

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Interview of James Lieberman

Docket Number: (not assigned)

Location: Rockville, Maryland

Date: Monday, July 22, 1996

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Pages 1-67

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ADDENDUM TO INTERVIEW OF James Lieberman  
(Name/Position)

Page	Line	Correction and Reason for Correction
22	19	Change "similar" to "seminal"
58	14	change "that that" to "that the"
58	20	change "incident" to "instant"
62	22	change "viewing" to "reviewing"

Page 1 of 1

Signature [Signature]

Date 7/6/96

ADDENDUM TO INTERVIEW OF JIM LIEBERMAN  
(Name/Position)

Page	Line	Correction and Reason for Correction
7	10	Trying To "give" NOT GET
8	10	recommendation, IN PART... recommendation, we
10	10	STRIKE "VIGOROUS" use higher
11	10	strike "have" use "ARE"
	20	CONTRACTOR
14	8	STRIKE "NOT" - Because the problem is allegation and they may be related to discrimination. - STRIKE "Maybe I just see it now" - I don't understand the sentence. "see it now" - maybe referring to I now understand your question.
18	3	"MOV" NOT "NOV"
42	22-23	STRIKE That two line - instead say "This agency applies a higher standard to individuals than however the legal standard is"
46	23	STRIKE "a tool on a gun" replace with "another tool in the tool box"
P53	10	STRIKE "give" replace with "CASES"
P66	6	replace "can" with "can't"

Page 1 of 1 Signature James Lieberman Date 7/12

(Name/Position)

Page

Line

Correction and Reason for Correction

21

22

1499

56

15

... the regional Office of ...

**Signature**

Date 21.2.96



1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 OFFICE OF NUCLEAR REACTOR REGULATION  
5 INTERVIEW

6 -----X  
7 IN THE MATTER OF: :  
8 MILLSTONE REVIEW GROUP :  
9 ALLEGATIONS & EMPLOYEE CONCERNS : Case File No.  
10 INTERVIEW OF JAMES LIEBERMAN : (not assigned)  
11 :  
12 -----X

13 Monday, July 22, 1996

14  
15 Conference Room 1F9  
16 One White Flint Plaza  
17 11545 Rockville Pike  
18 Rockville, Maryland  
19

20 The above-entitled interview was conducted at  
21 12:00 p.m.  
22

23 BEFORE:

24 JOHN HANNON, Team Leader  
25 RANDY HUEY, Investigator

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(12:07 p.m.)

TEAM LEADER HANNON: Good afternoon. Today is July 22, 1996, approximately noon.

My name is John Hannon. I am here at the White Flint Building in Rockville, Maryland. With me is Randy Huey. We're talking with Mr. Jim Lioberman today as a continuation of the interviews we've been doing looking into the allegations and concerns handling at Millstone during the last 10 years.

We are on a fact-finding mission to figure out what, if anything, went wrong with the process and to try to develop a database from which we can draw probable root causes and identify potential corrective actions that could be recommended for the NRC and Northeast Utilities to improve the process for future employee concerns and allegations.

Our focus today will be the enforcement practices and policies and procedures. We are looking historically at some of the cases that have generated some of these questions. None of the questions that we have to ask today have been asked to our knowledge before, but for your purpose, Jim, if they've already been asked and answered, then you can simply refer us to the material. We don't need to revisit any of that stuff that has

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1 already been on the public record.

2 But to the extent that some of these questions  
3 you may have subsequently been asked and answered in the  
4 past, you may have additional or different thoughts now  
5 since those reviews were completed. Any comments you may  
6 have now related to how well the recommendations of those  
7 reviews have been implemented would be appreciated.

8 The interview is being transcribed as have all  
9 of the interviews we have conducted to date. We're doing  
10 that for two reasons. One, so we can ask the right  
11 questions and followup questions, and pay attention to  
12 them and not have to be diverted by notetaking, and also  
13 we'll have the clear record of what you said to deliberate  
14 on later.

15 The accuracy of the transcript is important,  
16 and we will afford you the opportunity to review it and  
17 make any clarifications or changes to accurately capture  
18 what you wanted to say. I'll have a handout at the end of  
19 the interview that will describe the process we'll use for  
20 that, and our transcript custodian will be contacting you  
21 probably next week to arrange to have that done.

22 Do you have any questions before we begin?

23 MR. LIEBERMAN: No, I do not, John.

24 TEAM LEADER HANNON: Okay. Let me ask Randy,  
25 if you would, then begin the questions.

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1 INVESTIGATOR HUEY: Okay. First of all, the  
2 first question, our review indicated based on the case  
3 files that we have reviewed, and some of the individuals  
4 that we spoke to in the course of our review, indicated  
5 that some additional attention may be warranted relative  
6 to the severity level of the enforcement process and  
7 ensuring that the severity of the enforcement process is  
8 sufficient to deter licensees from discrimination.

9 One example that came to the forefront in that  
10 regard was a May '93 discrimination enforcement action  
11 against NU for Millstone discrimination, which involved  
12 corporate level NU personnel begging the question of  
13 severity level 1 type enforcement.

14 Sort of looking back and maybe doing some  
15 amount of second guessing considering the subsequent  
16 history of discrimination at NU, we'd be interested in  
17 getting your thoughts on two accounts. One, whether more  
18 severe enforcement action involving corporate level  
19 officers in the company may be warranted in future  
20 discrimination cases, and secondly, we'd be interested in  
21 any thoughts you might have on whether if more severe  
22 enforcement action were implemented, would it have some  
23 good effects, some positive effects?

24 And maybe you might have some thoughts in that  
25 regard relative to the May '93 case, whether had we done

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1 anything more severe, do you think it would have had any  
2 impact?

3 MR. LIEBERMAN: The May '93 case that you  
4 refer to, Randy, is that the enforcement action based on  
5 the discrimination against [REDACTED] S. #6

6 INVESTIGATOR HUEY: That's correct.

7 MR. LIEBERMAN: Okay. That was a very  
8 difficult case. There were approximately nine or 10  
9 volumes of testimony in that case. The staff made a  
10 considerable effort to review that case. In fact, we even  
11 went away for a week with representatives of OGC and NRR  
12 and the region to study the case and debate the evidence.

13 We were not of one mind in that case. We  
14 weren't of one mind as to who was responsible for the  
15 discrimination. There were views that maybe  
16 discrimination did not occur. It was not a simple issue.

17 The premise of your question is that maybe we  
18 should have had a higher severity level, or maybe we  
19 should have had a higher sanction. We went with a level  
20 2, primarily because the individuals involved were not  
21 corporate officers. They were corporate officers  
22 associated with this case. There was a vice president, as  
23 I recall, involved. But there were also first- and  
24 second-line supervisors involved in the case.

25 We thought, on balance, this was more a middle

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1 management and not corporate management, and that was why  
2 we had the severity level a 2. Also, in recognition of  
3 the differing views as to whether discrimination occurred  
4 and the level.

5 Level 1 cases I think should be reserved for  
6 clear cases of very significant violations in the  
7 discrimination area where it is clear that corporate  
8 management was involved. And that was, as I said, a  
9 difficult case.

10 Would stronger enforcement action have made a  
11 difference with this licensee? I've thought about that.  
12 That was \$100,000 for the violation; the maximum civil  
13 penalty is \$100,000 per violation. We had a DFI  
14 associated with that case. At the time, we thought the  
15 letter and the action we took was very significant. As  
16 you know, since that time we issued, I guess, a \$220,000  
17 case for discrimination involving [REDACTED] EY#6 as well as  
18 the subsequent violations there. We also issued recently  
19 a \$100,000 case with -- involving [REDACTED] EY#6

20 There were other cases that were investigated  
21 where we did not find discrimination. This company, on  
22 the surface, has told us in various briefings they are  
23 doing some good things. On the surface, they may appear  
24 to be good things, but they apparently have not gotten to  
25 the root cause, really dealt with the problem. If we had

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1 a higher sanction, would this plant have done more? I'm  
2 not sure.

3 I'm not sure with the current management,  
4 senior management, corporate officers, even a double or  
5 triple civil penalty would have done the job. This  
6 company has had if not the most civil penalties in recent  
7 years, one of the highest levels if you added up all of  
8 the civil penalties.

9 And this company I think has a hard time  
10 getting the message that we're trying to get. They have  
11 difficulty admitting error. So in hindsight, I'm not  
12 convinced today that higher civil penalties or stronger  
13 action would necessarily have changed things. Clearly, if  
14 we got rid of Mr. Fox and the other gentlemen that were  
15 involved, things probably would have changed. I didn't  
16 think -- I don't think, as I look back, that we had the  
17 evidence to take the action against those corporate  
18 officials.

19 Did I get all of the --

20 INVESTIGATOR HUEY: Yes.

21 MR. LIEBERMAN: -- questions there for you?

22 INVESTIGATOR HUEY: In that we note that your  
23 whistleblower review group had one of their  
24 recommendations the consideration of a higher sanction for  
25 wilful-type discrimination, I would assume from that that

1 you are of the opinion that higher sanctions, in general,  
2 may be warranted and may have a more remedial effect than  
3 they would have with Millstone in the timeframe of 1993.

4 MR. LIEBERMAN: Well, it is true that the  
5 reassessment of the NRC's program for protecting allegers  
6 against discrimination, NUREG-1499, had as a  
7 recommendation increasing civil penalties for wilful  
8 violations and discrimination, those type cases, to  
9 \$500,000. The Commission did not adopt that  
10 recommendation in part because of that recommendation. We  
11 had another review team that looked at the enforcement  
12 program, NUREG-1525. And I was the chairman of both of  
13 these review teams.

14 The outcome of the enforcement review team was  
15 not to recommend a higher civil penalty, because we  
16 concluded a higher civil penalty is not necessarily the  
17 solution. There is many things that influence the  
18 sanction or influence the impact of the sanction -- the  
19 adverse publicity, the impact on the money markets,  
20 insurance, NRC attention, the state PUCs. And it's not so  
21 much the absolute amount of money, but the relative amount  
22 of money that we thought was important.

