



## APPEARANCES: [continued]

On behalf of the NRC:

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and  
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## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert D. Martin	32	135	199	220
Larry George	222	237	258	--

## EXHIBITS

<u>JOINT NO.:</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
1	10	10
<u>NRC NO.:</u>		
A	54	60
B	69	135
C	77	86
D-1	88	90
D-2	90	91
D-3	91	92
D-4	92	95
D-5	95	96
D-6	97	98
D-7	98	99
D-8	100	102
D-9	102	105
D-10	105	106
D-11	106	107

	<u>NRC NO.:</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
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PROCEEDINGS

ARBITRATOR HAYS: On the record.

This is styled James Kelly and National Treasury Employees Union (NTEU) versus U.S. Nuclear Regulatory Commission (NRC), FMCS Case No. 89-23367.

It involves an appeal from a decision by Mr. Robert D. Martin dated June 26, 1989, involving one James A. F. Kelly, physical security specialist, in which Mr. Kelly was assessed 15 days disciplinary suspension.

Is the organization ready?

MR. DRESSLAR: Yes, sir.

ARBITRATOR HAYS: Is the agency ready?

MR. CRADOCK: Yes, we are, sir.

ARBITRATOR HAYS: All right. Can we agree to a statement of the issue and the scope of my jurisdiction?

MR. CRADOCK: Well, I have some preliminary matters, documents and witnesses that I'd like to take care of on the record before we begin, if we may.

ARBITRATOR HAYS: All right.

MR. CRADOCK: First of all, we have prepared an administrative -- Should we identify ourselves for the record?

ARBITRATOR HAYS: Yes, you probably should for the first time.

MR. CRADOCK: My name is James E. Cradock,

1 C-r-a-d-o-c-k. I'm a senior attorney with the Nuclear  
2 Regulatory Commission representing the agency.

3 With me is my associate, Attorney Brad Fewell, F-  
4 e-w-e-l-l.

5 Our address is USNRC, Washington, D. C. 20555.

6 The first order of business is a matter of the  
7 administrative file that we've prepared for purposes of the  
8 trial here.

9 We supplied yourself, Mr. Arbitrator, and Mr.  
10 Kelly, the complainant, with a four-volume, loose-leaf  
11 binder administrative case file in this matter previously  
12 for purposes of information regarding relevant documents and  
13 background information in the file.

14 I'd like to move at this time that this entire  
15 file be entered into evidence as a joint exhibit. The  
16 reason I'm asking to do that is several.

17 I want to facilitate the ease with which the  
18 witnesses can refer to documents in the trial. And I think  
19 we have most of the documents that we're both going to be  
20 relating to in these files.

21 Now, at the same time I'm not waiving any  
22 objections as to weight. I recognize that I've waived  
23 objections as to admissibility, but I think the parties  
24 could agree to enter these into evidence as a full exhibit  
25 for purposes of completion of the record without waiving any

1 objections on relevancy, whether they're material. The  
2 objections would, of course, go to the weight rather than to  
3 the admissibility. So I so move.

4 ARBITRATOR HAYS: Response?

5 MR. DRESSLAR: My name is Walter Dresslar,  
6 Assistant Counsel for the National Treasury Employees Union.  
7 The address is 3636 Executive Center Drive, Suite 201,  
8 Austin, Texas 78731.

9 I also have with me Mr. Ronald Caldwell of the  
10 National Treasury Employees Union who will be acting as a  
11 technical advisor.

12 We would object to the introduction of the entire  
13 ROI into evidence at one time and would ask that the agency  
14 be required to introduce those documents individually that  
15 they will be using as evidence against Mr. Kelly, and we can  
16 object at that time on relevancy or whatever the objection  
17 might be.

18 MR. CRADOCK: I'm not sure counsel understands  
19 what I was doing.

20 MR. DRESSLAR: I understand what you're doing, Mr.  
21 Cradock.

22 ARBITRATOR HAYS: Wait, just hold on.

23 MR. CRADOCK: If I may --

24 ARBITRATOR HAYS: You're proposing they be entered  
25 as a joint exhibit?

1 MR. CRADOCK: I'm proposing that it be entered as  
2 a joint exhibit, taking into account your broad authority  
3 with respect to accepting evidence.

4 I'm not stipulating to any facts by suggesting  
5 that we move this file into the record.

6 I'm reserving the right for both of us to object  
7 as to relevancy and materiality of any documents. I'm only  
8 doing this to ease, facilitate the trial of this matter.

9 It seems that that in fact would be the case.

10 If counsel doesn't want to agree to it, I'll just  
11 move my part at this time -- for the agency that it be  
12 entered as evidence.

13 ARBITRATOR HAYS: Well, I think counsel obviously  
14 is expressing his desire not to join with you in having them  
15 introduced as a joint exhibit.

16 MR. DRESSLAR: If his point is, that he just wants  
17 them in for ease of use by the witnesses and that they not  
18 be a joint exhibit, I can agree to that, and that we could  
19 -- now he's saying that we could object on even relevancy at  
20 any point.

21 ARBITRATOR HAYS: Yes.

22 MR. DRESSLAR: We could go along with that.

23 MR. CRADOCK: That was my point.

24 ARBITRATOR HAYS: I thought that's what it was.

25 MR. CRADOCK: We're not waiving any objections.

1 ARBITRATOR HAYS: On the basis of that, we can  
2 admit them. Can we mark them for identification?

3 MR. CRADOCK: They're marked as Volumes I through  
4 IV, case file, in the matter of James E. Kelly, FMCS No. 89-  
5 23367. Each volume is marked and tabbed and indexed. Four  
6 volumes.

7 MR. DRESSLAR: One other thing we would like to  
8 add to the case file -- I don't know if it was inadvertently  
9 left out or whatever -- but the letter invoking arbitration  
10 in this matter was not appended to the case file. We would  
11 like to add that to it right now.

12 MR. CRADOCK: You have a letter invoking  
13 arbitration?

14 MR. DRESSLAR: Yes.

15 MR. CRADOCK: No problem.

16 ARBITRATOR HAYS: All right. You don't have a  
17 problem with introducing these as joint exhibits with the  
18 understanding, do you, that you're not sponsoring them or  
19 going to necessarily be bound by them?

20 MR. DRESSLAR: Correct.

21 ARBITRATOR HAYS: I understand. We will  
22 introduce those and admit them into evidence as Joint  
23 Exhibit 1, with the one addendum with regards to the  
24 organization's appeal to arbitration, which would be added  
25 to that.

1 MR. DRESSLAR: It will be added to the case file  
2 Volume I.

3 ARBITRATOR HAYS: All right.

4 [Joint Exhibit No. 1 was marked for  
5 identification and admitted in  
6 evidence.]

7 MR. CRADOCK: I might suggest also that we put the  
8 administrative file in a convenient place by the witness  
9 seat so they can utilize that more effectively, once we get  
10 started.

11 ARBITRATOR HAYS: That will be fine.

12 MR. CRADOCK: Secondly, there have been some  
13 exchanges between myself and Mr. Dresslar regarding  
14 discovery and witnesses that I want to address at this  
15 point.

16 One is, I have been requested to have Mr. Yandell,  
17 who will be a witness for the agency, bring a set of  
18 personal notes that he maintains -- or maintained during the  
19 relevant time period (the summer of 1987) to the hearing for  
20 purposes of disclosing them to the organization, in the  
21 event that they wish to use them in cross-examination.

22 I will have Mr. Yandell bring those notes to the  
23 hearing and have no objection to their being reviewed.  
24 They're personal notes.

25 I have no objection to their being reviewed here



1 at the hearing, as long as they're in the custody of the  
2 hearing, so to speak, in your custody, Mr. Arbitrator. If  
3 they want to use them, to that extent they can use them.

4 So he will bring those notes with him when he  
5 testifies, which I think will be either late today or  
6 tomorrow morning.

7 Thirdly, when I interviewed Mr. Kelly last Friday  
8 afternoon, December 8th, as a compromise to our seeking a  
9 deposition in this matter, he indicated to me that he had  
10 two letters or was aware of two letters that I don't have  
11 that could be relevant to the case that he would make a  
12 search for and see if he could find for me.

13 One was a letter from himself to the Commission  
14 and the Chairman of the Commission. And the other was a  
15 response -- both of which were written around the time  
16 period here.

17 And also he indicated there was an individual  
18 whose testimony may or may not be relevant to the case who  
19 worked for the NRC's Congressional Affairs Office, whose  
20 name escaped him at the time.

21 I asked him if he could please make a search for  
22 the individual's name.

23 So I'd like to ask if those documents are  
24 available now, and if that individual's name is available so  
25 we can call him if we think it's necessary.

1 ARBITRATOR HAYS: Response.

2 MR. DRESSLAR: We have made a search for that  
3 document; we have been unable to find it. As of yet, we  
4 cannot find a government document that carries the name of  
5 the person who interviewed Mr. Kelly. We are still looking  
6 for that.

7 MR. CRADOCK: I wasn't asking for a document about  
8 a personal interview.

9 MR. DRESSLAR: I understand that, Mr. Cradock, if  
10 you would just listen to what I said. I said, "We have made  
11 a search for the document; we have been unable to find it as  
12 of yet."

13 We have also searched for the name of the  
14 individual, using government documents -- in other words,  
15 phone lists -- and we have been unable to find that person  
16 yet.

17 MR. CRADOCK: Now I understand what you're saying.

18 MR. DRESSLAR: We're still looking.

19 MR. CRADOCK: All right. We understand each  
20 other.

21 I think Mr. Kelly mentioned two documents. You  
22 are still looking; that's my understanding?

23 MR. DRESSLAR: Right. The letter to Mr. Zeck and  
24 the --

25 MR. CRADOCK: And you do not have the name of the

1 individual. Okay. Thank you.

2 Now, fourthly, there is a letter we received from  
3 Mr. Dresslar's office last week regarding witnesses that  
4 they would like to have present here.

5 Most of the witnesses are our witnesses, as a  
6 matter of fact. They include Mr. Martin, who is here -- the  
7 Regional Administrator; Mr. Bangert, B-a-n-g-e-r-t; Mr.  
8 Yandell.

9 There was a request for a gentleman named Lauren  
10 Bush, B-u-s-h. I'm challenging the necessity -- Mr. Bush  
11 is in Washington. I'm challenging the necessity of having  
12 him come down.

13 I'm asking that there be some kind of a showing  
14 made as to how he might offer relevant testimony to the  
15 hearing.

16 I have examined the file. There's a statement  
17 from him in the file, interview statement. I know that he  
18 testified before Congress around the time Mr. Kelly did, but  
19 I see no other connection between Mr. Kelly and Mr. Bush in  
20 this case.

21 I'm asking that there be some showing made as to  
22 how he could offer relevant testimony in the case.

23 MR. DRESSLAR: As I explained to Mr. Cradock the  
24 other day, there's two reasons for us wanting to have Mr.  
25 Bush as a witness.

1           One is he has some expertise in the matter of  
2 regulation of utilities and overregulation, which is one of  
3 the allegations that was raised against Mr. Kelly during the  
4 investigation which was conducted by ROI, which I guess now  
5 is Joint Exhibit 1.

6           Also, in his interview with OIA he raised  
7 testimony that he considered having the NRC inspectors on  
8 site at STP on a continuing basis to be an incorrect act.

9           That is one of the issues that we will raise in  
10 our whistleblowing case and also in defense of the main case  
11 is that the agency put the inspectors, including Mr. Kelly,  
12 in a position of high tensions when they shouldn't have,  
13 knowing full well that they shouldn't be there. The agency  
14 itself has raised in its decision letter that the tensions  
15 at STP were a mitigating factor. We'd like to interview Mr.  
16 Bush on that matter.

17           ARBITRATOR HAYS: Do you anticipate calling Mr.  
18 Bush as a part of your case in chief or in your affirmative  
19 defense?

20           MR. DRESSLAR: Well, we would call him in the  
21 affirmative defense, too.

22           To be a little more clear on it, we believe that  
23 one of the means of retaliation against Mr. Kelly for  
24 testifying before Congress was putting him in the position  
25 at STP on a continual basis and in a position of an improper

1 consultation role with the utilities over his objections.

2 Mr. Bush will testify concerning his opinion as an  
3 NRC official as to the propriety of that action by the  
4 Region IV management.

5 ARBITRATOR HAYS: Response?

6 MR. CRADOCK: Well, I'm not sure -- My reaction  
7 is that overregulation was an issue in the investigation. I  
8 understand that and I acknowledge that.

9 However, there was never any finding that the NRC  
10 inspectors were engaged in any overregulation. Therefore,  
11 that standing by itself I don't see as a grounds for this  
12 gentleman testifying.

13 The other matters seem to relate to Mr. Bush's  
14 being involved during the time when people were working --  
15 there was tension, people were required to work long hours.

16 I think there will be ample testimony from both  
17 sides in that respect without Mr. Bush.

18 I'm not sure -- I'm open to correction -- that Mr.  
19 Bush was down there all this time during the summer, during  
20 the relevant time period.

21 So I still fail to see how he can advance the case  
22 with some testimony.

23 We're talking about flying this individual down  
24 here from Washington.

25 ARBITRATOR HAYS: Well, at this point I have no

1 way of knowing whether he will or will not. Certainly,  
2 counsel raises several points that are pivotal in their  
3 defense, that Mr. Bush may very well have independent  
4 knowledge of.

5 I would ask -- We don't need to bring him down  
6 right away, I would assume. But I would at least make him  
7 available and ask counsel that if it reaches a point, I'll  
8 just hold the motion of the agency in abeyance until we make  
9 a determination at that time.

10 MR. CRADOCK: All right.

11 ARBITRATOR HAYS: Any other preliminary matters?

12 MR. CRADOCK: One other matter. As Mr. Dresslar  
13 mentioned, Mr. Caldwell is here. I understand he's a local  
14 union steward.

15 I had a discussion with Mr. Dresslar about him  
16 yesterday. I have a problem in this regard.

17 I don't have any objection to Mr. Kelly having a  
18 union representative present in the grievance as a union  
19 representative.

20 However, Mr. Caldwell is going to testify in this  
21 matter for Mr. Kelly. Mr. Kelly is here, as I suppose he  
22 should be, since he's the complaining party. He'll have the  
23 opportunity to observe the agency's witnesses when we put  
24 our case on first.

25 We don't have that opportunity, and I acknowledge

1 that.

2 The witnesses are sequestered; everybody is  
3 sequestered. However, by having Mr. Caldwell here, if he's  
4 going to testify after we put our case on, you have two  
5 individuals who have observed all the testimony of the  
6 government, something that we haven't had the opportunity to  
7 do with regard to their case, I think it would put us at a  
8 totally unfair disadvantage.

