UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor	Docket No. 50-142 (Proposed Renewal of Facility License Number R-71)

DECLARATION OF WILLIAM H. CORMIER

I, WILLIAM H. CORMIER, say:

1. I am an attorney in good standing and licensed to practice law in the State of California. On March 9, 1984, I submitted a declaration as part of University's Response to Board's Order of February 24, 1984, responding to the Board's questions about apparent misrepresentations made by University and the NRC Staff.

2. Having considered University's March 9, 1984 response the Board issued its Memorandum and Order, dated April 13, 1984. There the Board concludes that my statement that the UCLA security plan approved by the Commission's safeguards branch "is not designed to provide protection against sabotage" is a materially false statement. The Board states that I failed to ascertain the accuracy of the statement when made and that I failed to correct it when I discovered its falsity. The Board concludes that the statement is false on the basis of the provisions enumerated in Appendix B of its Order. Before deciding whether to issue a formal reprimand the Board has provided me an opportunity to respond to the reasons underlying its conclusion. This declaration constitutes that response. Paragraphs 3-11 of this declaration explain

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my statements as I intended them to be understood; paragraphs 12-27 address the Board's specific concerns; paragraphs 28-32 consider the Board's "Appendix B" provisions. (¶¶ 28-32, which contain "Protected Information", appear in Appendix A, hereof. Appendix A is being served separately.) This declaration is intended to supplement my March 9, 1984 declaration.

SUMMARY

3. The statement in question appeared in "University's Response in Support of NRC Staff Petition for Reconsideration of the Licensing Board's Memorandum and Order Ruling on Staff's Motion for Summary Disposition", dated August 25, 1983. Staff's petition was dated August 15, 1983. The underlying Board Order was dated May 11, 1983. I attempted to explain what was meant by my remark about the UCLA security plan in my March 9, 1984 declaration. The statement was intended as a legal argument only. The reference to the security plan was intended as a general characterization of the performance objective of UCLA's security plan as approved by the NRC. It was based on a particular interpretation of Part 73 sabotage protection requirements, especially the general performance objectives and the specific means for achieving the objectives described in §73.55. I understand that the Board has rejected that interpretation of the Part 73 requirements and I do not mean to argue for that interpretation here. However, as I explain in more detail below, at the time of the statement I did not find anything in the Board's Order that clearly foreclosed such an interpretation and I believed that my interpretation was consistent with that expressed by the NRC Staff in its petition which I was supporting. Further, I

believe that my interpretation is reasonably consistent with that expressed by the NRC Staff in its March 9, 1984 response to the Board's allegations of misrepresentation and that it is, at least, an arguably correct legal interpretation. Throughout this proceeding I have relied in good faith on what I understood to be the NRC Staff legal interpretation of the applicable Part 73 requirements. In fairness, I believe that the Board should conclude that that interpretation is not unreasonable on its face. My characterization of the plan in connection with the legal argument I was making in the August statement was based on that interpretation and, hence, was as much legal as factual, more a conclusion to be drawn from the whole than a matter of simple fact. In this light the statement (conclusion) cannot fairly be characterized as materially false.

4. I believe the context of the pleadings shows that the August statement was made solely as a legal argument in support of the NRC Staff's petition and that it was relevant only to the Board's legal ruling concerning sabotage protection requirements. Briefly stated, that argument was that consistent agency practice ought to be considered in interpreting agency regulations. With respect to the sabotage protection issue raised by Contention XX, it is my understanding that at least until the time of the January 26, 1984 Order when the Board reaffirmed its denial of Staff's summary disposition motion, only a legal issue has been before the Board. There has been no discovery relating to the plan and there are no facts of record on which any of the parties or the Board could rely in drawing particular conclusions about specific provisions of the plan. I did not intend the reference

to the plan as a representation of the specific provisions or contents of the plan. Such representations would have been improper at that stage of the proceeding. My reference was to the general performance objective, that is, the standard to be satisfied not the means used to satisfy the standard. The characterization of the plan was based on my personal knowledge of the provisions that were actually in place at the facility, that is, the alarms and other hardware and controls, which I had viewed on numerous tours of the facility and which I had occasion to discuss with the UCLA staff. It was also based on my understanding of the requirements of §73.67, particularly as explicated in Regulatory Guide 5.59 of which I was aware. As I intended it to be understood, I do not believe that the August statement is false, although I recognize that the argument could have been stated more clearly.

5. In view of the Board's sabotage ruling, as I now understand it based on the Board's several recent explanations, my description of the plan, at worst, understated the level of protection provided by the UCLA security plan. There was no institutional advantage in understating that protection. Hence, there is no reasonable basis to conclude that I was being deliberately dishonest. Moreover, since the Board's holding with respect to sabotage specifies that an adversary hearing must be held to assess the "realistic threat of sabotage", which but for the Board's holding would not otherwise be required, University was entitled to a ruling in advance of any such hearing concerning what the regulations required and whether a hearing of that extremely complex question -- the site-specific realistic threat of sabotage -- would be necessary. In other words, even if I had represented that the UCLA

security plan is designed to protect against sabotage, and that statement went unchallenged by the other parties, there still remained the important legal questions whether NRC regulations required such protection and whether UCLA would have to defend its statement in an evidentiary proceeding concerned with evaluating the realistic threat of sabotage at the UCLA facility. The Board's suggestion that a "threshold" question could have been avoided is incorrect. If NRC regulations do not require that UCLA provide for and maintain protection against sabotage no hearing to assess sabotage threats would be required. The parties were entitled to an advance ruling on whether a hearing on that issue was required. The nature of such a hearing has been a major concern. University does not understand how it can prove that any particular sabotage threat suggested by a party is not realistic without resort to information, including classified national security information, to which it does not have ready access. Moreover, my actions in getting the plan and other security materials into the hands of the Board to rule on certain expurgations which I pointed out, some of which expurgations the Board is now apparently relying on for its conclusion, is inconsistent with any attempt by me to hide those very provisions or items from the Board.

