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Mason spoke to Greer by phone about SWEC's proposal for SWEC employees to be provided under the loan agreement at a flat rate of \$55 per hour. Greer said that the weighted average of the billable rates for SWEC personnel then at TVA or expected to be assigned (including Kelly, Huston, Drotleff, Kirkebo, L. Nace, Sullivan or Siskin, and Matson or Greer) was \$63 per hour. He said SWEC Chairman Allen had determined that SWEC should not charge TVA more than \$250,000 per year per person and that the SWEC rate had to be further reduced to \$55 per hour to get the per year cost down to \$250,000 when the overheads were added in. Mason objected to the draft language on audit. Greer agreed the rate would be fixed but the hourly use of the rate was subject to audit. (M.D. March 5, 1986)

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Richard Parker called from Watts Bar Nuclear Plant and asked Mason about the status of a personal services contract that he said White wanted to handle some Employee Concern Program work at Watts Bar. Mason told Parker that contracting with SWEC involved other considerations and that it might not be possible to do what Parker wanted.

Mason then spoke to Webber about Parker's call. Webber said that he had heard about a \$500,000 contract and mentioned it to Parker several weeks earlier. However, Webber said ONP had since received OGC's February 18, 1986 memorandum on the conditions for contracting with SWEC. He said that Nuclear Engineering had recently gone ahead with a \$13 million contract with Bechtel that would cover the Employee Concern Program work Parker was talking about, but that ONP had a letter from SWEC describing the work SWEC could do. Webber said that Sequoyah Nuclear Plant also wanted to use the same SWEC contract for some of its Employee Concern Program work. Mason and Webber agreed that such a contract could only be requested in accordance with OGC's February 18, 1986 memorandum. (M.D. March 5, 1986; M-23)

3/6/86

Mason reported to Willis on his conversation the previous day with Greer on the amendment to the SWEC contract. Mason was in Willis' office when Dean came in. Dean asked Mason if he talked to Beck about the March 5, 1986 article. Mason said he had not. Dean said it was not correct anyway. Mason agreed it was not correct in some aspects. He then told Dean about the discussion with Greer on the flat rate.

Mason subsequently spoke to Greer by phone. Greer told Mason SWEC was referring all press inquiries on the contracts to TVA to handle. (M.D. March 6, 1986)

* * *

Bjorkman called Mason about the SWEC loaned employees' Financial Disclosure Reports. He said that they were working on consistent descriptions of each SWEC compensation plan for the loaned employees to use in making individualized responses on the required forms. In response to his point about the FOIA, Mason told him that Financial Disclosure Reports were available by statute upon request. Bjorkman told Mason that the SWEC employees' Financial Disclosure Reports would satisfy the intent of the statute. (M.D. March 6, 1986)

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At the public meeting, Willis and Dean announced that TVA and SWEC were agreeing on a flat hourly rate of \$55 per hour for SWEC personnel working under the loan agreement. (M.D. March 6, 1986)

* * *

Waters called Mason at the end of the day. He said he had been meeting with Ron MacMahon, publisher of The Knoxville Journal, Beck, and Crowell; that Beck had six information requests in to TVA that were not fulfilled, including one having to do with a survey of nuclear plant employees; and that Waters wanted Mason to get with Crowell to fill the requests immediately. Mason subsequently met with Crowell and Alan Carmichael, who told him that MacMahon said he would sue TVA on Monday on his FOIA requests if he did not have the documents by then. Mason discussed with them that Beck's request for SWEC documents included the Board's February 13 section 208 determination on Kelly, Drotleff, Huston, and Kirkebo, but that the documents still had blanks in them. Also his request would include the Federal Register generic determination but it was still in draft form. (M.D. March 6, 1986)

* * *

3/7/86

Representative Flippo asked Dean a second set of questions on TVA's arrangements and costs for White's services. (A-14)

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SWEC counsel asked on behalf of SWEC employees, Drotleff, Kelly, Kirkebo, and Huston, for extensions to file their Financial Disclosure Reports. (K-4)

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Crowell responded to The Nashville Tennessean's February 18, 1986 Freedom of Information Act request, providing documents relating to the TVA/SWEC contract. (S, Crowell to Jarrard, March 7, 1986)

* * *

Sanger spoke to White by phone and specifically discussed the negative comments being made about Mason. Sanger told White that they had to be fair about Mason. Sanger told White that he would defend the Board's authority to enter into the SWEC contracts. He told White that consideration of the generic section 208(b)(2) determination he had sent White could provide a basis for the Board considering issues on the proper implementation of the arrangements. (M.D. March 7, 1986)

3/7/86-
4/1/86

Sanger, Mason, White, Denise, Zigrossi, and QTC (Thero and Hill) had numerous telephone discussions, meetings, and correspondence on what if any extension of the QTC contract there should be. OGC's expressed interest in the discussions was to use QTC to provide the facts to OGC on I&H cases so long as OGC was responsible for doing that work. Zigrossi's preparedness to assume responsibility for wrongdoing and I&H cases was discussed and his determination not to work with QTC on matters assigned to his office. Major amounts of time were spent on confidentiality and reports retention matters. The NRC January 30 and subsequent order affecting these documents were considered and discussed. When it became apparent that QTC and TVA were not going to be able to reach agreement on continuing, Sanger and Mason urged that some transition arrangement be worked out to keep from losing work in process at QTC. (ONP and QTC agreed to extend QTC's work for this purpose from March 31 to April 12 and 21 I&H case files were completed and turned over to OGC.) (M.D. March 7, 1986 to April 1, 1986)

3/8/86

The March 8 Knoxville Journal, in a copyrighted article by Beck, on the TVA/SWEC contracts, quoted Waters: "It's an extremely complex legal situation You've got the ethics in government act and the conflict of interest law Our lawyers have been trying to figure out how to handle it."

3/10/86

Zigrossi returned his copy of Sanger's and Mason's February 13 files memorandum for safekeeping "as a result of all the interest in this matter." He wrote Sanger "I believe it was sent to me for information." (S, Zigrossi to Sanger, March 10, 1986)

* * *

Sanger advised White, copies to Willis and Zigrossi, on White's request for a \$40,200 personal services contract with SWEC to review TVA's plans to respond to NRC's section 50.54(f) letter on Watts Bar Nuclear Plant. The advice included: referring to Sanger's February 18 memorandum on the requested \$75,150 SWEC contract; the Board's January 3 determinations on the basis that White would act for TVA with respect to then-existing contracts and that the services that Nuclear Power needed from SWEC should be requested under the support services contract; that consistent with applicable law, White should not personally participate by approval, recommendation, or otherwise in any other TVA/SWEC contract matter not covered by the Board's determination; and that because the request for services was actually initiated prior to White becoming the Manager of Nuclear Power, the requested contract could be properly entered into by TVA if handled under the General Manager's direction by persons who had no interest in SWEC. (G-3)

* * *

Sanger and Mason gave Dean, Waters, and Willis a proposed response to Representative Schroeder's February 24 request for TVA's side of the story on White's contracts. A few minor word changes were suggested and agreed upon. (B-14)

3/11/86

The Board and White made a presentation to NRC. Sanger was present and answered questions. At that public meeting, the following exchange occurred:

COMMISSIONER ROBERTS: To go to your organization chart, the color-coded one, if I can count properly, below or including your position, Mr. White, you have got 24 positions here and eight are contractors or consultants. They are not on the TVA payroll directly. They don't get a U.S. Government check.

MR. WHITE: That's correct.

COMMISSIONER ROBERTS: Has the legality or the permissibility for this scheme been thoroughly confirmed?

MR. WHITE: I will let the lawyers talk about it in a minute, but from my perspective, the contracts under which we entered into this were reviewed by well over a dozen lawyers. They were reviewed by Stone & Webster, and I don't know how many lawyers there. They were reviewed by the top TVA lawyers and they were reviewed by a legal firm that specializes in this kind of thing. So any time you can get more than a dozen lawyers to agree on anything, let me tell you, I feel pretty confident.

COMMISSIONER BERNTHAL: I was about to say that one thing you learn in this business is that a dozen lawyers is worse than a half-dozen.

[Laughter]

MR. WATERS: I can give you the viewpoint of a very fine lawyer, myself.

[Laughter]

MR. WATERS: It is perfectly legal, Mr. Roberts.

CHAIRMAN PALLADINO: Did you want the general counsel to respond?

MR. WHITE: I don't know if he has anything to add.

