

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission  
Office of Investigations

Title: INVESTIGATIVE INTERVIEW  
Dr. Jerome F. Wiot  
(Closed)

Docket No.

LOCATION: Cincinnati, Ohio

DATE: Monday, July 16, 1990

PAGES: 1 - 37

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EXHIBIT 17

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7/23/90

1  
2 UNITED STATES OF AMERICA  
3 NUCLEAR REGULATORY COMMISSION  
4

5 OFFICE OF INVESTIGATIONS

6 - - - - -X

7 In the Matter of: :

8 INVESTIGATIVE INTERVIEW :

9 DR. JEROME F. WIOT :

10 (CLOSED) :

11 - - - - -X

12  
13 Dinsmore and Shohl

14 511 Walnut Street, Suite 2100

15 Cincinnati, Ohio 45202

16 Monday, July 16, 1990  
17

18 The above-entitled matter commenced at 2:55  
19 o'clock p.m., when were present:  
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1 On behalf of the Nuclear Regulatory Commission:

2  
3 RICHARD C. PAUL

4 Investigator

5 United States Nuclear Regulatory Commission

6 799 Roosevelt Road

7 Glen Ellyn, Illinois 60137

8  
9 On behalf of the witness:

10  
11 ROBERT A. PITCAIRN, JR., ESQUIRE

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13 1400 Tri-State Building

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## I N D E X

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Witness

Examination

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DR. JEROME F. WIOT,

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## P R O C E E D I N G S

[2:55 p.m.]

MR. PAUL: This is an interview of Dr. Jerome F. Wiot, spelled W-I-O-T. Who's currently employed by the University of Cincinnati; is that correct?

MR. WIOT: That's correct.

MR. PAUL: The location of this interview is Cincinnati, Ohio.

Present at this interview, in addition to Dr. Wiot, are Richard C. Paul, Investigator, U.S. Nuclear Regulatory Commission, and Robert A. Pitcairn, attorney, representing Dr. Wiot.

As agreed, this interview is being tape recorded by Court Reporter, Lincoln Davis.

Subject matter of this interview concerns the University of Cincinnati Medical Center. Whereupon,

DR. JEROME F. WIOT,  
a witness, having been first duly sworn, was examined and testified as follows:

MR. PAUL: Please be seated.

## EXAMINATION

BY MR. PAUL:

Q Dr. Wiot, what is your current position with the University of Cincinnati?

1 A I am Professor and Chairman of Radiology.

2 Q And are you currently the Chairman of the  
3 Radiation Safety Committee?

4 A No.

5 Q And were you Chairman at one point in time?

6 A Yes.

7 Q And what were the dates of --

8 A I was appointed in November of 1987 ( [REDACTED] )  
9 ( [REDACTED] ) in

10 January of '80 -- of '90 and they appointed at that time, an  
11 Acting Chairman in my stead, ( [REDACTED] )

12 Q As Chairman of the Radiation Safety Committee, how  
13 many people actually sat on the committee that you were  
14 Chair of?

15 A I don't recall the exact number. I'd have to  
16 guess; and I don't really know. Probably 12, close to 12.

17 Q And, it's my understanding, up until August of  
18 1989, Kenneth Fritz was the Radiation Safety Officer; is  
19 that correct?

20 A That's correct.

21 Q And did Mr. Fritz report to you directly, as  
22 Chairman?

23 A No. He reported to the Committee, essentially.  
24 Not to me directly.

25 Q In regards to Mr. Fritz's duties as RSO; how did

1 the Committee -- did they oversee the duties of the  
2 Radiation Safety Officer, or did they direct the duties?  
3 What was the relationship between the Radiation Safety  
4 Committee?

5 A Well, it was an oversight committee in that sense;  
6 but they did not direct his duties, no.

7 Q Did they set radiation safety policy -- the  
8 Committee?

9 A The Committee -- the Committee, as far as policies  
10 were concerned, there was none set necessarily, while I was  
11 the Chair, but -- so I can't comment on what happened before  
12 --

13 Q Did --

14 A -- as far as the -- as far as the operation of the  
15 Committees was concerned -- or the offices were concerned.

16 Q Who had the responsibility to run the day-to-day  
17 affairs of the Radiation Safety Office at the University?

18 A Ken Fritz.

19 Q And did you at all, as Chairman, get involved in  
20 any day-to-day affairs?

21 A No. Not really.

22 Q The issue has come up, and there is a series of  
23 memos that came out that I can show you here, relates to the  
24 Radiation Safety Office's problem notification process. And  
25 over the years, there were three memos that detailed -- I

1 believe it was procedures related to internal notification,  
2 regarding safety problems and they're marked attachment one,  
3 which is a UC memorandum, dated July 1, 1986. And it's to  
4 Radiation Safety Office Personnel, and it's from George W.  
5 Alexander, Kenneth R. Fritz, subject: Proper channel of  
6 communications for Radiation Safety Office Personnel.

7 Attachment two is the memo -- University of  
8 Cincinnati memo, dated June 30, 1988. It's to Radiation  
9 Safety Personnel, University of Cincinnati, from George W.  
10 Alexander and Kenneth M. Fritz, subject: Problem  
11 notification process for Radiation Safety Office personnel.

12 And attachment three is a July 31, 1989  
13 memorandum. It's Radiation Health Physics Technicians in  
14 the Radiation Safety Office and it's from Jerome F. Wiot,  
15 M.D., Chairman, Radiation Safety Committee; Problem:  
16 Notification process.

17 Doctor, could you look at these memoranda please?

18 [Witness perusing documents.]

19 A Yes. I know -- I know of two of the three.

20 Q And which two are those?

21 A The June 30th of '88 and the July 31 of '89 one.

22 Q On the June 30, '88, when did you become aware of  
23 the existence of that memorandum?

24 A In December of '88 it was brought to my attention  
25 -- well it may have been January of '89. It was brought to

1 the attention of the Committee by the Radiation Safety  
2 Techs, as a complaint -- as one of numerous complaints about  
3 the status of the office and the way it was being run.

4 Q Do you recall specifically what the complaint was  
5 as to attachment to the memorandum?

6 A Basically that the techs were not allowed to  
7 report difficulties, without going, first through the  
8 University system, basically.

9 Q Did their complaint involve anything to do with  
10 reporting safety problems to the NRC? Did they have -- did  
11 the technicians --

12 A Well, basically, they came to me in December and  
13 said that there were certain things which they felt -- Jeff  
14 Barbro, or one of them, came to me -- that there were  
15 certain things that were going on in the Radiation Safety  
16 Office, which they felt were -- were not appropriate and  
17 that they wanted to have them addressed.

18 And I said "fine," and I set up a separate meeting  
19 where -- a meeting other than the standard Radiation Safety  
20 Committee Quarterly Meeting, in which they came to address  
21 the Committee. This was in the first part of January, and I  
22 don't remember exactly when.

23 And they came and talked about the various  
24 problems which they perceived. I don't remember any more  
25 what they were; but, as I recall, there were something like

1 13 points, or 12 points which I picked up out of it. And  
2 they gave us all some information concerning what they felt  
3 was an inappropriate activity on the part of the Radiation  
4 Safety Officer and his deputy.

5 And that -- this was one of the -- one of the  
6 problems which they brought up.

7 Q Did you have any discussions with either Fritz or  
8 Alexander, related to the -- either attachment one or two?

9 A No. No, nothing direct, no. I didn't even know  
10 about number one. Number two I didn't have any -- as I  
11 recall, I didn't have anything -- direct discussion with  
12 them. I may have, but I don't remember.

13 Q As a result of your -- the initial meeting on  
14 January 4th, 1989, of the Health Physics Technicians, with  
15 the Radiation Safety Committee?