23 To these big companies \$500,000 is not  
24 necessarily a huge amount of money. I mean, obviously  
25 it's a lot to me and you, but to a company that has multi-

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1 billion dollars in capital assets and in sales, \$500,000  
2 is not so much money. Maybe a million would be better,  
3 maybe \$10 million would be better. I'm not sure what the  
4 absolute amount of money would be to solve the problem.

5 Clearly, NRC has put more attention in the  
6 area of discrimination, and I'm sure we'll talk about some  
7 of the things that we've done.

8 I think the industry knows of our concerns. I  
9 think the industry appreciates the aggravation they can  
10 get into when they have a case involving discrimination  
11 and the averse publicity. And I think the most important  
12 impact of enforcement is the adverse publicity.

13 Also, getting on the watch list is obviously  
14 not a good thing for utilities, and civil penalties help  
15 to get them on the watch list. It's not a specific  
16 criteria, but in my view if you look back at the licensees  
17 who have been on the watch list, you will also see that  
18 they are also the ones that have the more -- greater  
19 number of civil penalties and the greater number of  
20 escalated cases. There is almost a one-to-one  
21 relationship. Clearly, those are the plants which are  
22 discussed at the senior management meeting.

23 So civil penalties tell the licensees, when  
24 they get several of them, they are heading in that  
25 direction. I think that, together with the publicity, is

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1 a significant message. Rarely do I see in the newspaper,  
2 even when we give out a \$50,000 civil penalty, NRC gave  
3 too low of a fine, or the fine isn't treated  
4 significantly. People are concerned that when their bills  
5 go up, or their potential for their bills go up, even by a  
6 little bit because the entity got a civil penalty, they  
7 put adverse pressure on the company. These utilities like  
8 to be considered good corporate neighbors, and they want  
9 to avoid any sanction.

10 So, you know, I think vigorous civil penalties  
11 are better for -- not better, but are more appropriate in  
12 the more significant cases. But it's the relative amount  
13 which is I think more important, and the frequency of  
14 getting them, than the absolute amount.

15 INVESTIGATOR HUEY: Okay. Well, you've sort  
16 of headed towards the last thing I wanted to ask about.  
17 Relative to severity level and relative to the concept you  
18 addressed of negative publicity being one of the chief  
19 motivating factors of enforcement, and the relative nature  
20 of the -- what I'll call the level of the enforcement as  
21 compared to other organizations that are being cited,  
22 Millstone has received I guess in your litany that you  
23 went through I think three escalated enforcement actions  
24 within the timeframe of the review we're doing.

25 None of those have been severity level 1

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1 enforcement actions. Probably the one that I -- from my  
2 review that came closest was the one we just talked about  
3 involving [REDACTED] <sup>EX 6</sup> Can you share some of your opinion  
4 and comment on why isn't a severity -- an increased  
5 severity level warranted as a function of the repeated  
6 nature, on an ongoing nature, of discrimination?

7 MR. LIEBERMAN: Well, when you say "ongoing  
8 nature," do you mean different cases?

9 INVESTIGATOR HUEY: Yes.

10 MR. LIEBERMAN: Well, these cases have, you  
11 know, separated in time. I think the [REDACTED] <sup>EX 6</sup> case, for  
12 example the most recent case, is -- let me step back. I  
13 believe the [REDACTED] <sup>EX 6</sup> case occurred prior to the [REDACTED] <sup>EX 6</sup>  
14 case and when the deed occurred, but came out after the  
15 [REDACTED] <sup>EX 6</sup> case. So to escalate the [REDACTED] <sup>EX 6</sup> case because of  
16 [REDACTED] <sup>EX 6</sup> might not have been supportable because it happened  
17 before the [REDACTED] <sup>EX 6</sup> case. We wouldn't escalate the [REDACTED] <sup>EX 6</sup>  
18 case because we didn't know about the [REDACTED] <sup>EX 6</sup> case.  
19 [REDACTED] <sup>EX 6</sup> Now comes [REDACTED] <sup>EX 6</sup> several years later.  
20 [REDACTED] <sup>EX 6</sup> involved a contract. Didn't have a corporate  
21 management involvement that the other cases had.

22 INVESTIGATOR HUEY: I guess that's where --

23 MR. LIEBERMAN: And I -- I have to be careful  
24 here, because the [REDACTED] <sup>EX 6</sup> case is not over yet. I don't  
25 want to say anything here that will jeopardize --

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1 INVESTIGATOR HUEY: Well, let's just speak  
2 generally.

3 MR. LIEBERMAN: -- you know, potential  
4 enforcement action.

5 INVESTIGATOR HUEY: The general thought I  
6 wanted to pursue was, you know, without putting labels or  
7 specific cases to it, but just a situation where you had  
8 one close call on a severity level 1 or 2 that was the  
9 initial case. Then you have another example of  
10 discrimination at that same facility with that same senior  
11 management structure. Then you have a third one at that  
12 same facility with that same senior management structure.

13 At some point, would it be an -- would it be  
14 an abuse of the enforcement process to consider that  
15 although the investigated specifics of the case didn't  
16 involve a senior corporate level official? At least that  
17 was sufficiently done under his watch and with the track  
18 record, the accumulation of evidence warrants a more  
19 severe enforcement action.

20 MR. LIEBERMAN: Well, if you hypothesize a  
21 situation where corporate management is not addressing the  
22 issues, not attempting to address the issue, and they're  
23 condoning future cases, they are condoning cases of  
24 discrimination --

25 INVESTIGATOR HUEY: Or even just not being

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1 successful.

2 MR. LIEBERMAN: Well, the trouble with  
3 successful, these -- these issues don't get turned around  
4 overnight. These are large organizations. To change a  
5 corporate culture takes time -- to change management  
6 philosophies. You know, forget about discrimination, take  
7 a -- just poor performance. You're going to have some  
8 problems occur as you're trying to fix things. You don't  
9 weed it out overnight.

10 Severity level 1's have been reserved for the  
11 most extreme cases. Now, severity level 2's, on the other  
12 hand, are still very significant.

13 INVESTIGATOR HUEY: I believe there have been  
14 severity level 1 -- I seem to recall that we've had  
15 severity level 1 discrimination enforcement --

16 MR. LIEBERMAN: We have.

17 INVESTIGATOR HUEY: -- in the past.

18 MR. LIEBERMAN: We have. But it is when we  
19 can prove it. If your premise is when a licensee is not  
20 taking action, it's just occurring and occurring and  
21 they're not acting reasonably, and violations continue,  
22 that could be an element to consider an increase in the  
23 severity level.

24 One problem was at Millstone. We have lots of  
25 allegations, lots of issues, lots of investigations. But

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1 we only have three cases, and I think those cases -- one  
2 case occurred in the late '80s, another case occurred in  
3 the early '90s, and another case occurred in -- I'm not  
4 sure when the most recent case occurred, '95 or so maybe.

5           Given the hundreds of employees they have,  
6 that in itself may not be the trend to justify the higher  
7 severity levels. On the other hand, there is a problem  
8 there, and they're not related issues. Maybe I just see  
9 it now.

10           You can't solve this problem just by taking  
11 enforcement action case by case by case. We've had  
12 reviews. We've known about these issues for a long time.  
13 Maybe this plant should have been on the problem plant  
14 list earlier, at least I think so. And I guess others,  
15 based on IG investigations, have suggested the same.

16           Discrimination issues are really difficult  
17 because there is usually two sides to every story. We  
18 should have required these -- this licensee to have done  
19 outside audits, independent audits, to try to get an  
20 understanding of this problem and where the issues were.  
21 I suggested that on at least two occasions to Northeast  
22 Utilities when they were giving us briefings on programs  
23 they were doing, and they chose not to do it.

24           One of the recommendations from the review  
25 team efforts has been to NRC to develop a survey

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1 instrument and develop a process to measure the climate.  
2 The agency has not adopted that recommendation. Maybe we  
3 were rethinking that in more recent days.

4 We have not been proactive enough to get to  
5 the heart of this issue. It's not just enforcement. The  
6 real problem is not enforcement, I think. It is more this  
7 culture or attitude, the focus on corrective action and  
8 the lack of taking corrective action, which, you know, we  
9 are getting a better understanding of as we go through  
10 this.

11 So, in hindsight, could we have taken more  
12 enforcement action? Maybe the severity levels might have  
13 been higher. The civil penalties were at the maximum for  
14 the violations.

15 Should we use the wrongdoer rule more? At the  
16 time we considered it, and based on the facts of the cases  
17 we didn't think we had the case to use the wrongdoer rule.

18 INVESTIGATOR HUEY: Okay. Well, you've  
19 certainly introduced some subjects associated with the  
20 problem involving more than just enforcement, and I want  
21 to get on to that.

22 John, did you have anything -- more followup  
23 on severity level? Okay.

24 Second, our review raised the question of  
25 whether NRC enforcement process might be inhibited or side

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1 tracked when dealing with significant generic problems  
2 that have a severe economic impact on a licensee.  
3 Examples that were mentioned to us during our review were  
4 motor-operated valves and the Rosemount level indicator  
5 issues.

6 In your view, does the NRC at present, or  
7 expect to in the future, to consider economic impact in  
8 its enforcement process?

9 MR. LIEBERMAN: Economic impact in a sense  
10 that by taking an action we will --

11 INVESTIGATOR HUEY: Economically affect the  
12 licensee, i.e. is there any entering into the NRC's  
13 enforcement thought process what the economic impact might  
14 be on the licensee? Taking the case points with NOVs and  
15 Rosemount, we didn't take any enforcement action with any  
16 licensees because this was a generic issue that took a  
17 while to get our hands around and --

18 MR. LIEBERMAN: Okay. Let me answer the  
19 question squarely. To my knowledge, I have never made an  
20 enforcement decision that took into consideration -- or  
21 failed to make an enforcement decision because it may have  
22 economic impact on a licensee. I have no vested interest  
23 in these plants, and the issue is not whether there's an  
24 economic impact.

