

RELATED CORRESPONDENCE

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TESTIMONY OF DAVID H. GAMBLE

Submitted by

Three Mile Island Alert  
November 1, 1984

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G PDR

I am David H. Gamble, currently a Supervisory Criminal Investigator (Special Agent) with the Defense Criminal Investigative Service. Formerly I was a Criminal Investigator with the Office of Inspector and Auditor ("OIA") of the U.S. Nuclear Regulatory Commission ("NRC") and participated in the investigation into whether licensee Metropolitan Edison failed to report information about the accident which occurred at Three Mile Island ("TMI"), Unit 2, on March 28, 1979. I am also an attorney licensed to practice law before various federal and state courts. My educational and professional background is described in my resume. (Exhibit 1) I am not testifying as an official representative of the Department of Defense; references to my current employment are included solely for the purpose of assessing the weight to be given any opinions I provide.

The purpose of my testimony is to describe the deficiencies I perceived in the NRC's investigation into communication of information about significant events and reactor conditions during the TMI accident. It is also intended to highlight my criticisms of the NRC report which was issued in January, 1981, as a result of that investigation, "Investigation into Information Flow During the Accident at Three Mile Island" (NUREG-0760).

On March 21, 1981, Acting Commission Chairman John Ahearne directed the Office of Inspection and Enforcement ("IE") to begin this investigation. Although Chairman Ahearne ordered an investigation rather than an inspection,

non-investigative IE personnel directed the effort. At that time Chairman Ahearne also instructed the Director of OIA to assign a criminal investigator to the IE investigation "to protect the interests of the U.S. Department of Justice in any criminal matters that might arise during the investigation." OIA Director James Cummings assigned me to the investigation full-time.

I have participated in four other investigations of the TMI accident and related events including:

- (1) the investigation of the accident which led to the IE report entitled, "Investigation into the March 28, 1979 Three Mile Island Accident by Office of Inspection and Enforcement," Report No. 50-320/79-10 (August 1979), NUREG-0600;
- (2) the investigation into the accident conducted by the Rogovin Special Inquiry Group;
- (3) the joint OIA-IE investigation into falsification of leak rate tests at TMI;
- (4) the OIA investigation which led to an OIA Report entitled, "IE Inspectors' Alleged Failure to Report Information re March 28, 1979 Hydrogen Explosion at TMI-2" (January 7, 1981).

After receiving this assignment, I spoke to Norman Moseley, then Director, Division of Reactor Operations Inspections, IE, who in large part coordinated the investigation. Mr. Moseley told me I could not physically be located in IE offices as Mr. Cummings had directed but that he would ensure I was notified as to the time and date of interviews and meetings. During the investigation Mr. Moseley in fact did not notify me of some interviews and did not inform me of all the countless

informal meetings and strategy sessions which occurred among IE staff.

Two members of the investigative team, Ronald C. Haynes and William L. Fisher, both of IE, drafted the portions of the report for which they were responsible prior to conducting any interviews. It is my opinion that writing sections of the report before engaging in any significant investigation of the facts indicated that they may have predetermined the conclusions they would reach.

Near the start of the investigation, I perceived that Mr. Haynes had a potential conflict of interest which may have affected his objectivity. He was assigned responsibility for an area of the IE investigation into information flow for which he had held responsibility in the Rogovin Special Inquiry Group investigation into the accident. Shortly after I brought my concern about Mr. Hayne's potential conflict of interest to the attention of my OIA supervisors and Mr. Moseley, Mr. Haynes was relieved of his responsibilities in this investigation. (I understand that the reason for his release was listed as his need "to resume other pressing duties.")

A similar area which I do not believe was ever addressed was the question of whether Mr. Moseley, who headed the investigation, potentially had a conflict of interest since I understand that in the position he occupied at the time of the accident he held certain duties to receive, analyze and report information about the accident.

