the Nation's chief law enforcement agency.

DOJ's disrespect for DOL empowered other federal agencies to try "massive resistance" campaigns against whistleblower rights. DOJ's bulldozer behavior in response to Judge Thomas's independence and DOL management's fawning obeisance to the Justice Department in the prisoner cases established a pattern for other cases with federal interests -- federal agencies expect special treatment, even though they are often recidivist discriminators.

### ***FIFTH CIRCUIT'S BROWN & ROOT DECISION LOOPHOLE EXEMPTS WORKERS WHO "TELL THE BOSS" AND NOT A FEDERAL AGENCY***

Workers in the two largest chemical producing states, heavily polluted by oil and chemical plants, might as well be in slavery. Throughout the 1980s and 1990s and into the 21st century, workers in Texas and Louisiana, continued to be denied adequate environmental whistleblower protection. This is the direct and proximate result of the Fifth Circuit's ruling that you can't be protected if you merely tell the boss: you must make a report to a government regulator.<sup>260</sup> This Brown & Root decision is contrary to the law of every other circuit.<sup>261</sup>

After "non-acquiescing" in this Brown & Root decision and being criticized by the Fifth Circuit for it, DOL has now accepted it in the Fifth Circuit: except for ERA and STAA, which convey the right to object to management, Fifth Circuit residents lack basic whistleblower protections. In the Fifth Circuit, ethical workers are often fired as "troublemakers" before they get around to filing an official complaint. The effect of the Brown & Root decision is that employers in Texas and Louisiana may treat workers as virtual "mind slaves," with no right to raise immediate concerns to the boss in "real time" when they can save lives, health and property from pollution, e.g., worker expression of concerns "that pipe is polluting that creek from which people draw their water," "that welder is intoxicated" or "this plant is going to explode if you don't turn off that valve now."<sup>262</sup> Future Bhopals would be prevented if this ethic took root.

These two states are well "smeared, bleared and teared"<sup>263</sup> in petroleum and chemical industries, with over half the Nation's refining capacity, with serious air and water pollution problems, and with babies born without brains in South Texas and Mexican *maquiladora* towns. In the midst of this environmental wreckage, the Fifth Circuit's Brown & Root rule illustrates the Critical Legal Studies' movement's version of the "Golden Rule" ("they who hold the gold make the legal rules.") The Brown & Root decision epitomizes the sheer *chutzpa* and awesome power of the local industry<sup>264</sup> and the *Who's Who* of Houston to twist worker protection laws. The Brown & Root decision is a special interest stench in the nostrils of the Nation. Brown & Root v. Donovan should be overruled by Congress in clarifying the environmental whistleblower statutes, as the ERA nuclear whistleblower law was in 1992.

### **WHISTLEBLOWER LAW REFORMS NEEDED**

Congress and the President should set about revising and strengthening laws that protect environmental, nuclear and safety whistleblowers, a special class of government-protected witnesses:

- Whistleblower law does not yet protect all public and private sector workers expressing any concern about safety, health and environmental problems or any violation of statute or regulation, as the ABA endorsed in 1990.

- The statute of limitations should be at least one year, as ABA recommended. A 30 day statute of limitations for a worker protection law is an oxymoron. Like boxers, workers are often well-advised not to "lead with their chin."<sup>265</sup> Only when they are unable to get new jobs do many fired employees bother seeking legal counsel: then it is often too late. The statute of limitations starts counting when workers know the facts of discrimination, not when they feel the consequences. A statute of limitations of 30 or 180 days is not enough time to allow workers to make a well-informed litigation decision.
- Workers are poorly informed of their whistleblower rights. This is nonenforcement by design, as DOL is not working to assure that workers are informed of their rights and remedies, which include 30 and 180 statutes of limitations (ABA endorsed a one year statute of limitations).<sup>266</sup> The result is most workers never learn of their rights, and those who learn often learn too late. Even then, company EEO offices and DOL Wage-Hour and OSHA offices have given workers wrong advice, misleading them.<sup>267</sup> Workers must be well informed of their whistleblower rights through DOL advertising campaigns and posters. Today few workers know their rights.
- **Damage awards should be higher, more in line with federal and state court awards.** Historically, DOL damage verdicts have been so absurdly low that they have been insulting. In 1981 in, DeFord v. Tennessee Valley Authority, Labor Secretary Raymond Donovan held there were no compensatory damages, even though the statute said compensatory damages. He was roundly reversed by the Sixth Circuit Court of Appeals.<sup>268</sup> Ever since that reversal, DOL has enforced arbitrary caps of \$50,000 on compensatory damages, contrary to federal and state employment discrimination precedents. In Smith v. EBASCO, one DOL judge in 1997 recommended \$100,000 for a hostile working environment of seven weeks duration. His recommendation was supported by the law and the facts. However, the current DOL ARB chose to continue the prior Administrations' absurd policy of limiting damages, referring to a line of case law begun under Secretary Donovan which now continues in DOL.<sup>269</sup> (Ironically, President Clinton vetoed Congressional legislation that would have placed a cap on damages in other types of cases). Low monetary awards must be changed, consistent with public policies on protecting whistleblowers. As Thomas Jefferson said, we should not automatically follow the "barbarous" practices of our ancestors -- no more than anyone would still wear their childhood coat as an adult. DOL whistleblower law does **not** exist in an antebellum vacuum. DOL does not exist to provide employers subsidies for hostile working environments, e.g., in the form of lower compensatory damages than are obtainable in other fora. DOL damages must keep up with and respond to the external stimulus and moral reasoning of civil rights law damage decisions in state and federal forums, or DOL will become an unfair anachronism. **Compensatory damages are now severely limited and punitive damages**

**are being eliminated.** Recent tax law changes prejudice workers who suffer from psychological injury due to workplace discrimination. Compensatory damages are severely limited, even when ALJs find serious injury to a worker's emotional and physical well-being. The Reagan-Bush era DOL cap on damages is alive and well, creating unequal justice for whistleblower employment discrimination victims, arbitrarily subjecting whistleblowers to lower damages<sup>270</sup> than are available to other discrimination and harassment victims in both state and federal forums.<sup>271</sup> In 1998, ARB rejected a chance to provide fairer damages. In *Smith v. EBASCO f/k/a ESICORP*, in the case of South Texas nuclear powerplant scaffolding safety whistleblower Thomas "Bubba" Smith, ARB hewed to an arbitrary whistleblower damages "cap" and low value on pain and suffering, all of which is a "holdover" from the seedy days of controversial Labor Secretary Raymond Donovan. Mr. Donovan's absurd denial of the existence of compensatory damages under the Energy Reorganization Act (ERA) was rejected by the Sixth Circuit Court of Appeals in its *DeFord I* decision.<sup>272</sup> Secretary Donovan and his successors derailed the effect of the *DeFord I* decision with dispatch. First, the Courts determined that Secretary Donovan was wrong, and that the Energy Reorganization Act included awards of compensatory damages.<sup>273</sup> Then Mr. Donovan and successors all determined to limit compensatory damages to absurd levels. For example, one nuclear whistleblower lost his livelihood, forfeited his life insurance and dental insurance upon termination, was unable to find other employment, experienced physical and emotional stress as the result of blacklisting and termination by the world's largest electric utility. The Secretary awarded \$10,000 in compensatory damages.<sup>274</sup> Another whistleblower received \$4214 in compensatory damages as a result of wrongful termination, with the Secretary reversing the judge's award of \$20,000 in damages.<sup>275</sup> Such insulting low awards and reductions are typical of DOL's parsimonious attitude toward compensatory damages.<sup>276</sup> The low level of compensatory damages and the other toothless features of the DOL enforcement scheme have emboldened discriminators to keep discriminating, as in the *DeFord I* & *DeFord II* cases involving two findings of discrimination by the same government respondent, TVA.<sup>277</sup> Meanwhile, successive Labor Secretaries delayed final decisions in whistleblower cases. In its parsimonious 1998 *Smith v. ESICORP* decision, ARB oddly departed from ARB's own earlier understanding view of damages, clearly expressed in another whistleblower case one year before, where ARB rhapsodized about chilling effects and rationally recognized that low damages would reduce workers' willingness to take risks to raise protected environmental concerns:

... nominal awards to successful claimants may well have a chilling effect on future claimants. **Future potential whistleblowers may choose to remain silent rather than risk losing their jobs when the potential compensation for such a grave loss is a nominal sum.** The purpose of these environmental statutes would not be served and the environment

would suffer as a result.

[Emphasis added].<sup>278</sup> The quoted statement was also a strong argument for the Secretary of Labor to eliminate the unconstitutional<sup>279</sup> caps on compensatory damages in whistleblower cases.<sup>280</sup> The ARB did not discuss it. But as District Chief Administrative Law Judge Daniel Roketenetz held in DeFord II, it is **“patently unjust” for the “wrongdoer” to profit more than his victim.**<sup>281</sup> The ARB was just that -- “patently unjust” -- preferring to condescend to Mr. Smith and other workers.

- Prompt DOL adjudication deadlines should be established -- along with the funding, personnel, training and leadership required to meet them. Congress wrote legislation providing fired workers have a right to decisions in 90 days in response to complaints about environmental, trucking and nuclear safety concerns. That hardly ever happens, unless there is a settlement. Fired workers have waited upwards of five years for the Secretary of Labor to decide appeals from ALJ decisions, with some such workers like Bud Varnadore ironically told that their complaint was not timely filed under a 30 day statute of limitations that Ms. Culbreth & Company often twisted and misconstrued against the worker.<sup>282</sup>
- DOL must become more proactive in ordering injunctive relief or “affirmative action,”<sup>283</sup> or a “judicial order designed to reorganize a dysfunctional social institution.”<sup>284</sup> In whistleblower cases, DOL exhibits its mossback conservative personality, extremely weak-kneed when it comes to ordering injunctive relief, which is --

generally granted in the hostile working environment sexual harassment cases unless there is no reasonable expectation that the discriminatory conduct will recur, or interim events have completely and irrevocably eradicated the effects of the violation.<sup>285</sup>

It is well settled that:

The basic relief the courts have awarded in the hostile working environment cases consists of an injunction that has both negative and affirmative commands. The negative command simply directs the employer to cease and desist from engaging in or allowing ... harassment. The important features of the injunctive order, the affirmative command, usually directs the employer to adopt a policy designed to both prevent and remedy ... harassment in the work place.<sup>286</sup>

Race and sex discrimination plaintiffs have won thorough and creative measures of real relief against hostile working environments, including

workplace reforms and public apologies.<sup>287</sup> Yet under a statute requiring “affirmative action,” the most that DOL precedents on “affirmative action” and injunctive relief provide are orders directing discriminators not to discriminate again and to put up a poster.<sup>288</sup> However, in one initial order in a nuclear whistleblower case, DOL San Diego Wage-Hour District Director Linda Burleson and investigator Larry Benjamin broke new ground and ordered a broad range of injunctive relief, including a public apology, training, posting, disclosures and other reforms.<sup>289</sup> (The employer appealed immediately and the case ultimately settled). Such meaningful remedies directed against whistleblower retaliation are too rare in the post-Reagan-Bush DOL, reflecting its dominant “can’t-do” mentality under years of neglect and disrespect.

- Public defenders are made available to indigent criminals: why not provide counsel to fired whistleblowers who can’t find counsel? Whistleblowers are often unemployed and in dire straights. The vagaries of modern law practice management and law office economics should preclude many witnesses from finding counsel. As a backup to private counsel for employees, the DOL Solicitor’s office should be empowered to represent selected environmental nuclear whistleblowers, and Congress should allocate funds to pay for whistleblower representation by court-appointed counsel, including law school legal clinics and public interest lawyers.

Disgruntled employers’ favorite roadblocks to whistleblower protection should be removed. (See *infra*, § 5, listing proposed reforms for whistleblower laws.

These roadblocks include illogical exemptions from coverage due to “independent contractor” status, selective sovereign immunity, and the Fifth Circuit’s oppressive Brown & Root rule requiring workers to be protected to report their concerns only to a government agency (not the boss). Such exemptions from coverage should be eliminated.

Workers will forever fear to speak about problems if employers go “unwhipped of justice” by DOL. Representative Lowe of Kansas said in debate of the 1871 Civil Rights Act (or Ku Klux Klan Act), banning criminal and civil conspiracies to violate citizens’ rights:

While murder is stalking abroad in disguise, while whippings and lynchings and banishments have been visited upon unoffending American citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night [which] hides them, conspiracies, wicked as the worst felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress.<sup>290</sup>

DOE and Oak Ridge Operations management has failed egregiously in its duties to protect human rights, again and again and again: "the local administrations have been found inadequate or unwilling to apply the proper corrective." Id. Whistleblower retaliation remains legal against selected groups of workers, e.g. federal employees, "independent contractors," and workers in Texas and Louisiana. Such mind-slavery systems should be reversed by Congressional legislation, as was done for nuclear workers in the ERA, which overruled Brown & Root for nuclear workers, covering reports to management.

In the ABA House of Delegates meeting in Los Angeles in February 1990, there was overwhelming support for a resolution to increase protection of whistleblowers.<sup>291</sup> Congress has not responded. Our Government is merely giving "lip service" to whistleblower protection. Successive Administrations of both parties preach protection for whistleblowers but ignore and pay for intimidation and harassment. Companies operating nuclear weapons plants and nuclear powerplants are particularly ruthless. With DOL's long delays and low damage awards, workers in the plants know to keep their mouths shut. Even whistleblowers who have "won" now say privately that they wouldn't raise concerns again and that the process takes too much time and money for the results available. In workplaces where whistleblowers have pursued DOL remedies, chilling effects persist. Workers know about delays and how the company is willing to spend millions of dollars to silence concerns.

President Clinton's 1992 promise on whistleblower protection must be fulfilled. Congress and Secretary of Labor should adopt the ABA's reforms and make whistleblower laws work administratively and provide for a jury trial option. Congress should not let nuclear and environmental whistleblower cases be monopolized by a sometimes slow and problem-plagued forum – where the deciding person will usually be a former government lawyer

## **PREVENTABLE DISASTERS**

***"This didn't have to happen. We could have stopped it."***

*-- Dr. Don Francis, M.D., Center for Disease Control, circa 1986 on AIDS epidemic, quoted in Randy Shiels' AND THE BAND PLAYED ON (HBO)*

Only the location and the industry changes: the tragic story is the same. An unshored construction trench collapses and a worker dies. A K-25 welder is burned to death. A Y-12 process results in an explosion. An unsafe vehicle crashes. A gassy coal mine blows up. An oil refinery explodes. A chemical plant leaks. A truck or train or airplane crashes. A patient dies through neglect. The Space Shuttle Challenger blows up. A nuclear weapons or nuclear power plant poisons its neighbors. People are dead, dying, maimed and suffering.



The cause could have been prevented if the employer had listened to a "whistleblower" employee -- someone it fired, coerced or otherwise hushed up. Ordinarily, the problem festered and, as expected, blew up (literally or figuratively), causing death, dismemberment and disaster, hurting us all as citizens, patients, consumers, taxpayers, passengers, stockholders and people who require clean air and water and safe food and drugs to stay alive. Then management chills the witnesses and hides the evidence that could help the widows and orphans get justice.

All phases of most of the existing environmental and safety whistleblower federal administrative remedies are vested in the Department of Labor. The notable exception is the "dual enforcement model," providing independent agencies for hearings and appeals for coal miners protected by the Federal Mine Safety and Health Review Commission, federal employees allegedly protected by the Merit Systems Protection Board, and the special case of whistleblowing for government contract fraud (in U.S. District Court).

Congress has conducted little oversight over the effectiveness of these remedies. Successive Secretaries of Labor have been overtly hostile or indifferent to whistleblower laws. During this time for six years (1981-1987), Republicans controlled the Senate. As a result of bipartisan<sup>292</sup> acquiescence in the desuetude, environmental and nuclear whistleblowers face a Department of Labor growing increasingly incompetent at getting whistleblowers the fast, fair results promised by the late Senator Edmund Muskie, who championed federal environmental and nuclear whistleblower laws.

DOL is too often slow, ineffectual and incompetent. Congress must take steps to make the existing whistleblower laws work in practice. The time to prevent disasters in the making is ticking away, while no one seems to care.

Oliver Wendell Holmes said, "justice delayed is justice denied." Justice Louis D. Brandeis wrote that when "government becomes a lawbreaker," it promotes disrespect for the law, and anarchy.<sup>293</sup>

### **WHISTLEBLOWER RETALIATION HURTS WORKERS, TAXPAYERS, CORPORATE PROFITS AND ALL AMERICANS**

When government refuses to enforce whistleblower laws, not only workers but all Americans get hurt. As the proponents of the 1990 ABA House of Delegates resolution successfully argued:

It is in the interest of all employers as well as employees to protect "whistleblowers." It is often the case that only "whistleblowers" have the courage to carry bad news to executive suites, while middle-level managers

who may wish to protect their jobs will not inform senior management of developing problems. Since safety and health threats can also threaten corporate futures and profits with civil liability and unfavorable publicity, it is also in the interest of stockholders and corporations to keep the lines of communication open to information from employees who are intimately familiar with company shortcomings.

The recent examples of corporations in Bankruptcy Court as a result of tort liability for products that threaten safety and health clearly make the need for protecting corporate employees more urgent than ever.<sup>294</sup>

Employees don't choose to remain silent by free choice but by coercion and fear of job loss and ostracism on the job by management and co-workers. Outside the workplace, there is growing approval but still some societal hostility toward whistleblowers, whom some mossbacks regard as being government "snitches" out to "shut down the plant" and "take our jobs away."<sup>295</sup> The "employment at will" doctrine and DOL's refusal to enforce whistleblower law keep people silent, combined with the power of modern inventions unknown to our Founders, such as the mortgage and the pension plan.<sup>296</sup>

In passing the whistleblower laws, Congress recognized that employees often see disaster coming and often try to prevent it. In passing the Clean Air Act whistleblower provision, Congress said:

The best source of information about what a company is actually doing or not doing is often its own employees and this amendment will ensure that an employee could provide such information without losing his job or otherwise suffering economically from retribution from the polluter.<sup>297</sup>

Ethical engineers like Roger Boisjoly raised concerns about the "O" rings on the Challenger: if heeded, NASA could have avoided the Challenger Disaster. Such ethical employees, like the Challenger whistleblowers, are too often retaliated against and ignored, causing loss of human lives and untold damages to corporate reputations, from the Dalkon Shield to breast implants to asbestos to nuclear accidents. Knowing how employers hate any employee disagreeing with management, particularly criticism or reports about problems that can cost money to fix -- employees keep quiet, the public suffers, and costs of resolving

problems escalates. Lives and money are wasted, whether in unsafe vehicles and other products, nuclear weapons plant pollution, the costs of the S&L bailout, Challenger, and other disasters.

For fifty years, the central organizing principle of the United States Government was the defeat of fascism and communism. All energies of government and the private sector turned toward that goal.<sup>298</sup> Today, having prevailed over totalitarian governments that threatened the peace, the United States Government must commit its resources to preserving and protecting the environment.<sup>299</sup> A significant part of that effort involves coming to grip with the badly polluted nuclear weapons complex, where government and corporate officials concealed pollution under color of national security secrecy.

Despite the strong public and corporate interest in ethical disclosures, it is mid-level managers in corporations and government agencies who typically discriminate against whistleblowers -- they are legion --- know they can spend lavish sums of your money fighting modest DOL remedies. Under relentless campaigns to scare workers into submission as technological mind-slaves, American workplaces are becoming militantly hostile and toxic to raising concerns about problems.

### ***RETALIATION MUST BE EXTIRPATED***

The time for equivocation is over. There has been enough retaliation and enough smug DOE and DOL silence in the face of it. In discussing environmental ills, Vice President Gore has quoted Sir Winston Churchill, who said:

The Government simply cannot make up their minds, or they cannot get the Prime Minister to make up his mind. So they go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent.... The era of procrastination, of half-measures, of soothing and baffling expedients, of delays, is coming to its close. In its place we are entering a period of consequences.<sup>300</sup>

Vice President Gore compares U.S. failures to prevent environmental problems to Nazi Germany and the world failing to respond to Kristalnacht.<sup>301</sup> Franklin Roosevelt said that "war is a contagion -- quarantine the aggressor."

Like the AIDS virus, the management retaliation problem has festered for years, under-funded and poorly managed by a government that seems indifferent (if not downright hostile) to the victims of its own icy neglect.

Too often, DOL cowers to power. Buffeted by years of abuse by Corporate America, DOL has forgotten the workers. As a result, DOL empowers the hatred

and intolerance of government and corporate managers, who wield the power of life and death. Workplace tyranny chills the hearts and stills the tongues of employees about the risk of complex technologies, often “dangerous” ones.<sup>302</sup> More lives could be saved from “preventable disasters” if only we could stamp out the pandemic of retaliation and its chilling effects on raising environmental, safety and health concerns. At the same time that corporations merge and grow larger and more powerful, DOL refuses to do its job of protecting whistleblowers.

DOL has failed in the worker protection mission given it by Congress, replacing the idealism of Secretary of Labor Frances Perkins with the delays by design wrought by Secretary Ray Donovan, Secretary Elizabeth Hanford Dole<sup>303</sup>, OAA Director Elizabeth Culbreth, among others. Listen to the silent hallways in the quiescent Department of Labor: the spirit of Raymond Donovan is still haunting and stalking the Department of Labor -- the spirit of desuetude and delay and decay. To paraphrase the poet John Donne, “do not ask for whom the [silence] tolls: it tolls for [you, for your community,<sup>304</sup> and for our country].”

After the notorious Supreme Court Dred Scott decision<sup>305</sup>, Abraham Lincoln said the Union cannot survive “half slave and half free.” The half-baked mixture of workplace free speech “protections” under state and federal law still treats American workers as “mind slaves” in their own country, who might as well buy a lottery ticket as expect a prompt decision from DOL’s “90 day” remedy. Federal whistleblower laws do not adequately protect free speech, human rights and environmental rights. Employer retaliation against environmental whistleblowers enslaves and threatens us all. As Lincoln said, “we must disenthral ourselves.”

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# 5

## ***Proposed Reforms of Federal Environmental and Nuclear Whistleblower Laws***

The swift “90 day” whistleblower laws first proposed by the late Senator Edmund S. Muskie have become a farce and a mockery. Adjudications intended to take

90 days end up taking over five years. Adjudications intended to be simple have become complex. The 30 day statute of limitations has become a bar to recovery for most workers, who don't learn of the law until too late.

Major reforms are necessary to prevent our complex technological society from preventable accidents and disasters, from industrial facilities to construction sites to hospitals to airports to cars and trucks to homes. DOL delay gives no incentive for voluntary compliance with whistleblower nondiscrimination requirements. In this legal vacuum, employers chill free speech. Environmental, safety and health whistleblower laws are not being adequately enforced. DOL whistleblower law is being undermined by pro-business political pressures to delay cases and weaken whistleblower laws.

Department of Labor whistleblower laws are remedial and intended to protect human rights: the Supreme Court has said that they are to be liberally construed.<sup>306</sup> Many DOL investigators and adjudicators don't get the message. For too many nuclear and environmental whistleblowers, the Department of Labor justice system is broken and badly needs repair.

The DOL's Rube Goldberg legal system has been repeatedly criticized, from its sometimes lackadaisical investigators to the delays in DOL's Bleak House appellate process.<sup>307</sup> These DOL delays are quite intentional. The "remedial" whistleblower protection laws badly need reform. Under several Secretaries of Labor, whistleblower law has become a bad joke, delay-prone and exemption-ridden, often more loophole than law.

"Whistleblower" employment discrimination law is designed to allow workers to express concerns to regulators, the press and the boss about nuclear, environmental, trucking and workplace safety.<sup>308</sup> In 1990, the American Bar Association House of Delegates recommended several strengthening amendments protecting all workers raising concerns about safety, health or environmental matters or any violation of statute or regulation, with a one year statute of limitations. That recommendation has not yet persuaded Congress or the President to do anything to help whistleblowers. Here are ten reforms:

### **1. JURY TRIALS SHOULD BE GUARANTEED TO WHISTLEBLOWERS IN STATE AND FEDERAL COURTS.**

**Jury trials are still unavailable to too many whistleblowers. Unless their state law covers their protected activity, many environmental and nuclear whistleblowers are limited to federal administrative remedies. Whistleblower law should be amended to allow jury trials as an option, as a means of avoiding delays and injustice of DOL.** America's Founders considered juries to be the "bulwark of democracy," protecting citizens from

oppression by the powerful.<sup>309</sup> Congressional expediency in denying jury trials to whistleblowers was intended to provide a speedy "90 day" whistleblower remedy. That promise is rarely kept. Congress should give workers the right to sue in state or federal courts or to go to Administrative Law Judge, with jury trial rights assured.

**2. THE STATUTE OF LIMITATIONS SHOULD BE CHANGED TO AT LEAST ONE YEAR, AS WAS RECOMMENDED BY THE ABA HOUSE OF DELEGATES IN FEBRUARY 1990.**

Employees have a strict 30 day statute of limitations within which to file complaints under most DOL environmental whistleblower laws which are strictly interpreted against the workers through particularly harsh case law endorsed by the Courts based on their limited standard of review.<sup>310</sup> The Energy Reorganization Act and Surface Transportation Act provide for 180 day statutes of limitations for nuclear, trucking and drinking water concerns.<sup>311</sup>

Whistleblowers face not only little-known, too-short 30 or 180 day statutes of limitations, but an absurdly short five day deadline for requesting a hearing after investigation, and a new requirement that they have only ten days from the date of a judge's decision to petition for review of an ALJ decision to the ARB (rather than being automatic, as under former law). Delay-prone DOL hypocritically holds whistleblowers tightly to their complaint and appeals deadlines.<sup>312</sup>

DOL ARB refuses to consider motions for summary reversal of Administrative Law Judges. It grows cranky about informality of administrative law (such as letter-motions), while never going to the formality of Notice and Comment Rulemaking or adopting its own procedural rules, relying upon briefing orders sent to over one dozen persons for each case.<sup>313</sup> Yet a diffident "Golden Rule" may now prevail for defense contractors and other disgruntled employers. In 1995, Lockheed Martin was allowed to miss a key deadline (e.g., to request a hearing) and still have its day in Court, despite precedents holding pro se complainants filing their request for hearing late lost their right to hearing.<sup>314</sup> Chief Judge Vittone insists that his order did not "prejudice" worker rights. In fact, Chief Judge Vittone's order resulted in the need for a two week trial in August and September 1995, with the worker waiting until March 1998 for an ALJ decision. Chief Judge Vittone's orders delayed the case and denied equal justice,<sup>315</sup> once again proving that in DOL today, some litigants are "more equal than others."<sup>316</sup>

**3. COMPENSATORY, PUNITIVE AND LIQUIDATED DAMAGES SHOULD BE ALLOWED AND INJUNCTIVE RELIEF SHOULD BE ENCOURAGED.**

81 DOE's Toxic, Hostile Working Environment: Violates Human Rights

Compensatory and punitive damages should be awarded at levels that adequately compensate workers and punish wrongdoers. Liquidated damages of no less than \$100,000 should be provided whenever a violation is found. Injunctive relief should be encouraged by requiring posting, notices to employees, training and other remedies whenever a hostile working environment or discrimination is found.

**4. CONGRESS SHOULD CREATE ENFORCEABLE WHISTLEBLOWER ADJUDICATION TIMELINESS STANDARDS AND REQUIRE THAT WHISTLEBLOWER RIGHTS BE ADVERTISED AND PUBLICIZED.**

Deadlines for whistleblower case adjudications should be mandatory, unless waived by the worker for reasons of discovery or conciliation. There is no principled reason why a worker should not be excused for filing her complaint within thirty days while an employer is excused for failing to file a timely notice of appeal, and the Department of Labor excuses itself from deciding cases in 90 days, as Congress provided in writing the environmental and nuclear whistleblower statutes.

