The continuing struggle between career civil servants and political appointees in the development of government public health standards

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Barry Castleman recently documented the story of Dr. Alice Hamilton's encounter in the 1940s and 1950s with the FBI as she fought for social justice and her pioneering work in occupational safety and health.¹ Her encounter with the FBI may give many of us working to protect the public's health an uncomfortable feeling. Political intimidation by government political appointees, however, did not end 80 years ago. Within federal agencies, there is a continuous battle between political appointees and career civil servants over the scientific justification for the promulgation and enforcement of health and safety standards. Most of these struggles are rarely recognized outside the agencies. However, they have a negative impact on public health as well as morale within agencies. Corporations and business lobbies have used every political means to delay, weaken, and block the issuance of health standards since worker, consumer, and environmental protection agencies were created in the early 1970s.

I provide a few examples of these struggles from my experience working for the Occupational Safety and Health Administration (OSHA), first as Director of the Office of Carcinogen Identification (1978–1983) and then as Director of the Office of Standards Review (1983–2004). During the Reagan Administration, particularly, OSHA staff were often intimidated to downplay the toxicity of occupational agents and to remove or weaken provisions of new standards being promulgated.

In June of 1981, shortly after Thorne Auchter was appointed Assistant Secretary for OSHA, I was given a two-week notice that I was being removed from my civil service position because I had written to the International Agency for Research on Cancer (IARC) asking the

organization to reconsider its conclusion that formaldehyde exposure provided only limited evidence of carcinogenicity in experimental animals.² On the basis of this correspondence, I was charged with misrepresentation of OSHA's "policy" on formaldehyde's carcinogenicity and insubordination. Attached to my dismissal letter were intimidating letters from Joel Bender, the Medical Committee Chairman for the Formaldehyde Institute³ and John Byington,⁴ legal counsel to the same trade association that represents manufacturers of products made with formaldehyde. Byington⁴ asked Auchter how OSHA planned to "control members of the bureaucracy who seem to be moving freely within and without government ... and are advocating a position rather than processing information for the appropriate policy decision-makers." In other words, why was a government civil servant being allowed to freely express his scientific views on the carcinogenicity of formaldehyde both within OSHA and at scientific meetings outside of OSHA? Fortunately, Rep. Albert Gore, Jr., Chairman of U.S. House Subcommittee on Investigations and Oversight, held hearings on OSHA's plan to dismiss me; otherwise, I may have lost my job. Testimony from the Directors of the National Cancer Institute, the National Institute of Environmental Health Sciences, and the National Center for Toxicological Research concluded that the animal cancer studies provided sufficient evidence that formaldehyde caused cancer in experimental animals. Subsequently, OSHA dismissed the allegations against me.⁵ The only person in the agency who felt the animal cancer data were insufficient was the Special Assistant for Regulatory Affairs, Mark Cowan, an attorney by training, who after meeting with John Byington, the Formaldehyde Institute attorney, concluded the animal cancer data were insufficient. IARC re-evaluated the formaldehyde data in

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October 1981 and concluded there was sufficient evidence that formaldehyde was carcinogenic in experimental animals.⁶ (Auchter was accused of violating conflict-of-interest law in 1982 when he denied a petition for an emergency temporary standard for formaldehyde at a time when he owned \$21,900 worth of stock in DuPont, a major formaldehyde producer. The Formaldehyde Institute spent \$1.67 million in 1982 opposing, among other things, the formaldehyde petition that Auchter denied.)⁷

Even though the allegations against me were dismissed, I continued to be harassed by the Reagan Administration. My office would be assigned work on specific health standards; then, when they were close to being proposed in the Federal Register, I would be removed from further participation in the development of the standard. Harassment also took its form through the agency denying me the opportunity to speak about occupational carcinogens and reproductive hazards at International Symposia, even though my participation was being paid for by the organizations sponsoring the meetings. My request to speak at these Symposia while on administrative leave also was denied. Some of the times when I was approved to give lectures, the approval would be rescinded a few hours prior to my scheduled time of departure. A specific example of the OSHA flip-flopping on one of my speaking engagements follows: in January of 1981, the International Association of Machinists and Aerospace Workers asked me to make a presentation on the identification and classification of occupational carcinogens at their national safety and health conference in Washington, D.C. My participation seemed appropriate as I was the director of OSHA's Office of Carcinogen Identification and Classification. I was initially approved to speak, but one week prior to the meeting, I was informed by the Director of Health Standards that I could not speak at the meeting because the "front office was not happy to have me speaking before a labor organization."

