

Kelly

1 Said that we have identified problems and we
2 are attempting to resolve them, but Appendix B
3 provides for the occurrence of
4 non-conformances and the method of disposing
5 of them. Therefore, we are in compliance.

6 Now, that was revised. As I said,
7 the March 20th letter, transmittal letter, was
8 revised several times along the way. Those
9 particular words were taken out and alternate
10 words put in. The alternate words are
11 correct. They are a different approach to
12 answer the same questions.

13 Q. What are the alternate words you are
14 referring to?

15 MR. MESERVE: Do you want to look at
16 the letter?

17 THE WITNESS: The alternate words
18 are the words alluding to no pervasive
19 breakdown. Says, I find that there has been
20 no pervasive breakdown in the quality
21 assurance program, and then it goes on to say
22 that problems have been identified and the TVA
23 has remedied or will remedy all identified
24 design, construction deficiencies or
25 non-compliances.

1 That's not saying that we did not
2 find problems. Or that we disagreed with the
3 seriousness of those problems. It's only
4 saying that where we found problems they were
5 being attended to under the broad guidelines
6 of the QA program.

7 Q. Why were the words, no pervasive
8 breakdown used?

9 A. That popped up into one of the
10 revisions, draft revisions of that letter as
11 one way of saying that. That's all. I didn't
12 write those words, but I agree with them.

13 Q. On what basis do you agree with them?

14 A. I agree with them on the basis that, as
15 I defined pervasive, they are precisely
16 correct.

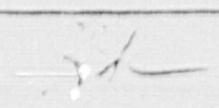
17 Q. How do you define pervasive?

18 A. Extending into all parts. That's not
19 quite the Webster's dictionary, but close.

20 Q. The last time we discussed this, I
21 believe you talked with myself, Mr. Thompson
22 and Mr. Richardson, and let me read you what
23 our notes indicate your definition was.

24 A. Okay.

25 Q. Tell me if this is correct. You said,



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1 pervasive breakdown meant wrong in every
2 respect. Then we asked you to amplify on that
3 and the basic result was that to have a
4 pervasive breakdown every aspect of every
5 criteria would have to be violated.

6 A. Yes.

7 Q. And we used an example with you, we said
8 if there were a thousand requirements and nine
9 hundred and ninety-nine were violated, but one
10 was complied with, there would not be a
11 pervasive breakdown by that definition.

12 A. By that definition.

13 Q. By that definition.

14 A. Right.

15 Q. That's the one you agree with or that
16 you used in this --

17 A. That's a definition that I can agree
18 with. I also could agree with the one I just
19 gave you, extending into every part.

20 Q. Is there a difference?

21 A. Semantics.

22 Q. Well, is there a difference between what
23 you said here and what you said there?

24 A. If you had a thousand items and nine
25 hundred ninety-nine were wrong and one was

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1 right, I'm not sure I would not call that a
2 pervasive breakdown. Now, if you want to
3 argue semantics, if one right out of a
4 thousand changes, where I fall on this, I
5 think it's kind of picky. I'm just giving you
6 a broad definition, my understanding of
7 pervasive, that virtually everything is
8 wrong. Extend into all parts of the program.

9 Q. So, virtually everything is wrong, every
10 aspect of every criteria would have to be
11 violated?

12 A. Right.

13 Q. Is it possible, in your opinion, to have
14 such a breakdown?

15 A. Not in any reasonable stretch of the
16 imagination.

17 Q. Has there ever been a situation in the
18 United States nuclear power program where
19 there has been such a breakdown?

20 A. I can't recall one. I've never heard of
21 one, and I don't expect I ever will.

22 Q. Let's say that letter --

23 A. If we ever had one, I would say that
24 obviously the NRC is not staying home and
25 paying attention to its job.

1 Q. Okay.

2 MR. MESERVE: May I just ask, I
3 mean, you are talking about a hypothetical of
4 a pervasive breakdown with this tremendous
5 description of, I guess, every aspect of every
6 criteria violated. Based on his review of the
7 various documents available on March 20th, did
8 you see anything that approached every aspect
9 of every criteria being violated?

10 THE WITNESS: No, we did not. We
11 did not find any of the activities in these
12 eleven issues that we felt was in
13 non-compliance with Appendix B. We found many
14 of them had, in fact, at one point of time had
15 a non-conformance with the requirements. Most
16 cases that requirement is some technical
17 requirement or some code or standard.
18 Appendix B is a management system outlining
19 basic approaches to controlling your
20 activities. It provides for lapses in those
21 controls and tells you what to do with them.
22 What we found was that there had been lapses
23 in the TVA system, mostly in compliance with
24 technical requirements, and that they were
25 following out the instructions or the

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1 requirements contained in Appendix B to
2 result.

3 So, the way I looked at it, that
4 does not represent a non-compliance with
5 Appendix B. That is series of violations of
6 requirements which are unacceptable and must
7 be fixed, but not a non-compliance to Appendix
8 B. Instantly other people might differ. You
9 know, when you have a single bad weld, often
10 times the NRC people and other people say that
11 represents a non-compliance to Appendix B. As
12 soon as you get that into a controlled
13 non-conformance system it now falls in
14 compliance with Appendix B. That doesn't help
15 you much, but --

16 BY MR. REINHART:

17 Q. I'm following you. Let me ask this: If
18 Mr. White had taken out that word pervasive
19 and said that I find that there has been no
20 breakdown of the quality assurance program,
21 could you have concurred with that statement?

22 A. No, I would not concur with that
23 statement.

24 Q. Why not?

25 A. Because the record, the attachments we

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1 were sending, listed large number of
2 non-conformance, each one of which
3 individually represents a non-compliance to
4 Appendix B. If somebody wants to call it
5 that.

6 Q. What if he said, I find there has been
7 no widespread breakdown of -- the quality
8 assurance breakdown?

9 A. Now I ask you to define widespread.
10 Extending into every part?

11 Q. I don't know. That was the phrase you
12 used with us the last time we had the
13 interview. That's why I'm feeding it back to
14 you.

