



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

September 20, 1982

MEMORANDUM FOR: File

FROM: Peter E. Baci, Sr. Investigator
Office of Investigations

SUBJECT: MIDLAND/ZACK:GAP ALLEGATIONS

On 15 September 1982, a meeting was held at the O'Hare Hilton Hotel, Chicago, between representatives of the Consumers Power Company (CP) and the NRC. The meeting had to do with CP's desire to begin its own company investigation into the allegations made by representatives of the Government Accountability Project (GAP) concerning the Midland Plant. Specifically, CP wanted to serve subpoenas on GAP because (they claim) they have been unable to obtain information regarding the allegations contained in the GAP affidavits or copies of the affidavits themselves from the NRC staff or GAP.

The NRC's position, as presented by Jim Keppler, Mike Wilcove (ELD) and myself, was that any action taken by the licensee prior to the NRC's investigation might have a negative impact on the investigation. They were told that an investigation by the licensee would most likely lack credibility with intervenors and might intimidate potential witnesses in the NRC probe.

CP's attorneys emphasized that they would certainly be working within the system if they served the subpoenas since they were issued by the Board; NRC's response was that they were certainly within their rights to serve the subpoenas but that it would be counterproductive to all sides to do so. CP was asked and agreed to back off until the NRC had completed its investigation. When they asked how long this would be, they were given a target date of the end of January 1983; however, it was stressed that this was a target date and that if priorities changed, then the completion date might be pushed back even further. To save time, Keppler agreed to let OI brief him on the investigation and then permit CP to go ahead with theirs before the actual report was completed.

CP expressed concern that the delays might affect their fuel-loading date (October 1983). (Note: This concern apparently is closely associated with a contract they have with DOW Chemical to buy processed steam from Midland. DOW has the option of backing out of the contract if the plant is not on line by January 1984 and has threatened to do so in the past.)

Present at the meeting were: Jim Keppler, Mike Wilcove (ELD) and myself from the NRC and Attorneys Michael Miller and Dick Stahl from Isham, Lincoln & Beale, Attorney J. Brenner from CP and Project Manager Dennis Budzig from CP.

cc: J. Fitzgerald, OI
W. Ward, OI
R. Fortuna, OI

^{Case file}
E-46
JIM HANCHETT
REGION IV

TESTIMONY OF

BILLIE GARDE and THOMAS DEVINE

GOVERNMENT ACCOUNTABILITY PROJECT
INSTITUTE FOR POLICY STUDIES
WASHINGTON, D.C.

before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION

of the

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

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CHAIRMAN MARKEY AND SUBCOMMITTEE MEMBERS:

I. INTRODUCTION

On behalf of the Government Accountability Project (GAP) of the Institute for Policy Studies it is an honor and a privilege to appear before you today.

Our testimony is presented to this committee specifically on behalf of Mr. E. Earl Kent, one of the many nuclear construction workers that GAP has or is representing as counsel. Mr. Kent is with us today in order to make a brief statement about the manner in which the Nuclear Regulatory Commission (NRC) handled -- or didn't handle -- serious allegations that he brought to its attention at two nuclear power plants. Mr. Kent's encounter with a Nuclear Regulatory Commission inspection mirrors the experience of other workers at nuclear power plants under construction across the nation.

The policies and laws for protection of nuclear workers who reveal information which may have an impact on public health and safety are clearly outlined in the code of federal regulations. The experience of Mr. Kent is a good example of the reality. Unfortunately for Mr. Kent -- as well as hundreds of other conscientious nuclear workers who put the health and safety of the public first -- the consequences of telling the truth or raising serious, valid questions in the nuclear industry are personal, professional and financial ruin.

Many potential whistleblowers are willing to speak out in spite of the risks -- but only if it is going to make a difference. As a Merit Systems Protection Board survey of government workers revealed, 73% who failed to challenge significant misconduct attributed their silence to a belief that nothing could or would be done. Only 19% "decided that reporting this matter was too great a risk for me."

The problem for nuclear industry whistleblowers is that there is no guarantee anything will be accomplished except professional martyrdom. The NRC is plagued by a breakdown in the quality assurance (QA) of its own investigations. The poor prospects are due to generic weaknesses that GAP has observed in NRC investigations and inspections.

A. In its approach to whistleblowers, the NRC has --

- (1) refused entirely to speak with employee whistleblowers, to cover specific issues such as retaliation, or to investigate at all when the allegation concerned a plant about to open;
- (2) violated the confidentiality of whistleblowers, either directly or indirectly;
- (3) narrowly defined issues raised by whistleblowers and failed to inspect beyond hardware examples the witness was able to identify specifically;
- (4) failed to record interviews or take affidavits, particularly on the most significant issues being raised by whistleblowers;
- (5) returned affidavits to witnesses to delete references to sensitive issues;
- (6) failed to include affidavits in the public reports when the statements contradicted the NRC's party line on the problems at nuclear plants;
- (7) failed to keep pace with new whistleblower allegations in a timely manner.

