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To: WND2.WNP3(jaz)  
Date: 10/6/96 7:33am  
Subject: RALPH NADER'S NO CONTEST

Friends:

Nader's latest book "No Contest" has just been published.

I am enclosing a summary of the book from the cover flaps and two of = the cases discussed in the book. One of these cases is near and dear = to my heart.

If anyone even thinks these can beat this "Corporate Mafia" they are = truly crazy. If you look at the Appendix to the book you will find = that these utilities use the best contract lawyers ratepayers can = buy. All of the law firms employed by the Utilities are in the "top = 100" for annual revenues.

Can you imagine if we had even 1% of the rate payer dollars spent by = the utilities to defend ourselves against this utility Mafia, the = impact we could have.

We wonder how many rate payer dollars were spent to develop the = illegal severance agreement forced upon the 104 terminated NU = employees in January of this year.

Get a copy of the book and appreciate just what you will face if you = decide to disagree with your employer.

Let=B9s pray that Nader will have the same sucess on the =B3Corporate = Mafia=B2 as with Corvairs. Get them off the road!

JUSTICE FOR ALL

Paul Blanch

There is a widespread belief among Americans that something is deeply = wrong with our legal system. As little as twenty-five years ago, the = word "lawyer" usually conjured an image of a brave, honorable = professional defending the weak against the strong. Today, the = best-known lawyers in America are probably Johnnie Cochran and Robert = Shapiro. Even our lawyer heroes in popular novels by John Grisham = and Scott Turow are outnumbered by rapacious thieves with LLDs. But = how has a profession whose ideals are integrity and the equality of = all sunk so low? Can this slide be reversed?

In No Contest, Ralph Nader and Wesley J. Smith kick over the rotted = log our corporate-dominated legal system has become to reveal what = has been happening to individual justice out of public view. Through = extensive research and interviews with juries, litigants, judges, = lawyers, and legal scholars, Nader and Smith counter the = corporate-financed propaganda blitz that has painted = multibillion-dollar corporations as hapless victims of

ordinary =

Americans bent on suing their way into prosperity. They argue that, = in fact, our system has all but abandoned the ideal of providing = every American access to justice. Instead, many courts have become = the nearly exclusive domain of the country's largest and most = powerful corporations-and their lawyers.

Behind the giant corporations' tightening grip on American society = are the large corporate law firms who have perfected the art of = nullifying, misusing, or breaking the law, while pretending to uphold = it. In No Contest, Nader and Smith reveal a side of corporate law = practice rarely discussed in the media or shown on Court TV. The = authors put law firms in New York, Washington, D.C., Boston, Chicago, = Houston, Los Angeles, Seattle, and around the world under the = microscope. They show how the "power lawyers" are behind the erosion = of the basic rights of access to true and timely 'justice for = ordinary Americans and people the world over. The scope of the = assault on workers' rights to organize, taxpayers and investors' need = for sound financial institutions, patients' needs for competent = health care, and consumers' needs for product safety is breathtaking. =

But it can be stopped.

No Contest depicts dramatic personal struggles by lawyers of = conscience to hold the law to its ideals of justice, and gives voice = to the unheralded corporate lawyers who are resisting the corruption = of their profession. Nader and Smith propose an extensive program of = legal reform that will preserve access to justice for all Americans, = unclog the congested courts, and guarantee that the right = side-citizen or corporation, poor or rich-will prevail. No Contest = is a book for all citizens who believe that justice under law is a = big step on the road to reform of the American political process.

#### THE CASE OF THE NUCLEAR WATCHDOG

Over twenty-one years, Paul Blanch had built a successful career as = an engineer with Connecticut's Northeast Utilities (NU). He worked = on the firm's nuclear power plant operations and moved up through the = ranks to the position of supervisor of instrumentation and control = engineering. Blanch also served on nuclear power plant safety = commissions and enjoyed the esteem of his employer and the nuclear = power professional community.

