

Labor Occupational Health Program MONITOR



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Labor Occupational Health Program MONITOR

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On the Cover:

Toxic chemicals may be the most serious of today's workplace health and safety hazards. It has been estimated that 55,000 industrial chemicals are now in use, and more than 500 new ones are introduced each year. In this issue of Monitor, Dr. Nicholas Ashford of MIT looks at the workplace toxics crisis. Dr. Ashford spoke in Berkeley in May; excerpts of his provocative remarks appear on page 4. Monitor also interviewed Dr. Ashford on the implications of his views for workers and unions; see page 7. (Photo: Ken Light.)

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LOHP is a labor education project of the Institute of Industrial Relations which produces a variety of printed and audiovisual materials on occupational health, and conducts workshops, conferences, and training sessions for California workers and unions. A catalog of materials and a brochure which describes training services are available upon request.

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"How Workplace Hazards Affect the Body"

New LOHP Slide Show Explains Occupational Disease

A new slide/tape show, **How Workplace Hazards Affect the Body**, is now available from the Labor Occupational Health Program.

This latest addition to LOHP's growing audiovisual catalog demonstrates how many different kinds of job hazards—noise, heat, stress, radiation, ergonomic problems, and toxic substances—can cause occupational disease. Written in clear, non-technical language, the show suggests how workers can find out about the risks they face and what they can do to protect their own health.

Some of the basic concepts and terminology of occupational health are introduced, with particular emphasis on the effects of toxics. Subjects covered include routes of exposure, toxicity, acute and chronic effects, latency, medical testing, and risk assessment. The show illustrates these ideas with stories about workers' actual experiences with occupational disease.

How Workplace Hazards Affect the Body consists of 91 slides with a taped narration and printed script. Price is \$100, including shipping and handling. Order from:



LOHP, 2521 Channing Way, Berkeley, CA 94720. Please enclose prepayment and allow six weeks for delivery. Make checks payable to: The Regents of U.C.

LOHP also offers several other slide/tape programs, as well as three 16-millimeter films, on various workplace health and safety topics. Please write for a free catalog.

LOHP Launches Labor Education on AIDS

In mid-1986, the Labor Occupational Health Program received a one-year grant from the California Department of Health Services to begin a new labor education project focusing on AIDS.

AIDS—a fatal disease technically known as “acquired immune deficiency syndrome”—has developed into a major public health crisis around the world during the last few years. The federal Centers for Disease Control now count over 25,500 diagnosed AIDS cases in the U.S. alone. A recent federal report estimates that by 1991, the figure will grow to 270,000.

AIDS in the workplace has become an issue which labor unions must address. Many unions already report increased calls from members requesting information on occupational exposure to AIDS, on the means by which the disease is transmitted, and on reducing the risk. Many members also want to know their rights, and ask for protection against discriminatory workplace policies.

The most widespread concern of workers has been the fear of infection from co-workers who are (or may be) AIDS carriers. Many people remain confused about the means of transmission of the AIDS virus. But there is *no* medical evidence indicating that the virus is transmitted through casual contact. The Director of AIDS Activity of the Centers for Disease Control, Dr. James Curran, says that “No evidence supports AIDS transmission by casual contact, by the airborne route, by ob-

jects handled by people with AIDS, or by contaminated environmental surfaces.”

In well-publicized incidents recently, misunderstanding and fear of AIDS have led to discrimination against hospital patients, schoolchildren, and people seeking jobs or housing. In the same way, misunderstanding and fear can lead to workplace discrimination against those believed to be in high-risk groups—gays, blood transfusion recipients, and others. Unions can play a role both in fighting such discrimination and in demanding reasonable protection against AIDS in those situations which actually call for precautions.

GOALS AND ACTIVITIES

The goals of LOHP's AIDS Project are twofold: to serve as a central source of information for the Northern California labor community on the medical and legal aspects of AIDS, and to help unions develop effective workplace AIDS policies.

Planned activities include jointly-sponsored union training programs on AIDS; technical assistance to unions on issues involving AIDS and the workplace; and an AIDS information center for labor which will be developed within the LOHP Library. The training programs will cover the epidemiology of AIDS, modes of transmission, occupational exposure, recommended work practices for certain occupations, fed-

eral and state laws and regulations which prohibit discrimination against persons with AIDS, and the use of these legal tools in grievance procedures and contract negotiations.

Among the first unions to become involved in the issue of AIDS have been those representing health care workers. LOHP's AIDS Project hopes to work with a wide range of unions. In September, the Project joined with SEIU to present a one-day conference in San Francisco on AIDS in the workplace, called “AIDS is Everybody's Business.” Work is also underway to develop training programs with the San Francisco Central Labor Council, SEIU Local 790, and the California State Employees Association (SEIU Local 1000).

A special focus of LOHP's AIDS Project will be training for rural firefighters in Northern California; this aspect of the Project's work will be co-sponsored by the Federated Fire Fighters of California, AFL-CIO. Programs will be designed to give firefighters practical medical information about AIDS and protection against exposure to the virus, as well as a basic knowledge of the legal issues.

For more information about the LOHP AIDS Labor Education Project, please contact Elaine Askari at LOHP, (415) 642-5507.

—*Elaine Askari*
Coordinator
LOHP AIDS Labor Education Project

December “Occupational Cancer” Symposium in San Francisco

Recent Advances in Occupational Cancer, the third annual educational symposium in a series, will be held at the Cathedral Hill Hotel, Van Ness and Geary, San Francisco, on Friday and Saturday, December 5–6, 1986.

