



Tennessee Valley Authority, Post Office Box 2000, Spring City, Tennessee 37381-2000

MAY 18 2000

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

Gentlemen:

In the Matter of) Docket No. 50-390
Tennessee Valley Authority)

WATTS BAR NUCLEAR PLANT (WBN) UNIT 1 - DEPARTMENT OF LABOR (DOL)
CASE NO. 1999-ERA-25 (CURTIS C. OVERALL V. TENNESSEE VALLEY
AUTHORITY)

In letters to J. A. Scalice dated July 17, 1998, and
September 4, 1998, NRC requested that TVA provide copies of future
filings made to DOL by TVA in connection with Curtis C. Overall's
Case No. 97-ERA-53. TVA has provided NRC with copies of each of
its filings in that case.

As you are aware, Mr. Overall has filed a second DOL complaint
which, although separate, involves issues closely related to his
first complaint. For your information, TVA has enclosed its
latest filing entitled "Tennessee Valley Authority's Motion to
Compel Discovery."

*Public per
Craig Civaline
DO30*

U.S. Nuclear Regulatory Commission
Page 2

MAY 18 2000

If you should have any questions concerning this matter, please telephone me at (423) 365-1824.

Sincerely,



P. L. Pace
Manager, Site Licensing
and Industry Affairs

Enclosure

cc (Enclosure):

Mr. William R. Borchardt, Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

NRC Resident Inspector
Watts Bar Nuclear Plant
1260 Nuclear Plant Road
Spring City, Tennessee 37381

Mr. Robert E. Martin, Senior Project Manager
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

U.S. Nuclear Regulatory Commission
Region II
Sam Nunn Atlanta Federal Center
61 Forsyth St., SW, Suite 23T85
Atlanta, Georgia 30303

ENCLOSURE

ADMINISTRATIVE LAW JUDGES BRIEF
CURTIS C. OVERALL - CASE NO 1999-ERA-25

TENNESSEE VALLEY AUTHORITY'S MOTION TO COMPEL DISCOVERY

**BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR**

IN THE MATTER OF)	
)	
CURTIS C. OVERALL)	
)	
Complainant)	
)	
v.)	Case No. 1999-ERA-25
)	
TENNESSEE VALLEY AUTHORITY)	
)	
Respondent)	

**TENNESSEE VALLEY AUTHORITY'S MOTION
TO COMPEL DISCOVERY**

Pursuant to 29 C.F.R. § 18.21 (1999) and Rules 26 and 37, FED. R. CIV. P., respondent Tennessee Valley Authority (TVA) hereby moves for the entry of an order compelling complainant to produce information regarding any typewriter(s) or similar machine he currently has or has had possession or control of, and to produce for inspection any such machine currently in his possession or control and his correspondence with the Nuclear Regulatory Commission (NRC), in accordance with the interrogatories and request for production served on complainant by TVA. As grounds for its motion, TVA would show:

1. In this proceeding, complainant claims that he was subjected to harassment at home and in the workplace by unknown person(s). According to complainant, the alleged harassment included receiving handwritten notes and a typewritten note which he has characterized as "threatening." TVA's Office of

Inspector General (TVA OIG) undertook to investigate the incidents and took custody of some of the original handwritten notes.

2. The Nuclear Regulatory Commission's Office of Investigations (NRC OI) was notified of the alleged harassment and also began its own investigation. As part of its investigation, NRC OI borrowed the original handwritten notes that were in the custody of TVA OIG to have a forensic analysis performed. When the handwritten notes were returned, NRC OI also provided a courtesy copy to TVA OIG of the forensic analysis that had been performed by the Georgia Bureau of Investigations Division of Forensic Sciences (GBI) at the request of NRC OI. The GBI report (which has been produced to complainant) included an analysis of the typewriting on the alleged harassing note purportedly received by complainant and an analysis of the typewriting on a letter and an envelope sent by complainant to the NRC. The report concluded that the typewriting on all three documents corresponds to the same style of type. However, the GBI report stated that a determination whether the typing originated from the same source could not be determined. A copy of the GBI report is attached to a certification filed herewith from Pauline A. Thompson, the custodian of the official NRC OI records.

