



## Carved in Stone

Twenty years after Jim Stone first blew the whistle on Rockwell International, he got his day in court -- the Supreme Court.

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Pondcrete.

The word echoed off the marble walls of the U.S. Supreme Court, the bedrock of a legal system that's lasted well over two centuries, with the eight judges considering the case of Rockwell International Corp. et al. v. United States et al. (Justice Stephen Breyer had recused himself) possessing a collective legal experience almost as lengthy.

But plutonium has a half-life of 24,000 years -- and the pondcrete that was supposed to safely store the toxic pond sludge created at Rocky Flats Nuclear Weapons Plant lasted barely a year before the blocks started falling apart.

Jim Stone had warned Rockwell International, which ran the plant sixteen miles upwind of Denver for the Department of Energy from 1978 to 1989, that the pondcrete process wouldn't work. Hired at the plant as an engineer in 1980, in October 1982 he'd sent a memo to Rockwell's management detailing his concerns about a proposal to mix sludge from the waste-storage ponds with concrete -- and suggested some tests. Instead, Rockwell went ahead and manufactured the pondcrete as originally proposed.

Stone wasn't around to see the pondcrete fail. In March 1986, Rockwell laid off its principal troubleshooter.

On July 5, 1989, Stone became its principal troublemaker, filing suit under the federal False Claims Act, which prohibits a contractor from submitting fraudulent claims to the U.S. government, and charging that Rockwell had concealed environmental, safety and health problems from the DOE. By then, it was no secret that there were big problems at Rocky Flats, which had



produced plutonium triggers in almost complete secrecy for decades. On June 6, 1989, the FBI had led a pre-dawn raid on the facility, with 75 FBI and EPA agents joining in the search. What they were looking for was revealed three days later when the search warrant obtained by lead FBI investigator Jon Lipsky was unsealed, spilling out allegations that Rocky Flats had illegally disposed of dangerous waste.

Some of those allegations had come straight from Stone.

"We'd been working on the investigation for almost a year," Lipsky says of his first meeting with Stone. "He was my first insider. I had a pretty good idea of how Rocky Flats was put together, but it was almost unbelievable. He was talking about stuff he knew -- and he was a very intelligent man, an engineer, on a different plane than I am. He was rattling it all off, and I had to stop to ask questions. Some of the stuff I could corroborate because I'd reviewed the waste streams out there."

But Stone had many more surprises for him, including 2,300 pages of documents -- one of them his 1982 memo -- and the stunning revelation that the plant's ductwork was full of lost plutonium.

The evidence seized in the raid was presented to a grand jury -- the first special grand jury in Colorado history -- that was convened in August 1989. Two years later, the jurors were getting ready to indict eight individuals -- some from Rockwell, some from the DOE -- in connection with what they regarded as an "ongoing criminal enterprise" at Rocky Flats. Instead, the government cut a deal with Rockwell. In March 1992, the corporation pleaded guilty to ten environmental violations at Rocky Flats. As part of the deal, Rockwell was to pay \$18.5 million in fines -- less than it had earned in bonuses for operating the plant. Lipsky was prohibited from mentioning Stone's charges in the plea agreement.

That December, Rockwell filed a motion to dismiss Stone's complaint, claiming that the whistleblower was not an "original source," as required under the False Claims Act. A judge disagreed, and in 1995 the U.S. government joined the case on Stone's side. Four years later, a jury decided many points in favor of Stone, and on June 10, 1999, the court awarded the plaintiffs treble damages of \$4.2 million.

Stone has yet to collect a cent.

Rockwell appealed, again arguing that Stone was not the original source of the pondcrete allegations. The 10th Circuit Court disagreed, twice. And finally, Rockwell petitioned the U.S. Supreme Court.

On December 5, 2006, more than twenty years after Stone was dismissed by Rockwell, seventeen years after the government raided its own plant, Stone's case finally reached the Supreme Court, and the word "pondcrete" echoed off those marble walls.

