

## **WHISTLE WHILE YOU WORK**

**By Todd Matthews**

**Copyright © 1997 – PRESENT By Todd Matthews**

**All Rights Reserved**

*This article originally appeared in Washington Law & Politics magazine. It received second place honors in 2003 for Best Political Government Reporting, as recognized by the Western Washington Chapter of the Society of Professional Journalists*

Whistle-Blower.

The word conjures derision for some, nobility for others. Whistleblowers have been romanticized by Hollywood (remember Silkwood or The Insider?), vilified by big business and government and heralded by the news media. Earlier this year Colleen Rowley, Minneapolis agent of the Federal Bureau of Investigation (FBI) blew the whistle heard around the world, and became round-the-clock news, when she accused FBI headquarters of putting roadblocks in the way of trying to investigate suspected terrorist Zaccarias Moussaoui, charged with conspiring with the hijackers in the September 11, 2001, attacks. For sounding the alarm, whistle-blowers are usually either "thrown into the volcano" (as one described his experience) or rewarded for their forthrightness. However the individual is described, one thing is certain: The whistle-blower is as much a part of American business as the chief executive officer.

"Blowing the whistle is like a snake shedding its skin -- you are raw, vulnerable and empowered to grow, all at the same time," says Lea Mitchell, the Washington state director of the Public Employees for Environmental Responsibility (PEER) -- a private, nonprofit national organization that protects government employees who blow the whistle on alleged environmental wrongdoings. "Corporations and bureaucracies often label whistle-blowers as disgruntled, irrational workers who have an ax to grind. What whistle-blowing really comes down to is taking action to support the greater public interest. Look back in history, and some of the people we now applaud as heroes were labeled as hysterical kooks."

Labeling a whistle-blower as "disgruntled" or "irrational" or "kooky" serves two purposes: It discourages people from blowing the whistle and it assaults the individual once he or she has blown the whistle. "[I]f you kill the messenger," adds Mitchell, "you don't have to deal

with the message."

But labeling is only one of the forms of repercussion. Washington state whistle-blower Casey Ruud blew the whistle on safety violations and contamination at the Hanford Nuclear Reservation during the mid-1980s. With the help of fellow whistle-blower and nuclear physicist John Brodeur, Ruud was able to prove that contamination at Hanford had reached the area's groundwater. His story was documented in 1993 in the book *Atomic Harvest*. "I have been chased and harassed so many times, I cannot remember," says Ruud. "My greatest fear was that someone would harm my kids. I was told that if I testified before Congress ... my children's lives were at risk."

Despite threats, whistle-blowers are successful about 30 percent of the time. During fiscal year 1999, 205 assertions of improper governmental action were received by the Washington State Auditor's Office, which tracks these statistics via the Whistle-blower Act, passed by the Washington State Legislature in 1982. Of that total, the office found reasonable cause in 62 cases. The Whistle-blower Act provides an avenue for state employees to report suspected improper governmental activity, including anything an employee does on the job that results in mismanagement or gross waste of public funds or resources, is in major violation of federal or state law or rule, or is of substantial and specific danger to the public health or safety.

The number of whistle-blowers in private industry is less identifiable, as many whistle-blowers wish to remain anonymous and many cases are settled privately or out of court. Still, in February 2000, the U.S. Department of Justice (DOJ) announced that more than \$3 billion was recovered in civil fraud cases brought under the whistle-blower provisions of the False Claims Act since the law was amended in 1986. The False Claims statute allows private persons to file suit on behalf of the United States alleging that false or fraudulent claims have been submitted to the government. The most common claims involve fraudulent billing in the defense and health-care industries. Persons who file suits may recover from 15 to 25 percent of the settlement or judgment if the federal government intervenes in the case, or up to 30 percent if they pursue it on their own. According to DOJ statistics, more than 3,000 suits were filed between 1986 and 1990. The number of suits filed rose from 33 per year in 1987 to 483 in 1999. And the DOJ reported in February 2000 that it paid whistle-blowers more than \$550 million as their statutory shares, with additional awards pending.

I tracked down some whistle-blowers in the state's most notable industries -- commercial fishing, timber and nuclear waste management -- in order to learn firsthand what it is like to risk life and limb to right wrongs.

### ***MATT TAYLOR / GOLDEN SPOON AWARD-WINNER***

When former Teamsters truck driver Matt Taylor was dispatched to the Hanford site located near Richland, Washington, in spring 1998, he had no idea that he was about to blow the whistle on nuclear contamination. Taylor arrived at the site's 300 Area, ready to haul drums to another part of the Hanford site for disposal. According to Taylor, what he found was horrific: Several hundred drums excavated 100 yards from the shore of the Columbia River were leaking a mysterious substance.

Taylor began asking retired workers about the area, and learned that the drums contained uranium shavings and depleted uranium, which had been covered in mineral oil to prevent the uranium from burning. Uranium, a spontaneously igniting substance, can spontaneously ignite upon contact with air. According to Taylor, many of the drums had leaked some or all of their oil. When an industrial hygienist told Taylor that carcinogenic polychlorinated biphenyls (PCBs) had been found in the oil, Taylor raised concerns at a safety meeting.

