

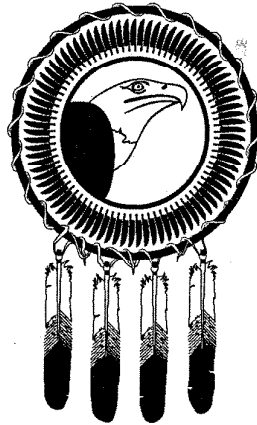
**Malcolm Wiener Center
for Social Policy**

*When Things Go Wrong:
Disciplinary Policies for Tribal Departments*

by

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Executive Summary

When Things Go Wrong: Disciplinary Policies for Tribal Departments

Carrie Bender, Chairperson of the Hualapai Tribe of Arizona, is one of several tribal officials concerned about problems with the disciplinary procedures and grievant appeals process currently being used by tribal departments.

Lack of clarity and inconsistency in the personnel manual are a source of structural problems with the disciplinary and appeals procedures. Moreover, the close personal ties that occur in many small communities are also causing difficulties; off-the-job personal relations sometimes influence on-the-job professional relations. Finally, the involvement of elected officials in several stages of the disciplinary and appeals process is effectively politicizing many decisions; no matter how impartial elected officials are when carrying out their duties in these areas, some members of the community will view the actions in political terms.

Accordingly, widespread support exists for restructuring the current procedures. After visiting the Hualapai Reservation and interviewing many members of the tribe, I recommend that restructuring be based on the following recommendations:

- *Clarification: categories of misconduct and disciplinary procedures should be clarified. Legal experts can help with this task.
- *Standardization: the same set of procedures should be used in all tribal departments (with some flexibility for special needs of individual departments).
- *Removal of Elected Officials from the Disciplinary Process: only non-elected managers should participate in disciplinary actions.
- *Restructuring of the Appeals Process: instead of settlement in the Tribal Council, appeals of disciplinary actions should be decided by a newly created Personnel Board.

Many of the recommendations that follow are intentionally stated in broad, general terms. Specific details are best developed by tribal leaders who have extensive knowledge about Hualapai culture and the intricacies of tribal government.

I. Introduction:

A challenging aspect of personnel management is the management of disciplinary problems. Because the response to disciplinary problems can involve penalties that have undesirable implications, all supervisors and employees should be aware of categories of misconduct and of steps in the disciplinary process. Furthermore, because some employees will feel that a given disciplinary action is unwarranted, the procedures for appeal of that action must also be known. The ways these topics are handled can strongly affect employee morale. Accordingly, procedures that are clear, consistent and impartial should be the goal of any organization.¹

The Chairperson of the Hualapai Tribe of Arizona, Carrie Bender, is concerned about several problems with the disciplinary procedures currently being used by tribal departments. Along with other members of the administration and Tribal Council, she is looking for new ways to handle disciplinary problems.

This report examines two problem areas: the disciplinary process and appeals procedures. For each area, the current situation and associated problems are discussed, followed by recommended solutions. Assessment of the current situation and associated problems is based on examination of the tribal personnel manual and other documents, and on extensive interviews with members of the Hualapai Tribal Council, tribal managers and employees, private citizens, and non-Hualapais familiar with the tribe. The recommendations that follow are also derived from discussions with many of the same individuals, and from suggestions of management professors and personnel managers from the public and private sector.

II. Disciplinary Procedures:

A. Current Situation:

The personnel manual presently lists 32 general categories of misconduct, which are followed by the required disciplinary action for first, second or third offenses. In general, disciplinary actions become increasingly severe and follow a four step procedure:

- 1.) Verbal Reprimand -- delivered in private, documented, copy sent to Personnel Department.
- 2.) Written Reprimand -- on standard form, specifying corrective action to be taken by employee, copies to employee and Personnel Department.
- 3.) Suspension -- without pay, to maximum of 30 days.
- 4.) Separation -- requires prior consultation with Personnel Director and approval of Chairman or Vice-Chairman.

In theory, all tribal departments are supposed to follow these steps. However, tribal "enterprises" (non-governmental profit making bodies that include river-running, hunting, cattle and tourist organizations) are not required to use these procedures; each is free to follow its own in-house policies.

