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September 9, 1981

James Cummings  
Director, Office of Inspection  
and Auditor  
Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Dear Mr. Cummings:

As you know on September 4, 1979, Ann M. Tracey and I met with members of your staff, John Sinclair and Bob Gamble, as well as Region III inspectors, John Streeter and Paul Barrett.

We were advised by Mr. Barrett and Mr. Streeter that I & E's inspection will still take several months to complete. It was agreed that this inspection, which is crucial to the NCR's health and safety concerns, is the top priority at this time. Consequently, to avoid any parallel proceedings problems, or somehow inhibiting I & E's review, it is my recommendation that no criminal investigation begin until the civil inspection is completed.

At that time, an assessment should be made as to whether such an investigation is appropriate, and an investigation begun if it is so indicated.

Please let me know if you concur in my assessment.

Sincerely,

JAMES C. CISSELL  
United States Attorney

*Patrick J. Hanley*  
PATRICK J. HANLEY, Chief  
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cc: Dave Everett

ATTACHMENT 2

Judge Hoyt: Mr. Fortuna, I'd like to introduce myself and I am Helen F. Hoyt, an Administrative Judge with the Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, and my colleague I believe you know, Mr. Sebastian Aloom, also from the Nuclear Regulatory Commission in the General Counsel's Office. The third person that you see in the room here is Miss Ruthanne Miller who is our law clerk. Mr. Aloom and I were assigned by the Chairman, Jim Palladino, on May 6, 1983, to undertake an investigation into the allocations that are detailed in the November 16, 1980, memorandum to Chairman Palladino from Mr. Martin G. Malsch, Deputy General Counsel. That interview was titled, "Interview with Thomas Applegate." I believe you have been forwarded a copy of that this morning to review, have you not?

Mr. Fortuna: No, not the charter.

Judge Hoyt: No, I don't mean the charter; I'm talking about now the interview itself. Let me also show you the charter from the Chairman. It was addressed to Mr. Levine, the one I referred to as being that of May 6, 1983.

Mr. Fortuna: Yes, Your Honor, I've read this May 6, 1983, memorandum and I'll pass it back to you.

Judge Hoyt: Thank you. As you have noted in there, our assignment will be the focus...is the focus of our investigation whether or not the Director of OIA of the Nuclear Regulatory Commission and that office made a good-faith

effort to carry out their responsibilities in an OIA investigation of Applegate allegations investigated by Region III in the early months of 1980.

Mr. Fortuna: Yes, Your Honor.

Judge Hoyt: To anticipate any questions you may have concerning an attorney, I would like to assure you that you may have one here in this interview if you wish.

Mr. Fortuna: I have no desire for an attorney, Your Honor.

Judge Hoyt: We have elected to use a small dictaphone cassette recorder in lieu of making copious notes which I'm sure you as an investigator know sometimes it distracts one from the substance of the interviewees testimony is intended for our use only and will remain in our files and will be used to transcribe events you will tell us about in this interview.

Mr. Fontuna: I have no objections to such procedure, Your Honor.

Judge Hoyt: Thank you. We ask that you not discuss this interview with anyone in this Commission's offices or any other office. This request is made of you to ensure that what we discuss today will not...if it could influence any other persons that we may talk with about this investigation. Do you have any questions up to this point?

Mr. Fontuna: No, ma'am.

Judge Hoyt: When we have completed the investigation, we will report our findings and our recommendations to the

Chairman. I believe that Mr. Alost would like to begin the questions this morning and at this time I'll ask him to take over here.

Mr. Alost: For the record, would you state your full name and present position with the Nuclear Regulatory Commission?

Mr. Fortuna: Roger A. Fortuna, Jr., presently Acting Deputy Director, Office of Investigations, Nuclear Regulatory Commission.

Mr. Alost: Were you ever assigned to the Commission's Office of Investigation and Audit?

Mr. Fortuna: Yes, sir, I was.

Mr. Alost: Could you describe the dates and any titles and responsibilities you had during that period of assignment?

Mr. Fortuna: I certainly will. I was employed initially with the Office of Inspector and Auditor from approximately June 1975 to early 1978 to the then Director, Mr. Thomas J. McTierna, as a special assistant. Subsequent to that, for approximately 14 months I was employed by the Nuclear Regulatory Commission's Office of Inspection and Enforcement. I then returned to the Office of the Inspector and Auditor in approximately June or July of 1979 and I performed as the Assistant Director...I was in the function of Assistant Director for Investigations from that time period until approximately the first of March 1980.



Mr. Aloit: O.K.

Mr. Fortuna: Excuse me, 1981.

Mr. Aloit: I'm going to present you one document and asked you to identify the document and to state whether you have seen that document before, other than today.

Mr. Fortuna: This document is titled: The Office of Special Counsel. There's a date of December 29, 1980, a memorandum with attachments from Mary Eastwood, Acting Special Counsel, addressed to then Chairman, John Ahearne, and it attaches 100 plus pages. I have seen this document before; I've seen it in my capacity as Assistant Director for Investigations, in the Office of Inspector and Auditor.

Mr. Aloit: I'm asking you a series of questions now dealing with the general investigative policies of the Office of Investigation and Audit and I asked you to answer them based on your best recollection.

Mr. Fortuna: Yes sir.

Mr. Aloit: O.K. Does OIA have any written policies regarding the initiation, conduct, or disposition of investigations?

Mr. Fortuna: I'll speak to the time that I served in OIA

Mr. Aloit: That's true.

Mr. Fortuna: During that time period we had no written policies or procedures regarding the initiation, conduct or disposition of investigations that fell within the jurisdiction of OIA.

Mr. Aloit: Did OIA have any unwritten policies regarding the initiation, conduct or disposition of investigations?

Mr. Fortuna: I think I could easily generalize it as being the following of generally accepted investigative practices and procedures that are adhered to in a general sense throughout the federal government's law enforcement establishment.

Mr. Aloit: As they would pertain to the Nuclear Regulatory Commission.

Mr. Fortuna: By that I mean quite simply we weren't authorized to administer polygraphs to surveillance or those sorts of, if you will, criminal law enforcement techniques, but we adhered to some generally accepted investigative practices, such as assuring that an investigation was properly scoped, that you prepared yourself before you conducted an interview, many of the things I'm certain you prepared yourself before today, made a concerted effort to have two individuals, investigators, present during an interview, tried to write up our interview notes, if we were doing the processes properly as possible and reducing that into a written format--statement of some sort--and things of that sort. Did I explain that clearly enough?

Mr. Aloit: Yes, you have. We probably will develop this a little more further.

Mr. Fortuna:        Alright.

Mr. Aloot:           Given the absence of any written or specific unwritten policies, would you explain based on your recollection now how OIA investigations were initiated? Were they self initiated or was...?

Mr. Fortuna:        I'd say, by and large, fairly routinely, the office self initiated. By that I mean...I think I'll have to give a little more background to help us all understand, also to refresh me. The Office of Inspector and Auditor is divided into two groups, there was inspection, excuse me, investigative group and an audit group. I had no jurisdiction over the audit group. The investigative group was charged with the conduct of investigations pertaining to the integrity of the NRC process, regarding, for example, individual employees. Getting that down to its simplest form, if an issue was raised regarding the abuse of time and attendance, it would be very routine for our office to involve ourselves in this type of case. We'd involve ourselves in overtime fraud, travel fraud, fraudulent claims by employees, threats, things of that sort pertaining the NRC mission. Additionally, we were charged with the responsibility of reviewing and investigating charges that had to do with, if you will, the poor performance of or malfeasance or misfeasance of individual NRC employees within their

jobs, as an example, this Applegate case would be a type of thing that we would handle, so our jurisdiction fell over NRC employees.

Mr. Aloit: When you say that the investigations were self-initiated, does that mean that the office basically read all the documents that flowed through the agency and said, "We should investigate this"? or...

Mr. Fortuna: No, what I meant by that quite simply was clearly for us to be aware of the fact--OIA--that Sam Smith perhaps cheated on his time and attendance. Routinely, an individual might phone up the office or come over in person and request an interview with myself for one of the individuals employed as an investigator and say something to the effect: "I'm a coworker of...and in my view Mr., Mrs. or Ms. such and such has done something wrong." Allegation.

Mr. Aloit: So in essence there was a referral of information, not necessarily request for investigation.

Mr. Fortuna: Right. I'm contrasting that to the present system where if for whatever reason it came to the attention of an office director, division director, or branch chief that individual may have passed on that information that he acquired from one of his or her employees and said, "This information has come to my

attention" would be in memorandum form "and I request that your office take a look see." I would call that more formal.

Mr. Aloit: Yes.

Mr. Fortuna: The one I would characterize as self-initiating: an individual walked off the street, mentioned something to us, we would not necessarily go back to the office director, division direction, and say, "Before OIA will do something, we asked that you ask us to do it." We had the authority to self initiate.

Mr. Aloit: Who made the decision to initiate an investigation, generally? Was it a line inspector, or did you have to receive the approval of assistant director, or even higher?

Mr. Fortuna: Oh, as in any organization clearly someone in the management chain would have to have a discussion with an individual investigator, or if the allegation or the charge was brought to one of the people on the audit side of the house for whatever reason, those people would bring the information to the investigative side of the house and, quite routinely, it would be very informal conversation, as an example, a telephone call: "I'd like to speak to an investigator." The secretary would take that phone call and advise me in my capacity as assistant director or advise Mr. Cummings in his



capacity as director and we would ask one of our investigators to please set up the time when this individual could come on over and have a chat. I'm giving examples that are fairly routine. And many times the individual on the other end of the phone would say, "Well, I don't care to give you any specifics until I arrive," so, I or my supervisor, Mr. Cummings, would have very little idea of what the information was going to be. At the end of that initial interview, our investigator and the particular person bringing information forward a discussion would routinely be held and perhaps a short memo written up: on such and such a day and such and such a time, Mr. Smith came in and spoke with Investigator O'Toole and provided the following information. That would quite logically generate a conversation between the investigator, the supervisor, myself or my branch chief, and Mr. Strickler, and perhaps Mr. Cummings -- just depending on the significance of the charge or the allegation.

Mr. Aloit: When you received this sort of information, was there a policy in OIA that if the information indicated possible problems within the jurisdiction of another office, was there an OIA policy about notifying the other office of the receipt of these allegations or this information, and, if so, at what time would the other office be notified?

Mr. Fortuna: The answer to that question is, of course, yes, depending on the type of allegation. I've chosen as my example or examples alleged employee misconduct. Quite simply, that clearly fell within the jurisdiction of OIA and no other office. Therefore, there would not need be any communication with, on a routine basis, with another office.

Mr. Aloit: Let me give you a hypothetical...and ask...based on your past position as a assistant director from Investigations if an investigator or a member of OIA received information basically alleging problems in the construction of a nuclear power reactor by a licensee or a licensee's contractors based on your formal position at OIA, would it had been proper for the line investigator not to communicate receipt of those allegations to, for example, I&E or NRR?

Mr. Fortuna: If we're talking health and safety issues, we're talking outside of the purview of OIA as far as an NRC employee integrity issue and clearly we should  
\_\_\_\_\_ -- I'm talking now from the OIA perspective -- should get that type of information to the appropriate office and that would be in that time period the Office of Inspection and Enforcement who then had control over all the Regions. That makes good common sense; that wasn't written anywhere, but that's the way that it would have, should have been handled if we're talking a "technical issue."

