

Vol. 21, No. 5 September/October 2007

FRAUDTM

M A G

**EMPLOYEE
ANTI-FRAUD
EDUCATION
PAGE 20**

**PRE-SCHOOL
FRAUD
PAGE 24**

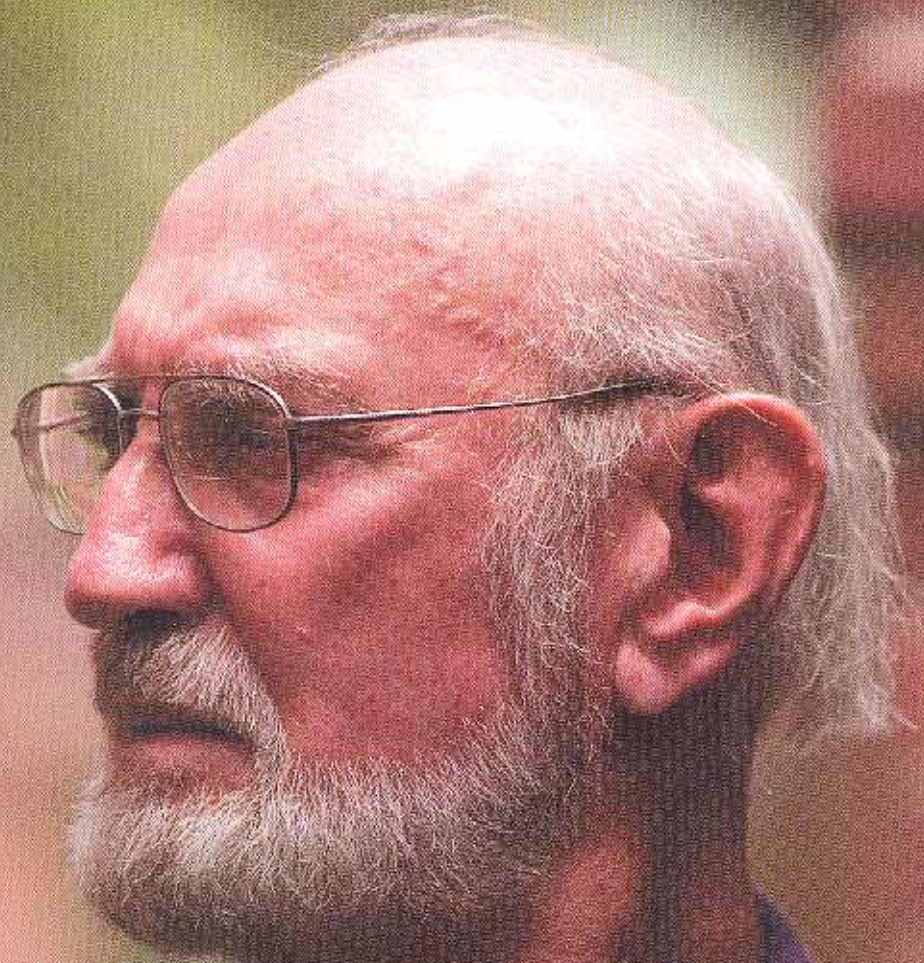
**PROTECTING
PRIVILEGES
IN FRAUD
EXAMINATIONS
PAGE 28**

**SUPPLY-CHAIN
FRAUD
PAGE 32**

SENTINEL AT THE EPA

William Sanjour, the
2007 recipient of the
ACFE's Sentinel Award

An interview with
William Sanjour



**SENTINEL
AT THE EPA**

The ACFE's 2007 Sentinel Award recipient spent more than three decades confronting deception and inequities in the Environmental Protection Agency.

When William Sanjour is asked how he was able to stand up to injustices at the U.S. Environmental Protection Agency for more than 30 years, he simply says, "It's in my genes. I come from a long line of people who would not be cowed when they are right."

It's not easy being a sentinel anywhere, but it's often toughest in a governmental regulatory agency. Employees, Sanjour says, often feel pressure to obey unwritten rules of conformity. Sanjour didn't conform and paid the price. But he also caused lasting change and left the EPA with a clear conscience.

In the late 1960s, the EPA hired Sanjour as a consultant. Several years later, as branch chief in the new Hazardous Waste Management Division, he supervised studies of hazardous waste damages and treatment technologies. His efforts led to the passage of the Resource Conservation and Recovery Act of 1976 (RCRA).

What began as an effort to do his job by developing regulations for the treatment, storage, and disposal of hazardous waste became a long, drawn-out battle with the EPA, multiple presidential administrations, and several government agencies as he fought to make the RCRA work in the true spirit of the legislation.