9 ARBITRATOR HAYS: Am I to assume from your  
10 comments, counsel, that you intend to ask the chair to  
11 invoke the rule; is that right?

12 MR. CRADOCK: I beg your pardon?

13 ARBITRATOR HAYS: You're going to ask the chair to  
14 invoke the rule and exclude -- sequester the witnesses; is  
15 that right?

16 MR. CRADOCK: Yes, I am. I assumed that they  
17 would be sequestered anyway.

18 ARBITRATOR HAYS: Okay. Well, I hadn't reached  
19 that point yet.

20 All right.

21 MR. DRESSLAR: I would respond, one, Mr. Caldwell  
22 is here as my technical advisor and not merely as Mr.  
23 Kelly's union representative. I am his representative in  
24 that capacity, in addition to being attorney for the union.

25 Mr. Caldwell will be called as a witness. At



1 least we anticipate having him called to testify.

2 But he is here as our technical advisor. As I  
3 understand it, we are entitled to one technical advisor.

4 ARBITRATOR HAYS: I think you are. I would give  
5 you the same latitude, counsel, if you'd like to have one;  
6 and I would not exclude people who might be called as  
7 witnesses from that group.

8 MR. CRADOCK: Just as a matter of correction. The  
9 contract provides that a union representative can be  
10 present, but not a technical advisor. It's in Article 8 of  
11 the contract.

12 MR. DRESSLAR: Well, then we'll call him a union  
13 representative, Mr. Cradock.

14 MR. CRADOCK: You just called yourself a union  
15 representative.

16 MR. DRESSLAR: Well, I am one.

17 MR. CRADOCK: Whatever he is, as I understand what  
18 you're saying, Mr. Arbitrator --

19 ARBITRATOR HAYS: I would grant you the same  
20 latitude, but I'm not going to exclude him. I will grant  
21 him a technical advisor or a union representative. The  
22 names ... whatever.

23 But I would grant the agency the same right. So  
24 if you would like to have the assistance of an individual,  
25 then go ahead.



1 MR. CRADOCK: We may.

2 Please note my exception in that regard.

3 ARBITRATOR HAYS: All right.

4 MR. CRADOCK: That's all we have as preliminary  
5 matters.

6 ARBITRATOR HAYS: Any other preliminary matters?

7 MR. DRESSLAR: One, and that is, if we can  
8 stipulate at this point that the matter is properly before  
9 the Arbitrator, and that no issues of arbitrability exist.

10 MR. CRADOCK: Agreed.

11 ARBITRATOR HAYS: All right. Now, how about the  
12 statement of the issue?

13 MR. CRADOCK: I'm prepared to give an opening  
14 statement.

15 ARBITRATOR HAYS: No, I'm not asking for opening  
16 statements, just identification of the issues so that I --  
17 Is there any question about my jurisdiction? Inasmuch as  
18 this is a disciplinary matter, are we agreed that if I find  
19 that the agency was authorized to take some sort of  
20 disciplinary sanction, do I have any independent authority  
21 to make a determination as to whether the amount of the  
22 penalty is excessive or not?

23 MR. CRADOCK: Yes, you do. My understanding of  
24 the law is that your authority goes to the ability to  
25 mitigate the penalty.

1 ARBITRATOR HAYS: Do you agree?

2 MR. DRESSLAR: Yes, sir, it does.

3 ARBITRATOR HAYS: All right.

4 MR. CRADOCK: Let me suggest something on this as  
5 well. We mentioned the question of briefs at the motion  
6 hearing up in Sherman a couple of weeks ago.

7 I might suggest, depending upon the state of the  
8 record, we would be inclined to file a post-hearing brief in  
9 this matter.

10 ARBITRATOR HAYS: I think because of the  
11 complexities of the issues involved, I think I'm going to  
12 request you do it anyway.

13 MR. DRESSLAR: I would insist on it.

14 ARBITRATOR HAYS: I would grant you ample time to  
15 do it, particularly since we don't have a continuing  
16 liability situation. I think it is in the interest of  
17 everyone to do it.

18 MR. CRADOCK: Fine. Thank you.

19 ARBITRATOR HAYS: You indicate that you do want to  
20 invoke the rule?

21 MR. CRADOCK: Yes, I do.

22 ARBITRATOR HAYS: Have you got some witnesses that  
23 you're going to --

24 MR. DRESSLAR: They're not here except for Mr.  
25 Caldwell.

1           ARBITRATOR HAYS: All right. Any other  
2 preliminary matters?

3           MR. DRESSLAR: I would just state -- as is often  
4 the case in these types of matters -- that the union will be  
5 relying upon witnesses that are management officials and  
6 witnesses that have been or will be provided by the agency  
7 in its case.

8           It will be examining those people and in cross-  
9 examination to make our case also.

10          I would just put that for the record. If we could  
11 call them and not call them later.

12          ARBITRATOR HAYS: Just purely for the information  
13 of the chair, if you would, announce that as each one comes.  
14 If you're going to consider them hostile (for lack of a  
15 better term), then please advise, so we can have some input  
16 as to your method of cross-examination or method of  
17 examination.

18          Any other matters?

19          MR. CRADOCK: No, sir.

20          ARBITRATOR HAYS: All right. I'm ready for  
21 opening statements, counsel.

22          MR. CRADOCK: Mr. Arbitrator, this case involves a  
23 straightforward, unadorned question of whether Mr. Kelly  
24 violated the NRC regulations.

25          The regulations of which we speak are at 10 Code

1 of Federal Regulations, particularly 10 CFR Part 0.735-  
2 22(a), which states that "Solicitation, negotiation or  
3 arrangements for private employment by an employee who is  
4 acting on behalf of the NRC in any particular matter in  
5 which the prospective employer has a financial interest are  
6 prohibited."

7 Furthermore, the word "solicitation" is defined  
8 and construed by the NRC in conjunction with .735-22(a) to  
9 mean the following: "Solicitation by an NRC employee  
10 encompasses any contact with a particular potential  
11 employer, including a telephone call, or the submission of a  
12 letter of inquiry or a resume, that reasonably can be  
13 construed as indicating an interest in obtaining a position  
14 with that employer."

15 Furthermore, the regulations at 10 CFR 0.735-49(a)  
16 provide that "An employee shall avoid any action, whether or  
17 not specifically prohibited by this Part 0, which might  
18 result in or create the appearance of using a public office  
19 for private gain."

20 Subpart 735-29(a) also states that "An employee  
21 shall avoid any action, whether or not specifically  
22 prohibited by this Part 0, which might result in or create  
23 the appearance of affecting adversely the confidence of the  
24 public in the integrity of the government."

25 We will show by a preponderance of the evidence

1 that Mr. Kelly was in violation of these regulations in 1987  
2 in soliciting employment with HL&P, Houston Light & Power  
3 Company, at its South Texas Plant, commonly known as STP; in  
4 violation of the solicitation of employment regulations  
5 which I have cited and in violation of the regulation that  
6 speaks to the question of either using a public office for  
7 private gain or giving the appearance of using a public  
8 office for private gain.

9 Furthermore, we will show by a preponderance of  
10 the evidence that Mr. Kelly violated the latter regulation  
11 regarding using a public office for private gain in actions  
12 taken regarding rumors in 1987, in actions he took regarding  
13 rumors in 1987, that NRC inspectors were biased against the  
14 licensee.

15 More specifically, we have found in this matter  
16 that it was inappropriate of Mr. Kelly to pursue with  
17 utility managers a course of action which would create the  
18 impression that he was speaking for the agency in response  
19 to such serious allegations.

20 His demands for an apology and threat of a lawsuit  
21 were found inappropriate, confrontational and served to  
22 increase already existing tensions between the STP and  
23 Region IV security staffs during the relevant time period.

24 We will further show that there is a nexus between  
25 the committed violations and the efficiency of the service;

1 to-wit: the mission of the NRC and its public trust.

2 Furthermore, we will show, using the Douglas  
3 factors, that the penalty imposed of a 15-day suspension is  
4 reasonable and appropriate and should stand.

5 Finally, the pleadings to date indicate that Mr.  
6 Kelly is under the impression that he is the object of some  
7 sort of a conspiracy on the part of the NRC to, quote, get  
8 him, closed quote.

9 His impression, however well intentioned, is  
10 misguided. This case, as I said, deals with violations of  
11 the regulations which are serious, but it deals with nothing  
12 more than violations of the regulations and nothing less  
13 than violations of the regulations.

14 We're ready to proceed.

15 ARBITRATOR HAYS: Counsel, do you want to make an  
16 opening statement now or do you want to reserve?

17 MR. DRESSLAR: We would like to make it now, Mr.  
18 Arbitrator.

19 If only this were an unadorned case of alleged  
20 violations of agency regulations, it would be much more  
21 simpler than it will be.

22 Mr. Arbitrator, in this case the union represents  
23 Mr. James Kelly. We believe the evidence will demonstrate  
24 that Mr. Kelly has been a valued employee of the Nuclear  
25 Regulatory Commission for more than ten years.



1           He has served in positions known generally as  
2 security inspectors and senior security inspectors since he  
3 was hired with the agency.

4           It is the agency that bears the burden of proof in  
5 this case, and the agency has charged Mr. Kelly with serious  
6 misconduct and has imposed an adverse action.

7           Now, the agency must prove each element of its  
8 case by a preponderance of the evidence. It must prove  
9 initially that Mr. Kelly actually committed each element of  
10 each offense with which he has been charged.

11           The agency must then prove that the conduct, as  
12 proven, adversely affects the efficiency of the service.  
13 That means that there must be a requisite nexus existing  
14 between the conduct proven and the efficiency of the  
15 service.

16           Finally, if the agency can meet its burden on the  
17 first two issues, it must prove that the penalty it has  
18 selected is appropriate under the circumstances presented in  
19 the case.

20           The union believes that the agency will fail to  
21 prove any element of its charges against Mr. Kelly, that the  
22 evidence will establish that Mr. Kelly did not solicit  
23 employment with Houston Light & Power during August of 1987.

24           Instead the evidence will establish we believe  
25 that Mr. Kelly merely voiced his opinion that it was

1 unlikely that HL&P would ever consider an NRC inspector for  
2 the position of nuclear security division manager under the  
3 conditions present in the summer of 1987.

4 The evidence will establish we believe that during  
5 the spring and summer of 1987, the NRC Region IV security  
6 inspectors uncovered hundreds and hundreds of deficiencies  
7 in the STP security plan.

8 These deficiencies ranged from the simple to the  
9 very severe. They included simple incompetence to gross  
10 falsification of records.

11 These deficiencies uncovered by Mr. Kelly and  
12 others resulted in a delay in the licensing of the plant by  
13 the NRC.

14 We believe that the evidence will show that by  
15 early June the inspectors had cataloged and reported  
16 hundreds of deficiencies to both HL&P management and NRC  
17 management, and that tensions were very high at the plant  
18 site.

19 The evidence will also establish that during mid  
20 June 1987, Mr. Kelly was called to testify before Congress  
21 about NRC management's handling of drug and alcohol abuse at  
22 nuclear reactor sites.

23 His testimony was critical of Region IV  
24 management. When he returned to Region IV after testifying,  
25 the evidence will establish that he was grilled by



1 management and subjected to severe pressures.

2 Mr. Kelly testified about Regional Administrator  
3 Martin's propensity to refer severe personnel problems  
4 involving drug and alcohol abuse by utility employees to  
5 utility management.

6 The evidence will also establish that Region IV  
7 management determined to order Mr. Kelly on site for  
8 continual inspection of the South Texas project.

9 Mr. Kelly and others will testify that this  
10 decision placed Mr. Kelly in an improper consulting role in  
11 a period of extreme tension at the STP site.

12 The evidence will also show that shortly after  
13 arriving at STP on this continual basis, rumors began to  
14 circulate about bias by the NRC inspectors against STP.

15 The record will establish we believe that neither  
16 Houston Light & Power nor NRC management gave these rumors  
17 any credence.

18 The NRC management learned of these rumors during  
19 July of '87. However, the evidence -- We believe July of  
20 '87.

21 However, the evidence will establish that  
22 management still required the inspectors, despite protests  
23 by the inspectors, to remain on site on a continual basis,  
24 even though the utility, HL&P, was clearly not ready for  
25 inspection.

1 Management's conduct in this matter clearly  
2 exacerbated an already tense situation. During June of '87  
3 it became painfully clear that HL&P would not witness its  
4 licensing date and thereby lose millions and millions of  
5 dollars.

6 Nevertheless, the NRC Region IV management took on  
7 a new watchword, we believe, to implement the plan and grant  
8 the license at almost any cost to the employees or the NRC  
9 and perhaps to the safety of the American public.

10 The NRC forced Mr. Kelly to unnecessarily remain  
11 in that terribly heated situation, to bear the brunt of  
12 repeated, unsubstantiated rumors impugning his integrity and  
13 the integrity of the other inspectors.

14 We believe the evidence will establish that NRC  
15 management forced the inspectors into a consultation role in  
16 contradiction of their true regulatory role.

17 The inspectors were forced to remain on site,  
18 despite Mr. Kelly's continued protests to management.

19 We believe the evidence will establish that by mid  
20 July of '87, the rumors had become such a real problem that  
21 the inspectors, including their supervisor, Mr. Lawrence  
22 Yandell, had had enough.

23 They contacted -- Mr. Kelly contacted his division  
24 director, who suggested that he take the matter to HL&P  
25 management. Mr. Kelly, Mr. Caldwell, a fellow inspector,

1 and Mr. Yandell, met with Mr. Geiger of HL&P who works and  
2 runs the quality assurance division.

3 At the meeting the issue of rumors was raised by  
4 the inspectors. However, Mr. Geiger, we believe the  
5 evidence will show, offered no real solution.

6 The inspectors and supervisors then took the issue  
7 to NRC Regional Administrator, Mr. Martin. The evidence  
8 will establish that they met with him the very next day in  
9 Arlington, Texas.

10 However, instead of following his usual policy of  
11 referring such personnel matters back to the utility, Mr.  
12 Martin referred the matter for internal investigation for  
13 wrongdoing by the NRC Office of Inspector and Auditor.

14 The union would like to be clear in this, though,  
15 that the evidence will establish that Mr. Kelly did not  
16 solicit employment with HL&P, that he engaged in no  
17 misconduct during the group meeting with HL&P on July 20,  
18 1987.

19 The evidence will also establish we believe that a  
20 license had already been issued to HL&P/STP by the time Mr.  
21 Kelly had a conversation with Mr. Larry George and Mr. Kern  
22 of HL&P in late August of 1987.