25 INVESTIGATOR HUEY: Right.

1 MR. LIEBERMAN: You know, I have wanted to  
2 shut down a lot more plants than this agency has shut  
3 down, and so I don't -- I don't see that as the issue.

4 The issue is the generic aspect. This agency  
5 does a very good job in dealing with a violation at a  
6 given plant from the enforcement point of view. But as  
7 soon as we have the same violation at several plants, then  
8 there's a problem. And why is that? Because the premise  
9 of the enforcement policy is not punishment, it is not  
10 retribution, but it is to provide incentives for licensees  
11 to identify and correct violations.

12 So we have an issue at a given plant, and be  
13 it fire protection or whatever it may be, and then we take  
14 enforcement action. Maybe we take enforcement action in  
15 another plant. And then we figure out, hey, many plants  
16 have this same problem. The goal isn't just to send your  
17 checks in. The goal is to identify these issues and  
18 correct them.

19 So then we issue an information notice to a  
20 licensee. "You've got this problem. Look for it." And  
21 then if they find it and take good corrective action,  
22 generally we don't turn around and say, "Give us a check."  
23 You know, it's like sending out an information notice. We  
24 should have a blank check with it. "We expect you to find  
25 this problem. If you find it, send us \$50,000." We don't

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1 do that. The goal is to encourage licensees to identify  
2 and correct problems.

3 The NOV stuff -- we have taken some  
4 enforcement actions for licensees with NOV issues. We,  
5 the agency, has spent a lot of time trying to figure out  
6 what the right solution to the problem is.

7 Rosemount -- we did take an enforcement action  
8 against the Rosemount Corporation. The Rosemount is a  
9 vendor, not a licensee. Our legal authority for a vendor  
10 is different than with the licensees. I take enforcement  
11 based on inspection findings and recommendations from the  
12 regions and NRR. I'm not aware of anyone, you know,  
13 giving us some enforcement cases -- NOV's or Rosemount --  
14 that we didn't take action on because of, you know, going  
15 back to the economic issue.

16 The generic issue is one that we -- we  
17 struggle with every day, and it's something that we  
18 probably should develop some guidance how to deal with.

19 Randy, you know, you used to be in Region 5.  
20 Trojan got the first fire protection one. They got the  
21 first I think EQ one. They got the -- several cases they  
22 were the first ones. I think the important thing is to  
23 spread these around so we don't pick on an individual  
24 licensee. But if we give a civil penalty to every  
25 licensee, or almost every licensee for a given area, I

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1 think there's a problem with the regulatory process.

2 INVESTIGATOR HUEY: You've answered my  
3 question.

4 MR. LIEBERMAN: Okay.

5 INVESTIGATOR HUEY: Moving on, our review of  
6 NRC files noted three different NRC team inspection  
7 reports issued between October of '90 and June of '93,  
8 which concluded a lack of chilling effect at Millstone.  
9 Again, from your enforcement role, I was interested in  
10 your perspective, considering the history of  
11 discrimination problems at Millstone, is NRC doing  
12 themselves a disservice, do you think, from the standpoint  
13 of going on record with findings of non-discrimination  
14 when we're seeing discrimination occur, you know, based on  
15 -- basically, based on faulty mechanisms, or apparently  
16 faulty mechanisms for sensing the atmosphere of the  
17 licensees?

18 MR. LIEBERMAN: And the answer to your  
19 question is I think yes, and let me explain. I do not  
20 like these inspections when NRC goes out and interviews  
21 workers to ask them if they have a chilling effect. "Do  
22 you have this chilling effect?" Obviously, we don't ask a  
23 question like that, but we ask a series of questions.

24 When the -- if you're a worker and you're  
25 really concerned about raising issues, and you're

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1 concerned about your livelihood and your family and all of  
2 those things that go into concerns about being  
3 discriminated against, and here is someone from the  
4 government or a stranger that comes up to you and says,  
5 "Hey, are you afraid -- you don't know whether that's  
6 going to get back to your management or whoever. Is your  
7 name going to be publicly associated with this?" I think  
8 it's very hard to get reliable, honest information from  
9 people about this type of thing.

10           You know, your manhood is being attacked and  
11 you're afraid to -- to raise an issue. It's also the way  
12 you ask the question. I happened to read the Maine Yankee  
13 report on the cultural assessment over the weekend, which  
14 I thought was a particularly good one.

15           If you ask a person, "Will you report to your  
16 management a failure that would cause a meltdown and  
17 jeopardize everyone in the community, including your own  
18 health and safety and your family?" I think that's easy.  
19 Of course you'd say yes, or I hope you'll say yes.

20           A more difficult question is they are not  
21 following this procedure, and if they did it right they're  
22 going to have to stop the outage and cost them a week of  
23 outage time, and it won't make the plant that much safer  
24 but it will at least be in accordance with requirements.  
25 That's one where it's -- the impact is more economic with

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21  
1 little safety payback. You may think twice. Someone may  
2 think twice before you raise that issue.

3 And so there is a whole series of issues, some  
4 more significant than others. So when you ask a person,  
5 "Will you raise issues?" I think it depends -- you've got  
6 to tie to that the degree of safety significance.

7 So I don't like the inspections that we do.  
8 That's why one of the things we recommended is to have a  
9 survey instrument by professionals who are disinterested  
10 in the particular case, neither the NRC nor the licensee,  
11 to do these surveys and get information. And to do that  
12 frequently or periodically to see if there is improvement  
13 in performance, and I clearly think that needs to be done  
14 at Northeast. And I gather they are planning or doing  
15 something in this area, but I don't know the details of  
16 what they're doing.

17 INVESTIGATOR HUEY: Okay.

18 TEAM LEADER HANNON: Let me follow that, Jim.  
19 You indicated that that recommendation had been made. Was  
20 that in the enforcement NUREG or in the 1499?

21 MR. LIEBERMAN: 1499.

22 INVESTIGATOR HUEY: It's in 1490.

23 MR. LIEBERMAN: And the staff did not support  
24 that recommendation. We even had an attachment from  
25 Batelle that was entitled "Assessing Organizational

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1 Climate of the Nuclear Industry for Employee's Reporting  
2 of Safety Concerns." And there were some ideas on that  
3 issue.

4 TEAM LEADER HANNON: It didn't go anywhere?

5 MR. LIEBERMAN: No. I think it might have  
6 been one that we reevaluated over time, and -- but I've  
7 lost track of what has happened to that.

8 TEAM LEADER HANNON: Okay. According to the  
9 interview I conducted last week in Region 1 with Mr.  
10 Kelly, who was the team leader for the 1990 inspection  
11 effort that Randy made reference to at Northeast  
12 Utilities, there was an attempt at that time to develop a  
13 set of questions to assess the culture, and they had  
14 support from one of our industrial psychologists named  
15 Dolores Morisow in developing those questions. And they  
16 interviewed, it's my understanding, over 100 people in the  
17 course of that inspection.

18 But there hasn't been any -- to your knowledge  
19 any followon from that, similar work that was done in  
20 Region 1 to try to further development of that process?

21 MR. LIEBERMAN: Well, there has been. I think  
22 there is an inspection module that was developed. I think  
23 most recently they used it at St. Lucie. There has been  
24 some effort to develop a more standardized approach.

25 As you know, Randy has done various

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1 inspections like this at -- Palo Verde comes to mind.

2 TEAM LEADER HANNON: But I'm understanding  
3 also that that was done in the '95 effort at Millstone,  
4 the Anil Goutam effort, which is the third --

5 MR. LIEBERMAN: Right.

6 TEAM LEADER HANNON: -- one you made reference  
7 to, was also done with the current thinking and  
8 development on that -- those techniques. So we still  
9 don't have a viable product.

10 MR. LIEBERMAN: My point is that -- you know,  
11 TVA has with their inspector general has -- has done these  
12 -- tried to do these surveys, too. These are very  
13 difficult things. I'm not criticizing what we've done.  
14 What I'm saying is that they are not very helpful in  
15 getting realistic information because of the nature of the  
16 beast.

17 Are people being honest with you? I think you  
18 need more than just interviews. I think you need  
19 instruments designed by psychologists where they ask the  
20 questions from different perspectives, mixes the questions  
21 with other issues. You know, how is your salary? How is  
22 the work environment? Lots of different things to try to  
23 measure climate. It's very difficult to measure climate.

24 People sometimes have gripes about the  
25 company. Any company, there is going to be some people

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1 who -- who are not happy. I don't know how many people  
2 are at the Millstone site, but let's say there's several  
3 thousand. One percent of several thousand is still a  
4 number of folks. And, I mean, do you ever get perfection?  
5 Do you ever expect to get everyone to buy in on anything?

6           You know, here at NRC, I don't think you --  
7 you know, just people -- you're always going to have some  
8 small percentage. The question is, is it all in one  
9 group? Is it disbursed around the company? Does it  
10 change over time? It's not a simple thing, and I think  
11 that this is an area that we could spend more effort on it  
12 as an agency to develop tools as professionals out there  
13 who do these type things.

14           Frankly, I think licensees should be paying  
15 for these efforts, and having the responses sent to, you  
16 know, a blind address, you know, no names. I mean,  
17 there's techniques to do these things. I'm not an expert  
18 on it, but I don't feel that just interviewing people by  
19 government employees is the way to get the real answer.

20           INVESTIGATOR HUEY: Well, the NRC obviously by  
21 nature is a technical organization, and 50.7 is a really  
22 unique regulation in that it really, in my opinion - and  
23 I'll state it in the form of asking this question -- is  
24 that it forces us into an area that is really out of our  
25 element and out of our fundamental expertise.

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1 But I would be interested in your opinion as  
2 to is chilling effect the only reason why the NRC is  
3 involved in this aspect of, you know, people and the way  
4 they think, and the way they feel, and culture, and all of  
5 this touchy-feely stuff that we normally don't get  
6 involved in?

