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USNRC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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JUL 31 1991

LUTHER D. THOMAS, Clerk  
By: *[Signature]*  
Deputy Clerk

STEVEN N. MILLSPAUGH  
and PAUL B. SHARPE  
BRANCH

vs.

CIVIL NO. 1:88-cv-312-ODE

R. A. KARAM, Individually and  
in his official capacity as  
Director, Neely Nuclear  
Research Center, and T. E.  
STELSON, Individually and in  
his official capacity as Vice-  
President for Research,  
Georgia Institute of Technology :

ORDER

This civil suit brought under 42 U.S.C. §1983 alleging, inter alia, First Amendment violations, is before the court for findings of fact and conclusions of law following a nonjury trial as to Plaintiffs' prayers for injunctive relief. By order entered January 10, 1990, summary judgment was granted except as to the First Amendment claim. By order entered October 17, 1990, Plaintiffs' claims for damages were dismissed upon a finding that these claims were barred by the doctrine of qualified immunity under Dartland v. Metropolitan Dade County, 866 F.2d 1321 (11th Cir. 1989).

Having considered the evidence of record and the arguments of counsel for both sides, the court finds and concludes as follows:

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The Plaintiffs, Steven N. Millspaugh and Paul B. Sharpe, are former radiation safety technicians at the Neely

NUCLEAR REGULATORY COMMISSION

Docket No. 50-160-REN EXHIBIT NO. 25

In the matter of GA Tech

☒ Staff ☐ Applicant ☐ Intervenor ☐ Other

☒ Identified ☒ Received ☐ Rejected Reporter WAW

Date 02-28-96 Witness Karam

STAFF 25

Nuclear Research Center ("NNRC"), which is located on the campus of the Georgia Institute of Technology in Atlanta, Georgia ("Tech"). According to the complaint, Plaintiffs, who presently hold other jobs at Tech, seek to regain their former positions. Plaintiffs claim they were deprived of the radiation safety jobs on account of their exercise of protected free speech rights, namely, because they complained of safety violations at NNRC to the U. S. Nuclear Regulatory Commission, to the press, and generally. Plaintiffs also seek an injunctive order against Defendants to prevent future free speech violations. Defendant R. A. Karam is the Director of NNRC and Defendant T. E. Stelson is Vice President for Research at Tech.

As its name implies, NNRC is a nuclear research facility. Experiments utilizing radioactive materials are conducted within NNRC's main facility, called its "containment" building. One such radioactive material is Uranium, which is stored and used in NNRC's reactor; another is Cobalt 60, which is utilized in experiments in a "hot cell" which like the nuclear reactor is within the containment building. NNRC is licensed by the Nuclear Regulatory Commission, which monitors its operations through a variety of means, including periodic unannounced inspections. As a nuclear facility, NNRC is subject to numerous federal regulations. The cobalt hot cell is primarily under state supervision and regulation.

At times relevant to the instant action, basically two groups of personnel (in addition to a few administrative or

clerical employees and Dr. Karam) worked within NNRC's containment building: licensed operators and radiation safety personnel, also sometimes referred to as health physics personnel. Licensed operators, of whom there were 3-4 at relevant times, are personnel trained to manipulate the radioactive substances during experiments conducted in the reactor or the hot cell. The licensed operators are not the designers of experiments. Rather, the experiments are designed by Tech professors or graduate students or private concerns who contract with NNRC. The operators are trained personnel licensed by the Nuclear Regulatory Commission. At times relevant to this lawsuit, not all of the licensed operators were college graduates.

At relevant times, the radiation safety staff at NNRC consisted of Plaintiffs Millspaugh and Sharpe, plus their immediate supervisor, Robert M. Boyd. The radiation safety staff is assisted by part-time employees, who are graduate students. Plaintiffs had on-the-job training and experience (Millspaugh began work at NNRC in 1972 and Sharpe began work at NNRC in 1984). Mr. Millspaugh obtained a Bachelor of Science degree through a correspondence course while working at NNRC and Mr. Sharpe does not hold a college degree.

The work of a radiation safety officer or health physicist consists of monitoring levels of radiation, performing daily and ongoing inspections of the facility to ensure that safety procedures are being followed, documenting irregularities as they are noted, and notifying the responsible authority of problems

noted. Levels of radiation are checked through various techniques, including a "smear" technique whereby a chemical substance is "smeared" on a surface and then measured for radioactive content through the use of geiger counters.

