"Whistle-Blowee" Responds

The many scientists and other professionals in LMS Engineers, as well as myself, have read with absolute disbelief the 14 November 1980 article (News and Comment, p. 749) by Constance Holden entitled "Scientist with unpopular data loses job." Were it not for the correct spelling of our names and the photograph of our former employee, Morris H. Baslow, we would have believed we were reading an article about some other firm and individuals.

This biased and incomplete article has damaged our professional reputation, as well as that of the individual scientists who have worked with us for many years and adhere to the highest of professional standards. It is impossible to set all aspects of the record straight in this letter. The masthead statement regarding *Science*'s serving as a forum for, among others, the presentation of conflicting points of view, requires an article placing this matter in proper perspective (that is, a response from the "whistle-blowee"). Such a response is warranted all the more because we recently learned from Baslow that this matter has been under evaluation by the AAAS Committee on Scientific Freedom and Responsibility for some 6 to 8 months, including the interviewing of many parties, whereas our first contact with *Science* was scant days prior to the article's going to press.

Irresponsibility and lack of impartial reporting is evidenced by Holden's statement that "the commission [FERC (Federal Energy Regulatory Commission)] also wants to establish whether there has been any wrongdoing on the part of LMS Engineers." This issue has been specifically addressed in the findings of a 5-day hearing held before FERC Administrative Law Judge Stephen Grossman. Judge Grossman's order of 10 September 1980 states:

> A number of the participants to this proceeding have argued in the alternative that, if an attorney-client privilege exists, it has been waived. The finding above, that no privilege exists, eliminates the need to address questions of waiver. In fairness to Utilities and LMS, however, one matter raised in this context must be addressed. Several parties have claimed that Utilities waived all evidentiary privileges because they have attempted to use the privileges to shield wrongdoing. The record in this proceeding proves the contrary and, in fairness of the parties accused, that proof is noted here.
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> The accusation of wrongdoing originated with Dr. Baslow's letter of October 8 to Judge Yost. In that letter, Dr. Baslow stated that 'I have known . . . that the density-dependent growth testimony in the utilities Hudson River . . . case is not valid.' Because LMS and Utilities knew of Dr. Baslow's research prior to the filing of the EPA testimony in question, the implication is that the Utilities knowingly filed false testimony before the EPA. Accepting this implication, of course, requires accepting the assumption that Dr. Baslow's studies vitiate the validity of the testimony filed before the EPA. Not even Dr. Baslow claims that his studies invalidate the EPA testimony. Testifying under oath at this proceeding, Dr. Baslow weighted his work this way. 'It is what it is and it points out a new area that must be considered when you deal with growth.' . . . Dr. Baslow rejected the proposition that his work 'completely devastated any major theories of compensation or density-dependent work.' . . .
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> In fact, with regard to Dr. Baslow's work, the record reflects this. Dr. Baslow believed that his temperature studies had revealed an important relationship between temperature and fish growth. Certain scientists at LMS and with the Utilities believed he might have a point; others believed the contrary. Dr. Baslow pushed to have his findings reflected in the EPA testimony and was temporarily overruled. Counsel for Utilities suggested that, after further investigation, the studies might be used on rebuttal before the EPA. This is not then a case of fraud or false testimony. It was, until Dr. Baslow went public, merely a disagreement amongst scientists over the validity of a new and untested piece of information. No wrongdoing has been shown.

Clearly Holden had access to this order.

Other instances of biased reporting abound. The time apparently was taken to seek opinions on Baslow's integrity from those who aligned themselves with his "cause." Should not I, my partners, and LMS as a whole have been afforded the same? The legal steps taken by LMS and the utilities are characterized by delaying and maneuvering. Why not discuss with us the reasons for any legal steps we took, all of which were totally proper? Did Holden read Baslow's statements retracting his allegations of wrongdoing and employee discrimination? Had she done so, her characterization of the settlement reached might have left less an impression of begrudging acceptance, and more an impression of clear and unequivocal removal of issues of impropriety, leaving the matter solely in the realm of a scientific and technical dispute, which indeed it is. Holden lists the initial Labor Department finding but does not tell the reader that such a finding would play no part in the Labor Department hearing, a fact which Labor's letter indicates and which was clearly pointed out to Holden by our attorney.

In short, Holden plainly infers that "a little simple whistle-blowing"—going public with *claims* of misconduct by one's employer—is praiseworthy, even

when the claims are not true. Judge Grossman made the following comment during the aforementioned FERC hearing that I believe is relevant here.

I suppose it is a syndrome that this country seems to have suffered from for some time popularly known as the 'Watergate Syndrome,' where there is leveled upon everyone regardless of what is being done, tremendous suspicion, especially anybody in the business or industrial community.

There is cast upon those who come forward and say I am going public with something that my employer doesn't want me to tell anybody, a halo, a presumption of holiness. The person doing that must be right or else he would not do it. And anybody who suggests that he is not right must be wrong. You are dealing with a firm in which we do not even know whether a problem even exists in its whole history, or even contemplated that an employee might go away with documents that firm might consider proprietary or privileged or even if they considered the possibility of this hearing, nobody has yet asked Dr. Lawler about this. Nobody seems to care. What you are trying to do is set up a security system that perhaps would be appropriate for a strategic defense department site and implying that LMS should have had such a system and foreseen that an employee was going to try to walk off with something. I do not find that credible.

In the interest of an objective evaluation of the workability of employee protection laws, we deserve this opportunity to respond.

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Galileo as a Scientist

The points I tried to make in my reply (Letters, 1 Aug. 1980, p. 544) to Whitaker (2 May, p. 446) were "unsupported" (Whitaker's letter of 10 Oct., p. 136), that is, unencumbered by footnotes, because I assumed that Whitaker was familiar with the underlying facts. This, apparently, is not the case. Let me therefore elaborate.

1) I admit that the copperplates of Galileo's drawings of the moon are more accurate, from the point of view of present-day knowledge, than the woodcuts, and those of my arguments which proceed from the latter are therefore rendered invalid—with a proviso to be spelled out in point 3 below.

2) However, not all troublesome aspects of Galileo's observations of the moon are thereby removed. For example, Galileo asks (*1*), "Why don't we see unevenness, roughness and waviness in the waxing moon's outermost periphery which faces west, in the waning