I recall that in early discussions on the scope of the investigation, IE (Mr. Moseley and possibly Victor Stello)

determined that the focus of the investigation was to be the flow of information during the first three days of the accident, March 28 to March 30, 1979.

#### Criticisms of Conduct of the Investigation

One major criticism I have of the investigation is that the IE Headquarters personnel assigned to the investigation, Mr. Moseley, Terry L. Harpster and John W. Craig, drafted the questions to be asked during all interviews and then tried to prohibit other interviewers from asking questions outside the pre-approved list, even those flowing logically from the witnesses' answers.

For example, I conducted a number of interviews of Babcock & Wilcox employees in Detroit with Mr. Fisher. Mr. Fisher, after reviewing the list of questions IE Headquarters had provided him, told me he believed at least one follow-up question should be added to the list but that he felt he was not permitted to take this initiative.

At the time of conducting an interview of George Smith, an IE Branch Chief, Mr. Moseley gave orders to the team to adhere to a protocol providing that only one person ask the pre-approved questions. Normally this person was either Mr. Harpster or Mr. Craig. If other interviewers on the team wished to ask additional questions, he was to wait until the end of the interview and then ask Mr. Moseley's permission to pursue these additional inquiries. Mr. Moseley at the end of the session would prescreen additional questions prepared by other interviewers and determine whether they could ask them "on the record." I refused to follow this procedure for two



reasons. First, I believe it improperly limited the scope of the interviews and impaired our ability to draw useful information from the witnesses. In the case when witnesses gave non-responsive answers to certain pre-approved questions, this protocol would forbid follow-up questions or inquiries more closely tailored to the knowledge or demeanor of particular witnesses.

Second, the Commission Chairman had assigned me, as the OIA representative, a specific mission in this investigation which could not be accomplished within the strictures Mr. Moseley attempted to impose.

Another criticism I have of the investigation was that I understood IE officials, presumably Mr. Moseley, had made an advance agreement with the attorneys from at least one company as to the areas in which that company's employees would be questioned. I learned that NRC officials had actually told the B&W attorneys that employees interviewed by the investigative team would not have to answer questions which fell within certain areas even if the questions asked for such a response. Mr. Moseley had not informed me of this agreement; instead I learned of it in a chance conversation with Peter Baci, an IE investigator who participated in interviews of B&W employees.

I disagreed with this approach insofar as it limited the potentially useful information which could be provided to the interviewers. However, my greatest concern was that NRC officials would enter into such an agreement without the knowledge of the interviewers. I, and Mr. Baci as well, questioned B&W employees about this restriction on their testimony.

After this set of interviews, Mr. Baci was not asked to participate in the investigation further and no other IE investigators were requested to participate in the investigation. IE's investigation into information flow should have been headed by trained investigators using standard investigative techniques instead of by IE inspectors and IE management.

Third, I believe that IE's policy of permitting legal counsel representing interviewees' employers to be present during interviews was counterproductive to the accomplishment of a successful investigation. I believe this policy may have had a chilling effect upon interviewees and provided opportunities for improper coaching of later interviewees to provide consistent testimony.

Fourth, in contrast to assertions in NUREG-0760, the investigative team did not document all interviews which were conducted. I understand that prior to an "on the record" interview of Eldon Brunner, an IE inspector conducted an informal interview of Mr. Brunner which was not transcribed and not documented other than perhaps by interviewers' notes.

Mr. Moseley also imposed an additional limitation on the investigation by prohibiting interviewers from inquiring into whether Metropolitan Edison or General Public Utilities had failed to report information to the Commonwealth of Pennsylvania. The stated basis for this direction was that he did not want to ask questions which might provide Pennsylvania authorities a forum in which to complain that they had not received sufficient information from the licensee during the accident.