B. In its approach to utilities, the NRC has --

(8) conducted closed-door meetings with utility and contractor executives when investigating whistleblower allegations;

(9) provided advance warning to utilities about where and when the NRC was going to inspect hardware;

(10) relied on industry's technical conclusions without disclosure of supporting data and calculations for evaluation of whistleblower allegations;

(11) offered advance, informal review of decisions to the targets of NRC investigations and inspections, thereby permitting utilities to escape accountability through informal, often-unenforced commitments "not to do it again."

(12) reviewed and informally approved licensee practices before approved by corporate officials with quality assurance responsibilities, thereby undercutting the employees who tried to carry out their duties objectively despite the pressure of management urgings that "it's all right with the NRC, so why are you holding things up?"

C. In its approach to its own personnel, the NRC has --

(13) censored the text and conclusions of sensitive investigative findings by the staff;

(14) permitted fact-finders with first-hand knowledge of defective conditions to be overruled by national officials whose biases carried more weight than the evidence;

(15) obstructed efforts by its investigators to gather evidence necessary for potential criminal prosecution and forbade its fact-finders to draw conclusions based on what was learned.

(16) pursued an internal "buddy system" that undercuts the merit system and shatters the morale of conscientious employees.

D. In its approach to the public, the NRC has --

(17) attempted as a knee-jerk reaction to discredit critics -- whether whistleblowers, anti-nuclear organizations, or simply interested and concerned citizens -- by questioning their motivations, patriotism, integrity, and technical competence to raise questions about public health and safety;

(18) destroyed drafts of reports, created secret files and failed to admit the existence of documents requested under

the Freedom of Information (FOIA), in order to prevent the public from learning how investigative findings were covered up.

We base these conclusions on our experience monitoring the NRC over the last three years as counsel for citizens organizations and approximately a dozen whistleblowers at six nuclear plants, as well as interviews with over 75 witnesses from the nuclear industry. We emphasize that it would be unfair to generalize the misconduct above to all NRC investigators, inspectors, managers or even commissioners. On each level the NRC has numerous employees who help to define the term "public servant." But the misconduct listed above has taken place and continues to occur frequently enough that potential whistleblowers are playing career Russian Roulette when they consider disclosures to the NRC. Further, we believe that nuclear power is so dangerous that the analogy extends to the public. It is small comfort that NRC investigations periodically are effective -- generally when investigators are unshackled due to the political pressure created by a scandal and citizen backlash.

II. BACKGROUND

The Government Accountability Project is a project of the Institute for Policy Studies, Washington, D.C. The purpose of the program is to broaden the understanding of the vital role of public and corporate employees in preventing waste and corruption, to offer legal and strategic counsel to whistleblowers, to provide a unique legal education for law students, to bring meaningful and

significant reform to the government workplace, and to expose government actions that are repressive, wasteful or illegal and that pose a threat to the health and safety of the American public. Presently, the Project provides a program of multi-level assistance for government employees who report illegal, wasteful or improper actions by their agencies. GAP regularly monitors governmental reforms, offers expertise to Executive Branch offices and agencies, and responds to requests by Congress and state legislatures for analysis of legislation to make government more accountable to the public.

GAP's Citizens Clinic is a citizens training, consulting, and social activist program for local "grassroots", public interest, community, and church groups. This program is designed to assist and direct citizen involvement. Its role is to provide a range of services to individuals or groups who begin to speak out about problems spawned by corporate or government ineptitude or malfeasance. The Clinic's focus is on assisting citizens to effectively use their First Amendment rights to expose or address significant issues.

The Clinic addresses health and safety concerns, consumer fraud, corporate "rip-offs", pollution, government misconduct, abuse or inaction, and the abridgement of individual rights that often accompanies the struggle of citizens to redress their grievances.

In recent years GAP has been approached by a growing number of witnesses from nuclear power plants under construction across the nation. In keeping with its objectives, both the GAP Whistle-

blower Review Panel and the Citizens Clinic Review Board have directed staff to pursue aggressively the complaints and problems that nuclear workers bring forward.

GAP is not an "anti-nuclear" organization. Its objectives within the nuclear industry are the elimination of the government's misconduct and inaction, the uncovering of facts that warrant closer scrutiny or regulatory action by the Nuclear Regulatory Commission (NRC), and monitoring of how the NRC deals with significant information provided by nuclear "whistleblowers". This Clinic assumes that nuclear-related issues are critically important to the public safety, and acts upon evidence that the NRC is doing an inadequate job regulating the nuclear industry that government created. Nuclear whistleblowers, the central figures in our approach to nuclear-related work, are the vital components in the struggle for safe energy and making the public aware of dangerous or questionable conditions.

III. CASE STUDIES OF THE QUALITY ASSURANCE BREAKDOWN IN NRC INVESTIGATIONS

A. Zimmer

Our work began over three years ago when Thomas Applegate, an undercover detective who was fired from the Zimmer nuclear power plant after uncovering severe safety problems and rampant criminal activities, brought his evidence to GAP. GAP launched its own extensive investigation. Eventually, GAP's investigation led to two NRC probes -- an internal investigation and a renewed probe of the detective-whistleblower's original allegations.