But Blanch's fortunes were to change when he came upon a serious = safety hazard. In 1988, he concluded that an electronic transmitter = used to measure crucial temperatures and pressures in one of =

Northeast's nuclear reactors, as well as in other U.S. nuclear = plants, had a propensity to malfunction and do so without giving any = signal of failure.

As a result, control room operators might receive = incorrect readings without knowing anything was wrong. He has = likened it to "an airplane altimeter that tells the pilot the plane = is at 30,000 feet no matter what the actual altitude." The problem, = he believed, was so bad that a meltdown could be in process and the = operator might not be aware of it. According to Blanch, this problem = with the transmitter, made by Rosemount, Inc., of Eden Prairie,

= Minnesota, "increased the risk of failure by a projected 6800%!"

Blanch notified the Nuclear Regulatory Commission (NRC), the federal = agency

charged with regulating the nation's nuclear power plants, = about his discovery. The deadly consequences of a meltdown being = what they are, one would have thought that NU chairman and chief = executive officer William B. Ellis and the NRC would have been = extremely grateful to Blanch. But in testimony that is typical for = its depiction of the mistreatment to which many whistle-blowers are = subjected, Blanch told a United States Senate committee in December =

1991 how he became a victim of on, the-job harassment, intimidation, = and interference with professional activities and growth:

As a result of identifying this sensor failure to NU management and = the NRC, I have been subjected to an internal audit conducted by NU = internal auditing personnel using false credentials, had subordinates = suspended without a fair and impartial hearing, suffered poor = performance reviews and was chastised by my management with false = accusations which they refused to support. Further, I had outside = contract work canceled due to direct influence by an NU Vice =

President and was otherwise "black-balled" in the nuclear industry.

Faced with these retaliatory actions by his employer, in 1989 Blanch = filed a complaint with the U.S. Department of Labor, which sustained = his claims that NU had subjected him to improper treatment in = retaliation for his whistle-blowing. But NU appealed the Labor =

Department decision, and, according to Blanch's testimony, the = utility's outside lawyers began to subject him to harassment.

In January 1990, NU and Blanch reached a settlement of his claims. = The agreement is confidential. However, in a February 1990 letter to = an NRC official, Blanch asserted that he did not sign the agreement = "due to its terms, but ... only due to the extreme personal financial = pressure imposed upon me by NU. Had I the financial re, sources, I = would have continued my complaint against NU." In the letter, Blanch = estimated that pursuing the case against NU would have cost him \$ 1 = 00,000 in legal fees.

Thus Blanch found himself in a typical situation: Companies with = massive resources direct their lawyers to financially exhaust = whistleblowing employees by waging a war of attrition, using every = legal option--litigation, appeal, and administrative processes--until = finally, the whistle-blower faces the prospect of the poorhouse, = which forces a settlement or capitulation. "You have an individual = who has been terminated and unemployed now fighting a legal battle = with his own funds against a company or utility with unlimited = dollars who can hire the best, most expensive lawyers in the = country," Blanch told us. "He doesn't have the money to pursue the = case because of all the money being thrown against him." To add = insult to injury, at tax time the employer deducts its legal fees as = a cost of doing business, while the whistle-blower may receive no = such relief.

Blanch's lawyer, Ernest C. Hadley of Wareham, Massachusetts, who has = represented other whistle-blowers, agrees with this dismal view. = "Whistle-blowing almost always involves very acrimonious litigation. = You are going to see objections, motions, appeals, as well as = allegations of misconduct and unacceptable performance. In many = ways, it's like divorce court. It gets very ugly.

According to one published report, NU has spent more than \$10 million = on legal fees fighting various whistle-blowers. And who pays the = lawyers to

battle those attempting to heighten the safety of nuclear = power plants? Ultimately, consumers are the ones, when they pay their = utility bills. Corporations mount such expensive, elaborate defenses in order to = force the whistle-blower to shut up and settle. The settlement = agreements are almost always strictly confidential as to terms, often = preventing the whistle-blower from speaking out against the former = employer.