At present, the Personnel Director position is unfilled and the Vice-Chairman has been given many of the responsibilities of that office. The Vice-Chairman is extremely busy and has little free time; he feels, along with other administrators, that a new Personnel Director should be hired.

B. Structural and Implementational Problems in the Disciplinary Process:

The disciplinary process currently in use suffers from several structural and implementational problems. The former results from the

lack of clarity and inconsistency in the personnel procedures. The latter results from problems in the practical application of personnel procedures; that is, even if the procedures were clearly outlined, difficulties would result during their implementation.

1. Lack of Clarity in Categories of Misconduct:

General categories of misconduct are ill defined. For example, the personnel manual lists three infractions that involve the use of alcohol: **Use of alcohol during work hours, Drunkenness or intoxication on the job, and Habitual use of intoxicants to excess.** Many supervisors are unsure which category applies in a given case, even though each one specifies different disciplinary actions. Accordingly, supervisors are often uncertain about the appropriate disciplinary response to a specific act involving the use of alcohol at work.

Other vague categories also cause confusion. For example, interviewees report that **Neglect of Duty** has been interpreted to include a range of misconduct from loafing to typing errors to the mishandling of large government grants. However, differences in severity do not result in different disciplinary responses, even though the best response to loafing may be different from the best response to losing large amounts of money.

2. Lack of Clear Information about the Disciplinary Process:

Requirements for supervisors who initiate disciplinary procedures are ill defined; for example, managers disagree whether the Personnel Director must be consulted when an employee is suspended, or whether administrative approval for separation is required before or after an employee is terminated. In addition, many employees complain that

supervisors often overlook the required steps for disciplinary actions by failing to keep written records of reprimands, failing to give copies of written reprimands to employees, and imposing penalties that exceed the personnel manual's stipulations.

Other implementational problems result from an inaccessibility of clear information. Many employees are unaware of, or confused by, the disciplinary procedures and categories of misconduct outlined in the personnel manual.

3. Inconsistency between Departments:

The actions that constitute misconduct vary between tribal departments (which use the standard personnel manual) and tribal enterprises (which use in-house policies). Moreover, several departments currently use, or are developing, their own in-house policies. This inconsistency in categories of misconduct is often confusing for employees.

4. Influence of Political and Personal Relationships:

Some of the difficulties hampering the tribal government's disciplinary process are common to many smaller societies. Most Hualapai tribal employees live in the town of Peach Springs, Arizona. Because Peach Springs has a small population and is somewhat isolated, the same individuals have extensive contact at work and at home; off-the-job personal relationships sometimes influence on-the-job professional relationships.

As a result, a major implementational problem involves the influence of personal relationships on disciplinary procedures. Many interviewees

(including tribal officials, department managers and employees, and private citizens) discussed disciplinary incidents that they felt were primarily a result of personal animosities.

Others discussed the importance of family relations. For example, many supervisors expressed an unwillingness to discipline employees who are related to members of the Tribal Council because of fear of "reprisal"; others complained that even if no "reprisals" occurred, the disciplinary action might be overturned by the council. Several supervisors reported that employees with council connections feel free to abuse the rules that others must follow.

Additional problems result from inclusion of elected officials in disciplinary procedures. Separation of an employee requires the approval of the Chairman or Vice-Chairman; this effectively politicizes the act of terminating an employee because no matter how objective the Chairman is, some constituents will view the decision in political terms. Moreover, this problem is intensified by the current situation, in which the Vice-Chairman is the acting Personnel Director.

D. Recommended Responses to Disciplinary Problems:

Disciplinary procedures need to be well defined and consistent. Supervisors must be certain about the specific procedures they should follow for a given act of misconduct. In pursuit of these goals, I recommend several changes in the disciplinary process:

1. Clarify Categories of Misconduct.

Clarity can be promoted by specifying, in precise terms, the characteristics of an act of misconduct, with reference to severity and

frequency when relevant. Moreover, whether an infraction is deliberate or not is a distinction that may be important in determining appropriate disciplinary actions. General categories like **Neglect of Duty** should be subdivided into more specific categories that account for severity, frequency or deliberateness.

Also, some categories, like **Serious personal misconduct which brings the organization into disrepute**, could be clarified by incorporating objective standards (such as conviction for an offense by a recognized legal tribunal). Others, like **Disloyalty**, are so vague that replacement by different categories covering the same subject area may be beneficial.² Overall, the assistance of legal experts would be helpful for restructuring and clarifying the categories of misconduct in the personnel manual.