The results of both investigations, released in November 1981, substantiated GAP's accusations. The NRC internal investigation revealed that the NRC's original effort failed to meet minimum government investigative standards. The probe of the fired employee's actual allegations led to a record \$200,000 fine, based on a finding of systematic quality assurance violations -- records had been doctored, mandatory inspections had been skipped and inspectors harassed.

But the NRC even failed to see the forest through the trees the second time around. Since November 1981, new whistleblowers from inside and outside the Commission revealed devastating new evidence about the plant and the NRC. The latest information demonstrates that the NRC investigations, as meticulous and comprehensive as they appeared, were meant to contain the scandal at the plant and shift the focus away from exposure of the most fundamental defects, hardware problems, and root causes. In the process, NRC avoided possible criminal prosecutions. Finally, in November 1982, after a sustained citizen campaign, the Commission recognized the scope of the problem and suspended safety-related construction.

Unfortunately, the Commission was quicker to shut down scheduled licensing hearings into the Zimmer QA breakdown than it was to shut down the plant. The NRC still has not permitted the hearings. As a result, the public still has no institutional opportunity to check whether the Commission has succeeded the third time around in avoiding a coverup. On June 3, 1983 GAP filed a renewed motion to reopen the licensing hearings, on behalf of the Miami Valley Power Project.

B. The Kent Case

Following the GAP staff work at Zimmer we received a request to pursue worker allegations of major problems at the Midland nuclear power plant in Midland, Michigan. On June 29, 1982 our preliminary investigation resulted in filing six affidavits with the Nuclear Regulatory Commission. One of these affidavits was from Mr. E. Earl Kent, a former senior welding engineer employed by the Bechtel Corporation, the main contractor of the Midland facility. His affidavit detailed serious welding defects at the Midland facility, and referenced similar problems at two other nuclear facilities that he worked on -- Palisades and San Onofre.

After submitting his allegations to the Nuclear Regulatory Commission at the end of June, Mr. Kent prepared his evidence and documentation for the anticipated visit by NRC investigators. Unfortunately the investigators never arrived. In mid-August, at Mr. Kent's own expense, he went to the regional NRC office to talk to the government officials charged with investigating the detail and specificity of his claims about the problems at Midland. Further, he wanted to clarify that the NRC was aware of his knowledge about serious hardware problems at the two other sites. Mr. Kent was seriously disappointed in his reception. He sensed correctly that nothing would be done.

Following the mid-August visit, GAP wrote a letter to Mr. James Keppler, Regional Director, emphasizing our concerns about Mr. Kent's visit. In the three months following the submission of Mr. Kent's claims -- serious construction flaws -- there remained no efforts on the part of the NRC. During this time Mr. Kent

and GAP worked to untangle the mystery of Bechtel's inadequate welding procedures.

Finally, upon his return to California, Mr. Kent attempted to independently pursue his concern about the San Onofre facilities. He contacted the utility, Southern California Edison (SCE), and also made direct contact with the Bechtel site Quality Control office in early and mid-September, 1982.

Then, after almost two years of working within the industry and regulatory system, Mr. Kent gave up on "the system" and agreed to go public for the first time by talking to a reporter from the Los Angeles Times. The reporter had learned of Mr. Kent's allegations from another source. On October 13, 14, and 15, 1982 there were numerous news stories about Mr. Kent's allegations at the three facilities.

After the press coverage, Mr. Kent was finally contacted by the Region V inspectors who had previously ignored, or remained ignorant, of his allegations. These NRC contacts came after Mr. Kent had again offered his assistance and information on serious welding flaws. Mr. Kent agreed to meet with the Region V inspectors.

Two days after the meeting NRC inspectors appeared at Mr. Kent's home and insisted that he sign a three page statement that they had prepared from their notes of the October 15 meeting. Mr. Kent reviewed the statement and made some changes. However, he wisely delayed signing the statement prior to review by his counsel.

On October 25, 1982 Mr. Kent was taken on a site tour of the San Onofre facility by Bechtel, SCE, and NRC personnel. During this tour he pointed out numerous construction problems, including

worker safety violations, and attempted to explain his technical welding allegations. He was not allowed the use of tools, accompaniment by a witness, or even the courtesy of a step ladder to point to specific flaws.

After our review of the statements, as well as receiving much more detailed information from Mr. Kent, we informed the NRC -- both Region III and Region V -- that Mr. Kent would be supplying an expanded and much more detailed affidavit of his allegations after he received and reviewed the NRC tapes of his interview. The NRC's commitment to provide the tapes immediately to Mr. Kent was a prerequisite to Mr. Kent's meeting with the NRC without his counsel present.

Then, on December 10, 1982 the Region V office, the Bechtel Corporation, and Southern California Edison held press conferences or issued press releases about the NRC report which debunked Mr. Kent's allegations, discredited him publicly, and denounced his concerns as unsubstantiated, untrue, or technically inaccurate.

It was a cheap shot.

Region V didn't bother to notify Mr. Kent prior to the public press conference, although both Bechtel and Southern California Edison had plenty of time to prepare for their own press releases issued the same day.

Region V didn't bother to provide a copy of the report to Mr. Kent or his counsel until 5 days after its public release. In fact, neither Mr. Kent nor GAP had received the interview tapes at the time of the press conference. The NRC did not even wait for Mr. Kent to sign an accurate version of his allegations and evidence, which the report supposedly had rebutted.