DISCUSSION OF THE AUGUST STATEMENT

6. The reference to the plan was intended to inform the Board that the UCLA security plan was not designed to prevent penetration or access by potential saboteurs to the reactor facility by means of armed guards, mandatory entry searches, explosives detection devices, etc. These were the measures which CBG, in its Contention XX, claimed were necessary to

protect against potential sabotage. That is what I understood the expression, "protection against radiological sabotage", to mean in the context of this proceeding to resolve Contention XX. Throughout the proceeding "protection against" had been used in the sense of preventing penetration or access and had been contrasted with the lesser standard of detecting access, as specified in the performance objectives of §73.67. The only specific physical security system measures for preventing radiological sabotage that had been discussed in the proceeding were those identified in Contention XX: guards (¶ 3.a.); routine searches (¶ 3.b.ii.); devices for detecting explosives, firearms, incendiaries and SNM (¶ 3.b.i.); and physical barriers and isolation zones sufficient to prevent penetration of the facility (¶¶ 2.a. to f. and 3.c.). I understood these provisions to be those described in §73.55 and applicable to power reactor facilities. [These measures are defined or described in 10 CFR Part 73 of the regulations in connection with power reactors, fuel-reprocessing facilities or other facilities using formula quantities of special nuclear material. Guards are defined in §73.2(c). Physical barriers are defined in §73.2(f). Isolation zones are defined in §73.2(k). These and the other measures are also described in §73.46(c)(3), (d)(5), (6), (9), and (h)(5); §73.50(b)(1) and (4), (c)(1), and (g)(4); and §73.55(a), (b)(1), (c)(3), (d)(3), and (h)(1) and (5). None of these means are made specifically applicable to non-power reactor facilities possessing SNM of low or moderate strategic significance. See §73.67.] At the time of the August statement my attention was directed to these provisions since these were the measures which CBG claimed in its contention were required to adequately protect against possible sabotage and CBG's

factual claims were the claims to be litigated in this proceeding. I believe that my concern or preoccupation with the claims in the contention was reasonable. In addition, my statement appeared in a response supporting Staff's petition for reconsideration of its motion to dismiss these CBG claims on legal grounds. The first argument in Staff's petition was "The Board Did Not Rule on the Issues in the Contention". I concurred in that argument.

7. At the time of my August statement it appeared that only two alternatives concerning sabotage protection were being considered by the parties and indeed were stated in the code: either UCLA would be required to protect against radiological sabotage in the sense of preventing access by potential saboteurs by means of searches, guards, etc., or it would be determined that no sabotage protection requirement applied to UCLA. I did not understand there to be any other alternative. As I understand the Part 73 requirements, the specific regulations generally first state a performance objective to be satisfied and then describe the specific means that are to be implemented to achieve that objective. Although the Board in its May 11, 1983 Order suggested some flexibility of means (the practical effect of which I did not understand), the Board said nothing to suggest that it had a performance objective in mind that was different from the specific Part 73 objectives: protection against sabotage in the sense of preventing penetration of the facility by potential saboteurs. In particular, I find nothing in the code to support this Board's suggestion of some intermediate level of sabotage protection nor that such should be determined on a site-specific basis. It is my

understanding that even commercial power reactor licensees are not required to theorize about the realistic threat of sabotage at their facilities. Even now I do not understand what standard of protection, that is the performance objective as that term is repeatedly used in the Part 73 regulations, the Board in its holding is requiring. I do not see a basis for it in the Part 73 definitions. It seems unreasonable to expect license applicants to guess at what requirements they will be expected to meet which are nowhere specified and can only be determined at the outcome of an adversary proceeding, in those situations in which such licensees have been unlucky enough to have been challenged. [I have been aware of at least one Appeal Board decision (ALAB-653, the Diablo Canyon proceeding) that suggests that individual licensees are not to be subject to such uncertainty, and at least with respect to sabotage protection at power reactor facilities, that "the Commission did not intend the threat to be an open-ended one to be determined on a site-specific basis using local intelligence sources."] I do not mean to argue here that my interpretation of the Part 73 requirements is in all respects correct, only that it is reasonable and that it has formed the basis for my characterization about the UCLA security plan. Notwithstanding my reservations about this Board's ruling, in University's December 13, 1983 pleading I attempted to take into consideration the suggestion I understood to be contained in the Board's October 24, 1983 Order that such an intermediate level of protection was required. The December pleading is explained in more detail below.