Mr. Aloit:            Alright.  Going on to...let's assume we get past the theory.  You received information...

Mr. Fortuna:          Excuse me, let me interrupt for one second.  I'm assuming in your hypothetical we're not speaking to an individual within the agency because it would be most unnatural for someone in the Office of NRR or I&E to OIA a ring and say that this problem in plant blue clearly \_\_\_\_\_ in their report structure they would be telling their own folks, so I assume in your hypothetical...someone outside the agency.

Mr. Aloit:            A member of the public.

Mr. Fortuna:          Yes, we take that information and should communicate that in a prime fashion to the...

Mr. Aloit:            Your response, was that personal or would it have been an expectation that you would have had for any investigator in OIA when you were the assistant director.

Mr. Fortuna:          I believe that not only would have been my personal opinion but opinion in formal policy enunciated to folks that worked with me in that office.

Mr. Aloit:            O.K. and this...

Mr. Fortuna:          And Mr. Cummings, too.

Mr. Aloit:            Alright.  Now, assuming you develop or decide to conduct an inspection, could you

Mr. Fortuna:          Investigation.

Mr. Aloit: Or investigation, could you describe the general procedure that the office went through to "scope" out an investigation?

Mr. Fortuna: I think it would perhaps be useful if we focussed our attention on to what type of investigation and I'll give you a little background. Generally speaking, we did two type of investigations: there was the employee misconduct and then there was the...regarding their functioning within the NRC time and attendance, overtime, what have you, then, there was the, as became more prevalent later on in my tenure, my second tour through OIA, the information coming external to the agency within the agency. Then, if we had an allocation that spoke to Sam Smith, Resident Inspector, at plant Green is not doing his or her job, or his job, in my example, Sam Smith, then, we were looking at it from an integrity perspective but not from a cheating your employer but from a...did that person really do a good job.

Mr. Aloit: Let's take that example.

Mr. Fortuna: Alright, how would that happen?

Mr. Aloit: Yes, how would you "scope" the investigation? Who would be involved in determining what questions to ask and what areas to investigate.

Mr. Fortuna: It's very clear to me that those type of allegations are, were more complicated. It would involve not only

the individual or individual investigator or investigators and myself as assistant director but also it would involve Mr. Cummings as director of the office. Routinely, in those type of cases, best of my recollection there were far fewer of those than the garden variety: employee misconduct type of case and what have you. Sit down in Mr. Cummings' office, discuss, normally these types of allegations would have paper behind them, some sort of letter, some sort of, perhaps intervenor group, assisting the person or persons making the allegation so there would be a packet and as an example I make reference to the document that I spoke to you about a moment ago, the Office of Special Counsel, I think from Mary Eastwood to Chairman Ahearn, so there would be something to read and analyze and step 1, quite simply, would be to go in and talk with the boss and say, "This has come in as you know. We've had x number of people available. How many folks do you think it will take to work this one? One, two, three, what have you? What's our schedules look like? What do we have owing on other investigations and cases? And it's Smith. And Jones. We'll use those two people. We probably won't be able to open on it for three or four weeks, what have you. Fine. That's a prioritization. A formal prioritization. Step two, let's get Smith and Jones to read the



paperwork; we'll skim along and read it too and have them come back to us with a ledger A, has ten allegations, they are: one, two, three, four, right down the line. Step one, a meeting two or three days later, depending how voluminous the document is. That's one mold; another mold may be the telephone call and it is...before we know what we're really going to be able to do on this thing, we think Smith ought to hop on a plane and talk to the alleged or perhaps the alleged will be town, we can have the alleged come out to our office space and conduct an initial interview, if you will, focus the charges and the allegations and help us understand what the concern is on the part of the alleged. So, in comes the package and there's something to analyze or in comes a phone call and we need to talk to that individual to find out what the problem is, or the allegation is.

Mr. Aloit: Following these kinds of meetings to flush out the investigation, was it a routine practice to reduce the decisions to writing? Or, was it routine just to leave it in the air?

Mr. Fortuna: I would have to say that by and large it was not routine practice to reduce many of these decisions to writing these formal things.

Mr. Aloit: Is there a reason for that?

Mr. Fortuna: I can offer my perspective on it; I think quite simply it was press of time, resources, things of that sort and I don't know how you operating this particular endeavor that you're involved with but even in the Office of Investigations where I presently worked where we do have some policies and procedures in place often times we are unable to, again, because of the press of business sit down and say you're up to phase 1 as of Thursday afternoon at 3:15 p.m., Mr. Fortuna, Mr. Hayes, investigators 1, 2 and 3, had a discussion wherein we determined that step No. 1 would be... I have to say that a lot of that is kind of intuitive information, fairly routine, and done time and time and time again.

Mr. Alout: I see.

Mr. Fortuna: What would be more typical in my view of written would be a fairly complicated case where the supervisor has said I don't have the time to read this in the detail that you can, Mr./Mrs. investigator. List out for me the allegations and come on in and we'll use this as a talking paper and that may find itself in the file. There could be, within the investigators own work file, sheets of paper, perhaps even typewritten, where that individual done analysis of a 100-page document and gotten it down to 3 or 4 pages of highlights. Something like that would not be uncommon but there was

no rule #1 or rule #2 as before you come in to the boss you have an agenda and list out the allegations and behind each allegation you write down what you're supposed to be doing regarding each one. Nothing like that.

Mr. Aloit: Mr. Fortuna, are you familiar with an Arthur Schnebelen?

Mr. Fortuna: I certainly am.

Mr. Aloit: In what capacity are you familiar with Mr. Schnebelen?

Mr. Fortuna: Mr. Schnebelen came to the NRC, I believe, also in 1975 under Mr. McT\_\_\_\_\_, Office of Inspector and Auditor. Mr. Schnebelen was employed as an auditor and, I believe, sometime in the 76-77 time frame, perhaps even earlier, serves as a branch chief on the audit side of the house, reporting in to a assistant director, Mr. Messenger. I think he's in that capacity today.

Mr. Aloit: O.K.

Mr. Fortuna: Mr. Schnebelen upon my departure from OIA in early 1981 -- short period after I left -- performed the function of acting assistant director for Investigations and just around the time period when I left I believe he was special projects or special assistant to Mr. Cummings, the director.

Mr. Aloit: Let me see if I understand this.

Mr. Fortuna: Alright.

Mr. Aloit: You previously stated that OIA was divided into two areas: investigations and audit.

Mr. Fortuna: Correct.

Mr. Aloit: And Mr. Schnebelen's background was in audit?

Mr. Fortuna: That's correct.

Mr. Aloit: As acting director or assistant director for Investigations, that would be responsible for the investigations and not the audit side?

Mr. Fortuna: Right.

Mr. Aloit: O.K. Let me ask: Was it common during your tenure at OIA for someone like Mr. Schnebelen, assistant director, or someone with a background in audit, or Mr. Cummings, himself, to participate in an actual, field investigation?

Mr. Fortuna: Ah, I can't...Let me speak to Mr. Schnebelen in its audit role. Many of the overtime abuse cases and the time and attendance cases required an assist to the investigator from an auditor. The auditor is much more familiar with T&A work, and things of that sort, so it was not uncommon to team an investigator and an auditor on inhouse integrity cases. That was fairly routine and I imagine continues today, the same way that OI where I presently work will team up an inspector or two with an investigator. One has a technical expertise that the other doesn't. One enhances the other by way of background in getting to your question. It would

not be routine for an auditor (in fact, it just never happened while I was there) to run an investigation, if you will, as the lead person but rather as an assist. And it was not routine, in fact, I don't believe that it ever happened, where an auditor would, if you will, be in the investigative supervisory chain, any more than an investigator would be in the audit supervisory chain.

Mr. Alcott: I see.

Mr. Fortuna: Now, getting to the second part of your question, I believe it was the common practice for, in my tenure, an investigative supervisor, like myself, or Mr. Cummings, to involve himself in investigative field work. And the answer to that question is on occasion Mr. Cummings did involve himself with some field work in investigations. I cannot recall if it was it would be very minimal my involving myself in the field work, the conduct of the field work in investigation other than on a rare occasion. Now, I've got the exception; I've answered my own question where we were just so short handed and a particular interview had to be conducted because an individual would only be available on a very short time period where I would involve myself, and rarely in the field would be more common. Here at Headquarters if someone was in town or unless passing through and there was nobody else to talk to



the person there was needed to be a second person, a two-on-one type interview which is in my view the best way to conduct an interview. Then, yes, occasionally, I would be involved.

Mr. Aloit: What about the situation where you had four available investigators? That would be a somewhat uncommon thing to have?

Mr. Fortuna: Oh, yes. I don't think that's a sound management principle, in my view.

Mr. Aloit: O.K. Let's get to the stage where...again, talking generalities at this point, where the field investigation has been completed, who's generally responsible for writing the first draft of a report?

Mr. Fortuna: The investigator would be.

Mr. Aloit: The principal investigator. And...

Mr. Fortuna: Good point. Correct. There could be a lead and then assist. Those people would team up together and one would have, well, I'll be very simple; it makes good common sense: Mr. Aloit, you're working for me; you're the senior investigator on the case. I hold you responsible for that document and that item. There's a junior investigator working with you; I recommend that you monitor his work product and ensure that it comes in together.

Mr. Aloit: Could you describe the chain of review; oh, excuse me. Change the tape.

Mr. Aloit: Side 2 of Roger Fortuna interview, May 11, 1983. Let's continue. You just stated who was responsible for writing the first draft. Could you describe the general chain of review for investigative reports?

Mr. Fortuna: I will for the time that I was in the organization. When I was in the organization, we had a branch chief as I mentioned earlier, Mr. Strickler. I do not recall when Mr. Strickler left the NRC and whether or not he was still on board just as I was leaving, but for most of my second time through OIA Mr. Strickler was in there as a branch chief and it would have been, it was, not would have been, his responsibility to review, if you will, first drafts of reports. It wasn't anything else, and it could be more than a first draft. If an individual investigator, a lead investigator, was involved in a bigger case, we used to try to get a feel for where we heading, heading because it was important to make sure that we had a broad enough scope, and that we were going deep enough and that we were asking the right questions, because you wouldn't want to let a case get down close to the end and get a first draft and say, my golly, I don't understand why you didn't talk to these other folks. I don't understand why in interview #3, and now you're down to interview #25, that you didn't ask the following four or five questions. What we try to do, and, again, limited

resources in the ideal world lost and conflict would be if at all possible when an individual investigator and investigators came back from a field trip; as an example, ten people in four different states and they made their swing in Illinois, at a minimum Mr. Strickler, branch chief, would sit down with people when they came back from Illinois and say, "Can you write it up for me?" It was maybe yes or no, so you could look at a write up and see where the case was heading. Or, if you don't have the time because you have to catch the next plane to get to California because we're working deadline, perhaps a Commission deadline, or a self-imposed deadline, tell me, talk to me where you are so far. Talked to who, those four people? Fine. Roughly, what did they say? Fine. And you can talk out where they were and you might say, Mr. Strickler, and if it was important enough, Mr. Strickler would involve me, before you head out to California. On your way back, hit Chicago and get off that plane and ask four or five more questions of interviewee #3. So, we got phase 1 complete and keep going out to California. So, in addition to, if you will, the first draft review, we try as best we could to keep in touch with our folks and find out where they were in the process.

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Mr. Aloit: During this, ah, let's call it the interim review, was it common during the tenure at OIA for the director of the office to participate in these interim reviews.