The symposium will address four important topic areas in occupational cancer: Controversies in Cancer; Cancer Prevention Strategies for Hospital and Health Care Staff; State Cancer Policy; and Cancer and Special Worker Groups (including minorities, firefighters, and asbestos workers). In each area, lectures by speakers prominent in the field of occupational cancer will be fol-

lowed by case presentations and opportunities for discussion.

Sponsors are the University of California, San Francisco's Extended Programs in Medical Education and Department of Medicine; the San Francisco Unit of the American Cancer Society; and the Northern California Occupational Health Center (with which LOHP is affiliated). Primarily designed for physicians, nurses, and industrial hygienists, the symposium will offer Continuing Education credit for these groups. It will also be of interest to other health professionals with epidemiology and toxicology back-

grounds, professionals involved with public health policy, and union representatives with health and safety responsibilities.

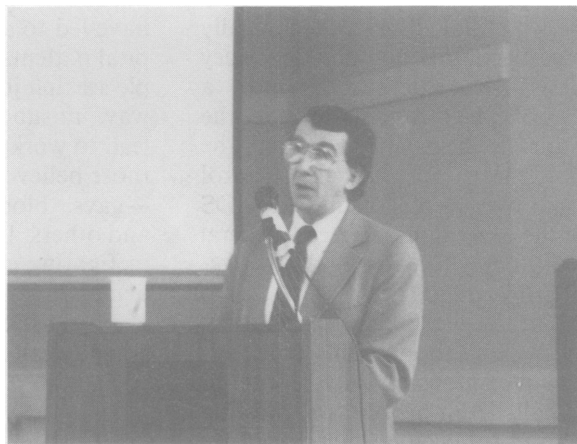
Registration fee is \$200 for physicians, and \$140 for others. Enrollment may be limited, and advance registration is recommended. A block of specially-priced rooms has been reserved at the Cathedral Hill Hotel for participants, and discount airfares are also available. For more information about the program, please phone (415) 476-5208; for registration information phone (415) 476-5808.

The "Crisis in the Workplace" Continues

Dr. Nicholas A. Ashford of the Massachusetts Institute of Technology was a featured speaker at the Western Meeting of the American Public Health Association's Occupational Health Section, held in Berkeley in May, 1986. Dr. Ashford, a leading figure in the field of health and safety policy, is best known as the author of *Crisis in the Workplace*, a landmark 1976 Ford Foundation study which examined the state of occupational health in the U.S. The book brought new attention to the epidemic of occupational disease and injury among U.S. workers, and its recommendations for public policy reform were taken very seriously at the time by many in government, industry, and unions.

But, according to Dr. Ashford, the "crisis in the workplace" continues in the eighties. In his wide-ranging Berkeley talk, he looked at occupational health in the U.S. ten years after his original report. Focusing on the still unsolved problem of toxic chemicals in the workplace, he showed that there are considerable grounds for optimism—scientific knowledge about toxics is growing dramatically, and new manufacturing technologies exist which would allow the use of safer products and processes. Yet his scientific optimism was balanced by his disappointment that many political obstacles to solving the problem remain. *Monitor* is pleased to present excerpts of his remarks below. An interview with Dr. Ashford also appears in this issue.

Dr. Ashford is currently a faculty member in the Center for Technology, Policy and Industrial Development at MIT as well as in the Industrial Relations Section of MIT's Sloan School of Management. He has been a member of the National Advisory Committee on Occupational Safety and Health (NACOSH) and of the Environmental Protection Agency's Science Advisory Board. He was recently elected a fellow of the American Association for the Advancement of Science.



Dr. Nicholas Ashford addresses the May meeting of the American Public Health Association in Berkeley. (Photo: Patricia Quinlan.)

RISK ASSESSMENT/ TECHNOLOGY ASSESSMENT

If one really wants to improve the occupational health and safety of America's workers...you have to have a mechanism to create the knowledge base upon which you move scientifically, economically, and politically.

I think there are two major areas where information badly needs to be generated...One is *risk assessment*: all the factors that enter into determining what is hazardous. The second is *technology assessment*: knowing what our technological capabilities are.

Where are we nationally? We lobbied very strongly for workplace and environmental protection, and we talked about the fact that there are 55,000 chemicals in production currently, and that we add as many as 500 to 1,000 every year. We persuaded people politically that this is a tremendously difficult, intractable problem—that we have to solve this problem before we are buried in a sea of chemicals and all die before the age of four.

The truth of the matter is that probably no more than around 500 chemicals are responsible for most of the exposure and most of the environmental and oc-

cupational disease. If we could get our hands on these 500 or so, we probably could solve most of the health problems, and we all could move to a different area of concern. I personally would like to be put out of business. I'd like to get this business overwith and move on to some other social problem.

The science of risk assessment has exploded. Whole new groups in the scientific world are involved, like biostatisticians. In spite of the fact that there doesn't seem to be any money to do research...we're cumulating experience, for example with regard to the kinds of chemicals that cause cancer. It's not as true with chemicals that cause birth defects; we're still in a kind of quandary there...[But I think] that, within the order of five years, we should be able to look at a chemical structure and pretty well make a good guess as to whether the substance is a "bad actor."

[Risk assessment involves] the choice of models, the choice of data, the choice of statistical conventions—all of which are value-laden. Whether we do a back-of-the-envelope risk assessment or we do a very Cadillac, multi-variant analysis should depend on what we're

going to do with the answer...What risk assessment we do should take into account whether or not we *need* to know.

