

Privacy Suit Puts Cancer Agency on Trial

Melvin Reuber, star witness against pesticides in the 1970's, charges officials and lobbyists with plotting to wreck his career

An out-of-work pathologist named Melvin D. Reuber has caused an awful lot of trouble for his old employer, the Frederick Cancer Research Center. His career at the lab came to an abrupt halt in 1981. Reuber had acquired a reputation for finding chemicals carcinogenic when other researchers did not, an irksome trait, as his employers saw it. But the trouble the government has brought on itself by punishing Reuber is worse than irksome.

Reuber's ignominious exit from the lab is the subject of a trial that began on 16 April in the U.S. District Court for the District of Columbia. It will rule on the first of three lawsuits Reuber has brought making libel and damage claims for about \$20 million.

Among those called on to testify or give depositions are Vincent DeVita, director of the National Cancer Institute (NCI); Richard Adamson, head of NCI's division of cancer cause and prevention; Ernest McConnell, chief pathologist of the National Toxicology Program; Edwin Johnson, director of the Environmental Protection Agency's Office of Pesticide Programs; James Nance, president of Litton Bionetics; several chemical company lobbyists; and numerous cancer experts, including Richard Griesemer, William Lijinsky, Umberto Safiotti, and Elizabeth Weisburger.

Reuber claims that he was harshly reprimanded and harassed out of his job in the spring of 1981 as punishment for offending agricultural firms. He also says that he was libeled and his career ruined by chemical industry lobbyists. Two days before Reuber voluntarily left the Frederick lab on 24 April 1981, on the advice of his doctor, lobbyists on Capitol Hill were excitedly passing around a confidential letter of reprimand written by Reuber's boss. "The real issue in this trial," says one observer, "is not the letter or Reuber's competence, but the relationship between the chemical companies and the government."

Through his attorney, Raymond Battocchi of Cole and Groner, Reuber has filed suit against NCI and the Environmental Protection Agency (EPA) for violating the Privacy Act. In another suit filed in Baltimore, he claims to have been libeled by Litton Bionetics, *Pesticide and Toxic Chemical News*, and others who received the letter. A third suit

filed in Washington, D.C., a \$19-million blockbuster, charges lobbyists for Stauffer Chemical and the National Agricultural Chemicals Association (NACA) with destroying Reuber's career.

The government has responded to the privacy suit in several ways. It has argued that Reuber was reprimanded for good cause—namely, for mailing out his own personal, unreviewed report calling the pesticide malathion carcinogenic. The punishable offense was Reuber's use of the Cancer Research Center address under his by-line. Because the work was his own, the government says, it should have carried his home address. Reuber also is accused of giving California reporters and employees of a California environmental foundation called the

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John Muir Institute the impression that he spoke ex cathedra for the NCI. The government says Reuber sought to undermine NCI's official reports, which found malathion safe. Reuber was not fired, the government argues, just told that he should have been fired. And the government says it has no idea how lobbyists got their hands on a private letter of 26 March 1981 excoriating Reuber for incompetence and unprofessional conduct.

Reuber's boss when this happened was Michael Hanna, Jr., director of the Frederick Research Center and, like Reuber, a Litton employee. Litton manages the Frederick lab under contract to NCI. In January 1981 a California official—Keith Maddy of the state Department of Food and Agriculture—wrote to NCI complaining that Reuber was scaring people in California with his reports that malathion was carcinogenic. The state was trying to fight the Medfly infestation with aerial spraying of malathion.

Maddy told NCI that Reuber had gone out on a limb, claiming in a letter to another California official that his personal analysis was superior to the contract work officially cited by NCI.

"These statements have created a 'cancer scare' of major proportions and have had a very negative effect on the political and public support" for malathion, Maddy wrote. He complained about "Dr. Reuber's completely unrestrained activities" and warned that the nation might suffer "multibillion dollar" losses annually from insect damage.

Maddy told *Science* that Reuber's papers are still giving him headaches. The state is spraying malathion in Los Angeles this month to control the Mexican fruit fly and is still defending itself against Reuber's finding of carcinogenicity. Maddy may be in for more headaches. Reuber's attorney says he hopes to demonstrate that malathion is carcinogenic.

When they learned of Maddy's complaint, according to depositions in the lawsuit, some officials wanted Reuber fired. Instead, Hanna gave Reuber a severe scolding and handed him the strongest reprimand he has ever written, the letter of 26 March. Vincent DeVita, director of NCI, may have proposed this step, hoping to avoid making a martyr of Reuber. This point is disputed. In any case, the general outline of what happened afterward is not disputed.

Twenty days after the confidential reprimand went into Reuber's file, it was in the hands of the chemical industry. One lobbyist, Jack Wise of Stauffer Chemical, gave a copy to *Pesticide and Toxic Chemical News* on 14 April. Verbatim excerpts were printed the next day. Another copy went to George Meyding of Stauffer, who quickly set up a meeting on Capitol Hill with a representative of American Cyanamid (malathion's manufacturer) and an aide to Representative Kika de la Garza (D-Tex.), chairman of the House Agriculture Committee.

The aide and the two lobbyists discussed how the letter might be used to launch hearings. The theme would have been scientific slovenliness and excessive zeal for banning chemicals in the federal pesticide program. The hearings might well have taken place had Reuber not been persuaded by a friend to hire a lawyer. When Battocchi stepped in, the lobbyists apparently lost their zeal for the game.