MR. SANGER: We have looked at this very carefully, of course, and what we are doing here is contracting for work, and we have express authority under Section 9(b) of the TVA Act to do that. While this is an unprecedented kind of thing in terms of placing people in line management positions, TVA has always had these kinds of contracts. I don't have any doubt about their legality, and I have so assured the Board and did so before we entered into this arrangement [NRC March 11, 1986 meeting transcript at 97-99].

3/12/86

Sanger spoke to White by telephone on several matters including telling him that Sanger was sending White the proposed response to Representative Schroeder's February 24 request that included the Board's and General Manager's comments. The proposed response was then sent electronically to White's office and verified. (B-14)

* * *

Sanger advised Willis, with copies for the Board members, of the legal basis for the statements in White's February 14 letter on the inapplicability to White of certain statutes. Sanger provided copies of White's February 14 letter as well as Sanger's proposed response transmitting the agreed-upon letter to White. (A-11)

Willis agreed to White's statement in his February 14 letter. (A-10)

3/13/86

Sanger transmitted to White a copy of White's February 14 letter which Willis had approved March 12 confirming the understanding that White was not and would not be deemed to be an employee or in other categories for certain purposes. Sanger confirmed White's February 7, 1986 statement that he understood Sanger's position as TVA's General Counsel that the financial disclosure requirements of the Ethics in Government Act and section 208 applied to White, Kelly, and others and that on the basis of White's understanding Sanger had agreed to omit a sentence from White's February 14 letter that he understood that TVA may consider him to be an employee for other purposes. (A-10)

3/14/86

Sanger and Mason reported to Willis on the results of Mason's discussions with SWEC (Greer) to develop a Supplement No. 1 to the SWEC loan agreement to establish flat hourly rates for SWEC and STEMAR personnel provided under that agreement. Sanger discussed this with Willis in his office prior to that time and subsequently in a session Willis and Sanger had in Dean's office. Willis approved the proposal and Mason so informed Greer. SWEC (Matson) proposed to Willis a Supplement No. 1 to the SWEC loan agreement to establish flat hourly rates for SWEC and STEMAR personnel (except White) provided under that agreement. (A-12, A-5; M.D. March 14, 1986)

* * *

Referring to his February 10 request for a \$40,200 SWEC contract to review TVA's plans on the NRC's section 50.54(f) request, White confirmed to Sanger, copies to Willis and Zigrossi, that he desired "to maintain an 'arms-length'

relationship with SWEC regarding any contracts other than those specifically approved for my involvement by the Board of Directors." Therefore he delegated his authority on this contract, as well as all future SWEC contracts, to C. C. Mason for Mason to deal directly with the General Manager and not to present such SWEC matters to White. (G-2)

* * *

Representative Schroeder asked GAO to look into and report on 13 questions regarding TVA's arrangements for White's services, Zigrossi's compensation, and intimidation and harassment of employees raising nuclear safety issues. (A-6)

3/17/86 White submitted to Sanger his Financial Disclosure Report. (K-28, K-30)

3/18/86 Sanger provided Drotleff, Kelly, Kirkebo, and Huston copies of SWEC counsel's March 7 letter, but advised these loaned employees that the filing of the Financial Disclosure Report was a personal obligation and that all matters on the reports, including requests for extensions, should be handled directly between Sanger as the Designated Agency Ethics Official and each employee. (K-5, K-13, K-16, K-18)

3/19/86 White sent Sanger a proposed revised draft response to Representative Schroeder's February 24 request. Sanger told the Board that the response was very late and of particular items he would change in White's draft. (B-13)

* * *

J. Q. Webber transmitted to OCC a draft request from C. C. Mason to Personnel for a \$5 million personal services contract with SWEC for engineering, construction, and operations support services, for a two-year term from February 13, 1986 to January 12, 1988. (H-3)

3/20/86 Drotleff and Kirkebo each requested from Sanger an extension to file Financial Disclosure Reports. (K-2, K-24)

* * *

In a meeting with C. C. Mason, Sanger and Willis asked him to get Power's comments for Sanger on Sanger's February 27, 1986 draft section 208(b) generic determination transmitted to White on that date. (Note on Sanger to White, February 27, 1986)

* * *

Dunn was informed by an ONP employee that he was being directed by a SWEC manager to ignore OGC advice on SWEC contract matters. Sanger subsequently informed the General Manager and Inspector General of this matter. (L-1)

3/21/86

Sanger spoke to Dean, Waters, and Willis about TVA's response to Representative Schroeder's February 24 request for TVA's side of the story and made specific suggestions to address identified issues, starting with the March 12 draft. After trying to reach White by telephone, Sanger sent electronically and verified receipt of this further revised draft. Sanger also gave copies of the draft to John Stewart and Willis. (B-12)

* * *

GAO (Henry R. Wray) asked Dean to provide a report responding to each of Representative Schroeder's questions on the TVA/SWEC/White arrangement and Zigrossi's compensation. (GAO, Wray to Dean, March 21, 1986)

* * *

Referring to Willis' proposed letter to SWEC prepared and reviewed by Sanger, Mason, and others in OGC and responding to SWEC's assertions in Matson's February 28 letter that the Ethics in Government Act was not applicable to SWEC loaned employees, Waters approved the letter but stated to Willis and Sanger, "I don't like the tone but I understand it is necessary." Dean okayed the letter the same day and Willis released it. The letter explained that TVA was firm in its determination that the Financial Disclosure Reports must be filed by loaned employees in covered positions and that the requirement was based on law as well as making good business sense. (A-1, A-2)

* * *

Willis returned to SWEC a fully executed original of Supplement No. 1 to the SWEC loan agreement establishing retroactive to January 3, 1986, flat hourly rates for SWEC and STEMAR personnel (except White) provided under that agreement. (A-3)

* * *

Huston requested from Sanger an extension to file his Financial Disclosure Report. (K-12)

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At Drotleff's request, Sanger returned Drotleff's request for an extension to file his Financial Disclosure Report. (K-3)

★ ★ ★

Referring to Sanger's February 18 and March 10 memorandums on previously requested SWEC contracts for work at Watts Bar Nuclear Plant, C. C. Mason requested Personnel to issue two personal service contracts for SWEC's work in the amount of \$40,200 for review of translation of design criteria and for \$75,150 for review of TVA's plans on NRC's section 50.54(f) request. (G-1)

3/24/86 Sanger telecopied to White's office for his comments the March 21 draft response to Representative Schroeder's February 24 request. (B-12)

★ ★ ★

Kelly requested from Sanger an extension to file his Financial Disclosure Report. (K-20)

3/25/86 White sent Sanger a further revised draft to Representative Schroeder's February 24 request. Sanger told the Board he did not think this was an adequate response, but made suggestions in line with others' interests to try to improve it. (B-11)

★ ★ ★

C. C. Mason sent Personnel a draft request for a supplement to the SWEC support services contract to increase the contract limit from \$4 million to \$12 million per year. Copy to OGC. (F-1)

3/26/86 Drotleff resubmitted to Sanger his March 20 request for an extension of time to file his Financial Disclosure Report. (K-2)

3/27/86 Having received ONP's comments on a draft, Sanger sent Willis the generic section 208(b)(2) determination requested by Willis to "be considered by you and the Board in light of our previous advice on the subject." (N, Sanger to Willis; March 27, 1986)

3/27 or 28/86 Having spoken to Willis, Waters, and Dean on many occasions about the risk Sanger thought the Board was running by continuing to leave their section 208 determinations in effect for White and the other SWEC managers, Sanger asked Dean to go to lunch with him to talk to him again about it. Sanger explained again the risk he thought Dean was running

that some zealous prosecutor would conclude that the Board members were involved as accessories in violations of section 208, a Federal criminal felony statute. Dean told Sanger that he had not acted with intent to commit any crime; that he had acted only to do what was necessary to rehabilitate the nuclear program. Sanger explained to Dean that intent was not an element of a violation of section 208. Citing Mississippi Valley, Sanger explained that the statute was aimed at not merely punishing actual corruption but making it a crime to be in a position where a decision could be made involving conflicting private and government interests.