Prior to July 1, 1987, the health physics staff at NNRC had no direct reporting responsibility to anyone except to Dr. Thomas E. Stelson, Vice President for Research at Tech. When the health physicists observed an irregularity, they would direct the operators to take corrective action or, in some instances, order that an experiment in progress be stopped. Sometimes these directions by the health physicists would be disputed by the licensed operators, who basically regarded the health physicists as their co-equals. Tension between operators and health physicists is more the norm than the exception at nuclear facilities; however, it is undisputed that the friction between these two groups at NNRC was unusually great.

Beginning as early as 1973, proposals had been made at Tech to place the health physicists and the licensed operators both under the direction of the Director of NNRC; however, these proposals were rejected until 1987. Under regulations of the Nuclear Regulatory Commission, the individual appointed as Radiation Safety Officer must have direct access to top management officials. Prior to July 1, 1987, Tech's Radiation Safety Officer was Robert M. Boyd, Plaintiffs' immediate supervisor.

In 1983, Dr. R. A. Karam became the Director of NNRC. Dr. Karam, who holds a Ph.D. in Nuclear Engineering, is a native

of Lebanon, educated in the United States. Soon after becoming Director, Dr. Karam determined that a reorganization should be effected to bring the health physics staff under his direction. His feeling that there was too much friction between the health physicists and the licensed operators is documented in various memoranda dated as early as January 26, 1987. In one such memorandum dated January 26, 1987, he commented in part:

Combined operation will give the Director and Associate Director of NNRC control over the petty quarrels that take place between the Radiation Safety Office staff and the NNRC staff. These quarrels are historic and rooted in self assertion on both sides. My concern here is that these quarrels could lead to safety problems.

In a presentation to the NNRC personnel on March 6, 1987, Dr. Karam enumerated the problems he saw and suggested merger of the two staffs under a newly created post of Associate Director as a possible solution.

In February of 1987, Plaintiff Sharpe made a confidential telephone call to the Nuclear Regulatory Commission to report problems at NNRC which he felt were receiving inadequate attention from Dr. Karam. Specifically he discussed a perceived undue increase in reactor power and certain problems in monitoring the hot cell; also, he felt there had been some tampering with health physics waste samples. The individuals to whom he spoke indicated that an investigation would be conducted.

On April 7 through 10, 1987, the Nuclear Regulatory Commission conducted an inspection of NNRC. This inspection revealed numerous violations which, according to the Notice of



Violation which later issued, had occurred at various points in time beginning in June, 1986, through the date of the inspection.

On May 4, 1987, an enforcement conference was held to discuss the apparent violations which for the most part had been gleaned by the inspector from a personal log maintained by Plaintiff Millspaugh, which was made available to the inspector by him during her visit. Dr. Karam, however, had never been notified of the violations in question and until the April inspection had been unaware that the radiation safety technicians maintained personal logs. Dr. Karam was concerned and annoyed that the cited infractions had not been brought to his attention before being reported to the Nuclear Regulatory Commission. His feeling were shared by Dr. T. E. Stelson, Vice President of Research, who said to Mr. Boyd while en route to the enforcement conference, "How would you like not to get a raise this year?" Mr. Boyd reported this remark to Sharpe and Millspaugh.

On May 6, 1987, Karam sent a memorandum to Stelson formally requesting that NNRC be restructured so as to place the manager of the Office of Radiation Safety directly under the NNRC Director. In the memo, Karam noted that the Nuclear Regulatory Commission held the Office of the Director responsible for compliance with safety regulations.

On May 26, the Nuclear Regulatory Commission sent Dr. Karam a letter enclosing a formal Notice of Violation. The letter said in part:

We are concerned about the management control and involvement in the imple-

mentation of your programs for radiation protection, reactor operations and control of experiments which contributed to the violations described in the enclosed Notice. . . . These findings indicate the need for improved management control of your licensed activities to insure adherence to NRC requirements and the safe performance of licensed activities. . . . Particular attention should be given to how you will improve working relations between health physics and operations and adherence to written procedures by personnel at the facility.

The Commission's letter of May 26, 1987, to Dr. Karam enclosing the Notice of Violation also stated in part:

We noted, based on discussions during the Enforcement Conference, your concern that your employees have reported safety concerns directly to the NRC, without providing your managers an opportunity to resolve perceived or actual safety problems. We support the concept that the most effective way to resolve such issues is to have them brought directly to line management, and we encourage to promote the type of working conditions that your employees feel will be appropriately responsive to their concerns. Nevertheless, you must also recognize that employees' right to provide NRC information about safety concerns is protected under Section 210 of the Energy Reorganization Act as implemented by 10 C.F.R. 50.7.