8. There may be other possible interpretations of the expression "protection against radiological sabotage" as used in Part 73 than the

meaning I intended in making the August statement. However, I believe that my interpretation of the performance objective implied in that expression is reasonable and that it is consistent with the way in which I understood the other parties to have used the expression in this proceeding as shown by the following considerations:

(a) During the February 4-5, 1981 prehearing conference when Contention XX was first discussed, counsel for the NRC Staff attempted to clarify for the Board that while power reactors are required to prevent sabotage and theft by means of armed guards, detection devices, and search requirements, non-power reactor licensees with low to moderate quantities of SNM are not required to protect against sabotage or theft. Such facilities are only required to detect unauthorized access. Tr. 377-78, 394-95. This explanation led to an exchange between a former Board Member and counsel for Staff wherein the Board Member contrasted "protect against", in the sense of prevent, with the lesser standard of "detection". Tr. 396-98. The distinction between "protection against", in the sense of prevention, and "detection" has persisted during this proceeding.

(b) In its September 7, 1982 response to Staff's motion for summary disposition, when CBG first disclosed its reliance on §73.40(a), CBG equated "protection against" with "prevention" in arguing that searches, guards, etc., were necessary to prevent access by potential saboteurs:

> As noted above NRC Staff has agreed that early detection and assessment capabilities provide adequate security to Applicant's facility. In the context of sabotage, the danger to the public health and safety engendered by sabotage will have already occurred

prior to early assessment and detection. No prevention is no protection. Therefore, an adequate plan must include sabotage prevention measures. . . (Page 5, Footnote 1; emphasis added.)

(c) The Board's sabotage protection holding is found on page 25 of the Board's May 11, 1983 Order. In that Order it was held "that UCLA must institute some means of providing physical protection against sabotage." The holding did suggest that there would be some flexibility in the means to be instituted; but nothing in the holding suggested to me that the Board's idea of the objective, protection against sabotage (presumably, radiological sabotage as defined in §73.2(p)), was any different than that which could reasonably be inferred from the definitions and usage in Part 73; that is, the objective remained preventing potential saboteurs from gaining access to the facility. The Board did state that the means should be less stringent than the requirements of §§73.40(b), (c), and (d) and 73.60, but the Board did not further explain whether each one of those particular means (whatever they were) was excluded or whether instead the permissible means could not exceed the requirements of §§73.40(b), (c), and (d) and 73.60 considered together. In its April 13, 1984 Order the Board did elaborate on these provisions in its Appendix A in a way that is helpful; however, I did not have the benefit of that explanation at the time of my August or December pleadings. Furthermore, the Board did not explain what it meant by that statement with respect to the specific provisions claimed to be necessary in the contention. In this regard I wish to note here that in CBG's April 26, 1984 request for reconsideration and clarification of the Board's April 20, 1984 Order, which I just received, counsel for CBG now argues that §73.60 does not provide an upper limit to sabotage protection in making the statement:

> On page 12 of its Order the Board states that 10 C.F.R. § 73.40(b), (c) and (d) and § 73.60 provide an upper limit to the range of sabotage protection measures that UCLA may be required to undertake. This conclusion is erroneous, sets a standard which is not countenanced under the regulatory scheme, and should be reconsidered. (Committee to Bridge the Gap's Motion for Reconsideration and Clarification of Portions of April 20, 1984 Pre-Hearing Conference Order, page 7.)

I do not want to comment on CBG's argument here except to point out that that argument would be untimely in the extreme if CBG had understood the Board's May 11, 1983 Order as the Board is suggesting I should have understood it, since the Board's April 20, 1984 Order only restates the standard the Board sought to establish in its May 11, 1983 Order. Apparently, the Board's May 11, 1983 Order was not altogether that clear to other of the parties in this proceeding.

(d) In fact, the Board's May 11, 1983 Order denied all aspects of Staff's motion for summary disposition of Contention XX, which meant, as I understood it, that the Board had not ruled out any of the specific means which CBG claimed in its contention were necessary. Even in its January 26, 1984 Order, in which the Board reaffirmed its denial of Staff's motion for summary disposition, the Board had not explicitly ruled out entry searches, guards, explosives and incendiaries detection devices, isolation zones, etc. Concerning those measures set out in ¶ 3 of the contention the Board stated: ". . .our agreement with Staff that these matters are outside the contemplation of § 73.67 does not mean that they are also outside the contemplation of § 73.40(a)." (Order, at 6.) On several occasions now, the Board has stated that the determination of what finally may be required to meet the heretofore unspecified standard of protection can only be determined after a full adversary hearing.

(e) Most significant is the fact that my August statement was submitted in support of the NRC Staff's August 15, 1983 petition for reconsideration and that it subscribed to the arguments contained in Staff's petition. Staff's petition is based, in part, on the distinction between protection against sabotage and theft, as required for power reactors, and the lesser standard of detection, as specified in the performance objectives of §73.67. (Pages 10-11). Cited therein is the Staff's advisory memorandum to the Commission (SECY-79-38) which anticipated the issuance of §73.67. SECY-79-38 states that "[t]he proposed amendments . . . do not include sabotage protection" and further explains that "[t]he emphasis of this guide is on a detection and response system rather than a prevention system." (Page 12.) Staff also noted in its petition that the Commission was considering a proposed rule change to add a new §73.67(h) to address non-power reactors with formula quantities of SNM. With respect to this proposed rule Staff stated: "This proposed rule would provide that even non-power reactors with formula quantities be held to the performance standards in 10 CFR §73.67(a) for detection of intrusion and theft, but not protection." (Staff Petition, at 14.) In the August response I relied on this argument and the distinction being made, as I understood it, between "protection against", in the sense of prevention, and "detection." In the August response I also sought to draw the Board's attention to the specific "performance objectives" of §73.67. As Staff had argued in its petition, I argued that it would be contradictory to assume that, in addition, a general, non-specific requirement to protect against sabotage was imposed. Then, in the sentence that has troubled the Board, I pointed out that the UCLA security plan had been approved

