



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

164

June 7, 1983

MEMORANDUM FOR: The File
FROM: Ruthanne G. Miller
SUBJECT: INTERVIEW WITH APPELATE'S LANDLADY

On June 1, 1983, Judge Helen F. Hoyt conducted an interview by telephone with Mrs. Larry V. Means. Mrs. Means lives in Covington, Kentucky. Her telephone number is _____ Judge Hoyt placed the call at 5:15 in the afternoon. Sebastian Aloit and myself listened on the line.

Exemption 6

Judge Hoyt called Mrs. Means to check out Applegate's allegation that approximately in April 1981 the NRC diverted resources to investigate Applegate. At page 5 of the attachment to the Malsch Memo, Applegate is represented as stating "that his former employer, his landlady and members of his family told him that they had been interviewed about Applegate."

Judge Hoyt identified herself and asked Mrs. Means if she knew Thomas Applegate. She said that she did.

Judge Hoyt then asked her whether he was living there in April 1981. Mrs. Means stated that he was and that he left in August 1981; that it's been 2 years since he had been away from there.

Judge Hoyt asked whether anyone had ever interviewed her about Thomas Applegate. She said no, except that Tom Devine had asked her some questions. Nobody else questioned her.

Judge Hoyt then terminated the interview.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

167

In the matter of:

INTERVIEW OF JAMES B. MCCARTEN

Docket No.

CLOSED MEETING

Location: Great Lakes, IL

Pages: 1 - 163

Date: Tuesday, June 7, 1983

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3
4 INTERVIEW

5 OF

6 JAMES B. McCARTEN
7 Special Agent
8 Naval Investigative Service
9 U. S. Naval Intelligence

10 Great Lakes Naval Station
11 Building 3, Room 202
12 Great Lakes, Illinois 60088

13 Tuesday, June 7, 1983

14 The interview commenced at 10:10 a.m.

15 BEFORE:

16 THE HONORABLE HELEN F. HOYT
17 Administrative Law Judge
18 Atomic Safety and License Board Panel
19 Nuclear Regulatory Commission
20 Washington, D. C.

21 C. SEBASTIAN ALOOT, ESQ.
22 Office of the General Counsel
23 Nuclear Regulatory Commission
24 Washington, D. C.

25 - - -

P R O C E E D I N G S

JUDGE HOYT: We have met here at the Great Lakes Training Center Station in Chicago, Illinois with Mr. McCarten.

I would like to on the record introduce myself as Helen F. Hoyt, an Administrative Judge with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board Panel, and introduce my colleague, Sebastian Aloat from the General Counsel's Office of the Nuclear Regulatory Commission.

Mr. Aloat and I were assigned by the Chairman on May 6th, 1983, to undertake an investigation into the allegations that are detailed in the November 16, 1982, memorandum to Chairman Palladino from Martin G. Malsch, Deputy General Counsel. This memorandum is entitled "Interview With Thomas Applegate."

In accordance with our assignment, the focus of our investigation will be whether or not the Director of OIA and that Office made a good faith effort to carry out their responsibilities in an OIL investigation of Applegate's allegations investigated by Region III in the early months of 1980.

If you wish, Mr. McCarten, you of course may have an attorney here. You have not expressed any desire to have one. So therefore none is present here in the

1 interview room, and the interview room should be
2 designated as your office, I believe.--

3 MR. McCARTEN: Okay.

4 JUDGE HOYT: We ask that you not discuss this
5 interview with anyone in this Commission's office or in
6 any other office, and the request is made of you to
7 ensure that what we discuss today will not, if it could,
8 influence any other persons we talk with about this OIA
9 investigation.

10 Do you have any questions of us, Mr. McCarten?

11 MR. McCARTEN: No, I have no questions.

12 JUDGE HOYT: All right. When we have completed
13 the investigation, we will report our findings and
14 recommendations to the Chairman of the Commission and to
15 the Commission.

16 MR. McCARTEN: Okay.

17 JUDGE HOYT: Mr. McCarten, would you please
18 identify yourself.

19 MR. McCARTEN: I am Special Agent James
20 McCarten. I am with the Naval Investigative Service,
21 Resident Agency, Great Lakes, Illinois.

22 I was employed by the Nuclear Regulatory
23 Commission from September 1979 to March of 1982.

24 JUDGE HOYT: Your employment was terminated in
25 1982. Can you explain to me what the circumstances were?

1 MR. McCARTEN: At that time I resigned from my
2 position as an investigator with Region III, Office of
3 Inspection and Enforcement in order to accept a position
4 with Naval Intelligence, Naval Investigative Service at
5 Great Lakes.

6 JUDGE HOYT: Were you employed during the
7 early months of 1980 with the Nuclear Regulatory
8 Commission in Region III?

9 MR. McCARTEN: Yes, I was.

10 JUDGE HOYT: What was your position at that
11 time?

12 MR. McCARTEN: At that time I was an
13 investigator assigned to the Region III staff.

14 JUDGE HOYT: Mr. McCarten, did you have an
15 opportunity to become acquainted with the allegations
16 made by Thomas Applegate?

17 MR. McCARTEN: Yes, I did. In January of 1981 I
18 was assigned by Mr. Jerry Phillip to investigate four
19 allegations that were made by a former quality control
20 inspector at the Zimmer project.

21 After the Christmas holidays in January myself
22 and NRC Inspector Jerome Shapker went to the Zimmer site
23 to investigate four allegations.

24 One of them dealt with the unjustified firing
25 of a QC inspector.

1 Another allegation was that noncomformance
2 reports were being improperly voided.-

3 Another allegation was that bolt holes on
4 some structural steel were not being properly reamed.
5 They were being welded rather than drilled, which was Mr.
6 Shapker's concern generally. It was an engineering
7 problem.

8 There was also an allegation that design
9 drawings and documents of the plant were not accurate.

10 Those were the four allegations that I
11 initially started investigating.

12 These were made by an individual who requested
13 confidentiality. Can I disclose him for the purpose of
14 this hearing?

15 JUDGE HOYT: Yes.

16 MR. McCARTEN: These allegations were made by

17
18
19
20
21 I was sent out to Zimmer to investigate these
22 allegations.

23 Prior to my beginning my investigation, Mr.
24 Jerry Phillip and Mr. James Foster informed me that they
25 had conducted numerous previous investigations at Zimmer

Withhold-Ex. 7(c)

1 and that this site, to use their expression, was a "real
2 turkey." They made statements to me like you will have a
3 lot of fun there and I am glad it is you and not me,
4 statements to this effect which led me to believe that
5 Zimmer was going to be a problem site.

6 They had recently gone through a SALP process,
7 systematic appraisal of licensee performance, and in
8 December Mr. Keppler, the Regional Director, had
9 characterized Zimmer for a site under construction to
10 have the most construction noncompliances of any other
11 site in the region.

12 So I thought this investigation at this point
13 was extremely important and I began pursuing the
14 allegations with Mr. Shapker.

15 Do you have any questions so far?

16 JUDGE HOYT: Did these in any way relate to
17 allegations made by Thomas Applegate?

18 MR. McCARTEN: These allegations did not relate
19 to Mr. Applegate at all.

20 JUDGE HOYT: When did you first become
21 acquainted with Mr. Applegate?

22 MR. McCARTEN: Could I speak for ten minutes
23 and lead up to where Applegate tuned in?

24 JUDGE HOYT: Whatever way you want to answer
25 the question, Mr. McCarten.

1 MR. McCARTEN: Myself and Inspector Jerry
2 Shapker went to the site and Jerry Shapker had spent
3 anywhere from two to four years as a welding inspector
4 for the Navy on nuclear reactors being built for the
5 NIMITZ class aircraft carriers. He was an extremely
6 knowledgeable welding inspector and an extremely
7 competent inspector.

8 He and I went to the site and we took neutral
9 position on what the site was. We had heard so much good
10 and so much bad. We began pursuing these allegations, I
11 think it was the week -- could we stop and I can get a
12 calendar to give you the exact dates?

13 JUDGE HOYT: If it will help you, sure.

14 MR. McCARTEN: It will be helpful to me to show
15 you the scenario.

16 JUDGE HOYT: We will go off the record a
17 moment.

18 (Short Pause.)

19 JUDGE HOYT: Back on the record now.

20 Go ahead, Mr. McCarten.

21 MR. McCARTEN: To the best of my recollection,
22 I visited the Zimmer site for the first time from the
23 week of January 12th to the 16th with Mr. Shapker.

24 JUDGE HOYT: And that is 1981?

25 MR. McCARTEN: 1981. He and I investigated

1 those four allegations and a number of significant things
2 happened that week.

3 We found that the inspector who was threatened
4 with firing by a construction manager, that that was in
5 fact probably true. Jerry Shapker found that he was
6 properly inspecting a weld according to code and a
7 [REDACTED] threatened
8 to have him fired. In fact, the employee was told he was
9 going to be fired and later that firing was rescinded.

withhold-Ex 7(c)

10
11 But still the statements were made, and then
12 after the utility realized, or Kaiser realized that they
13 did not have the grounds to fire him, that he was
14 performing his duties according to code and he was in
15 fact right, they did not fire him. But still the threat
16 was made that he would be fired and people intervened and
17 he wasn't.

18 MR. ALOOT: Were those threats documented?

19 MR. McCARTEN: These were all documented in the
20 investigative report, 81-13. It was [REDACTED]

21 JUDGE HOYT: Is that spelled [REDACTED]

withhold
Ex-7(b)

22 MR. McCARTEN: [REDACTED] The allegation that
23 nonconformance reports were being voided was found to be
24 substantiated and it was also found that during a
25 previous routine inspection, Inspector Isa Yin had found

1 that they were improperly voiding nonconformance reports.

2 JUDGE HOYT: Would you give us the spelling of
3 that, please.

4 MR. McCARTEN: Isa Yin.

5 MR. ALOOT: Now these inspectors are licensee

6 ---

7 MR. McCARTEN: No. Isa Yin is an NRC inspector.
8 He cited them for improperly voiding nonconformance
9 reports. At that time as corrective action they were
10 directed to stop voiding the nonconformance reports and
11 they were directed to audit the nonconformance reporting
12 system.

13 A Mr. [REDACTED] working
14 for the utility was interviewed about the nonconformance
15 reports.

Withhold
Ex-7(L)

16 The bolt holes problem that Jerry Shapker
17 looked at was substantiated.

18 The design drawing problem, we didn't
19 substantiate it, but we received more allegations of more
20 instances of problems in the documentation.

21 JUDGE HOYT: What was the nature of those
22 allegations?

23 MR. McCARTEN: The nature of those allegations
24 were that records were not being properly filed, that
25 records were being falsified, that Kaiser welding records

1 were being falsified.

2 JUDGE HOYT: By falsification, Mr. McCarten, do
3 you mean that the records had been changed to reflect
4 something that was different than the actual facts?

5 MR. McCARTEN: Specifically allegations were
6 made that heat numbers showing the quality of the steel
7 being used in the construction was being changed.

8 JUDGE HOYT: And the change resulted in what?

9 MR. McCARTEN: The change resulted in a lack of
10 traceability for the steel because you would have two
11 heat numbers for the same piece of steel and you wouldn't
12 know if it was nuclear or non-nuclear steel.

13 (Brief pause while Mr. McCarten receives phone
14 call.)

15 MR. McCARTEN: What we found essentially was
16 that almost all the allegations were true. During the
17 course of our inquiry the inspectors we were interviewing
18 made more allegations and gave us names of other
19 inspectors who had left the site because of harassment,
20 because of records being falsified, because of
21 construction problems, because of poor management of the
22 site. Just a myriad of allegations were made, and I think
23 we walked away with 90 more allegations after a two-week
24 period.

25 The first week was spent at the site. What was

1 also interesting at this time was that the Resident
2 Inspector, Thomas Daniels, was at the site and he was an
3 ex-Navy Nuc, but he was an operations inspector.

4 About Wednesday we went to lunch with him and
5 we talked about the case and we said, hey, we feel we
6 have got some real problems here. Tom Daniels' reaction
7 to that was that well, it is about time that somebody
8 from the investigation side realized that and had enough
9 guts to say so.

10 He felt that Phillip and Foster had come out
11 there and whitewashed the allegations and he had no
12 confidence in the investigations staff at Region III.

13 JUDGE HOYT: Now that is the investigation that
14 Phillip and and Foster put together in the earlier part
15 of 1980; is that correct?

16 MR. McCARTEN: Yes.

17 MR. ALOOT: Did Mr. Daniels convey his opinion
18 about the Phillip and Foster investigation to anyone in
19 Regional Headquarters?

20 MR. McCARTEN: He never expressed that to
21 Regional Management. It was like field personnel to field
22 personnel, that type of a conversation.

23 MR. ALOOT: I see.

24 MR. McCARTEN: And he didn't say it in the
25 context of Applegate being right or in the context of

1 Applegate. He talked about all the previous
2 investigations.

3 JUDGE HOYT: Now this is Mr. Daniels you are
4 speaking about?

5 MR. McCARTEN: Yes. He felt Region III's
6 handling of the construction problems at Zimmer were very
7 poor. He said that Gaston Fioarelli's group and
8 construction inspectors in Region III had not done a good
9 job inspecting the plant.

10 He said he was the first operations inspector
11 ever to cite a plant for a construction violation, and he
12 sent it forward to the region to cite them for a
13 construction violation where here he is an operations
14 inspector. He said he found weld rod all over the place.

15 His opinion of the utility that he
16 communicated to me was that on the operations side they
17 were not capable of getting the plant ready, they were
18 way behind and did not have the expertise to get the
19 plant operating. He also told me that he had no
20 confidence in the construction side of the house either.

21 JUDGE HOYT: Well, what did you do with the
22 allegations that you received at that time?

23 MR. McCARTEN: The next week I went out and
24 visited the Midland site and the Perry site and talked to
25 some of these [REDACTED] and one of them was

with
Ex-70

1 [REDACTED] I talked to him to get clarification of his
2 allegations.

withhold
Ex-7(D)

3 [REDACTED]
4 [REDACTED]
5 Let me get my notes so I can give you some
6 other names that I talked to during that time.

7 (Brief pause while Mr. McCarten gets notes
8 from file.)

9 MR. McCARTEN: During that January time period

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 allegations.

withhold
Ex-7(D)

19 JUDGE HOYT: May we have the spelling of that
20 name.

21 MR. McCARTEN: [REDACTED] I talked to

withhold
Ex-7(D)

22 [REDACTED] I don't think he made any allegations.

23 MR. ALOOT: Were all these interviews reduced
24 to writing?

25 MR. McCARTEN: The substance of these

1 interviews were summarized and presented to Mr. Charles
2 Norelius when I returned. After this two-week sojourn I
3 returned to the region.

4 JUDGE HOYT: Is that Glen Ellyn?

5 MR. McCARTEN: Glen Ellyn.

6 JUDGE HOYT: Who did you give them to?

7 MR. McCARTEN: I verbally related the
8 information to Mr. Norelius. I said these are the
9 allegations. There were so many I started documenting
10 them on note paper in going to the field interviews. Some
11 of them I took statements from, and those are in the
12 81-13 or in the Region. [REDACTED] I took statements

13 from. [REDACTED] I took statements from.

Withhold
Ex-7(D)

14 The substance of what these people said was
15 phenomenal. Here is [REDACTED] saying the
16 vendors, all the people that supplied material to the
17 plant were not approved, a lot of them were not approved
18 vendors.

19 So what he is saying is you are getting
20 non-nuclear material in there from unapproved vendors.
21 He says I knew this and [REDACTED] and Kaiser did
22 not support us. Kaiser would not give us adequate
23 staffing. Not Kaiser, but CG&E would not give us adequate
24 staffing.

Withhold
Ex-7(D)

25 Kaiser officials made allegations that CG&E

1 management was not properly running the plant, and all
2 this was communicated to the region. --The statements were
3 given to regional officials, Mr. Norelius, Mr. Streeter,
4 Mr. Keppler, Mr. Warnick, Mr. Heismann, Mr. Fioarelli.

5 I came back from this two-week trip with all
6 this information and we spent a week in planning and
7 discussing it because while I was visiting those other
8 peripheral sites Paul Barret's team was out investigating
9 the 19 Applegate allegations which came in on January
10 11th, the week that I started going to Zimmer.

11 GAP came in with the allegations, the 18
12 Applegate allegations, and they created a big political
13 problem for the region. You know, they were under fire
14 for doing a poor job in a previous investigation at
15 Zimmer.

16 Keppler is faced with a dilemma. He has got
17 Applegate walking in and saying you blew the previous
18 investigation, which may or may not be true. I didn't
19 participate in the investigation. I didn't participate in
20 the investigation of Phillip's inquiry into Applegate's
21 allegations. I stayed away from that. I was too busy with
22 what I had.

23 Then I came in the door and I says, hey, I
24 have got [REDACTED] telling me the plant is
25 screwed up. So it put the regional officials in a real

Withhold
Ex-7(D)

1 problem. Keppler characterized it in meetings. He said
2 Zimmer was always a "D" student and now it has gone to an
3 "F".

4 At that point we spent a week planning how we
5 would pursue the investigation.

6 MR. ALOOT: By "we" you mean ---

7 MR. McCARTEN: Myself and Mr. Barret. At that
8 time Mr. Norelius left investigations and Mr. Streeter
9 came in. Mr. Norelius wanted to do a team investigation,
10 a big investigation. In fact, he had told me that early
11 in January. I called him on the phone and I said, hey, I
12 have got all these allegations. He says, well, we are
13 going to get a team together and look at it. We are going
14 to pursue it.

15 The investigation planning group, I disagreed
16 with their strategy and I told them that. I vehemently
17 told Mr. Streeter that. The investigations planning group
18 was chaired by Mr. Heismann, Mr. Fioarelli, it included
19 Mr. Shapker, Mr. Barret, Mr. Kevin Ward, Mr. Streeter,
20 myself. It was about ten people who met one morning
21 during the week of -- it would have been the 26th to the
22 30th of January I think we met.

23 I proposed and I told them that I felt there
24 were criminal violations at the plant. I felt that we
25 should get OIA involved in the investigation. I told them

1 that we should do a team effort of inspectors looking at
2 the hardware and investigators looking at the paper to
3 prove falsification because it is very difficult to
4 prove it. You first have to prove the hardware is wrong,
5 then you have got to prove the paper is wrong, then you
6 have to prove that they violated an NRC requirement and
7 then you have to prove the false statement, and it is
8 very difficult to make a false statement case in the NRC.
9 You have got to prove all four elements.

10 I felt this would need a lot of control and
11 attention. I didn't expect to lead it. I knew I couldn't
12 be expected to lead it. I didn't have the seniority with
13 the NRC to lead it, but my approach was good and sound
14 and I discussed it with Bill Ward, the head of
15 investigations on the phone.

16 MR. ALOOT: This is Bill Ward at Headquarters?

17 MR. MCCARTEN: Yes. I said this is the way I
18 feel we should approach this thing. Mr. Heismann and Mr.
19 Fioarelli, I remember during a meeting I said I can see
20 this thing all going to a gradual thing where we prove
21 the hardware is wrong, we prove the paper is wrong, we
22 prove falsification and we go to a grand jury. You would
23 think I had just said I was Satan or something. These
24 people looked at me like I was nuts.

25 MR. ALOOT: In teaming this investigation, did

1 they fold the Applegate/GAP allegations in with yours?

2 MR. McCARTEN: This is what I disagreed with.

3 First of all, I said that the real meat was the
4 inspectors and everybody agreed to that. The field people
5 agreed to it. I said we ought to go for a criminal case,
6 and they have no interest in working an investigation
7 which would lead to a possible Justice Department
8 prosecution. The operations people and the construction
9 people, that was totally alien to them obviously, and it
10 was totally distainful to them. They had no desire at
11 all, the management officials that were present during
12 those planning meetings, to pursue a criminal case.

13 JUDGE HOYT: And these are the officials in
14 Region III of NRC that you are talking about?

15 MR. McCARTEN: Right.

16 JUDGE HOYT: Let's go back to Mr. Alout's
17 question. How did this interface with Applegate?

18 MR. McCARTEN: This is what happened. We got
19 our marching orders. You will investigate Applegate. I
20 briefed them. I says, you know, I have read Applegate's
21 allegations, and I said these are allegations of
22 misdemeanor criminal offences which are not under the
23 jurisdiction of the NRC. I said we do have criminal
24 violations here. They are 1001 violations, falsification
25 of records, harassmt of inspectors. I said but the type

1 of criminality that Applegate is alleging is not
2 something within our jurisdiction. -

3 In fact, if you read his affidavits, and I
4 read all of the backup, it wouldn't even be something
5 that would even warrant an investigation by the local
6 police.

7 JUDGE HOYT: Are you talking about the belt
8 buckle and prostitution---

9 MR. McCARTEN: All that kind of garbage, the
10 prostitution, the belt buckles ---

11 JUDGE HOYT: --- and the gambling.

12 MR. McCARTEN: --- and the gambling. The local
13 police wouldn't even do that, and that is what I told the
14 region. But I said we do have these other problems and
15 these are significant and these are criminal and they
16 didn't buy that. They didn't agree with my concept of
17 working for a criminal case.

18 JUDGE HOYT: Mr. McCarten, let me ask you. In
19 your opinion, did they disagree with you out of a sense
20 of ignorance or did they disagree with you because you
21 didn't have the documentary proof to present to them that
22 would persuade them that they should go that route, and
23 that route meaning the criminal investigative route?

24 MR. McCARTEN: I don't want to say ignorance
25 because that gets them off the hook. I think they knew

1 what I had. Later on in the investigation when the
2 criminal stuff came out more clear, Mr. Daniels made
3 comments to me on the way to lunch saying, yes, Bob
4 Warnick says McCarten wants to throw these people in
5 jail, you know, like he is nuts for wanting to do that.

6 They did not want to have anything to do with
7 a criminal investigation. They didn't. That was their
8 thinking, their philosophy and their policy. As you see,
9 as we get on with this, OIA did get involved in trying to
10 get them more atuned to the criminality.

11 We will continue with the chronological series
12 of events.

13 MR. ALOOT: Let me see if I understand this.
14 You believed a criminal focused investigation was proper.
15 Now did you distinguish between record falsification and
16 items of that nature, did you distinguish that from other
17 health and safety types of violations?