"I was the company boy at the time," Taylor recalls. "There was nothing that I could do wrong. I thought that I would settle it all by bringing up the issue at the morning safety meeting. I was supposed to be able to bring up anything without fear of reprisal."

Taylor filed his first complaint to the state Department of Labor and Industry a few months later. In that suit, Taylor charged that Roy F. Weston Co., Taylor's contractor, retaliated against him for raising safety concerns with "screaming fits" and derogatory graffiti ('Matt takes it in the ass for his check' was one of the slurs scribbled on his locker, says Taylor). Taylor claims that he received the "Golden Spoon Award" from a retiring safety officer and a note that read, "To Matt Taylor. For his awesome ability to stir shit."

Taylor settled with Weston in fall 1999. According to that settlement, Taylor agreed to leave Weston, while Weston agreed to get rid of any negative references in his personnel file. Weston also agreed to join the Hanford Joint Council, a coalition of Hanford parties designed to look at and mediate whistle-blower matters in the early stages to try to head off litigation. Taylor also received an undisclosed financial settlement.

In Taylor's case, standing up cost him much peace of mind and, ultimately, a career at Hanford. With the help of attorney Tom Carpenter [see sidebar interview] at the Government Accountability Project (GAP) -- a national organization devoted to protecting the public interest and promoting government and corporate accountability -- Taylor filed two suits against contractors who allegedly refused to hire him or created excuses to terminate him. In a suit filed by Taylor and Carpenter in February 2000, Taylor alleged that he was harassed and his house and car were vandalized, and witnesses who were supportive of him were threatened (the brake lines of one were cut), when he refused to drop his complaints. "I live in a park with retired people all around me," says Taylor. "Yet my house was vandalized. There was no reason for vandalism, except that the bar where everyone [at Hanford] goes and stews on what happened for the day is two blocks away."

According to Taylor, settlements similar to the one with Weston were reached in each case. Taylor no longer works at the Hanford site. "I received two dispatches for Hanford, but refused them," Taylor says. "It was too much stress. I had a mental breakdown. I broke down in tears. I was trembling. I finally went to see a psychologist, and found out I had post-traumatic stress disorder." Instead he found a job as a fuel truck driver.

"People think you become a whistle-blower for the money. You don't choose to be a whistle-blower," says Taylor. "Everybody at one time in their life eventually stands up for something. The circumstances come together to stand up for an issue."

### ***BILL BIDSTRUP / PASSIONATE, PERSISTENT AND GUILT FREE***

"I have made it my cross to bear to change the culture within the Department of Natural Resources," says timber industry veteran Bill Bidstrup. "The best way to do that is through the legal system." When Bidstrup was hired by the Northeastern Regional Office of the Department of Natural Resources (DNR) more than 20 years ago, he viewed himself as a conservationist with a passion for working in the natural resources industry. Instead, says Bidstrup, he found himself working amid a conflict of interest. DNR is charged with both enforcing state laws regulating logging and managing state forestland. Bidstrup says he grew increasingly frustrated over the years at the alleged "look the other way" practices of employees when writing or approving management plans for timber harvests or dealing with permit violations.

In 1998 he filed a complaint with DNR headquarters over the illegal use of a three-mile road in the Loomis State Forest in north-central Washington state. The road paralleled a large fish-bearing stream, and sediment from the road was impacting the fisheries. After the road was washed out during heavy rains, work was initiated to rebuild the road without a permit. Bidstrup went to then-Commissioner of Public Lands for Washington state Jennifer Belcher and received the attention of Belcher's assistant, Lanny Quackenbush. After Quackenbush toured the road, a \$15,500 fine was levied against the DNR regional office.

Bidstrup says he started to feel pressure from DNR management. "They intimidated me and made my life miserable," says Bidstrup. "I hated to go to work." Bidstrup took a two-week vacation and spoke with a personal attorney. During that time, the controversial three-mile road was rebuilt in preparation for a timber sale. Bidstrup blew the whistle again. He made headlines in January 2000 when he became the first DNR employee in Washington state history to file a legal appeal on a timber-sale application.

The veteran DNR employee pursued his whistle-blowing endeavors and filed a complaint with the Washington State Auditor's Office, alleging that the structure of the DNR discourages the enforcement of laws on state lands since it is both a land management and regulatory agency. "As soon as I went to the State Auditor's Office," says Bidstrup, "I realized I had given up any chance of being promoted."

The Auditor's Office told Bidstrup that the issue was out of its jurisdiction. Bidstrup went to the State Executive Ethics Board, asking if the Ethics in Public Services Act addresses conflicts between the regulatory and proprietary functions of the DNR. Last spring, the board ruled that the act does not address conflicts between official duties. Energized by this ruling, Bidstrup is presently urging the Board of Natural Resources and the Forest Practices Board to consider recommending to the Legislature that the administration and enforcement of the Forest Practices Act be delegated to an independent agency.