16 A Yes.

17 Q Did you subsequently appoint a subcommittee --

18 A Yes.

19 Q -- to look into their concerns?

20 A Yes. Ted Silverstein chaired it I remember, and  
21 we had a -- we had the -- had a lawyer on the Committee -- I  
22 forget his name -- oh, he's the lawyer that works for the  
23 hospital -- he was on the Committee.

24 And I, I appointed somebody else, and I don't  
25 remember to the subcommittee -- to really review the things



1 to -- that they presented and to make decisions and comments  
2 back to the major Committee to meet their concerns.

3 Q Did the subcommittee eventually issue a report on  
4 --

5 A Yes. With one -- I think there were 17 items, and  
6 I think they added one more. There were 13 items, as I  
7 recall.

8 Q Did it -- were there any -- did it address the  
9 issue brought up in regard to attachment two?

10 A Yes. In the sense that they were going to -- they  
11 were going to carry it to Personnel. The attorney's name --  
12 Gary something -- Gary Harris?

13 Q Harris.

14 A Garry Harris. They were going to address it with  
15 Bill -- Gary, in the guise of his attorney position, and  
16 Bill, were going to look at the thing and devise one which  
17 was more within the guidelines which, I assume the Nuclear  
18 Regulatory Commission wanted.

19 So this was given to them to do the job.

20 Q In any of the -- other than at the Radiation  
21 Safety Committee Meeting of January 4th, did you meet at  
22 other times with the Health Physics Technicians?

23 A Yes. Periodically, Jeff Barbro. Well, I met with  
24 -- I met with three or four of them. I guess I met with all  
25 four of them, just prior to the meeting -- because they --



1 before the meeting, because they came to me with their  
2 complaints and I told them, "put them in writing," and that  
3 I would -- then we would meet with them; which we did.

4 I met with them kind of informally, to listen to  
5 them afterwards; but I don't remember particularly what the  
6 issues were. I don't -- it didn't address this, but I don't  
7 know really what the issues were.

8 Q Do you recall that the Health Physics Technician  
9 ever referring two <sup>to</sup> attachment two as a gag order?

10 A I don't recall whether they have referred to it in  
11 that sense. I know it has been referred to as a gag order;  
12 and whether they were the instigators of it; I don't know.

13 Q Do you recall if that was one of their concerns,  
14 that this memorandum was --

15 A It was definitely one of their concerns.

16 Q Okay.

17 During the meetings, I guess -- it culminated in  
18 the end of July 1989, beginning August 1989, some  
19 allegations that came forward through the -- I believe the  
20 Radiation Safety Committee, regarding concealment of a  
21 sealed source, inventory cards from the NRC of an inspection  
22 back in -- that took place in August of '88. Are you  
23 familiar with the allegation?

24 A Yes. I know about that.

25 Q During your meetings that took place in late '88,

1 early 1989; did the health, or the Health Physics  
2 Technicians ever bring that particular concern up?

3 A No.

4 Q Do you recall when you first became aware of this  
5 allegation?

6 A On August 2, 1989. I know exactly.

7 Q And, how did it -- how were you notified of the  
8 allegations?

9 A Jeff Barbro, one of the techs, asked to see me.  
10 He said he had something he wanted to tell me. He said that

11  
12  
13  
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15 There was a whole series of things which he  
16 presented to me. And he said, at the same time, that Ken  
17 Fritz had told Prince Jason, to conceal documents at the  
18 last inspection, when the Nuclear Regulatory Commission was  
19 here. And I said, "that's fine, Jeff, but I have to have  
20 that in writing from Prince Jason, I can't just take your  
21 word for it. Would you get it for me?" He said "yes."

22 And the following morning on my desk, was a letter  
23 from Prince Jason to the effect that Ken Fritz had told him  
24 to conceal documents and the actual cards and the white <sup>wide</sup> ~~wide~~ <sup>20</sup> ~~20~~  
25 tests which weren't performed, or so and so, were given to

6.7c portions

1 me -- I mean, they were there. And that's the first time  
2 that I had heard about that at all.

3 Q Up to this time, were you ever aware of missing  
4 sealed sources being an issue within the Radiation Safety  
5 Office?

6 A No.

7 Q You had never heard of that --

8 A No.

9 Q -- as being a problem?

10 Okay let me go through -- I have some more memos  
11 I'd like you to look at, to see if you can -- make this.  
12 The first set was one, two, three. These will be --  
13 attachment four will be a July 28, 1989 memorandum to Edward  
14 Silberstein, M.D., from Health Physics Technicians,  
15 Radiation Safety Office.

16 Have you ever seen that before?

17 A I don't recall it. I don't think so.

18 Q Okay.

19 [Witness perusing document.]

20 A I don't recall seeing it --

21 Q Okay.

22 A -- but that doesn't mean I didn't.

23 Q Okay.

24 And attachment five will be a University of  
25 Cincinnati letter, dated August 2, 1989. It's addressed to

1 Dr. Jerome F. Wiot, and it's signed by Prince Jason.

2 Is this what Barbro came forward with then, as to

3 --

4 A Yes. This is what Jeff sent to me -- I mean, I  
5 don't know how this got there -- but it was on my desk. I  
6 was doing something and it appeared on my desk with -- there  
7 was an attachment with it and those were the -- the --

8 Q The notecards themselves?

9 A Notecard themselves, yes.

10 Q Do you recall how many inventory -- or how many  
11 sources were missing?

12 A No.

13 Q <sup>s</sup>What the issue was?

14 A No.

15 Q Okay.

16 Evidently, then on August 18, 1989 -- we'll make  
17 this attachment six -- it's a letter to Prince Jason, from  
18 Jerome F. Wiot, dated August 18, 1989.

19 He wrote back asking you for supplemental  
20 information. Do you recall that?

21 A Yes. Yes.

22 Q And what happened in the interim, between August  
23 2nd and August 18th? Did anything happen on this specific  
24 issue?

25 A Well, yes. When I got the information from --

1 this information back --

2 Q Attachment five information?

3 A Yes. Attachment five back, with the cards, I  
4 called the President of the University and I told him I  
5 thought we had a significant problem; because there was  
6 documentation that -- that material had been hidden from the  
7 Nuclear Regulatory Commission and I felt that, despite the  
8 fact that we had been trying to address the problems which  
9 the radiation techs felt were problems; which Ken Fritz did  
10 not feel were problems, nor did Prince Jason feel were  
11 problems, nor did most of the people in nuclear medicine who  
12 were on the Radiation Safety Committee feel were problems.

13 Although, we had been trying to address some of  
14 these alleged violations, I felt that this particular  
15 complaint was obviously something which needed more than an  
16 inside investigation, as to how -- whether this was true and  
17 how it happened.

18 And I asked the President if I could have the  
19 right to call in an outside consulting firm and he said  
20 "yes, and I will give you my full support to do whatever --  
21 do whatever is necessary to solve the problem."

22 I didn't really know who to call, because I don't  
23 know those kind of people. And I called the office in  
24 Chicago and I spoke to -- pardon me for having problems with  
25 names -- I talked to one of the people in your office, who

1 I'd met before one time, when he was down. And he  
2 recommended NES, and specifically, Francisco Trejo, who he  
3 said was -- the company was good. They had done this  
4 before. They were good at it and they understood the  
5 problems of how to straighten your problem. And he said  
6 "fine."

7 I then called Mr. Trejo. Darryl Weidman is who I  
8 talked to. I called Mr. Trejo and he wasn't in. And then,  
9 subsequently he returned me call, a couple of days later --  
10 he was out; but he returned my call shortly. Well, no, in  
11 fact, he may have returned my call the same day -- that's --  
12 he did, from the airport. He called me at home.