18 MR. McCARTEN: No. I said the health and safety
19 equalled criminality. The words I used was it forms like
20 a pyramid. We proved the health and safety, but we want
21 investigators there to prove the falsification and let's
22 work together.

23 MR. ALOOT: I see.

24 MR. McCARTEN: Their concern and what was set
25 up was they said the first priority will be given to

1 investigating Applegate, and you will investigate
2 Applegate's allegations to no end. No stone will be left
3 unturned. You will do every investigative lead possible
4 to prove or disprove Applegate.

5 MR. ALOOT: By Applegate you mean the 19 ---

6 MR. McCARTEN: The 19. They said just the 19,
7 and I says, wait a minute, if you read all the affidavits
8 from GAP and they make another hundred allegations. I
9 said limiting yourselves to the 19 is ridiculous because
10 there are a hundred other allegations backing up the 19
11 and plus the ones I had. I said what are you trying to do
12 here? They wanted to contain it to just the 19
13 allegations.

14 MR. ALOOT: Who made the decision to focus only
15 on Applegate's 19 health and safety allegations?

16 MR. McCARTEN: This is what was set up.
17 Applegate's 19 allegations got first priority. Some of
18 the more significant QC allegations got priority. Then
19 priority two and three was given to the QC inspector
20 allegations. I did not assign the priorities.

21 MR. ALOOT: Who assigned the priorities?

22 MR. McCARTEN: Paul Barret assigned the
23 priorities.

24 MR. ALOOT: On his own?

25 MR. McCARTEN: With Mr. Heisman and Mr.

1 Fiorelli. The construction branch assigned the priorities
2 and Mr. Keppler knew it. He was briefed on it and he knew
3 that I disagreed because I had told Mr. Streeter I
4 disagreed with the overall approach of the investigation.

5 MR. ALOOT: Did you tell Mr. Keppler?

6 MR. McCARTEN: I didn't tell him directly.

7 MR. ALOOT: Did you send him a memo or did you
8 ask Mr. Streeter to convey your views?

9 MR. McCARTEN: I asked Mr. Streeter to convey
10 it. But I think their position and their feeling at the
11 time was that we have got egg all over our face, we are
12 in a bad situation, we have got a real mess here, and I
13 think the management wanted to contain that mess.

14 One of the comments made throughout the
15 investigation by Mr. Keppler himself, the words he used,
16 and I will never forget them, he says how can you guys
17 tell me that a plant is a hundred percent inspected,
18 every construction module was bought off on, completed
19 for that plant, and yet you are telling me it is not
20 built right. How did that happen? He says, how can I go
21 to the public and say we have completed inspected the
22 plant, it is 93 percent complete, but it is a mess? And
23 here he is the Regional Director supervising this work.
24 For the past five years he was responsible for monitoring
25 Zimmer's construction progress.

1 MR. ALOOT: Did Mr. Keppler ever get a response
2 to his statement or his question?

3 MR. McCARTEN: Mr. Barret told him, he said our
4 construction program is flawed. He said the problem with
5 the construction program, and I don't know if it has been
6 remedied, was let's say you look at a concrete pour and
7 how were they pouring concrete in 1977? You then check
8 off that module. The concrete construction is okay. If
9 you find something wrong, you write them an item of
10 noncompliance, they follow it up and you check their
11 response. That is the way the system works.

12 There is nobody going in there in 1981 and
13 rechecking the module on construction. In the meantime
14 the utility, GAP gives the utility the opportunity to
15 weaken and water down the procedures which is what Zimmer
16 did, and [REDACTED] told me that.

Withhold
Ex-7(D)

17 In a statement he says I wanted to build the
18 plant to nuclear codes and standards and CG&E wouldn't
19 let me do it and I left.

20 JUDGE HOYT: Do you have that statement here?

21 MR. McCARTEN: Let me check my notes.

22 (Brief pause.)

23 MR. McCARTEN: Looking down my list, [REDACTED]
24 was his name. But he mentioned that [REDACTED] who
25 was a [REDACTED], would corroborate what he said.

Withhold
Ex-7(D)

1 JUDGE HOYT: Do you have the spelling on that
2 name?

3 MR. McCARTEN:

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] I am pretty sure. If I had my book of
7 statements that I took, that the FBI has. It is a whole
8 book of statements that I compiled on Zimmer and the
9 Region III files have them, too. He identifies himself as

10 [REDACTED] What he said was that CG&E
11 management did not support the QA program.

12 MR. ALOOT: Let me interject a point here. Any
13 document you gave the FBI, would they also be in the
14 NRC's files?

15 MR. McCARTEN: Yes. when I left the NRC I was
16 given a memo saying you will turn everything you have
17 over. I discussed with Mr. Warnick this memo, and I says,
18 you are right, I have all these -- I decided to leave in
19 late November, and I had all my field interviews right
20 here. There were allegations in those interviews which
21 might not have been documented. So I spent like three
22 weeks in December going through every single interview I
23 did, which is over a hundred interviews, and entering
24 those allegations on a computer printout, and all of them
25 are computerized in the Region III files and they have

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1 the backup because I was concerned that they wouldn't be
2 able to read my handwriting.

3 So when I left the NRC I wrote them a memo
4 back saying I have complied with your memo. I am not
5 leaving here with anything that you don't have. At that
6 point notes were the personal property of the
7 investigator. That was the policy. I think that has
8 changed.

9 I told Bob Warnick, I said I am going to keep
10 all this stuff. In fact, in the memo I say any notes on
11 this case should be kept for the lifetime of the plant's
12 licensing. Those were the words I used to emphasize that
13 I felt everything should be retained.

14 When the FBI subpoenaed me they asked for
15 these records under a grand jury subpoena. We went
16 through every record I had and they took what they felt
17 they wanted. One of them was a master copy of every
18 statement taken during the Zimmer investigation, indexed,
19 who was interviewed, date interviewed and the statement.
20 It was about that thick.

21 MR. ALOOT: By that you indicate four inches.

22 MR. McCARTEN: Four or five inches thick. The
23 regional officials had access to that thing. I passed out
24 copies of these statements to everybody.

25 MR. ALOOT: Did they have access to the master

1 COPY?

2 MR. McCARTEN: Yes, consistently. In fact, at
3 the end of the investigation when they were compiling
4 their report, they had lost some stuff and they would
5 come to my files to get it right, because I said I am
6 keeping everything. I logged it and everything. I didn't
7 have the originals, but I had everything.

8 When I left I took whole folders down to the
9 reproduction room and I said Xerox the whole folder and
10 left them with Mr. Foster. I took every stuff like phone
11 notes and planning notes that I Xeroxed and gave them to
12 him.

13 To get back to the point. At this point in the
14 investigation I disagreed with their approach to the
15 investigation. Mr. Streeter knew it and the planning
16 group knew it to each individual inspector, especially
17 Mr. Barret. I told him, I said this is not the way to go.

18 They said Mr. Keppler is getting heat on the
19 Applegate thing. So this is the way we have got to go.
20 They responded more to the public pressure by GAP than
21 they did for the real safety allegations and they all
22 admitted it. Streeter admitted it and Barret admitted it.

23 JUDGE HOYT: Were these admissions made to you
24 in conversations?

25 MR. McCARTEN: Yes, in conversations in their

1 office and out in the field. We then went to the Zimmer
2 site I think the first week in February and we conducted
3 our investigation of the Applegate allegations.

4 Of the original 19 allegations, the ones that
5 alleged criminality were basically unfounded. They were
6 state misdemeanor offenses, et cetera. We continued to
7 work on some of the more hot quality control allegations.

8 MR. ALOOT: Was records falsification one of
9 the elements of this investigation?

10 MR. McCARTEN: Yes. I particularly focused on
11 that, and I did get a mandate. I said to Mr. Streeter,
12 can I interview every QC inspector on the site, and he
13 did let me do that. So my time was spent, and I went
14 through every QC inspector on the list and interviewed
15 every one of them and we got a lot more allegations from
16 them.

17 MR. ALOOT: Did any of these QC inspectors tell
18 you why they didn't in furtherance of their own personal
19 job responsibility identify these problems earlier?

20 MR. McCARTEN: What they said is that they
21 had identified the problems, written them up on
22 nonconformance reports, written them up on inspection
23 reports and that the utility had destroyed their reports.

24 MR. ALOOT: They knew that for a fact?

25 MR. McCARTEN: Yes, and we proved it.

1 JUDGE HOYT: How?

2 MR. McCARTEN: They gave me nonconformance
3 reports which we found were later never entered into the
4 nonconformance reporting system. We went to the log which
5 logs those reports and I found that the entire log had
6 been rewritten and that the last two pages which had not
7 been rewritten, I found evidence of white-out for two
8 NRs. I seized the original pages of log and sent them to
9 OIA and told OIA about them later on in the thing.

10 MR. ALOOT: When did you send these papers to
11 OIA?

12 MR. McCARTEN: I verbally told OIA about them
13 in February.

14 MR. ALOOT: Who in OIA did you send them?

15 MR. McCARTEN: Art Schneblin. Then when I left
16 the NRC I sent the originals to them because I didn't
17 feel that the people in Region III had the ability to
18 retain that type of evidence. They would look at it as
19 junk and throw it away. So I sent it to OIA directly.

20 My point is during the February time frame we
21 found proof of falsification of records, falsification of
22 the NR log, we found NRs not entered into the system, we
23 found heat numbers. Fred Maura found that drawings had
24 heat numbers on them which were false for the diesel
25 generator room.

1 He went in there and he walked it down and
2 took the drawing that the utility had, especially on
3 small bore piping, and compared it with what was in the
4 plant and proved that the record didn't match what was in
5 the plant and that they had falsified the record. That is
6 what he said.

7 That was one of the allegations we kept
8 pursuing because it was one of those original four that
9 was made.

10 Another allegation was the NRs. We found
11 falsification there. We found NRs that had been thrown
12 away. Inspectors told us, they said I have identified
13 problems, but it is put on a punch list or it is put on a
14 lesser significant document that does not get any
15 engineering or NRC review.

16 Tom Daniels, the resident inspector, told me
17 about these documents and about the fact that inspectors'
18 concerns were not being properly documented and that the
19 QA program had broken down.

20 MR. ALOOT: Did Mr. Daniels notify Regional
21 Headquarters of these problems?

22 MR. McCARTEN: Yes, he did. Mr. Daniels'
23 communications to the region prior to my getting there I
24 think are for him to talk about, but he told me that he
25 had made the operations side aware of the construction

1 problems, and Mr. Daniels is a very outspoken person and
2 he did.

3 JUDGE HOYT: Did you check Region III
4 Headquarters' records to see if any of those reports of
5 Mr. Daniels were in the files?

6 MR. McCARTEN: No, because my job was not to
7 conduct an internal inquiry of Region III management, but
8 I had allegations that I entered into the computer system
9 which indicated that CG&E was directly involved in the
10 falsification of records, the allegations that I
11 collected, and I showed people's statements made by
12 people that said these records have been falsified.

13 MR. ALOOT: The first hard evidence of record
14 falsification came to your attention around February of
15 1981?

16 MR. McCARTEN: We spent three weeks at the site
17 in February. Yes. At that time Mr. Art Schneblin and I
18 think it was John Sinclair came to Region III and were
19 conducting the OIA investigation. At that time I was
20 pretty friendly with them because we were of like
21 backgrounds. We were both from another organization which
22 was considered one of the best organizations.

23 Art Schneblin I think is former Air Force OSI.
24 So we hit it off. I told him, I said hey, let me show you
25 all this. I said we have got falsification of records

1 here. This is in February that OIA was aware that we had
2 allegations and had some proof of falsification of
3 records at Zimmer. They talked to me, they talked to Fred
4 Maura, they talked to Paul Barret and they talked to
5 Kavin Ward. They also were doing the OIA investigation of
6 Phillip's investigation.

7 So it was a difficult time in the region. It
8 was a high pressure thing and I elected to stay totally
9 away from the OIL Applegate thing as far as looking at my
10 own shop. But I did communicate to them that there were
11 criminal allegations and that they were in line with the
12 1001 type violations, falsification of records.

13 Mr. Lieberman attended a briefing on Zimmer in
14 February.

15 MR. ALOOT: Mr. Lieberman ---

16 MR. McCARTEN: From ELD.

17 MR. ALOOT: That is Jim Lieberman?

18 MR. McCARTEN: Yes, Jim Lieberman. He attended
19 this briefing, and at the end of the briefing he turned
20 to me in the hallway and he said there are a lot of 1001
21 violations here. Is OIA aware? I said yes, they were here
22 last week. I told them about it, and I said I know there
23 are 1001 violations.

24 His concern was are you pursuing these, and my
25 only comment to him was OIA knows about it and we are

1 working on it. We are trying to get the falsification.

2 My problems with the region at that time was I
3 felt they did not properly prioritize the task. I also
4 felt that their approach to the investigation was do
5 anything you could on Applegate. Go to the umteenth
6 degree on Applegate. The other stuff we will do in our
7 regular way, but we will do a better job than we did
8 before. But they were very concerned, overly concerned
9 about Applegate, and I told them that.

10 MR. ALOOT: Did you work on any other
11 investigations other than Zimmer at this time?

12 MR. McCARTEN: Not during this year. I spent
13 the whole year exclusively on Zimmer. I never did another
14 investigation for the NRC until I left once I had gotten
15 into Zimmer. I did a little bit on NPI, Nuclear Pharmacy,
16 Incorporated.

17 My dealing with OIA was I told them about the
18 criminal falsification.

19 MR. ALOOT: Did you provide them documentation?

20 MR. McCARTEN: Yes, I did. I showed them the
21 documentation. I didn't give them copies of it. They
22 expressed no interest in the copies.

23 We then continued our investigation in Zimmer
24 throughout the month of March. I think we went there two
25 or three more weeks on and off, and we began to

1 investigate the QC inspector allegations.

2 At this time Mr. Bob Warnick was named site
3 coordinator. They wanted a GS-14 or 15 to be on the site.
4 There were so many people there and he could solve
5 problems on the site, plus there was a conflict between
6 I think myself and Mr. Barret. He was lead investigator
7 and I was lead inspector.

8 He was going back to the region I think and
9 saying McCarten wants to do things this way. I never
10 complained about him, but he apparently complained about
11 me. So Mr. Warnick came out as kind of an intermediary to
12 keep things going smoothly. Mr. Barret did not agree with
13 pursuing any type of a criminal case against CG&E. It was
14 against his philosophy.

15 MR. ALOOT: Let me ask here, in deciding not to
16 pursue a criminal case, do you mean that you were
17 investigating the same health and safety allegations and
18 the difference was in the way you acquired and maintained
19 evidence?

20 MR. McCARTEN: It was to the depth of the
21 coverage, it was the way you acquired evidence and
22 generally what you pursued and why.

23 MR. ALOOT: But whatever health and safety
24 allegations were on the table starting in January,
25 everybody was still investigating those?

1 MR. McCARTEN: Yes. He felt that you could go
2 in there and find poor welding, prove that they hadn't
3 found it and that was it.

4 MR. ALOOT: And put it into the system.

5 MR. McCARTEN: Yes, and I would say, hey, wait
6 a minute. Why don't we go back to the inspection record
7 and look at the inspector who approved that welding. That
8 is a false document. He didn't understand that. He says
9 if we did that, every time we found a noncompliance we
10 would find a false record and we can't charge every
11 single inspector with criminality. That was his attitude.

12 My attitude was, hey, when you have the same
13 inspector and it shows a pattern of falsification, then
14 you have got somebody falsifying records and not just
15 making a technical mistake.

16 Later the issue came up that the welders were
17 not qualified and some of the inspectors were not
18 qualified which maybe negates your criminal case, but it
19 certainly makes a pretty strong regulatory violation.

20 I disagreed with the depth. To go into a
21 record and to pursue it for falsification takes a lot
22 more than to prove noncompliance.

23 Bob Warnick when he was out at this site, it
24 was a compromising situation. If I felt we should dig a
25 little more because there might be a false record, he

1 would say let's dig into the false record.

2 We had one case I remember in February. While
3 the investigation was in progress there was construction
4 going on.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

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11 They didn't use the walkway. They redesigned
12 the plant. Design control was poor, which 81-13 later
13 shows, and the situation was that they had attached
14 safety related equipment to a non-safety support
15 structure. The welding was poor and it wasn't even
16 inspected.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 these NRs, go out there and take a look at the beams and
23 see what you find.

24 Well, [REDACTED] found out, and he said hey,
25 boss, five of them aren't bad, 50 of them are bad and you

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Ex-7(c)

1 have got a real big problem here. I wanted to jump right
2 on that and go out and look at those beams right now.
3 Barret disagreed and. Warnick disagreed. We have got to
4 pursue Applegate.

5 When May rolled around I finally got to pursue
6 the allegation again. By that time Kaiser had cut out
7 every beam. They had done their own thing and had removed
8 all the beams and fixed it. So therefore you have no item
9 of noncompliance.

10 MR. ALOOT: But you also have no ---

11 MR. McCARTEN: The NR was destroyed. The log
12 entry showing that NR was whited out. So you have a false
13 record and you have a hardware problem associated with
14 it.

15 MR. ALOOT: But you don't have poor beams left.

16 MR. McCARTEN: You don't have poor beams left
17 in a safety sense, but you do have a pretty good false
18 record case. If we would have gone out that next day, we
19 would have said there are the beams.

20 MR. ALOOT: What would have been the proper
21 procedure then, for them to bring the NRs into the
22 system, note that they were defective and then note that
23 the corrective action was to cut them all out?

24 MR. McCARTEN: Right. The significant thing is
25 NRs are subject to engineering review. You review those

1 things and you get a feel for what is going on in the
2 plant, where are you finding things wrong in a general
3 sense and where are mistakes being made? That would have
4 showed poor design control and it would have showed hey,
5 maybe there are other areas of the plant that were
6 tacking stuff that was essential to nonessential
7 equipment.

8 The utility could have instituted procedural
9 changes maybe and inspection programs to remedy this.
10 This utility didn't do that, and that is why Zimmer is
11 such a mess today.

12 The strongest tool, the field representative's
13 tool to tell the utility something is wrong, the NR, was
14 thrown away because when these guys wrote stuff it
15 identified big generic problems and the utility didn't
16 want to deal with them because it meant big money and it
17 meant not getting licensed.

18 We were doing our investigation in February.
19 They were telling the licensee we are going to fuel load
20 in August of '81. Tom Daniels told me privately no way,
21 but this was the utility's mindset. The utility didn't
22 have a handle on this plant. They didn't want to hear
23 about any construction problems. They rode these
24 inspectors, destroyed their reports and drove them off
25 the site by giving them poor positions, cuts in pay and

1 changed their shifts, threw away their reports,
2 harassment.

3 I reported all this to the region in our
4 investigation ---

5 MR. ALOOT: Who did you report this to again?

6 MR. McCARTEN: Mr. Streeter.

7 MR. ALOOT: All this information went to Mr.
8 Streeter?

9 MR. McCARTEN: It went to Mr. Streeter and in
10 briefings with Mr. Keppler.

11 JUDGE HOYT: What kind of documentation did you
12 have on that, Mr. McCarten?

13 MR. McCARTEN: I had signed sworn statements
14 from the inspectors. I had the voided NRs. I had the NR
15 log sheets which I showed to people and the whited out
16 logs. I showed it all.

17 MR. ALOOT: Those are the log sheets that you
18 subsequently transferred to OIA?

19 MR. McCARTEN: To OIA. I wasn't the only person
20 saying this. Fred Maura came in and said the same thing.
21 Kevin Ward found a big problem with their radiography.
22 Jerry Shapker came in and he says hey, I looked at
23 structural welding and its terrible. He said they didn't
24 even inspect it. They handed them an eight by ten sheet
25 saying this thing is inspected.

1 We found that we received allegations that the
2 material was supplied by non-approved vendors. Here [REDACTED]
3 [REDACTED] had made allegations about that and about
4 them not doing adequate vendor audits, and Paul Barret
5 found while pursuing another allegation that they had not
6 done adequate vendor audits, that they had no vendor QC
7 program and that a lot of the allegations that Region III
8 had previously investigated were now substantiated. It
9 was a real mess.

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Ex 7-11

10 MR. ALOOT: Now is it safe to say then that in
11 the course of conducting what has been titled Phase I of
12 the Zimmer investigation, that is the Applegate
13 allegations plus some others, is it safe to say that at
14 the end of your investigation of those allegations you
15 had more allegations than when you started?

16 MR. MCCARTEN: Oh, yes, and not only that, but
17 we had covered so few of them that I was pretty
18 disappointed. In fact, in June I was told write the
19 report and you will be sent back out there to do Phase
20 II. Then as that dragged on and on and on and the region
21 didn't even think about Phase II, I got more
22 disappointed. So I didn't see a real effort to go after
23 the additional allegations.

24 This is what happens in the region that I have
25 problems with. In February we met with Applegate and we

1 were still pursuing the Applegate allegations. Applegate
2 talks about that meeting where he says we promised him
3 four things.

4 MR. ALOOT: Were commitments made at that
5 February 26th meeting?

6 MR. McCARTEN: Yes. Mr. Keppler made
7 commitments to Applegate pertaining to the 19 Applegate
8 allegations, not to the whole case.

9 JUDGE HOYT: But did Applegate understand?

10 MR. McCARTEN: I don't think so.

11 JUDGE HOYT: Okay.

12 MR. McCARTEN: He doesn't understand. I think
13 anything that is found at Zimmer he attributes to him
14 personally uncovering it.

15 MR. ALOOT: And you have stated previously that
16 the week the Applegate allegations came in you had
17 already ---

18 MR. McCARTEN: --- gotten wind of the problems.
19 They discussed that. They said your findings are going to
20 make Applegate look like a hero. After hearing that for
21 about two weeks I just said so what, and Keppler adopted
22 that position, so what, you know, who cares. It comes out
23 in the end where he looks good. So what. But a lot of
24 people had some heart burn with that. A lot of people in
25 the region had heart burn with that. I didn't have any

1 heart burn.

2 JUDGE HOYT: Who had heart burn with that?

3 MR. McCARTEN: I think Mr. Phillip had some
4 heart burn with it. I think Mr. Davis, Mr. Heisman, Mr.
5 Fioarelli and Mr. Streeter had some heart burn with it,
6 and understandably so. That didn't bother me. Warnick had
7 a problem with that, Barret had a problem with it,
8 Daniels, he had my attitude. He didn't care.