3/31/86

Ken Gray in TVA's Washington Office told Sanger that the Chairman's Office had told him that the response to Representative Schroeder's February 24 request was being sent to him for delivery to Representative Schroeder. Sanger was not shown the letter the Chairman sent to Gray. (B-10)

* * *

Sanger met with Zigrossi and discussed with him the conflicts of interest problems in some detail. Sanger specifically raised with him, Zigrossi's March 10 return of Sanger's and Mason's February 13 files memorandum. Zigrossi said he sent the memorandum back to Sanger because this was a controversial matter in which he was not yet involved. (Sanger's note on Zigrossi's March 10, 1986 45D to Sanger)

* * *

Sanger called White and told him that QTC was willing to work for about 2 more weeks to complete 15 I&H cases that were investigated but uncompleted. Sanger told White that he would not push it if White wanted to do something else, but Sanger wanted White to know that QTC said it could finish 30 I&H reports in 4 weeks and that OGC hated to see that work be thrown away. Sanger told White he saw no reason why he should express any different view from White's view that QTC should not do further work for TVA and that it was not acceptable for QTC as a contractor to state that it would only work for TVA through OGC and not ONP and White agreed that Sanger should work with QTC to finish 15 cases by April 12. Sanger informed QTC and QTC agreed to do so; (M.D. March 31, 1986)

4/1/86

Dean's response to Representative Schroeder's February 24 request was released to her. (B-9)

Sanger asked Dean about the decision to send the letter and why it was not mentioned to Sanger. Dean said he and Waters had decided to take the best of two draft letters and send it. Sanger pointed out to Dean that with the deletion of two paragraphs and minor changes in the introductory language, the letter is the same as the one Sanger and Mason gave the Board and it approved on March 10. (B-10)

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By memorandum Dean requested Sanger to prepare a written opinion for the Board relating to the total legality of the arrangements between TVA, SWEC, and STEMAR. Immediately after receiving that memorandum, Sanger once again told the Board what his advice was. (J-4; M.D. April 1, 1986)

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Sanger, White, Willis and the Board met in Knoxville for White to brief the Board on developments in the QTC contract. (O, Willis to General Manager's files, April 1, 1986)

White told Sanger that Mason was leaking information to publicly embarrass White. Sanger denied that Mason would do such a thing, telling White that Mason had been involved over the years in much of the agency's most sensitive work and nothing had been leaked by him or those he worked with. White cited as proof of Mason being the source of the leaks the enclosure (Exhibit B to the TVA/SWEC loan agreement) to Representative Schroeder's March 14 letter to GAO. White told Sanger that Representative Schroeder's documents came from Mason because the documents had Sanger's marginal notes to Mason on them. Sanger denied that could be the case and told White he would check.

Later that afternoon, after checking with Mason and reviewing the document (A-6), Sanger called White and told him that the notes on Exhibit B were not Sanger's or Mason's distinctive handwritings; but rather that the only thing they could assume was that the notes apparently reflected Simmons' March 5 telephone interview of Mason in which she was trying to follow up Beck's March 5 Journal article. He told him the note read:

Mason
One of my obligations
Keep the confidences of my client
[next line illegible]

Sanger told White that those notes reflected Mason's responses to Simmons' questions about Mason's advice on SWEC's arrangements.

Sanger told White he could only assume Simmons gave Representative Schroeder the Documents Representative Schroeder provided to GAO. (M.D. April 1, 1986)

Sanger then met with White privately to go over White's Financial Disclosure Report. White provided requested additional information. (K-27) Sanger told White the form was complete.

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Sanger approved Kelly's request for an extension to April 29 to file his Financial Disclosure Report. (K-15)

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James B. Hall, an OGC attorney, told Mason he had accepted a job as Assistant to the Inspector General and would be leaving OGC as of April 8. Among various items discussed, Mason told Hall that one difficult issue the Inspector General had to deal with was the section 208 conflict of interest issue that was pointed out in Sanger's and Mason's February 13 files memorandum, a copy of which was sent to the Inspector General. Mason stated his surprise that Zigrossi had not acted already on the matter. Hall told Mason that he would speak to Zigrossi promptly about this as Hall agreed it appeared that Zigrossi needed to take some action.

4/2/86

Sanger and Mason discussed with Willis the generic section 208(b) Federal Register determination.

They also discussed C. C. Mason's March 25 draft request to increase the contract amount from \$4 million to \$12 million per year under the SWEC support services contract in light of the fact that the Board had made White's, Kelly's, and other SWEC loaned employees' section 208(b) determinations in consideration that the SWEC support services contract would be limited to \$4 million per year unless it was increased by the Board on the recommendation of permanent TVA employees without involvement by SWEC employees and based upon the normal competitive process. C. C. Mason's request was for sole source procurement from SWEC. Willis said that rather than the proposed extension, C. C. Mason would request a separate \$10 million contract with SWEC to be solely administered by TVA employees without any SWEC loaned employee involvement. The issues involved in transferring

the SWEC QA engineers already at work under the January 3 SWEC support services contract to work under this proposed contract were raised by Sanger and discussed. (F-1; M.D. April 2, 1986)

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Sanger approved Drotleff's and Kirkebo's requests for extensions to April 28 and 30 respectively to file their Financial Disclosure Reports. (K-1, K-23)

4/3/86

Webber for C. C. Mason asked Personnel to issue a \$10 million personal services contract with SWEC for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. The request stated that authorization to use this contract will be limited to TVA employees and that all SWEC employees will be prohibited from requesting these services to avoid a conflict of interest. The memorandum also requested authorization to transfer the SWEC employees currently performing services under the support services contract to this requested contract, "recognizing that those personnel involved may have been recommended by SWEC loaned employees and authorized by Mr. White or myself." (H-1)

4/4/86

White told Dean and Waters, copies to Sanger and Willis, in disagreeing with Dean's April 1 letter to Representative Schroeder, that "the manner in which this reply was generated was unsatisfactory." (S, White to Dean and Waters, April 4, 1986)

4/7/86

George Dilworth and John Fenton of Nuclear Engineering and J. M. Gross and Nina Stoner of Personnel met with Osteen, Mason, and Smith. Dilworth recounted that he was on a task force to handle the engineering and installation of needed modification work at Browns Ferry Nuclear Plant for restart in 1988. He said TVA had 600 TVA and contractor employees at work on Unit 2 and that TVA did not have any additional engineering or installation resources to assign to that work on Units 3 and 1. Therefore, ONP wanted to contract the work out. A problem discussed was that two of the three contractors ONP thought could do the work were SWEC and Bechtel. White and Drotleff, both in the chain of command on engineering matters, had interests in SWEC. On the installation aspect of the contract, McCullough, the Manager of Nuclear Construction, was a Bechtel employee. Dilworth asked for advice on the conflict and procurement issues involved. OGC agreed to respond the next day. (M.D. April 7, 1986)

4/8/86

Representative Flipppo inquired, for the third time, when TVA would respond to his February 18 and March 7 letters. (B-8)

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After discussing the matter with Sanger, Osteen and Mason met with Dilworth and others on possible contract arrangements for modification work at Browns Ferry. Mason first advised that no determination about limiting the prospective bidders should be begun until it is assured that no one participating in the process has a financial interest in any possible contractor. He also stated OGC's advice that the maximum competition that can be obtained may be helpful on questions about conflicts of interest and TVA's business judgment, and then recommended that TVA seek proposals from three or more firms. (P, April 8, 1986 Discussion Outline)

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Sanger, Osteen, and Mason met with Willis to discuss the several loan agreements White wanted with Bechtel, GE, MAC, and others. Osteen said that White wanted to include in the agreements provision for requesting services of contractor personnel not in line positions. They also discussed the difficulty of administering the additional SWEC personal services contract in a manner that excluded SWEC persons in line TVA jobs from participating in it. They also discussed the generic section 208(b)(2) determination and that Willis was going to suggest the Board act on it at its next Board meeting.

4/9/86

Sanger approved Huston's request for an extension to April 28 to file his Financial Disclosure Report. (K-11)

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Willis sent the Board a copy and asked it to include on the agenda for its next meeting the section 208 generic determination. (Willis to Board, April 9, 1986) The same day Waters wrote back to Willis "Under no circumstances do I want this sent to Federal Register until question of potential criminal liability is resolved to Bd and GM satisfaction" (emphasis in original). (Waters' handwritten April 9, 1986 note, id.)

4/10/86

Willis gave Mason White's additional comments on the proposed section 208 generic determination.