23 The union submits that the actions by management  
24 against Mr. Kelly in this case are retaliation for Mr. Kelly  
25 having testified before Congress about Region IV

1 inadequacies and mismanagement.

2           The evidence will establish that Mr. Kelly  
3 testified before Congress on or about June 11, 1987, and  
4 that Mr. Martin, Mr. Bangart and Ms. Sharon Connelly were  
5 aware of Mr. Kelly's testimony, that Mr. Martin as regional  
6 management was the subject of Congressional testimony and  
7 that he was instrumental in implementing the adverse action  
8 taken against Mr. Kelly, as was Mr. Bangart and Ms. Sharon  
9 Connelly.

10           The union believes that the evidence will also  
11 establish the requisite causal connection between the  
12 protected conduct and the adverse action.

13           Mr. Arbitrator, when all is said and done in this  
14 case, we believe several things should become clear: Mr.  
15 Kelly is a good employee, an excellent inspector, concerned  
16 for upholding the true mission of the NRC, which is to  
17 provide for safe operation of nuclear powerplants, and to  
18 protect the public health and safety.

19           Some would say we believe he did his job too well,  
20 and in performing so well, he raised the ire of the nuclear  
21 utility industry and NRC management.

22           In seeking to protect the public's health and  
23 safety, he raised the ire of his own Region IV management.

24           We believe he has been punished for doing an  
25 admirable job under the worst of conditions at the STP site

1 during the spring and summer of 1987.

2 ARBITRATOR HAYS: All right. Call your first  
3 witness.

4 MR. CRADOCK: If we may have one minute, please.

5 ARBITRATOR HAYS: All right.

6 [Pause.]

7 MR. CRADOCK: Mr. Arbitrator, I want to state for  
8 the record that we have with us now Mr. Greg Benoit, B-e-n-  
9 o-i-t.

10 He's in the regional office here. He's the  
11 Director, Division of Resource Management and  
12 Administration.

13 We will graciously accept your offer and have him  
14 here as our technical advisor. He's a former chief of labor  
15 relations and policy for agency.

16 He may testify at sometime in this proceeding.

17 ARBITRATOR HAYS: His presence will not keep him  
18 from being eligible to testify.

19 MR. CRADOCK: Thank you.

20 I'd like to call Mr. Robert Martin.

21 ARBITRATOR HAYS: All right.

22 If you would, state your name and spell it,  
23 please.

24 THE WITNESS: My name is Robert D. Martin, M-a-r-  
25 t-i-n.

1 ARBITRATOR HAYS: Proceed, counsel.

2 MR. DRESSLAR: Could we ask that the witnesses be  
3 sworn, please.

4 ARBITRATOR HAYS: All right. If you'll swear the  
5 witness in.

6 Whereupon,

7 ROBERT D. MARTIN

8 was called as a witness, and having been first duly sworn by  
9 the Notary Public, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CRADOCK:

12 Q. Would you state your occupation, sir.

13 A. I'm the Regional Administrator for the Nuclear  
14 Regulatory Commission, Region IV office here in Arlington,  
15 Texas.

16 Q. Would you please describe for us the functions of  
17 the region and your job.

18 A. The function of the region is to manage the field  
19 activities of the Nuclear Regulatory Commission for areas  
20 that are under our responsibility in the 14-state region  
21 that comprises Region IV.

22 The geographical area of the region reaches  
23 roughly from the Rio Grande, the southern border of the  
24 United States, to the Canadian border, roughly from an area  
25 in the general vicinity of the Missouri River and Louisiana



1 to the Rocky Mountains. It's a 14-state region.

2 In that regard we have the primary responsibility  
3 of inspecting nuclear facilities which are licensed by the  
4 Nuclear Regulatory Commission.

5 This includes at the present time ten nuclear  
6 power reactors, which are managed by eight different  
7 electric utilities, and about -- on the order of 900 -- what  
8 we call materials licenses, which are much smaller  
9 applications of the use of radioactive material in industry,  
10 research, medicine, university applications.

11 We are responsible primarily -- the majority of  
12 our responsibility is inspecting those activities to assure  
13 that the health and safety requirements of the regulations  
14 of the Commission are being carried out.

15 To do that, my staff is therefore predominantly  
16 technical personnel who have either experience or training  
17 or both as inspectors for compliance and for safety.

18 In addition, we have a licensing responsibility.  
19 There are certain licensing type activities which are  
20 predominantly conducted by the headquarters activities, but  
21 at least in part have been delegated to the regional office.

22 That is primarily in the area of materials  
23 licenses. We issue most of the materials licenses in our  
24 jurisdiction in this part of the country.

25 We issue revisions or we perform technical reviews

1 relative to minor revisions in certain selected areas of  
2 licenses that are applicable to the nuclear power reactors.

3 In addition, Region IV has a satellite office in  
4 Denver. That office is primarily responsible for virtually  
5 all aspects of our regulation of the uranium milling  
6 business where -- for the 19 or so mills that are located in  
7 -- uranium mills, for the mining and processing of uranium  
8 in this part of the country.

9 Those activities are managed out of our URFO  
10 office, the URFO division -- the URFO office reports to one  
11 of the divisions within this office organizationally.

12 Q. Do you have any emergency preparedness  
13 responsibilities in this regard?

14 A. Yes. The region has the primary, initial response  
15 -- responsibility for emergencies, not only of materials  
16 facilities, but also at -- and primarily at nuclear reactor  
17 facilities.

18 We would have the responsibility for initial  
19 assessment and dispatch of initial teams. Being the field  
20 office, we are located closer to the reactor facilities.  
21 Therefore, our emergency response capabilities are a major  
22 element of our requirements.

23 In the event of a large emergency at any facility,  
24 clearly then the resources of this office would be over  
25 taxed. Then the national emergency response program comes



1 into effect, and should it be large enough, the federal  
2 response program.

3 But the initial responsibilities set with the  
4 region.

5 Q. I think you mentioned to me just before we started  
6 that in the event there was any type of emergency that  
7 occurred during the proceeding here, you wanted to be sure  
8 that the parties understood that you would have to react to  
9 that and we would have to suspend the proceedings.

10 A. Yes. The likelihood is extremely small. But  
11 periodically we have to place our emergency response center  
12 in a standby mode where we monitor. That could disrupt, the  
13 need for me to pull people out of this meeting.

14 Q. How long have you been regional administrator, Mr.  
15 Martin?

16 A. I was assigned as administrator in October of  
17 1984.

18 Q. Can you tell us what you did prior to your present  
19 job?

20 A. Immediately prior I was in the Region II office in  
21 Atlanta. I was the deputy regional administrator from about  
22 1981 to 1984.

23 Previous to that, from about 1977 through 1981, I  
24 was a section chief, which is a first-line supervisor, in  
25 the Region II office in Atlanta.

1           Prio. to that, from 1974 to '77, I was a reactor  
2 inspector in the Region III office which is centered outside  
3 of Chicago, Illinois.

4           Prior to that I was with the University of  
5 Michigan for about ten years, from about '64 to '74. I was  
6 a manager of their nuclear reactor facility, part of their  
7 research activities. I took some graduate work there. I  
8 also taught in their department of nuclear engineering. I  
9 was a lecturer, as well as being the manager of the reactor  
10 facility.

11           And for a period of time I was a consultant to the  
12 Atomic Energy Commission, which was the predecessor agency  
13 to the Nuclear Regulatory Commission, at least as far as the  
14 regulatory activities are concerned.

15           The Atomic Energy Commission was separated in the  
16 1975 time frame. The regulatory activities of the old  
17 Atomic Energy Commission became the Nuclear Regulatory  
18 Commission, and ultimately the other activities of the AEC  
19 evolved over time into the Department of Energy.

20           Q.    Could you describe briefly for us your educational  
21 background.

22           A.    I have a Bachelor's degree in mechanical  
23 engineering from the Polytechnic Institute of Brooklyn.

24                   I have a Master's and professional degree from the  
25 University of Michigan. A professional degree is a post-

1 Master's degree. At Michigan it's an alternative to the  
2 doctorate for people who are more interested in design than  
3 they are in research.

4 Q. Mr. Martin, have you in your official capacity had  
5 involvement with the present case involving Mr. Kelly?

6 A. Yes.

7 Q. And what was that involvement?

8 A. I was the deciding official -- to be the deciding  
9 official on an action that was proposed by Mr. Kelly's  
10 division director, Mr. Bangart.

11 Q. Now, I'd like to direct your attention to what has  
12 been entered into evidence as Joint Exhibit 1. To your  
13 right there's a case file indexed Volume I, Tab 1. It's a  
14 document dated June 26, 1989. Have you seen this before?

15 A. Yes, I have.

16 Q. Could you identify it for us, please?

17 A. It is ....

18 Q. Take a moment to look it over.

19 A. It is my decision letter which I -- after having  
20 reviewed the matters of this case made my decision about the  
21 nature of the action against Mr. Kelly, which was to suspend  
22 him for a period of 15 days.

23 Q. I'd like you to take a moment to direct your  
24 attention further to the second and third paragraphs of page  
25 1 of the decision letter where you relate charges 1 and 2 in

1 this case. Would you take a moment to look those over,  
2 please.

3 [Pause.]

4 Have you had a chance to look those over?

5 A. Yes.

6 Q. Having done so, could you summarize for us your  
7 decision with respect to those two charges?

8 A. With regard to charge 1, which is the charge that  
9 he had -- paraphrasing -- had improperly solicited  
10 employment with Houston Light & Power. And the summary of  
11 the paragraph that you referred me to relative to charge 1  
12 was that in looking over the material that was available to  
13 me, the original investigation, the supplementary  
14 information that was obtained, memoranda that Mr. Kelly had  
15 provided to me, reviewing the transcripts -- and it is  
16 particularly important that we recognize, I was basing it on  
17 a review of the transcripts of the statements provided to  
18 the Office of Inspector and Auditor, not the conclusions  
19 that were provided by them -- that I came to the conclusion  
20 that I was more persuaded by Mr. Kelly did in fact engage in  
21 a dialogue which constituted improper solicitation of  
22 employment with two members of the HL&P staff.

23 Q. With respect to charge 2?

24 A. Using the same information and the background and  
25 knowledge that I had of the circumstances at that site, I

1 concluded that Mr. Kelly did in fact request, demand, expect  
2 apologies and other activities that I considered to be  
3 inappropriate type of conduct, when it comes to the  
4 standpoint of carrying out the mission of this office, and,  
5 accordingly did, in fact -- I concluded that he did in  
6 fact imply or threaten a lawsuit.

7 And to my mind that was inappropriate conduct and,  
8 in fact, was in violation of the requirements relative to  
9 using a public office for private gain.

10 Q. You mentioned several things that you relied upon  
11 in coming to these conclusions, including the testimony from  
12 the OIA inspection, memoranda from Mr. Kelly. Can you  
13 recall anything else that you used as a basis on which to  
14 deliberate on the decision?

15 A. In fact, the second paragraph of that letter,  
16 there was the oral presentation and his written presentation  
17 of May of '89, which was in response to the original  
18 proposal.

19 There was my knowledge of the events that were  
20 taking place and the circumstances surrounding the  
21 activities that were going on at the South Texas site in the  
22 summer of '87, and my involvement with that; memoranda that  
23 Mr. Kelly wrote to me or I received copies of, because I was  
24 cc'd on them. He had written those memoranda to other  
25 people either during the conduct of the investigation or

1 after the investigation was concluded.

2 Q. Did you consider in your deliberations Mr.  
3 Bangart's proposal letter? And I'm referring to what's Tab  
4 4 in the same volume that you have, which would be the  
5 proposal letter on Mr. Kelly.

6 Do you recall whether and how you may have  
7 utilized Mr. Bangart's proposal letter?

8 A. Well, clearly, Mr. Bangart's proposal letter was a  
9 key document in terms of reviewing what kind of action I  
10 would finally arrive at as a deciding official.

11 It was the document which articulated the  
12 background, the circumstances.

13 So the action I was really dealing with was his  
14 response to this proposal. So I considered this document  
15 and his response the fundamental package that I had to come  
16 to grips with as far as being a deciding official.

17 Q. Thank you.

18 Now, with respect to your reliance on the OIA  
19 testimony, you say in the second paragraph -- or the third  
20 paragraph of page 1 again -- back to your decision letter --  
21 that you find the statements of Messrs. Larry George and  
22 Charles Kern of HL&P to be more credible than Mr. Kelly's  
23 explanation of his contacts with them.

24 Now, I'd like to refer you back to the  
25 administrative file again, if you would look in Volume III,



1 Tabs 40, 41 and 42. Have you seen those before?

2 A. Yes, I have. 41 and 42 appear to be the reports  
3 of interview that were attached to the investigation report.

4 Tab 40 appears to be -- and I have seen this  
5 before. This appears to be a note that the OIA investigator  
6 collected during the period of time of the investigation.  
7 It apparently is a handwritten note that went from Larry  
8 George to the prior director of the nuclear security  
9 department at South Texas.

10 I have seen all three before.

11 Q. And they're dated when, Mr. Martin?

12 A. Tab 40 is a single sheet document dated August 21,  
13 1987.

14 Tab 41 is a report of interview dated February 2,  
15 1988.

16 Tab 42 is a report of interview dated February 2,  
17 1988.

18 Q. Now, I want to direct your attention to Volume IV  
19 that's next to you there, approximately six pages in. Would  
20 you take a look there.

21 There are statements -- documents in there dated  
22 November 14, 1988. Have you seen those before?

23 MR. DRESSLAR: Excuse me. Could I ask what page  
24 we're looking at?

25 MR. CRADOCK: It's approximately the sixth page



1 in.

2 THE WITNESS: This is the November 14, '88 report  
3 of interview with Larry George.

4 MR. CRADOCK: Right.

5 BY MR. CRADOCK:

6 Q. Could you identify the following page?

7 A. This is a report of interview of Charles Kern  
8 dated November 14, 1988.

9 Q. Have you seen these before?

10 A. Yes. These were the supplemental interviews.  
11 This is the report of the supplement interviews that I made  
12 mention of before.

13 Q. Now, going back again to your reliance on these  
14 statements that you mentioned. Tabs 40, 41 and 42 of Volume  
15 III and the two documents you just identified, are these the  
16 statements of which you speak?

17 A. Tabs 41 and 42.

18 Q. 41 and 42 are the statements.

19 A. Tab 40 --

20 Q. Is a memo.

21 A. -- is an internal document that was an STP  
22 document. I did not ascribe any particular significance to  
23 it because I had less knowledge about the true nature of its  
24 origin and its purpose.

25 But 41 and 42 and the two November 14 reports of

1 interviews that we just discussed --

2 Q. These are the statements which you relied upon?

3 A. Those are the statements that I relied on when we  
4 talk about those things that were attached to the OIA  
5 report.