9 MR. ALOOT: Let me ask another question here.
10 Was there an understanding that you had that OIA was
11 going to monitor this second Region III investigation?

12 MR. McCARTEN: No. You mean like audit our
13 case?

14 MR. ALOOT: Yes, as it was ongoing.

15 MR. McCARTEN: OIA was in the region on
16 Phillip's case. They had a lot of confidence in my work
17 and told me that.

18 MR. ALOOT: Who is they?

19 MR. McCARTEN: John Sinclair, Dave Gamble, Art
20 Schneblin. They expressed to me over lunch and over
21 dinner that they were happy with our current work on the
22 case, my current work, investigations current work. Ted
23 Gilbert from headquarters was involved in this phase of
24 it and his work was unquestioned.

25 They were concerned that the field inspectors,

1 the I&E inspectors on the job would not pursue the
2 criminal falsification when they came across it, like an
3 inspection report. Their position was mine. You find a
4 defective weld. If an inspector inspected that and said
5 it wasn't, then he has falsified his work either through
6 negligence or through intent, and that should be looked
7 at and is this a pattern, and OIA agreed with that.

8 They told Keppler this and he wrote a memo to
9 the staff saying OIA has said they don't feel you are
10 significantly sensitive to criminal allegations. The
11 Commissioners said it to them.

12 MR. ALOOT: Wait. Mr. Keppler said OIA feels
13 that you are not sensitive to criminal allegations.
14 Wasn't there something else after that, or was it just
15 ---

16 MR. McCARTEN: And he said, yes, you will
17 pursue criminal, you know, but that is the way he worded
18 it.

19 OIA came in in February and they met with us
20 on Applegate. They came in in late March after were were
21 done with the Applegate allegations and some of the QC
22 allegations. They came in I think on the Monday following
23 Easter and I briefed them. I told them again, the second
24 time, and I think it was John Sinclair and Dave Gamble
25 this time, and I briefed them on everything I had, and I

1 had more specific examples.

2 At that time is when they talked to not only
3 me, but they talked to Fred Maura, Paul Barret, Bob
4 Warnick. They talked to a number of people involved in
5 the investigation, Kevin Ward, and they came away with an
6 impression that Barret was not that sensitive to criminal
7 matters and that generated that letter, and neither was
8 Warnick, and that generated their concern. They told me
9 that that was their concern.

10 We then met with the U. S. Attorney. Now in

11

12

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Ex-7(c)

13 hey, we feel that, you know, based on my experience as a
14 criminal investigator with the Navy for five years, that
15 Applegate's 19 allegations, the criminality aspects are
16 basically state misdemeanor offenses and that there isn't
17 even enough to prosecute on a state violation or even to
18 warrant an investigation by a state agency.

19

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Ex-7(c)

21 said but we have got some false records here and that is

22

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Ex-7(c)

23 was and I went into detail as to what some of those
24 violations were and that we were actively pursuing those
25 violations and that we hoped to make a criminal case.

1 This is in February.

2 MR. ALOOT: You told the [REDACTED]
3 that the NRC was actively pursuing the false records
4 allegation.

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Ex-7(c)

5 MR. McCARTEN: Because I was, and I was the NRC
6 person doing it. We also had phone conversations with Mr.
7 Bernard Gilday, Mr. Keppler did and Mr. Davis did and I
8 was in on it and Streeter was in on it. We told them in
9 these phone conversations in February that we had some
10 ---

11 MR. ALOOT: Gilday is the ---

12 MR. McCARTEN: Gilday is the U. S. Attorney in

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

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Ex-7(A)

16 but we are in a bind because he has made these
17 allegations and we are not a criminal investigative
18 agency per se of that type of criminality. At that point
19 I interjected into the conversation, I said wait a minute
20 here, we do have some 1001 violations and he wanted to be
21 briefed on those.

22 MR. ALOOT: The U. S. Attorney.

23 MR. McCARTEN: The U. S. Attorney did. We then
24 met with the U. S. Attorney in Cincinnati in April,
25 myself and John Sinclair met with the U. S. Attorney in

1 Cincinnati. David Everett was there and Bernard Gilday
2 was there. We again discussed the Applegate allegations
3 and the perspective on those.

4 We told them, we said we felt the Applegate

5
6

7 hey, there is somebody somewhere saying that the U. S.
8 Attorney is not interested in Zimmer, and he says that is
9 not true, I am interested in Zimmer.

10 JUDGE HOYT: Did he indicate to you who that
11 someone was?

12 MR. McCARTEN: No. It might have been the
13 press. It might have been he heard it somewhere.

14 JUDGE HOYT: It wasn't necessarily someone
15 within NRC that he was referring to?

16 MR. McCARTEN: No.

17 JUDGE HOYT: All right.

18 MR. McCARTEN: Although at the time NRC
19 inspectors and myself were saying to the FBI and to the
20 people we were working with, and it was common knowledge
21 that we all felt after the month of looking at
22 Applegate's stuff that it was unfounded. Even the safety
23 stuff was primarily unfounded.

24 MR. ALOOT: Unfounded or nonsignificant?

25 MR. McCARTEN: Non-safety significant and/or

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Ex. 7(A)

1 unfounded. When we met with Gilday, he expressed that
2 concern that he was interested in any type of a criminal
3 case coming out of Zimmer and he strongly emphasized
4 that. You know, voices were raised saying hey, I am
5 interested in the case.

6 David Everett, the Assistant U. S. Attorney
7 say hey, I want to get in on this case right now. He says
8 I want to be guiding this case from a justice viewpoint.
9 He said we get involved in these things, the U. S.
10 Attorney, similar to our big cases here. We are on the
11 phone the next day to the U. S. Attorney and they are
12 telling us what they feel they will need to prosecute.

13 He said, I know we have never worked with the
14 NRC before like this, but I want to work with you guys
15 like this and I want to be briefed on the case and I
16 want to be out there with your agents working.

17 JUDGE HOYT: Were there any concerns expressed
18 that the NRC was anxious to pursue this thing from a
19 civil point of view?

20 MR. McCARTEN: During that meeting I told Mr.
21 Everett that we would welcome him into the investigation.
22 Mr. Sinclair commented to him that his headquarters would
23 have to review it and make a decision. Following the
24 meeting he told me privately without Mr. Gilday or Mr.
25 Everett present, he says I&E Headquarters is never going

1 to buy that and he mentioned Vic Stello in particular.

2 MR. ALOOT: Mr. Sinclair mentioned this?

3 MR. McCARTEN: Yes. He said Vic Stello and
4 Cummings will never buy that.

5 MR. ALOOT: Getting the U. S. Attorney involved
6 in the field investigation.

7 MR. McCARTEN: Getting a U. S. Attorney
8 involving in guiding one of our investigations.

9 JUDGE HOYT: Did he tell you why they would not
10 be interested in pursuing it?

11 MR. McCARTEN: That is what I said. I said why?
12 This is a good criminal case. He said these people aren't
13 interest in pursuing criminal cases and he referenced
14 NPI, Nuclear Pharmacy, Incorporated, and Mr. Stello's
15 apparent mitigation of some civil penalties that were
16 directly contradictory to DOJ's guidance on the case.

17 They compromised the DOJ case during a civil
18 penalty hearing with Nuclear Pharmacy, Incorporated, Mr.
19 Stello had, and Main Justice wrote a scathing letter to
20 Cummings saying his meeting with the company without
21 Justice's approval or knowledge and his acquiescing on
22 some of the civil items of noncompliance negated criminal
23 prosecution in this case. That is what they said.

24 Sinclair told me flatly I&E is not interested
25 in pursuing criminal things.

1 MR. ALOOT: Did he indicate whether OIA was
2 interested?

3 MR. McCARTEN: He said he wasn't sure. His
4 general tone was he says I don't think they will buy it,
5 Everett getting involved in the case. We briefed Everett
6 in detail on the falsified NRs and the falsified records
7 that Fred Maura had found.

8 MR. ALOOT: This is in the same April meeting?

9 MR. McCARTEN: Yes. I said hey, these are
10 directly falsified, and Sinclair took a more cautious
11 approach and said well, they may be, and I think mainly
12 because OI hadn't looked at it yet and he didn't want to
13 speak for another, you know, like he was saying it. But
14 he said we are looking at inspection records being
15 falsified. He said Jim has found these NRs which are not
16 per se inspection records, but he was saying we are
17 looking at these other things.

18 I told them flat out that we hadn't gotten the
19 opportunity to look at inspection records because of the
20 Applegate allegations.

21 That meeting ended and there were a series of
22 discussions which I was not privy to between Bert Davis
23 and Cummings and Main Justice. Whatever it wanted didn't
24 come to pass.

25 MR. ALOOT: It being?

1 MR. McCARTEN: It being him being involved in
2 the NRC case.

3 JUDGE HOYT: The U. S. Attorney being involved
4 in the ---

5 MR. McCARTEN: And he said, he says I don't
6 want to run it. I just want to give you guidance and I
7 just want to be kept apprised. I saw it as not an unusual
8 request.

9 MR. ALOOT: In this April meeting did the OIA
10 representative commit to keep the U. S. Attorney
11 apprised?

12 MR. McCARTEN: No.

13 MR. ALOOT: Was there a contrary commitment?

14 MR. McCARTEN: There was a comment that we will
15 get back with you.

16 MR. ALOOT: I see.

17 MR. McCARTEN: There was a commitment to
18 continuing keeping him briefed on the case.

19 JUDGE HOYT: On the progress of the
20 investigation that you were performing.

21 MR. McCARTEN: Yes.

22 MR. ALOOT: But not necessarily the findings of
23 the investigation.

24 MR. McCARTEN: Oh, yes, the findings, but the
25 issue of them getting involved directly in the case and

1 guiding the case was given a noncommittal answer. The
2 issue to brief was kept solid. We will keep you briefed.

3 MR. ALOOT: To your knowledge, was that
4 complied with?

5 MR. McCARTEN: We will get into that.

6 The next phase of the case -- do you want to
7 get off on the side issue of the Easter meetings in which
8 the staff recommended closing the plant and Mr. Keppler
9 not closing it and coming up with the QCP? That is an
10 issue I think I raised during the phone call. Do you want
11 to cover that now?

12 JUDGE HOYT: I think we better let you make
13 that decision on the way you want to proceed so that you
14 will get everything in that you have.

15 MR. McCARTEN: Okay. I think chronologically is
16 the best way to proceed.

17 JUDGE HOYT: I think we had agreed upon that.
18 Why don't you go ahead that way.

19 MR. McCARTEN: Okay. At this point in the
20 investigation ---

21 JUDGE HOYT: Don't forget that other thing
22 though.

23 MR. McCARTEN: Yes. I think chronologically is
24 the best way to do it.

25 JUDGE HOYT: All right.

1 MR. McCARTEN: The month of April was
2 characterized by the OIA meetings, by starting to
3 reorganize and discussing the report and beginning to
4 starting to write it.

5 MR. ALOOT: Were there any on-site
6 investigations going on at the same time?

7 MR. McCARTEN: The most we dug into the
8 allegations, Burt Davis or Warnick or Streeter would
9 review and say hey, we need a little more here or hey,
10 can you look into this deeper. We would go back out to
11 the site with a laundry list and we would look into it.

12 MR. ALOOT: Was there any point -- well, we
13 will get to it chronologically.

14 MR. McCARTEN: Yes. What happened was was the
15 last week in March the Applegate allegations were just
16 about finished, and at this point there was a strong
17 feeling on the team that we had pursued Applegate enough
18 and that the QC inspectors were the significant thing.

19 The utility was saying hey, you have been on
20 our site for seven weeks with ten people on and off and
21 you haven't briefed us yet on what you found. What is
22 going on? They had somewhat of a right to know on some
23 things.

24 So Warnick on Monday finally said okay, now we
25 will start pursuing the QC inspectors' allegations.

1 MR. ALOOT: Do you have a date for Monday?

2 MR. McCARTEN: 1981. It would have been the
3 week before Easter which I think was the 28th. It would
4 have been the week of the 23rd to the 27th that we were
5 at the site.

6 MR. ALOOT: Okay.

7 MR. McCARTEN: What happened was we went out to
8 the site. We started pursuing the QC allegations and hit
9 pay dirt. Every single inspector that was given a QC
10 allegation found it to be substantiated and there was a
11 lot of real strong feelings. Everybody just came back to
12 the trailer every night saying hey, the one you gave me,
13 they are all screwed up in structural welding, in
14 radiographs, in design drawings, in the electrical area.
15 Everything we looked at and everything we had an
16 allegation of was proven, and this was after weeks of
17 working on Applegate and just spinning our wheels for a
18 lot of them, for a lot of the inspectors.

19 By Wednesday Warnick said hey, we have been
20 out here seven weeks and people are getting tired.
21 Everybody in the trailer said we ought to shut the plant
22 down. There was a meeting of the Region 3 office on I
23 think Good Friday in which the staff said they felt the
24 plant should be shut down. The people at the site felt it
25 should be shut down, the field inspectors.

1 Keppler left that meeting. I think that was
2 the meeting where he turned to Davis and he says we have
3 to discuss strategy and they left it at that.

4 The result of that strategy discussion was
5 that the QCP was initiated and the plant was not shut
6 down. I questioned this and I asked Barret and I asked
7 Warnick. I said hey, why don't we shut the plant down,
8 and the response to me was we can't shut down a plant
9 that is 90 percent inspected and 93 percent complete. It
10 would make us look bad. The boss can't shut it down.

11 The second comment was they would never get
12 back up again because at that time Marble Hill was having
13 trouble getting recertified to get back up. They said
14 this place is so much worse than Marble Hill that they
15 will never get back up.

16 MR. ALOOT: When they made these statements,
17 was it their own personal opinion, or did they indicate
18 in any way that it was part of the strategy that Mr.
19 Keppler and Mr. Davis had talked about?

20 MR. MCCARTEN: I think Mr. Barret and Mr.
21 Warnick felt it was their personal opinion, but Mr.
22 Keppler made the statement a number of times during these
23 meetings when we briefed him on the case, he says how did
24 this happen, how do we go and explain the fact that a 90
25 percent complete plant is bad and how do I personally

1 explain that?

2 When you heard that six or seven times, the
3 tone became clear. He didn't want to shut that plant
4 down. He knew the region had a big problem. During these
5 meetings there were discussions with the construction
6 inspectors. He would say how did this happen and what is
7 wrong with our inspection program?

8 The conclusion was after three or four
9 meetings, everybody concluded the inspection program was
10 inadequate and they all agreed to that. So by the time it
11 came around to closure, he came out with the strategy of
12 we will give them a stop work order and we will initiate
13 this quality confirmation program.

14 That was a program designed by Bert Davis.
15 The idea was Bert Davis' idea, and the construction
16 people liked that because it got them off the hook,
17 because if they closed the plant down, there would be a
18 lot of adverse publicity. Applegate would get credit, and
19 that was a factor in closing the plant down, and they
20 didn't want to give Applegate that credit.

21 MR. ALOOT: What is the difference between
22 closing the plant down and issuing a work stoppage order?

23 MR. MCCARTEN: Well, work stoppage stops work
24 in certain areas, and only in the areas where we had
25 found problems.

1 MR. ALOOT: So the difference is one is general
2 and one is specific.

3 MR. McCARTEN: One is specific. You no longer
4 have a construction license or to show cause to revoke
5 your license.

6 MR. ALOOT: I see.

7 MR. McCARTEN: What happened then was the
8 construction people in April and May got actively
9 involved with the CG&E people in trying to set up this
10 QCP, the QCP program, which I had nothing to do with.
11 That was strictly the construction side of the house,
12 working with CG&E to come up with a plan to fix all this
13 stuff, and it was a nice, convenient way for them to
14 dodge the issue of an internal inquiry into why Region
15 III failed to inspect it, a stop work order which would
16 make Applegate look like a hero, and one of the reasons
17 given was they said they would never get back up again
18 they were so screwed up.

19 Those three reasons were given at various
20 times during the discussion.

21 MR. ALOOT: At the present time work at Zimmer
22 is suspended?

23 MR. McCARTEN: Right now it is after the second
24 phase investigation which took a year and a half to get
25 off the ground.

1 That was my concern, that appropriate
2 enforcement action was not taken. The inspectors all the
3 sudden into a mode where they were working hand in hand
4 with the CG&E people and the criminal issues are dropped.
5 There is no hard investigating going on any more. We are
6 all of the sudden helping the utility with this QCP.

7 MR. ALOOT: Now you just mentioned that you
8 were not involved in this QCP.

9 MR. McCARTEN: Yes.

10 MR. ALOOT: The inspectors were involved. What
11 did you do with your time?

12 MR. McCARTEN: That is the point. You lose your
13 inspection support and you can't do much more
14 investigating. What I did was I did a lot of follow up on
15 some of the Applegate allegations. I spent a lot of time
16 keeping track of things and categorizing information and
17 getting it down and disseminating allegations. I spent a
18 lot of time with OIA being interviewed by them.

19 MR. ALOOT: You are saying that, let's say, May
20 1981 there was no active on-site investigation?

21 MR. McCARTEN: In April we started getting in
22 to the QCP and in May they started getting into the QCP,
23 which drained our inspection effort. Investigations kind
24 of went and followed collateral issues, you know,
25 interviewed more allegeders and things like that. We began

1 writing our report.

2 Then at the end of May you see a flurry of
3 activity. OIA went out I think on May 18th and
4 interviewed some witnesses in California, and at that
5 point OIA was going to get involved in the case. They had
6 planned to come out to the site in the last week of May
7 and they did.

8 I met Al Pulgia and Dave Gamble and we started
9 working in the falsification issues on site. After one
10 week Pulgia and Gamble after reviewing my work and
11 interviewing people on their own and looking at records,
12 they said we ought to go to the U. S. Attorney right now.
13 That is what they told Cummings in a phone call that I
14 listened to.

15 MR. ALOOT: When was this phone call?

16 MR. McCARTEN: This was from the Region III
17 trailer and it would have been one of the last weeks in
18 May of '81 when OIA was on the site. It was probably, and
19 I am not sure, the week of the 18th to the 22nd.

20 MR. ALOOT: Could you to the best of your
21 recollection recreate what you heard them tell Mr.
22 Cummings?

23 MR. McCARTEN: What I heard was, and I think it
24 was on a Thursday or a Friday afternoon, they were
25 briefing Mr. Cummings on what they had found. They said

1 they had pursued my allegations and Maura's allegations
2 of falsified records and they had interviewed some
3 employees about falsified records and inspector
4 harassment.

5 Pulgia and Gamble told Cummings that we ought
6 to go to a grant jury right now, meaning go to the U. S.
7 Attorney and get a grant jury convened and start
8 subpoenaing records and calling witnesses and we should
9 get the FBI involved in this right now. That was their
10 feeling. I think they left on a Thursday.

11 MR. ALOOT: You didn't get any impression of
12 Mr. Cummings' response?

13 MR. McCARTEN: No.

14 JUDGE HOYT: You were not using a speaker phone
15 then?

16 MR. McCARTEN: We were using a speaker phone,
17 but I was not a participant in the investigation. I think
18 the overall tone was we will get back to the office and
19 we will discuss it.

20 JUDGE HOYT: But you heard Mr. Cummings'
21 replies to the Gamble/Pulgia remarks?

22 MR. McCARTEN: Yes, and I think the reply was
23 we will get back to OIA and we will discuss it.

24 JUDGE HOYT: Was that the only thing that you
25 recall him saying?

1 MR. McCARTEN: Yes, because it has been so
2 long. What sticks out in my mind was them saying let's go
3 to the U. S. Attorney right now and that there is
4 falsification there.

5 The next week, or maybe a week intervened, I
6 think it was June, Cummings, Sinclair, Gamble and Pulgia
7 came out to the site. I was actively involved in writing
8 the Zimmer report and John Streeter said hey, you can go
9 there to meet with OIA, but spend a minimum amount of
10 time because I need you to write the report. I had no
11 qualms with that. We had to get the paper out, and this
12 conflicted with his getting the paper out.

13 I met with Mr. Cummings and Mr. Gamble, Mr.
14 Sinclair and Mr. Pulgia. We spent a whole day in our
15 hotel room and I briefed them, I think like a 10 or
16 11-hour brief where I gave them everything I had and they
17 grilled me over what I had. Cummings was asking me
18 questions and Sinclair was asking me questions on
19 specific items of falsification and why I felt it was
20 false and where are we at right now.

21 Comments were made by Dave Gamble to me and by
22 Al Pulgia, and the one that sticks in my head was
23 Cummings is out here to quash the investigation. That is
24 a direct quote.

25 MR. ALOOT: Were these made in the presence of

1 each other or separately?

2 MR. McCARTEN: In the presence of ---

3 MR. ALOOT: I guess it is Pulgia and Sinclair?

4 MR. McCARTEN: The people that said it most of
5 the time were Pulgia and Gamble.

6 JUDGE HOYT: And they were all in the same
7 vicinity?

8 MR. McCARTEN: Yes. Of course, Cummings was not
9 present. John Sinclair may have been present.

10 JUDGE HOYT: That would be Pulgia, Sinclair and
11 you were together?

12 MR. McCARTEN: Yes, and comments were made that
13 he is out here to quash the investigation.

14 JUDGE HOYT: Did they tell you why he wanted to
15 quash the investigation?

16 MR. McCARTEN: The general feeling of their
17 staff was that he did not want to find anything wrong,
18 that he did not want to pursue any criminal cases. That
19 was the tone of their stand.

20 JUDGE HOYT: Did not want to pursue any
21 criminal cases or did not want to pursue this criminal
22 case?

23 MR. McCARTEN: Any criminal cases, and I think
24 their reasoning for it was he either didn't want to make
25 waves and he was happy where he was at and let's not make

1 waves or he was pro-nuclear to a point where he didn't
2 want to embarrass the industry. I don't know what the
3 motivation was, but when they said to me he is out here
4 to quash the investigation as the Chief Investigator, you
5 know, for five months or six months, that kind of hit you
6 hard.