- 4/11/86 OGC subsequently received a June 5 memorandum from Willis that recorded that the Board, Willis, and White discussed and White agreed to curtail loaned employees' ordering services for TVA from their respective companies. (S Supp., Willis to Board, June 5, 1986 memorandum)
- 4/12/86 On QTC's last day of work, it delivered 21 I&H files on which it had completed work since March 31, 1986. (OGC status sheet on receipt of QTC records; I&H status report)
- 4/14/86 Personnel requested OGC approval of a \$10 million personal services contract with SWEC for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. (H-1)

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Sanger transmitted to Willis the proposed generic section 208(b)(2) determination reflecting ONP changes to March 27 draft. (Sanger to Willis, April 14, 1986)

- 4/15/86 In responding to Representative Schroeder's questions to GAO, Dean transmitted to GAO Sanger's memorandum on the propriety of TVA contracting for personal services to enhance its nuclear power program. (B-3)

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Mason approved for legal effect the proposed \$10 million personal services contract for engineering, construction, and operations support services, when and as requested by the Deputy Manager of Nuclear Power. (H-1)

- 4/17/86 Thompson recommended to the General Manager that the Board approve a \$10 million personal services contract with SWEC for engineering, construction, and operations support services, for an approximate two-year term from April 7, 1986 to January 12, 1988. The services to be provided when and as requested by the Deputy Manager of Nuclear Power. (H-2)

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Huston submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-38)

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Bjorkman asked Mason for copies of the Board's section 208(b) determinations on Kelly, Drotleff, Huston, and Kirkebo. (M.D. April 17, 1986)

4/18/86 At its public meeting, the Board approved the \$10 million personal services contract with SWEC for engineering, construction, and operations support services, to be provided when and as requested by the Deputy Manager of Nuclear Power. (E-12)

4/22/86 OGC received GAO's request for answers to eight follow-up questions and certain documents in regard to Representative Schroeder's questions. (B-1)

4/23/86 TVA's April 15 response to GAO on Representative Schroeder's questions was provided to about 50 interested congressmen. (D-5)

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Drotleff submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-39)

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Sanger initially understood White was having his office prepare responses to the additional questions GAO asked on Representative Schroeder's questions on the TVA/SWEC/White arrangements and Zigrossi's compensation. Sanger spoke to White by phone.

Sanger informed Willis, copy to White, of the additional questions asked and documents requested by GAO in connection with Representative Schroeder's questions. Sanger told Willis OGC would draft responses and obtain White's views and that White understood this was the proper manner of handling the request. (D Supp., Sanger to Willis, April 23, 1986; M.D. April 23 1986)

4/24/86 Kelly submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-40)

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Orem called and asked to meet with Sanger. (M.D. April 24, 1986)

- 4/28/86 Waters asked Lewis E. Wallace, Deputy General Counsel, about the status of OGC's work on the section 208 question in response to Dean's April 1 memorandum. (M.D. April 28, 1986)
- 4/29/86 After notifying or attempting to notify each affected person, OGC provided the Information Office with the available Financial Disclosure Reports requested on April 25 by Libby Wann. (K-37)

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Sanger sent White and Zigrossi draft proposed answers to GAO's April 22, 1986 additional questions regarding Representative Schroeder's questions. (D-4; D Supp.; Sanger to White, April 29, 1986)

- 4/30/86 Kirkebo submitted what he called his Financial Disclosure Report "on a voluntary basis," on condition that it be kept confidential, stating that it was filled out as required except as to his SWEC wages. (K-36)

* * *

Willis met with Webber for two hours on matters involving the administration of ONP personal services contracts and employee loan agreements, including Webber's uneasiness about rates of pay and possible conflict of interest situations. Willis told Webber to call him if he had questions or concerns.

After Willis left, Webber was called to John Krummel's office and questioned by Krummel, a SWEC employee who at the time was a contractor, but who was designated as a loaned employee, about Webber's meeting with Willis. Krummel asked Webber three or four times "do you know who your boss is?" or "do you know who you are working for?" Webber answered "yes, TVA." Webber told Krummel that he understood the chain of command and that Willis outranked everyone in ONP and that he would follow instructions Willis gave. Webber understood Krummel was instructing him not to discuss ONP business with Willis. (Smith to Sanger, June 13, 1986)

5/1/86
(approx.)

Willis saw Webber in the vicinity of White's offices in Chattanooga and briefly discussed contract matters. Almost immediately after that discussion, Krummel questioned Webber about the encounter, including Krummel commenting that Webber was on a first-name basis with Willis. (Smith to Sanger, June 13, 1986)

5/5/86

Referring to his February 13 written advice, Sanger responded in writing to the second aspect of Dean's April 1 request for an opinion on the legality of TVA's arrangements with SWEC; that aspect involving the implementation of the arrangements to avoid any possible violation of the conflict of interest statute. (J-1)

TENNESSEE VALLEY AUTHORITY

OFFICE OF THE INSPECTOR GENERAL

Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority (TVA), Knoxville, Tennessee, was interviewed in his office concerning his recollection of negotiations and implementation of the arrangements under which Mr. Steven A. White was retained as the Manager of the Office of Nuclear Power. Mr. Sanger provided the following information.

Sanger stated he had been working with the Board of Directors of TVA for a number of years attempting to come up with a solution to the problems TVA had had in addressing the deterioration of the TVA nuclear program by attempting to obtain qualified personnel who had necessary experience and capabilities to effectively run the TVA nuclear plants. TVA had been limited in obtaining qualified personnel for the nuclear plants because of salary limitations. He stated the agency had been able to hire good people at a beginning level, but soon lost them after they gained experience which qualified them for higher paying jobs in private industry. TVA was unable to obtain more highly qualified individuals because of the Federal pay cap. TVA had tried a number of methods to obtain qualified people at a competitive salary. Such methods have included retention contracts whereby employees could be hired for a specified period of time on a "personal services" basis at a specified salary with the agreement not to compete with the employer for a specified period of time should they leave their employer. Sanger stated his office had been instrumental in developing a reverse concept to that retention contract whereby people agreed not to compete with their former employer for a period of time after they left that employment by having contracts with employees whereby they would come to work for TVA at a specified rate of pay for a specified period of time such as three to five years. He advised they had also used contracts where they obtained services of employees of other organizations as loaned employees.

Sanger advised TVA has legal authority to enter into contracts with people to obtain their services for the benefit of TVA. Sanger stated his office has no doubts whatsoever about the legality of entering into contracts as loaned employees. He stated the difficulty in using such loaned employees is in the administration and execution of the contracts.

Sanger advised, the exact date he could not recall, but in December 1985, the Board of Directors called and asked him to accompany them to the Sequoyah Nuclear Plant. When they arrived there, the Board met with Nuclear Regulatory Commission member Lando Zech, who discussed the nuclear program with the Board. Sanger said he did not attend that meeting with the Board, but worked in the cafeteria on his own work while the Board was attending the meeting. After the Board's meeting with Commissioner Zech, he then met with the three Board members; Hugh Parris, Manager of Power and Engineering (Nuclear); Bill Willis, General Manager of TVA; Steven A. White; and Bill Wegner, an adviser to White. He stated the meeting was, to discuss arrangements for a personal services contract with Steven White to use White's expertise in helping TVA with the nuclear program problems. During the discussions the concept came up whereby TVA would have a contract with White's corporation,

June 26, 1986

Knoxville, Tennessee

Investigation on

by SAs Robert G. Carter and George T. Prosser:BN

File # 66-3

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STEMAR, rather than White. Sanger thought that such a contract would help the situation. During the discussion, Bill Wagner stated that any contract with Steven White would have to be done in an arrangement whereby TVA would contract with Stone & Webster Engineering Corporation (SWEC), who in turn would have an agreement with STEMAR. Sanger stated this idea was presented by Wagner, and no one offered to negotiate anything other than what had been stated by Wagner. Sanger stated this was not the type of contractual relationship he had envisioned, but did not feel he was in a position to bring up his thoughts at that time. He felt he was in a delicate position since they were just beginning discussions with White regarding White being brought to TVA to head the nuclear operations program. He stated Hugh Parris asked him, Sanger, if he would excuse himself from the discussions. Sanger stated he felt embarrassed by being present in the meeting at that point because it was obvious they were discussing Parris's future, whereby Parris would be replaced by White. He stated Parris was in an emotional state when he talked to Sanger and Sanger stated he understood Parris's concern and felt it would be best for him not to be present during the discussions regarding Parris's future.

