

Judges Versus Engineers

BACKGROUND AND OPENING ROUND

Nuclear power plants, jet airliners, factories producing pesticides, dangerous large dams — these are what we usually envision as background for cases where engineers get into trouble trying to defend public safety. But important and interesting ethics cases can also stem from less dramatic “low” technology, as is illustrated below [1].

In January 1991, David Monts, an experienced, licensed electrical (and nuclear) engineer, began working for the Physical Plant Services Department (PPSD) of the New Orleans campus of the University of Louisiana (UNO). This department was responsible for building construction and renovation. Monts' immediate supervisor was John Michael Parnon, an architect, but the administrative head, Frank Schambach, had no technical background. On a number of occasions, Schambach, without consulting his engineers, underestimated the costs for certain jobs.

When these projects threatened to go over budget, Schambach insisted on various cost-cutting measures. In some cases, these measures entailed improper practices that put people at risk. There were also situations in which engineering changes were made by people not licensed to practice in the technology involved.

Monts repeatedly objected to these tactics. In particular, he protested when fire alarms were deleted from plans to renovate certain space to accommodate offices, and in another instance, the omission of emergency exit lights. A less obvious hazard involved a design with inadequate circuit overload protection. These, and other instances of corner-cutting, involved more than a difference of opinion as to what was required for safety. They violated state building codes.

When these objections, though supported by his colleagues and supervisor, were repeatedly ignored by

Schambach, Monts went to see the UNO attorneys. He reported the problems and asked for help. But before anything came of this, and just before another conversation was scheduled with them in July of 1996, he was summarily dismissed in a letter signed by Parnon and Schambach. The stated grounds for the dismissal were that Monts had a negative attitude with regard to his employment and that he disrupted weekly staff meetings by complaining and arguing about non-project related matters.

Monts asserts that the real cause was his repeated protests about the shoddy practices mandated by director Schambach and his assistant Gus Cantrell, a civil engineer. Apparently his discussions with the UNO attorneys about such matters as the building code violations precipitated his discharge.

Monts initiated a wrongful discharge suit. Since he was not a civil service employee and had no written contract, he was what is legally termed, an “at-will employee,” meaning that he would have to carry a substantial burden to win his case. The principal ground for his lawsuit was that he was discharged for exercising free speech when he protested to management and the UNO attorneys about the improper practices on the projects that he was responsible for. He argued that engineers have an ethical obligation to speak out when they encounter practices in their work that endanger the public. In his case, as a licensed engineer, this obligation was clearly spelled out in the law.

The deposition process now began a long, drawn-out legal process. It was Monts versus the UNO, so that he not only had to pay the full cost for presenting his side of the case, but, as a taxpayer, he was helping pay his opponents' costs. The battle began with the taking of legal depositions. This went on for several years, during the course of which, all the managers and engineers involved, except for Cantrell, left the employ of UNO.

There seemed to be unanimous agreement that Monts was an excellent engineer. Even Frank Schambach admitted this. Allen Anderson, an experienced EE (and PE), who worked with Monts for a number of years, characterized him as, “one of the most compe-

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tent, industrious, and conscientious electrical engineers I have worked with.” John Ehlers, a licensed mechanical engineer, who also worked with Monts, concurred with this assessment. Both supported Monts’ contention that management often overruled the directives of the design professionals on safety-related issues. Anderson and Ehlers had left UNO prior to the time they were deposed.

Regarding the grounds stated for Monts’, firing, the engineers agreed that Monts never disrupted a departmental meeting or otherwise interfered with his co-workers performance of their duties. Confirming this is the fact that, on Monts’ employment record, there are no negative entries of any kind (prior to the termination note), and there are eight commendations.

A key figure in the case is architect John Parnon, Monts’ supervisor. In his deposition, his comments about Monts were, at best, ambiguous. Subsequently, he left the employ of UNO and was then more forthcoming with respect to what happened to Monts. Parnon prepared a written statement in the form of an affidavit, which provides us with a fascinating view of the situation. In general, his statement fully confirms the claims made by Monts and the other engineers regarding the behavior of management, the issue of code violations, and the spurious nature of the charges on which the firing was based. He states that “David is one of the most competent, industrious, and conscientious design professionals I have ever worked with.” Not only did Parnon deny that Monts’ complaints about management’s behavior were disruptive, he asserted that he encouraged Monts to speak out about such matters at staff meetings and at other times, and he expressed admiration for his courage.

How then can we account for the fact that Parnon, apparently without protest, added his name to the letter discharging Monts? The explanation is in the same draft affidavit. “Had it not been for Pat [Patrick Gibbs, Vice Chancellor for Business Affairs] and Frank ordering me to do so, I would not have fired David.” Parnon did argue with Schambach and Cantrell about such matters as their corner cutting, but he felt powerless to influence them. He appears to be a very decent, honest man, but not one willing to take risks on matters of principle. “I personally may have been indecisive for not taking a more proactive approach on these issues, but...I did not want to do anything to jeopardize my job.” Parnon explains why, in the course of his original deposition, which took place while he was still a UNO employee, he “was not inclined to speak volumes”: “I was concerned about keeping my job based on...” and he then lists various instances of intimidating behavior by his UNO superiors, followed by: “I was very close to getting a promotion from the position of Manager of Facility Renovation and Design to the position of

Director of Facility Renovation and Design” (a promotion that did indeed subsequently occur). Sad to say, Parnon declined to sign the affidavit, expressing concern that doing so might cause the university to attack his reputation.

