

DoJ in new assault on military science

by Leo Scanlon

While the clients of Kissinger Associates negotiate the sale of chemical weapons technology to the Soviets, the three scientists who invented the modern forms of such U.S. weapons are awaiting sentencing in a U.S. court. William Dee, Carl Gepp, and Robert Lentz are career Army chemical engineers who were convicted for illegally storing hazardous wastes at the Aberdeen Proving Grounds in Maryland. Sentencing is scheduled for March, and penalties range from 5-15 years.

This is the first time that one government agency (the Department of Justice) has brought criminal charges in an area of administrative law against representatives of another federal agency (the U.S. Army). The Army, by abdicating its responsibility for the management of the highly classified weapons facility and allowing the three to be tried as individuals, finessed the prohibition against the government suing itself.

If the technique is allowed to stand in the appeals courts, it will, according to the prosecutor and elated environmentalists, unleash an avalanche of similar suits against employees of federal agencies and scientific laboratories who run afoul of the eco-gestapo being put in place within the Bush administration. Even experienced Carter-era DoJ environmentalists were astounded that main Justice allowed the office of U.S. Attorney Breckenridge Wilcox to pursue the issue in such a reckless fashion. "There is no way we could ever have gotten away with this," one environmentalist said, "it sure seems that things are changing."

This trial culminated a years-long effort by federal agencies and the news media to prepare the conviction by cultivating hysteria about the chemical weapons research being conducted at Aberdeen. These efforts were conducted locally through Sun Papers' reporter Robert Benjamin. Benjamin worked with the Maryland Department of the Environment and a disgruntled technician, Dennis Reeves, to scandalize the management of the Proving Ground and the facility within it known as the Pilot Plant.

The Pilot Plant was the site of research into the development and production of a new generation of chemical weapons, safe to store and handle, which was scheduled to replace the aged and deteriorating NATO stockpile. The weapons developed at Aberdeen are called binary weapons, and are characterized by the clever design which encloses two sepa-

rated chemicals, each relatively inert until combined with the other, within one artillery shell or warhead. Being thus long lived, and non-lethal until actually fired, the technology is a powerful deterrent to the chemical warfare capability of the Warsaw Pact.

While the Reagan administration insisted upon the necessity of the binary weapons, Congress turned funding for the program into a forum of intervention into treaty negotiations with which the Soviets hoped to stop the deployment of the technology. The debate over the treaty was one of the most hotly disputed matters before the Congress in 1985-86. The dilapidated conditions under which the engineers pushed their crash effort is entirely due to this circumstance.

Judge shapes judicial frame-up

The case itself could not have gone anywhere without the favorable rulings of Judge Hargrove, who upheld the prosecution's motions *in limine*, to restrict the defendants from explaining the actual chain of command over the facility to the jury—which would have established the validity of numerous efforts by the defendants to rectify problems with the facility long before the incidents were brought to the attention of environmentalists. Incredibly, the judge argued that if the managers of the facility knew of problems uncorrected by their superiors, they, not the Army which refused to act, should be held responsible! Thus, the opinion of a disgruntled "whistle blower" carries more weight than the superior command over a military facility. This decision will come back to haunt the bureaucratic cowards who refused to fight it.

The judge also ruled that the managers could not plead ignorance of the rule of the Resource Conservation and Recovery Act, under which they were indicted, even though the act had not been written when the plant was put into activity! He also side-stepped the obvious fact that the RCRA provides for the enforcement of injunctive relief by a prosecutor, not criminal sanctions, in a matter involving a government agency. Finally, he disallowed the defense argument, that the use of a "hazardous materials" statute by the prosecution was a sophistry, since the materials stored in the facility were only defined as hazardous waste once the plant was closed down—an action which was precipitated by the government itself!

With this setting, the prosecution opened its arguments: "The government will not be producing evidence that any of these three individuals stood over a sump or a pit and poured in hazardous waste. These actions were done by their subordinates." The subordinate referred to, not surprisingly, was Dennis Reeves, the "whistle blower."

Assistant U.S. Attorney Veronica Clark closed the proceeding with a tirade, telling the jury "these men were more concerned with their 'mission' of producing chemical weapons to kill people than they were in the environment of their own back yards . . . their defense that they were not responsible . . . is the same defense used by Nazi war criminals" in Nuremberg.