3. In order to conduct its own forensic analysis, TVA propounded interrogatories and requests for production that requested complainant to identify and produce for inspection the originals of his correspondence with the NRC, and "each and every machine that was or is capable of producing a printed or typewritten document that you have used, owned, had custody of, or that was maintained at your home in the preceding 10 years" as well as the machine upon which a particular letter to the Nuclear Regulatory Commission (NRC) was prepared (respondent's third set of

interrogatories (attached hereto as exhibit 1), Nos. 1, 2); respondent's third request for production (attached hereto as exhibit 2), Nos. 1, 2).¹

4. Complainant objected to these requests on the "basis of undue burden and overbreadth, inasmuch as this request encompasses time periods not within the scope of the present litigation" (complainant's responses to respondent's third set of interrogatories (attached hereto as exhibit 3), Nos. 1-3; complainant's responses to respondent's third request for production of documents (attached hereto as exhibit 4), Nos. 1-3). There is no justification for this objection.² The time period covered by the request (from March 1990 to March 2000) is actually *less* burdensome than that imposed by complainant's written discovery to TVA. Complainant cannot reasonably claim that there is any real burden caused by these requests, let alone a significant or undue burden. TVA is merely requesting information on the type of machine(s) complainant owns or owned during this period and, if complainant has not disposed of any such machine, TVA is requesting to inspect it. Complainant's claim that he cannot look through his own home, office, and personal records for the responsive information or typewriter(s) is simply nonsensical. In an effort to accommodate complainant, TVA is willing to narrow its request to the time period beginning January 1, 1994.

5. Complainant also objected on the grounds that "[r]espondent is impermissibly seeking to use civil discovery as a means of obtaining evidence for the Tennessee Valley Authority Inspector General's alleged criminal investigation" (ex. 3, resp. to interrog. No. 1; ex. 4, resp. to req. No. 1). This objection is completely without merit. There is simply no statutory or legal authority which justifies

¹ Due to a typographical mistake, TVA requested information concerning a March 5, 1999, letter to the NRC. The letter was, in fact, dated May 5, 1999, and TVA corrected this error in an April 17, 2000, letter to complainant's counsel.

² Although complainant objected to producing his correspondence with the NRC, complainant did produce some correspondence *from* the NRC. He failed to produce any of his correspondence *to* the NRC.


complainant's refusal to meet his discovery obligations to produce information relevant to this civil administrative proceeding initiated by him. As a part of complainant's case, he has the burden to prove that TVA is legally responsible for the alleged harassing note. As part of that burden, complainant must prove that he is not the author of the note. Given the GBI report, an inspection of his typewriter(s) and his correspondence is clearly a legitimate subject of discovery in this case. The fact that there may be criminal ramifications to the TVA OIG's investigation of complainant's claims does not give him some privilege from making discovery on an issue central to his claims in this case.

6. For the reasons stated above, TVA's motion to compel should be granted, and complainant should be ordered to provide the requested information and

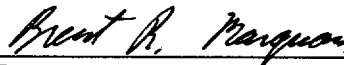
produce his correspondence with the NRC and any typewriter or similar machine he has owned or used.

Respectfully submitted,

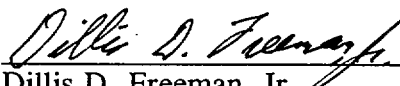
Edward S. Christenbury
General Counsel



Thomas F. Fine
Assistant General Counsel



Brent R. Marquand
Senior Litigation Attorney



Dillis D. Freeman, Jr.
Attorney

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401
Telephone No. 865-632-2061

Attorneys for Respondent

003675822

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion and the certification of
Pauline A. Thompson have been served on complainant by mailing copies thereof to:

Lynne Bernabei, Esq.
Bernabei, Katz & Balaran, PLLC
1773 T Street, NW
Washington, D.C. 20009

This 9th day of May, 2000.


Attorney for Respondent

"Complaint" means the February 19, 1999, letter and enclosure which were accepted as the complaint in this proceeding.