2. Clarify Disciplinary Procedures and Duties of Supervisors.

A clear outline of the steps a supervisor must follow when disciplining an employee would help eliminate confusion. Such an outline could be placed on standard forms to be used for each type of disciplinary action. Ideally, each form will specify higher level supervisors (including the Personnel Director) who must be notified, records that must be kept,³ corrective actions to be taken, and other supplementary actions.

Also, I recommend that all employees be reminded of what constitutes misconduct and what disciplinary action can result. To accomplish this, an employee handbook could be given to each new employee when he or she starts work, and all employees should be required to attend an orientation session before the first paycheck is issued.⁴

3. Use One Set of Procedures for All Departments:

The substantial confusion and complaints over the lack of consistency in categories of misconduct could be eliminated by the development and use of a single set of guidelines. This fact suggests that the same disciplinary procedures should be followed in all tribal departments and enterprises.

However, I recommend that some categories of misconduct be flexible to accommodate departments with special needs. For example, dress codes are more important in office work than in forestry; use of alcohol is less tolerable with drivers of tourist buses than with cattlemen. Individual managers, working with the Personnel Director, should be allowed to adapt disciplinary procedures for those categories of misconduct that present special problems for the department. These adaptations should be clearly identified and publicized.

4. De-Politicize Disciplinary Actions.

Eliminating the role of elected officials in disciplinary procedures is one way to de-politicize the process. Accordingly, I recommend that minor disciplinary actions (verbal and written reprimands) be initiated by the employee's supervisor and approved by the next highest supervisor. More important disciplinary actions (suspension and separation) should also be approved by the Personnel Director (or highest ranking non-elected personnel officer).⁵ Judgements would be made on the basis of the facts of the case, on the specified disciplinary response to a given act of misconduct, and on precedent.⁶ Additional benefits would arise if supervisors felt immune from "reprisals." This could be promoted by removing elected officials from the appeals process (discussed below).

III. Procedures for Appeals of Disciplinary Actions:

A. Current Situation:

A tribal employee who is disciplined by a supervisor (reprimanded, suspended, or terminated) is allowed to appeal the supervisor's decision through the following procedure:

- 1.) Within 10 days, the grievant must appeal in writing to the Personnel Director.
- 2.) The personnel director must submit the grievant's appeal to the Personnel Committee within 3 days.
- 3.) The committee has 10 days to study the appeal and submit it, along with a recommendation for action, to the Tribal Council.
- 4.) The council has 30 days to support or overturn the disciplinary decision. (See Appendix)

Employees of all tribal departments use this procedure, although some departments have additional steps imposed through in-house policies. Tribal enterprises are free to develop their own policies (including a policy of "no appeal").

B. Structural and Implementational Problems with the Appeals Process:

Several problems exist with the appeals procedures in theory and in practice. As it exists now, the appeals process is ill defined and several procedures are poorly designed. Moreover, these procedures are frequently not followed.

1. Lack of Clarity in the Appeals Process:

The appeals process is ill defined. There is no statement on the right

to have a representative or lawyer present in a hearing of the Personnel Committee or the Tribal Council, nor is the right for the grievant to attend these hearings guaranteed. Also, some upper level managers occupy so-called "non-classified" positions (positions which supposedly deny the manager any rights of appeal), but no regular process exists to establish that status and wide disagreement exists regarding who is non-classified. Thus, some managers are unsure what appeal rights, if any, they have.

2. Lack of Clear Information about the Appeals Process:

Some members of the Personnel Committee are unaware of the steps in the appeals process. Committee members are appointed by the Council for two year terms and some, it seems, are unaware of the proper steps of the appeals policies. Procedural errors are reported by many grievants. The same problems occur at the level of the Tribal Council, where all appeals are supposed to be resolved. Council members are elected to three year terms and have many responsibilities. Many do not have time to acquaint themselves with the appeals process.

3. Appeals Procedures Are Not Always Followed:

The acting Personnel Director occasionally determines the resolution to an appeal in his own office, thereby overlooking the rest of the process. Although this is not a problem when all parties are satisfied with the outcome, it can cause difficulties when disagreement still exists. In some cases, interviewees who were unaware of all the steps in the appeals process believed the Personnel Director's ruling to be final. They reported that they would have liked to continue their appeals.