On occasions when I was asked to testify before the U.S. Congress on carcinogenic exposures in the environment, I would be required to take annual leave. Yet, most citizens from the private sector are given their daily pay when testifying before the U.S. Congress. Even when my approval for annual leave for congressional testimony was given, I would receive the approval only at the last minute so that my scheduled flight would have departed, requiring me to find alternate flights that resulted in my arrival at the cities where the hearing was held well after midnight. At these congressional hearings, I testified on the toxicity of chemicals released into the environment on the same panel as the OSHA political appointees, but identified myself as a "private citizen" because OSHA would not allow me to offer opinions on epidemiological study results.^{8,9} Instead, OSHA would offer someone from the Agency with no training in epidemiology to speak on the epidemiology of toxic chemicals.

Those speaking for the Administration would also misrepresent my training and education to members of the

press or others who would call me to discuss matters of occupational and environmental health. For example, in September of 1981, CBS asked OSHA for permission to interview me about occupational cancer. The spokesperson for OSHA responded that I had no expertise on occupational cancer. I ended up doing the interview on annual leave and identifying myself as a "government scientist" without reference to the Agency where I was employed. On another occasion, a staff member from the congressional office of U.S. Rep. George Brown called OSHA's Legislative Office to request that I be made available to discuss the epidemiology of reproductive hazards in the occupational setting. The OSHA public relations officer falsely informed the caller that I was not an epidemiologist and there was no need for further discussion. At the persistence of the congressional staffer,¹⁰ I was eventually "approved" to have the discussion. Often, calls from the public or from congressional offices to speak with me regarding occupational and environmental health hazards were initially denied on the grounds that I could not speak on OSHA policy. Yet, none of the callers ever indicated they wanted to speak with me about OSHA policy. This "purposeful" misinterpretation of the intention of the call was to deny me one of the responsibilities of my office at OSHA – to inform the public about occupational hazards. I have provided only few examples of the type of harassment I experienced because of my disagreements with political appointees on matters of science. In the face of this harassment, I decided to stay with the agency to help with the promulgation of health standards.

On the other hand, a civil servant at the EPA took another route. During the EPA's attempt to regulate formaldehyde in 1981, Richard Dailey, a former EPA staff scientist, testified before Congressman Albert Gore's subcommittee that he had been ordered to alter data on the toxicity of formaldehyde. He quit his job rather than do so.¹¹ EPA staff had written justification to regulate formaldehyde in 1981 but flip-flopped on the evidence after lobbyists from the Formaldehyde Institute pressured the agency through the White House Task Force on Regulatory Relief.¹¹

Career employees other than myself were targets for political appointees. In 1985, Assistant Secretary for OSHA, Robert A. Roland held a three-day management retreat in Williamsburg, VA. During the meeting, his Deputy Assistant Secretary for OSHA field operations, James Meadows, told department officials that "OSHA is full of commies and I intend to root them out."¹² He told those assembled that they had to "kick ass and take names" (KATN) and if federal and department regulations were a hindrance, "go ahead and terminate them and let them hire an attorney and spend the next three years trying to get their jobs back."¹³ The meeting was subsequently referred to as the K.A.T.N. meeting. On 9 May 1985, U.S. Rep. Gerry Sikorski, Chairman of the House Committee on Post Office and Civil Service, held a congressional hearing to gather information about this meeting. During testimony,

OSHA management officials acknowledged use of the commie comment. One OSHA official acknowledged that he had previously told a lawyer that the language she used in drafting a proposed standard for regulating lead exposure in the workplace was “communistic” and sounded as if the woman were “trained in Moscow.”¹² Rep. Sikorski likened the OSHA Administration’s testimony to accusations made by Sen. Joseph McCarthy in the 1950s, e.g. the use of a blacklist to rid people from the Agency.