The violations cited in the Notice of Violation stemming from the April 7 through 10 inspection did not include any determination of an undue increase in reactor power. No reference was made to monitoring problems in the hot cell.<sup>1</sup> The

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<sup>1</sup>However, the evidence reflects that when Mr. Boyd called this matter to the attention of the Radiation Safety Committee, it shut the cell down pending certain equipment replacement deemed necessary to the safe operation of the cell. Regulation of the hot cell is primarily a state matter.

inspectors did however determine that there had been a failure on one occasion to properly label some radioactive material, that there had been, certain failures to appropriately conduct radiological surveys, and that certain procedural requirements relative to the conducting of experiments had not been followed. The violations were classified by the Nuclear Regulatory Commission as Severity Level IV. The highest severity level is I; the lowest is V. Severity Level IV carries no fine or other penalty.

On May 27, 1987, Dr. Stelson sent a memorandum to Dr. Henry C. Bourne, Jr., Acting President of Tech, formally requesting Dr. Bourne's approval of a reorganization to place the health physicists under the management of the Director of NNRC. The health physicists would be part of an Office of Radiation Safety within the NNRC structure; a Radiation Safety Officer (who would not be a member of the Office of Radiation Safety) would then be assigned to function independently of NNRC in conjunction with the Nuclear Safeguards Committee, a preexisting committee composed of Tech faculty members. The Radiation Safety Officer would have the authority to report independently to the President of Tech "on any matter of urgent need completely bypassing all organizational structure." However, the Radiation Safety Officer would not be housed in NNRC's facility. On June 19, 1987, President Bourne wrote back to Dr. Stelson that he was in agreement with the reorganizational proposals, which then became effective on July 1, 1987. Dr. Bernd Kahn, a Tech professor who was a member of the



Nuclear Safeguards Committee, was appointed as Radiation Safety Officer.

The reaction of Plaintiffs Sharpe and Millspaugh, and that of their superior Robert M. Boyd to the reorganization was very negative, for a number of reasons. First, they strongly believed that their independent status better served the safety interests of Tech and the community. This belief was shared by some Tech faculty members including Dr. Mel Carter, Chairman of Tech's Radiation Safety Committee, and Dr. Bernd Kahn. Secondly, they perceived that the reorganization would diminish their status. Finally, the court infers that Plaintiffs and Mr. Boyd resisted Defendant Karam's leadership because of personality differences, especially as between Dr. Karam, who is an intense, professorial individual of foreign extraction, and Mr. Boyd, who is a low key, soft spoken southerner with a more laissez-faire management style than Dr. Karam, who was perceived by the radiation safety group as being too intrusive. For this combination of reasons, Plaintiffs were unsupportive of the reorganization and resisted Defendant Karam's leadership. There was mutual distrust as between Messrs. Boyd, Millspaugh and Sharpe on the one hand and Dr. Karam on the other hand.

On August 19, 1987, Susan Selman (a graduate student working part-time with Millspaugh and Sharpe) discovered while conducting a routine monitoring on the main floor of the containment building that there was some unusual contamination. She reported this to Plaintiff Millspaugh who confirmed her

findings. This matter was reported to Mr. Boyd. Messrs. Millspaugh and Boyd reported the incident to Dr. Karam. Dr. Karam learned from one of the licensed operators, Bill Downs, that on the preceding day Downs had opened a container which held some irradiated topaz; the container had been lined with cadmium-115 (a radioactive substance) which had partially decomposed. The decomposed cadmium apparently became airborne when the container was opened and ultimately contaminated some portion of the containment building.

Dr. Karam did not report the cadmium spill to the Nuclear Regulatory Commission, taking the position that the degree of contamination was not of sufficient magnitude to warrant that action. Messrs. Boyd and Millspaugh took the position that while there might not be any requirement of a report, the preferable course would be to report the incident. Dr. Karam personally oversaw the clean-up effort. On August 24, 1987, Plaintiff Sharpe wrote a memorandum to Dr. Karam stating that the clean up effort had been concluded and congratulating the licensed operators for their participation in this effort.

Because of the lack of systematic documentation, and apparent conflicts in existing documents, it is difficult to assess whether the cadmium spill caused widespread contamination. Routine survey forms filled out by graduate student Selman for the month of August, 1987 reflect no above-average radiation except in one area of the containment building on the day of August 19, 1987. Her note concerning the one contaminated area on that date

indicates a radiation level of 100-200 disintegrations per minute per 100 cm<sup>2</sup>, an above-normal, but relatively insignificant level. On the other hand, a survey data sheet filled out by Mr. Sharpe on August 24, 1987, shows above-normal radiation levels (including a level significantly above normal in one area) in many areas of the containment building after the decontamination clean-up work had been concluded. A memorandum from Robert M. Boyd to Dr. Karam dated August 20, 1987, states that the contamination level on the floor on top of the reactor (near the area where the operator had been doing the experiment with the irradiated topaz) on August 19 before the cleanup was 20 mrem/hr, a level which is significant but not highly dangerous, at least on a short-term basis. An exposure to this level of radiation for a period of one hour would be the equivalent of one-third the amount of radiation received in an x-ray.