The definition of "material false statement" was discussed in early discussions on the scope of the investigation. This came up in a discussion attended by Mr. Moseley, Richard Hoefling, Office of Executive Legal Director, Marian Moe, Office of General Counsel, and myself. As I recall, Mssrs. Moseley and Hoefling were questioning whether there would be any criminality if the investigation were to determine that the licensee failed to provide NRC with information but did not actually provide false information. I brought up to the group the fact that the definition of material false statement for criminal purposes is broad and also encompasses a willful omission of material facts.

I did not have the opportunity to participate in most of the discussions concerning the conclusions included in the report. My primary assignment was to work at that time on a related investigation requested by IE Director Victor Stello on IE inspectors' alleged failure to report information on the March 28, 1979 hydrogen explosion at TMI-2.

I remember, however, hearing of a number of discussions among IE officials which focused on which word would be most appropriate to describe the intent of the licensee's actions. In general, IE appeared to want to avoid use of the word "willful" even though words connoting similar intentional or deliberate action were considered. I believe part of the reason IE wished to avoid use of the word "willful" was because of a desire not to indicate the company's potential exposure to criminal liability for its actions.



Criticisms of the Report

Mr. Cummings directed me to review the draft of NUREG-0760 which IE sent to the full Commission on January 17, 1981. After reviewing the draft, I noted several obvious deficiencies. After calling these to the attention of my OIA superiors, Mr. Cummings directed me to apprise Mr. Moseley of my concerns. I met with Mr. Moseley and began to list my criticisms of the draft report. Mr. Moseley appeared not to be receptive to my criticisms but rather became very angry that I had brought them to his attention.

Therefore, I did not detail each of my criticisms to him at that time. I consulted with Mr. Cummings who directed me to write a memorandum to Mr. Moseley detailing the problems with the draft report. I prepared a memorandum and sent it to Mr. Moseley on January 26, 1981. (Exhibit 2)

Among the more significant criticisms I listed in my memorandum, which appear relevant to the issue of licensee site personnel's knowledge and understanding on March 28, 1979 of the pressure spike, generation and combustion of hydrogen, and potential core damage are the following:

(1) The report's conclusion that conflicts in testimony are not the result of lying is not adequately supported in the report. Both that conclusion, and the opposite one -- that conflicts are the result of lying -- are equally reasonable given the facts which appear in the report.

(2) The summary section of the draft report on the containment pressure spike listed one of three factors relevant to licensee's knowledge of the containment pressure

spike "the testimony of Chwastyk and Mehler." This introductory statement is inconsistent with the details which follow since it improperly narrows the focus of the reader solely to the testimony of Mehler and Chwastyk. In fact, other licensee and NRC personnel testimony is relevant to the issue of licensee's knowledge and appreciation of the pressure spike on March 28, 1979.

(3) The draft report incorrectly stated that only Chwastyk and Mehler attributed the pressure spike to other than electrical faults or instrument malfunctions.

(4) The draft report incorrectly stated that only Chwastyk and Mehler testified that an NRC inspector was present in the control room at the time of the spike. In fact, other Met Ed and NRC personnel agree that an NRC inspector was present at that time.

(5) The draft report's use of language to describe NRC inspector Karl Plumlee's testimony and its general treatment of Mr. Plumlee's testimony does not weigh or consider his testimony as it does other witnesses'.

#### Evaluation of the Investigation's Findings and Conclusions

The NRC investigation failed to inquire adequately into possible failings by NRC management and employee on March 28 to transmit and evaluate information about significant events and reactor parameters. In preparation for a January, 1981 Commission meeting to review the draft report, the NRC staff discussed the need to take care not to discuss in detail areas which might provoke a question from any of the Commissioners

regarding possible fault of NRC employees in reporting failures.