by the Commission's safeguards branch, as Staff had pointed out in its petition, and that it is not designed to protect against sabotage. In context, my reference to the plan meant that the plan did not satisfy any NRC-required performance ofjective of protection against sabotage based on the distinction Staff had emphasized between protect against in the sense of prevention and detection. In the second clause in that sentence I said that licensees, like UCLA, have never been required to adopt security plans designed to protect against sabotage. In context, I was referring to non-power reactor licensees possessing less than formula quantities of SNM who were required to comply with the specific requirements of §73.67 but not any other specific requirements and the relevant period was since the issuance of §73.67 in November, 1979. The term "protect against" was intended in the sense which I have explained above. As I intended it, I do not believe the statement is false, although I understand there may be instances of inconsistent Commission practice of which I am not aware.

9. Given this context and particularly in view of the fact that my August statement was made in direct support of the arguments contained in Staff's petition, I believe that my statement that the UCLA security plan is not designed to protect against (radiological) sabotage was reasonable and correct. I intended to convey only that the security plan approved by the NRC is not designed with the performance objective of preventing sabotage by the use of entry searches, guards, etc., which were part of the Contention XX claims. My statement about the consistent practices of the Commission's safeguards branch in interpreting and applying its own regulations was intended to call the

Board's attention to those practices as an aid to the correct interpretation of the applicable regulations.

10. I believe my understanding of the expression "protection against radiological sabotage" is supported by common sense considerations and, further, is consistent with the way the expression has been used by the Commission and its staff, as demonstrated by the following arguments:

(a) Unlike the attempted theft of SNM which could reasonably be expected to require some time to carry out (particularly with an Argonaut reactor), an act of attempted radiological sabotage can occur in an instant by an individual or individuals, disdainful of life, who gain access to a facility, by force or subterfuge, and are armed with explosives, incendiaries or other such contraband. This point was alluded to by the NRC Staff representative from the Division of Safeguards at the February 8-9 prehearing conference (Tr. 3542). If access to a facility is achieved by potential saboteurs, the act will be successful unless the design of the reactor is such that little damage can be done. To protect against such attempts at sabotage requires that the saboteur be intercepted before he gains access to the facility. At the very least, this would seem to imply that the facility must implement mandatory personnel entry searches to detect any attempt to bring contraband into the facility. In addition, it may also be necessary to employ armed guards capable of intercepting any determined intruder who had been so detected and was willing to use force to gain entry. In general I do not understand how the provisions of a physical

security system can be considered effective in protecting against sabotage unless the protective system includes means to prevent access to the facility by the potential saboteur. It is the position of the UCLA staff that with regard to the UCLA facility the principal safeguard against radiological sabotage is derived from the basic design and operating characteristics of the reactor and that additional security system measures that may be required at other facilities are not necessary at the UCLA facility.

(b) It is my understanding that wherever in the Part 73 safeguards regulations a specific requirement to protect against radiological sabotage is imposed an entry search has been required. The Statement of Considerations issued with 10 CFR §73.67 includes a statement that suggests that an entry search is a minimum requirement:

> The primary objective of entry searches is to detect materials which could be useful in sabotage. Since protection against sabotage is not within the scope of the proposed amendments, an entry search is not necessary. (44 Fed. Reg. 43280, at 81.)

(c) The NRC Staff's March 9, 1984 response to the Board's allegations of misrepresentation in commenting on the language of the UCLA security plan makes the following statement:

> The UCLA security plan provides actual security measures described in 10 CFR §73.67 and provides for no entry searches, the foundation for sabotage protection. . . . The actual provisions of the UCLA security plan follow only those requirements in §73.67 and do not indicate any procedures to screen persons entering the facility. (Page 9-10; emphasis added.)

In fact, I believe that this statement made in Staff's March 9, 1984 response is based on the same characterization of the UCLA security plan that I was relying on in making my statement in August, 1983.

11. My characterization of the UCLA security plan as not designed to protect against radiological sabotage was based on what I understood to be the performance objective implied in that expression, that searches, at least, were a minimum requirement of a security system that was to be designed to protect against radiological sabotage, and on my personal knowledge that the facility did not employ mandatory entry searches nor armed guards, etc. It has been the consistent UCLA position that the design and operating characteristics of the reactor itself provide the basic safeguard against radiological releases endangering the public, whether such releases are considered to occur by credible accidents or credible acts of sabotage. This position is stated in the declarations of Dr. Wegst and Mr. Ashbaugh submitted with University's pleadings of March 9, 1984. I do not mean to argue here whether the reactor is so protected nor whether my interpretation of what it means to "protect against radiological sabotage" is correct. I believe, however, that my understanding was reasonable under the circumstances and held in good faith and, furthermore, that it is consistent with the meaning that may be reasonably inferred from NRC Staff documents and from the statements of NRC Staff upon which I have relied in forming my opinions as to the applicable legal requirements. In particular, I wish to direct the Board's attention to SECY 83-500 and the several related documents cited by Staff in its March 9, 1984 response which explain the practice of the safeguards division and the reasons for the rule clarification currently being proposed. Fairly considered in light of the entire record in this proceeding, I believe my characterization of the UCLA security plan is reasonable and would not be regarded as false by the NRC Staff.

