

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

(UCLA Research Reactor)

}  
Docket No. 50-142  
(Proposed Renewal of Facility License)  
}

AFFIDAVIT OF DANIEL O. HIRSCH

I, Daniel O. Hirsch, being duly sworn do depose and state as follows:

1. I am President of the Committee to Bridge the Gap, Intervenor in the relicensing proceedings for the UCLA nuclear reactor.

2. On January 19 or 20, I received a phone call from Jessica Lavery, formerly Counsel for NRC Staff in the UCLA reactor relicensing proceeding. Ms. Lavery identified herself as currently being on the staff of newly-appointed NRC Commissioner Thomas Roberts. Ms. Lavery indicated that she and Mr. Roberts would be in Los Angeles on Tuesday, January 26, 1982, and would be conducting a site visit of the UCLA reactor, beginning at 9:30 a.m. Ms. Lavery indicated that the purpose of her call was to inform the Committee to Bridge the Gap, Intervenor in the UCLA matter, of the impending visitation to the reactor by Commissioner Roberts.

3. Ms. Lavery did not volunteer any information as to whether representatives of the Intervenor could attend the site visit, but upon my inquiry, she stated that she had already been in touch with William Cormier, an attorney for the Applicant (UCLA), and that if we would limit our group to three individuals, we would be permitted to attend the visit. We were told to be at the Nuclear Energy Laboratory at UCLA at 9:30 a.m. on January 26, as that was when the site visit would begin.

4. On Friday, January 22, I asked an assistant in our office to call Ms. Lavery's office to confirm that the site visit was still as scheduled. Ms. Lavery could not be reached, but her office indicated that to the best of their knowledge, there had been no change in time or date.

5. I arrived at the Nuclear Energy Lab at UCLA at 9:10 a.m. on the 29th. Ms. Dorothy Thompson, an attorney with the Nuclear Law Center who was to attend as part of our party, was already there. The door to the reception room of the Nuclear Energy Lab (NEL) was open; inside were Neill C. Ostrander, Manager of the Lab, and several secretaries. Ms. Thompson and I conversed for a time in the hall outside the lab entrance. Soon after I arrived, she indicated to me that Mr. Ostrander had told her he thought the meeting was upstairs "in the Dean's office." Shortly thereafter, Mr. Cormier arrived, looked surprised to see us (we were early), conferred hurriedly with Mr. Ostrander and also Ms. Thompson, and quickly left.

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6. Shortly after I arrived at NEL, a reporter and camera crew from KNXT-TV also arrived. When I told the reporter it was unclear whether he and his crew could either attend the site tour or even speak with the Commissioner before or after the tour, he went inside NEL and spoke with Mr. Ostrander. The reporter later indicated to me that Mr. Ostrander said the matter was not up to him, and arranged for the reporter to phone Mr. Cormier, who said he would ask the Commissioner; the reporter indicated that Mr. Cormier left the phone briefly, and then returned to indicate the Commissioner would not speak with the press, either before or after the tour, and that the press could not attend the tour. My memory is that all this occurred considerably before 9:40 a.m.

7. Ms. Thompson and I became concerned that while we were waiting at the appointed place and time for the tour to begin, a meeting between Commissioner Roberts, Jessica Laverty, Mr. Cormier, the Dean of the School of Engineering and Applied Sciences, and others might be occurring somewhere upstairs. Because we didn't want to miss the tour, we remained where Ms. Laverty had told us in her phone call of the previous week to wait. We asked one of our assistants, however, to go upstairs to Dean O'Neill's office and see if the Commissioner could be found.

8. About 9:45 a.m., Andrew Basiago, a reporter for the UCLA Daily Bruin, returned to where we were waiting for the tour to begin. He indicated he had just returned from Dean O'Neill's office, where he had witnessed what he believed to be a meeting between a party meeting Commissioner Robert's party's description, and Mr. Cormier and other university officials. We continued to wait at the appointed location for the now-late tour to begin.

9. About 10:00 a.m., Ms. Laverty and Mr. Cormier emerged from within the Nuclear Energy Laboratory, told us that Commissioner Roberts was inside the Lab and that the tour was about to begin. I asked if a meeting had taken place between Mr. Roberts and any university representatives. Mr. Cormier said no. I indicated that we had reason to believe such a meeting had indeed taken place in Dean O'Neill's office. Mr. Cormier then admitted that Commissioner Roberts and his party had been taken up to Dean O'Neill's office, but for a "greeting," not a meeting. I asked how long this "greeting" had lasted, and Mr. Cormier indicated no more than ten minutes. I asked when this "greeting" had occurred, and Mr. Cormier indicated 9:50 to 10:00. When I asked what was discussed, Mr. Cormier indicated "just general matters" like enrollment problems faced by the School of Engineering and the School's related financial difficulties.