15 A. Right. Well, I probably would not have
16 endorsed changing pervasive to widespread,
17 because that, again, you need to calibrate
18 it. Widespread, that can be defined as a lot
19 or almost all or a large number.

20 Q. Well, in translating this the way it was
21 written and the way you defined -- and if I
22 remember correctly, you explained your
23 definition to Mr. White and he understood
24 that, is that correct?

25 A. Yes, I did.

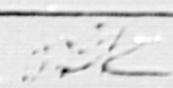
1 Q. Did he accept that definition as the
2 definition to be used when everybody signed
3 off?

4 A. Yes, he did.

5 Q. If that's what he's saying when he says,
6 I find there has been no pervasive breakdown,
7 what he was really saying, I find that not
8 every aspect of every criteria has been
9 violated. Therefore, he really didn't answer
10 the question.

11 A. You are trying to take things out of
12 context in that letter. That letter goes on
13 to say a couple of other things, too. True,
14 he says there is no pervasive breakdown, and
15 by the definition we've talked about and I
16 think he agrees with, we did not find that
17 there had been a breakdown which extended into
18 every part of every criteria, but he goes on
19 to say that problems have been identified and
20 that TVA has remedied or will remedy all
21 identified design, construction deficiencies
22 on non-conformance and that accordingly the
23 overall QA program is in compliance.

24 Now, we are saying that we found
25 problems. We said, if you'll read the ten or



1 eleven attachments, there were a lot of
2 problems. And that some of them were
3 significant. We gave you non-conformance
4 numbers where we had them. We listed things
5 that were called significant condition
6 reports, which were more serious than
7 non-conformances. We even identified things
8 that were so serious they required reports to
9 the commission under the 5055 E rules.

10 So, we were not saying we didn't
11 find problems. If you had asked -- if Mr.
12 Denton had asked a single question in that --
13 in his January 3rd letter, either one of the
14 two questions we thought he asked, we could
15 have answered it more sharply, more cleanly,
16 but he asked for both.

17 Now, he asked for them in two
18 pieces, one being response in six days and one
19 being a response thirty days later. As it
20 turned out, because of White's showing up on
21 the scene and agreements from the
22 commissioners that we could have more time to
23 review the matter more thoroughly, it ended up
24 being treated as one response. Those two
25 issues are difficult to couple. One is a

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1 statement of are we now in compliance. And if
2 we had answered that question only, we could
3 have said that we have a significant number of
4 problems. All we know of on the subject of
5 non-conformances are being worked on and based
6 on criteria fifteen and sixteen provisions of
7 Appendix B we are in compliance to the best of
8 our knowledge. We could have said that
9 cleanly and sharply. But when we muddied the
10 water by dragging all history in, the
11 implication is, you should also make a
12 statement, were they always in compliance. We
13 are not -- we weren't in a position to answer
14 that. Today we are not in a position to
15 answer, were they always in compliance. We
16 didn't set out to find out. We set out to
17 correct the problems. We did not spend a lot
18 of time rehashing old sins.

19 Q. Okay. Let me explain the problem I'm
20 having in understanding the paragraph. It's A
21 is true, B is true, therefore C is true. A
22 is, there is no pervasive breakdown, B, we
23 identify problems we fix problems, B, and, C,
24 therefore, the overall QA program is in
25 compliance. A, there are no pervasive

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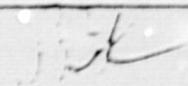
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1 breakdown, based on the definition, it's an
2 impossible situation to achieve, therefore, A
3 doesn't tell me anything. So, I'm down to B.
4 B says, I'm identifying problems and I'm
5 fixing problems, therefore, the overall QA
6 program is in conformance with respect to 10
7 CFR 50, Appendix B. I wonder why under A that
8 doesn't mean anything and then why come down
9 and modify with overall QA program, rather
10 than just answer the question that was asked.

11 A. Are you asking me a question or are you
12 speculating?

13 Q. I'm -- can you help me get a better
14 perspective on that?

15 A. Well, pervasive has some meaning.
16 Primarily in the licensing of nuclear plants.
17 It's -- I don't know of any place that it's
18 specifically used in the regulations, but it's
19 certainly been entered into licensing
20 proceedings, the Diablo Canyon and Calloway,
21 two specifics, where it was utilized as part
22 of an ASLB determination when there were
23 significant contentions about QA programs. It
24 has some precedent. It had some specific
25 meaning in that arena. It was interjected not



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1 by me into this letter, but by other people
2 commenting on the letter, and I had no problem
3 with it. It has meaning. You say that it's
4 an impossible situation. Well, it's not --
5 it's not theoretically impossible and it has
6 precedent. Two ASLB judges utilized it in
7 rendering decisions.

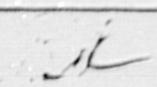
8 Q. In the ASLB proceedings wasn't it with
9 respect to intervenors and intervenors had
10 introduced the term and the judges came back
11 and said, no, we don't find anything that
12 makes this plant not licensable, therefore --

13 A. I believe you are probably right. It
14 was introduced by intervenors.

15 Q. So that really isn't the context of what
16 we are talking here at all. Not really a
17 licensing basis. It's not used in standard
18 licensing documentation.

19 A. Not usually. Not in an application.
20 It's only when you have a contention.

21 Q. So, back to my question. The problem
22 I'm having with the letter that I'm asking for
23 help on is the definition you gave that you
24 explained to Mr. White that presents a premise
25 for the conclusion, a premise which is



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1 impossible to not have, therefore, you have
2 it. It doesn't really lend a lot of weight on
3 down to the conclusion.

4 A. I get the feeling that you have
5 preference to how you would like the words to
6 read. Several people had preferences as to
7 how they'd like the words to read, including
8 me, and mine wasn't necessarily those specific
9 words, but that doesn't make them invalid.