DISCUSSION OF SPECIFIC CONCERNS RAISED IN BOARD'S APRIL 13 ORDER

12. In its April 13, 1984 Order the Board acknowledges the explanation contained in my March 9, 1984 declaration concerning what I meant in my August statement. But the Board then states:

> "It is true that Contention XX argues for some measures which, given our holding in LBP-83-25A, may be beyond the "upper limit" of sabotage protection required of this facility. Nevertheless, the fact that CBG may seek to have such measures imposed does not justify the blanket statement, made in response to our holding in LBP-83-25A, that no measures dealing with sabotage are employed." (Order, at 10, emphasis added.)

In the first place, the Board has unfairly misrepresented my August statement. That statement was intended to characterize the plan as a whole and not any of its specific provisions. It was concerned with what I understood to be the level of performance which the plan was designed to achieve and not the particular means that might be used to achieve that performance. It was based on my personal knowledge of the electronics and hardware systems that were in place at the facility, various discussions with the facility staff about those systems, familiarity with Regulatory Guide 5.59 which I understood to require compliance with §73.67 only, sufficient familiarity with the plan to understand that it closely followed Reg. Guide 5.59, reliance on the NRC Staff's distinction between "protection" and "detection", and my understanding that the plan did not contain the specific provisions -- searches, guards, etc. -- which are described in Part 73 of the regulations (in particular, §73.55) for protection against radiological sabotage and which CBG had claimed were necessary. I did not intend such a sweeping statement "that no measures dealing with sabotage are employed." I did not make that statement.

13. Furthermore, I believe that my concern with the measures that CBG is seeking to impose is reasonable. I do not know if the Board's statement quoted above is intended to imply that my concern was unreasonable and that I should have inferred from the Board's sabotage holding that CBG's claims went beyond what could be required. If so, I respond only that the Board's May 11, 1983 ruling was not that clear to me. Moreover, as noted above, the Board's holding was apparently not that clear to CBG since now, nearly twelve months after that ruling, CBG is questioning the Board's interpretation of the "upper limit". I was preoccupied with CBG's claims for the simple reason that those were the claims that were to be litigated in any evidentiary hearing that would be necessary. I note that the Staff, in its petition, was also concerned because in its holding the Board had not addressed the issues in the contention. Perhaps I was slow to pick up on the implications of the Board's holding. But the Board's holding did not specifically discuss or rule out any of CBG's claims. Most significantly, the practical effect of the Board's May 11 Order was to deny all aspects of the motion for summary disposition which meant that, according to the Board's view, none of CBG's claims could be ruled out as a matter of law and that University would have to demonstrate that as a matter of fact none of the recommended measures were necessary based on a site-specific assessment of adversary characteristics and the threat of sabotage. It is not necessary that the Board agree that all my judgments were correct. However, I do believe that my characterization of the plan was reasonable and that my interpretation of the effect of the Board's sabotage holding was one a prudent advocate would make.

14. At the time of making the August statement I understood that there were basically two alternatives respecting CBG's sabotage claims: protect against radiological sabotage by means of searches, guards, etc., the only means that I understand to be specifically described in Part 73 for accomplishing that objective, or no specific sabotage protection measures would be required. In the Board's October 24, 1983 Order (ruling on Staff's petition) the Board addressed the distinction that Staff had drawn between "protection" and "detection" with the following comment:

> ". . . To make this argument, Staff draws a distinction between detection of theft, required by §73.67, and protection against theft, required by §73.40. We are not prepared to draw the conclusion that theft is permissible under the rules so long as one knows it has occurred. We view detection as one aspect of protection against theft, an aspect which the Commission has decided provides sufficient protection in this case. (Order, at 10.)

By these remarks I understood, for the first time, that the Board could have been using the term "protection against" in a more general sense than I understood that term to be used in Part 73, as signifying specific performance objectives. In its October holding the Board did not elaborate on this point nor discuss the matter in connection with CBG's specific claims. As a result, I was still unsure what the effect of this holding was with respect to CBG's specific claims. It was unclear to me at the time and I am still unsure what particular "level of protection" the Board had or has in mind. That is, I am unsure what is to be the objective of the protective system (preventing all possible sabotage?, all credible radiological sabotage as defined in §73.2(p)?, or delaying or impeding such sabotage?, or mitigating the consequences of such sabotage?, or something else?) as distinguished from the means to accomplish that objective (entry searches, guards, detection devices,

etc., or perhaps, as I now understand it, response procedures, or something else).

15. The Board's comments in its October Order prompted the statements contained in my response of December 13, 1983. There, I stated my concern that the Board had not fully explained the "practical effect" of its recent ruling, that is, were entry searches and/or armed guards "in" or "out". The "practical effect" was very important because the University would not implement mandatory entry searches of its personnel nor the posting of armed guards. University would forego the license rather than institute such measures. I also repeated the argument made in the August statement that the Board's interpretation of §73.40(a) was inconsistent with what I understood to be the practices of the Commission's safeguards branch in requiring facilities, like UCLA's, to comply with §73.67 only. In view of all the Commission documents and other evidence submitted by the NRC staff concerning the proper interpretation of the Part 73 regulations and all the affidavits submitted as part of the NRC Staff's March 9, 1984 response, my statement concerning the practices of the Commission's Division of Safeguards is at least arguably correct. In any case, my interpretation of the regulations and my understanding of the practices of the NRC's safeguards branch are held in good faith.