Bidstrup says he blew the whistle for personal and environmental reasons. "I was getting toward the end of my career," he explains, "and I didn't want to feel guilty. I wanted to be proud. A lot of it was protection of the environment. But I was also feeling guilty for being in bed with the timber industry over the years."

Bidstrup is currently employed in the wetlands section of the DNR's Northeastern office,

where he is a specialist administering the State Environmental Policy Act (SEPA). He recently served as an expert witness in a case by the Washington Forest Law Center involving SEPA-exempt forest practices applications in a watershed near Mount Rainier National Park.

Last year Bidstrup was honored as one of five Environmental Heroes by the Washington Environmental Council (WEC). When he received his award, WEC representatives noted, "Bill's honesty and forthrightness set an example for a superb public servant -- one who is willing to speak the truth in the face of considerable adversity." Bidstrup has received no monetary compensation for his whistle-blowing. The WEC recognition came with a \$250 award, which he politely declined. Instead, he considers his reward the fact that the three-mile road impacting fisheries was permanently abandoned last fall. Moreover, the DNR is nearing completion of a watershed analysis of the forest road identified by Bidstrup that is expected to show significant adverse cumulative impact.

"I am hoping to go to law school when I retire and try to do some volunteering," says Bidstrup. "I have three years left before I retire. Hopefully I will make it there."

STEPHEN TAUFEN / "HIRED, CONSPIRED AND FIRED ... " "The whistle-blower is the canary in the mineshaft," says accountant Stephen Taufen. "The whistle-blower is saying, 'We are running out of oxygen down here. We are running out of good values ... law ... order.' The whistle-blower is the ultimate litmus test. If you can't get it by a whistle-blower, then there must be something wrong with it."

When Taufen began his career as an accountant nearly 20 years ago, his collegiate interests in finance and geography led him to the commercial fishing industry. He spent 15 years balancing the books for a number of commercial fishing companies before Seattle-based UniSea, Inc. hired him in June 1992.

Three years later, the accountant was fired. Taufen claims his employment was terminated because he refused to hide taxable inventory from the Internal Revenue Service (IRS). As such, Taufen became a whistle-blower for the IRS.

"I needed to clear my name," Taufen says flatly. "It was a matter of ethics. I couldn't have my name on the fraud. It was the right thing to do. They churned me and burned me. They

hired me, conspired me and fired me. I basically said that I would fight back."

He directed the IRS to a \$1.3 million claim against UniSea, Inc. Court documents related to the IRS claim show that Taufen was directed to put on the company's books an inventory of stray parts collected in a UniSea warehouse. Employees who worked under Taufen testified that they valued the inventory to be \$10 million and \$15 million, but that senior staff told Taufen they didn't want millions in taxable assets recorded on their books. Taufen stated that he was told to enter a one-penny value for many parts. Accountants refer to the practice as "abusive transfer pricing," and it occurs when income and expenses are improperly allocated for reducing taxable income.

When Taufen later led IRS investigators to UniSea, the agency forced UniSea to revalue the parts. The IRS also found that UniSea had tried to write off \$6 million in income for ship repairs it wasn't actually liable for. UniSea settled the dispute financially with the IRS in 1995. Taufen reached a private settlement with UniSea.

Unisea would not comment on Taufen's performance or his reasons for leaving the company, citing company policy. However, spokesperson Chris Plaisance said, "Mr. Taufen did sue Unisea after he left the company. Any differences between him and the company related to his departure from the company were resolved."

"[I was] threatened at times," says Taufen, recalling his experience. "Businesses I dealt with were harassed. I went through the full gamut. But it caused me to stay in the fight. It didn't cause me to run away. Why do we have an attitude toward whistle-blowers in society? Why don't we concentrate on what's going on? Instead, we throw the whistle-blower "virgin" into the volcano. Why aren't we focusing on [the issue] instead of the whistle-blower?"

Today Taufen is the head of the Groundswell Fisheries Movement in Seattle. He shares his experience and knowledge about abusive transfer pricing with individuals in the commercial fishing industry. He frequently writes about the topic for trade newspapers such as The Fisherman's News. "Abusive transfer pricing is the largest tax topic of the 21st century," says Taufen. He believes that it is harming the entire industry -- commercial fishermen, in particular. "It is the mechanism. If you can falsify the books and convince people that you aren't making any money, you can convince fishermen to drop their prices. This transfer pricing fraud becomes a fraud that ends up in everything."

Taufen has no regrets. "I feel good that I blew the whistle," he says. "My conscience is clear. I was emotionally affected in the middle of my lawsuit. I had too many unanswered questions. I wasn't very capable of going out and getting a job. I used to be a top interviewer at jobs. But being a whistle-blower becomes part of your talk. 'Why did you leave an industry?' People see that you are outspoken. Whistle-blowers earn their stripes. But those stripes are permanent tattoos on their forearms. You become the proud bearer of your actions, because you knew that you were right."