10 Q. I don't have a preference. I'm just
11 trying to get some help in understanding why
12 this is a basis for the conclusion.

13 A. The conclusion being overall QA program
14 is in compliance?

15 Q. Yes. With 10 CFR 50, Appendix B.

16 A. Is it untrue? My question to you. Is
17 any part of that three -- actually there is a
18 colon, a semicolon, two thoughts in that
19 sentence, but is any part of that sentence
20 incorrect? We didn't find it to be
21 incorrect. They are somewhat disconnected,
22 but valid.

23 Q. Well, I'm saying, to say the overall QA
24 program is in compliance with 10 CFR 50,
25 Appendix B, for a person to say every aspect

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1 of every criteria was not violated, therefore,
2 the overall program is in compliance, I don't
3 think follows logically. I think you need a
4 stronger basis to say the overall QA program
5 is in compliance.

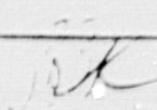
6 A. Well, I guess you are entitled to your
7 opinion on the subject.

8 MR. MESERVE: It doesn't say that,
9 because you are omitting the intermediate
10 phrases.

11 MR. REINHART: I understand. Why is
12 premise A a conclusion, a basis for the
13 conclusion? I'm just asking why.

14 MR. MESERVE: Even if it's
15 superfluous or redundant, so long as the
16 conclusion follows from the previous
17 statement, doesn't make it inaccurate. I
18 think that's his point, is the pervasive
19 breakdown, as defined, nobody has said that
20 that was inaccurate, that there was a
21 pervasive breakdown. Maybe that's not
22 necessary to reach the conclusion, but the
23 factors that are necessary to reach the
24 conclusion are stated in that paragraph.

25 BY MR. REINHART:

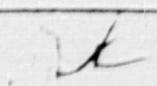


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1 Q. Well, let me try it another way. If A
2 says, there is no pervasive breakdown, which
3 means not every aspect of every criteria has
4 been violated, that being a nearly impossible
5 situation to achieve, does it make it untrue,
6 okay? It's impossible to achieve, we didn't
7 achieve it, therefore, that's not, in itself,
8 incorrect, but that leads us to premise B,
9 saying we've identified and will correct all
10 these problems. Is that enough to
11 substantiate that the overall QA program is in
12 compliance with 10 CFR 50, Appendix B?

13 A. Yes, it is. It is enough by itself to
14 have identified all the problems. Earlier
15 drafts, as I said, that we worked on, although
16 more explicit and more pointed to that issue,
17 relied on that as the basis for reaching a
18 conclusion to respond to the January 3rd
19 letter. If you control conforming conditions,
20 that doesn't make them desirable, but it also
21 doesn't make you in non-compliance to Appendix
22 B.

23 I've never seen a plant that has not
24 had a large number of violations of some
25 requirement. Usually some that get directly



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1 to the QA program. So long as you fix them
2 and you make that correction complete and
3 extensive so that you don't leave anything
4 unresolved, unacceptable, you end up with a
5 plant that is acceptable under Appendix B.
6 Now, at any instant point in time you could
7 argue about it, but the commission, itself,
8 has reviewed many, many plants, something over
9 a hundred of them, each one of those plants
10 has had large lists of non-conforming
11 conditions, many discovered and identified by
12 the NRC, that were satisfied, were resolved
13 and the NRC then reaches a conclusion, usually
14 in it's SAR, that plant complies with Appendix
15 B. That's a word that your own organization
16 uses.

17 Q. Does not a QA program require more than
18 criterion fifteen and sixteen?

19 A. It certainly does. There are eighteen
20 and they are all required.

21 MR. REINHART: Fine.

22 MR. MURPHY: Why don't we break at
23 this time. It's now 12:18.

24 (Recess is called.)

25 (Resumed.)

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1 MR. MURPHY: It's now 12:52 and we
2 are back on the record.

3 BY MR. WILLIAMSON:

4 Q. Mr. Kelly, in the March 20th, 1986
5 letter from Mr. White to Mr. Denton, the
6 statement, there has been no pervasive
7 breakdown of the quality assurance program is
8 made. You mentioned that there were some
9 problems with implementation of the quality
10 assurance program earlier. Aspects of the
11 quality assurance program. Could you say that
12 there had been a breakdown in the
13 implementation of various aspects of the TVA
14 quality assurance program?

15 A. I wouldn't say that. That may be true
16 and I didn't look at it that way. I would
17 think that there probably were breakdowns.
18 They have been -- we have found breakdowns in
19 what we have looked at since the March 20th
20 letter. We found instances where the QA
21 program broke down. I wouldn't be at all
22 surprised if there weren't others. Virtually
23 every 5055 B report, and there is a number of
24 them, sixty or seventy this year, represent
25 potential breakdowns of QA program.

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1 BY MR. REINHART:

2 Q. Sixty or seventy in 1987?

3 A. I think that's the number.

4 MR. REINHART: Okay.

5 BY MR. NORTON:

6 Q. Mr. Kelly, you mentioned that the term
7 pervasive breakdown wound up in one of the
8 drafts. When?

9 A. I don't precisely know the date.
10 Somewhere in the middle of the process.
11 Sometime between mid-February and 20th of
12 March. I don't know exactly what.

13 Q. Who originated the term?

14 A. Who originated the term or who
15 interjected it --

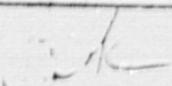
16 Q. In this process.

17 A. In this process, I believe it probably
18 came from George Edgar.

19 Q. Why do you say that?

20 A. He was consulted as to -- along the way
21 by Steve White, and my recollection is that
22 that term was suggested by him and it would
23 seem reasonable, because that's the licensing
24 type terminology and that's his forte.