Sanger stated the next day, on December 24, 1935, he talked with the Board of Directors regarding the possibility of TVA entering into contracts to obtain the services of Steven White as the Manager of the Office of Nuclear Power. He stated he told the Board they could legally enter into contracts to obtain the services of Steve White as a loaned employee. He told them White could not be considered a regular employee. He advised the Board they should obtain a personal services contract for White's services to TVA, which would allow TVA to pay to White a higher salary than what is allowed by Federal law. He said the TVA procurement statutes were broader than those of other Government agencies, and there was no question as to the legality of TVA entering into a personal services contract and paying a higher salary than allowed by the Federal pay cap for the services of White.

Sanger knew that additional work would be necessary to prepare the necessary contracts to obtain White's services and advised he had talked with Director Richard Freeman about the necessity of preparing for such contracts. He told Freeman he had leave scheduled during the Christmas holidays but would cancel that leave and come in to work on the contracts. He advised that Freeman told him to go ahead and take his leave because he had not taken all his leave in the past and had too often worked when he had leave scheduled. Sanger stated, based on the discussion with Freeman, he decided to go ahead and take his Christmas leave and have Bill Mason work on the preparation of the contracts to obtain the services of White.

Sanger advised after Christmas Bill Mason was called by Bill Willis to come to discuss the contracts they needed to prepare to obtain White's services. He stated Mason visited him at his home and he gave to Mason notes he had taken during his discussions with the Board at Sequoyah concerning their plans to hire White plus six to eight additional people that White indicated he would need. The next day Mason called Sanger at Sanger's residence [REDACTED] and told Sanger he was in Washington, D.C. discussing the arrangements with White, White's attorneys, and SWEC representatives. Mason advised he learned they were discussing a different arrangement from what Mason understood the arrangement would be to hire White when he left Knoxville. He stated Mason told him the discussions were completely

different, and Mason did not know what he should do. Mason told him the discussions had become hostile when he told the participants he did not believe he had authority to enter into negotiations and make arrangements in the manner in which they were proposing. Mason told Sanger that White told him if he didn't have authority, he should get someone who did. Sanger advised Mason to check with the Board and tell them the problems he was encountering. Mason called Knoxville and advised of his concerns, but nothing was resolved. Mason discussed the situation with Bill Willis, who told Mason to return to Knoxville.

On January 2, 1986, a meeting was held in Knoxville between the members of the Board, Bill Willis, representatives from SWEC, OGC attorneys, Steven White, and White's attorneys. Mason called Sanger and told Sanger the entire situation was very confusing and they had numerous impasses. Sanger told Mason to be patient, to try to work out the problems, and he should not be overwhelmed and to ensure he was correct in his work because the matters they were discussing were far-reaching and proper steps must be taken to ensure everything was legally correct.

Mason had pointed out to the Board of Directors and to other participants in the negotiation session that the arrangements they were proposing could cause problems under the conflict of interest statute. White's attorneys told Mason they had never seen the conflict of interest statute and asked Mason to obtain a copy of it for them to review. Mason consistently pointed out to everyone the problems in the conflict of interest statute, and Bill Willis told everyone they must put together a contract where neither White nor anyone else obtained under the contracts to perform work for TVA could order services or employees from their parent company because to do so would be a violation of the conflict of interest statute.

Sanger stated Mason told him White's attorney, George Edgar, after reviewing the conflict of interest statute, said the Board could make a determination under Section (b) of the statute, which would allow White to order the services of SWEC employees if the Board had reviewed White's financial status and had made a determination that his financial interests with Stone & Webster were so insignificant it would not affect the integrity of his work for TVA. Sanger stated Mason advised everyone present the Board could not make such a determination in White's case because his interests were not insignificant. Sanger stated Mason told him both Chairman Dean and Director Waters took the position they had to go ahead and make that determination because they needed the services of White. Sanger said Mason then talked with Director Freeman, who told him that since both Dean and Waters had decided to approve such an arrangement, there wasn't anything he, Freeman, could do because he was outvoted by Waters and Dean. Sanger stated that in such a situation, representatives from the Office of the General Counsel (OGC) are in an awkward position because they cannot insist the Board not do something. He said his office can only advise them as to what is proper and correct, but the Board makes the final decision, which leaves his office at a disadvantage because his office does not have a vote on the Board's decisions.

Sanger returned to work at TVA on January 6, 1986, at which time Mason gave him a full report as to the problems Mason had encountered during the negotiations and arrangements made on January 2 and 3. Sanger stated after learning what action the Board had taken, he immediately went upstairs to talk with the Board members and

told them his advice was that again the Board had the authority to enter into a contract to obtain the services of White, but that the Board had serious problems with the conflict of interest statute the way the agreements had been written, especially when it allowed White to order the services of employees from SWEC. Director Waters told him, "Someone may say we did it wrong, but we did it."

Sanger said he persisted in advising the members of the Board about the conflict of interest problem throughout January 1986. He stated he persisted almost to the point of obnoxiousness in trying to get them to understand they had problems with the conflict of interest statute. Sanger advised on January 13, 1986, he had a discussion with Steve White concerning White's agreement with the Board and the problems White would have in hiring employees from SWEC. White told him he wanted the authority to be able to hire people from wherever he needed them, whether they be from SWEC or other companies. Sanger told White that White could not do anything to economically benefit the company with whom he had a relationship, because that would be in violation of the conflict of interest statute. White replied to Sanger that there would be no conflict of interest violation if White ordered employees from SWEC for TVA's interests. Sanger advised he told White the conflict of interest statute was to prevent problems from occurring. He told White the law states specifically that White cannot have any conflict of interest. Sanger proposed to White that in order to avoid a conflict of interest problem, White, whenever he needed additional people, should tell a TVA employee such as General Manager Willis what he needed to do a job, in the manner of a requisition, and a regular employee such as Willis would then order the type of individual and/or services that White needed. By requisitioning his needs from a TVA employee, White would not be placed in a position of conflict of interest. White replied to Sanger that this type of arrangement would be too restrictive on him to properly manage the nuclear power operations.

Sanger advised that almost daily during the month of January 1986, he had discussions with members of the Board of Directors regarding the conflict of interest statute. He said he repeatedly told them they could not make a determination that something was insubstantial when in fact it was substantial. He stated he did not recall White being overly concerned regarding the conflict of interest statute. He recalled talking with White about White's traveling when White had asked him if White could travel on the SWEC plane. Sanger told White that White could under certain conditions travel on the SWEC plane.

Sanger advised he talked with White regarding White and others having to file their financial disclosure under the Ethics in Government Act. He stated he could recall talking with White both in Chattanooga and Knoxville and told White that White would have to make such a disclosure. White did make a disclosure and submitted it to one of the staff attorneys, who went over the disclosure and in turn submitted it to Sanger for his review. Sanger stated he never approved White's disclosure report because he understood White has an indemnity agreement with SWEC. White never disclosed to Sanger the provisions of that indemnity agreement with SWEC. Sanger stated that in his opinion, if there is additional information which White has not disclosed, he wonders if the determination which the Board made for White would be valid if White had not disclosed the provisions of the indemnity agreement.

Sanger stated he had discussed with White and told White he was not worried about White being in violation of the conflict of interest statute so long as White or others did not order people from the companies in which they have an interest. He said White had taken the position that under the agreement White has with SWEC, White will be paid by SWEC whether he works for them or not, and therefore this would show he would not have a conflict of interest problem. Sanger was of the opinion this arrangement made no difference under the provisions of the conflict of interest statute.

In February 1986 White contacted Bill Mason and told Mason he needed additional SWEC people. Sanger stated Mason advised White that White could not order such people without being in violation of the conflict of interest statute. White told Mason he did not like his advice, and finally talked with Sanger about Mason's advice. Sanger told White he believed Mason was advising him properly. Sanger explained to White that White had to make a financial disclosure under the Ethics in Government Act, and that White could be considered an employee for one purpose but not an employee for another purpose. Sanger told White that White was not considered an employee under Title 5 but was subject to the Ethics in Government Act where he was considered to be an employee. He pointed out to White that it was not unusual under the various laws for a person to be considered an employee for one purpose and not in another purpose.

Sanger stated White had had discussions with the Board regarding hiring additional SWEC employees, and the Board had informally said White could hire those people. White then told Mason he had Board approval, but that Willis then told White that although he might have had informal Board approval, he did not have formal Board approval, because the Board had not made any Section 208(b) determinations for those people.

