

Chapter 11

DOE Covers Its Ass -- And So Do Others, January 2002 - June 2005

Those of you who are too sensitive to hear how sausage is made should skip this chapter. What I will be relating here will probably turn even the strongest stomach. Those readers who work for DOE and try to put in an honest day's work may cry themselves to sleep. (Sorry about that.) It is truly sad to have it confirmed that high DOE management is every bit as cynical and politically weathervaning as they are rumored to be.

The Appeal

As I noted earlier, because of the "smoking gun" memo and other factors, Held thought that an appeal to the next level -- to the head of DOE's Office of Hearings and Appeals (OHA) -- was a good idea. I agreed to try it, although I thought it would be in vain. She asked for an additional \$1000 as a further retainer and said that "we would see where we went from there". She did not send me a new agreement to sign, so this was entirely oral. Hence I assumed that our former agreement would apply, i.e., that she would get one-third plus expenses, less the now \$3000 I had advanced her so far. In retrospect, it would have been better for both of us if we had entered into another written agreement that spelled out the financial terms.

Held filed the appeal within the required 30 days. In her brief, she argued that the judge, Roger Klurfeld, had ignored clear evidence that UT-Battelle had selected me personally to be laid off, rather than letting the layoff criteria prompt the selection. For example, Held noted, according to Sims' testimony, Scott communicated her decision to terminate me to Sims in a July 2000 meeting, whereas the layoff evaluation sheets ("RIF review sheets", in which points were allotted and rankings determined) were not prepared until August 2000. Also, there was Scott's dictating that my performance rating be lowered. Held pointed out that under the criteria given on the evaluation sheets (including time at ORNL, age, and years of experience), I should have been the one peon rad engineer retained. She also pointed out that a lot of what I had been doing on overhead would continue to need to be done by somebody, and to be done on overhead. She noted that UT-B's statements that I was difficult to work with, which were accepted by Klurfeld, were not substantiated by witnesses, only by the hearsay testimony of Sims and Scott.

Because of my stressful job at UT, my attention was focussed on trying to get a new job and living through the one I had. Thus when the appeals decision was rendered in May 2002 and Held called to tell me about it, I was taken completely by surprise. We had won! Held was triumphant, but told me magnanimously, "You did it, Janet, you did it". I demurred, saying -- sincerely -- that we had both done it. Different as we were in many things, we were both tenacious and that quality had made the difference here, I thought.

The decision can be found on the Web. In it, the head of OHA, George Breznay, wrote that he deemed Klurfeld's determination that I would have been laid off even in the absence of my disclosures to be "clearly erroneous". He stated that the two key actions to be examined in the case were the decision to eliminate two positions and the selection of me as one of those to be eliminated. He noted that Klurfeld had ruled that management's decision to eliminate the two positions was based on its determination to have all ALARA work charged out in the future and that the selection of who was to be laid off was based on which of the three rad engineers would be able to charge out his cost. While Breznay accepted Klurfeld's overall determination that the decision that some ALARA functions would need to be charged out was made impartially and without reference to me, he did not accept Klurfeld's determination that UT-B had supported its position that it would have to discharge two rad engineers to satisfy the chargeout mandate and he agreed that Klurfeld had ignored some important evidence in the record that refuted UT-B's claim that the selection of me as one of the two rad engineers to be laid off was made without

consideration of my protected disclosures. He noted that Klurfeld had accepted the assertions of UT-B's witnesses that I would not be able to charge out my work even though corroboration in the record for that was weak.

Breznay said that there was little support in the record for UT-B's assertion that in adopting a chargeout system, it would have to eliminate two rad engineering positions. First, significant non-chargeout work was being done by AEG already. Second, Mei testified that I had been assigned to projects not associated with chargeout functions, which Scott's testimony supported, but when Scott was asked how this non-chargeout work was to be paid for, she replied that they would have to ask Sims. Sims agreed that while I was charging out only 11% of my time, I was working full-time, so that there was clearly a significant amount of overhead work being done. When Sims was asked who would perform this other work if two AEG engineers were laid off, he testified that he was not familiar with that work and did not know who would perform it if I was terminated. So although there was evidently a significant amount of overhead work to be done, Scott and Sims -- who made the layoff determination -- were unclear about the work or who would perform it after the layoff. This failure on the part of Scott and Sims to focus on the fate of the overhead work lead Breznay to question the thoroughness of the deliberations leading to the decision to lay off two AEG engineers. UT-B could have offered testimony as to how the work was being performed since the layoff, but they chose not to. So Breznay was not persuaded that UT-B had made "a rational and informed decision" to terminate two AEG engineers. He thus found the assertion that two AEG positions needed to be eliminated to be "pretextual" (i.e., a pretext to cover other motives or reasons).

Also, Breznay noted that while Sims testified that I had charged out only 11% and Utrera had charged out 38%, Klurfeld observed during the hearing that the OSSD finance officer, who calculated the percentages at Sims' request, said that Utrera was working on a temporary project for a particular organization (RRD), yet there was no footnote in the documentation submitted into evidence to indicate that this high chargeout was an anomaly or temporary condition. Breznay concluded that UT-B's comparison of chargeout rates might thus be inapt.

Breznay noted that there was evidence in the record that suggested that the layoff evaluation sheets were drawn up to favor a preselected individual. He reviewed the criteria set out in the sheets and found "troubling inaccuracies and manipulation". This lead him to doubt UT-B's position that the process by which I was chosen to be laid off was unrelated to the disclosures. He gave as an example the criterion called "transferability of skills", one of six given on the sheets. The definition of this criterion was given on the sheets as "Ability to directly transfer skills or acquire new skills necessary to maintain core competencies, demonstrates flexibility and adaptability to changing needs of business, has multiple skills to work a variety of functions, seeks opportunities to learn new skills, and improve on known skills". He noted that "flexibility" in this context had to do with transferability of substantive skills in order to adapt to changing needs, that the criterion was commonly found in layoff evaluations, and that the UT-B Human Resources person had testified that the criterion referred to possession of skills that could be used in future assignments and to "the ability to transition to different work". So he saw nothing unusual in having such a criterion or in its definition.

What he did find surprising was how it was applied in my case: in a note on the evaluation sheet in this criterion category, it was stated about Utrera that "His flexibility has led to his being in demand by customers". Breznay said this made little sense because it was contrary to the definition; Utrera did not have any recently acquired substantive new skills that UT-B lacked. Breznay concluded that something else accounted for the more favorable rating that Utrera got on this criterion: UT-B's "purported other concern" that I could not get along with customers and would not be able to charge out work. Breznay stated that that concern was unrelated to the criterion as defined and that the skills were related to competence and not to personal style. He said that in his view, "[UT-B's] use of this criterion to assess whether an employee is flexible enough to "satisfy" or "get along with" customers is so strained that it

suggests a manipulation of the system to reach a predetermined result". He pointed out that had the criterion been fairly applied, I might have ranked higher than Utrera. He noted that UT-B could have included a criterion that addressed the ability to attract chargeout work through the use of overhead skills, but they didn't. Hence, he concluded, its use was an afterthought, "one designed to downgrade Westbrook and target her for determination". (Along these lines, he also observed that the sheets stated that my unique skills, such as running "elaborate computer codes", were not a necessary core competency and that Utrera provided needed -- but unspecified -- support for ORNL divisions.)

Breznay noted it was not clear how the length of company service and the age criteria were factored into the rankings. He said that the sheets showed that Utrera had received "consistently exceeding expectations" ratings for 1998 and 1999 (which surprised me), while I received a "consistently meets expectations" rating for those years. Then in 2000, Utrera received a "5" rating, while I received a "4". But, he noted, testimony was clear that while Mei's proposed ratings for Geber and Utrera were approved, her proposed rating for me was overruled. Breznay observed that Scott and Sims did not provide any explanation for this, which undercut UT-B's position that the layoff process was not used to terminate me unfairly. Other evidence that the evaluation sheets were "more of a pro forma exercise than a real attempt to rate the employees" were Scott's selection of me for layoff before the sheets were prepared, even though, as she testified, she had been on the job only a few months, she was not familiar with the work of the 200 employees in her organization, and she relied on Sims for information about individual employees. However, Breznay pointed out, she did have some key specific knowledge about me personally: the protected disclosures I had made to her in June 2000.

Breznay said that while there was evidence that I was difficult to work with, it was mainly in the form of hearsay testimony by Sims and Scott. He noted that the record included copies of E-mail messages and memoranda describing the difficulties that some people had when working with me. (Note that I do not know what this refers to, since I believe that none of these were put in the record at the time of the hearing and I have never seen them myself. Perhaps Klurfeld did after all allow UT-B to submit these after the hearing?) Breznay said that there were also some documents that were complimentary of my work. He pointed out that while one witness (Gilpin) testified that she thought that I "came across very aggressively" and was "confrontational", another witness (Mueller) never observed me to do anything inappropriate or out of the norm. Mei said some customers liked me and others did not; Sims agreed that I had come into contact with dozens of ORNL employees. Thus, he concluded, there was evidence on both sides of the issue. But, he pointed out, if Sims had only 11 complaints (and some of these were for the same two projects), it was not persuasive that the larger group of employees that I had contact with would object to working with me. He said that evidence that some employees had objections to my working style was not sufficient to establish that a significant number of potential customers would object to using my services, especially if I were the only AEG engineer available for safety reviews. Further, there was no direct evidence from potential customers, which UT-B certainly could have provided. He deemed the contention that because of my personality I was less likely than Utrera to be able to attract chargeout customers to be unsubstantiated.

Breznay concluded that UT-B had not provided clear and convincing evidence to support its position. He said that UT-B's lack of testimony from past and potential customers would have made UT-B's contentions more persuasive, but all they had was "mere management say-so". So he found in my favor.

I was so grateful that he saw the weak point in UT-B's case: that their alleged financial necessity was just a shell game and their application of their layoff criteria a sham. However, Breznay did not note -- probably because it wasn't evident from the record -- that the ones who complained were almost without exception those who were found (or whose projects were found) to be violating procedures in some egregious fashion or those who, like Dr. Phillips, were not able to explain notable deficiencies in activities they were in charge of. I think that Breznay, as head of OHA, had probably seen over and over

in whistleblower cases the tendency to tar the whistleblower as unreasonable and hard to get along with, as he suggested himself by stating that this was "the type of speculative problem often used to justify dismissal of a whistleblower". He also did not note, although I imagine he was aware of it, that Sims was one of the ones about which I made disclosures and that his testimony was therefore rather suspect.

Dealing with the Details of the Damages

The next step was to prepare my "financials", that is, the tabulation of what I was entitled to in the way of damages. Held and I worked to get the financial declaration together. I had to do all of my calculations myself, including the "future worth" (interest) calculations, except for some 401(k) and Social Security information provided by my financial advisor. Held got the thing organized and put in her own arguments for her legal fees. One thing I pointed out to Held was that I had not actually received my pay in lieu of notice check on 1 December 2000, my last day of work, but on 28 December 2000. This was because when we layoffees met hastily with the Benefit Plans folks that last week in November 2000, they expected us to make instant decisions as to what pension option to take, etc. I felt that I could not do that without checking with my financial advisor. The Benefits Plans folks said fine, but the check would not be sent until I signed all the forms. What with the holidays and all, it took some time to get all that done and for them to send me the check. (Had we had more notice, of course, I could have gone over my options with my advisor prior to my last day.) I also pointed out that UT-B's lawyer Guilford had more hours attributed to me as paid for than my pay stubs indicated that I was paid for; that UT-B was trying to put my pay for unused vacation into the offsets (see below), when that was already earned, so to speak; and that it was not clear that I was actually paid for working on Friday, 1 December 2000. (Other layoffees had the same question. One got the runaround from UT-B when she tried to pursue it.)

In the DOE whistleblower protection system, one can't be awarded damages for pain and suffering, for injury to one's professional reputation, or for punishment of the malefactor. Nor can one usually receive "front pay" or future salary (e.g., if one has been blacklisted and can get only jobs paying lower than previously, pay from the time of settlement forward cannot be awarded). One can receive damages only for back pay; benefits such as lost medical, pension, 401(k) contributions and missed Social Security and Medicare contributions; interest on the back pay; legal fees (figured at standard or typical area rates); and expenses of litigation. All of this must be approved by the judge. Furthermore, if one gets a job during the period between the layoff and the final payoff, the wages one earns are deducted from the back pay, the contributions of the other employer toward medical benefits (even inferior ones) are deducted, etc. -- these are called "offsets". I thought that the costs of my trip to the Health Physics Society conference in February 2001 should have been included, since I had made the commitment to go only because my management had said for months that they would be sending me, since they had had months in which to tell me I was to be laid off but didn't, and since I would have been able to go if I hadn't been laid off. But Held told me not even to ask for reimbursement for this.

Since most people, in order to secure the services of a lawyer, have to enter into an agreement with the lawyer to fork over one-third after the expenses are subtracted and since the nominal legal fees are usually not more than one-third of the sum of the legal fees plus the back pay and etc., the lawyer usually ends up getting some of the back pay as well as part of the one-third. Example: ignoring expenses and offsets, suppose the back pay for two years is \$120,000 and the legal fees are \$40,000, for a total of \$160,000; the lawyer's third is about \$53,000 and the victim's share is \$107,000, i.e., the victim is out \$13,000. (This is not to say that the lawyer shouldn't get the one-third, of course, just that the victim will usually come up somewhat short in the DOE whistleblower system.) Thus the employee can win the case but not necessarily be "made whole" in the financial sense. Furthermore, as indicated above, if the person has difficulty getting a comparable job, this is not taken into account in any way, nor does DOE seem to take any interest in auditing his job application and interview history with other DOE contractors and subcontractors to make sure he is not being discriminated against on the basis of his being a whistleblower. As I will explain later, I tried to get DOE to do that, but was rebuffed. Again, I had a

"3161" preference with DOE because of my many years of work in the DOE world, but this made absolutely no difference in my ability to get an interview.

I was entitled to get my job back as part of my win, but obviously this was not an attractive possibility. UT-B was not going to change, their O&R managers were not going to change, and I would undoubtedly be relegated to a series of marginal and make-work special jobs, possibly until such time as they could lay me off again. This had happened to others laid off on the Oak Ridge Reservation. Besides that, I felt sure that I would be watched like a hawk and every little thing I said that could be interpreted as "not nice" would be documented. And worst of all, I would almost certainly have to work under Hunt and Scott.

UT-B appealed, this time to the Secretary of Energy (see below), but they indicated that they might be amenable to a settlement. In July-August 2002, Held talked with UT-B about a settlement but we could not agree on terms with them. They were offering \$282,500 (total for me and Held). Their hangup was that they wanted either a confidentiality clause or a statement by which they came out smelling like a rose. Regarding confidentiality, as I noted earlier, I had told Held the first time we spoke that I would not sign a confidentiality agreement in the event of a settlement, so that I could be free to speak of anything and everything that transpired. She had warned me that defendant-corporations would not settle for as much if they could not get confidentiality (since if other people heard that a comparatively large amount was being paid out by the corporation, they were more likely to sue); I had told her that I didn't care. As a "rose" statement, UT-B wanted the settlement agreement to say that "To date, DOE has not directed or required UT-B to take any corrective action to address any of the numerous concerns expressed by Ms. Westbrook". This latter statement and others that were to be included obviously had the purpose of making the point that whatever OHA said, local DOE-ORO supported UT-B. I could not agree to having such "spin" included in the settlement, especially as it was irrelevant to the purpose of the agreement.

Held advised me to "hold my nose" and sign because we could always issue a press release later, but I could not do so in good conscience. At one point, she told me that her advice was to sign and if I chose to ignore it, I would have to go to another lawyer and get a second opinion so that Held would be protected in the future. This was the equivalent of a doctor's sending a patient to another doctor, not to help the first doctor clarify the situation, but to protect him against a malpractice suit. Not only did she stress that I was going against her advice to sign -- even though her advice was against my instructions to her as to terms that were acceptable to me -- she also made it very clear to me that even if I continued to pursue my Secretarial appeal and won, I would get much less money than what UT-B was offering now. That was true, but if I won on appeal it would be a clean win and UT-B would not be putting any spin on the judge's decision, as they wanted to do with the settlement. Held's attitude was disillusioning for me, since her advice was to take the money and run even though she knew my principles went against that philosophy. But I tried to keep in mind one thing: she seemed to be increasingly doubtful as time went on that we would win the Secretarial appeal -- and she might have some informant who told her so. It was thus understandable that she was not optimistic and wanted to be sure of getting something out of all that effort.