The absence of records documenting a systematic survey of the entire facility following the August 18 spill and the lack of records documenting the extent of contamination in all areas of the containment building was the subject of severe criticism by the Nuclear Regulatory Commission. Dr. Karam asserted that the absence of proper documentation and proper surveying techniques was the fault of the radiation safety group; the Plaintiffs in turn contend that Dr. Karam was at fault because he "took charge" following the discovery of the spill.

Around the middle of September, 1987, a number of incidents occurred which made Defendant Karam feel suspicious that

the health physicists were engaging in pranks or possible sabotage to discredit him and the reorganization. Plaintiffs Millspaugh and Sharpe deny having done any of these acts.

First, someone put a paper bag containing apparent human feces in a refrigerator used primarily by the licensed operators to store their lunch sacks. Secondly, algaecide was found leaking from an opening in a 5-gallon heavy duty plastic container. Karam felt that the container had been "slashed"; Plaintiffs assert that it was merely leaking due to a defect in the container. Third, on September 22, 1987, Karam discovered that three safety switches in the cobalt area had been simultaneously turned off. These switches are a safety device which will set off an alarm if the level of zinc bromide solution in the "hot cell" windows, or the level of the water in the cobalt pool, falls below a certain level. If the solution falls dramatically below that level without setting off an alarm, cobalt radiation could escape undetected. Karam consulted the chief of the campus police and the deputy chairman of the Nuclear Safeguards Committee at Georgia Tech. The chief of campus police suggested that polygraph tests should be administered to personnel at the containment center. A meeting was held on September 28, 1987, in which Karam asked all staff members to submit to polygraph tests. All of the staff members, except Plaintiffs Sharpe and Millspaugh agreed; Millspaugh and Sharpe stated Karam would have to discuss this matter with their lawyer before they could consent. The lawyer is Edward F. O'Connor, one of the counsel for Plaintiffs herein, who is also a

personal friend of Plaintiff Millspaugh. Later, Karam abandoned the idea of the polygraph tests.

In October, 1987, Dr. Karam found pictures of Defendant Stelson and Bill Downs, one of the licensed operators, on a dart board in the office in the containment building which was shared by Millspaugh and Sharpe. This was another indication to Karam that Millspaugh and Sharpe were disgruntled employees.

In November, 1987, Susan Selman, who worked under Millspaugh and Sharpe, wrote a letter to the "Technique," Tech's student newspaper. The letter was critical of the reorganization and suggested that undue safety hazards had been created by having the radiation safety officers working under the director of NNRC instead of being independent. Karam, who suspected that Millspaugh and Sharpe were behind the letter, called Ms. Selman into his office. Dr. Karam told her that she should have come to him first to discuss her concerns before writing the letter; Ms. Selman stated that she did not think any policy at Georgia Tech required this. Dr. Karam told her that if an incident like that occurred again, she would be fired. He went on to state to her that he felt her letter was untrue in a number of respects. According to Ms. Selman, Dr. Karam told her to "... butt out, don't play politics as a student," and that "dabbling in politics is not desired or recommended." No retaliatory action was taken against Ms. Selman.

On November 13, 1987, Dr. Karam wrote a memorandum to Robert M. Boyd asking him to give him a comprehensive inventory of



radioactive substances in use on the Georgia Tech campus. He requested that this inventory be completed by November 23.

Mr. Boyd replied by memorandum also dated November 13, 1987. Mr. Boyd's memorandum did not include a "comprehensive inventory" but simply stated that there were 101 persons on campus who had been approved to use radioactive materials and that the exact status of the inventory was known to them; they were supposed to keep Boyd's staff informed. The memo then noted that while there appeared to be occasional discrepancies, they were minor. The memo, which was quite short, concluded with Boyd's statement that he would keep Dr. Karam posted of efforts to maintain accountability for radiation sources on campus. As Dr. Karam noted in a handwritten note on the top of Boyd's memo, he felt Boyd's response was inadequate.