13 And I told him the problem. I told him that I had  
14 spoken to Mr. Weidman and he suggested that I call him and  
15 that -- would he and his company come in and see what are  
16 major -- what our problems were and try to straighten out  
17 the problem.

18 He agreed to come. In fact he agreed to come --  
19 this all happened on like a Friday, or a Thursday or Friday.  
20 He agreed to come on Monday, but I happened to be going on  
21 vacation and I was -- had it all planned and there was no  
22 way I could change. And I didn't want him to start actually  
23 -- or for his company to start until I was in town.

24 So we delayed the actual beginning one week, until  
25 I got back from vacation. So, whatever that would be --



1 August 9th or 10th, or 12th, or whatever that -- about that  
2 was, is when Mr. Trejo came in and we started the process  
3 and he looked over a lot of the allegations and looked over  
4 the situation.

5 And then the decision was made early on that it  
6 was appropriate that, in view of what the allegations were,  
7 that we ought to talk with the university officials; and  
8 which I did. I talked to the President, I talked to Dr.  
9 Harrison, as I recall, about what was going on. Mr. Trejo  
10 did too.

11 And it was the feeling of everyone that we should  
12 relieve both Prince Jason and Ken Fritz of their  
13 responsibilities for the Radiation Safety Office. But we  
14 had to get a Radiation Safety Officer in order to continue  
15 as it was.

16 And we got -- we looked over -- well actually, Mr.  
17 Trejo looked over the credentials of the various people who  
18 could potentially do it and the -- we then went up to  
19 Chicago -- it was someplace like the 22nd, or something like  
20 that --

21 Q Of August?

22 A Yes, of August. In order to see the group in  
23 Chicago, as to whether our choice was okay. And they said  
24 fine. And so we came back and then we called both Prince  
25 Jason and Ken Fritz in and put them on administrative leave



1 with salary, while the process of finding out everything was  
2 -- was being done.

3 Q I notice on attachment six, which is the August  
4 18th letter that you wrote to Prince -- or Prince -- let's  
5 see --

6 A Yes. That's to Prince Jason.

7 Q -- yes -- that you wrote to Prince Jason, it's  
8 cc'd to Trejo -- by this --

9 A Yes.

10 Q -- so by this point --

11 A Francisco was on board.

12 Q He was on board by then?

13 A Yes.

14 Actually, Francisco felt that these were the  
15 documents that we needed and, you know, it's got my  
16 signature on it as Radiation Safety, but Francisco was the  
17 one who developed the letter, as to what we really needed in  
18 order to get the information.

19 Q Did Mr. Trejo then follow up on -- well, I'll give  
20 you the last exhibit, which would be attachment seven; which  
21 is Prince Jason's response to you, dated August 21, 1989.

22 He specifically addressed each item --

23 A Yes, I remember --

24 Q -- by number.

25 A -- this letter, yes.

1 Q Did Mr. Trejo then do the follow up, as to Prince  
2 Jason's response, or was there anything done with the  
3 information?

4 A I can't answer that; except that, you know, it  
5 became part of the -- part of the in-house investigation of  
6 what was going on. Because at this point it was -- it was --  
7 - we were still on an in -- on an in-house evaluation of the  
8 situation.

9 Q And who did the in-house evaluation?

10 A Well, primarily -- well, Francisco, but actually  
11 Bob -- it's been a long time since I've been involved -- Bob  
12 --

13 Q Was he an NES employee?

14 A Yes.

15 Q Bob Burgin?

16 A Bob Burgin. Yes. Bob Burgin did. Francisco was  
17 in and out on a regular basis, you know, to San Francisco  
18 and to here and to there; but Bob Burgin stayed with us; and  
19 there were a couple of other people involved who were NES  
20 employees, that I don't really know.

21 Q Did they issue a report as to the specific  
22 allegation -- the concealment of the cards?

23 A There is -- there is a report which they have  
24 issued to the -- Dr. Harrison, who's the Vice President of  
25 the University, concerning their findings.

1 Q Okay.

2 Do you recall what those findings were?

3 A No.

4 Q Did you see the report?

5 A Probably, but I didn't read it.

6 Q Okay.

7 And Dr. Harrison's the President of the  
8 University?

9 A No. He's Vice President -- well, he's Senior Vice  
10 President and Provost of Medical Affairs; and actually the --  
11 -- everything reports through him.

12 Q Did you ever talk to Dr. Silberstein regarding  
13 these specific allegations -- the allegation related to the  
14 concealment?

15 A I don't recall.

16 Q Did you ever talk to either Jason or Fritz about  
17 the allegations?

18 A Yes, on the 25th -- 24th, 25th of August, or  
19 something in that neighborhood. I relieved them of their  
20 responsibilities and I told them --

21 Q Did they --

22 A -- I told them the reason that I relieved them.

23 Q And what was that specifically?

24 A Specifically that -- that Prince Jason alleged  
25 that Ken Fritz had -- had ordered him to conceal documents

1 from the Nuclear Regulatory Commission and that, in view of  
2 the fact that this was an allegation of one against the  
3 other; until the facts were determined, I was putting them  
4 both on administrative leave.

5 In other words, I was given the responsibility by  
6 the University to do that, in my position as Chairman of the  
7 Radiation Safety Committee.

8 Q Did they respond to the allegation?

9 A In writing?

10 Q Verbally or in writing?

11 A No. Except -- one to say he didn't do it, and the  
12 other to say he did.

13 Q Who said he did and who said he didn't?

14 A Prince Jason said Ken Fritz told him and Ken Fritz  
15 denied it.

16 Q As a result of receiving these series of  
17 allegations from the Health Physics Technicians, did you  
18 have any concerns as to the operation of the Radiation  
19 Safety Office, as far as being effective in radiation -- in  
20 the Radiation Safety area?

21 A No, I did not.

22 Q Did you think that there was a basis for these  
23 allegations?

24 A My information was from people in -- who were more  
25 knowledgeable of it than I was -- was that it was -- they

1 were blowing smoke. Except until this issue, and that is  
2 the issue of concealment of documents. I mean, I had been  
3 informed that in July or June of '88, why, we passed  
4 inspection, I assumed we were active. The Committee had  
5 been in place a long time. There was an obvious hatred of  
6 the radiation technicians; for Ken Fritz and so -- you know,  
7 the combination of events was such that.

8 Although I felt that we should address their  
9 concerns, my information led me to believe that it was all  
10 an attempt, on their part -- well, they were very frank to  
11 admit they wanted to get rid of Ken Fritz. They told me  
12 that in person -- that they intended to get rid of Ken  
13 Fritz.

14 Q Were you in a position to evaluate Fritz? Was  
15 that one of your responsibilities?

16 A As a Radiation Safety Officer?

17 Q Yes?

18 A Was I in the position to do that?

19 Q Right?

20 A Personally?

21 Q Right?

22 A No. I was not personally.

23 Q Who handles evaluation?

24 A Well, the evaluation of his performance was  
25 essentially at the level of the Committee. If you ask me if

1 I personally was -- was -- was able to do that, and the  
2 answer was, no. But there were people on the Committee who  
3 could well evaluate his performance as a Radiation Safety  
4 Officer, in the technical sense.

5 We had physicist, Jim Keriakes on there, Howard  
6 Elson was on there, Gene Sanger was still on the Committee,  
7 Since most of the business was related to nuclear medicine -  
8 - nuclides -- radio-nuclides, why we had people on there who  
9 were very much -- very much knowledgeable of radio nuclides  
10 and so -- and their handling and the proper things -- so --  
11 from that perspective -- the Committee was composed of  
12 people who could do that.