Mr. Fortuna: Yes, I think it would be. Now, common, common in the sense if it was a bigger case.

Mr. Aloit: Not a run of the mill time and attendance type of thing?

Mr. Fortuna: Yeah, if it was a bigger case, it certainly was, I think, a common practice for him to involve himself. That makes good sense.

Mr. Aloit: During your tenure at OIA, was it a common practice to permit the subject of an investigation (let's assume it's a large scale investigation) to review the OIA report prior to it's official release?

Mr. Fortuna: The report?

Mr. Aloit: Let me clarify this: Do you make a distinction between the investigative summary and the cover sheet summary, the report or...ah

Mr. Fortuna: O.K. It's going to take us a little time. As I recall the way the reports structured would be cover sheet, Office of Inspector and Auditor report, subject: de da, Investigator 1, 2, 3, 4 Supervisor de da. Turn that over and you have the summary. And I may be confusing what we do now in OI and what we did in OIA. So, if I'm wrong, I stand corrected. Excuse me; on top



of that cover page should be a transmittal letter: Dear user, recipient of the report, enclosed herein pursuant to request of, or due to initiation, or, of, please find the report of... And perhaps a few paragraphs describing the issue and perhaps describing what we found. Then came the cover sheet. Then would come a summary section, 4, 5, 6, 7 pages. Bottom lines: executive summary; so, if the Commissioners had an interest in reading the report, they wouldn't have to wade through 100 pages of exhibits and 50 pages of testimony or interview statements. That would be the summary section. I believe we also used to have a predication or scope section which, excuse me, would have come before the summary section. Here's what we're going to; Here's what we did do -- scoping it out. Then would come your summary, then would come your details and the details would be really the body of the report if you'd care to indulge yourself in a couple of hours of punishment, self punishment, and that would be interview #1 and interview #2, interview #3, da da da da. And attached to each interview statement would be pertinent documents.

Mr. Aloit:           Yep. Getting back to the question, was it common to

permit subject of the investigation to have an opportunity to review the OIA report and if so which parts?

Mr. Fortuna: The whole thing? No! Absolutely...

Mr. Aloit: By whole thing, you refer to...

Mr. Fortuna: All those things I've described: the transmittal letter, the cover page, the synopsis, the summary, the detail section, the exhibits.

Mr. Aloit: It was not common practice then.

Mr. Fortuna: No, sir, not on my \_\_\_\_\_.

Mr. Aloit: What happened...let's take a situation where the report is about another NRC office, would it be common during...

Mr. Fortuna: That would be in audit.

Mr. Aloit: Well...

Mr. Fortuna: I'm sorry; I'll let you finish your thought.

Mr. Aloit: Yeah, I was thinking of, ah, let's say an investigation that's predicated on an allegation of wrong-doing by a member of a particular office.

Mr. Fortuna: Uh huh.

Mr. Aloit: Would it be...

Mr. Fortuna: Let's see if we can get a little more specific. Allegation comes in that Joe Smith is cheating on time and attendance. Several supervisors in that chain, section chief, let's pick a GS-10, 9, 8, whatever, it

could be a section chief in that \_\_\_\_\_, it could be a branch chief, in that individual alleged wrong-doer's management chain, section chief, branch chief, division director, office deputy director and a director, O.K., we would not...now if it came to us through that office director, section chief, or branch chief, they had to know what we were up to, they brought the allegation to us. Routinely, that individual or some individuals in the management chain would have to be interviewed. Again, good common sense. Those folks would be aware of our interview; they'd know the investigators were in their spaces talking to different people in their organization. They'd be aware in a general sense of what we were up to, and as the judge admonished earlier on, we'd appreciate a request that you not discuss the contents of this interview outside of this room. Well, that's a request. Some people do live up to that request and others do not. So, word gets out as I'm sure word will get out eventually about this endeavor. I contrast that against a formal, hard copy draft or final report. Through my tenure I instructed my folks, in fact, they needed no instruction because all of those folks had some investigative experience not to share that information with "the subjects of the investigation".

Mr. Aloit: Next Step. The subject is our GS-9. What about the office director whose probably by now, if he \_\_\_\_\_ to OIA, is clearly aware of it, or during the process may become aware of it, and wonder what's going on over here in my organization? And other people that work for me that I am aware of nor myself, provided, if you will, first draft, early draft, dirty draft, whatever you have, to an office director. If an inquiry would come in, is it true that you are over in my office space conducting an investigation if that phone call came to one of my investigators or to myself, we would acknowledge the fact (this is where the office director didn't make the referral or the division director or branch chief, or what have you) and try to keep the information as limited as humanly possible. Again, the rationale is quite simply don't let the cat out of the bag, the "subject of the investigation may somehow find out information and be able to fashion a story around or fitting between testimony of other people or thinking very negative thoughts, an individual supervisor may have had this wonderful working relationship with the individual and be convinced that that alleged wrong-doer could do nothing wrong and may unfortunately through some sense of loyalty, or what have you, communicate what it was that we were up to to

that individual. So, the answer to your question is no. If the question was asked from a supervisor, Yes, we are on your space, we are conducting an investigation, we can't tell you too much more about it until it is over.

Mr. Aloit: Turn to the Applegate matter. When was the first time you learned of allegations relating to Zimmer or Region III and their investigation?

Mr. Fortuna: Let me start with the document that you asked me to identify earlier. I know that in early December I was aware of this communication between Mary Lawton and Mr. Aherne from the Office office of Special Counsel. I see that its got a date or state stamp on this

particular

copy wherever it came from of December 29, 1980 but I absolutely, for sure, know that I saw this document earlier on at least a couple of weeks, no, it was before Christmas and after Thanksgiving. As I recollect this came into the agency. I know we got a copy.

Mr. Aloit: Yes, to assist you I will point out....

Mr. Fortuna: Excuse me, I' looking at the ... here it is. I think I've got it, December 10, 1:36 p.m., Washington Office of Special Counsel, OK, yeap, here it is. The transmittal to the GAP pack is being sent by Mr.



Clark, Director to, excuse me, not Mary Lawton, Mary Eastwood, Mary Lawton is another fine attorney at the Justice Department, December 10, and then they put a cover letter on it and shipped it to our agency on December 29th so they must have spent a couple of weeks analyzing it or whatever. I know I saw a copy of this GAP package minus this Office of Special Counsel cover letter. How or why or when or where I got it beats the devil out of me.

Mr. Alout: To your best recollection today, did you, did Mr. Cummings or any other official in CIA relate to you in February of 1980 to see the many allegations regarding Zimmer or an individual by the name of Applegate, or Region III?

Mr. Fortuna: Oh, did Cummings talk to me about that?

Mr. Alout: In February of 1980?

Mr. Fortuna: Oh, I'm sure he did. Because once... let me do this a little differently... forgive me for forcing my poorly organized mind on your efforts here. When this package came in in early December as I recollect, I remember talking to Cummings about it; I remember talking to David Gamble about it. I don't remember whether Strickler was around or not. I think he had left the agency. I remember talking to John Sinclair about it and I remember informally cruising through it for



about a half hour or 40 minutes. I remember asking Gamble to take a looksee at it for awhile just to see what it was like. This is one that comes in from the outside. This would be one where I wouldn't at all been surprised as the case would ultimately be where the Commission would say OIA start looking at it, because I anticipated that might happen. As I recollect Cummings recollected the same thing. We were trying to get a leg up on it. We might as well read the package and see what it has to say, so, if the job comes our way, we'll be a little more up to speed.

Mr. Aloit: Let me direct your attention to a period 9 to 10 months earlier in December, 1980 and ask if, to the best of your recollection, there was any mention by Mr. Cummings or any other individual in your office, about a telephone allegation from a Mr. Applegate regarding Zimmer or ....

Mr. Fortuna: I'm sorry, yes, yes, I had it in 1981. This was in February of 1980. I don't remember the dates, if you say February it may be so, but I know its before the date of this document that is before me. I remember Cummings talking to me about being on the telephone with a man by the name of Applegate regarding some Zimmer stuff.

Mr. Aloit: Do you remember the approximate dates of this

conversation?

Mr. Fortuna: Oh, no. I'm sure don't; I really don't.

Mr. Aloit: It was prior to receiving the GAP petition in December of 1980.

Mr. Fortuna: Of that I'm convinced of, yes.

Judge Hoyt: Would you tell us how long prior to the December '80 receipt of this package that you talk about

Mr. Fortuna: The telephone call?

Judge Hoyt: Yes.

Mr. Fortuna: No, I can't. What I could do, I don't know how valuable this would be ... if I rooted through OIA files somehow, some way, I'm sure, Cummings said he talked to him. He must have it written down on a note or something, I would think,

Judge Hoyt: Can you relate it to anything that occurred at that time? Still in the winter..., spring?

Mr. Fortuna: I sure can't. The only way maybe if there's a file with a piece of paper it may trigger it. Golly, for all I know I hope to God that its the case that maybe somebody might have scratched a little penciled note and threw it in the file....

Mr. Aloit: Does February ring a bell?

Mr. Fortuna: No, not really..., not really.

Mr. Aloit: Let's continue with your discussion of your recall of the prior discussion with Mr. Cummings regarding the

Applegate telephone call.

Mr. Fortuna: I can remember going into Mr. Cummings' office on some other issue; I don't know what the heck that issue would be and he was on the phone and I was about to do a quick about face and duck out the door and he waved me to the sofa, which gave me the signal that he was almost done; it's a call that I don't need to get out of the room on because it's not the Chairman or one of the Commissioners... stick around, it's almost over type of signal, and I recall when he finished up with the telephone conversation, he said that was a fellow by the name of Applegate talking about Zimmer. So, I only wish now that I had listened up more carefully. I heard the tale end of a conversation. Lord knows what duration, and I heard the Cummings half of conversation. Again, I'm not making this up, I'm just guessing, maybe I had a piece of paper in front of me that was the issue of the day regarding me and Cummings and I am sure I was reading it and rehearsing my lines so I could get my thoughts to swing in my direction, and I really wasn't paying much attention to what he had to say, but when the phone went down I do remember Mr. Cummings speaking that this was the fellow Applegate who had something to do with Zimmer .... so forth and so on.... Let me see if I can squeeze any

more out of that. I think I remember Cummings saying to the guy, if you got anything in writing could you provide it to me. That rings a bell, but that's a real distant bell. That's it; anything other than that I'd really be ... , I'm stretching as it is now.

Mr. Aloit: You recall the discussion whether any matters should be referred to another office?

Mr. Fortuna: Well, I'm trying to give you what I remember verses what other people told me.

Mr. Aloit: I see.

Mr. Fortuna: And the problem is its like TMI, after you went up and interviewed the reactor operators the third time, they were not sure what they remembered that day and what they read in someone else's transcript. I just happened to know, using an illusive sense of the word, that someone else from I&E, that now happens to work for me, Bill Ward, telling me long after the fact that Mr. Applegate had talked with him and that I think this is after he had talked with Cummings, but that's all through handed stuff and I think its better that you got that kind of information from the horse's mouth.

Mr. Aloit: Do you recall any other individuals who may have known about the phone calls or that Mr. Cummings may have talked to during this previous contact with Mr. Applegate?

Mr. Fortuna: No, not really. If you've got to help me, I know that you want independent recall, but if you've got a piece of paper or something, maybe it would jog my memory.