As part of a settlement, UT-B also wanted me to agree not to apply to work for Battelle or UT-B until October 2005, i.e., a period of over three years. Of course, if I won the Secretarial appeal, they would have to give me my job back. At one point, UT-B lawyer Jeff Guilford sent an E-mail message to Held, which she forwarded to me with a note saying that I should keep it for my files as an example of UT-B's trash-talking. In it, Guilford told Held that UT-B had had some internal discussions about their taking me back if I should win. He said the following. "Let me say again that Ms. Westbrook will not get her former job back. It simply no longer exists. No one is sitting around writing ALARA procedures. Both her former supervisor and her sole peer have shifted to the UT-Battelle compliance model....It appears that Ms. Westbrook continues to harbor misgivings about the OSSD reorganization and UT-Battelle's overall approach to regulatory compliance. Certainly her numerous critical comments to the press indicate this to

be true. She has voiced her concerns and we have listened. However, management is not required to tailor its programs to her liking, and the time for endless argumentation on differing professional opinions has ended. She will be free to raise concerns if she returns, of course. But she will be required to work within the current model for bringing technical knowledge to bear in project design and execution. This must be done in an effective manner using expertise, highly developed interpersonal skills, and team relationships. This is the same performance expectation that applies to other employees in the central compliance organization. Past history suggests that this will be a significant stretch for Ms. Westbrook. As noted in the hearing testimony, she has good technical knowledge. As also reflected in the testimony of many witnesses, however, her judgment tends to be driven by a personal agenda, and her interpersonal communication skills are lacking. If she returns, our hope is that she can be a productive employee. However, it will be in a revised job with additional expectations that will challenge her ability to grow and adapt. This is exactly the same position she would be in if she had not been laid off. And our judgment of her ability to meet this challenge formed the sole basis for the decision to lay her off....There should be no illusion about the performance expectations that exist within the central compliance organization. If she is not interested in a settlement, so be it. She should understand, however, that she will not be returning to her old job."

The reader should note several things about Guilford's statement above. If I won the appeal and was ordered to be reinstated in my job, I would have to be put into a substantially equivalent position. Even with UT-B's new "model" and so forth, I doubted that my duties would be much different than they had been before (except possibly for the RP-310 reviews), because all of the things I did were still there to be done. (For example, as I noted earlier, Mei had told me in 2001 that OSSD management had judged that they didn't need AEG's calculational capacities because they could get people in other divisions to do them, but that had not proved to be the case.) So if UT-B put me into some made-up job, it would be for the purpose of keeping me marginalized and unable to influence or even stay informed about worker protection. It seemed that Guilford's statement carried within it a veiled threat as well: as I had thought, my performance would have to be perfect and I would absolutely have to toe the line, or I would be laid off again on the same grounds. Thus UT-B was still in denial about its illegal actions during the layoff.

When Held submitted the financial details to OHA and to UT-B, Guilford sent her an E-mail message stating sarcastically that after all the offsets were deducted, he came up with "an astounding number": \$74,370 (plus legal fees). He argued, for example, that the "pay in lieu of notice" should be included in the offsets because "this was essentially nothing more than (nearly) two month's of salary [sic]"; he also included the severance pay. I thought it was inappropriate to exclude both. He also claimed an offset for the tiny pension I was drawing ("since UT-B is the payor") -- even though UT-B, like all the other contractors on the Oak Ridge Reservation, was not paying into the pension fund for its employees or paying my pension directly (as I will explain later). Furthermore, there was a logic problem with subtracting the pension as an offset, as though it were normal income -- that would be the same as counting against me money that I would be due anyway later, and counting it against me only on the basis of when I took it. UT-B was thus attempting to realize an effective return on money it hadn't actually put out. I thought that that showed real chutzpah. Another point about the pension was that nearly all of my pension, except during the time I was on the health plan at UT, went to pay my medical premiums. Had I not taken the pension and thus been forced to pay for the premiums out of my savings, I would still be reimbursed for the differential cost of the premium in the damages -- but would not have had the pension deducted. Thus again I was to be penalized for taking the pension. Finally, I thought from the figures that UT-B was counting what they paid me for my unused vacation. I don't know if this point was ironed out or not, but the vacation pay was earned pre-layoff and was not a "gift" like severance.

Guilford said to Held that he knew that "it's not about the money" and he admitted that "in Janet's case I believe there is a significant element of truth in this cliché". But then he went on to state that if UT-B had realized before they made the \$282,500 offer that I stood to receive so little in damages, they would not

have offered as much. He stated that UT-B was still willing to settle "if it is accepted soon". But we still could not agree on terms and in any case, I had reservations about settling. In the end, it didn't really matter. UT-B had decided to go ahead with their appeal, as I will relate below.

We Step Back into the Ring: UT-Battelle Appeals

After they were notified of the result of my appeal to the head of OHA, UT-B had 30 days in which to file their appeal to the Secretary of Energy. As usual, they filed it a few days late; as usual, DOE allowed this. As weeks ticked by and we waited for the decision, I believe that UT-B pulled out all the political stops to influence the decision.

Held pointed out to me that UT-B was not likely to win on the merits; the written decision by Breznay clearly called out the various points on which UT-B's case had foundered, which points could not be prettied up with newly spun arguments. But she worried that DOE might reverse the decision on political grounds: the Secretary of Energy was a political appointee and so would likely be more easily swayed by pressure from a large and successful contractor like Battelle. Of course, the head of OHA apparently also was a political appointee, but he was supposed to be (and I believe was) above the political hurly-burly and he was supposed to consider each case solely on the legal merits. The Secretarial review was a whole 'nother ballgame. Thus we were relieved and delighted to hear in late October 2002 that the result of the Secretarial review was in my favor. This was the end of the line, I thought. But Held advised me that UT-B, as the losing party, could still appeal the decision to the US (federal) Sixth Circuit Court of Appeals -- which could take years longer.

What neither UT-B nor we realized at the time was that for some years, the Secretarial appeals had been delegated in writing from the Secretary of Energy to the head of OHA. This was apparently to save the Secretary time, but it had the effect of implying that the Secretary considered the weighing of such appeals to be unimportant. In any case, by this formal delegation, reviewing his own prior decisions was thus an ex officio function of the head of OHA. As it would be unlikely that he would reverse his own decision, this meant that a reversal at the Secretarial level was almost impossible. UT-B realized that the decision had been reviewed not by the Secretary or (better yet, undoubtedly, from their point of view) his politically astute staff, but rather by the same politically unreachable official who had ruled against them before. UT-B cried foul. They sputtered that it was a denial of their due process, that it was against the intent of the whistleblower law, etc., etc., for anybody but the Secretary to decide the appeal. They lodged a formal protest with DOE. A UT-B lawyer told Held that they regarded the Secretarial-level decision as illegitimate and they considered it to be "without legal effect".

One can see their argument that if the review was to be "Secretarial", it ought to involve the Secretary. But on the other hand, in other regular court systems judges' rulings are sometimes appealed to the judges themselves and they do occasionally reverse themselves. Even when their rulings are appealed to higher courts, the cases are sometimes remanded back to the lower judges for further action, as being the proper level for certain judgments to be made. What the delegation seems to have done was to say that OHA should handle all decisions except for those that really needed to be considered by the Secretary, e.g., those involving secret matters of national security. We heard that DOE was claiming that its Office of General Counsel, which advises the Secretary, did not know this was going on. (Yeah, right, as if they did not look over every document the Secretary issued, including that formal delegation.)

An article on the front page of the 31 October 2002 edition of The Oak Ridger (newspaper) noted that DOE was backtracking on the dismissal of UT-B's appeal. UT-B's protest was very pointedly critical of OHA head Breznay for having, in their view, overstepped his bounds. As an acute observer of my case remarked, if that was found to be true, Breznay could lose his job. Obviously this would be bad from my point of view (since he found in my favor), but it also would send a chilling message to other OHA people: that you could do what you were told to do and then later be made a scapegoat. Also, as Held

astutely pointed out, this called into question all other Secretarial review decisions already handled by the OHA head: if UT-B got a re-review, couldn't all the other losers also demand a re-review?

I thought that the reason that UT-B was choosing to keep the fight within the DOE "family" was that they had more chance of influencing the outcome than if they went to the next step, the Sixth Circuit Court of Appeals because, again, the Secretary of Energy was a political appointee. Held expressed concern that I would lose on Secretarial review because of this political influence factor, even though the Secretary had reversed only once in the past (or so she said). As I told my support group, my case was like those horror movies that featured the character "Jason": I kept thinking I'd killed it and it kept coming back from the dead. So I kept having to look over my shoulder

We waited for several months to see what would come of UT-B's protest of the Secretarial review decision. Held and others told me that there was quite a stir in the legal and political activist communities with regard to this turn of events. DOE looked even more inept than ever, not only because they had allowed this to come to pass but because they were dithering over how to proceed. If they ruled in UT-B's favor and reopened the Secretarial review, it would look as if they had given in to political pressure and it would look unfair to me. If they ruled in my favor and refused to reopen the Secretarial review, UT-B might take them to court to force the issue. If they reopened the Secretarial review and then ruled in UT-B's favor on the appeal, then I might take them to court (to the Sixth Circuit Court of Appeals). This was obviously a problem with a huge potential for embarrassment for DOE.

In investigating the precedents, Held talked with a DOE-Washington lawyer. Held told me that Breznay did nothing wrong (i.e., it was a legal delegation), so the Sixth Circuit Court would not issue a stay of enforcement pending appeal (which I believe meant that UT-B would have to comply). The DOE-Washington lawyer said he had never faced a situation where a contractor (UT-B) was brazenly saying they wouldn't follow a DOE directive. Held was later told by DOE, I believe sub rosa, that DOE really, really, really wanted to bury this thing and was pressuring UT-B to settle with me. This brought up some issues of its own, particularly from the taxpayers' point of view. First, if DOE was an honest broker in all this, then why should they pressure either side at all? Second, if UT-B did agree to settle, under pressure, what kind of pressure was it that DOE was applying -- were they offering a carrot (incentive) or a stick (punishment)? Third, if UT-B did agree to settle, who would actually be paying for it?

Held told me that the decision whether to settle or not was up to me. But it seemed clear that she would prefer a settlement, for two reasons. One, she would get her money right away. While tort lawyers have to be able to play a waiting game, for years if necessary, they still have to eat and they want to reap their reward after spending a lot of time and effort on a case. Second, we would likely get more from a settlement than from an award of back pay, expenses, and legal fees figured at prevailing local rates.

On about 11 November 2002, Held told me that a DOE-ORO lawyer, Jennifer Fowler, had told her that DOE intended to put my case on hold "for up to two years" while they decided how they wanted to revamp their appeal procedures. DOE would then revisit my case under the revised procedures. (This was of course after the Secretarial appeal ruling in my case had already been issued in writing.) I suggested that Held put Fowler's statement in writing as a letter to Fowler that restated what Fowler had said, and Held did so. On the basis of Fowler's statement, I agreed with Held that it was best to settle with UT-B and we set the settlement meeting for 15 November 2002, a Friday (see next section). On 14 November, Fowler faxed Held a reply to her letter, stating that Fowler had told Held that DOE was hopeful that mediation (of a settlement) would resolve the matter and that the DOE General Counsel's Office was given "serious consideration to the issues raised by UT-Battelle", i.e., to UT-B's contention that its rights were violated by not having the Secretary himself review the matter. But Fowler asserted that she herself had "no knowledge or insight into the outcome of that review except the Deputy General Counsel's admonishment to both parties that neither should assume that the outcome will be in their favor". She said

that she and Held discussed only "a wide range of possibilities", including additional rulemaking, a stay of OHA's order, upholding that order, etc.; she claimed to have "no knowledge or insight into the Department's plans". Since these were two lawyers, I concluded that it was unlikely that there was a misunderstanding about this. I believe that Held told me the truth about what Fowler had said but that Fowler could not acknowledge it, for political reasons. Held told me later that she did not get Fowler's fax -- which printed out in her office at about 4:00 pm on Thursday, 14 November -- until the following Monday, 18 November, since we were in the settlement meeting all day Friday, 15 November. Still, I believe that subsequent events showed that Held was wise to advise me to settle, as I will explain.

By Fowler's and other communications to Held, DOE made it clear that they had no intention of deciding my case one way or the other any time soon. It seemed that as is DOE's wont, they were going to study it and think about it and consult about it and have task forces meet about it. OHA's already having decided in my favor on solid grounds, their already having issued the Secretarial appeal ruling in writing, my already having waited for almost two years for the conclusion of the process, the prolongation of stress to me, the increase in any potential damages -- all this seemed to mean nothing to them. Fairness was the ostensible goal, but planning to take up to two more years to decide how to proceed, before actually proceeding, was patently unfair to me. Nor did it bode well for others whose appeals had already reached or soon would be reaching the Secretarial level: if other companies who had lost in a Secretarial review handled by OHA now protested to DOE and had their cases put on hold while DOE reconsidered its procedures, the plaintiffs whose cases were now pending at the Secretarial level or who would be appealing during the delay would have to wait out the extra time also.

Much later, after my case was settled, a manager at a local company that does work for DOE and its contractors told me two very interesting things. He said that when he had been in Washington, D. C. on business, a DOE-Washington person told him something that he thought relevant to my case; I can't state it here because I could not check the details, but it was strikingly to the point and showed that even DOE-Washington people felt cynical about what DOE was doing. My informant also said that a DOE-ORO person told him that former DOE-ORO head Joe LaGrone would never have tolerated this situation -- he would have called UT-B in and told them stop fooling around and settle up with me. (LaGrone was known for his tough and tenacious stance toward the contractors and compliance issues when they got up to his level, although some DOE people thought he had more bombast than substance.) I found these comments interesting because they suggested that within DOE, there was disapproval of how the lawyers in DOE were handling my case. Things were not looking good for DOE's credibility.

As the old saying goes, "Justice delayed is justice denied". I had gotten away from my toxic boss at the University of Tennessee, but I hadn't yet found another job in my field in my area; my daughter was to go to college in another year; and although my husband was now working, we felt very vulnerable. A delay meant that I would be condemned to continue as I was. So much for justice.

The Settlement Talks and My Desired End Point

Although DOE had put my case in limbo while it decided how to proceed with Secretarial appeals, they were apparently embarrassed by their bungling of the procedural aspects. So despite their professed intention to suspend any action on my case, it appeared that they wanted my case off the radar. It was thus not surprising that there were intimations that DOE was pressuring UT-B to settle with me. It occurred to me that the "wait up to two years" statement might even have been a ploy to get Held and me to the settlement table.

My whole desire was not to profit by all this, but to be "made whole". I explained to Held on multiple occasions what I meant by this: I would be left financially in the same position I would have been in had I not been laid off but had continued to work at ORNL up to the time of the settlement. This would have to be after Held's portion had been deducted, because otherwise I would suffer a net loss. Because of the

offsets, the lawyer's one-third, etc., as I explained earlier, if the judge set the award, I would likely not be made whole. I did not begrudge the money to Held, because after all, she had taken a risk in taking my case. It was just the unfairness of ending up having, in effect, to pay even a cent to be recompensed for UT-B's misdeeds.

The legal system professes not to think this unfair even though your ordinary citizen thinks it is. I believe that the award ought to be set up so that the person against whom a wrong has been committed can end up at more or less the same place financially as he would have been had he not been wronged; at the same time, the lawyer should be adequately compensated at the one-third level or some other reasonable "not just typical hourly rate" level. Note again that this is with regard to only the direct financial aspect and the retrospective aspect: if the judge considered the damage to professional reputation, the likelihood of being blacklisted in your field, etc., the award would have to be much, much higher.