If a chemical is absolutely essential—if we can't do without it—then I think it requires being very sophisticated about the risk assessment. But if it's something like formaldehyde in the resin that imparts permanent-press characteristics to cloth, which can be easily substituted by a very safe chemical to eliminate the majority of exposure which occurs in the manufacturing of clothing, I don't understand why we have to have this pissing contest about the extent of its carcinogenicity. Just substitute the damn thing. You've got to have the political will, of course.

The parallel activity that accompanies risk assessment has to be technology assessment, which considers product substitution, process redesign, and those areas. What we did in air and water pollution is "end-of-pipe treatment"—incinerate the garbage, bury it, and so on. But of course it's going to end up in the underground water. [This approach] has finally come home to roost. We solve the air problem, we solve the water problem, and we end up with toxic waste that we don't know what to do with.

Or, we can look the industrial world straight in the face and say, "You've got to redesign your process technology." We're not talking about collecting the waste; we're talking about not producing it in the first place. In other words, in the manufacture of chlorine, we shift from a mercury process to a non-mercury process so there isn't any mercury to get rid of. And it's that process redesign which will give us real windfall benefits in reducing occupational exposure and other kinds of environmental pollution.

The time has come to redesign the industrial process.

ACCESS TO INFORMATION

We need access to relevant and timely information. The focus has been on "right to know": chemical identities are given, and exposure information is given. The thing that seems to be absent is a duty to inform about health effects. When people understand the actual health problems that they may be getting, from seeing biological monitoring information or medical information, that's when they begin to become mobilized.

The activity in the Congress now, in the form of the High Risk Notification Act, is a beginning. [It] requires NIOSH, the Centers for Disease Control, or anyone else who does epidemiological studies to inform workers who are part of a high-risk group that they are in that group, whether or not the individual actually has a disease. Whether it comes to pass isn't immediately important; what's important is that there's a movement to get access to that information.

OSHA's Medical Access rule requires more than medical access. It requires management to give labor all the information that it has on exposure and health effects. One bit of information that management is now required to record—not for OSHA purposes but for the Environmental Protection Agency—is what's called a "significant adverse reaction." If one single worker comes down with an allergenic response and goes to the company doctor, that event has to be reported to the EPA. It's through accessing that information that labor will [become] conscious of the fact that there is a problem in their own plant. The trick is that you have to know the information exists in order to ask for it.

So we shouldn't be misled that simply knowing the chemical identity is going to solve the problem.

The Reagan administration has understood the importance of information. [However we try to] improve access to the system, this administration is cleverer [in] cutting it back. . . . The amount of money spent on statistics and generating information is [dropping]. Surveys by governmental agencies are being severely curtailed. Anything which creates information and disseminates information to the public is being cut back by the Reagan administration, including research grants and contracts in fundamental toxicology and epidemiology. Of course, we're hoping that will change in the next administration, no matter what its color.

REGULATION AND STANDARDS

The next element is regulation, particularly standard-setting, which we all hope will have some teeth. Again, I don't think we have to set standards for 55,000 chemicals. If we take the 450 TLVs [that exist] and relook at those substances, plus probably another hundred, we should have handled most of the problems. This is achievable.

The present conflict over the formaldehyde standard is crucial. The question is, "Is the data sufficient to indicate whether this substance is a carcinogen?" There's doubt about its human carcinogenicity. There are about 200 chemicals for which the *only* evidence of carcinogenicity is structural, short-term *in-vitro*, or animal—just like formaldehyde.

What we do with formaldehyde will determine what we do with the other 200. So the fact that the studies *border* on statistical significance. . . . is crucial here.

We will ultimately regulate formaldehyde one way or the other, either on irritant effects or as a carcinogen. Whether we regulate it at 1.5 parts per million or 1.0 actually will make *no* difference in terms of protection for workers, because we will always engineer below that level anyway. What *will* have crucial effect is what we will then be allowed to do with regard to the [other] carcinogens for which there is no human data. We have just about exhausted the human evidence. . . . So we have got to rely on chemical structure, on animal data, and on analogous thinking. I think the scientific community is ready to move in that direction, provided there is political will.

BIOTECHNOLOGY

The biotechnology area represents a whole different kind of problem. Knowing how to anticipate the proliferation of an organism in the field is a very difficult thing.

The FDA doesn't think there's a problem, and the Department of Agriculture doesn't think there's a problem, [of] release into the field. [But] the biotechnology area, I would say, presents an extremely dangerous source of possible human exposure, not only in general but in an occupational sense. If

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The science of risk assessment has dramatically increased our understanding of toxic chemicals. Here, a chemist uses a spectrometer in an OSHA analytical laboratory. (Photo: Meg van Meter, U.S. Dept. of Labor.)

CRISIS IN THE WORKPLACE

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these organisms don't live very long beyond the laboratory, they nonetheless live *in* the laboratory and in the manufacturing process. And OSHA has decided biotechnology risk isn't a problem!

This problem is going to be dealt with on the local level. Local communities are not going to want genetically engineered products made in their communities. California is already moving in this direction, and Cambridge, and other places the biotech companies need to be near. Without being cancerphobes... there are sensible people [questioning biotechnology].

This is an infinitely flexible industry. The paper values of the companies are millions of dollars, but... the companies are collapsing every day. The technology is highly volatile at this point. That means we have an opportunity to direct it. And the occupational issue has to be pressed forward, because not only will workers be harmed, but in fact workers can be... walking sources of infection for the rest of the community.