Judge Hoyt: Mr. Fortuna can you tell us when Mr. Cummings was speaking to Mr. Applegate? What would you say was his tone of conversation with him; was he impatient, was he patient, was he asking questions, was he aggitated to get off the line because he had you there to talk to about other matters? Just exactly what was his general \_\_\_\_\_ of conduct there?

Mr. Fortuna: I can't really give you that kind of detail on that particular conservation. If it's of any value to you, I can to the best of my... the way I view Mr. Cummings, give you a feel for the way he talks with people most of the time, if you will. He's a talker; he a talker; he's not abrupt, I'm far more abrupt than Mr. Cummings is on a telephone call. That's just my nature. Mr. Cummings is not, he a talker. That's really about all I....

Judge Hoyt: If he was conducting this natural way, when does....

Mr. Fortuna: Let me do it a different way...

Judge Hoyt: All right.

Mr. Fortuna: Had he said something, even though I might have been in concentration in another piece of paper, with a cuss word or raising of his voice, something that in my view



was out of his character, I'm sure I would have noticed it and I'm sure I would have remembered something like that. I don't recall anything like that whatsoever, If that is of any value.

Mr. Aloit: Now going forward in time until the date you first saw the GAP petition, can you describe the events that took place at OIA since that time into, let's say, into mid-January to attempt to scope out the events.

Mr. Fortuna: I think I can do that with a far more degree of certainty than the last answers I gave you. As I said I saw this piece of paper sometime before Christmas. I'll say early December. I believe that I asked John Sinclair to take a look at it and see what he thought about it, and it probably would, and again I'm guessing, would have been along the line that he might get this so he might as well start reading it and tell me what it's about. Now I'm going back to custom and usage as opposed to case specific. Give me a list, tell me what it's all about, if it's 10 allegations lay out those 10 allegations for me and we'll talk about it. Christmas time came. John went on leave, I went on leave, the other people went on leave, and I think it's the December 29, '80 or that January 4-5, 1981 time frame when it came in officially. I see here Mary Eastwood to John Ahearne, December 29, 1980.



Now I'm guessing, but I'll bet you I'm right, that would have probably filtered down from the Commission the first of the year or a few days later. Then it's really in the system, the NRC system, and I think Dave, John might have been on travel or may have been doing something else, John Sinclair, excuse me, and I probably would have said something like, hey, Dave, take a look at it now; it seems to have more of a sense of urgency.

Mr. Aloit: Dave?

Mr. Fortuna: Yes, David Gamble, yes sir.

Now, sometime in January, the dates may be wrong but I think it's close enough. You know what I'm struggling with, perhaps you can help me. We got this job, OIA, and for the life of me I don't recall how we got the request. Now, in the Office of Investigations, we require folks to write us a piece of paper requesting an investigation so we have an \_\_\_\_\_ or we write ourselves a little note saying this is a self-initiated job based on what have you, we give it a case number, we assign it to an agent, and we begin our work. I don't know... I know that we sat down sometime in early January and began to discuss scoping out this project, but for the life of me I don't recall how it was that we came to get the job.

Mr. Aloit: Mr. Fortuna do you... refresh your recollection... I... told you that on or about December 15th that Chairman John Ahearne had sent a memo to the Office of Inspection and Audit requesting an investigation consistent with this Office of Special Counsel letter, or, excuse me, I should say the GAP petition, had been sent to the Office of Special Counsel....

Mr. Fortuna: OK, well, alright, that must be it... that makes good sense.

Mr. Aloit: Unfortunately I don't have a copy of it with me. I thought we had it in this package.

Mr. Fortuna: Maybe I just plain read over it when I thumbed ....

Mr. Aloit: I do not believe so. I think it was on top of this....

Mr. Fortuna: That does make good sense. In other words, we had a request from the Chairman to get started... alright, so we did have some formal piece of paper... I still do recall earlier on though, my dates may be off, we saw this piece of paper informally... that's probably round one, round two is the formal request, now we are busy as beavers comes the Christmas holidays, back the first of the year we had a meeting, and, of course, this would have been a very major ....

Mr. Aloit: When you say we had a meeting ... who was at this meeting?

Mr. Fortuna: Now I'm talking of a more formal meeting, a scoping

session, Mr. Cummings, myself, Gamble, Sinclair....

Mr. Aloit: Was Mr. Schneberler at this scoping meeting?

Mr. Fortuna: I don't remember to be honest with you ... I really don't remember.

Judge Hoyt: Could I have that date again?

Mr. Fortuna: The first part of January ... that's the best I can give you ... maybe ... I doubt very much it had been late December because there wouldn't have been all the players on board because of the holidays. If Schneberlen was there, I sure don't recall. Let me put it this way. I'm more bottom line oriented, as hard as it is to believe.... I'm not that much of a talker ... based on today, maybe I am. Cummings' got a tendency to spend more time in meetings than I would have. Something that I am describing right here and now could have gone on for an hour or an hour and a half and I could take away 10 minutes worth of the information, and we did have many meetings of this type and other types that probably, after all was said and done, was really five or ten minutes worth of information to give to the people to say let's get charging on it. Now I'm describing one of those types of meetings that I don't remember Schneberlen being there. He could have been. That's why I'm struggling with what role he played in the

office. Sometime in this time frame he was there as a "special projects person" and I do definitely know that before I left in early March that he became involved in this matter, and one of the reasons that he did become involved was because I was disengaging from OIA and going off on an inter-governmental personal act detailed to the Pennsylvania Human Relations Commission, Commonwealth of Pennsylvania, so that if Cummings was fitting him in as I was disengaging from all my other projects in OIA for my tour of duty. Now whether Schneberlen was involved in this "scoping meeting" and for all I know there may have been a couple of scoping meetings, I don't really recall that, but I remember quoting "big one" regarding this project in early January 1981. I do remember Gambles, Sinclair and myself and Cummings being at that meeting.

Mr. Aloit: Before we continue I think that we are going to have to change that tape.

Mr. Fortuna: OK.

DISCUSSION OF WHAT ROLE OIA WOULD PLAY  
IN LOOKING AT SEPARATE ISSUES  
Side 1 of Tape 2 of Fortuna Interview  
May 11, 1983

ALOOT: Mr. Fortuna, you were prepared to describe the discussions that took place at the first scoping meeting of the Applegate investigation. Would you continue now.

FORTUNA: Yes sir, well, I remember three or four things that I took from that meeting very clearly, very definitely, very bottom line, and I really don't recall the reiterations in the back and forth. But it was clear that the gap group and Mr. Applegate was concerned with the performance of Region III regarding their investigation of his particular allegations. It was clear from, this should refresh my recollection, from the \_\_\_\_\_ memo that we were going to work on that project. As I recall, I just skimmed it quickly, for about, oh, 5 or 10 minutes before we began this interview, there were multiple concerns, multiple charges, multiple allegations. In my first reaction was other than, hum, I'm wondering why it is that Mr. Applegate is going down to the Office of Special Counsel because he is not a government employee and I had thought, in my limited understanding of the fact, that I did cruise through the statutory background of the Office of Special Counsel and how it was set up because I am an attorney and it really didn't relate to the investigation program. I wondered why he came through the Office of Special Counsel. I only thought that was for government whistle blowers? It was curious, I remember cruising through that and talked about



that briefly and I said that I recollect the Office of General Counsel got involved in that issue as was appropriate.

FORTUNA: The second thing that struck me is that I was generally familiar with the chart of the Office of Inspection and Enforcement, familiar with the chart of the Office of Inspector and Auditor; it seemed to me at first blush that some of the concerns that Mr. Applegate raised were kind of non-NRC related, thief, time and attendance. fraud, pilferage of belt buckles, drinking. That's about all that I can remember right now. And, as we were scoping in saying what is it that we are going to do, what we were going to do is essentially is did Region III do a good job? The first thing that struck me and struck the people in the room was let's make sure that what doesn't belong to the NRC got to the right people, people that had jurisdiction over it. That would be one of the things that our investigator or investigators should be looking at when we were measuring the performance, if you will, of the Region. We got into a discussion and the bottom line, in my view of the discussion was, how will we measure this performance? Are we involved with determining whether or not Mr. Gerald Philip did a good job, are we involved in measuring the performance of Region III (Philip and the supervisory chain doing a good job), are we involved in measuring the performance of the "investigative program of the Office of Inspection and Enforcement"? Let me double back to give you a little



background, and I think it's valuable. In addition to our garden variety in plain integrity cases, we had in South Texas, which is another case that we had handled, received a request from the Justice Department to conduct an investigation, to assist them regarding allegations and harrassment, intimidations and I believe QC inspectors at that site. Mr. Sinclair did that job. It was one of his first major jobs in the Office of Inspection and Enforcement. One of the things that nagged me and I believe Mr. Cummings and Mr. Sinclair after doing that job was OIA did not do external investigations, Licensee contractors, vendors. The Office of Inspection and Enforcement then had control over the regions and through the regional people conducted those "types of investigations" and it was a mixed bag. It was inspectors and some investigators going around, and we were left, excuse me, let me make it perfect, I was left at a minimum with the appreciation that perhaps the I&E investigative program didn't hit it the way we thought it ought to be hit based on our investigative backgrounds in OIE. So, if you will, stuck in our craw, my craw, let's get it specific; I don't want to speak for other people, just speak for myself on this point, wondered how good the investigation program was in I&E. We had seen other civil penalty packages that came across our desks as a matter of information which I'd taken a look at and, as I mentioned earlier on Tape I, Side 1, so many minutes ago, I had been in the Office of Inspection and Enforcement

and one of my responsibilities had been to not only be an investigator but to be an enforcement specialist. That's the person who puts together the inspection report, drafts up to Notice of Violation, makes a recommendation for civil penalty or no civil penalty and I was always left with the impression that I was not favorably impressed based on my background as an Assistant United States Attorney and Trial Attorney in main Justice but those packages were as tight as they could have been even though the working time was in the evidence standard as opposed beyond a reasonable doubt standard. So this background I would have carried into that scoping session and I made it perfectly clear that in my view when we went out when we did this job on the Applegate issues that we should be alert not only to if you will a less than adequate job on the part of Mr. Phillips and whoever else did that work with him out at Region III but we should be attuned to and look for and talk to the managers of Mr. Phillips chain to see if in fact there was any written policy. Same things you have asked me about what did OIA have in writing and so forth, my answer was very little. I asked those folks I believe it had Mr. Cummings blessing, you do the same vis a vis the Region supposed to have an investigative program. Make sure when you go out that not only do you find out whether Phillip and Co. whoever was on that report were "doing the job as we thought it should be done" but measure their performance not only against those "generally acceptable

investigative procedures and practices" whatever they may be and how \_\_\_\_\_ they may be but make sure gentlemen that you find out what is written in the I&E manual chapter or wherever else in I&E that describes what you should do when you conduct an I&E investigation. You need a standard, you need a criteria against which to measure performance if one exists.

1) Find that if that exists, 2) If it does not exist in writing go to your custom and usage interview if you will Mr. Keppler or may be the Deputy Director I don't recall who was on board at that time frame. Interview the Division Director, interview the branch chief, the section chief, ping ping ping. Interview them as how it is that you expect investigations to be done in general and give case specific. What was your guidance, what was your direction, what criteria did you levy upon the individual inspectors and investigators when they went out and did the "Applegate case".

ALOOT: Let me see if I can clarify this, now are you saying then that it is your recollection that at this first scope in the meeting...