JUDGES TAKE OVER

In April of 2001, the trial court judge granted the defendant’s motion for summary judgment, dismissing the case with prejudice, without a trial. The judge stated that there was no evidence supporting Monts’ claim that he was dismissed for reporting the code violations to the UNO attorneys. UNO’s view of the case, apparently accepted by the judge, might be summarized by the following quotation from a letter from defense attorney Alexander McIntyre, Jr.:

“... Mr. Monts was terminated for no other reason than his inability to timely complete his duties and engaging in disruptive behavior. (For example, shortly before his termination, Mr. Monts photocopied and distributed a list of his co-workers salaries, with its concomitant negative effect on morale in the Department.)”

Note that Anderson, Ehlers, and Parnon denied that Monts was disruptive and concurred that he “was never slower than other design professionals at completing any task.”

Based on depositions by Schambach, Cantrell, and Gibbs, the judge also accepted the contention of the defense that those responsible for firing Monts were not aware that he had met with UNO attorneys. The fact that evidence had been introduced that Gibbs had received billing records from the attorneys dealing with interviews with Monts was not deemed significant. The affidavit by Parnon, which clearly established such knowledge, was dismissed on the grounds that it was not signed, and the sworn affidavit by Ehlers that he had overheard Schambach “angrily telling someone on the telephone, ‘Dave went to go [sic] see an attorney’” was also not deemed sufficient proof. Finally, as a point of law, the judge stated that there is no public policy exception to Louisiana’s employment-at-will doctrine. That is, in Louisiana, it is not improper to discharge an employee for acting to protect the public interest, e.g., by pointing out a violation of a safety code.

Monts appeal of this ruling to Louisiana’s Fourth Circuit Court of Appeal was denied on 2/27/02 in a unanimous verdict of three judges. There are two important and interesting components of the opinion [2] supporting this ruling. One is that Monts’ complaints about safety issues do not constitute protected speech because he did not carry these beyond the PPSD, except for having gone to the UNO attorneys,

which the court decided was not a factor because management stated that they were unaware of this. The concept embodied by this reasoning clashes sharply with the advice generally given to engineers to try to resolve problems internally, going outside only after exhausting all possible internal remedies. It puts engineers in a catch-22 situation. If they go outside their organizations they are vulnerable to charges of irresponsibly impugning the reputations of their organizations, but if they do NOT go outside, then, according to this opinion, this may be considered as evidence that their issues are not matters of public concern.

The other point is embodied in the following excerpt from their opinion:

“In the instant case, review of the alleged code violations with which Monts was concerned — if they were code violations at all — cannot be said to be major matters of public safety. Monts complained of wire size, plumbing, and leveling issues and the like. It would not appear that, even if they were present, these seemingly minor deviations from the purest building practices suggest great threat to the public health and safety.”

This statement was lifted verbatim from the defendant’s brief, where it appears without substantiation. It is incorrect in detail in that Monts did not mention plumbing issues. Most significant is that three appeal court judges, citing no documents or expert testimony, have decided that, contrary to the opinions of professional engineers, building code violations (including, as mentioned above, such points as inadequate overload protection, and the omission of fire alarms and emergency exit lights,) are obviously of no consequence. Note that this is a finding by an APPEALS court, NOT based on a verdict of a jury that heard evidence.

Two years prior to this decision, the Louisiana Engineering Society (affiliate of NSPE) endorsed Monts’ case, provided \$100 support, and requested NSPE to help Monts with money, legal support, and an *amicus* brief. An article on the case was published in the NSPE newspaper, *Engineering Times* [3]. The shocking nature of the Appeals Court opinion induced the NSPE to take action. Arthur Schwartz, NSPE legal counsel, filed an excellent *amicus curiae* brief [4] strongly supporting Monts’ appeal to the Louisiana Supreme Court. Unfortunately, the response of that court on May 31, 2002, to Monts’ request for a hearing was very concise: “Denied”. More recently, Monts’ last effort in the legal arena was rebuffed when the U.S. Supreme Court declined to hear his appeal. Rubbing salt into his wound, UNO is now seeking about \$5000 in legal costs from Monts.

LOW PAY AND ABUSE

As in most real world cases, there are secondary issues involved in the Monts case. Monts’ supervisor, John Parnon, felt that he and those working under him were significantly underpaid in terms of standards prevalent in the area, and even within the university.