Workers must be well informed of their whistleblower rights through DOL advertising campaigns and posters. Today few workers know their rights. This is quite intentional: even the U.S. Environmental Protection Agency (EPA) will not agree to inform its employees of the existence of environmental whistleblower laws and the short statute of limitations.

**5. WHISTLEBLOWER LAWS SHOULD PROTECT ANYONE RAISING A SAFETY, HEALTH OR ENVIRONMENTAL CONCERN OR CONCERN ABOUT VIOLATION OF ANY STATUTE OR REGULATION, AS RECOMMENDED BY THE ABA HOUSE OF DELEGATES IN FEBRUARY 1989. OTHER LOOPHOLES IN WHISTLEBLOWER LAWS SHOULD ALSO BE CLOSED.**

Coverage loopholes should be eliminated. DOL whistleblower jurisdiction and coverage is a still a Swiss cheese of coverage and exemptions, often for no good reason, as Washington, D.C. attorney Eugene Fidell found in his study for the now-defunct Administrative Conference of the United States.<sup>317</sup> Today:

- Truck drivers, nuclear powerplant and refinery workers are covered by whistleblower laws. Airline, tobacco, consumer products, restaurant, taxicab, food and drug industry employees are not protected. There is no rhyme or

reason to the piecemeal coverage and large-scale exclusions of whistleblower laws.

- So-called "independent contractors," millions of them, are not covered.
- Depending on the subject of their concerns, some federal employees are protected for environmental whistleblowing.<sup>318</sup> (Several OSHA offices mistakenly tell them they have no such rights and one OSHA supervisor in Atlanta refused to serve the Department of Energy when it was named as a Respondent).
- After the vote of both House and Senate in 1992 in amending the Energy Reorganization Act (ERA), federal employee coverage was deleted in Conference Committee. While DOE contractor employees are protected by ERA's 180 day statute of limitations, its more favorable burden of proof and its provision for preliminary orders, DOE employees are not protected.
- Workers have "no individual right of action" if they are retaliated against for complaining to OSHA about working conditions, but they do have such individual rights for environmental, nuclear and trucking safety concerns.<sup>319</sup>
- DOL has created a false distinction between environmental whistleblowing and workplace safety whistleblowing -- this harsh doctrine said that if workers expressed concerns about their own exposures, rather than public exposures, the workers weren't protected (except in asbestos and lead cases). There is only one environment, and workplaces are not sealed containers. The illogical Reagan-Bush doctrine allowed summary dismissal of cases where worker concerns about chemicals relate to worker exposures as opposed to pollution of the atmosphere. This false dichotomy may be eroding in the wake of decisions finding coverage for expressing policy concerns, for criminal investigator concerns about acid rain research contract fraud and conflict of interest and for concerns about Space Shuttle cabin air (Secretary of Labor Reich rejected EPA and NASA arguments that such employees should not be protected under the Clean Air Act).<sup>320</sup>

Workers ordinarily have no right to bring their own Federal District Court actions unless their case involves False Claims Act jurisdiction.<sup>321</sup> Some states have statutes<sup>322</sup> or judge-made whistleblower laws<sup>323</sup> with jury trials and precedents and provisions well worth using if applicable. Other state whistleblower laws are more loophole than law.<sup>324</sup> "One confused hodgepodge" is the state of whistleblower law, which depends on the subject matter and the subjunctive mood of DOL, with few unifying principles and, as attorney Eugene Fidell noted in his 1986 Administrative Conference study, confusing procedures and jurisdiction.<sup>325</sup>



For the fired or blacklisted worker, the worker who reports concerns to the news media, DOL precedents can offer great promise and helpful features but only if you file on time under the short statute of limitations. It is problematic for whistleblowers to find the right attorney on such short notice when they are not made aware of the law. Only a few whistleblowers (e.g., truck drivers) are represented by the DOL Solicitor under current law. (The DOL's Solicitor's office in Dallas once told a DOL judge that she was "sort of representing" the whistleblower, a non-English speaking truck driver, thereby rightly prompting a DOL judge to fly to Amarillo with a Spanish translator to inquire into the proposed \$5000 settlement and whether the driver understood his rights.)

## **6. WORKER DISCOVERY AND TRIAL RIGHTS MUST BE ASSURED.**

**Today, discovery and trial rights are being unfairly denied and delayed.** The scope of discovery is required to be liberal.<sup>326</sup> It is harmful error for an ALJ to deny a full fair hearing or full discovery in a whistleblower case.<sup>327</sup> The ERA and other whistleblower laws are remedial and to be liberally construed. Yet worker discovery rights are being denied, as judges have often claimed to see no "relevance," failing to enforce discovery rights that have been oft-repeated, often resulting in reversals while delaying adjudications.<sup>328</sup>

Fair trials are being denied, delaying cases. DOL judges have too often denied trials based on spurious reasons, further prolonging cases further and prejudicing whistleblowers' rights.<sup>329</sup> DOL judges have too often frustrated Congressional intent of a swift remedy. DOL judges have too often used flyspecking reasons to deny fair trials in "real time," shortly after the firing or blacklisting occurs, with years of waiting for reversals to hold a trial or admit more evidence. This procedure encourages evidence to disappear, as documents are destroyed, computer memories are wiped, employee witnesses are fired, or employees die, retire or move, memories to fade. This abusive procedure allows retaliation problems to fester and pollution and other dangers to persist, denying the public the right to know, provided by the "disinfectant" of "sunlight"<sup>330</sup> -- an open public hearing<sup>331</sup> in a DOL whistleblower case.

## **7. DOL WHISTLEBLOWER INVESTIGATORS, JUDGES, LAW CLERKS AND OTHER DECISIONMAKERS SHOULD BE PROVIDED WITH CONTINUING TRAINING AND SCRUTINIZED FOR CONFLICTS OF INTEREST.**

**Whistleblower laws are not being enforced equally. DOL too often tilts toward powerful employers and against powerless employees.** This inequality is particularly acute given the power disparities between powerful employers and fired whistleblowers. The inherent effects of such power

inequality problems is often acute in whistleblower litigation.<sup>332</sup>

**DOL investigators and decisionmakers may lack real independence, sensitivity or necessary knowledge or appear biased in favor of employers, resulting in an unaccountable process.** Lifelong government employees, whether ALJs or DOL investigators, often lack perspective when a large government or corporate employer is in the dock in a whistleblower case. DOL investigators and other decisionmakers should be scrutinized for conflicts of interest and provided with continuing training on whistleblower law.

Despite these problems, whistleblowers' raising of concerns about rude ALJ behavior toward whistleblowers is frowned on by DOL managers.<sup>333</sup>

Although the DOL Inspector General recommended much greater sensitivity to concerns of "customers" about DOL whistleblower adjudication procedures, it has not been forthcoming. DOL whistleblower investigation and adjudication professionals and managers too often view all criticism as "attacks," all questions as distractions, and all FOIA requests as somehow beneath their dignity.<sup>334</sup> Too often authoritarian and hierarchical personalities make misjudgments based on prejudice or hostility against whistleblowers.<sup>335</sup> It is sad but true that a few DOL judges appear to lack objectivity and resent litigants who are to their parochial standards too outspoken, persuasive, intelligent or assertive and who are "uppity" or ask too much of the DOL system, based on their own personal prejudices. Lack of Departmental leadership on whistleblower rights empowers judges who prefer desuetude to jurisprudence, lassitude to working hard for working America. At best, **DOL adjudicator performance varies widely** in handling of whistleblower cases, with some judges showing great courage, and others showing a profound bias for the government agencies and corporations in the Respondent's chair.<sup>336</sup> Every year, DOL law clerks (attorney-advisors) from the DOL Office of Administrative Law Judges leave their two year clerkship to go to work for defense firms. Few DOL OALJ law clerks wind up representing workers.

**8. NO TAX DEDUCTIONS AND NO REIMBURSEMENTS SHOULD BE PROVIDED TO GOVERNMENT CONTRACTORS DEFENDING WHISTLEBLOWER CASES.**

The Internal Revenue Code should deny deductions for fees spent fighting whistleblower cases. It is contrary to public policy to subsidize violations of civil rights. Private sector employers should not be subsidized in retaliating and discriminating against employees who commit truth.

**9. CONTRACTORS ENGAGING IN DISCRIMINATORY PRACTICES SHOULD BE SUSPENDED AND DEBARRED FROM GOVERNMENT CONTRACTS.**

**Government contractor whistleblower defense costs are directly reimbursed by the government and disgruntled employers spend prodigal sums to fight a whistleblower.** Government reimbursement of contractor legal costs is an abuse of federal funds blasted by Ralph Nader in his recent book.<sup>337</sup> The Department of Energy spends some \$30 million per year paying its contractors' legal defense costs in whistleblower cases, part of an "indemnification scheme." Discussing the Edwin L. Bricker case at the Hanford nuclear weapons plant, Ralph Nader writes that Joint whistleblower defendants Westinghouse and Rockwell were paid over \$1 million by DOE to fight a whistleblower case that could have been settled for \$65,000 at its inception. (The case settled for \$200,000, including fees). Ralph Nader quotes Mr. Bricker's attorney Tom Carpenter:

... if in 1990 Westinghouse had undertaken a good faith effort to transfer him and undo the negative effects of the hostile work atmosphere that had been created, the matter would have been quickly resolved.

Ralph Nader concludes:

But that course of action did not reflect the purposes of Rockwell, Westinghouse and DOE, and the DOE, before being forced into sweet reason by Secretary O'Leary. Bricker and his lawyer believe that the obstinance and retaliation they faced were designed to deter any inclinations by other would-be whistleblowers to do their public duty. Hardball litigation conducted by corporate lawyers at great taxpayer expense was the primary tool.<sup>338</sup>

The Government's discriminator defense funding pays for an "immense expense"<sup>339</sup> to defend to discrimination charges. Scandalous is the word for it. The Department of Energy bloviates but fails to take prudent contractual steps to protect whistleblowers, like debarment of contractors.<sup>340</sup> Meanwhile, DOE and other government agencies and their contractors go to absurd lengths and expense to fight them.<sup>341</sup> Military-mindset agencies are particularly hostile to environmental whistleblowing. The Department of Energy has reimbursed its contractors millions of dollars to fight whistleblower cases, spending millions of dollars to fight workers like Ed Bricker. In the Varnadore case against Oak Ridge National Laboratory, DOE showed the courage to tell Martin Marietta it would not pay its legal bills. Contractor pressures made DOE cry uncle in other cases, and the contractor spent millions of its own money to defeat Mr. Varnadore before the ARB. To this day, contractors bill millions of dollars in legal fees to fight whistleblower worker rights.

What other industry can count on a government handout (not just a tax deduction) to retaliate against its employees? Fueled by this corrosive discrimination subsidy<sup>342</sup>, DOE Oak Ridge Operations' spending on defense of whistleblower cases is the highest of DOE Operations offices in the Nation

DOE's common plan or scheme is to promise protection for whistleblowers but deliver only promises. DOE's own 10 C.F.R. Part 708 regulations is a bait-and-switch scheme.

DOE delivers little or nothing. As former Secretary of Energy Hazel O'Leary testified in deposition, there is a common and routine practice of whistleblower retaliation throughout the DOE system.<sup>343</sup> Federal funds shoveled with a smile to defense contractor retaliators is hardly the "American way" to sustain the "resistance" to corporate crime and retaliation against federal witnesses. President Dwight D. Eisenhower warned in his 1961 Farewell Address that the:

conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence ...is felt in every city, every statehouse, every office of the Federal Government ... In the councils of government **we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex.** The potential for the disastrous rise of misplaced power exists and will persist... We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted.

Defense contractors look to their discriminator funding as if it were some sort of entitlement. It emboldens the worst sort of discrimination. Congress should abolish this porcine discriminator funding scheme at once.

Giving federal funds with a smile to free speech retaliators is unAmerican. Congress should withdraw the subsidies to corporate crime and retaliation against witnesses. Congress should eliminate all tax deductions for money that corporations spend fighting whistleblowers, not a meretricious subsidy.

It is axiomatic that when safety and fair labor standards are not obeyed and enforced, workers get killed and maimed.<sup>344</sup> To enforce labor laws, the government is not even using its debarment authority against corporate wrongdoers found to have broken the law.<sup>345</sup> All employers violating whistleblower laws should be suspended and debarred from government contracts.

### **10. RETALIATORY EMPLOYERS SHOULD BE PROSECUTED.**

Federal criminal law prohibits retaliation against a protected witness or

informant.<sup>346</sup> There has been one criminal prosecution of a retaliatory manager at the Palo Verde nuclear powerplant. Managers responsible for retaliating against whistleblowers should be investigated, prosecuted and imprisoned. Only fear of prison will vindicate civil rights, as in the 1960s.

### **WHISTLEBLOWER LAW REFORM URGENTLY REQUIRED**

DOE's "90 day" whistleblower remedy has become comatose. DOL took seven years to reach a final decision about insulting, demeaning manager cartoons mocking nuclear reactor scaffolding safety concerns, which made his work life miserable in 1991, Mr. Thomas H. "Bubba" Smith got his answer seven years later: \$20,000 in compensatory damages, attorney fees, but no action taken against EBASCO's new owner to require it to change its ways at the South Texas Plant. Meanwhile, many workers at the South Texas Plant remember only management's savage retaliation, consisting of mocking cartoons on management bulletin boards. Mr. Smith and other DOL whistleblowers say that if they had it to do over again, they might not go through all of the suffering again due to DOL's delays. This further chills worker self-expression of safety, health and environmental concerns. With DOL's indifference to whistleblowers, swift justice can only be assured if workers had a right to seek a jury trial after affording DOL an opportunity to provide a meaningful administrative remedy and relief. Federal and state court juries reflect "the conscience of the community" and should be trusted to decide nuclear and environmental whistleblower cases.

Some of DOL's governing legal precedents are helpful. DOL whistleblower law does not preempt state law torts.<sup>347</sup> Workers have rights to make reports to the news media and outside the chain of command.<sup>348</sup> Workers have rights to be free from retaliatory fitness for duty examinations.<sup>349</sup> The scope of blacklisting is broad.<sup>350</sup> DOL bans gag orders preventing whistleblowers from speaking out.<sup>351</sup> To prevail in a DOL whistleblower case, workers generally must show a good faith belief that their concerns are valid, not that there was a violation of federal law<sup>352</sup> or that they were ultimately proven correct.<sup>353</sup> DOL has stated that worker concerns are protected as long as the worker is "not crying over spilled milk."<sup>354</sup> Trial transcripts may be obtained inexpensively through FOIA.<sup>355</sup> DOL ALJs often try very hard to help protect workers' rights. However, the system has let too many workers down for too long.

Juries could see through coverups more quickly than the cumbersome DOL ALJ system, with fairer results. Letting workers elect to sue in federal or state court could be the answer if DOL does not mend its ways. Why should Title VII plaintiffs have a right to jury trial under the 1991 Civil Rights Act, but not whistleblowers? Whistleblower laws would work better if Congress did just two things:

**(a)** provided a worker option for jury trials in state or federal courts and

(b) adopted legislation implementing the 1990 American Bar Association House of Delegates whistleblower resolution.

The patchwork quilt of whistleblower laws has remained essentially unchanged, as they were in 1986 when attorney Eugene Fidell did a study on the lack of uniformity or focus in whistleblower law.<sup>356</sup> Little has changed since then,<sup>357</sup> although all our leaders now routinely claim to love whistleblowers, even to "celebrate" them, as Secretary of Energy Hazel O'Leary intoned. It is long past time for Congress and the President to put up or shut up with their whistleblower promises: make the whistleblower laws work before DOL and provide for Federal Court jury trials to protect Due Process.<sup>358</sup>

As Senator Moynihan reminds us, progress toward creation of the Administrative Procedure Act began when President Roosevelt appointed a committee in response to the criticism of Roscoe Pound "**denounced the trend of turning 'the administration of justice over to administrative absolutism ... a Marxian idea.'**"<sup>359</sup> In Roscoe Pound's words, the "administrative absolutism" of DOL requires resolution.

Under DOL's dangerously defective whistleblower administrative litigation system, whistleblowers are denied "[t]he complete freedom ... necessary to prevent the [federal government's] channels and information from being dried up by employer intimidation of prospective witnesses."<sup>360</sup> DOL's poltroonish approach puts lives at risk.

Courageous workers are waiting for the potential of the whistleblower laws to be realized in their workplaces, in "real time" rather than geological time. More and more workers are now willing to consider reporting employer wrongdoing, realizing that employers are no longer loyal to employees, and "downsize" them at the drop of a hat.<sup>361</sup> Those workers deserve protection not pejoratives, investigations not coverups, and fair trials not kangaroo courts. From investigations to hearings and appeals, DOL decisionmakers in whistleblower cases are too often craven "cat's paws." Justice Byron White wrote:

citizens who sue or are sued ... must be able to trust the system to decide cases honestly and fairly. They are entitled to expect that those who judge them will **not** be mere **cat's paws for the powerful or the government**. The system must not only be an honest one in fact, it must also appear to be what it purports to be. (Emphasis added).<sup>362</sup>

Ours is an increasingly challenging environment of technological change. In the 21st century, more than ever, American workers demand "freedom from fear," as Franklin D. Roosevelt put it. Otherwise, the future will bring more "preventable disasters," from Outer Space to the skies<sup>363</sup> to the ocean depths.

# 6

## ***Need to Investigate and Prosecute DOE Site Crimes***

**If we do not, on a national scale, attack organized criminals with weapons and techniques as effective as their own, they will destroy us.**

**--- Attorney General Robert F. Kennedy**

DOE and its contractors must be held accountable for their massive pollution and suppression of dissent. That includes the criminal law, including the Racketeer-Influenced and Corrupt Organizations Act (RICO).

As I testified before Rep. Albert Gore, Jr. on July 11, 1983, persons responsible for coverups and pollution should be prosecuted. No one has ever been prosecuted for pollution at a DOE site. Under Presidents Reagan, Bush and Clinton, DOE and its contractors have avoided any criminal accountability.

After the 1983 Oak Ridge hearing, one DOE minion got a slap on the wrist for the mercury pollution and coverup. No one ever went to jail.

Today in Oak Ridge, DOE cannot tell how many workers are in radiologically and chemically contaminated buildings. DOE/AEC signed in 1971 a memorandum of understanding (MO.) with the Department of Labor Occupational Safety and Health Administration, pledging to obey all OSHA standards. DOE Orders require that safety be protected. Such agreement and orders are not complied with, to the detriment of workers around the country.

In the 1990s, when the Denver, Colorado Rocky Flats Grand Jury neared an indictment of Rockwell for its manner of running the Rocky Flats Plant, the Justice Department shut them down, forcing them to hire their own lawyers to raise concerns about the coverup of reckless endangerment of citizens' lives by DOE and its contractors. Federal Bureau of Investigation Special Agent Jonathan Lipsky documented Rocky Flats conditions in his exhaustive search warrant. Some 75 agents were required to carry out the warrant. Yet no

indictments were ever brought. The Justice Department apparently feared civil liability if those who were criminally culpable were ever brought to justice.

State prosecutors have the right to prosecute crimes on DOE reservations. They have done so for over five decades for crimes ranging from drunk driving, drugs, thefts and gambling. State prosecutors in Tennessee and elsewhere should be given technical assistance by the Justice Department and EPA to bring public nuisance lawsuits and criminal prosecutions for reckless endangerment of workers, homicide, assault and battery, fraud, RICO and other crimes.

Ultimately, a Special Counsel is required to investigate and prosecute crimes at DOE sites. Federal entities and employees work in a small community of interests in places like East Tennessee, Western Washington State and New Mexico. Local FBI agents and Assistant U.S. Attorneys look upon DOE employees as their "customer" rather than as targets, witnesses and informants in federal crimes.

DOE failed and refused to enforce its own safety and whistleblower protection rules, resulting in personal injuries to workers. A United States District Judge has ruled that the "discretionary function" is a complete defense to lawsuits against the Government under the Federal Tort Claims Act.

Workers have been exposed to toxic substances and radiation. Whatever the outcome of any particular cases, crimes have been committed. Workers and residents have been exposed to toxics. Those responsible must be held accountable.

### ***RECIDIVIST CRIMES AT DOE SITES***

DOE has committed some of the environmental crimes of the 20th Century -- continuing into the 21st Century. These crimes involve high government officials. There should be a Special Counsel to investigate crimes in and around the DOE sites including the Oak Ridge Reservation. As I testified before then Reps. Gore and Lloyd in 1983:

We can infer criminal intent from, among others, the following acts: Repeated false statements of no environmental problems, possible falsification of data,.... failure to warn affected population groups; take reasonable care with legal mercury... failure to properly consider that mercury under Y-12 buildings would [not] stay there and completely ignoring the possibility of underground migration... misrepresentations to Tennessee Valley Authority officials; failure to obtain toxic waste dump and NPDES permits; failure to seek all possible information on the interactive effect of DOE's pollutants on human health, including what would happen when you mix human beings and mercury,



PCBs, uranium, thorium, plutonium acids and heavy metals in the same stream.

Probable violations of criminal law have been committed? Will they be investigated? Will indictments be handed up? Will people be prosecuted and imprisoned for their antisocial behavior? Or will the combined might of national security rhetoric, bomb builder influence and the implications of crimes involving the U.S. Government and a multinational corporation named Union Carbide, number 27 on the Fortune 500 -- will that combined might result in the absence of justice? Will this case be fixed? That depends upon what happens next.<sup>364</sup>

## **POSSIBLE CRIMES IN OAK RIDGE**

### **WITNESS/WHISTLEBLOWER RETALIATION**

Whistleblower retaliation should be investigated by a Special Counsel pursuant to relevant federal criminal laws.<sup>365</sup>

### **RETALIATORY PSYCHIATRIC EXAMINATIONS**

DOE and contractor abuse of psychiatrists and psychologists to harm whistleblowers should be investigated for violation of federal criminal laws.<sup>366</sup>

### **BERYLLIUM EXPOSURES**

Those responsible for exposing workers to toxic beryllium should be investigated and prosecuted for reckless endangerment, assault and battery, homicide and other crimes. As revealed by the *Toledo Blade*, DOE and its commercial allies knew of the hazards and did little or nothing to protect workers.<sup>367</sup>

Although a Federal Judge recently ruled that the "discretionary function" exception bars any Federal Tort Claims Act liability for beryllium exposures, there is no such bar in criminal law.

Those responsible for exposing Oak Ridge, Ohio, Kentucky and other workers to beryllium while keeping them in the dark should be in the dock in criminal trials.

### **OAK RIDGE K-25 CYANIDE AND TOXICS COVERUP.**

As discussed earlier, there has been a coverup of cyanide concerns at the K-25 site.<sup>368</sup> Those responsible for exposing workers to cyanide and other toxicants and seeking to hide their tracks should be investigated for reckless endangerment, assault and battery, homicide and other crimes. In 1995,

workers and neighbors at K-25 started noticing severe health effects. DOE and its contractors. They raised concerns and held meetings.

Some 55 workers filed -- with great difficulty -- medical incident reports regarding cyanide exposures. The University of Alabama and NIOSH were brought in. Workers were assured there was no source of cyanide. These assurances were in error. It appears that federal crimes such as conspiracy, perjury and fraud against the Government may have been committed. See *supra*, § 3 of this testimony.

Former Lockheed Martin Medical Director Dr. Daniel Conrad, M.D. should be called as a witness by this committee and put under oath, along with former Lockheed Martin Energy Systems Vice President Fred Mynatt and K-25 Plant manager Harold Conner. Their actions, discussed *supra*, require investigation. Just why was cyanide considered "sensitive" by Lockheed Martin corporate? Who directed the coverup, and how high did it go?

***ORNL MOLTEN SALT REACTOR EXPERIMENT  
(MSRE) EXPOSURES -- FAILURE TO  
DECONTAMINATE, DECOMMISSION, DEACTIVATE  
NUCLEAR REACTOR FOR 25 YEARS, WHILE OFFICE  
WORKERS WORK ON TOP OF IT***

The Molten Salt Reactor (MSRE) is supposed to be the biggest technical achievement in the history of Oak Ridge National Laboratory.<sup>369</sup>

MSRE was never decontaminated, decommissioned, deactivated or dismantled, inflicting radiation and toxic exposures on workers three decades after the reactor was shut down. It was evacuated on an emergency basis in 1994. Due to nuclear criticality and hydrogen fluoride and fluoride chemical poisoning hazards expressed by whistleblowers, the area was evacuated and is currently the object of a \$120 million cleanup. The issue was duly reported by the New York Times in 1994.

Today, the MSRE is the object of a nine-figure environmental cleanup, once estimated to cost \$125,000,000. Yet today, office workers once again have offices in the former Molten Salt Reactor in Oak Ridge, which raises serious concerns that should be investigated by the EPA, OSHA and FBI.

DOE admits that MSRE is now belatedly a deactivation project (there is still fuel present), as well as a "decontamination and decommissioning project." DOE admits that the MSRE presented significant life, safety and health risks to workers. The radiation and chemical exposure was ongoing for 300 MSRE workers. DOE's negligently misleading "historical" or "legacy" radiation designation, DOE's yellow ropes and DOE's vague assurances did not fulfill

DOE's legal and moral duty to clean up the radiation and toxics, with the reactor not decontaminated or decommissioned for 25 years.

DOE's contractors subjected at least one MSRE whistleblower to retaliation, hostile working environment, termination and blacklisting arising out of her expression of good faith concerns regarding the presence of asbestos and radiation in and near filing cabinets she worked with in the High Bay Area in Building 7503 at Oak Ridge National Laboratory, formerly the Molten Salt Reactor's three-story tall service area (or "High Bay," sometimes mistakenly called by DOE officials the "highboy").

The confinement of human beings in this building was tantamount to a warped, negligent "experiment" with 300 peoples' lives, without moral or legal justification or excuse, in violation of the Geneva Convention and the Nuremberg Principles.

DOE failed to supervise its contractor properly in performing annual annealing and other required, necessary and proper maintenance chores at the reactor. DOE failed to give orders required by DOE Orders to clean up the reactor. No deactivation, decontamination or decommissioning of a nuclear reactor located in the middle of a government plant employing 7000 people was ever done, with fuel left in the reactor and associated pipes and places from 1969-1994.

MSRE workers now have a number of health conditions that are chronic and relate to exposures at the Molten Salt Reactor, Building 7503 at DOE/ORO/ORNL Building 7503. MSRE worker children were born stillborn, with chromosomal abnormalities. Workers were not given asbestos, hazardous waste or radiation training before being placed in harm's way, assigned to work pursuant to DOE's negligent management practices with old files in filing cabinets containing asbestos in the radioactive High Bay area of DOE/ORO/ORNL Building 7503 for the Management Applications and Development Group (MAD) of the Health Sciences Research Division (HSRD) at ORNL.

On orders from DOE Oak Ridge Operations Manager Joe Ben La Grone, ORNL workers were evacuated from the MSRE in 1994. Under ORO's current management, over 100 office workers are working inside the MSRE buildings today, while decontamination, decommissioning and deactivation work is ongoing around them. Who is responsible for their reckless endangerment? Oak Ridge managers responsible should be investigated and prosecuted.

***OAK RIDGE Y-12 PLANT AFRICAN-AMERICAN  
(SCARBORO) COMMUNITY POLLUTION AND  
COVERUP***

Nearly 17 years ago, I testified before Reps. Gore and Lloyd about Oak Ridge,

calling for criminal investigation of the reasons why the African-American community in Oak Ridge was moved to the area adjacent to Y-12. No such investigation has ever taken place. This is the premier example of "environmental racism" in this country. It should be thoroughly investigated and all documents on it should be made public.

### ***TSCA AND OTHER OAK RIDGE INCINERATORS***

In the early 1990s, the National Oceanic and Atmospheric Administration wanted to build ten towers in Oak Ridge to measure and study microclimates. DOE rejected the idea, preferring less data at greater cost. In contrast, the government has funded extensive studies of San Francisco microclimates.