16. In discussing the Board's interpretation of §73.40(a) at the bottom of page 4 of the December response, I referred to my understanding of the claims made in Contention XX in making the following comment:

> . . .Subpart 1 of CBG's Contention XX contains the assertion that the UCLA facility should be protected "against possible acts of radiological sabotage or attempts at theft or diversion of SNM." That assertion is equivalent to the claim that UCLA should be able to prevent all possible acts of sabotage. In response to that specific claim University has asserted that the Commission's regulations do not require that it be able to "protect against sabotage" in the sense of any requirement that University employ measures at its facility that will be effective in thwarting or preventing specific acts of sabotage or theft.
>
> However, the protection against sabotage and theft required by §73.40(a) can be interpretated in a more general sense. . . . (Pages 4-5.)

In its April 13 Order the Board did not consider the portion of the December pleading quoted above. The Board did consider the following portion of that pleading which begins with the observation that the measures used by UCLA to satisfy the requirements of §73.67 provide "some measure of protection against sabotage and theft." The next statement was intended as a more general observation: "University's security precautions provide 'protection against sabotage' although . . . the level of protection that is provided would not satisfy the objective of preventing certain specific acts of sabotage such as the design basis threats defined in Part 73 of the regulations." (The reference was to §73.1(b) which defines design basis threats that commercial power reactor and certain other facilities are required to protect against.)

17. I had no particular provisions of the plan in mind in making those statements. Because it was my understanding that only a legal issue was before the Board as a result of Staff's petition respecting the Board's sabotage holding, I did not believe it was necessary to examine the plan in more detail. The Board had yet to adopt a suitable protective order for discovery of security information. It would have

been unfair to CBG and improper for me to have discussed any specific aspects of the plan with the Board at that stage of the proceeding. I have avoided discussing any specific details or provisiors of the plan during the pre-evidentiary phase of the proceeding. Arguably, I would have been absolutely precluded from disclosing such information in advance of the Board's establishment of a protective order as required by the procedures established in the Diablo Canyon case.

18. The sole purpose of my August and December remarks was to bring into sharper focus what I understood to be the significant legal issue presented by the Board's holding. The December comments were not specifically directed to correcting the August statement because I did not and still do not believe that my August statement was incorrect when it is understood as I intended it to be understood. The December statement did not signal a change in University's legal position -- that the specific safeguards requirements for the UCLA facility are found in §73.67.

19. However, I believe when it is fairly considered the December statement does indicate that I had taken account of what I then understood to be the Board's different and more general use of the expression "protect against" and in that sense it does represent a changed position. The Board is wrong is saying that the thrust of the December pleading was to reaffirm the statement made in the August pleading. The actual thrust of the December pleading is evident from the statement that appeared on page 5, that the "Board's interpretation of §73.40(a) does not specifically respond to the claims made in the

Contention. . .", and the several-times-repeated request that the Board "clarify the practical effect of its ruling." I regret that my remarks were not clearer. With deference to this Board's sabotage holding, which is to be regarded as the law of the case, on the basis of the representations made by the NRC Staff in this proceeding and, in particular, the affidavits and documents submitted with Staff's March 9, 1984 response, there does appear to be some uncertainty with respect to the ruling that licensees such as UCLA are required to protect against radiological sabotage. But assuming the Board's holding is correct, there is still uncertainty about how the requirement is to be interpreted. It seems particularly unreasonable to hold my remarks to standards of precision that the Commission's regulations could not and do not, in all respects, satisfy.

20. I note that although the Board discussed each of the arguments in Staff's petition in its October order, the only mention of the UCLA position on the sabotage question is contained in the Board's two-word acknowledgment, "UCLA concurs" appearing on page 9 of its order. Likewise, the Board's consideration of my December statements is summed up in the statement in the Board's December 23, 1983 Order that "[a]t the moment, UCLA is preoccupied with sabotage" and its acknowledgment that "[w]ith respect to the sabotage issue, UCLA clearly seeks guidance as to the practical impact of our ruling . . ." (page 8). Because the Board did not discuss the UCLA position in making its rulings I was not alerted to the fact that my remarks had misled the Board.

21. In its April 13, 1984 Order the Board asserts that at the time of preparing the January expurgations when I reviewed the plan in more detail I should have become aware of its true contents and that I had a duty to correct my August statement. As I explained in my March 9, 1984 declaration, I did become aware of the introduction to the security plan at the time of preparing the expurgations. Upon reading the introduction my concern was that the actual provisions of the plan did not seem to me to carry out this part of its stated purpose, but again that was based on my understanding of what the expression "protect against radiological sabotage" meant. When Mr. Ashbaugh informed me of the way he used the phrase "radiological sabotage", I recognized that his use was not consistent with the definition in Part 73. Of course, there was no reason why it had to be consistent. I believe that Mr. Ashbaugh's use of the phrase to be more appropriate because it includes minor contamination and reactor damage incidents which are the more likely type of occurrences for the UCLA facility, but which could not endanger the public because the consequences would be confined to the reactor room. It has been the view of the UCLA staff that such minor incidents, whether accidents or events caused deliberately, are the only credible events requiring responsive planning. I expected that I would have to explain the different uses of that phrase to avoid confusion, but in view of what I then understood to be the Board's more general use of the term "protect against" I did not perceive any other problem. It simply never occurred to me that the Board would find an inconsistency with my August statement.