7 MR. LIEBERMAN: Well, you know, you're right.  
8 We are good at, you know, nuts and bolts -- gearheads as  
9 Ben Hayes used to say. But it's the people who run these  
10 plants. It's the management that run -- you know, are  
11 involved in these plants. And, you know, what -- if I  
12 knew the secret of what makes a good plant versus a poor  
13 plant, I wouldn't be working, you know, for the government  
14 here. But I'm sure the people issues are a large part of  
15 that process.

16 So the issue of discrimination, the -- strike  
17 that. The real issue is having the questioning attitude.  
18 What we say in our report, 1499, a safety culture, where  
19 people are appreciated for raising issues. Complacency is  
20 never acceptable. If you raise issues, you are encouraged  
21 to raise issues. You don't have to be right. They'd  
22 rather have the issue raised than -- and the person be  
23 wrong than not to have the issue raised. You know, it's a  
24 management philosophy that I think separates the better  
25 licensees, and so now you get the chilling effect.

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1                   If you have a place where people aren't  
2 raising issues, where management is not receptive to new  
3 ideas or different ideas, if you see your buddy being  
4 discriminated against -- and the most difficult -- I don't  
5 want to be like on a soapbox here, but I've given a lot of  
6 thought to this issue. The most difficult thing about  
7 discrimination, chilling effect, is it doesn't matter what  
8 the true facts are. It doesn't matter whether this person  
9 was really laid off because he was late for work or wasn't  
10 competent, what not. It's what the rumor mill thinks  
11 happened.

12                   And so if the people think he was laid off for  
13 inappropriate things, they say to themselves, "Hey, should  
14 I raise this issue?" And we're going to talk about the  
15 DOL process. Why should I risk my livelihood and my  
16 family's livelihood to raise an issue when I see what  
17 happened to that guy? And that's the chilling effect.  
18 You can't measure it, but it's something you have to look  
19 out for and be concerned about.

20                   And I think NRC clearly has an appropriate  
21 role to weed out and take enforcement when there is  
22 discrimination, and be sensitive to these perception  
23 issues, and try to have the licensees deal with those  
24 issues. And we had some recommendations in the 1499 on  
25 that issue. It got into the enforcement manual. The

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1 manual chapter 8.8 now has this stuff in it.

2 And Guy Caputo is now interested in this  
3 issue, because he is also recognizing that individual  
4 cases can't solve this problem. And we're going to be  
5 working with Ed Baker and Guy and starting to track  
6 allegations from plant to plant periodically, and try to  
7 see if we can't be a little more proactive to try to focus  
8 on this chilling effect in advance of discrimination  
9 occurring.

10 INVESTIGATOR HUEY: Okay.

11 TEAM LEADER HANNON: That leads right into  
12 this issue about the chilling effect, if we could capture  
13 that before you --

14 MR. LIEBERMAN: Okay.

15 TEAM LEADER HANNON: -- move on. That some of  
16 the individuals that we interviewed indicated that the  
17 chilling effect letter that we issue is of virtually no  
18 value, that it doesn't have any impact, and what we should  
19 be doing is more aggressive enforcement actions, like  
20 after a DOL determination that discrimination has  
21 occurred, they suggested that you should require a public  
22 posting, for example, highlighting the discrimination and  
23 the federal prohibitions against continued discrimination.

24 What is your present view of these chilling  
25 effect letters? Do you think they're worthwhile? And

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1 what other measures do you think should be considered?

2 MR. LIEBERMAN: Okay. You know, I am the  
3 author of this chilling effect letter concept. And in the  
4 right cases, they're good. If a licensee hasn't had a  
5 discrimination issue for several years, then I think it's  
6 appropriate. Well, let's go back to why we have them to  
7 understand -- understand this.

8 The area office of DOL makes a finding of  
9 discrimination. That area office finding is sometimes not  
10 worth the paper it is printed on, and even DOL management  
11 will tell you that. The problem is they have 30 days by  
12 statute to do this investigation. In the first few weeks  
13 of that time period they are spending time trying to get a  
14 reconciliation between the parties. And if they can't get  
15 it, the time left they do the investigation. It may be  
16 only a week or two.

17 To deal with discrimination cases, in many of  
18 these cases, in two weeks is impossible. To do it in 30  
19 days is probably impossible. That's why one of our  
20 recommendations is -- well, I should also say in OSHA --  
21 strike that.

22 Wage and Hour, they do -- Wage and Hour  
23 Division has 60,000 complaints or so a year that they have  
24 to investigate. Only a few hundred or a hundred are  
25 associated with discrimination. In many cases, the

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1 investigator who does the Wage and Hour investigation will  
2 have never done a whistleblowing case before. And while  
3 in OSHA, they use a cadre of people, all they do is  
4 whistleblowing investigations. And we have recommended  
5 that DOL transfer the whistleblowing cases to OSHA, and it  
6 looks like that's going to happen in the fall.

7 That is going to strengthen the quality of the  
8 -- that first report. But they still have to comply with  
9 the statute. You know, government agencies like to comply  
10 with the law, and they have 30 days to do it. We have  
11 recommended legislation to extend that investigative time  
12 period to four months. I think four months. Or was it  
13 three months? But a longer time period to provide for a  
14 better investigation. Then, we may be more -- or in a  
15 better position to rely on the findings of the area  
16 office.

17 So getting back to the chilling effect letter,  
18 we have a finding of discrimination. We don't feel  
19 there's the quality there to take enforcement, but we had  
20 to do something. We just couldn't let it sit there. So  
21 we said, "Okay. Let's send this letter to the licensee  
22 and say, 'Okay. Here is this finding of discrimination.  
23 You may disagree with it. But what is your view on the  
24 facts? And second, what are you doing to remove any  
25 potential chilling effect from this issue?'" because now

1 sometimes the mere issuance of the DOL decision can create  
2 a chilling effect.

3           Maybe only three or four people knew about  
4 this discrimination. But now it is public, and so now  
5 people, if they weren't chilled before, they become  
6 chilled because they're, "Hm, look what this company has  
7 done." So what have they done?

8           So when there's only one or two type of cases,  
9 it's a good avenue. Now, when you've got multiple cases,  
10 like in the Millstone or Palo Verde or TVA, using those  
11 chilling effect letters are probably not the right thing  
12 to do. That was another recommendation in the 1499 to be  
13 more proactive, have meetings, use DFIs, and things of  
14 this sort, instead of chilling effect letters.

15           And we have that in the manual, but I have to  
16 say we -- we may not have been doing that as much as we  
17 should be. Chilling effect letters are normally handled  
18 by the regions, and I don't get very involved in them. We  
19 started tracking chilling effect letters by using EA  
20 numbers, so now we can see if a licensee is getting -- you  
21 know, the frequency of a licensee receiving these things.  
22 And, as you know, we have discussed the Scully matter, and  
23 not to use a chilling effect letter in that case but maybe  
24 use another approach.

25           So the premise of the issue of chilling effect

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1 letters may not be the appropriate vehicle when you have  
2 multiple cases. I agree with that.

3 INVESTIGATOR HUEY: Okay. We spoke earlier at  
4 some length on escalated enforcement actions. I want to  
5 very briefly touch on the other end of the enforcement  
6 spectrum, as it relates to being responsive to alleged  
7 who come into the NRC. Our review of case files  
8 identified an instance where an alleged had pointed out a  
9 relatively minor problem involving excessive use of  
10 overtime.

11 The NRC independently verified the validity of  
12 his concern but took no enforcement action. And it  
13 appears that the basis for that was that a similar  
14 overtime violation had been issued in the recent past, and  
15 the licensee hadn't had sufficient opportunity to correct  
16 it before the NRC felt appropriately warranted issuing  
17 additional enforcement action.

18 Removing yourself a little bit from the rote  
19 enforcement of policy, do you view there is any maybe  
20 exceptions warranted to normal enforcement action when you  
21 are dealing with a situation where an outside licensee  
22 employee has come to the NRC, pointed out a valid  
23 violation that is a recurring example of a problem that  
24 we've cited in the past? Should we put any additional  
25 emphasis on maybe going ahead and issuing another

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1 citation? Or is it appropriate to take no enforcement  
2 action?

3 MR. LIEBERMAN: Well, I'm not familiar with  
4 this particular issue. I think the question might be how  
5 much time has occurred since the previous citation? For  
6 example, let's say there was an inspection on day 1, and  
7 we issued an NOV. And the licensee said, "Here is what  
8 we're going to be doing. We're going to be taking  
9 discipline against that supervisor. We're going to be  
10 changing this program, changing that program." And the  
11 violation occurred two days later, before they are able to  
12 modify their procedures or what not.

13 If it's a clear violation, I mean this is not  
14 a judgment call, but there was a mistake made and a  
15 licensee is put on notice at the exit, I don't have any  
16 problem issuing another citation. If it's an issue where  
17 the procedure wasn't so clear, and they had to clarify  
18 their procedure, and it's going to take time to do that,  
19 that's another thing. Whether we identified it or the  
20 alleged identified it I don't think should necessarily  
21 make a difference in whether the violation occurred.

22 The question is, did the licensee commit a  
23 violation, and was it reasonable for the licensee not to  
24 have committed that violation?

25 INVESTIGATOR HUEY: Okay.

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1 MR. LIEBERMAN: I don't -- I don't look at the  
2 non-escalated cases very much. This, I realize, is a  
3 weakness of the program, but it is limited by FTEs. When  
4 I do look at the non-escalated cases, I usually get  
5 concerned how consistent we are in dealing with them. For  
6 example, at Millstone and Haddam Neck, I think there were  
7 many violations that we could have taken more action on,  
8 and that does concern me.

9 When an alleged identifies the violation to  
10 NRC, one could almost say that's the strength of the  
11 licensee. Well, it's like QA findings. Is it good --  
12 does an effective QA program mean that the QA program is  
13 finding violations or not finding violations? If alleged  
14 are raising issues with us, and they feel comfortable  
15 raising issues with us, that suggests there may be an  
16 environment where people are encouraged to raise issues.