13 We'd had no problems with anybody, and had had no  
14 problems with the Nuclear Regulatory Commission. And the  
15 only people who were pounding the drums, saying things were  
16 bad, were the four techs; who, frankly, were determined --  
17 and they were complaining that Ken Fritz was not responding  
18 to it.

19 And there was complaints about certain things to  
20 do with improper cleaning of bathrooms. And they were also  
21 angry because I had made the decision that it was  
22 appropriate for them to be responsible to clean up spills.  
23 And they became very angry at me and at everyone, because we  
24 had made the decision that they were the appropriate  
25 individuals to clean up spills.

1           So, their complaints -- you had to temper a bit  
2           with their attitude towards what was going on, to be honest.

3           Q     Up until then -- August of 1989 -- was the  
4           Committee satisfied with Ken Fritz's performance?

5           A     Yes. I think we had no reason not to -- we had no  
6           reason to think that he was not performing adequately. He  
7           had some interpersonal problems, but, as far as the  
8           technical aspects of the running of the Radiation Safety  
9           Office, we had no real reason, except, as I say -- the  
10          complaints which we picked up in December, which we started  
11          to address, from the techs.

12          We had no complaints from your office -- not your  
13          office, but the Nuclear Regulatory Commission Office. We  
14          had no -- we passed inspection. We had no user complaints,  
15          we had none of this type of problem.

16          So, we had only -- and we had people on the  
17          Committee who -- addressing some of the complaints -- some  
18          of their complaints -- felt that they were unfounded and  
19          they didn't necessarily -- they were not necessarily counter  
20          to Nuclear Regulatory Commission rules, so, we had no reason  
21          to get terribly upset with them.

22          Q     Did the Radiation Safety Committee conduct  
23          periodic audits of the Radiation Safety Office?

24          A     Financial audits?

25          Q     No. Performance audits?



1           A     Performance audits?

2                     No. I don't think so. Not in that true since, I  
3 mean, Ken Fritz brought the material to the Committee each  
4 time -- at our quarterly meeting, as to what was going on in  
5 the Committee, and how many people were being studied and so  
6 on. But there was no formal audit.

7           Q     Based on the information you received as to this  
8 allegation, regarding the concealment of sources; did you  
9 make any decision as to who was responsible for the  
10 concealment?

11          A     I only know what I was told by Prince Jason and  
12 Ken Fritz, that's all.

13          Q     And basically, when Jason says that he was told by  
14 Fritz --

15          A     Told Fritz to do it and Fritz said, "that's not  
16 true."

17          Q     Other than that, you weren't involved in any of  
18 the other follow-up?

19          A     No. Absolutely not.

20                     MR. PAUL: Can we go off the record here?

21                     [Discussion off the record.]

22                     [On the record.]

23                     BY MR. PAUL:

24          Q     On another subject, were ever made aware in  
25 January 1989, at the time the Health Physics technicians

1 came forward to the Radiation Safety Committee, that one of  
2 the technicians by the name of Melvin Boyd had concerns that  
3 he was being identified as a source of allegations to the  
4 Nuclear Regulatory Commission? Do you recall?

5 A Yes. He wrote to me saying that that wasn't true.  
6 There was apparently, it was reported to the office, I  
7 guess, in Chicago that there had been, there had been two  
8 phone calls, anonymous phone calls concerning allegations  
9 that we're doing things badly.

10 I didn't get the phone call. The phone call -- I  
11 don't know who the phone call came to, to be very honest  
12 with you. But I got the letter from him and I also got a  
13 letter from Jeff Barbro, in reference to the fact that they  
14 hadn't done it.

15 [REDACTED]  
16 [REDACTED]  
17 ( [REDACTED] ) 67c  
18 [REDACTED]  
19 [REDACTED] )

20 Q Prior to getting the letter, were you aware that  
21 the NRC had even received allegations?

22 A No. No, because when I was told -- oh, yes. Yes,  
23 someone told me that they had received the thing because I  
24 was supposed to meet with them.

25 Q With the NRC?

1 to continue

1           A     No. I was supposed to meet with the techs. I was  
2 going to meet with the techs to address some of their  
3 questions. What I was trying to do was meet with them on a  
4 somewhat of a regular basis to find out really what their  
5 problems were and to try to make them work better with Ken  
6 Fritz and tell them that we were trying to work through  
7 their concerns, because their concerns were related also to  
8 such things as promotions. They needed a ladder, a  
9 promotional ladder, and so on. So, I was trying to meet  
10 with them.

11                   And I don't know whether George Alexander called  
12 me or someone called me and told me that the Nuclear  
13 Regulatory Commission had received two anonymous phone calls  
14 from people saying that we were doing something bad. I  
15 really, when I got this information I had already planned  
16 this meeting with them, with the four techs to sit down and  
17 talk with them. Just, as I say, I was trying to get things  
18 together so that they would be more responsive and they  
19 would work better with Kent because I felt the major problem  
20 was that they weren't working together.

21                   When I got this, I wrote to them and I said, in  
22 view -- I wrote them a letter and said that in view of some  
23 allegations that had been made concerning something which I  
24 felt was inappropriate, that in view of what we were doing  
25 addressing, that I would not meet with them until I met with

1 the Radiation Safety Committee so that we could discuss the  
2 allegations that had been made. That's when I got the  
3 letter back from Jeff and I got the letter back from Melvin  
4 Boyd.

5 Now, I assume -- maybe Ken Fritz got the phone  
6 call. I think, I think, you know, I'm kind of vague, but I  
7 think Ken Fritz did get the phone call and Ken Fritz was the  
8 one who called me and told me that. So, I told him I  
9 wouldn't meet -- that's when I got the letters back from  
10 Melvin, Jeff Barbro. One of them typewritten and one of  
11 them handwritten, as I recall.

12 Q In regard to this incident, was it ever discussed  
13 with Fritz or Alexander that this allegation had been  
14 reported to the NRC and in violation of the, what I showed  
15 you as Attachment 2, the June 30, '88, problem notification  
16 process?

17 A Did I discuss that with Ken and George?

18 Q Right, or did they discuss it with you, that this  
19 was outside the proper procedure?

20 A Well, no. That whole business started in January  
21 of '88 when we started to attract this. And that was part  
22 of the points which they brought, the techs brought to the  
23 Committee.

24 Q You mean, January '89.

25 A '89, excuse me. Yes, January in '89. They

1 brought that information as part of their business. That's  
2 when I pointed the subcommittee. That's when the  
3 subcommittee recommended the change. Then the change was  
4 not forthcoming because it kind of fell through the cracks  
5 is what happened. It fell through the cracks, I think, at  
6 the University level, probably Personnel office because I  
7 finally wrote by myself.

8 Q Which is Attachment 3.

9 A Yes.

10 Q The July 31, '89.

11 A Yes.

12 Q Well, yes. That is July 31, '89, but actually  
13 what I did is I wrote it and I sent it off to Gary Harris  
14 and he said he'd run it by Bill Lodge and make sure it was  
15 okay before we did it because I wanted to make certain it  
16 was right. And it was something which I -- it was not  
17 written by a lawyer. It was written by me to address the  
18 problem. And when they approved, I then sent it off to  
19 these people, to the health techs in the office.

20 Q As far as the procedure of problem notification,  
21 it doesn't specifically address the ability of the  
22 technicians to go to the NRC. Was there any specific reason  
23 for this?

24 A No.

25 Q What was the procedure? Was this covering the

1 procedure whether they could contact the NRC?

2 A No. This was really a basic problem that they had  
3 that -- you see, their original complaint was not that they  
4 had to go to the, they couldn't go to the NRC. Their  
5 original complaint was the fact that the way that thing was  
6 written, it talked about 3, they had to write 3 times to Ken  
7 Fritz or something. They said that's wrong and that's not  
8 the way it should be. And they really were more concerned  
9 about the fact that when they found a problem that was not  
10 being addressed, this was to address that.