The ridge and valley geography of Oak Ridge is among the most intriguing and under-studied microclimates in the country, but DOE wanted no data and rejected NOAA's proposal.

Why? The reason is probably related to the fact that DOE and associated contractors sited the Toxic Substances Control Act (TSCA) Incinerator and other major polluting incinerators in an area that was already home to three Superfund sites (K-25, X-10 and Y-12), as well as major polluting fuel-burning installations (TVA's Kingston and Bull Run coal-fired powerplants). Not satisfied merely to burn waste from Tennessee, DOE ORO has burned waste from other states as well. The TSCA Incinerator was the first incinerator in the country to burn both radioactive and toxic waste. DOE's TSCA incinerator opened in 1989. Many workers and residents associate the onset of their health problems with that year. The TSCA Incinerator was extensively covered in the Nashville Tennessean series on Oak Ridge pollution, and its radioactive, hydrogen fluoride and other toxic emissions are a major part of local health problems. Who was responsible for locating this dangerous plant in the Oak Ridge community? Why was it allowed to continue burning for multiple years?

There should be a criminal investigation of incinerator pollution, and the government officials who turned deaf ears to the workers and residents raising concerns about it while resisting and delaying their requests for information.

Tennessee Governor Don Sundquist has repeatedly rejected DOE's plans for the TSCA Incinerator. A December 1999 report on K-25 by the DOE Office of Oversight for Environment, Safety and Health found that:

In his rejection of the incinerator treatment plan, the Governor indicated that the state is concerned that DOE is not committed to cleaning up Oak Ridge and resolving worker and community health and safety issues. In February 1999, the state of Tennessee again rejected the 1999 plan, stating that they

had laid out several concerns when they rejected the 1998 plan; to date, DOE has not adequately addressed a single concern. The plan would have brought about 1.5 million pounds of radioactive and hazardous waste from several states into Oak Ridge.<sup>370</sup>

The DOE Inspector General has recommended that the incinerator be shut down after June 2000. That may be too late for some Oak Ridge area workers and residents, who are directly under the TSCA toxic plume. If the incinerator is not shut down, the local District Attorneys and County Attorneys should file a public nuisance lawsuit against the operator of the incinerator to shut it down.<sup>371</sup>

In effect, the TSCA incinerator and other Oak Ridge pollution events have been an unethical human experiment.<sup>372</sup> Those responsible should be investigated by a Special Counsel and local law enforcement officials.

### ***Y-12 MERCURY POLLUTION AND COVERUP***

The persons responsible for exposing workers to mercury have never been prosecuted. There should be a criminal investigation on the mercury issues.

### ***WHITE OAK CREEK POLLUTION***

As documented by Dr. Morgan's book, the decisions on White Oak Creek were made with complete contempt for public health. There should be a criminal investigation.

### ***NUCLEAR WEAPONS TRANSPORTATION***

Transportation of nuclear weapons has been unsafe, exposing workers and citizens to unnecessary risks. The persons in charge of DOE's Transportation Safeguards Division should be investigated by a Grand Jury in connection with their retaliation against workers and their attempts to impose a conduct policy amounting to a series of illegal "gag orders."<sup>373</sup>

### ***SURVEILLANCE OF WORKERS AND CITIZENS***

DOE and its predecessor entities have surveilled workers and citizens, including activists concerned about environmental issues:

- During the Manhattan Project, workers' homes were susceptible of being broken in upon and some ten percent of the employees in Oak Ridge were spying on the other workers.<sup>374</sup>
- In 1991, Martin Marietta was found to have illegally had dozens of pieces of illegal surveillance equipment in Oak Ridge, which were required to be

turned in after the Inspector General uncovered the scheme. One does not accumulate surveillance equipment without the intent to use it.<sup>375</sup>

- On July 11, 1996, Lockheed overtly videotaped workers speaking in a NIOSH closeout of a confidential health hazard evaluation request. Two Lockheed Martin video camera operators recorded the faces and voices of workers asking critical questions<sup>376</sup>, a number of whom were shortly thereafter laid off by Lockheed Martin in a 300 person layoff. The tapes were professionally edited, with each speaker shown on-camera. NIOSH health hazard evaluation report under overt video surveillance, with two video cameras recording the faces of employees who disagreed with the company and NIOSH positions regarding the presence of cyanide at K-25.<sup>377</sup> The videotape of the overt surveillance was not produced by the employers in discovery. The tape has professional editing, cutting back and forth between two cameras, one focused and panning on the concerned employees.<sup>378</sup>
- A confidential March 23, 1998 meeting between workers and doctors was taped by Lockheed, without permission of any of the workers who were present in the confidential meeting.<sup>379</sup>
- In April 1999, a former K-25 worker and her lawyer used the DOE Oak Ridge Reading Room: the identity every single one of the documents they viewed was swiftly reported to DOE and Justice Department lawyers, without their consent.<sup>380</sup>

DOE and its contractors routinely invade workers' privacy. In the 1996 and 1998 surveillance acts, Lockheed tried to pretend that there was no intent in 1996 and that the 1998 instance was a "mistake." As I wrote to Secretary Richardson last year:

Now DOE ORO is caught like the proverbial "hog caught under a gate," **spying on reading room requests**, with the evidence contained in a filing with a Federal Judge.<sup>381</sup>

I also wrote the Secretary that:

The Oak Ridge version of Jimmy Breslin's "*The Gang That Couldn't Shoot Straight*" -- the ORO regime dominated by ... "hatchetm[e]n," ... was found by respected University of Tennessee industrial psychologist Professor John Lounsbury, Ph.D. to be **the most dysfunctional organization he had ever studied**. Your recent transfer of DOE Oak Ridge Manager Jim Hall was a good thing -- but in one sense not unlike the punchline of the lawyer joke -- "**a good start.**" Generations of Americans fought and died for a free country, one that ORO managers would evidently like to shackle and return to a British-style monarchy, where the "king can do no wrong."

<sup>97</sup> DOE's Toxic, Hostile Working Environment: Violates Human Rights

Citizens using a government reading room have two reasonable expectations -- of **privacy** in his/her research and identity, and of **probity** in the government's and contractor's handling of confidential records on that research. Those privacy and free speech rights must never again be violated by DOE Oak Ridge Operations personnel. Nor should such Watergate-style dirty tricks be joined in by the Justice Department.<sup>382</sup>

This surveillance should be investigated by a Special Counsel with no ties to Lockheed, DOE and Justice Department lawyers who may have received the fruits of such surveillance. The purpose of such surveillance is intimidation of potential government witnesses. It must be halted.

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# 7

## **CONCLUSION**

As the late father of health physics, Karl Morgan wrote in 1999:

It is one thing to know that government or industry needs to make a change. It is quite another to stand up and insist that the change be made. The world community of informed citizens simply must make government and the global nuclear industrial complex accountable in two key areas, nuclear waste disposal and nuclear arsenals.<sup>383</sup>

Sadly, the history of Oak Ridge and the K-25 Site is a history of toxic pollution and coverups. Those government and contractor officials responsible for the coverups should be investigated, and a Special Counsel should be appointed by the Attorney General to investigate crimes committed on and regarding the Oak Ridge Reservation and other DOE sites. Compensation should be provided to the toxic tort victims, providing the right to jury trials for whistleblowers and toxic tort victims. As the Appalachian Observer of Clinton, Tennessee editorialized on April 6, 1983:

Somehow in our cynicism, we are used to private, multinational monopolistic chemical companies putting dollars ahead of people. This, however, is a case of toxic ... pollution of our own U.S. Government, a development [that] would make our Found[ers] ..., like Jefferson and Madison, sick at heart.

As U.S. Representative Albert Gore, Jr. has said, only "public protest" can bring about needed action on toxic chemical waste dumps.

What is it going to take for DOE to get the message? A hundred thousand people on the lawn of the Oak Ridge Federal Building protecting a potential government-caused "ripple of death?"<sup>384</sup>

Since that time, DOE has sold off much of its lawn in Oak Ridge to private enterprise. Such a demonstration would no longer be possible.

As Chairman Thompson put it in his Opening Statement, what we have seen is "one of the more unseemly aspects of the Cold War: the possibility that the federal government put workers at its nuclear weapons plants in harm's way without their knowledge." What DOE has done to workers and residents in and around Oak Ridge and other DOE sites is truly "**an indictment of our civilization.**"<sup>385</sup>

In the new Millenium, I recommend this Committee and the Permanent Subcommittee on Investigations do what this Committee does best throughout much of our Nation's history: investigate wrongdoing.

I suggest that you vote today to mount a continuing investigation of DOE and its contractors, issue subpoenas, and uncover criminal wrongdoing.

It is up to you to protect future generations of workers from the mediocre mendacious management that has created the present crisis in Oak Ridge, Paducah, Piketon and other DOE sites.

One day several years ago I sat at the Nashville airport in the midst of a tornadic thunderstorm, waiting to board a plane. No airplanes were taking off or landing due to the lightning, which would have been life-threatening. Most of us patiently waited for the thunderstorm to blow over. Yet an officious man with a Paducah Rotary Club gym bag and a Lockheed Martin security clearance badge baited and pestered the airline personnel, saying that they should "offer \$100" for "someone" (an airline employee) to go out in the rain and do what needed to be done so our plane could take off, whether he was electrocuted or not. The Lockheed Martin man from Paducah evidently thought this was an appropriate way to run an airline. He may have even thought that this was funny. This statement truly exemplifies "Energy Systems values" and DOE values.

The workers at K-25, Paducah, Piketon and other DOE sites are not laughing. Their managers lied to them. They betrayed them. DOE and its contractors treated them as objects to be exploited, used and disposed of when they got sick. To such heartless and soulless managers, we say: ENOUGH. The DOE complex should be investigated for criminal law violations. Workers'



compensation should be complete. An apology should be provided, as is set forth in Rep. Kanjorski's bill, H.R. 674. For too long, being DOE has meant "never having to say you're sorry."<sup>386</sup>

DOE must be reformed. The "iron triangle" of DOE and its Nuclear Weapons industry supporters must no longer frustrate environmental, safety and health protection. Workers and residents must be protected from harm, even if it requires evacuation of offices and residences.

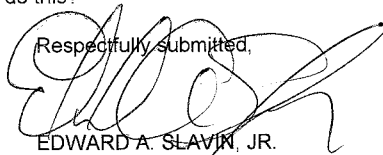
Independent health care must be provided.

Crimes at DOE sites must be prosecuted.

Whistleblowers must be protected.<sup>387</sup> As Robert Kennedy said, "It is not enough to allow dissent, we must demand it, for there is much to dissent from."

On behalf of Oak Ridge workers and residents, and to paraphrase Albert Camus, if this Committee "will not do this, then who else in the world can help us do this?"

Respectfully submitted,



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MARCH 20, 2000  
(minor changes filed on March 29, 2000).

**EDWARD A. SLAVIN, JR.  
BACKGROUND**

- Attorney for DOE and contractor employees in several states.
- Counsel for the Plaintiff in *Farver v. Carpenter*, a medical malpractice case where an Anderson County jury awarded \$600,000 against DOE's consultant psychiatrist for misdiagnosing a worker environmental activist as "paranoid, delusional and psychotic, with loss of her job and security clearance.
- Published seven (7) articles on civil rights matters in American Bar Association publications, including two in the ABA *Judges' Journal*.
- Public critic of Oak Ridge waste disposal practices since 1981.
- B.S., Foreign Service, Georgetown University
- J.D., Memphis State University.
- Testified thrice before House of Representatives subcommittees on DOE-related issues.
- Pioneered use of whistleblower laws to protect Oak Ridge worker rights.
- Legal Counsel for Constitutional Rights, Government Accountability Project (GAP), 1989-93
- Counsel, AFL-CIO Occupational Health Legal Rights Foundation, 1988-1989.
- Law Clerk, Chief Administrative Law Judge, Department of Labor, 1986-1988
- Editor, *Appalachian Observer*, 1981-1983, recommended for Pulitzer Prize by DA for exposing Oak Ridge mercury losses.
- Staffer for United States Senators Edward M. Kennedy, Gary W. Hart and Jim Sasser, 1974-1977.
- Listed in *Who's Who in American Law*, Millenium Edition.
- Author, *Jimmy Carter* (Chelsea House Publishers 1989)
- Published seven articles in American Bar Association Publications on human rights issues, 1986-1993.
- Have advised the Coalition for a Healthy Environment since 1996.
- Early adjunct faculty member of the District of Columbia School of Law clinical program in conjunction with the Government Accountability Project's legal clinic.
- Attorney for plaintiff in *Rinde v. Woodward & Lothrop*, historic 1989 District of Columbia gay and lesbian rights case involving equal discount benefits at department stores, with settlement vindicating rights of Woodward & Lothrop and John Wanamaker employees in Washington, D.C., Baltimore and Philadelphia metropolitan areas.
- In the early 1980s was appointed a member of Anderson County Commission Special Tax Study Committee.

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## ENDNOTES

1. Martin Tolchin, "Judges Who Decide Social Security Claims Say Agencies Goad Them to Deny Benefits," New York Times, January 8, 1989 (quoting DOL Chief Judge Nahum Litt).
2. A truly independent audit would probably show that the Black Lung tax makes a net contribution to reducing the debt, after correcting for accounting flummery that may be designed to keep Black Lung from being used as a basis for compensating asbestos and cotton dust victims.
3. ORNL Review, Nos 3& 4 (1992)(50th Anniversary Edition) at 65, quoting Dr. Alvin Weinberg.
4. See United States v. Mississippi Valley Generating Co., 364 U.S. 520, 548 (1961)(the "Dixon-Yates case"), with the Supreme Court relying on Matthew 6:24 and expressing the view that prevention of conflicts of interest is aimed "not only at dishonor but at conduct that tempts dishonor."
5. *Id.*
6. See Judge John Noonan, Bribes.
7. *Id.*
8. See Rules 702, 703 & 403 of the Federal Rules of Evidence and Daubert v. Merrill-Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
9. As the Supreme Court has held, "A fair trial in a fair tribunal is a basic requirement of Due Process." In re Murchison, 349 U.S. 133, 136 (1955); Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986). This requirement applies to agencies and governmental hearing officers as well as to judges. Withrow v. Larkin, 421 U.S. 35, 46 (1975); Gibson v. Berryhill, 411 U.S. 564 (1973); American Cyanamid v. Federal Trade Commission, 363 F.2d 757, 767 (6th Cir. 1966).
10. "Justice must not be done in a corner, nor in any covert manner." State ex rel Herald Mail Co. v. Hamilton, 267 S.E.2d 544,548 (W.Va. 1980), citing 1676 Charter of Fundamental Laws of West New Jersey, Ch. XXIII. For years, DOE's DOE's security clearance system was characterized by "secret law," a process long condemned by American law:  
 Secret law, or law imperfectly known and developed, is undesirable for many reasons but is especially injurious to the policy of getting controversies settled without adjudication. The clearer and better known the law is, the fewer disputes over it that will arise and the more readily they will be disposed of.  
 Daniel Joseph & Michelle Gilbert, "Breaking the Settlement Ice: The Use of Settlement Judges in Administrative Law," Report to the Administrative Conference of the United States at 33-34 (May 20, 1988).
11. See The Connecticut Light & Power Co. v. Secretary of the United States Department of Labor, 85 F.3d 89 (2d Cir. 1996)(employer seeking gag order illegal in settlement negotiations in Energy Reorganization Act case because it asks Complainant to waive known rights).

12. Richard G. Hewlett & Francis Duncan, U.S. Atomic Energy Commission (WASH 1215) Atomic Shield -- A History of the U.S. Atomic Energy Commission 1947-1952, at 455
13. See Clifford T. Honicker, "The Secret Files," New York Times Magazine, November 19, 1989 (cover story).
14. L.A. McKeown, "MD claims harassment after cancer warning," Medical Tribune, April 8, 1993.
15. Lockheed Martin Energy Systems, Inc. v. Slavin, No. 3:98-CV-613 (Hon. Curtis Collier, Memorandum Order, December 6, 1999), notice of appeal filed with United States Court of Appeals for Sixth Circuit. So closely do DOE and Lockheed work that a copy of the Order was forwarded by Lockheed's all-white Knoxville corporate law firm to the DOE Chief Counsel in Oak Ridge, on to the DOE office in Albuquerque, and by the Albuquerque Operations Chief Counsel to the DOE Office of Hearings and Appeals by fax on December 10 & 13, 1999, resulting in a pejorative order by a DOE OHA attorney, which resulted in the withdrawal of Knoxville lead counsel for an Oak Ridge whistleblower, scared off from trying her first case. No one has ever accused the DOE management structure of being afraid to engage in *ex parte* contacts, or taking any other action to discourage workers from hiring lawyers.
16. Reid v. Methodist Medical Center of Oak Ridge, 93-CAA-4 (Sec'y, April 3, 1995).
17. See [www.covenanthealth.com](http://www.covenanthealth.com).
18. Lockheed Martin, "How We Work at Lockheed Martin Energy Systems, Inc.," October 26, 1996 one-page handout given to workers at medical department, discouraging workers from seeing doctors or lawyers without seeing management first, Mr. and Mrs. Delbert Lynn and Linda Jayne Cox v. LMES, 97-ERA-17, Exhibit CX-23.
19. Cox v. LMES, Tr. 1647-48.
20. *Id.*, Tr. 1647.
21. *Id.*, Tr. 2738-39.
22. *Id.*, Tr. 1649.
23. *Id.*, Tr. 1650.
24. *Id.*
25. *Id.*, Tr. 1650, 2791.
26. *Id.*, Tr. 1650.
27. *Id.*, Tr. 1566, Dr. Conrad.
28. *Id.*
29. *Id.*, Tr. 1572.

30. *Id.*, Dr. Conrad, Tr. 1570-71; CX-239.
31. *Id.*, Tr. 2851.
32. James J. Fletcher, PhD; Jeanne Sorrell, PhD, RN; Mary Cipriano Silva PhD, RN (Dec. 31, 1998); "Whistleblowing As a Failure of Organizational Ethics," *Online Journal of Issues in Nursing*. Available at [http://www.nursingworld.org/ojin/topic8/topic8\\_3.htm](http://www.nursingworld.org/ojin/topic8/topic8_3.htm)
33. "The Impact of the Mercury Losses in Oak Ridge," Hearing Before the United States House of Representatives Science & Technology Committee, Subcommittees on Oversight and Investigations and Subcommittee on Energy Research and Development, July 11, 1983 (co-chaired by then-Reps. Albert Gore, Jr. and Marilyn Lloyd) at 350, quoting interview by Libby Wann of the Chattanooga Times.
34. Testimony of K-25 Human Resources Director Cleve Jones, Jr. in Mr. and Mrs. Delibert Lynn and Linda Jayne Cox v. LMES, 97-ERA-17, Tr. 2718 (simultaneous layoffs of husband and wife managers shortly after co-chairing first Oak Ridge environmental meeting in 1996)
35. Leo Williams, "LMES hires consulting physicians, drops cyanide study," Oak Ridger, August 6, 1996, reporting that consulting physicians will have "broad authority to order tests," but dropping a study whereby urine samples would have been taken from sick workers; Lockheed Martin employee publication, July 11, 1996, "Effort made to address cyanide recommendations"; Leo Williams, "The search for cyanide and trust," Oak Ridger, June 20, 1996.
36. *Id.*
37. *Id.*, Tr. 2872.
38. *Id.*, Lockheed Exhibit R27, p 26 of 33.
39. *Id.*, Tr. 2845-51; Lockheed Exhibit R27, p.26.
40. *Id.*, Lockheed Exhibit R27, p. 16.
41. *Id.*, Lockheed Exhibit R27, p. 17.
42. *Id.*, Mr. Conner, Tr. 2855-56; *see also* Mr. Dalton, Tr. 2550; Mr. Milan, Tr. 2936.
43. *Id.*, Tr. 2571.
44. *Id.*, Tr. 2572.
45. *Id.*, Tr. 254.
46. *Id.*, Tr. 196-97.
47. *Id.*, Tr. 197, 198.
48. *Id.*, Tr. 217-19.

49. *Id.*, Tr. 506 (Mr. Jones).
50. *Id.*, Tr. 225-26.
51. *Id.*, Tr. 1231, 1239.
52. *Id.*, Tr. 1362-63.
53. *Id.*, Tr. 1367.
54. *Id.*, Tr. 1491.
55. *Id.*, Tr. 1353, 1350, 1425-26, 1466.
56. *Id.*, Tr. 1249, 1253; *see also* Tr. 1255, 1403.
57. *Id.*, Tr. 1405.
58. *Id.*, Tr. 1427.
59. *Id.*, Tr. 1537-39.
60. *Id.*, Tr. 1556.
61. *Id.*, Tr. 1559.
62. *Id.*, Tr. 1559.
63. Random House College Dictionary.
64. Cox v. LMEIS, Tr. 1560. DOE Order 5480.8A discuss health care of contractor employees.
65. *Id.*, Tr. 1529.
66. *Id.*, Tr. 1545.
67. *Id.*, Tr. 1540-41.
68. *Id.*, Tr. 1563.
69. *Id.*.
70. *Id.*, Tr. 1541.
71. *Id.*, Tr. 1525 (emphasis added).
72. *Id.*, Tr. 1540, 1564.
73. *Id.*, Tr. 1652.

74. *Id.*, Tr. 1535.
  75. *Id.*, Tr.1531.
  76. *Id.*, Tr. 1543.
  77. DOE Office of Oversight, Environment, Safety and Health, East Tennessee Technology Park Site Profile (December 1999).
  78. Cox v. IMES, Exhibit CX-179; Tr. 1352-53.
  79. *Id.*, Tr.1314.
  80. *Id.*, Tr. 1314.
  81. *Id.*, Tr. 1268, 1179.
  82. *Id.*, Tr. 1265.
  83. *Id.*, Tr. 1266.
  84. *Id.*, Tr. 1266.
  85. *Id.*, Tr. 1266.
  86. *Id.*, Tr. 1254.
  87. *Id.*, Tr. 1250-51.
  88. *Id.*, Tr. 1259-60, 1502.
  89. *Id.*, Tr. 1500-1501.
  90. *Id.*, Tr. 1253, 1501, 1502.
  91. *Id.*, Tr. 1526.
  92. *Id.*, Tr.1503.
  93. *Id.*, Tr. 1490
  94. *Id.*, Tr. 1251.
  95. *Id.*, Tr. 1524.
  96. *Id.*, Tr. 1524, 2794.
  97. *Id.*, Tr. 1524.
  98. *Id.*, Tr. 1512, 1552.
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99. *Id.*, Tr. 1511.

100. In American discrimination law, it is not a *bona fide* occupational qualification to require that an employee be a “team player.” In Abrams v. Baylor College of Medicine, 581 F.Supp. 1570, 1574 (S.D. Texas 1984), the Court rejected pretexts for discrimination in refusing to send Jewish physicians to a program in Saudi Arabia, including a “team player” requirement. The phrase “team player” is freighted with the implication that one is willing to get along, go along, say what management wants to hear, and do what one is told by managers, no matter what the ethics or legality of the situation. In the political corruption case of United States v. Salvatti, 451 F.Supp. 195, 197-98 (E.D. Pa. 1978), one witness testified that “when she complained to the Mayor about Mr. Carroll’s pressure, and advised him that the proposed payment to the Sylks would be totally improper and probably illegal, the Mayor chided her for not being a team player.” See also Fitzgerald v. Seamans, 384 F.Supp. 688,697n7 (D.D.C. 1974), affirmed, 553 F.2d 220, 224 (D.C. Cir. 1977), reversed, Harlow v. Fitzgerald, 457 U.S. 800 (1982); see also Nixon v. Fitzgerald, 457 U.S. 731 (1982) (remarks of President Nixon et al. on need to fire Department of Defense whistleblower A. Ernest Fitzgerald after he testified before Congress on C-5A transport cost overruns); see also Broderick v. Ruder, 685 F.Supp. 1269 (D.D.C. 1988)(sexual harassment at Securities and Exchange Commission); Tomsie v. State Farm Mutual Automobile Insurance Co. 85 F.3d 1472, 1474 (10th Cir. 1996); Geddes v. Benefits Review Board, 735 F.2d 1412, 1416, 1420 (D.C. Cir. 1984) (Washington Metropolitan Transportation Authority considered workers’ compensation claimant not a “team player”); Davis v. California, 1996 WL 271001 (E.D.Cal. 1996); Schloesser v. Kansas Dept. Of Health & Environment, 766 F.Supp. 984 (D. Kansas 1991); Stradford v. Rockwell International, 48 Fair Empl.Prac.Cas. (BNA) 697, 49 Empl. Prac. Dec. P 38,828,1988 WL 159939 (S.D. Ohio). See, also, American Heritage Dictionary of the American Language (1992)(“**team play**”: “Collective play participated in by team members,” “Collective effort and mutual cooperation.”); Seymour M. Hersh, Annals of National Security: The Intelligence Gap -- How the digital age left our spies out in the cold, The New Yorker, December 6, 1999) 58, 62, quoting sources about ineffectual NSA managers: “‘If you didn’t support their position, you weren’t considered a team player,’ this person told me.” Accord, Dictionary of Contemporary American Usage (1957), which speaks of the many “unctuous cliches” using the root word “team,” stating that “much of it is commercial and ... tainted with downright dishonesty and association with highly undesirable people,” stating that the word “teamwork” is the “keynote of its hucksters, barkers and shills -- a keynote which some do not find wholly inspiring.”

101. Cox v. LMES, Tr. 1553.

102. *Id.*, Tr. 1252.

103. *Id.*, Tr. 1253.

104. *Id.*, Tr. 1253.

105. *Id.*, Tr. 1255.

106. *Id.*, Tr. 1256, 1264.

107. *Id.*, Tr. 1353-54.

108. *Id.*, Tr. 1270.

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109. *Id.*, Tr. 1270.
110. *Id.*, Tr. 1270-73.
111. *Id.*, Tr. 1581.
112. *Id.*, Tr. 1586.
113. *Id.*, Tr. 1590.
114. *Id.*, Tr. 1590.
115. *Id.*, Tr. 1280.
116. *Id.*, Tr. 1282.
117. *Id.*, Tr. 1368.
118. *Id.*, Tr. 1260-61, 1352.
119. *Id.*, Tr. 1352.
120. *Id.*, Tr. 1260-61.
121. *Id.*, Tr. 1322.
122. *Id.*, Tr. 1322.
123. *Id.*, Tr. 1325.
124. *Id.*, Tr. 613 (Emphasis added).
125. *Id.*, Exhibit CX-265, pp. 76, 80-81.
126. *Id.*, Tr. 1581.
127. *Id.*, Tr. 1566.
128. Cox v. LMES exhibits CX-268, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 290A&B, 291.
129. *Id.*
130. *Id.*, CX-268, 281, 282, 284, 286, 287.
131. *Id.*, CX-268, p. 2.
132. *Id.*, CX-268.
133. *Id.*, CX-278, 279, 280A.