In 1995, Sanjour won a landmark suit against the U.S. federal government, which established the First Amendment right of federal employees to "blow the whistle" on their employers. (To this day, *Sanjour v EPA* hasn't been overruled.)

Until his retirement in 2001, Sanjour faced retaliation, reassignments, demotions, and legal showdowns – all the while stubbornly continuing his government service and assisting grassroots environmentalists.

Sanjour spoke to *Fraud Magazine* from his home in Arlington, Va.

The ACFE's Cliff Robertson Sentinel Award is presented annually to recognize the selfless act of coming forward for the sole purpose of righting a wrong. The award carries the inscription, "For Choosing Truth Over Self." What are your thoughts about being chosen the 2007 recipient?

I am awed to be in the company of Bunmarine Greenhouse, David Graham, Marta Andreassen, and Cliff Robertson.

You've written that the EPA – regardless of who is in the White House – is simply more concerned with protecting the interests of the people it's supposed to regulate than in protecting the public interest. Has it always been this way in the EPA and what has caused it? What are the deficiencies and the strengths of the EPA? Why do the problems continue through both Republican and Democratic administrations?

Regulatory agencies are created by Congress in order to control some powerful forces in society (usually corporations), which benefit society but which are also prone to abuse their power. The purpose of a regulatory agency is to allow the flow of benefits while straining out the abuse. In order to do this, Congress gives administrators of regulatory agencies broad discretionary power to write regulations for industries for which they are responsible.

By Dick Carozza • Photos by David Holloway

The flaw in the system is that the administrator is appointed by the president and, although confirmed by the Senate, he or she nevertheless serves at the pleasure of the president. Thus any discretionary authority given to a regulatory agency administrator is, in fact, given to the president of the United States to be used as the president sees fit, and the administrator is no more than a White House staffer.

As I said, we are dealing with powerful forces. The Food and Drug Administration, the Nuclear Regulatory Commission, the National Highway Traffic Safety Administration [NHTSA], and EPA, among many others, regulate giant corporations.

As you know, big corporations have big power, money, and influence. Corporate money helps elect governors, congressmen, senators and presidents. The threat of a corporation's withdrawal from a state causes governors to hesitate to enforce the state's laws.

Congress has essentially given the authority to regulate these powerful giants to a president. A president, however, regardless of party, has an agenda of about a half dozen issues with which he and his staff are most concerned. These are usually national security, foreign affairs, the economy, the budget, and maybe one or two others; call them Class A priorities. All others – housing, education, transportation, veterans' affairs, the environment – are in Class B.

A president – any president – expects performance in Class A. He will expect the military to be able to deploy forces anywhere in the world when he chooses, and if it isn't, he will bang heads until it is. If Congress doesn't support his budget, he will call the budget director into his office and pound his fist on the table. But can you picture a president bringing the secretary of transportation into the Oval Office and yelling because of poor bus service in Sheboygan? Or summoning the administrator of the Environmental Protection Agency in and chewing him out for pollution in the Cuyahoga River? I can't. A president expects performance in Class A; in Class B he expects only peace and quiet.

But regulatory agencies, by their very nature, can do little that doesn't adversely affect business, especially big and influential business, and this disturbs a president's repose. The EPA, for instance, cannot write regulations governing the petroleum industry without the oil companies going to the White House screaming "energy crisis!" As a result of energetic lobbying by the automobile industry, the NHTSA cannot release the millions of automobile safety complaints in its files. When the FDA wants to thoroughly evaluate a new drug, the pharmaceutical company lets loose a public relations barrage about how the bureaucratic delays are costing lives. Regulatory agency employees soon learn that drafting and implementing rules for big corporations means making enemies of powerful and influential people. They learn to be "team players," an ethic that permeates the entire agency without ever being transmitted through written or even oral instructions. People who like to get things done, who need to see concrete results for their efforts, don't last long. They don't necessarily get fired, but they don't advance either; their responsi-

bilities are transferred to others, and they often leave the agency in disgust. The people who get ahead are those clever ones with a talent for procrastination, obfuscation, and coming up with superficially plausible reasons for accomplishing nothing.

This is a long answer to a short question, but the bottom line is: There are two systems that are not properly designed to work as they are expected to work. The first is our whole system of corporate law, which gives such power to corporations. But the solution to that is, as they say in the military, above my pay grade. The second problem is easier. Regulatory agencies write and enforce regulations. Regulations are laws. The business of writing laws is the business of Congress and not the president. The regulatory and enforcement parts of agencies should be split, and the administrators of regulatory agencies should be appointed by Congress for fixed terms and only removed before the end of their terms only by impeachment or an act of Congress. Enforcement should be separate and administered by the federal or state governments.