11 Now, my original comments were such that, you  
12 know, anyone can talk to anybody at any time. In my memo to  
13 Gary Harris, it said, you know, this is my understanding,  
14 that anyone can go to the NRC at any time and that should be  
15 in there.

16 But this memo was primarily to address their  
17 concern about all this business about, we've got to do it 3  
18 times and, you know, write him again and write him again.  
19 And I felt that was totally inappropriate. And if they felt  
20 that they had a problem and it wasn't addressed by Ken Fritz  
21 immediately it should come to the Committee. And Ken Fritz  
22 had a responsibility to report in 30 days as to what he did  
23 about the concern.

24 Q Do you feel that Ken Fritz's reporting procedures,  
25 as detailed in Attachment 1 and 2 here, inhibited the



1 technicians from going to the NRC to date?

2 A No. I think that that's smokescreen on their  
3 part. They know the rules. They know that anybody can go  
4 to NRC. They were using that as a hit against Ken. That's  
5 all. They know the rules better than most people, so to  
6 suggest that that would restrain them from doing anything, I  
7 think for them to suggest that's inappropriate on their  
8 part.

9 Q I don't know if I asked you this: did you ever  
10 ask the technicians -- I believe you mentioned Barbro -- in  
11 connection with the concealment allegation, why it took them  
12 a year to bring it forward?

13 A Well, in the discussion I said, Jeff, what in the  
14 hell are you coming here a year after the fact for. I mean,  
15 why didn't you tell me this earlier. You know, he said, I  
16 don't know, he said, but I tell you we're going to get Ken  
17 Fritz. I mean, he said that right in my office sitting  
18 right across the desk, we're going to get Ken Fritz.

19 Q Did you feel that any of these concerns that came  
20 up, you know, over the period January '89 forward, they were  
21 the ones that came to the Radiation Safety Committee. Would  
22 you characterize them as more personnel problems,  
23 administrative-type problems, health safety-type problems?

24 A Yes. Well, the people that were on the Radiation  
25 Safety Committee, who, as I said, were knowledgeable, we took



1 the complaints and looked at them. There were letters  
2 written by Jeff Barbro, something to do with the restroom  
3 and the home hospital. And I brought these all to the  
4 Committee to evaluate because, as I said, I'm not  
5 sophisticated in that particular area enough to know whether  
6 the facts are -- and I had good people on the Committee and  
7 I trusted them. And I knew that there was this terrible  
8 interpersonal problem between Ken Fritz and the Radiation  
9 Safety techs. There was no question -- I mean, there was no  
10 question about that.

11 So, it was a matter that you had to take many of  
12 their complaints and look at them in light of, one, the  
13 office had been inspected a year earlier and looked okay,  
14 and two, the people who were knowledgeable said that many of  
15 these complaints did not need, and I had people who'd been -  
16 - Gene Sanger's an example. He's been chairman of the  
17 Radiation Safety Committee. Radiation accidents are his  
18 primary interest.

19 I had to go on the basis of these types, this type  
20 of information to determine, but I felt that they had  
21 problems like this type of a thing where they had,  
22 administratively they had to do something that was really  
23 kind of cumbersome and that was one of the problems that I  
24 wanted to address. And I also wanted to address the other  
25 problems which they had concerning promotions, et cetera,

1 that type of thing. So, that was part of my reason for  
2 having the additional meeting, was to try to show them that  
3 we were concerned about them and that we did want to make it  
4 right and try to, really, to try to get a better working  
5 relationship in the office so things would go smoother.

6 But as I say, they were so angry about Ken, and  
7 then they were angry at me and the Committee because of the  
8 business about cleaning up spills, that was the beginning of  
9 the problem that you had a difficult time weeding out what  
10 was personal and what was really factual in there with them.

11 Q When did they become part of a union, do you  
12 recall?

13 A Oh, that was in this same particular area. They  
14 came -- what happened, early on, Bill Lodge and I met with  
15 them and I don't remember when it was, and Cyril Kupfeberg.  
16 Cyril, he's the assistant to Dr. Harrison. We met in Dr.  
17 Harrison's office, well, in Kupfeberg's office in his  
18 conference room. When they had decided to go union, and  
19 they had decided to joint-ask me, we met with them, and I  
20 met with them to ask them, you know, what their problems  
21 were that wanted to make them join the union and could we  
22 address those problems.

23 Again, it was, I think, as I recall, it was Jeff  
24 Barbros who made the comments and made the statements. And  
25 my concern was only for them because, to be very honest with

1 you, they were joining and asked me, there are four people  
2 joining a union which was primarily housekeeping and some of  
3 the clerical people, and they would be a small issue. And  
4 the union was not going to do much for them; they were such  
5 a small part of the situation and they would be paying  
6 whatever the dues are a month and they are debt-well paid  
7 anyway.

8 So, I went to this thing primarily to try to say,  
9 look, we will address -- that was the first time that I met  
10 with them, where I said, we will address your concerns about  
11 promotions, et cetera, et cetera. They did, they chose to  
12 join the union.

13 Q That predated the January subcommittee?

14 A Yes. That was before that. I don't remember  
15 exactly when that was, but that was before that.

16 Q Was Prince Jason part of management, as the  
17 assistant RSO?

18 A Oh, I guess. But in the sense that the techs  
19 reported to him or to Ken, so I guess he would be considered  
20 management, yes.

21 Q Was he part of the group that came forward to the  
22 Radiation Safety Committee with concerns?

23 A I think it was primarily the four techs. Yes, I  
24 think it was primarily the four, five techs null and void,  
25 and the other three, four techs.

1           Q     What was George Alexander' role within the  
2     Radiation Safety Office? Was he a manager?

3           A     Actually, the Radiation Safety Office from an  
4     administrative point within the University was in Radiology,  
5     in the sense that we had their budget, their budget was part  
6     of my budget in radiology. That was because Gene Sanger had  
7     been the radiation safety officer and they kind of kept it.  
8     But Nuclear Medicine is a part of Radiology, and I'm the  
9     chairman of Radiology.

10           When I really got involved in looking at the  
11     Radiation Safety office, I really felt that  
12     administratively, Ken, you know, Ken was not really good at  
13     it. And this was on the advice of my fiscal officer, who  
14     said, you know, their records are sloppy and that's not  
15     good.

16           So, we decided that George Alexander, who was  
17     administrator of Nuclear Medicine area, would help us get a  
18     more functional and workable Radiation Safety Office. So we  
19     asked George to move into that job because he had the  
20     Nuclear Medicine laboratory running quite efficiently. So  
21     we moved him in there to help with the administrative  
22     responsibilities. You know, make sure that the documents  
23     went out on time and that everything went out on time was  
24     really what his responsibility was, and that we fulfilled  
25     all the requirements as necessary because he was just a

1 better manager in that sense. It, nothing to do with the  
2 technical aspects, just to do with the paperwork of the  
3 office, so to speak.

4 Q Did Alexander report to Fritz?

5 A No, he reported to me really.

6 Q To you.

7 A Yes. He reported to me in the sense, initially  
8 early on, because the budget was in my area, but then  
9 reported to me when I became the chairman of the Radiation  
10 Safety Committee.

11 Q Dr. Wiot, have I or any other NRC representative  
12 here threatened you in any manner, offered you any rewards  
13 in return for this statement?

14 A No.

15 Q Have you given the statement freely and  
16 voluntarily?

17 A Yes.

18 Q Is there anything further you care to add for the  
19 record on the matter?

20 A I don't think so, no.

21 Q The interview is concluded.

22 MR. PITCAIRN: We would like Dr. Wiot to have the  
23 opportunity to read and sign his statement before it's used.  
24 You can make the arrangements through me. Why don't you  
25 make them through me.