The advantage to settling, as opposed to having the judge set the award based on your financials, is that you can settle for as much as the defendant will give you. This allows for the plaintiff to be made whole financially, while providing a nice windfall for the lawyer as well. This is one reason that plaintiffs' lawyers like to settle, I believe. My often-reiterated position, though, was that the settlement had to be fair. Hence I would expect to be "made whole" but I would not expect to reap a profit from it.

(I will digress here to point out two instances that preceded my layoff in which I demonstrated that for me, it really is not "all about the money". First, when I was rear-ended by a fellow ORNL staffer on my way to work one day, I refused to take any "pain and suffering" money from her insurance company, on principle, even though they offered it to me. Since all I had was a two- or three-day whiplash headache and neckache, I felt that accepting only compensation for my medical expenses and the repair of my car was fair. Second, back when I was working for the architect-engineer in Chicago, I was told I was going to be promoted to the equivalent of a task leader level. This, it was explained to me, was a way to put me into a higher pay bracket. I told my supervisor that I could not accept the promotion since I did not think I had qualified to be a task leader, in particular because I hadn't ever been put in charge of even a short-term project. A year or two later, when I had worked on a small project that I was in charge of getting done and on which I directed the work of two young engineers, I felt that I was qualified to be a task leader. I told my supervisor this and subsequently got the promotion.)

As I said earlier, we had some preliminary negotiations in the early summer of 2002, but these foundered on some demands made by both sides. I refused to sign a confidentiality statement and I was resistant to the self-serving language that UT-B wanted to put into the proposed settlement agreement in order to tell the world that they weren't really guilty, no matter what the head of DOE-OHA had said. As I recall, I also did not want to agree not to apply for work at ORNL or with Battelle, etc., for three or four years and I did not understand a release they wanted me to sign. Held explained that somebody somewhere had sued an employer after being rehired less than a year after being laid off for some non-whistleblower reason; UT-B wanted to ensure that the period of time in which I might come back to work at ORNL was more than a year (presumably under the state statute of limitations). I asked her why they wanted three years -- why not just a year? She said that she didn't know. So I was wary.

Finally, Held called me one day and told me that UT-B was willing to sit down with a DOE mediator and us to try to negotiate a settlement. She said the mediation would not be binding -- if we decided not to settle, we would be no worse off than we were. But if we did settle, the case would still be on the record as a win for me, a very important point to me. She also reminded me that the alternative was to wait out the two years of DOE's machinations. I was tempted -- I was so tired of having my life held hostage to this legal rollercoaster. But I was also dubious, because by now I very much did not trust DOE's good faith and commitment to fairness. I was also concerned about the ethical implications: was it right to engage in negotiations with slimy UT-B, presided over by feckless, clueless DOE? I polled my support

group friends, asking them what they thought. More than half of those who replied told me to take the money and not look back; the others were noncommittal. Nobody told me unequivocally to go on fighting. I decided that if the mediation was not binding and if my case would be on the record for all time as a win for me, then I should go for it. I told Held that we could try.

Both sides and DOE decided on a meeting day, 15 November 2002, a Friday. The mediator was Phyllis Hanfling, a lawyer who was in DOE's Office of Legal Counsel, i.e., not in OHA but in DOE's more politically oriented legal arm. As Held and I waited in the lobby of the Federal Building in Oak Ridge for someone to escort us upstairs, Held told me that she had just spoken with, I believe, Fowler, who said that Hanfling had been instructed to fly back to Washington that night with a signed agreement. My misgivings increased apace, because an instruction like that showed that there would therefore be a great deal of pressure to settle. I was right about that, as things turned out.

When we got upstairs, we found that the UT-B people were already there and apparently already set up. Present for UT-B were UT-B's lead counsel, Stephen Porter; the UT-B vice-president for operations, Jeff Smith; and later, lurking around the fringes in go-fer mode, Jeff Guilford. Hanfling had obviously already met them and I suspected by everybody's manner that she had already met with them as well.

Hanfling began the meeting by having both sides state their positions and what they wanted to get out of the settlement. Porter did most of the talking for his side. Porter and Smith did not actually say that they wanted to pay as little as possible, which I imagine would be their side's position; rather, they reiterated their position that UT-B had not acted unfairly, had not retaliated against me, etc., etc. I thought to myself, "If you are innocent, UT-B, then why are you agreeing to settle? Time is on your side." But I did not challenge them on it because I was trying to be as non-confrontational as possible. For my part, I stated that I wanted to be "made whole" -- I used that term explicitly -- and I described what I had lost, including my ability to get a reasonable job in the area. I was of two minds whether to say that or not. If I did say it, everybody would realize how difficult things had been for me (if they all had consciences); however, UT-B might think that they had me on the ropes and they could also quote me as saying that nobody would hire me. This would allow them to spin my statements as "See? Nobody else wants her either", when (I remind the reader) the truth was that I and my fellow layoffees had been blacklisted as undesirables and that I had also been tarred with the "whistleblower" brush. I also said explicitly that for me, it wasn't about the money, which was why I was asking only to be made whole and not asking, e.g., for huge damages. I pointed out that my progress in my profession had been arrested by the layoff and that this was very significant for me.

At one point, the issue of my going back to ORNL was raised. Smith pointed out that I had told The Oak Ridger (see below) that I did not want to go back to ORNL. I responded that I had, but what I meant was that I did not feel that I could work there if things continued as they had been when I left, with safety taking a back seat to meeting production or project milestones. Smith or Porter then stated that my job had been "eliminated" and that there was no such job for me to go back to; UT-B would have "to find something for you to do" if I went back. They made it clear that I was not welcome and said fairly explicitly that while I would have a job, it would not be necessarily be in operational radiation protection. Hanfling -- a DOE lawyer who supposedly knew the statutes and their implications by heart -- sat there and said nothing. I believe that the intent of the statute and of whistleblower protection is to make it possible for people to return to jobs they were forced out of because of their disclosures. If DOE allowed UT-B to say explicitly that they were going to put me into a make-work job where I would have no professional input whatsoever in the area I had expertise in, then that would be tantamount to allowing them to evade the purpose of the statute. In my opinion, that is exactly what Hanfling did as DOE's representative. I think that DOE (Hanfling or somebody else) must have communicated this to UT-B at some previous time, or else Porter/Smith would not have said what they did in so unguarded and candid a

manner. This was a red flag to me at that point that DOE (in the person of Hanfling) was not acting as an honest broker, but was allowing UT-B to try to bully Held and me into a settlement.

After the initial session, the UT-B pair retired to another room. Hanfling then shuttled between rooms, carrying new proposals or tweaks of proposals back and forth. One sticking point was the confidentiality clause, which I adamantly refused to agree to. I had been saying it since Day One, so UT-B had known it for a long time. I suspected that DOE wanted the clause just as much as UT-B did: Hanfling and Held explained to me yet again that the reason for the clause was to discourage suits by others. At one point, Hanfling asked me how much it would take for me to sign such a clause. After a second or two, I said, "A million dollars". Held and Hanfling were taken aback by my actually naming a figure, and such a huge one at that. Hanfling said to me sarcastically, "I thought you weren't interested in the money". I replied, "If I received that much, I wouldn't be able to tell people the amount, but I could then say that I received enough to retire on". I let that sink in. Held and Hanfling understood my meaning: they realized that my being able to say that would have had the same effect as my being free to name any exact figure, i.e., everybody would still know that UT-B had parted with a "chunk of change". Hanfling said with asperity something like "Well, they aren't going to pay you a million dollars." I said okay. I sat back and waited for her next move.

I felt sure by now that Hanfling was trying to goad me into saying something that she could pounce on as evidence of insincerity or inconsistency and then use to make me feel guilty about not settling. She was obviously an experienced mediator, but I felt that she regarded this whole thing as an exercise in problem solving -- for DOE's benefit alone. I also thought that she seemed somewhat hostile to what I represented; the reader should note that there was no pro forma statement at the beginning of the day about how important DOE regarded information from whistleblowers or its commitment to protect them or any such thing, no statement that I was, at least at the moment, the declared winner in the legal process. Thus although Held had alerted me at the beginning of the day as to Hanfling's instructions from the DOE powers that be, it was Hanfling's own manner and statements that convinced me that the sole purpose of her mission was to get rid of the embarrassment to DOE.

Part of me wanted to stand up and march straight out of there. I was concerned that in some way I would be victimized. Also, although Held had told me at the beginning of the day that we did not have to settle, that it was my decision, etc., she seemed to be pushing me to settle, by her odd silences and by her occasional chipping in support of some statement made by Hanfling. I felt alone and without a rudder when Held, with Hanfling out of the room, chastised me with words to the effect that I was being obstructionist and not agreeable enough to Hanfling, who, she said, had thought at one point that I was rejecting any settlement. Held gave me to understand that she had conveyed to Hanfling that that was not what I meant (and I did not see how Hanfling could have got that impression anyway). I felt that Held was pushing me to settle also and that she was impatient with me for having given Hanfling the impression (if I did) that I was unwilling to settle at all. Thus she seemed to be rebuking me for dragging the process out, as though it were my duty to settle because otherwise everybody's time was being wasted. I did not argue with her, but I felt that I could not count on her to watch my back, legally speaking. Note that it is normally the lawyer's job to do most of the negotiations and present the client's positions -- to be the "mouthpiece" -- not to hang back and make the client negotiate directly with Hanfling, as Held was doing with me. Note too that normally a lawyer will not speak disparagingly and sarcastically to a client, but rather will try to coax, coach, and cajole a client on order to persuade him to take a position that will prove to work out. The lawyer tries to demonstrate to the client that what the lawyer advocates is in the client's best interest, which he can't do if he alienates the client by insulting him. Held's appearing to try to make me feel guilty by telling me how irritated Hanfling was convinced me that I was really on my own.

I tried to keep my eye on the ball: that the most important thing, whatever the other terms were, was that the record would show that I had won and UT-B had lost -- that they had indeed retaliated against me and

that, by implication, they had something to hide. I tried to keep in mind that a final win by me would help my support group in their own lawsuits and would make it difficult for UT-B to argue to the public that it was innocent.

Eventually, we did agree on terms. It was proposed that I should receive two years' back pay (i.e., December 2000 through November 2002) plus legal expenses. Since my last day at ORNL had been 1 December 2000, it was very nearly two years by the settlement negotiation day, 15 November 2002. Held explained to me when we were alone that there would be no offsets (i.e., there would be no deductions for what I had earned at UT, for unemployment compensation I had received, etc.). She said that according to the financials (which, curiously, she had not brought a copy of and had not told me to bring a copy of), the annual figure we had come up with for salary and benefits was about \$105,000. This was probably somewhat low, as it did not take account of, e.g., lost interest on withdrawn savings, but as best I could recall from memory, it seemed in the ballpark. This, multiplied by two for the two years to become \$210,000, would be my "made whole" figure, with one other adjustment. As Porter and Smith had explicitly agreed to earlier in the meeting, UT-B would in addition pay back to the pension fund the amount I had already received (about \$8000, before deductions for the medical plan) and I would be credited with the two additional years of service toward my pension, i.e., with 13 years instead of 11 years. In addition, at my request, UT-B agreed to give me a letter stating that I had been a good employee and -- significantly for any future badmouthing of me by UT-B -- stating that UT-B would not oppose my being hired by any other company, even for work on the ORNL site. There was no confidentiality clause.

What UT-B got in return, besides getting DOE off its back, was an agreement by me that I would not apply for work at UT-B or at Battelle (as the parent company) for a period of two years after the settlement date, i.e., until November 2004. UT-B would also get to put into the settlement document their pro forma denial of guilt; and the two sides would jointly agree to ask DOE to dismiss the pending DOE actions due to the settlement -- except that UT-B agreed that "it is understood that the last decision reached by DOE will stand, i.e., the dismissal of UT-B's appeal and the consequent upholding of the decision in Ms. Westbrook's favor by" OHA. I will explain the reason for this last statement later.

Regarding the legal expenses, as I noted earlier, Held had told me on a previous occasion that she "would take" \$40,000 as her share if we settled, i.e., explicitly a flat sum instead of the one-third, this being a concession she would make to move the process to completion. Now, during the settlement negotiations, as I was adding up the 2 times \$105,000 and was about to prorate it by a little more than 50% to include her one-third plus expenses, she told me spontaneously that she "would take \$70,000". I took this to mean that she would accept \$70,000 instead of about \$105,000 as her share; I assumed that she offered to do so in order to move the settlement negotiations forward. I inferred that she took that as the amount possibly because she had been told outside my hearing that the most UT-B was willing to pay was something under \$300,000. I asked her if she was sure that that was okay, if that was enough -- I truly believe that she understood, from the context, that I understood her to say that she was agreeing to accept the \$70,000 as her full share. She said yes, it was okay with her.

If I had been awarded damages by DOE at the end of the appeals process, the legal fees would have been set at about \$28,000 and my award at about \$74,000, so that the most she would have gotten was a little over one-third of the sum, or about \$35,000. Thus with \$70,000, she would be getting twice as much by my settling as she would have gotten if we had gotten the award at that time. Had I thought that she was simply unilaterally setting her legal fees at \$70,000 (which again was almost three times as much as the DOE judge had set it at) and still expected to get over one-third of the total, I would simply have multiplied my \$105,000 by 3 and added in a few thousand for her expenses. In this way, I would still have been made whole by receiving the \$210,000 and she would have had her windfall and then some. The reader should keep this in mind with regard to what happened later.

The two amounts, what I understood to be \$210,000 for me and \$70,000 for her, were put into the agreement explicitly and specifically as my damages and her fees. We also asked to be paid part of it in what remained of 2002 and the rest in January of 2003, for tax reasons. As I will bet most readers are unaware of, the Internal Revenue Service has taken the position that the taxes on such awards are levied as if the entire award were income for the year received, even if it was back pay for two different years (for me) or if it was for services rendered over two years (for her). The courts, illogically, have upheld this interpretation. Thus the tax bite out of the award is much greater than it would be if the recipients were allowed to consider the income as being received over two years. Yet in damage awards, as far as I could find out, no consideration is made by courts for the extra loss incurred by the plaintiff and his lawyer because of this (an unfairness that I hope will some day be rectified).

Hanfling had announced at the beginning of the settlement negotiation day that she had to leave by a certain time, I think 3:30 pm, in order to catch a plane back to Washington. At the time she left, we had more or less come to mutual agreement on a settlement, but had various details to work out. So we finished the negotiations without her. The agreement was put into writing by Porter on his laptop and we finished honing it at about 5:00 pm. But I refused to sign anything that day because I wanted to see the provisions on the printed page and to think about them for a day or two. Porter and Smith agreed. They had copies printed out and Held and I left with ours.

Over the next ten days or so, Held and UT-B E-mailed back and forth until we reached agreement on every jot and tittle. The agreement specified that UT-B was paying \$210,000 to me and \$70,000 "for her attorney's fees". Then everybody signed the multiple copies of the document on 26 November 2002. Held and I sat back to wait for the settlement terms to be met by UT-B.

But there were holdups. First UT-B asked if, in view of the Thanksgiving holiday and the consequent squeeze to get out their November paychecks, we would wait until 6 December for the money. We agreed. Then on 6 December, when I would have thought that the check would have been sent by messenger to Held, we were informed by UT-B that they had put the check in the regular mail. I was to leave on the following Tuesday afternoon (10 December 2002) for training at my new employer's headquarters in New York State. So when Held called me on Monday, 9 December, to say that the check had arrived, we agreed that I would stop at her office in Knoxville on my way to the airport the next day. I found that there were actually several checks, made out to both me and Held: as is usual in tort cases, Held, as the lawyer, would receive the money and then disburse it to me from her escrow account.

I noticed that the tax deductions were far beyond what was reasonable and customary to take out and I pointed it out to her. She said, "I wondered if you would notice that." I thought that was very odd -- if she thought the deductions were excessive, why didn't she point that out to me? Was she going to see if I would just accept it and if I did, not say anything? I had misgivings about signing the checks -- an action that I thought might be interpreted as my accepting the amount as correct -- but Held assured me that she would talk with UT-B about it. I signed because I was in a hurry to make my plane and I wanted Held to get her money right away, but I agonized over it the entire flight. When I talked with my husband by telephone that night, I asked him to call Held the next day and tell her not to send me any money until the error had been rectified: if I did not take the money, I was thus not agreeing that the amount was correct.

