

## Job Protection for "Whistle Blowers" Being Tested

The state of Missouri is challenging the right of a health physicist to seek federal protection from loss of his job at a state cancer hospital where he "blew the whistle" on a rules violation involving use of radioactive material.

Now pending in the U.S. Eighth Circuit Court of Appeals, the case involves Clifford W. Richter, whose job as health physicist at Ellis Fischel State Cancer Hospital in Columbia, Missouri, was abolished in late 1978 some 8 months after the whistle-blowing episode occurred.

In late 1977, some seeds of iridium-192 which had been implanted in a cancer patient were overlooked and left in the patient's body when she was discharged. When the mistake was discovered the next March, Richter, knowing that for the iridium not to have been removed before the patient left the hospital was contrary to federal law, immediately reported the violation to the Nuclear Regulatory Commission (NRC).

Richter had had reason to believe that he was in good standing. His performance ratings had been excellent, and, only 3 months before the rules violation was reported, the hospital administrator had recommended him for a \$10,000 raise. But he was soon admonished by the administrator for making the report to the NRC without first clearing it with him and the hospital staff. In late 1978, Richter, who meanwhile had informed the NRC that another iridium seed was missing (it was later found on the roof of the hospital), was notified that his job as chief physicist was being abolished.

Richter's report had led both the NRC and a committee of the Missouri State Senate to investigate the initial incident. Serious deficiencies in the hospital's handling of radioactive material were brought to light. Also, survivors of the cancer patient—the hospital maintains the overlooked iridium seeds in no way contributed to her death—have filed a \$10.5 million malpractice suit against the hospital.

Under the Energy Reorganization Act of 1974, institutions licensed by the NRC to use radioactive materials for cancer therapy or other purposes may not fire an employee for reporting

rules violations. Accordingly, Richter sought redress from the Department of Labor, and, after an investigation and hearing, an order was issued last August for the hospital to reinstate him with back pay.

Missouri is now challenging this order. It maintains that Richter's job was eliminated as part of a hospital staff reorganization that was unrelated to the furor caused by his report to the NRC. Beyond that, the state asserts that the Eleventh Amendment of the Constitution gives its institutions a shield of sovereign immunity from actions such as the one taken against the hospital by the Labor Department. The Court of Appeals will begin hearing the case on 13 March.

## Conservation League Gives Brown Top Rating

The League of Conservation Voters gives its highest rating to Governor Jerry Brown of California, but all three Democratic presidential contenders are preferred to any of the Republicans who are running.

The league, a nonpartisan organization that has endorsed Republicans as well as Democrats in past congressional races, gave its assessment of the presidential candidates at a Washington news conference on 21 February. The assessment represented the consensus view of a league steering committee drawn largely from major national environmental groups such as the Sierra Club, the National Audubon Society, the National Wildlife Federation, and the Environmental Defense Fund.

Although the league was not speaking for these groups, its judgments on the candidates may represent the best available reading of how environmentalists are sizing up the candidates, at least at this early stage in the presidential race. Governor Brown was cited for "excellent appointments and [policy] initiatives, strong leadership on energy and pollution control, and good follow through." The league indicated that for those environmentalists who turn toward President Carter and Senator Kennedy in the belief that Brown cannot win the nomination, choosing between them will not be easy.

It credited President Carter with "many good appointments"—his appointment of the strongly pronuclear James Schlesinger as secretary of energy was cited as a conspicuous exception—and with a number of "enlightened policies," as in his proposals to preserve much of the Alaskan wilderness and abolish the water projects pork barrel. But the Carter Administration's record in implementing laws such as the Clean Air Act, the Toxic Substances Control Act, the Endangered Species Act, and the Outer Continental Shelf Lands Act was characterized as spotty.

Moreover, the league deplored the "deep conflict between the President and environmentalists on energy, starting with the Administration's early support for nuclear power and culminating in the President's disastrous initiatives on synthetic fuels and the Energy Mobilization Board."

The league said that Senator Kennedy has an outstanding voting record on environmental issues. But it noted that he has not been a leader nor been tested under pressure on these issues.

Among the major Republican contenders, the league gave Representative John B. Anderson of Illinois and Senator Howard Baker of Tennessee the best overall ratings, and, of the two, Brent Blackwelder, the league's president, said Anderson was to be preferred. The league credited Anderson with playing a "crucial role" in House passage of the Alaska lands bill last year, but it criticized him as the congressman whom some regard as "the most effective and skillful proponent of nuclear power in the House." Baker was credited with excellent leadership on pollution control issues, but was given bad marks both for his record as a nuclear proponent and as a supporter of the Tellico Dam.

George Bush, the Republican front-runner going into the New Hampshire primary, was found to have "poor campaign positions" on issues having to do with energy and environmental regulation, although as a Texas congressman in the late 1960's he was said to have "courageously stopped" a Buffalo Bayou channelization project in his home district in Houston. Ronald Reagan was put down as "generally unsympathetic to environmental concerns" and John Connally was held to be "openly hostile."

**Luther J. Carter**