17 We'd rather raise them -- have them raised to  
18 the licensee. But if they want to come to us, that's  
19 fine, and we want licensees to let people know that it's  
20 okay to come to us. So that may be good.

21 I've seen some cases where I think alleged  
22 withhold information from a company to give it to the NRC  
23 so the company will get a citation. I don't think that's  
24 healthy either. We don't want to be manipulated by the  
25 process. I think it's fact dependent.

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1 INVESTIGATOR HUEY: Okay. Your comments are  
2 helpful.

3 Okay. This is -- the next question is a mind-  
4 stretching one. Our review developed the question of  
5 whether the DOL process has focused the definition of  
6 protected activities too narrowly, applying only to the  
7 specific employee and not, for example, to his  
8 subordinates or family members. We have noticed in our  
9 review instances where it -- where licensees may have  
10 harassed or intimidated concerned employees by targeting  
11 their subordinates or family members.

12 We are interested in your view -- your  
13 comments as to whether the NRC should consider any  
14 protection of subordinates or family members from  
15 harassment by licensees.

16 MR. LIEBERMAN: This really gets to a legal  
17 question, what is protected activities? To my knowledge,  
18 I don't recall -- well, first of all, protection -- we  
19 don't protect employees from harassment. We take action  
20 when -- when discrimination occurs. This whole term  
21 "protection" is difficult. The remedy is provided by DOL,  
22 but I don't think that is really the focus of your  
23 question.

24 INVESTIGATOR HUEY: No.

25 MR. LIEBERMAN: Protected activities is

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1 raising issues. I'm not aware of any cases where we've  
2 been presented with a set of facts where the employee who  
3 was engaged in protected activities was gotten to because  
4 of harassment to the family members. For example,  
5 employee X raises a concern and his wife also works at the  
6 company, and they fired the wife to give a message to the  
7 employee.

8 My own view is I think that would probably be  
9 a violation of the law. But as I said, to my knowledge,  
10 this hasn't come out squarely in a case yet.

11 Harassment is harassment. And if you use  
12 harassment by affecting subordinates or family members, I  
13 think you can make out a case for discrimination there.  
14 As I think about this, there was an issue in one of the  
15 cases, but I don't think we concluded discrimination  
16 occurred.

17 INVESTIGATOR HUEY: That's correct, at least  
18 in the case I'm thinking about.

19 MR. LIEBERMAN: And in that -- anyway, my  
20 thinking of today would be I think you can make a good  
21 argument that that would be considered an adverse action,  
22 if you can draw the nexus fact-dependent.

23 INVESTIGATOR HUEY: Very good. Thank you.

24 The next question is simple and short. Should  
25 NRC hold open enforcement conferences for all

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1 discrimination cases?

2 MR. LIEBERMAN: Well, that's a policy question  
3 that we -- we have a working -- right now, we have a  
4 Commission paper due in eight days to the Commission, and  
5 we are giving active consideration to opening enforcement  
6 conferences and discrimination cases. In DOL cases, we  
7 have been opening cases. In fact, just Friday we had a  
8 case involving South Texas, two discrimination cases in  
9 South Texas that we had to conference on. And we -- we  
10 let the -- call the victim, the person subject to  
11 discrimination, listen in by telephone and their attorneys  
12 listen in by telephone.

13 We're considering ways to be more proactive in  
14 that area, especially if it's not based on DOL. And if  
15 it's not based on DOL, based on OI. Maybe there's a role  
16 to have the employee participate in the enforcement  
17 conference. So after we hear the licensee's perspective,  
18 we can hear the employee's perspective and then give the  
19 licensee -- for the licensee to rebut the employee's  
20 statement, since they are the ones subject to the  
21 enforcement action. So we get the issues more joined.

22 So maybe that's a long-winded yes.

23 INVESTIGATOR HUEY: Okay.

24 TEAM LEADER HANNON: But let me follow that,  
25 because that part, having just heard some similar answers

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1 from folks in Region 1 -- by the way, I got one contrary  
2 view that we shouldn't be having open conferences,  
3 enforcement conferences on discrimination cases, because  
4 it allows the utility the opportunity to retry their case  
5 in a different forum outside of the DOL proceeding.

6 MR. LIEBERMAN: Could I just respond to that?

7 TEAM LEADER HANNON: Sure.

8 MR. LIEBERMAN: What we're thinking about --  
9 and you're right. And what we've said to licensees in the  
10 last two predecisional conferences on DOL cases, that  
11 we're not interested in retrying a case. We want to focus  
12 on corrective action. If you give us any information that  
13 is different from what you gave DOL we want to know about  
14 it, and we want to know why you're giving it to us and not  
15 to DOL.

16 There are people -- in fact, I'm going to have  
17 a differing professional view filed I would expect in the  
18 near term. People don't like relying on the DOL case.  
19 Some of these cases are close calls, and they don't feel  
20 it's appropriate to take action on a preliminary or a  
21 recommended decision by DOL.

22 We accuse people of wrongdoing before the  
23 adjudicatory process is completed by -- if we have an open  
24 conference and we release the OI report in advance, we  
25 accuse people of wrongdoing before things have been

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1 adjudicated, before we hear the other side of the story,  
2 and unfortunately we don't agree with the OI report, and,  
3 you know, there is a down side of that.

4           If the -- where we're heading is if you've  
5 gone to DOL, if you've had an ALJ adjudication, maybe we  
6 should forego the enforcement conference and just focus on  
7 corrective action and writing it. If it's an OI case  
8 where we haven't had a DOL proceeding yet, we are planning  
9 about releasing the OI report, and we did that the other  
10 day at Salem.

11           So parties have the benefit of the OI report.  
12 They can use that in the DOL process. We've done that --  
13 several cases of this on the recommendations from the  
14 review team. And then, since the OI report has been  
15 released, have an open conference on it.

16           There is pros and cons, but we think there is  
17 more pros than cons.

18           TEAM LEADER HANNON: Can you clarify one thing  
19 for me? How there could be a case that is proceeding on a  
20 discrimination complaint through the OI process, and  
21 because of the time limits involved with establishing the  
22 DOL rights, that it hasn't been activated in DOL but there  
23 is an OI proceeding such that you would be considering an  
24 enforcement conference based on an OI finding.

25           MR. LIEBERMAN: Because many DOL -- well,

1 A) everyone who comes to us doesn't come to -- go to DOL.  
2 If they feel a discrimination occurred, "I'm sick of the  
3 industry. I'm going to get out of it. I'm not going to  
4 DOL," that's A. B) some of these discrimination issues  
5 don't have a great economic impact, and they choose not to  
6 go to DOL.

7 DOL is a public process. It requires you to  
8 hire a lawyer. It requires you to take the initiative.  
9 And let me just go to an aside here. And one of our  
10 recommendations is for DOL to be a more activist and  
11 litigate the cases or litigate cases where they find  
12 discrimination by the area office. So the employee  
13 doesn't have to hire the attorney and mortgage the house,  
14 and suffer all of that extra financial impact. DOL is  
15 changing the process to -- to permit doing that in the  
16 right cases.

17 But going back to the question, some cases are  
18 settled. Many cases are settled in the process. So by  
19 the time OI completes their review, the case is settled.  
20 In some cases -- OI is getting faster now in doing cases  
21 -- they have issued their report, or completed their  
22 investigation, before the hearing has concluded or before  
23 the decision of the ALJ has occurred, and because the ALJ  
24 process takes a long time. And to the extent we do that,  
25 the parties can use that information.

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1 I think I've answered your question.

2 TEAM LEADER HANNON: That's helpful, because I  
3 -- I was under the view that generally, if we had an OI  
4 finding that supported a discrimination complaint, that  
5 there would also be the DOL proceeding in parallel. But  
6 you've indicated there may be cases that doesn't occur.

7 MR. LIEBERMAN: Right.

8 TEAM LEADER HANNON: Okay.

9 INVESTIGATOR HUEY: We've already touched on  
10 application of 50.5, and I don't want to pursue any more  
11 generic questions in that regard. Could you either for  
12 the record, or subsequent to the interview if you would  
13 need to research the enforcement files, could you just  
14 provide us some examples of current applications of 50.5  
15 and discrimination cases?

16 MR. LIEBERMAN: Well, in some notes thinking  
17 about this interview, I put together some cases. Palo  
18 Verde, we issued an NOV to a person who was responsible  
19 for discrimination.

20 INVESTIGATOR HUEY: That's the one I'm -- the  
21 one that I am familiar with.

22 MR. LIEBERMAN: Okay. That was Mr. Warriner.

23 INVESTIGATOR HUEY: Right.

24 MR. LIEBERMAN: In South Texas, we issued an  
25 NOV to a Mr. Balcom for discrimination issues there. We

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1 have issued various letters to people involved; you might  
2 call them a letter of reprimand. I'm not sure what they  
3 were entitled, but they certainly weren't compliment  
4 letters.

5 At Turkey Point, most recently, Vogtle in  
6 several letters, Susquehanna. I think we also issued an  
7 NOV in Susquehanna.

8 INVESTIGATOR HUEY: To the individual.

9 MR. LIEBERMAN: Yeah. These are all letters  
10 to -- letters or actions on individuals. Browns Ferry,  
11 Comanche Peak, recently we had three letter of reprimand  
12 to supervisors. In fact, in that particular case, we  
13 didn't take enforcement action against the company,  
14 because the supervisors were involved in discriminatory  
15 conduct and they -- 5:00 on one afternoon they pulled this  
16 person's badge because he was engaged in protected  
17 activity, or they thought he was engaged in protected  
18 activity.

19 When the vice president -- the senior vice  
20 president found out about it the next morning, he quickly  
21 directed the badge be reinstated. The individual  
22 involved, probably to this day, does not know his badge  
23 was pulled for a short time period. And action was --  
24 corrective action was taken, and that's the type of  
25 performance we're looking for companies to take. So we

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1 did not issue an enforcement actions to companies, but we  
2 did issue letters of reprimand and had enforcement  
3 conferences with individuals.