This seems to be the scenario that ensnared Paul Blanch. His = agreement appears to prevent him from public criticism of NU. A June = 1993 letter from NU attorney Nicholas S. Reynolds, of the national = power law firm Winston & Strawn, advised Blanch that his settlement = agreement with NU "does place limitations on your ability to = disparage or criticize the Company and its employees in a public way. =

. ." Indeed, in speaking with us, Blanch refused to criticize NU or = the company's treatment of him.

But Blanch spoke to us generally about his experiences: "It has been = demonstrated that everything that I contended was, in fact, true. = Yet today, if someone asked me whether to blow the whistle or play = along, I would tell them to think twice and consider keeping their = mouths shut because whistle-blowing extracts such a terrible = emotional and financial price."

Blanch resigned from NU in February 1993. In July 1993 he told a = Senate committee that, as a result of his whistle-blowing, "I have = been isolated by the industry that I have given my entire = professional career to. There is virtually no chance that I will ever = work in my chosen field again." He has filed a lawsuit against =

Rosemount, maker of the transmitter, contending that it pressured NU = to go after him because of the company's fears that its prior = knowledge of the problem would be uncovered. Rosemount denies the = charge. As this is written, that matter remains in litigation.

In May 1993, the NRC determined that the Rosemount transmit, the = problem and other safety violations raised by Blanch were = significant, that the company wrongfully retaliated against Blanch = for pressing his concerns, and that the company improperly delayed = reporting a problem that could have caused accidents at reactors = across the country. It fined NU \$ 1 00,000." The utility issued a = lengthy rebuttal disputing the agency's findings but agreed to pay = the fine."

With corporate executives and lawyers able to exercise such power = over the lives and careers of individuals, and with corporate lawyers = ready, willing, and able to engage in litigation tactics that have = the effect-and often the design-of emotionally exhausting and = financially draining the whistle-blower and his or her family, it is = a tribute to human courage that there are any whistle-blowers at all.

HARASSING WHISTLE-BLOWERS-  
COURTESY OF UNCLE SAM

The United States government often enters into contracts with the = private sector to perform vital government services. These contracts = usually receive little public scrutiny. In fact, most citizens are = probably unaware of many expensive deals made in their name.

Incredibly, sometimes your tax dollars are used to pay the legal fees = for private companies, working as government contractors, in their = litigation battles against conscientious whistle-blowers. One = example is the saga of Ed Bricker. In 1977, he went to work at the =



Hanford Nuclear Reservation in Washington State." Hanford processes = plutonium for the production of nuclear weapons. The federal = facility is administered by the Department of Energy (DOE). Under = contract with the government, Rockwell International Corporation = operated portions of Hanford from 1977 until 1987, when Westinghouse =

Electric Corporation took over these contracts. That same year, = Bricker reported what he considered safety violations at the plant. = Instead of receiving a medal, he got the fight of his life.

Private DOE contractors at Hanford and at other such facilities don't = have to worry about the legal costs associated with squaring off in = court against whistle-blower employees. Why? The United States = government pays their legal fees incurred in disputes with third = parties, such as employees. This indemnification scheme for =

Department of Energy contractors costs taxpayers approximately \$30 = million in legal fees and costs each year. 52

How can this be? How can DOE contractors use federal funds to battle = workers who report unsafe conditions, when such reporting is required = by DOE's own regulations? To attract private sector companies to run = its nuclear weapons programs, the DOE enters into deals that = specifically protect contract companies from certain liabilities, = meaning that in addition to paying these company's legal fees, the = government may be responsible for money damages arising from a = company's improper operations. The DOE accepts such a bad deal in = part because it fears that, if contractors were responsible for their = own legal costs and liabilities, they might frequently turn around = and sue the government, claiming that government negligence or = misconduct caused the harms alleged. By assuming the costs up front, =

DOE hopes to maintain greater control of litigation decisions.