6 Q. Can you tell us why you found the statements of  
7 Kern and George more credible than Mr. Kelly's on this  
8 issue?

9 A. Mr. George and Mr. Kern, during the period of time  
10 when there was severe difficulties at the South Texas site  
11 relative to the security organization at South Texas and  
12 their readiness to be in a position that they were supposed  
13 to be in prior to the licensing of that facility, Mr. George  
14 and Mr. Kern were represented to me on occasions by Mr.  
15 Kelly, including as recently as after the presentation of  
16 his written response to the proposal letter, that Mr. Kern  
17 and Mr. George were not part of the problem with the South  
18 Texas organization, that they were good men --

19 MR. DRESSLAR: I'm going to object to this last  
20 part. He has stated that he spoke with Mr. Kelly after --  
21 I'm supposing the decision letter, and that that was the  
22 basis for --

23 MR. CRADOCK: That's not what he said.

24 ARBITRATOR HAYS: If I understood him right --

25 THE WITNESS: The decision letter --

1 ARBITRATOR HAYS: -- after he had formulated his  
2 response to the proposed letter. Is that --

3 BY MR. CRADOCK:

4 Q. Mr. Martin, maybe you could -- It was after what?  
5 Could you clarify that?

6 A. When Mr. Dresslar and Mr. Kelly provided both the  
7 oral and written response to the proposal.

8 Q. And before you made your decision?

9 A. And before I made the decision. It was at that  
10 point -- and I believe we had gone off the record at that  
11 point because Mr. Dresslar had completed the presentation of  
12 the oral response, that I asked a question with Mr.  
13 Dresslar's, I believe, agreement of Mr. Kelly about were Mr.  
14 Kern and Mr. George not considered to be, you know, decent,  
15 reliable people at the South Texas site during that period  
16 of time.

17 That's what I was --

18 MR. DRESSLAR: I'm going to object as being  
19 hearsay, that was discussion off the record after the oral  
20 reply also specifically at my request.

21 MR. CRADOCK: May I respond?

22 Whether it's hearsay or not is of no consequence  
23 in this proceeding.

24 Secondly, if there's a prior statement against  
25 interest, he ought to be able to testify.

1 ARBITRATOR HAYS: I'll overrule the objection and  
2 allow you to testify. Proceed.

3 THE WITNESS: Well, in any event my perception of  
4 Mr. George and Mr. Kern were that they were more reliable  
5 portions of that organization during that period of time.

6 Mr. Kelly, I believe, described them -- I believe  
7 in one of his -- as I recall, in one of his memoranda that I  
8 either was the recipient of or that I received a copy of  
9 because I was cc'd on when he sent it to someone else --  
10 identifying those individuals as informants to him during  
11 the course of his inspection activities at the South Texas  
12 project.

13 So they were viewed as reliable personnel. They  
14 were retained despite the massive changes of personnel that  
15 took place in the South Texas security organization, to  
16 replace people who were fundamentally incompetent and not  
17 doing their work well.

18 Those two individuals were retained in positions  
19 of responsible locations, and they were viewed by the  
20 inspector staff as being reliable, credible, decent people,  
21 and that those two individuals testified in my view with  
22 certainty that Mr. Kelly entered into a conversation with  
23 them that they were convinced they were being asked by Jim  
24 Kelly whether or not HL&P would consider Jim Kelly a  
25 candidate for employment.

1           That was the fundamental basis that led me to give  
2 them credibility.

3           MR. DRESSLAR: Might I ask a question? We asked  
4 for all material relied on in this case. He just testified  
5 about some documents that Mr. Kelly provided to him that we  
6 were not -- I don't know if they're in the file.

7           If they're not, we were not provided with those  
8 documents, and I would like copies of them as soon as  
9 possible. If he's saying he relied on them.

10          MR. CRADOCK: We'll get to some documents that he  
11 relied upon.

12          MR. DRESSLAR: I understand.

13          MR. CRADOCK: I haven't offered any particular  
14 documents. But we've provided everything.

15          ARBITRATOR HAYS: Can you identify the documents  
16 that you -- I believe you said you were copied on them,  
17 that they were authored by Mr. Kelly.

18          THE WITNESS: Yes. I believe they were documents  
19 that I transmitted to OIA -- at least one of them, I  
20 transmitted to OIA before the conclusion of their  
21 investigation, and I believe it was made a part of the  
22 investigative file.

23               I believe I have seen these documents in the  
24 preparation for this hearing within these documents here.

25          ARBITRATOR HAYS: Can you be a little more

1 definitive as to the substance of the document that you're  
2 looking at? Are you able to tell us, so we can better  
3 identify the document?

4 MR. CRADOCK: If you could bear with me, if I  
5 could proceed, I might be able -- In fact, I'm going to  
6 address the question of documents. I believe it might  
7 answer the questions.

8 ARBITRATOR HAYS: All right. I'll give you the  
9 latitude, counsel, to proceed.

10 BY MR. CRADOCK:

11 Q. Now, from what you've said, you had no reason to  
12 believe that either Kern or George had any prejudice against  
13 Mr. Kelly in any way.

14 A. It was on that -- Yes, that is correct. It was  
15 on that basis that I gave the credibility to their testimony  
16 or to their information.

17 Q. Referring you to the decision letter, with respect  
18 to the memoranda from Mr. Kelly which you say you relied  
19 upon, I'll direct your attention to the OIA investigation  
20 which is contained in Volume II of the administrative file,  
21 Tabs 2 and 3.

22 A. Okay.

23 Q. Have you seen those before, Mr. Martin?

24 A. For some reason, Tab 2 is empty. Tab 3 is empty.

25 Q. I'll give you another copy. Let the record show

1 I'm handing you Volume II of the administrative file.

2 Have you seen that before?

3 A. Yes. Tab 2 is a memo to me from Jim Kelly dated  
4 July 28 -- I think that's the 28th -- 1987.

5 Tab 3 is another memo to me from Jim Kelly dated  
6 July 28, 1987.

7 Q. Are these the memos to which you related in your  
8 decision letter? And if so, can you explain for us how they  
9 related to your decision?

10 A. With regard to the item at Tab 2, the letter of  
11 July 28, 1987, one of the statements that's made -- a  
12 closing statement is, "I am seeking an apology from the  
13 utility in behalf of myself and the agency."

14 In the July 28, '87 memo, which is behind Tab 3,  
15 he makes reference to the fact that he feels he's being  
16 slandered by a falsehood.

17 Those are again singular events, singular  
18 sentences, singular tones -- tonal type of comments made in  
19 individual memoranda collectively. Those, I think, reach  
20 more to the time -- to the aspect of the decision, not so  
21 much for the employment solicitation, but for the second  
22 charge, Charge 2.

23 Remember, I answered in the opening paragraph the  
24 things that I collectively relied upon.

25 In this instance I would say those two sentences,



1 those two memoranda, were partially related to my decision  
2 relative to Charge 2.

3 Q. Now, I'd like to refer you back to your decision  
4 letter again, if I may, which is in Volume I, the last  
5 paragraph. You say there with respect to Charge 2 --

6 A. I'm sorry. The last paragraph on page 1?

7 Q. Page 1.

8 It says with respect to Charge 2, "Mr. Kelly  
9 raised matters for resolution with HL&P management, demanded  
10 apologies and improperly threatened lawsuits." You say that  
11 he independently pursued the matter up the corporate level  
12 to meet with Mr. Goldberg. What was Mr. Goldberg's capacity  
13 at HL&P at that time?

14 A. Mr. Goldberg was the group vice president in  
15 charge of the South Texas Project. This made him  
16 accountable to the president and chairman of the board  
17 directly. He was the responsible corporate official for the  
18 South Texas Project.

19 Q. Can you tell us what you know of Mr. Kelly  
20 pursuing those matters with Mr. Goldberg?

21 A. [No immediate response.]

22 Q. Let me ask you another question. Tell us how you  
23 found out that Mr. Kelly had pursued the matters with Mr.  
24 Goldberg.

25 A. I believe they were -- Reaching back to that

1 time frame, I believe one of the issues was in testimony  
2 provided in the OIA report, there is a -- I believe an  
3 interview of Mr. Goldberg where he refers to a meeting with  
4 Jim Kelly.

5           There are also notes that I received that  
6 precipitated the need that I had to transfer this matter to  
7 OIA in the first place, which was prompted by a telephone  
8 call from Mr. Goldberg to me expressing concerns -- and this  
9 would have been in the -- I think July, July 1987 time  
10 frame.

11           Mr. Goldberg called me expressing concern about  
12 the level of tension that was building at that period of  
13 time, or that was in existence at that period of time  
14 between the NRC inspection staff and the -- his field  
15 security personnel and his security managers, and that he  
16 had received some information of some contentious meetings  
17 that had taken place or -- lack of a better word,  
18 contentious meetings that had taken place between our  
19 respective staffs.

20           We both were concerned that personalities and  
21 tensions not overwhelm the issues that had to be addressed  
22 and taken care of.

23           It may be -- and I cannot remember with  
24 specificity -- it may be that Mr. Goldberg also mentioned  
25 that to me at that point.

1           However, what was of greater concern at that  
2     juncture, at that moment was the fact that there was  
3     assertions of bias and assertions of retaliation by the NRC  
4     people because they had not been given jobs, or had applied  
5     for jobs and not been satisfactorily awarded a position.

6           That was at the time frame in July, perhaps late  
7     June/early July.

8           With that allegation, he said that he had notes  
9     that his staff members had prepared. I asked him to send  
10    those notes to me. I believe they are -- I'm convinced --  
11    I'm confident that they're attached to the OIA report and  
12    were part of the documents that I forwarded to OIA in order  
13    to ask them -- to inform them.

14          At that point I was informing them. I had also  
15    asked at that point for Mr. Kelly and Mr. Caldwell to  
16    provide me statements about applications for employment,  
17    which reached back to the 1984 time frame, I believe.

18          That was a dialogue that all took place during  
19    that period of time. I believe perhaps Mr. Goldberg at that  
20    point made mention of it.

21          In any event, it was confirmed through the OIA  
22    testimony.

23          Q.    Going back to the OIA testimony, would you please  
24    take a look at Volume II of the administrative file, Tab 11.  
25    Have you seen that before?

1 A. Yes.

2 Q. Can you identify it for us, please?

3 A. That's a report of interview by Donna Rowe, the  
4 case investigator on the OIA case. It has the dates of May  
5 26 and June 16, 1988; and it's a report of interview of  
6 Jerome Goldberg, Jerry Goldberg.

7 Q. Would you take a moment to review that again, Mr.  
8 Martin.

9 A. Yes, I have.

10 Q. Would you summarize what Mr. Goldberg says in that  
11 statement for us.

12 A. Mr. Goldberg had had discussions with Mr. Kelly,  
13 that they discussed the rumors that had been going on.  
14 Goldberg indicated that he was hearing the same rumors and  
15 ostensibly gave no credence to the loose talk.

16 At least in the characterization of this report of  
17 interview it said Mr. Goldberg appeared -- Mr. Goldberg  
18 stated that Kelly appeared to be anguished that the gossip  
19 was an attack on his reputation --

20 MR. DRESSLAR: Mr. Arbitrator, we're going to  
21 object. We were given the opportunity to object to some  
22 documents when this thing was entered, and we're going to  
23 object to this document as being irrelevant.

24 There has been no foundation as to how it was  
25 developed, and it's also hearsay if they're trying to use it

1 to prove that Mr. Kelly said anything that's related in this  
2 document.

3 ARBITRATOR HAYS: Response.

4 MR. CRADOCK: The testimony that's sought to be  
5 elicited has nothing to do with what Mr. Kelly said. It has  
6 to do with whether he contacted Mr. Goldberg and Mr.  
7 Goldberg's impression of what Mr. Kelly told him.

8 That goes to the issue of Mr. Kelly going up the  
9 corporate level improperly in our view in this matter.

10 MR. DRESSLAR: Then I might respond that that's  
11 one of the charges against Mr. Kelly, and agency counsel has  
12 just stated they're trying to use this document to prove  
13 that. Our objection remains the same.

14 MR. CRADOCK: You're going to have -- Well, I --

15 ARBITRATOR HAYS: Go ahead.

16 MR. CRADOCK: We have a document here, statements.  
17 I think it's fair to ask someone to summarize the statement  
18 if the person is not present at these proceedings, to  
19 summarize what the statement says for purposes of the  
20 record.

21 It's relevant to --

22 ARBITRATOR HAYS: I'll overrule the objection. Go  
23 ahead.

24 BY MR. CRADOCK:

25 Q. Anything else?

1           A.   Well, the last point I was going to make was that  
2   at least in this report of interview, it states that Kelly  
3   responded that if the rumors didn't stop, he would possibly  
4   consider filing a civil action for slander.

5           So the --

6           Q.   Mr. Goldberg relates that?

7           A.   This is a report of interview by Donna Rowe about  
8   what Goldberg was telling her.

9           MR. DRESSLAR: Mr. Arbitrator, might I ask? Did  
10   you also overrule our objection on relevancy, since there  
11   was no foundation as to this document?

12           ARBITRATOR HAYS: I'll overrule the objection on  
13   relevancy, and note the exceptions.

14   BY MR. CRADOCK:

15           Q.   Mr. Martin, I've handed you what has been marked  
16   for identification as NRC Exhibit A. Have you seen this  
17   before?

18                               [NRC Exhibit No. A was marked for  
19                               identification.]

20           A.   Yes.

21           Q.   Could you identify that for us, please?

22           A.   This is a memorandum to me from Jim Kelly on  
23   August 6, '88, "Erroneous charges made by OIA." This was a  
24   memo I received -- If I recall correctly, this was a memo  
25   I received before the OIA report was issued.

1 I believe I forwarded this memo to OIA with a  
2 memorandum because he had made a number of strong statements  
3 relative to matters that were under investigation. I  
4 believe I forwarded it on to OIA.

5 Q. Does Mr. Kelly make any mention of Mr. Goldberg in  
6 this memo? Would you take a moment to look at it?

7 [Pause to review document.]

8 A. In the third paragraph of the first page, it makes  
9 reference to his understanding from Mr. Goldberg. So,  
10 clearly, there was contact between them of some sort.

11 Q. Can you summarize the document otherwise?

12 A. It's a three-page document summarizing --

13 Q. What do you recall about the information you got  
14 from them?

15 A. I believe in the first case -- on the first page,  
16 it appears he is summarizing a prior contact that might have  
17 included discussions of employment at STP back in the 1981  
18 time frame with a Mr. Parker of HL&P.