On March 5, 1981, OIA referred the matter of possible licensee reporting failures to the Department of Justice for potential criminal prosecution. The Justice Department asked OIA to do an analysis of the differences which existed between the NRC Report, NUREG-0760, and the report prepared by the Majority Staff of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, entitled "Reporting of Information Concerning the Accident at Three Mile Island" (March, 1981). On December 1, 1981, OIA completed its analysis of the differences between the two reports and forwarded it to the Department of Justice. (Exhibit 3)

Overall, my evaluation of the NRC investigation into information flow, which led to the issuance of NUREG-0760, is that it was not searching enough in its areas of inquiry, was conducted in a manner to preclude a full development of the facts, and reached conclusions that were not supported by the facts.

DAVID H. GAMBLE  
P.O. Box 9290  
Alexandria, Virginia 22304-9998

EMPLOYMENT HISTORY

1982 to present	Criminal Investigator (Special Agent) Contract Fraud Division Defense Criminal Investigative Service
1978 to 1982	Criminal Investigator Office of Inspector and Auditor U.S. Nuclear Regulatory Commission
1975 to 1978	Personnel Security Specialist Division of Security U.S. Nuclear Regulatory Commission

EDUCATION

Juris Doctor (with Honor)	University of Maryland School of Law
Bachelor of Arts	Bucknell University

HONORS

1982 Award for Superior Performance in directing the investigation into NRC's Region IV's investigation of the Hayward-Tyler Pump Company.

1984 Award for Special Achievement in investigations leading to the prosecution of Defense procurement fraud cases.

PROFESSIONAL ASSOCIATIONS

Member, Federal Law Enforcement Officers Association

Member, American Bar Association

Licensed to practice law before various state and federal courts.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 26, 1981

MEMORANDUM FOR: Norman C. Haseley, Director  
Division of Program Development and Appraisal, IE

FROM: David H. Garble, Investigator  
Office of Inspector and Auditor *David H. Garble*

SUBJECT: IE INVESTIGATION INTO INFORMATION FLOW CONCERNING THE  
THI ACCIDENT

Attached are my comments on the subject draft IE report which you transmitted to the Commission on January 17, 1981. Because my participation in the investigation was limited to potentially criminal aspects, this memorandum does not constitute, nor am I prepared to give, a thorough critique of the investigative effort. These comments are limited to those matters which obvious to me from a reading of this draft in the short amount of time has been available to OIA; I have not addressed matters such as the enforcement actions being considered or the manner in which the investigation was conducted. I am providing these comments to you in this form because when I highlighted several to you on January 21, you responded that the comments were not substantial and therefore you had no intention of incorporating them into your report.

Attachment: As stated

cc w/att: J. Cummings, OIA  
R. Fortuna, OIA  
H. Roe, CC  
R. Haeftling, ELD



COMMENTS ON 1/17/81 DRAFT OF  
IE INVESTIGATION RE TPI

1. Pp 2, 98, and 99 and the cover sheet must be revised to accurately reflect the extent of DIA's participation (i.e., as outlined in the Chairman's March 21, 1980, memorandum which directed the investigation. I understand from you that these changes will be made.
2. Throughout the report are conclusions which I do not feel are adequately supported by the report. While the opposite conclusion would not be justified either, the report confuses opinions with conclusions - implicit in the latter is that they have a factual basis. For example, at the end of the first paragraph on page 19 you "conclude" that none of the conflicts examined were the result of lying; however, it is just as reasonable based upon the facts presented in your report to conclude that they were the result of lying.
3. P. 1, para. 3, sentence 3, attempts to define the investigation's scope, but has two problems:
  - a. The statement presupposes that information did not adequately flow. This way of phrasing it is not appropriate for an introduction unless you had reached this conclusion before the investigation was initiated.
  - b. The sentence includes the flow of information to the state Government within the investigation's scope. My understanding of the scope was that it was not to include TPI's relationship with the state. Among the exchanges that led me to this understanding were your directions to those of us participating in the interviews of state officials to carefully restrict our questioning to prevent providing those state officials with a forum to air their difficulties in obtaining information from TPI. My understanding of the actual purpose of those interviews was to determine whether TPI provided the state with information that was not provided to LIRC (which would indicate that TPI may have withheld the information from LIRC). However, the report portrays the limited inquiry performed in this area satisfying a greater scope. There are other sources which did not attempt to explore (e.g., we abandoned the idea of interviewing the Lieutenant Governor because his schedule would not allow an interview when we wanted it; we did not track down whether any minutes were taken of TPI's briefing of the Lieutenant Governor). It seems strange to now take action based upon this restricted phase of the investigation.