Unfortunately, the way this tends to work in real life is that the = DOE allows its contractors to decide whether to defend the case, to = choose the lawyers (subject to approval by the DOE), and to exert = tremendous influence over decisions about the whistle-blower's case, = e.g., whether to settle or go to trial. Then, the government = rubber-stamps the company's legal bills." This often forces = whistle-blowers into protracted litigation, fighting a company that = wants to beat them into the ground and that has little incentive to = quit, because the taxpayers, including, of course, the = whistle-blowers themselves, are paying the bills. Meanwhile, = whistleblowers frequently must pay their own legal fees, even as they = risk losing their jobs. This was the reality facing anyone at =

Hanford who considered blowing the whistle on safety violations.

Hanford has been a busy place since World War II, when it processed = the plutonium in the atomic bomb that the United States dropped on = the Japanese city of Nagasaki. Plutonium processing was a growth = industry throughout the Cold War, but business really took off in the = early 1980s, when President Reagan decided to massively increase = military spending and accelerate the growth of the U.S. nuclear = arsenal.

Bricker, a third-generation Hanford worker, helped restart an old = processing facility brought back on-line when business expanded. =

Soon thereafter, however, he became disturbed by what he perceived to = be acute problems, problems that he believed threatened the health = and safety of Hanford workers.

Bricker could have kept his mouth shut and collected his paycheck. =

He had done that once before-with tragic consequences. He recalls, =

"Back in 1977, I had a buddy killed, literally cut in half, due to a = safety problem I knew about but which I had done nothing to cure = because I was

concerned about job pressures. After my friend's funeral, I vowed that would not happen again."

Bricker's friend died in a crane accident, not due to nuclear material. This time, however, Bricker observed what he thought were safety deficiencies that could have exposed workers directly to plutonium, one of the most dangerous carcinogens known to humankind.

"The area where we worked had alarms that would warn us if we were exposed to radiation," Bricker reports. "But the alarms weren't working correctly. They were being set off merely by the background radiation of concrete. So, they were often disconnected because they had become such a nuisance."

If Bricker was correct, there was an insidious problem. Workers, exposed to unsafe levels of radiation, would not be aware of the contamination. And Bricker's concern about the disconnected alarms was heightened when he discovered an additional hazard. Hanford workers observed plutonium processing and used insulated gloves to reach into sealed processing areas at so-called hood windows.

Bricker concluded that these windows were leaking air, thus exposing workers to increased radiation risks. He was alarmed. "Can you imagine hearing the hiss of air that may contain specks of plutonium, whistling around you?" he asks.

That wasn't all Bricker believed he had discovered. "I noticed that the actual layout of the plant did not match the schematics. Over a period of thirty years, there had been no configuration control to make sure that the updating process matched the drawings." That meant that the actual layout of the plant would not have been recorded.

The company had even allowed the governor of Washington to drive through a contaminated area while on an official visit without warning him of the danger.

The last straw for Bricker came one day when he walked into the plant control room and there was no plant operator at the controls. "The only person in the room was an engineer. He told me that he had things under control. I asked him what he would do if a sudden problem developed, and it became clear to me that he didn't know what to do in an emergency. It was as if the whole plant was on auto-pilot. That was when I decided to nail my 'Ten Theses' to the church door."

Bricker complained about the safety deficiencies he had observed. "I went up the chain of command and got nowhere." So he decided to take his complaints to The Seattle Times, which reported them. "That," he says, "is when the campaign of harassment began."

In the wake of his public statements, Bricker says he was subjected to myriad forms of intimidation, some minor, some more serious. He was denied good work assignments. He believes his phone was tapped.

His wife began to receive obscene phone calls, but only when Bricker was at work. "I was called a nitpicker and a troublemaker. I was called a government mole. I was told that if I didn't stop complaining, the facility would be shut down and everyone would lose their jobs. I began to receive poor work performances. I was threatened with firing for being two minutes late. I was ordered to see a psychologist who wanted to know about my nervous breakdown, when in fact, I had never had one. My security clearance was threatened. Petitions were circulated with management's active involvement stating that I had mental health problems. The icing on the cake came when my air equipment was sabotaged that allowed me to go safely into contaminated areas. I held my breath and ran out of the facility and passed out. If I had breathed the air I could have contracted lung

cancer." Tom Carpenter, an attorney for the = nonprofit Government Accountability Project who eventually became = Bricker's lawyer, concluded that Bricker's claims of safety risks = were fully warranted."