On December 9, 1987, Dr. Karam met with Vice President Stelson and told him that he felt that the entire radiation safety staff consisting of Boyd, Millspaugh and Sharpe should be terminated and replaced with new personnel. Karam expressed the opinion that the situation had deteriorated to the extent where nuclear safety was being jeopardized. At that time, however, Stelson determined that no changes should be made until the new associate director of NNRC had arrived; this was expected to occur in January. Also, Dr. Stelson felt that Mr. Boyd had too much seniority at Tech to be terminated; he indicated he was not in favor of terminating Mr. Boyd.

On December 16, 1987 and continuing into January, 1988, the Nuclear Regulatory Commission conducted a routine, unannounced inspection of NNRC. On December 16, the September 18, 1987 cadmium spill was reported to the inspectors by the radiation safety staff. The court infers that Plaintiffs' own reports emphasized the seriousness of the incident and their perception that management should have reported it but instead had covered it up. Karam was interviewed by the NRC inspectors about the cadmium spill. He was not told specifically that Plaintiffs had discussed this matter, but the court infers and finds that he believed Millspaugh and Sharpe had done so.

The inspectors were extremely concerned about the information gathered during the investigation. On January 20, 1988, an order issued from the Nuclear Regulatory Commission modifying NNRC's license effective immediately so as to require that irradiation experiments in the reactor cease pending further investigation. The order modifying the license recited preliminary findings, including that the licensed operator responsible for the cadmium spill had acted improperly in conducting his experiment in a number of respects, that the contamination surveys which had been conducted after the incident had been inadequate in certain respects, and that the record keeping which had been undertaken following the cadmium spill was inadequate. Neither the order modifying the license nor the subsequent inspection report which followed on February 10, 1988 concluded that NNRC should have reported the cadmium spill to the Nuclear Regulatory Commission

when it occurred. The inspection report stressed the Nuclear Regulatory Commission's serious concern that there continued to be a lack of management controls necessary to operate a safe facility. The poor relationship between health physics and operations personnel was noted as a safety concern.

In January of 1988, Mr. Boyd had a conversation with a student at Tech regarding Boyd's perception that the reorganization had threatened nuclear safety at Tech. The student suggested that Boyd call his father, who worked for the Nuclear Regulatory Commission in Washington. The student's father told Boyd that if he had concerns he should report them to the Regional II Nuclear Regulatory Commission office in Atlanta. Boyd related this conversation to Plaintiff Millspaugh. Millspaugh called the Regional II office and spoke to Oscar D. Miranda, Allegations Coordinator. He told Miranda that he felt inappropriate pressure was being placed on health physics personnel to overlook safety problems and that threats were being made against radiation safety personnel. Millspaugh had in mind the statement to Susan Selman and also the statement made by Dr. Stelson to Mr. Boyd in May of 1987.

On January 11, 1988, Dr. Karam met with Drs. Stelson and Kahn to discuss a proposal to replace Messrs Millspaugh and Sharpe and to hire a new head of the radiation safety staff who would have a Ph.D degree. Dr. Kahn suggested that a management assessment should be made before taking that step; Dr. R. M. O'Bannon, an industrial psychologist employed by Georgia Tech was

asked to make an assessment of the situation. Dr. O'Bannon interviewed Dr. Karam, Dr. Stelson, members of the health physics staff, the licensed operators and others; he concluded that the level of hostility between the health physics and licensed operator groups was too great to be remedied; therefore, he recommended that Plaintiffs be transferred to other positions at Tech outside NNRC. His findings were orally related on February 5 and 6, and were presented in writing on February 18, 1988.

Among the findings in the February 18 report were the following:

\* \* \*

All employees acknowledged a history of interpersonal conflict between Health Physics and Operations personnel which has been present for the last five to six years.

Tensions between Reactor Operators and Health Physics Officers are often characterized by verbal hostility while work is being done, and there is resentment felt by each group toward the other. In general, interpersonal interactions have declined between the two groups in frequency and quality. Hostility has escalated as a result of lack of communications.

Among the conclusions reached by the report were the following:

\* \* \*

Dr. Karam's management style is characterized by close monitoring and frequent involvement in day-to-day activities. He is seen by his employees as active, interested, and very hard-working. At times he is also seen as becoming overly involved in the work at too fine a level of detail.

Those managers reporting to Dr. Karam are not seen by other employees as effective leaders. There appears to be little evidence of strong first-line management skill in either Health Physics or Operations.

It is typical for groups such as Reactor Operations and Health Physics to experience some degree of friction in their daily working relationships. In the present setting, these tensions have escalated above an acceptable level. The long history of the disagreements and the intensity of the feelings has led both groups to be pessimistic about improving the quality of these relationships.

The conflict is unlikely to be resolved satisfactorily within the current organizational context and with the individuals currently in place.