FORTUNA: Un Hum

ALOOT: ah that it was decided that the Applegate inquiry would focus on two aspects not only \_\_\_\_\_ was there adequate job investigating Applegate's specific allegations...

FORTUNA: Un Hum

ALOOT: but also whether the generic inspection ah

FORTUNA: Well investigation

ALOOT: investigation program at Region III was

FORTUNA: or throughout I&E for that matter

ALOOT: or throughout I&E for that matter

FORTUNA: or something written yes

ALOOT: yeah was adequate

FORTUNA: They were to be alert to that. I don't know what

Chairman Ahearne's request said, I can guess it. Go out there fellows and gals and see what there is to this stuff. He's the Chairman he's not \_\_\_\_\_ to investigative traditions. But based on my experience, based on South Texas as I said some other enforcement packages sent to me were a little, you know could have been tighter, there's nothing wrong with them but could have been in my view for whatever that's worth done better. I said in my view, I believe that this was agreed to when you are there and you talk to Jerry Phillips about what did you, when did you it, how did you do it, who did you talk to, what documents did you get, what did you say to Applegate, da da da da, you are going to have to ask him, did you use your best judgment in doing the things that you did or did you get oral or written direction from your supervisors or do you have a manual chapter that tells you how to do it, or did you do all of the above. I don't know how else you can measure an individual's performance.

ALOOT: Based on that, you said you indicated that if you are going to ah let's say be alert to the general investigator policies and procedures of I&E, you would want to talk to the Regional



Director and the Branch Chiefs and the Assistant Director. If you were conducting an investigation just of the adequacy of a particular investigation, would you routinely limit your interviewees to just the people who did that investigation or would you also in conducting a limited investigation of that type. Also, talk to the Regional Administrator and the Deputy or Administrators or the Branch Chiefs. I guess the focus of my question is in the scoping meeting when they identify potential interviewees why was Keppler and I believe Davis....

FORTUNA: Burt Dav's

ALOOT: Burt Davis and Mr. Norelius

FORTUNA: Mr. Norelius yes

ALOOT: and all the other branch people identified as potential interviewees was there some purpose to that.

FORTUNA: I don't why, I don't that we decided that day we were going to talk to all those people. I would have I'm guessing but I think it would be something like this. You go out to measure the performance of those individual people that did that investigation, I'm gonna to have to repeat myself and maybe I'm not being particularly clear. Ask them what they did and why they did it. How come you do this, why didn't you do that, but if we are going to come in, we all know that the end of any trail we have to write a report. Out front you need a yardstick or a criteria against or criterion against which to measure and don't no at least at this meeting I'm talking about but I am talking generally don't think back a set of 17

or 18 interviews says that I did this and I did that and I didn't do that. Ask them why they did or didn't, ask them did they do it or not do it based on a policy. Did they do it or do it not based on direction of the management chain. These are questions you have to ask. If you will it's like in the Office of Investigations, if we go out, we have to know what the tech spec is, we have to know what the license conditions are, we have to go and we if we don't know we interview an inspector, we ask the Office of General Counsel to help us out. What's applicable here that's the point that I'm trying to make, now I don't know if we got as far as saying and because of this be alert to or aware of talk to Keppler talk to this one talk to that one. It would have been more talk to who you need to talk to satisfy yourself that we know what exists. Let's recall what the Office of Inspector and Auditor is. It's more than an investigative unit, it is the closest thing we have in this agency to an Inspector General. We not only if you will investigate and measure the performance of individual players, we were chartered and the Office is still chartered with measuring the performance of organizations. Be it branches, divisions, or offices. So that when you go out in the IG mode you not only go out to find out whether Sebastian Aloit wrote the best legal memo that ever was, God forbid that we were charged that back in OIA. But we go out to see what rules he works under, that's my only point. That's my only point. It was perfectly clear to me and it was



made perfectly clear in my view and was confirmed by me after that scoping meeting that when you are out there you do what you have to do to see not only what those individuals did, but why they did it and that maybe policies and procedures written or oral.

ALOOT: You mentioned it was confirmed to you. Who confirmed you that that was the one of the aspects was it any particular individual or just how they arranged the investigation.

FORTUNA: I have to think back again, I definitely remember saying this. Several things can happen when this report when it is written based on the facts. Number one we may find out fortunately or unfortunately that Mr. Phillip, his name keeps turning up, because as I recollect he was the only individual named in the allegation but there were other unfortunate as that may be he was point person on this thing. He had helpers as I recollect doing that Region III effort. In fact, I'm sure if I flipped to the report they produced there's other names on it and they all have to be talked to too. Ah, one of three things can happen, we can write a report that says, Phillips did and his other folks with him did or didn't do a good job for the following reason. Additionally, we may find even though Phillips did a lousy job the reason he did a lousy job is because that was told that was all he was supposed to do. The boss told him, whoever that boss maybe don't talk to the next ten people only talk to the first ten people. Don't handle all those allegations, only handle half of those allegations.

For whatever the reasons may be within or without our jurisdiction, half of them we don't do because they are not NRC issues or he may have done a "lousy job" and I always emphasize the negative unfortunately because the "I&E investigator policy" says you only do so much. That's why you can't operate in a vacuum, it's very difficult to operate in a vacuum that's why so you could have a report that says Phillips did an individually poor job or Phillips did the job that he do because his supervisor told them that was all that was to be done or the I&E policy told him that's all that was to be done. Alright, now, why was I sensitive to those issues as I said earlier and I repeated and repeated myself it is because that certainly would not have come as a surprise to me based on my own personal opinion on the review of other reports that I had seen before. No genius on my part no genius on Mr. Sinclair's part no genius on Mr. Gamble's part no genius on Mr. Cumming's part. We'd seen reports before that we didn't think that were that great. We're an Inspector General function, we were and are over there and no longer there. And we you have to be sensible there no matter what your charter is. I'll give you one other example and I'll stop. If in the process of doing an investigation in going through a little old time and attendance fraud, and I can give you an example without names a shortage in the cashier's office over the Division of Accounting as we conducted the investigation with the assist of an auditor which was

perfectly logical and normal the auditor said you know there's something you fellows don't realize but we do know why this that was more likely to have happened. Do you see the controls that they have paperwise, do you see how they don't have the right receipts, do you see that they leave their keys in the wrong place, do you see this, that and the other thing. So a logical flow from an OI investigation maybe a finding we send to the audit side of the house and it would be this. Case specific there was a theft, we solved the crime or we did not solve the crime, but if you will we ask you on the audit side of OIA to take a look at it because it may have generic implications. Then the auditors could have gone over and you know the windows are too small, the locks are not good enough, we should have more receipts, IGs that flows back and forth. That's all I'm saying ....

ALOOT: I see

FORTUNA: it could have a generic implication

ALOOT: And should be alert when there

FORTUNA: Yeah be alert to that

ALOOT: investigation then that could be an explanation

FORTUNA: Un hum, yeah

ALOOT: Ah, during this period then January 1981 were there any meetings with the government accountability for project. We refer to them as gap.

FORTUNA: Yes. I recollect that John Sinclair, he may even give you

more detail on that I'm sure, had a telephone conversation with Mr. Devine and I recollect that he went down to the gap offices or he met with Mr. Devine outside of NRC spaces and what the subject of that conversation was I don't know. But I do believe it probably would have focused around confidentiality and again I'm sorry I am going to start giving you back you stopped me short it's not relevant to what it is you are attempting to accomplish in your inquiry. There has been no clearly defined policy in the agency regarding confidentiality. The concept has been used in banning about and I'm sure we all know is now subject to you know to great discussion within the agency. I know that the different regions which were controlled by I&E had involved themselves in the concept of confidentiality where an individual ledger comes in and I want to tell you something about public health and safety but I fear for my job. Would you give me confidentiality? Would you make sure that nobody knows who I am and nobody uses my name? Very lovely concept very basic concept and very difficult in application quite simply as your Honor as I am sure you are aware there comes a time during a hearing where there's a contested issue that you need to know who that person is so you can examine that person for yourself and satisfy yourself to truth and for accuracy of and significance of that information. So a lot of issues involved what's confidentiality, how long does it hold, is it forever and ever, what happens if something goes to the Justice



Department, what happens if something goes to a hearing board, what happens if something goes to an appeals board, it is a guarantee for life or is it limited. I believe that the conversations Mr. Sinclair had with Mr. Devine probably revolved around that if you will both types of ground rules. We have policy now in the Office of Investigations thank the Lord, and rightly or wrongly at least we imply that concept in our view uniformly. So that I think that, I recollect that

ALOOT: You don't recall any face to face meetings between representatives from accountability project and members of OIA during January and February

FORTUNA: That Sinclair thing

ALOOT: Oh I thought you mentioned by telephone

FORTUNA: No excuse me I didn't finish my thought I sure there was a telephone conversation followed up by a meeting.

ALOOT: Oh I see. And Mr. Sinclair that you know of that met with...

FORTUNA: No I think Schnebelen got involved in that too, I may be wrong but I think he did and if he did that probably would have been further on down the line. You know the more I think about it and Schnebelen kind of coming in as I was going out probably would you can ask Schnebelen this to prove positive he might have been in that scoping session that I'm talking about you will have to check that one out that's all I recall ....

ALOOT: So were there any (cleared throat) you mentioned at the scoping process that you tried to identify the allegations for example in this GAP petition that OIA was going to deal with.



Do you recall any allegations that were identified that OIA determined not to investigate.

FORTUNA: (Blowing through his mouth like a missile, like wow let me think about this)

ALOOT: Outside the jurisdiction or outside the scope of the Chairman's ah memo

FORTUNA: I don't know outside that outside the scope of the Chairman's memo would have meant alot at least not to me. Again I don't mean that with any disrespect but I when you involve an investigation in something you come across that is related you either report it in that case number under that case number or you write yourself a little note or what have you and you know you have to follow it up with something else. If you've got a report deadline you got to get issues 1-4 done and you stumble across 5, 6, and 7 you can either address them in that report or you can say that I can't make it in that time period I will report on 1-4 and will follow up on 5, 6, and 7 at a later date. I'm struggling with your question as to was anything that we wouldn't have not handled. I don't recall, but common sense dictates to me that I got alluded to it later "the belt buckle issue, pilferage issue, time and attendance fraud". Really if you will if we were to see what kind of a job Region III did on that I would view that now as view then is you go see and you make sure folks that Region III got the information to the right people that had jurisdiction on authority over those particular issues. In my view had they

gotten them and I don't know the answer because I wasn't there when the report was finalized. But most of the field work was done if you will Region III got those other non-NRC issues to as an example the FBI. Okay fine they did their job. If they Region III would have cognizance over the safety issues that the inspect plans they got those to themselves so be it they might have dealt that off to the inspectors to do a follow up.

ALOOT: Was there any discussion of apparently the time Region III was conducting health safety investigations where they sum up the more recent allegations by Applegate. At these January scoping meetings was there any discussion of what role OIA would play and you are looking at those separate issues.

FORTUNA: Yes. If for whatever reason and our efforts to measure or monitor the quality of the product produced by Region III if we "came across other safety information" typical would have been Jerry Phillips talked to Sam Smith. You go to Sam Smith and you find out what Sam thinks he told Jerry and that would be a measure of his ability to recount that information if for whatever reason that particular interviewee provided "information which didn't fall under OIA jurisdiction but was safety related". It was a clear understanding that not only in this case but all other cases that that type of information had to be communicated at least informally by the telephone to the Region cause that is the responsibility.