INTERROGATORIES

1. Identify by manufacturer, make, model and serial number each and every machine that was or is capable of producing a printed or typewritten document that you have used, owned, had custody of, or that was maintained at your home in the preceding 10 years.

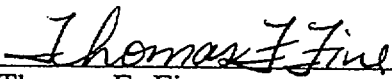
2. Identify by manufacturer, make, model and serial number all machines on which you prepared a March 5, 1999, letter to Al Ignatonis.


3. Identify all correspondence between you and the Nuclear Regulatory Commission.

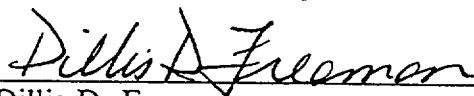
The foregoing interrogatories are continuing during the course of this litigation, and you are directed to supplement your responses as required by

Rule 26(e) of the FEDERAL RULES OF CIVIL PROCEDURE, giving such supplemental responses promptly when the same shall become known to you.

Edward S. Christenbury
General Counsel


Thomas F. Fine
Assistant General Counsel


Brent R. Marquand
Senior Litigation Attorney


Dillis D. Freeman
Attorney

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499
Telephone No. 865-632-2061

Attorneys for Respondent

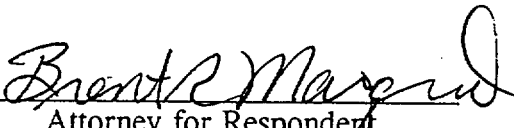
003674444

CERTIFICATE OF SERVICE

I hereby certify that the foregoing third set of interrogatories has been served on complainant by mailing a copy thereof to:

Lynne Bernabei, Esq.
Bernabei, Katz & Balaran, PLLC
1773 T Street, NW
Washington, D.C. 20009

This 6th day of March, 2000.


Attorney for Respondent

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

IN THE MATTER OF)	
)	
CURTIS C. OVERALL)	
)	
Complainant)	
)	
v.)	Case No. 1999-ERA-25
)	
)	
TENNESSEE VALLEY AUTHORITY)	
)	
Respondent)	

TENNESSEE VALLEY AUTHORITY'S THIRD REQUEST
FOR PRODUCTION

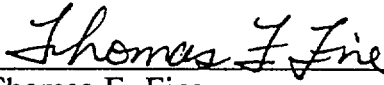
Pursuant to 29 C.F.R. §§ 18.1 and 18.19 (1998), and Rules 26 and 34 of the FEDERAL RULES OF CIVIL PROCEDURE, respondent Tennessee Valley Authority (TVA) hereby requests that, on or before April 5, 2000, complainant produce the following things for inspection at TVA's Office of the General Counsel, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499.


1. Produce for inspection each and every machine that was or is capable of producing a printed or typewritten document that you have used, owned, had custody of, or that was maintained at your home in the preceding 10 years.
2. Produce for inspection each machine which was used in the preparation of the March 5, 1999, letter from you to Al Ignatonis.
3. Produce for inspection and copying the originals of all correspondence between you and the Nuclear Regulatory Commission.

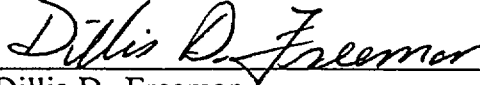
4. Produce for inspection the original of the document which you claim in the chronology to your complaint to have received in the interoffice mail on August 27, 1998.

The foregoing request for production is continuing during the course of this litigation, and you are directed to supplement your responses as required by Rule 26(e) of the FEDERAL RULES OF CIVIL PROCEDURE, giving such responses promptly when the same shall become known to you.

Edward S. Christenbury
General Counsel


Thomas F. Fine
Assistant General Counsel


Brent R. Marquand
Senior Litigation Attorney


Dillis D. Freeman
Attorney

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499
Telephone No. 865-632-2061

Attorneys for Respondent


003674445

CERTIFICATE OF SERVICE

I hereby certify that the foregoing third request for production of things
has been served on complainant by mailing a copy thereof to:

Lynne Bernabei, Esq.
Bernabei, Katz & Balaran, PLLC
1773 T Street, NW
Washington, D.C. 20009

This 6th day of March, 2000.



