

[From the Spokane Review, Mar. 16, 1997]
FEDS PAY IN BATTELLE FRAUD CASE

(By Karen Dorn Steele)

U.S. government investigators agreed that scientist Jagdish C. Laul was fired for turning in his managers for fraud.

A federal appeals court agreed Laul could sue the Hanford contractor for whom he worked for wrongful termination.

The government made the contractor, Battelle's Pacific Northwest National Laboratory pay back \$330,000 for double-billing lab equipment—and even recommended Battelle managers be criminally prosecuted for fraud.

But who picked up the \$750,000 tab for defending Battelle against Laul's lawsuit?

U.S. taxpayers.

Laul's case is the most recent example of a system that allows private nuclear contractors to rack up huge legal bills fighting whistleblowers—even when the contractor's in the wrong.

Battelle settled with Laul in January to head off a federal jury trial in Spokane.

The cost of his case to taxpayers includes the \$250,000 settlement paid to Laul; \$400,000 in legal fees to Battelle's outside law firm, Davis Wright Tremaine of Seattle; and about \$100,000 in legal work and other Battelle costs to fight Laul.

If Laul had won at trial, taxpayers would have paid that bill, too. That's because of a Cold War agreement in which the U.S. government promised to pay all legal costs of its nuclear weapons contractors when they agreed to run the government's weapons plants.

The agreement, called indemnification, is still in effect today. It applies to Battelle, which works on Hanford cleanup and other government nuclear programs.

Under contract reforms pushed by the Clinton administration, the government plans to stop reimbursing contractors when a court rules against them, or if they're found guilty of reprisal in a whistleblower case.

The reforms don't yet apply to Battelle. Under its current contract, the company's top manager has to be involved in illegal retaliation before taxpayers won't pay their legal bills, said Carolyn Reeploeg, DOE's assistant chief counsel in Richland.

That will change in Battelle's new contract, currently under negotiation, Reeploeg said.

The reforms, which also apply to other Hanford contracts, "broaden protections for whistleblowers," she said.

But they don't go far enough, said Alene Anderson, Laul's attorney from the Government Accountability Project, a group that represents whistleblowers.

"The system is stacked against whistleblowers. They still let these cases get to the courthouse doorstep. Millions of taxpayer dollars can be spent before that," Anderson said.

Despite its settlement with Laul, Battelle still isn't admitting any wrongdoing in his firing. The company even denies Laul's a whistleblower.

"In our view, the taxpayers are served when contractors defend themselves from frivolous lawsuits," said Battelle spokesman Greg Koller.

But newly disclosed reports show the U.S. Department of Energy's inspector general recommended criminal sanctions in 1993 against Battelle managers for covering up the lab fraud reported by Laul.

The confidential reports were obtained under the Freedom of Information Act.

Battelle improperly modified a \$210,000 piece of lab equipment, fired Laul and then lied to the Energy Department in a cover-up, the inspector general's investigation found.

The U.S. Justice Department made Battelle repay the government \$330,000. Laul got \$60,800 of that for his role in identifying the fraud under the Federal False Claims Act. He brought the claim in 1995.

Battelle's treatment of Laul demonstrates the company's "inability to conduct an unbiased investigation," said George Allen, the inspector general's investigator.

Battelle repaid the government with private contract revenue, not taxpayer money. The criminal charges were then dropped.

The dispute goes back a decade.

In 1987, Battelle purchased two \$210,000 mass spectrometers to analyze chemicals for a government program at Hanford, Nevada and Texas to build a tomb for commercial wastes from nuclear power plants.

Laul, a 57-year-old geochemist, was a project manager doing groundwater studies for that program. It was canceled in 1988 when Congress decided to build a repository at the Nevada Test Site.

In 1990, Battelle illegally modified the spectrometer in the Hanford nuclear waste cleanup program, the inspector general's report said.

Battelle was "double billing" Hanford's former site contractor, Westinghouse Hanford Co., for the equipment by seeking reimbursement from both the civilian nuclear waste project in Nevada and the Hanford cleanup program, the report said.