ALOOT: Would there be any responsibility to your mind on OIA's part

to monitor the regional office investigation or handling of those safety, health and safety issues that have been referred.

FORTUNA: No. None whatsoever. If that were the case, then that would carry it to its logical or illogical conclusion depending on your view. Meaning that OIA would have to really monitor every inspection done by the Office of Inspection and Enforcement. It doesn't make good sense to me.

ALOOT: Now you previously mentioned that Mr. Schnebelen was basically moved in to occupy your position.

FORTUNA: First special project. Mr. Schnebelen moved into my position sometime month, two or three after I left for the Commonwealth of Pennsylvania. I wasn't aware that of any plans to move him into that spot prior to my departure. But when I said when filling in behind me he was special projects officer and I knew he was getting himself involved in this ah Applegate issue. I didn't know what his title would wind up being. But I knew he was getting involved with this.

ALOOT: So would it be then (cleared throat) your recollection and Mr. Schnebelen would have been assigned to this particular investigation by virtue of his title, his position and not...

FORTUNA: Yes. In fact you just helped me remember. I recall not in the scoping session but talking with the investigators before ah I was leaving but while I still was on watch, what's Schnebelen's role in all this. Ah who do we report to, who do

we tell things to, who do we call, da da da. My answer was what's per I don't think we got a clear answer from Jim, if we did I just don't recall it. Ah Jim Cummings. Let's just handle it this way. Jerry Strickler in this had left. While I was struggling with that, he had left by then my branch chief. But Arthur for this project where the branch chief fall. If I'm not here.....Arthur was not \_\_\_\_\_ from the investigative background whatsoever by the nature of his background I said if it's, if it's anything that you can't get me on but it's not too terribly important go ahead to Arthur. But if it is anything of any substance until Arthur gets read into the case, Arthur gets read into the investigative area which should probably be good for help during a short period of time feel free to come to me. But he is a senior member of this staff and according with the respect of that it entitles him to and be sure if you tell me that you tell him and if I'm not here and you need a supervisor and it's not important enough to tell Cummings be sure you tell Arthur. Damn sure be certain that if it is something that you can see is not clicking it is an investigative question that the minute I get back that you lay your hands on me, you tell me too. That simple. So he was kind of floating out there as you will.

ALOOT: Given the nature of this investigation the adequacy of I&E investigation at the Zimmer plant, would it be consistent with the policy you mentioned before ah to show the regional



personnel the draft report before its official release at least finished.

FORTUNA: As I said earlier, we had no policy per se that was written. I fall back to this very loose amorphous concept of a separate investigative practices and procedures and I think I subtracted out of that portion those techniques and those things that other law enforcement type groups do that we don't really do here at NRC, the polygraph and those sorts of things. But if you pair it back to some of the basic principles, audit reports with the blessing of OMB and GAO are shared with the offices that are reviewed, they have conferences, they have draft you come back we disagree, we think you got your facts wrong and then you finally send, send your final report out. It is not routine practice based on my experience to share a final report or excuse me a draft or an almost final report with "the subjects of an investigation"

ALOOT: Side 2 Tape 2 FORTUNA Interview May 11, 1983

Ah tape had runned out and your were finishing up your response to whether it would be ah

FORTUNA: That's not routine in my view based on my experience or whatever value that has.

ALOOT: Yeah, let me take you back in time a little bit. Ah based on the initial scoping meetings in January who would you see has the subject general subject of this inquiry.

FORTUNA: Okay I would say that it would be it's not in the criminal sense...



ALOOT: No, no

FORTUNA: Performance sense if you will the individuals that did the work on the Applegate issues in Region III. And depending how their answers came, anyone else in the management chain that may have said do or don't depending whether it do or don't cause the less than rigorous inquiry. In theory you know, if branch chiefs said don't do this because...and then the branch chief maybe the alleged wrongdoer at that point and time.

ALOOT: I see. Ah other than the individuals that you mentioned so far are there any other individuals that you know of who may have information regarding ah OIA's conduct of this invest..., the Applegate investigation or some information about the Applegate allegations in general.

FORTUNA: Oh I mentioned the gentlemen, Wayne Ward ah sometime earlier I think. And I know from conversations past yes I did mention that that he had some conversations with Applegate and I am sure he can help you on that February 1980 versus December 1980 time frame "telephone conversations with Applegate." I think that a gentlemen by the name of James McCarten (spelled it out) was then in Region III and was doing "some Zimmer work." Now whether or not he was doing Applegate per se or Applegate fallout if you will Applegate phase II from Region III, I don't know but I am just absolutely certain that Mr. McCarten somehow involved in the Zimmer-Applegate issues.

ALOOT: Ah (cleared throat) Mr. Ward works for the NRC ah ...

FORTUNA: Mr. Ward is presently the Director, Division of Fuel

Operations, Office of Investigations with the Office that I am employed by.

ALOOT: And the other gentlemen.

FORTUNA: Mr. McCarten left the employ of the NRC I believe 2 or 2-1/2 years ago perhaps less. Is presently employed by the Naval Investigative Service and I believe he works ah in the Chicago area at their ah the Naval Training Center, Great Lakes Naval Training Center.

ALOOT: And ah the OIA investigation was it cited a file number.

FORTUNA: I'm sure it must have received a file number earlier on in the game. We would have to have taken this information from special counsel and put it in a file.

ALOOT: You don't know....

FORTUNA: If we had a request I would know the number. If we had a request from the Chairman as we clearly did with the December 15 thing we would have had a jacket, a case and would put the request or whatever paper we had in it starting day one.

ALOOT: To the best of your recollection was did OIA have in January 1981 any other pending investigations relating to Zimmer or Region III.

FORTUNA: Ooh that's a tough one, but there is a very easy answer to that OIA did and continues to put out a monthly investigative status report to the Commission and if you pull the November, December, January 80, 81 ah monthly status report you are going to find whatever is pending.

ALOOT: How long does it take to get an investigation to get posted on

to that status report. Leave gaps, open files....

FORTUNA: Well they are due we will pick a date I don't recall OI's is due to the Commission 15th of the month. OIA's might have been the first of the month. If it came in 15th December we owe the Commission a January 1 monthly status report two weeks within two or three weeks.

ALOOT: Okay.

FORTUNA: It should be on the list. So you could \_\_\_\_\_ and you could span back to September and down into February and March and should be able to hit there. Quite easily.

ALOOT: I have no further questions. Judge Hoyt do you have any questions that you'd like to .....

HOYT: Let me stop for just a moment here and go back and review a couple of things.

FORTUNA: Yes mam.

HOYT: I just have couple of general questions ah

FORTUNA: Yes your honor.

HOYT: Fortuna and they are very general. I'd just like your opinion on whether you think the Applegate investigation that took place in OIA office was ah proper subject for that office to be handling and did you feel that ah the primary focus of that investigation was um a personnel matter such as the one that you have described to us here.

FORTUNA: Proper subject I think the answer is yes because no where else in the Commission could those types of issues could have been addressed other in a factual or data package put together so

our decision makers the Commission could make whatever action they feel appropriate. And based on my understanding of then present OIA charter this would really be no other place to go ah within the agency now was to whether it should have gone at somewhere else within the Federal Government I really have no opinion. I haven't thought it through at all.

HOYT: While you were involved in the investigation in OIA did you have any feel for whether or not the ah office had the appropriate resources to perform that type of investigation if there were any resources that you found missing could you tell us what those were?

FORTUNA: I would sing a song that every member of every office in any government agency will say which is of course we never have enough staff, but it was quite simple in the major case you could steal bodies from other cases and postpone a delay. Since this particular case had Commission interest we could have robbed Peter to pay Paul to some extent we probably did. So resources were available by slipping other matters. Second part of your question I believe was do you think that the individuals involved had the backgrounds appropriate to conduct such type of an inquiry am I correct in

HOYT: Yeah I was coming into that ah...

FORTUNA: Excuse me

HOYT: Go ahead

FORTUNA: I think so. I really do I think what the real issue was that



Mr. Applegate raised he brought concerns to the Commission, certain individuals addressed those concerns he was dissatisfied with the manner in which those concerns were addressed. In other words rigorousness, etc. What I think we were chartered to do is to measure the performance of that group of individuals and I would think that investigators would be less suited to measure the performance of "other folks performing investigative function." I think it was appropriate and I think the people that were assigned had the expertise to adjust to those issues. Not the health and safety questions per se but the did you work through those issues. No possible way an investigator in OIA or OI can tell you what the bottom line is on the health and safety issue. But I think they're perfectly capable of developing the information that a ledgers provide. Writing that information up and providing it to the technical people in this agency who have the retrospect expertise to analyze that and develop it. It could beat the legs and arms and ears of technical side of the house. Is that response okay.

HOYT: Sure. Have you ever handled any of these ah whistle blowers before in your career \_\_\_\_\_?

FORTUNA: Yes mam I have.

HOYT: Do you find anything unique or different ah as the person of Applegate seemed to call \_\_\_\_\_ a classic pattern of what whistle blowers are usually all about.

FORTUNA: I've handled matters directly when I was a nonsupervisor as a



working case agent.

HOYT: Draw up any experience that you have.

FORTUNA: NRC type if you will whistle blowers I choose not to say whistle blowers concerned employees ah I have not worked a case in the trenches with external allegeders. I've worked on the supervisors. Ah based on that I'd say is he Mr. Applegate any different? I don't know because I never really had any direct contact with Mr. Applegate. I don't think so.

HOYT: Well let's say just from the nature of the allegations he made are they pretty typical of what type of allegations whistle blowers usually make?

FORTUNA: Yes. The thing that was different about Mr. Applegate was I think he was one of the very first that came in with a outside group like GAP under the sponsorship of and caused you know press noterity and big big interests \_\_\_\_\_ Commission. Routinely they would have come in through the Region or the regional people would have talked about. Mr. Applegate was one of the first that I recollect that came back after the fact and said I told you last year and I don't like what you did. I think you did a poor job. So he is different in time that this is now based on the last three years experience. This is becoming more and more difficult.

ALOOT: Is that it? Ms. Miller any questions.

MILLER: No.

ALOOT: I think that that concludes the interview run out of questions for you.

FORTUNA: If there is anything else that I can help perhaps I misspelled or didn't give a clear enough background for a particular question, I would be delighted to come back at your request.

ALOOT: It may prove necessary to speak with you further, if it does we will get in touch with you and arrange a time to see you or perhaps ask you to please bring back some documents or identify ah documents that we may know about but can't put our hands on them.

FORTUNA: Alright.

HOYT: Thank you very much Mr. Fortuna, that will conclude the interview at approximately 1:03 on this date.

11

RUTH ANN MILLER'S NOTES FROM INTERVIEW WITH DAVE GAMBLE

Side 1

On May 11, 1983, Dave Gamble was interviewed by Sebastian Aloit and Helen Hoyt.

Ruth Ann Miller took these notes and also asked a few questions.

Dave Gamble was interviewed as part of the investigation into the allegations that are detailed in the November 16, 1982 memorandum to Commissioner Palladino from Marty Malsch, entitled, Interview with Thomas Applegate. This is part of the investigation of whether the Director of OIA and that office made a good faith effort to carry out their responsibilities in Region III's investigation of the Applegate allegations. Mr. Gamble requested a copy of whatever memo of this interview may eventually be sent to the Commission.