4 And I guess I should also say not only did we  
5 have letters and NOVs, we also had several enforcement  
6 conferences with individuals where we asked them to  
7 explain their actions. We have not issued a -- we have  
8 also had some DFIs, too. We have not issued an order in  
9 recent days to remove someone from license activities,  
10 though.

11 INVESTIGATOR HUEY: Didn't we -- maybe I got  
12 lost in the shuffle. I thought with Mr. Warriner we ended  
13 up restricting -- I mean, he was voluntarily leaving the  
14 industry, but I thought we had -- that was going to be my  
15 last question. What is your -- to your recollection, what  
16 is the most significant example of action we've taken up  
17 in -- including an order prohibiting --

18 MR. LIEBERMAN: Well, I think in the Warriner  
19 case, where there was a criminal conviction with the NOV,  
20 I think we concluded that the felony conviction, together  
21 with the civil penalty of the company, was sufficient.  
22 Now, this agency won't take action against individuals.  
23 We apply a relatively high standard, the legal standards,  
24 preponderance to the evidence. But when we're dealing  
25 with individuals, we generally take a relatively high

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1 standard before we remove someone from license activities.

2 INVESTIGATOR HUEY: So we have not removed  
3 someone from license activities as of this --

4 MR. LIEBERMAN: In recent years. You know,  
5 the very first case before the wrongdoer rule at Davis  
6 Bessie removed a QA manager. That was a clear case where  
7 the QA manager took action against a QC inspector, because  
8 the person had -- went over his head raising an issue, and  
9 we removed the QA manager. That was in the late '80s  
10 before the wrongdoer rule.

11 We also have the -- you'll be getting this,  
12 but maybe I should just raise it now. The criminal aspect  
13 -- a deliberate violation, most of NRC requirements is  
14 also a criminal offense, and industry is well aware of  
15 that. And we had this one criminal conviction. We've had  
16 several referrals, and that has some beneficial aspect.  
17 When you have a grand -- when you're invited to a grand  
18 jury, I'm sure people don't take that lightly.

19 We haven't had a lot of repeat cases where the  
20 same individuals have been involved in discrimination, so  
21 I have to say I think for the most part our enforcement  
22 actions have been effective. People don't like going to  
23 these conferences. I had one conference that lasted five  
24 hours with an individual, and he was in tears. You know,  
25 this plant manager took this thing very seriously.

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1                   These downsizing things which are occurring  
2 across the industry -- not easy for them to select  
3 employees, and they have to make sure they're not doing  
4 this in a way that discriminates. We have investigated  
5 several of these cases, and I think supervisors know that  
6 there is 211 and 50.5 and 50.7. And while we're not  
7 taking action and removing people, we are taking actions.  
8 And when the United States Government sends you a letter,  
9 and your livelihood is in nuclear power, that's considered  
10 by a lot of people as pretty significant action.

11                   TEAM LEADER HANNON: You brought up the  
12 referral to DOJ, Department of -- by the way, you used an  
13 acronym, DFI. I'm not sure that has been described.  
14 Could you --

15                   MR. LIEBERMAN: DFI is a demand for  
16 information. It is essentially a show cause order. Tell  
17 us why we shouldn't do something. They have to respond in  
18 writing under oath. On the basis of that, we decide  
19 whether to go forward with a sanction or close it out, or  
20 whatever.

21                   TEAM LEADER HANNON: Okay. With regard to the  
22 referrals to the Department of Justice, it has been  
23 indicated to us that some of the people in the alleged  
24 community feel that we fail to fulfill our enforcement  
25 responsibilities in these cases when we defer them to DOJ,

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1 because it never results in any additional substantive  
2 penalty for the licensee and only delays the NRC  
3 enforcement process to the point that enforcement is  
4 untimely or less severe than it otherwise might have been.

5 Do you consider that the DOJ referral has any  
6 negative impact on NRC enforcement? Has it added any  
7 additional value? You've indicated you thought it did,  
8 so elaborate on that.

9 MR. LIEBERMAN: This is not a choice by the  
10 NRC. This is a statutory requirement to refer matters to  
11 the Department of Justice. We had a hearing before  
12 Senator Glenn in '87, where the issue of DOJ and NRC --  
13 the referrals of NRC to DOJ came up. We were accused of  
14 not providing them cases.

15 I myself was investigated several years ago  
16 for writing an analysis that was -- some people viewed was  
17 designed to -- not to have a case referred to the  
18 Department of Justice. So that was in the mid '80s.

19 After that congressional hearing, and I  
20 believe there was even a conference report that directed  
21 us to have a memorandum of understanding with the  
22 Department of Justice, which I was involved in negotiating  
23 -- a good criminal conviction is better than any NRC civil  
24 action, in my view. And so if the case is investigated by  
25 DOJ, and they prosecute, I think that goes a long way to

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1 -- for deterrence.

2           It is true that very rarely the cases are  
3 investigated, and there is usually a pretty long time --  
4 or a long time for the DOJ referral process. Sometimes  
5 they work under a five-year statute of limitations for the  
6 criminal case. DOJ has done much better over the years.  
7 In many cases, we get the declination before the OI report  
8 is completed. But in the more significant cases, it does  
9 take time.

10           And I think it is an important part of the  
11 process because licensees know that deliberate, wilful  
12 violation -- discrimination is -- falls in that area. It  
13 will be reviewed by the Department of Justice. I think  
14 that has a remedial aspect, even if DOJ doesn't prosecute.  
15 If they have a grand jury -- in some of the Millstone  
16 cases there were grand juries in the discrimination area.  
17 That has I think a beneficial aspect to it.

18           I wish it was more timely, but, you know --  
19 just like we take it -- when we take action against an  
20 individual we want to be right, I think DOJ also feels  
21 that if they are going to indict someone they want to take  
22 the time to perfect their cases, too. So I think it is  
23 part of the process -- a tool and a quiver -- and it can  
24 help -- help us do a better job.

25           INVESTIGATOR HUEY: Okay. The next question

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very un-  
ces compared to the individual  
that are  
that this problem may be

1 -- for deterrence.

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1 is dealing with the timeliness aspect as well. Our review  
2 raised a question of whether some licensees use the DOL  
3 process to financially intimidate and beat employees into  
4 submission of settlements because of the licensee's  
5 relatively unlimited financial resources and legal  
6 resources compared to the individual DOL litigant.

7 Do you think that this problem may be  
8 compounded by NRC not aggressively pursuing cases that are  
9 ultimately settled, from an enforcement standpoint?

10 MR. LIEBERMAN: Why do you say NRC does not  
11 pursue cases which are ultimately settled?

12 INVESTIGATOR HUEY: It has been suggested that  
13 cases that are settled at a lower level don't come into  
14 the NRC arena from the alleged coming directly to the NRC,  
15 our only involvement being notification of the  
16 discrimination through the DOL process. That absent  
17 pressure by the alleged, the individual coming in and  
18 pursuing his case personally with the NRC, that we tend to  
19 back off from spending much time or consideration on cases  
20 that are settled, figuring that if the person doesn't come  
21 and complain he must not warrant our effort.

22 MR. LIEBERMAN: Okay. I believe the  6  
23 case was a case that was settled, and we investigated it  
24 anyway.

25 INVESTIGATOR HUEY: Of course, he was very

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1 vocal in coming to us complaining about discrimination.

2 MR. LIEBERMAN: But the policy of the agency  
3 -- and some of this is changing -- the enforcement policy  
4 says that if a low level supervisor is involved in the  
5 discrimination, and it is promptly corrected and settled,  
6 settled before the person has to go to the expense of the  
7 hearing process, we'll consider that in enforcement  
8 action.

9 We've modified the priorities for  
10 investigations, and the fact that the case is settled is  
11 not a relevant criteria, if it meets the high priority  
12 standard. And the Commission has asked us to develop a  
13 plan to do investigations independent of DOL in the high  
14 priority area, and that was the paper I referred to a few  
15 moments ago that's due shortly.

16 But in the DOL area, if all we have is a DOL  
17 investigation, and you have a recommended decision, and it  
18 goes up to Secretary of Labor and it gets settled in the  
19 process, and now it is three years after the evil deed  
20 occurred and the case is settled, we don't have a finding  
21 of discrimination. For us to then turn around and do an  
22 investigation, looking at things that happened two years  
23 ago, sometimes is very difficult.

24 In one case, we are looking at the record that  
25 DOL developed in adjudication and considering whether we

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1 should take enforcement action based on that record, not  
2 the ALJ decision but the record, even though it is  
3 settled.

4 The goal is doing the investigation early on,  
5 and with the high priority cases we intend to do that,  
6 whether or not they settle.

7 TEAM LEADER HANNON: Could you describe where  
8 the prioritization is identified? Is it in 8.8?

9 MR. LIEBERMAN: Yeah, manual chapter 8.8,  
10 where -- I think it's four examples of high priority  
11 investigations. It comes out of the recommendations from  
12 the NUREG-1499, and I think we are adding a fifth one to  
13 it. I don't remember exactly what it is. But our goal in  
14 response to the Commission is do a better job, a more  
15 timely job, in making sure that those type cases are  
16 investigated, and we have reprioritized --

17 INVESTIGATOR HUEY: Independently.

18 MR. LIEBERMAN: Of DOL.

19 INVESTIGATOR HUEY: Yeah.

20 MR. LIEBERMAN: And we have reprioritized the  
21 investigations in-house according to that criteria.

22 TEAM LEADER HANNON: Is there a process by  
23 which you would obtain information relative to the  
24 settlement that might indicate the nature of the dirty  
25 deed, as you put it? In other words, if they settle for a

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1 small amount of money, it's likely not a very strong case  
2 there. On the other hand, if it's a large settlement,  
3 even though it might be obscure to the NRC, there could be  
4 more of an egregious conduct.

5 MR. LIEBERMAN: I'm not sure if you can -- if  
6 you can say that. You know, it may be what the damages  
7 are in a particular case. It might have been a severe  
8 case of discrimination, but there wasn't money lost. For  
9 example, a person of -- gets fired and immediately gets  
10 another job, say within a week, at a higher salary. If  
11 that case goes to a DOL hearing and the employee wins, he  
12 still -- or she may still -- he or she may still not get a  
13 lot of damages. They may settle the case.