All through December, Held and UT-B talked about this. Guilford claimed that some decision of some Federal appeals court was to the effect that more money had to be withheld, while Held pointed out, correctly, that that was not our regional Federal appeals court, that other appeals courts agreed with our regional court, etc. Finally, Guilford caved in, telling her that it would be on our heads, and UT-B issued an additional check for the difference. I finally got my money in early January 2003 .

I found that of the \$280,000 we received from UT-B (before deductions), Held listed \$93,333 paid to her for "services at trial" and a further \$5244 paid for "services on appeal". My portion, before deductions, was \$181,000. She had thus taken much more than the \$70,000 that she said she "would take". Further, she had charged the costs of the appeal separately, rather than taking that as part of the one-third settlement. Finally, she had not credited me with the original \$2000 retainer I had given her, as she had told me she would do during our first meeting, or with the additional \$1000 retainer I had given her for the appeal. I wrote her by E-mail (unlike many other lawyers, she preferred this mode of communication) to point out that she had not acted as she had given me to believe that she would. She replied by E-mail, stating airily that she would check our agreement. She claimed that she had told me that she would be charging me directly by the hour for the appeal, which she certainly had not done; I would never have agreed to that because I would have been on the hook for the charges whether we won or lost. Certainly she never put that in writing. She told me later -- again by E-mail -- that she had "audited" the charges and had concluded that she should return the \$2000 to me. But she kept all of the one-third plus her charges for the appeal and also the \$1000. She wrote me that I could complain about her to the State law board, if I liked, although I had not even hinted I would do anything like that. She also noted that I had asked her to request an explanation of how UT-B had handled the deductions for tax purposes, but said that that wasn't included in our legal agreement and that "as I have stated repeatedly" (she hadn't, that I could recall), she was not a tax lawyer and was not advising me as to the tax consequences of these transactions. I was nonplussed, because I wasn't asking her opinion as to the tax consequences, just her writing to UT-B to have them provide an explanation of their deductions.

I was upset that I had had to give up more than I had thought I would have to. It wasn't the money per se that bothered me -- it was the difference between what she had said and what she then had done. It was that I believed that she knew, from my explicit statements at the settlement negotiations, how I had understood the matter to be, and yet she had never corrected my understanding or said explicitly what would happen. She had every opportunity to go over the prospective split with me at the settlement meeting, when Hanfling was out of the room conferring with UT-B, but she did not. It was also very cavalier of her to say that I could talk to the State board: she knew it would be my word against hers and although our various written E-mail messages over time would make clear what my understanding of the matter was, I thought that as lawyers they would give her the benefit of the doubt as regards our oral discussions and she would no doubt try to persuade them that I was just confused.

I was sick of the whole thing -- sick of UT-B's petty machinations, sick of lawyers, and most of all, sick of DOE's talking out of both sides of its mouth about protecting whistleblowers and about being fair. My husband and I decided to bite the bullet and just accept the situation. He was working, I was working at last, and we didn't have time for this stuff any more.

We did have to take time for one thing, however: our income taxes. My husband had always done them with the help of a tax preparation software program, but now we had this big lump payment in December to deal with and it was complicated by the fact that the money had been paid to Held and not taken by me due to the withholding issue. So we made an appointment with a tax accounting firm that our investment counselor recommended. At the appointment, we met with one of their accountants -- let's call him Mr. T. We explained our situation to Mr. T and gave him copies of various documents. I pointed out to him that the money as received from UT-B had been tied up with Held's portion, so that he might want to coordinate with her tax person to make sure that everything was in order. I then sent Held an E-mail to tell her that I had seen Mr. T, in case he did get in touch with her. She wrote me the next day to tell me that Mr. T was doing her taxes too. She implied that she had known him previously and that he was already her accountant. I was astounded: what a coincidence! But I had misgivings about this. If he was her accountant and also our accountant and some conflict developed, would he tell us? I visited the head of the accounting firm and asked him to consider whether there was a conflict of interest. He told me he didn't think so, but he would look into it and get back to me. He also told me that Mr. T had never spoken

to Held before I had visited him and Mr. T had subsequently called her. But the head, by his not saying anything further, implied that they were going to keep both Held's and my business (otherwise there would have been no conflict at all).

Weeks and weeks went by. We heard nothing. Finally, I called up the accounting firm to ask what was going on. I was told that the head of the accounting firm would get back to me, but he never did. With April 15 fast approaching, I finally called and told the receptionist that I would be by to pick up my financial documents. As I recall, the receptionist asked if I didn't want to leave a message for the head of the firm. I said no, because I thought that he had wasted enough of my time. When I got there, the receptionist handed over the documents without any fuss. Neither Mr. T nor the head spoke to me at all. So here was another mystery. We heard after this all happened that the head of the accounting firm was indeed one who was very slow to get back to people. But what was all this with Held and Mr. T? Did they or did they not have a previous business relationship? If so, why didn't Mr. T tell me when I mentioned Held's name in our interview with him? If not, why had Held implied that they did and why didn't the head tell me right off that there was no conflict? Etc., etc. Like everything else related to my case, these events made me feel like Alice in Wonderland -- nothing was as it seemed to be or should be.

With only two weeks before April 15th, we scrambled to find a new tax accountant. My husband got a recommendation for someone in Knoxville and we went there. That accountant and his firm did a good job for us, fortunately.

I asked Held several times about the "you were a good employee" letter that UT-B had agreed to provide as part of the settlement but not yet sent. She said she would get in touch with them about it. The last time I asked, in about February 2003, she said that Guilford had said to her when she asked, "Oh, yeah, I have to get that to you", but hadn't done so yet. I began to regard this as stalling in perpetuity by UT-B. With friends, I jokingly began to refer to them as "those deadbeats". Held did not seem to want to pursue it; after she had her money in hand, she didn't seem to want to have anything to do with me any more. Yet ensuring that all the terms of the settlement were met was part of her duty as my attorney, part of what she got the money for. I let the issue drop then, but it reared its head again, as I will relate below.

Who Really Paid the Settlement: Freedom of Information Act Request

An issue that should be of major interest to every reader who is a US taxpayer is this: who would be paying the costs of UT-B's litigating my case and of my settlement? Most people would say UT-B -- but most people would be wrong. The relevant statute implies but does not say explicitly that the contractor must pay it. The requirement for the contractor to pay such fees or for DOE to pay them is in the contract language, which is different for each contractor. The gist of it is usually that DOE will pay for it if the contractor wins but the contractor must pay it if the contractor loses. However, there seems to be some fudge language that allows DOE to reimburse the contractor under certain circumstances even if the contractor loses. It seems outrageous to most people that the contractor can do wrong, be taken to court, and be found guilty -- and have the taxpayers pay for it instead of the contractor. But this is the DOE world, where favored contractors can have exceptions made for them.

I was sure that DOE would be paying for all or part of my settlement for two reasons. First, Hanfling told Held and me that that was what was going to happen. That is, at one point when Held, Hanfling, and I were conferring, there was a pause while I made some notes, and Held and Hanfling began to chat. My attention was caught by their saying what a shame it was that DOE would have to pay. Startled, I asked them if they meant what I thought they said. Hanfling confirmed that DOE would be paying all or most of the settlement costs, although perhaps not UT-B's legal fees. She or Held said something to the effect that since DOE wanted the settlement, they had to agree to pay for it in order to get UT-B to the table. I was tempted to quit the meeting right there because I viewed it as immoral that the government should pay for UT-B's misdeeds, even if DOE had acted as the enabler in the retaliation. But I realized again that there

was no guarantee that DOE would not pay even if we waited the two years and won again. It was too important, I thought, to have UT-B's defeat be on the record for all time.

Second, the week after the settlement Held sent me an E-mail message saying that Guilford had let slip in a conversation with her that DOE would be paying at least part of the settlement. Held noted that if that was true, it would explain why, at one point in the settlement negotiation, Hanfling was gone a long while and then told Held when she returned that she had been talking to DOE headquarters. Held told me that she feared that DOE would make confidentiality a condition of approving the settlement. Although supposedly a settlement is between the two parties involved and DOE is only the mediator, I was told that DOE would have to approve the settlement, presumably because they were kicking in some of the money. In any case, DOE did not demand confidentiality -- I think they realized how it would look for DOE to demand this from a whistleblower.

In August 2004 I filed a request for information under the Freedom of Information Act (FOIA) (letter dated 1 August 2004). I did so to try to find out who had paid the costs of litigating and settling my case, UT-B or DOE. I sent my request to DOE-Washington's FOIA-handling office. I received a letter acknowledging my request and stating that the DOE-Washington office had referred my request to DOE-ORO's FOIA-handling office, the contact person there being Amy Rothrock. The reason given for referring it to DOE-ORO was that all of the documentation would be found in DOE-ORO. I was told that filling a FOIA request could take up to a year (more if it is denied and you have to appeal). So I waited for almost a year. On 21 July 2005, I called Rothrock and left a message on her voice mail asking about the status of my request. She never got back to me. On 2 August 2005, I called again and this time the phone was answered by the voice mail of, apparently, a contractor employee working for the DOE-ORO Office of General Counsel; I left a message for her. Again, there was no response. I called a third time on 10 August 2005 and left a message on the voice mail for the contractor employee.

Since there was again no response, on 16 August 2005 I called DOE-Washington at a FOIA number that DOE-Washington had given me in their original acknowledgment of my request. The DOE person who answered told me that the DOE-ORO Office of General Counsel was "very busy" with EEOICPA (sick worker) dose reconstruction project records requests. I told her that I worked on that very project, so I understood that the request load was heavy, but DOE-ORO should at least call me back to let me know how much longer I would have to wait. She recommended that I send Rothrock an E-mail message, because the FOIA office in DOE-Washington had had better success in getting DOE-ORO to reply to them if they sent E-mail messages instead of calling -- implying that sometimes DOE-ORO did not get back to Washington either! I told the DOE-Washington person that I had had enough, that I was not going to send yet another message for DOE-ORO to ignore. My position was that the dose reconstruction response load was an explanation for delay in filling FOIA requests, but not an excuse for failing to respond to inquiries about the status of the requests; DOE surely could not expect the FOIA requests, much less inquiries about them, to be held hostage for years until all the dose reconstruction work was done. So I asked the DOE-Washington FOIA person herself to get a message to DOE-ORO and tell them that if I had not heard from DOE-ORO by the end of business on 23 August 2005 (i.e., one week later), I would institute Plan B (e.g., writing the newspaper for help). Having heard nothing from DOE-ORO after two weeks, on 31 August 2005 I called DOE-Washington back. The same DOE-Washington person I had spoken to before told me that she had indeed E-mailed Rothrock and another DOE-ORO person and had also called one of them. She too had received no answer from them. I then wrote the "Ask Inky" help column in The Oak Ridger (letter dated 3 September 2005) because they often find out DOE-related information for readers, but I never heard from them.

But on 19 September 2005, Rothrock called me to apologize for the delay, saying that DOE-ORO was indeed very busy with the EEOICPA requests. She said that DOE-ORO was putting together a package of several documents in response to my request; when one last document had been reviewed, then the

package would be mailed to me. The review, she stated, was an attorney-client product review by DOE and UT-B. Sure enough, on 21 September 2005, I received an interesting set of documents from her.

First, there was a 23 May 2002 memorandum from DOE-ORO's assistant chief counsel for litigation and claims, Don Thress, to Susan Hiser of DOE-ORO's Procurement and Contracts Division. Thress stated that DOE-OHA's Breznay's decision in my case "disallows" (his quotation marks) UT-B's litigation costs in my case, effective 9 May 2002. He attached a copy of a 23 May 2002 letter from him to UT-B's Guilford stating this. His attached letter thanked Guilford for providing him with a copy of Breznay's 9 May 2002 decision (but why didn't DOE-ORO get this directly from DOE-Washington?). After reviewing the high points of Breznay's decision, Thress stated that as an "adverse determination" in a 10 CFR 708 case, Breznay's decision "has essentially activated Article H-7, Costs Associated with Whistleblower Actions, of the UT-B contract". Thus, he said, in order to comply with this article, UT-B had to differentiate and account for all litigation costs it might have incurred in my case -- "after May 9, 2002, as well as those it may incur henceforth". He then added, repetitively but explicitly, that DOE "has no liability for any costs associated with the Westbrook litigation which UT-Battelle may have incurred since May 9, 2002, or which may be incurred hereafter". These two statements imply that UT-B was asking that DOE pay its legal costs and that DOE did pay for UT-B's legal costs up until Breznay rendered his decision in May 2002. Thress added that if UT-B should "appeal" (his quotation marks again) Breznay's decision and win, UT-B could apply to DOE for reimbursement for all the legal costs from May 2002.

Also in the package was a 9 September 2002 letter from Steve Porter (UT-B chief counsel) to Thress in which he first stated UT-B's rationale for laying me off, reminded Thress that UT-B had won the first round, noted that UT-B was appealing -- and pointed out for the umpteenth time that I had "filed a seventy-two page complaint in response to my layoff". (Of course, my giving my complaint writup to Rufus Smith had preceded my layoff.) He also asserted to Thress (as if this had anything to do with the price of tea in China) that "During this time frame, Ms. Westbrook had written letters to the editor of local newspapers and had a lengthy article about her in a local weekly, all of which were highly critical of DOE and UT-Battelle". Porter then went on to say that while UT-B felt that they had a "compelling argument" in their Secretarial appeal, he had met with Thress and DOE-ORO Office of General Counsel lawyer Jennifer Fowler to suggest that "we" (apparently UT-B and DOE) should attempt to settle. He asserted that under the terms of UT-B's contract with DOE, UT-B had "a strong argument that all of the costs associated with this matter are allowable [i.e., reimbursable by DOE]". However, he stated, "we further agreed that the settlement costs and attorneys fees owed to Ms. Westbrook would be split 50/50 with an agreed-upon settlement ceiling amount". He said that he had spoken with my counsel (Held) on 26 June 2002 and that on 11 July 2002 "we accepted a counter offer of Ms. Westbrook that provided we would pay her \$282,650 in settlement of all sums owed, and she would waive any rights to reinstatement with UT-Battelle". He said that UT-B had prepared it and sent it to Held on 12 July, but that when Held sent them back a proposed revision on 22 July, she said that she had not yet presented it to me to review. After the dust settled from that revision, both UT-B and I found it to be unacceptable. Porter claimed that I would not accept "any form of a confidentiality provision,...provided a release of any other claims she may have against UT-Battelle, including potential age and Title VII 9 (gender) claims she could pursue, nor agree to a satisfactory provision to not seek future employment". He stated that UT-B could not agree to a settlement that did not include a "full and complete resolution" of all employment-related claims and that "I [he] don't think DOE would accept such an offer either". Thus the settlement effort was at that time at an impasse.

The next document was a 31 October 2002 faxed letter from Guilford to Thress. Guildford asked Thress to approve a "settlement amount" of \$316,000, "half of which would be paid by UT-Battelle", which he noted was an increase over the previous offer of \$282,650. He observed that UT-B thought that acceptance of this offer by DOE was advisable "to preclude a potential requirement to reinstate her employment" at ORNL. (This was a curious statements because it suggested that DOE itself did not want

me to go back to ORNL.) Thus, he said, "we are seeking approval to use \$158,000 in DOE funds for purposes of settling this case for \$316,000". He noted that settlement negotiations were continuing, with the confidentiality provision being a sticking point that was "extremely important to us [UT-B]".

There is no document in the package in which DOE approves UT-B's proposal for this amount or for DOE's paying half. It is hard to believe that DOE approval was given entirely orally, so DOE-ORO apparently failed to fill my FOIA request completely. But obviously DOE did approve the 50/50 proposal. The last document in the package is a memorandum from Thress to DOE-ORO contracts and procurement person Hiser, transmitting a copy of the signed settlement agreement and summarizing it. Interestingly, he states that there are several provisions governing my release of any claims (other than those related to physical injury, etc.) "against UT-Battelle, its predecessor [Lockheed Martin], and/or DOE". I was surprised to read that DOE was listed in there, but that is what the agreement says.