1 MR. PAUL: We're off the record.

2 [Whereupon, the deposition was concluded at 4:10

3 p.m.]

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## REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

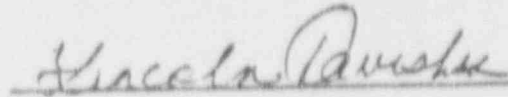
in the matter of:

NAME OF PROCEEDING: Investigative Interview

DOCKET NUMBER:

PLACE OF PROCEEDING: Cincinnati, Ohio

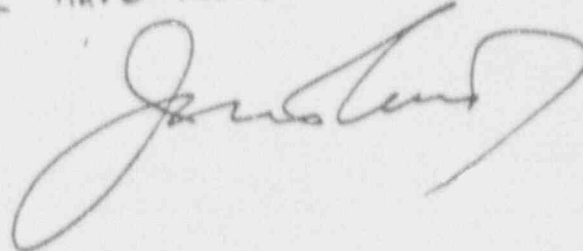
were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Lincoln Davis

Official Reporter  
Ann Riley & Associates, Ltd.

I have READ THIS TRANSCRIPT





University of Cincinnati  
Radiation Safety Committee

Mail Location #591  
Telephone (513) 872-4115

234 Goodman Street  
Cincinnati, Ohio 45267-0591

1 July 1986

TO: Radiation Safety Office Personnel  
University of Cincinnati

FROM: *George W. Alexander, Jr.*  
George W. Alexander, Jr.  
Administrative Director

*Kenneth R. Fritz*  
Kenneth R. Fritz  
Radiation Safety Officer

SUBJECT: Proper channel of communications for  
Radiation Safety Office. Personnel

University of Cincinnati Policy dictates that you must report all problems first to your immediate supervisor. Your immediate supervisor is the Deputy Radiation Safety Officer - Mr. Prince Jason. Problems relating to Radiation Safety which have not been addressed by the Deputy Radiation Safety Officer should be directed to the Radiation Safety Officer - Mr. Kenneth R. Fritz. Administrative Matters should be directed to the Administrative Director - Mr. George Alexander. All correspondence including anything that has financial implications should be directed to the Administrative Director.

In the event that the Radiation Safety Officer and/or Administrative Director deem it necessary to direct problems to the Chairperson of the Radiation Safety Committee or the Radiation Safety Committee, it is their job to perform this function.

In the event that any member of the Radiation Safety Office staff deters from this procedure, it is grounds for disciplinary action. Further, University Policy states that unauthorized discussion of information pertaining to students, patients or other employees of the University with friends, relatives, the general public or the news media is considered inappropriate behavior, and that it shall result in disciplinary action up to and including immediate discharge.

Take pride in your office. Do not encourage conversation regarding what is happening in this area. If you spread derogatory information elsewhere, you can only hurt yourselves, - the Radiation Safety Office of the University of Cincinnati.

GWA/sk

Attachment 1

University of Cincinnati  
Radiation Safety Committee

234 Goodman Street  
Cincinnati, Ohio 45267-0591

Mail Location #591

Telephones:

Radiation Safety Office 558-4110  
Administration 558-9081

40

June 30, 1988

TO: Radiation Safety Personnel  
Univ. of Cincinnati

FROM: George W. Alexander, Jr. B.S. *S.A.*  
Kenneth E. Fritz, M.S. *KMF*

SUBJECT: Preliminary Notification Process for  
Radiation Safety Office Personnel

In the event that there are any problems related to Radiation Safety Office programs, Radiation Health Technicians must notify either the Deputy Radiation Safety Officer, Radiation Safety Officer or Administrative Director of Radiation Safety immediately. Under no circumstances should any employee state either policies or problems related to radiation safety anyone within the University of Cincinnati or outside of the University of Cincinnati unless told to do so by one of the above mentioned supervisors. Please be reminded that the Radiation Safety Committee makes radiation safety policies for the University, and we act upon the provisions of our NRC Broad License. Your specific jobs are to comply with assigned duties from the supervisors. In the event that there is a discrepancy related to this policy by an employee, disciplinary action will be taken.

NAME

DATE

July 28, 1989

TO: Edward Silberstein, M.D.  
Radioisotope Laboratory

FROM: Health Physics Technicians  
Radiation Safety Office

42

We the undersigned state that prior to the Nuclear Regulatory Commission (NRC) inspection of August 22-25, 1988, of our Broad Scope License that the Deputy Radiation Safety Officer handed the Staff Health Physics Technicians sealed source wipe test records for seal sources that had been unaccounted for. The approximate wording used by the Deputy Radiation Safety Officer were, "Here, do something with these."

During the NRC inspection these records were kept from the NRC inspector and were essentially unavailable for his inspection.

These sealed source wipe test records are identified as follows:

- Card # WH-4 - Isotope Ni-63 Activity on 5-24-69 was 10 mCi
- Card # 106 - Isotope Ni-63 Activity on 5-24-69 was 10 mCi

Both of these sources were originally purchased by Dr. Henry Tan.

Affirmed on July 28, 1989 by:

Jeffrey E. Barlow  
Michael D. Boyd  
Patrick W. Harris

attachment B4

EXHIBIT



UNIVERSITY OF CINCINNATI • RADIATION SAFETY OFFICE

43

Telephone (513) 558-4110

234 Goodman Street  
Old Operating Pavilion Basement  
Cincinnati, Ohio 45267-0561

August 2, 1989

Dr. Jerome F. Wiot  
Chairman Radiology  
Professor  
M.L. 742

Dear Dr. Wiot:

This memo serves to certify that I do have knowledge of various documents which were intentionally concealed from a Nuclear Regulatory Commission inspector during an on-site inspection of our broad license. Kenneth M. Fritz, the University of Cincinnati's Radiation Safety Officer, directly ordered me to do so and I felt as if I had no other choice but to follow that directive. Enclosed you will find other documents on sealed radioactive sources that have been "missing" for some time now as is evidenced by the dates of their last being tested for leakage. To the best of my recollection, Mr. Fritz has seen this information. This report is freely and willingly furnished to you with the hope that it will help to rectify the problems with which we all are currently confronted. My signature below verifies the aforesaid.

Respectfully yours,

*Prince Jason*

Prince Jason  
Deputy Radiation Safety Officer  
University of Cincinnati

University of Cincinnati  
Radiation Safety Committee

234 Goodman Street  
Cincinnati, Ohio 45267-0591

Mail Location #591

Telephones:

Radiation Safety Office 558-4110

Administration 558-9081

513/558-4396

August 18, 1989

Mr. Prince Jason  
Deputy Radiation Safety Officer  
University of Cincinnati  
Cincinnati, Ohio 45267-0591

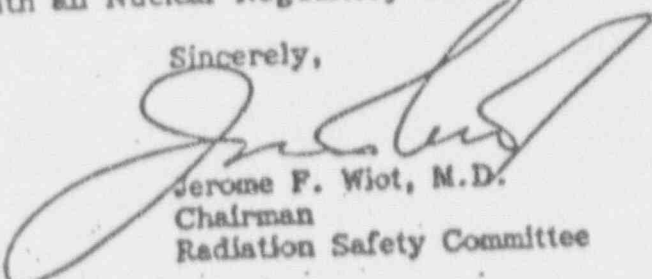
Dear Mr. Jason:

Thank you for your letter. Please be assured that the matters to which you refer will be thoroughly investigated. In that regard, could you please provide me with the following supplemental information:

1. Can you identify the documents (specifically or by category) which were "intentionally concealed from a Nuclear Regulatory Commission inspector during an on-site investigation of our broad license?"
2. When did the concealment occur? How long did it last? What on-site inspection did it affect?
3. How was the concealment accomplished - were the documents removed from the files, misfiled so they wouldn't be noticed, or never filed at all? Were the document logs altered in any way so as to assist the concealment?
4. Are the "other documents" you enclosed with your letter different from the ones that were concealed from the NRC inspector?
5. What do you mean when you say the documents have been "'missing' for some time now"? Have they also been deliberately concealed? If so, how and by whom were they concealed? If not, were the documents "missing" because they were lost or misfiled? If so, who is responsible?