7 MR. ALOOT: Did Mr. Cummings tell you what the
8 purpose of this long-term interview was?

9 MR. McCARTEN: He interviewed me for three
10 days. Then we went to the site and he interviewed some
11 people.

12 MR. ALOOT: But he never told you what the
13 purpose of your grilling was?

14 MR. McCARTEN: Well, the purpose of the
15 grilling, it was a "briefing" on the case.

16 MR. ALOOT: A three-days' briefing?

17 MR. McCARTEN: A three-day briefing.

18 MR. ALOOT: In a motel room?

19 MR. McCARTEN: One in a motel room and one at
20 the site. That is how long we discussed Zimmer.

21 MR. ALOOT: And this entire discussion was
22 focused on criminal allegations and not health and
23 safety?

24 MR. McCARTEN: Criminal allegations. At that
25 point we were not very knowledgeable about what the

1 implication of this is, but it was spent on that, and
2 that is a long time.

3 JUDGE HOYT: In that entire period of time you
4 were not able to discern the purpose that Cummings had?

5 MR. McCARTEN: The purpose was to open an OIA
6 investigation of Zimmer. That was the obvious purpose
7 that OIA was actively investigating the criminal case at
8 Zimmer. That is the obvious reason. They had three or
9 four people out there. My impression was they were going
10 to be out there with us for the rest of the time.

11 MR. ALOOT: Doesn't that seem somewhat
12 inconsistent to have OIA initiate a formal and somewhat
13 involved criminal investigation and yet attempt to quash
14 the investigation at the same time?

15 MR. McCARTEN: Yes. Well, the way he acted was
16 he did not want to pursue it. He did not want to go to
17 the U. S. Attorney and that made the investigators feel
18 he was going to quash it.

19 JUDGE HOYT: What manifestations did you see
20 him exhibit?

21 MR. McCARTEN: He was extremely skeptical of
22 what we said. He was noncommittal about approaches to it.
23 He wasn't aggressive. It wasn't like saying we will need
24 more people out here. When you talk about doing a
25 criminal case you say let's focus in on this guy or let's

1 focus in on this issue regarding CG&E management. No talk
2 like that. There was no talk of what we are going to do
3 in the future. It was what have you got and no response
4 from him.

5 In fact, he had a conversation with me by the
6 pool that night alone which I thought was funny. He
7 turned to me and he said you know your boss Jim Cummings
8 here has a real problem with Zimmer and that is all he
9 said.

10 JUDGE HOYT: Now who is it that said that?

11 MR. McCARTEN: Cummings to me directly.

12 JUDGE HOYT: Speaking of himself in the third
13 person, is that you are saying?

14 MR. McCARTEN: Yes. He turned to me and said
15 you know Jim Keppler has a big problem with this
16 investigation.

17 JUDGE HOYT: Oh, Jim Keppler had a problem.

18 MR. McCARTEN: Jim Keppler has a big problem
19 with this investigation.

20 In other words, here he is, and you have got
21 to look at my perspective. I am a new agent. I have been
22 told by his staff he is here to quash the investigation.
23 After grilling me for a whole day and knowing that
24 Keppler in fact has a big internal problem that Cummings
25 should be investigating. He is the internal investigator

1 for the whole agency. He turns to me and says you know
2 your boss has a real problem with this case.

3 You know, how do you take it? I took it as he
4 has no interest in seeing why the NRC got this way when
5 an internal inquiry I felt was warranted and memos had
6 already been written by Fred Maura saying an internal
7 inquiry in warranted of Region III to see why this
8 happened. And the head of the Office of Inspector and
9 Auditor turns to me and says you know your boss has a
10 real problem with this case, with Zimmer.

11 MR. ALOOT: That was all he said?

12 MR. McCARTEN: That is all he said, but how do
13 you take that?

14 MR. ALOOT: How did you take it?

15 MR. McCARTEN: I didn't say nothing. I just
16 went well, you know. And here his staff has told me
17 privately 20 minutes before that he is out here to quash
18 the case.

19 JUDGE HOYT: Did you confront him with that
20 statement, or did you indicate it to him why are you
21 here? You made no response to him at all?

22 MR. McCARTEN: No. He did say that I&E's
23 inspection program was "screwed up." During the day long
24 thing he says well, I&E is all screwed up. And I am
25 looking at him, well, you are the Internal Investigator.

1 If it is screwed up, why don't you look into it. You have
2 got the auditors and you have got the staffing to audit
3 the program to find what is wrong, and you are telling me
4 you don't like I&E and it is screwed up and you are not
5 doing anything about it.

6 MR. ALOOT: Now this is in June?

7 MR. McCARTEN: June.

8 MR. ALOOT: Was there a meeting at the U. S.
9 Attorney's Office in June?

10 MR. McCARTEN: No.

11 MR. ALOOT: Other than OIA's on-site visit,
12 were there any Region III on-site inspections at Zimmer?

13 MR. McCARTEN: Yes. There were people there for
14 the QCP all the time. There were investigators there
15 coming and going. I know I spent two weeks out there. Bob
16 Burton and other investigators came out for a week or two
17 at a crack on and off.

18 MR. ALOOT: What about in July?

19 MR. McCARTEN: July, this is what happens.
20 June, I went out there with OIA. The OIA people told me
21 he is going to quash the case. The week before that we
22 had interviewed Floyd Oltz, to go back a little bit to
23 give you the significance of it.

24 Dave Gamble and Al Puglia interviewed Floyd
25 Oltz who was the Chief Document Controller at the plant.

1 We interviewed him for four hours and we taped it. At the
2 end of the interview Al Puglia turned to Oltz and said is
3 what out there at that plant match what is in that vault?
4 He said you are the custodian of all these records and
5 you know more about the designs and the drawings and
6 everything than anybody else. What do you think?

7 He says this plant has got a lot of problems.
8 He said what is in that vault don't match what is out
9 there. In other words, the certification of inspections,
10 the physical location of the components on the drawings
11 don't match what is really out in the plant.

12 MR. ALOOT: Is that on the tape?

13 MR. McCARTEN: It is on the tape. The way
14 Puglia phrased it was we have talked here for four hours.
15 We have got a long, sad story here, Floyd, and what is
16 the bottom line?

17 The bottom line is Floyd said the drawings
18 don't match the as-built condition of the plant, the
19 inspection records aren't accurate and he said there is
20 going to be a lot of rework needed to fix it. His tone
21 was I have been trying to hold down the fort myself and I
22 have had inadequate staffing and inadequate help.

23 Cummings was privy to that information because
24 that was before he came to the site.

25 MR. ALOOT: Did he have a copy of this?

1 MR. McCARTEN: Yes, he had the tape, and it was
2 supposed to be transcribed.

3 MR. ALOOT: Was it transcribed to your
4 knowledge?

5 MR. McCARTEN: It was transcribed and we
6 listened to the tape and added comments because the
7 transcription wasn't that good. I submitted my
8 transcribed copy to Dave Gamble from OIA and I never got
9 anything back. Let's put it that way.

10 MR. ALOOT: When did you submit your corrected
11 version of the transcript to OIA?

12 MR. McCARTEN: That would have been in August.

13 MR. ALOOT: Of '81.

14 MR. McCARTEN: '81.

15 JUDGE HOYT: Is that the early part of August?

16 MR. McCARTEN: Yes.

17 MR. ALOOT: Before the OIA report came out?

18 MR. McCARTEN: The OIA critical of Phillip?

19 MR. ALOOT: Yes.

20 MR. McCARTEN: Yes. He was aware of that
21 statement I am sure. That was a key statement.

22 JUDGE HOYT: By he you mean Cummings?

23 MR. McCARTEN: Cummings, and I made Keppler
24 aware of it, too, and I made Streeter aware of it.

25 MR. ALOOT: That takes us into the beginning of

1 July.

2 MR. McCARTEN: Okay. When you get into the
3 beginning of July, I conducted an interview of Phil
4 Gettings with OIA, Sinclair and Gamble present. They then
5 went on to interview [REDACTED] 7(c)

6 MR. ALOOT: Who is [REDACTED] 7(c)

7 MR. McCARTEN: [REDACTED] 7(c)

8 [REDACTED] and they described that interview to me as very
9 nonproductive. I didn't want to interview [REDACTED] 7(c)
10 because I was not prepared to interview [REDACTED] 7(c)
11 [REDACTED] was such a major actor that I felt it was a
12 premature interview because all along I had felt we
13 should build this pyramid type case proving the
14 falsifications and then working our way up. I didn't feel
15 you should talk to the major subject of the case until
16 you get to a point where you should.

17 I didn't participate in the interview. I
18 didn't think it was an appropriate interview to make at
19 the time.

20 MR. ALOOT: Well, you nonparticipation, was it
21 choice or their choice?

22 MR. McCARTEN: My choice. Gettings, I asked
23 specific questions of Gettings that I needed to prove our
24 regulatory case and to prove points that I had made so
25 far. We interviewed him and OIA then continued to

1 interview him. To be honest with you, the OIA
2 investigators did not know as much about this case as I
3 did.

4 MR. ALOOT: Well, you had lived with this case
5 for six months.

6 MR. McCARTEN: I had lived it for six months,
7 yes. They were getting into it.

8 MR. ALOOT: You participated at Gettings
9 interview.

10 MR. McCARTEN: Yes.

11 MR. ALOOT: Did you reduce that interview to
12 writing?

13 MR. McCARTEN: Yes, I did. In 81-13, that is in
14 there.

15 MR. ALOOT: Was OIA's interview summary
16 subsequently sent to Region III?

17 MR. McCARTEN: It was, but it wasn't until
18 late. The interviews of [REDACTED] and Gettings didn't get
19 to Region III I think until September or October. 7(c)

20 MR. ALOOT: Would it be necessary since you had
21 already done Gettings?

22 MR. McCARTEN: That is why. The issue that

23 [REDACTED]
24 [REDACTED] I was verbally briefed on the [REDACTED] 7(c)
25 interview and Gamble and Puglia told me, they said you

1 wouldn't believe it. This guy is a [REDACTED] and 7(c)
2 he is sitting in an office with no furniture waiting to
3 retire in a little four by ten office. He is like an
4 exile because of Zimmer and the problems, and the company
5 had more or less labeled him as a screw-up and he didn't
6 say anything.

7 The [REDACTED] interview they talk about says 7(c)
8 nothing. [REDACTED] admitted to nothing. 7(c)

9 MR. ALOOT: You were verbally apprised of the
10 contents of the [REDACTED] interview at the time it 7(c)
11 occurred?

12 MR. McCARTEN: Yes, and that is why I felt the
13 interview was premature. They didn't have a line of
14 questioning to deliver to him. They had not prepared the
15 interview, you know, what issues were they going to
16 address.

17 MR. ALOOT: Did they tell you the interview of
18 [REDACTED] was under strained circumstances? 7(c)

19 MR. McCARTEN: Yes.

20 MR. ALOOT: Why?

21 MR. McCARTEN: Because of the situation he was
22 in. He had obviously been left with nothing to do as a
23 result of Zimmer. His career was obviously at an end. I
24 think he made a comment to them at the end of the
25 interview like the next time you want to talk to me you

1 will need a subpoena or something to that effect. That is
2 a sign of a strained interview.

3 They were looking more at the mangement of the
4 utility conspiring to falsify records. I felt we weren't
5 there yet and we hadn't proved enough individual
6 instances of falsification.

7 MR. ALOOT: You thought ultimately you might do
8 that?

9 MR. McCARTEN: Yes, or not even me, but maybe
10 the grand jury.

11 MR. ALOOT: But you feel that OIA's people were
12 focusing in albeit prematurely, but still focusing in on
13 the ultimate issue?

14 MR. McCARTEN: Yes.

15 MR. ALOOT: Management, high-level CG&E
16 knowledge involved in all this.

17 MR. McCARTEN: Management knowledge and
18 involvement in these problems. The kicker is is in August
19 I called back and I said hey, when are you guys going
20 back out? We are going back out sometime during October.
21 Well, we don't know yet. Well, I am not sure. Throughout
22 September and October there is no more investigation of
23 Zimmer?

24 JUDGE HOYT: Who was this you were talking
25 with?

1 MR. McCARTEN: Gamble and Sinclair?

2 JUDGE HOYT: At different times or together?

3 MR. McCARTEN: At different times almost
4 weekly.

5 MR. ALOOT: So after this last round of the
6 Gettings and [REDACTED] interviews, was there any active
7 investigation by OIA, to your knowledge?

8 MR. McCARTEN: No.

9 MR. ALOOT: Was there a meeting at the U. S.
10 Attorney's Office in August?

11 MR. McCARTEN: Yes, there was. There was a
12 meeting with the U. S. Attorney's Office in late August.
13 I was at the training center in Chattanooga. It might
14 have been late August or early September. The gist of
15 the meeting was to discuss the findings of 81-13.

16 MR. ALOOT: That were yet to be issued.

17 MR. McCARTEN: Yes. I learned about the meeting
18 through Ted Gilbert who was in attendance at this
19 training meeting with me. I called up John Streeter. I
20 said, John, I hear there is a meeting with the U. S.
21 Attorney, and I said I would like to go. I said I am the
22 most knowledgeable person on the criminal issues in the
23 case. I said I want to attend the meeting. They say well,
24 it is going to be with Ann Tracey and not the same
25 people. I said well, I want to be there.

7(c)

1 Streeter says you are right, Jim, you should
2 be there. You know more about the criminal case than
3 anybody else. We will arrange a flight for you.

4 I called back at one o'clock. Jim, you can't
5 come to the meeting. I said why? He gave me no reason
6 why. He says you just can't come. I said, John, not to
7 insult you or anything, but you don't know anything about
8 the criminal issues in this case and neither does Paul
9 Barret who was also going to the meeting.

10 I said you don't know enough about the
11 specifics of the issues to brief the U. S. Attorney. He
12 says you are right, Jim, I don't, but I will just do the
13 briefing anyway. But you cannot come to the briefing. I
14 felt that I was intentionally excluded from the briefing
15 for some reason.

16 MR. ALOOT: You do not know why.

17 MR. McCARTEN: No.

18 MR. ALOOT: Do you know who participated in the
19 decision not to want you to go?

20 MR. McCARTEN: No.

21 MR. ALOOT: Could budget have been one reason?

22 MR. McCARTEN: No. They had money coming out
23 the ears for Zimmer. There was no logical reason for me
24 not to attend the meeting. My overall impression was I
25 had voiced my opposition and I was not happy with the way

1 Zimmer was going.

2 In June a decision was made that Jim Foster
3 would be the editor of the report. I strongly disagreed
4 with this position. I said, wait a minute. I said Foster
5 did all the previous investigations at Zimmer. He has got
6 a vested interest in rewriting this thing. I said I don't
7 like the idea of anybody rewriting our reports and
8 "editing" it. What for? What we say is what we say and
9 that is it.

10 My philosophy and their philosophy were
11 totally different and they knew it, investigative
12 philosophy, enforcement philosophy and how to report
13 things. My idea were the same as Bill Ward's, and Bill
14 Ward had taken taken Ted Gilbert's work at Zimmer and his
15 other investigators' work at North Anna and made it into
16 a report which was similar to an NIS report which follows
17 the guidelines that if you are an individual and you
18 state to me something, it goes in the report exactly how
19 you stated it.

20 The agent says he interviewed somebody and the
21 person said this. It is all there, good or bad, true or
22 untrue. It is a regular standard investigative report
23 that every other agency uses.

24 He wrote that report and the Region III people
25 got it and they went "Yoosch", you know, here are these

1 guys saying in a public document this plant is all
2 "screwed up." They didn't like those kind of words and
3 words were used like we have to use word engineering. We
4 have got to massage your report. These were words used to
5 me about my reports.

6 I wrote them the way it was said.
7 Consistently in my two years at the NRC, your reports
8 need a lot of rework and a lot of rewriting. You reports
9 have to be massaged a lot.

10 JUDGE HOYT: Now let me understand, Mr.
11 McCarten. You were the lead investigator now at Zimmer.

12 MR. McCARTEN: Yes.

13 JUDGE HOYT: And the focus of everything that
14 you were doing there at Zimmer was towards the criminal
15 aspects of the case.

16 MR. McCARTEN: Yes.

17 JUDGE HOYT: But you were not going to the
18 meeting with Ann Tracey in the U. S. Attorney's Office in
19 Cincinnati in August.

20 MR. McCARTEN: And my entire report, which was
21 written by me, was edited by John Streeter and Jim Foster
22 and it took them June, July, August, September, October
23 and until November 24th to rewrite it.

24 MR. ALOOT: Do you think that the rewriting and
25 editing process misrepresented your ---

1 MR. McCARTEN: I found instances where the
2 report that was presented to the Commissioners was false
3 and contradicted sworn depositions that were attachments
4 to the same report.

5 JUDGE HOYT: Could you take that report as
6 issued today, Mr. McCarten, and point out to us those
7 areas where you found those inconsistencies? If we give
8 you a copy of that report, could you do that for us?

9 MR. McCARTEN: Yes. What they did was they did
10 the tone.

11 JUDGE HOYT: Let me see if we can get an answer
12 to that first. Could you do that?

13 MR. McCARTEN: Yes.

14 JUDGE HOYT: Would you do it?

15 MR. McCARTEN: Yes. I will walk you through one
16 section of that report and I will tell you what really
17 happened and what really was told to me and then what was
18 in that report, and it is so watered down and it is so
19 toned down that you can't discern. It is there, but the
20 impact is gone.

21 One thing they did was they took my entire
22 section of the report detailing all the falsifications in
23 the nonconformance reporting system and made it an
24 appendix.

25 JUDGE HOYT: Which you think detracted or

1 watered it down.

2 MR. McCARTEN: Sure it does when it is not part
3 of the body of the report. What Streeter did was he wrote
4 and I concurred in a summary of the nonconformance report
5 allegations.

6 All my facts were made an attachment to the
7 report. All the exhibits that backed up those facts that
8 excluded. So the statements with all the meat in them,
9 with the real testimony and the person was gone.

10 MR. ALOOT: You did sign that final report?

11 MR. McCARTEN: I did sign the final report.

12 MR. ALOOT: Was it under protest?

13 MR. McCARTEN: I verbally protested to Foster
14 and Streeter, and I also at one point wrote a memo saying
15 hey, parts of the report are false, and Streeter did not
16 tell Mr. Keppler about this memo.

17 MR. ALOOT: You sent a memo to Mr. Streeter?

18 MR. McCARTEN: Yes, and I verbally discussed it
19 with him. This was in November when the final draft was
20 going. Mr. Foster in his zeal to water down this report
21 had actually made misstatements in the report.

22 MR. ALOOT: Do you have a copy of that memo?

23 MR. McCARTEN: I will dig it out of here and
24 give it to you. I think I have got that or the Bureau has
25 got it, but I will check it. If you interview Streeter,

1 he will tell that happened, and there are memos in the
2 files about it because he wanted me to sign a memo saying
3 everything I found wrong was substantially not
4 significant, and I wouldn't sign it.

5 He did not tell Mr. Keppler about this. We
6 went to a meeting in November with OIA to discuss the
7 case and Foster out of the clear blue stands up in the
8 meeting and says is everything in the report accurate?
9 Everybody agrees to that, don't they? I said no, I don't.
10 I found misstatements in the report, and Keppler and
11 Davis hit the ceiling because they had already given the
12 report to the Commissioners.

13 MR. ALOOT: You say OIA was also present there?

14 MR. McCARTEN: OIA was present there.

15 JUDGE HOYT: Who was representing OIA?

16 MR. McCARTEN: Cummings.

17 MR. ALOOT: What was the purpose of OIA in the
18 Region III meeting on this report?

19 MR. McCARTEN: It was a problem they had. The
20 problem they had was in the summer Keppler briefed the
21 Commissioners and they called me at home in the morning
22 and said isn't it true that OIA told you not to get a
23 statement from Gettings? And I says well, they told me
24 not to take the interview and that they weren't taking a
25 statement.

1 MR. ALOOT: Why did OIA tell you not to take
2 the interview of Gettings?

3 MR. McCARTEN: I don't know. I wanted to take
4 it. I felt it was that significant, they said no, because
5 I like to get transcripts of the tapes. They vetoed it.
6 So when I responded thinking they refused to let me tape,
7 and that is equivalent to a statement, I says I did that
8 at the direction of OIA.

9 Well, OIA denied ever telling me that I
10 couldn't take a statement. Well, to me not taping it was
11 telling me not to take a statement. So Keppler went and
12 testified before the Chairman that OIA directed us not to
13 take statements from people and that hit the ceiling.
14 Cummings denied it and his staff denied it and we had
15 this big meeting with about 15 people present and
16 everybody agreed it was a misunderstanding and I had
17 taken the tape incident out of context.

18 Well, that was the purpose of the meeting and
19 here in the meeting I says hey, that report ain't right,
20 and Streeter and Kepple hit the overhead when Streeter
21 says yes, McCarter told me about this three days ago and
22 I ain't told you yet. My comments were not welcomed, to
23 say the least, you know, that the report was false in
24 certain areas.

25 MR. ALOOT: False or misleading or ---

1 MR. McCARTEN: Outright false.

2 MR. ALOOT: Did Mr. Keppler ever, to your
3 knowledge, convey your feelings about the report to the
4 Commission to correct the record?

5 MR. McCARTEN: Not that I am aware of.

6 MR. ALOOT: This briefing, did this occur ---

7 MR. McCARTEN: You have got to look at this
8 time, the time frame you are talking about. OIA people
9 know that Foster and Streeter are rewriting the whole
10 report, and the people who participated in the report,
11 what a slap in the face.

12 You have got to remember that I left. Jerry
13 Shapker left. Paul Barret said I don't want to have
14 anything more to do with Zimmer. Tom Daniels left the NRC
15 at that time because of things like this. They took our
16 whole report and edited it. People who hadn't even
17 participated in the investigation edited it.

18 People had a vested interested interest in
19 making sure that the report didn't highlight things that
20 the NRC had previously approved, like Foster and the
21 vendor audits. Barret found problems with the vendor
22 audits and that was very weakly put in the report. Yet,
23 that is a major problem area because it proved that
24 Foster's previous investigation of [REDACTED] and the
25 testimony before the ALSB was wrong.

withhold
Ex:7(D)

1 So the editing process, I strongly objected to
2 the editing process. I fought with them. I at times
3 ignored them. A whole month went by where I just didn't
4 talk to them.

5 MR. ALOOT: Let me get this straight though.
6 From basically May to November you had no involvement in
7 the editing of your report.

8 MR. McCARTEN: You have got to look at July. I
9 was in the Reserves for two weeks. So that cuts out about
10 a half a month there.

11 MR. ALOOT: I see.

12 MR. McCARTEN: In August I was actively
13 involved in the Applegate part, and I didn't have a big
14 problem with the Applegate editing. I didn't have a big
15 problem with what they were saying. I thought they were
16 going overboard in the way they were editing.