134. *Id.*, CX-272.
135. *Id.*, CX-277.
136. See, e.g., Seater v. Southern California Edison Company, 95-ERA-13 (ARB, Sept. 27, 1996).
137. Cox v. LMES, Tr. 269.
138. *Id.*, Exhibit CX-189, p2.
139. On the Internet at <http://www.acoem.org/code/code.htm>
140. ACOEM Statement on Medical Surveillance in the Workplace, on the Internet at <http://www.acoem.org/paprguid/papers/msurv.htm>.
141. See, e.g., Frank Swoboda, "Report Calls Secretary's Office 'Burial Ground' for Bias Cases," Washington Post, May 26, 1993, p. A5; "Political Considerations Thwarted Review of Bias Cases at DOL," BNA Daily Labor Report, May 24, 1993. Most Department of Labor whistleblower orders and decisions are collected in the DOL Office of Administrative Law Judges Whistleblower Library, [www.oalj.dol.gov](http://www.oalj.dol.gov), except for a few that have been inexplicably lost or stolen or withheld. Pressures on Social Security judges were common under Reagan and Bush. Martin Tolchin, "Judges Who Decide Social Security Claims Say Agencies Goad Them to Deny Benefits," New York Times, January 8, 1989 (quoting DOL Chief Judge Nahum Litt). DOL Chief Judge Litt (1979-1995) insulated DOL judges from employer pressures. Likewise, pressures on security clearance adjudicators led to an American Bar Association resolution in 1989, and five days of House oversight hearings on violations of workers' security clearance Due Process rights. See "Standards and Due Process Procedures for Granting, Denying and Revoking Security Clearances" 135-140, 210-243, House Judiciary Subcommittee on Civil and Constitutional Rights and House Civil Service Subcommittee, House Judiciary Serial No. 101-85, Post Office and Civil Service Serial 101-57, including testimony of Honorable Robert Bamford, Honorable Delbert R. Terrill, Edward A. Slavin, Jr. and the Department of Energy, which admitted it did not use the Anglo-American system of precedent as a guide to making security clearance decisions); see also Viveca Novak, "Suspect," 15 Common Cause Magazine No. 3, (May-June, 1989)(cover story).
142. Most U.S. corporations only receive the tax subsidy of deductibility when they get sued for discrimination: Lockheed and other government contractors get to make profits on such suits.
143. Legislative history of the Federal Water Pollution Control Act cited in Conference Report of Clean Air Act, 1977 U.S. Code Cong. & Ad. News, 1077, 1404.
144. [Emphasis added]. 118 Cong. Rec. 10,766-768 (1972) reprinted in Legislative History of the Water Pollution Control Act Amendments of 1972, at 655.
145. The DOL OAA 1994 Mission Statement said in relevant part:
- Workers who have confidence that unsafe or unhealthy working conditions or discriminatory practices can be brought to the attention of authorities without fear of retaliation are workers who can see themselves as important links with management rather than mere units of production.

- Conversely, it is important for management as well as workers to know that they are entitled to a fair hearing before the Secretary or his designated representative and that sound, unbiased decisions can be expected.
146. 30 U.S.C. § 820 (b)(1). From 1972-1980, Congress actively protected worker rights, passing seven whistleblower laws and in eight years: the Safe Drinking Water Act (SDWA) Clean Air Act (CAA); Energy Reorganization Act (ERA); Comprehensive Environmental Response and Liability Act (Superfund or CERCLA); Toxic Substance Control Act (TSCA); Solid Waste Disposal Act (SWDA or RCRA); and the Water Pollution Control Act. Kohn, Environmental Litigation Handbook xxiii. After the inauguration of President Reagan, no further environmental whistleblower laws were passed, although the Surface Transportation Assistance Act (STAA) whistleblower provision passed in 1982.
147. Mackowiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1162 (9th Cir. 1984).
148. Courts are reluctant to find that the deadlines are enforceable, and *mandamus* actions have been unavailing, except in getting agencies to promise a date for decision. DOL promises to courts have been broken too. Few parties want to file a *mandamus* action over delay and risk offending the deciding official.
149. Constitutionality of the provisional remedy ordered by OSHA was upheld in Brock v. Roadway Express, 481 U.S. 252 (1987), though reinstatement of the worker is required before a hearing.
150. July 26, 1996 letter from Office of Inspector General to author.
151. Russell L. Weaver, "Appellate Review in Executive Departments and Agencies," 48 Admin. L. Rev. 251,257,269,271 (Spring, 1996).
152. BNA Daily Labor Report, January 11, 1993, A-8.
153. See Stephanie Armour, "Child-labor violators' fines often reduced," USA Today, December 23, 1998, pages 1A,1B&2B; "Child-labor laws not tough enough, advocates say," *id.* at 2B.
154. DOL Office of Public Affairs, Secretary of Labor August 12, 1998 press release on "Job-Related Deaths."
155. Worker protection laws protect free speech and are "**modeled on the First Amendment**." The Courts defer to this principle in legislative construction by borrowing the statute of limitations used in 42 U.S.C. § 1983 civil rights actions. See Reed v. United Transportation Union (UTU), 488 U.S. 319, 334 (1989):

Congress modeled Title I after the Bill of Rights, and that the legislators intended s 101(a)(2) to **restate a principal First Amendment value--the right to speak one's mind without fear of reprisal.**" Steelworkers v. Sadlowski, 457 U.S. 102, 111, 102 S.Ct. 2339, 2345, 72 L.Ed.2d 707 (1982)....

Reed v. UTU, 488 U.S. at 325 (Emphasis added). The Sixth Circuit held in a Railway Labor Act (RLA) case that it would apply the NLRA statute of limitations to an action brought pursuant to RLA. The Sixth Circuit stated that the "**same principles and rationale logically follow under**

each Act dealing [with] ... employer-employee relations." Bailey v. Chesapeake & Ohio Railway Co., 852 F.2d 185, 186 (6th Cir. 1988)(Emphasis added). See also Legislative history of the Federal Water Pollution Control Act cited in Conference Report of Clean Air Act, 1977 U.S. Code Cong. & Ad. News, 1077, 1404. In so delaying, prolonging and distorting the whistleblower process, DOL has flouted "First Amendment values," Sadlowski, *supra*.

156. DOL Inspector General Report 11-5-193-08-001 (March 3, 1986), "Review of the Office of Administrative Appeals."

157. See Edward A. Slavin, Jr., "Judicial Independence undermined -- What the Department of the Interior is Doing and Why," Spring 1992 ABA Judges Journal.

158. Department of Labor Inspector General, "Audit of the Office of Administrative Appeals," Final Report 17-93-009-01-010 (May 19, 1993)(1993 DOL IG Audit Report of OAA) at p. 3.

159. 5 U.S.C. § 3105.

160. 1993 DOL IG Audit Report of OAA at 1.

161.

162. Id. at 7.

163. "Fact Report on Followup of the Audit of the Office of Administrative Appeals," page 4, attached to May 2, 1994 Memorandum for the Secretary from Charles C. Masten, Inspector General, re: "Unsuccessful Efforts to Resolve the 1997 Audit of the Office of Administrative Appeals," Report No. 17-93-09-01-010.

164. Secretary Reich March 2, 1994 Press Release "On Honeywell Ruling, OAA Backlog."

165. "Fact Report on Followup of the Audit of the Office of Administrative Appeals" attached to May 2, 1994 Memorandum for the Secretary from Charles C. Masten, Inspector General, re: "Unsuccessful Efforts to Resolve the 1997 Audit of the Office of Administrative Appeals," Report No. 17-93-09-01-010.

166. Id. See end note 9, *supra*, regarding Due Process requirements.

167. October 21, 1993 Memorandum from OAA Acting Director Gresham Smith to Deputy Secretary re: "Our Response to the DOL IG Audit Report."

168. In 1993, the late John F. Kennedy, Jr. reportedly toured OAA and turned down the OAA Director's job, and the position remained unfilled for several years.

169. *Id.*

170. June 11, 1993 memorandum from Secretary of Labor Robert B. Reich to Gresham Smith, with copies to Michael Kerr and Betty Bolden.

171. February 3, 1994 Memorandum from Gresham Smith to OAA Staff re: "Processing of Old Cases," pp. 1-2.

172. March 2, 1994 Secretary Reich press release “On the Honeywell Ruling, OAA Backlog,” p. 3.
173. See page 3 of the “Fact Report on Followup of the Audit of the Office of Administrative Appeals”, attached to May 2, 1994 Memorandum for the Secretary from Charles C. Masten, Inspector General.
174. See page 10 of the “Fact Report on Followup of the Audit of the Office of Administrative Appeals”, attached to May 2, 1994 Memorandum for the Secretary from Charles C. Masten, Inspector General.
175. *Id.*
176. *Id.* at 3.
177. *Id.*
178. See Robert B. Reich, The Work of Nations (1991), showing that Reich showed little compassion for American workers, treating them as objects when he was an academician.
179. Secretary of Labor Order 2-96, 61 *Fed Reg.* 19978.
180. May 15, 1996 letter from Edward A. Slavin, Jr. to Secretary of Labor Robert B. Reich.
181. After belatedly posting material to DOL’s web site, ARB has a thin paragraph on each member, but no photographs.
182. See <http://dol.gov/arb/public/areas.htm>
183. In response to a June 17, 1996 FOIA request, DOL took until January 1999 to decide to withhold some 100 pages of documents on ARB’s creation, including documents circulated between the Secretary of Labor and Chief Judge John Vittone. The putative justification was a backlog of FOIA requests by fast food chains regarding child labor violations, and DOL’s failure to allocate sufficient staff to answer them. There is no excuse for keeping secret from the American people any information about the creation of the Administrative Review Board.
184. This sort of information which is commonly available for cabinet members, NLRB members and the CIA Director, to name a few, but not for the secretive ARB.
185. March 2, 1994 Secretary Reich press release “On the Honeywell Ruling, OAA Backlog,” p. 1.
186. Secretary of Labor Order 2-96, Authority and responsibilities of the Administrative Review Board, ¶ 5, states:  
*Composition.* The Administrative Review Board shall consist of three **public members**, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board... (Emphasis added).
187. 1993 *Annual Report of the Administrative Conference of the United States*, p. 56, “Public Members,” defining “Public Members” as “‘non-government’ members.” See, also, former 1 U.S.C. § 593(b)(6)(1993); former 1 C.F.R. § 302.2(b)(1993).

188. See Moore v. DOE, 1999-CAA-14, Complainant's August 6, 1999 Motion to Disqualify Cynthia Attwood; Complainant's June 10, 1999 Petition for Review, Motion for *Quo Warranto* Hearing on *Ex Parte* Communications and Other Possible Due Process Violations, Counsel's Declaration & Motion to Order DOL and DOE Employees to Answer Questions; and ARB's July 13, 1999 Order.
189. Mesarosh v. United States, 352 U.S. 1, 14 (1956).
190. The whistleblower laws should "be treated as a working instrument of government and not merely as a collection of English words." United States v. Dotterweich, 320 U.S. 277, 280 (1943).
191. See *supra*, note 153.
192. Compare Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442 (1977)(Congressional creation of OSHRC upheld).
193. Varnadore v. Secretary of Labor, 141 F.3d. 625 (6th Cir. 1998).
194. Varnadore v. Oak Ridge National Laboratory, 92-CAA-2. (ARB, June 14, 1996).
195. Tyndall v. Environmental Protection Agency, Inspector General, 93-CAA-6, 95-CAA-5 (ARB, June 14, 1996)(EPA IG senior special agent concerned with corruption in acid rain research contract held entitled to discovery and trial in Clean Air Act whistleblower case).
196. OAA 1994 Mission Statement ¶ 2.
197. Cable News Network (CNN) "*Capital Gang*," December 12, 1998.
198. ARB's current members are Chair Paul Greenberg, E. Cooper Brown, both former plaintiff's lawyers, and Acting Member Cynthia Atwood, a DOL Associate Solicitor for safety and health.
199. March 18, 1992 letter from Bill Clinton to Messrs. Louis Clark and Jeff DeBonis regarding "Protecting Integrity and Ethics" Conference and protection of federal employee whistleblowers, quoted in Paul Sloca, "Whistleblowers should have attentive ear in White House," The Oak Ridger, December 2, 1992 at 1.
200. Service v. Dulles, 354 U.S. 363 (1957).
201. Nader, No Contest: Corporate Lawyers and the Perversion of Justice in America, 218-31.
202. In amending the Energy Reorganization Act § 210-211, 42 U.S.C. § 5851 to protect nuclear workers, House of Representatives Education and Labor Committee Chairman William Ford cited the Sixth Circuit's unreported case, emphasizing the need for steps to halt delays. 138 Cong. Rec. H11444 (daily ed. Oct. 5, 1992) (statement of Rep. Ford), citing the experience of Detroit Edison employee Ms. Carolyn Larry as an example of this problem. In its footnote 3, the Sixth Circuit noted that it was unclear why Ms. Larry's relief was delayed five years from the time the administrative law judge issued his decision until the Secretary rendered her Final Decision ordering relief. Detroit Edison Company v. Department of Labor, No. 91-3737, 1992 U.S. App. LEXIS 8280 (6th Cir. Apr. 17, 1992) (unpublished), slip op. at 7, footnote 3 [enforcing Larry v. Detroit Edison Co., 86-ERA-32 (Sec'y June 28, 1991); Larry v. Detroit Edison Co., 86-ERA-32 (ALJ Oct. 17, 1986)]. In effect, the

DOL Inspector General in 1993 answered the Sixth Circuit's implied question, when it stated it does not know why the Secretary took five years after the ALJ's RD&O to decide the case: delays in whistleblower cases was a political decision by several successive Secretaries of Labor.

203. *See, e.g., Landers v. Commonwealth-Lord Joint Venture*, 83-ERA-5 (District Chief Judge Daniel K. Roketenetz RD&O May 11, 1983, adopted by Secretary September 9, 1983);

204. DOL took the position that it did not need to use rulemaking to create ARB. *See* author's May 15, 1996 Petition for Rulemaking.

205. 29 C.F.R. § 18.34(g)(3)(Denial of authority to appear), last sentence, states, "No provision hereof shall apply to any person who appears on his or her own behalf or on behalf of any corporation, partnership or association of whom the person is a partner, **officer or regular employee.**" (Emphasis added) This rule tells ruthless employers their in-house attorneys may do anything in DOL without fear of disqualification. This provision is discriminatory and should be eliminated (pending petition for rulemaking would allow DOL disqualification of in-house counsel!)

206. *Hasan v. NPS*, 86-ERA-24 (ALJ Order of Disqualification, May 12, 1989).

207. Devine & Aplin, "Whistleblower Protection - The Gap Between the Law and Reality, 31 *Howard L. J.* 223, 228-9 (1988); Glazer & Glazer, *The Whistleblowers: Exposing Corruption in Government and Industry*, *passim*, 133-66 (1989).

208. The NLRB orders employers to cease and desist creating the impression among employees that their protected activity is under surveillance, or engaging in such surveillance. *Consolidated Edison Company*, 4 NLRB 71, 94 (1937), enforced, 305 U.S. 197 (1938); *Atlas Underwear Co. v. NLRB*, 116 F.2d 1020, 1023 (6th Cir. 1941); *NLRB v. Ford Motor Co.*, 119 F.2d 326 (5th Cir. 1941); *Press Co. v. NLRB*, 118 F.2d 937 (D.C. Cir. 1940), cert. denied 61 S.Ct. 1118; *NLRB v. Baldwin Locomotive Works*, 128 F.2d 39, 49 (3d Cir. 1942); *NLRB v. Jasper Chair Co.*, 138 F.2d 756 (7th Cir. 1943); *NLRB v. Collins & Aikman Corp.*, 146 F.2d 454, 455 (4th Cir. 1944). It is a truism that --

**whistleblowers often face some type of surveillance** from either the government, the industry, or some other private investigator. The experience can be very frightening and can add an ominous presence to the misery of blowing the whistle.... We often advise that if someone is watching you, he or she wants you to become affected by the surveillance and to act irrationally about it. It can be another way of bullying you into a mistake.

Government Accountability Project, Tom Devine, Julie Stewart, et al. *Courage Without Martyrdom -- A Survival Guide for Whistleblowers* 5 (1989)(Emphasis added). In response to surveillance, DOL has most often shrugged its shoulders and refused to answer the questions. *See, e.g., Scott v. Alyeska Pipeline Services Company*, 92-TSC-2 (Sec'y, 1995). DOL should provide a remedy for surveillance or giving the impression of surveillance, in order to halt future lawbreaking. *See NLRB v. Anchorage Times Publishing Co.*, 637 F.2d 1359, 1365-6 (9th Cir.), cert. denied, 454 U.S. 835 (1981); *NLRB v. Randall P. Kane Co.*, 581 F.2d 1124, 1131 (9th Cir. 1978); *NLRB v. Squire Shops, Inc.*, 559 F.2d 486, 487 (9th Cir. 1977); *NLRB v. Miller Redwood Co.*, 407 F.2d 215, 218 (9th Cir. 1978); *NLRB v. Intertherm*, 596 F.2d 267 (8th Cir. 1979); *Russell Stover Candies, Inc. v. NLRB*, 551 F.2d 204, 207 (8th Cir. 1977); *NLRB v. Speed Queen*, 469 F.2d 189, 191 (8th Cir. 1973); *NLRB v. Hawthorn Co.*, 404 F.2d 1205, 1208-09 (8th Cir. 1969); *Olsen Rug Co. v. NLRB*, 304 F.2d 710, 714-15 (7th Cir. 1962); *NLRB v. Tidelands Marine Service*, 339 F.2d 291 (5th Cir.

1964); National Phosphate Corp., 211 NLRB 567 (1974); Fotomat Corp., 207 NLRB 461 (1973); J.P. Stevens & Co., 245 NLRB 198 (1979); Laidlaw Waste Systems, 305 NLRB No. 5 (1991); see also Local 309, United Furniture Workers v. Gates, 75 F.Supp. 620, 625-26 (N.D. Ind. 1948); Alliance to End Repression v. City of Chicago, 742 F.2d 1007 (7th Cir. 1984); Handschu v. Special Services Divn., 349 F.Supp. 766 (S.D.N.Y. 1972); Presbyterian Church (USA) v. United States, 870 F.2d 518 (9th Cir. 1989); Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate, 519 F.2d 1335 (3d Cir. 1975); Paton v. LaPrade, 524 F.2d 862 (3d Cir. 1975); Cf. Fr. Robert F. Drinan, "First Amendment Endangered" (book review) 78 Geo L.J. 2057 (1990). Otherwise, "[o]nly a brave soul would dare to express anything other than orthodoxy under such circumstances." White v. Davis, 120 Cal. Rptr. 94 (1975).

209. See, e.g., DOE Albuquerque Operations Deputy Chief Counsel Ronald B. O'Dowd's August 28, 1998 letter to OSHA Dallas office re: Walter Moore v. DOE, which was not shared with Mr. Moore or his counsel after numerous requests to DOL and DOE until February 3, 1999, after DOE's Motion to Dismiss was rejected. The unsworn letter sets Mr. O'Dowd up as an "authority" on whistleblower law without benefit of oath-taking: Mr. O'Dowd clearly takes the complaint personally, and he uses the word "I" 13 times, asserting that "I believe this complaint was contrived to foster other interests of Mr. Moore and his counsel" who "has represented other clients in CAA and STAA complaints against the DOE and considers himself an expert in such cases." Mr. O'Dowd claims that the whistleblower complaint was filed solely to assist adjudication of Mr. Moore's Federal Tort Claims Act complaint and asserts that the complaint was "an attempted sham" (sic). DOE took no action to deter Mr. O'Dowd's filing of *ex parte* answers to OSHA complaints. What other forum in America permits an *ex parte* answer to a complaint?

210. See Secretary Reich's discussion of "the Murphy incident," where ORNL manager John Murphy instructed "his" workers not to talk to Mr. Varnadore. Varnadore v. ORNL. Sec'y slip op. 53, 68-84.

211. [Diaz-] Robainas v. Florida Power & Light, 92-ERA-10 (Sec'y Jan. 10, 1996)(psychiatric exam ordered after worker said he would call the Miami Herald if he was not allowed to bring lawyer to performance evaluation meeting).

212. Southern California Edison training on whistleblowers informs managers that retaliation is limited only by human creativity. Seater v. Southern California Edison Company, 95-ERA-13, Tr. 934 (testimony of employee concerns upgrade supervisor Steven Brown); Exhibit CX-35, pp. 16-17, re: exhaustive list of all forms of known discrimination followed by comment: "The human mind can probably think of many other examples of harassment and intimidation."

213. Connecticut Light & Power Co. v. Secretary of Labor, 85 F.3d 89 (2d Cir. 1996)(cited in DOL OALJ Whistleblower Newsletter, re: hardball anti-whistleblower coercion and litigation tactics).

214. 5 U.S.C § 500; Sperry v. Florida, 373 U.S. 379 (1963); Texas Supreme Court, Professional Ethics Opinion 516 and 276 (July 1996 and December 1963).

215. Stephenson v. NASA, *supra*.

216. See, e.g., Juan Williams, Thurgood Marshall: American Revolutionary (1998) at 103-104, 136-138, 170-73, 203, 249, *passim*.



217. See, e.g., Stephen M. Kohn, The Whistleblower Litigation Handbook: Environmental, Safety and Health Claims § 14.6 (Aggressive Litigation),” stating that “Whistleblower cases often involve not just employee-employer disputes, but indirectly concern the veracity of the underlying safety allegations,” and may present a “threat to the prospects of obtaining or retaining a license to operate a multi-billion dollar asset.” Therefore, “allegations of misconduct or unethical conduct by counsel are not uncommon.” *Id.*
218. Dr. William K. Reid, M.D. v. Methodist Medical Center of Oak Ridge, Martin Marietta Energy Systems, et. al., 93-CAA-4 (September 27, 1993 Order at 14-15), quoting Miller v. Bittner, 985 F.2d 935, 941 (8th Cir. 1993).
219. See Vice President Albert Gore, Jr., Earth in the Balance 346, 183-185, 337-338.
220. *Id.* at 262.
221. See Smith v. EBASCO, 93-ERA-16, where Wage-Hour investigator retired and new investigator told Mr. Smith he was closing out the case within the week, without investigation, because it didn’t matter, and that whoever didn’t like his decision would appeal anyway: investigator didn’t even correctly report the name of the employer. See also Farver v. Lockheed Martin, April 15, 1999 challenge to March 26, 1999 firing, with no findings yet made by DOL OSHA.
222. Tyndall v. Environmental Protection Agency, Inspector General, 93-CAA-6, 95-CAA-5 (ARB, June 14, 1996)(finding EPA IG criminal investigator’s concerns about acid rain research contract fraud expressed protected activity under Clean Air Act, requiring discovery and trial to show the nexus to air pollution legislation).
223. See, e.g., Edward A. Slavin, Jr., January 6, 1999 letter to DOL Inspector General Donald Masten and January 19, 1999 letter to Secretary Alexis Herman, both re: mishandling of Texas OSHA § 11(c). case.
224. See Pickett v. Tennessee Valley Authority, 1999-CAA-25 (September 10, 1999 Order Remanding)(Hon. Stuart A. Levin); Mourfield v. Bethlehem Advanced Materials, 96-CAA-10 (Hon. Paul H. Teitler, September 25, 1996 Order of Remand); Odom v. Anchor Lithkemko/ International Paper Co., 95-WPC-2 (Hon. Ralph Romano, April 28, 1995 remand for Wage-Hour investigation after employee was not informed of statute of limitations or DOL jurisdiction by either Jacksonville, Florida office of the Wage-Hour Division and DOL headquarters), cited in May 1995 OALJ Whistleblower Newsletter. In Odom, Judge Romano held that such a remand for investigation is an interlocutory order that does *not* require referral to the Secretary, a proposition the Judges in Pickett and Mourfield took for granted.
225. Secretary of Labor Robert Reich February 9, 1994 testimony to Senate Labor and Human Resources Committee. The SWDA, WPCA and Superfund whistleblower laws all cover “authorized representatives” of employees. Stephen Kohn, Whistleblower Litigation Handbook, § 3.12; 42 U.S.C. § 6971(a); 33 U.S.C. § 1367(a); 42 U.S.C. § 9610(a).
226. Odom v. Anchor Lithkemko/ International Paper Co., 95-WPC-2 (Hon. Ralph Romano, April 28, 1995 remand for Wage-Hour investigation after employee was not informed of statute of limitations or DOL jurisdiction by either Jacksonville, Florida office of the Wage-Hour Division and DOL headquarters).

227. See March 22, 2000 testimony of attorney Stephen M. Kohn before House Committee on Science, noting that EPA Chief of Staff Peter Robertson and EPA Deputy Assistant Inspector General for Investigations Emmett Dashiell claimed ignorance of environmental whistleblower laws. See Mr. Kohn's testimony at: [http://www.house.gov/science/kohn\\_032200.htm](http://www.house.gov/science/kohn_032200.htm), also noting that EPA had failed to carry out training of managers regarding rights under environmental whistleblower laws, despite order from DOL to do so. Mr. Dashiell was a named discriminator in *Tyndall v. EPA*, *supra*, making his claim appear of ignorance of environmental whistleblower laws appear disingenuous, if not actually perjurious.

228. Lawyers from the law firm of Baker & Botts in Houston advise company managers never to sign their DOL statements, rendering them unusable as party opponent admissions before DOL ALJs. Signing witness statements should be required by DOL whistleblower statutes and regulations, as in other civil rights laws.

229. In May 1997 trial in *Stephenson v. NASA*, the Dallas Office of the DOL Solicitor sent the witness statements to NASA, depriving NASA of the ability to say it did not have its managers' "confidential" statements, resulting in disclosure of the statements despite NASA's scheming. Once revealed, the statements revealed that NASA had lied to the Wage-Hour investigator, leading to key impeachment of the retaliators against concerns about ethylene oxide in Space Shuttle cabin air. No DOL investigator should ever again be able to treat a statement as "confidential" unless it is by a person who fears retaliation by the employer. Since discriminatory government managers are most often rewarded, the lockstep treatment of all NASA managers' statements as "confidential" was an abuse of power intended to help protect NASA. See, generally Senator Daniel Patrick Moynihan, *Secrecy* (1998).

230. 5 U.S.C. § 3105.

231. *Universal Camera Corp. v. NLRB*, 340 U.S. 456, 496 (1951).

232. *Rex v. EBASCO*, 87-ERA-6,40 (Secretary of Labor, March 4, 1994), where Edwin Meese cronyn Robert L. Ramsay, fired as Chair of the DOL Benefits Review Board after deputation that included firing a DOL union steward. After his firing, Ramsay reverted back to his ALJ position in the DOL OALJ San Francisco office. The disgruntled former employer wrongfully attempted to assess tens of thousands of dollars of sanctions against attorney Billie Garde, Bob Guild and the Government Accountability Project. The Secretary of Labor held that Rule 11 sanctions could not be selectively incorporated by DOL, and that the "situation" of attorney discipline was already covered by DOL rules. For other examples of outrageous DOL ALJ chauvinism, see *Nathaniel v. Westinghouse Hanford Co.*, *supra*, reversing Judge Butler, who referred to chemist as "this young woman"; see also *Flor, Tyndall; Stephenson*, *supra*.

233. *Timmons*, *supra*.

234. See, e.g., *Seater*.

235. *Nolan v. AC Express*, 92-STA-37 at 10 (Sec'y, January 17, 1995)(remand with strict 180 day time limit upon ALJ Barnett due to her prior adjudication delays).

236. *Johnson v. DOE Oak Ridge Operations Office*, 95-CAA-20,21,22 (February 1997 ALJ Edith Barnett Orders recommending dismissal of case without investigation and recommending that the author be disqualified from practicing before her after raising concerns about delay)(Judge Barnett

committed suicide less than a year later).

237. Five Supreme Court justices have opined that Courts do not sit to determine whether litigants are "nice." Price Waterhouse v. Hopkins, 490 U.S. 228, 258, 295 (1989): "courts do not sit to determine whether litigants are nice." (Justices Kennedy and Scalia, dissenting)(emphasis added). Justices Brennan, Marshall and Stevens stated in their plurality opinion that "[w]e sit not determine whether Ms. Hopkins is nice, but to decide whether the partners reacted negatively to her personality because she is a woman." 490 U.S. at 258 (emphasis added).

238. Strategic Lawsuit Against Public Participation.

239. Nathaniel v. Westinghouse Hanford Co., 91-SWD-2 (Sec'y Feb. 1, 1995) reversed the ALJ's decision but did not address his chauvinistic language.

240. Tyndall]; Judge Mahony moved on to the Securities and Exchange Commission, which has very little work for its judges and where presumably there is no latent fear of a line of government criminal investigators stretching around the block to file cases.

241. Id.

242. Farver & Williams v. Lockheed Martin, 98-ERA-40&42, November 17, 1998 Prehearing Conference before Honorable Rudolf L. Jansen.