We were outraged at how Region V handled Mr. Kent's allegations. We announced that we would do an independent investigation of (1) the substantive allegations; and (2) Region V's inspection/investigation effort. We completed that effort last month.

Kent Analysis

Tomorrow we intend to file our independent investigative analysis of Region V's Kent inspection with the Commissioners.

In summary our independent investigation of the NRC's effort has determined that--

- (1) The inspection was seriously prejudiced by unverified and unsubstantiated attacks on Mr. Kent's integrity by another NRC inspector. As evidence to discredit Mr. Kent's allegations, the NRC used uncorroborated rumor; deliberate misrepresentations of another NRC inspection effort that, in fact, had never been conducted; and crude, irrelevant and unsubstantiated personal attacks on Kent's professional and educational background.
- (2) The inspection was curtailed at its inception to meet the utility licensing timetable for San Onofre Unit 3.
- (3) The inspection did not address the basic generic welding flaw alleged by Mr. Kent.
- (4) The inspectors either did not conduct, did not document or destroyed records of all of the interviews with Bechtel and utility executives, yet the alleged interviews were used to discredit or dismiss Mr. Kent's allegations.
- (5) The NRC either did not perform, did not document or destroyed records of any independent technical analysis of Mr. Kent's allegations -- instead, the NRC adopted without question Bechtel's technical evaluation of the safety consequences from its own misconduct.
- (6) The NRC either did not perform, did not document, or destroyed records of all inspection interviews with workers beyond Mr. Kent and two employees specifically referenced by him.
- (7) The NRC either did not conduct or did not document interviews, or destroyed records of information provided by individuals who substantiated Mr. Kent's specific or generic allegations.

- (8) A NRC regional investigator attempted to predetermine the results of another Region's inspection/investigation efforts prior to any inspection/investigative effort on the part of the other Region.
- (9) Regional inspection policies were directly contradictory to federal NRC inspection guidelines for a period of at least 18 months -- this practice compromised at a minimum one San Onofre inspection effort as documented in an Internal Office of Inspector and Auditor investigation, the Narbut Report.
- (10) Top-level NRC administrators, including officials in the offices of Nuclear Reactor Regulation (NRR), Investigations (OI), and Inspection and Enforcement (IE) were all aware of the inadequate investigation/inspection effort undertaken by Region V.
- (11) Finally, the NRC failed to provide either the Washington, D.C. administrators or the public with the facts surrounding Mr. Kent's refusal to sign an NRC-prepared statement. Instead, Region V officials used the unsigned statement as fact, and failed to explain that Kent's refusal to sign was based on the fact his counsel advised him not to because the statement was inaccurate, incomplete and seriously understated Mr. Kent's concerns.

On balance, we believe that just as at Zimmer three years ago with the Applegate allegations, the NRC response to Mr. Kent failed to meet minimum government investigative standards.

We will ask the Commissioners to -- (1) initiate a legitimate inspection and technical analysis of Mr. Kent's welding defect concerns, and (2) seek an investigation by another government agency such as the Naval Intelligence Service into the outrageous handling of Mr. Kent's allegations, or (3) request a GAO investigation into Region V's handling of this inspection and the deliberate or inadvertant violation of NRC inspection procedures and policies throughout the Region.

We have also forwarded this information to the Department of Justice.

C. Palo Verde

In May 1982, Region V and the Office of Investigations began an investigation into allegations of faulty electrical work on the shutdown systems and falsification of quality assurance records at the Palo Verde plants. At the time, the NRC staff promised Robert Gunderson, the electrician who raised these allegations, that his identity would be protected and that there would be a thorough investigation. Mr. Gunderson, who last February revealed his identity in order to criticize the conduct of the NRC's investigation, believes he was subsequently blackballed from the nuclear industry. Further, over a year later the investigation report is not complete.

The investigators did not go to the site to examine Mr. Gunderson's allegations until two months after interviewing him and another QA manager who made similar charges. In September 1982, before the issuance of any report, the Arizona Public Service Company which owns Palo Verde announced in its newsletter that it had received a "clean bill of health" from the NRC on these allegations.

Mr. Gunderson was flown back to the site in October 1982 for an exit interview. The investigators told him at the time that all problems he described had been fixed prior to the NRC inspection or that the specifications for the job had changed so the discrepancies were no longer violations of the specifications. Mr. Gunderson, expecting this response from the NRC, then detailed other problems which he had deliberately omitted from his first affidavit. None of these deficiencies, of course, had been repaired.

When we inquired about the status of the investigation and how the utility knew the outcome of the investigation, the OI investigator hung up the telephone on us. We complained to his superior in the Office of Investigations in February 1983 about the manner in which the investigation was being conducted. We heard no response until May 1983, when we were told that OI had misplaced our letter for three months and believed the matter was more appropriately handled in OIA.

The OI Report has yet to be issued, although a special inspection report issued on April 22, 1983 indicates Mr. Gunderson's charge of falsified records was corroborated. Neither OI nor OIA has provided any explanation for the long delay in the investigation or the apparent disclosure to the utility of Mr. Gunderson's allegations prior to NRC inspection.