This would not, of course, solve all problems, but it would improve the framework for solving problems.

You've said that the people in the EPA who want to change things and correct problems don't necessarily get fired but they don't advance and often leave in disgust. Did you find many allies as you fought to see concrete results? What sustained you during those years? Why did you decide to speak up within the EPA rather than quit as so many have done?

It's in my genes. I come from a long line of people who would not be cowed when they are right. I followed the example of a great whistle-blower sentinel – Martin Luther. When faced with the wrath of his superiors, rather than back down, Luther formed alliances with the public and the powerful north German princes who shared his views and defied the authority of the church. I did likewise by finding allies in environmental and whistle-blower organizations, in Congress, and in the press. They encouraged me to continue speaking out and helped protect me from the backlash.

Thus, I became a conduit for others in the government industry and for environmentalists, who had information about EPA waste, fraud, and abuse. I would investigate these charges and, if I felt they had merit, I would bring them to the attention of the administration or the inspector general, making sure that copies went to Congress and the press.

I recognized, just as Luther did, and what many whistle-blowers fail to recognize, that after publicly confronting the powers that be head on one can never return to the life one led before. Instead, with the help of his allies, Luther carved out a new life for himself. In doing so, he had to make many changes and develop many new skills but he took command of his life and never allowed himself to become a victim.

However, my advice to people, in general, is don't be a public whistle-blower. Avoid open challenge or defiance of authority or power. Try to satisfy your conscience or your sense of duty without getting personally involved. For example, you can leak

stuff to a known sentinel who is willing to take the heat, or to an activist organization, or to a plaintiff's attorney, or anyone who will protect the identity of the source.

Can you explain how you blew the whistle in 1978 when the Carter Administration, concerned about inflation, took steps, as you've said, "to protect industry by removing the teeth" of the Resource Conservation and Recovery Act of 1976, which you helped bring about?

In the early 1970s, as an EPA branch chief, I supervised studies of hazardous waste damages and treatment technologies. These efforts culminated in the passage of the Resource Conservation and Recovery Act [RCRA] of 1976, after which, I was in charge of drafting regulations for the treatment, storage, and disposal of hazardous waste.

In the midst of this effort, on June 15, 1978, the staff was told that we had received new orders from the politically appointed office director. He said there were several recent developments including: President Carter's directive to reduce the federal budget to fight inflation, many new congressionally mandated programs in EPA with not enough resources to fully implement them, and the so-called taxpayers' revolt. As a result of these, the office director felt the hazardous waste management regulations had to be reduced in scope. In particular, the definition of what waste would be covered by the regulations would have to be changed and could not be based on whether the waste causes cancer, causes birth defects, is poisonous or radioactive. The petroleum industry and several others were to be excluded from the regulations. Furthermore, the staff was directed to come up with reasonable-sounding rationales for these cutbacks and was warned not to make any of this public.

At first I fought from within the EPA to make RCRA work in the true spirit of the legislation. The agency responded by transferring me in 1979 to a position with no duties. I then became an outspoken EPA whistle-blower. I alerted Congress, environmental groups, and the press to this attack on RCRA.

Can you give other specific examples of how the EPA procrastinated, obfuscated, or capitulated to outside powers to the detriment of the health of citizens?

I could fill a book answering this question, but here are just a few brief examples.