VICTIM COMPENSATION

[An important] incentive for occupational disease prevention is the whole area of victims' compensation. It's expressed in product liability suits, tort suits, and the like. But you're now faced with Proposition 51 [in California]... The allegation is that these tort suits are going wild, that the country's going to be bankrupt, that crazy punitive or pain-and-suffering awards are going to bankrupt the system, so let's cap them.

It certainly isn't borne out by the evidence. Asbestos cases, yes—but that's about it. We *don't* have an explosion of tort suits and awards.

Even *60 Minutes* has been persuaded that there's a [tort suit] problem. The uncritical adoption of these kinds of untruths leaves us in really bad shape. There are those of us who know better and ought to do something about it.

The criminal prosecution area is absolutely essential... The reason that you're having such large punitive damages where you have them is because nobody bothered to take the bastards to [criminal] court and to prosecute them. If you can encourage criminal prosecution, you're unlikely to have outrageous civil awards.

The strange thing [is] that you have an alliance of conservative and liberal people who would go for criminal prosecution. Conservatives by nature are law-abiding people, and they don't want people dumping PCBs on the highway. They have shown their willingness to [attach] very high criminal penalties to this area. Instead of sitting on one's ideology and not talking to them, take a conservative to lunch... Let's see if we can't form an alliance.

ALLIANCES AND STRATEGIES

I think you have to find those industrialists, those bureaucrats, and those politicians who have some stake in sound environmental and occupational health policies, and I think there are a lot of them who do. We cannot view industry as monolithic. There are those firms and those technologies that seek to replace the existing bad technologies. We should encourage them and allow them to profit from the process.

It turns out from industrial relations studies... that labor is not committed to high productivity where the health and safety in the plant is low. [Some industrialists] understand that.

Industrialists are splitting ranks, and it's up to us to ally ourselves and build coalitions with those who do things differently. [But] I'm not saying let the fox guard the chicken coop.

I find an increasing energy and competence among the [health professionals] I see who are involved in this area. We are building a cadre of impressive professionals. However, we've got to do two things.

We've got to engage the legal educators. In the law schools, and in the legal profession, we have "legal aid clinic" approaches: helping people with landlord-tenant problems, or defending criminal indigents against prosecution for having stolen a loaf of bread, or

whatever. There are opportunities to sensitize these new lawyers to workers' comp claims, to filing product liability suits, to pushing criminal prosecutions like the Film Recovery case in Chicago.

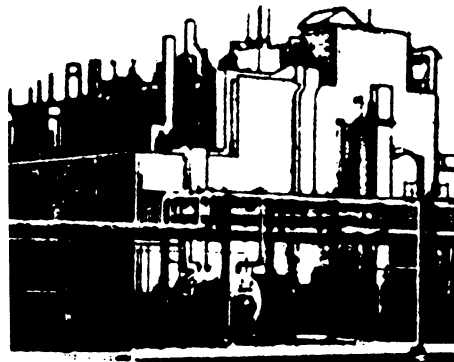
And we've got to engage the engineers who will be capable and interested in redesigning the technology. I will make a distinction between what I call environmental engineers and chemical process engineers. Environmental engineers will give you the gas stack scrubber, the lead trap, and the incineration technology. We don't want any more of that. What we want is process redesign. We've got to involve those engineers and technologists who are interested in safe production.

Use of the media is crucial. We ought to learn to talk to the press. We should find junior reporters who want to make a mark, and report competently and in a way which sensitizes people. You can always report about a toxic waste spill, but we've got to get a different kind of message across and we've got to solicit the press to do it.

The Congressional [campaigns] in 1986 and 1988 are [vital]. We ought to target... We ought to lend political support, knowledge and speechwriting, and try to influence half a dozen Congressional elections in our districts.

[There's an issue of] the extent to which individual scientists have to be political... If we are not involved in the political process, then people like George Schultz will decide how to use Strategic Defense Initiatives and other technology for their own purposes. We can no longer allow the political process to simply take over the facts and the science and distort them. We have got to be involved.

I am optimistic. I see people like yourself still alive, and enthusiastic, and not discouraged, and not selling insurance... We've got a real problem to work out—a real problem that we can solve. Time is on our side.



Workers' "Right to Know" About Safer Technology

(After Dr. Nicholas Ashford's May address in Berkeley—which is summarized on page 4—he was interviewed for Monitor by LOHP's Darryl Alexander. In the interview, Ashford explains his belief that it is necessary to go beyond the current concept of the "right to know." He suggests that workers and unions need to seek out new kinds of information, especially on alternative products and processes which can replace dangerous ones in the workplace. He also assesses how far occupational health in the U.S. has progressed—or not progressed—in the last ten years.)

Alexander: You suggested in your talk today that the concept of workers' "right to know" isn't enough—that workers need new kinds of information. Could you elaborate on that?

Ashford: I think there are three categories of information that workers really need to have. One is scientific, one is technological, and one has to do with legal rights and access to the political machinery.

On the **scientific** side, we've been focusing on the ingredients of a product or a workplace process. The "right to know" has mostly gone to "What are people working with?" In addition, of course, within the realm of the scientific you have to have information about health effects—any medical information you need.