17 But when it got to the meat of the
18 nonconformance reports, the poor designs, et cetera, they
19 really started taking it apart, disagreeing with a lot of
20 the findings.

21 In fact, at one point Foster and I made a
22 visit out to the site because we disagreed on some points
23 and we wanted it clarified by field interviews, site
24 work. We participated in an interview of a witness and
25 Pat Gwynn was the Resident Inspector that was present

1 during the interview. The tone of the interview was so
2 bad that Pat Gywnn and I left the trailer and Pat Gywnn
3 turns to me unsolicited and says what is Foster trying to
4 do, put words in that guy's mouth to get out of the item
5 of noncompliance?

6 He would interview him about a procedure, a
7 welding procedure, and the guy would say I made a
8 mistake. I didn't review that radiograph. Foster would
9 say oh, come on, you didn't really make a mistake, did
10 you, and doesn't the procedure really allow you to give
11 it another kind of testing? He says yes, you are right.
12 The code says we could give it another kind of testing,
13 but our procedure said to test it this way and we
14 violated our procedure and we were wrong. No, no, you
15 weren't really wrong because you weren't against the
16 code. After about 15 minutes of this Gywnn and I walked
17 out of the trailer.

18 Foster was deliberately trying to water down
19 those findings in that report because it would prove that
20 the Phillip's investigation was flawed and his previous
21 investigations were flawed and it caused a lot of
22 friction in the region.

23 I was gone for the month of September, too.
24 They sent me to two report-writing schools, each a week
25 long, and I got married and I took about three weeks off.

1 So I was gone a lot in September. But in October and
2 November I was involved in the editing process. In
3 November it got very heated over what I felt should be in
4 there and what shouldn't be in there.

5 MR. ALOOT: You signed the report on October
6 16th, 1981, and five weeks later it was issued.

7 MR. McCARTEN: Right.

8 MR. ALOOT: When you signed it, was your
9 section part of the report or was it part of the
10 appendix?

11 MR. McCARTEN: When I signed it, it was made an
12 appendix. They did that in August while I was gone.
13 Myself and Tom Daniels signed that report and we both
14 discussed not signing it. We said let's just sign it and
15 forget it, you know, and the hell with it. We are both
16 leaving.

17 So we signed the report, and then in November
18 I started comparing things because I said, boy, they
19 really butchered this thing. I started going through it
20 word by word. I read it over and I said it looks good. It
21 ain't what I wrote, but it looks good. But then I started
22 going through individual interviews and I took my
23 originals and compared it with the old ones and that is
24 why it took five more weeks to get out because not only
25 did I do that, but about four other inspectors came in

1 and said what the hell is going on here.

2 MR. ALOOT: Did you write the entire report?

3 MR. McCARTEN: You have got to remember the
4 title page was signed October 16th. They were still
5 changing the report after the title page was signed.

6 MR. ALOOT: Certainly, yes.

7 JUDGE HOYT: Let me pick up on something a
8 moment. I want to be certain I understood you correctly.
9 The testimony that Foster from Region III gave to the
10 Atomic Safety and Licensing Board in its hearings on the
11 operating license was misleading? Did I understand you
12 correctly?

13 MR. McCARTEN: One of Keppler's concerns was
14 that statements we had made to the Licensing Board about
15 electrical, and I think it was electrical, that the
16 inspectors had made based on the investigations conducted
17 by Foster and by the inspectors were false. I think one
18 of them was Jack Hughes who appeared before the Board and
19 made statements that the electrical problems were okay
20 and that a number of these allegations were unfounded.
21 Barret went in there and found they were violating some
22 of those.

23 MR. ALOOT: But was the concern that the
24 testimony would turn out to be false or that the
25 testimony was knowingly false when given?

1 MR. McCARTEN: It would turn out to be false.

2 MR. ALOOT: So we are not talking about purjury
3 so much as stupidity.

4 MR. McCARTEN: Yes, stupidity. But to go before
5 the Board and say hey, our people are stupid or we made a
6 mistake, that is bad for Regional Directors.

7 JUDGE HOYT: Was this an operating license?
8 That must have been an operating license stage, wasn't
9 it?

10 MR. McCARTEN: Operating, and it was about
11 construction issues in the electrical area and that was a
12 big worry. Previous investigations, inspections and
13 testimony before the Board were proven to be untrue.

14 MR. ALOOT: We jumped ahead to November. When
15 you came back to Glen Ellyn after the August meeting with
16 the U. S. Attorney's Office, did you ask anybody what
17 went on and what was said?

18 MR. McCARTEN: Yes. I asked Paul Barret what
19 went on, and Paul Barret described it as the U. S.
20 Attorney, Ann Tracey, didn't know anything about nuclear
21 power, didn't know anything about the issues in the case
22 and the meeting was a joke.

23 MR. ALOOT: Who attended this August meeting?

24 MR. McCARTEN: Paul Barret, John Streeter and
25 John Sinclair from OIA.

1 MR. ALOOT: And Ms. Tracey of the U. S.
2 Attorney's Office.

3 MR. McCARTEN: And Ms. Tracey.

4 MR. ALOOT: What was the purpose of that
5 meeting again?

6 MR. McCARTEN: The purpose of the meeting was
7 to tell them the findings from 81-13. How they could tell
8 about the criminal findings is beyond me, and they
9 described the meeting as not much of a brief. Just the
10 tone of what Barret told me, he said she didn't know
11 anything about nuclear power, had no expertise in it and
12 was not knowledgeable of the case. They could have told
13 her anything.

14 MR. ALOOT: Was there a memo to the file
15 concerning that August meeting prepared by anyone in
16 Region III?

17 MR. McCARTEN: There was a memo to Ann Tracey
18 that I have here.

19 MR. ALOOT: It is a letter?

20 MR. McCARTEN: Yes. Here it is.

21 MR. ALOOT: What was the date of that letter?

22 MR. McCARTEN: August 17, 1981. This is an OIA
23 letter from Schneblin and Cummings to Tracey.

24 MR. ALOOT: Can I have you compare this
25 document that is numbered 64 to the letter you have and

1 are they the same letter?

2 MR. McCARTEN: Let's see what it says here.

3 (Pause while Mr. McCarten examines documents.)

4 (A short recess was taken.)

5 JUDGE HOYT: We have been off the record for a
6 moments and have resumed the interview.

7 I think, Mr. McCarten, you were comparing the
8 two letters of Ann Tracey there.

9 MR. McCARTEN: Yes.

10 JUDGE HOYT: Let me retrieve that report I
11 handed you earlier, the Marty Malsch interview.

12 MR. McCARTEN: Here you go.

13 JUDGE HOYT: Thank you.

14 MR. ALOOT: Is the document identified as No.
15 64 identical to the document you were going to be
16 discussing?

17 MR. McCARTEN: Yes, it is.

18 Okay, do you have any questions on it?

19 JUDGE HOYT: May we have that back if the copy
20 is the same.

21 MR. ALOOT: The letter indicates it is from OIA
22 signed for Mr. Cummings and Mr. Schneblin to Ann Marie
23 Tracey. This is the only document reflecting the
24 substance of that August meeting?

25 MR. McCARTEN: What is the date on the

1 document against?

2 MR. ALOOT: August 17th, 1981.

3 MR. McCARTEN: That doesn't talk about that
4 particular meeting. The meeting with Ann Tracey postdates
5 that document. That is the forwarding of the OIA report
6 of Jerry Phillip's investigation.

7 MR. ALOOT: All right. What I was interested in
8 was is there any ---

9 MR. McCARTEN: ---documents to her about the
10 late August meeting?

11 MR. ALOOT: Not only to her, but to the file or
12 to somewhere else.

13 MR. McCARTEN: Not that I am aware of.

14 MR. ALOOT: The substance of the August meeting
15 was never reduced to writing?

16 MR. McCARTEN: Not that I am aware of, and I
17 was never told formally, except by Mr. Barret informally,
18 as to how that meeting went. Mr. Gamble did tell me I
19 think after that meeting that a decision had been reached
20 where I&E would continue its health and safety
21 investigation and keep Justice apprised periodically and
22 that Everett's proposal to get actively in the case was
23 out and that OIA's investigation of the criminal matters
24 was out, was ended, and that I&E would do its health and
25 safety first and then the criminal would be done. It

1 would not be done together. That is what Sinclair told me
2 circa September or October, was that OIA was out. Their
3 investigation was out.

4 MR. ALOOT: They were not continuing with their
5 current investigation.

6 MR. McCARTEN: Right, and that I&E had the
7 ball.

8 JUDGE HOYT: In effect then, Mr. McCarten, you
9 were not replaced in Region III as the lead criminal
10 investigator in Zimmer matters.

11 MR. McCARTEN: No. Mr. Foster was given the
12 Zimmer case after I left. I left in March.

13 JUDGE HOYT: I thought you said you left in
14 November.

15 MR. McCARTEN: I took the job in November. I
16 did not leave until March. In December, January and
17 February I assisted in compiling Zimmer data for Foster
18 and I also got involved in the Zion investigation about
19 drug use at Zion. That took about a month's time on that.

20 MR. ALOOT: Why do you believe that you were
21 excluded from the August 1981 meeting with the U. S.
22 Attorney's Office?

23 MR. McCARTEN: I don't know. It shocked me that
24 I was excluded. I can't speculate as to why I was
25 excluded. It could be for a very practical reason. My

1 feelings were known that I felt we should take an
2 aggressive approach to the criminal case. The end result
3 is that an aggressive approach was not taken.

4 I can speculate that they didn't want my view
5 expounded at the meeting, and I would have expounded it.
6 They knew that. In fact, I was known to attend meetings
7 and just say what I felt and not acquiesce to the group.
8 If I wanted a criminal case I would have told them that
9 we have got a criminal case here.

10 MR. ALOOT: Do you believe any relevant
11 information was withheld from the U. S. Attorney's
12 Office regarding criminal violations at Zimmer?

13 MR. McCARTEN: I feel that documents were
14 withhold from the U. S. Attorney's Office.

15 MR. ALOOT: Which documents in particular?

16 MR. McCARTEN: When I left the NRC I provided
17 all of my field notes, there was a computerized printout
18 made of all of the allegations and all of the statements.
19 When I met with the FBI in 1982 I talked to a special
20 agent there.

21 MR. ALOOT: Do you know the name of the special
22 agent?

23 MR. McCARTEN: Let me check in my file.

24 (Brief pause.)

25 MR. McCARTEN: I think I kept his card. Yes,

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[REDACTED]

Withhold
Ex-7(C)

MR. ALOOT: In what office?

MR. McCARTEN:

[REDACTED]

Withhold
Ex-7(C)
Ex-7(C)

I had talked to Ted Gilbert once I returned, and I said hey, Ted, if you ever want to sit down with me, I hear you are going to be working on Zimmer, if you ever want to sit down with me, and I think this was in September of '82, I said I hear the Zimmer investigation is kicking off and if you want to interview me on it, I will be glad to spend a day or two helping you out to get started on it again.

His comment to me was well, Foster hasn't cut loose the documents from Region III. He is sitting on the documents, all of my stuff that I left copies of in Region III, was a comment that Ted Gilbert made to me.

MR. ALOOT:

[REDACTED]

Withhold
Ex-7(A)

MR. McCARTEN: Yes.

1 MR. ALOOT:

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23 MR. ALOOT: Who was the Assistant U. S.

24 Attorney assigned to ---

25 MR. McCARTEN: Ann Tracey.

Withhold - Ex-7(A)

1 MR. ALOOT: [REDACTED]

2 [REDACTED]
3 MR. McCARTEN: [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

withhold
Ex-7(A)

9 MR. ALOOT: Do you believe that any material
10 information or documents were withhold from the U. S.
11 Attorney's Office in August of 1981?

12 MR. McCARTEN: No, not that I am aware of. I am
13 saying pertinent information may not have been
14 effectively communicated to her.

15 MR. ALOOT: At that time.

16 MR. McCARTEN: At that time.

17 MR. ALOOT: But of course there was no official
18 request for documents or information at that time.

19 MR. McCARTEN: No.

20 MR. ALOOT: Were there any subsequent meetings
21 with the U. S. Attorney's Office that you knew about or
22 participated in?

23 MR. McCARTEN: No.

24 MR. ALOOT: Mr. McCarten, I am going to show
25 you a letter from Jim Cummings to Patrick Hanley. It is

1 identified as document 74 and ask you to look it over and
2 further ask whether you have seen that document before or
3 have heard about it, its substance?

4 (Pause while Mr. McCarten examines document.)

5 MR. McCARTEN: I have never seen this document
6 before. To comment on the substance, parallel proceedings
7 was discussed in May of 1981. Dave Everett was the person
8 that I talked to in the case.

9 I am kind of vague as to what Mr. Cummings
10 refers to as "I am aware of Dave Everett's point of view
11 on this matter. However, I do not share that point of
12 view nor, to my knowledge, does the Department of
13 Justice." If he is referring to Mr. Everett's view that
14 he should be actively involved in the case, he is
15 obviously disagreeing with him her. He says they can get
16 involved.

17 MR. ALOOT: What I am somewhat confused about
18 is obviously parallel proceeding problems are dependent
19 upon having parallel proceedings or parallel
20 investigations. Was there any time in 1981 or in March of
21 '82 where there was not a parallel civil investigation on
22 the Zimmer site that could have been repeated if there
23 was a criminal investigation at the same time, or was
24 there always investigations on these allegations?

25 MR. McCARTEN: Throughout '81. In '82, from my

1 understanding, there was no investigation at Zimmer,
2 investigation, now there may have been inspections, from
3 January through most of '82, all the way to September.

4 MR. ALOOT: Did you say there were
5 investigations in December of '81 on site?

6 MR. McCARTEN: There was no investigation at
7 Zimmer from November/December of '81 all the way until
8 1982, late '82.

9 MR. ALOOT: What happened to all those
10 allegations that had not been addressed?

11 MR. McCARTEN: They were assigned to Mr. Foster
12 to investigate and there was no pursuit of them by Region
13 III for months and months and months.

14 JUDGE HOYT: Now all those months totalling up
15 to late '82; is that what you are saying?

16 MR. McCARTEN: That is what I am saying, to my
17 knowledge. I don't know what Foster did. He had the con
18 to do something. Now what he did was another matter.

19 MR. ALOOT: During this time period was the
20 Office of Inspection at the NRC being involved?

21 MR. McCARTEN: They were involved in monitoring
22 the quality confirmation program, and they may have
23 looked at some of these allegations, but I wasn't there.
24 Mr. Foster could speak as to the progress of the Zimmer
25 case. Mr. Gilbert in September when he took over the case

1 had told me that they had done nothing on it.

2 I have a question on this letter. Can we go
3 off the record for a minute?

4 JUDGE HOYT: I think so.

5 (Discussion off the record.)

6 JUDGE HOYT: Back on the record.

7 MR. McCARTEN: When I look at this letter,
8 Exhibit 74, he is saying now all of the sudden in
9 September he feels that he is doing something that is
10 contrary to what he has been doing.

11 MR. ALOOT: Who is he?

12 MR. McCARTEN: Cummings in this letter. He is
13 saying now I believe there is a parallel proceedings
14 problem. Well, in May we discussed parallel proceedings
15 at length with Main Justice and got memos on this point
16 from Main Justice. In fact, I remember reading those
17 memos saying it is okay to proceed, and OIA's position
18 was proceed, OIA and I&E go with it, a joint
19 investigation.

20 Now in September he writes a letter saying we
21 are not going to proceed and I disagree with your
22 approach to Everett. They got an opinion from Greenspan.
23 The letter was signed by Greenspan in Main Justice saying
24 proceed.

25 MR. ALOOT: With a joint I&E and OIA ---

1 MR. McCARTEN: With a joint I&E and OIA
2 investigation, and then in September he writes a letter
3 to the U. S. Attorney which says I have had further
4 discussions which say don't proceed. I don't understand
5 what was told, you know, what changed. I was not privy to
6 those conversations, but in light of the guidance in May,
7 this is totally contradictory to the guidance that he
8 gave us in May, and the guidance he gave us in May was
9 based on discussions he had with Main Justice.

10 MR. ALOOT: Now would it be consistent with Mr.
11 Everett's contrary views with regard to the U. S.
12 Attorney's involvement in monitoring and leading the
13 on-site investigation?

14 MR. McCARTEN: It could either be over parallel
15 proceedings or over Everett's more aggressive approach to
16 the investigation. He says "I do not share this point of
17 view nor, to my knowledge, does the Department of
18 Justice." I don't know what to say about that. He doesn't
19 agree with Everett obviously, but Everett's approach is
20 one that is commonly used by Justice with every other
21 agency in the government and why not the NRC. That was
22 Everett's position. He says hey, we have worked with
23 everybody else and why not you.

24 I remember at that meeting in April with
25 Sinclair. He says I don't see what the problem is. We

1 work with everybody like this, and that is true. Why is
2 there a problem with NRC I think was Everett's position.

3 MR. ALOOT: Mr. McCarten, I am going to show
4 you a document identified as No. 85 and ask if you have
5 seen that?

6 MR. McCARTEN: Yes, I have.

7 MR. ALOOT: Does that document attach relevant
8 information regarding record falsification to Zimmer?

9 MR. McCARTEN: These documents were forwarded
10 to the region in November and I think this information
11 was included into the report, these interviews were, not
12 all of it in its total.

13 MR. ALOOT: Do you recall receiving that in
14 November of '81?

15 MR. McCARTEN: Yes.

16 MR. ALOOT: You recall reading it?

17 MR. McCARTEN: Yes.

18 MR. ALOOT: The information that was provided
19 in the transmittal memo, did any of that or does any of
20 that contradict any of the findings of 81-13, or could it
21 have changed any of the findings of 81-13?

22 MR. McCARTEN: See, I don't agree with the
23 findings of 81-13.

24 MR. ALOOT: You did state that you received
25 that.

1 MR. McCARTEN: Yes.

2 MR. ALOOT: Did you review that prior to the
3 sending out of the report?

4 MR. McCARTEN: Yes, I did.

5 MR. ALOOT: After reading that and knowing what
6 the report said, would you have pointed out any
7 information that was inconsistent with the report's
8 findings?

9 MR. McCARTEN: I reviewed all these and some of
10 this we included in the report, the interview of
11 Schwiers especially.

12 You are saying did this contradict the report?

13 MR. ALOOT: Obviously one of the allegations is
14 that the relevant information that contradicted the
15 findings of 81-13 was not provided to Region III until
16 the report was issued.

17 MR. McCARTEN: That allegation is kind of moot
18 because 81-13 knew there was contradictory information. I
19 mean there was contradictory information in our own files
20 to the conclusion of 81-13. The conclusion of 81-13 is
21 Zimmer has some, or the summary said there were some
22 paper problems. I disagree with that conclusion, that is
23 "only paper" was what was touted in the region, and it
24 was told to the press in November. I was present at that
25 press conference. I didn't believe that.

1 That report in that area, the region said
2 there were only paper problems when we had allegations of
3 hardware problems. We had substantiation of hardware
4 problems. Mr. Keppler was fully briefed that there were
5 hardware problems. As inspectors began to look more and
6 more at the plant, they found more and more hardware
7 problems in the October and November time frame.

8 That brings us around to the main meeting with
9 Mr. Stello in Region III in which Mr. Stello was given
10 detailed brief as to what we found at the plant. The
11 conclusion of the brief was Mr. Stello, these are only
12 paper problems and that is it.

13 Stello got very upset about that saying you
14 mean you spent three months investigating a plant with 20
15 inspectors and invested a thousand man-hours and you are
16 telling me you have only found paper problems? He was
17 kind of upset with that type of thinking, and one of the
18 inspectors, Jerry Shapker, stood up and he says has
19 anybody in this room got any evidence that there are
20 hardware problems? He said I have got inspectors that can
21 walk into a plant and tell you if there are hardware
22 problems. I would like to see the inspector, but the
23 point is Shapker stood up in that meeting and said there
24 are some hardware problems, the structural welding is
25 faulty.

1 I stood up and I says the nonconformance
2 reporting system relates to hardware problems not being
3 identified. Then I said there are also criminal
4 violations there, and when I said that Stello got very
5 emotionally upset, threw up his hands and said we have
6 got inspectors tied up in grand juries right now. I don't
7 want to hear about any criminal allegations. He says we
8 are just going do health and safety. That is OIA's job
9 and we don't want to have nothing to do with criminal
10 stuff, and this is May. Then he walked out of the
11 meeting.

12 MR. ALOOT: You are saying then that the
13 information or the memos or interview summaries that were
14 transmitted on November 18th, 1981, while it may be it
15 had given information that was contradictory to the
16 findings of 81-13, that that contradictory information
17 was already in your files, or was this new information?

18 MR. MCCARTEN: Yes, because you have got to
19 look at the scope and how they narrowed. At the beginning
20 of the investigation they narrowed the scope of what we
21 would look at. We didn't look at CG&E management.

22 MR. ALOOT: But what I want to make clear is,
23 to myself anyway, is that this information that OIA
24 allegedly failed to transmit in a timely manner, would it
25 have affected or added new information to the

1 investigative report, 81-13, if it had come over earlier?

2 MR. McCARTEN: No, because the regional people
3 would have excluded it in the editing process, just like
4 they excluded all the other stuff.

5 To answer your question, Applegate is right.
6 Pertinent information was excluded from 81-13.

7 MR. ALOOT: But not by OIA.

8 MR. McCARTEN: Not by OIA. By Region III
9 specifically during the five-month long editing process.
10 This information shows that the utility and that Kaiser
11 management was involved in these problems. I had similar
12 statements to these. I had better ones and they are in
13 the files. If you get those and you read them, you will
14 see that these guys are saying CG&E management failed to
15 provide us with inspectors.

16 Yet the overall report, the summary of the
17 report reads these are paper problems, not hardware
18 problems and we believe they are not indicative of real
19 quality problems at the plant. The summary of 81-13 is
20 false. In a sense Kepper issued a false report.

21 When he was making that press conference and
22 saying it was only paper, I sat in the back of the room
23 and I knew it was false.

24 MR. ALOOT: Do you believe Mr. Keppler knew it
25 was false?

1 MR. McCARTEN: Yes, and I think it has been
2 proven that it is false because the subsequent Phase II
3 investigation has proven those hardware problems.