19 There are also comments about my referring a self-  
20 reported matter to OIA. I take this as his concern that I  
21 had elected to do that.

22 He then reviews some of the issues that were in  
23 fact known problems, known problems because of the  
24 inspection efforts relative to problems with the South Texas  
25 security organization, other comments about OIA attempting



1 to discredit him and the security inspection effort.

2 He then again categorically denies that he was  
3 seeking employment in his August of '87 contact and proceeds  
4 on to a description of what he believes is being  
5 misunderstood which was the assertion that the contact was  
6 made with Larry George relative to Mr. Caldwell, not  
7 himself.

8 Q. Now, Mr. Martin, this is one of the memos you said  
9 you relied upon from Kelly in making your decision.

10 MR. DRESSLAR: Excuse me. That's leading the  
11 witness, and I object. He hasn't stated that.

12 MR. CRADOCK: I'll rephrase the question.

13 ARBITRATOR HAYS: Yes.

14 BY MR. CRADOCK:

15 Q. Mr. Martin, is this one of the memoranda you were  
16 speaking of earlier when you said you relied on memoranda  
17 from Mr. Kelly?

18 A. Well, this is one of the memoranda I certainly  
19 reviewed and included in the documents I reviewed in  
20 reaching the decision relative to Mr. Kelly because of his  
21 characterization of what the purpose of the discussions with  
22 Larry George were about.

23 In that regard, yes, it served as one of the  
24 documents I relied upon.

25 Q. Is it also one of the documents you relied upon in

1 your finding regarding Mr. Kelly pursuing the matter up to  
2 Mr. Goldberg?

3 A. There is a final sentence. Again in the context  
4 of certain sentences that I identified to you in previous  
5 memoranda is, "I intend to pursue whatever course is  
6 necessary to dispute these falsehoods."

7 Again, that was adding to the further conviction  
8 in my mind that Mr. Kelly was acting in the fashion of  
9 pursuing some sort of action.

10 MR. CRADOCK: I move that NRC Exhibit A be entered  
11 as a full exhibit.

12 ARBITRATOR HAYS: Any objection?

13 MR. DRESSLAR: Well, I would only object on the  
14 basis that the agency again did not provide this information  
15 upon our request for material relied on.

16 He is now claiming -- The agency is now claiming  
17 that they relied on this material.

18 ARBITRATOR HAYS: Response, counsel.

19 MR. CRADOCK: I'm trying to recall what the  
20 discovery request was that we had. I think it only related  
21 to --

22 ARBITRATOR HAYS: I think it related to documents  
23 relied upon by the agency.

24 MR. CRADOCK: Which request?

25 MR. DRESSLAR: Mr. Arbitrator, if I might,

1 initially when this first thing started, we made a request  
2 for all material relied on. It was also, I believe, in the  
3 decision letter -- the proposal that we were entitled to  
4 that.

5 That's a statutory obligation, not just a  
6 discovery request obligation.

7 ARBITRATOR HAYS: Any explanation as to why this  
8 document wasn't provided, counsel?

9 MR. CRADOCK: Well, two. One, again I don't  
10 recall any request that we provide anything relied upon.  
11 The only request that we received -- We had some 7114  
12 requests.

13 I believe we had a dispute over Ms. Rowe and Ms.  
14 Connelly.

15 Secondly, the first time I saw this document was  
16 approximately two days ago. I wasn't aware of it myself.

17 Mr. Martin I know hadn't recalled it until that  
18 time. There was no effort to cover anything up.

19 I don't see how there's a damage to Mr. Kelly, if  
20 Mr. Kelly originated this memorandum.

21 MR. DRESSLAR: Can I have a few minutes to review  
22 the entire document?

23 MR. CRADOCK: Thirdly, it seems to me that the  
24 admissibility of the document depends upon the rules of the  
25 contract that states that you can exclude matters that are

1 irrelevant, immaterial and unduly repetitive.

2 I think we've established firmly -- more than  
3 firmly -- the relevance and materiality of the document.

4 MR. DRESSLAR: I can respond to that. This is not  
5 only a contractual matter. This is also a statutory matter.

6 Under the statute we are allowed to receive all  
7 material relied on, and that is the basis for our objection.

8 If I can review it for a few minutes, if we can  
9 just have a couple of minutes, I'll review the entire  
10 document and may be able to withdraw my objection.

11 ARBITRATOR HAYS: All right.

12 [Pause]

13 MR. DRESSLAR: If we can limit its use in the  
14 record as an exhibit to only the paragraph beginning --  
15 Well, everything after the first two paragraphs. I don't  
16 think the first section is relevant.

17 MR. CRADOCK: I can respond on the relevance if  
18 you want of those two paragraphs. I mean, there's a  
19 question here about whether there were rumors. We're going  
20 to get into that in the testimony, of whether there were  
21 rumors down here about retaliation by our people.

22 MR. DRESSLAR: Okay. I'll just withdraw the  
23 entire objection. It's not worth fighting over.

24 MR. CRADOCK: I'll renew my motion.

25 ARBITRATOR HAYS: NRC Exhibit A will be admitted.

1 [NRC Exhibit No. A was admitted in  
2 evidence.]

3 BY MR. CRADOCK:

4 Q. Now, Mr. Martin, I'd like to draw your attention  
5 back to your decision letter, page 1, and running over to  
6 page 2. You state that you relied also in your decision  
7 upon your personal knowledge of the South Texas situation.

8 You state at page 2 that you took into account in  
9 suspending Mr. Kelly the "high degree of tension at the  
10 South Texas Project."

11 Could you explain for us what your personal  
12 knowledge is, and your perception of what that tension was  
13 at that time, and when and how it got started.

14 A. The South Texas Project was a large state-of-the-  
15 art nuclear powerplant which was physically being readied to  
16 go into operation in the late spring or early summer kind of  
17 time frame of 1987.

18 The company, for reasons not clear to me, did not  
19 monitor the activities of the security department -- of  
20 their own security department in preparing the security  
21 aspects of their programs to be as ready for operation as  
22 the rest of the plant.

23 At that particular time, the security -- the  
24 manager in charge of that security department was a previous  
25 NRC inspector from another region who had been hired by

1     them.

2             On their staff in various capacities were two  
3     other previous NRC inspectors. I believe it may have to do  
4     with the fact that they relied heavily on the prior  
5     experience of these two individuals and that all the  
6     problems were being taken care of.

7             Whatever the reason was, the normal management  
8     controls that should have been applied to the security  
9     program at South Texas, which is required to be up and  
10    operational -- as operational as the physical plant is at  
11    time of licensing of the plant was not being accomplished.

12            This was being identified by our people, and  
13    ultimately escalated to the area where the plant in fact was  
14    finished and ready for licensing, and the security program  
15    was not.

16            Therefore, the plant would not get a license and  
17    was not going to get a license until it was ready for  
18    operation in all of its respects, including security.

19            Therefore, we were down -- we -- our inspectors  
20    were down at the site identifying failures in the security  
21    program, extensive failures in their hardware, in their  
22    security intrusion systems, in their identification systems,  
23    in their computer hardware, in their training programs,  
24    major deficiencies, to the extent that in fact guards at  
25    such facilities in the State of Texas also have to be

1 licensed by the State of Texas in order to carry firearms.

2 At one stage the State of Texas required them to  
3 disarm the guards. They had to put all the weapons back  
4 into the armory and be retrained comprehensively.

5 There were very extensive problems. So, clearly,  
6 the security department was the reason for holding up the  
7 operating license for the -- I mean, their own security  
8 department was the reason for holding up their license of  
9 that large powerplant.

10 So, obviously, there was a great deal of focus of  
11 corporate attention, albeit late, but then focused on the  
12 security department. Our staff were the evaluators of the  
13 adequacy of that work.

14 So, clearly, you have a small staff -- relatively  
15 small part of an organization being wholly and individually  
16 responsible for holding up the operation of a large nuclear  
17 powerplant.

18 That placed them under a lot of tension relative  
19 to their own peers, other employees in the organization,  
20 everyone else on site. There was probably on the order of  
21 3000 people on site whose activities were being held up by  
22 an organization of a few hundred people.

23 That created tensions between them and our  
24 inspectors, every time our inspector said, "No, this isn't  
25 ready, this isn't complete, this isn't right, this is not in



1 compliance with the requirements," because that just meant  
2 it would be longer before they would no longer be the  
3 impediment to the operation of that plant.

4 As a consequence of that -- Well, that was the  
5 basis upon which I knew. I was receiving during that period  
6 of time almost daily briefings on the progress of the  
7 licensee, Houston Light & Power, in getting their problems  
8 resolved, what were the issues at the site that had to be  
9 worked, and whether or not things were being brought to a  
10 conclusion in the way that they should have been.

11 Q. Is this atmosphere of tension that you just  
12 described the atmosphere that existed when in your knowledge  
13 of the facts of the case, Mr. Kelly made the violations  
14 charge regarding solicitation of employment and regarding  
15 taking matters up with HL&P management personnel?

16 A. I think we have to separate the two issues. I was  
17 aware that these tensions were going on on site. I  
18 recognized that there were these tensions. It was very  
19 apparent.

20 I was receiving that feedback. Anyone who has  
21 been in a similar circumstance just knows that that is going  
22 on, knows through the various inputs I was receiving from  
23 line managers responsible for the security group, from the  
24 security inspectors themselves.

25 So the existence of the tension is not only

1 natural, but in fact we were getting overt understanding  
2 about it.

3 At the time of the referral, which is about the  
4 time of getting the information that there had been  
5 outbreaks or flareups or losses of temper, and that issue  
6 was not only from my own staff, that there were great  
7 difficulties in dealing with certain members of the South  
8 Texas security organization, but in addition at that point I  
9 had received a telephone call from Goldberg saying he was  
10 having the same problems with his side of the organization.

11 But during that conversation, the issue of prior  
12 employment was generally alluded to. There were also the  
13 issues of whether or not there was bias and whether or not  
14 this was competition between NRC inspectors in Region IV  
15 versus former NRC inspectors in Region II, the previous  
16 management who -- the management of the program who had been  
17 previously there.

18 Those issues, you know, become a different matter.  
19 The issue of employment about which this action is being  
20 taken, that matter did not come to light at that point. We  
21 are talking a time frame prior to the point that this  
22 exchange between Mr. Kelly and Mr. George and Mr. Kern ever  
23 took place.

24 Q. How long did this atmosphere of tension exist?

25 A. Oh, Lord. Three months, four months.

1 Q. What months do you recall?

2 A. June, July, August, and I would say after they got  
3 licensed, and even in the first month after licensing of the  
4 plant, they were still just marginally acceptable. I think  
5 there was still a level of tension into September.

6 Q. Do you recall the date that Mr. Kelly is charged  
7 with making the violations of Charges 1 and 2?

8 A. The documents are not totall' consistent on that.  
9 In the charge I believe it is the date of August 10th.

10 Q. On the solicitation?

11 A. On the solicitation part. I believe there are  
12 other documents -- and perhaps in some of Mr. Kelly's  
13 memoranda -- refer to a different time frame in August. But  
14 in any case, the issue appears to be taking place in the  
15 August time frame.

16 Q. And the pursuit of the matter with HL&P management  
17 was in July; correct?

18 A. That is the best I can construct from the  
19 information I have here, yes.

20 Q. Back to the question: The tension did exist, in  
21 fact, at the time that our facts indicate that violations  
22 were made?

23 A. There's absolutely no question that tension  
24 existed.

25 Q. Now, you mentioned rumors. You mentioned Mr.

1 Goldberg. What kind of knowledge did you have of these  
2 rumors, if any, during this June/July/August time period?

3 A. From our own staff.

4 Q. What were they --

5 A. To one extent, and then also I mentioned the  
6 feedback that I received from Mr. Goldberg.

7 So I had -- I will not say continuous, but  
8 periodic feedback from my own staff of the existence of such  
9 rumors; and, secondly, the specific feedback from Mr.  
10 Goldberg.

11 Q. Do you recall what exactly the rumors were?

12 A. Well, one rumor, as I recall, was that there was  
13 racial bias.

14 Q. On the part of?

15 A. I think primarily Mr. Kelly, but I think it was  
16 generally alluded -- But I think it was primarily that  
17 charge was directed against Mr. Kelly and was one of the  
18 charges investigated in the OIA investigation.

19 Another was over regulation, we were going beyond  
20 what was required.

21 Another was competition, if you will, between  
22 Region II/Region IV.

23 And the thought was bias or -- Bias, for lack of  
24 a better word at this moment -- bias because Mr. Kelly and  
25 Mr. Caldwell had been spurned in employment offers or

1 employment approaches made to the company.-

2 Q. Did you ever have any meetings or otherwise  
3 discuss these rumors with Mr. Kelly, if you recall?

4 A. I can recall after hearing the charge about bias  
5 because of employment solicitation a meeting in which it was  
6 requested -- I cannot honestly remember whether I directly  
7 asked Mr. Kelly and Mr. Caldwell or I asked them after we  
8 met and asked what this was about, what were these  
9 discussions about employment about -- that I asked them  
10 through Mr. Bangart to provide me memoranda on what it is  
11 they could possibly be talking about.

12 Those two memoranda were forwarded to OIA, along  
13 with the comments that I received from South Texas.

14 Q. Referring you back to Volume II, Tabs 2 and 3,  
15 would you identify those for us again, please.

16 A. As I mentioned before, Tab 2 is a memo of July 28,  
17 '87 from Jim Kelly to me, a meeting in your office on the  
18 21st of July '87.

19 Q. Is this one of the memorandum --

20 A. This is one of the memos.

21 Q. Tab 3?

22 A. At Tab 3 is -- I answered too quickly relative  
23 to Tab 2.

24 Q. Go ahead.

25 A. I believe Tab 3 really constitutes the request I

1 made for an understanding about this charge of contact  
2 relative to employment.

3 Q. And Tab 2 would be?

4 A. I don't ....

5 Q. It refers to a July 21st meeting you said?

6 A. Yeah, I believe -- Most of these memos are dated  
7 in the same time frame. I think they were both created out  
8 of the same request or the same meeting.

9 Q. All right. I would direct your attention to the  
10 meeting that's referred to, July 21st, 1987 --

11 A. Yes.

12 Q. -- what, if anything, can you recall about that  
13 meeting?

14 A. I had had the combined input of the rising  
15 tensions, and then the input from the HL&P management with  
16 regard to this issue of not just tension, but also because  
17 of being spurned on employment offers.

18 It was at that point I believed it important to  
19 ascertain whether or not there was any problem with regard  
20 to bias relative to employment, real or perceived, that  
21 would have to be dealt with.