On the **technological** side, I think you have to know about the alternative products that could be used instead of the one you're exposed to, or an alternative process technology that you could try to pressure an employer to adopt. Because when the employer says "I have to do it this way" or "I have to use this product" he might often believe that. But it's up to labor in some way or form to have access to the answers to the question "Can you do this a different way?"

So, rather than arguing about whether you should be exposed to five or ten parts per million of a particular substance, you might show that you don't need to be exposed to anything toxic by simply substituting—using a different solvent, for example. One can do this. What one knows, obviously, is going to affect what one presses for. So I think both management—but particularly labor, since they're the ones whose ass is in a sling—have to find out what kind of technological options exist.

As to information on **legal rights**, workers ought to be aware of the existence of the anti-discrimination machinery that is available to them, like the right to refuse hazardous work. They

should understand their "right to know." And they should be aware that the Toxic Substances Control Act and OSHA can be used in tandem to really access a tremendous amount of scientific and medical information they otherwise wouldn't have a chance to get.

Alexander: You mention the burden on labor to point out to management that there are technological alternatives, but where does labor begin to get this kind of information?

Ashford: If they have a union structure which has some technological knowledge, obviously that's what should be used. The Steelworkers, for example, know as much about steel production and steel technology as almost anybody does. It's a large union, and there are really technically educated people. Lynn Williams, the president of the Steelworkers, knows as much about steel production as any steel engineer.

So sometimes unions have the information, and they might also have access to foreign technology which is different. Obviously they should have people who read technical literature.

Now that's not always practical in all unions, so what's the next best solution? Identifying with academic groups or professionals whose business it is to know about these issues. Sometimes the community colleges have these people, sometimes the private institutions. There are a lot more academic people willing to trade information, share information, than labor people realize. But, of course, accessing these people is something which labor isn't used to doing. There is inherent suspicion of the academic—and with good reason—on the part of labor. But, after all, academics are some of their best allies in the acquisition of some of this information.

So I think labor could try to get information through their union structure, or they could try to do it directly with the academics in their local area. They

could try to do it by coalescing with environmental groups who are also concerned about technology, because if you find a technology that doesn't emit a pollutant from the smokestack, it also might be a technology that doesn't use that substance any more. So you've solved two problems that way.

Also, if the union is a national union, even though it itself may not have technical expertise it should be able to get access to it through the AFL-CIO or the Workers' Institute or a variety of institutions that are now proliferating at the national level.

Getting people in unions more conversant technologically, at least so they are able to do the brokering for information, is an important thing. I think there has to be a sharing of both the inquiry phase and the dissemination phase when getting this information. But there is a lot there for someone who knows how to get it.

An awful lot of union people, of course, are shy of dealing with governmental organizations, professional organizations, or academic institutions. So I think we've got to break those barriers. Unions have got to hire a small number of educated or trained people who know how to access the system.

Alexander: Are there any sources within the government to get this sort of technological information, or are any of the regulatory agencies looking at this?

Ashford: Yes. For example, the Environmental Protection Agency's Office of Toxic Substances has a unit called, oddly enough, the Office of Industry Assistance (OIA). But it gives information to anybody who wants it.... I'm not sure OSHA has anybody, because I'm not sure OSHA is functional. But in its more functional times, OSHA had information.

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ASHFORD INTERVIEW

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Alexander: Do you think that workers will run into the same kind of problems getting information on alternative processes that they've had with chemical "right to know"? Will processes be regarded as trade secrets? Is that something we should anticipate?

Ashford: In some cases, the precise process information will be withheld. But the workers who are working with that process know the process, right? The question is, how do you get access to somebody else's process which is a better technology? In many cases, it's available. It's not that much of a secret.

The Scandinavian countries, Germany, and France are developing new technologies for production. Because they live in a more concentrated geographical area, their pressure to reduce pollution is actually greater than ours—hazardous waste, for instance. They are always redesigning technology, and I think accessing the Scandinavian, German, and French technologies is a good place to start. The French actually have a National Institute for Occupational Safety and Health, in a city called Nancy, which knows this kind of information. Very few people know that that institution exists. But you can get that information.

Alexander: Do you have any other advice for unions on what their strategy should be for dealing with workplace health and safety issues? You mentioned some, like coalitions with environmentalists.

Ashford: I think they ought to really focus on bringing to the bargaining table the issue of technological change, so as to have an earlier voice in the choice of new production technology and its role in their lives.

Alexander: Has the "crisis in the workplace" changed since your report some ten years ago? How would you assess the conditions in the workplace nowadays?

Ashford: Well, I think that in terms of fatalities on the job, practically nothing has changed. I think that we really underemphasize basic safety.

In terms of exposure to toxic materials, there is a greater consciousness of that issue now in the large, well-established corporations. But in Dorothy Nelkin's book, *Workers at Risk*, she does interviews with something like 230 workers. Admittedly, it's a kind of random and not statistically chosen sample, but what you are struck with when you read the interviews is that these workers are not being exposed to esoteric chemicals. We're talking instead about benzene, we're talking about lead, we're talking about acids, we're talking about