4. P. 2, para. 3., sentence 2, refers to SIG denositions. Not all of SIG's interviews were depositions.
5. P. 3., the sentence which began on the previous page refers to a Congressional subcommittee, but it does not indicate which committee or which house of Congress the subcommittee is from.
6. P. 3., para 1, sentence 2, said "... all interviews were conducted under oath with a court reporter providing a verbatim transcript that about the interviews (informal prescreening or whatever you call them) of individuals such as Eldon Brunner which are not reflected anywhere in the report?
7. P. 12, para. 3. - The Regional Director must have told the IE Director more than the bare fact that the Regional Emergency Center had been activated. When you are reporting an investigation of information flow, this seems to warrant a little more detail here, especially because if the Regional Director provided this information to Headquarters at 8:00 a.m., IE would hardly be in position to cite TII for not providing the information.
8. Comment 02 above is generally applicable to the conclusions at pp 19-20. In addition:
  - a. Conclusions 04 and 05 relate to the State/TII relationship - see comment 03.b. above.
  - b. Conclusion 07 speaks of NRC's having an ineffective system re info flow. It is interesting to compare this to the similar conclusions re Kat-Ed: conclusion 02 says Kat-Ed also had an ineffective system; however conclusion 03 goes further by saying that Kat-Ed personnel contributed to the information flow problems. Now back to conclusion 07: the report conclude that NRC's system was a problem, but it is silent on whether NRC personnel contributed to the info flow problems. This silence is strange in light of your expressed intentions to request a review of actions by NRC personnel as soon as this report is issued.
9. I do not recall that Marshall was interviewed, yet he appears to figure in on the knowledge of the ENSV being open (see p. 36, para 2., which states that Higgins received his info on this area from Marshall).
10. P. 44, para 1, sentence 3, states "This conjecture, when combined with other information, suggested that the core may have been uncovered." This sentence is not clear: Are you stating that the conjecture did, in fact, suggest to someone (when?) that the core may have been uncovered? or are you stating that in retrospect it is so suggested?

11. P. 47, para 1, lists "the testimony of Chwastyk and Kahler" as the third aspect pertinent to a discussion of the 28 psig containment spike. As your subsequent analysis indicates, there are others whose testimony is clearly pertinent to this issue; therefore, to only cite Chwastyk's and Kahler's testimony in this introduction may unduly narrow the readers' focus before they reach the subsequent discussion.
12. P. 48, para. 2, sentence 1, states that the reactor building pressure rose to 28 psig. Isn't it more correct to say that the pressure recorder indicated 28 psig? That is to say, isn't it possible that the explosion generated greater than 28 psig for an instant (I understand that there is some small time lag between actual pressure and the indication on the recorder. I would guess that even a fraction of a second's delay would mean that the actual pressure during an explosion may have been somewhat higher than the indicated pressure).
13. P. 48, para. 2, sentence 5, said that only two Mat-Ed employees (Chwastyk and Kahler) attributed the pressure spike, etc., to anything other than electrical faults or instrument malfunctions. This sentence fails to take Ilijes' comments into account (see pp 61-62).
14. P. 49, para. 2, summarizes knowledge of hydrogen and points out Chwastyk's and Kahler's different recollections. This discussion falls short of being complete by failing to mention others who recall hydrogen discussion on the day of the accident (i.e., Ilijes and Plumlee).
15. P. 51, para 1, sentence 2. You examined an alleged discussion not a possible discussion (IF did not independently explore the possibility the vessel arose only because Chwastyk and Kahler have alleged that such a discussion took place). In addition, the alleged discussion was not just "in the presence of an NRC inspector" - it was either with or in the presence of an NRC inspector."
16. P. 51, para 1, sentence 5, states that only Chwastyk and Kahler even placed an NRC inspector in the control room. I believe others also said this (o.g., Zawa, Ross, Higgins, and Neely).
17. P. 52, para 2, sentence 2, states that Neely's discussion with Kahler was in April. In two subsequent interviews by OIA, Neely said this discussion was sometime after May 15, 1979 (OIA report pp 8 and 17). This same sentence described Kahler as "a Mat Ed employee." This is misleading. It is important that Kahler's name be used here because he is one of the Mat-Ed employees alleging that an NRC inspector was informed of the spike - if Kahler had felt Neely was the inspector, it would have been highly unlikely that Kahler would have confided this information in Neely (see OIA report P. 8, para 1, last sentence).