10. I then asked Ms. Laverty if such a meeting took place and what was discussed. She refused to answer, saying that if I were to attempt to pursue the matter at that time, the tour (or our attendance on it) would not occur, indicating that Commissioner Roberts' time was short and had a plane to catch. As Commissioner Roberts was inside NEL meeting alone with other UCLA representatives while Mr. Cormier and Ms. Laverty and Ms. Thompson and myself were discussing the matter, we indicated our objection to the meeting and the refusal to disclose its details and went inside NEL to join the Commissioner on his tour.

11. The three representatives of our party (Ms. Thompson, physicist Amory Lovins, and myself) proceeded to sign in and entered the control room for the reactor. We expected to see Commissioner Roberts there, but we did not. We requested that we be able to show Commissioner Roberts a few aspects of the facility that we felt he should see and that were not likely to be shown by the Applicant's representatives as they conducted the tour. We indicated these would relate directly to aspects of the facility show (or things said) by Applicant's representatives as they gave the tour, and we would limit ourselves to pointing out only a very few items so that the tour would not be measurably lengthened in time. Both Mr. Cormier and Ms. Laverty vehemently objected, indicating that we were there solely as observers and that the tour would be given solely by Applicant's representatives. Mr. Cormier repeatedly spoke for the Commissioner (i.e. Applicant's attorney said several times, "Commissioner Roberts does not want...", "Commissioner Roberts has no intention..."). However, Ms. Laverty likewise refused our request.

12. We were then taken downstairs in NEL to the machine room, where Commissioner Roberts, a male assistant whose name we were not given, Ivan Catton (NEL Director), and several NEL employees were talking. As we arrived, they were discussing the adequacy of the equipment needed for maintenance and the ability of the NEL to fabricate its own parts, both of which are items in controversy in the relicensing proceeding. Commissioner Roberts was being told how well-stocked was the machine room was with tools and so on and how readily the facility could fabricate various equipment.

13. Commissioner Roberts was then taken to student labs and was told by Director Catton and Senior Reactor Operator Ashbaugh about the allegedly extensive student research projects supported by the reactor (also a matter in contention; Intervenor has contended that the reactor is very rarely used for student research and is instead primarily used for commercial purposes, in violation of its license). We were not permitted to tell this to Commissioner Roberts, nor point out that the same room he was being shown had only a few weeks earlier been a fire trap, with flammable materials piled up massively and one fire extinguisher missing and the other virtually unreachable because of the piles of material surrounding it.

14. Applicant's representatives then showed Commissioner Roberts and his party various radiation counting chambers and devices, emphasizing the quality and selection available. Intervenor has contended that the equipment is inadequate, has been repeatedly improperly calibrated, and doesn't have the needed sensitivity; the only information as to these devices was provided by Applicant, all favorable to their position in this contested matter.

15. The tour then was taken into the reactor room.

Inside the reactor room, various aspects of the reactor itself, as well as supporting equipment, were shown to the Commissioner, again with total focus on those aspects of the reactor which support the Applicant's position in the contested matters regarding adequacy of safety features, monitoring, calibrating, and maintaining of equipment, emission control, accident prevention, and so on. Applicant's representative showed the Commissioner, for example, the control rod drive mechanisms, emphasizing the ease of maintenance of having the drives outside the core, with no mention of the accident potential of ready access for manual torquing of the drive shaft with a pipe wrench, creating mechanism similar to SL-1 for rapid manual insertion of large excess reactivity. Mr. Ashbaugh, the Applicant's reactor operator conducting this part of the tour, showed Commissioner Roberts an unconnected HEPA filter and asserted that Applicant was having to install such filters because of pressure from the Intervenor. Intervenor was not permitted to rebut the assertion, nor call attention to the inspection report in which an NRC inspector expressed concern about the lack of HEPA filters. Nor were we able to point out to the Commissioner that there are no filters whatsoever in the main exhaust from the reactor room.

16. Mr. Roberts was told that the reactor room was kept at negative pressure so that any potential contamination would not leak out of the room; we weren't permitted to indicate to Mr. Roberts that the exhaust stack for the reactor, out of which the reactor room is emitted, is directly upwind of a main airvent for the nearby Math Building, nor that in case of accident, the fans are to be shut off, cutting off the negative pressure and permitting the contamination to leak out of the reactor room through the wide airchannels through which the air normally leaks in. We weren't able to point out to the Commissioner the use of duct tape as a questionable means of attempting to reduce the sizeable Argon leakage from the reactor. Although Ms. Laverty inquired whether the Argon decay tanks lying near the reactor were connected finally, we were unable to show Commissioner Roberts that despite purchase of the decay tanks over a year ago, they remain to this date unconnected. Thus, Mr. Roberts was shown only those aspects of the emission control which served the Applicant's case, and contrary information was not permitted to be heard.