Sebastian Aloit conducted most of the questioning and he began it.

Dave Gamble stated that he was involved in both investigations. The investigation of Region III's investigation, as

well as the parallel criminal investigation. He was employed by the NRC from May 1975 through August 1982. From May 1975 through June 1978 he worked as a Personal Security Specialist in the Division of Security. From June 1978 through August 1982 he was an Investigator in the Office of Inspector and Auditor. From May 1982 through August 1982 he was detailed to the Office of Investigations.

Sebastian Aloit began by asking Dave Gamble about some background of the general procedures at the Office of Inspector and Auditor, hereafter OIA. Sebastian Aloit asked Mr. Gamble whether OIA has any written policies on the initiation conduct or disposition of investigations.

Dave Gamble said that when he was there, there were virtually none. There were common understandings, people knew from past cases and past experiences how to conduct investigations.

Sebastian Aloit asked whether OIA has any unwritten policies on the initiation conduct or disposition of investigations, if so, could he describe and state when they were adopted.

Dave Gamble stated that the unwritten policies were really the collective knowledge of the investigative staff. There were a couple of discrete memoranda from previous Directors

of OIA. Staff came across the prior memos by accident. There was no training, the office generally hired experienced people.

Sebastian Aloit asked if there were no written or unwritten policies, how were OIA investigations initiated, conducted, and disposed.

Gamble stated that every investigation required the Director to initiate it. All correspondence came to the Director. The Assistant Director had limited authority, he was in charge of day-to-day supervision of the conduct of investigations.

Aloit asked as a general matter, how was the scope of an investigation determined. Who participates in these decisions, who makes the final determination as to scope.

Gamble stated that if it's a complex matter, the meetings are held with the Director. Consensus is then reached among those participating in the meeting. There are no specific memos and no written policy on how the scope of an investigation is determined.

Aloit asked how many investigators are generally assigned to an investigation.



Gamble responded that two investigators are assigned generally.

Aloot asked whether it is common for Cummings or Schneblin to participate in an investigation, if so, to what extent.

Gamble responded that Schneblin had been an auditor, not an investigator, and that he had not been involved in the investigation until the tail end. Schneblin was made Branch Chief when Fortuna left. Schneblin served as Acting Assistant Director. This is the only investigation Gamble remembers him participating in. Cummings frequently participated in investigations if they were important or unusual.



withheld under  
5/16 pending  
Gamble review

Aloot asked generally who was responsible for writing the draft report, what is the chain of review.

Gamble responded that first draft of the OIA report the investigators wrote, it went through the Assistant Director to the Director. Gamble said in this case the investigators wrote up the whole report and then submitted it through the chain of review.

Alout asked whether it was common to permit the subject of an investigation an opportunity to review the OIA report prior to its official release to the Commission.

Gamble responded, absolutely not. It is absolutely not common to let the subject of an investigation review the report before it's issued. A review of the report consisted of examining whether the allegations were sufficiently addressed, whether they went into it deeply enough, whether the report covers all the issues and whether the message is conveyed. Under Fortuna, the review was for content, under Schneblin the review concerned more form than content.

Alout then turned to the Applegate matter and asked when was the first time that Gamble learned of allegations relating to Zimmer or the Region III investigation.

Gamble responded that the first time he learned of the Zimmer allegations was in December 1980. In mid-December he had a sense that something was going on. He got a bad copy

of the petition allegations and the substance of the report at that time. John Sinclair was reviewing it, Ahearne then wrote a letter to the Director of Investigations. Gamble became involved in between Christmas and New Year when the package arrived. He received it from the courier.

Alot asked, how or why were you assigned to the Applegate matter.

Gamble said that he was assigned to conduct a review by Cummings or Fortuna. That person i.e., Cummings or Fortuna, was not aware that Sinclair was doing it.

Sebastian Alot asked whether in February 1980 anyone mentioned receiving phone calls.

Gamble said yes, Cummings was getting calls and discussing them with Fortuna. Gamble wasn't involved then. He recalls that Applegate called collect. Applegate made many attempts, at least once Cummings told him. He heard Cummings tell the secretary to say that Cummings was not there to receive the call.

Sebastian Alot asked why Gamble was assigned to this investigation. Gamble responded that there weren't many investigators. There were about five or six and that Gamble

and Sinclair were higher on the learning curve of problems involving regulatory activities, that the others were involved more in internal affairs. Sinclair and Gamble did more reviewing of I&E reports. Although they originally were reviewing the Region III investigation, they expected to then do the criminal investigation. There were two files, 81-18 which was the review of Region III investigation and then the criminal file which is numbered 81-39. He said that they should have made two files originally, but that they broke them up later.

Sebastian Aloit asked how the investigation was scoped.

Gamble responded that the first level results unintentionally in duplicate reviews. The first matter was to determine what was in the package. He showed it to Fortuna, Schneblin was not in yet. This was early January. He discussed the matter with Fortuna. Fortuna, Sinclair and Gamble had a meeting and agreed roughly what they should do. 1) Without retracing all the steps, they decided that they should determine if OIA did an adequate job; 2) to compare the performance of this investigation against the investigatory policy. If shortcomings were discovered then they were to attempt to see if there were indications of larger problems. Whether it was Region III's investigation problems or I&E investigation problems in general. Previous

reviews had probed their interest that there might be serious problems in I&E's program. They then went to Cummings, Schneblin joined them early January. At this meeting, there was Gamble, Sinclair, Fortuna, Schneblin and Cummings. Gamble, Sinclair and Fortuna highlighted the allegations to Cummings. At this meeting they stated the purpose of the investigation, the scope of the investigation. He remembers that they mentioned Phillips name, whether the report should be directed against him and what he did. Gamble said that he and Sinclair and Fortuna said that they didn't think that it should be Phillips investigation. The scope and goal that he proposed was to find out if there was program weakness, everybody chimed in that it should not be a witch hunt. Don't hang the guy for generic weakness in system. There were no modifications at that point, they discussed prior cases that showed that there might be problems, such as South Texas.

Alot asked if Cummings had mentioned prior conversations with Applegate.

Gamble responded that Cummings didn't say it, but Gamble, Sinclair and Fortuna did. That when they go out to Region III, Region III might say that Applegate had been to Cummings too back then. Cummings response to Gamble,



Sinclair and Fortuna, was just to say that the Commission had told us to investigate.

Sebastian Aloom asked whether there were other meetings and Aloom said that Sinclair and Schneblin and once Gamble too, met with GAP and had a telephone conversation with GAP at which they discussed the allegations and received more information. They got affidavits that GAP obtained. They acted as a conduit to Region III for Region III's substantive investigation. They also discussed confidentiality. Sinclair and Schneblin asked GAP whether GAP was really after Jerry Phillip or a larger concern. Their response was that their concern was larger.

Gamble said that this was in early January, that the documents were in OIA's file before January 13th.

Aloom stated that then this was a two prong investigation. What was done, i.e., what Phillips did, and any generic problems.

Aloom asked just how were potential interviewees identified.

Gamble responded that it was generally left to the discretion of the investigators with one or two exceptions. Those being the Harpster and the Thomas Vandel interviews.

Cummings directed that they do these interviews. They chose to interview those involved in the investigation and those in the supervisory chain. They didn't interview anybody else on-site. They also did some on-site interviews for the criminal investigation.

Aloot asked whether there was a conscious decision not to interview outside of Region III.

Gamble responded no, that they just didn't see the need. That that was not within the scope of this investigation.

Aloot asked how were the interviews conducted.

Gamble responded that on January 13th those people in Region III who were to be interviewed were all gathered together for a meeting.

Aloot asked if they were given any notice about this investigation.

Gamble responded that they were told the purpose of the investigation and the philosophy behind it.

Aloot asked if they were prepared questions and Gamble said that no, they were not.

Alout asked if the interviews were free formed and if Gamble could recall the nature of the questions.

Gamble gave an example of the type of questions that were asked. He said they would ask each of the interviewees to give a chronology of the events that they knew about in the investigation and their knowledge of the policies that related to the conduct of investigations.

Alout asked whether the interviews were scheduled in any particular order.

Gamble responded that there was no particular order, that they interviewed the principal actors first, Phillip and Ward, and that the interviews are laid out in the report in chronological order.

Alout asked who wrote the interview summaries.

Gamble stated that at least two investigators participated in an interview and that they split up the writing of the summaries. One would write it, the other one would then review it, add to it and then give it back to the writer.

Alout asked when the first round of interviews were completed.

Gamble responded that the last interview was conducted on March 5, 1981. When the interviews were all written they went up to the management for review.

Gamble said that Schneblin would not have seen these summaries until April.

Gamble said that the last week in March he and Sinclair went out to review what Region III had done on, I believe he said Region III's safety investigation.

Aloot asked how were re-interviews or additional interviews determined, who so determined them.

Gamble said that re-interviews were done in February to resolve some discrepancies. He thinks, and he qualified it by saying that this is just a feeling, that Cummings was responsible for that. He said that Cummings was a trusting kind of guy who believed that if you bring people together, that the truth comes out. The interviews in the report, according to Gamble, don't document all the interviews that Cummings did. He said that Cummings contacted people independently, including people already interviewed. Gamble stated that Cummings would get up out of the room and come back indicating that he had talked someone.

If I interpret my notes correctly, I believe that Gamble stated that after the interview with Ward in February, that he and Sinclair went to Saint Louis and left Cummings and Schneblin at the Region and he does not know whom they may have spoken to at that time.

Gamble said that he and Schneblin returned on August 3rd and 4th and showed those Region III people who had been interviewed a copy of the report of their interview.

Alot asked what was Schneblin's role/input during interviews.

Gamble said that Schneblin didn't do much questioning, Schneblin was pretty much silent. When Cummings did questioning, Cummings asked clarifying questions. Gamble said that he had no idea what Schneblin's role was in coming to Region III. Sinclair and Gamble discussed things in front of him. Gamble and Sinclair reported to Fortuna up through March. Schneblin was a Special Assistant to Cummings. This was a point of contention because they didn't feel it was appropriate to report to Schneblin. They reported daily to Fortuna and then Schneblin began initiating calls to Cummings. At this point Fortuna was getting cut out. There was a flow of daily information to the Director in early or mid-January in the form of status



reports. Cummings contacted Phillips and Ward and one of the supervisors. Gamble sensed there were others with whom he had a good rapport such as Keppler and Davis.

Aloot asked whether in other investigations, it was common for Cummings to call up people.

Gamble said in his other investigation, TMI one couldn't do that. He also said that in a Region IV investigation, Gamble was sent home one day early and Cummings stayed. Another investigator remained with him there.

Aloot asked why Cummings became involved in the field investigation.

Gamble responded that he did because this was a high visibility case.

Aloot asked if he took control of the investigation.

Gamble said yes, we brief him on what we uncovered and learned in great detail. They would then assess where to go from there. What, he'd suggest what kind of points they'd want to ask. He directed Schneblin to contact the Regional inspectors at Zimmer, re: the welding records. He didn't usurp all control, he would give additional things to ask.

He got more involved when he came on-site. Everybody would be in the office at the same time when the interviews were being conducted, except when Cummings made his side trips. Sometimes he'd report a little. Gamble said it was not his or Sinclair's place to ask if he did care to share what he had learned.

Alout asked Gamble to describe how the first draft of the report was put together.

Gamble said that the interview were written as separate documents. That Sinclair and Gamble reviewed each others write up of the interview.