18. P. 52, para. 2, sentence 3, says that Neely turned Mehler's allegation "over to the IE investigation team, whose findings are contained in NUREG-0660." This sentence is also misleading. OIA's investigation found that, apparently through a misunderstanding, IE addressed the information Neely provided by interviewing Eljes and nobody to date has interviewed Mehler specifically regarding the information he provided to Neely (OIA report pp. 20-21).
19. P. 53, para 1, quotes Higgins' description of why he may have missed the "thud." However, the report states that this is Higgins' explanation of why he was not aware of the spike on the pressure recorder. Obviously the quotation is not appropriate to answer the question posed in the report. This makes Higgins appear to be non responsive; however, if you furnished the complete quotation, the reader would see that Higgins was responding to a question about his knowledge of either the spike or the thud - his answer was apparently not intended to address his knowledge of the spike. You should use a quotation here in which Higgins directly addresses his knowledge of the spike itself (see, e.g., the OIA report of p. 12, para. 2 and p. 13, para. 1).
20. P. 54, para 1, sentence 3, mentions a Miller/Marshall discussion regarding the thud - was Marshall interviewed?
21. P. 62, para 1, describes OIA's interviews of Plumlee and Seelinger. This paragraph has three problems:
  - a. The first sentence says OIA interviewed several inspectors who went to THI on the day of the accident. The fact of the matter is that OIA interviewed all of the inspectors who were at THI by 1:50 (the time of the hydrogen explosion).
  - b. The second sentence said Plumlee "expressed several concerns" during the interviews. It is interesting that Plumlee is the only interviewee whose responses are characterized as expressions of concerns - rather than recollections. While I recognize that the report ultimately dismisses Plumlee's statements, I would suggest that the narrative account of his statements be more objective.
  - c. The report only attributes Plumlee's statements to his OIA interviewing on December 2 and 3, 1980. However, when IE interviewed Plumlee on May 30, 1979, for NUREG-0660, Plumlee also stated that he learned "that the containment building has the hydrogen present in the atmosphere in a significant quantity" (Tr.5). Furthermore, Plumlee repeated and elaborated upon his statements when IE extensively reinterviewed him in January 1981. Consistent statements at various points of time (especially those closer to the event) add to the credibility of an interviewee.

22. P. 62, para. 2, "concern" #1 addresses knowledge of hydrogen by Region I personnel. This fails to state the important fact that this knowledge was reportedly held by Region I management.
23. P. 63, para. 2, lists two sources for Plumlee's belief that regional personnel had knowledge of hydrogen. The first is what he believed his branch chief said regarding hydrogen (this would obviously indicate knowledge by regional personnel). The second is Plumlee's own analysis; however, it does not necessarily follow that Plumlee would have concluded that regional personnel knew of hydrogen based upon his own ability to analyze the situation. A third factor which is not described in the report is the corroboration Plumlee reportedly received from Seelinger regarding the hydrogen samples early on the day of the accident. Seelinger's conversation undoubtedly reinforced Plumlee's belief that his branch chief had actually mentioned hydrogen during the briefing.
24. P. 65, sentence 3, states, "Plumlee was also certain that, when he told Callina of his conversation with Seelinger, Callina told him that there was already general speculation that the hydrogen burn had occurred" (emphasis added). During OIA's interviews (OIA report, P. 27, para 3-4), Plumlee said the pressure spike (not the hydrogen burn) was known.