Bricker filed a formal complaint against Rockwell and Westinghouse = with the Department of Labor, contending he was being harassed on the = job because he had engaged in legally protected whistle-blower = activities. After an extensive investigation, John R. Spear of the = Occupational Safety and Health Administration, an agency within the = Labor Department, concluded:

There is ... little question that Bricker suffered adverse employment = action. He received negative performance appraisals; he was directed = to be evaluated by a DOE contractor psychologist on three occasions = under the perceived threat of losing security clearance and job; he = received written disciplinary actions for alleged misconduct; he was = the subject of a continuing investigation by contractor security = officials; and, a decidedly hostile work environment developed = between Bricker and his managers and among fellow employees.... Based = on the above it is concluded by this investigator that Bricker was = discriminated against by the Rockwell Hanford company in retaliation = for his safety and health complaints filed with his management, =

Congress and the DOE. The reprisals were in the form of an = investigation by security officials of his protected activities which = were designed to result in his termination.... There was some = carry-over of these hostilities after Westinghouse took over the = contract due to the continuation of lower level managers, but it = appears that Westinghouse management has attempted to correct the = situation.

Bricker contends that if Westinghouse upper management did indeed = attempt to correct the problem, their efforts were short-lived. For, = while the Labor Department report led to an agreement by Westinghouse = Hanford officials to cease all harassment, Bricker says the = intimidation continued unabated.

"Westinghouse was ordered to purge all incorrect appraisals that had = been made because of my labor actions," Bricker recalls. "When I = found my requests for transfer hampered because of my reputation as a = whistleblower, I asked to see my files. Lo and behold, nothing had = been purged." Bricker also reports that the harassment continued. "I = was denied good worker awards I had earned. I was still under = continual scrutiny. I was forced to take yet another medical and = psychological examination, which did not result in my losing my = clearance. The company was thumbing its nose at the Department of =

Labor and sending the message to other workers that it did not pay to = blow the whistle because the government could not protect you.

Finally, after suffering years of abuse, for the good of his family, = his health, and his own peace of mind, Bricker gave the officials of = Hanford what they so dearly wanted: He quit and took a job working = for the State of Washington. Perhaps fittingly, he now is a state = regulator overseeing some of Hanford's health and safety practices.

In August 1990, Bricker brought a lawsuit in Yakima, Washington, = federal district court against both Rockwell and Westinghouse = alleging that the companies engaged in a campaign of illegal = harassment because of his legally protected whistle-blowing = activities. Despite the earlier Department of

Labor finding in his = favor, and despite substantial reporting by the media on Hanford's = campaign of harassment," Rockwell and Westinghouse, with the support = of the DOE, denied the charges and fought Bricker every step of the = way.

Here's where the corporate lawyers come in. According to materials = supplied by the DOE under the Freedom of Information Act, the agency = paid two Seattle law firms, Helsell, Fetterman, Martin, Todd & =

Hokanson, and Davis Wright Tremain, more than \$1 million in taxpayer = money for legal fees and expenses to fight Bricker's claim. What = makes that especially outrageous is that Bricker offered to settle = his entire dispute with the companies for \$65,000, which would have = done little more than cover his legal fees, but the DOE rejected this = offer, according to Bricker's lawyer, as "outrageously high"!

How could these law firms spend so much money? First, Westinghouse = and Rockwell appear to have authorized, and the DOE appears to have = approved, a full-bore, all-out, spare-no-expense litigation. Then, = the company representatives merely sent the legal bills on to the = general counsel at the Richland, Washington, DOE office for = rubber-stamp approval, after which the DOE accommodatingly wrote a = check.