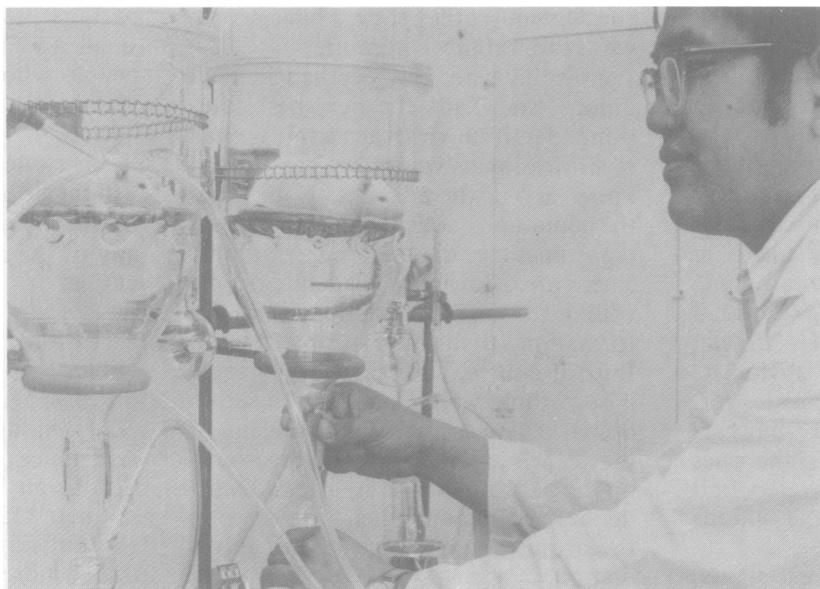
corrosives. Their health and safety problem is 1930s technology.

90% of America's labor works in workplaces with less than 25 employees, and those are small shops. The big companies may be where the political action is, but that's not where a lot of the exposure occurs.

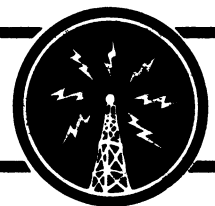
I think one should always measure one's progress by where you *could* be relative to what you know. If I look at a decade ago, we obviously had less protection then. But we also *knew* so much less. Today, given what we know and what we *could* do, I give ourselves a poorer grade than a decade ago, even though things have improved.

And we could do very well *without* a tremendous cost. That is the real tragedy of this whole business—you can redesign technology and restructure the nature of production at a minimum cost or even at a profit to the manufacturing sector. But it requires farsighted management, a non-knee-jerk response to labor demands, and an ideological approach to safety and health which is not built on old ideas.

If one refuses to talk to a capitalist, you can lose part of the group of people who can solve your problems. I think one has to make distinctions. Neither labor nor management is monolithic; there's a great variety of tastes, styles, knowledge, and capabilities within what we call the labor and management sectors.



Today, industry's own laboratories often conduct toxicological testing of products and their ingredients. (Photo: Dow Chemical.)



Ventilation and Short-Handled Hoe

State Office Vetoes New Cal/OSHA Standards

Cal/OSHA's pioneering health and safety standard for building ventilation, adopted earlier this year after a long campaign by labor and other groups, was rejected in August by the state Office of Administrative Law. (*See Monitor, Spring 1986, page 12, for an earlier report on the standard.*)

At the same time, the Office of Administrative Law also rejected another long-awaited Cal/OSHA standard, which would have prohibited use of the short-handled hoe in agriculture.

State law requires that the OAL review new health and safety standards adopted by the Cal/OSHA Standards Board to ascertain whether they are necessary, clear, and consistent with

existing regulations. In the case of the ventilation standard, the OAL said that it contained language too vague to be effective. The OAL's objection to the short-handled hoe standard was that it would make it illegal for growers themselves to use the tool to chop weeds.

The building ventilation standard, urged for several years by unions, health groups, and the Indoor Air Pollution Coalition, was designed to help solve indoor air quality problems in workplaces, including the well-known "sick building syndrome" in which workers in new buildings develop respiratory and other symptoms in disproportionate numbers.

The short-handled hoe standard was

intended to formalize a ban on use of the hoe which has been in effect since a state Supreme Court decision ten years ago. The Court outlawed use of the hoe, or *cortina*, because it requires continuous labor in a stooped position, a clear hazard to health. The ban had long been sought by labor.

The Cal/OSHA Standards Board has 120 days to act on the rejections. Steve Jablonski, executive officer of the Standards Board, told the *California AFL-CIO News* that "these things are all solvable." Jablonski said that many of the OAL's objections could be handled through "purely editorial" changes in the standards.

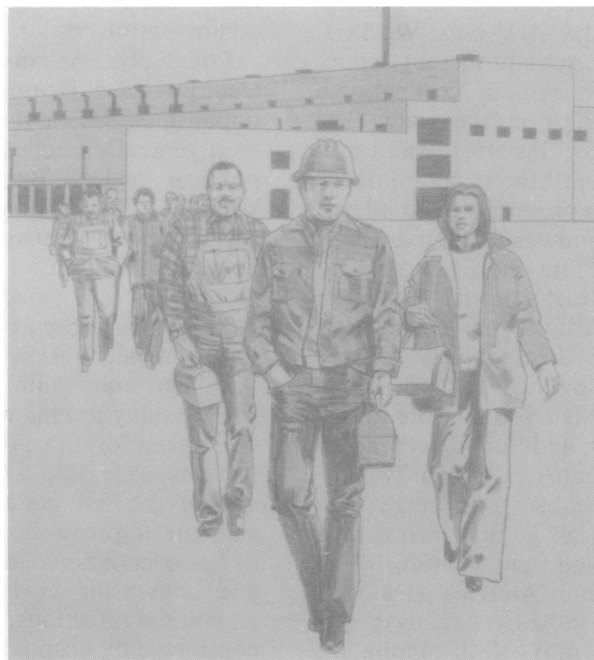
OSHA EXEMPTS SOME SUBSTANCES FROM ASBESTOS STANDARD

On July 24, 1986, federal OSHA announced that it had granted a nine-month stay for several substances from provisions of its new asbestos standard. (*See Monitor, Spring 1986, page 10, for details of the new asbestos standard.*)

The stay applies to non-asbestos forms of tremolite, anthophyllite, and actinolite. (Non-asbestos forms are not fibrous.) Asbestos forms of the three substances, as well as all other asbestos, will continue to be covered by the new standard, which became effective July 21. During the nine month period, the old asbestos standard will apply to non-asbestos forms of the three substances.