So DOE did in fact pay half of the settlement amount....in order to get UT-B and me to settle....in order to get the case off the radar, as implied by the pointed statement of Porter that I had managed to get a lot of publicity about my case, and to keep me from coming back to ORNL. My stomach is churning as I write this -- I'm off to take some antacid.

Some Further Hints of Blacklisting

One of my fellow layoffees was finally hired at another Oak Ridge area DOE site. He happened to be in a lunchroom one day and heard a person -- call him S -- bragging about how he had told a local company that did rad characterization and cleanup work about another layoffee and me. The braggart claimed that as a result, the company did not hire us. The other "dissed" layoffee -- call him Z -- asked around about S and found out that S had his own consulting business. Z found that S was getting contract work through the American Museum of Science and Energy (AMSE) in Oak Ridge to do support work for the sites. This was startling, because AMSE is, well, a museum, not a contracting company, and it was operated and financed by DOE. However, when UT-B took over the ORNL contract, AMSE was turned over to UT-B to manage and fund. So this seemed very fishy, if true. But even worse was the fact that S's past work was being questioned. Z (who had excellent sources for this sort of information) heard that the safety analysis documents S did for the waste management operations were inadequate and that DOE was requiring them all to be redone to include sampling and waste characterization data in the analyses; Z knew for a fact that other waste management documents were having to be redone also. The disturbing thing was that S did not know Z well and did not know me at all as far as I could tell; S seemed to be talking us down simply for sport, like kicking someone when he's down.

I was also been told by yet another layoffee (who fortunately was able to find a job with a subcontractor) that he had been trying to find jobs for Z and me. However, he said, there was a problem, in that his employers and others were leery of hiring anyone who was pursuing legal remedies. He had nearly persuaded his company to hire Z when the news of the 17 or however many people suing UT-B on grounds of age and sex discrimination came out in the newspapers. The Human Resources rep at his company asked him if Z was the same person as one of those mentioned in the newspaper article. He said yes. The rep then said, "We can't hire Z -- Z is suing DOE!" He explained that Z was suing UT-B, not DOE, that Z was a capable worker whom he had known for years, etc. But to no avail.

This employed layoffee also told me that when a subcontractor submits a bid or contract proposal to a DOE contractor, the contractor (e.g., UT-B) will often want to see the names of the people who are going to work on the contract. As he notes, if they object to one of the proposed people, the subcontractor has to substitute someone else. Subcontractors are thus reluctant to hire anyone that any potential client might object to. It's clear that in this way, the contractors can continue to discriminate and retaliate by vetoing subcontractor personnel and by inspiring subcontractors to discriminate as a form of self-protection. Also, the contractors and even some subcontractors seem to be contracting with headhunters or employment

agencies to get people for them. In this way, I think, they have deniability in discriminating against people, especially as they can tailor their job requirements documents to the person or type of person they want to hire and exclude anybody they don't want to have to interview; they can always say they themselves did not discriminate, did not know who was applying, etc., while the headhunter or employment agency can just say that they were following the employer's instructions. More and more, open jobs are not advertised and many are not even posted on the contractor's Web site before being filled -- not from within, but from outside. This is of course unfair since these jobs are funded by DOE and thus if they not filled from within, they should be open for all qualified candidates to apply for; they are not "owned" by the contractors and should not be controlled so as to promote corporate interests. I believe that DOE should look into how this works and whether there is de facto discrimination going on here.

There even seems to be some prejudice against hiring anyone who was laid off at all, whether pursuing a lawsuit or not. Z, mentioned above, had not been hired for a position after an interview and called a management representative of the potential employer to discuss why. The rep told Z the name of the person who had been hired, remarking that the person had no DOE experience. Z expressed surprise, since DOE safety analysis (the job in question) has some significant differences from other regulatorily-driven safety analysis. He replied, laughing, that "we" (his employer) were avoiding anybody "tainted by having worked in the plants before". This certainly is a departure from pre-UT-B years, when experienced people did tend to get new jobs on the Oak Ridge Reservation fairly soon by signing on at one of the other plants or with a subcontractor. Z also once sent an application in a certified letter, so as to assure that the company applied to was aware of Z's 3161 status -- and received no reply. So it appears that the contractors are able to thumb their noses at the 3161 provision as well.

UT-Battelle Issues a Revised Notification to the State of Tennessee

A few days after I was laid off in 2000, I received a copy of the separation notice that an employer sends the State when an employee is laid off. The other layoffees received one too. It seemed to us typical of UT-B's incompetent handling of the layoff that they had failed to check the box that indicated that pay in lieu of notice had been given to the employee. Without the box being checked, we layoffees could legally begin collecting our unemployment compensation right away. But although some people had taken this issue up with the State unemployment people, the State insisted that they were taking UT-B's word that pay in lieu of notice had been given. Some layoffees had to pay back the unemployment they had received due to their local State agency's belated failure to realize what the official State line was. I did not attempt to collect unemployment before time because after all I had received pay in lieu of notice. But it was very bothersome that UT-B was forgiven its errors even though one would have thought that the notice was a legal document that constituted UT-B's official statement to the State about each individual's status. It was some time before any of us layoffees obtained a copy of any letter from UT-B to the State about the error, so one can assume that UT-B's initial assurances were entirely informal, possibly even only oral.

In about July 2003, out of the blue, I got a revised copy of my notice. It was dated late November 2002 -- more than six months before. I was worried when I saw it. It indicated that I had been laid off in late November of 2002 (i.e., as of my settlement date), not 2000, and thus implied that I had been employed and paid over the those two years. I called the State unemployment people about it. Only one of them seemed to know what the implications were: he said that I might have to pay back my unemployment, because in my settlement part of the money was termed "back pay", but that I should see a lawyer to find out for sure. I pointed out to him that the notice was apparently backdated, since I was just now receiving it, and it said on the notice that the law required that it be given to the employee within 24 hours of the separation. But he was evasive, saying that the State "didn't really enforce that".

I tried to call and E-mail Held about this, especially since in the settlement the term "back pay" was used; tax lawyer or not, she should have been aware of this potential side effect when we made the settlement

agreement. But she put me off. She was too busy to handle this, she wrote me by E-mail. She told me that I could talk to another lawyer who was apparently working part-time with her firm, or to any other lawyer. I thought that dealing with this was squarely her responsibility, as fallout from the settlement. If I had to pay back the unemployment -- a question that had not been brought up at any time by Held or in the settlement meeting by the UT-B or DOE lawyers -- then I would suffer a further financial hit. If I paid back the unemployment money, then UT-B would get back some or all of the money it had paid to the State unemployment fund on my behalf -- so it would be a windfall for them. Realizing that on this, Held had blown me off again, I asked another lawyer about this, one I had met with before on behalf of another layoffee. He said that this was a subtle issue. He thought probably I had nothing to worry about: if UT-B didn't ask the State for its money back, he said, the State would have no reason to ask me to pay them back. He thought that UT-B's motive in sending me the notice was to cover their ass in the paperwork sense. He had to cut short our talk because he had someone arriving for an appointment. So he said he would call me back. But he never did, even though I had told him that I was willing to go to his office and pay him for his time. I decided that I would wait and see if the State asked me for the money back. If they did, then I would find a lawyer to deal with it (sigh) and I would also talk to DOE. To date, I have not heard anything from the State. So maybe my friend's lawyer was right that this was a non-issue.

My New Job

As I mentioned above, I finally got a regular professional health physics job. About a year earlier, I had been called by someone I knew who had formerly worked at ORNL, but had moved to the Northeast. She told me that the firm she worked for, MJW Corporation, was partnering with two other firms to bid on the EEOICPA dose reconstruction project (see below). She wanted to put my name on the bid as one of those who would or could be doing the work if they got the contract. My name had been put on various contracts during my periods of unemployment and nothing had ever come of it -- if the companies using my name got the contract, I never found out about it and I certainly was never hired as a result. This is because, as I noted earlier, if a company uses your name, it is understood that this is not a guarantee of employment and they can end up using someone whose qualifications are equivalent to yours (or even less than yours), for the purposes of the contract. This is a real bait-and-switch game for some companies, I would guess, because once they are awarded the contract, they can get cheaper people or their friends or relatives, instead of the people they had proposed to use. I didn't think that this woman was like that or that any company she worked for would do that. So I said okay. However, I reminded her about my whistleblower status and said that the company should be aware of that -- I wouldn't want the project to be pulled down by my presence. She said that "we" (she and her management) had already talked about that and had thought that that would be an asset rather than a liability: it gave me credibility as a person who was interested in safety and was not a "company man". I thought it was significant that they had actually discussed this, as it implied that in other circumstances it might count against me in hiring.

EEOICPA is the Energy Employees Occupational Illness Compensation Program Act (2000), passed by Congress in response to claims that people who worked on the atomic bomb and atomic energy projects for the government or its contractors had not been adequately protected from the hazards and should be compensated if they got cancer or other illnesses. The government entities involved were the Manhattan Engineer District (the Manhattan Project manager); its successor, the Atomic Energy Commission (AEC); AEC's successor, the Energy Resources Development Administration (ERDA); and ERDA's successor, DOE. The act set up a program under which the Department of Labor and the Department of Health and Human Services figured out who should be compensated, based mostly on information from DOE and governmental archives. It seemed overly complicated to me to involve so many agencies, but Congress did not want to entrust DOE with administering the program (how sensible of them). The National Institutes of Occupational Safety and Health (NIOSH) was the entity within HHS that had the primary responsibility for administering and overseeing the program.

Right before the settlement meeting with UT-B and DOE -- and the day after I sent in my resume to apply to ORAU to be hired for the project -- my MJW contact got in touch with me. I was offered a job and they Fed-Ex'd me an offer letter. I thought the timing was a pretty big coincidence, but even so, I wasn't going to say so to anybody. It seemed too paranoid, as if I thought that DOE's and UT-B's need to have the problem of me go away was lurking behind every tree. However, when my husband -- the least paranoid person you can imagine -- said it seemed suspicious to him, I had to look at it more closely. Also, it seemed odd that I hadn't heard from ORAU about the position I had applied for with them, when ORAU supposedly needed a lot of qualified people and here I was, right in Oak Ridge. (I preferred to work for ORAU because they were headquartered in Oak Ridge, where I live, and not to work at home for an out-of-town company.) On 17 November 2002, in the midst of pondering the settlement agreement, I pointed out this coincidence to Held. I noted that the offer letter contained no description of my duties or working arrangement, who my supervisor would be, to whom I would give my acceptance or rejection, by when I had to reply, etc., etc. The usual benefits plan brochures were not included either. The MJW person that I was told to speak with about this said I had to talk with a manager who wouldn't be in for two days. I naturally wondered if the offer from MJW had been ginned up hastily to give me an incentive to settle (e.g., I might be more inclined to settle or to hold out for less settlement money if I had a new job lined up). Or, I wondered, might it have been to forestall ORAU's having to consider me for the job I applied for? ORAU was also partnering with UT-B in the university consortium part of the ORNL-associated work and thus ORAU might not want to hire me on those grounds.

When I finally go to speak with the MJW manager (after the settlement negotiations), I asked if MJW had received any request from outside MJW to hire me. He said no. I stated that I had to be sure I was being hired for myself, for my qualifications and expertise. He said I could speak with the ORAU manager of the project. I had been acquainted with this ORAU manager for years and liked him, so I communicated by E-mail with him. He first said that he wasn't aware that I had applied to ORAU, then said that "we" (ORAU) regarded me as "MJW's asset". This implied that the three partners had agreed that they were not going to poach on each other's signees. But I was not obligated yet to work for MJW and I had certainly been free to apply to ORAU when I had sent in my resume. So I was disgusted to see that, unbeknownst to me, they had agreed among themselves that I "belonged" to MJW. The project manager did not say so, but I feared that if I didn't take the MJW job, ORAU still wouldn't hire me. ORAU is a longtime Oak Ridge entity that has deep, deep DOE roots and has close connections with ORNL. This made me think that possibly they, like everybody else in town, would not hire me if I were the last CHP on earth.

So I took the job with MJW. I started in early December 2002 and as of this writing (February 2006), I still work for them on the project. As the technical reader can appreciate, the dose reconstruction project, while a worthy effort, is entirely a retrospective health physics exercise. It is not in my primary area -- operational health physics -- and is mostly oriented toward dosimetry calculations. Beyond that, I don't have an office to go to; I work out of my home. Some people think that is wonderful, but I don't -- I am technically isolated and socially lonely. I enjoy no secretarial, janitorial, or other onsite support; my computer support is far away in Cincinnati (my husband is my unpaid network consultant); and my managers are in New York State and New Hampshire. There is nobody for me to talk to at the water fountain -- I haven't got one -- and nobody to go to lunch with. I access almost all documents via computer in pdf format and I spend all day, every day, at the computer. (I say, only half-jokingly, that God did not mean for man to spend eight hours a day at a computer.) I started at the same salary as I ended up with at ORNL (i.e., the same salary as I had been earning two years earlier). I pay for my own furniture, electricity, heat, and water. Until they sent me another computer and printer, I used my own computer and printer. I had to buy a new desk for the new computer setup -- at my own expense.

I say this not so much to complain (although it's satisfying to vent), but to illustrate how becoming a whistleblower has made me the kind of pariah that has to live in the occupational equivalent of a leper colony. It's not the project itself: there are many technically interesting features of the work and the

historical aspects were a revelation to me. But again, it is not operational health physics and it does not affect the health and safety of any current, living worker in real time -- I call it archaeological health physics. Thus I have been sidelined into an area where I have no influence on the true rad protection of anybody. I work very hard (my husband thinks too hard), but although my title is senior health physicist, I feel that because of my lack of dosimetry experience relative to many others on the project, I am a junior person. So at age 55, I am back at the bottom of the mountain, professionally speaking. Only time will tell if I can climb back up. (Or I guess I could go into teaching....)

Another Job Interview

In 2003, I interviewed with a company -- call it the Forelock Company -- that had recently won multiple contracts with Bechtel Jacobs, around the time that Bechtel Jacobs signed a new contract with DOE. I wanted to get back to operational health physics and here, it seemed, was my chance. Forelock needed a certified health physicist to write work and safety documents and later on to oversee the rad aspects of the actual work. But Bechtel Jacobs had had to agree to do the work for far less than many experienced observers thought was reasonable or even possible (as I will discuss later). In the interview, I asked two Forelock managers if they thought that Bechtel Jacobs would be expecting them, as subcontractors, to cut corners and to do things on the cheap. The more senior manager pooh-pooed this, saying that Bechtel Jacobs "had no reason" not to work safely or foster safety in its subcontractors. I had heard that phrase "have no reason not to" too often to take it seriously; in fact, use of this phrase usually indicated the opposite. So I took it with a grain of salt.

In the middle of the interview, in the course of discussing approaches to safety, I mentioned that I had been laid off from ORNL and why. I debated whether to mention it: on the one hand, it might prejudice the interviewer against me or might make him think I was weirdly candid, but on the other hand, he might well be aware of it already and it would thus be wise to show that I was not hiding anything and that I believed in candor in safety matters. Besides that, until such time as I would receive my "good employee" letter from UT-B, I thought it best to mention the matter to any interviewer, so that if they did hire me they would be aware of any potential difficulties with UT-B's hiring them. The interviewer acknowledged my statement about being a whistleblower, but we did not discuss the matter and he did not seem discomfited. In fact, several statements he subsequently made seemed to be designed to allay any fears I might have as to his company's attitude toward safety.