Sanger stated he could recall early in February 1986 a discussion arose regarding additional SWEC employees having to submit financial disclosure forms under the Ethics in Government Act. They did not want to file disclosures because first they did not believe they were employees and secondly they did not want to tell what their salaries were because they did not want competitors to know what they were earning nor did they want fellow employees to know what their salaries were. Sanger stated he discussed this matter with SWEC counsel, who had also taken the same position. He stated finally the SWEC employees did submit financial disclosures under protest. Sanger told the SWEC counsel if they did not provide financial disclosures, he would have to advise the Justice Department of a potential violation of the ethics in government statute. He stated that even when SWEC employees had filed their financial disclosures, they did not file them properly. He stated as of yet they were not complete because they did not mention a specific salary but only mentioned a salary range on the financial disclosure forms. Sanger explained he had given several extensions to the SWEC employees to file the forms, but they had never given the specific amount of salary they are being paid by SWEC. Sanger stated he had, on May 28, 1986, sent back the incomplete financial disclosure forms to SWEC and had not yet received completed forms back.

Sanger advised during the first part of February 1986, he had talked with the Board several times about SWEC employees brought in by White ordering the services of other SWEC employees in violation of the conflict of interest statute. He stated a

particular problem concerned Richard Kelly, who was a SWEC employee brought in to head up the nuclear program's quality assurance function, who in addition to being a SWEC employee was also a member of the board of directors of SWEC. He stated he advised against making a determination under part (b) of the conflict of interest statute, that Kelly could be determined not to have a substantial interest in his parent company. On February 12 he met with Chairman of the Board Dean, Richard Freeman, General Manager Willis, and Bill Mason, and talked simultaneously with Director Waters on a speaker phone about the conflict of interest problem as pertaining to Kelly and other such SWEC employees. Director Freeman read aloud the conflict of interest statute and Sanger again read it aloud again so that everyone would understand the provisions. Chairman Dean asked Sanger if he, Sanger, were on the Board of Directors, would he vote to make such a determination. Sanger stated he told Chairman Dean that he would not make such a determination. Director Freeman told Dean it was wrong to ask such a question to the General Counsel because he does not make policy. Sanger stated the Board then told him to get together the best kind of conflict of interest determination he could make so that a determination could be made. Sanger replied he would defend such an action as best he could, but in his opinion the Board could not call something insubstantial that indeed was not insubstantial.

Sanger stated Freeman told him he would resign if he had to approve such 208 determinations, and if something else being proposed should occur. Sanger stated Freeman never told him what the other matter concerned. Freeman told Sanger that Sanger should not tell anyone else and that Freeman himself would not say publicly that was the reason he would resign but stated if the determinations were approved, he would resign. Later that evening Freeman called Sanger and asked him to come up and assist him in obtaining the necessary documents to resign.

Sanger stated he and Bill Mason had prepared a memorandum to the General Counsel files regarding their analysis of the conflict of interest problems and their concern regarding such problems. He stated the next day he gave a copy of that memorandum to Director Freeman and Bill Willis and asked them to review it. He stated after reviewing the memorandum, Willis asked him to refine a part of that memorandum dealing with something that Director Waters had said, and Freeman told him after reviewing the memorandum that it was an accurate record of what had happened concerning the conflict of interest situation. Sanger stated he wasn't able to find the other two Board members but sent a copy of that memorandum to them.

Sanger stated he had prepared the determinations for the other SWEC people as he had been instructed by the Board members, and when he put the determination on Director Freeman's desk, Freeman resigned five minutes later. Sanger advised the determinations had been drafted by his office at the request of Waters and Dean but not Freeman. Sanger stated Bill Willis refused to recommend the determinations to the Board, and in his cover memorandum to the Board attaching the determinations, Willis made no recommendations to the Board.

Sanger advised that sometime later he became concerned regarding the criminal provisions of the conflict of interest statute and talked to members of the Board about those criminal provisions. He stated Dean told him that Dean had no criminal intent when he had taken the actions he had taken in making the determinations

under the conflict of interest statute. Sanger told Dean criminal intent was not applicable in this particular situation because intent was not an element to criminally violate the conflict of interest statute. Dean told him Waters had made the determinations and Waters was an attorney, and he knew Waters would not do anything criminally. Sanger told Dean that Sanger's job was to advise him on legal matters, and he was advising him, and in this instance intent was not applicable to the conflict of interest statute.

Sanger told Willis of the criminal provisions of the statute and told him in some instances others who assisted in violating the criminal portion of the statute could be considered accessories or conspirators. Sanger cited situations where even though someone was not a subject in the violation of a criminal statute they could also be criminally prosecuted because they were accessories or conspirators. He stated Willis talked to the Board members for him to try to get them to understand that they could be criminally violating the conflict of interest statute.

The exact day he could not recall, but Sanger asked Dean to go to lunch with him so he could get Dean by himself to discuss the potential criminal violations of the conflict of interest statute. Sanger told Dean he was not a criminal attorney, but he wanted Dean to understand it was his responsibility to report to the United States Attorney's office any potential criminal violations. Sanger stated he did not report to the United States Attorney's office his concern of potential violation of the criminal provision of the conflict of interest statute because it is no longer his responsibility to advise the United States Attorney of such matters since an Inspector General's office has been created at TVA. It is now the Inspector General's responsibility to advise the United States Attorney in such matters. Sanger explained he had given a copy of his and Mason's February 13 memorandum to the OGC files to Norman Zigrossi, Inspector General at TVA, and stated Zigrossi was impressed with Sanger's concern. He stated Zigrossi told him after reviewing the memorandum that Sanger had to do what he had to do. He advised Zigrossi returned the February 13 memorandum to him with a note. He could not recall exactly what the note said, but believed it stated words to the effect that Zigrossi was returning the memorandum to Sanger due to its sensitivity.

Sanger advised after Director Waters had read his February 13 memorandum, Waters called Sanger to his office and told Sanger that the memorandum was not the kind of work that Sanger normally did. Sanger explained to Waters the reason he had prepared the February 13 memorandum was to confirm and place on record his concerns regarding the conflict of interest statute. He said Waters told him that after reading the memorandum he had spent one of his worst weekends thinking about the memorandum. Sanger told Waters it had taken him a week to prepare the memorandum, and it also was difficult for him to write such a memorandum. Sanger told both Waters and Dean he was sorry they were unhappy with his memorandum, but in his opinion he did what was right by writing the memorandum. He stated Waters told him two or three times that was a 'crappy' memorandum. Sanger stated it did not bother him what Waters said to him about the memorandum because he didn't need anyone to tell him whether a memorandum was good or bad. Sanger advised during February and March of 1986 he had daily discussions with Willis trying to get Willis to talk to the Board about Sanger's concerns regarding the conflict of interest statute. He stated during this period of time he did not take any action to advise the Office of Government Ethics regarding his concern of potential violation of the conflict of interest statute.

Sanger stated the reason he had lunch with Dean during the later part of March was to try to get the Board to pull together and take appropriate action to resolve the conflict of interest problems. He stated he didn't know for sure, but assumed Dean talked with Waters after he and Dean had lunch. He stated on April 1, 1986, Dean wrote a memorandum to him directing that he prepare his analysis of the conflict of interest problems. He stated Dean and Waters expressed irritation toward him because of the advice he had given them. Sanger explained he was glad to have the opportunity to prepare a response to Dean's April 1, 1986 memorandum, and stated he even took two days off work to prepare the response at his residence so he would not be interrupted. He stated Mason came to talk with him both morning and afternoon of those two days off to bring copies of law and other materials to assist him in preparing the response.

Sanger advised he issued his response to Dean's request on May 5, 1986. After issuing his response to the Board, the Board called him up to their office and were very irritated with him. Dean told him that Sanger was accusing him of being a criminal. Sanger told Dean this was not true, he was only advising Dean of the problems and making a suggestion as to how the problems could be corrected. He suggested the contracts be restructured so that TVA would be dealing directly with Steve White or White's corporation and to not let Kelly and other SWEC employees be in a position to order SWEC personnel or services. Sanger told Dean Kelly could not even make any recommendations regarding the ordering of SWEC personnel or services. Bill Willis was assisting Sanger in helping sell to the Board the necessity for restructuring the contractual arrangements. One day Director Waters told Willis and Sanger they had better have a good reason for making such restructuring or the next time they suggested problems with the contracts, it would be their heads. Sanger stated he could not understand the reluctance of the Board to make the changes in the contractual arrangements; nor could he understand why the Board took the action of referring the problem to the Inspector General's office to conduct an investigation regarding the problems with the conflict of interest statute. He stated he told the Board members they should just act to correct the defects on their own. He stated to do so was the proper step they should take, because an aggressive prosecutor would be better impressed if the Board on its own took steps to correct the potential problems.