17. Also in the reactor room, Mr. Roberts was shown the storage holes for spent fuel. As an apparent example of radiation safety practices, Commissioner Roberts was told that a Cobalt-60 source was currently being stored in one of the holes. The Commissioner, however, was not permitted to be informed that previous storage of a leaking Cobalt-60 source in the same location had apparently led to an offsite contamination incident when improperly monitored spent fuel stored in one of the holes was shipped out, leading to impoundment of the truck for Cobalt-60 contamination and a DOT investigation.

18. Mr. Roberts was shown the fuel coffin for use in removing fuel for the core, apparently as an example of the radiation protection equipment available during refueling. He was not shown that the coffin is missing its top plug, nor was he shown the woefully inadequate "poor man's hot cell" for inspection of the fuel after removal from the core.

19. Commissioner Roberts was shown numerous barrels of heavy water stored right next to the reactor. The Applicant tourguide discussed how expensive heavy water is, but no discussion was permitted of the safety problem if heavy water, a superior moderator, were used in an improperly reviewed experiment to replace the light water normally used in the reactor, nor the propriety of storing large quantities of an effective liquid moderator near a reactor for which NRC studies indicate core flooding could lead to significant excess reactivity additions.

20. Commissioner Roberts was shown the process pit, with considerable emphasis on how carefully the various piping has been color-coded for student benefit. We could not tell the Commissioner how excessively radioactive some of those exposed pipes were, nor indicate that keeping primary coolant and demineralizer piping so accessible, with the shield blocks normally off the process pit, unnecessarily increased student exposures and exposures of the people in offices on the floors directly above the reactor.

21. Commissioner Roberts was shown various irradiation ports as evidence of a broad experimental use of the facility, and was told, as a supposedly representative example of the use to which the reactor was put, of neutron activation analysis performed on moon rocks. We were not permitted to indicate that such uses represent an extremely small part of the reactor's actual use, and that the bulk of the hours of reactor use are for commercial purposes (ore assaying for a commercial firm and diamond coloration for a gem dealer) in violation of the facility license.

22. The Commissioner was not shown the lack of any fire suppression equipment for major fire. He saw small fire extinguishers, but the lack of sprinkler or deluge system was not mentioned, nor that extinguishers have been found missing or discharged.

23. Upon leaving the reactor room, the Commissioner was shown a supposedly representative radiation protection practice of requiring everyone to use the hand and foot counter. It was explained that such monitoring of visitors is a standard practice. Failure to badge visitors, register an address, and notify visitors if high readings are discovered was not permitted to be indicated. We couldn't even indicate that none of us had been given film badges.

24. The party then was taken into the control room, where an extremely favorable presentation about the adequacy of the control panel was given, with emphasis of its failsafe nature and the redundancy and reliability of the devices. No contrary information was heard as to inadequacy, failures, lack of redundancy and reliability, all of which are in contest.

25. Mr. Cormier then indicated that Ms. Thompson, Mr. Lovins and myself should leave the Nuclear Energy Laboratory as NEL wished to give Commissioner Roberts and his party a private tour of remaining aspects of the facility, assertedly restricted to security matters. No mention had been made previously to me that a part of the tour would occur without us. We protested the exclusion, indicating that the security measures and devices at the facility were an important matter in controversy (Contention XX) and that we felt a presentation by the Applicant without Intervenor even present would be most improper. We were repeatedly told by Mr. Cormier that we would neither be permitted to attend nor would Applicant and the Commissioner's party reconsider the private, off-the-record part of the tour.

26. I then suggested that if we were neither permitted to observe the tour nor could prevail in preventing what we viewed as an ex parte meeting on a significant matter in controversy, that the Commissioner should permit us merely three minutes to identify for him weak aspects of the security system. We indicated we could do this without access to any area (i.e. fresh fuel room) to which public access was restricted, and that we could do so very quickly so that he was not delayed.

27. Mr. Cormier, continually asserting he was speaking for the Commissioner (i.e. "The Commissioner does not want to hear any of this..."), refused to permit any such presentation. I pressed the Commissioner to permit the brief pointing out of weak devices or directly refuse, as Mr. Cormier is legal representative for the Applicant, not the Commissioner. Commissioner Roberts said, "Ask my lawyer", referring to Ms. Laverty. Ms. Laverty indicated the Commissioner would not hear anything from us, and when pressed, specifically denied our request. Commissioner Roberts indicated the matter was final.