A 1985 government report said EPA has failed to enforce

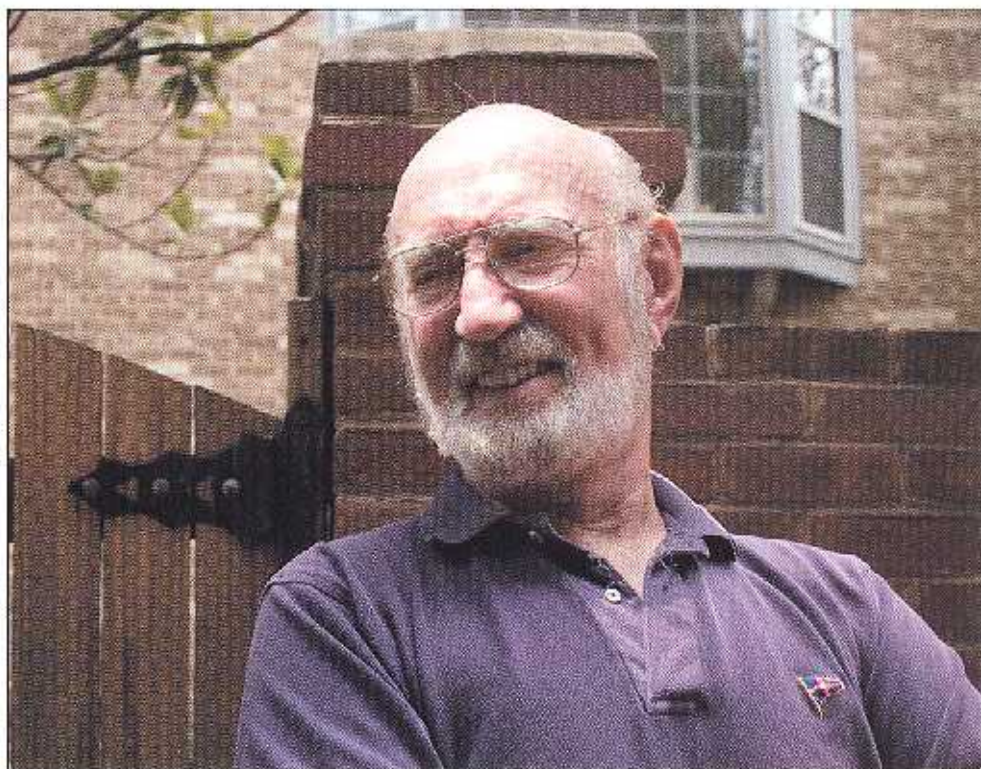
laws requiring land disposal facilities to certify compliance with the RCRA or shut down.

When EPA research found that EPA regulations were not preventing poisonous dioxin emissions from hazardous waste incinerators, EPA issued instructions to ignore the findings.

In 1993, EPA went to court to defend the right of a hazardous waste incinerator operator in Arkansas to vent dioxin-contaminated gases into a residential neighborhood.

The Clean Air Act required EPA to review and, if necessary, revise standards for ozone and particulates every five years. EPA stopped doing so in 1979. Only after it lost a lawsuit in 1991 and was under court order to act did EPA write the minimal standards it thought it could get away with.

Systemic state and U.S. EPA enforcement failures have re-



sulted in several decades of routine high air-pollution levels and episodes of excess air emissions caused by repeated operating problems and upser incidents at oil refineries.

Congress is now investigating EPA's recent proposed rule to revise the national ozone standard but not to the extent recommended by its own staff scientists and advisors. They are interested in possible White House intervention. The White House Office of Information and Regulatory Affairs held three meetings on the rule, two of which were packed with industry reps. The first meeting also featured a representative from Vice President Cheney's office. Contrary to the rules, EPA was not told of the meetings and did not attend.

In 1995, you won a landmark suit against the U.S. federal government, which established the First Amendment rights of federal employees to “blow the whistle” on their employers. Can you briefly describe the circumstances that lead to that decision and whether it still helps federal employees today?

I suppose I should be flattered that the mighty United States government wrote a law just to silence only me and one other person. The law was a result of years of frustration at EPA trying to silence us from speaking out in public, on our own time, in opposition to government policy and its embarrassment at having to answer complaints from important people on why the agency had to tolerate this conduct. For example, when Lois Gibbs and I were invited to speak in Alberta, Canada, in opposition to a hazardous waste landfill, the landfill operator wrote a scathing letter to the administrator wondering how a government official could do that “without putting his continued government employment in jeopardy.” The Canadian government was also up in arms. The EPA was humiliated at having to apologize not only to the landfill operator but to the State Department as well.

I was asked to testify in Congress about the origins of the law written by the Federal Office of Government Ethics (an oxymoron) and the outright lies used to justify it. The lawsuit to overthrow it, *Sanjour v. EPA*, was brought, pro bono, by the National Whistleblower Center and attorney Steve Kohn. After four years of litigation, the U.S. Appellate Court for the D.C. Circuit, en banc, found the law unconstitutional. The majority decision said:

Government employee speech is protected by the First Amendment, and can only be infringed when the government demonstrates that the burden on such speech is “outweighed by [its] necessary impact on the actual operation of the government.”

In spite of this decision, for years, EPA continued to threaten employees against violating a law, which the courts had found unconstitutional. While we eventually prevailed, one is nevertheless left apprehensive at the Stalinist tactics the United States government is willing to use to silence perfectly legal dissent.

In what other ways has the EPA violated whistle-blower statutes? Have conditions improved in the agency?