4. Personal and Political Influences in the Appeals Process:

In theory, all appeals, no matter how minor, go through the Personnel Committee to the Tribal Council for settlement. Many grievants report that they would not appeal disciplinary actions because of personal "enemies" who are members of the committee or council; thus, grievants do not believe that they will receive an objective, impartial hearing. This view is widely held: nearly all interviewees (including past committee members, tribal officials, managers and grievants) discussed the prevalence of personal bias and lack of impartiality.

Also, the appeals process is subject to political pressures at many levels. The acting Personnel Director is the Vice-Chairman; members of the Tribal Council face reelection every three years. No matter how objective the Vice-Chairman or the Tribal Council members are in resolving appeals, their decisions will be viewed politically by some members of the community. In addition, the council, which meets infrequently, is the highest body in tribal government; members have many important responsibilities. The routine settlement of appeals could be done at a lower level.

D. Recommended Responses to Problems in the Appeals Process:

To solve these problems, I recommend that the appeals procedure be restructured and that all employees be fully informed about their rights of appeal. Specific recommendations include:

1. Restructure the Appeals Process:

The goal of restructuring is to depoliticize the appeals process by eliminating the participation of elected officials. The following model

promotes this goal:

- 1.) Within 10 days, the grievant must appeal in writing to the Personnel Director. (When the position is vacant, the highest ranking non-elected personnel officer should fill this role.)
- 2.) The Personnel Director will set up a meeting within 10 days for the grievant, the supervisor, and up to one representative for each party. The goal of the meeting will be the resolution of the dispute through mediation by the Personnel Director. If both sides agree with the resolution put forward, the appeals process stops. Otherwise, the Personnel Director will convene a meeting of the Personnel Board for an appeals hearing within 10 days.
- 3.) The Personnel Board will hear the appeals and render a decision. Decision by the Personnel Board will be final. (See Appendix)

The only role for involvement of any other party in the appeals process would be to ensure that all appeals procedures are being followed.

In the event of procedural error only, the grievant should have the right to appeal to the Tribal Court for a new hearing.⁷

2. Appoint a Personnel Director:

Because the removal of elected officials from the appeals process would promote the goal of impartial appeals resolution, the duties of the Personnel Director should not be assigned to the Vice-Chairman. If possible, a new Personnel Director should be appointed by the Council on the basis of his or her prior experience, knowledge of personnel management, and impartiality. When the position is vacant, other non-elected administrators should be assigned the duties of Personnel Director on the basis of the same qualifications.⁸

In addition to his or her regular duties, the Personnel Director would also be responsible for mediating disputes between grievants and supervisors in step 2 of the appeals process. I recommend that the Personnel Director act primarily as an impartial intermediary who is providing an opportunity for reconciliation after a "cooling off" period of several days. Again, any agreement must be acceptable to both parties; the Personnel Director's role is to facilitate mutually acceptable solutions.

3. Establish a New Personnel Board:

Personnel Boards should be composed of individuals who render decisions solely on the basis of the facts of a specific case; members should not have strong personal ties with either the grievant or the supervisor. Accordingly, many smaller organizations (where everyone seems to know everyone else) often look for third party outsiders to help settle grievances and disputes. Michael Jucius, Professor of Management at the University of Arizona, writes "The assumption is that an impartial, competent outsider can render a fair verdict not attainable from the parties themselves because of their prejudiced viewpoints or highly emotionalized stands."⁹

For these reasons, I recommend that the Hualapai Tribal Council also look to "outsiders" for some of the members of the Personnel Board. Ideal members will have regular contact with the Tribe, but lack close personal ties with the individuals who come before the Personnel Board. Presumably, these individuals will generally not be tribal members; however, they should have substantial knowledge about Hualapai culture and the work of tribal departments. Eligible candidates may include trusted business partners, members of the Enterprise Board, or local

government officials.

Although some members of the Personnel Board should be outsiders, I recommend that others be "insiders" -- individuals in daily contact with the tribe. Non-elected tribal members or non-Hualapai tribal employees, or employees of state and federal government agencies (such as the Indian Health Service or the public school), could be considered.