I do not know whose names were being considered for such a blacklist if one did exist. However, rumor at the time suggested that I may have been a candidate for the list because of my objection to the changes in scientific evaluations by political appointees during the Reagan Administration.¹³ Another potential candidate was a compliance officer, Curtis Foster, who was dismissed from the Civil Service on allegations of misconduct after he issued citations for several safety violations at the Coors Brewery in Boulder, Colorado. These citations apparently offended Joseph Coors, a close friend of the Reagan White House.¹³ Following several years of governmental appeals, OSHA was ordered to reinstate Foster with full back pay.

There are many examples of political appointees altering the work of agency scientists, or totally removing provisions of standards, or entire standards that would safeguard the health of working-class Americans. I will provide three examples.

In 1985, the Administration, over the objection of the OSHA staff who developed the ethylene oxide (EtO) standard, removed the provision for the short-term exposure limit (STEL) just prior to publication.¹⁴ A 5.0 ppm STEL was to accompany the 8-h time-weighted-average of 1.0 ppm. An epidemiological study conducted in Finland had clearly demonstrated an excess of spontaneous abortion among female sterilizer operators. Their mode of exposure to EtO was through short-term bursts as they opened the sterilizer door. Two major manufacturers had already established a STEL for EtO at their facilities and had recommended to OSHA that a STEL be included in the final standard. I testified before Congress in 1983 that a STEL should be considered by OSHA based on the aforementioned epidemiological study.¹⁵ Another OSHA office director, Robert Beliles, who was in charge of the standard testified before the same congressional committee that a member of the Ethylene Oxide Industry Council, the trade association for the manufacturers of EtO, had walked into his office unannounced to inform him that the Council was not in favor of the inclusion of a STEL in the EtO standard.¹⁶ After the lobbyist’s attempted influence on the office director had ended, he proceeded into the office of a higher level official, the Director of Health Standards. The Health Standards Director met with the EtO lobbyist for more than an hour according to the office director, Robert Beliles, but for no more than five minutes according to the Health Standards Director. (As the hearing record had been closed, this lobbying pressure

constituted *ex parte* communication between the lobbyist and the Director of Health Standards.) The irony of this entire episode is that in 1983, I had been scheduled to make a presentation on the genetic risks of EtO at a course at the University of Texas Medical Branch in Galveston. The Director of Health Standards informed me just prior to my departure that I could not give the lecture because OSHA was in rulemaking on EtO and I therefore could not have an opinion on its toxicity. I asked the OSHA Solicitor’s Office to intervene. The solicitor informed the Director that OSHA staff working on standards were required to have an open mind, “not a blank mind,” otherwise OSHA would never be able to initiate a proposal for a standard. I was able to present the lecture.

OSHA was subsequently sued for the exclusion of the STEL by Public Citizen, a consumer advocacy group, and several unions. (See detailed review of the history of the development of the permissible exposure limits for EtO.)¹⁷ In 1988, a revised EtO Standard with a STEL was promulgated.¹⁸ The justification for this provision was virtually identical to that removed from the OSHA 1985 standard three years earlier. (Recent epidemiological study has demonstrated a dose response for breast cancer in relation to average EtO exposure below 1.0 ppm among women hospital sterilizer operators.¹⁹ Thus, the three-and-a-half-year delay in the provision for a STEL in the OSHA standard may have a greater impact on the health of these women than realized in the early 1980s.)

OSHA chief, Secretary Roland, over the objection of career OSHA staff who were developing the Field Sanitation Standard, also removed provisions requiring agribusiness to provide field workers with toilets and potable drinking water.⁷ As a result of outside pressure and dedicated career civil servants, who fought with the political appointees within the agency, these provisions are now a part of the Standard. (Roland was appointed Assistant Secretary for OSHA during a Senate recess and never received confirmation on his appointment. He held the position for less than one year and resigned. His tenure at OSHA was mired in “serious” conflict allegations.⁷ For one example, at the time of his decision to remove the toilet and fresh water provisions from the Field Sanitation Standard, he held between \$15,000 and \$50,000 in Tenneco stock. At the time, Tenneco employed 2,000 farmworkers on 117,000 acres in California and Arizona.⁷ Among other groups, the Congressional Hispanic Caucus demanded his resignation over his decision to remove these provisions.)