4 MR. ALOOT: Well, again, the question is is it
5 false through ignorance or false through a knowing ---

6 MR. McCARTEN: I think it is knowing because
7 there was enough there to say there were hardware
8 problems and he didn't want to say it, and I think Victor
9 Stello had a big, big role in taking it from hardware to
10 paper, to downplay it. Again, they inspected the plant
11 for five years. How can they come out and say it is bad
12 now.

13 MR. ALOOT: The interviews that are attached,
14 and I believe there is a memo, attached to the November
15 18th transmittal memo, would that be information that
16 would be relevant to the U. S. Attorney's inquiry?

17 MR. McCARTEN: Yes.

18 MR. ALOOT: Was that ever provided to the U. S.
19 Attorney?

20 MR. McCARTEN: Not that I am aware of.

21 MR. ALOOT: I am going to show you a document
22 identified as 92. It is a December 3rd letter from Mr.
23 Cummings to Ann Marie Tracey.

24 MR. McCARTEN: December 3rd of '81.

25 MR. ALOOT: I believe it references the

1 interviews in document 85.

2 MR. McCARTEN: It says "Results of several OIA
3 interviews conducted." Okay.

4 MR. ALOOT: What I want to know is that since
5 you did receive this, is it reasonable to read that
6 reference to refer to this November 18th ---

7 MR. McCARTEN: Yes. These are the interviews
8 that OIA did at the site.

9 MR. ALOOT: Were there any other interviews
10 that you happen to know of that might be relevant other
11 than what was transmitted here in this November 18th
12 memo?

13 MR. McCARTEN: What was your question? I was
14 reading aloud.

15 MR. ALOOT: Are there any other documents or
16 interviews that may be relevant other than to the U. S.
17 Attorney's investigation other than the ones that were
18 transmitted to you on November 18th of '81?

19 MR. McCARTEN: Yes, there is. We took over 50
20 statements.

21 MR. ALOOT: Obviously the November 18th package
22 is not 50 statements.

23 MR. McCARTEN: Right. There are 50 statements
24 taken by I&E investigators at Zimmer that were never
25 given to the U. S. Attorney and were never included. A

1 majority of them were never included in 81-13. Some of
2 them for reasons of confidentiality of the alleged and
3 some of them just for general considerations.

4 JUDGE HOYT: Can you identify those to us, Mr.
5 McCarten?

6 MR. McCARTEN: It would be easy to identify if
7 you ---

8 (Pause while Mr. McCarten receives phone
9 call.)

10 MR. McCARTEN: Can we take a short break?

11 JUDGE HOYT: Sure.

12 (Brief recess.)

13 JUDGE HOYT: All right, go ahead.

14 MR. McCARTEN: I have turned over all the
15 paperwork to the FBI or otherwise it would be a lot
16 easier. These statements that we are talking about are
17 located in the Region III investigative file. They would
18 be the results of all the people I interviewed during the
19 first six months of 1981, the statements that I took.

20 JUDGE HOYT: Do you recall the number of that
21 file?

22 MR. McCARTEN: It is not. It would be
23 investigative notes, but it was left with Jim Foster when
24 I left. If you really have a hard time with it, you could
25 go to the Bureau in Cincinnati and they could give you

1 the file in its totality.

2 MR. ALOOT: Unless a grand jury has been
3 impaneled.

4 MR. McCARTEN: Yes, and then they can't. Region
5 III has got it. It is just a matter of how they filed it.

6 MR. ALOOT: Do you happen to know whether
7 everything that you give to Mr. Foster when you left
8 Region III, whether all that information was given to
9 OIA?

10 MR. McCARTEN: No, I have no idea.

11 MR. ALOOT: It is quite likely then that OIA's
12 file on criminal issues at Zimmer are not as complete as
13 what you turned over to Mr. Foster or not the same?

14 MR. McCARTEN: It could be, but I think I gave
15 them copies of all the statements because there were
16 books of these statements made.

17 MR. ALOOT: Judge Hoyt, I believe you had a
18 question that I stepped on just before we went on the
19 recess. You asked him if he could identify ---

20 JUDGE HOYT: Oh, that was the names of the
21 persons and I think we got that when you came back in.

22 MR. ALOOT: The names of what people?

23 JUDGE HOYT: These were the names of the people
24 that you had interviewed that were not included in the
25 ---

1 MR. McCARTEN: You could take 81-13 and compare
2 it with the list of people, the statements attached to
3 81-13 and the statements that are in the file and you
4 will see how many were excluded.

5 MR. ALOOT: Were some of the statements you
6 received involving allegations that had yet to be
7 investigated?

8 MR. McCARTEN: That is correct.

9 MR. ALOOT: So is it possible that some
10 statements were excluded because 81-13 never got around
11 to dealing with their allegations?

12 MR. McCARTEN: That is right, but it doesn't
13 mean that you can't forward that to OIA or Justice, and
14 that was my point.

15 MR. ALOOT: Okay.

16 JUDGE HOYT: You never knew what OIA was
17 feeding to Justice though, did you?

18 MR. McCARTEN: No, I did not. The
19 communications between Main Justice and OIA, the only one
20 I got a feel for was results of the parallel proceedings
21 discussions in May which were in memos and I don't know
22 if you have them. I don't have them. They were memos from
23 OIA to the region saying here is guidance on how to
24 pursue this.

25 MR. ALOOT: Did you have any discussion with

1 U.S. Attorney in Cincinnati regarding the flow of
2 information from OIA to that office?

3 MR. McCARTEN: You mean in December?

4 MR. ALOOT: From the present to '81.

5 MR. McCARTEN: I discussed with the FBI the
6 lack of communication, you know, obviously they didn't
7 have what they should have. That was the only thing I
8 discussed with them.

9 MR. ALOOT: And they were going to discuss that
10 with the NRC, or they indicated they would more than
11 likely through the U. S. Attorney's office.

12 MR. McCARTEN: Yes.

13 MR. ALOOT: You have had no other
14 communications with the U. S. Attorney's Office of the
15 FBI?

16 MR. McCARTEN: No.

17 MR. ALOOT: I should get you to identify this.
18 It is document 95. I believe that is your exit memo that
19 you identified and discussed previously. -

20 MR. McCARTEN: Yes. I say I turned over all my
21 field notes from the '84 field interviews I did. My
22 interview notes and copies of all statements were turned
23 over and it includes transcripts and copies of all
24 documentation relating to the NR system investigation.
25 The original NR log book and NR reports found in the

1 inspection report file had been turned over to OIA for
2 custody.

3 What I do say is that I was able to augment
4 the interviews that were not reduced to statements, just
5 the field interviews where no statement was taken, to the
6 computer list. The statements, which speak for
7 themselves, have to yet be entered in the computer.

8 MR. ALOOT: I see.

9 MR. McCARTEN: Then I say in paragraph 5, I say
10 that on three occasions we told OIA and DOJ that we would
11 pursue anything that would violate a criminal violation.
12 I said the people currently assigned to the case are not
13 criminal investigators. I said we are not committing our
14 commitment to OIA and DOJ without having experienced
15 trained personnel to conduct a criminal case, and I
16 recommend that somebody from I&E headquarters with the
17 proper experience be given the authority to independently
18 look at the criminal allegations. Then I say the records
19 should be maintained until the plant is finally licensed
20 or the life of the plant.

21 JUDGE HOYT: Did you get any reaction to that
22 memorandum?

23 MR. McCARTEN: I sent a copy to Cummings and
24 Fortuna. This reaction was a response from them, from the
25 region. I was leaving and Investigator Foster wrote a

1 memo. It was almost an insulting memo saying turning
2 everything you have over and it was very detailed. It was
3 like a warning notice almost. So I submitted this in
4 response.

5 JUDGE HOYT: But after you had submitted that
6 and a copy of it was given to Cummings and to the
7 regional people, did you receive any feedback from it?

8 MR. McCARTEN: No comment from them at all. In
9 fact, my recommendation was not followed because until
10 September Foster was the lead investigator. Foster had no
11 experience in working a criminal case. He has never been
12 trained.

13 MR. ALOOT: What was his experience?

14 MR. McCARTEN: His experience was he was a sky
15 marshal for three years and then he went to work for the
16 FAA checking physical security of airports. Then he went
17 to work for the NRC as an investigator. He has a degree
18 in psychology. I felt he had no background.

19 He was never trained at a federally recognized
20 law enforcement investigation school like the NIS
21 Academy, the FBI Academy or the Federal Law Enforcement
22 Training Center down in Georgia which Treasury uses.

23 MR. ALOOT: NRC doesn't train people as
24 investigators.

25 MR. McCARTEN: At that point they hired

1 everybody who had that training. He was one of the people
2 hired before Bill Ward came in and instituted those kind
3 of changes. Some individuals like Bob Burton were sent to
4 the schools for eight weeks. He had never been sent to
5 the schools, and in fact Bill Ward wanted to send him to
6 the school and the region protested it. He had no
7 training in criminal law, criminal evidence or criminal
8 procedure, no experience, nothing.

9 MR. ALOOT: Did you ever have cause to discuss
10 the problems at Zimmer or the nature of the NRC's
11 investigation with any group or individual other than us,
12 the FBI or OIA?

13 MR. McCARTEN: I talked to representatives from
14 Congress regarding Zimmer.

15 MR. ALOOT: Who was that?

16 MR. McCARTEN: The Udall committee.

17 MR. ALOOT: Anyone else?

18 MR. McCARTEN: They contacted me. After I left
19 the NRC somebody gave them my name that I was leaving and
20 they contacted me saying will you talk to us.

21 MR. ALOOT: They got to look at the same
22 records the FBI got to look at.

23 MR. McCARTEN: Not in their total, no.

24 MR. ALOOT: Did you talk to anyone else? Did
25 you ever talk to GAP?

1 MR. McCARTEN: Why would you ask that question?

2 (Laughter.)

3 MR. ALOOT: I am just interested.

4 MR. McCARTEN: I get calls from reporters and
5 everybody and I freely discuss the activities of the NRC.

6 [REDACTED] withhold
7 to a reporter I say hey, I will talk to you in general Ex. 7(A)
8 [REDACTED] withhold
9 [REDACTED] Ex. 7(A)

10 MR. ALOOT: Have you ever talked to GAP?

11 MR. McCARTEN: They have called me.

12 MR. ALOOT: And they were treated no different
13 than a reporter?

14 MR. McCARTEN: Yes, than a reporter.

15 MR. ALOOT: Did you ever talk to Applegate?

16 MR. McCARTEN: I have talked to Applegate.

17 MR. ALOOT: You met him personally.

18 MR. McCARTEN: I met him personally. Do you
19 want to go off the record now? -

20 MR. ALOOT: No, no. I just wanted to know how
21 many times you had met him.

22 MR. McCARTEN: On the record, Applegate
23 contacted me, and how he got my phone number bothered me.

24 MR. ALOOT: He called the NRC operator.

25 MR. McCARTEN: Probably, I was here. He

1 contacted me last summer and wanted me to give him all
2 the documents that I had on Zimmer and I of course
3 refused. My meeting with him, the best way to
4 characterize it would be obsessed with Zimmer. It has
5 become his whole life's work.

6 Zimmer to me is kind of a nuisance because now
7 I have got all these other cases and it interferes with
8 them. It has become almost an obsession with him. The way
9 he contacted me and the nature of the contact was that he
10 is someone who is very upset over Zimmer.

11 MR. ALOOT: We should get something else on the
12 record here that we have already discussed, and that is
13 did you at any time advise Mr. Applegate that the Region
14 III investigation was going to focus on him personally?

15 MR. McCARTEN: No, never. I never said that to
16 him. The periodic briefings of Applegate were ended when
17 we stopped investigating his allegations and we told him
18 that. I told him that a number of times. I said we have
19 investigated your stuff and it is unfounded. Some of it
20 is and some of it isn't.

21 MR. ALOOT: When you stopped the investigation
22 of Applegate's allegation ---

23 MR. McCARTEN: We stopped the briefs.

24 MR. ALOOT: That doesn't necessarily mean that
25 you stopped the investigation at Zimmer.

1 MR. McCARTEN: Right, but we weren't going to
2 tell him about the progress of our investigation of QC
3 inspector allegations, especially with the
4 confidentiality of the inspector involvement.

5 MR. ALOOT: Some of the names you have given us
6 are confidential informants?

7 MR. McCARTEN: [REDACTED]

withhold
Ex. 7(D)

8 MR. ALOOT: So then they continue to be
9 confidential.

10 MR. McCARTEN: I would say the name of anybody
11 that I interviewed during the course of my investigation
12 that I identified as an allegor I think should be kept
13 confidential for the record. Give them an acronym or give
14 them a code letter, A, B, C. I would request that because
15 I don't know who specifically I granted it to it has been
16 so long. So I don't know if that causes you a problem.

17 JUDGE HOYT: I don't think so.

18 MR. ALOOT: It might be best to do that for
19 almost every name except those of myself and ---

20 MR. McCARTEN: Of NRC employees.

21 MR. ALOOT: I will be individual "A".

22 (Laughter.)

23 MR. ALOOT: Have you talked to Mr. Applegate
24 since you left the employ of NRC?

25 MR. McCARTEN: Yes, he contacted me and I

1 talked to him once and that was enough.

2 MR. ALOOT: You changed your phone number and
3 put the screens on the doors.

4 MR. McCARTEN: That is why we have all these
5 alarms just to keep him out.

6 (Laughter.)

7 MR. McCARTEN: No, it was a very testy
8 situation, and he is a problem. To me he is a problem.

9 JUDGE HOYT: How long ago was this contact?

10 MR. McCARTEN: Last summer he contacted me.

11 JUDGE HOYT: He hasn't contacted you since that
12 time then I take it.

13 MR. McCARTEN: No, I haven't talked to him
14 since then, and if he calls me again I won't talk to him.
15 This situation was he showed up here at our office.

16 JUDGE HOYT: You mean he got into the station
17 and came to your office to see you?

18 MR. McCARTEN: Yes, as a guest or something he
19 got in last summer. This station is an open post, by the
20 way.

21 JUDGE HOYT: Yes, I understand.

22 MR. McCARTEN: It is not secure.

23 JUDGE HOYT: I noticed that coming in.

24 Did he say what the purpose of contacting you
25 was other than to get your notes?

1 MR. McCARTEN: He wanted to get my notes. He
2 believed that there was a large conspiracy between the
3 utility and the NRC to cover up Zimmer. He believes that
4 it even goes to the White House and involves Weinberger
5 or somebody at that level.

6 JUDGE HOYT: You mean the Secretary of Defense?

7 MR. McCARTEN: The Secretary of -- some big
8 official in the Reagan Administration that used to work
9 for Bechtel.

10 MR. ALOOT: Shultz.

11 MR. McCARTEN: Shultz, yes. He believes it
12 involves the White House and all this.

13 JUDGE HOYT: That is the Department of State.

14 MR. McCARTEN: He is all wrong in who has
15 influence and everything. That is why I say he has become
16 obsessed. There may be problems at Zimmer, but his train
17 of thought isn't logical as far as who is responsible.

18 My opinion is, and I will tell you this of the
19 NRC as a whole, the people that I worked with in Region
20 III, they were not aggressive inspectors. They were not
21 aggressive managers. They were not aggressive
22 individuals. They were primarily technicians. They were
23 not administrators. They don't think like lawyers or
24 investigators. They are not very critical of what people
25 tell them. They don't question what is said.

1 As a whole the FBI people said are these
2 people taking bribes? I said you don't have to bribe
3 somebody that you have already bought. They are so pro
4 nuclear and they believe that they are trying to save a
5 dying industry. I don't think it is dying, but their
6 philosophy is the industry is under fire and we have
7 circled the wagons. Their philosophy is we have to fight
8 off all these people. You don't have to buy them. They
9 are already bought.

10 They are career nuclear engineers. Their whole
11 life has been in nuclear power. It is in their vested
12 interest to keep it going and not find anything wrong.

13 So when somebody like me comes in from an
14 outside agency, and this is my experience and the
15 experience of other investigators in the NRC, we are
16 treated like somebody from outer space because we don't
17 think like they think.

18 They are oriented towards the utility and they
19 are pro nuclear, so pro nuclear they don't have to be
20 bought, some of them. I am saying some of them are. Most
21 of the upper management is that way. In fact, I have
22 never met anybody in the GS-15 area or higher who doesn't
23 have that basic philosophy.

24 You will see individual inspectors, 13's and
25 14's, who are true safety inspectors, but the management

1 of the NRC, every single one I met in my two and a half
2 years there, has that idea. They don't have to be bought
3 or paid off. Their minds are already there.

4 MR. ALOOT: But Special Agent O'Neil seriously
5 asked you whether you believed any individuals working
6 for the NRC had taken bribes regarding Zimmer?

7 MR. McCARTEN: Yes, and that was my response.
8 You don't have to buy them. They are already bought.

9 MR. ALOOT: Before Applegate's second set of
10 health and safety allegations came in, you mentioned that
11 you had developed in January 1981 a set of QC allegations
12 on your own.

13 MR. McCARTEN: Yes.

14 MR. ALOOT: Were those allegations ever
15 investigated or scheduled for investigation?

16 MR. McCARTEN: They were scheduled to be
17 investigated during Phase II.

18 MR. ALOOT: And when was that? What was the
19 time schedule for Phase II?

20 MR. McCARTEN: Phase II was after I left the
21 NRC.

22 MR. ALOOT: So post March 1982?

23 MR. McCARTEN: Yes.

24 JUDGE HOYT: And you discovered those
25 violations in '81?

1 MR. McCARTEN: In '81, January of '81 and they
2 sat on them for a year and a half.

3 JUDGE HOYT: And during that entire time
4 neither you nor anyone in Region III was assigned to do
5 any investigation. Let me ask you this. Were any of those
6 allegations that you were able to come up with, were they
7 picked up in the OIA's investigation albeit for that very
8 brief period?

9 MR. McCARTEN: No. There were literally 200
10 allegations that languished for a year and a half in
11 Region III.

12 JUDGE HOYT: Have you got any feel for where
13 they are now?

14 MR. McCARTEN: They are on a computer printout.

15 JUDGE HOYT: I am speaking of in the
16 investigative process.

17 MR. McCARTEN: No, because I don't have any
18 privy to what they are finding in Phase II. To me that is
19 inexcusable, a year and a half. I don't care how you
20 manage a case, that is just gross mismanagement.

21 MR. ALOOT: On the computer printout, obviously
22 it lists allegation by allegation.

23 MR. McCARTEN: Yes.

24 MR. ALOOT: Does it list the time period in
25 which that allegation was developed?

1 MR. McCARTEN: Yes. It lists the name of makes
2 the allegation. It lists what the allegation is. I am not
3 sure if it lists the date the person was interviewed, but
4 then you can go to the book of statements and pick that
5 out or the book of field notes.

6 MR. ALOOT: Does it list when that allegation
7 was resolved, or is the computer listing only of
8 outstanding ---

9 MR. McCARTEN: It is a list of allegations
10 resolved and unresolved.

11 MR. ALOOT: So it does reflect whether they are
12 resolved or unresolved. Does resolved mean investigated
13 or does it mean something different like scheduled for
14 investigation?

15 MR. McCARTEN: That is the point. They were
16 going to try to say that if it was raised in the past
17 during a previous investigation at Zimmer, then they
18 should not reinvestigate it, completely negating OIA's
19 findings that their previous investigations were flawed.
20 When I left I said that shouldn't be done.

21 Now some of the stuff that GAP raised I said
22 we should not investigate on its face.

23 MR. ALOOT: Which stuff was that?

24 MR. McCARTEN: Stuff relating to belt buckles.
25 Stuff that clearly nothing to do with safety and was

1 merely ---

2 MR. ALOOT: What about drinking on site?

3 MR. McCARTEN: That should not be
4 reinvestigated.

5 MR. ALOOT: You don't think that drinking on
6 site has a health and safety ---

7 MR. McCARTEN: I think it does, but you have to
8 prove it.

9 MR. ALOOT: Doesn't common sense say if someone
10 is drunk and doing a weld ---

11 MR. McCARTEN: That is my point. The way you
12 prove that is what is the end product, and the end
13 product is sloppy work. If you find sloppy work, there is
14 a reason somebody didn't weld it right and he may have
15 been drunk, he may have been on drugs, he may have been
16 poorly supervised or his testing may have been falsified.

17 MR. ALOOT: Oh, I see.

18 MR. McCARTEN: So you don't investigate
19 drinking. You investigate the work the guy did.

20 MR. ALOOT: You investigate the hardware
21 problems and find the cause of the hardware problems.

22 MR. McCARTEN: That is my point. We are
23 investigating it, we are finding hardware problem and we
24 are citing them and saying that is it. We are almost
25 doing what the utility did with the plant. We never look

1 at why. In my cases I looked at why and I tried to do
2 that in my stuff.

3 MR. ALOOT: Did you have cause to review the
4 OIA report on the Phillip investigation?

5 MR. McCARTEN: I read it.

6 MR. ALOOT: You weren't asked officially to
7 comment on it like everyone else in Region III was asked?

8 MR. McCARTEN: Well, I was. I was there at that
9 meeting when they briefed everybody on the findings, and
10 I agreed with OIA, which did not make me very popular the
11 rest of Region III.

12 MR. ALOOT: You agreed with them in the sense
13 of ---

14 MR. McCARTEN: I agreed with them in their
15 conclusion that Region III's investigation showed a lack
16 of depth and the conclusion of substantiated or
17 unsubstantiated was a wrong way to say things.

18 MR. ALOOT: Did you express that support at the
19 time?

20 MR. McCARTEN: Yes, I did. I told them OIA was
21 right.

22 JUDGE HOYT: Did you tell them that in the
23 meeting?

24 MR. McCARTEN: After the meeting I told them. I
25 said they were right.

1 MR. ALOOT: Who is them?

2 MR. McCARTEN: Streeter, Foster, Keppler. I
3 said they were right. In fact, I was kind of an
4 intermediary. Keppler blew up and everybody was made and
5 I was in the middle caught between the people I knew in
6 OIA and I&E and I said hey, they are right. The bottom
7 line was I said they were right. He did do a sloppy job.

8 But my qualification is this. That report was
9 reviewed by Region III management and "edited" in the
10 same manner that my report was and they never came down
11 on the regional officials who edited the report.

12 Norelius, Heisrann and Keppler had intimate
13 dealings in rewriting that report and changing things.
14 Yet they dump it on Phillip.