February 2, 1981

MEMORANDUM FOR: David H. Gamble, Investigator, Office of Inspection  
and Auditor

FROM: Norman C. Moseley, Director, Division of Program  
Development and Appraisal, Office of Inspection  
and Enforcement

SUBJECT: IE INVESTIGATION INTO INFORMATION FLOW CONCERNING  
THE TMI ACCIDENT

This responds to your gratuitous comments on the subject report. These comments were mailed on January 26, 1981 and received by me on January 27, 1981, when the report was already finalized and in the printing process.

Your memorandum implies that the draft upon which you commented was the only opportunity you had to review the report. This, we both know, is not true. You have been supplied copies of each of the numerous drafts of the report, in each case with an understanding that your comments were solicited. In most cases no response was received from you. Let the record be straight that the comments which you gave me on January 21 were verbally given and to the best of my recollection were related to Items 3, 4, 17, 18, and 21C. My reaction to all of the comments in your January 26 memorandum is that even if they had been accommodated there would have been no significant effect on the conclusions and recommendations made in our report.

Finally, it is incomprehensible to me that you waited until now to bring up the numerous issues you now raise. You not only received copies of previous drafts, as was stated above, you also sat in on a number of discussions where the report, its conclusions and recommendations were discussed. In neither case did you avail yourself of the opportunity to raise the issues you now express.

Distribution:

Moseley

Norman C. Moseley  
Director  
Division of Program Development  
and Appraisal  
Office of Inspection and Enforcement

cc: V. Stello, Jr., IE  
J. J. Cummings, IA  
R. Fortuna, IA  
H. E. Hoe, GC  
R. A. Hoefling, ELD

D-PDA:IE

NC Moseley #8 1d  
81

180940

December 3, 1981

Julian Greenspun, Esq.  
 Deputy Chief for Litigation  
 General Litigation and Legal Advice Section  
 Criminal Division  
 U.S. Department of Justice  
 Washington, D.C. 20530

Dear Julian:

Enclosed is a self-explanatory review of two investigative reports concerning the reporting of information to the State and Federal Governments on the day of the accident at Three Mile Island. You had requested this Office to conduct this review to assist you in analyzing the differences between these reports. In addition to copies of these reports, we have also enclosed a related report prepared by this Office.

Sincerely,

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James J. Cummings, Director  
 Office of Inspector and Auditor

Enclosures:

1. Memo Fortuna and Gamble to Cummings, dtd 12/1/81, "Question of Withholding Info During TMI Accident".
2. IE Report "Investigation into Info Flow During Accident at TMI (NUREG-0760, dtd 1/81).
3. Report of Majority Staff of Committee on Interior and Insular Affairs, U.S. House of Representatives, "Reporting of Info Re Accident at TMI" (97th Congress, 1st Session, Committee Print 3, dated March 1981).
4. OIA Report, "IE Inspectors' Alleged Failure to Report Info re March 28, 1979 Hydrogen Explosion at TMI-2," dated 1/7/81.