D. Catawba

On April 21, 1983 GAP requested an Office of Investigation (OI) probe into the Catawba facility under construction in South Carolina by Duke Power Corporation. We had received significant evidence of a massive utility coverup of welding procedure violations, records falsification and retaliation. This information was brought to the NRC's attention by over two dozen welding quality control inspectors.

Retaliation and records falsification are potential criminal violations; but the NRC region permitted the utility to dispose of the issue through a report by a consulting firm on whose board the utility president sat. The ensuing report devoted only three pages out of 450 to the allegations of deliberate violations such

as illegal reprisals. The regional office was satisfied that there aren't any problems. The whistleblowers feel they were left to twist slowly in the wind, and are still twisting.

Clearly this would have been an opportunity for the new Office of Investigations to demonstrate its own independence and to compensate for the NRC's previous abdication. Unfortunately, OI passed the buck again. It delegated the case to the Office of Inspector and Auditor. At best, OIA will investigate the NRC's own oversight, leaving the charges of reprisal still effectively unanswered.

As a result, after two years there have been three utility task forces, one Regional I & E review and an OI referral to OIA. But the NRC's investigative program still has failed to seriously address all the issues initially raised at Catawba.

IV. ORGANIZATIONAL CAUSES FOR THE BREAKDOWN

The case studies demonstrate repetitive violations in the quality of NRC investigations. At nuclear plants, NRC inspectors have concluded that repetitive violations indicate an organizational breakdown in the quality assurance program. In our opinion, that same conclusion applies to the NRC. We have identified four causes for the breakdown -- 1) programmatic defects; 2) failure to honor the merit system for personnel decisions; 3) absence of legitimate structure for checks and balances on agency performance, evidenced by the absence of an independent Inspector General; and 4) failure of leadership by the Commissioners. The net effect has been to cripple the NRC's investigative program generally and to effectively abdicate the criminal enforcement of provisions in the Atomic Energy Act.

A. Programmatic Defects

In some instances bureaucratic roadblocks have obstructed investigators' efforts. For instance, in practice the various NRC factfinding bureaus -- OI, OIA and the Office of Inspection and Enforcement (IE) -- sometimes each wait for the other to complete its individual segments before taking a turn. Successive instead of integrated cases lead to delays, as witnesses leave, forget key evidentiary details or simply become tired of the parade of NRC representatives. The nuclear industry investigators and attorneys do not wait for IE to finish its inspections before speaking with witnesses. We don't understand why OI investigations are put on hold, sometimes until potential criminal cases become stale and defenses are perfected.

Another significant problem is the prohibition on conclusions or recommendations in OI reports. As a result, the factfinder who directly observes the witnesses and gathers the evidence must defer judgment about such key issues as criminal intent to those without firsthand knowledge -- Mr. James Cummings, OIA Director, or the Commissioners. While the ultimate policy decisions of course must be made by agency leadership, GAP believes that the NRC's investigators should be permitted to draw conclusions about what they have learned. Currently there is a void in the NRC's capacity to detect intentional violations of the Atomic Energy Act.

One of the most obvious handicaps for OI is its meager staff of approximately 25 investigators. Given the state of utility contempt for legal QA requirements, this is a hopelessly inadequate force to uncover the causes of illegalities throughout the industry.

B. Buddy System Intrusions Into the Civil Service

One letter that GAP received recently alleged serious personnel policy abuses -- including predetermined personnel selections for those who don't make waves with the industry by a particular regional administrator. The letter contained documents that evidence violations of the Civil Service Reform Act. The results of these merit systems violations can be ominous for the public forced to put its trust in the NRC. To quote the NRC source who communicated with GAP --

...incapable stooges are being promoted to lead competent engineers into doing an inadequate job. One incapable person after being installed at the helm, stands in a position to help select other incompetents and then the chain continues which ultimately spells disaster.

These concerns echo the frustration of excellent investigators who have left the agency in protest. They have informed GAP that many conscientious NRC investigators must make a career decision after around two years -- whether to stop fighting for principles and results, or whether to leave. That is not to deny that dedicated personnel persist, or that outstanding new investigators are recruited by the NRC's public service mission. But we believe talent is wasted unnecessarily due to merit system violations.

C. Lack of an Independent Inspector General

The repetitive breakdowns in the quality of NRC investigations suggest a breakdown in the agency's system of checks and balances. We have found that to be the case at the Commission. The Office of Inspector and Auditor does not have legitimacy as the watchdog on the quality of NRC's performance. To illustrate the sorry state of OIA's credibility, the whistleblower who disclosed

allegations of merit system violations closed with a specific request: "Please, we do not want you to send Mr. Cummings or his staff to do this [Investigation]. They do a good paint cover up job when it comes to covering up for management deficiencies."

Our assessment is that OIA under Mr. Cummings leadership has sacrificed its role as an agent of accountability. On occasion it has been reduced to smoothing over potentially embarrassing scandals through "counseling", to make sure that the problem is "resolved". Even worse, OIA has become a de facto graveyard for charges of criminal Atomic Energy Act violations.