25 Q. Would you identify Mr. Edgar?



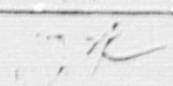
1 A. George Edgar is an attorney in
2 Washington. I'm not sure of the name of his
3 company, but he's very active in licensing of
4 nuclear plants.

5 Q. You mentioned that you believe that he
6 was consulted by Mr. White and that's where
7 the term came from. Did Mr. White tell you
8 this?

9 A. I don't recall who told me specifically.

10 Q. Why was Mr. Edgar consulted? Did Mr.
11 White say that I'm going to send this letter
12 to Mr. Edgar?

13 A. As I indicated, I don't recall
14 specifically whether White told me or not. I
15 knew that a copy of some of the drafts had
16 been sent to George Edgar. George Edgar, by
17 the way, was an attorney for Steve White in
18 conjunction with the formation and contracts
19 with Stamar, so he was not involved in the TVA
20 business, except to the extent that he was
21 negotiating contracts with them for the --
22 with Steve White. In this case, it just so
23 happened that George Edgar's business involves
24 dealings on Appendix B type questions and
25 Steve White consulted with him. I believe he



1 consulted with lots of people. I don't know
2 all of them and I was -- I'm not sure who told
3 me that he was consulted. It may have been
4 Steve White or it may have been somebody else.

5 Q. During this process of the review of
6 what became the March 20th letter, did someone
7 explain to you the derivations of the term,
8 pervasive breakdown?

9 A. No.

10 Q. I mean, how did you know that it came
11 from licensing proceedings in the Diablo
12 Canyon and Calloway?

13 A. I had read the Diablo Canyon and
14 Calloway decisions before I went to TVA. I
15 knew the context in which it had been used. I
16 monitor the nuclear industry generally, as
17 well as having direct quality assurance
18 activities on Stone & Webster plants. I also
19 had people work at Diablo Canyon, prior to
20 licensing. Other facilities. So, I was
21 familiar with the decisions where pervasive
22 came into play and in that context or when
23 that word was used White asked me to define it
24 and I gave him a definition and then went and
25 got Webster's dictionary and read him that,



1 too. It was close to -- it's not exactly what
2 I have given here, but it's close to that.

3 Q. Was that, the definition you gave Mr.
4 White, was it the definition we discussed
5 earlier today?

6 A. The one where I defined it as extending
7 into every part. That was essentially the
8 context that I explained it to him, but, as I
9 said, we then looked it up and went to the
10 dictionary and it had a very similar
11 definition, a little more formal.

12 Q. Were there any other participants in
13 this discussion?

14 A. About the meaning --

15 Q. About the term. About the term
16 pervasive breakdown?

17 A. Yes. There were two or three other
18 people there and I'd be guessing at who they
19 were, but there were other people in the
20 room. Probably Houston and Gridley, but it
21 could have been other people.

22 Q. Did anyone have a different definition
23 of the term breakdown?

24 A. Nobody offered one.

25 Q. Did anyone -- I'm not limiting it just



1 to this one discussion with Mr. White, up
2 until the time that the letter was sent out,
3 did anyone differ over what the term pervasive
4 breakdown meant?

5 A. No. Not that I know of.

6 Q. Did anyone object to the use of the term
7 pervasive breakdown?

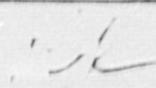
8 A. No.

9 Q. Did you have any discussions with Mr.
10 White or anyone at TVA, for that matter,
11 concerning the realistic possibility of there
12 ever being a pervasive breakdown?

13 A. No, we didn't. Didn't discuss that.
14 First one that's raised that in that context
15 is Mark.

16 Q. Was there any discussions with anyone at
17 TVA concerning the possible consequences to
18 TVA's nuclear program of a positive response
19 to the March 20th letter? By positive
20 response, I mean having to admit that we were
21 not in compliance with Appendix B?

22 A. Yes, there were discussions along that
23 line. I had discussions with several people
24 about the consequences of a pervasive
25 breakdown, you know, a total failure in the QA



1 program.

2 Primarily they centered around not
3 the issue of whether there had been or had not
4 been a major failure, but about what would
5 happen, about who could resolve the issues, if
6 that was the call, because, obviously, NRC
7 would have been found derelict in its duties
8 if they had not seen a major QA breakdown in
9 TVA, and the concern was if NRC is not in a
10 position to make a judgment as to the adequacy
11 of the program, if the reflection is on NRC's
12 ability to perform such a judgment, then
13 whoever authorized the licensing of a nuclear
14 plant or the restart of a TVA plant. There
15 was significant concern, mostly centered
16 around the consequences to the NRC, not to the
17 TVA.

18 Q. With whom were these discussions?

19 A. I had that kind of discussion with Jim
20 Houston. I probably had it with Larry Nace.
21 Conceivably some kind of discussion of that
22 kind might have been held when Steve White was
23 present. I don't remember.

24 Q. Mr. Wegner or Mr. Bass?

25 A. Wegner was there for part of -- for at

1 least similar discussions to that, yes.

2 Q. Anyone with the NRC?

3 A. Nobody from the NRC. But, don't forget
4 that the NRC was being chided rather heavily
5 precisely at this time. There were
6 investigations of NRC's performance and
7 credibility. They were being criticized
8 heavily by a couple of subcommittees in
9 congress. So, we had a concern along those
10 lines.

11 Q. That was my next question. Was this
12 letter -- the individuals who participated in
13 drafting this letter and in finally approving
14 it, was there a realization on their part
15 that, in addition to being addressed to the
16 NRC, this letter was being addressed to
17 congress and/or the public?

18 A. I think there was a realization that
19 this letter would get reasonable amount of
20 focus. Everything that was going on was
21 appearing in the paper daily. There was six
22 to ten articles in the paper every day about
23 events going on at TVA. Every letter sent,
24 everything received from the NRC, every
25 commissioner's visit. Congressional caucuses,

nd

1 opinions. There was a lot of press. Not all
2 of it favorable. As a matter of fact, most
3 all of it was not favorable to anybody.