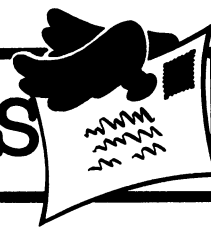
OSHA said that it is reopening its rulemaking record to consider additional comment on these substances.

Non-asbestos forms of the substances are used in industrial talc, found in ceramics and in other products. Some studies have shown that even non-asbestos forms of the substances can cause tumors.



—Courtesy of U.S. Dept. of Labor, OSHA.

FromTheReaders



Arkansas

Workers' Comp Battle in a "Right to Work" State

Editor's Note: There is growing interest among workers' compensation activists nationwide in exchanging information about developments in the various states. Especially because compensation systems are state programs which vary considerably, many Monitor readers and others have called for a national clearinghouse to share ideas and news. Monitor's coverage of the 1985 effort to reform California's comp system (January-February, 1985 issue) may be considered a contribution to that effort. We would like to make further contributions by publishing reports which we receive on workers' compensation problems and prospects in other states.

The report excerpted below is especially significant because it examines the politics of workers' compensation in a Southern "right to work" state where labor is relatively weak as a political force. As the author notes, Arkansas also ranks very low in per capita income.

The author, Robert B Leflar, J.D., M.P.H., is associate professor of law and medicine at the University of Arkansas and legislative co-chairman of the Arkansas Public Health Association.

To MONITOR:

In 1985, industry made an attempt to undercut the Arkansas Workers' Compensation Act and thereby reduce economic incentives for occupational safety and health in the state. The major vehicle for this effort was a proposal to "reform" the structure of the Act. Industry's proposal led to a legislative battle of unusually high intensity and bitterness. But the final outcome in 1986 was at least a partial victory for workers and the labor movement.

First, some background on the economic and political facts of life in Arkansas: the state is a mixture of Old South, hillbilly, and Sunbelt characteristics. Its economy is primarily agricultural and timber, with some light industry, such as poultry processing, oil, trucking, and Sam Walton, by far the richest man in America. (He owns the Wal-Mart stores.) Arkansas' per capita income ranks 48th among the 50 states. Its educational level is 49th. It is a "right-to-work" state, and unions have a hard time organizing Arkansas workers, so labor is relatively weak as a political force. The state's business and political leaders place high importance on creating a "good

business climate" and attracting new industry, through low taxes and low labor costs (among them workers' compensation costs.)

Politically, Arkansas has a long tradition as a Democratic state with populist strains, and at the statewide level generally elects fairly progressive political leaders. But the state legislature is different. In many ways, it is a classic old-boy network in the great Southern tradition.

Workers' compensation benefits in Arkansas have been persistently below levels prevalent elsewhere in the country. The maximum weekly benefit for disability in 1985 was \$154, close to the lowest of the 50 states. Funeral benefits were just \$750. Arkansas is one of the few states that require a claimant to prove the work-relatedness of an occupational disease by "clear and convincing evidence." Most occupational infections, other than those contracted by hospital employees, are excluded from coverage. Occupational disease claims have to be filed within a year after the time of disablement—although the diagnosis that the illness is work-related may not occur until long after disablement. As in many states, farmworkers are excluded from

workers' compensation unless their employer opts for coverage.

One quirk of the Arkansas workers' compensation law is that it is difficult to amend. Because the original law, and most of the significant amendments, were enacted by initiatives passed by the voters, changes are only possible through new ballot initiatives or through a two-thirds vote of both houses of the legislature. Either employers or labor have always been able to muster at least one-third of one house to block any changes adverse to them. Labor in recent years has not wanted to undertake the expense of any new initiative campaign. So the only recent changes in the law have been those to which all parties could agree in private negotiations.

EMPLOYERS SPARK 1985 BATTLE

Despite Arkansas' relatively weak workers' compensation law, and despite the supermajority required to change it, in 1985 the state Chamber of Commerce and the Associated Industries of Arkansas came before the legislature with a bold proposal for a significant restructuring of the system. They presented a superficially attractive case to the legislature: Arkansas benefit levels are comparatively low, but employer costs are comparatively high. They claimed that, despite the low benefit levels, workers' compensation costs to employers were 25% above the national average; Arkansas allegedly ranked 10th among the states in employer costs. The implication was that premiums were going for trumped-up and illegitimate employee claims encouraged by irresponsible attorneys, whose fees had to be paid by employers who unsuccessfully contested the claims.

The employer groups calculated their cost figures as follows: total comp premiums paid by covered employers

were divided by total payrolls of covered employers. The average came to \$2.87 in premiums per \$100 of payroll, compared to the national average of \$2.29 per \$100 of payroll.