Sanger stated when the conflict of interest problem first became a concern, his office called the Office of Government Ethics (OGE) in early February. He wasn't certain but believed Maureen Dunn and Bill Mason of his office talked with the OGE; however he does not know with whom they talked regarding potential conflict of interest as related to Richard Kelly, a SWEC employee, ordering services of other SWEC employees. He stated he knew they had discussed the matter with White's attorney, George Edgar, about getting the views of the OGE concerning Kelly and other SWEC employees ordering services of their own companies. Sanger explained there is no time limit when the OGE is to be notified, but that either Dunn or Mason told him that after he had written his May 5 memorandum to the Board of Directors, he should at that point officially advise the OGE as to his concern. He stated as a matter of fact he had talked with OGE for about three hours on June 24, 1986. He stated the OGE views the fact that the Board of Directors had referred the problem of conflict of interest to the Inspector General to conduct an investigation as being a step on the part of the Board to isolate the OGC from doing its job. Sanger explained he also knew the Stone & Webster attorneys had had a private attorney call the OGE to try to get OGE to say in a hypothetical

situation that employees of SWEC working for TVA under the loaned employee agreements would not be subject to the OGE provision of such employees making financial disclosures. Sanger explained that the OGE had told the attorney that under such a hypothetical situation they would be considered as employees and would have to make financial disclosures. Sanger explained the purpose of making financial disclosures under the OGE statutes is to review those financial disclosures to make a determination if there indeed is a conflict of interest.

Sanger explained in June 1986 he did not accompany the Board of Directors to Washington for Congressman Dingell's hearing. He stated the next day after they had gone to Washington, he received a phone call from Bill Willis who advised him that while Willis and the Board of Directors were on their way to Washington, the Board told Willis they had talked with Howard Baker regarding the contract problems they had with the White employment arrangements. Willis stated the Board told him Baker had said the Board should talk with a Democratic law firm regarding the situation and that the Board had contacted the Robert Strauss law firm. Willis advised Sanger that he, Willis, was uncomfortable with the action the Board had taken and thought the OGC should be handling the problems rather than an outside law firm. Willis told Sanger the Board had insisted that Willis meet with Strauss and another attorney named Langdon. When Willis met with Strauss, Strauss told him, "You have a problem and the Board could be indicted in 24 hours." Willis told Sanger that Strauss said he had reviewed the OGC's memorandum and stated that the OGC for TVA had done TVA a favor, and it was the best legal work he had ever seen. Willis told Sanger that Strauss would be calling him to discuss the matter. Sanger stated he told Willis he wouldn't talk with Strauss because he did not believe it to be appropriate. Willis relayed Sanger's reply to Strauss, and Strauss told Willis that was the type of reply he had expected from Sanger, who was taking a proper position.

Sanger advised the next day the Board called him and told him about their contacting the Strauss law firm. Sanger asked the Board what was the reason for their contacting the law firm and what function or mission did they expect of the Strauss firm. He stated the Board replied they were not sure, but wanted him to talk with the Strauss firm regarding the conflict of interest problem. Sanger advised the members of Board that if they were retaining the Strauss law firm as their independent counsel, TVA could not pay for that sort of arrangement. He advised the Board members told him they were not retaining the Strauss firm for their individual interests but were retaining them as an independent counsel to TVA. Sanger explained that at present the OGE doubts that TVA can properly pay the Strauss firm. He then agreed to the Board's request that he talk with Strauss.

He advised when he talked with Strauss, Strauss told him that after Strauss had reviewed the correspondence provided to him regarding the conflict of interest problem, that in Strauss's opinion Sanger's memorandum to the Board of Directors dated May 5, 1986, was one of the best pieces of legal work he had ever seen. He stated Strauss advised that he would not give an opinion as to the situation and had thought first of writing a comforting type letter. He stated he had also talked to the TVA Inspector General's office and to Steven White. Strauss told Sanger he had told the Board he wanted to be assured of his independence in the matter. Strauss told Sanger that in his opinion the TVA Board members could hang. Strauss told him the Board members had a major problem in trying to solve the nuclear problems of TVA considering the salary and budget limitations with which

they had to work. He, Strauss, said he would attempt to give a report whereby the problem was explained in a bigger context and that the actions that the Board members had taken were the actions of a group of honorable men trying to solve a problem. Sanger advised Strauss told him the Board members should be happy Willis was present during Strauss's meetings with the Board because Willis had corrected the Board on several points, and Strauss considered Willis to be an honorable person. Strauss asked Sanger to meet with two of his attorneys, both of whom told Sanger that Sanger was correct in his analysis of the conflict of interest problem. He stated he also met with Strauss and another attorney by the name of Feld, but those meetings did not shed any additional light on the matter.

Sanger advised sometime later, exact date he could not recall, he received a telephone call from Senator Gore, who told him he had heard TVA had some tremendous problems regarding contractual arrangements with Steven White and requested Sanger come to Washington to talk to him. Sanger advised he went to Washington and talked with Senator Gore and was as honest as he could be with Gore to explain the problems TVA has regarding violation of the conflict of interest statute. He stated Gore was extremely irritated with the entire matter. Sanger stated while in Washington he did not talk with Senator Sasser regarding the problem. Sanger explained it has been his responsibility in the past to frequently talk with the Senators without advising the Board of Directors he was going to talk with them. He stated he had responsibility to TVA to represent TVA on legislative matters. Sanger explained he had tried to find either Dean or Waters the evening before he left to go to Washington but was unable to locate them. He stated upon his return from Washington, he met with Dean and Willis the next morning and told them of his talk with Senator Gore.

Sanger advised Steve White told him that White had a problem working with Bill Mason because Mason had told White that White had people working for him who had no contractual relationships with TVA giving orders to TVA employees. Sanger explained that such people were BETA (Basic Energy Technology Associates) employees who were assisting White and that one of the BETA employees named Brodsky had been giving negative information to White regarding Mason. Sanger told White Mason was a good person and did an excellent job on harassment issues and asked White to help. He stated White did not agree with him, and Sanger told him that Sanger and Mason would do what they had to do. Sanger advised he had never had any vocal arguments with White and he considered White to be a very competent person and enjoyed working with him. He told White, while they were discussing the legality of the contracts, for White to let him alone and he would defend the contracts which he felt were legal, but he told White he could not defend the actions taken by White and other SWEC employees in ordering personnel and services from SWEC. He told White that White should not concern himself with such matters because that was OGC's responsibility and told White he should concentrate on solving the nuclear problems. Sanger stated White agreed with him that White had been taking too much of his time being concerned with the contracts and agreed that Sanger should be the person to address contractual problems. Sanger stated, however, that since Chairman Dean had directed the TVA Inspector General's office to conduct an investigation into the conflict of interest matter, his office has virtually been excluded from addressing contractual problems.

Sanger advised upon returning from his Christmas leave on January 6, 1986, and reviewing the loan agreement and a memorandum of understanding, he had consistently

been of the opinion that TVA was able to enter into such contractual agreements and that no law had been violated until someone took action under those contracts whereby they ordered services or personnel from their own companies. He stated he thought that when White ordered services of Kelly and others, then a violation had occurred.

Sanger stated the contract TVA had with the Management Analysis Corporation (MAC) had also violated the conflict of interest statute. He stated he had sent the Office of Government Ethics a copy of that contract. Sanger explained the OGC thought that Bill Bibb was only going to manage the Browns Ferry Nuclear Plant. He stated the OGC did not know that Bibb was going to hire personnel from his own company. When asked how in his memorandums Sanger could take the position that a determination under section (b) of the conflict of interest statute could be made for Bibb while they could not be made for the White contracts, Sanger replied he did not recall the advice his office had given on the Bibb situation and stated he would have to look at the memorandum regarding the matter. However, he believed he had said that Bibb could not order services and/or personnel from his own company. Sanger stated in the Kelly situation, he had advised the Board they could not make such determinations that Kelly's interest in SWEC was insubstantial when in fact it was substantial. However, the Board had told him to draft the best case he could.