We reviewed the lawyer billing sheets charged in the Bricker = litigation. They reveal that each month, the two Seattle firms = billed the taxpayers (through Westinghouse or Rockwell) between = \$18,000 and \$45,000. Thus, two or three months' worth of lawyering = more than equaled the entire amount for which Bricker had been = willing to settle his case. The bills show how many hours corporate = lawyers, billing at high hourly rates, are willing to devote to = cases, with inordinate amounts of time spent on reviewing records, = pleadings, correspondence, deposition notices, responses to = discovery, writing memoranda, revising memoranda, conferring, = telephoning, etc.

That isn't all. Whatever the propriety of the specific bills = submitted by the law firms fighting Bricker, recent analysis by = Congress's investigative arm, the General Accounting Office (GAO), = indicates that DOE has repeatedly paid more for outside legal fees = than federal regulations permit or the market would require. On July = 13, 1994, Victor S. Rezendes, director of Energy and Science Issues, = Resources, Community and Economic Division, for the GAO, told a = congressional committee:

We found that DOE is paying significantly higher costs than = guidelines allow. For example:

=85 -The Federal corporations [government operated corporations such = as the FDIC] require that discounts on fees for legal services be = sought.... DOE does not require that contractors seek discounts for = outside legal fees.

=85 -The federal corporations' criteria limit document duplication to = \$0.08 per page. All of the law firms retained by DOE contractors = were charging more-as much as \$0.25 per page. This could be = significant, as duplication costs for one firm over a 3 year period = were over \$175,000.

-The federal corporations' criteria require that facsimile = transmissions-faxes-be billed at actual cost. DOE is reimbursing = some contractors' law firms as much as \$1.75 per page plus telephone = charges for faxes. For one firm, the charges for faxes totaled over = \$48,000 during a 3 year period.

-The federal corporations' criteria limit travel costs to coach = airfare, moderately priced hotels, and federal per them rates for = meals. Travel



costs reimbursed by DOE were significantly higher. =  
For example, two firms billed first-class airfare for their senior = partners.  
Additionally, some firms billed for meals costing almost \$ =  
1 00 per person.

(These kinds of billing practices, shocking as they seem, will become = quite familiar to the reader in Chapter 7.) As to the Bricker matter, = the GAO says that the Richland DOE chief counsel approved bills "on = the basis of billing summaries" which "lacked the specificity that = would enable a reviewer to determine what the costs actually were for = and their appropriateness." We recently asked the DOE whether it had tried to recover any of the = overcharges documented in the GAO report. In August 1995, the DOE = provided a written response that stated in part:

In the summer of 1994, DOE made an attempt to recover some of the = overcharges billed by contractors to the Department. In those = instances where charges were clearly unallowable under the provisions = of [federal regulations], costs were disallowed or restitution was = made. However, most of the overcharges involved past costs or = activities for which the Department had issued no clear guidance to = contractors. In those instances minimal or no recovery was made.

The DOE also reports that it has implemented reforms to control = litigation costs in the future.

But what of the more fundamental issue-government backing of = corporate legal battles against whistle-blowers? President Clinton's = energy secretary, Hazel R. O'Leary, seems to take a somewhat more = whistle-blower-friendly approach than her predecessors from the =

Reagan and Bush administrations. She committed the department to = protecting whistle-blowers and asked her subordinates to develop = policies to ensure such protection. In April 1994, DOE official = Thomas E McBride wrote in a letter to Ed Bricker:

As you may know ... Secretary O'Leary set up a working group to make = specific recommendations to carry out the Whistleblower Protection = commitments she has made.... I can tell you that [the group's report] = calls for an expeditious review of pending cases, such as yours, to = ensure that DOE is not reimbursing contractors for legal expenses for = defense of cases where the contractor is at fault and where = opportunity for reasonable settlement exists.

Legal expenditures on the Bricker case had achieved their desired = effect: stalling a final resolution of Bricker's claims. In = September 1 99 1, Hanford lawyers convinced the federal trial judge = that Hanford employees, who worked for a private company rather than = the government, had no right under federal law to recover damages for = whistle-blower harassment. Because all of Bricker's other claims = arose under state law, the federal judge ruled that he had no = jurisdiction to hear the case. Two years later, the U.S. Court of = Appeals for the Ninth Circuit affirmed that decision, and in October = 1994 the U.S. Supreme Court refused to review the lower court rulings. Bricker would have to start all over again, with fewer legal claims, = in state court.