As we say in Arkansas, you don't have to be "broke out with brilliance" to see the fallacies in that formula. First, Arkansas is a low-wage state, so the premium cost per \$100 of payroll is artificially inflated (by the low denominator of the fraction). Benefits and premiums are scaled only in part to wage levels. Second, the comparison to the national average may reflect a relatively high incidence or severity of occupational injury and disease in Arkansas, especially since the timber and poultry processing industries are known to have high injury rates. In fact, the Arkansas injury and illness incidence rates were 6 to 17% above the national average from 1975 to 1981.

BILL INTRODUCED

The management groups' 1985 "reform" bill was introduced by a former ally of labor who was angered over the state AFL-CIO's failure to endorse one of his friends for a minor office. The bill proposed to substitute a requirement of "strict construction" of the

Act for the "liberal construction" traditionally applied in Arkansas and most other states, in effect increasing injured workers' burden of proof; and to require "objective and measurable" medical evidence rather than "subjective complaints or symptoms" to support a successful claim.

The bill also sought to make other detailed changes in the law, chiefly adverse to employee interests. These restrictive provisions were to be in exchange for an increase in the benefit maximum from \$154 to \$189 per week.

The battle grew bitter. Business leaders talked personally with every legislator, seeking support. Supporters of labor, put on the defensive, sometimes overreacted. At a public hearing before a Senate committee, a successful claimants' lawyer compared the proponents of the bill to Nazis. The resulting publicity did labor no good. The bill's supporters responded with a printout of all the fees the lawyer in question had earned in workers' comp cases—some \$500,000—saying that the lawyer was "dealing in the misery of injured workers." The bill cleared the committee easily. It later passed the Senate, after a ferocious debate, by more than the necessary two-thirds majority.

While the bill was being considered in the House, the Arkansas Bar Associ-

ation, a group without strong ties to either employees or management on this issue, voted to oppose it.

Finally, at the climactic session on the House side, the bill's opponents introduced a "monkey wrench" amendment: to allow chiropractors to make disability determinations. A chiropractor in the legislature spoke in favor of the amendment; it was passed. But with the chiropractor amendment, the bill was unacceptable to employers, since they viewed chiropractors as more willing than physicians to find a malady job-related. The bill's sponsors decided to scrap the effort. So at the last minute the bill was defeated by what can best be described as a well-designed legislative ambush by a minority.

1986 DEVELOPMENTS

Relieved by the defeat of the industry bill but distressed by the lack of legislative progress on benefit levels, labor interests geared up for a campaign to pass a new voter initiative on workers' comp in the November, 1986 elections. The prospect of a hard-fought initiative campaign brought business groups back to the bargaining table in the spring of 1986, resulting finally in

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WORKERS' COMP IN ARKANSAS

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an agreement on new workers' comp legislation.

The labor ballot initiative contained a feature of particular significance: it provided an exception to the general rule that the comp system is the "exclusive remedy" for injured workers and that they may not sue the employer for an injury or illness. Labor and its allies argued the need for an end to the "exclusive remedy" concept by pointing to well-publicized instances of mayhem on the job where the present workers' comp law let industry off cheaply. For example, at a pesticide plant north of Little Rock, an employee transferring toxic chemicals from a 55-gallon drum was splashed and died horribly. The employer violated OSHA regulations requiring adequate protective clothing, but the employee's survivors will receive only about \$78,000 for death benefits under workers compensation.

Under the labor proposal, if an injury resulted from an employer's intentional act or from an employer's "willful or wanton" negligence, the employee could elect to sue the employer in court and possibly collect punitive as well as compensatory damages. This proposal, by breaching the wall of "exclusive remedy," had

the potential for a significant and favorable impact on occupational health and safety. Fearing punitive damage judgments, employers would have a strong incentive to institute new safety-and health-oriented measures in the workplace.

As the labor-backed initiative proposal gained signatures, Governor Clinton appointed a study commission to attempt to reach an accommodation between the two sides. The initiative campaign carried risks for both camps. For labor, it promised to be bitter and expensive, taxing limited resources. And the head of the state Chamber of Commerce viewed the measure, if passed, as likely to have "devastating effects on Arkansas' favorable business climate." (The fear that Arkansas could be put at a disadvantage in attracting and keeping industry is a potent concern in an industry-poor state.) Thus, both sides had an incentive to reach a compromise rather than risk the hazards of going before the voters.

Negotiators finally hammered out a compromise whereby disability benefits will be increased over a period of years to 70% of the state's average weekly wage, and injury and funeral benefits will also be hiked. Employers whose violation of safety regulations leads to injury will have to pay increased penalties, creating a stronger safety incentive; and \$100,000 will be allocated for a special safety analysis and education project. Adjustments

are to be made to hearing procedures to provide an informal pre-hearing settlement conference, and attorney fee scales will be revised. Determinations of permanent impairment are required to be based on "objective and measurable physical or mental findings." The exclusive remedy principle remains unchanged. Having accepted this compromise, labor agreed to discontinue its initiative petition drive.

Once the compromise was approved by both sides, Governor Clinton called a special session of the legislature in the spring of 1986, and the agreement was enacted into law.

For the past two years, workers' compensation issues have been at or near the forefront of public attention in Arkansas as a source of labor-management friction. This year, through use of the initiative petition as a bargaining tool, labor forces found a way to neutralize past legislative hostility, and achieved a partial reform of the state's workers' compensation law.

—Robert B Leflar

(Dr. Leflar, as legislative co-chairman of the Arkansas Public Health Association, has also helped organize a coalition to push for passage of a state "right to know" law. The coalition includes the Association and the state AFL-CIO along with church, community, civil rights, and environmental groups.)

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