4 So, yes, it was recognized. That
5 didn't change what we had to deal with,
6 though. We had to deal with the facts and we
7 were concerned if we made -- if we reached a
8 conclusion that we had a breakdown, massive
9 breakdown in the QA program, what the next
10 step was, but that didn't enter into the
11 decisions or the judgment as to the actual
12 call made.

13 Q. But, did it enter into the judgment to
14 use the term pervasive breakdown?

15 A. I don't know. I don't know. As I say,
16 I didn't suggest that term. I did not object
17 to its use, but, I didn't put it in.

18 Q. Do you know if anyone ever made a
19 suggestion that perhaps TVA should respond
20 that, yes, we have had a significant breakdown
21 or a breakdown in the QA program?

22 A. Not precisely in those words, but some
23 of the drafts along the way said that we have
24 had numerous -- I'm not sure whether we used
25 the word breakdown. We used the word

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1 non-compliances or failures to comply, but
2 those were in various drafts along the way.

3 Q. What was your view of those drafts?
4 Your own personal view?

5 A. I wrote a couple of them, so I thought
6 they were peachy.

7 Q. We've had -- let me ask you this, Mr.
8 Kelly. Are any of those drafts still in
9 existence?

10 A. I had one. That's all I know that still
11 exists. There may be others, but I had one of
12 them which I think I gave to Mark in
13 Washington the last time we talked about this
14 subject.

15 MR. REINHART: We have a draft.

16 THE WITNESS: Well, one of them has
17 my handwriting on it.

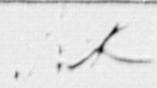
18 MR. REINHART: Right.

19 THE WITNESS: That's the only one I
20 know of that exists.

21 MR. REINHART: That's the one that
22 we got a copy of from Jim Houston.

23 THE WITNESS: There may be others,
24 but I don't know of them.

25 BY MR. NORTON:



1 Q. Okay.

2 A. Some of these drafts we had to put the
3 time of day on them, because at some stages of
4 this there were three or four revisions of
5 that letter each day.

6 Q. Why did the tenor of the draft change
7 from what you just described, in other words,
8 acknowledging that there had been some
9 significant deficiencies, is that the word you
10 used, in the QA program, to this terminology
11 of no pervasive breakdown? In other words,
12 the letter seems to have changed substantially
13 from the earlier drafts to the final version.

14 A. The wording changed. The intent
15 didn't. The intent never was to deny the
16 existence of problems. We did not, even at
17 the end. The tone changed substantially along
18 the way several times.

19 Q. Why?

20 A. Most every time Bill Wegner -- it got to
21 Bill Wegner it was totally rewritten. And
22 turned around. That's just the way he is. He
23 has his own style and he rewrote inputs
24 several times and they were recycled and he
25 changed his own.

Bill

1 Q. Yes. Did Mr. Wegner ever express his
2 reasons, though?

3 A. He liked it better.

4 Q. Did he point out any deficiencies in the
5 earlier drafts?

6 A. No.

7 Q. That he wanted to correct?

8 A. Not that I can recollect. It was style,
9 mostly. His style of saying things.

10 Q. Realizing that I'm in danger of
11 rehashing something we've covered extensively,
12 but I wanted to ask you, in light of the
13 definition of pervasive breakdown, does the
14 following phrase convey any information
15 whatsoever? I find that there has been no
16 pervasive breakdown in the quality assurance
17 program.

18 A. Yes. It conveys some information.

19 Q. What is that?

20 A. You are taking it strictly out of
21 context. That conveys there hasn't been a
22 total failure in the QA program. If you want
23 to talk about the problem of big QA's and
24 little QA's. Lots of meanings to these
25 things. Normally, QA, large QA, means the

1 assurance program done by quality assurance
2 people. That's not where most of the failures
3 occur. Most of the failures occur in the
4 small QA program done by construction people
5 and engineering people. That's quite common
6 to have a lot of problems in there. They are
7 not deemed to be too significant, even if they
8 are costly to repair sometimes. More dramatic
9 one is where the QA organization fails to
10 provide something. That use indicates that
11 the QA, that connotation, the large QA
12 organization did not fail to any significant
13 degree.

14 Q. Well, correct me if I'm wrong. I
15 thought earlier we had -- you had said that
16 there had been some breakdowns in the QA
17 program, meaning the larger QA, is that
18 correct?

19 A. In that sense I'm talking QA, small QA,
20 meaning all the assurance activities by all
21 the people. There are -- obviously also has
22 been some breakdowns in the large QA
23 organization program. That is the activities
24 of the QA organization, because they didn't
25 ~~expect~~ expect some things, so that's a breakdown in

1 the large QA.

2 Q. Welding?

3 A. Welding.

4 Q. Breakdown in the large QA, correct?

5 A. Breakdown in both, because the craftsmen
6 did it wrong and the inspector didn't inspect
7 it, so that's a breakdown in both areas.

8 Q. What about the term, the overall QA
9 program. How did that originate?

10 A. I don't recall. I really don't.

11 Q. Could we have said the QA program is in
12 compliance with Appendix B?

13 A. We could have, but that would have been
14 more argumentative, I think, than putting the
15 overall.

16 Q. Would you have agreed with that
17 statement, the QA program --

18 A. I probably would have drawn back from
19 that statement.

20 Q. Why?

21 A. Because there were instances -- there
22 are always instances where something is
23 happening that violates the requirements.
24 Now, any time you violate a requirement it's
25 argumentative whether it's a compliance or

JK

1 non-compliance with Appendix B. I've been
2 through that. I've been through thirteen
3 years of that kind of argument and I have it
4 relatively easy at Stone & Webster because I
5 define when something is in compliance or not
6 in compliance with Appendix B for Stone &
7 Webster. I make the determination. Nobody
8 argues with me. You guys won't let me do
9 that. You insist on reserving that right to
10 yourselves.