243. Rockefeller v. DOE, 1999-CAA-6 (February 19, 1999 RDO of District Chief Administrative Law Judge Edward C. Burch) @ 3.

244. Id at 2.

245. "Ludicrous ...1. amusing or laughable through obvious absurdity, incongruity, exaggeration or eccentricity; 2. meriting derisive laughter or scorn as absurdly inept, false or foolish." Webster's Ninth New Collegiate Dictionary (1987).

246. See Asst. Secretary & Bigham v. Guaranteed Overnight Delivery, 95-STA-37 (May 8, 1996 RD&O, reversed by ARB Order of September 5, 1996, at 2-3.), where Judge Tureck used the word "ludicrous" to describe the Solicitor of Labor's request that the truck driver receive \$48,000 in compensatory damages. See also Reid v. Methodist Medical Center, 93-CAA-4 (March 29, 1993 RDO), terming "ludicrous" the idea that a DOL judge should apply the literal language of CERCLA as written (e.g., DOL *stare decisis* that no specific violation of a specific environmental statute is required for liability, RD&O at 11n8).

247. Stephenson, *supra*.

248. Tyndall, Rockefeller I, *supra*.

249. See notes 241,242, *supra*, re: DOL Administrative Law Judge Jeffery Tureck's repeated abusive of the word "ludicrous," the definition of which includes word "scorn."

250. See, e.g., Rex v. EBASCO, 87-ERA-6,40 (Sec'y, March 4, 1994)(holding Rule 11 monetary sanctions are **not** available under power of DOL judges, reversing then-Judge Robert L. Ramsay's illegal sanctions payment of \$77,468.53 that whistleblower and lawyers were illegally ordered to pay

in the ALJ's May 12, 1989 Order. See also Wage Hour Administrator *Amicus Curiae* Brief of September 9, 1989, agreeing that sanctions were improper as a matter of law. Then-DOL ALJ Robert L. Ramsay's attempt to impose sanctions upon Government Accountability Project and attorneys Robert Guild and Billie Pirner Garde, where state court nature of employer's retaliatory animus not known until eve of trial. Despite EBASCO's claims of "frivolous" litigation in unlawfully and unethically seeking the \$77,468.53 ordered by Judge Ramsay, the facts in Rex resulted in a jury award of some \$150,000 (plus interest and attorney fees) for retaliation for reporting fraudulent conduct in Matagorda County, Texas in 1993. EBASCO's Rex sanctions move shows intent to punish protected activity at all costs, typical in the nuclear industry. See Ralph Nader & Wesley J. Smith, *No Contest: Corporate Lawyers & the Perversion of Justice in America* (1996) 218-231 ("Crushing the Ethical Whistleblowers"). See also Johnson v. DOE Oak Ridge Operations Office, 95-CAA-20,21,22 (February 1997 ALJ Edith Barnett Order recommending the disqualification of the author from practicing before her after raising concerns about two years of delay in deciding motion to remand)(ARB appeal is pending; Judge Barnett is deceased, committing suicide in December 1997); see also Rockefeller v. Carlsbad Area Office, Department of Energy, 96-CAA-10 & 11 (September 1998 ALJ Henry B. Lasky Order of Disqualification of author after raising concerns about delays caused by sua sponte show cause order and discovery stay in violation of DOL precedents) (ARB appeal pending). No hearing has been provided in response to either case of attempted retaliatory disqualification; the ALJ in Johnson committed suicide in December 1997.

251. 29 C.F.R. § 18.34(g)(3), last sentence; February 19, 1999 Petition for Rulemaking Regarding Attorney Disqualification of Respondent Employers and Their In-House Counsel, filed on behalf of Mr. and Mrs. Lynn and Linda Cox of Clinton, Tennessee.

252. Hasan v. NPS, 86-ERA-24 (ALJ Order of Disqualification, May 12, 1989), appealed October 21, 1986, Joint Motion to vacate pursuant to settlement agreement granted February 4, 1987).

253. Tyndall, *supra*.

254. Reid v. Methodist Medical Center of Oak Ridge, 93-CAA-4 (Sec'y, April 3, 1995).

255. Reid v. Methodist Medical Center of Oak Ridge, 93-CAA-4, Judge Tureck's March 29, 1993 Recommended Decision at Order at 2.

256. *Id.*, agreement is attached to Judge Tureck's decision.

257. See, e.g., Malone & Beasley, "Contractual Concerns for Hospitals and Other Health Care Organizations," 32 S. Tex. L.R. 77 (1990); Weiner, "Managed Health Care," HMO Corporate Liability, Independent Contractors and the Ostensible Agency Doctrine, 15 J. Corp. L. 535 (Spring, 1990)("judicial antipathy" to the independent contractor doctrine "hastened [its] demise," see text accompanying footnote 427; Michael Compagno, "Malpractice on the Love Boat: Barbetta v. S/S Bermuda Star, 14 Tulane Mar. L. J. 381 (1990); American Law Institute, "Managed Health Care -- Does It Offer a Cure for the Nation's Health Care Ills?", articles by William P. Brossman, Jr., "Legal Liability Issues In Managed Care." and by Harvey Pies (Blue Cross and Blue Shield of Florida), "Quality Assurance and Risk Management in Managed Care: An Overview of Important Legal Issues," (September 26, 1991)(C-653-ALA-ABA 193 & 471)(on WESTLAW). Mr. Pies, the Blue Cross and Blue Shield of Florida lawyer, states that --

**One way in which HMOs can try to prevent being held liable as an employer of the provider under the doctrine of respondeat superior is to place language in its provider**

**agreements stating that the provider is an independent contractor, and all patient care decisions are ultimately to be made by the provider and the patient based on independent medical judgment. Nevertheless, such statements may be seen as self-serving and thus ignored by the courts.** It therefore may be more effective to prominently state in subscriber contracts that the HMO's providers are independent contractors, not employees. Ultimately, however, **it probably is not possible to have the degree of control necessary to implement an HMO's quality assurance and cost management programs and, at the same time, enable to HMO completely to be assured that it can avoid liability under the doctrine of respondeat superior.**

This dilemma is illustrated by the recent decision in Schleier v. Kaiser Foundation Health Plan, 876 F.2d 174 (D.C. Cir. 1989), in which an HMO was held liable for negligence of a nonplan specialist who was called in on a consulting basis by the patient's primary care physician. Although many of the factors which are usually found in the employment relationship were absent in this case, the court found that the HMO had "some ability" to control the consultant through the primary care physician, as well as the ability to discharge the consultant, and that the consultant's actions were within the scope of the HMO's business. These findings enabled the court to find that a "master/servant relationship existed, and thus to reject the HMO's claim that the consultant was an independent contractor.

H. Pies, *supra.*, p. 22 on WESTLAW [internal outline subsection letters omitted and emphases added]. See also Lon Fuller, Legal Fictions.

258. See June 28, 1996 decision of the U.S. Supreme Court rejecting the "independent contractor defense" in O'Hare Truck Service, Inc. v. City of Northlake, --- U.S. ---, No. 95-191 (1996). O'Hare Truck Service rejects the "independent contractor defense" as applied to free speech rights. In O'Hare Truck Service, the Supreme Court rejected the defense that workplace free speech rights depend on arcane state law vagaries of whether one is deemed an "employee" or "independent contractor" of a government (under state common law principles once taught as "master and servant law.") The respondents in O'Hare Truck Service operated a local political machine. Those respondents unsuccessfully argued that the common law categories of "employees" and "independent contractors" should determine the very existence of free speech rights. In O'Hare, the Supreme Court considered the defense theory that formed the only basis of the Secretary of Labor's decision in Reid [based upon Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989) and Nationwide Mut. Ins. v. Darden, 503 U.S. 318 (1992)]. The Supreme Court forcefully rejected the "independent contractor" defense. The Supreme Court saw:

**no reason**, however, why the constitutional claim here should turn on the **distinction**, which is, in the main, a **creature of the common law of agency and torts**. Recognizing the distinction in these circumstances **would invite manipulation by government, which could avoid constitutional liability simply by attaching different labels to particular jobs...** The fact of interference here is not altered by the circumstance that the victims are not classified as employees.

O'Hare, slip op. 7-8 The Supreme Court rejected use of the common law "independent contractor" tests to ration First Amendment rights in the American workplace:

Respondents say this case is different because it involves a claim by an independent contractor. **We are not persuaded. A rigid rule** "giv[ing] the government *carte blanche* to terminate independent contractors for exercising First Amendment rights . . . **would leave [those] rights unduly dependent on whether state law labels** a government service provider's contract as a contract of employment or a contract for services, a distinction which is at best a very poor proxy for the interests at stake."

O'Hare Truck Service, Inc. v. Northlake, *supra*, slip op. at 7 (emphasis added).

259. See Coupar v. Federal Prison Industries/Unicor, 92-TSC-6 and 8 (Hon. Samuel Smith June 11, 1992); Plumley v. Federal Bureau of Prisons, 86-CAA-6 (Deputy Chief Judge E. E. Thomas, Dec. 31, 1986).

260. Brown & Root v. Donovan, 747 F.2d 1029 (5th Cir. 1984).

261. The court held that internal safety concerns triggered the protection of the whistleblower provisions of the Federal Mine Health and Safety Act, 30 U.S.C. § 820 (b)(1) in Phillips v. Dept. of Interior Bd. of Mine Appeals, 500 F.2d 772 (D.C. Cir. 1974), cert. denied, 420 U.S. 938 (1975); See also Donovan v. Stafford Construction Co., 732 F.2d 954 at 960 (D.C. Cir 1984) (following Phillips). Kansas Gas & Elec. v. Brock, 780 F.2d 1505 (10th Cir. 1985), cert. denied, 478 U.S. 1011 (1986); Consolidated Edison v. Donovan, 673 F.2d 61 (2nd Cir. 1982); Mackowiak v. UNSI, 735 F.2d 1159 (9th Cir. 1984).

262. The Fifth Circuit deprives its residents any of the workplace discourse about pollution that the whistleblower laws are designed to encourage, which discussion among colleagues helps prevent both pollution and litigation. When I was in law school in 1984, workers at a dock on the Mississippi River complained about acid dripping on their heads from leaking tanks. The employer at first did nothing. Then the workers complained to the Coast Guard: one worker was laid off for a week in retaliation. A lunch meeting between the worker's attorney and the company lawyer noted the existence of whistleblower laws, resulting in the worker's prompt reinstatement with backpay. No complaint was ever required to be filed. In the Fifth Circuit, thanks to Brown & Root, such simple means of controlling pollution as telling the boss without fear of retaliation do not exist, fostering hierarchical and authoritarian management that need brook no dissent about pollution. While whistleblower laws should be almost self-enforcing, as in the Mississippi River example, they seldom are: in most management cultures, where managers want "yes people." See, e.g., William H. Whyte, The Organization Man (1957). Many managers do not want to supervise people who make reports, as Congress protected in the whistleblower laws. A recent ARB case implied this was understandable. In violation of First Amendment principles engraved in the whistleblower laws, whistleblowers are discriminated against because they are not "yes people" who will think, do or say whatever the employer wants in a stultifying modern form of "mind slavery." In a recent TV advertisement, bad managers' dreams of subservient employees were satirized by the words of children expecting to grow up to have "brown noses" and "claw their way up through the ranks to a mid-management job." Fox television network, January 31, 1999 Superbowl television commercial for "monster.com," an Internet job service.

263. Gerard Manley Hopkins, S.J., "God's Grandeur."

264. See, e.g., Robert Engler, The Brotherhood of Oil (1977); Morton Mintz & Jerry S. Cohen, Power, Inc.: Public and Private Rulers and How to Make Them Accountable (1976); Carl Solberg, Oil Power (1976); Anthony Sampson, The Seven Sisters: The Great Oil Companies and the World They Shaped (1975); James Ridgeway, The Last Play: The Struggle to Monopolize the World's Energy Resources (1973); John M. Blair, The Control of Oil (1976) & Economic Concentration (1972). The political economy of oil in the "oil patch" region is legendary. In 1960, after 21 years on the federal bench, Chief United States District Judge for the Northern District of Oklahoma, Royce H. Savage dismissed all federal criminal antitrust conspiracy indictments against 29 major oil companies, stating, "I have an absolute conviction personally that the defendants are not guilty," entering a non-appealable judgment on their behalf. See, e.g., Sampson at 163; Judge John Noonan,

Bribes (1994) 634-36, 641. Some 19 months later, Judge Savage became Vice President and General Counsel of Gulf Oil, and was a member of the Gulf Board of Directors. *See id.*; Blair, Control of Oil at 395; McCloy at 226. Judge Savage was forced to resign after it became known he carried cash to public officials, and that Gulf Oil had been paying foreign leaders. *See also* John McCloy, The Gulf Oil Spill: The Inside Report -- Gulf Oil's Bribery and Political Chicanery (Chelsea House 1976) 226-234 (Report of investigation by the law firm of Milbank, Tweed, Hadley and McCloy on Gulf's illegal payments) Bagman Claude Wild reported directly to Savage. *Id.* at 226. Savage was forced to pay back some \$100,000 to Gulf Oil for 1975 income. Judge John Noonan, Bribes, 641. Wild gave annual \$10,000 gifts to Senate Minority Leader Hugh Scott among others because Savage "had not liked" an earlier arrangement giving Scott's law firm a \$20,000 to \$25,000 annual retainer. *Id.* at 635. Wild was among Washington's most respected lobbyists and the son of a Lyndon Johnson operative in Texas. Judge Noonan, Bribes, 634-35; Morton Mintz & Jerry S. Cohen, Power, Inc. 144-145. The Gulf disbursements were global. John McCloy, *supra*. According to some of his biographers, Lyndon Johnson reportedly had close political and personal ties to the founder of the defendant in Brown & Root, helped give it government contracts during Vietnam, and it also helped choose Fifth Circuit Judges for years.

265. Professor James G. Tigner, Memphis State University, 1983.

266. See author's January 6, 1999 letter to DOL Inspector General Charles C. Masten and January 20, 1999 letter to Secretary of Labor Alexis Herman.

267. Detroit Edison Company v. Department of Labor, No. 91-3737, 1992 U.S. App. LEXIS 8280 (6th Cir. Apr. 17, 1992) (unpublished), slip op. at 7, footnote 3 [enforcing Larry v. Detroit Edison Co., 86-ERA-32 (Sec'y June 28, 1991); Larry v. Detroit Edison Co., 86-ERA-32 (ALJ Oct. 17, 1986)]. Odom v. Anchor Lithkemko/ International Paper Co., 95-WPC-2 (Hon. Ralph Romano, April 28, 1995 remand for Wage-Hour investigation after employee was not informed of statute of limitations or DOL jurisdiction by either Jacksonville, Florida office of the Wage-Hour Division and DOL headquarters), *cited in* May 1995 OALJ Whistleblower Newsletter.

268. DeFord v. Secretary of Labor, 700 F.2d 281 (6th Cir. 1983).

269. Thomas H. Smith v. ESICORP f/k/a/ EBASCO Constructors, 93-ERA-16 (ARB, Aug. 27, 1998). Compare Secretary of HUD ex rel Estate of Simpson v. Johnson, HUD ALJ No. 06-93-1316-8 (July 26, 1994)(\$300,000 for racially hostile residential environment).

270. See the ARB's cavalier reduction of DOL Judge Kerr's recommendation of damages from \$100,000 to \$20,000 in Thomas H. Smith v. EBASCO Constructors, 93-ERA-16 (ARB, Aug. 27, 1998). Compare Secretary of HUD ex rel Estate of Simpson v. Johnson, HUD ALJ No. 06-93-1316-8 (July 26, 1994)(\$300,000 in compensatory damages for Vidor, Texas housing discrimination case involving hostile living environment, not dissimilar in character to EBASCO's hostile workplace). The ARB refused to discuss any of the cases cited by Mr. Smith, preferring to mock the dollar figure he had suggested in his brief, eschewing mature discussion of case law from outside the self-reflexive Department of Labor, whose hopelessly self-referential and hopelessly provincial Weltanschauung kept it from discussing awards of damages in other federal and state discrimination cases, even those of the HUD Chief Administrative Law Judge. ARB prefers to write decisions that treat M. Elizabeth Culbreth as the lawgiver on compensatory damages, rather than state and federal courts and juries in comparable discrimination and retaliation cases.

271. The State of Texas ultimately paid the judgment. See also American Medical International v. Guiurintano, 821 S.W. 2d 331 (Tex. 1991)(\$500,000 actual and \$1,420,000 punitive damages; "\$16 Million for Whistleblower," Vol. 2 No. 12 Dept. of Justice Alert 23 (December 1992); "Discharged Whistleblowers Receive \$69 Million RICO Award," Prentice-Hall, Termination of Employment, Vol. IV, p. 3 (July 5, 1988); "Jury Awards \$38.8 Million to Casino Workers for Wrongful Termination," Daily Labor Rep., 48:A-8 (Mar. 24, 1989); See also \$3,500,000 compensatory damage award and \$3.5 million punitive damage award in Mehlman v. Mobil Oil, where oil company toxicologist was fired after he raised concerns about marketing of benzene-laden gasoline in Japan. See Thomas W. Durso, "Fired Whistleblower's Successful Appeal May Broaden State Protection Statutes," The Scientist, September 2, 1996; See also S. Sternberg, The Scientist, January 8, 1996; F. Hoke, The Scientist, August 22, 1994. See also New York Times, (July 24, 1996), reporting \$3.1 million whistleblower verdict (Atlantic City, N.J. policemen awarded 1.3 million in compensatory damages, including \$200,000 for wife's loss of consortium, with \$1.8 million in punitive damages); Cancellier v. Federated Department Stores, 672 F.2d 1312, 1320 (9th Cir. 1982), where the Ninth Circuit upheld Age Discrimination in Employment Act and state law claims of \$800,000, \$600,000 and \$500,000 to discrimination victims of I. Magnin store; In re IBP Confidential Business Documents Litigation, 755 F.2d 1300 (8th Cir. 1985), cert. denied sub nom Bagley v. IBP, 479 U.S. 1088 (awarding damages of \$650,000 for tortious interference with employee); Sea-Land Service, Inc. v. O'Neal, 297 S.E. 2d 647, 648 (Va. 1982) (\$125,000 verdict in case sounding in breach of contract and fraud); Chamberlain v. Bissell, Inc., 547 F.Supp. 1067, 1084 (W.D. Mich. 1982) (\$360,906 judgment for non-willful age discrimination, including \$150,000 for three years of emotional distress after termination); Faulk v. AWARE, Inc., 35 Misc.2d 302, 231 N.Y.S.2d 270, 244 N.Y.S.2d 259 (A.D. 1963), 202 N.E.2d 372 (N.Y. App. 1964)(\$1,000,000 libel/ Red scare blacklisting trial verdict reduced to \$400,000 compensatory damages on appeal); Hughes v. Patrolmen's Benevolent Assn., 850 F.2d 876 2d Cir. 1988 (verdict reduced to \$225,000 compensatory damages and \$350,000 punitive damages on appeal, where policeman harassed and falsely accused of causing suicide); R. Burke, "Fired auditor gets [over] \$600,000 in PHA Fight," Philadelphia Inquirer, Oct. 21, 1992 A-1 (Federal jury whistleblower verdict).

272. DeFord v. Secretary of Labor, 700 F.2d 281 (6th Cir. 1983)(DeFord I).

273. *Id.*

274. McCuiation v. Tennessee Valley Authority, 89-ERA-6 (Sec'y November 13, 1991).

275. Goldstein v. EBASCO Constructors, Inc., (86-ERA-36)(Sec'y, April 7, 1992).

276. Another whistleblower got only "indirect" compensatory damages, when a judge recommended that there be no set-off against backpay to adjust for unemployment compensation. Hancy v. North American Car Corp., 81-SWDA-1 (June 30, 1982 Sec'y decision affirming December 15, 1981 and August 10, 1981 ALJ RD&O at 24). Another got \$18,217, representing six months of frontpay in a situation where the Wage-Hour Division and ALJ both found a hostile working environment to which the whistleblower should not return. Fischer v. Town of Steilacoom, (83-WPC-2, RD&O May 2, 1983, settlement approved August 22, 1983). Another "won" a recommendation for \$5000 in compensatory damages, reversed by Secretary Donovan on the dubious basis of his erroneous DeFord I decision. Hedden v. Conam Insp. Co., 82-ERA-3 (RD&O January 22, 1982, rev'd in relevant part by June 30, 1982 Sec'y decision). In Johnson, Hernandez & Bradley v. Old Dominion Security, (86-CAA-3,4 & 5) three whistleblowers got \$2500, \$2500 and \$10,000, respectively in compensatory damages. In DeFord I, 81-ERA-1 (ALJ RD&O January 7, 1981)(Judge E. Earl Thomas), (Sec'y decision April 30, 1984) on remand from sub nom DeFord v. DOL, 700 F.2d 281,



288 (6th Cir. 1983), the Secretary on remand awarded only \$10,000 be paid by TVA for Mr. DeFord's demotion, intimidation, harassment, psychological and physical stress, which prevented him from working for several years. (This low award came only after Sixth Circuit reversed the Secretary's obviously erroneous March 4, 1981 decision striking any compensatory damages for Mr. DeFord, after the ALJ had recommended \$50,000, with the Secretary reversed by the Sixth Circuit, 700 F.2d at 288).

277. See DeFord v. TVA, 90-ERA-60)(DeFord II), April 27, 1992 RD&O of Hon. Daniel J. Roketenetz) (Implementing settlement agreement approved by Secretary, January, 1993). The second time around, Mr. DeFord was subjected to a retaliatory RIF, was unemployed, underemployed, with bleeding ulcers, Krohn's disease and other sequelae of harassment, intimidation and retaliation. The ALJ recommended \$50,000 in compensatory damages in addition to other remedies. See also Marcus v. EPA, 92-TSC-5 (Recommended Decision and Order of Judge David Clarke, Jr., December 3, 1992) (\$50,000 compensatory damages for wrongful firing after harassing IG investigation in which evidence was destroyed).

278. Biddy v. Alyeska Pipeline Service Company, 95-TSC-7 (ARB Dec. 3, 1996) at 2. The quoted paragraph appears in the context of a decision on the need for complete whistleblower settlement agreement disclosures to the ARB.

279. If DOL admitted it has adopted a \$50,000 cap on compensatory damages, it might be declared unconstitutional. See, e.g., Weathers v. American Family Ins. Co., 777 F. Supp. 879 (D. Kan. 1991); Mahomes-Vinson v. United States, 751 F. Supp. 913 (D.Kan. 1990); Moore v. Mobile Infirmary Assoc., 592 So.2d 156 (Ala. 1991); Martin v. Richards, 531 N.W. 2d 70 (Wisc. 1994); Smith v. Florida Dept. Of Insurance, 507 So.2d 1080 (Fla 1987); Lucas v. United States, 757 S.W.2d 687 (Tex. 1988); Waggoner v. Presbyterian Medical Center, 647 F.Supp. 1102 (N.D.Tex. 1986); Kluger v. White, 281 So.2d 1 (Fla. 1973); Sofie v. Fibreboard Corp., 771 P.2d 711 (Wash. 1989). These cases involve judicial responses to legislative enactments. In sharp and marked contrast, **no legislature** sat with controversial former Department of Labor Office of Administrative Appeals Director M. Elizabeth Culbreth (1985-1993) when she and Republican Secretaries of Labor unilaterally carved their initials into whistleblower law. Congress has **not** passed any cap on whistleblower damages. The President opposes arbitrary "caps." and vetoed legislation that would have provided for them.

280. Why should a hostile working environment be accorded less value by DOL than a hostile living environment is accorded by HUD? As a matter of public policy, employers need to be held to the same standard of civility and non-discrimination as public housing residents, with the same damages available to compensate bigotry's victims -- whether they are victimized by bigotry at home or at work. See Smith v. ESICORP, Inc., f/k/a EBASCO Services, Inc., 93-ERA-16 (Sec'y, March 13, 1996), slip op. 8-11, 23-29, regarding the elements of a hostile working environment in a nuclear powerplant. "Any reasonable employee concerned in the least with nuclear safety would have found" EBASCO's intimidation and harassment of Mr. Smith to be "offensive." Id., Sec'y slip op. at 26. Mr. Smith's concerns focused on dangerous scaffolding that could kill and maim workers and cause damage to the nuclear powerplant. EBASCO's intimidation had serious effects on safety:

The **destructive impact** on such **harassment, created and/or condoned by management**, on the workplace environment is apparent. It is tantamount to **intimidation**, having a **chilling effect on open communication between EBASCO employees and the NRC**, and counteracts the purpose of the ERA.... Any reasonable employee would have ... perceiv[ed] additional retaliation.

Id. 26-27. (Emphasis added). The “hostile and offensive, insulting” cartoons were:

1. Displayed in EBASCO management offices.
2. Drawn on management time by an EBASCO manager.
3. Not legitimate business and a distraction to employees.
4. Directed at Mr. Smith.
5. Caustic and castigating toward Mr. Smith’s going to the NRC.
6. Hostile and offensive and insulting.
7. Intended to create a chilling effect on other employees making protected reports to NRC by threatening that EBASCO union workers would lose their jobs due to contract cancellation.
8. Showing Mr. Smith being dragged out the gate.
9. Showing Mr. Smith as a judge sitting in judgment, with medals on his chest for going to NRC and HL&P’s SPEAKOUT (a typical utility “independent” concerns reporting system that critics say is a “whistleblower identification scheme”).
10. Deliberately subjecting Mr. Smith to a hostile working environment known to EBASCO management, who did nothing about it, but “[i]nstead, **they laughed about it.**” March 13, 1996 Sec’y D&O of Remand at 26-27 (Emphasis added).

After seven years, DOL handed out EBASCO’s successor only the whistleblower equivalent of a parking ticket in damages, e.g., *a fraction of the \$200,000 in NRC fines that HL&P has paid over EBASCO’s retaliation* and a fraction of the \$77,468.53 whistleblower and lawyers were illegally ordered to pay in Rex v. EBASCO Services, Inc., 87-ERA-6 and 40 (ALJ May 12, 1989), *reversed*, Secretary Robert Reich Final D&O, March 4, 1994. It was undisputed that this hostile working environment has had a severe effect on Mr. Smith’s life, marriage and family, inducing severe depression. Mr. Smith endured a hostile working environment after raising concerns about defective scaffolding that can **kill workers**, while EBASCO managers made clear their displeasure with Mr. Smith’s protected activity. Mr. Smith has the symptoms of severe depression. Diagnostic and Statistic Manual (DSM) of the American Psychiatric Association, *cited in Hilgert v. Dresser/Atlas*, 93-LHC-912 (Hon. James W. Kerr, Jr., May 4, 1995), at 6-7. With the Smith decision, the ARB in 1998 gave Corporate America a message that it will still get its compensatory damages “fixed” at obscenely low levels. EBASCO wanted damages lowered, and DOL delivered. The Smith family was devastated by Respondents’ retaliation and hostile working environment, directed by EBASCO managers with all of the forces of intimidation and social control at their disposal -- including whipping up union members against their brother carpenter. “Prejudice” is:

an avertive or hostile attitude toward a person who belongs to a group simply because he belongs to that group, and is therefore presumed to have the objectionable qualities ascribed to that group.

Gordon W. Allport, The Nature of Prejudice (1954) at 8. Harassment by EBASCO was “sufficiently severe or pervasive as to alter the conditions of his employment and create a hostile work environment.” Smith v. EBASCO, Sec’y op. 26-27. Top EBASCO managers thought the intimidation was humorous: they were not punished. Secretary Reich wrote, EBASCO management, “had notice and did not attempt to remedy the abuse. Instead, **they laughed about it.**” Id. (Emphasis added).

281. DeFord v. Tennessee Valley Authority, 90-ERA-60 (DeFord II) April 29, 1992 Recommended Decision & Order of District Chief ALJ Daniel J. Rokenetz)(discussing TVA payment of \$50,000 “hush money” to discriminatory Senior Vice President for Nuclear Engineering Fred Moreadith).