As with the breakdown in the NRC investigative program generally, the OIA's record can be illustrated through case studies and repeat violations, and explained through poor leadership and structural defects.

1. Case Studies of OIA Investigations

- a. The Narbut Report

Our concerns about Region V's handling of the Kent investigation led us to inquire into the regional inspection policies. We discovered that a July 1982 OIA investigation had determined that, in fact, Region V had a policy of sharing inspection information such as draft reports with licensees that was in direct violation of NRC investigation/inspection policies. We learned that the OIA investigators had effectively gathered all the facts, but the OIA leadership failed to endorse or even include the investigative conclusions in the final report.

- b. Zimmer

The Zimmer case illustrates the myriad of OIA deficiencies. In the end, the investigative staff was able to produce a significant report. But they

produced it in spite of OIA management, which severely compromised the effort through -- 1) even more significant censorship; 2) stopping the investigators at the key point in their probe into the causes of the QA breakdown; and 3) denying the existence of agency records requested under the Freedom of Information Act (FOIA) which reveal the extent of the coverup.

Our June 3, 1983 motion to reopen Zimmer licensing proceedings summarizes OIA's -- and Mr. Cumming's -- efforts to avoid public disclosure of the NRC's role in the failure to see the obvious at Zimmer.

The rationalizations for the coverup are in the best tradition of Catch 22. To illustrate, throughout most of the Zimmer OIA investigations Mr. Cummings effectively defined the mission as determining the root cause of the NRC's failure, rather than a witchhunt against individuals. This effort produced evidence that both Region III and top utility executives may have been aware that the QA program was out of control as far back as 1977, and deliberately let the violations continue. At the last minute, Mr. Cummings deleted this major section of the report, over the investigators' objections, with the excuse that QA's mission was merely to look for individual personnel violations. Mr. Cummings cut the heart out of the OIA report around the same time that he participated in a decision to stop his investigators as they were closing in on identification of the decision makers in the QA violations, for possible presentation to a grand jury.

Last month Judge Thomas Hogan issued an order in Applegate v. NRC No. 82-1829 (D.D.C., May 24, 1983) with significant conclusions about OIA's lack of accountability to the public under the FOIA. The Court found that--

evidence was uncovered in the record suggesting that despite the existence of a carefully drafted official NRC FOIA policies and procedures, the personnel assigned to implement FOIA in OIA executed those rules in a manner designed to thwart the release of responsive materials....It is disturbing to this Court that unbeknownst to agency management, an office in the NRC was able to design a filing and oral search system which could frustrate the clear and express purposes of FOIA. The assertion of an exemption is one thing, avoidance borders on dishonesty....A lawsuit ought not to be required to ensure the adequacy of a search.

Mr. Cummings has publicly stated that the FOIA policies in the Zimmer case reflected his decisions, that he did nothing wrong and would make the same decisions again. In light of the Court's finding, this type of leadership is not reassuring. It has been a barrier to exposing the truth.

c. LaSalle

At LaSalle, Mr. Cummings could perhaps explain better than we why he found nothing when he investigated internal allegations of "NRC white wash" by members of Region III management. His own memorandum of July 15, 1982 to William Dircks (enclosed as Exhibit 3) illustrates how OIA has substituted counseling, and Mr. Cummings' subjective reassurance, for accountability:

On June 30, 1982, Jim Keppler called me relative to internal comments being made in Region III to the effect that there was so much emphasis/pressure to complete the licensing process of the LaSalle plant that certain allegations relative to LaSalle, and currently under investigation by Region III, were not being properly investigated, i.e., the investigation would result in a "white wash."

Principle examples given by Maura and Reimann in this regard was the fact that Reimann had been pulled off the investigation just at the point where he was discovering more evidence/records to support the falsification charge and further that proper safeguards were not

taken to impound or protect the questionable records but rather the records were left in the custody of the licensee;

The Regional Administrator was in general agreement that the criticism levied by Maura and Reimann was valid, however, overall office circumstances have dictated both the delay of investigative matters and in some instances the assignment of inspectors to investigatory matters;

The Regional Administrator has directed that the falsification allegations regarding torque wrenches and gauges be fully and completely investigated irrespective of real and/or imagined pressure regarding the licensing of LaSalle.

In view of the above no further action is being taken by this office.

This approach may smooth over potential scandals but it is no substitute for effective enforcement as the sorry history of La Salle demonstrates.

2. Causes of the OIA Failure

Like the QA breakdown at OI, the violations at OIA are repetitive. The same type of misconduct is being discussed today that was reported two years ago in a General Accounting Office report, "Improvements Needed in the Nuclear Regulatory Commission's Office of Inspector and Auditor" (July 9, 1981) EMD 81-72. While Mr. Cummings' leadership is an obvious target, we believe that GAO's findings help to explain the continuing breakdown:

The independence of the Office of Inspector and Auditor needs to be strengthened. In GAO's view, this only may be possible if NRC accepts and implements the recommendations contained in this report. GAO also suggests that Congress consider establishing a statutory Inspector General office at the NRC. Such an office could help ensure that the Congress and the Commissioners receive objective information on problems within the Commission and enhance public trust in the regulation of commercial nuclear power.