11 I know where the arguments lie. The
12 arguments lie each time you have something
13 that violates a requirement you get a purist
14 that defines that as a breakdown in compliance
15 with Appendix B. And it is, but that's
16 provided for in Appendix B and, therefore, I
17 say it's a semantics problem. It's not a real
18 issue.

19 Q. Did you see the -- at the time of the
20 March 20th letter that was being prepared did
21 you see the NRC's question as strictly a
22 semantics problem?

23 A. No, I didn't. I guess I had some
24 strange reactions to the NRC question, the
25 January 3rd letter. That's because the way it

Mark

1 arose, came out. It came up because
2 Commissioner Asselstein had been shown
3 information which had been prepared by a
4 couple of individuals as their own position
5 and when given an objection that that did not
6 represent TVA's position, that was a
7 representation by a couple of individuals,
8 this issue was blown up.

9 The normal course, if Commissioner
10 Asselstein hadn't been present at that
11 meeting, the differences would have been
12 ironed out and a position would have been
13 reached or a position would have been taken,
14 even if somebody objected, that objection
15 would have been processed independently. In
16 this case the question was being posed in
17 order to satisfy an obvious disagreement on a
18 couple of points. When I looked at those
19 points I found that, in substantial number of
20 the basic issues, the NSRS people, the
21 individuals, were interpreting things
22 incorrectly. They were interpreting Appendix
23 B requirements as they chose to interpret
24 them, not as they were reasonably represented
25 by NRC enforcement actions. There was no

SK

1 reaching an agreement on those.

2 Now, normally that would have been
3 handled by an employee concern. In this case
4 it was being handled by presentation of
5 differing professional opinions to one of the
6 commissioners.

7 I recognize that that's a political
8 problem within the NRC and that's what we were
9 explaining to. Political problem within the
10 NRC. Worded the way this January 3rd letter
11 was, it was a difficult question to answer,
12 couched as it was.

13 Q. You mentioned earlier along the line of
14 it being a difficult question to answer that
15 really the NRC was asking two questions.

16 A. Right.

17 Q. And that it would have been simple to
18 answer either one. But that combining them
19 made the March 20th letter a very difficult
20 letter.

21 A. That's correct.

22 Q. Wasn't it your choice to combine them,
23 the two?

24 A. Not after the thirty -- not after the
25 six day request had been extended beyond the

:k

1 thirty day response requirement. Then we had--
2 to respond to Mr. Denton's letter. We felt we
3 had to respond to the whole letter.

4 Q. Did anyone consider or attempt to go
5 back to the NRC and say, redefine what you are
6 asking us or clarify what you are asking us?

7 A. I don't think anybody went back. I
8 don't know.

9 Q. Was there any consideration given --

10 A. Not that I know of. We had -- you know,
11 there were other inputs to this. I had talked
12 to NRC people about the instant, if they had
13 any problem with the QA program, as it was
14 being conducted in February and March of
15 1986. You had inspection personnel all over.
16 You had people out of region two that had the
17 duty for watching compliance with the
18 program. I talked to a number of people. I
19 found nobody who thought that we were not in
20 compliance with Appendix B in the NRC staff.
21 That was instant, then, not past.

22 Past there was obvious evidence in
23 the record, via the 5054 letter that had been
24 issued by the commission in the fall of '85,
25 where they had significant concerns and

1 problems. No NRC person I know of was going
2 to take an issue with those letters that were
3 on the record.

4 Q. One definitional point before I move
5 on. Does there have to be a pervasive
6 breakdown in order not to be in compliance
7 with Appendix B? Can you be in non-compliance
8 with Appendix B short of a pervasive
9 breakdown?

10 A. You can be in non-compliance to parts of
11 Appendix B and often are.

12 Q. I understand that, but can you be in
13 non-compliance with Appendix B?

14 A. I'll defer that definition to the NRC.
15 I'm not going to answer that. I don't know
16 the answer to that. I have a judgment, but I
17 think my judgment is irrelevant in that
18 regard.

19 Q. What was your judgment at the time this
20 March 20th letter was being prepared?

21 A. My judgment was that as long as you
22 recognize and control non-compliances, you are
23 in compliance with the intent and requirements
24 of Appendix B.

25 Q. When you say recognize and control,

1 non-compliances, are we speaking primarily of
2 a corrective action program?

3 A. Some cases it's stopping work. There
4 were stop works issued, which prevented
5 mistakes from being made by stopping the work
6 until we re-oriented our program.

7 Q. Was your understanding of a
8 non-compliance with the Appendix B program,
9 was this discussed among Mr. White and/or his
10 advisors?

11 A. Yes. All of the -- each one of the
12 attachments was extensively discussed.

13 Q. No, I'm sorry. Maybe I wasn't clear in
14 my question. I mean your understanding that
15 you just mentioned to us, about being in
16 non-compliance with Appendix B overall, was
17 that discussed with Mr. White and/or his
18 advisors?

19 MR. MESERVE: Being in
20 non-compliance or compliance?

21 MR. NORTON: Non. Non.
22 Non-compliance. Not being in compliance.

23 THE WITNESS: We had discussions --
24 I had discussions with White about what it
25 takes to be in non-compliance, and how that's

26

1 been looked at by various bodies, including
2 the NRC and others. We did discuss that you
3 have failures to comply, you have
4 conformances, you have deviations, you have
5 reportable conditions, what they were, and
6 that although each may represent a
7 non-compliance of Appendix B, they are not
8 considered to render the program in
9 non-compliance to Appendix B. We did discuss
10 that kind of thing.

11 BY MR. NORTON:

12 Q. Did you also discuss with Mr. White, so
13 long as you had the ability to identify issues
14 and then to schedule corrective action, that
15 that would prevent the program from being
16 in -- overall program from being in
17 non-compliance?