14 There is nuisance values, how good your lawyer  
15 is, how egregious the facts look. I mean, there's a lot  
16 of things that go into a settlement. So the fact that  
17 they were settled doesn't necessarily mean that  
18 discrimination occurred. Some licensees have told me, or  
19 their attorneys have told me, their policy is to settle  
20 discrimination cases.

21 This company, or the companies people have  
22 spoken to me about, they say they can't afford to have a  
23 discrimination issue on their site. They want to weed it  
24 out real quickly. If you remove that potential chilling  
25 effect, they are concerned that that may be encouraging

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1 other employees to raise issues. But some licensees  
2 figure, hey, it's better to do it that way than to have  
3 these cases go on for years and simmer and just create  
4 problems. So all I'm trying to say is you can't tell  
5 necessarily what a settlement means.

6 INVESTIGATOR HUEY: One last question dealing  
7 -- focusing on timeliness, and we've already touched to  
8 some degree on the timeliness of enforcement actions. But  
9 just to address it again here frontally, considering the  
10 lengthy process for completing discrimination  
11 investigations, is there anything else further than what  
12 you've already indicated in discussing the previous  
13 questions that -- where the NRC should -- could consider  
14 some additional measures to improve enforcement action  
15 timeliness associated with discrimination cases?

16 MR. LIEBERMAN: Well, having more people  
17 available in enforcement, more FTEs, would be helpful. My  
18 office is a relatively hardworking office. We have  
19 relatively few people in enforcement compared to elsewhere  
20 in the agency. More people could help process these cases  
21 faster. More attention within the agency would help  
22 things go faster. But, you know, if you go --  
23 discrimination, high priority. How about -- other cases  
24 are also important.

25 The -- we are looking at working with OI to

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1 get their transcript into evidence early in the process so  
2 that when the report is done we are more likely to be  
3 ready to go with it, tightening up timeframes, working DOL  
4 cases. Changing the enforcement process to have the --  
5 the individuals involved may speed up the process because  
6 we've had several cases where the person observes the  
7 enforcement conference and then sends us a letter with all  
8 of the problems, and then the licensee wants to respond to  
9 that, and that just drags these cases out.

10           So if they are there and the issues are  
11 joined, maybe that will quicken the process. We might  
12 also learn from the process.

13           Getting more OGC support in these cases would  
14 be helpful, having OGC closer involved with OI, so that  
15 when OI concludes discrimination occurred they will have  
16 had OGC input at the front end. So we don't have to start  
17 reviewing the issue at that point. Having OGC be involved  
18 and assisting the investigators at the front end and  
19 scoping the -- the investigation as to what facts may be  
20 needed, again, would be helpful, because OI, you know, is  
21 relatively independent. And you get the product at the  
22 end, and there has been times where they proved something  
23 is wilful but it wasn't a violation.

24           INVESTIGATOR HUEY: Some of these ideas were  
25 certainly covered in 1499. Some of them that you're

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1 mentioning now I don't recall. Are these --

2 MR. LIEBERMAN: No, these --

3 INVESTIGATOR HUEY: -- new ideas, or are these  
4 covered some --

5 MR. LIEBERMAN: No. Some of -- the OGC aspect  
6 is -- we couldn't get a consensus to put it in the report.  
7 For whatever reason, that issue gets -- being raised, but  
8 I have not found anyone in OGC who has been particularly  
9 responsive to -- to that issue.

10 If these are involve Commission papers, that  
11 takes an awful -- it takes an awfully big effort to get a  
12 Commission paper through the system. We recommend as part  
13 of the enforcement review to decrease Commission  
14 involvement in certain cases, including actions against  
15 individuals. That will save a few months on cases that  
16 have to go to the Commission. And we're still working on  
17 that effort.

18 INVESTIGATOR HUEY: Okay. You mentioned  
19 OE (sic) resources. Do you care to offer any opinion  
20 relative to OI resources?

21 MR. LIEBERMAN: No, I think that is something  
22 for OI to consider. I would think that they certainly  
23 have more investigations than they have staff power to  
24 investigate. So -- so one could say a larger effort in  
25 that area can't help but to speed up the process, in my

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1 view.

2 INVESTIGATOR HUEY: One last followthrough on  
3 the timeliness aspect of enforcement in discrimination  
4 cases. Could you offer your opinion as to whether civil  
5 penalties or mitigation of civil penalties is influenced  
6 by the long period of time from the occurrence of the  
7 discrimination to the actual implementing of the  
8 enforcement?

9 And I'm asking the question in the context  
10 that sometimes it has been such a long time that the  
11 licensees had opportunities to take a number of corrective  
12 actions that wouldn't have been taken had the enforcement  
13 been more timely. Do they perhaps receive inappropriate  
14 mitigation for corrective actions just due to the fact  
15 that the process is drawn out so long?

16 MR. LIEBERMAN: Okay. There is two issues  
17 here. One is the statute of limitations. So if it's  
18 greater than five years, we can't have a civil penalty.  
19 And we used to have that problem, but that is less of a  
20 problem now because we initiate action based on the ALJ  
21 decisions. We don't wait for that process to be  
22 completed.

23 So we've had some cases recently where the  
24 area office found no discrimination. And this is  
25 important to -- to appreciate how difficult these issues

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1 are. Area office finds no discrimination. ALJ finds no  
2 discrimination. The Secretary finds discrimination.  
3 People say the area offices tend to find discrimination.  
4 ALJs, depending on how you look at it, may tend to find  
5 it. These are difficult cases. Different people have  
6 different views on a set of facts.

7           So if no one has found discrimination until  
8 the Secretary of Labor has ruled, sometimes we're out of  
9 time and that has happened recently. But I think your --  
10 the focus of your question is not so much on statute of  
11 limitations but when licensees have made substantial  
12 corrective actions. That can influence us -- no question  
13 about it -- because we want to focus on corrective action.

14           But we also consider have they provided the  
15 remedy in the individual. Taking good corrective action  
16 by not providing a remedy in the individual doesn't get --  
17 doesn't get them mitigation in the discrimination area.  
18 Taking -- providing a remedy after the ALJ concludes  
19 discrimination occurred doesn't get them that much  
20 mitigation.

21           We consider both the site-wide problem,  
22 chilling effect, as well as the remedy for the individual.  
23 In the cases that drag out a long time, they generally  
24 haven't taken the action for the individual. But if  
25 they've changed management completely, got new VPs and new

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1 vice presidents, it is a totally different operation. I  
2 think that's a consideration that might be appropriate,  
3 but generally not.

4 INVESTIGATOR HUEY: Okay. Good. I'm glad  
5 we've left 20 minutes at least for the last couple of  
6 questions, which I'm particularly interested in your  
7 thoughts on. Our review of the files indicated that in  
8 some enforcement cases the licensee paid the fine, but  
9 pretty strenuously disagreed with the findings, and facts  
10 would show that they didn't take corrective -- effective  
11 corrective actions by virtue of continuing discrimination  
12 cases, or findings of discrimination.

13 From your enforcement perspective, do you see  
14 additional measures that the NRC, as an integrated agency  
15 -- you know, the region's Office of Enforcement, NRR --  
16 anything more that can be done to deal with situations  
17 where you have a licensee, you know, paying a civil  
18 penalty but really not what I'll say is having religion  
19 but wanting to move on, and not aggressively implementing  
20 corrective action?

21 You know, they make a good show of it at the  
22 enforcement conference, they do the supplication after the  
23 civil penalty, but then they stick it up on the shelf and  
24 continue on. Is there something more that the agency can  
25 do in following through after enforcement?

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1 MR. LIEBERMAN: Licensees don't have to agree  
2 the violation occurred. If they pay the money, the case  
3 is over from a civil penalty point of view. The premise  
4 of your question is the recurring issue again. And I  
5 presume it goes back to Millstone. And again, we've only  
6 had, you know, three actual cases of discrimination there  
7 separated by time.

8 But I think it goes back to what we talked  
9 about earlier, measuring -- trying to gauge the chilling  
10 effect, trying to determine whether the licensee is doing  
11 the right things to try to address the root causes of the  
12 problem. My office doesn't follow up on corrective  
13 action. You know, I have to admit that. That we look at  
14 what the licensee is proposing, is planning to do, has  
15 done; and we consider that in the decision.

16 We consider the region's views on corrective  
17 actions. But then it's up to the region to follow up on  
18 whether that action's been taken.

19 TEAM LEADER HANNON: Let me comment here,  
20 because I'm concerned that we're miscommunicating. This  
21 issue came up when we were in Region I last week also and  
22 the corrective action aspect was the focus, and the region  
23 correctly indicated that they had followed up on the  
24 licensee's proposed corrective action for the civil  
25 penalty and verified that it had been done.

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1                   And what was -- what we finally reached --  
2 arrived at was that if you take the view of the alleged  
3 community, the people there that are wanting to raise  
4 issues and make the plant run better and so forth, and  
5 they see a licensee take the position with the agency that  
6 yeah, we'll pay the fine, here's your check, but we didn't  
7 do anything wrong, the message they get from that is there  
8 -- we've got to be careful.

9                   There's a definite chilling effect -- signal  
10 being sent here. And they watch and see what the NRC does  
11 about it. And the NRC's reaction to that rebuttal was we  
12 see no further need to debate this issue, thank you for  
13 your check, let's move on. So that there wasn't a  
14 recognition on the part of the agency that that signal  
15 they sent was causing a chilling effect.

16                   And that was the subtle part that we finally  
17 reached in the discussions in Region I. Because if you --  
18 there's no question we followed our process. We verified  
19 the corrective action the licensee proposed to take as a  
20 result of the incident case. But it was more this  
21 prevailing view, the signal that was being sent to the  
22 population at the plant.