15 MR. ALOOT: They being?

16 MR. McCARTEN: They dumped the blame on him.
17 They meaning Keppler, Norelius, and this is Phillip's
18 poor report.

19 MR. ALOOT: You don't think OIA's report
20 indicated it?

21 MR. McCARTEN: No. In fact OIA said that. They
22 said that the report was reviewed and the management
23 officials responsible in the region are ultimately
24 responsible for the work. Phillip had just been doing
25 things the way they had always done them, go out there,

1 this is the allegation and you talk to the utility.

2 You look at the report. The only people he
3 talks to are utility officials. That is it. He talks to
4 the allegor and QA managers on up. He never goes down in
5 to the field and talks to the guys doing the work about
6 what really happened. He takes a manager's word as to
7 what happened without ever verifying it and that is
8 flawed. You look at the index of names on the report and
9 it shows manager, manager, manager, engineer, engineer.

10 MR. ALOOT: Do you think that the OIA report
11 accurately and completely indicated that Phillip's
12 investigation was inadequate because he did it by the
13 book and the book was wrong, or do you feel that it never
14 reached the cause of the inadequacy of the Phillip
15 investigation?

16 MR. McCARTEN: I felt it never reached the
17 cause. I read the Harpster interview and I also think
18 that Cummings exclusion of the Harpster interview was an
19 attempt to keep a lid on Zimmer.

20 MR. ALOOT: Why?

21 MR. McCARTEN: Because they all new Zimmer was
22 a turkey.

23 MR. ALOOT: But why do you think Harpster's
24 interview was relevant?

25 MR. McCARTEN: He was the resident inspector

1 there. He was the most knowledgeable person about the
2 plant.

3 MR. ALOOT: At the time of the Phillip
4 investigation?

5 MR. McCARTEN: At the time of the P. 'lip
6 investigation, yes, and yet he said all those things
7 about CG&E which are later found to be true. You see a
8 quashing of the Zimmer allegations before you even got
9 into it.

10 MR. ALOOT: I am a little bit confused as to
11 what is the relevance of Harpster's interview to the
12 particular Phillip investigation that OIA was reviewing.
13 Certainly it was relevant to Zimmer, but in what way was
14 it relevant to ---

15 MR. McCARTEN: CG&E's mismanagement of the
16 plant. One of the things that Phillip found in his
17 investigation was that NRs were written and voided and
18 written and voided and written and voided and played
19 with, and that is the key to a major problem at Zimmer is
20 that the reports were played with.

21 MR. ALOOT: Are you saying then that the
22 Harpster interview is an example of depth in an
23 inspection?

24 MR. McCARTEN: Yes. If you go in and talk to
25 somebody you don't say what did you do Monday and just

1 limit it to what happened Monday when the whole place is
2 falling down. That is my approach to an investigation.
3 His exclusion of that, I don't know. I wasn't involved in
4 that at all, but I read the interview and in light of
5 what ---

6 MR. ALOOT: When did you read the interview?

7 MR. McCARTEN: I think it was in August, the
8 Harpster interview. When I was working with OIA they
9 showed me the Harpster interview.

10 MR. ALOOT: Oh, it had already been taken out
11 of the report at that time?

12 MR. McCARTEN: Yes.

13 MR. ALOOT: Who showed it to you?

14 MR. McCARTEN: I think it was Gamble.

15 MR. ALOOT: What did Gamble say when he showed
16 it to you?

17 MR. McCARTEN: he said this is the Harpster
18 interview. Harpster knew about all these problems just
19 like Daniels did. Daniels went there as his replacement
20 and found the same thing wrong. Lee Speserd, I think he
21 was in Ops, and he was in charge of Zimmer preoperational
22 testing. He said to me before he even went to Zimmer in
23 the hallway when he heard I was going there, he said,
24 Zimmer, he says Schwiars and company, the QA Manager,
25 they are a bunch of turkeys.

1 The same guy in a meeting with Keppler four
2 months later stands up and says well, you know, boss, in
3 all deference to the guys that worked on the team,
4 meaning the people that did the field work, us managers
5 in the region feel that, you know, we gave them a mandate
6 to investigate Applegate to no end and they found all
7 this other stuff wrong. Maybe we keyed them up too much
8 and Zimmer really isn't that bad, right, boss? I couldn't
9 believe the guy said that. But in the meeting with
10 Keppler he made it sound like no disrespect to the team
11 members, but what they are finding is not significant.
12 They are overemphasizing what they are finding wrong and
13 Zimmer is really not that bad.

14 MR. ALOOT: Compared to other plants?

15 MR. McCARTEN: No. Zimmer is not that bad
16 because the inspectors overreacted and you sent too many
17 critical inspectors in there and gave them a mandate to
18 act like tigers and you really didn't find a lot wrong
19 and it is really just paper, downplaying.

20 A guy who never went to the site, a guy that
21 three months previously said that the place was a turkey
22 is now telling Keppler something directly opposite. That
23 is because, like I said, he is one of these GS-15
24 managers who go with the flow. That is my complaint with
25 the NRC in a general sense.

1 JUDGE HOYT: It is more than a complaint, Mr.
2 McCarten. I seem to feel like it is pretty much of an
3 indictment, isn't it?

4 MR. McCARTEN: Yes.

5 MR. ALOOT: A true bill.

6 JUDGE HOYT: And a true bill.

7 MR. McCARTEN: And it is true. You have got to
8 get an influx of people from outside the NRC and from
9 outside the nuclear industry to manage that agency. You
10 cannot promote engineers and make them enforcers. Their
11 mindset is not enforcement. It is to resolve. All their
12 training, 16 years of college, is towards resolving
13 problems and not towards enforcement. So how can you run
14 an enforcement agency with people that have no
15 enforcement philosophy.

16 JUDGE HOYT: Do you think the role of a
17 regulatory agency is primarily an enforcement agency; is
18 that what you are saying?

19 MR. McCARTEN: Yes. In this case enforcement
20 because there is a lack of enforcement that led to these
21 problems.

22 JUDGE HOYT: I wanted to just pursue one thing
23 that you mentioned earlier about the interview with
24 Victor Stello and he was very angry that these criminal
25 investigation allegations were being brought up.

1 Did I understand you correctly to say that he
2 was not interested in it? Would you give me that
3 statement of what his reply was again?

4 MR. McCARTEN: He said we don't get involved in
5 that. Our job is health and safety and we are not
6 involved in investigating criminal allegations.

7 JUDGE HOYT: Was there anybody in that room
8 that tried to relate to him how criminal could be health
9 and safety as well or health and safety could be
10 criminal?

11 MR. ALOOT: Well, after saying that and after
12 seeing his eyes bulge out, I just sat down. He then
13 turned to Kepper and said I want to talk to you and he
14 left the meeting. That was like the high point of the
15 meeting.

16 JUDGE HOYT: And the meeting was at Region III
17 headquarters?

18 MR. McCARTEN: Yes.

19 JUDGE HOYT: So Stello and Kepplex go then into
20 Keppler's office?

21 MR. McCARTEN: Yes, because he challenged the
22 audience are there hardware problems and we stood up and
23 said there were. Also, the tone of the meeting, too, was
24 funny. There were like 20 people there and there were the
25 seven people who were actively involved in the

1 investigation and every manager in the building was
2 there. People who had never even been involved in Zimmer
3 were there and giving input on what they thought about
4 Zimmer. I couldn't believe it. They like to rule by
5 committee. I guess that negates any mistakes.

6 MR. ALOOT: It spreads the blame.

7 MR. McCARTEN: Yes, it spreads the blame or
8 something.

9 MR. ALOOT: Let me focus your attention back on
10 the August 1981 meeting when OIA came out to read their
11 draft report or at least their summary. Do you know of
12 any modifications that Region III personnel requested OIA
13 to make on the summary?

14 MR. McCARTEN: Yes. There were discussions
15 between Keppler and Schneblin, Cummings wasn't there for
16 that meeting, about modifying the summary.

17 MR. ALOOT: Were you privy to those
18 conversations or did you hear about it secondhand?

19 MR. McCARTEN: Secondhand.

20 MR. ALOOT: What did you hear secondhand?

21 MR. McCARTEN: Secondhand I heard that they
22 wanted to rewrite the summary and that is all.

23 MR. ALOOT: Who did you hear this from?

24 MR. McCARTEN: I heard it from Schneblin and
25 Gamble.

1 MR. ALOOT: Schneblin and Gamble told you about
2 Keppler's ---

3 MR. McCARTEN: You see, at this point I was
4 offered a job in OIA. In January of that year I was
5 offered a job to be the first regional OIA
6 representative. Cummings announced the job, I was given
7 the job and then they decided not to implement
8 regionalization at that level. But I was their pick for
9 the OIA rep for Region III hands down. No question about
10 it. We thought the same way.

11 MR. ALOOT: I get the sense you are conveying
12 the impression that at least during this time period you
13 were viewed as one of the team, the OIA team, at least
14 among the OIA field investigators. You were not an
15 adversary.

16 MR. McCARTEN: Yes, because I definitely was
17 not a member of the Region III team at this point.

18 MR. ALOOT: So you heard about the request for
19 ---

20 MR. McCARTEN: I heard about a request to
21 rewrite the report.

22 MR. ALOOT: Did you hear about any successful
23 rewriting of the report?

24 MR. McCARTEN: No.

25 MR. ALOOT: You weren't interviewed, right, by

1 OIA with respect to the Phillip investigation?

2 MR. McCARTEN: No, I had no participation in
3 that case.

4 JUDGE HOYT: When did you then have the feeling
5 that Cummings was quashing this, when you were told that
6 by Sinclair and Gamble?

7 MR. McCARTEN: Yes, in June.

8 MR. ALOOT: This is June 1982?

9 MR. McCARTEN: '81.

10 JUDGE HOYT: '81.

11 MR. ALOOT: You are telling me they quashed it
12 in June of 1981?

13 MR. McCARTEN: They commented to me that he was
14 here to quash this case in June of '81.

15 MR. ALOOT: Even though they had opened up this
16 criminal investigative file in May of '81?

17 MR. McCARTEN: Right. They said to me we will
18 never be out here again and they weren't.

19 MR. ALOOT: Did they indicate that they
20 wouldn't because they were going to defer to the U. S.
21 Attorney's office?

22 MR. McCARTEN: No. They indicated to me, they
23 said Cummings is going to quash it and we will never be
24 out here again.

25 JUDGE HOYT: 81-39, do you recognize that

1 number, 81-39?

2 MR. McCARTEN: No.

3 JUDGE HOYT: All right.

4 MR. McCARTEN: 81-13 is the inspection report
5 on Zimmer.

6 MR. ALOOT: 81-39 is the OIA designation for
7 their criminal investigation. If you don't know it, you
8 don't know it.

9 MR. McCARTEN: 81-39?

10 JUDGE HOYT: Yes.

11 MR. ALOOT: They have the same system and it
12 gets kind of confusing with the numbers.

13 MR. McCARTEN: My opinion of the NRC at this
14 time was that ---

15 JUDGE HOYT: Are we speaking of June '81?

16 MR. McCARTEN: June '81.

17 JUDGE HOYT: All right.

18 MR. McCARTEN: Or let's say August of '81.

19 JUDGE HOYT: All right.

20 MR. McCARTEN: My opinion of the NRC was that
21 regional officials were not adequately doing their job in
22 the construction inspection program and were quashing any
23 information which would prove that.

24 The internal affairs division of the NRC was
25 not interested in investigating our auditing, I&E's

1 performance, and that they were effectively keeping a lid
2 on a criminal investigation, both of them. So that is why
3 I left the agency.

4 MR. ALOOT: Didn't OIA ultimately assist in the
5 creation of OI?

6 MR. McCARTEN: That is after I left. No, OI did
7 not ultimately assist in that. Morris Udall assisted in
8 the formation of OI.

9 MR. ALOOT: You had talked to the Udall
10 committee?

11 MR. McCARTEN: Yes. After I left and talked to
12 Udall OI was set up.

13 MR. ALOOT: And you believe it was Udall's
14 Congressional suggestions ---

15 MR. McCARTEN: --- that they get an independent
16 investigative body in there that could not be influenced
17 by the Regional Directors, and I was not the only one
18 that had a problem. Investigator Dick Herr had a case
19 where the Regional Director made disclosures to the
20 licensee and had the licensee ---

21 MR. ALOOT: Is this Region III or another
22 region?

23 MR. McCARTEN: Region V in Dallas.

24 MR. ALOOT: Four.

25 MR. McCARTEN: Four. He was the Chief

1 Investigator in Region IV and the Regional Director was
2 replace as a result of a Congressional inquiry. From what
3 I heard secondhand was that a report was provided to a
4 utility, a draft report. Dick Herr was told he will only
5 investigate this matter for a very limited amount of
6 time, two or three days. He will not take statements from
7 people, and generally focusing his investigation and then
8 informing the utility of the findings before he ever got
9 out there.

10 MR. ALOOT: You mentioned previously that you
11 had conducted other investigations for Region III at
12 plants there than Zimmer.

13 MR. McCARTEN: Right.

14 MR. ALOOT: Was the handling of the
15 investigation at these other facilities different than
16 the handling at Zimmer?

17 MR. McCARTEN: No. In the case of Systems
18 Control Corporation, which was a vendor investigation, I
19 talked to Gene Pawlik, the new Chief Investigator at
20 Region III and he told me. I said why Systems Control two
21 years later? He said Cummings said he had lost the report
22 and never referred it to OIA.

23 MR. ALOOT: Do you mean DOJ?

24 MR. McCARTEN: DOJ. OIA lost the report and
25 never referred it to DOJ. You have got to remember I read

1 the GAO report on OIA at this same time.

2 MR. ALOOT: That came out in July of '81 I
3 believe.

4 MR. McCARTEN: Yes.

5 MR. ALOOT: What but I am trying to get at is
6 you indicate that the 81-13 was edited in such a way that
7 the problems were minimized at Zimmer.

8 MR. McCARTEN: Yes.

9 MR. ALOOT: Were reports that you wrote
10 concerning other facilities like Zion, where they also
11 edited to minimize the problem?

12 MR. McCARTEN: Yes. Systems Control they let go
13 through and I was surprised. That is why it is going to a
14 grand jury. I had trouble with American X-Ray and
15 Inspection, getting that through.

16 MR. ALOOT: What do you mean by trouble?

17 MR. McCARTEN: Meaning that the way I wrote it
18 and the way they wanted to rewrite it significantly toned
19 down the significance of the incident. What people
20 testified to me in person after reading an interview of
21 them in the report was sterilized to a point where a lot
22 of emphasis was gone on what the person really said.

23 MR. ALOOT: You believe then the reports were
24 edited not for style but for substance?

25 MR. McCARTEN: Yes.

1 JUDGE HOYT: Mr. McCarten, you mentioned
2 earlier that you had gone to a report writing course a
3 couple of times I believe you said.

4 MR. McCARTEN: Yes.

5 JUDGE HOYT: Was the agency at Region III
6 telling you that your reports were deficient?

7 MR. McCARTEN: Yes, they were.

8 JUDGE HOYT: And that you had to go to these
9 schools to improve your writing techniques; is that
10 right?

11 MR. McCARTEN: Yes. They denied me a grade 13
12 in August.

13 JUDGE HOYT: Is that August of '81 now?

14 MR. McCARTEN: Yes.

15 JUDGE HOYT: All right.

16 MR. McCARTEN: After doing the Zimmer case they
17 denied me a grade 13 and I told them, I says hey, I don't
18 think it is how I am writing. I think it is what I am
19 writing.

20 JUDGE HOYT: And what was the response to that?

21 MR. McCARTEN: No response.

22 JUDGE HOYT: Who were you talking to?

23 MR. McCARTEN: I said that to Mr. Keppler. I
24 then went to two report writing schools in August and
25 September. They were somewhat beneficial, but the

1 overall problem was that they -- we also had a very
2 incompetent clerical staff in Region III, and it was not
3 a place where you could write. Like I find myself, I came
4 back to NIS, and I can write a lot better because I am in
5 a room by myself. It is more quiet and it is more
6 conducive to writing.

7 Where we were in Region III, we were right down
8 the hall from Keppler with phones ringing. Our secretary,
9 she is about 63 years old and she was not that competent.
10 In fact, she was down right incompetent, and there were a
11 lot of problems administratively in that office and a lot
12 of that impacted on the work of the office.

13 We told John Streeter that. They knew there was
14 a problem administratively. Here you have got a key
15 office and they have got somebody who can't type in
16 there.

17 MR. ALOOT: Do you acknowledge that your writing
18 style could be improved and that these two schools
19 helped?

20 MR. McCARTEN: The two schools helped, but what
21 I was saying was a problem, too. I put down a narrative
22 report. When somebody said something, that was it, and
23 they didn't like that.

24 MR. ALOOT: Well, how would they like the
25 reports written?

1 MR. McCARTEN: They want them written like
2 81-13.

3 MR. ALOOT: You are telling me that your
4 interview summary style is FBI style. If they caught it
5 goes on a piece of paper.

6 MR. McCARTEN: Yes, and they didn't like that.

7 MR. ALOOT: What way did they like it? They
8 meaning, I assume, your supervisors.

9 MR. McCARTEN: They would like to summarize the
10 interview. Well, they summarized the NRs. I interviewed
11 like a hundred people and they wrote one line. NR-3855,
12 NR-3840 and NR-3850 were improperly voided.

13 Hell, if I had known that is all they wanted in
14 the final report, I could have done that in a day. I
15 wrote a big thick -- this thing, this thick.

16 JUDGE HOYT: Meaning about three inches.

17 MR. McCARTEN: Yes, about the backup to come to
18 that conclusion.

19 MR. ALOOT: Do you believe that your interview
20 summary style is similar to that used by OIA?

21 MR. McCARTEN: It is used by OIA and it is now
22 used by I&E. The new reporting writing system that I&E is
23 adopting, or OIA, is that system. In fact, the report
24 written by the headquarters people was that style.

25 MR. ALOOT: I see.

1 MR. McCARTEN: It was a matter of they wanted to
2 write like an engineering technical report and we wanted
3 to write an investigative report.

4 A problem with handwriting and editing and what
5 they did are two different things. They took out
6 substantive facts relating to the case. They called it
7 word engineering. It was Streeter's favorite word, and he
8 meant word engineering. You could have a good secretary
9 rewrite your reports to be grammatically and punctually
10 correct. They engineered, they toned down and they played
11 with the reports. It took them three months, four months.

12 JUDGE HOYT: What were they doing in that time,
13 Mr. McCarten, in four months to edit the report?

14 MR. McCARTEN: Yes, four months.

15 JUDGE HOYT: Well, what were they doing that
16 required that?

17 MR. McCARTEN: You see the size of 81-13. It is
18 this thick, and they were editing every single line of
19 that report and every single interview, everything.

20 JUDGE HOYT: And it took them four months to do
21 it.

22 MR. McCARTEN: Four months to do it. That is why
23 so many people left. During that four-month period you
24 saw the key people wanting to leave, me, Daniels decided
25 to leave during that period and later left, Shapker and

1 Barret.

2 MR. ALOOT: You said someone else indicated they
3 didn't want to be associated with Zimmer.

4 MR. McCARTEN: Yes, that was Barret, and Fred
5 Maura said don't you rewrite my part of the report, and
6 they did battle with him for a month on his part.

7 MR. ALOOT: Did they rewrite his part of it?

8 MR. McCARTEN: Yes, they did.

9 MR. ALOOT: That brings up a question I want to
10 ask.

11 MR. McCARTEN: It was word engineering in a
12 grammatical sense. It was doing battle with the inspector
13 over his finding.

14 JUDGE HOYT: Over his substantive finding?

15 MR. McCARTEN: Yes.

16 MR. ALOOT: What section of the 81-13 did you
17 write?

18 MR. McCARTEN: Have you got 81-13 there?

19 JUDGE HOYT: Yes.

20 MR. ALOOT: We have got sort of a copy here. It
21 is the one you signed. It doesn't have everybody's
22 signature on it.

23 (Brief pause while Mr. McCarten reviews
24 document.)

25 MR. McCARTEN: I wrote Employee Dismissals,

1 Radiographer Suppression, Industry Blacklisting,
2 Inspector's Journal, Inspector Harassment, QA
3 Surveillance Reports. I am pretty sure. There is a
4 question of QA Surveillance Reports. I think Shapker
5 might have had it. I wrote Control of Nonconformances,
6 Threatened Firing. Let's get back here to the back. Here
7 you get some of the back part which I think is called
8 Appendix -- I wrote about the whole back part of the ---

9 MR. ALOOT: Those are interview summaries?

10 MR. McCARTEN: Yes, all those interviews and
11 statements. It is a whole thing on nonconformance
12 reports. It is the whole thing. I think it is Exhibit 1.
13 Yes, I wrote all of Exhibit 1 which is about 30 pages
14 long.

15 MR. ALOOT: You say that originally was a
16 section in the main report.

17 MR. McCARTEN: And they made it an exhibit.

18 MR. ALOOT: When it was a section in the main
19 report, there were exhibits that supported that chapter,
20 or whatever it was?

21 MR. McCARTEN: Yes.

22 MR. ALOOT: And they were replaced with the
23 section you wrote itself.

24 MR. McCARTEN: With no exhibits, yes. Well,
25 maybe there are exhibits to this exhibit. I think I

1 fought that and I think the exhibits are here because
2 here is Exhibit 1 and I think that is Exhibit 1 to
3 Attachment A, which is kind of ridiculous.

4 MR. ALOOT: Do you have copies ---

5 MR. McCARTEN: That is 30 pages at the back of
6 the report.

7 MR. ALOOT: Do you have copies of the final
8 draft that you submitted to ---

9 MR. McCARTEN: No, I think the FBI has that.
10 Yes, that is in a special yellow folder and they have got
11 that. Let me check here. Yes, they have that.

12 MR. ALOOT: I have no more questions.

13 MR. McCARTEN: They have, that because it has got
14 the ---

15 MR. ALOOT: --- notations of where changes were
16 made?

17 MR. McCARTEN: It is more detailed. No, it
18 wasn't the changes. It is just more detailed. It is a
19 better tool to work with for an investigator than this
20 thing. I fought them for four months and down to the last
21 day on some of the stuff.