When asked about a memorandum of Sanger's to White dated March 20, 1986, in which Sanger's office made the statement that personnel associated with the MAC contract would have to recuse themselves from ordering their employees or would have to have the Board make a determination that their interest in their company was not a substantial interest, Sanger responded he believed the memorandum said that Bibb should recuse himself from ordering his own people or a determination could be made by the Board under section 208 of the conflict of interest statute. Sanger stated such a determination is a remedy available under the conflict of interest statute. He stated he believed, however, his March 20, 1986 memorandum to White was saying that White would have to have all the facts to make such a determination. He stated he did not recall the details and he would have to refresh his memory by reviewing that memorandum. Sanger advised he was under the impression that as soon as White began working for TVA he intended to run off Bibb. He stated he didn't have any present recollection regarding the details of the Bibb situation.

Sanger advised he ultimately did send a copy of the MAC contract with TVA to the Office of Government Ethics. He stated he did not discuss the violation of the conflict of interest statute in the MAC situation with the United States Attorney's office because it is no longer his responsibility. He advised it is now the responsibility of the Inspector General's office of TVA to discuss such matters with the United States Attorney's office. He stated he had discussed his concerns about the MAC contract with both Steven White, Bill Willis, and the members of the Board; and they had argued about the intent of that MAC contract.

Sanger was asked if he was familiar with a consulting contract between TVA and SWEC in November 1985 when SWEC came to do an evaluation of TVA's nuclear problems. Sanger advised he did not know about the contract until he went to the meeting in Sequoyah in December of 1985. He knew the Board had in the past talked with a former admiral by the name of Wilkinson, who was well known in the Navy nuclear program. He stated Wilkinson, White, and another Admiral by the name of Williams were known as "clean broom admirals." He stated TVA should pay SWEC for their

consulting services. He stated he could recall White talking to him about a contract to pay to SWEC for the consulting services, but he told White that White shouldn't recommend SWEC be paid because White should not place himself in the position to recommend a contract to TVA to pay money to SWEC, a company with which he has an employment relationship. Sanger stated that if SWEC did provide such service, they should be paid; however, details of that arrangement had not been brought to his attention.

Sanger advised in reference to the White situation, he wrote a document to the Board stating that it was not proper to have the contractual relationships between TVA, SWEC, and STEMAR. He stated in the document he wrote to the Board, he had attempted to correct the contractual relationships and even had diagrams on that document to graphically explain the way the relationships should be operating. However, the Board refused to send that document to White. Sanger explained that he is in an awkward position when the Board tells him to draw up the best documents even when he has told them it was not the proper action to take. He stated the Board is entitled to his opinion; however, they do not have to take his opinion. He pointed out it has been rare in the past that they haven't followed his opinions. Sanger explained that he was in an awkward position with the Board when he advised them what he considered to be the proper legal procedures to follow and they acted counter to his advice. He stated he had looked at the canons of law regarding what he could do and determined he had no authority to go to the United States Attorney but did have a concern as to his obligation in such situations, especially as it related to ethics. He stated when the Board asked him to prepare the best case he could, his office did so, even though it had recommended against such actions to the Board.

When asked if Sanger had ever discussed with Hugh Parris TVA's entering into the contractual relationships with White to obtain White's services, Sanger advised that when he was at Sequoyah during the December meeting, he felt personally embarrassed for Parris and as a result did not discuss the matter in detail because he knew that Parris was emotionally concerned regarding the matter. He stated Parris had talked to him about retirement a couple of times prior to his retiring, but beyond that he had not discussed the matter with Parris.

Sanger advised he was also concerned about what employees of BETA Corporation are doing in the TVA nuclear program. He did not know what authority or responsibility they had or even what duties they were performing.

In response to a question regarding his talking with Congressman Cooper in April about the contractual relationships TVA had to obtain White's services, Sanger recalled talking with Cooper and stated the matter came up as an aside. He told Cooper that there was no problem of TVA entering into the contracts it had entered into. He stated he believed his statement to Cooper was prompted by a question asked by Congresswoman Lloyd about the contracts. Sanger told them TVA did have the authority to enter into the contracts, but he did not believe Cooper or Lloyd's question to him asked anything about the conflict of interest statute. Sanger advised he had heard a lot of comments regarding his May 5, 1986 memorandum to the Board concerning the conflict of interest statute. He stated he was not free to respond to anything he had heard being discussed regarding the memorandum because of his position in a lawyer/client relationship to the board. He explained that such a relationship puts him in a bad position when a lot of people are talking

about the memorandum and he cannot personally say anything about it. He stated he would always take the position that TVA had several areas to enter into contracts, such as a standard appointment process, a personal service contract, and authority to enter into contractions under section 9b.

When asked about his response to Congresswoman Schroeder, Sanger advised he was responding to her question to him and he had answered her specific question. He advised it was difficult to get a reply out to her questions. Sanger stated he had also prepared a response to GAO, but the Board would not use his rough draft memorandum in responding to GAO. He stated he told Chairman Dean that Dean's response to GAO did not answer GAO's questions because it did not say anything about STEMAR.

Sanger advised he responded to Chairman Dean's April 1, 1986 memorandum with his written opinion concerning the conflict of interest statutes on May 5, 1986. The reason it took that length of time was because he did not see any reason to turn out anything less than a full product. He believed he needed to respond with a complete answer. He advised he wanted to take a few days to get personally involved and to ensure the response was done correctly. He stated in his opinion the response was a good, solid product and stated that good legal work takes time. Sanger stated he knew Mason was under a lot of pressure during the first negotiation session and he had told Mason that Mason should be accurate in his work because those contracts were bigger and more important than other contracts which had been negotiated in the past.

Sanger stated he had given the interviewers a broad brush view of the situation and stated he knew they had documents they could review regarding a lot of the details. Sanger advised he would get an answer back to the interviewers regarding his interpretation of his March 20 memorandum to Steven White concerning the MAC contracts, as well as would check to determine if his office had any knowledge as to whether SWEC had been paid by TVA for the consulting work they had done for them in November 1985. Sanger advised he would also make available to the interviewing agents a copy of his chronology of events concerning the conflict of interest situation.

DATE: 3-31-86

PROGRAM MANAGEMENT

MEMORANDUM FOR: HENRY GROMKIEWICZ
Director, Division of Internal
Management Control/ISA

FROM: A. A. ROSSI
Director of Information, Privacy
and Investigative Information Systems

SUBJECT: Report No. CO-66-0193

The Secretary of Labor has charged the Inspector General's Office with the responsibility for the direction and control of the DOL Hotline. The IG Complaint Analysis Office which includes operation of the DOL Hotline is responsible for the receipt, review, processing and distribution of all allegations and complaints to the appropriate agency and/or office.

The above-captioned report reflects information received by the IG Complaint Analysis Office which pertains to your component of the Department. The Inspector General has determined from the information available that the complaint lacks criminal investigative merit. This information is transmitted to you for your review and any management action deemed appropriate. Please advise us of the final disposition you take in this matter.

The confidentiality of the complainant is to be protected to the maximum extent practicable.

Contact Ann Baldea (202-0228) or myself (523-9909) if you have any questions concerning this referral or should any evidence of criminal acts, serious misconduct, or reprisal against the complainant surface.

Your cooperation in this matter is appreciated.

Attachment

EXHIBIT 77
Page 1 of 4

complaints against TVA. In only five (5) of the thirteen investigations did CO Seeley find violations of ERA which were charged against TVA. In addition, the Manager of Nuclear Power at TVA, Admiral Steven White has praised CO Seeley's professional abilities in meetings with her supervisor.

In summation, CO Seeley has demonstrated no bias against TVA in investigating complaints filed against it under the ERA and, in Wage and Hour's view, has conducted herself in a professional manner at all times in dealing with that agency.

No further action is planned.

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

Reply to the Attention of



NOV 17 1986

Mr. Guy H. Cunningham, III
Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Cunningham:

This is in response to your letter to Mr. J. Brian Wyland regarding the conduct of a DOL employee in the performance of her duties involving the Tennessee Valley Authority.

The Wage and Hour Division is the agency within this Department that investigates complaints involving Section 210 of the Energy Reorganization Act. Therefore, I referred your letter and enclosures to the Employment Standards Administration, which has jurisdiction over Wage and Hour matters. That agency provided the enclosed memorandum as a result of their inquiry.

If you have any further questions, please give me a call on 523-9909.

Sincerely,

A. A. ROSSI
Director of Information, Privacy
and Investigative Information Systems

Enclosure

EX-51 77
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