Whistle-blower attorney Steve Kohn tells me that the EPA has committed more violations of the environmental whistle-blower laws than any other single employer including private industry. They have fired whistle-blowers, bad-mouthed whistle-blowers, created hostile work environments, etc. Worse, they still have not created any program to encourage the private sector to implement the environmental whistle-blower laws. Conditions have not improved in the agency. The EPA is leading the charge in trying to get the Department of Labor to narrowly interpret the laws, such as narrow definitions of who is an employee, what is protected activity, and what is adverse action.

Does Sanjour v. EPA still help federal employees today?

Yes, it does, and Steve Kohn tells me it has never been overruled or even criticized by any other court.

Did you see outright fraud at the EPA or just waste and abuse?

If by fraud you mean deceiving people in order to take their money, then I haven't seen that. But if by fraud you mean deceiving people in order to deprive them of their legal rights, then that's what this is all about. However, unlike much occupational fraud, in this case it is the people at the very top who are committing the fraud.

How do you advise idealistic members of grassroots environmental groups?

When I worked for EPA, I spent much of my spare time meeting with grassroots environmental groups. Their members frequently ask me why EPA does not seem particularly interested in protecting the environment. The question usually comes from people who are dealing directly with the EPA for the first time, ordinary citizens with ordinary political views and lifestyles who suddenly find themselves living close to a hazardous waste facility, incinerator, or nuclear waste dump. These are people who started out with a strong faith in their country and its institutions, who had always thought of the EPA as the guys in white hats who put the bad polluters in jail. “If there were anything wrong with it,” they say, “the government wouldn't let them do it.”

To their surprise, these folks find that the EPA officials, rather than being their allies, are at best indifferent and often antagonistic. They find that the EPA views them, and not the polluters, as the enemy. Citizens who thought that the resources of the government would be at their disposal find instead that they have to hire their own experts to gather data on the health and environmental impacts of proposed facilities, while the government sits on the same information, collected at public expense. And if these folks want to go to court, they have to run bake sales to hire attorneys to go up against government lawyers whose salaries are paid by the taxpayer.

I advise them to organize. Learn the issues; educate their neighbors and get them involved. There are strengths in numbers. (If I sound like a labor organizer, that's what it's like.) With numbers, they can exert pressure on local government and businesses. I tell them to get organizing and technical support from environmental and other support groups such as the Center for Health, Environment and Justice, and the Southern Organizing Committee. I place litigation as a low priority because the people they are up against are probably better at it. I tell them that politicians need two things to get elected: money and votes. Corporations can always provide the money, but an organized community can provide the votes.

There's a whistle-blower protection section, “Protection for employees of publicly traded companies who provide evidence of fraud” [Sec. 806], in the Sarbanes-Oxley Act. What are your thoughts on that?

SOX is a great law and it is wonderful that it extends whistleblower protection coverage to public company employees.


I have a beef about whistle-blower protection laws in general in that they don't go far enough. Whistle-blowers, in almost every case, became whistle-blowers because a moral dilemma, not of their own seeking, was thrust upon them. They were asked to do something immoral and they refused. They are the kind of people who are concerned that things get done right. Each year taxpayers pay billions of dollars to police and prosecute fraud, waste and abuse, yet one whistle-blower can accomplish more than a room full of inspectors or policemen and cost far less. Whistle-blowers know the system and speak out in a spirit of public service. And for that, they pay a heavy price. They deserve more than just the right to hold onto their jobs; after all, it's not the whistle-blower who needs protection so much as it is the public that needs the protection of the whistle-blower.

Do you still advise possible sentinels, for instance, at companies that are dumping toxic waste into municipal landfills? If so, how do you counsel them? What are sentinels' biggest misconceptions?

As I said earlier, I would never encourage anyone to be a public sentinel. Better to do the "deep throat" thing. If you are thinking

of going public I suggest you first read "A Textbook for Whistle-blowers" and "Introductory Remarks for Undeclared Whistle-blowers" on my Web site [<http://pwp.lincolncollege.edu/sanjour>]. Then go to the Web site of The National Whistleblower Center [www.whistleblowers.org]. There is help, but you must learn where it is before jumping. The courts can be friendly or unfriendly, depending on how well you have done your homework.

What were the costs of being a sentinel? What did you find satisfying?

In my case, I guess I always suspected that sooner or later I would be in a situation where I would have to choose between being cowed or being right, because, as I said, it's in my genes. Maybe that's why I chose government service, because of the protection. When the time came, I was, at least partially, prepared for it. The cost was high, but not as high as it could have been or as high as it was for many others I knew who didn't do their homework. The satisfaction is having confronted the beast and not only survived but having taken a bite out of its tail. 

Dick Carozza is editor of Fraud Magazine. His e-mail address is: dcarozza@ACFE.com.