282. Varnadore v. Secretary of Labor, 141 F.3d. 625 (6th Cir. 1998).

283. See, e.g., 42 U.S.C. § 7622(b)(2)(B)(I); 42 U.S.C. § 300j-9(I)(2)(B)(ii)(II); 42 U.S.C. § 6971(b); 33 U.S.C. § 1367(b); 42 U.S.C. § 9610(b).

284. See Larry W. Yackle, Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System (1989) at 20.

285. Belton, Employment Discrimination, § 8.9 (Hostile Working Environment) at 281, citing Bundy v. Jackson, 641 F.2d 934, 946n13 (D.C. Cir. 1981); Valdez v. Church's Fried Chicken, Inc., 683 F.Supp. 596, 621 (W.D. Tex. 1988); Ross v. Double Diamond, Inc., 672 F. Supp. 261, 277 [with Valdez and Ross citing United States v. W.T. Grant Co., 345 U.S. 629 (1953) and County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)].

286. Belton, *supra*, at 282.

287. See Snell v. Suffolk County, 611 F.Supp. 521, 531-32 (E.D.N.Y. 1985)(requiring Warden to appear before correctional officers to remedy hostile working environment, requiring him to forbid discrimination, racially hostile acts, assure prompt and severe discipline of violators, designation of an affirmative action officer to remedy violations, and establishment of human relations workshops); Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1545 (M.D. Fla. 1991)(appointing plaintiff's attorney organization, the NOW Legal Defense Fund, as monitor to assure continued compliance with remedial order in sexual harassment case, subject to employer's right to advise the court about the feasibility of implementation. See Belton, Remedies in Employment Discrimination Law, *supra*, § 8.9 (Other Nonmonetary Relief -- Hostile Environment) at 283, characterizing the Robinson case's monitoring provision and involvement of the NOW Legal Defense Fund as both "important and innovative."

288. See, e.g., McMahan v. California Water Quality Control Board, 90-WPC-1 (February 5, 1992 RD&O of Judge Melvin Warshaw at 25)(requiring posting of notice by state employer); Landers v. Commonwealth-Lord Joint Venture, 83-ERA-5 (District Chief Judge Daniel K. Roketenetz RD&O at 15, May 11, 1983, adopted by Secretary September 9, 1983); Discriminatory, law-breaking employers are routinely ordered to post notices regarding nondiscrimination. Lockheed Martin is no exception. See, e.g., Martin Marietta Corporation & Milan Davich, 293 N.L.R.B. No. 89 (1989)(NLRB ordered reinstatement of worker wrongfully fired for whistleblowing about toxic chemical exposures at a Martin Marietta Florida aerospace plant). See, also NLRB v. Gissel Packing Co., 395 U.S. 575, 613-14 (1969)(NLRA violation remedied by nationwide posting requirements); Virginia Electric Power Co. v. NLRB, 319 U.S. 533, 541 (1943); Wells v. Kansas Gas & Elec Co., 83-ERA-12, slip op. of Secretary of Labor at 12 (1984)(plantwide posting of anti-discrimination orders); Donovan v. Freeway Constr. Co., 551 F. Supp. 869, 879-92 (D.R.I. 1982)(injunction against future retaliation and required posting concerning misconduct and who to conduct if one wants to report violations); Pawlak v. Greenawalt, 477 F.Supp. 149, 151, affirmed, 628 F.2d 826 (3d Cir. 1980), cert. denied 449 U.S. 1083 (requiring posting of court order in the Teamsters' monthly magazine in Labor Management Reporting and Disclosures Act action against local union to cure chilling effects of defendants' unlawful conduct); Jew v. University of Iowa, 749 F.Supp. 946 (S.D. Iowa 1990)(distribution of court's memorandum and order to specific individuals and groups). Indeed, when District Chief ALJ von Brand went slightly beyond DOL precedents in recommending relief in the Yarnadore case, it drew a presumably appreciative headnote from the DOL OALJ whistleblower law counsel about "novel" forms of relief. Such creativity should be encouraged under a statute that is remedial and to be liberally construed, for "equity delights to do justice and not by halves." Equitable maxim.

289. Seater v. Southern California Edison Company, 95-ERA-13 (San Diego Wage Hour Office findings letter, 1994).

290. Monroe v. Pape, 365 U.S. 167, 175 (1960), quoting Cong. Globe, 42nd Cong., 1st Sess., App. 166-167. In its discussion of the appropriate level of damages in Smith v. ESICORP f/k/a ESICORP, the ARB mocked the phrase “unwhipped of justice” without giving the derivation of the quote. In *dicta* by the Secretary and ARB, and in side comments by ALJs and investigators, it is apparent that at all times in all places, DOL shows little sophistication or understanding of the role conspiracy in employment discrimination against whistleblowers, often expressing skepticism that employers would want to retaliate against people telling the truth. Compare DeFord v. Tennessee Valley Authority, 90-ERA-60 (District Chief Daniel J. Roketenetz, April 29, 1992), holding wrongdoer Senior Vice President for Nuclear Engineering conspired to deprive senior management whistleblower with a position during reorganization, finding that although 1200 employees were laid off in reorganization, it was discriminatory as to ethical engineer because of the way in which all other managers found jobs but the complainant). Lack of labor law or prosecution experience has in the past made some DOL decisionmakers almost campily trusting of and deferential to employer pretexts, as if they would believe anything from someone in a position of authority.

291. In the House of Delegates, the ABA Young Lawyers Division, Individual Rights and Responsibilities Section, Litigation Section, and Judicial Division supported the resolution; only the government contractors’ group (the Public Contracts Section) opposed it.

292. Ironically, there was nothing bipartisan about Congressional requests for General Accounting Office (GAO) oversight of DOL’s whistleblower program -- two separate requests generated two separate reports: one to Rep. John Dingell and other Democrats and one to Rep. Joe Barton and House Republicans. One request was from Democrats and one from Republicans. When asked by GAO, Democrats did not consent to have the Republican questions tacked on to their request, resulting in two separate audit reports in 1998, including one that listed specific cases that GOP members didn’t like (e.g., DOL whistleblower giving workers more rights, including one on the “chain of command” where the nuclear industry and NRC asked reconsideration by the Secretary of the idea that nuclear employees aren’t required to make reports to management before calling NRC). The House Republican request to GAO originated in the Washington, D.C. office of a law firm that represents electric utilities, and Rep. Barton’s staff was unable to answer questions, demurring until the law firm could be contacted. Compare, General Accounting Office, “Nuclear Power Safety: Industry Concerns With Federal Whistleblower, Protection System” (Letter Report, September 2, 1997, GAO/HEHS-97-162)(Republican request) with GAO, “Nuclear Employee Safety Concerns: Allegation System Offers Better Protection, but Important Issues Remain” (GAO/HEHS-97-51, March 31, 1997)(Democratic request).

293. Olmstead v. United States, 277 U.S. 438, 478 (dissenting)(1928).

294. See e.g., p. 2 of Report and Recommendation to the ABA House of Delegates accompanying Resolution 125 from the Young Lawyers Division, National Conference of Administrative Law Judges, and Section of Individual Rights and Responsibilities, in Volume II American Bar Association, *Reports with Recommendations to the House of Delegates*, 1990 Midyear Meeting.

295. The mere act or status of doing one’s job and reporting such unwanted truths is itself rather pejoratively labeled “whistleblowing” by the media in our society: a sign of mixed feelings about employees some perceive to be “snitches,” troublemakers and malcontents. Many whistleblowers prefer other words, such as “ethical resister.” Glazer & Glazer, The Whistleblowers (1989). Doing

one's job "too well," e.g., as an inspector, is protected activity. *Mackowiak v. University Nuclear Systems, Inc.*, *supra*.

296. See, e.g., Gerry Spence, *From Freedom to Slavery* (1993), 80-99 ("The Tyranny of Fear" and "The Tyranny of Work," necessary precursors to "The New King -- Tyranny of the Corporate Core." *Id.* pp. 100-154).

297. Legislative history of the Federal Water Pollution Control Act cited in Conference Report of Clean Air Act, 1977 *U.S. Code Cong. & Ad. News*, 1077, 1404.

298. See, generally, Vice President Albert Gore, Jr., *Earth In the Balance* (1992).

299. *Id.*

300. House of Commons, November 12, 1936 regarding appeasement of Nazis (quoted in Albert Gore, Jr., *Earth in the Balance* (1992) at 196 in context of desuetude and indecision in U.S. environmental policy).

301. Albert Gore, Jr., *Earth in the Balance* at 177.

302. As the DOL ARB itself stated, "Nothing must "interfere with the full and fair presentation of the case by the parties." *Timmons v. Mattingly Testing Services*, 95-ERA-40 at 6 (ARB, June 21, 1996) (Emphasis added, with bold phrase above used *twice* on same page), citing *Rose v. Sec'y of Labor*, 800 F.2d 563, 565 (6th Cir. 1986)(Edwards, J., concurring, **describing nuclear technology as "one of the most dangerous" ever invented**).

303. When Mrs. Dole set up a Presidential exploratory committee, she stated:

"I revere free enterprise," she said, yet "capitalism is imperfect. Conservatives should never hesitate to speak out against the unregulated, unadulterated pursuit of cash if it leads to the coarsening of our culture, to the pollution of the airwaves or the pollution of the air."

Ron Fournier, Associated Press, "Elizabeth Dole raising campaign funds, sees room to run as a Republican moderate," *Miami Herald*, February 10, 1999 at 3A.

304. Representative William D. Ford (D. Mich), later Chairman of the House Education and Labor Committee, in offering an amendment to the Federal Water Pollution Control Act (FWPCA) employee protection provision, stated:

Mr. Chairman, in offering this amendment we are only seeking to protect workers and communities from those very few in industry who refuse to face up to the fact that they are polluting our waterways, and who hope that by pressuring their employees and frightening communities with economic threats, they will gain relief from the requirement of any effluent limitation or abatement order.

[Emphasis added]. 118 *Cong. Rec.* 10,766-768 (1972) reprinted in *Legislative History of the Water Pollution Control Act Amendments of 1972*, at 655.

305. One attorney was criticized and reported to the Tennessee Supreme Court Board of Professional Responsibility by DOL Chief Judge John Vittone for criticizing OSHA, DOE, DOL OALJ and DOL ARB, and for filing a document comparing the ARB's 1998 *Smith v. ESICORP f/k/a EBASCO* compensatory damages cap decision to the Supreme Court's discredited decision in *Dred Scott v. Sandford*, 19 How. 393 (1857). The author stands by that comparison. The 1998 *Smith v. ESICORP* decision, like *Dred Scott*, demeans, debases and dehumanizes millions of

powerless victims lacking in political influence. Smith v. ESICORP values American workers' suffering in a hostile working environment at almost nothing when inflation is considered, as if rewarding industrial "mind slavery" whereby EBASCO wanted its workers to keep their mouths shut about safety risks of unsafe scaffolding that could kill and maim workers. See, Vincent C. Hopkins, S.J., Dred Scott's Case (1971), 156-177 ("War of Words," regarding reaction to the Dred Scott decision, culminating in the Civil War and Emancipation). Of course, in America, lawyers have a right to criticize courts and government officials. See Ramsey v. Board of Professional Responsibility, 771 S.W. 2d 116, 121 (Tenn. 1989); Wood v. Georgia, 370 U.S. 375 (1962); Bridges v. California, 314 U.S. 242 (1941); Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Harney, 331 U.S. 367 (1941). As Justice William O. Douglas stated in Craig, "Judges are supposed to be [people] of fortitude, able to thrive in a hardy climate." The notion that attorneys should not criticize government officials is a pre-Revolutionary War idea that our Founders rebelled against. See also, James Morton Smith, Freedom's Fetters: The Alien and Sedition Laws and America's Civil Liberties (1956 Cornell University Press.); Henry Kalven, Jr., A Worthy Tradition -- Freedom of Speech in America (1988).

306. See e.g., Brock v. Roadway Express, 481 U.S. 252 (1987); DeFord v. Dept. of Labor & TVA, 700 F.2d 281, 286 (6th Cir. 1983). Accord, English v. General Electric Co., 496 U.S. 72, 88 (1990); see also Amicus Curiae Brief of the Government Accountability Project filed with Supreme Court in English v. General Electric. "Regard for these [implications] should infuse construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words." Cf. United States v. Dotterweich, 320 U.S. 277, 280 (1943). Like other civil rights laws, the whistleblower laws are "remedial, and in aid of the preservation of human liberty and human rights." See, e.g., Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 686 (1978), quoting Rep. Shellabarger during the enactment of the 1871 Civil Rights Act (the Ku Klux Klan Act), in turn citing Justice Story, 1 Story on Constitution §429: "Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws."

307. Compare the duration of DOL whistleblower cases discussed by the Inspector General to Charles Dickens' Bleak House.

308. See, generally, Stephen M. Kohn, The Whistleblower Litigation Handbook: Environmental, Safety and Health Claims (1990).

309. Parklane Hosiery v. Shore, 439 U.S. 322 (1979)(Rehnquist, J., dissenting)

310. See, e.g., Varnadore v. Secretary of Labor, 141 F.3d. 625 (6th Cir. 1998).

311. In 1990, the ABA House of Delegates recommended a one year statute of limitations; not even liberal United States Senate Labor Subcommittee Chairman Senator Howard M. Metzenbaum (D-Ohio) would propose that change.

312. See, e.g., 29 C.F.R. 24.4(3)(I)(1995):

(3)(I) If on the basis of the investigation the Administrator determines that the alleged violation has occurred, the notice of determination shall include an appropriate order to abate the violation, and notice to the respondent that the order shall become the final order of the Secretary unless within five calendar days of its receipt the respondent files with the Chief Administrative Law Judge a request ... for hearing...

(Emphasis added). See Crosier v. Westinghouse Hanford Company, 92-CAA-3 (Sec'y, January 12,

1994), regarding the automatic effect of 29 C.F.R. 24.4(3)(I); see also Ellis v. Ray A. Shoppert Trucking Company, 97-STA-28 (Sec'y, 1992)(party seeking tolling of time limit due to ill health must prove mental incapacity).

313. See March 2, 1999 Petition for Rulemaking filed by author with Secretary of Labor Alexis Herman.

314. Shelton v. Oak Ridge National Laboratory, 95-CAA-19 (August 2, 1995 and March 12, 1998 orders by DOL Chief Administrative Law Judge John M. Vitone excusing Lockheed Martin's failure to file timely request for hearing with Chief Judge on the basis it was served on other parties).

315. *Id.*

316. George Orwell, Animal Farm.

317. Eugene Fidell, "Federal Protection of Private Sector Health and Safety Whistleblowers", Administrative Law Journal (1988), 84.

318. See, e.g., Flor, Tyndall, Stephenson, supra. There is sovereign immunity under some whistleblower statutes, but not under the Clean Air Act, where Congress remarked on the obviousness of the whistleblower provision by stating that:

This section is applicable, of course, to Federal, State, or local employees to the same extent as any employee of a private employer.

H.R. Rep. No. 294, reprinted in 1977 U.S. Code Cong. & Admin. News 1077,1404-05. Congress said "of course" about the matter of waiving sovereign immunity over federal agencies, having inexplicably waived sovereign immunity under some whistleblower laws while not in others, like the Toxic Substances Control Act.

319. See Stephen Kohn, Whistleblower Litigation Handbook, Chapter 13, for discussion of OSHA rights, noting "The OSHA whistleblower protection statute is weaker than the environmental and nuclear employee protection acts." § 13.5. See also Solomon & Garcia, "Protecting the Corporate Whistleblower Under Federal Anti-Retaliation Statutes," Journal of Corporation Law (Winter 1980).

320. See, e.g., DeFord v. Tennessee Valley Authority (DeFord II), 90-ERA-60 (District Chief ALJ Roketenetz April 29, 1992); Tyndall, Stephenson, supra.

321. The False Claims Act prohibits discrimination against employees who bring a *qui tam* case or provide assistance to the government or the *qui tam* relator, providing for a United States District Court remedy, including double backpay, and attorney fees. 31 U.S.C. § 3730(g). Relief for harassing whistleblowers raising concerns about government fraud is also available in District Court through the Major Fraud Act, 18 U.S.C. § 1031(g)(1) and as an administrative remedy through the Defense Acquisition Improvement Act. 10 U.S.C. § 2409. Relief for firings and other retaliation may also be available under an implied right of action arising out of 18 U.S.C. § 1513, which makes it a crime to retaliate against witnesses and informants. There may also be a constitutional tort for defense contractor retaliation against whistleblowers. Defense contractors fear such remedies. See paper presented by Mr. Peter Wellington, Steptoe & Johnson, "Potential Employee Claims Arising Out of Procurement Fraud Investigations," published in CLE materials distributed by ABA Section of Public Contracts Law, GRAPES OF WRATH: A Good or Bad Year for Employee Rights, Napa, California, November 2, 1990.

322. See 1986 New Jersey Conscientious Employee Protection Act, New Jersey Code § 34-19 (hereinafter CEPA), discussed at 1998 ATLA Employment Rights Section Annual Meeting By Stephen M. Kohn in "Modern Trends in Protection of Employees under State Whistle-blower Laws: a Model Statute." (Hereafter "Modern Trends").

323. See Sabine Pilot Services v. Hauck, 687 S.W.2d 733 (Tex. 1985) and cases collected by Stephen Kohn, Whistleblower Litigation Handbook, *supra*, § 12.2. In 1998, Stephen Kohn noted that:  
 In Martin Marietta Corp. v. Lorenz, 823 P.2d 100, 106 n.3 (Colo. 1991), the Colorado Supreme Court listed 37 states that had adopted the public policy exception to the at-will doctrine as of 1991. Since then, the following courts, including Colorado, have adopted the public policy exception: Dupont v. Pressman, 679 A.2d 436 (Del. 1996); Adams v. George W. Cochran & Co., 597 A.2d 28 (D.C. 1991); McArn v. Allied Bruce-Terminex Co., 626 So. 2d 603 (Miss. 1993); Vanacore v. UNC ArdcO, Inc., 697 So. 2d 892 (Fla. App. 4th Dist. 1997) (requiring employees to follow the Florida whistle-blower statute); Contreras v. Ferro Corp., 652 N.E.2d 940 (Ohio 1995) (court now requires employees to follow Ohio state whistle-blower statute); Huegerich v. IBP, Inc., 547 N.W.2d 216 (Iowa 1996); Fox v. MCI, 931 P.2d 857 (Utah 1997). In addition, Louisiana, a civil law state, passed a whistle-blower protection statute in 1997. LA. REV. STAT. § 967 (1997). Stephen Kohn, "Modern Trends," *supra*, note 3. See also, Barnett, Overview of State Whistleblower Protection Statutes, LABOR L.J. (July 1992); Mullings, Is there Whistleblower Protection for Private Employees in New York?, N.Y.B.J. at n.11 (Feb. 1997) (citing laws passed after 1992).

324. As Stephen Kohn writes:

The New Jersey whistle-blower protection statute represents a good working model for future legislation on both the federal and the state level. The alternative is stark. Ignorance concerning which provisions are necessary in order to enact a realistic and successful whistle-blower law has resulted in the enactment of a number of whistle-blower laws that, in practice, undermine whistle-blower protection....

See also the Montana Wrongful Discharge from Employment Act §§ 39-2-901-914. This law explicitly prohibits state courts from adopting any common law remedy for wrongful discharge. The law prohibits damages for "pain and suffering," "emotional distress," and other "compensatory damages" and limited back pay awards. § 39-2-905. It also contains a very narrow definition of protected activity, has burdensome and restrictive exhaustion and arbitration requirements, and only covers discharges from employment, not other forms of discrimination. §§ 39-2-903(7), 39-2-904, 39-2-911, and 39-2-914. Given its features, the Montana law is better characterized as an anti-whistle-blower law.

"Modern Trends," Conclusion and accompanying endnote 27.

325. Eugene Fidell, "Federal Protection of Private Sector Health and Safety Whistleblowers", Administrative Law Journal (1988), 84.

326. Discovery is necessarily wideranging in any employment discrimination cases but is especially so in a whistleblower case. See, e.g., Holub v. H. Nash, Babcock, Babcock & King, Inc., 93-ERA-25, Order Denying Respondents' Motions for an Immediate Hearing & to Limit Damages & Back Pay (ALJ June 24, 1993) (Hon. Joan Huddy Rosenzweig); Discovery Order (ALJ Mar. 2, 1994); Mulligan v. Vermont Yankee Nuclear Power Corp., 92-ERA-20(ALJ David W. Di Nardi Apr. 17, 1992) (prehearing order).

"Generally, plaintiffs should be permitted a very broad scope of discovery in Title VII [and other



discrimination] cases. Since direct evidence of discrimination is rarely obtainable, plaintiffs must rely on circumstantial evidence ... **evidence of an employer's overall employment practices may be essential to plaintiff's prima facie case.**" Morrison v. City & County of Denver, 80 F.R.D. 289 (D. Colo. 1978), citing Rich v. Martin Marietta Corp., 522 F.2d 333 (10th Cir. 1975)(Emphasis added).

327. See Flor v. Dept. of Energy, 93-TSC-1 (Sec'y, December 9, 1994); Tyndall v. EPA Inspector General (ARB, June 14, 1996, reversing two ALJs); Seater v. Southern California Edison, 95-ERA-13 (ARB, September 27, 1996).

328. See, e.g., Flor v. Department of Energy; Tyndall v. EPA Inspector General; Stephenson v. NASA; Timmons v. Mattingly Testing Servs., Case No. 95-ERA-40, (ARB June 21, 1996); see also Seater v. Southern California Edison Company, 95-ERA-13 (ARB September 27, 1996). Discussing Seater, Department of Labor Administrative Law Judge David DiNardi has written of the scope of discovery, evidence and the burden of proof in whistleblower cases:

With these burdens in mind, it is important to note the rules of evidence that apply in the context of an administrative proceeding. In retaliatory intent cases that are based on circumstantial evidence, as here, fair adjudication of the complaint "requires full presentation of a broad range of evidence that may prove, or disprove, retaliatory animus and its contribution to the adverse action taken." Seater v. Southern California Edison Co., 95-ERA-13, at p. 4 (ARB 9/27/96), citing Timmons v. Mattingly Testing Servs., Case No. 95-ERA-40, (ARB 6/21/96) (footnote omitted). See Generally, K.C. Davis, Administrative Law, 2d Ed., Vol. 3, Ch. 16, Evidence (1980). In the context of whistleblower litigation, Part 24 ... provides that the ALJ may exclude relevant evidence that is "immaterial, irrelevant, or unduly repetitious." 29 C.F.R. 24.5(e)(1). The Board has thus stated that Part 24.5(e)(1) does not allow for the exclusion of relevant evidence unless it is "unduly repetitious." Seater, supra, at n. 8. The mandate of this Section is consistent with the nature of the evidence presented in a circumstantial evidence case of retaliatory intent, some of which may appear to be of little probative value until the evidence is considered as a whole. Id. (citing Timmons, supra and cases cited therein.) Saporito v. Florida Power & Light, 89-ERA-17 (ALJ October 15, 1997) @6-7, *affirmed*, ARB August 11, 1998.

329. Tyndall, Stephenson, Flor, Timmons, Seater, supra.

330. "As Mr. Justice Brandeis correctly observed, 'sunlight is the most powerful of all disinfectants,' New York Times Co. v. Sullivan, 376 U.S. 254, 305 (1964)(Goldberg, J., concurring), citing Freund, The Supreme Court of the United States (1949), p. 61. Those upon whom the sunlight of DOL environmental and nuclear whistleblower accountability is directed seldom react with amity.

331. 29 C.F.R. § 18.43(a).

332. See, e.g., Judge James Guill and Edward A. Slavin, Jr., "A Rush to Unfairness: The Downside to Alternative Dispute Resolution," American Bar Association Judges' Journal, Summer 1989.

333. For example, in three instances, whistleblower efforts to obtain DOL "peer review" of unfair or inept judges was shot down, with pejoratives signed by DOL Chief Administrative Law Judge John M. Vittone and a Bar complaint filed for asking for peer review of the judges and criticizing DOE, DOL OALJ and OSHA practices. Will history find current OALJ management lived up to proud traditions, or followed the path of certain past Supreme Court justices, who undid FDR's New Deal legislation based upon personal histories of representing railroads, governments and other large

organizations? *See*, Drew Pearson & Robert Allen, The Nine Old Men (1936).

334. Twice during a delay-prone decade at DOL -- by letters sent to the author by OAA management in 1991 and ARB management in 1999 -- the DOL administrative appeals office has suggested that DOL appeals decision delays were due to the burden of responding to "requests." This is a circular argument. IF DOL did not have delays that the DOL Inspector General calls "unconscionable," no FOIA requests would be filed about delays. Rather than wracking their brains to rationalize delays, DOL managers need to work harder and more compassionately.

335. Rex v. EBASCO, *supra*.

336. Stephenson, Tyndall, *supra*.

337. *See, e.g.*, Ralph Nader & Wesley J. Smith, No Contest: Corporate Lawyers and the Perversion of Justice in America, pp. 222-231, discussing government contractor litigation subsidies, and GAO report finding DOE paid "more for outside legal fees than federal regulations would permit or the market would allow." *Id.* at 227-228.

338. *Id.* at 229-230.

339. Former U.S. Representative Patricia Schroeder (D-Colo.) sang in 1989 with the "Capitol Steps" comedy troupe a song, "Immense Expense is Mainly in Defense," to the tune of "The Rain in Spain is Mainly on the Plain" from My Fair Lady.

340. *See* General Accounting Office, "Historical Perspective on Noncompliance with Labor and Worker Safety Law," Statement of Cornelia Blanchette, Associate Director, Education and Employment Issues, Health, Education and Human Services Division, Before the Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, U.S. House of Representatives, GAO/T-HEHS-98-212.

341. In a hurry to receive a DOL investigative file on a pending case, one former DOE Chief Counsel working for a defense firm billed the contractor hundreds of dollars for FOIA research when he knew they would get everything once the investigative report was written, and not before. 5 U.S.C. § 552(b)(7).

342. Government and contractor defense lawyers have been known to oppose whistleblowers' FOIA rights to the transcript of DOL ALJ hearings, calling this a "subsidy." In one case alone, this defense tactic would have cost the worker \$10,000 for the transcript of his own discrimination hearing, which was provided free by DOL OALJ pursuant to a fee waiver. Under FOIA, to receive a transcript, workers pay local copying company charges of some 7 cents per page, with the first 100 pages free. This contrasts with state and federal courts where workers often must pay in excess of \$3 *per page* for the transcript of their own hearings.

343. Deposition of Hazel O'Leary in Joseph Carson v. Dept. of Energy, U.S. District Court for District of Columbia Case No. 1:98CV00368 (Judge Sporkin), May 14, 1998.

344. Secretary of Labor Robert Reich, February 9, 1994 Statement to Senate Committee on Labor and Human Resources: re: OSH Act reform.

345. See General Accounting Office, Historical Perspective on Noncompliance with Labor and Worker Safety Law, Statement of Cornelia Blanchette, Associate Director, Education and Employment Issues, Health, Education and Human Services Division, Before the Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, U.S. House of Representatives, GAO/T-HEHS-98-212.

346. 18 U.S.C. §§ 1505, 1512, 1513.