They were enthusiastic at the outset, however. This is reflected in a memo to

Cyanamid headquarters in New Jersey from Nancy Benson, the company's congressional expert. She attended the meeting on Capitol Hill on 22 April 1981 and afterward wrote:

The House Agriculture Committee is expected to proceed as follows: A meeting between Larry Harlow, Director for Legislative Affairs (EPA), Nick Ashmore (for Rep. Kika de la Garza), myself and the Stauffer representative will be scheduled to discuss this matter further. The probable outcome of this meeting will be a letter from Rep. de la Garza to EPA asking for an explanation of their practice of contracting and subcontracting for scientific studies, their funding of such studies, the weight attached to these studies in regulatory decisionmaking, and their procedure for scientific peer review. . . . Stauffer has called a meeting for April 22 at 2:30 pm of selected Washington reps to prompt congressional contact on the issues raised by the letter to Reuber. Some questions for EPA may be planted with Members of Congress.

By late spring, the companies had stepped away from their plan, sensing it might backfire. Their newfound caution is reflected in a Benson memo of 11 May, in which she wrote that Cyanamid had decided to "do nothing" to draw attention to the Reuber case. She noted that other lobbyists were going to "pursue the EPA-John Muir Institute connection with the intent to curtail the grant." John Muir had publicized Reuber's work in California. Other "lower-key investigations" would continue, Benson wrote.

The companies considered pushing for hearings because Reuber had been influential in his earlier work on pesticides. Reuber was an expert witness for the EPA in legal battles during the 1970's when EPA banned the compounds aldrin, dieldrin, chlordane, and heptachlor. In addition, he testified in hearings chaired by Senator Edward Kennedy in 1976, indicting the pesticide testing program as inept. He testified in court against the Velsicol Chemical Corp. in connection with a federal antipollution case in Ohio. He also served as an expert witness for the Canadian government. Later, working on his own time at Frederick, Reuber researched and published papers claiming that at least a dozen major pesticides are carcinogenic.

The potential weakness of these papers, which the government will bring out in its defense, is that many were not peer reviewed. In the case of malathion, as with several others, Reuber analyzed the pathological data on his own time and wrote up his findings outside the formal review system. Reuber tried to submit his personal work to NCI reviewers for clearance, but he claims he was told not to do so. The government agrees that Reuber was told not to submit his

personal work for review, but adds that he was also told to take the Frederick Center address off the title pages. The malathion paper had been submitted to a journal, but not reviewed or published before Reuber mailed it to the John Muir Institute in California.

No matter how strong the case against Reuber on the false-address issue, it will be difficult for the government to make him out to be incompetent. In 1979, just 2 years before he left government service, he was an expert witness for the Canadian government. He also published articles in the official journals of NCI and the National Institute for Environmental Health Sciences. And he was welcomed as a coauthor by several scientists even now in senior positions. The government will nevertheless attempt to attack Reuber's reputation and, in doing so, will provoke some mudslinging in return.

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When it comes to examining reputations, Reuber's attorney is likely to explore the quality of lab work contracted for by NCI, the credibility of NCI's own quality control system, and the integrity of the EPA's toxicology reviews. As it happens, the NCI malathion study was performed by the Gulf South Research Institute of New Iberia, La. In defense of this lab, the U.S. brief offers the comment: "Some of Gulf South's work was fine, including its work on malathion and the malaoxon studies. Recently Gulf South was terminated as a governmental contractor because of poor laboratory practices then in existence."

The court must weigh the evidence and decide whether Reuber's reprimand and its leak to the public was a standard disciplinary action that accidentally went amok or a deliberate effort to crush Reuber by exaggerating his offenses and circulating the exaggerations to the world. In his brief, Reuber says the action was not standard, for it was not handled by the in-house professional conduct watchers, the inspector general, or the division of management survey and review. There was never any technical review of Reuber's paper, except one privately undertaken by Adamson.

Reuber argues that his offenses were exaggerated, for it is not usual in scientific disputes—regardless of the tactics used to express dissent—for a dissenter to be branded "unprofessional," "obstreperous," "arrogant," and guilty of making "incorrect and misleading" statements, as Reuber was by Hanna. The government claims that all these charges were justified, however.

Proving that Hanna's charges were concocted and published deliberately will be the most difficult task for Battocchi. In his brief, he accuses William (Vernon) Hartwell, a former EPA and NCI employee, of leaking the reprimand to NACA. Hartwell agrees in his deposition that he received a copy of the confidential reprimand from Hanna. Hartwell did meet with a friend at NACA in the spring of 1981. The friend at NACA, William Hollis, did get a copy of the letter in an anonymous envelope. Hollis gave what he claims was another copy of the letter—one he says he got from an EPA bulletin board whose exact location he cannot remember—to a Stauffer official, Jack Wise, who gave it to *Pesticide and Toxic Chemical News*. Hartwell did conduct an unbidden investigation into Reuber's research habits and turned the findings over to Hanna.

Hartwell denies that he gave the letter to NACA and says he harbored no animosity for Reuber or his work.

Reuber's attorney claims he has compelling evidence that there was a conspiracy to ruin Reuber and drive him out of the lab. In his brief, he argues that Hartwell was a "sympathizer of the regulated pesticide industry" who worked in opposition to Reuber at the EPA in the 1970's when major chemicals were banned. He makes the most of the fact that when Hartwell left the government in 1981, he destroyed some of his records and since then has had difficulty recalling some of these events in detail. Hartwell and the government attorneys vigorously deny that there was any conspiracy against Reuber or any attempt to hide information. The court will have to sift these conflicting claims and come up with its own reading of the truth.

Whatever the outcome of this trial, it will provide an unusual insight into the backstage maneuverings that went on at NCI and among the chemical companies in early 1981. It will illustrate some of the pitfalls of mixing politics with toxicology. And it may reinforce the traditional methods of review and discipline by peers in the scientific agencies, methods that were bypassed with disastrous results in the Melvin Reuber case.

—ELIOT MARSHALL