22 We met, we discussed that aspect. I'm sure we  
23 discussed a number of other things at the same time.

24 But the issue was focusing on whether or not there  
25 was a being spurned because of a job offer.

1           If I may digress, in those kinds of cases I must  
2 take action. If charges are being made that inspectors are  
3 biased because of some particular activity that is different  
4 than the technical tension that can occur by two technical  
5 experts disagreeing on a subject when it introduces this  
6 other element, I have to pursue it.

7           So when that other element arose -- that is, being  
8 spurned from an employment offer, it was necessary for me to  
9 establish that, collect what information I could, which is  
10 basically the memo under Tab 3.

11           And then I must forward that to the Office of  
12 Inspector and Auditor. I don't have a choice about it.

13           Q.   Regarding these requirements of which you just  
14 spoke, I'm handing you a two-page document marked for  
15 identification as NRC Exhibit B. Have you ever seen this  
16 document before?

17                               [NRC Exhibit No. B was marked for  
18 identification.]

19           A.   Oh, yes.

20           Q.   Could you take a moment to review it, please.

21                       Could you identify for us what NRC Exhibit B is?

22           A.   NRC Exhibit B are copies of pages out of the NRC  
23 manual, which is basically the management directives that  
24 exist, and that it's incumbent upon me and all employees to  
25 adhere to.



1           This particular one has to be -- I don't know if  
2 these are all of the pages under this particular chapter,  
3 but it's two pages out of Chapter 702, which is the  
4 responsibility of all employees relative to notification and  
5 investigation of misconduct.

6           Q.    Would you tell us what it provides under 0.702-1,  
7 coverage regarding references or referrals of matters?

8           A.    Would you give me the reference you're addressing  
9 me to?

10          Q.    It's the top of the page, the first page of the  
11 document.

12          A.    702-01?

13          Q.    Yes, sir.

14          A.    Basically the chapter covers the NRC's procedures  
15 for reporting conduct to the Office of Inspector and Auditor  
16 and their obligations to investigate such reports.

17          Q.    And it refers, does it not, to misconduct of NRC  
18 and contractor employees, does it not, as opposed to --

19          A.    It refers to NRC and NRC contractor employees.  
20 This is not the mechanism which is used for licensee  
21 employees or people outside of our employ. This is the  
22 procedure when the misconduct is alluded to about one of our  
23 employees or one of our contractors.

24          Q.    Is there a mechanism which exists if there is  
25 misconduct to allege regarding licensee or licensee

1 employees?

2 A. Yeah, if there is misconduct alleged regarding a  
3 licensee employee, and that misconduct is under our  
4 jurisdiction, then the procedures would direct me to utilize  
5 the resources of the Office of Investigations --

6 Q. Which is --

7 A. -- to investigate such matters.

8 That's an arm of this organization whose charter  
9 is to conduct what we would call outside investigations,  
10 investigations of licensees, either as organizations or  
11 individuals in licensee's organizations for wrongdoing.

12 Q. Back again to the OIA referrals which are covered  
13 by this excerpt, if I can direct your attention to the  
14 bottom of the first page, Part O-32, Subsection (a). Could  
15 you tell us what that provides?

16 A. That provides the directive to me that I must  
17 refer all -- all allegations of employee wrongdoing to the  
18 Office of Inspector and Auditor.

19 I do not have the option to decline to refer such  
20 allegations.

21 Q. When you made the referral in this case, were you  
22 acting pursuant to these NRC manual regulations?

23 A. Yes.

24 Q. Back to the July 21st meeting, did you have any  
25 discussions with Mr. Kelly regarding whether you were going

1 to refer the matter to OIA, that you recall?

2 A. I cannot specifically. It would not surprise me  
3 at all. In fact, it appears from the memo under Tab 2.

4 Q. Are you talking about Mr. Kelly's memo?

5 A. Yes -- I'm sorry. Under Tab 2 of Volume II  
6 there is a memo, which I've mentioned previously, from Mr.  
7 Kelly to me which stated the explanation, which is the  
8 document prepared under Tab 3.

9 That that explanation was to be forwarded to the  
10 NRC Office of Inspections and Audits -- that's not exactly  
11 the title, but Inspector and Auditors -- for their  
12 consideration.

13 So I must have discussed it either at the time of  
14 that meeting, shortly thereafter or in the context of that  
15 environment.

16 Clearly, he became aware.

17 Q. Do you recall the substance of those discussions  
18 or that discussion?

19 A. I wanted to find out was there any substance to --  
20 were there any approaches for employment, what was the  
21 factual background for it.

22 I asked them to provide me statements that  
23 described what was being alluded to and that I was going to  
24 forward it to OIA.

25 Q. Do you recall Mr. Kelly questioning your referral

1 of the matter to OIA?

2 A. No, I can't honestly -- I cannot recall whether  
3 he did or did not question it.

4 Q. Did you recall at that meeting on July 21st  
5 whether anyone raised the issue of another avenue might be  
6 more appropriate than an OIA referral?

7 A. I vaguely recall some reference to why can't we  
8 pursue these matters of the rumors directly with the  
9 company.

10 Q. Do you recall what your response was to that?

11 A. [No immediate response.]

12 Q. Well, let me ask you another question. Based on  
13 what you've testified to regarding this matter and the  
14 guidelines that you were following regarding referrals,  
15 based on those guidelines would it be appropriate pursuant  
16 to those guidelines to refer the matter back to the licensee  
17 or back to OI under those circumstances?

18 A. In the factual circumstances we're talking about  
19 now, it would not be appropriate to refer to OI. The matter  
20 is an allegation or series of allegations of misconduct  
21 brought against NRC employees, NRC inspectors.

22 It is not appropriate to refer those kinds of  
23 matters to the Office of Investigations who do not do  
24 internal investigations.

25 It is wholly inappropriate to ever refer an

1 internal matter -- a matter relative to a charge against an  
2 internal -- an employee to an outside licensee to look into.

3 Q. Thank you.

4 Now, did you, in fact, Mr. Martin, refer the  
5 matter to OIA ultimately?

6 A. Yes, I did.

7 Q. I'd like to refer you back to the administrative  
8 file, Volume II under Tab 1, the first page -- Well,  
9 there's one page at Tab 1. The document dated August 31,  
10 1987.

11 A. Yes.

12 Q. Have you seen this before?

13 A. Yes, I have.

14 Q. And could you identify that for us, please?

15 A. That was the basic -- It's a memorandum dated  
16 August 31, 1987, from Robert Martin to Sharon Connelly, who  
17 was the Director of OIA at that time.

18 It is the transmittal memo which incorporated the  
19 memoranda from two security officers, Region IV senior  
20 security officers.

21 These would be the Caldwell and Kelly memoranda,  
22 along with the notes that were sent to me from South Texas  
23 through Jerry Goldberg.

24 Q. Would you read for us the second page of that  
25 referral for the record.

1           A.    Okay.  The second paragraph reads, "Last month I  
2  informally received information that during a security  
3  program inspection this summer of the South Texas Project  
4  (STP), there were heated exchanges on several occasions  
5  between three Region IV inspection personnel and several STP  
6  security personnel.  Other than the enclosed STP meeting  
7  notes and the memoranda to me from two Region IV senior  
8  security officers, I have no other documentation.  However,  
9  my discussions with the involved inspectors lead me to  
10 believe that this was an emotional flareup limited to that  
11 particular stressful period.  No formal complaint or  
12 allegation has been received."

13                   That's the second paragraph.

14           Q.    From what you stated in there, it was your view  
15 that, quote, this was an emotional flareup limited to that  
16 particular stressful period at that time?

17           A.    At that time, as I understood the circumstances in  
18 the August 31 time frame, that there had been a stressful  
19 period, there had been some exchanges.  I had these bits of  
20 information, and I had some information relative to some  
21 dated employment-related matters.

22                   I, as required, forwarded to OIA.

23           Q.    Thank you.

24                   Going back to Charge No. 2 in your decision  
25 letter, the charge is that Mr. Kelly wrongfully pursued the

1 matter with HL&P management. Do you have an opinion as to  
2 what the correct avenue may have been for Mr. Kelly to  
3 follow if he was concerned about pursuing rumors? And if  
4 so, what is that?

5 A. We have the document you referred me to before  
6 relative to the responsibilities I have to refer matters to  
7 the Office of Inspector and Auditor.

8 The same issue occurs relative to the avenue  
9 that's open when such charges are levied.

10 Basically, if I can refer you to -- I'm speaking  
11 from NRC Exhibit B -- 0702-031. Basically it's the same  
12 document. Employees shall report to the director of their  
13 office allegations -- allegations -- of.

14 And then continuing on down, 032(a), I have to  
15 report that to the director.

16 I believe -- I'm trying to see if it is here. I  
17 believe there is also --

18 I'm sorry. Under 031 there's a statement, on the  
19 first page under 031, it says semicolon -- it's the last two  
20 lines -- "however, when the exigencies of the circumstances  
21 dictate, employees may make such reports directly to the  
22 Office of Inspector and Auditor."

23 That would be the case where I was viewed as being  
24 not an appropriate channel to pass the information forward.

25 But when such allegations come up, our



1 responsibility is not to try to pursue them individually,  
2 but rather to refer them to OIA.

3 Q. All right. Thank you, Mr. Martin.

4 Now, I'm handing you a document that has been  
5 marked for identification as NRC Exhibit C -- Let me just  
6 withdraw the document for a moment. I have to do something  
7 else.

8 [NRC Exhibit No. C was marked for  
9 identification.]

10 Q. [continuing] One other question on the actions  
11 charged against Mr. Kelly. Could you once again for us  
12 summarize the violations as you saw them in making a  
13 decision to decide that Mr. Kelly was wrong in soliciting  
14 employment with HL&P and in pursuing the matter of rumors  
15 with HL&P management at the July 20, 1987 meeting?

16 A. The July 20, 1987 meeting was the meeting between  
17 Mr. Kelly and Mr. Goldberg?

18 Q. No, it was the meeting that was the subject of  
19 Charge No. 2.

20 A. Could you refer me -- The July 20 date --

21 Q. You say you relied upon the proposal letter of Mr.  
22 Bangart --

23 A. Could you refer me to that tab because I did not  
24 refer to the July 20 date in my decision letter, but I did  
25 refer to Charge 2.

1 I've forgotten which tab Mr. Bangart's letter is  
2 under.

3 Q. It's Tab 4, specifically page 5 of the proposal.  
4 If you would review that paragraph, then I'll ask the  
5 question again.

6 A. I have reviewed it.

7 Q. Now, once again, could you summarize for us the  
8 violations as you saw them that caused you to decide that  
9 Mr. Kelly was wrong, in violation of the regulations in  
10 soliciting employment and pursuing the matter of rumors of  
11 HL&P personnel, including speaking with Mr. Goldberg, at a  
12 meeting with him on July 20, 1987?

13 A. It is inappropriate for an inspector to either  
14 solicit or give the appearance of soliciting employment  
15 while acting as an inspector and reviewing matters under our  
16 jurisdiction and responsibility, where he's carrying that  
17 out.

18 I was persuaded by reviewing the documents that we  
19 have discussed at some length that the individuals that Mr.  
20 Kelly made contact with were convinced that in fact Mr.  
21 Kelly was asking -- soliciting information relative to  
22 employment for himself.

23 I have discussed the basis upon which I gave them  
24 that credence. That kind of conduct and what that does to  
25 compromise the integrity of our inspection process is

1 unacceptable.

2 Therefore, I found that charge to be supported.

3 The second charge with regard to actions taken in  
4 response to rumors, assertions, allegations, we've already  
5 discussed what actions are mandated upon us for the handling  
6 of such matters.

7 It does not include individual inspectors chasing  
8 down such allegations, or groups of them chasing down such  
9 allegations on their own initiative, and representing those  
10 as agency actions because that is not in concert with the  
11 agency procedure for doing that.

12 Therefore, such contacts are inappropriate. I  
13 have discussed the matters that I used in coming to the  
14 conclusion that I believe that occurred, and it occurring is  
15 in fact in violation of internal directives.

16 Q. Thank you.

17 Now, I'll direct you back to the exhibit I handed  
18 you a moment ago, NRC Exhibit C for identification. Have  
19 you seen this before, Mr. Martin?

20 A. Yes.

21 Q. Can you identify it for us, please?

22 A. Well, the top sheet is a standard route slip from  
23 a regional counsel, Mr. William Brown, to me including a  
24 sheet of paper with 12 typewritten lines on it described as  
25 the so-called Douglas factors.

1           Apparently, these were matters that I was supposed  
2 to consider and utilize in my decision, when I took final  
3 decision on the proposed action against Mr. Kelly.

4           Q.    Would you read for us the cover memo from Mr.  
5 Brown.

6           A.    It's a transmittal slip to R. Martin dated 6-13-  
7 89. The text reads, "Pob, attached are the so-called  
8 'Douglas factors,' " "Douglas factors" in quotes, "that you  
9 should consider in determining the appropriate action to be  
10 taken in re the Kelly action. Bill."

11           Then it's further signed W. D. Brown.

12           Q.    Did you take into account these Douglas factors in  
13 making your decision with regard to the penalty in this  
14 case?

15           A:    Yes, I did.

16           Q.    Now, Mr. Martin, using NRC Exhibit C as a  
17 reference, could you point out for us how you considered the  
18 Douglas factors in this case and which ones you considered  
19 to be most important in this matter.

20           A.    It is --

21           MR. CRADOCK: If I could interrupt. Mr.  
22 Arbitrator, if I could, just to make the record clear, I'm  
23 not positive I moved to enter Exhibit B as a full exhibit.

24           ARBITRATOR HAYS: You have not.

25           MR. CRADOCK: I would like to enter NRC Exhibit B

1 as a full exhibit at this time.

2 MR. DRESSLAR: We would object unless the agency  
3 can provide the entire document.

4 MR. CRADOCK: We can provide the entire document,  
5 but I don't think it's necessary. We're talking about a  
6 document that I think you can take administrative notice of.

7 It's an excerpt from the NRC manual. We've  
8 established its relevance and materiality to -- I'm talking  
9 about Exhibit B, sir.

10 -- its relevance and materiality to the matter, as  
11 the guidelines that Mr. Martin was following regarding how a  
12 referral should be made.

13 ARBITRATOR HAYS: What exclusions are you  
14 concerned with, counsel?

15 MR. DRESSLAR: Well, I'm wondering if that's the  
16 only definition we're talking about of misconduct, whether  
17 the sections on basic requirements which end right there,  
18 there may be other standards for investigation or non-  
19 investigation.