28. I expressed my belief that the private meeting before the tour, the part of the tour on which we were included but muzzled, and the subsequent tour on which we could neither attend nor speak, all constituted serious violation of ex parte rules in a hotly contested proceeding and asked them to reconsider. We were refused, and I indicated we would have to consider filing a formal complaint with the Commission. I extended to Commissioner Roberts an invitation that if he ever wished to see and hear the other side of the UCLA reactor dispute, we would be pleased to provide such a tour and presentation. He made no response.

29. We were then ushered outside, while Mr. Roberts, Ms. Laverty, and the unidentified individual with them were given their private presentation without us present.

30. Approximately twenty minutes later Mr. Cormier emerged from the Nuclear Energy Laboratory to a waiting group of reporters. Again indicating he was speaking for the Commissioner, the UCLA counsel said something to the effect that the Commissioner had left by another entrance and had nothing to say to the press.

31. Mr. Cormier was asked by one of the reporters whether a meeting between the university and the Commissioner had occurred prior to the tour. He at first denied any meeting had occurred, but when a reporter indicated he had seen Mr. Cormier and the Commissioner's party upstairs in Dean O'Neill's office, Mr. Cormier assented, but indicated it was merely a greeting, not a meeting. Asked what they spoke about, Mr. Cormier indicated "general matters" such as enrollment trends in the School of Engineering and ensuing financial difficulties. Asked how long the meeting occurred, Mr. Cormier once again said roughly ten minutes, from 9:50 to 10:00 a.m. When a reporter indicated that he had seen Mr. Cormier and the Commissioner's party meeting at roughly 9:20 a.m., Mr. Cormier indicated the interview was over and left abruptly.

32. I, as representative of Committee to Bridge the Gap, Intervenor in the above-captioned proceeding before the ASLB, am on the service list for all matters relating to that proceeding. As of March 2, 1982, I have received no written report summarizing or detailing the contents of either private meeting between the Commissioner's party and the representatives of the Applicant, neither the pre-tour meeting nor the part of the tour from which I was excluded.

33. I have received neither any written nor oral communication from Applicant subsequent to January 26, 1982, as to the meetings from which we were excluded.

34. I have likewise as of this date received no oral communication from Commissioner Roberts, Ms. Laverty, or anyone else on the Commissioner's staff as to the contents of the meetings from which we were excluded.

35. As of March 2, 1982, (the last date which I personally checked the LPDR), no written communication from the Commissioner, the Commissioner's staff, or the Applicant has been placed in the Local Public Document Room established in the UCLA reactor matter.

36. From shortly after CBG filed its Petition for Leave to Intervene until late 1980 when she withdrew as Counsel for NRC Staff, I had numerous contacts with Ms. Laverty of an adversarial nature, she representing one party (Staff) in the UCLA proceeding. I personally witnessed a great many contacts between Ms. Laverty and Mr. Cormier, counsel for Applicant, contacts which I would characterize as far less adversarial. In numerous pleadings, as well as oral argument, before the Atomic Safety and Licensing Board, Ms. Laverty strenuously advocated Staff positions contrary to the positions of Intervenor. In addition, in one particular instance it is my opinion that Ms. Laverty, representing Staff, violated a stipulation as to language of and admissibility of contentions, a stipulation she executed as Counsel for Staff. It is my current intent, as President of the Committee to Bridge the Gap, when the matters are ripe for appeal, to appeal numerous of these matters to the Commission for resolution. These matters will include a number of areas in which Ms. Laverty as Counsel for Staff strenuously advocated a Staff position which Intervenor intends to directly challenge on appeal, as well as areas in which Intervenor intends to assert misbehavior directly on Ms. Laverty's part as Counsel for Staff. I intend to direct that these matters be appealed to the Commission, and as President of the Committee to Bridge the Gap, have been granted the authority by CBG to so direct.

37. Prior to our being forced to leave the control room, the Commissioner was told that the reactor was operated by 4-6 student operator trainees (no mention of unlicensed high school students). Director Catton said he didn't have a license, saying he was "just the director" and didn't have to know how to  
Executed this 2 day of March 1982 at Los Angeles, California. run 1

*Daniel O. Hirsch*  
Daniel O. Hirsch

Sworn and subscribed to before me this 2<sup>nd</sup> day of March 1982.

*Dorothy Thompson*  
Notary Public