Even during the Carter Administration, when Eula Bingham was Assistant Secretary for OSHA and was successfully promulgating several standards that were protective of workers’ health, there was scientific and political interference. The manufacturers of beryllium put pressure on NIOSH and OSHA through the hiring of “consultants” to review the NIOSH epidemiological studies and then to send complaints to the White House about the quality of the data. While some of the arguments

about the epidemiological data were reasonable, in general they made little difference in the overall evaluation of the data indicating a significant association between beryllium exposure and lung cancer among exposed workers along with evidence that beryllium caused lung cancer in experimental animals. Yet, the promulgation of a new beryllium standard was stopped in 1978 as Secretary of Energy, James Schlesinger, argued that our national security would be threatened by a revised beryllium standard because the only two “non-communist” manufacturers of beryllium in the free world would be put out of business at a compliance cost of \$150 million. Schlesinger claimed his “rule of thumb” estimate was provided to the Energy Department by the beryllium producers.^{20–22} A compliance cost estimate from one of the two beryllium producers in the country, however, was only \$4.6 million and the Department of Labor’s estimate for both company’s combined was only \$3.7 million. Secretary of Labor Ray Marshall was quoted as saying he would not comply with Schlesinger’s request to halt the standard. He called beryllium “one of the most toxic substances known to man.”²² Nevertheless, Schlesinger gathered the support of Secretary of Defense Harold Brown and the White House ultimately ordered Secretary Marshall to withdraw the standard (Eula Bingham personal communication). It is 28 years later and we still lack a new beryllium standard.

I left OSHA in 2002 in part because of misinformation I was ordered to put into the Agency’s Hazard Information Bulletin (HIB) on Preventing Adverse Health Effects from Exposure to Beryllium in Dental Laboratories.²³ This modification to the HIB was requested by a beryllium manufacturer’s industrial hygienist through the Assistant Secretary’s office. I was offered the option of not having the agency publish the HIB, or making the modification. I chose to make the modification, but insisted that a footnote be added to qualify the modification. (During the development of the HIB for dental laboratory technicians exposed to beryllium, I contacted the three major investigators conducting research on beryllium exposure and chronic beryllium disease. All three gave the opinion that workers exposed to beryllium should be offered the Beryllium Lymphocyte Proliferation test (BeLPT) as a screening tool to identify those with chronic beryllium disease, a debilitating and often fatal lung disease. Yet, the Brush Wellman industrial hygienist insisted to the Assistant Secretary that the test not be recommended. Thus, against my recommendation and also against the recommendation of the OSHA staff physician who was working with me on the development of the HIB, I was “required” to add information that the BeLPT did not meet the criteria of a screening test. [See page 4 of the HIB.])²³

A second reason for my eventual departure was my realization that the George W. Bush Administration had no interest in completing the beryllium standard languishing in OSHA since 1978. Nor was this administration interested in promulgating any Health Standard. A reflection of

this political philosophy can be seen by OSHA changing the name of the Directorate of Health Standards Programs to the Directorate of Standards and Guidance. The emphasis was to be placed on guidance documents, which are not enforceable.

I have provided a few examples of the struggles a career civil servant can have with political appointees. Intimidation is too often present because manufacturers, who carry an inordinate amount of influence over government regulatory agencies, do not want to be regulated and economic concerns of manufacturers, even when not adequately documented, are able to win the battle leading to less protective or an absence of standards. I was able to keep my job because of the intervention of Congressman Gore and the amount of press the action received. Most other career civil servants whose best scientific judgments are changed by political appointees have little recourse other than to remain silent, or leave the agency because they have no constituency to support them. These situations lead to an attrition of many competent staff, hinder the development of adequate standards and their enforcement, and are a threat to a basic social right of working-class Americans – to have a safe and healthy workplace.

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