I appreciate your assistance in our continuing efforts to achieve full and complete compliance with all Nuclear Regulatory Commission requirements.

Sincerely,

  
Jerome F. Wiot, M.D.  
Chairman  
Radiation Safety Committee

JFW/kam

cc: F. Trejo



234 Goodman Street  
Old Operating Pavilion Basement  
Cincinnati, Ohio 45267-0581

August 21, 1989

Dr. Jerome Wiot  
Chairman Radiology  
Professor  
University of Cincinnati  
Cincinnati, Ohio 45267-0742

*These  
documents  
marked*

Dear Dr. Wiot:

I appreciate your concerns and actions in regard to the information which has been given to you. I shall here commence to answer the questions posed in your letter dated August, 18, 1989. In doing so, there are a few corrections and/or clarifications which I must make.

1. The incident whereupon sealed source documents were "concealed" from the "C" inspector did not actually occur while he was on-site. My technical staff made me aware of this as they, too, are knowledgeable of the happening. It was the Friday before the inspector arrived (August 19, 1988) that Mr. Fritz reviewed all of the sealed source documents and sorted out those that he could see had any type of discrepancy. He then handed those documents to me and told me to "... here, do something with these", or "... here, put these somewhere." I then took the documents from his office, brought them out to the office area where our technicians' desks are and gave them to one of our staff members who placed them in the back of a desk drawer. All of us - myself, Mr. Fritz and the technicians - knew that the inspector was due to arrive the following Monday, August 22, 1988. I can identify these documents as I have them in my possession. I sent you photocopies of most or all of them in my original letter.
2. As stated in item 1 above, this action took place on Friday, August 19, 1988 and has endured until the present. It affected the inspection of August 22-25, 1988. A copy of that inspection report is enclosed.
3. There was no alteration of the documents and item 1 above describes the manner in which they were withheld.
4. No. Those are the ones. As stated, I have them. There may be more; I do have others.
5. I do not believe that I said any documents were missing. If I did, it was erroneous wording on my part. Yet, this also, is probably the case as is

46  
aduced by the fact that we could find no records in our office of the  
three tritium foils which were found in room 524 of the LDR building on  
Wednesday, July 26, 1989. Nonetheless, what I did say (or meant to) was  
that the sources have been "missing for some time now". This is what the  
documents attest to. I have these documents, but since they show that  
there has not been a leak test performed since 1986, and there is no no-  
tation as to their disposition, then the question becomes, "Where are  
these sources?"

I hope these responses represent a clear understanding of what occurred. If  
I may be of further assistance, please let me know.

Sincerely,

*Prince Jason*

Prince Jason  
Deputy RSO

PJ/pj  
enclosure

cc: F. Trejo



## U.S. NUCLEAR REGULATORY COMMISSION

RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER(S)

JIA - 91-533

RESPONSE TYPE

☒ FINAL ☐ PARTIAL

DATE JAN 9 1992

DOCKET NUMBER(S) (if applicable)

REQUESTER

Mr. Kenneth S. Resnick

## PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

☐ No agency records subject to the request have been located.☐ No additional agency records subject to the request have been located.☐ Requested records are available through another public distribution program. See Comments section.☐ Agency records subject to the request that are identified in Appendix (es) \_\_\_\_\_ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☐ Agency records subject to the request that are identified in Appendix (es) \_\_\_\_\_ are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ Agency records subject to the request that are identified in Appendix (es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☐ Agency records subject to the request are enclosed.☐ Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

## Fees

☐ You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.☐ You will receive a refund from the NRC in the amount of \$ \_\_\_\_\_.☐ In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No \_\_\_\_\_.

## PART II. A.—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

☒ Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

## COMMENTS

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

DISTRIBUTION—DFIPS Subject, Author, Branch Chief, Director of Administration, Other:

3/1/92

4/1/92

*in comment*

10474

FOIA - 91-533

JAN 9 1992

## PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) \_\_\_\_\_ are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

1. The withheld information is properly classified pursuant to Executive Order, (Exemption 1)

2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)

3 The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

4 The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated (Exemption #)

The information is considered to be confidential business (proprietary) information

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).

5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5) Applicable Privilege

Attorney-client privilege: (Confidential communications between an attorney and his/her client.)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption B)

7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reasons indicated. (Exemption 7)

Disclosure would constitute an unwarranted invasion of personal privacy (Exemption 7(C)).

OTHELLO

## PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.26(b) and (c) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

## PART II. D. - APPEAL RIGHTS

Re: FOIA-91-533

APPENDIX A

RECORDS TOTALLY WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION &amp; EXEMPTION</u>
1.	Various	The Office of Investigations entire file. EX. 7A



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November 27, 1991

FREEDOM OF INFORMATION  
ACT REQUEST

Mr. John A. Grobe  
Chief, Nuclear Material Safety Branch  
U.S. Nuclear Regulatory Commission  
Region III  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

FOIA 91-533  
Rec'd 12-2-91

Re: Kenneth M. Fritz/University of Cincinnati

Dear Mr. Grobe:

This will request that the Nuclear Regulatory Commission provide me copies of the following materials under the Freedom of Information Act, 5 U.S.C. § 522 and your agency's implementing regulations, 10 C.F.R. § 9, et seq.: 1) Evidentiary summary or report supporting the synopsis of alleged violations which is attached hereto as Exhibit A, and, 2) any referral by your agency to the Justice Department or a U.S. Attorney's office for criminal prosecution of Kenneth M. Fritz, Prince Jason or the University of Cincinnati with regard to the events described in the synopsis attached hereto as Exhibit A and any written response to such referral from the Department of Justice and/or a U.S. Attorney's office.

In compliance with the applicable regulations, I promise to pay reasonable charges incurred for search and copying costs. Please send me your invoice along with the copies which I have requested to my attention at the above address in Cincinnati. I look forward to your response within 10 days or earlier if possible. Thank you very much.

Yours very truly,

DINSMORE & SHOHL

  
Kenneth S. Resnick

KSR:ymm

9301060335 2PB



# SYNOPSIS

On October 30, 1988, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region III (R311), requested that an investigation be initiated concerning an allegation that sealed source records were intentionally concealed from an NRC/R311 inspector during a 1988 inspection at the University of Cincinnati Medical Center (UCMC). The Office of Investigations (OI) investigation substantiated the allegation that the UCMC Radiation Safety Officer (RSO) and Deputy RSO intentionally concealed sealed source records from the NRC inspector during his August 1988 inspection.

During the investigation an additional allegation of discrimination was brought to OI's attention and pursued during the investigation. The OI investigation substantiated that the RSO and his administrative director intentionally instituted a policy which was discriminatory. However, the investigation failed to find where the discriminatory policy affected or prevented UCMC employees from going to the NRC.