20 MR. CRADOCK: I think the --

21 MR. DRESSLAR: If you can just direct me to a copy  
22 of it, I'll read it during the break and see if there's --

23 ARBITRATOR HAYS: Let's do that, rather than have  
24 the whole document introduced.

25 I'll hold your objection pending your opportunity

1 to examine it.

2 MR. CRADOCK: Sorry, Mr. Martin; sorry, gentlemen.  
3 Would you like me to repeat the question?

4 THE WITNESS: I think so, yes.

5 BY MR. CRADOCK:

6 Q. Now, using NRC Exhibit C as a reference, could you  
7 point out for us how you considered the Douglas factors in  
8 this case and which ones you considered to be most important  
9 in this matter?

10 A. I think the most important factor, especially with  
11 regard to Charge 1, solicitation of employment, is the first  
12 Douglas factor, the first item here which I understand is  
13 the Douglas factor, which states, "The nature and  
14 seriousness of the offense and its relation to the  
15 employee's duties, position and responsibilities, including  
16 whether the offense was intentional or technical or  
17 inadvertent, or was committed maliciously or for gain, or  
18 was frequently repeated."

19 The nature and seriousness of the offense.  
20 Solicitation for employment by an inspector, while he's  
21 carrying out inspection responsibilities, is probably one of  
22 the most serious offenses I can think of.

23 There must be integrity in the inspection process.  
24 That is the fundamental responsibility and obligation that  
25 we have in the carrying out of the mission of this agency is

1 that we carry it out in such a fashion that it is viewed by  
2 all parties -- that's the public, that's the licensee,  
3 that's our management -- that those inspection activities  
4 are being carried out by people who are impartial and  
5 objective in the manner in which they're carrying out those  
6 duties.

7 Any compromise of that exposes the agency or any  
8 one of its inspection activities, all of which are based in  
9 safety -- exposes them to the possibility of willingness to  
10 compromise.

11 We cannot afford that. Any issue that is a  
12 compromise of the integrity or creates the appearance of  
13 compromising the integrity, the objectivity of the  
14 inspection process therefore compromises our ability to  
15 carry forth and make safety decisions.

16 It compromises my ability to make safety judgments  
17 for this office because I must rely on the input from my  
18 inspectors as to what is the factual matters going on.

19 If I must question and lose confidence in their  
20 objectivity because of issues relative to such things as  
21 soliciting for employment, that undermines the integrity of  
22 my decision making, the confidence of the public in the  
23 fairness of the licensee being treated equitably.

24 That to me is probably the most fundamental factor  
25 that I had to rely on, not the only one, but the most



1 fundamental one.

2 All of what I just described about the fundamental  
3 aspect of the inspection job, clearly Item 2 identifies --  
4 Item 2 is a factor because all inspectors are trained; all  
5 inspectors regularly reminded of the importance of not  
6 either creating a conflict of interest or creating the  
7 appearance of a conflict of interest.

8 Item 5, the effect of the offense upon the  
9 employee's ability to perform at a satisfactory level and  
10 its effect upon supervisor's confidence in the employee's  
11 ability, again I believe I even referred to that kind of an  
12 issue under Item 1.

13 Such activities do undermine confidence:

14 If I may, the notoriety of the offense: As a  
15 consequence of such questions being raised, it raises the  
16 question of all work that has been conducted by those people  
17 over a period of time.

18 Therefore, in fact, independent reviews may well  
19 have to be done to reestablish the validity of work that had  
20 been done previously.

21 It raises, while not specifically in this case, it  
22 raises the potential of a great deal of notoriety with  
23 regard to whether or not the agency had lost its objectivity  
24 in the handling of a particular case.

25 Item 9, the clarity with which the employee was on

1 notice. I mention that again.

2 A previous statement: All employees, all  
3 inspectors -- all employees are trained, but most  
4 specifically inspectors are trained, because inspectors have  
5 that unique relationship that they are the enforcer, as well  
6 as the safety reviewer. They are out on their own in many  
7 instances, all alone.

8 Therefore, that trust and confidence must be  
9 there, and they are trained and exposed regularly to the  
10 requirements about the degree of caution which must be used  
11 when conducting activities outside.

12 Now, in terms of reaching a decision, certainly  
13 Item 11 came into effect, the mitigating circumstances  
14 surrounding the offense, such as the unusual job tension.

15 There's no question that there was tension at that  
16 site and circumstances. Whether or not that mitigates  
17 improper conduct was an issue that had to be balanced by me  
18 in trying to come to a decision.

19 Those ones that I've identified are identified as  
20 the dominant ones. Without question, Item 1 in my mind is  
21 the most dominant as the manager of this office in terms of  
22 importance.

23 The others entered in, to the extent that I  
24 mentioned. If I look through all of these, finally -- in  
25 the final analysis all of these were considered, but they

1 all constituted input to a lesser degree.

2 Q. Thank you.

3 MR. CRADOCK: I'd like to move NRC Exhibit C into  
4 evidence as a full exhibit.

5 ARBITRATOR HAYS: Any objection?

6 MR. DRESSLAR: No, sir.

7 ARBITRATOR HAYS: There being no objection, NRC  
8 Exhibit C will be admitted.

9 [NRC Exhibit No. C was admitted in  
10 evidence.]

11 MR. CRADOCK: Thank you.

12 BY MR. CRADOCK:

13 Q. Now, Mr. Martin, I'd like to refer you back to  
14 Douglas Factor 9, the clarity with which the employee was on  
15 notice of any rules that were violated, committing the  
16 offense or had been warned about the conduct in question.

17 You mentioned a moment ago that the inspectors are  
18 trained constantly. What type of training were you alluding  
19 to?

20 A. There are -- initially -- periodic announcements  
21 that are issued by -- I believe it's the Office of General  
22 Counsel, so-called yellow sheets, that come out on a  
23 periodic basis, reminding people of their responsibilities  
24 under the conflict of interest regulations.

25 They are periodically supplemented at the request

1 of the EDO -- the Executive Director for Operations for the  
2 agency, to be supplemented on a more than annual basis when  
3 particular instances or concerns may arise.

4 So believe there is a general agency-wide  
5 announcement that comes out at least annually, if not more  
6 frequently.

7 Regional Counsel conducts specific training  
8 sessions not less than annually on the subject of conflict  
9 of interest/avoidance of the appearance of conflict of  
10 interest.

11 There is in the training program for inspectors in  
12 the fundamental -- I believe the current name of it is the  
13 "Fundamentals of Inspection" course -- all inspectors are  
14 trained on that matter.

15 I meet with the inspection staff as a general  
16 meeting about once every six weeks, every four to six weeks.  
17 I know over the five years that I have been here that  
18 subject of concern and caution and being careful about  
19 conflict of interest has been brought up a number of times.

20 However, I do not keep specific records, but I  
21 know it has been brought up several times.

22 We have had a film, which I think we show about  
23 annually, from the Office of Government Ethics on conflict  
24 of interest matters.

25 We remind line supervisors to remind their people

1 of that on a periodic basis.

2 Then when specific issues come up, or charges are  
3 raised, or questions are raised, we almost always put out a  
4 reminder note to the staff in one fashion or another, just  
5 to continue to remind them of those issues.

6 Q. Is it fair to say from what you've said that the  
7 question of conflict of interest of NRC employees is a  
8 prominent issue concerning which there is constant training  
9 about, sensitivity about in the agency and in the region?

10 A. It is a very sensitive issue. It is particularly  
11 sensitive with regard to the inspection forces.

12 It is true with all employees, but particularly  
13 true with regard to inspection employees.

14 Q. Now, Mr. Martin, I'm handing you an exhibit marked  
15 for identification as NRC Exhibit D-1. Have you seen this  
16 before?

17 [NRC Exhibit No. D-1 was marked for  
18 identification.]

19 A. Yes.

20 Q. Could you identify it for us, please?

21 A. It is what I would refer to as a yellow sheet.  
22 Typically when this is -- It is an all-employees  
23 announcement dated May 24, 1984, on the subject of  
24 information regarding conflicts of interest.

25 This is a -- I will say -- rather typical fashion

1 in which this information is put out on a periodic basis to  
2 all the staff about the conflict of interest.

3 When I commented about it being a yellow sheet is  
4 this is normally printed on yellow paper when it's  
5 distributed to all employees.

6 MR. CRADOCK: I would move NRC Exhibit D-1 into  
7 evidence as a full exhibit.

8 ARBITRATOR HAYS: Any objection?

9 MR. DRESSLAR: There has been no showing that Mr.  
10 Kelly received a copy of this document. We'll object on the  
11 relevancy.

12 MR. CRADOCK: It has been established that it's a  
13 NRC-wide document. Mr. Martin said it was distributed to  
14 all employees.

15 ARBITRATOR HAYS: Well, you might go ahead and  
16 ask some expansion questions to make sure that's in the  
17 record.

18 BY MR. CRADOCK:

19 Q. Mr. Martin, can you tell me anything about the  
20 normal distribution of those types of documents?

21 A. We get a large quantity of these come into the  
22 office, and through our mail distribution system we assure  
23 that every mail drop location in the office get a copy of  
24 these.

25 I cannot personally attest to any given



1 individual, but the system is there by which we distribute  
2 these documents like this to every employee in the region.

3 ARBITRATOR HAYS: Counsel.

4 MR. DRESSLAR: I'll just leave my objection on the  
5 record.

6 ARBITRATOR HAYS: Overruled.

7 [NRC Exhibit No. D-1 was admitted in  
8 evidence.]

9 BY MR. CRADOCK:

10 Q. I'm handing you a document marked as  
11 identification as NRC Exhibit D-2. Have you seen this  
12 before, Mr. Martin?

13 [NRC Exhibit No. D-2 was marked for  
14 identification.]

15 ARBITRATOR HAYS: NRC Exhibit D-1 will be  
16 admitted.

17 THE WITNESS: This is a memorandum dated July 25,  
18 1984, designated as being to all Region IV employees, signed  
19 by John Collins who was the predecessor regional  
20 administrator before I took over in October of that same  
21 year.

22 The memorandum, if I may paraphrase, is calling  
23 for -- It's basically stressing their awareness of the NRC  
24 Manual Chapter 4124 on conduct of employees.

25 I read this as reminding them that they should be



1 aware of the information contained in it. It alludes to NRC  
2 Announcement 46 issued to all employees, and that was just  
3 handed to me as NRC Exhibit D-1.

4 It states whether or not there is any doubt about  
5 a situation or set of circumstances as being a conflict of  
6 interest, they should approach William Brown, the regional  
7 attorney.

8 MR. CRADOCK: I move NRC Exhibit D-2 into evidence  
9 as a full exhibit.

10 ARBITRATOR HAYS: Any objection?

11 MR. DRESSLAR: We will have the same objection as  
12 last time.

13 ARBITRATOR HAYS: Same ruling. D-2 will be  
14 admitted.

15 [NRC Exhibit No. D-2 was admitted in  
16 evidence.]

17 BY MR. CRADOCK:

18 Q. Now, Mr. Martin, I'm handing you NRC Exhibit D-3.  
19 Have you seen this before, sir?

20 [NRC Exhibit No. D-3 was marked for  
21 identification.]

22 A. It's a -- Your question was have I seen it  
23 before?

24 Q. Have you seen it before?

25 A. And the answer is yes.

1 Q. Can you identify it for us, please?

2 A. It's a memorandum of July 31, 1984, from John T.  
3 Collins, Regional Administrator, to all employees on the  
4 subject of ethics in government.

5 It is identifying that a copy of the film on  
6 ethical problems in government entitled, "The Consent of the  
7 Government, the Enduring Public Trust," had been obtained  
8 and was scheduled for viewing on Wednesday, August 8, 1984.

9 I believe I'm correct in that this is the same  
10 film that I referred to earlier about it being available in  
11 the regional office for periodic showing to the staff.

12 MR. CRADOCK: I'll move NRC Exhibit D-3 into  
13 evidence as a full exhibit.

14 MR. DRESSLAR: I'm not sure what this document  
15 says of any relevance, but I won't raise an objection.

16 ARBITRATOR HAYS: Without objection, D-3 will be  
17 admitted.

18 [NRC Exhibit No. D-3 was admitted in  
19 evidence.]

20 BY MR. CRADOCK:

21 Q. Now, Mr. Martin, I'm handing you a document marked  
22 for identification as NRC Exhibit D-4. Have you seen this  
23 before, sir?

24 [NRC Exhibit No. D-4 was marked for  
25 identification.]

1 A. Yes, I have.

2 Q. And could you identify that one for us?

3 A. It's a regional office notice on information  
4 regarding conflicts of interests. It is signed out by me.  
5 It is a system I utilize for generally informing the staff.  
6 Distribution List C is an all-hands distribution to all  
7 members of the staff.

8 It is -- By looking down at the concurrence  
9 signatures at the bottom of the page, I believe it was April  
10 30, 1987 that this was issued.

11 However, the copy I have, I can't read the year of  
12 issue at the top. But it is a periodic reminder to  
13 employees to be familiar with and the requirements of the  
14 conduct of employees as in Manual Chapter 4124.

15 MR. CRADOCK: I move NRC Exhibit D-4 into evidence  
16 as a full exhibit.

17 MR. DRESSLAR: I would object on relevancy again.  
18 There has been no showing that the document was produced,  
19 and the signature lines at the bottom, or the concurrence  
20 lines at the bottom have been altered to change the date.

21 MR. CRADOCK: I beg your pardon?

22 MR. DRESSLAR: On our copy the concurrence lines  
23 at the bottom, the dates have been altered to change the  
24 dates. We don't know when the document was issued.

25 MR. CRADOCK: It was issued during Mr. Martin's

1 tenure as Regional Administrator. He said he wasn't sure of  
2 the date, he thought it was April 30, 1987.

3 The purpose of this and the other documents I'm  
4 submitting at this time goes directly to Douglas Factor 9 --

5 MR. DRESSLAR: We understand the relevancy on --

6 MR. CRADOCK: I want to be heard on this, counsel,  
7 if you don't mind.

8 It goes directly to Douglas Factor 9 and the  
9 question of the notice to which employees are put regarding  
10 issues such as the types of issues we're dealing with in the  
11 present case.

12 I want to clearly establish by these documents  
13 that the NRC and the region is very conscious of the  
14 question of conflict of interest and ethics in government  
15 and is constantly training on that issue.

16 ARBITRATOR HAYS: Now, counsel.

17 MR. DRESSLAR: The same objection. There has also  
18 been no showing that the grievant, Mr. Kelly, received this  
19 document.

20 ARBITRATOR HAYS: I believe your testimony was,  
21 Mr. Martin, that the Distribution List C includes what? An  
22 alpha listing of all of the persons on your staff?

23 THE WITNESS: It is a general distribution to all  
24 members of the staff in the regional office.

25 ARBITRATOR HAYS: In the normal course of

1 business is this the way you make distributions to all  
2 members of your staff?