The lab flap delayed progress in nuclear waste cleanup, including Hanford's single shell tank program, the most urgent and riskiest in the nation's weapons complex, the inspector general noted.

Those delays cost taxpayers \$300,000, according to the report. That's in addition to the legal fees.

In October 1989, Laul reported the equipment misuse to DOE because he was angry his work would be jeopardized by modifying the machine.

Battelle fired Laul in May 1990, saying he had improperly disposed of hazardous waste—a violation DOE later said Battelle used as an excuse to fire him.

On at least two occasions, Battelle's legal spat with Laul could have been stopped.

Energy Department records show that John Wagoner, Hanford's top manager, was told by his own investigator in April 1991 that Battelle should settle with Laul because Battelle was at fault and likely would lose a jury trial.

Steve Abernethy, DOE's safety concerns manager, said in a report to Wagoner that Battelle fired Laul because he reported the fraud, not because he mishandled the chemical.

DOE should "direct PNL (Battelle) to quit spending contract funds to defend this case" and order a settlement with Laul, Abernethy said in his report.

Battelle strongly disagreed.

"We think there's no connection" between Laul's firing and his reporting the lab equipment dispute to DOE, Koller said in an interview last week.

An early DOE investigation by contractor Stone & Webster supported Laul's termination. But Abernethy said Battelle's legal department "may have obstructed" the investigation by having Battelle lawyers present at all employee interviews about Laul's conduct.

Laul used "very poor judgment" in disposing of the chemical, but that didn't justify firing him, Abernethy's report said. Termination "is a rather harsh and unprecedented punishment for a senior scientist that has had a distinguished 15-year career at PNL," he added.

The inspector general later agreed, saying Laul's complaints to DOE about the lab equipment led directly to his firing.

Wagoner referred the issue to an internal Battelle committee to decide whether Laul's treatment was consistent with DOE and Battelle whistleblower policies.

Battelle said the committee was "united" in concluding Laul was fired for "severe misconduct," Koller said.

But the inspector general's report disputed that.

"At least half of the six committed members found evidence of fraudulent management of the (Battelle) Lab. However, those findings were not reported back to John Wagoner," by Battelle managers, the inspector general's report said.

The committee's legal counsel was from Davis Wright Tremaine, the law firm taxpayers later paid \$400,000 to litigate against Laul.

"This was a conflict of interest," Laul said last week. Battelle's Koller said it's "standard practice" for Battelle to use its outside law firm on such issues.

The DOE's inspector general report recommended criminal sanctions against Battelle for "theft, conspiracy and false statement."

"The U.S. attorney's office intends to prosecute the violations detailed in the July 1993 report," the report said.

A grand jury was convened last year in Spokane to consider criminal charges. But they were dropped when Laul won his Federal False Claims Act case, forcing Battelle to reimburse the government, said Assistant U.S. Attorney James Crum.

Laul sued Battelle in 1993 for wrongful termination. His claim was initially denied in U.S. District Court in Spokane. But he appealed to the 9th U.S. Circuit Court of Appeals, which ruled in his favor and ordered a jury trial.

A whistleblower trial was justified because Laul's immediate supervisor "drafted a memorandum only five days before Dr. Laul's termination calling for (his) termination because of his complaints to the DOE," the court said last June.

That's when Battelle offered to settle, Laul said.

He got the inspector general reports after he agreed in January to accept the offer.

"These reports show I could easily have prevailed at trial," Laul said.

Laul is now living in Boulder, Colo. He's taken loans against his house and depleted his savings in his long fight with Battelle.

Now, he's talking to Congress in an effort to make his case an issue in DOE contract reform.

"I stood up in the interest of DOE and had Battelle pay back \$330,000, and then DOE turns around and pays back all the litigation costs to Battelle to fight my lawsuit.

"This just does not make any sense," Laul said.