Jim Stone wasn't there to hear it. The 82-year-old has Alzheimer's and wasn't well enough to travel. But his original attorney,

Hartley Alley, was there, sitting in the courtroom while a lawyer with the big New York City firm he'd long ago brought in argued on Stone's behalf. (Stone's lawyers also have yet to collect a cent; meanwhile, Rockwell's lawyers are asking the government to foot their \$20 million bill.)

The first case that morning had devolved into a discussion of California's definition of "joyriding." "Where's the joy in that?" asked Chief Justice John Roberts. "The joy, apparently, is you don't get convicted of theft," responded Justice Antonin Scalia. Of course, neither had anyone at Rockwell, since the 1992 deal precluded prosecuting any individuals.

And any remaining joy left the courtroom when Rockwell's attorney repeated the argument that Stone could not have been an "original source" of the allegations. Although the 10th Circuit had determined that Stone had "direct and independent knowledge," the lawyer said that the pondcrete hadn't been made until after Stone left Rocky Flats, and that he could have learned of its subsequent failure in the media. Stone's "central observation was not even presented to the jury" that decided the initial case in favor of the whistleblower, Scalia pointed out. But then, Justice Ruth Ginsberg noted, Rockwell had misrepresented the safety of pondcrete, too. In fact, one exec had told the jury that pondcrete would be just like the concrete in your driveway.

After less than an hour, the case was closed.

Three months later, on March 27, the Supreme Court handed down its decision -- and any hopes that there would one day be justice for Jim Stone crumbled like rotting pondcrete.

Scalia wrote the 6-2 decision in favor of Rockwell. "Stone did not know that the pondcrete failed; he *predicted* it," the court ruled. And that was not enough for an "original source."

But the legal cases connected with Rocky Flats have a half-life on their own. In February 2006, a class-action suit filed against Rockwell and Dow Chemical, a previous plant operator, on behalf of 12,000 property owners who'd owned land around Rocky Flats resulted in a record-breaking \$554 million judgment. Although motions have stayed that judgment from being dispersed to the plaintiffs, U.S. District Judge John Kane is expected to rule on those soon.

And by April 20, the U.S. Attorney's Office must respond to an argument that the Rocky Flats grand jurors finally be allowed to tell their story in court. Back in 1996, attorney Jonathan Turley asked that the jurors be released from grand jury secrecy rules in order to talk about what had gone on behind closed doors; in February, he again argued their case before U.S. District Judge Richard Matsch.

The grand jury foreman, Wes McKinley, is not part of that action. He's now a state representative, and has twice pushed for legislation that would require that warning signs be posted outside the former nuclear weapons plant -- which was declared cleaned up last fall and is slated to become a 6,500-acre wildlife refuge. The DOE may turn over that land to the U.S. Fish &

Wildlife Service as early as this month, according to David Abelson, who heads the Rocky Flats Stewardship Council. Although the refuge will not be open to the public for at least five years, the signs are already in place. "We want to be sure that people understand what happened at Rocky Flats," Abelson says. "There's disagreement, but the big picture is shared." And it's not pretty.

Alley, who's stuck by Stone for twenty years, isn't about to give up now. The engineer's allegations about the missing plutonium were never adjudicated -- and they make for a strong case. "When Stone met with the government team, he told them where to look," Alley says. "They found 61 pounds of plutonium in the air ducts, enough to make several Hiroshima bombs." But while he contemplates dropping that legal bombshell, he's already taken his client's case to another court: the court of public opinion.

Three days after the Supreme Court's decision came down, Alley sent a letter to this state's senators on behalf of a "true hero in Colorado history," asking that Ken Salazar and Wayne Allard support a bipartisan resolution that Stone receive a just share of the government's recovery, a share the government itself had told the Supreme Court that Stone deserved. "Had Rockwell's crimes and practices gone unchecked, there is no telling what further injuries and harm would have befallen Colorado and the health of its citizens," he wrote. "Mr. Stone's career was ruined because of his reporting the crimes at Rocky Flats -- something he did as a patriot on behalf of the people of Colorado and the U.S. taxpayers. That he has not received a single penny for his trouble is an injustice, pure and simple. It cries out for redress."

It's a sin -- an original sin.