The report included the following recommendations:

\* \* \*

It is recommended that Health Physics personnel who work directly with Reactor Operators be reassigned to other responsibilities appropriate to their levels of skill and experience. Physical separation of the work spaces of the two groups may be helpful to ensure the cessation of dysfunctional interactions.

It is recommended that an experienced manager be sought for direct supervision of the Health Physics group. In addition to using sound criteria for technical knowledge and training, an emphasis should be placed on ability to provide leadership, build team work, and maintain stable relationships with other managers. It would be helpful for this individual to have a history of work with groups with conflicting goals and to possess well-developed conflict resolution skills.

On January 14, 1988, Dr. Robert MacDonald assumed the newly created position of Associate Director of NNRC. Tech had



begun advertising this position, which entailed day-to-day supervision of the health physics staff and licensed operators, in July 1987 when the reorganization became effective.

Sometime in January, 1988, media representatives became aware of the investigation which was being conducted by the Nuclear Regulatory Commission. The record does not indicate exactly how this happened. None of the media reports prior to February 11, 1988, identified Sharpe or Millspaugh by name, but did cover the subject of possible safety problems at NNRC. In general, the articles reflected the health physicists' point of view and were very critical of NNRC.

On February 9, 1988, Dr. Stelson met with Drs. Karam, Kahn and McDonald. The findings of Dr. O'Bannon were discussed. Karam's proposal to terminate Messrs Millspaugh and Sharpe effective immediately was discussed. Drs. Stelson, Karam and McDonald concurred in the recommendation; Dr. Kahn also concurred, albeit more reluctantly.

On February 10, 1988, Karam sent a letter to Tech's personnel director which stated that he intended to terminate Messrs Sharpe and Millspaugh on the following day.

On the morning of February 11, 1988, The Atlanta Constitution carried a story suggesting that safety was being compromised at NNRC. This story identified Mr. Sharpe as its source.

On the afternoon of February 11, 1988, Karam personally handed letters of termination to the Plaintiffs. The letters, which were identical, stated as follows:

This is to inform you that in order to meet our obligations to the U. S. Nuclear Regulatory Commission under terms of our license, it is imperative that we upgrade our health physics program. Consequently I am taking steps to improve our program by hiring highly qualified people. This requires me to make adjustments in our personnel. I truly regret to inform you that your employment will be terminated February 25, 1988. This date includes the customary two week notification period. On February 11, 1988 you will be asked to return all keys and cards to Georgia Tech.

I sincerely wish you well in your career.

Sincerely,

R. A. Karam  
Director

On February 12, 1988, Plaintiffs together with their attorney Mr. O'Connor, visited Tech's personnel director to make inquiries regarding the Plaintiffs' procedural and substantive rights. The personnel director in turn communicated with Dr. Stelson about the fact of the visit. Stelson also consulted counsel, Alfred L. Evans, Jr., who represents Defendants in the instant case. This resulted in Defendant Stelson sending the following letter to each of the Plaintiffs on February 15, 1988:

I have reviewed the circumstances concerning the termination of your employment at the Institute, effective February 25, 1988.

This is to advise you that I have today rescinded your termination pending a full and complete hearing of all the

circumstances under applicable Statutes of the Georgia Institute of Technology and the Policies of the Board of Regents. You will be advised shortly of the procedures for your hearing.

Please report to my office tomorrow morning for further assignment by me.

Sincerely,

T. E. Stelson  
Vice President for  
Research

As a result of Dr. Stelson's letter, the Plaintiffs never were actually terminated from employment at Georgia Tech. Instead, they were initially placed in the Tech personnel office and subsequently were assigned to other jobs. Mr. Millspaugh is presently an assistant to the director of Tech's Office of Hazardous Waste and also functions as a research assistant; Mr. Sharpe is employed in a computer programming capacity. Neither Plaintiff has offered any evidence that there has been any loss of pay or benefits flowing from the transfer to different positions.

On August 11, 1988, the Nuclear Regulatory Commission issued an 89-page Report of Investigation entitled "Frank H. Neely Research Center: Alleged Harassment and Intimidation of Health Physics Technicians." In the section of the report entitled "Investigator's Conclusion," the investigator concluded in part:

... there appears to be sufficient evidence to indicate that one of the reasons for the dismissal of the two HP employees, but more especially for Sharpe, was for discussing potential GTRR health and safety problems, including the CD-115 incident and other related issues with the NRC before reporting them to management.