Attorney for Respondent

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

CURTIS C. OVERALL,

Complainant,

v.

TENNESSEE VALLEY AUTHORITY,

Respondent.

000413D017

Case No. 99-ERA-25

COMPLAINANT CURTIS OVERALL'S RESPONSES TO RESPONDENT
TENNESSEE VALLEY AUTHORITY'S THIRD SET OF INTERROGATORIES

4-10

Complainant Curtis Overall, through undersigned counsel,
hereby responds to Respondent's Third Set of Interrogatories.

GENERAL OBJECTIONS

Complainant objects to respondent's interrogatories insofar
as they:

(a) request information or identification of documents
concerning confidential communications between complainant and
his attorneys, on the ground that the information sought is
protected under the attorney-client privilege.

(b) request information or identification of documents
prepared by complainant's counsel for their own use, on the
ground that the information sought is protected from disclosure
by the attorney work-product doctrine;

(c) seek to enlarge complainant's obligation to respond to
discovery beyond the obligations established by the Federal Rules
of Civil Procedure and the regulations of the Office of
Administrative Law Judges, United States Department of Labor.

RESPONSES

INTERROGATORY NO. 1:

Identify by manufacturer, make, model and serial number each and every machine that was or is capable of producing a printed or typewritten document that you have used, owned, had custody of, or that was maintained in your home in the preceding 10 years.

RESPONSE TO INTERROGATORY NO. 1:

Complainant objects to this interrogatory on the basis of undue burden and overbreadth, inasmuch as this interrogatory encompasses time periods not within the scope of the present litigation. Complainant further objects on the grounds that Respondent is impermissibly seeking to use civil discovery as a means of obtaining evidence for the Tennessee Valley Authority Inspector General's alleged criminal investigation.

INTERROGATORY NO. 2:

Identify by manufacturer, make, model and serial number all machines on which you prepared a March 5, 1999 letter to Al Ignatonis.

RESPONSE TO INTERROGATORY NO. 2:

See Response to Interrogatory No. 1. Complainant further avers that he is unaware of any letter dated March 5, 1999 to Al Ignatonis.

INTERROGATORY NO. 3:

Identify all correspondence between you and the Nuclear Regulatory Commission.

RESPONSE TO INTERROGATORY NO. 3:

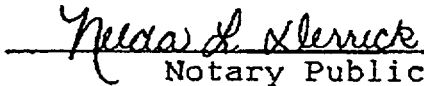
Complainant objects to this document request on the basis of undue burden and overbreadth, inasmuch as this request encompasses time periods not within the scope of the present

litigation. Complainant further avers that the originals of correspondence sent by him to the Nuclear Regulatory Commission are in the possession and control of that entity.

Notwithstanding these objections, Complainant hereby produces additional correspondence. See Documents Bates-Stamped Nos. COO 00595-00658.



Curtis C. Overall

Subscribed and sworn to before me,
this 10th day of April 2000.


Notary Public

My commission expires 10-7-2003

AS TO OBJECTIONS:



Lynne Bernabei
Debra S. Katz
Alan R. Kabat
Bernabei, Katz & Balaran, PLLC
1773 T Street, N.W.
Washington, D.C. 20009-7139
(202) 745-1942

Attorneys for Complainant
Curtis C. Overall

DATED: April 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complainant
Curtis Overall's Responses to Respondent Tennessee Valley
Authority's Third Set of Interrogatories was served on Respondent
by sending a copy by first class mail, postage prepaid, this 10th
day of April, 2000 to:

Brent Marquand, Esquire
Office of General Counsel
Tennessee Valley Authority
400 W. Summit Hill Drive
Knoxville, TN 37902-1499

Alan R. Kabat

Alan R. Kabat

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES OF AMERICA
DEPARTMENT OF LABOR

0111/ CURTIS C. OVERALL,
Complainant,

v.

TENNESSEE VALLEY AUTHORITY,
Respondent.

000413D016

Case No. 99-ERA-25

COMPLAINANT CURTIS OVERALL'S RESPONSES
TO RESPONDENT TENNESSEE VALLEY AUTHORITY'S
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS

4-10

Complainant Curtis Overall, through undersigned counsel, hereby responds to Respondent's Third Request for Production of Documents.