23                   INVESTIGATOR HUEY: But again, --

24                   MR. LIEBERMAN: But how do you deal with that  
25 issue? I mean, if the licensee in good faith -- I presume

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1 good faith or whatever -- says hey, we didn't do it, and  
2 we said, you know, you did do it; and we've concluded as -  
3 - you haven't asked for hearings -- discrimination  
4 occurred, you've paid the civil penalty, we've looked at  
5 the corrective action, what can NRC do other than to be --  
6 keep our eyes open and be looking for problems that  
7 requires additional corrective action.

8 I understand the perspective of the allegers.  
9 You know, people can go to jail and come out -- you know,  
10 going to jail denying they're guilty, come out of jail  
11 saying hey, I didn't do anything wrong then, you know, and  
12 I still don't think I did anything wrong. The -- our  
13 enforcement actions are remedial and they're not punitive.

14 They're not designed for punishment. They're  
15 designed to give a message. And the licensee, if they  
16 don't hear the message and they're not responsive to that  
17 message, no doubt will have another violation. And we  
18 need to be looking out for that. Maybe we should be more  
19 demanding in the corrective action and be monitoring that  
20 corrective action or doing these surveys.

21 And I think it gets back to the surveys and  
22 understanding what the climate really is.

23 INVESTIGATOR HUEY: I think we're making a big  
24 circle. I think you --

25 MR. LIEBERMAN: And maybe that's the solution.

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1 INVESTIGATOR HUEY: It's gone through the --  
2 like my reaction like when you said that the region  
3 rightly said they followed up at the expense of being --  
4 you know, I don't mean to come across overly critical  
5 because I'm second guessing a lot of my own things that I  
6 did out in Region V. But I'm thinking it's more going  
7 through the motions of following up on the corrective  
8 actions using flawed instruments for trying to sense that  
9 the corrective action has actually taken place, which  
10 takes you all the way around to the beginning where we  
11 were talking about of how in the world do we develop some  
12 instruments that can effectively measure those things.

13 MR. LIEBERMAN: And maybe we need special  
14 inspectors with special skills to look into this area. We  
15 have some very good resident inspectors with good  
16 engineering technical skills. But everyone of them are  
17 not outstanding people persons and they're not management  
18 consultants and management experts. And one of the  
19 findings we had in our review team effort was greater  
20 sensitivity to allegers.

21 And they're not always right. Maybe some --  
22 maybe most of the time they're wrong. I don't know. I  
23 really don't know what the percentages are. But they'll  
24 be wrong sometimes. If they're in good faith, that's all  
25 we're looking for. And we'll look into it and see if

1 they're right or wrong.

2 We want issues to be raised. And if you're an  
3 inspector and you have lots of things on your plate with,  
4 you know, your modules that you have to do and now you've  
5 got all these allegations and you don't think they're --  
6 you know, they're correct because of the knowledge you  
7 have -- and you have to take all this time in dealing with  
8 this issue. It can make it frustrating for an individual  
9 inspector.

10 And that's why we need to keep on training and  
11 reenforcing the inspectors of the value of allegers and  
12 the role they play in the process. And I think we're much  
13 better off today than we were five years ago. And you  
14 know -- but there's still probably a lot to do, but maybe  
15 the type people who work on these teams to try to gauge  
16 that climate -- we need to have more psychologists and  
17 different disciplines than just "engineers."

18 Maybe more industrial engineers than  
19 mechanical and nuclear engineers. And we might not have  
20 that mix of people within the agency, and that may be  
21 something to think about.

22 INVESTIGATOR HUEY: I want to quickly get one  
23 last question in that is in this same vein. You mentioned  
24 earlier that perception is the -- you didn't phrase it  
25 that way, but I'll restate it. Perception is the key to

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1 chilling effect rather than the actual facts. In that  
2 regard, one last question I wanted to ask that comes close  
3 to home with you is in responses to the public, responses  
4 to allegers, one alleger in particular documented one of  
5 his concerns about the NRC's lack of appropriate  
6 enforcement action with the 2.206 petition.

7 And we took a pretty litigious, stern response  
8 that basically just parroted back our policy, which was  
9 that -- you know, if you want something reconsidered under  
10 2.206, you're supposed to provide some new information to  
11 bear. You didn't provide any, good bye. Thinking again  
12 now in the context of the way allegers feel and the  
13 feeling with which the NRC has done as much as they might  
14 do to make sure that these people feel that they've gotten  
15 an appropriate response, is there room for maybe providing  
16 more insight and feeding the people more information when  
17 it's, you know, an individual who is an alleger, who is an  
18 individual, who has a significant audience in the employee  
19 -- licensee/employee community to maybe go further to  
20 assuage their concerns?

21 MR. LIEBERMAN: Well, the 2.206 process, the  
22 manual chapter -- I don't remember what the number is of  
23 the chapter -- provides that what you said that --  
24 basically you don't use the 2.206 process to relitigate or  
25 reopen enforcement cases. In fact, the enforcement policy

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1 itself says that if -- you don't reconsider an enforcement  
2 action in the absence of significant new information.

3 At some point, you have closure on the  
4 enforcement action. This was an issue that we had a  
5 congressional issue, nothing to do with discrimination.  
6 At what point do you have closure on enforcement action?  
7 You had a set of facts, you reached some judgements, you  
8 took an action, and now someone says hey, this should have  
9 been a higher action -- big action.

10 We have a case where we went out with a  
11 \$50,000 penalty and the person thought we should have had  
12 an \$80,000 penalty. We do take a formalistic approach to  
13 these type cases because enforcement is judgmental  
14 process. And frequently it's a compromise where X wants  
15 this penalty, Y wants this penalty. How we arrange the  
16 violations -- we make judgements and we make compromises,  
17 and it's part of the discretionary -- our process is not  
18 always easily explainable.

19 And in the case at issue, the enforcement  
20 action we thought spoke for itself. And we had other  
21 issues to work on. This case took a lot of effort to  
22 reach the action we took. And to write down -- to answer  
23 specific questions why we did things on the case, in all  
24 honesty, it might be difficult because three people agreed  
25 to this violation for X reasons; someone else agreed to

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1 the violation for Y reason.

2 It's like a Supreme Court decision. Sometimes  
3 there's nine separate decisions why they affirmed the case  
4 below, each person with a different theory. But the  
5 bottom line was they agreed. Enforcement actions are  
6 sometimes similar.

7 INVESTIGATOR HUEY: But I guess it just still  
8 leaves me with an unhappy feeling where you have an  
9 individual that comes in with the specifics saying you  
10 only gave a Level 2. Your letter acknowledged that  
11 corporate level officers were involved, and your policy  
12 calls for a Level 1 in that instance and you didn't do it;  
13 and we only respond you didn't say anything new period.

14 I'm just saying in an instance like that, it  
15 seems like it would be in our own best interest to at  
16 least offer what insight that there is. I mean, we  
17 certainly had insight in the commission paper as to why we  
18 didn't go with a Level 1. What would be wrong with  
19 sharing that with the individual so at least we have a  
20 credible record with the public as to what our rationale  
21 was?

22 And it doesn't leave that chilling effect with  
23 the individual that the NRC has just stonewalled him.

24 MR. LIEBERMAN: Well, do you think that if we,  
25 for example, released the commission paper they gave more

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1 reasoning in why we disagreed with OI or this or that --  
2 that would --

3 INVESTIGATOR HUEY: I wouldn't do that.

4 MR. LIEBERMAN: -- solve --

5 INVESTIGATOR HUEY: That would raise more  
6 questions than it would answer.

7 MR. LIEBERMAN: And so if we condense that  
8 commission paper, it may not solve the problem. And for  
9 example, if we say well, you know, in this particular  
10 case, it was a difficult case and some people thought we  
11 shouldn't do this and other people thought we should be  
12 doing that, and we compromised and we did X to get a  
13 consensus that we thought the lawyers would defend, the  
14 commission would buy, this and that -- I mean, that is a  
15 process.

16 And the person receiving that may not be  
17 satisfied. We try to put in the letters to the licensee  
18 what we think is the message we want the licensee to  
19 receive and why we did it. And then we get on the next  
20 case. I could have had someone spend a week or two  
21 preparing a letter to the individual explaining the case  
22 and get it through the review process and what not.

23 And that would mean the next case would be  
24 slowed down that much more. We only have two FTE's in  
25 enforcement for reactor cases. And you know, it's a

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1 problem.

2 INVESTIGATOR HUEY: Okay.

3 MR. LIEBERMAN: You know, I understand the  
4 issue, but the nature of enforcement -- you know, it's  
5 like DOJ. If someone gets a sentence -- it should be a  
6 longer sentence. You can go to DOJ and say tell us why  
7 you didn't have a longer sentence or didn't push for a  
8 longer sentence. This is a judgmental process that is not  
9 easily explained. And I have a sign in my office that  
10 says "If you appreciate the law and you like sausage, you  
11 don't want to see either one being made."

12 And not to make a joke out of this, there's  
13 something to be said for that. It is a process that when  
14 you explain it out with all its issues, we may take away  
15 from the message that we're trying to give the licensee.  
16 Maybe the licensee will say well, you know, the agency  
17 really wasn't that convinced. Maybe it wasn't all that  
18 bad.

19 We don't want to give the wrong message to the  
20 licensees either.

21 TEAM LEADER HANNON: Jim, I want to thank you  
22 for your time. I'm going to give you this handout that  
23 describes the process for viewing the transcript. And  
24 Cherie Nagel, our transcript custodian, will be getting in  
25 touch with you to do that next week. Appreciate you

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1 spending the couple of hours with us today.

2 It's been very informative. And it's  
3 approximately 2:00 and we'll conclude the interview.

4 (Whereupon, the interview was concluded at  
5 1:58 p.m.)

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C E R T I F I C A T E


This is to certify that the attached  
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Regulatory Commission in the matter of:

Name of Proceeding: INTERVIEW OF JAMES LIEBERMAN

Docket Number: (NOT ASSIGNED)

Place of Proceeding: ROCKVILLE, MARYLAND

were held as herein appears, and that this is the original  
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