This lack of organizational independence would violate Criterion I of 10 CFR 50, Appendix B if it existed at a nuclear power plant. At the NRC it helps explain why OIA was stopped in its tracks and hit with bureaucratic retaliation when it took tentative steps in late 1981 to pursue agency accountability. When OIA proposed an audit of the NRC's QA oversight, Chairman Palladino quashed the initiative and allowed the staff that would have been the subject of the audit to exonerate itself. This action undercut the Chairman's warning to the Atomic Industrial Forum that the NRC will hold the industry to higher quality assurance standards.

Similarly, after OIA's strong findings on Zimmer, the NRC's "watchdog" was put on a leash and not permitted to conduct further oversight of NRC investigations for months.

The net result is that an independent Inspector General is necessary to establish a structure that even permits accountability. Fresh leadership is necessary to implement a system of legitimate checks and balances, if one becomes available.

D. Failure of Leadership by the Commissioners

As seen above, the Commissioners must share the responsibility for the investigative breakdown at NRC. Amazingly, this spring the Commissioners took the industry bait and established an advisory committee that may further weaken the investigative program. The "Advisory Committee for Review of the Office of Investigation Policy and Rights of Licensee Employees Under Investigation" was established to consider such issues as whether NRC

investigators should be required to inform witnesses of their Miranda right to counsel. Another topic was whether the company should provide the lawyer. We believe that this project is illegal under the Federal Advisory Committee Act (Pub.L. 92-963), as well as utterly frivolous.

Initially the committee is illegal, because the NRC justified its existence by subtracting a key phrase from the Act. In a January 10, 1983 letter, Chairman Palladino explained that a committee is appropriate in part because "we are not aware of any other agency advisory committee which could fulfill this purpose." That is not the relevant test under the statute. Section 5(a) of the Advisory Committee Act specifies that proposed committees should be screened to determine "whether the functions...are being performed by one or more agencies or by an advisory committee already in existence" (emphasis added). As the NRC's Advisory Committee hearings revealed, nearly every other agency in the Executive Branch already has a policy on Miranda-style warnings in non-custodial interrogations. Various representatives shared their experience with the NRC. As one bewildered witness at the May 26 hearings from the Pentagon IG noted about the whole proposition, "...I just don't understand the purpose of it."

The NRC advisory committee also is illegal because it does not reflect the requirement in Section 15(b)(2) of the Act for balanced membership "in terms of the points of view represented...." There is not even token membership on this committee for public interest and/or citizens groups, or even those who have fought for the rights of nuclear industry employees. Just as industry proposed

the committee, its membership is top-heavy with industry representatives. The chairman has represented Houston Power and Light. Another member was one of those who started the Atomic Industrial Forum.

The bias is so crude that Julian S. Greenspun, the Department of Justice's Deputy Chief for Litigation, General Litigation and Legal Advice Section, Criminal Division, refused to cooperate with the committee. Mr. Greenspun explained that "policy matters of NRC investigative procedures are not, in my view, to be decided in concert or partnership with representatives and agents for utility companies or their management who may be subjects of these investigations...."

The effort is frivolous if its true intent is to help protect employees. In GAP's experience, whistleblowers are much more chilled -- and realistically threatened by -- management representatives than by NRC investigators.

Indeed, there is little prospect of criminal liability for anyone. The NRC effectively does not have a credible program to prosecute criminal violations. There have been only a handful of criminal referrals to DOJ in history, and just one indictment of which we are aware. In short, the Commissioners have fiddled Nero-like with an industry-proposed and dominated advisory committee to "solve" a non-problem by further weakening the NRC investigative program -- which already has lost public credibility.

V. CONCLUSIONS

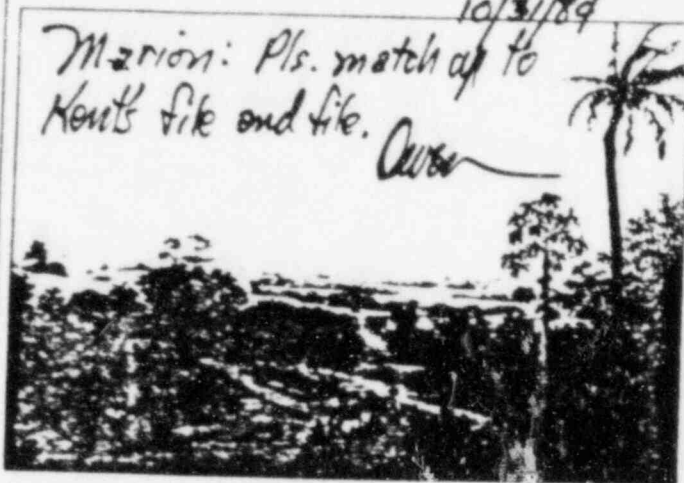
Contrary to NRC responses on occasion, GAP's concerns are not unreasonable demands. We are not alone in our frustration,

which is shared widely by whistleblowers, the public and even the Department of Justice. The legitimacy crisis has reached the point that on March 25 Mr. Greenspun warned that he is "reluctant to recommend at this point that NRC be the exclusive agency relied on to develop criminal cases (and possibly civil cases)..."