DOE settled these remaining state law claims against Rockwell and =

Westinghouse in December 1994 by paying Bricker \$200,000. As late as = August 1994, the DOE Richland field office had offered only \$25,000. = Bricker's lawyer, Tom Carpenter, reports, "It was only through = Washington Headquarters' intervention that a reasonable settlement = figure was offered.=B2 (The defendants admitted no wrongdoing. = Officials at the DOE Richland office did not make themselves = available for comment.)

Why the increase from Bricker's original \$65,000 demand to a final = settlement agreement of \$200,000? Four years came and went after = Bricker's offer to settle for \$65,000. Years of bitter and expensive = litigation caused Bricker severe emotional distress, ulcers, = stress-induced skin rashes, and inability to sleep, forced him to = quit his job, give up his seniority and other benefits, and leave his = home in Richland. According to Carpenter, "We engaged in a major, = bitterly contested litigation with a lot of discovery, depositions, = motions, and other trial work. Our out-of-pocket costs alone to pay = for the litigation were more than \$50,000. Yet, 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."

But that course of action did not reflect the purposes of Rockwell, = Westinghouse, 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 whistle-blowers to do their public = duty. Hardball litigation conducted by corporate lawyers at great = taxpayer expense was the primary tool.

"This is the public policy importance of the Bricker settlement," = Carpenter says. "Workers have to feel that, like Ed, they can take = on the system and win. It is not about the money but the = vindication. If Ed had lost this fight, the signal was going to be = heard by the workforce. People would not speak out as Ed did."

And herein lies a bitter irony. Ed Bricker lost, even as he won. =

"Ed was a foot soldier for a safer work environment," Carpenter says. =

"He got worn down, abused, and damaged but, in the end, at least he = has the satisfaction of knowing that his sacrifice served the public = interest."

Meanwhile, the government also lost, spending more than \$1 = million on outside attorneys' fees and costs in resisting the = whistle-blower's legitimate claim-plus costs incurred by assigning =

DOE's own in-house lawyers to the matter. Only the corporate = lawyers, who received fat fees for throwing legal obstacles in the = way of a clearly meritorious case, suffered no adverse consequences = from the litigation.

There was at least one public benefit resulting from the Bricker = litigation: the release, through discovery, of important information = regarding operations at Hanford. "Freedom of Information Act" = requests are not enough to watchdog government," Carpenter says. =

"The government often does not provide the information in a timely = manner that is helpful. Legitimate litigation helps us promote the = public interest because we can often get through discovery that which = might be denied in a FOIA [request]. What we discovered in this case = led directly to beneficial reforms."

In December 1994, the Hanford Joint Council was created as a = nonprofit corporation partially funded by Westinghouse. The council = is a mediation

board composed of public interest activists, such as = at, Tom Carpenter, as well as Westinghouse managers. It is designed = to resolve whistle-blower disputes before they turn bitter and get = out of hand. "Because of the council, it is now much safer to be a = whistleblower at Hanford, Carpenter says. Given the growing public = record of Hanford's environmental toxic contamination from = radioactive and other materials in past years, this is a welcome = assurance for the exercise of employee conscience. Bricker's case also led Congress, in 1992, to improve the legal = protections available for whistle-blowers who work for DOE contract = companies. "Congress expanded the law to explicitly provide = whistleblower protection to contractor employees such as Ed," = Carpenter happily reports. Indeed, Representative Ron Wyden of = Oregon specifically cited the court decision in the Bricker case as = the catalyst for the change in the law. (Thirty-five states have = enacted statutes providing protections for whistle-blowers. = Twenty-four cover only government employees, but eleven extend some = protections to workers for private companies.) This chapter has provided just a small sampling of the tricks power = lawyers use to bring misfortune upon people who get in the way of = powerful corporate clients. The next chapter will demonstrate why = power lawyers are so fond of staying these games: It pays.

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