22. The expurgations were made subsequent to the parties' conference call of January 25, 1984 (this fact is alluded to in the Board's order of January 27, 1984, which reported the results of the conference call in which I stated that I was only then considering making expurgations). It was only while preparing the detailed expurgations about the last week in January that I saw the several references to sabotage in the pre-1980 inspection reports and in the response procedures. The specific matters actually addressed in the inspection reports concerned access to the reactor room and matters pertaining to access apply equally to protection against theft and protection against sabotage. I did not understand the inspectors to have identified any specific sabotage threats and I do not know what they meant by their reference to sabotage. I did not regard these references to sabotage as significant. Moreover, because of the major regulatory change that occurred in November 1979 with the issuance of §73.67 and the fact that the UCLA security plan, in its present form and with its present content, was not in existence prior to that time, I did not view the pre-1980 inspection reports as especially revelant. It is the status of the Commission's safeguards regulations and the practice of the Commission's safeguards division subsequent to the issuance of §73.67 in November, 1979, that is relevant to the issue of what requirements apply to UCLA's facility. I knew the UCLA security plan followed Reg. Guide 5.59 very closely and that that document pertained to the requirements of §73.67 only. I knew that several of the response procedures which were kept with the security plan were actually developed as part of the Emergency Response Plan because of the standard form in which they are drafted. I understood that those procedures were

not considered part of the security plan but were kept with the security plan because it was appropriate and convenient to do so and because the security plan called for certain procedures. Because Contention XX did not raise any question about response procedures I simply regarded them as irrelevant to the issues to be litigated. None of these matters caused me any concern.

23. I have been well aware of the procedures for the discovery of protected information established in the Diablo Canyon proceeding since about the time of the Board's July 1, 1981 Order which mandated that those procedures be followed in this proceeding. I have long anticipated that I would be sending the Board the security plan and other security information for the Board's decision on the release of a "sanitized" version of such materials, though I did not plan to review this material for the purpose of preparing expurgations until the Board had finally decided the summary disposition motion and resolved all legal questions. Surely, I could not have been thinking that any of these matters which the Board believes contradict my statement would escape the Board's attention. Indeed, as to many of these items I actually drew the Board's attention to the matter by drawing a box around the item forcing the Board to consider the matter in deciding whether or not the item was to be expurgated. I would not have prepared those expurgations if I was attempting to hide those items from the Board.

24. When the recommended expurgations had been decided about the last week in January, a copy of the plan with the deletions marked was

sent to the Board as soon as the effort was finished. The marked-up security plan, response procedures, and inspection reports were mailed January 31, 1984. At that point in time there was no purpose to be served by trying to explain the plan since I was immediately placing the materials in the hands of the Board who could draw their own conclusions or ask whatever questions they wished. I certainly believed that the Board would not delay in reading the materials since the Board was expected to rule on the expurgations at the then upcoming February 8-9 prehearing conference. Indeed, the expurgations were discussed at that conference and the Board surely gave the impression that it had read the materials. In addition, the specific features of the UCLA security system which the Board identifies in ¶¶ 1 and 2 of its Appendix B were described for the Board during the February 9, 1984 site tour. If the Board was troubled by apparent inconsistencies in the materials it was never brought up. I was unaware that there was any question about my August statement.

25. The statement contained in University's August 25, 1983 response is solely my responsibility. I did not seek to have it reviewed and it was not reviewed, either before or after it was made, by any of the attorneys in the Office of the General Counsel nor by any other representatives of The Regents. The purpose of the August pleading was to briefly present legal arguments, and only legal arguments, in support of the NRC Staff's petition for reconsideration. I did not believe it was necessary to review these legal arguments with particular members of the technical staff of the NEL. Aside from the files of pleadings I keep in my office, the Nuclear Energy Laboratory

keeps a chronological file of the proceeding for its records. Most, but not all, of the pleadings and correspondence eventually get in the files of the NEL. Matters of significance or particular interest I call to the attention of Mr. Ostrander, who is manager of the NEL. I did not call the August pleading to the attention of Mr. Ostrander and I do not recall ever discussing it with him or with Mr. Ashbaugh, who is senior reactor operator and security officer at the NEL. Of course, after the Board raised questions about the accuracy of a statements made in the August pleading and in the December 13, 1983 pleading, these pleadings were discussed with a number of individuals.

26. The Board concludes that my statement was false, that I knew it was false, and that I failed to so inform the Board. Even if I had perfectly understood the implications of the Board's several holdings on the applicable sabotage protection requirements, which I did not and still do not, I should be entitled to make what I regarded as an honest characterization of the design or performance objectives of the plan. As a result of the anticipated evidentiary hearing on this matter it may be concluded that my characterization is incorrect. But that conclusion would not make my earlier characterization materially false. Further, the opposing party in this proceeding will surely be permitted to argue that the UCLA plan is not adequately designed to protect against radiological sabotage and indeed the evidentiary hearing will be largely to decide that factual claim in accordance with the Board's ruling. The following is a fair statement of what I understand to be the principal issue which the Board wishes resolved in the upcoming hearing: "Is the UCLA security plan designed adequately to protect against

radiological sabotage?" On what subtle difference in meaning is the Board relying in concluding that my statement is so obviously false while permitting the issue whether UCLA is adequately protected to go to hearing? Clearly, the level of protection provided by the UCLA security plan is disputed by the parties and would still be disputed even if all the parties could agree on what regulations apply and what they mean. The ultimate result of this adversary proceeding on Contention XX may be the Board's determination that UCLA is taking greater precautions than University claimed in its statements made by me, at least as the Board understood those statements. What purpose does this Board think I was serving in so understating the level of protection provided by the UCLA security system? There was no institutional advantage to be gained in making such a statement. What indications are there of any attempt to deceive or mislead the Board? To what end? My actions in this matter have not been those of someone who is trying to deceive the Board. On the contrary, I believe that my actions establish that I was not trying to deceive the Board.