18 A. Yes, we discussed those and we discussed
19 timely, that is, in the regulations in
20 Appendix B there is words timely, corrective
21 or prompt corrective action, I guess. We
22 discussed that extensively, because one of the
23 issues is incomplete or ineffective corrective
24 actions. That's one of the eleven issues.
25 That one was one of the more difficult ones.

JK

1 so we had extensive discussions about what the
2 prompt corrective action was.

3 MR. REINHART: Can I ask a
4 question?

5 MR. NORTON: Just a second, Mark.

6 BY MR. NORTON:

7 Q. Mr. Kelly, have you ever known an -- the
8 QA program or a QA program, not aspects of it,
9 but a QA program to be in non-compliance with
10 Appendix B?

11 A. Well, of course there are lots of them
12 that aren't in compliance with Appendix B,
13 that aren't intended to be.

14 Q. I'm sorry. I didn't hear you.

15 A. There are a lot of them that aren't
16 intended to be, but those that are intended to
17 be, that are committed to Appendix B.

18 Q. Correct.

19 A. I know some -- I don't know of any that
20 have been totally in non-compliance, although
21 I've seen some that are substantially at
22 variance with it and had substantial
23 non-compliances, which are unacceptable. The
24 program was unacceptable because too much was
25 in non-compliance.

with

1 Q. Could this letter -- would you have
2 agreed with this letter, March 20th, 1986, if
3 it had said that the overall QA program does
4 not have any substantial variances from
5 Appendix B?

6 A. Probably not.

7 BY MR. REINHART:

8 Q. You mentioned some NRC persons that you
9 talked to around the time frame regarding how
10 they felt about compliance. Do you remember
11 who they are? Could you tell us who they are?

12 A. Al Belisle, Mark Reinhart in the
13 interview in Washington, Hugh Thompson and I
14 discussed that. You were there.

15 Q. These people told you what?

16 A. Agreed that as best they knew the
17 program was in compliance in March.

18 Q. Let me just pick one specific person
19 here. You say Mark Reinhart told you that?

20 A. No. I said you were present.

21 Q. I see. Hugh told you that? Hugh
22 Thompson told you that?

23 A. He agreed with that during that
24 discussion.

25 Q. So, Hugh Thompson and Al Belisle felt --

JK

1 A. Individually.

2 Q. Right.

3 A. I'm not sure either one of them was on
4 the record when they said it.

5 Q. Okay.

6 A. I'm just saying I consulted with other
7 people to see if they had any specific hot
8 spots. Belisle, early on, because he was
9 there shortly after I arrived in February.
10 But there were other people that also -- my
11 staff talked to other people about things.

12 MR. REINHART: Okay.

13 BY MR. NORTON:

14 Q. One final question. Mr. Kelly, was
15 there any objections at all to concurring in
16 the final draft of the letter?

17 A. Sort of. There was one person that
18 objected to it and it's not a direct
19 objection. Kermit Whitt had some
20 reservations. When we had the final review
21 Steve White asked us to sign it, indicating
22 that we agreed with everything in it and we
23 had been through with each of the groups in
24 the line organization to give them a final
25 review and ask them to sign that they agreed

1 with what they presented. Steve White did the
2 same thing to myself, Gridley, I think Bill
3 Drotleff and Kermit Whitt. Each of us signed
4 it as agreeing with the content of the letter
5 and the attachments.

6 Kermit later had some reservations
7 and Dick Gridley noted those on the
8 concurrence sheet, that Kermit was signing
9 that he had read the Appendix B, the March
10 20th letter, not that he agreed with it,
11 although personally in the discussions he said
12 he agreed with it, he personally agreed with
13 the March 20th letter, but if he signed as
14 having concurred in it, he could not -- no
15 longer control his organization, which was the
16 NSRS people. They would think he betrayed
17 them, so he -- his signature, in that case, he
18 was saying, was that he -- all he was signing
19 for was that he had read it, not that he
20 agreed with it, although he personally didn't
21 have any problems with it.

22 Q. Did Mr. -- during this approval process
23 of the final letter did Mr. Whitt ever
24 indicate that he did think that there had been
25 a breakdown in the corrective action program?

JK

1 A. Not that I heard.

2 Q. Or any breakdown in any QA area?

3 A. Not except those that had been put in
4 writing.

5 Q. The ones included in the letter?

6 A. Yes.

7 MR. NORTON: Okay.

8 BY MR. ROBINSON:

9 Q. A couple questions, Mr. Kelly. We've
10 had a lot of discussion about semantics and
11 terminology and the meaning of words here.
12 And I think you've indicated that there were
13 some discussions like that that went on
14 between you and Mr. White's staff in the
15 preparation of the letter, is that correct?

16 A. Right.

17 Q. Why did those discussions go on?

18 A. We were reviewing a draft of the letter
19 and talking about what the letter meant,
20 represented.

21 Q. Was there either an expressed or an
22 implied fear of submitting a material false
23 statement to the NRC?

24 A. I don't recall any discussions of that
25 prior to the March 20th letter being sent.

JK

1 First discussion I recollect of that was
2 sometime in June. June, July-ish after one of
3 the -- after it was -- those words appeared
4 either in the press or in accusations from
5 some Dingell Committee staff. It came up
6 after that.

7 Q. You indicated that one of the major
8 concerns either in your mind or in Mr. White's
9 staff's mind in the ramifications of saying
10 that you weren't in compliance would have been
11 to kind of protect the NRC's integrity. Is
12 that correct?

13 A. We had no control over the integrity of
14 the NRC. We didn't feel it was desirable to
15 throw rocks at the NRC. I mean, an easy
16 response to this January 3rd letter, as far as
17 White was concerned coming in cold, not having
18 any responsibility, would have just been to
19 send back a letter saying, yes, we probably
20 are in non-compliance, but we are going to fix
21 it. That would have basically got everybody
22 off White's back, but we didn't -- he or I
23 didn't feel that was a responsible position to
24 take.