However, later events indicated that even if it didn't bother him, it seemed to bother someone at Forelock. There was an industrial hygiene person among Forelock's employees, but apparently no health physics person, which is why they were interviewing for one. The main interviewer suggested near the beginning of the interview that I might like to speak with this industrial hygiene person in person about the work, since her position was the most nearly analogous to the one I was interviewing for. Near the end of the interview, I asked about speaking with her, but he said that she was out in the field all day; he would call me on the following Monday and arrange for me to speak with her. When he didn't call me, I called him. He was vague and evasive about my speaking with the industrial hygiene person; he said she was out in the field again, although he supposed she might call me on the phone. A day or two later, he told me that they had "decided to go in a different direction" than hiring their own CHP. He said that the company managers had thought that the industrial hygienist, who was also their safety officer, could sign the safety analysis documents as the official preparer, but this turned out not to be the case: Bechtel Jacobs, who was letting the contract, required that the safety document preparer have a 40-hour safety analysis document preparer course, which the industrial hygienist had not had. This course, he said, would not be given again for about three months, and meanwhile the Forelock Company needed somebody right away to sign the documents. So they had decided to hire a trained consultant to prepare the documents.

This seemed suspicious to me. As an informant who knew the consultant confirmed, the consultant was the ex-spouse of someone who worked for Bechtel Jacobs. The consultant had a full-time job at another

company, but would apparently be doing the consulting work as part of a personal business. I wondered if the consultant's employer (who might be in competition with the Forelock Company for some of the Bechtel Jacobs work) knew about this gig. I didn't say anything about this to the interviewer when he told me they were hiring a consultant, but I did point out that I had had safety analysis training and review experience at ORNL and that I had had a lot of safety analysis calculation and documentation experience prior to my ORNL work. Hence, I said, I might well be considered qualified by Bechtel Jacobs to do the work. He seemed uncomfortable at hearing this -- my impression was that he or someone had come up with this perfect excuse not to hire me, and here I was undercutting the excuse. Realizing this and recognizing that it was hopeless, I tried to wind up the conversation gracefully and we said goodbye.

Meetings with the Press

A few weeks after the layoff, I called up the local newspaper, The Oak Ridger, and offered to give an interview, with the subject being the point of view of the layoffee. Another layoffee subsequently also gave an interview. We pointed out how the very short notice departed from the past practice of DOE operations in the Oak Ridge area and how we felt brushed off. I expressed optimism about finding a new job (misplaced, as it turned out). The interview article, by Paul Parson, ran on 28 December 2000.

I also asked for and got an interview with Frank Munger, the Knoxville News-Sentinel reporter who specialized in DOE affairs and whose office was in Oak Ridge. This interview took about an hour and a half because it kept being interrupted by people calling Munger. Munger was polite and asked some questions, but he did not seem very interested in what I had to say and he said that he would probably cover my case in his twice-weekly column and not as a separate article. However, he did not print anything about it after all. I was not surprised, since I often thought that he took a patty cake approach to DOE contractors and especially to ORNL (as I will discuss later).

On 24 January 2002, The Oak Ridger published a short article by Parson about my losing my case. UT-B had no comment on their win. As I recall, there was nothing in the Knoxville News-Sentinel. Then after I had won my appeal, The Oak Ridger and the Knoxville News-Sentinel published articles about it (on 17 May 2002 by Parson and on 18 May 2002 by Munger, respectively). Several of my friends noted what they perceived to be the grudging nature of the News-Sentinel article. There was again no comment from UT-B. Thanks to my lawyer, Held, who arranged for a reporter to interview me, there was also an article about my struggle and my win in Metropulse, Knoxville's alternative weekly newspaper. One notable quote from me: "I have said that UT-Battelle was reckless and they seem to be rather ruthless". They also quoted Held regarding customer service: "Held likens it to saying a driver who gets pulled over for speeding is a "customer" of the Tennessee Highway Patrol".

I sent the Knoxville News-Sentinel a letter to the editor, which was published on 16 July 2002. I thanked them for their article about my win. But, I said, I wanted to point out the lesson of the Enron and Coster Shop cases, as similar to the DOE case, as follows. The Enron case is, of course, well known: the SEC did itself not check up thoroughly on the financial activities of Enron and like companies, but allowed them to hire outside auditors to do the checks, on the grounds that these auditors were independent of the companies. That worked until the auditing firms began to soften and shape their audits in return for more profitable consulting contracts from the auditee companies. SEC was likely aware of what was going on, but did nothing until the big companies started crashing down. The Coster Shop case was a Knoxville-area scandal: the Tennessee Department of Environment and Conservation (TDEC) approved a disposal plan for the former Coster Shop, where there was a lot of soil with (non-radioactive) contaminants in it. However, by law TDEC did not have the authority to supervise the execution of the plan or to check up on the results until and unless problems developed and a complaint or report was received. Thus the Coster Shop soil was dumped illegally by a subcontractor into sinkholes on the property of some people out in the county, with apparent pollution of soil, wells, etc., without TDEC's knowledge. Subsequently, there was a fight over who was to pay for the cleanup of the county sites and so forth.

In my letter, I said that the lesson from these cases, applicable to DOE as well, was that where there is risk involved in an activity, be it financial or industrial or research, there needs to be strong independent oversight. If the government does not provide that directly, then a strong, independent group within the company or hired by the company needs to provide oversight. As my case showed, DOE did not perform adequate oversight of ORNL activities and the contractor operations people were allowed to control the safety organization, leading to the operations people's essentially deciding for themselves on safety standards and practices for themselves. So both DOE and the internal safety entity were weak. I predicted that this would not change at ORNL until some major incident happened.

There was an even closer resemblance between the Coster Shop case and the ORNL case than I realized. In followup articles, the Knoxville News-Sentinel (6 and 7 June 2005) said that legal documents related to the various lawsuits that had been filed showed that under oath, none of the principals involved took any responsibility for dumping the 800+ loads of debris and contaminated soil into the sinkhole. The city had hired an engineering firm for the engineering and a demolition firm for the demolition; the engineering firm had hired another company to provide worker safety and environmental protection coverage. An official of the demolition company said that his firm had no experience in handling contaminated industrial materials and had never had a job as big as the Coster Shop work. Further, they were given only 80 days to take down the building, dig up the foundation, and haul everything away -- a schedule that the city and the contractors all agreed was tough to meet. But still, the demolition company would have to pay a stiff penalty for every day it went over the schedule. As they dug the soil, they encountered gummy areas and even large liquid pockets of oil and diesel fuel. TDEC had originally wanted the concrete waste to be handled as "special waste", which would have required a special permit and cost \$2 million more in fees. So naturally the city and the contract companies wanted to handle it as regular debris so as to be able to dump it anywhere without regulation. The Tennessee Department of Environment and Conservation (TDEC) said they could treat the concrete foundations as regular debris as long as they got nearly all the (oily) dirt off first. It was documented that the demolition company offered to pulverize the concrete, mix it with the soil, and bury it on the site as fill; however, the "responsible" city official claimed never to have seen the proposal, while the Knox County Development Corporation (KCDC, a quasi-governmental agency) rep claimed that KCDC couldn't have done it without the city's approval but he couldn't remember if he had told the city official or not. An ES&H company manager said they had told TDEC about the pulverize-mix-bury proposal, saying that TDEC "made the decision for them", while TDEC denied having ever heard the proposal or directed the choice of what to do with the dirt.

The demolition company thus ended up breaking the foundation into pieces, drying it out, knocking off most of the dirt, and hauling the piles away to the sinkhole. A representative of the ES&H company came by to inspect the drying piles and the demolition company said that it was she who told them when to break up or load material. But her boss swore that she did not and could not inspect every load as it left the site. He also said that the ES&H company did not have stop-work authority and they addressed environmental issues on an as-needed basis. While the city was supposed to monitor the project, no city personnel were assigned to do so. The executive director of KCDC was supposed to "handle" the project, according to the director of the (city of) Knoxville development entity, but a KCDC rep said that this agency was not hired to act as the general contract manager but was merely to act in an advisory capacity -- it was the City of Knoxville that was supposed to oversee the project. This representative also said that it appeared that each of the contract companies was responsible for doing its own work correctly and safely. Etc., etc. In terms of the safety management of this project, the Keystone Kops come to mind.

Communicating with My Congressman

In support of my support group and my case, on 21 March 2001 I sent a letter to my representative to the US Congress, Zach Wamp. He had been in office for some years, but I had never had occasion to write him before to ask for his help on a personal matter. I described the circumstances of my layoff and asked

him to look into it. By letter dated 20 April 2001, he (or rather his staff) sent me back a form to fill out. I thought that that was insulting, since I believed that I had given all that information in my letter and their sending me their form (after a month) just used up more time. Besides that, other layoffees had already gotten in touch with him, asking him to look into the matter, so his staff certainly knew about this already. I did not send in the form.

On 22 February 2001, our support group sent Wamp a letter about our layoff. Like DOE, in due time he simply passed along to us UT-B's response to him. On 25 May 2001, we sent him a rebuttal letter. This letter stressed the financial fishiness, the lack of knowledge by even direct supervisors regarding who was to be terminated, etc. Wamp's reply, on 12 June 2001, stated that he had read our letter carefully, but that our request that he "order an investigation into personnel matters" would not be "helpful" because the response by ORNL was "well documented". He went on to say, "I have great confidence in Dr. Bill Madia's leadership and would not do anything to undermine the future of the lab. I appreciate your service to ORNL and the community, but a leader with the expertise and knowledge of Dr. Madia should not be subject to second-guessing about how best to ensure the solid future of ORNL". He said any further action by his office in this matter would not be "appropriate". It was startling to see how Wamp made this "all about Bill", as if our criticisms were directed at Madia personally and not at UT-B or ORNL management. (See the next chapter for more on the Wamp-Madia nexus.)

While my appeal was pending, I sent Wamp another letter. I didn't ask him to intervene in my behalf, didn't ask him to appeal to DOE, or anything like that. All I asked him to do was to tell DOE that he would be interested in seeing the outcome of my case, that is, to let them know he was taking an interest, without weighing in on one side or the other. Since this did not represent any conflict of interest for him, I thought that he should be willing to do that. On 2 April 2002, he sent me a letter, saying that he would speak to DOE and let them know of his interest, which he did by letter to DOE-ORO on 1 April 2002. After I won my appeal, he sent me a letter dated 20 May 2002 in which he said that DOE had responded to the request he made on my behalf and he was pleased to let me know that "the outcome was positive". He attached a letter dated 17 May 2002 from DOE, in which DOE summarized their actions and stated that I had won my appeal. I assume that he wasn't taking credit for influencing my win, but it seemed odd that he acted as though he were announcing the win, which his staff must have known about already (it had already been announced in the area newspapers). Because of Wamp's evident aversion to providing ordinary citizens any actual assistance in DOE matters, I decided not to ask for his help any more.

Efforts To Focus DOE's Attention on the Blacklisting Problem; Trying To Get My "Good Worker" Letter

In March 2003 (over two years after the layoff), I again visited Rufus Smith, head of DOE-ORO's Office of Employee Concerns and Diversity Programs, to talk about the difficulties I and my fellow layoffees had been encountering in finding new jobs. I described some of the things that had happened to us that were clearly discriminatory. For example, I told him about the various signs of blacklisting that we had encountered. I also told Smith that the "3161" preference was widely ignored. I pointed out that if the 3161 preference meant anything, it ought at least to get a person an interview for a job for which he was qualified, but most often that had not happened. I also told him about my own efforts to find a job. I offered to give him a list showing all the places I had applied to; whether there was a posted (advertised) position or not when I applied; and whether I had gotten an interview. I suggested that DOE ought to look into this issue because if blacklisting were indeed going on, that suggested that DOE did not adequately protect whistleblowers (as in my case) or people who were older (as with most of the layoffees). I pointed out that I still had not received the "good worker" letter that UT-B had promised me as part of the settlement agreement.

Smith seemed interested in the problem. He told me that he had been backed off of some of these issues by DOE's legal counsel, one of whom essentially told him "Don't call us, we'll call you -- if we think we need you". He had obviously been stung by this attitude because discrimination was one of his main

programmatic areas to address and he should have been involved. The similarity between the legal person's statement to him and the line managers' statements to me and AEG when I was at ORNL did not escape me. I suggested to Smith that DOE might, for not too much cash, fund a study of this problem, perhaps by some enterprising University of Tennessee graduate student. He seemed interested in the idea, noting that the most likely student major of interest would be public policy.

In June 2003 I sent him the list I had promised. I was surprised myself by the number of entries -- I hadn't realized that I had put in so many applications to so many places, to many of them repeatedly as they advertised open positions. Some weeks later Smith sent me a letter of reply. He stated that he could not do anything because of "pending litigation". I was nonplussed. My case was over. Did he mean that because other layoffees were suing UT-B, DOE could not perform a general investigation of all the layoffees' situation or of my individual situation? But when I looked at the two attachments, a possible meaning was clear. One of them was the "good worker" letter required by my settlement agreement, specifically a letter from the head of UT-B Human Resources, stating what it was supposed to say; it had obviously been faxed from ORNL to DOE-ORO headquarters. The second attachment was a form intended as a petition to DOE to put my case aside because we had settled; this too was called for by the settlement, but only UT-B had signed -- there was a signature line for my attorney, but she had not signed it, and there was no signature line for me. The letter was dated 6 January 2003 and the petition and cover letter to Held were dated 30 January 2003. By implication, UT-B had sent them to Held on about the latter date.

So now I was stunned again, but in another way. I had never seen the letter or the petition and in fact, as the reader will recall, all my nudges to my lawyer had not produced the letter for me. I began to call Held -- I was not going to E-mail her and give her an opportunity to put me off with some airy denial of knowledge or responsibility. The first two calls were recorded on her office answering machine and nobody called me back. I called and left a message a third time, but I decided that if I didn't hear from Held by the following Tuesday, I would send her a letter dismissing her as my lawyer and then approach UT-B myself about getting the documents. I would tell UT-B that I would sign the petition and send it back to them. I drafted the letter to Held and had it waiting to go.

But on the Tuesday, one of her office people finally called me back. This person was very testy with me from the start, as though she was irritated at my taking up the office's valuable time with my trivial issue. I think Held was in the room, telling her what to say, because of the several pauses between my saying something and the person's answering me. I was told that Held had never received "the documents", even though it seemed to me that I had not yet explained what they were. I pointed out that the documents had been dated late January 2003 and presumably had been sent to Held about then. The person said that she would check with Held. I stated that I needed a "clean" original copy of the letter, not one with fax markings on it such as had appeared on the copy that came with Smith's letter to me.

Held's office did not call me back, so I called a fourth time. Eventually one of the office people confirmed that "the staff" would be handling the matter and said that my file had been "archived". It was too much trouble to dig it out again, this person explained, so they would request that UT-B resend the documents. I asked if Held had ever received the documents and the person sidestepped a direct answer by telling me that they had previously been sent to me from Held's office. That was of course a baldfaced lie. I told the person pointedly that I had never received them. I asked if they had been sent Registered Mail or Receipt Requested, as all other important documents that Held had ever sent me had been. The person thought this over (again, I thought that Held was probably telling her what to say) and replied evasively, "Not necessarily". She also said that Held had told Guilford to sign the dismissal petition for her -- "it's done all the time". Although I did not say so to this person, I was outraged. I thought that for as much money as Held had received for my case, she could at least handle the followup actions; in fact, it was her legal duty to do so, I believe. If she had screwed up by being too busy to handle the documents when she had received them and subsequently misplacing them, she should own up to it. Making UT-B take the trouble

to resend the documents because she was inefficient was embarrassing to me. Beyond that, why would she trust Guilford to sign the petition for her? Only lawyers think other lawyers are honorable enough not to change anything in a document before signing for someone else. I would never have countenanced that if I had known. But of course, due to Held's failure to tell me about it, I hadn't.

Some weeks later, I called Held's office to ask how the request to UT-B was going. As usual, I had to leave a message on the answering machine even though it was during business hours. A very nice new member of Held's staff (odd that it seemed to be a different person every time) called me up to say that he had called UT-B's legal office "15 or 20 times" to request new copies of the documents. He was always told that the lawyer (presumably Guilford) was out or in a meeting. But he would try again. I explained to him again that I needed a nice clean copy. He called me back a few days later to say that the documents had been sent by UT-B to Held's office and he would send them to me. Sure enough, they arrived two days later in the mail (but not registered or otherwise specially handled). Unfortunately, one of them was the settlement agreement, not the petition. And the letter, while it clearly had the same content as the faxed version, was crooked on the page and was evidently copied on a scanner-copier -- the quality was terrible, especially for a formal letter. It looked like a fake.