Parnon’s complaints to his superiors about this went unheeded. During the early 1990s, several engineers resigned from the department on these grounds, and efforts to recruit replacements were unsuccessful until 1998, when salaries were significantly raised. Monts also protested about the low salaries, and, with the support of his supervisor, obtained, and distributed to other interested parties, data on University salaries. Because of the unfilled positions, the workload on the remaining engineers was substantially increased and became another contentious factor.

Another problem was the overbearing attitude of Frank Schambach and his assistant Gus Cantrell. There were numerous incidents in which they verbally abused subordinates, often using vulgar language. Engineer John Ehlers was amazed when Cantrell, threatened to fire him for wearing a vest. On several occasions, women employees were reduced to tears by Cantrell’s bullying. Finally, according to Ehlers, Cantrell, while pressing for various economies that violated good practice, insisted on the installation of a “grossly overpowered air conditioning system” for his own offices.

SOME CONCLUSIONS

The Monts case is a sad example of the failure of the courts both to do justice to an individual, and to protect the public safety. The summary dismissal concept, intended to weed out frivolous cases, was used to deprive David Monts of his right to a trial by jury (as specified in the Seventh Amendment of the U.S. Constitution.) I personally find it hard to believe that any jury would not have found in favor of Monts.

One could always second-guess Monts’ attorney and argue that he could have done more, or that he made some mistakes. But it should be remembered that he had limited time and resources and did not have a lot of experience in cases of this type.

With hindsight, one could argue that it would have been better to have initiated action in the federal rather than in the state court system. Another decision was not to press the issue of the code violations in a wider arena, or to seek publicity in general. For example, telling UNO students about what was happening might have generated a wave of public opinion that might have made the judges hesitate before making rulings that would be hard to justify in a public forum.

With respect to David Monts, one can only admire his courageous devotion to principle. Apart from spending over \$140 000 in legal costs, he expended an

enormous amount of time and energy over a period of six years. In September, 2002, the Board of Governors of the IEEE SSIT voted to present him with the Carl Barus Award for Outstanding Service in the Public Interest.

About three decades ago, the BART case [5] served to illustrate dramatically the dilemma of employee engineers whose professional judgments were overridden by managers placing financial considerations above the public welfare and safety. That case led directly to the formation of the IEEE Member Conduct Committee (MCC) and provisions in the IEEE bylaws authorizing the IEEE to come to the aid of engineers who get into trouble as a result of efforts to abide by the IEEE Ethics Code. Since that time the cause of ethics support has had its ups and downs. With respect to the IEEE, we are certainly in a "down" mode [6]. It is interesting that, at the outset of the BART case, the California Society of Professional Engineers began with a strong position and then

faded away under pressure from large engineering firms, with the NSPE doing essentially nothing. It was the IEEE that picked up and carried the ball. In the Monts case, to switch metaphors a bit, it is the NSPE that stepped up to the plate, while the IEEE left the ball park five years ago.

REFERENCES

(I have not listed the many documents that I used but which are not publicly available to readers.)

- [1] D. Monts, "Summary of Case", 3/3/02, on line at <http://www.cs.columbia.edu/~unger/monts/summary.html>
- [2] Court of Appeal Opinion on Monts Case. 2/27/02 on line at <http://www.cs.columbia.edu/~unger/monts/appCtRuling.html>
- [3] J. Ganz, "NSPE, Louisiana Society inform Court of PE's public safety role", *Engineering Times*, May 2002. On line at <http://www.nspe.org/etweb/15-02montscase.asp>
- [4] A. Schwartz, NSPE Amicus Curiae Brief. On line at <http://www.cs.columbia.edu/~unger/monts/amicus.html>
- [5] S.H. Unger, *Controlling Technology: Ethics and the Responsible Engineer*, 2nd ed. New York: Wiley, 1994, pp. 20-27.
- [6] S.H. Unger, "The assault on IEEE ethics support," *IEEE Technology & Society Mag.*, pp. 36-40, Spr. 1999. On line at <http://www.cs.columbia.edu/~unger/articles/assault.html>

NEWS & NOTES

SSIT Members Achieve IEEE Fellow Status

The following SSIT members have been named 2003 IEEE Fellows for their contributions in electrical engineering:

Prof. Gerald L. Engel

University of Connecticut (USA).
IEEE Society memberships: C, Ed, SIT.
Nominating society: Computer Society
For contributions to computer science and engineering education.

Prof. Anil Pahwa

Kansas State University (USA).
IEEE Society memberships: PEN, SIT.
Nominating society: Power Engineering

For contribution to power distribution system automation and restoration.

Mr. Kensuke Kawai

Toshiba Corporation (Japan).
IEEE Society memberships: CS, SIT, SMC.
Nominating society: Systems, Man, and Cybernetics
For contributions to human-machine systems for computerized power-plant automation.

Nominate a 2004 IEEE Fellow by March 15

Nominate an IEEE member with an extraordinary record of accomplishments in SSIT's field of interest. For details on the fellows program and the nomination process go to: <http://www.ieee.org/about/awards/fellows/fellows.htm>