GENERAL OBJECTIONS

Complainant objects to respondent's requests insofar as they:

(a) request documents concerning confidential communications between complainant and his attorneys, on the ground that the information sought is protected under the attorney-client privilege.

(b) request documents prepared by complainant's counsel for their own use, on the ground that the information sought is protected from disclosure by the attorney work-product doctrine;

(c) seek to enlarge complainant's obligation to respond to discovery beyond the obligations established by the Federal Rules of Civil Procedure and the regulations of the Office of Administrative Law Judges, United States Department of Labor.

RESPONSES

DOCUMENT REQUEST NO. 1:

Produce for inspection each and every machine that was or is capable of producing a printed or typewritten document that you have used, owned, had custody of, or that was maintained at your home in the preceding 10 years.

RESPONSE TO DOCUMENT REQUEST NO.1:

Complainant objects to this document request on the basis of undue burden and overbreadth, inasmuch as this request encompasses time periods not within the scope of the present litigation. Complainant further objects on the grounds that Respondent is impermissibly seeking to use civil discovery as a means of obtaining evidence for the Tennessee Valley Authority Inspector General's alleged criminal investigation.

DOCUMENT REQUEST NO. 2:

Produce for inspection each machine which [sic] was used in the preparation of the March 5, 1999, letter from you to Al Ignatonis.

RESPONSE TO DOCUMENT REQUEST NO. 2:

See Response to Document Request No. 1. Complainant further avers that he is unaware of any letter dated March 5, 1999 to Al Ignatonis.

DOCUMENT REQUEST NO. 3:

Produce for inspection and copying the originals of all correspondence between you and the Nuclear Regulatory Commission.

RESPONSE TO DOCUMENT REQUEST NO. 3:

Complainant objects to this document request on the basis of undue burden and overbreadth, inasmuch as this request encompasses time periods not within the scope of the present

litigation. Complainant further avers that he possesses no originals and the originals of correspondence sent by him to the Nuclear Regulatory Commission are in the possession and control of that entity.

DOCUMENT REQUEST NO. 4:

Produce for inspection the original of the document which you claim in the chronology to your complaint to have received in the interoffice mail on August 27, 1998.

RESPONSE TO DOCUMENT REQUEST NO. 4:

Complainant objects to this document request on the grounds that the original has been under the custody and control of Respondent from August 27, 1998 to the present. See also Documents produced by Tennessee Valley Authority that are Bates-Stamped Nos. 004501-004504; 004508-004511.

Alan R. Kabat

Lynne Bernabei
Debra S. Katz
Alan R. Kabat
Bernabei, Katz & Balaran, PLLC
1773 T Street, N.W.
Washington, D.C. 20009-7139
(202) 745-1942

Attorneys for Complainant
Curtis C. Overall

DATED: April 10, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complainant
Curtis Overall's Responses to Respondent Tennessee Valley
Authority's Third Request for Production was served on Respondent
by sending a copy by first class mail, postage prepaid, this 10th
day of April 2000, to:

Brent Marquand, Esquire
Office of General Counsel
Tennessee Valley Authority
400 W. Summit Hill Drive
Knoxville, TN 37902-1499

Alan R. Kabat

Alan R. Kabat

UNITED STATES
NUCLEAR REGULATORY COMMISSION
CERTIFICATION

I hereby certify under penalty of perjury under the laws of the United States of America that I am employed by the United States Nuclear Regulatory Commission (NRC), that I am an official custodian of NRC records that include the document listed below, that the attached is a true and correct copy of that document, and that the attached is a copy of an official record that is kept in the regular course of business at the NRC's Region II Office, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303-3415.

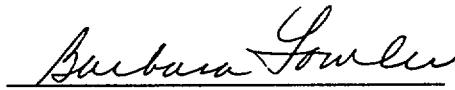
Official report dated August 12, 1999, from the Georgia Bureau of Investigation, Division of Forensic Sciences, regarding an analysis performed on a typewritten letter dated May 5, 1999 from Curtis C. Overall to Al Ignatonis, NRC, and the envelope in which the May 5, 1999 letter from Overall to Ignatonis was received by the NRC.