347. English v. General Electric Co., 496 U.S. 72 (1990).

348. The Secretary's decisions in environmental whistleblower cases hold that an ethical employee has an right to go outside the chain of command and even to the news media, and can break the corporate "chain of command," and to be free from retaliation for filing a DOL whistleblower complaint. See Hoffman v. Bossert, 94-CAA-4 (Sec'y, September 19, 1995); Saporito v. Florida Power & Light Co., 89-ERA-7 and 17 (Sec'y Feb. 16, 1995); Carson v. Tyler Pipe Co., 93-WPC-11 (Sec'y Mar. 24, 1995); Leveille v. New York Air National Guard, 94-TSC-3& 4 (Sec'y December 11, 1995); Oliver v. Hydro-Vac Services, Inc., 91-SWD-1 (Sec'y, November 1, 1995); Varnadore v. ORNL, 92-CAA-1 (Sec'y, Jan. 26, 1996); Floyd v. Arizona Public Service Co., 90-ERA-39 (Sec'y Sept. 23, 1994); Pooler v. Snohomish County Airport, 87-TSC-1 (Sec'y Feb. 14, 1994), slip op. at 5.

349. [Diaz] Robainas v. Florida Power & Light, 92-ERA-10 (Sec'y Jan. 10, 1996)(psychiatric exam ordered after worker said he would call the Miami Herald if he was not allowed to bring lawyer to performance evaluation meeting; the employee was not required to mitigate damages by attending illegal examination).

350. Gaballa v. The Atlantic Group, 94-ERA-9 at 5 (Sec'y, Jan 18, 1996)(Complainant hired reference checking company); Earwood v. Dart Container Corp., 93-STA-16 at 5 (Sec'y, December 7, 1994); Wehb v. Carolina Power & Light, 93-ERA-42 at 5 (Sec'y, July 14, 1995), citing Beckett v. Prudential Ins. Co. of America, No. 94-CV-8305(SAS), 1995 U.S. Dist. LEXIS 6513 (S.D.N.Y., May 15, 1995); Leveille v. New York Air National Guard, 94-TSC-3& 4 (Sec'y December 11, 1995) This is direct evidence of discrimination. Holden v. Gulf States Utilities, 92-ERA-44 at 9 (Sec'y, April 14, 1995). Where there is direct evidence of discrimination, it is unnecessary to engage in Dartey v. Zack allocation of burdens of proof and production applicable in cases of circumstantial evidence. The prohibited retaliation and evidence of discrimination are often the same act. Gaballa v. The Atlantic Group. There is also no requirement that the blacklisting prevent the employee from obtaining a job, or that it be regarding a *bona fide* job opportunity.

351. Connecticut Light & Power Co. v. Secretary of Labor, 85 F.3d 89 (2nd Cir. 1996).

352. Du Jardin v. Morrison Knudsen Corp., 93-TSC-3 (ALJ Nov. 29, 1993); Helmstetter v. Pacific Gas & Electric Co., 91-TSC-1 (Sec'y Jan. 13, 1993). The primary consideration is whether the complaint was based upon possible violations. See Yellow Freight Sys., Inc. v. Martin, 954 F.2d 353, 357 (6th Cir. 1992). Accord Richard Adams, No. 89-ERA-3 (Sec'y Aug. 5, 1992). To be covered under the employee protection provision, a complaint need only be grounded in conditions constituting a reasonably perceived violation of the underlying act. See Yellow Freight System, Inc. v. Martin, *supra*; Johnson v. Old Dominion Security, 86-CAA-3 (Sec'y May 29, 1991), slip op. at 15; Aurich v. Consolidated Edison Co., 86-ERA-2 (Sec'y Apr. 23, 1987), slip op. at 4. Adams v. Coastal Production Operators, Inc., *supra*.

353. For more on protected activity, *see* Stephen Kohn & Thomas Carpenter, "Nuclear Whistleblower Protection and the Scope of Protected Activity Under Section 210 of the Energy Reorganization Act," 4 Antioch L.J. 73 (1986).

354. Minard v. Nerco Delamar Co., 92-SWD-1, (Sec'y, Jan. 25, 1995), slip op. 8n8 reversing recommended dismissal order (ALJ Tureck, Sept. 17, 1992). In Minard, the SOL adopted the "opposition clause," indicating that "opposition to an employer's actions which are reasonably believed to violate Title VII is protected," even if the employer's actions did not violate Title VII "either because the employer did not do what was complained about or because the actions the employer took did not violate Title VII." Minard, slip op. at 20-22, citing Berg v. La Crosse Cooler Co., 612 F.2d 1041 (7th Cir. 1980); Parker v. Baltimore & O.Ry. Co., 652 F.2d 1012, 1020 (D.C. Cir. 1981). The Secretary made the "opposition clause" approach mandatory, moving beyond the traditional "proceeding" clause.

355. Frugal whistleblowers may obtain their DOL OALJ trial transcripts for ten cents a page under FOIA. This can save an unemployed worker thousands of dollars on court reporter bills. If the ALJ requests the transcript on disks, each day's transcript may be obtained through FOIA in electronic format at a cost of \$2 per day. Some employers object to FOIA requests on the spurious grounds of subsidy, which sounds hollow from an employer receiving reimbursement of all of its legal fees from the federal government. Other employers (including federal agencies like NASA) are making FOIA requests for the transcripts in whistleblower cases. Imitation is the sincerest form of flattery.

356. Eugene Fidell, "Federal Protection of Private Sector Health and Safety Whistleblowers", Administrative Law Journal (1988), 84.

357. Congress made important modifications to the Energy Reorganization Act in 1992.

358. As the Supreme Court has held:

Under our constitutional system, courts stand against any winds that blow, as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice ....

Chambers v. Florida, 309 U.S. 227, 241 (1940).

359. Senator Daniel Patrick Moynihan, Secrecy (1998) at 197, citing Annual Report of the American Bar Association 63 (1938); 340.

360. NLRB v. Scrivener, 405 U.S. 117, 122-24 (1972).

361. A Rutgers University professor has reportedly compiled a list of 150 euphemisms for "firing" now used by Corporate America.

362. Justice Byron White, ABA Judges' Journal (Spring 1991).

363. *See, e.g., Stephenson v. NASA, supra*, Secretary of Labor July 3, 1995 decision holding concerns about Space Shuttle cabin air are protected under Clean Air Act.

364. "The Impact of the Mercury Losses in Oak Ridge," Hearing Before the United States House of Representatives Science & Technology Committee, Subcommittees on Oversight and Investigations and Subcommittee on Energy Research and Development, July 11, 1983 at 335, 385.

365. See, e.g., 18 U.S.C. §§ 241, 243, 1505, 1512, 1513.

366. *Id.*

367. See [www.beryllium.org](http://www.beryllium.org) for excellent Web site containing information on beryllium exposure and government and industry culpability. See also, Gary S. Foster, March 17, 2000 letter to Senator Fred Dalton Thompson.

368. See also, Frank Munger, "Firm denies cyanide problem at K-25 site," Knoxville News-Sentinel, May 31, 1996; Frank Munger, "K-25 samples don't reveal cyanide; search to go on," Knoxville News-Sentinel, June 20, 1996; Frank Munger, "Cyanide probe starts at K-25 -- NIOSH checks air; employees to be tested for exposure," Knoxville News-Sentinel, June 5, 1996; Frank Munger, "K-25 workers may be checked for cyanide -- Some employees say concerns overlooked," Knoxville News-Sentinel, June 4, 1996; Leo Williams, "Workers attack LMES cyanide plan," Oak Ridger, June 14, 1996; Leo Williams, "LMES hires consulting physicians, drops cyanide study," Oak Ridger, August 6, 1996, reporting that consulting physicians will have "broad authority to order tests," but dropping a study whereby urine samples would have been taken from sick worker; Leo Williams, "Tests fail to find cyanide at K-25/ Sampling to continue into future," June 19, 1996 Oak Ridger; Frank Munger, "Exposure to Cyanide? Some K-25 workers link health woes to spray liner," Knoxville News-Sentinel, May 15, 1997; Lockheed Martin, undated 1996 employee relations publication, "Cyanide exposure concerns update; Frank Munger, "K-25 Workers Complaining of Exposure to Cyanide," Knoxville News-Sentinel, February 10, 1996; Frank Munger, "NIOSH mulling cyanide issues at K-25," February 21, 1996; Ann Walzer/The Exposed -- March 6, 1996 letter to Governor Don Sundquist of Tennessee; Sandra M. Keen, E-mail message then forwarded by Tonia Sue Wade, re: Maintenance Division staff meeting -- May 23, 1995 re: TSCA incinerator air tests and the fact that the "chances of [Hazel O'Leary] visiting the K-25 site are slim"; Anne Paine, "Oak Ridge monitors found metals -- Stations closed after high levels," Nashville Tennessean, September 25, 1997; Associated Press, "DOE faces \$92.6M in claims," September 1, 1997; Susan Thomas, "Oak Ridge workers file suit," Nashville Tennessean, August 30, 1997; Susan Thomas, Laura Frank and Anne Paine, "Residents who have no ties to Oak Ridge complex ill, too," Nashville Tennessean, August 31, 1997; Laura Frank, Susan Thomas and Anne Paine, "Learning problems soar near Oak Ridge complex," Nashville Tennessean, August 24, 1997.

369. ORNL Review, Nos 3& 4 (1992)(50th Anniversary Edition) at 154, quoting Dr. Alvin Weinberg..

370. DOE Office of Oversight, Environment, Safety and Health, East Tennessee Technology Park Site Profile (December 1999) at 5.

371. DOE Inspector General Report No. DOE/IG-0451 (August 1999), <http://www.hr.doe.gov/ig>

372. Leonard W. Schroeter, "Human Experimentation, The Hanford Nuclear Site and Judgment at Nuremberg," 31 Gonzaga Law Review 147 (1997).

373. See Moore v. DOE, 1999-CAA-14 (on appeal to DOL ARB), including undisputed proof of dangerous DOE nuclear courier job conditions without proper radiation detection equipment.

374. See generally, Johnson & Jackson, City Behind A Fence (1982); These Are Voices: The Story of Oak Ridge 1942-1970, edited by James Overholt (Regional Appalachian Center of the Children's Museum of Oak Ridge)(1987), at 63, 91, 103-04, 275-76 for discussions of routinized abuses of

individual rights in the name of putative "national security" in a company town where the security interests are taken to be the same as managers' selfish interests in concealing environmental crimes.

375. In Freels v. Martin Marietta, Energy Systems, Inc., 94-ERA-6, Lockheed answered Ms. Freels' Interrogatory No. 64 about surveillance under oath and in writing:

Energy Systems objects to this interrogatory on the ground that the information sought is completely irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, Energy Systems states that it has had access to technical surveillance equipment (TSE) since 1989. TSE is any device specifically designed for surreptitious acquisition of nonpublic communications or activities without the consent of a person who is party to the act. In August 1991, the following TSE equipment was turned over to DOE:

Manufacturer	Model	Serial No.
Panasonic Camera	WCVD810	78AO2864
Panasonic Camera	WCDV810	78AO2855
Panasonic Kit Camera	GP-CA49	OX0139
Elbex EX Camera	465	010130
Elbex EX Camera	465	010127
Elbex EX Camera	465	010066
Elbex EX Camera	435	010379
Sony Camera	HVM-302	9010398
Sony Camera	HVM-302	9019405
Sony Camera	HVM-322Q	9001030
Sony Camera	HVM-322Q	9001025
Remote Activation Camera	link	link
Camera Control Box	link	link
Telephone Recording Control	MDL-43-228	link
Telephone Recording Control	MDL-43-228	link
Video Sender Transmitter	UltraLink	(NSN)
Video Sender Transmitter	UltraLink	(NSN)
Gemini Transmitter (Two Piece Unit)	Rabbit	4292691 4286695
NIT Transmitter	TI-2002	077EO0320
NIT Transmitter	TI-2102	077EGO07212
Panasonic Lens	WVLA 12	8030411
Panasonic Lens	WVLA6	8042288
VMI Lens	AIF-0825	6002
VMI Lens	FO-38128	12339
VMI Lens	SL-1123	2215
VMI Lens	WTL-190	8503
Computar Lens	link	(NSN)
Cosmicar Lens	link	(NSN)
Cosmicar Lens	link	(NSN)
AT&T Throw Phone	link	link
ORNL Throw Phone	N/A	(NSN)
Hostage Negotiation Throw Phone	link	link
AT&T Hostage Phone	link	(NSN)

Direct-Recording	link	link
Wired-Microphone		
Voice-Activated	link	link
Control Switch		
Litton Adaptor	CAF	(NSN)
Litton Adaptor	PK	(NSN)

A description of additional technical surveillance equipment which was turned over to DOE on July 29, 1992, is as follows:

Manufacturer	Model No.	Serial No.
EDCOR Receiver	ST-3	46746P
EDCOR Transmitter	PM-1	00185
Sony Monitor	FDM-402A	9010398
Litton Night Vision	UNC	PN206812-100
Systems Kit, Containing Litton Relay Lens, Fuji Lens 1:1.8/17.5 - 105 mm		
Panasonic Wide Angle Lens	GP-LM3T	No Serial No.

Energy Systems cannot provide TSE for examination by the Complainant because the equipment is no longer in Energy Systems' possession.

376. Cox v. LMES, Tr. 684,1086.

377. *Id.*, Exhibits CX-257A,B&C.

378. *Id.*, Tr. 2877 (Mr. Harold Connor).

379. Harry L. Williams & Sherrie Graham Farver v. Lockheed Martin, 98-ERA-40&42 (on appeal to DOL Administrative Review Board), brought by the current President and Treasurer of the Coalition for a Healthy Environment in their individual capacities as Complainants. Mr. Williams and Ms. Farver were not even allowed to testify before DOL Administrative Law Judge Rudolf Jansen at the November 17, 1998 Prehearing Conference before Honorable Rudolf L. Jansen; as discussed *supra*, Judge Jansen, a former IRS lawyer, was rude and disrespectful to both the complainants and their counsel, both in person and in writing, not allowing them to testify, not allowing discovery, and refusing to view the videotape of the July 11, 1996 NIOSH closeout meeting. Complainants wrote in their May 20, 1999 brief to the ARB:

On November 30, 1998, only thirteen days after the ALJ gagged them from speaking in "his courtroom," Mrs. Farver and Mr. Williams met with Secretary of Energy Bill Richardson regarding their concerns about environmental, safety and health matters. The ALJ's refusal to allow Complainants to testify was unreasonable. It was hostile. It was unprecedented.

Tilting toward the retaliators, the ALJ made up his own excuses and defenses for government and contractor discriminators, ("national security," mentioned in the Prehearing Conference, was heavily on his mind). The ALJ forced Mrs. Farver and Mr. Williams -- both persons the Complaint makes clear have disabilities -- to travel to Cincinnati the week before Thanksgiving, while not allowing them to testify. Representative Maxine Waters (D-California) has said that

“justice may be blind, but she is not gagged.” Mrs. Farver and Mr. Williams were “gagged” by the ALJ, forbidden to testify in their own Prehearing Conference on discovery issues on which they had personal knowledge. Mrs. Farver is a Certified Radiation Control Technician, and Mr. Williams was a Commander in Lockheed Martin security, with decades of law enforcement experience in the military police and Tennessee state Fish and Game enforcement. Even when the ALJ made baseless assertions about surveillance and “national security,” Commander Williams were forbidden to testify. While the Respondents made unsworn assertions about E-mail searches, Mrs. Farver and Commander Williams was forbidden to testify. Refusal to let Complainants testify is one of the most mortal errors ever committed by a DOL ALJ -- akin to an intentional tort by the ALJ, who looks down his nose at workers.

380. April 22, 1999 letter from Edward A. Slavin, Jr. to Energy Secretary Bill Richardson re: “FOIA Delays and Surveillance of Researchers in Oak Ridge,” stating *inter alia* at p. 1:  
Oak Ridge is an insular “Company Town,” where not even the reading room is safe. ORO’s library surveillance reminds us of Kenneth Starr’s book store subpoenas or J. Edgar Hoover’s sending agents to public libraries to learn what Americans were reading in their spare time. It is legally and morally wrong and reprehensible. This is a crime against our democracy. No excuses have been offered. No apologies have been received. No answers have been provided. But Justice Department attorney Henry Miller stated, ““I am not ashamed of anything I did.”
381. *Id.* at 2.
382. *Id.* at 2-3.
383. Karl Z. Morgan, *The Angry Genie* at 157.
384. “The Impact of the Mercury Losses in Oak Ridge,” pp. 335, 385.
385. See Albert Gore, Jr., *Earth in The Balance* 21 (1992) re: “oil-covered otters and seabirds of Prince William Sound” in the wake of the Exxon *Valdez* disaster.
386. “The Impact of the Mercury Losses in Oak Ridge,” p. 334.
387. The fear continues. As Senator Voinovich noted in his Opening Statement:  
For years, few workers dared openly speak about the loss of friends and co-workers to illness, their own diminished health and the increased risk they had placed on their families. Many employees feared that exposing such health and safety problems would jeopardize the very existence of the plant, and the thousands of good paying jobs it provided the community. There are still employees who are afraid to come forward.



Senator Fred Thompson  
3322 West End Ave.  
Nashville, Tn.

Dear Senator Thompson:

I am writing this letter on the behalf of my wife, her father was one of the victims of exposure from working at K-25 who spent 32 years of his life there. He spent the last 20 years of his life which the doctor said was a lung disease. He spent the last 12 years with a tube in his back to drain fluid from his lung.

It has been sad to see someone like him suffer from this. He believed that exposure from working there caused his problems.

We are asking that employees and former employees receive recognition for what they have lost and suffered from working at K-25 and others located in Oak Ridge, Tn.

Sincerely,  
Thomas G. and Marjorie Spangler  
7621 Konda Dr.  
Knoxville, TN 37920

Subject: Testimony  
Date: Tue, 28 Mar 2000 17:12:13 -0500  
From: kbswain@dialpoint.net (Kathryn Swain)  
To: cheryll@netzero.net

March 26, 2000

To the United States Government  
RE: Senate Hearing on DOE Illnesses

I am a former Oak Ridge worker. I have lived in Charlotte, NC for a little over three years, now. When it became clear to me that something in my work environment--and very likely, something in areas surrounding Oak Ridge as well, had made me very ill, my husband and I pulled up all the roots we had put down, and we started over someplace else. Within a few months of leaving Knoxville, I began to feel better, and I soon returned to work. I was a very difficult struggle at first, but I am one of the fortunate ones--I have been able to recover most of my previous capabilities, and I have learned to work around the continuing deficits. I am certain that I am not what I would have been had I never worked for the Department of Energy, but I am, at least for now, capable of living a full and fruitful life.

I am absolutely convinced of two things-- (1) I was exposed to something, or more likely, a great variety of somethings, that made me and many other people ill; and (2) the medical community at large will never be able to state with a certainty what made us all ill. However, simple logic, honesty, morality, integrity, and intestinal fortitude will, I hope, someday lead to revelation of the truth for all to hear.

Another thing that I am almost, but not quite, convinced of--my government and my former employer do not really care that they made me and others ill and that they never gave us a choice as to whether we were willing to risk toxic exposures. I did not initially believe this--I continued to hope and to try to convince others that help would be forthcoming soon. But I got sicker and sicker, and the ONLY aid, the ONLY care I EVER received was from the others and from a couple of doctors among many. As I got sicker, the shocking and terrifying absence of concern became ever more evident.

That dark cloud of doubt follows me now. I am doing well now, but what seeds of future illness do I carry within me? If my government does not care now, have I any hope that it will care when I am 20 years further away chronologically from the exposures? If it doesn't matter now that I had to leave my chosen home and start all over, if it doesn't matter that several years of my life are just a blur to me now, if it doesn't matter that I am physically older than my chronological age, and if it doesn't matter that I am probably the healthiest and strongest of the people I knew there who were also exposed, what can I expect?

I don't expect much. I don't expect anyone to care that I have been labeled a hypochondriac even though I had only two doctors in the years before I moved to Knoxville--the one who delivered me, and the one who took over when he died. I don't expect anyone to care that I was refused life insurance because of issues related to the Oak Ridge exposures. I don't expect anyone to care that my I.Q. dropped 10 points.

But I am one of the lucky few. I got better. If my luck holds, I won't ever NEED my government to care. But others have gotten worse. And others will get sick if something isn't done. I need my government to care about them. And I need you to DO something, something REAL.

In the five years that I worked at Oak Ridge, I witnessed a great deal of discussion and planning, but very little actually happened. Little or none of the work that was discussed and planned during those years ever seemed to take place. The same approach has been taken with these exposures and illnesses. All the effort has been directed toward the APPEARANCE of doing something--or getting ready to do something. Well it's time to stop wasting time, money, and peoples' lives. Stop PREPARING to do something (or pretending to do so) and get busy doing something that will actually directly address these peoples' needs!

I am also including here the biographical piece I wrote for the Coalition for a Healthy Environment Website several years ago:

My name is Kathryn Swain. I first came to Tennessee in 1983 to attend graduate school at UT Knoxville. I completed my M.A. there and went to Emory University to work on my Ph.D. I missed UT and East Tennessee so much that I came back to UT in 1985. I loved the beauty of the region and the kindness of the people, but I didn't realize then just what an ugly secret those beautiful hills and many of those "kind" people hide. I wish now that I had never seen or heard of Knoxville or Oak Ridge.

I went to work as a technical editor at ORNL in July 1991. Almost immediately, I began having problems with musculo-skeletal pain and fatigue, but I chalked it up to having a desk job and sitting all day. In the summer of 1993, I moved to K-25 (I will NOT call it a "park"). My pain and fatigue worsened. Soon, I began having flu-like symptoms. Initially, these symptoms improved over the weekend and worsened during the week. Eventually, I was sick all the time, no matter where I was. I was horrified. I LOVED my job, and I LOVED the people I worked with. (In spite of my illness, I won a number of awards for a job well done.) To make matters worse, my husband did not have a full-time, permanent job, and the job market in East Tennessee held little promise that such a job would be easy to come by. We did not want to leave, so, in addition to LOVING my job, I NEEDED it.

I went to doctor after doctor trying to discover what was causing my constant headaches, muscle aches, and terrible fatigue, what was making my eyes burn all the time, what was causing my ears to ring, what was making it so hard for me to concentrate and to complete work that once had been so easy for me. Finally, my internist suggested a test for cyanide. "No thanks." I told her, "I work in an office--I am never anywhere near any chemicals." She responded, "well, we've looked at everything else. What could it hurt?" I had the test.

My husband and I happened to be out of town when the lab results came back. The doctor left several messages on my machine. She was obviously quite concerned. When I spoke to her, she told me that my urine thiocyanate level was 36 micrograms per milliliter. She also told me that the normal level for a non-smoker was 0 to 5 micrograms per milliliter and, even for a heavy smoker, the highest level should be 17. I asked her what I should do, and she said "see a toxicologist." I asked her to recommend one, and she told me that there were no toxicologists in East Tennessee. She recommended that I go to Emory.

When I reported this problem at work, an industrial hygienist came to my office. The first thing he said was "how did you get cyanide in your system?" I was amazed. "That's what I want YOU to tell ME!" I

said. He then asked me if I ate a lot of apples or almonds! I asked him whether the TSCA Incinerator effluent was tested for cyanide. He said yes, but he came back a few days later to tell me that he had found out that it was not tested. I said that I WANTED it to be tested. I also asked for monitoring of my office air and for sampling of the dust in my office. I was promised more sophisticated monitoring, but I have never seen any evidence that any real monitoring was done. Yet several other people who worked in the same hallway where my office was located also suffered illness and also had high urine thiocyanate levels. I am so very glad that I found the people who later became CHE. They were the ones who cared what happened to me.

I was confident, at first, that LMES would do the right thing. That confidence rapidly diminished as time passed. I watched as LMES and DOE paid lip service to concern for employees. Time after time, they looked NOT to find the problem. They treated me and others as if we were simpletons. They did nothing to alleviate the problem. I asked for and received permission from my supervision to move to another location. After I moved away from the K-25 Site, my urine thiocyanate levels decreased, but I remained ill. I sought help from several doctors. Hair analysis revealed high levels of a number of toxic materials. Examination by a neurologist and a neuropsychologist revealed brain and nerve damage. Finally, when I hurt so badly and when I could not concentrate well enough and focus long enough to complete my work, I went out on short-term disability. I hoped that rest would help, but the weeks passed with no improvement. My urine thiocyanate level dropped to zero, but the pain, the fatigue, and the disorientation continued.

When my husband received a job offer in another state, we decided that we had no choice but to take it. We moved. After living outside of Tennessee for about 3 months, I began to improve. After 4 months, I began working again. It was very difficult at first, but it has gotten easier. The pain is much improved. I seldom have headaches anymore, though my back continues to give me grief, and the pain in my arm and leg muscles returns to haunt me if I exert myself very much physically. I don't have much energy left after an 8-hour day, but I am so grateful that I can work an 8-hour day! What used to be easy for me intellectually is difficult now, but I am so grateful that I can still work, and my verbal skills seem to be returning gradually!

When I first came to Tennessee, no one could believe me when I told them my age--everyone thought I was a decade younger than I was. Now, I am older than my age, and I look it and feel it. But I still hope that I will recover further. I still hope that the friends I left behind in Tennessee will be able to improve, too. And I still hope that my government will not continue to allow the people of East Tennessee to be exposed needlessly to a number of poisons. Please understand that when DOE and LMES keep saying that they are "in compliance," it has NO MEANING!! Even if they were in compliance for each hazardous substance, the combination of a large number of hazardous materials in small amounts adds up to a large dose of poison. They NEVER consider how many different toxins are dumped into the air and water of that beautiful, poisoned paradise. We were all poisoned, and the poisons continue to flow. This is documented fact and easily verified. They distract us from the numbers by focusing on "compliance" of individual substances. There is no law regulating the total toxic burden they are allowed to dump in YOUR back yard.

It is difficult to understand and to believe, if you are healthy--or believe that you are--that others who live and work alongside you ARE sick because of environmental toxins. I know that I did not want to believe that my employer and my government would allow such a frightening thing to happen. We need intelligent, compassionate allies who are strong enough and wise enough to look at the facts, see the truth, and speak out in our behalf. I hope that you will read these pages, look into these faces, and try to comprehend this terrifying truth--people are suffering here, and it doesn't have to be. Be brave! Look to FIND THE TRUTH. Don't turn away. You or someone you love could be on this page next week or next year. And it doesn't have to be that way.

Thank you,

Kathryn B. Swain  
5806 Timber Falls Place  
Harrisburg, NC 28075

Senator Fred Thompson  
3322 West End Ave.  
Nashville, TN

Dear Senator Thompson,

We read a newsletter over the Internet about "the U.S. Senate Committee would be investing the way the Department of Energy handles health and safety concerns." at Uranium processing plants in Oak Ridge and Portsmouth, OH.

Our father, Roy R. Swatzell, who now is deceased as of February, 1999, worked at K-25 for 32 years, from 1944-1976 as a chemical operator in the process department. After numerous repeated X-Rays of his lungs, they let him retire knowing something was wrong with his lungs with a pension of \$500 a month. Shortly after he retired, he became very sick and almost died. His stay in the hospital was 3 months, his diagnosis was some type of Pneumonia. He came home with a tube in his back for infections and drainage. The tube came out for a while, but he always had a cough and would spit up blood.

Ten years later, he had to have the tube inserted into his back again and he died with a tube in his back. With his first stay in the hospital, in late 1976 after he retired, his sickness caused other problems. He and our mother's life was over. We had to make sure one of us was available at all times. Our mother needed our help taking care of dad.

Senator Thompson, his medical bills were around \$800 a month. This alone was for his medicines. Our mother called Oak Ridge to see if she could get some help. She was told that our dad got everything he was entitled to.

He was in and out of the hospital so many times, and each time we thought we would lose him. The last 2 years of his life were the worst. For he had to have oxygen everytime he tried to walk, eat, or even talk. Before he had to have oxygens at intervals. It was so hard for us to see him not be able to breathe.

We felt that we had to write to you and let you know about our dad. He was a wonderful person, the best dad anyone could have. He loved us and we loved him. It is too late to help him, but there are alot of K-25 workers and former workers who need help.