On November 15, 1988, the Nuclear Regulatory Commission issued a final report as to the matters which were the subject of the investigation begun on December 16, 1987, which had resulted in the modification of NNRC's license. This report, which is captioned "Notice of Violation and Proposed Imposition of Civil Penalty," was coupled with written notice that Tech was authorized to resume reactor operations<sup>2</sup> and irradiation experiments. The Notice of Violation, which concluded that a Severity Level III violation had occurred, imposed a \$5,000 civil penalty. The Notice of Violation confirmed the determination that there had been a failure to implement adequate management controls to ensure safe operation of the reactor and that "... a severe state of disharmony and conflict existed between the operations and health physics staffs and this condition appeared to have escalated and intensified since July 1, 1987 when all staff personnel were placed under the same management structure. Poor management at all levels substantially contributed to this atmosphere. It was the failure of management evident during the January 1988 inspection that caused the NRC to issue an Order on January 20, 1988 and the Confirmatory Order of March 14, 1988."

The Notice of Violation went on to state that the NRC investigation had identified

... numerous examples of perceived harassment by management as well as staff factions. The involuntary dismissal of two

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<sup>2</sup>In March, 1988, Georgia Tech had consented to the issuance of an order shutting down the reactor pending the conclusion of the investigation.

health physics employees in February 1988 was viewed by the health physics staff as retaliation for discussing safety concerns with the NRC. While there are some indications to support this perception, such that adverse actions may have been taken because the employees were engaged in protected activities, there is, in our view, insufficient evidence to conclude that a violation of 10 C.F.R. 50.7 occurred. Although you are not being cited, we believe the environment was conducive to such potential violations and had the potential to affect adversely the safety of reactor operations. This is clearly a significant regulatory concern. We recognize that you have made substantial changes to the organization and management to remedy this matter. Nonetheless, you should continue to assure and reinforce to all your managers and supervisors involved with NRC-licensed activities the clear understanding of the right of employees to raise safety concerns with Georgia Tech management or the NRC without fear of reprisals, and the necessity for maintaining a work environment conducive to safe operations. Your actions in this area will be reviewed by NRC in future inspections.

At the evidentiary hearing held in this matter on January 7, 1991, Plaintiff Millspaugh testified that he no longer wishes to regain his job as a health physicist at NNRC. Plaintiff Sharpe, while expressing reservations about working for Dr. Karam, stated that he does want to have his old job back.

According to Plaintiffs' pleadings and their proposed findings of fact and conclusions of law, Plaintiffs seek a declaratory judgment that the acts of the Defendants were violative of their first amendment free speech rights. Plaintiffs seek a permanent injunction enjoining the Defendants from depriving Plaintiffs of their employment as health physicists at NNRC. They



also seek injunctive relief enjoining Defendants from depriving them of their free speech rights; from publishing any false statements about the Plaintiffs regarding the reasons for the adverse personnel actions; enjoining Defendants from placing any adverse information concerning the subject matter of this action in their personnel files and requiring the Defendants to remove any adverse information which may already have been placed in such files; and enjoining Defendants from retaliating against Plaintiffs in any way because of their protected free speech activities.

As the court has noted in prior orders, Plaintiffs' statements that the reorganization would adversely affect the safety at NNRC, their reports to the Nuclear Regulatory Commission concerning perceived safety problems and regulatory violations, plus Plaintiffs' comments to the press constitute protected speech under the First Amendment of the United States Constitution. The court is satisfied, however, that none of the protected speech had any causal relationship to Plaintiffs' proposed terminations and subsequent reassignments except for the reports to the Nuclear Regulatory Commission inspectors during the inspection beginning on December 16, 1987. During that inspection, the Plaintiffs stated their version of the facts relative to the September, 1987 cadmium spill; this triggered an intensive investigation by the Commission which led to the January order directing the cessation of irradiation experiments and, ultimately, the shutdown of Tech's reactor. It also brought about the press coverage of purported safety violations at NNRC which, the court concludes, was an

embarrassment to Georgia Tech. For almost a year prior to the December 16 inspection, however, the Plaintiffs had been vocal in opposition to the reorganization, and had made reports to the Commission concerning perceived safety violations. While Dr. Karam either knew or suspected that the Plaintiffs were the source of these reports, and he was well aware of Plaintiffs' opposition to the reorganization, he took no action against them. Indeed, the evidence reflects that Dr. Karam did not have the power to terminate the Plaintiffs or to transfer them to other jobs at Tech. Rather, he had only the power to recommend such action to Dr. Stelson.