25 We looked on this as a serious

1 matter. And, you know, that would have been
2 an easy response, but we did not pursue
3 that -- didn't even discuss that seriously.
4 We really wanted to answer the intent of the
5 letter. They asked a question. We were
6 trying to answer that question. Now, we did
7 recognize that off-loading it that way, by
8 just admitting it, was potentially detrimental
9 to TVA, but it was much more potentially
10 detrimental to the NRC. That was
11 undesirable. Because, although easy for TVA
12 to do and much easier for White, it would have
13 created a problem downstream. Who do we deal
14 with to get approval of our corrective action
15 program? If we destroy the NRC and feed it to
16 Dingell, who is left to defend the industry
17 and to conscientiously carry out the reviews
18 of the plant?

19 Q. You indicated that around the -- between
20 the January and March time frame you asked
21 some NRC representatives as to whether or not,
22 in their opinion, the program was in
23 compliance with Appendix B and you indicated
24 that they couldn't say no or they said that it
25 probably was in compliance. Did you attempt

sk

1 or anyone that you know of attempt, during
2 that period of time, to get a definition from
3 NRC as to what is compliance and what is
4 non-compliance with Appendix B?

5 A. I didn't. I don't know of anybody that
6 did. As I said, I felt that I was capable of
7 reaching a conclusion on that subject.

8 Q. Is --

9 A. By the way, I'd like to go back and add
10 to that last question. I don't want to leave
11 a misimpression. I did not feel that NRC had
12 done a poor job. They had -- NRC had done a
13 lot of reviews, found most of the problems,
14 from what I saw, have seen since. I didn't
15 have any problem with the way the NRC had
16 conducted its business or acted, so obviously
17 I didn't want to find fault with the NRC,
18 because I didn't have any fault with the NRC.

19 Q. NRC's interpretations of violations of
20 Appendix B, as reported in their enforcement
21 actions, did that substantially agree with
22 your -- your definition of violations of
23 Appendix B?

24 A. You mean their grading system for
25 violations?

JK

1 Q. Well, I think earlier you indicated that
2 as the NRC reasonably reported in their
3 enforcement actions, they applied their
4 enforcement actions to various violations of
5 Appendix B. Would you still describe that as
6 reasonable, their applications of enforcement
7 to Appendix B?

8 A. I might take issue with the NRC
9 approach, because everything that is done
10 incorrectly at a plant subject to NRC
11 inspection is labeled as a violation of
12 Appendix B. They always get to that, because
13 that's their federal regulation on which all
14 of their enforcement actions are based.
15 That's their way to apply their enforcement
16 actions. In many cases I think that's
17 misrepresenting why the fault occurred. But,
18 it's not incorrect, according to the
19 regulations, it's just -- just tends to mix up
20 where the cause of the failure is.

21 Q. Let me ask you, are you aware that the
22 man in NSRS that came up with the NSRS
23 Perceptions in the first place and the bottom
24 line that Appendix B requirements are not
25 being met at Watts Bar, has experience as an

mt

1 NRC inspector and regulator and has some
2 personal knowledge of Appendix B requirements?

3 A. I did not know that, even today I didn't
4 know that. That wouldn't have changed my
5 conclusion. I've seen a number of NRC
6 inspectors who are real turkeys.

7 Q. In your overview of the technical
8 responses as they were coming to you through
9 Bob Mullin, is that essentially the funnel of
10 information?

11 A. Yes.

12 Q. Coming to you through Mr. Mullin?

13 A. Yes.

14 Q. What were the nature of the NSRS
15 Perceptions when you went to that first
16 meeting with Mullin and he had his White
17 papers, which included overnight work from the
18 line people, as well as, I imagine, overnight
19 work from the NSRS people?

20 A. Yes, I think they worked long into the
21 night, too, to prepare those.

22 Q. Did you have an initial opinion of the
23 NSRS input, the NSRS input, upon reviewing
24 those White papers?

25 A. I had some thoughts at that point. One,

JK

1 I thought that they were reasonably informed
2 of things that were happening in the industry,
3 reasonably well-informed, because of a lot of
4 the issues were things that were very new
5 evolution in the industry, like the cable
6 jacketing, side wall pressure issues, but I
7 also had the opinion that they were operating
8 as judge and jury in some of these areas
9 because they were literally interpreting words
10 in reg guides or codes without benefit of
11 taking, digesting the significance of what it
12 was that they were -- what they had as an
13 issue.

14 They had things that they said
15 violated a requirement, a code, that, if true,
16 meant -- made no difference. It was an
17 irrelevant type observation. May have been
18 true, but it lacked significance, and so I had
19 some of those, because I saw some of them. I
20 also felt that they had done a lot of
21 homework. They must have spent a lot of time
22 developing and struggling with these issues
23 and I also formed an opinion, I'm not sure
24 whether it was immediately on reading those,
25 but if not, it was shortly afterwards, that

151

1 they had been struggling to get what they saw
2 as required corrective actions with little
3 success.

4 Q. When your group of six people came in
5 under Lundin's direction to kind of test the
6 accuracy and validity of not only -- of the
7 line information coming back in respect to the
8 responses, did the Lundin group also check the
9 validity of the NSRS input?

10 A. Yes, yes.

11 Q. Did Lundin comment to you on that?

12 A. I'm sure he must have, but I don't
13 recall.

14 Q. Did he comment to you on the validity of
15 the line responses?

16 A. Yes.

17 Q. And --

18 A. He did that in writing.

19 Q. That was that, essentially, he could --
20 that it was essentially valid?

21 A. Yes. And I had the benefit of -- in the
22 discussions with him, you know, more
23 information than is just contained in the
24 letter. I went through a little discussion
25 with each of the eleven issues and what we

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were finding.

Q. You don't recall whether or not he had a comment as to the validity of the NSRS Perception.

MR. MURPHY: 13:42, let's take a break.

(Recess is called.)

(Resumed.)