Sincerely,  
Roy E. Swatzell

March 22, 2000

To the United States Government  
RE: Senate Hearing on DOE Illnesses

My name is Lloyd Terry. I am a former employee of K-25 and worked as a Firefighter and EMT for five years. I have always loved firefighting and working as an EMT trying to help people. I was an avid hunter and fisherman. I was very family oriented, going places with and enjoying my kids and wife. I taught Sunday School. Shortly after I began working at K-25, my health began to deteriorate. It began with shoulder and neck pain, pain throughout my body, memory loss, sleep apnea, depression, diabetes, fibromyalgia, neuropathy, CFS and this is to name only a few of my many medical problems.

Working at "the plant" was an answered prayer. I didn't realize that my prayer would eventually kill me. I have been exposed to many unknown toxins and chemicals without my knowledge. I should have been warned and allowed to make an informed decision about whether I wanted to expose myself to these chemicals. My life has been unfairly taken away from me because of DOE negligence and I believe our government should fight, investigate and do what is right for the ill workers.

There needs to be compensation of lost wages, future wages lost and continuous health insurance coverage as well as medical care and treatment for the affected people. I am asking on behalf of myself and all the others that have been made ill by simply performing their duties at their jobs.

You cannot give my life that you've so unfairly taken away back to me. But, you can do the right thing and change things for the people still working at the DOE facilities and stop the contamination. OPEN YOUR EYES and DON'T TURN YOUR BACKS, that's been going on long enough! We have traveled many miles to hopefully see some changes and have hope again!

Please, HELP!

Sincerely,



Lloyd Terry  
410 Old Edgemoor Lane  
Powell, TN 37849

March 22, 2000

To the United States Government  
RE: Senate Hearing on DOE Illnesses

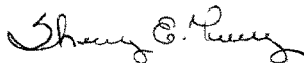
I would like to explain how our life has been destroyed. My husband is 42 years old and was a very healthy, active man when he started to work at K-25 in 1992 as a Firefighter and EMT. Since beginning work there, he has deteriorated -- vision loss, hearing loss, fibromyalgia, CFS, depression, hypogonadism, diabetes, neuropathy - just to name a few of his medical problems.

Our family used to be able to spend *quality* time together playing with our children, taking trips, teaching Sunday School and most of all, my husband used to SMILE! He is no longer able to be this person. My husband is in bed most of the time, takes strong pain medications to control his SEVERE pain, can't remember where he is going if he drives, can't exert himself at all because of such severe CFS, and is depressed most of the time. The damage that has been done to my husband and our family is inexcusable. He was only doing his job and wasn't warned of any exposures and wasn't provided protective apparel to help protect him in the event of exposures. The horrible thing is that this continues on a daily basis even today.

How can this go on? You are allowing people to die and you have control and won't do anything. God created us all with some morals and ethics but some choose to ignore the morals that God instilled in us. I don't know how you can sleep at night with this on your conscience. Many people will lose their lives because of this inexcusable negligence. You need to look into your heart and do what is right. There needs to be an investigation and ill and affected people need continuous medical care, compensation for lost and future wages and compensation for the loss of their lives (if you can compensate for killing someone).

Our children may not have a daddy for long. We will try to make the best of what time we do have. I just wish you could give him his health and life back - this would be the best compensation. But, you can't do that, can you?

Sincerely,



Sherry Terry  
410 Old Edgemoor Lane  
Powell, TN 37849

March 22, 2000

To the United States Government  
RE: Senate Hearing on DOE Illnesses

My name is Whitney Terry and I am nine years old. I would like to tell you how sick my daddy is because he tried to do his job. He worked as a fireman and EMT at K-25 trying to protect and help people. My daddy used to have fun with us. Now he stays in bed all the time, hurts all the time and he is grouchy to me and my little sister.

I wish you could PLEASE give my daddy back to me since you helped take him away from me. And, it was because he was only doing his job. There are many sick people that I know worked in the same place as my daddy. PLEASE, HELP THEM ALL! My parents always taught me to do what was right - how come us kids are supposed to do the right thing but our government doesn't have to?

Sincerely,

Whitney Terry

Whitney Terry  
410 Old Edgemoor Lane  
Powell, TN 37849



340 Dirksen Senate Office Building  
Washington, D.C. 20510

Testimony of Janine L. Voner to Senator Fred Thompson Pertaining to the K-25  
Oak Ridge Gaseous Diffusion Plant Hearing on March 22, 2000

Dear Senator Thompson:

In 1978, I began my employment as an administrative assistant at the K-25 Oak Ridge Gaseous Diffusion Plant in Oak Ridge, Tennessee. When I began working at the K-25 Plant Site I was 25 years of age and in excellent health.

It was not long after I started working there that my overall health began to change and I was experiencing health problems such as cluster migraines, cardiac arrhythmia, anxiety/panic attacks, severe memory loss, acute daily muscle and joint pain and swelling, night sweats, flushing of my ears, face and neck, intestinal problems, multiple ovarian cysts, multiple hemangiomas in my liver with the largest being 7.5 cm. in size, fibroid adenoma in my left breast, fibroid tumor in my uterus, reoccurring cystitis and nephritis, diseased sublingual and submaxillary glands in the left side of my neck, constant swelling in my lymph nodes, reoccurring pneumonia and plurosy in my left lung as well as mild depression. For the past twenty years of my life I have gone from physician to physician, had numerous surgeries to remove glands, cysts, as well as fibroid tumors, endured constant physical therapy to include electrical cortisone injections for swollen and painful joints, and have undergone a myriad of medical testing and treatments.

In 1998, my health began to worsen and I began having crippling fluid on the back of both of my heels. My cluster migraines were no longer being controlled by medication or injections, I began having severe night sweats once again and my memory as well as my speech began to get worse along with my depression which my medication was not controlling. I had an overwhelming feeling of hopelessness and did not know where to turn as it seemed as though none of my physicians were able to diagnose the cause of my illnesses. On September 28, 1998, I began reading the front page of the Maryville Daily Times and noticed a headline: "Mysterious ailments uncovered around nation's nuclear facilities". The article told of scores of former and current workers at the Oak Ridge Nuclear Reservation that were suffering a pattern of unexplained illnesses. I consequently contacted Bob Poe at the DOE Oak Ridge office and asked him if he was familiar with any of these employee illnesses and if there were any organizations or groups that I might be able to contact to find out further information. Mr. Poe advised me that he was not aware of anything pertaining to sick workers in Oak Ridge and also that he knew of no one that I might contact regarding this. After talking with Mr. Poe I spoke with an employee at the DOE office and was advised to contact Sandra Reed at the Coalition for Healthy Environment. It was through this contact that I found out that there were many sick workers who were suffering from a variety of unexplained illnesses and health problems.

Subsequently I contacted the Department of Energy's Oak Ridge office and requested copies of my K-25 medical file be sent to me. After receiving my medical file I delivered it to my family physician for his review. I was then referred to a toxicologist for testing. My toxicology test results revealed that I had many heavy metal toxins in my body to include Mercury, Cadmium, Arsenic, Lead, Nickel, Thallium, Tin, Tungsten, Uranium, Cobalt and others. The test results also indicated that my entire immune system had been severely compromised due to the loss of necessary trace elements and minerals needed to keep my body in good health.

In February 2000, I was approved for Permanent Medical Disability by the Social Security Administration due to Chronic Fatigue Immune Deficiency Syndrome, Damage to Overall Nervous System, and Heavy Metal Toxicity. I own a small gift shop which supports my daughter and I now have full-time workers to run my store as I am physically unable to work. My current medical condition includes constant swelling in my lymph nodes, Chronic Epstein-Barre Virus, Chronic Fatigue Immune Deficiency Syndrome, chronic bone and joint pain, cluster migraines, cardiac arrhythmia, severe memory loss and speech difficulties, constant fevers, severe fatigue, sleep and eating disorders, weakness in my arms and legs, constant upper abdominal pain, restless leg syndrome, constant chest pain, flushing of my ears, face and neck, and depression which comes and goes. On January 4, 2000, I participated in the Worker Health Protection Program for DOE Gaseous Diffusion Plants and had a physical exam in Knoxville, Tennessee. Last week I received my test results and have been advised that my LPT test for beryllium is now abnormal as well as testing weakly positive on one of the four bladder cancer screening tests. I have since had my third LPT test for beryllium sensitivity which was recently sent to National Jewish Hospital in Denver and have taken another set of bladder cancer tests thru this medical testing program. In 1999, I was sent to a neurologist at Erlanger Medical Hospital in Chattanooga, Tennessee and was advised that I have permanent damage to the sub-cortical area of my brain, damage to my overall nervous system, and a severely compromised immune system all due to chemical/toxic exposure.

My financial situation extremely stressful. I have doctor bills which I cannot pay and health insurance which will be cancelled in approximately one more year. My medication each month will cost me over \$300 per month without insurance coverage and to pay the doctor bills will be impossible for me to do.

We need help. We need qualified physicians who are familiar with the effects that that heavy metals, toxins, and chemicals have on our bodies and what treatments would be appropriate for our illnesses and symptoms. We need health insurance to cover testing and treatment. We need financial assistance for those of us who are on Permanent Disability and are unable to work.

I would like to thank you for allowing me to submit this written testimony. My prayers are that our government will pass a fair and comprehensive Workers Compensation Program to include the assistance that we are so badly in need of.

Sincerely,

Janine L. Voner  
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March 29, 2000

**From: Pamela Gillis Watson**  
**134 Jarrett Lane**  
**Oak Ridge, TN 37830**

**To: U.S. Senate Governmental Affairs Committee, Attention: Darla Cassell**

**Re: Hearing on Oak Ridge, Tennessee, and Portsmouth, Ohio, Department of Energy Gaseous Diffusion Plants**

I have a number of concerns about the Department of Energy Oak Ridge (DOE-ORO) Environmental Management Program, the DOE-ORO Reindustrialization Program, and the Bechtel Jacobs Company's management of the Environmental Management prime contract that I believe are relevant to environmental, safety, and health issues at the DOE-ORO gaseous diffusion plants and to the ability of various interested parties to obtain accurate and timely information about those issues.

I have been an employee of DOE contractors in Oak Ridge for 10 years. My first 4 years were spent at Oak Ridge National Laboratory, and then I transferred to K-25 in 1993. I was assigned to K-25 from the summer of 1993 to December 1999. For 2 years I was assigned to an offsite location in Oliver Springs, Tennessee, but for 4 years I worked on site at K-25. I was one of the Lockheed Martin employees who transferred to the Bechtel Jacobs Company in April 1998 when Bechtel Jacobs became the prime contractor for the DOE-ORO Environmental Management Program, including the former gaseous diffusion plants at Oak Ridge and Portsmouth.

I remember when the Nashville Tennessean newspaper began their series on the concerns of sick current and former workers and residents who live near the K-25 Site. Most of the information that filtered down to the K-25 workers at the time was that we had nothing to worry about in regard to health and safety issues unless we worked in one of the occupations known to be more hazardous (such as those who worked directly with hazardous waste), and that the Tennessean's series was just sensationalism designed to sell newspapers. However, when some of my own colleagues who did not work in one of hazardous occupations became ill (for instance, Kathy Swain and Janet Michel), I began to have doubts. Eventually, I became convinced that it is indeed DOE operations in and near Oak Ridge that are causing at least some of the workers' illnesses. Discoveries and revelations reported during the last year about DOE-ORO operations, plus my own experiences over the past 2 years as an employee of the Bechtel Jacobs Company, have solidified my belief that the Department of Energy and its contractors—past and current—have perpetrated a massive betrayal of the workers, the public, and the environment.

My primary concerns about the current DOE-ORO Environmental Management Program, DOE-ORO Reindustrialization, and the Bechtel Jacobs Company's management of the Environmental Management contract fall into four main categories as detailed below.

**1. Lack of experience and knowledge in many employees now doing the Environmental Management work**

One concern of mine is that there has been an exodus of experienced and knowledgeable employees from the Environmental Management Program over the last 2 years. A large number of employees who were working for Environmental Management before Bechtel Jacobs took over the contract are simply no longer around. Why? I see a variety of reasons:

The Bechtel Jacobs environment is hostile to employees who formerly worked for Lockheed Martin. Former Lockheed Martin employees are openly disrespected, threatened, and driven away by Bechtel Jacobs managers.

I believe the Bechtel Corporation and Jacobs Engineering (the parent companies of Bechtel Jacobs) wanted to use the Environmental Management contract to create jobs for their own employees. My first two supervisors with Bechtel Jacobs told me that Bechtel employees were promised jobs, promotions, increased responsibilities, etc., if they would come to Oak Ridge to work, only to be told once they got here that they might not have jobs because Bechtel Jacobs had been "forced" to take more Lockheed Martin employees than they had expected. The only way these employees from the parent companies were going to have jobs was if the grandfathered Lockheed Martin employees and previous subcontractors left. In the meantime, Lockheed Martin employees had been told initially (back when we first learned that the contract would go to a company other than Lockheed Martin) that "only about 12 top managers" in Environmental Management would be replaced when the new company came on board. What actually happened was that Bechtel and Jacobs brought in about 150 employees from their parent companies. Unlike hundreds of grandfathered employees, these employees who came to Bechtel Jacobs from the parent companies have not been "outsourced" to subcontractors. Thus, a disproportionate number of the current "core" Bechtel Jacobs employees are people from Bechtel and Jacobs who had not worked at K-25 prior to April 1998.

Lockheed Martin employees who transitioned to Bechtel Jacobs were not given the "equivalent balance" of pay and benefits they were told they would have when the transition first began to be discussed. Their pay is the same, but their benefits definitely are not. When talented, knowledgeable, experienced employees with marketable skills are mistreated and not given what they were promised, they tend to look for jobs elsewhere.

Many employees did not want to be placed with subcontract companies that were seen as being undesirable. To avoid being forced to work for these subcontractors, many employees simply found other jobs outside the Environmental Management Program or outside the DOE Complex entirely. Subcontractors who were awarded workforce transition contracts by Bechtel Jacobs wanted to fill the available positions with their own employees instead of the grandfathered employees who were supposed to have right of first refusal on those positions. Bechtel Jacobs has made it easy for them to do just that, while DOE has looked the other way. Subcontractors who have little or no understanding of the work to be done are allowed to decide for themselves how many grandfathered employees they need to hire for any given scope of work and come up with their own position descriptions and qualifications for the positions to be filled. Then, when they claim that no grandfathered employees meet the criteria they have devised for these positions, Bechtel Jacobs allows them to fill the positions with their own employees or with new hires who are cheaper—but far less knowledgeable and experienced—than the scorned grandfathered employees from Lockheed Martin.

Bechtel Jacobs has laid off grandfathered Lockheed Martin employees while retaining employees from the parent companies, or has "reassigned" grandfathered employees to other positions and given their work to employees from the parent companies. It was apparent to me in the 2 years I worked for Bechtel Jacobs that quite a few of the employees from the parent companies were not qualified to be doing or capable of doing the work that they were given—work that could have and should have been done by a grandfathered employee. When I complained to DOE Human Resources about work being taken away from the experienced, knowledgeable grandfathered employees and given to "new hires" from the parent companies, I was told that these were "operational decisions" that were the prerogative of Bechtel Jacobs management. When I complained to Bechtel Jacobs management about subcontractors filling positions with their own employees or "new hires" instead of grandfathered employees and claiming the grandfathered employees were not qualified, I was told it

was not my responsibility to "trend" hiring practices of the subcontractors, and Bechtel Jacobs was not going to "interfere in the subcontractors' hiring process." When I complained to Bechtel Jacobs management that grandfathered employees were not being identified as eligible for workforce transition for types of jobs they had done in the past and/or could do, I was told that it was the prerogative of Bechtel Jacobs management to decide whom they wanted to do the work.

Subcontractors working in the Environmental Management Program prior to the Bechtel Jacobs transition did not have any right of first refusal on their jobs when those jobs were outsourced. What this meant was that when the contract for that work was awarded to a different subcontractor, and the subcontractors previously doing the work were not offered positions with the new subcontractor or weren't made offers they could accept (because of reduced pay and benefits), the experienced subcontractors had to go elsewhere. Many of the positions formerly filled by experienced, knowledgeable subcontractors are now being filled by former Y-12 employees who had not worked in Environmental Management prior to the transition or by "new hires" brought in by the new subcontractor. This is the case in the Bechtel Jacobs Records Management program, where very few of the new subcontractor's employees have been in their current positions for more than a year or two. This is bound to have an impact on the ability of Congress, the DOE Headquarters investigators, or anyone else to obtain Environmental Management records in an accurate, timely manner.

The net effect of all this is that a lot of the Environmental Management work will now be done by new hires or by employees who lack the necessary knowledge or experience for that type of work. Contrary to what Bechtel Jacobs senior managers seem to believe, this work is not simple "dirt moving." The hazards employees face in Environmental Management and in the DOE Complex as a whole are not the typical kinds of hazards faced in civil engineering or construction work, which is where the majority of Bechtel's experience lies. (For more background, I recommend you read an Office of Technology Assessment report called *Hazards Ahead*.) I believe it is only a matter of time until there is another serious accident at K-25 that will be caused in part by the lack of knowledge and experience of workers who are new to that environment. I urge the Governmental Affairs Committee to take action now to stem the tide of experienced workers from the DOE-ORO Environmental Management Program.

## **2. Lack of access to on-site medical services for employees who have been transitioned to subcontractors**

Many—and maybe all—Bechtel Jacobs employees who have transitioned to subcontractors no longer have access to on-site medical services. Further, Bechtel Jacobs management has "gutted" Medical Services at K-25, which they rationalized by saying that many employees have transitioned to subcontractors where they won't be able to access Medical Services, anyway. I was told that Bechtel Jacobs even laid off the K-25 occupational medicine physician, who was one of the early advocates for the sick workers. (Now isn't that a coincidence!)

The Governmental Affairs Committee should do everything in its power to ensure that current and former DOE workers, whether they be employees of DOE, its contractors, or its subcontractors, have access to adequate medical monitoring and care.

## **3. Risks to workers and members of the public created by Reindustrialization at K-25**

Private companies coming on site as part of the Reindustrialization program are effectively bringing the public inside the gates at K-25. I am not at all confident that the employees of these private companies are adequately informed of the hazards on site or trained to recognize and handle them. Further, I do not

believe the oversight of these private companies is adequate or appropriate. Who is responsible for them? OSHA? DOE? Do they have health and safety plans, and has DOE reviewed them? According to a statement I saw in the tenant guide recently, the reindustrialization tenants at K-25 are not even required to have a fire protection plan—but the tenant guide says if they don't have one, the K-25 Fire Department will merely "show up and throw water on the fire." Isn't it comforting to know that could happen at a Superfund site?

What do the tenant lease agreements say? Why can't we see them? The leasing authority at K-25, the Community Reuse Organization of East Tennessee (CROET), which is a DOE entity, says we cannot see the lease agreements because they contain "proprietary information." Yet the property still belongs to DOE, and CROET is funded with taxpayer dollars.

You see, CROET has a vested interest in not informing lessees of the hazards, because this might scare business away. Until very recently, CROET even carried on their "news" web site a copy of a 1998 opinion column by a pseudo-science writer who protested against and ridiculed the series the Nashville Tennessean did about the concerns of sick workers and local residents. The column was titled, "Newspaper Invents Nuclear Health Scare." The column was not removed until a number of citizens and sick workers began complaining to CROET and DOE.

Further, there is a widely-held belief at K-25 that the private companies and the Bechtel Jacobs subcontractors on site can "do whatever they want" because they are "private companies." I have heard more than one Bechtel Jacobs manager state this as a fact. The corollary of this belief is the notion that the private companies and subcontractors don't have to follow the same environmental, safety, and health rules and guidelines as do DOE and the prime contractor.

Now, Reindustrialization has approved such endeavors at K-25 as a railroad on which the public can take rides through the site and continue on into the "beautiful east Tennessee countryside." A railroad museum has recently been proposed. (Amusing to hear "CROET" and "railroad" used in the same sentence.) Nearby property has recently been rezoned by the city of Oak Ridge for mixed use to allow a housing development to be built there with "riverfront properties" on the DOE-contaminated waterway. And the public is led to believe that it's all perfectly safe. Well, until recently, beryllium contamination was not thought to be a danger to employees at the gaseous diffusion plants. Until recently, we did not know that employees at the gaseous diffusion plants were exposed to uranium "feed" contaminants such as plutonium, neptunium, and technetium. Until recently, we did not know that nuclear weapons had been dismantled and parts of them buried at the gaseous diffusion plants and that these parts were the source of tritium releases to the environment. What else don't we know yet about what dangers really exist at K-25? And are we willing to expose not only DOE workers but also members of the public to those potential dangers by bringing them on site through reindustrialization?

Recently, I received information from an "insider" in the Reindustrialization program that the data being used to create risk assessments for Reindustrialization actions are faulty data and that those responsible for conducting the risk assessments are intentionally excluding information that would be unfavorable to them. This should be investigated right away.

Another area of concern is the sale of equipment and materials through the Reindustrialization program. Are we willing to sell supposedly "safe" metal to the public for recycle that is volumetrically contaminated with radiation because it supposedly represents "savings" for the taxpayers? At the first big, highly publicized sale of equipment opened to the public as part of the reindustrialization program, which was held in Building 1401 at K-25, a rad-contaminated piece of machinery was sold to a member

of the public. Had the buyer not been suspicious and had his own test run, he might have never known the equipment he bought was "hot." All the equipment that was put up for sale was supposedly checked by DOE and the Tennessee Department of Environment and Conservation prior to the sale and declared "clean." Are we willing to risk more and worse incidents of this kind that could endanger the lives of workers and the public, all in the name of "saving jobs" and "saving money"? The Governmental Affairs Committee should do everything in its power ensure that no unsafe materials or equipment are sold or released to the public.

**4. Bechtel Jacobs management discouragement of disclosure of concerns and retaliation against those who make disclosures**

Workers, the public, and the environment cannot be safe as long as there is a workplace culture at K-25 in which workers fear speaking out about unsafe conditions and practices and where they are punished for disclosing concerns. I have direct experience with Bechtel Jacobs management in this regard.

In 1998, I called several organizations at K-25 trying to resolve a concern that there was no effective way to find issuing/signature authorities for welding, burning, and hotwork (WBH) work permits. It is the issuing authority who specifies how the work is to be done, such as whether a fire watch is required. As you have probably heard, there was a fatality at K-25 several years ago when a welder caught fire while performing WBH work; he had been working alone with no fire watch present. None of the organizations I called in 1998 were maintaining a list of issuing authorities for WBH permits as their own procedure required them to do (though the plant shift superintendent's office told me they would love to have one if I could find it). Eventually, I entered this concern as a formal health and safety concern. In the process of handling my concern, Bechtel Jacobs discovered that there were two conflicting procedures in effect for WBH work, but I was basically told that my concern was not valid because Bechtel Jacobs was still using the old Internal Approval Listing created by Lockheed Martin to identify issuing authorities. However, much later when I gained access to the Internal Approval Listing (in early 1999), I found that it had not been updated since before Bechtel Jacobs took over the contract, and many of the people listed as WBH issuing authorities were not even employed at K-25 any longer. Still later, after I had reported the concern to DOE, Bechtel Jacobs discontinued use of the Internal Approval Listing to find issuing authorities for work permits and the various organizations started maintaining lists of issuing authorities as the procedure specified. However, the last time I saw these lists (which was a few weeks ago), WBH permit approval authority had expired for nearly all of the people listed on nearly every one I checked.

Over the next several months in 1998 and 1999, I reported a number of health and safety; fraud, waste, and abuse; and information security concerns to Bechtel Jacobs management and submitted a cost savings suggestion. The initial response to my reporting of concerns or submittal of suggestions was usually no response. When I persisted in trying to have concerns addressed or making suggestions, my supervisor told me I had better "lay low," because management was going to try to "get me." After I made my cost savings suggestion into a formal suggestion and sent it to DOE under the Whitestone Initiative, I was told in confidence by a Bechtel Jacobs senior manager whom I had formerly considered to be a friend that he could no longer "do anything to help" because my suggestion had "created quite a stir in Building 1225" (that's where senior management's offices are). I never did get a response to that suggestion, by the way (which was that the Web Services group be moved to the Information Technology organization where they clearly belonged).

Because of Bechtel Jacobs' failure to adequately respond to and address one of the health and safety concerns I reported, there were two recordable injuries at K-25. One of them was mine, and one of them

was my coworker's. My coworker eventually had to have surgery and physical therapy related to her occupational injury. I was put on medical restriction that prevented me from doing my job for a week, and then I was moved to a different location where I performed different tasks.

In March 1999, I reported an information security concern to DOE after trying unsuccessfully for 10 days to have the concern addressed by Bechtel Jacobs management. The next day, I was called to a meeting with my manager, where he handed me a letter stating that I was being disciplined because I had "contacted a DOE official." The letter said I could be terminated if there were any further offenses and that in the future I was to confine myself to issues that my management considered to be "within the scope of [my] work assignment." I protested the letter as retaliation, but Bechtel Jacobs senior management backed my manager up all the way. They stated unequivocally that I did not have the right to contact DOE. I then went to DOE and filed an employee concern. Subsequently, the disciplinary letter was retracted by Bechtel Jacobs.

In May 1999, I sent a letter via e-mail to DOE, members of Congress, and Secretary Richardson protesting the way the Environmental Management contract was being handled by Bechtel Jacobs and stating that DOE and Bechtel Jacobs were not fulfilling their responsibility to protect the workers, the public, and the environment and keep the promises they had made to grandfathered Environmental Management employees. My letter got wide circulation both within and outside Bechtel Jacobs. This was during the hearings regarding Paducah, during which an e-mail message was produced in which the Bechtel Jacobs site manager at Paducah was quoted as calling the investigation a "circus." Bechtel Jacobs employees in Oak Ridge were warned at staff meetings not to say anything that would embarrass the company with Congress or the media. My coworkers told me they were sure now that Bechtel Jacobs would try to get rid of me.

In October 1999, I filed another health and safety concern (which was only recently found to be valid and resolved). In November, I was handed a layoff notice by Bechtel Jacobs. At the same time, I learned that Bechtel Jacobs planned to continue to keep subcontractors on staff doing work that I had done formerly and for which I was supposed to have right of first refusal. One of these workers being kept on staff doing work that I had done formerly was a man we were told had been laid off by Bechtel and brought out to K-25 with the new hires from the parent companies. His former office mate told me he admitted he did not even have a degree in the required discipline for our work (technical communication). Our supervisor told us that the reason our work was being given to him was that senior management knew him from the days they worked together at Bechtel, and they were "comfortable" with him. When I questioned why I was being laid off while this employee—who did not have right of first refusal—was being kept on staff, I was told that senior management had decided I was not qualified for the work he was doing. Keep in mind that this was work I had performed very successfully for 10 years. Even Bechtel Jacobs senior management described me as having outstanding technical skills and as being a worker who could nearly any task and manage a very heavy workload with ease.

After receiving the layoff notice, I reported to DOE that I believed I was being retaliated against for voicing concerns. DOE's response was to send the issue back to Bechtel Jacobs for resolution. Bechtel Jacobs' response was to send in an HR specialist from Bechtel to "investigate" for DOE. No one, least of all me, was surprised when Bechtel Jacobs' "self investigation" found "no evidence to support [my] allegations." However, the HR specialist told me (in the presence of a witness, by the way) that the reason senior management considered me not to be qualified for the work being done by the former Bechtel employee was that there was a concern I might "pass along sensitive information to DOE." After I pointed out to DOE that my "passing along sensitive information" to DOE had been protected disclosures that could not be used to take adverse employment actions against me, Bechtel Jacobs offered



me mediation to resolve the dispute. This mediation has tentatively been scheduled for the second week in April 2000.

Something must be done to educate Bechtel Jacobs to the fact that employees have a right and obligation as federal contractor employees to report concerns to DOE, Congress, law enforcement authorities, and the media and that Bechtel Jacobs can neither discourage this nor retaliate against employees for doing so. Until then, many concerns will go unreported and unresolved because employees cannot afford to lose their means of livelihood.

Signed,

*Parula Gillis Watson*