The court finds that Plaintiffs' report of the cadmium spill to the Nuclear Regulatory Commission inspectors in December of 1987, taken together with the negative publicity Georgia Tech received in January of 1988, was a substantial factor in the initial decision of Dr. Stelson to terminate the employment of Plaintiffs. However, the court also finds that even without the occurrence of these events, namely the report to the inspectors and the negative publicity presumably triggered by reports from Millspaugh and Sharpe to the press, Plaintiffs more likely than not would have been transferred from their jobs at NNRC to other jobs at Georgia Tech. The bad relationship between the health physics staff and the licensed operators was the subject of serious concern by the Nuclear Regulatory Commission, and Dr. Karam was committed to resolving this problem. The evidence shows however, that there were no steps short of removing at least Millspaugh or

alternatively, certain of the licensed operators from the facility to achieve a reasonable working relationship between the two groups. Furthermore, a poor working relationship existed especially as between Messrs. Millspaugh and Boyd on the one hand and Dr. Karam on the other hand. The poor quality of this relationship was due not to Plaintiffs' advocacy of their point of view about the reorganization, but rather to personality differences plus Dr. Karam's feeling that the Plaintiffs, especially Millspaugh, were seeking to subvert his authority and embarrass him. In this regard, the court notes that Dr. Karam's meeting with Dr. Stelson on December 9, 1987, wherein he discussed the possible termination of Millspaugh, Sharpe and Boyd occurred a week before the inspection during which the cadmium spill was reported to the Nuclear Regulatory Commission. Finally, the court notes that the conclusion that the Plaintiffs should be transferred outside NNRC was also concurred in by Dr. O'Bannon.

The court is skeptical, however, that the later-aborted decision to terminate the Plaintiffs ever would have been made by Georgia Tech but for the intervention of the reports of the cadmium spill and the widespread negative publicity which Tech received in January and early February, 1988. Plaintiff Millspaugh had worked at NNRC since 1972, and had some important supporters, including Dr. Carter, Chairman of the Radiation Safety Committee. From the evidence at trial, the court infers that there was a more significant level of distrust between Dr. Karam and Plaintiff Millspaugh than as between Dr. Karam and Plaintiff Sharpe. Thus,

the court finds that in all likelihood, Millspaugh would not have been terminated absent the December-January events but rather would have been transferred to other work on the Georgia Tech campus. The court further finds that given that eventuality, Tech would not have elected to terminate Sharpe's employment either. Mr. Sharpe had only been working at NNRC since 1984, but he was not regarded by Drs. Stelson and Karam as a trouble maker, as was Millspaugh. The court believes and finds that if Plaintiff Millspaugh had been transferred to a different job within the Tech community, Sharpe would have been also.

Because Defendants elected to undo their decision to terminate the Plaintiffs' employment before the terminations became effective, and arranged for them to be transferred to other jobs on the Tech campus, the Plaintiffs' present employment status is probably no different from what it would have been but for the events of December, 1987 and January, 1988 as discussed above. Because the court finds that the Plaintiffs would have been transferred to other jobs in any event, reinstatement of the Plaintiffs to their positions at NNRC is inappropriate. Mt. Healthy City Board of Ed. v. Doyle, 429 U.S. 274 (1977).

There is no evidence in the record which suggests that Plaintiffs presently are in danger of being deprived of their free speech rights, or that Defendants are publishing any false statements about them, or that any adverse information has been placed in Plaintiffs' personnel files. Accordingly, no relief will be granted in these areas.

The court does, however, order and direct the Defendant T. E. Stelson and all persons acting in concert with him, not to take any retaliatory action against the Plaintiffs on account of the bringing of the within litigation or on account of the Plaintiffs' exercise of their free speech rights. While it is not clear from the record that Defendant Stelson is in a position to undertake retaliatory action affecting the Plaintiffs' employment, or that he would presently wish to do so, in light of the evidence reflecting that the initial decision to terminate Plaintiffs' employment in February of 1988 was triggered by the Plaintiffs' exercise of their free speech rights in December of 1987 and January of 1988, and further in light of the fact that the record does not clarify that Plaintiffs' present positions are not merely for the pendency of this litigation, the court will enter the referenced injunctive order.

In summary, the court FINDS and DECLARES that the referenced activities of the Plaintiffs in December of 1987 and January of 1988 were speech protected by the First and Fourteenth Amendments of the United States Constitution; that the Defendants' initial decision to terminate Plaintiffs' employment would have violated Plaintiffs' rights, had it been implemented; however, the Defendants' decision was retracted before it became effective. Plaintiffs' prayers for injunctive relief are GRANTED IN PART and DENIED IN PART, as aforesaid.



SO ORDERED, this 31 day of October, 1991.



ORINDA D. EVANS  
UNITED STATES DISTRICT