AWARDING THE CONGRESSIONAL GOLD MEDAL TO FRANK SINATRA

SPEECH OF

HON. SONNY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, April 29, 1997

Mr. BONO. Mr. Speaker, I rise in support of H.R. 279 and the awarding of a Congressional Gold Medal to a great American, Mr. Francis Albert Sinatra. Or, as the entire world knows him, Frank Sinatra. I also wish to commend my colleague, Mr. SERRANO of New York, for all his efforts on behalf of this legislation.

Aside from the fact that while growing up Frank Sinatra was my total hero, and I desperately wanted him to marry my sister so I

could be related to him, Frank Sinatra helped define America for the rest of the world. He was the epitome of the American dream, rising from modest surroundings to become the biggest recording artist in the world. Although he was not a scholar, his impact on our national culture was enormous. And, it was a very positive impact. Frank became as identified with America as "mom and apple pie."

Everyone knows about Frank Sinatra's success as an entertainer. He made hundreds of hit records, was awarded three Oscars, received seven Grammys, a Peabody Award, and an Emmy. But many people don't know that he was also a great philanthropist and humanitarian. They may not know about this side of Frank Sinatra because of his modest nature and the quiet way he went about helping others. I know how often Frank Sinatra helped friends in need and total strangers. He contributed his name, time, and money to many, many worthwhile causes never desiring credit or recognition. But his generosity is legendary among those who know him. That is why he was honored with some of the Nation's most prestigious humanitarian awards—the Presidential Medal of Freedom, the Academy of Arts and Sciences' Jean Hersholt Humanitarian Award, the Life Achievement Award of the NAACP, and many others. In my community of Palm Springs, Frank Sinatra contributed generously to so many causes, including the creation of the Martin Anthony Sinatra Medical Education Center in honor of his father.

Mr. Speaker, it is my great honor to know Frank Sinatra, and I am proud to consider him a friend and inspiration. We are honoring a truly great American.

IN HONOR OF THE STUDENT CHAPTER OF THE SOCIETY OF HISPANIC PROFESSIONAL ENGINEERS

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, May 5, 1997

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to the student chapter of the Society of Hispanic Professional Engineers, which garnered first place at the National Academic Olympiad. The four triumphant team members will be honored by the Hispanic Organization of Students in Technology at the Fifth Annual Gala Banquet at Campino Restaurant in Newark, NJ.

The event celebrates the accomplishments of the New Jersey Institute of Technology's [NJIT] victorious College Bowl Team. The team was composed of four engineering majors: Rene J. Yandun, Fernando Teixeira, Pablo O. Delgado Jr., and Aldo Nina. This National Academic Olympiad, held during the National Technical and Career Conference [NTCC] in Philadelphia, is a prestigious educational event sponsored by the companies such as Hewlett Packard, Kodak, Lucent Technologies, Amoco, Motorola, and Texas Instruments.

A series of valuable workshops were available at the conference, such as "The Academic Stress", "Student and Professional Workshop", "Creating Solutions for a Changing World", and "Improving your College Career—Making yourself more Marketable".

Members of the student chapter of the Society of Hispanic Professional Engineers were able to enhance their professional college careers—185 of the top engineering corporations and government agencies were present and recruiting talented Latino student Latino corporate America. The conference also supplied entertainment for the participating students which included a gala reception where company executives and students mingled for an evening of celebration.

NTC '97 played an essential role in the futures of these Hispanic students. Conferences of this type augment the possibility for NJIT students to become involved with important members of the professional world. They have the opportunity to pursue internships or employment in their prospective careers. Finally NJIT has received its deserved national recognition for their achievements in competing against schools in various regions of our country.

I ask my colleagues to join me in recognizing the outstanding work of the Society of Hispanic Professional Engineers and those individuals being honored at its annual gala. The victorious College Bowl Team members serve as excellent examples for other members of the Hispanic Organization of Students in Technology to follow. I commend their accomplishments and am delighted with their progress in the engineering field.

IN HONOR OF JOHNNY VADNAL

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, May 5, 1997

Mr. KUCINICH. Mr. Speaker, I rise to honor the lifetime achievement of Johnny Vadal—band leader, master of the accordion, and Cleveland's Polka King.