On April 6th and 7th the summaries were put together into a final form.

Alout asked what exactly was sent up to Cummings, the whole package or individual parts.

Gamble answered that the bulk had been written in late March. Any earlier interviews could have been sent up just to Schneblin. Whenever an interview had been written up, it was sent to the files. If these drafts were sent up they weren't typed for final, they were just reviewed by Schneblin. Sinclair wrote the summary, Gamble added his

input. This was the only time that Gamble recalls the report being returned for re-writing. Schneblin corrected typos and grammatical errors, he didn't change anything on his own regarding the investigations. He would only make recommendations to Cummings. The first draft went up shortly after April 7th.

Aloot asked when he heard about the results of the review.

Gamble said that between April 7th and August 7th the report went back and forth more than once, at least a dozen times. He's never seen anything like that in his life. This occurred over a four month period. He said for a sensitive investigation, this was quite a delay.

Aloot asked how the version sent up in April compared to the August 7th final report. Had that April report been significantly modified.

Gamble indicated that the summary in welding sections had been significantly modified, that there were very little changes to the interview section, except for the deletion of the Harpster interview.

Alot asked Gamble to describe any significant modifications to the draft report during this review stage. Who modified them and why.

Gamble said that the welding section was modified a lot, but he was not unhappy about it. He said that the modified version presented it in better fashion. And that no information had been deleted. There was just re-writing and re-organization and he was happy with that. Second, he said that one attachment had been removed. This was a memo from Victor Stello to Phillip. This attachment was removed by Schneblin. This memo had been written in early January, after receipt of the GAP petition and before the Field investigation. This memo addressed the allegations made about Phillip and said to the effect that we are behind you 100%. Schneblin appeared to remove this attachment on his own. Also removed was the last section of the body which reviewed I&E's Inspectors Manual, i.e., Inspection Manual, Chapter 8, Attachment 10. This section analyzed that chapter of the Inspection Manual, it was written by John Sinclair and said that parts of this investigation fell short of established procedures. Gamble hesitated to characterize what the section said. It was not in the April 7th report. It was written by John Sinclair in the later part of July before the report was issued. Gamble thinks he decided on his own to write it. It involved obvious

deficiencies. Gamble said there was never much discussion on this. Sinclair on his own wrote it. Schneblin told Gamble that he was thinking about deleting it and Gamble had told Schneblin that maybe it could be written better but that it was important and that Schneblin should leave it in. Gamble thinks that Cummings made Schneblin delete it.

Alot asked why was Harpster interviewed, why was he deleted and when.

Gamble said that Cummings directed them to interview Harpster, that Cummings deleted the interview at the end of the review process in July. Sinclair and Gamble told Cummings and Schneblin that they were very distressed about the deletion.

#### Side 2

Cummings felt that the information developed during the Harpster interview was not related to how Region III conducted this particular investigation.

Gamble said that Harpster had been around, that he likes to talk. He had been a Project Inspector. He told I&E that OIA wouldn't dare talk to him because he knew too much. Dudley



Thompson called Cummings and recommended that they interview him. Cummings told Sinclair and Gamble.

Alot asked if the removal of the Harpster interview affected the summary or conclusions of the report.

Gamble said that the summary of April 7th had been significantly modified. That the removal of the Harpster interview didn't affect the final summary. Gamble said that the original summary is in the FOIA litigation. Harpster said that there was a conflict between NRR people and I&E people. Inspectors who want to uncover violations and those who want to license. He said that there was a tension between I&E and OIA. That I&E people were closer to identifying with the plant. The Harpster interview discussed an investigator at Zimmer who lied to the ACRS.

Gamble said that he didn't investigate that because there had been a prior OIA investigation of that matter, though that one was not very good. Gamble said that whether I&E did a good job was bound up with the allegations. He made reference to the Phillips March 11th letter limiting allegations to 3 or 4. Gamble said that Sinclair visited the FBI and got a copy of the memo dated February 1980 which should be in the FOIA files. That memo documents Applegate's contact with the FBI. Williamson went to the

FBI office for purpose of copying records. Phillip was confident then these other allegations had gone to the law enforcement agency.

Aloot asked Gamble if Gamble had asked Phillip and Ward why they didn't reflect this in their report.

Gamble said that they discussed at length that he should document every allegation and what happened with them. That is what the Inspection Manual said to do and they were not living up to it. Phillip said that he wrote the Inspection Manual. Phillip's philosophy was that you consider every allegation but you don't document each allegation in the report.

Gamble said that there were generic problems.

Aloot asked whether the summary had the same flavor and effect of the report and Gamble said absolutely not. He said that the summary makes the investigation appear to be a limited one. That those particular investigators perform well. The initial summary was broader and discussed the larger problems. He said that the problems were larger than what two regional people did.

Gamble said that where the investigators were given due credit, that part was taken out, i.e., favorable parts were taken out.

Alout asked why was Region III provided with the final draft.

Gamble said that Cummings directed Gamble and Schneblin to go out to Region III. Gamble argued more Schneblin against it. Gamble said that it was improper to give someone a chance to review and change their interview writeup. He argued that they should document the re-interview and should show both. He was told that he would not be permitted to do that.

Alout asked how did they get to put in the asterisks then. These asterisks interview changes as the result of the second interview.

Gamble said that Sinclair and Gamble inserted the asterisks when Cummings was not in that day. Gamble and Sinclair have never done that before. Under predecessor to Cummings. The rules were to see what they had to say and then they'll consider making changes. The first went to each individual interviewee and showed them what they had written about their particular interview and then let them comment on it.

After asterisks meant corrections. Then there was a second group meeting with Keppler at which most of the interviewees and everyone on current investigations in Region III attended. Approximately 15 people. Gamble didn't like it at all. Gamble read the summary to them. After he called Cummings to tell him what the response was Keppler was very upset. Keppler called Cummings with Sinclair and Gamble in the room. Cummings was put on the speaker phone. The OIA report made it sound like Region III was asleep at the switch. Cummings response was that this was a camera shot on how this investigation was done, not on his staff. Keppler recommended changes and they were made, penned in. There is a version in FOIA. Last sentence in first paragraph of summary. Two paragraphs in the summary had been dropped inadvertently and they were put back in. There was nothing sinister here.

Gamble said that the principle change was the last paragraph of the summary. The earlier draft discusses Region III's work on Zimmer. Makes it look better. Gamble said this is not a lie, it's a shading. The prior draft paragraph that Keppler took exception to was not at all inaccurate. Cummins response was that they did not need it to make the point. Gamble says that the GAO report on OIA says that OIA needs more independence, that it should not share its findings prior to issuance. Cummings challenged that

report. There is sensitivity about the question about sharing reports. Gamble suggested that we look at the controversy last Spring in which OIA conducted an investigation of Region IV and V where the regional offices shared draft reports and Cummings criticized that.

Gamble said there was also a change in the flavor of the last paragraph. Gamble said that the agreement to change was made by by Cummings and Keppler. That Gamble and Sinclair were not consulted. Cummings added the last sentence in the first paragraph specifically. Keppler was surprised.

Alot asked if the last sentence of the first paragraph concerned how the investigation was scoped in January of '81.

Gamble said yes, that it was not inaccurate. That Cummings went overboard the other way.

Alot asked whether it was uncommon for an OIA report to take four months to write.

Gamble said that one report he wrote took two and a half years. Cummings wrote the transmittal memo which contained some conclusory comments. Gamble and Sinclair tried to keep



the investigation report more clean. In reference to the bullets on the August 7th, 1981 transmittal letter that Cummings wrote, in Gamble's opinion, each of the bullets are correct, but he would not have discussed the activities in terms of vigor, he would have added more on program weaknesses. He would have drawn on prior investigations. He said that the last paragraph is responsive to criticism. He doesn't think that that's ever been done, but maybe it has happened since he left. Gamble said that the problems with investigations kept coming up time and again. That was the impetus for the new office of OI and for policy guidelines. There were larger problems that they thought the time was ripe here to discuss. Cummings did not. Gamble and Sinclair concerned themselves with the criminal investigation while the re-writing of this report was being done.

Alout asked if OIA monitored how Region III investigated the health and safety allegations of the GAP petition.

Gamble said that the referral of health and safety issues was the basis for file 81-39. Gamble says that they knew in January that they would have to do an investigation, but they thought they would put it out of their mind until they finished the first investigation and that they therefore created the file later. At one point in April or May they split the files. Some interviews were done with regional

personnel for 81-39. Gamble said that Jim McParton was good about giving them all their stuff. Late in the summer Cummings sent out material to Region III.

Alout asked why the Harpster interview was not sent to Region III with the other interviews.

Gamble said that he was not really involved then that he had taken off on another investigation mid-summer but that he objected fundamentally to the deletion of the interview. Cummings wanted there to be a third file for the Harpster interview. Sinclair and Gamble said that it should be sent out to someone. Cummings retreated from the third file idea, put the report in both files, said that the Harpster interview will be published with the 81-39 report. For that part Gamble was out of it, but the 81-39 report never issue.

Alout asked about Gamble's memorandum, breaking down the allegations raised in the GAP documents. Gamble said that Jim Cummings had asked him to put that together but that Cummings might have seen it but he can't swear to it, that this was done in early January. Alout asked what the purpose of it was and Gamble said that it was a breakdown for OIA and I&E responsibilities related to 81-39 (Item 2), that it was a chance to carve out turf and make sure that

all the allegations were addressed. The purpose for creating it was to assure that every line in Applegate's allegations and GAP's petition were addressed. It was not used for this purpose though. Aloit asked whether it was used for the report. Sinclair and Gamble used it to know what allegations there were and what they had to demonstrate, noted what allegations I&E had. Not sure that Cummings saw this but Schneblin did.

Gamble said that he was a little bit upset by the brushoff from Schneblin. The focus had gone away from making sure that all the allegations were covered. People got caught up at Wells.

Aloit asked whether there were discussions month-to-month or on a periodic basis as to where they were.

Gamble stated that they proceeded full speed ahead, the only problem was in the re-writing. Gamble said that the report was turning into a report of a more limited investigation then was actually conducted. There was much antagonism over the report, but Cummings did not state full dissent. Gamble said that the summary of the investigation did not reflect the investigation. That the investigation was accurate minus the deletions. Hopefully, the summary is objective of the investigation interviews. The summary is not a fair

reflection of what is behind it, i.e., the August 7th summary report is not complete. Gamble said to see the April 7th summary, which would have stood behind it. He said that most of the changes were made before the Region III meeting.

Alout asked whether Cummings talked to people outside the office.

Gamble said that Cummings often called Ahearne and briefed him and talked to him. Gamble would speculate that there were many communications between the two of them. He thinks that Cummings gave Ahearne reports, but not sure of this. Gamble suspects that he may have bootlegged a copy to Region III of the Harpster interview because that interview was a period outside the agency prior to the FOIA request. Gamble said that he could speak to the initial stages of the OIA criminal investigation and the meeting of the U.S. Attorney's office in September of 1981. This concerns allegation number 4 appearing in the November 16, 1982 memo to Palladino from Malsch.

Alout asked, I believe, whether Gamble thought OIA had improperly suspended its criminal investigation and Gamble responded that if you took the word improperly out that he

would subscribe to the rest of it. 81-39 is now the responsibility of OI.

Gamble didn't think that that made too much sense because OI usually involves only prior, i.e. civil investigations. The criminal investigation should still be active.

The end.