27. Further, how does this Board now distinguish between my August statement, made unsuspectingly, and the March 9, 1984 statements made by the Staff in response to the Board's allegations of misrepresentation:

> Moreover, the descriptive language in the UCLA plan does not accurately reflect the actual provisions of the plan according to Part 73 definitions of sabotage protection such as those described in §73.55. The UCLA security plan provides actual security measures described in 10 CFR §73.67 and provides for no entry searches, the foundation for sabotage protection. . . .
>
> . . . the actual provisions of the UCLA security plan follow only those requirements in §73.67 and do not indicate any procedures to screen persons entering the facility. . .(Pages 9-10; emphasis added.)

In its March 9, 1984 response the NRC Staff made it clear that its statements, including the statement quoted above, represent the position of the NRC Staff Division of Safeguards. I see no substantial difference between my characterization of the UCLA security plan made last August and the NRC Staff explanation quoted above. Indeed, as I have tried to explain, my statement was based on the same understanding of the Part 73 requirements that I believe underlies the Staff characterization. Apparently, the NRC Staff does not view my statement as materially false. What fairness is there in a result that my statement is materially false but is not so viewed by the NRC Staff safeguards division, who are especially qualified to evaluate the statement?

THE APPENDIX B PROVISIONS

[¶¶ 28-32, which contain "Protected Information", appear in "Appendix A", hereof]

CONCLUSION

33. I respectfully submit that the Board's conclusion that I made a materially false statement in my August statement which I subsequently failed to correct is not well-founded. As I have explained, the reference to the security plan approved by the NRC in my August statement was intended as a general characterization of the plan as a whole. It was based on my understanding of what was meant by the performance objective, protect against radiological sabotage, according to the Part 73 definitions. The August statement was intended as a legal argument only: calling the Board's attention to what I understood

to be the NRC Staff's consistent practice in applying the Commission's safeguards regulations to facilities like UCLA. In making that argument I did not claim that Commission practice was the total answer to the question, but only that it was entitled to great weight in properly interpreting the regulations. Although there are apparently some inconsistencies in NRC Staff practices, I think that my statement was a fair one in view of the rule clarification that the Staff is currently pressing and, in particular, the Staff's March 9, 1984 response.

34. By my reference to the security plan I did not mean what the Board apparently thought I meant. I did not intend that the remark convey anything about the specific provisions of the plan; it was concerned instead with the basic performance objective of the plan viewed as a whole. Moreover, as I have explained in discussing the Board's Appendix B provisions there is at least some uncertainty as to the status of those provisions and their purpose. I was unaware that my August remarks had been misinterpreted. I had no reason to "correct" the characterization since I did not view it as incorrect. I do not believe that the NRC Staff views my statement as materially false. Indeed, the representation in Staff's March 9, 1984 response, that the actual provisions of the UCLA plan follow only those requirements in §73.67, is substantially equivalent to the characterization of the plan I made in August.

35. Underlying the alleged misrepresentation is a legal dispute not a factual one. The legal dispute concerns not just what regulations are applicable to UCLA's facility, but also how those regulations are

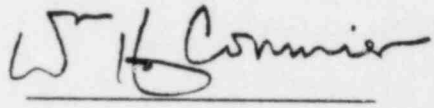
to be interpreted. I have not sought to re-argue those legal questions here. However, I ask this Board to recognize that my representation of the plan is based on a particular view of the Part 73 legal requirements which on its face is not unreasonable. Nowhere is the expression "protection against radiological sabotage" defined. Its meaning can only be inferred from the descriptions and definitions that appear in Part 73. The Board's conclusion that my statement is false is certainly not a necessary one. In considering all the circumstances, the ambiguity that exists in the regulations and the complexity of those regulations, the Board must at least conclude that I did not deliberately attempt to deceive the Board concerning the contents of the UCLA security plan. At worst, my August statement understated the level of protection provided by the UCLA security plan. There was no advantage to be gained by understating the protection provided.

36. I believe that if the Board considers fairly the explanation I have provided herein it will agree that its conclusion that I made a knowingly false statement is in error and unjust. I ask that no reprimand be issued. The Board's conclusion was prominently publicized in the community where I live and work. As a result, my personal and professional reputation have been severely damaged. I hope that the Board will be willing to reconsider the conclusion of its April 13, 1984 Memorandum and Order. In the event that the Board finds that the explanations of my conduct contained herein do not provide a sufficient basis for the Board to reconsider its earlier conclusion, or if the Board is otherwise unwilling to reconsider that conclusion, I

respectfully request a hearing concerning this matter and notification regarding my appeal rights.

EXECUTED at Los Angeles, California, this 1st day of May, 1984.

I DECLARE under penalty of perjury that tne foregoing is true and correct.



WILLIAM H. CORMIER