When I pointed these two problems out to Held's staffer, he apologized. He told me that the two documents were not in my file, which they had apparently dug out of wherever archive they had been in. I found that interesting, because it meant that UT-B might not have sent it to Held previously after all. The staffer had gotten only the poor-quality letter from UT-B and had thought that the settlement agreement must be the other document I had asked for, i.e., the petition. He said that he would re-request the documents. Eventually, in November 2003 -- a year after the settlement had been signed -- the nice staffer succeeded in getting me a clean copy of the letter. But, he said, the petition had been signed by both lawyers some time ago and had been sent to DOE -- which had been sitting on it ever since. Eventually he called me back and told me that DOE had told the two lawyers that there was no formal dismissal document: DOE's last word on the subject was the Secretarial appeal opinion written by Breznay of OHA.

I was happy that it was all over at last -- three years after I had been laid off and a year after I had signed the settlement agreement. But although DOE's last word was that I had won, it seemed peculiar that the fact that UT-B and I had settled was not indicated in DOE OHA's Web information.

Some Safety Events Around the Oak Ridge Reservation

In this section, I will have to reach back in time to discuss safety events prior to the nominal time period covered in this chapter in order to describe the newer events in their context.

Back in about 1995, DOE put the Y-12 plant on an extended "stand-down", or suspension of normal activities, while the plant's procedures were overhauled and all employees were retrained. I believe this was in response to a Y-12 manager's blowing off a DNFSB inspector who was trying to talk with him as part of a normal audit process. As of 2000, Y-12 was still in stand-down, although many work activities were taking place. As *The Oak Ridger* (25 February 2000) noted, there had been a chemical explosion at the Y-12 Plant in December 1999 that injured three workers, one seriously. There had been a Type A investigation, following which DOE-Washington had issued a report highly critical of Y-12 management (Lockheed Martin at the time) and the local DOE office. The accident was judged to be quite preventable, with violations including lack of supervision, failure to wear necessary protective clothing, failure to consult safety documents relating the connection between the "NaK" material and the mineral oil used, and ignoring documentation from previous accidents that was applicable to this one. Lockheed Martin promised to reform; DOE promised to be more visible at the plant; and "continuous training" was to be instituted. The head DOE investigator observed, according to *The Oak Ridger*, that changing a safety culture that had been in place for a long time could require a long time and lots of persistence. Still, one

would have thought that after five years, an accident like this, with so many administrative and procedural failures contributing to it, would not have occurred if change was really taking place.

To judge from an Oak Ridger article of 12 October 2000, one would think that Bechtel Jacobs and UT-B - self-proclaimed heavy hitters in ESH&Q who were "serious about safety" -- were talking the talk but not walking the walk. On 22 August 2000, a man who was working for Bechtel Jacobs on a cleanup project "conducted by" UT-B at Portsmouth, Ohio, was seriously burned and had to be airlifted to a burn center; a second man was treated on site. Details were sketchy, but it seems that a steam bubble was ejected from a chemical reaction in a 5-gallon bucket. A DOE investigation report criticized UT-B and Bechtel Jacobs for "deficiencies in numerous aspects of safety management and emergency preparedness" on the project, including a delayed emergency response and a 911 call that said the accident had occurred at Paducah (Kentucky), not Portsmouth. UT-B, of course, defended the safety of the operation.

The Oak Ridger (23 March 2001) reported that BNFL Inc (the Oak Ridge subsidiary of British Nuclear Fuels Ltd.) had been given a \$41,000 civil penalty (fine) by DOE in connection with a 4 April 2000 fire at a BNFL work site at K-25. According to DOE, the fire caused the release of highly enriched uranium fuel (I assume as airborne) from some metal tubes that had been used in the gaseous diffusion process some time between 1954 and 1987. The problem was that, as a DOE press release noted, the firefighters were not given the information about the uranium hazard at the time they were fighting the fire. BNFL disputed that any uranium was released and cited its own approach to work safety as the principal reason why no injuries, personnel uptake, or environmental contamination occurred. (See the next chapter for remarks about the independent review of BNFL's safety management practices mentioned in the article.)

In December 2001, there was an incident at the ORNL accelerator (HRIBF, the Holifield Radioactive Ion Beam Facility) in which five workers were exposed to X rays during startup testing of an electron cyclotron resonance source for a physics experiment (Knoxville News-Sentinel and The Oak Ridger, both 10 January 2002). This was not discovered until later (it was not explained how). The Oak Ridger noted that there were three separate test runs involved -- thus three separate incidents from the point of view of opportunity to detect the radiation -- and that the exposees were "a graduate student, a technician, a senior task leader, and two other staff members". An investigation report released in 2002 (Knoxville News-Sentinel, 6 February 2002) attributed the incident to inadequate management oversight and control of the project; the experimenters hadn't thought that significant radiation would be generated during low-power testing. More to the point, the investigators found that the Physics Division had slighted safety in its pursuit of excellence in science. The final maximum dose was said to be only 35 mrem (early on, it was thought that an individual might have received as much as 300 mrem, still not a huge amount). However, because the dose had been received in an unanticipated manner, the event was considered of concern.

In late June and early July 2002, several parking lots at ORNL had had to be closed because of what was called "an isolated low-level radioactive contamination" with strontium-90 (Knoxville News-Sentinel, 2 July 2002). Access to certain buildings was also restricted for a time. ORNL officials gave an estimate of the highest dose that any person could have received as "equivalent to a week's background exposure" and they emphasized that there was no danger to personnel outside the restricted area. The Oak Ridger (2 July 2002) pointed out that this incident occurred "just days after" the General Accounting Office released a report stating that DOE failed to meet a deadline to tell Congress how it planned to alter its practice of self-regulating the ten national laboratories. Two weeks later, officials claimed still not to be able to determine where the contamination had come from (The Oak Ridger, 18 July 2002). Bechtel Jacobs, which The Oak Ridger said was asked by ORNL and DOE to head an investigation because some ORNL facilities managed by Bechtel Jacobs as part of the "Environmental Management Program" contained strontium, said that the contamination was in the form of particles over an area of 5 to 8 acres. The Oak Ridger (10 December 2002) reported that Bechtel Jacobs officials estimated the release as less than 2 millicuries and that the release was due to a HEPA filter change performed by Duratek, a Bechtel Jacobs

subcontractor, on the roof of Building 3038 on 26-27 June 2002. One root cause finding of the investigation was that "extreme" levels of ductwork contamination were not evaluated in the facility safety documents and "historic" hazard screening was inadequate; another was that "appropriately qualified" personnel were not involved in the planning and review of the work.

The Oak Ridger (11 July 2002) said that BNFL had just finished briefing employees after a 1 July 2002 accident (the inadvertent dropping of a load of wall panels about ten feet) that resulted in a one-week work stoppage. Well, the BNFL people called it a "safety pause" -- what with this accident occurring right after a 27 June 2002 fire at Building K-33 and with the July Fourth weekend coming up, BNFL decided that it was best not to continue work until the festing was over. Nearly 400 workers were thus sent home from 1 July through 4 July -- without pay. During that time, BNFL managers devised an "extensive" safety briefing to get the workers back on track; we can believe the "extensive" part because the safety briefings took two days. The Oak Ridger (21 February 2003) reported that BNFL had been fined a total of \$124,000 under P-AAA for the 25 July 2001 and the 27 June 2002 tube bundle fires. A DOE P-AAA enforcement official stated that "of particular concern is the repetitive nature of the types of nuclear safety compliance violations seen in the three tube bundle fires that have occurred over the last 2.5 years"; he also said that the violations involved weaknesses in BNFL's work planning documentation, adherence to the requirements arising from the work planning during performance of work, and proper use of personnel protective equipment. Finally, he noted that BNFL had plenty of opportunity over the 2.5 years to correct the known deficiencies, either through internal assessment or external oversight, but had not. A BNFL spokesman said that nobody was harmed, that there was little equipment damage, etc., which "speaks well of our safety program". But this statement was undercut by his adding that disassembly operations in the converter area (the area of the June 2002 fire) had been "voluntarily" shut down since the June 2002 incident and had been restarted only in early February 2003. The local DOE office had no comment.

The Oak Ridger (28 January 2003) reported that Bechtel Jacobs had suspended all rail shipments due to DOE's ordering a "Type B Equivalent" investigation of Bechtel Jacobs' management and procedures. This resulted from a 21 January 2003 incident in which rail shipments of sludge generated by the West End Treatment Facility at Y-12 were sent from the K-25 site to the privately owned but federally regulated Envirocare waste treatment site in Utah. It seems that a Bechtel Jacobs subcontractor that was performing the work of blocking and bracing the sludge boxes prior to shipment reported on 21 January that some of the boxes in one shipment had shifted and some waste had leaked. A Bechtel Jacobs spokesman said that because there was only a small amount of leakage and none of it leaked from the railcar, Bechtel Jacobs did not consider that there was a threat to human health or the environment; besides, there had been 14 previous shipments without incident. Envirocare reported to Bechtel Jacobs that the leakage amounted to 200-500 grams; The Oak Ridger helpfully noted that 1 gram = 0.035 ounce, but gave no details of volume, density, or percent liquid. The leaking box and five others were too damaged to be used again.

The Oak Ridger (31 March 2003) reported that the HFIR reactor was back up after a shutdown due to a "wiring error" in the control systems that caused power to lag. The ORNL associate director in charge of the Research Reactors Division, Jim Roberto, claimed that the problem did not affect safety and the impact to research was minimal. The rest of the article touted all the new capabilities being installed at HFIR. An earlier article (17 March 2003) quoted Roberto as saying that the wiring of one of the control motors was "inadvertently reversed" during routine maintenance. I heard from a very reliable source that the installation was reversed in all three redundant control systems (which some power plant readers may find eye-opening). Again, the rest of the earlier article dealt with the wonderfulness of all the new stuff RRD was putting in at HFIR.

The Oak Ridger (9 September 2003) reported that four air monitor alarms in Building 3047 went off when "a variance in ventilation" (whatever that means) was triggered when a door to a hot cell was "operated" (opened?). (The Oak Ridger just quoted what ORNL told them, of course.) Twenty-five

employees were evacuated "as a precautionary measure"; seven had a whole-body count. The Oak Ridger (20 November 2003) reported that ORNL "continues to be viewed by many within the Department of Energy as a facility that does not have an acceptable level of safety in the workplace" and that as a result ORNL had been issued a \$151,000 fine, presumably under P-AAA, for violations at the HFIR reactor and other facilities. Actually, it was UT-B that had been issued the fine. ORNL director Jeff Wadsworth (Madia's successor) said that the DOE Office of Science director and his staff were nevertheless "pleased with the progress that ORNL had made on a number of fronts, including the lab's scientific agenda and modernization efforts as well as the extent to which UT-B is viewed as a valued member of the community", as The Oak Ridger put it. (See the next chapter for more on modernization and community bonding efforts.) Wadsworth claimed that ORNL's "customers" recognized that ORNL's safety record had improved over the past two years, although he acknowledged that it was below that of at least several other DOE labs.

The Knoxville News-Sentinel (20 November 2003) noted that UT-B and Bechtel Jacobs had been fined, the latter to the tune of \$192,000 for the burn accident at Paducah and other violations. Wadsworth's spin on the UT-B fine was that it "could have been larger had DOE not been confident that we are taking effective actions to address these issues". (This seemed to be true too of Bechtel Jacobs, which shortly before had been awarded a new five-year DOE contract to continue to manage the cleanup program.) Wadsworth said that "employees who place themselves and the success of this laboratory in danger" by violating safety rules would be disciplined or even terminated, "regardless of whether the violations result in injuries" (underlining mine).

Wadsworth kept his word on that. The Oak Ridger (20 February 2004) reported that a technician who had worked in the former Metals and Ceramics Division (M&C) for some 17 years had been fired from ORNL for an event in which he violated safety rules. One of his assigned tasks was to prepare samples for testing. One of the steps was to notch the samples so that they could be told apart. The mechanical saw he usually used was out of commission, so he decided to use another one. He admitted to The Oak Ridger that this second saw was not appropriate for the purpose, but he thought that he could hold the sample still for long enough to make a notch. He did not wear gloves but held the sample with his bare hands, another safety no-no. Unfortunately, the force of the saw dragged the sample and his hand upward and cut seven tendons in his wrist. He was out for an extended period on medical leave. He admitted to The Oak Ridger that he had violated safety rules and he did not say that he had been pressured to get those samples into testing. But as he pointed out, he was the only one hurt and the only one who was endangered at all. He contended that being fired was a punishment that did not fit the "crime" -- that, say, a month off without pay would have been an adequate punishment. He also pointed out that it would be difficult for him to find another job in this area and that since his wife worked at ORNL, they did not want to move. While he was still on leave, he read a memo that Wadsworth had just sent out to all employees in which two instances of safety violations were discussed: the series of HFIR violations that resulted in the DOE fine in 2003 and the technician's accident. Wadsworth said that each individual had the primary responsibility for his own safety and that this was not a "freak accident beyond the employee's control". Although the technician was not mentioned by name in the memo, he guessed that from the way his accident was discussed that he might be fired -- which indeed happened shortly after he returned from medical leave.

The Knoxville News-Sentinel (5 March 2004) reported that the HFIR reactor was back up after a problem developed with one of the four cooling pumps. Since the reactor authorization basis allowed it to operate with three of the four pumps, workers simply re-installed another motor and cooling pump that had been taken out of service earlier. The latter pump and motor were supposed to be sent off to a shop for a complete overhaul, but with the malfunctioning pump and its motor out, that had to be postponed. Or rather, the malfunctioning pump would be sent off instead. Meanwhile, the malfunctioning pump's pony motor was scavenged for use with the functioning pump. I.e., there was no spare pump and motor. (DOE has always forced this reactor, "one of the world's top research reactors", to operate on a shoestring as far

as the bread-and-butter safety equipment goes, while approving the installation of beam upgrades and so forth -- kind of like a gorgeous ball gown worn with ratty underwear and worn-down heels.)

On 8 May 2004, there was a release of sodium hydroxide at the East Tennessee Technology Park (ETTP, i.e., K-25) at a building that had been leased to the Community Reuse Organization of East Tennessee (CROET -- see also next chapter) and subleased to a private company. The private company had a DOE contract under which it obtained title to about 55 tons of sodium "components" for recycling, said by DOE to be an alternative to disposal by DOE's Environmental Management organization. The sodium was contained in aluminum cladding in large aluminum forms up to 11 feet in diameter (I think they were old shields from the Tower Shielding Reactor). Workers were heating the first container to remove the sodium when the cladding ruptured and released about 400 pounds of molten sodium onto the floor of the work cell. Then a door seal failed, allowing some of the sodium to be released to the environment and to form sodium hydroxide, sodium peroxide, and sodium dioxide, which drifted through the air. Due to the uncertainty of the release and the drift, the Tennessee Emergency Management Agency (TEMA) recommended a temporary closure of the Clinch River and Highway 58 and the evacuation of residents within a half-mile radius. The Type B investigation board concluded that, among other deficiencies, there had been "insufficient safety and health oversight of the sublessee's [private company's] operations" and that better lease and contract controls, more rigorous health and safety oversight, and better defined emergency response protocols were needed. Subsequently, the Local Oversight Committee (a representative community group funded by DOE) requested and received a briefing by the leader of a team put together by DOE or the offending private company to evaluate the causes of the accident and to put together a corrective action plan (The Oak Ridger, 11 March 2005). The plan apparently had a lot of administrative measures but few engineering ones, because one committee member remarked at the end of the presentation, "It's important to have procedures in place, but good procedures don't replace knowledge. An administrative plan won't stop a technical failure. How can we be sure this won't happen again?" Replied the team leader, "We're hoping it won't".