Johnny Vadal and his family—mother, Anna; brothers, Tony, Frankie, and Richie; and sister, Valeria—brought the joys and rhythms of polka music to Cleveland and the country for the past 50 years.

Johnny was the first polka band leader in the country to have his own television show in a major market. From 1949 to 1961, the Vadnals performed every Sunday afternoon at 1 o'clock on WEWS channel 5 in Cleveland.

In the late 1940's and early 1950's, the Vadnals played six nights a week. Johnny and his band were regulars at all the famous establishments including the Superior Ballroom, Twilight Gardens, Aragon Ballroom, and the Bowl Ballroom. Johnny was so popular at the Bowl Ballroom that not even Louis Prima drew a crowd like Johnny could.

At the height of his popularity, Johnny captivated 64,000 baseball fans at Cleveland Stadium when he introduced "The Baseball Polka" in 1950. Recording for RCA Victor, Johnny's biggest hits were the "Yes, My Dear" waltz, which sold 50,000 copies in its first week, "Two-Timing You," "The Slap Happy Polka," "The Prairie Polka," "The Mountain Climber," "No Beer on Sunday," "Blame in on the Waltz," "Clap Hands Polka," and his theme song, "The Wayside Polka." In 1983, Johnny wrote "My Alice Waltz" for his wife, and it was named polka song of the year.

Johnny's prodigious talent was matched only by the passion and sincerity with which

he played. "All I can say is I play from the heart," he has said.

On May 7, the National Cleveland Style Polka Hall of Fame will salute Johnny Vadal upon his retirement. Mr. Speaker, we are richer as a nation and more civilized as a people for Johnny's contribution to the culture.

IN HONOR OF OFFICER ANTONIO NARDINI AND HIS FELLOW POLICE OFFICERS: MAKING A DIFFERENCE EVERY DAY IN THE LIVES OF THE RESIDENTS OF BAYONNE

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, May 5, 1997

Mr. MENENDEZ. Mr. Speaker, I rise to pay tribute to a truly special gentleman, Police Officer Antonio Nardini of Bayonne, NJ. Officer Nardini's extraordinary efforts will be recognized during the 1997 Make a Difference Day Awards ceremony in Arlington, VA.

The awards presentation will celebrate the contributions of 11 unique individuals—including Officer Nardini—chosen from more than 1 million people, from all over the Nation, who participated in USA Today's Make a Difference Day on October 26, 1996. Anyone who knows Officer Nardini is not surprised that he would be included in this elite group. His work as a Drug Abuse Resistance Education [DARE] Officer has positively affected the lives of countless young people in Bayonne. When the idea for this ambitious hunger reduction project came to Officer Nardini, local schoolchildren were naturally inspired to pitch in and make a difference themselves.

The road which has led Officer Nardini to this special acknowledgment began on 23d Street in his hometown of Bayonne where he witnessed numerous people awaiting food distributions outside a local church. Upon closer inspection, Officer Nardini surmised that there were indeed a number of community food pantries struggling to provide for their needy constituencies. This dire situation was a call to action for Officer Nardini and his fellow officers to volunteer their time to help ease the situation. They promptly installed a collection bin in their precinct, setting the example which many then followed, including city hall, the housing authority, senior citizens complexes, and every library in town.

USA Today Weekend held its annual Make a Difference Day October 26, 1996. With Thanksgiving less than a month away, it gave people an opportunity to give thanks for all they have by helping others in need. On that morning, 7,500 children from 17 local elementary schools, along with other volunteers from corporate, union, and civic groups, took up the challenge of helping those less fortunate than themselves. They joined Officer Nardini and his fellow officers going door to door, collecting food donations that were loaded onto trucks which were donated by the city of Bayonne. At day's end, 22 trucks were brimming with donations, and helped save the Thanksgiving holiday for many families in need. Some of the day's harvest was distributed to food pantries in the community, to help them with their good work.