569

# DINSMORE & SHOHL

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WRITER'S DIRECT DIAL:

(513) 977-8332

December 26, 1991

## OVERNIGHT MAIL

Robert C. Hardzog  
Chief, FOIA-LPDR Branch  
Division of Freedom of Information  
Public Services  
Office of Administration  
United States Regulatory Commission  
Washington, D.C. 20555

Re: FOIA Request No. 91-533/University of Cincinnati

Dear Mr. Hardzog:

As I indicated to you on the telephone today, I represent the University of Cincinnati in connection with matters presently before the Nuclear Regulatory Commission. On November 27, 1991, I made a FOIA request with respect to matters raised in a "synopsis" (attached to the FOIA request) received by the University of Cincinnati from the NRC in November of 1991. In this synopsis, the NRC indicates that it has "substantiated" various allegations that were made in connection with a prior NRC investigation. In conjunction with the transmittal of the "synopsis," the NRC invited the University to participate in an enforcement conference relating to the NRC's substantiation of the allegations raised during the investigation. See 10 CFR Part 2 Appendix C(IV). The enforcement conference is currently scheduled in Chicago on January 29, 1992.

As I indicated to you on the telephone today, I would appreciate it if you would do everything in your power to expedite consideration of the University's prior FOIA request. This information is critical to the University's preparation for the enforcement conference to be held on January 29, 1992. It is my understanding that a decision will be made within a week and I will be notified by telephone as soon as that decision has been made.

Since you indicated to me that my FOIA request will in all likelihood be denied on the basis that there is an "ongoing investigation," I would like the Commission to reconsider based upon the following:

9301060343 2AP

... sent to the University indicates that

Robert C. Hardzog  
December 26, 1991  
Page 2

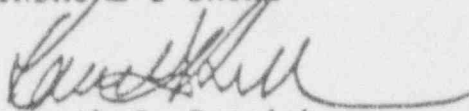
been "substantiated." It is inconceivable that the Commission can take the position that an investigation is still "ongoing," but on the other hand claim that various allegations raised in that very same investigation have been "substantiated."

- 2) According to the NRC's regulations, one of the purposes of an enforcement conference is to "discuss the violations." Again, I find it inconceivable that the NRC would invite the University to discuss "violations" that have been "substantiated," but at the same time purport to describe its investigation as "ongoing." If the investigation is truly "ongoing," I suggest that the enforcement conference be postponed until the NRC completes its investigation so the issues may be discussed thoroughly and intelligently.
- 3) Although the University has been invited by the NRC to participate in an enforcement conference to discuss the alleged violations, the NRC has provided the University with nothing more than a two paragraph bare bone synopsis of the alleged violations. Without the evidentiary summary and report that supports this synopsis, it will be impossible for the University to adequately prepare for the enforcement conference and will effectively prevent the University from raising mitigation factors and developing other information which will help to determine whether any enforcement action is appropriate. It is simply unfair to invite the University to participate in an enforcement conference, yet deny the University the information and background material necessary to an effective and meaningful conference.

I look forward to hearing from you as soon as possible. If you have any questions, please do not hesitate to contact me.

Yours very truly,

DINSMORE & SHOHL



Kenneth S. Resnick

cc: Mr. John A. Grobe  
Chief, Nuclear Material Safety Branch  
U.S. Nuclear Regulatory Commission  
Region III

KSR:ymm

DINSMORE & SHOHL

# DINSMORE & SHOHL

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## WRITER'S DIRECT DIAL:

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APPEAL OF INITIAL FOIA DECISION

92AIE(91-533)

Rec'd 1-9-92

January 8, 1992

## FREEDOM OF INFORMATION APPEAL

### OVERNIGHT MAIL

Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Freedom of Information Act Request 91-533

Dear Sir or Madam:

This will appeal the denial of information requested by me as legal counsel for the University of Cincinnati under the Freedom of Information Act and Agency Regulations. My letter of request sent on November 27, 1991 was denied by James Lieberman, Director, Office of Enforcement on January 8, 1992. A copy of the denial letter is attached.

In the denial letter, Mr. Lieberman invoked the terms of exemption 7(A) and concluded that access would be denied to the requested documents. The explanation of that denial is insufficient in scope, lacking in legal basis and incapable of withstanding close scrutiny by the courts, should judicial de novo review be sought. In addition, the stated exemption is inconsistent with the position the NRC is taking with respect to an enforcement conference currently scheduled with the University of Cincinnati on January 29, 1992 at Region III headquarters in Glen Ellyn, Illinois. I incorporate herewith by reference my letter to Robert Hardzog, Chief, FOIA/LPDR Branch, Division of Freedom of Information and Public Services dated December 26, 1991.

In particular, there is absolutely no basis upon which "disclosure could reasonably expect to interfere with an enforcement proceeding" as the NRC alleges in its denial of this request. There is no reasonable possibility that the material "requested would reveal the scope, direction and focus of enforcement efforts or could possibly allow recipients to take

930106035-1 2pp.

Executive Director of Operations  
January 8, 1992  
Page 2

action to shield potential wrongdoing" because the NRC has already conducted its investigation and has come to the conclusion that the violations occurred. Indeed, in the NRC's own terms, the violations have been "substantiated." These violations will be the subject matter of an enforcement conference between the NRC Region III and the University of Cincinnati on January 29, 1992.

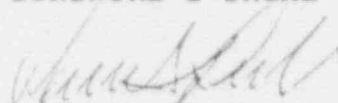
Furthermore, the information requested is essential to the University's preparation for its enforcement conference with the NRC. Since the NRC will ask the University to comment on the accuracy of the facts underlying the violations; it is simply unfair to withhold those facts from the University prior to the enforcement conference.

PLEASE NOTE THAT THE ENFORCEMENT CONFERENCE IS SCHEDULED FOR JANUARY 29, 1992. PLEASE NOTE THAT TIME IS OF THE ESSENCE WITH REGARD TO THIS APPEAL. I WOULD APPRECIATE IF THIS APPEAL WOULD RECEIVE IMMEDIATE AND PROMPT ATTENTION.

Please call me should you have any questions or need further information. I would appreciate hearing from you as soon as possible.

Yours very truly,

DINSMORE & SHOHL



Kenneth S. Resnick  
Legal Counsel for  
The University of Cincinnati

cc: Robert Hardzog  
Chief, FOIA-LPDR Branch  
FAX: 301-492-7617  
KSR:ymm



Rec'd 1-27-92

# DINSMORE & SHOHL

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January 21, 1992

VIA FAX 301/492-7617

Robert C. Hardzog  
Chief, FOIA-LPDR Branch  
Division of Freedom of Information  
Public Services  
Office of Administration  
United States Regulatory Commission  
Washington, D.C. 20555

Re: Appeal of FOIA Request No. 91533/University of Cincinnati

Dear Mr. Hardzog:

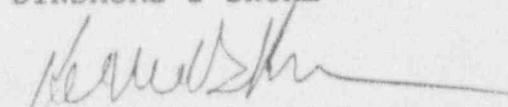
As a supplement to our telephone conversation this morning, I wish to remind you that my prior FOIA request on behalf of The University of Cincinnati sought the evidentiary summary of the alleged violations prepared by the Office of Investigations. The University does not seek any documents prepared by the Office of Enforcement that relate to any proposed action the Office of Enforcement may or may not take on the basis of the evidentiary summary prepared by the Office of Investigations. Since the Office of Investigations has completed its investigation, there is absolutely no legitimate basis under exemption 7(A) to withhold the evidentiary summary initially sought by the University in its FOIA request. However, to the extent that the evidentiary summary contains any reference to potential enforcement action, the University would agree to the redaction of such references.

This letter should be considered an addendum to the appeal filed by the University in connection with the above action FOIA request.

Please do everything in your power to expedite this appeal. As you know, the enforcement conference is scheduled for January 29, 1992. If you have any questions please give me a call.

Yours very truly,

DINSMORE & SHOHL

  
Kenneth S. Resnick

9301060856 218.



cc: Mr. John A. Grobe  
Chief, Nuclear Material Safety Branch  
U.S. Nuclear Regulatory Commission  
Region III  
KSR:ymum