For too long the NRC has failed to perceive the obvious at nuclear power plants. It is time for the Commission to admit the obvious about its own shortcomings and begin a thorough overhaul of its program for investigations and agency accountability.

WE CAN'T GET IT FOR YOU WHOLESALE, BUT

10/3/84
Marion: Pls. match up to
Kent's file and file. Owen



Frans Post's View over Varzea, Brazil: a cool \$200,000 for openers

THE J. PAUL GETTY Museum in Malibu, the richest in the world, has more than \$1 million a week to spend on art purchases. Even though museum director John Walsh says he buys selectively in order to avoid upsetting the international art market, it is obvious that the Getty can afford whatever is offered. So why not: ■ The Art Collection of the British Railway Pension Fund? Estimated worth \$37 million. The fund has invested a portion of its assets in an art collection which includes marvelous Impressionist paintings, quality medieval manuscripts and sculpture from the Parthenon. The collection does not include national treasures, so it can be exported and sold easily. ■ The George Eastman House Collections, Roches-

ter, N.Y.? Estimated worth \$100 million. This repository of photography and motion picture history is in big financial trouble, and if the trustees don't come up with a solution, everything may have to be donated to the Smithsonian. The collection includes 600,000 prints (rare Steichen, Muray and Hine) and 5,000 film titles, primarily of the silent genre. ■ A couple of Sotheby's Old Masters paintings? In January, there will be two landscapes by seventeenth-century Dutch artists, estimated at \$200,000 to \$300,000 apiece. Both *Land-scape of Wheatfields* by Jacob van Ruisdael and *View over Varzea, Brazil* by Frans Post are signed and considered works of first importance—assets to the Getty's own Old Masters collection.

—Sarah Green Durkin

AIR WATCH

CALIFORNIA MOTORISTS who complain when they see soot pouring from the tail pipe of diesel-powered automobiles (exempt from smog device inspections) may soon stop grumbling. Beginning in 1985, diesel passenger cars sold in California must meet increasingly tighter standards for particulate emissions. By 1988 the state expects to

reduce their emissions 80 percent.

All this will be made possible by a particulate trap that filters soot from the exhaust stream and burns it. The device is not expected to add appreciably to the cost of a new car. But, says Bill Sessa of the Air Resources Board, "It's as important a milestone as the catalytic converter."

For one thing, says Sessa,

long-term reduction of diesel emissions is likely to be more dramatic than reduction of gasoline emissions. Pollution levels on gas-fueled autos begin to go up as soon as the vehicles leave the showroom. Smog device checks aim at making small adjustments to restore the tuning. But diesel engines tend to retain the same level of emissions over

the lifetime of the car, and few external adjustments can change emission levels.

The best news about the device is that if it works on passenger cars, it may be applied to buses and trucks, which are responsible for 20 percent of vehicle emissions, including 75 percent of the particulate matter.

—Peter Steinhart

DAY CARE WATCH

IT'S 2 P.M. DO YOU KNOW where your children are? If you're among the 1.5 million dual-career couples in California, chances are your preschoolers are in one of the 6,616 licensed day care centers here. Those centers that are state supplemented operate on a sliding scale, with an average maximum charge of \$70 a week, but waiting lists are long and preference is given to low-income families. Privately funded centers, however, have no such limits. We looked at a number of them recently and came up with these weekly rates for full-day care for a two-and-a-half- to five-year-old (lunch and snack included):

Bakersfield: Munchkin

Land, (805) 325-0668, \$45.

Beverly Hills: International Children's Center, (213) 652-7483, \$75.

Merced: Happy Time Nursery School, (209) 722-3889, \$40.

Pasadena: All Saints Children's Center, (818) 449-0985, \$69.

Riverside: Joyful Noise Pre-School and Day Care, (714) 686-6473, \$47.50.

Sacramento: Alice in Wonderland Pre-School and Day Care, (916) 455-0607, \$43.75.

San Diego: Adventure Days, (619) 560-5686, \$63.50.

San Francisco: Friends of Saint Francis Childcare Center, (415) 861-1818, \$91.

NUKING THE WHISTLE-BLOWERS

TWO SENIOR ENGINEERS who worked in the Bechtel-built Midland, Michigan, nuclear plant are suing the San Francisco company for wrongful termination. E. Earl Kent and Ken West originally asked for \$1 million each in actual damages for being laid off in violation of their contracts. But recent news that completion of the Midland plant was abandoned following a series of financial and safety-related setbacks bolsters the engineers' charges that they were fired for whistle-blowing. Or so believes Paul Monziona, a member of Melvin Belli's firm, which is handling the case. According to the lawyer, NRC guidelines obligated his clients to report

safety code violations, and removing them for doing their job may subject Bechtel to as much as \$100 million in punitive damages.

Not so, says Philip Placier, one of four attorneys representing Bechtel. Kent was fired because he was "incompetent" and West because he was not a "satisfactory employee." But West claims his supervisors rated his performance as "meeting or exceeding [their] requirements," and Kent says he had been serving as a senior quality-control engineer for the company since 1980. It was only after he tried to draw attention to undersized, porous and excessively ground welds that Bechtel dismissed him.

—Ehud Yonay