Distribution:

OIA 81-10  
 OIA Reading  
 DGamble

bcc: Commission  
 W. Dircks, EDO  
 R. DeYoung, IE  
 D. Thompson, IE  
 L. Bickwit, OGC  
 H. Shapar, ELD

OFFICE	OIA:	OIA:	OIA:				
SURNAME	EGAMBLE:JW	RFORTUNA	ULRICH				
DATE	12/1/81	12/1/81					

8130  
 ✓



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

December 1, 1981

MEMORANDUM FOR: James J. Cummings, Director  
Office of Inspector and Auditor *JD*

FROM: Roger A. Fortuna, Assistant Director for Investigations  
Office of Inspector and Auditor *Roger A. Fortuna*

David H. Gamble, Investigator  
Office of Inspector and Auditor *David H. Gamble*

SUBJECT: QUESTION OF WITHHOLDING OF INFORMATION DURING TMI  
ACCIDENT

On March 5, 1981, at the direction of the Commission, we met with representatives of the Criminal Division, U.S. Department of Justice (DOJ), to present the results of the Office of Inspection and Enforcement (IE) report entitled "Investigation into Information Flow During the Accident at Three Mile Island" (NUREG-0760, dated January 1981, hereinafter referred to as the "IE Report"), for their consideration as to whether the facts warranted prosecution for willful misrepresentations, omissions, or violation of NRC regulations.

At that time we also provided DOJ with a draft of the report prepared by the Majority Staff of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, entitled "Reporting of Information Concerning the Accident at Three Mile Island" (97th Cong., 1st Sess., Committee Print No. 3, dated March 1981, hereinafter referred to as the "HR Report"). We then advised DOJ that we were providing them with both reports because of an apparent difference in the conclusions reached therein regarding whether Met-Ed employees withheld information from the State and Federal Governments on the date of the accident at Three Mile Island. Not having read the HR Report, we were unable to describe for DOJ what discrepancies existed between the two reports. At that time DOJ requested that the Office of Inspector and Auditor (OIA) identify the portions of each report relating to the specific topics so that they could more easily analyze the discrepancies between them. Per your instructions we performed this task by reviewing the IE and HR reports without consulting the results of similar reviews (e.g., by ACRS) or other investigations (e.g., by Rogovin's Special Inquiry Group). In

*cc to 822 criminal  
12/1/81*

this review we have avoided the temptation to characterize the contents of various sections of these reports in favor of referring to specific page numbers in order to insure that DOJ reads the actual words of the reports within their own contexts. The following are the results of our review:

I. Scope of the reports

IE Report - pp. 1-2, 33 par. 3, 35 par. 3, and 39 par. 5  
HR Report - pp. 1-3

II. Identification of the primary individuals and organizations

IE Report - p. 33 par 4  
HR Report - pp. 4-5

III. Availability and comprehension of information

A. Open PORV/EMOV as cause of low pressure in the cooling system

IE Report - pp. 16-17 and 33 par. 5  
HR Report - pp. 6-11 and 93 par. 2

B. Throttling of high pressure injection

IE Report - pp. 13-14  
HR Report - pp. 11-14 and 93-94

C. Temperature Data

IE Report - pp. 14-16 and 18-20  
HR Report - pp. 14-33 and 94-95

D. Uncovering the core

IE Report - pp. 14-16, 18-20, and 34 par. 1  
HR Report - pp. 35-45 and 95-96

E. Uncertainty as to core cooling

IE Report - pp. 14-16 and 18-20  
HR Report - pp. 45-54 and 95-96

F. Neutron detectors/count rate behavior

IE Report - pp. 20-22 and 34 par. 1  
HR Report - pp. 33-35

G. High radiation levels in containment/Goldsboro radiation dose rate projection

IE Report - pp. 31-33

HR Report - p. 35

H. Hydrogen combustion/containment pressure spike

IE Report - pp. 22-31 and 35 par. 1 (see also OIA Report, "IE Inspectors' Alleged Failure to Report Information re March 28, 1979 Hydrogen Explosion at TMI-2," dated January 7, 1981)

HR Report - pp. 54-92 and 96-97

IV. Information received by the NRC

IE Report - pp. 35-39

HR Report - pp. 103-121

V. Information received by the State

IE Report - pp. 39-45

HR Report - pp. 103-121

VI. NRC reporting requirements

IE Report - pp. 45-52

HR Report - pp. 98-102 and 121