Pauline A. Thompson
Records Custodian
Office of Investigations, Region II Field
Office
U.S. Nuclear Regulatory Commission
Region II

State of Georgia, County of Fulton, ss:

The foregoing instrument was acknowledged before me this 31st day of May 2000, by Pauline A. Thompson, who produced a valid Georgia driver's license as identification.


Notary Public

My Commission expires: Notary Public, Fulton County, Georgia
My Commission Expires September 2, 2002



STATE OF GEORGIA
GEORGIA BUREAU OF INVESTIGATION
DIVISION OF FORENSIC SCIENCES
OFFICIAL REPORT

PAGE 1 OF 2

99-55166
CASE NUMBER

AUG. 12, 1999
DATE

VICTIM:

SUSPECT:

OVERALL, CURTIS C.
AGENCY NO., 21998023

OFFICERS:

AGENCY:

COUNTY:

S/A GARY H. CLAXTON
U. S. NUCLEAR
REGULATORY
COMMISSION

DESCRIPTION:

ON JUNE 21, 1999 AT 14:12 THE FOLLOWING EVIDENCE
WAS RECEIVED FROM S/A GARY H. CLAXTON:

SEALED ENVELOPE(S) CONTAINING:

1. MACHINE COPY OF A TYPEWRITTEN NOTE BEGINNING "LEAVE WATTS..."
2. ENVELOPE ADDRESSED "MR. AL IGNATONIS"
3. MACHINE COPY ONE-PAGE TYPEWRITTEN LETTER, DATED MAY 5, 1999
4. BOND PAPER BEARING HANDPRINTING BEGINNING "DID YOU..."
5. BOND PAPER BEARING HANDPRINTING "STOP IT NOW"
6. BOND PAPER BEARING HANDPRINTING "BOO!"
7. BOND PAPER BEARING HANDPRINTING "SILKWOOD"

SERVICE REQUESTED:

HW DOCUMENTS

RESULTS:

THE TYPEWRITING APPEARING ON EXHIBITS 1, 2 AND 3 MOST CLOSELY
CORRESPONDS TO A BROTHER STYLE OF TYPE. THIS STYLE OF TYPE
CAN BE FOUND ON MACHINES MANUFACTURED UNDER THE BRAND NAMES OF
BROTHER, FACIT, ROYAL AS WELL AS OTHERS. A DETERMINATION
WHETHER THE TYPING ON EXHIBITS 1, 2 AND 3 ORIGINATED FROM THE
SAME SOURCE COULD NOT BE DETERMINED.

THE HANDPRINTING ON EXHIBITS 4, 5, 6, AND 7 IS OF PROBABLE



STATE OF GEORGIA
GEORGIA BUREAU OF INVESTIGATION
DIVISION OF FORENSIC SCIENCES
OFFICIAL REPORT

PAGE 2 OF 2

99-55166

CASE NUMBER

AUG. 12,

DATE

1999

RESULTS:

COMMON AUTHORSHIP.

THE LABORATORY DOES NOT PERFORM PAPER ANALYSIS.

NO WATERMARKS WERE DETECTED IN ANY OF SHEETS OF BOND PAPER.

EXHIBITS 1, 4, 5, 6, AND 7 WERE PROCESSED FOR THE PRESENCE OF INDENTED WRITING WHICH MIGHT ASSIST IN IDENTIFYING THEIR SOURCE. THE HANDPRINTED AND SIGNED NAME "KELLY MORGAN" WAS DETECTED ON EXHIBIT 5. COPIES OF THE IMAGES ARE ENCLOSED.

NO OTHER CONCLUSIONS COULD BE REACHED.

ATA/8-11-99

*** THIS REPORT CANNOT BE REPRODUCED EXCEPT IN FULL WITHOUT WRITTEN PERMISSION OF THE LABORATORY. ***

RESPECTFULLY SUBMITTED,

Arthur T. Anthony, B.S., D-ABFDE
Chief Forensic Document Examiner
404-244-2500