22 MR. ALOOT: You didn't attend the Commission
23 briefing, did you?

24 MR. McCARTEN: No. You might have a copy here
25 where it is safety related.

1 JUDGE HOYT: I am sorry. I didn't understand
2 what you said.

3 MR. McCARTEN: There was one on electrical that
4 they said was not safety related and we later found out
5 it was. Yes, like the final report says, this was not
6 safety related.

7 JUDGE HOYT: Would you mark that for us?

8 MR. McCARTEN: Yes, and I think page 30 of
9 Attachment 1.

10 MR. ALOOT: That is the one where Mr. Keppler
11 flip-flopped.

12 MR. McCARTEN: Yes, was it safety or not. It was
13 the violation of a hold tag where they whited out one of
14 the log books. Keppler didn't get involved in the
15 editing. Streeter did all that.

16 MR. ALOOT: So by the time it hit Mr. Davis, Mr.
17 Keppler ---

18 MR. McCARTEN: Mr. Streeter and Mr. Foster had
19 already rewritten a lot of the report, parts of it.

20 MR. ALOOT: So any improper editing would have
21 been done at the Streeter level?

22 MR. McCARTEN: The Streeter/Foster level.

23 MR. ALOOT: What about Mr. Warnick?

24 MR. McCARTEN: Or Mr. Warnick, yes. No, Mr.
25 Warnick, he took over Streeter's job after Streeter got

1 this report out.

2 MR. ALOOT: You were the lead investigator.

3 MR. McCARTEN: Yes.

4 MR. ALOOT: And Foster was what, lead inspector?

5 MR. McCARTEN: Nothing.

6 MR. ALOOT: How did he get in the role of
7 editing your work product?

8 MR. McCARTEN: Streeter had him edit my work
9 product.

10 MR. ALOOT: So the people that had the problems
11 with your writing style were Streeter ---

12 MR. McCARTEN: And Foster.

13 MR. ALOOT: Who was not your supervisor.

14 MR. McCARTEN: Streeter was my supervisor.
15 Foster was not my supervisor. He was a co-worker.

16 MR. ALOOT: What about Warnick?

17 MR. McCARTEN: Warnick, no. It was mainly a
18 conflict between Streeter and I.

19 JUDGE HOYT: Well, Foster was also editing the
20 report because he was going to replace you, or had been
21 tapped to replace you.

22 MR. McCARTEN: That was not at the time he was
23 given the job of editing.

24 JUDGE HOYT: That came later then.

25 MR. McCARTEN: He wasn't tapped until I quit.

1 JUDGE HOYT: And at that time you had not made
2 known your intentions to depart?

3 MR. McCARTEN: No. I left because of the
4 editing.

5 MR. ALOOT: Did you ever ask Mr. Streeter why a
6 co-worker was now supervising your work product?

7 MR. McCARTEN: Their excuse they gave to me in
8 June when they started this editing process was that he
9 had experience on the Marble Hill report and they wanted
10 him to get in on it. There was no adequate reason I felt
11 to have him rewrite the report. I said I could have done
12 it.

13 The point is why rewrite an entire report? Why
14 does it take four or five months to get a report out? I
15 think Keppler's intention was to get another opinion on
16 Zimmer maybe in there. That could be his only
17 justification.

18 JUDGE HOYT: Let me suggest to you a reason, Mr.
19 McCarter, that it took so long to rewrite the report. It
20 feel in consistently with the attempt to ignore the
21 criminal violations and retain the paper chase theory
22 that had sprung up earlier.

23 MR. McCARTEN: I don't understand the paper
24 chase theory.

25 JUDGE HOYT: Well, the paper chase idea seemed

1 to have been that we were going to call things that
2 happened at Zimmer paper problems. This you mentioned
3 several times.

4 MR. McCARTEN: Yes. What you are saying is that
5 it was an effort to keep the lid on while the utility got
6 its act together. It could have been that.

7 JUDGE HOYT: Do you think it was?

8 MR. McCARTEN: I don't know.

9 JUDGE HOYT: Have you ever been asked that
10 before?

11 MR. McCARTEN: No. I do know that I have read a
12 book which indicates that Streeter was involved in the
13 Davis-Bessie case. He was Jim Creswell's supervisor. Are
14 you familiar with Davis-Bessie and Creswell, the
15 inspector who said that the Babcock and Wilcox reactors'
16 water level indicators were defective and could lead to a
17 TMI accident and this was three weeks before TMI?

18 He went before the Commissioners and flew there
19 at his own expense to express his concerns because he
20 felt Keppler was quashing his concerns. He talked to
21 Ahearne or somebody and he said the only thing I want out
22 of this is another job because I will be persona non
23 grata in Region III.

24 Streeter was Creswell's supervisor during that
25 time, and two weeks after he went to the Commissioners

1 TMI happened, and exactly what he said would happen
2 happened at TMI. They could not read the pressure level
3 indicator which resulted in an accident. That was a
4 subject in numerous Congressional inquiries following the
5 TMI accident.

6 Streeter was Creswell's supervisor. Streeter
7 was brought into Zimmer by Keppler the minute he knew he
8 had a big problem. He had a big problem at Davis-Bessie.

9 MR. ALOOT: Wouldn't Streeter normally have been
10 involved in Zimmer since he was your supervisor?

11 MR. McCARTEN: Streeter had no ability or
12 experience whatsoever in investigation.

13 MR. ALOOT: But wasn't he your supervisor?

14 MR. McCARTEN: He was named Chief of
15 Investigations when he had never done an investigation in
16 his life.

17 MR. ALOOT: But when was he named Chief of
18 Investigations?

19 MR. McCARTEN: The first week of February when
20 this thing started. They wouldn't name Jerry Phillip to
21 Chief of Investigations.

22 MR. ALOOT: But assuming that once he became
23 Chief of Investigations he would automatically have been
24 involved in Zimmer.

25 MR. McCARTEN: Right, and he was, and that is

1 the point. He is interjected into Zimmer at the point
2 when Keppler knows he has a problem and then he
3 subsequently edits the whole report.

4 My theory is, if there is a theory as to why it
5 took five months, is Kepper wanted to lid kept on and he
6 didn't want the problems pointing to him and his
7 mismanagement of the construction inspection program, and
8 he Streeter was somebody he could count on to minimize it
9 and it was minimized and delayed.

10 That is my only theory, and that is because of
11 what I have read about the Davis-Bessie incident. That is
12 just theory. I am not saying that is a fact, I have no
13 evidence of that, but there is why Streeter was brought
14 in there.

15 MR. ALOOT: Was the job announced?

16 MR. McCARTEN: No.

17 MR. ALOOT: You never had a supervisor in
18 investigators?

19 MR. McCARTEN: There was a reorganization and
20 Chuck Norelius was named a branch head and Streeter took
21 his job.

22 MR. ALOOT: Where was Streeter prior to
23 February?

24 MR. McCARTEN: He was an operations supervisor.
25 He had never done any investigations. He knew nothing it,

1 and at a crucial time he is brought into the picture. It
2 made no sense.

3 MR. ALOOT: His background was engineering?

4 MR. McCARTEN: Yes, reactor operations. For all
5 the criticism of Jerry Phillip, Jerry Phillip at least
6 had 20 years experience as an investigator, good or bad
7 experience. He knew. He was a quantum leap over Streeter.

8 MR. ALOOT: Did Mr. Schneblin know much about
9 investigations at OIA?

10 MR. McCARTEN: Yes. He had been in Air Force OSI
11 or Air Force Air Police for years.

12 MR. ALOOT: Did he impress you as having a good
13 grasp of investigative techniques, and managing field
14 investigations?

15 MR. McCARTEN: Yes.

16 MR. ALOOT: Did Mr. Gamble or Mr. Sinclair ever
17 express any opinions regarding Mr. Schneblin's
18 qualifications?

19 MR. McCARTEN: No.

20 MR. ALOOT: That is pro or con.

21 MR. McCARTEN: Neither pro nor con, never
22 anything critical said about Mr. Schrieblin. He was I
23 think retired. This was not his career. This was for
24 something for him to do, which maybe is a good attitude
25 to have. He as very easy going. Now the other people

1 involved in the case were highly qualified.

2 MR. ALOOT: Mr. Sinclair and Mr. Gamble.

3 MR. McCARTEN: Mr. Sinclair and Mr. Gamble
4 studied to be an attorney.

5 MR. ALOOT: Mr. Pulgia?

6 MR. McCARTEN: Mr. Pulgia had been a DEA agent
7 for like 12 years and had been involved in major drug
8 investigations.

9 The inspectors on the staff were some of the
10 best inspectors on the team.

11 MR. ALOOT: What about Mr. Cummings?

12 MR. McCARTEN: His qualifications?

13 MR. ALOOT: Yes.

14 MR. McCARTEN: I have never worked with him on A
15 case. I have never seen him work.

16 MR. ALOOT: You had always been the object of
17 the interview.

18 MR. McCARTEN: Yes.

19 (Laughter.)

20 JUDGE HOYT: Tell us more about that job offer
21 you had from OIA.

22 MR. McCARTEN: That was Roger Fortuna who is now
23 in I&E.

24 MR. ALOOT: OI.

25 MR. McCARTEN: OI.

1 (Laughter.)

2 MR. McCARTEN: What happened was Fortuna got the
3 clearance to announce this job for an OI regional
4 investigator for Chicago and it was going to be a pilot
5 program to put OIA in the regions.

6 Fortuna announced the job. I applied for it and
7 nobody wanted to go to Chicago. I heard that the weather
8 is bad here, but that is totally erroneous.

9 (Laughter.)

10 MR. McCARTEN: But nobody wanted to go to
11 Chicago. That was one of the factors, but they also
12 called me and said hey, the announcement is coming out
13 and would you apply, and I said, yes, I would be
14 interested. I applied. I was accepted.

15 Then there was a problem where I wasn't in
16 grade a whole year as a 12. So they cancelled the
17 announcement and they were going to reannounce it as an
18 11 so they could hire me.

19 Then Keppler heard that I was going to be the
20 OIA guy in the region and he called headquarters and said
21 what is going on here? He told me. He says it is nothing
22 against you personally, but they should tell the Regional
23 Director when they are going to put an OIA guy into his
24 region, and I don't like this and neither does
25 headquarters.

1 MR. ALOOT: OIA doesn't report, however, to
2 headquarters.

3 MR. McCARTEN: Yes. So the point is that the job
4 was never reannounced. Fortuna then went on like a year's
5 sabbatical or a year exchange program with the State of
6 Pennsylvania to work with them. He was very disappointed
7 in the way the announcement thing was handled. I guess
8 when I heard secondhand that when I&E complained about OI
9 doing something in their region without telling them, he
10 was not backed up by Mr. Cummings.

11 JUDGE HOYT: He Fortuna was not backed up?

12 MR. McCARTEN: Yes. Cummings said well, Fortuna
13 did this without my approval and it is not my fault.

14 MR. ALOOT: Fortuna announced a position?

15 MR. McCARTEN: Yes, without Cummings' approval.

16 MR. ALOOT: So it is your understanding that Mr.
17 Keppler complained to whom, Stello or Cummings?

18 MR. McCARTEN: I think Cummings directly. Not
19 complained, but said hey, what is going on here? That is
20 all.

21 MR. ALOOT: Did you take it personally? I know
22 Mr. Keppler said don't take it personally, but did that
23 upset you?

24 MR. McCARTEN: No. In fact, Keppler thought it
25 was a good idea because I was finding all the criminal

1 stuff anyway.

2 MR. ALOOT: But the problem is OIA could start
3 turning its sights internal.

4 MR. McCARTEN: Yes. I don't know. He told me he
5 felt it was a good idea because I was developing a number
6 of criminal cases and he felt I had the expertise to do
7 it and it would relieve him of having to worry about
8 criminality. He could just say hey, I have got it right
9 here.

10 MR. ALOOT: Was Mr. Keppler's objection the fact
11 that they would locate the pilot project in Region III,
12 or that they had started to do that without informing
13 him?

14 MR. McCARTEN: Starting to do it without
15 informing him.

16 MR. ALOOT: How does that translate into
17 cancelling the announcement?

18 MR. McCARTEN: The announcement was cancelled
19 because I did not have enough time ---

20 MR. ALOOT: Well, ultimately cancelling a
21 position, how does that ---

22 MR. McCARTEN: Cummings backed off, and I later
23 heard months down the road that that was a feeler to I&E
24 to see if they would buy OIA in the regions.

25 MR. ALOOT: A trading chip or something?

1 MR. McCARTEN: Yes. It was just a feeler sent
2 out to see how things would go.

3 MR. ALOOT: Who did you hear this from?

4 MR. McCARTEN: Sinclair and Fortuna, but I don't
5 think it was a feeler. I don't know what happened there.
6 I didn't care at the time. I think it was in '80 when
7 that happened. It didn't happen when Zimmer was going on.
8 That was in '80.

9 JUDGE HOYT: Why, Mr. McCarten, would Keppler
10 have been pleased that you were developing these criminal
11 violations when the OIA appointment business came up and
12 he would still have you out there after it was cancelled,
13 and his desire to prevent, as I understand you to be
14 saying here, or keep the lid on the Zimmer thing?

15 MR. McCARTEN: I think Keppler's perspective in
16 keeping the lid on was to keep a lid on an internal
17 inquiry of Region III's actions. I think Cummings had a
18 lot to do with keeping the lid on the criminal.

19 MR. ALOOT: So when you referred to keeping the
20 lid on, it was not to protect the licensees from the
21 public, but it was to protect Region III from the
22 Commission.

23 MR. McCARTEN: And specifically Keppler from the
24 Commission. Nobody has ever looked at how this happened.
25 The Commission never has.

1 JUDGE HOYT: How what happened?

2 MR. ALOOT: How Zimmer happened. That is what I
3 am saying. How did a plant get to this stage and be this
4 bad?

5 JUDGE HOYT: Well, let me see if I understand
6 you then, Mr. McCarten. You are saying in effect that
7 everything that Region III did was either futile or
8 mismanaged or of such a poor quality that they screwed
9 the operation from the very beginning.

10 MR. McCARTEN: Of Zimmer?

11 JUDGE HOYT: Of Zimmer.

12 MR. McCARTEN: Yes, and I think that is
13 evidenced by the fact that eventually the plant got
14 closed down two years later. I think I am right.

15 MR. ALOOT: You think Zimmer was ---

16 MR. McCARTEN: I think Zimmer properly managed
17 at the beginning would have led to a closure in March.

18 JUDGE HOYT: March of '81?

19 MR. McCARTEN: '81, and you would have a year
20 and a half more ---

21 MR. ALOOT: Rework time.

22 MR. McCARTEN: Rework time, yes. So in a sense
23 they did an injustice to the utility.

24 MR. ALOOT: Is Zimmer unusual of the plants that
25 you dealt with?

1 MR. McCARTEN: Yes. I have never seen a place
2 like that in my life.

3 MR. ALOOT: My problem is you are saying the
4 region mismanaged.

5 MR. McCARTEN: Oh, are they mismanaging things
6 in general?

7 MR. ALOOT: Yes.

8 MR. McCARTEN: I have had a number of cases that
9 have languished for months. I really can't say. My other
10 work at the NRC was pretty well managed. They used to
11 send me out on peculiar kind of cases like they had an
12 allegation of sabotage of the reactor, a possible
13 misalignment of valves at Quad Cities here in Illinois and
14 they sent me out on that because of my experience in the
15 Navy. We worked a lot of sabotage cases, unfortunately
16 for the Navy's part. We work with a lot of disgruntled
17 people turning knobs and turning valves.

18 I could work those kinds of cases, allegations
19 of drug use and stuff like that. I developed more
20 criminal cases than all of Region III had ever developed
21 in the two years that I was there.

22 JUDGE HOYT: Were these brought to successful
23 conclusions?

24 MR. McCARTEN: Yes. A lot of them resulted in a
25 number of civil penalties. One of them is going to a

1 grand jury, Systems Control. The one out in Quad Cities,
2 we proved that it could have been an accident and it
3 could have been a mistake.

4 I successfully resolved all of my cases.

5 MR. ALOOT: What I think Judge Hoyt was after
6 was were any of your criminal investigations, have any of
7 them resulted in a criminal conviction?

8 MR. McCARTEN: No, because they were all
9 forwarded to OIA. Yes, one did. We found a nurse in
10 Milwaukee who was, and you laugh, but she was taking old
11 people and in order to speed up the ---

12 MR. ALOOT: I can remember this.

13 MR. McCARTEN: You have heard this one where she
14 wanted to speed up the nuclear medicine scan on a person
15 because she didn't want to spend that much time with an
16 elderly person.

17 So instead zapping them with 15 millicuries of
18 radioactive material, she would give them 45, three times
19 the dose and then falsify the logs and the person would
20 get a scan in 20 minutes and it should have taken 45. She
21 would do this without the doctor's approval. She
22 confessed to it. I got her to confess to it, and she gave
23 some horrendous doses of radiation to some elderly
24 people's kidneys and vital organs.

25 That one she pleaded guilty before she got into

1 court and gave up her nursing license and went on
2 probation for like three years.

3 MR. ALOOT: But how about with respect to any
4 biproduct material licensee or ---

5 MR. McCARTEN: That was one of them. Oh, you
6 mean nailing a licensee, a company?

7 MR. ALOOT: Yes.

8 MR. McCARTEN: No. We have one of the few
9 license revocations of a radiographer. It was American
10 X-Ray. I did that. Are you familiar with that one?

11 MR. ALOOT: That never got to OGC's level.

12 MR. McCARTEN: Okay. That was in Detroit where
13 the guy was ---

14 MR. ALOOT: I mean if they are dead in the water
15 and they don't fight about it, we never hear them.

16 MR. McCARTEN: This guy just bowed under. He
17 said hey, take my license. He was giving people 60 rem in
18 a nearby garage, shooting pipe welds inside of his
19 garage. I had a number of good cases. I had a good track
20 record there.

21 JUDGE HOYT: A lot of these civil penalties were
22 simply assessed because they were minor. They were
23 criminal, but of minor quality, a misdemeanor type of
24 things rather than ---

25 MR. McCARTEN: Yes, they weren't the magnitude

1 of Zimmer.

2 JUDGE HOYT: Yes.,

3 MR. McCARTEN: Although System Control, the one
4 that I said was sat on, is a felony violation.

5 So I think we have covered everything.

6 MR. ALOOT: I have no more questions.

7 JUDGE HOYT: I have no more questions either,
8 Mr. McCarten.

9 I think obviously we will want to simulate what
10 you have told us here and we would like to have the
11 opportunity to speak with you again probably at even
12 greater depth focusing in on a much more narrow area of
13 interest in the future.

14 We would like though the privilege of having
15 you cooperate with us again as you have done so today.

16 MR. McCARTEN: Does the Chairman of the NRC have
17 any feeling towards looking at why this happened, why
18 Zimmer happened?

19 JUDGE HOYT: Well, I think, Mr. McCarten, you
20 have seen our charter. We will of course write our report
21 based upon the information we have developed in the
22 various interviews and examination of the documentation
23 and we will make certain recommendations to the Chairman.
24 That is as far as I think I can indicate to you anything
25 at this point in time.

1 MR. McCARTEN: I would like a transcript of this
2 interview when you get it all done.

3 JUDGE HOYT: I think that can be arranged
4 without any problem.

5 MR. ALOOT: This one we can guarantee you.

6 JUDGE HOYT: This we can guarantee an accurate
7 transcript since we do have a qualified reporter with us.
8 I will ask for a second copy. I believe the Commission
9 usually buys two copies of these transcripts any way, and
10 we will have a copy of it sent to you.

11 MR. McCARTEN: At the close I would like to say
12 that I don't see any criminal wrongdoing at this point
13 because I am not privy to all the information on behalf
14 of NRC employees. I will say that. I never saw a
15 deliberate criminal violation, but I am not privy to
16 what was communicated to Main Justice and by who and in
17 what tone, and I was not privy to the August 27th meeting
18 and why I was excluded and that may change that opinion.

19 MR. ALOOT:

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MR. McCARTEN: Yes. You can't shock an FBI
agent.

(Laughter.)

(Discussion off the record.)

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1 JUDGE HOYT: Just one final thing that was
2 generated by your last remark.

3 Mr. McCarten, when we talked to you by phone we
4 reduced to writing the substance of what you had told us.
5 You had indicated to us in that telephone conversation we
6 had with you several days ago now that Region III and OIA
7 did not pursue the criminal violations and may have
8 obstructed justice.

9 Are you indicating that you are backing off
10 from the obstruction of justice?

11 MR. McCARTEN: I would say that they may have
12 constituted obstruction of justice, yes. If they did not
13 effectively communicate to the Department of Justice the
14 allegations of criminal wrongdoing at Zimmer, that may
15 have constituted -- it depends on what was communicated to
16 them in Cincinnati, Mr. Everett, and what Mr. Cummings
17 communicated to Main Justice. That is why I qualified
18 that. I say did they impede a criminal investigation by
19 failure to adequately disclose all the information that
20 they had, which is the statements of all the people that
21 I took and the results of my interviews with them and the
22 results of other inspectors.

23 MR. ALOOT: In the face of a specific request
24 for those documents or that information.

25 MR. McCARTEN: I don't think they were ever

1 asked for all the documents. What I am saying is did they
2 adequately brief them. How can you talk to me for two
3 days and then brief the U. S. Attorney on what I said in
4 a half hour, and what was said on the phone about the
5 investigation? I am not privy to what happened.

6 But the result is did the Justice Department
7 act or not act based on what the NRC told them, officials
8 in the NRC, whoever they may be.

9 That is my concern, my exclusion from the
10 meeting and the resultant stalling of the investigation
11 may have constitutdd obstruction of justice if what was
12 communicated to them constitutes that. That is what I
13 communicated to the FBI, that I was not there, I don't
14 know what was said, but I can tell you this is what I
15 communicated to them and this is what the end result was.
16 Actions were or were not taken and investigations were or
17 were not continued and why, for whatever reason it was
18 communicated to them.

19 Appligate of course will say it is obstruction
20 of justice at the drop of a hat, but I won't.

21 JUDGE HOYT: Thank you, Mr. McCarten.

22 (Whereupon, at 1:55 p.m., the interview
23 concluded.)

24 - - -

25

CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: Interview of James B. McCarten

Date of Proceeding: 7 June 1983

Place of Proceeding: Great Lakes, Ill.

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Mary C. Simons

Official Reporter - Typed

Mary C. Simons
Official Reporter - Signature