In general, members of the Personnel Board should be selected for their abilities to act in an informed and unbiased manner. If members of the Personnel Board were chosen in equal numbers from the two groups discussed above, then impartiality and familiarity would be evenly represented.

Specific details about the number, composition, appointment and terms of office of Personnel Board members are best determined by tribal administrators and the Tribal Council. Accordingly, I recommend only some general guidelines that are in common use¹⁰:

- 1.) Number: The Personnel Board must be large enough to allow for broad representation of departments and interests, but small enough to allow for detailed discussion and examination of the case. Five to eight members is recommended.
- 2.) Composition: An equal number of "outsider" and "insiders" would allow even representation of impartiality and familiarity. Variety in the careers and backgrounds of Personnel Board members would provide a broad representation of interests.
- 3.) Terms of Office: While members should be free to make unpopular decisions, accountability is also important. Appointment to terms of three to five years is recommended.

4. Clarify Guidelines of the Appeals Process.

I recommend that an employee manual, clearly outlining appeals procedures and employee rights, be distributed to each employee.¹¹ Also, the grievant's right to attend the appeals hearing, and the right to engage an advocate or attorney, should be clearly stated. In addition, standard forms should be used for all disciplinary actions; forms should include mention of appeals rights and copies should be given to the employee. Verbal notification of appeals rights by the supervisor should also occur at the time of disciplinary action.

IV. Conclusion:

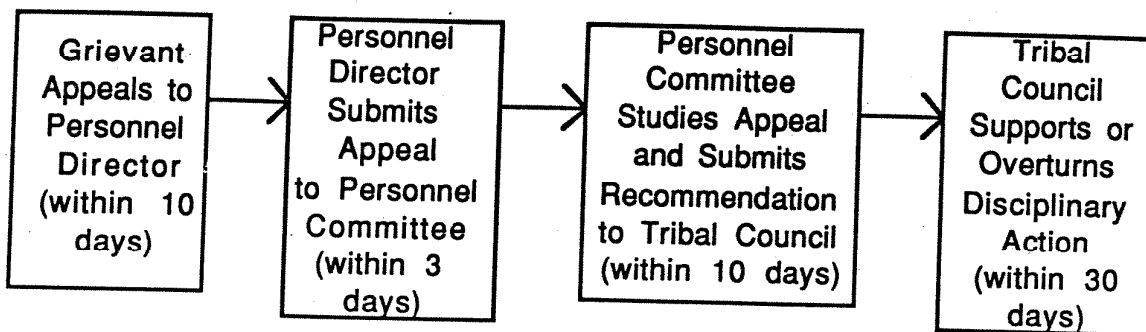
The disciplinary process and appeals procedures currently being used by Hualapai tribal departments suffer from several structural and implementational problems. I have suggested changes that can help solve these problems, the most important of which are:

- *Clarification of categories of misconduct and of the procedures for disciplinary actions and appeals.
- *Standardization of procedures across all tribal departments and enterprises (with some flexibility for special needs of individual departments).
- *Removal of elected officials from the disciplinary and appeals processes.
- *Restructuring of the appeals process to allow for impartial settlement in a non-politicized environment.