On 14 May 2004, there was a release of strontium onto a public highway. A truck left the New Hydrofracture Facility at ORNL, which was being decontaminated and decommissioned by Safety and Ecology Corporation (SEC) under contract to DOE (the Melton Valley cleanup project). The previous month, Portland cement had been poured into an old tank to solidify the 12-18" of liquid that had been discovered in it; the tank was then stored, with inadequate protection from the elements, to await transport to a disposal facility. Liquid was discovered in the tank wrapping while it was being loading for transport, so the truck bed was tilted so as to collect and remove any additional liquid from the tank. Apparently no further checks were done except for a visual inspection. The truck then left the facility carrying the tank. When the truck arrived at the disposal facility, contamination was detected on the truck; soon afterward, contamination was detected on the access road. TEMA closed down portions of Highway 95 for a radiological survey at 4:21 pm, forcing many commuters to detour; subsequently, part of Bear Creek Road was closed. The road was found to be somewhat contaminated in places, suggesting that the liquid had leaked out of the tank, into the truck bed, and off onto the road as the truck drove along. The Type B investigation team concluded that SEC's work control process was not adequate to prepare the tank for safe transport, that SEC did not accurately characterize the tank, and that neither the cleanup managing contractor (Bechtel Jacobs) nor DOE provided adequate oversight of SEC's work control processes. The investigation team's corrective actions were mostly a series of "need to improve" statements.

The Knoxville News-Sentinel (9 September 2004) reported that four months after the Highway 95 spill, the hydrofracture facility cleanup project that the spill was associated with remained in limbo; Bechtel Jacobs was being fined \$250,000 for the spill and other incidents; and SEC had been barred, apparently by Bechtel Jacobs and not DOE, from seeking additional subcontracts in the cleanup program. SEC was also financially responsible for cleaning up and even repaving sections of the radioactive roads; SEC said that it estimated that it would be forking over \$650,000 or more for this, but it had not been asked to pay

"any direct financial penalties". Although Bechtel Jacobs' contract with DOE was "loaded with financial incentives to accelerate cleanup projects", according to the News-Sentinel, the president of Bechtel Jacobs claimed that that had nothing to do with the spill because the spill was part of a previous contract with DOE. Amazingly, he claimed that because the work was already a year behind schedule and Bechtel Jacobs had already missed its performance objectives, there was no reason to hurry. (For more on accelerated cleanup and its associated financial incentives, see the next chapter.) Well, maybe not: almost a year later, the fine was still only a "proposed fine". The final fine was announced in August 2005 (as reported by various sources).

The Oak Ridger (30 September 2004) reported that both SEC and Bechtel Jacobs were faulted for the accident by the investigation report and that DOE-ORO was cited as failing to provide adequate oversight; also, some 40 corrective actions had been proposed by contractors and would be reviewed by DOE-ORO, which would then make recommendations to DOE headquarters. Bechtel Jacobs told DOE that it had committed to doing a detailed assessment of all waste packaging and transportations processing and procedures, it was making changes to its work control processes to document that lessons learned had been reviewed before work began, etc. It was reported (Knoxville News-Sentinel, 8 October 2004; The Oak Ridger, 12 October 2004) that SEC had still not regained its right to bid on new DOE-ORO cleanup work, which it had lost as a result of the road contamination incident, and would therefore no longer be managing the project involved in the incident. But, as The Oak Ridger (20 October 2004) said, SEC would be allowed to do work involving hazardous material removal associated with the demolition of two buildings at Y-12 because the contract had already been let to SEC by BWXT at the time SEC was barred from future work -- i.e., this was not "new" work.

The Oak Ridger (16 June 2004) reported that in June a 2000-lb hoist dropped 12 feet and landed 5 feet away from two workers. No one was badly injured, but it was the third lifting accident at ORNL in the span of a year. There was also a recent event in which a guest researcher left unattended a water container he was filling; it overflowed and the water traveled through two labs and shorted out some electrical equipment. Some shock-sensitive chemicals had been discovered in a drawer in an area that supposedly had had all such materials cleaned out the year before. And (although these were not ORNL events) there was the forklift that turned over into a contaminated creek and the chemical spill that shut down a Roane County road for some time while the spill was cleaned up. No wonder that Frank Munger, in his Knoxville News-Sentinel column of 18 August 2004, reported that the Oak Ridge-area contractors were under the gun to improve their safety records. He mentioned the firing of the ORNL technician by UT-B earlier in the year after the notching accident; he mentioned the rumor that BWXT Y-12 had fired a subcontractor employee for failing to wear two personal radiation detection devices (after the employee, who was performing an inspection and failed to notice the sign requiring the two devices, reported his own transgression).

The Knoxville News-Sentinel (25 September 2004) reported that a carbon dioxide leak had forced the closure of Highway 95 on the Oak Ridge Reservation. It seems that ORNL researchers had a 50-ton tank of CO₂ from which they released a small amount continuously into stands of trees (in order to simulate greenhouse gas emissions for a study of global climate changes) and the tank was found to be leaking carbon dioxide. As the News-Sentinel pointed out, Highway 95 is used continually by ORNL and other reservation workers to get to work; of course it had also been closed during the earlier strontium spill on the road. As ORNL conceded, while not toxic in the poisonous sense, CO₂ is an asphyxiation hazard and does not support life if you are enveloped in it.

The News-Sentinel (2004) reported that the HFIR was back in service after the shroud (top cover) was dropped during refueling. An associate director, Jim Roberto, said, "We do not completely understand what went wrong". He was sure, however, that it was completely unrelated to the work-control issues cited by DOE the previous fall or to recurring safety deficiencies DOE found at the reactor. This reactor

was built in the 1960s and has been operating (except for 3.5 years during The Great Shutdown) ever since, but maybe the dropping of the shroud, with consequent damage, is one of those once-in-a-lifetime events. Maybe.

The News-Sentinel (25 November 2004) reported that UT-B had been fined \$55,000 by DOE for safety deficiencies associated with a nuclear spill at Building 2026 on 6 October 2003. In this incident, a waste drain overflowed in a hot cell due to a clogged pipe; DOE said that procedures were not followed during the emergency response and the cleanup and concluded that (as the News-Sentinel put it) there was "lax attention to safety regulations" at 2026, including what DOE termed "the relative informality demonstrated in responding to the spill, the lack of desired questioning attitude concerning conditions found, and the apparent expediency they thought they needed even though the circumstances of the spill were not known". Two workers were exposed when they rushed to clean up the spill before assessing the conditions and they did not leave the area when a radiation alarm went off. But DOE praised UT-B management for "a broad and rigorous investigation" and for various corrective actions -- and therefore reduced the nominal penalty by half.

The Oak Ridger (10 and 29 September 2004) and the Knoxville News-Sentinel (17 and 29 September 2004) both reported that a Bechtel Jacobs investigation of a 10 August 2004 accident in which four subcontractor workers received "significant" doses of radiation ascribed the cause to poor planning and an inadequate understanding of the hazards -- i.e., the usual suspects. In particular, the investigators said that preplanning did not identify special circumstances or such conditions as the extent of rad hazards; planners underestimated the problems by using past events as a basis for judgment and workers ignored signs that indicated that stopping was advisable. The accident occurred in a hot storage garden, an area where very radioactive material (including isotopes of americium, curium, europium, and plutonium) was stored in underground concrete storage wells. The workers were cleaning up an underground storage facility by removing steel baskets that had formerly contained spent fuel assemblies and other irradiated materials from ORNL. The subcontractor doing the work was faulted because its field work plan "did not reflect the technical documents and radiological surveys provided to the subcontractor and lacked detail regarding the radiological hazards". It was noted that some workers did not know they had taken in radioactivity until they had finished work and left for the day.

The subcontractor, while acknowledging that his people had made errors such as using the wrong rad work permit, claimed that the area had not been properly characterized by the cleanup contractor, Bechtel Jacobs, who had not made the subcontractor aware of the extent of radioactive contamination. Contrary to what a preliminary report suggested, he said, the workers did not choose to keep working without respirators; although they had frisked out of the work area, there was no indication of contamination and the workers did not even know they were contaminated until another subcontractor technician checked himself with more sophisticated equipment. (It is implied that the first subcontractor workers were frisking with a beta-gamma detector and the second rechecked with an alpha detector, but the newspaper accounts are not specific enough for us to tell and I can't find the investigation report on the Internet.) The dose to any worker was projected to be less than 5 rem but more than 2 rem (the Oak Ridge administrative limit) and thus these workers would be barred from returning to any nuclear work for the time being. It would seem that DOE (and not just Bechtel Jacobs) would be investigating the incident since the subcontractor was pointing the finger at Bechtel Jacobs, but apparently DOE just reviewed Bechtel Jacobs' report. The Knoxville News-Sentinel (20 May 2005) reported that after nine months, operations resumed at the hot garden.

Subsequently, the News-Sentinel (13 June 2005) reported that an investigation by Bechtel Jacobs showed that there were "widespread problems" with radiation detection equipment used in the environmental cleanup work. Every one of the alpha detectors had been evaluated, with 100 out of 250 proving to be faulty. One problem was that there were pinhole leaks in the covering through which the radiation entered

the detector, allowing light to enter and skewing the alpha readings. Several Bechtel Jacobs safety managers assured the News-Sentinel that this was a common occurrence with alpha detectors and was easily repaired. But a further problem was that the gauges did not show a high offscale reading as they were supposed to do to indicate a problem; instead, they read zero, "apparently because an internal mechanism designed to pick up the overload had not been adjusted to a sensitive enough setting". (It was not stated why this had not been checked at the time the model(s) was calibrated and sent into the field for use.) Some detectors were found not to have this mechanism at all and were thus being replaced.

This all probably sounded good to the reporter (Munger), who then dutifully reported the following explanatory statements. A Bechtel Jacobs safety system manager said that the detectors malfunctioned only under certain conditions that would not typically affect work operations; that was said to be because to detect alphas, the detector "has to be placed almost flat against a surface -- thus shutting out the light source". (I.e., if one is detecting alphas, one really does not have to worry about the light level.) Bechtel Jacobs was confident that no employees left work sites without contamination on them being detected because "redundant systems" were used for monitoring: workers were also checked with a beta-gamma detector, which, according to one manager, also detected the alpha although it wasn't "specific", as the reporter put it. So if there was an elevated reading with the beta-gamma detector, rad technicians would then use the alpha detector to verify the type of radiation present. (No word on what would happen if the second alpha detector used was also malfunctioning and registered zero...but oops, we forgot, that doesn't matter in operational conditions.) Not only that, but workers would "often" pass through other radiation detectors before leaving nuclear facilities on the reservation. (No word on what would happen if they didn't or if those other detectors were not set at a level sensitive enough to detect the requisite radiation types and levels....) Actually, all of these statements have some truth to them, but as an explanation for why there was no real risk to having 40% of the alpha detectors malfunctioning, they are inadequate.

The Knoxville News-Sentinel (26 February 2005) reported that the HFIR reactor had been shut down -- in the middle of an operating cycle -- because of "inconsistencies" found in its safety documents related to seismic events. It seems that the Research Reactors Division had been conducting a review of the documentation "to prepare for new seismic standards being implemented by" DOE and "concerns were raised about some of the assumptions used in earlier safety calculations". Details were not given, but it seemed to be overkill to shut the reactor down (especially in mid-cycle) because of prospective standards that would have to be met. Otherwise, one would have to conclude that the reason it was shut down was that the assumptions were in fact inadequate even under the old standards. Inquiring minds -- such as those who formerly on the ORNL Reactor Operations Review Committee, like me -- would like to know.

The Oak Ridger and Knoxville News-Sentinel (3 March 2005) reported that two air monitors went off in a "nuclear [isotope] processing building" (REDC) on 2 March 2005, resulting in the evacuation of the 15 people in the building and an order for the sheltering in place of the 150 people in nearby buildings, including the HFIR reactor building. Officials stressed that nobody was hurt, there was no release to the environment, etc. A team was trying to determine why the monitors went off -- apparently there was some kind of release, although it might have been confined to a single room. Later The Oak Ridger (6 April 2005) reported that it had been determined that a clogged ventilation line had caused "a small airborne release" of radioactive material during a waste transfer procedure.

The Knoxville News-Sentinel and The Oak Ridger (both 30 March 2005) said that a report by DOE's Inspector General's office criticized ORNL for not taking proper security measures in handling dead anthrax spores. ORNL had allowed a guest scientist to work with the spore material in an "uncontrolled research facility". ORNL's deputy director for operations, Jeff Smith, admitted that some of the work was done in a laboratory "not specifically designated for that work" instead of in what the News-Sentinel termed "a specially controlled research facility on a ridge behind the main ORNL complex" (presumably another laboratory that was certified for such work). The vials were left on a countertop in the laboratory

or in an unlocked refrigerator also used by uninvolved researchers (for research materials, not for food); The Oak Ridger said that the IG's audit of the anthrax work was prompted by an anonymous complaint that the guest scientist used the same equipment as other researchers, but the other researchers were not made aware of what he was working with. After the IG investigators notified ORNL of their preliminary findings, ORNL moved four vials of spore material to a laboratory that was certified for that type of work -- but they missed the other 16 vials because even the lead ORNL researcher on the anthrax project did not know of their existence. When the guest scientist got back from a vacation, he got the four vials back from the certified lab and took them to his assigned lab (the uncontrolled one). It is not clear from the article whether anybody at ORNL knew at first that he had done this.

The investigators also pointed out that the security reviews required to implement the DOE Integrated Safeguards and Security Management "initiative" at ORNL were not conducted for the anthrax spore project and some other biological-based projects. They found that some important ORNL laboratory personnel that usually oversaw work with biological agents were not aware of the anthrax project (which suggests that they were deliberately left out of the loop); some DOE-ORO officials were also not aware of the work. Smith claimed, "We followed our approved security procedures in handling this material". But the IG investigators, although they conceded that dead spores are not a health hazard, took issue with those procedures because as they pointed out, if the spores got out, they could cause false positives in detection systems and cause public panic, take up resources in establishing the origin of the spores, etc.; there was no requirement to log in the vials of material or to track them for accountability and control reasons. Besides the lack of control of the anthrax material, during their investigation the auditors found that 55 other researchers had failed to file appropriate documentation on their specific (non-anthrax) projects. Concluded the auditors, "In our view, the failure to not accurately identify individuals authorized to work on laboratory research projects is a significant security concern". I found it interesting that among the awards given at ORNL's big Awards Night in October 2004 (The ORNL Reporter, November 2004) was one called "Integrated Safeguards and Security Management", which went to a team that was credited with providing "innovative and efficient security solutions in support of laboratory programs that have enhanced the security of personnel and research efforts while promoting a principal ORNL goal of an open laboratory campus".

The Oak Ridger (19 December 2005) said that DOE was fining UT-B \$110,000 for violating radioactive material limits at multiple storage areas. DOE's report "suggested that there were no injuries, only concern about creating potentially hazardous conditions". DOE could have fined UT-B more, but decided "to give UT-Battelle credit for its response", including corrective actions. The Oak Ridger also noted that earlier in December 2005, DOE had awarded UT-B a new five-year, \$6.3 billion contract to run ORNL.

The News-Sentinel (24 October 2005) said that it had been discovered that a process filter at Y-12 had not been changed for nearly 20 years. This filter was monitored by an in-place system that indicated that the filter had only one-tenth of the U-235 that it actually had on it, i.e., 1800 grams. The Defense Nuclear Facilities Safety Board pointed out that this was above the action level (the "check it or do something about it" level) for criticality. A Y-12 spokesman claimed that there was no threat of criticality because the filter was physically not large enough to contain enough U-235 to constitute a criticality concern. As the News-Sentinel pointed out, this may not have posed an imminent danger but it did raise questions.

The News-Sentinel (23 January 2006) reported that Bechtel Jacobs and its subcontractors had logged eight recordable injuries already in 2006, with five of those involving broken bones; one man spent a week in the hospital. These injuries were from multiple incidents, so DOE said it was asking Bechtel Jacobs some "hard questions". Perhaps DOE should ask itself if the financial belt-tightening DOE had forced on Bechtel Jacobs (see next chapter) had anything to do with it.