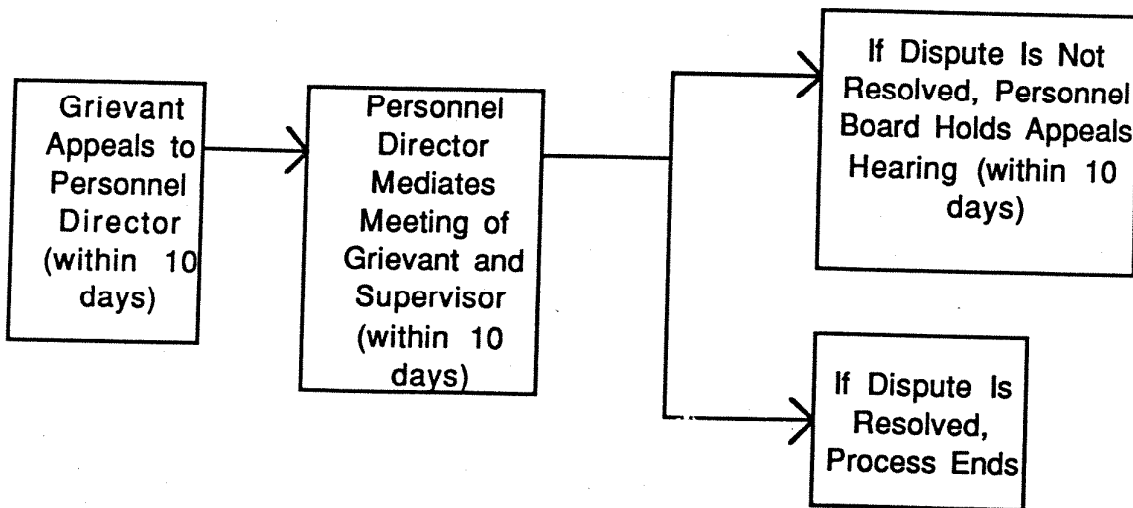
Many of these recommendations are intentionally stated in broad, general terms; the specific details can best be developed by tribal administrators and members of the Tribal Council -- individuals with extensive knowledge about Hualapai culture and the intricacies of tribal government. As noted above, the value of "outsiders" lies in their objectivity. My recommendations derive from study of the policies outlined in the personnel manual, from interviews with a wide variety of individuals involved with the Hualapai Tribe, and from discussions with professors and personnel managers. These general recommendations can be usefully adapted by the Hualapai Tribe to help solve problems with the tribal disciplinary process.

APPENDIX

CURRENT APPEALS PROCESS



RECOMMENDED APPEALS PROCESS



End Notes

1. Professor of Management Michael Jucius discusses these principles of disciplinary action extensively in a chapter on the topic. See Michael Jucius, Personnel Management, pp. 475-487.
2. For example, the category of **Disloyalty** could be broken down into several subcategories: Making false or vicious statements about the organization or its employees; Engaging in sabotage; Posting of matter on department bulletin boards that contains material offensive to the Tribe; etc.
3. Keeping records is especially important to monitor the frequency of misconduct. An employee who regularly violates rules will require different treatment from one who seldom does. Several interviewees reported that managers rarely looked at the frequency of infractions.
4. Dave Morgan and Taylor Satala discussed the importance of an employee handbook and an orientation session in their October, 1987 review of the personnel policies. Their review took the form of a private letter to Edgar Walema, a past Chairman.

Many management professors have written about the value of employee handbooks. See, for example, Pigors and Meyers, Personnel Administration, pp 325-326; Strauss and Sayles, Managing Human Resources, p. 132.
5. This idea was developed by Morgan and Satala, October 1987.
6. Strauss and Sayles discuss the importance of precedent and consistency on p. 132 of Managing Human Resources: "If two individuals commit the same offense and one is more severely disciplined than the other, naturally there will be cries of favoritism. One of the quickest ways for a manager to lose the respect of his subordinates and to lower the morale of the work group is to impose discipline in a whimsical, inconsistent way."
7. Leroy Walker, a human resources specialist from Raytheon Corporation, suggests that consistency can be encouraged by requiring the Board to

explain its decision in writing; any departures from the precedents set by earlier decisions should also be justified.

One problem with this process could involve the competence of Personnel Board members to hear appeals that concern an employee's abilities in specialized fields about which board members may know little. (For example, a health worker may be the subject of disciplinary actions for neglect of duties involving medical procedures.) In such cases, the Personnel Board should invite experts in the field to attend the hearing.

8. The Tribal Employment Rights Officer may be a logical candidate for such assignment, given the nature of the position.
9. Jucius, Personnel Management, p. 471.
10. C.H. Reynolds, a private consultant and John Elsbree, a retired official of the Indian Health Service offered these suggestions.
11. Morgan and Satala, October, 1987.

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Sayles, Leonard R. and Strauss, George, Managing Human Resources. New Jersey: Prentice-Hall, Inc. 1981.

In addition, the following individuals gave many important suggestions:

Prof. Steve Cornell, Harvard Project on American Indian Economic Development.

Mr. John Elsbree, Public Health Service and Indian Health Service (retired).

Prof. Joe Kalt, Harvard Project on American Indian Economic Development.

Mr. Dave Morgan, Indian Health Service, Parker, Arizona.

Mr. C.H. Reynolds, private consultant, Boston, Massachusetts.

Mr. Leroy Walker, Raytheon Corporation, Milton, Massachusetts.