3 THE WITNESS: Yes, it is.

4 ARBITRATOR HAYS: On the basis of that, I'll  
5 overrule the objection. NRC Exhibit D-4 will be admitted.

6 [NRC Exhibit No. D-4 was admitted in  
7 evidence.]

8 BY MR. CRADOCK:

9 Q. I'm handing you a document marked for  
10 identification as NRC Exhibit D-5, Mr. Martin. Have you  
11 seen this before?

12 [NRC Exhibit No. D-5 was marked for  
13 identification.]

14 A. Yes.

15 Q. Could you identify it for us, please?

16 A. It's a regional office notice dated March 28,  
17 1985, signed by my previous deputy for me. The subject of  
18 the regional office notice is information regarding  
19 conflicts of interest, again a periodic reminder of  
20 employees' obligation to be familiar with the requirements  
21 of Part 0 and the NRC Manual Chapter 4124.

22 This is one of the periodic reminders to the  
23 staff.

24 MR. CRADOCK: I move NRC Exhibit D-5 into evidence  
25 as a full exhibit.

1 ARBITRATOR HAYS: Same objection, counsel?

2 MR. DRESSLAR: Yes, sir.

3 ARBITRATOR HAYS: Same ruling. NRC Exhibit D-5  
4 will be admitted.

5 [NRC Exhibit No. D-5 was admitted in  
6 evidence.]

7 MR. DRESSLAR: Do you want to enter them as a  
8 group, Mr. Cradock, and we can just have the same objections  
9 to every one?

10 MR. CRADOCK: I don't have any objection to you  
11 having a standing objection, but I prefer to do them one at  
12 a time and have them identified.

13 ARBITRATOR HAYS: All right.

14 MR. CRADOCK: Thank you.

15 MR. DRESSLAR: We find it a tremendous waste of  
16 the transcript and cost to do it this way.

17 ARBITRATOR HAYS: Counsel, both of you all, you're  
18 professionals; and I'm going to ask you to show a little  
19 professional courtesy.

20 Proceed.

21 BY MR. CRADOCK:

22 Q. I've handed you a document marked for  
23 identification as NRC Exhibit D-6. Have you seen this  
24 before, Mr. Martin?

25 A. Yes.

1 [NRC Exhibit No. D-6 was marked for  
2 identification.]

3 Q. Could you identify it for us, please?

4 A. It's a memorandum dated April 12, 1985, from Gary  
5 Sanborn, who was at that point the regional training officer  
6 -- Gary carried the collateral duty of a regional training  
7 officer -- to specific individuals indicating that -- it was  
8 a reminder that attendance at one of the training sessions  
9 on the standards of conduct, including conflict of interest  
10 standards, had been made mandatory by me, and that the last  
11 of the three sessions was scheduled for Thursday, April 18th  
12 at 1:00 p.m.

13 It has as at least a list of addresses a number of  
14 people in the regional office.

15 Q. Okay. Direct your attention to the right-hand  
16 column on the second page of the document.

17 A. It identifies the Division of Radiation Safety and  
18 Safeguards, individuals in that division who were to receive  
19 this memo. Included in there is J. Kelly.

20 MR. CRADOCK: I move that Exhibit D-6 be entered  
21 into evidence as a full exhibit.

22 ARBITRATOR HAYS: The same objection --

23 MR. DRESSLAR: And the further objection that  
24 there has been no showing that Mr. Kelly was in fact  
25 required or did attend the training.



1 ARBITRATOR HAYS: Same ruling. D-6 will be  
2 admitted.

3 [NRC Exhibit No. D-6 was admitted in  
4 evidence.]

5 BY MR. CRADOCK:

6 Q. I've handed you a document marked for  
7 identification as NRC Exhibit D-7. Have you seen this  
8 before, Mr. Martin?

9 [NRC Exhibit No. D-7 was marked for  
10 identification.]

11 A. Yes.

12 Q. Could you identify it for us, please?

13 A. This is a list of a regional training schedule.  
14 If I recall -- and I believe I do -- during this period of  
15 time it used to be an attachment to a regional office  
16 notice. That would be a document of a structure similar to  
17 regional office notices, for example, in Exhibit D-4. That  
18 is such a regional office notice, that we give a training  
19 schedule.

20 This appears to be the training schedule for April  
21 of 1985. It indicates on April 4th, 1985, there would be a  
22 conflict of interest training by Bill Brown, who's regional  
23 counsel, to be repeated on April 9th and April 18th.

24 It so shows the repeat scheduling on the 9th and  
25 the 18th of conflict of interest standards training by Mr.

1 Brown.

2 MR. CRADOCK: I move NRC Exhibit D-7 into evidence  
3 as a full exhibit.

4 MR. DRESSLAR: Object on the same basis.

5 ARBITRATOR HAYS: This seems to be in a different  
6 time frame, materially different. We're talking about the  
7 '87 period or immediately preceding that, and now this goes  
8 for a four-month period in '85? Is there -- 4-1-85 to 4-  
9 30-85.

10 MR. CRADOCK: Yes, sir

11 ARBITRATOR HAYS: Which was some two years  
12 before?

13 MR. CRADOCK: We have documents that are dated  
14 prior to the time relevant. It's my understanding that Mr.  
15 Kelly has been employed since 1980. Our purpose is to put  
16 in documents that show that there was continuous training  
17 during that time period.

18 ARBITRATOR HAYS: Well, I'm not sure it affects  
19 relevance, but it does go to weight. I'll overrule the  
20 objection and allow D-7 in.

21 [NRC Exhibit No. D-7 was admitted in  
22 evidence.]

23 BY MR. CRADOCK:

24 Q. Mr. Martin, I've handed you a document which is  
25 marked NRC Exhibit D-8. Have you seen this before?

1 [NRC Exhibit No. D-8 was marked for  
2 identification.]

3 A. Yes, I have.

4 Q. Could you identify it for us, please?

5 A. Forgive me, but I'm having some difficulty  
6 specifically identifying this. I believe this is a document  
7 that was a compilation of information that was put together  
8 in support of those training activities that were conducted  
9 by Mr. Brown.

10 These were used as distribution documents, and it  
11 serves as a compilation of a manual chapter, some Part 0  
12 requirements of our agency, and a cover sheet about the code  
13 of ethics for government service.

14 But the specific origin -- whether or not I'm  
15 correct in my memory of this -- I can't really specifically  
16 attest to.

17 I believe this was a document that was prepared in  
18 support of these training sessions.

19 Q. The training sessions to which you just alluded?

20 A. I believe that is the case, yes.

21 Q. It is your belief that this was a handout that Mr.  
22 Brown used in those training sessions?

23 A. I believe that is the case.

24 MR. CRADOCK: I move that NRC Exhibit D-8 be  
25 entered in evidence as a full exhibit.

1           ARBITRATOR HAYS: You're getting further and  
2 further from the center, but okay.

3           MR. CRADOCK: I'd like to respond to your comment,  
4 Mr. Arbitrator.

5           One of the really important matters here is the  
6 question of the awareness of Mr. Kelly regarding what was  
7 going on here, if we prove he was soliciting employment.

8           It might be a bit tedious for all of us here. We  
9 may be here for four days, but I'm going to put my case in,  
10 and I'm going to emphasize that this region and this agency  
11 did everything it could to conduct ethics and conflict of  
12 interest training.

13           ARBITRATOR HAYS: I understand.

14           MR. CRADOCK: I beg your pardon if it takes a  
15 while.

16           ARBITRATOR HAYS: I understand where you're going,  
17 counsel. All I'm saying is that the documents that are  
18 being offered -- Now, your witness can't even say for  
19 sure. He just is speculating as to when they were used and  
20 whether they were handed out or not.

21           MR. CRADOCK: I'll acknowledge that.

22           ARBITRATOR HAYS: That is primarily what my  
23 comments went to. But I understand they're offered for the  
24 purpose of showing that you had a pattern and practice  
25 within the agency to reacquaint people with their

1 professional responsibility and ethical responsible.

2 To that extent I'll overrule the objection and  
3 allow it in.

4 [NRC Exhibit No. D-8 was admitted in  
5 evidence.]

6 BY MR. CRADOCK:

7 Q. I'm now handing you an exhibit marked for  
8 identification as NRC Exhibit D-9. Have you seen this  
9 before, Mr. Martin?

10 A. Yes.

11 [NRC Exhibit No. D-9 was marked for  
12 identification.]

13 Q. Could you identify it for us, please?

14 A. This is a standard training attendance record.  
15 This is used when training conducted for those kinds of  
16 courses where training activities for which we want to  
17 assure ourselves that we have created a record or a  
18 documentation -- a record that training has been conducted  
19 and attended.

20 These are -- This is the signature of Bill Brown  
21 my regional counsel. This appears to be the training  
22 records for the standards of conduct/conflict of interest  
23 training conducted on April 4, 9 and 18 of 1985.

24 Q. And directing your attention to the right-hand  
25 side of the first page.

1           A.    Yes.  These would be the signatures of attendees  
2 at those training sessions.  And at least under this one it  
3 identifies next to the name J. Kelly an initial.  Some  
4 initials have been inserted, what I read as a J-A-K.

5           Q.    And the second page, would you look in the same  
6 space.

7           A.    There is what appears to be a further makeup  
8 session.  This would appear to be a makeup session in which  
9 it added June 6, 1985 as another training session on the  
10 same subject to catch additional people.

11                   That's what I would read the second sheet to be.

12           MR. CRADOCK:  I move NRC Exhibit D-9 into evidence  
13 as a full exhibit.

14           MR. DRESSLAR:  Can I ask a few questions, Mr.  
15 Arbitrator?

16                   ARBITRATOR HAYS:  Please.

17                               VOIR DIRE EXAMINATION

18 BY MR. DRESSLAR:

19           Q.    Do you know where this document came from, Mr.  
20 Martin?

21           A.    Do I know where it came from?

22           Q.    Yes.

23           A.    The original signed version of this as such?

24           Q.    Yes.

25           A.    I can assume it came from the records of our

1 personnel department. We have a personnel assistant who has  
2 some area of responsibility for retention of some of these  
3 records.

4 Q. Is that person available to testify?

5 MR. CRADOCK: Are we questioning the authenticity  
6 of the document?

7 ARBITRATOR HAYS: Right now he's taking the  
8 witness on voir dire prior to objection. So I'll allow him  
9 to do it. Go ahead.

10 MR. CRADOCK: Excuse me, Mr. Arbitrator, but what  
11 I was saying is if he's conducting voir dire, it is going to  
12 the authenticity of the document, nothing else I assume.

13 ARBITRATOR HAYS: Well, I don't know. He hasn't  
14 raised his objections yet. He has only asked for permission  
15 to examine the witness.

16 He hasn't even raised an objection that I know of,  
17 and may not.

18 BY MR. DRESSLAR:

19 Q. Do these documents show that Mr. Kelly attended  
20 both sessions on the same issues?

21 A. Perhaps I was not clear. I believe what the first  
22 and second page to me shows, looking at the signatures, is  
23 that there was a fourth session held. The same training  
24 record was circulated for those people who had not signed  
25 previously.



1 Q. Okay. That clears that up.

2 A. I believe that is how I would read this, as what  
3 that information means.

4 Q. So the same document was just placed on the table  
5 twice to collect signatures, once for the original and once  
6 for the makeup?

7 A. I believe that's probably true for all four  
8 sessions.

9 MR. DRESSLAR: I have no objection.

10 ARBITRATOR HAYS: All right. There being no  
11 objection, D-9 will be admitted.

12 [NRC Exhibit No. D-9 was admitted in  
13 evidence.]

14 FURTHER DIRECT EXAMINATION

15 BY MR. CRADOCK:

16 Q. I'm handing you a document marked for  
17 identification as NRC Exhibit D-10. Have you seen this  
18 before, Mr. Martin?

19 [NRC Exhibit No. D-10 was marked for  
20 identification.]

21 A. Yes.

22 Q. And could you identify it for us, please?

23 A. It's a regional office notice dated July 1, 1985,  
24 signed by me, a periodic reminder of employee obligations to  
25 adhere to requirements on conduct of employees.

1 MR. CRADOCK: I move NRC Exhibit D-10 into  
2 evidence as a full exhibit.

3 ARBITRATOR HAYS: Same objection?

4 MR. DRESSLAR: Same objection.

5 ARBITRATOR HAYS: Same ruling.

6 [NRC Exhibit No. D-10 was admitted in  
7 evidence.]

8 BY MR. CRADOCK:

9 Q. I've handed you a document marked for  
10 identification as NRC Exhibit D-11. Have you seen this  
11 before, Mr. Martin?

12 [NRC Exhibit No. D-11 was marked for  
13 identification.]

14 A. Yes.

15 Q. And could you identify it for us, please?

16 A. It's a regional office notice identifying that the  
17 original was signed by me.

18 This apparently is a file copy. But that is the  
19 way in which I indicate concurrence, down at the bottom  
20 left-hand corner.

21 So it's apparently a September 1985 time frame. A  
22 periodic reminder on employee conduct.

23 MR. CRADOCK: I move NRC Exhibit D-11 into  
24 evidence as a full exhibit.

25 ARBITRATOR HAYS: Same objection; same ruling.

1 [NRC Exhibit No. D-11 was admitted in  
2 evidence.]

3 BY MR. CRADOCK:

4 Q. I hand you a document marked for identification as  
5 NRC Exhibit D-12. Have you seen this before, Mr. Martin?

6 [NRC Exhibit No. D-12 was marked for  
7 identification.]

8 A. Yes.

9 Q. And could you identify it for us, please?

10 A. This is another all-employee announcement that I  
11 referred to previously as a yellow sheet signed out by Mr.  
12 Victor Stello, who was then the executive director for  
13 operations of the NRC, to all employees, on the matter of  
14 standards of conduct requirements applicable to employment  
15 negotiations. It's dated July 11, 1986.

16 MR. CRADOCK: I move NRC Exhibit D-12 into  
17 evidence as a full exhibit.

18 ARBITRATOR HAYS: Subject to the same objection,  
19 Exhibit D-12 will be admitted.

20 [NRC Exhibit No. D-12 was admitted in  
21 evidence.]

22 BY MR. CRADOCK:

23 Q. I'll hand you a document marked for identification  
24 as NRC Exhibit D-13. Have you seen this before, Mr. Martin?

25 A. Yes. My handwriting is in the upper right-hand

1 corner. I have to point out, this apparently is a copy to  
2 which there was a yellow sticky attached to the cover page.  
3 So you have part of it blocked out because of the yellow  
4 sticky note.

5 But it again is an all-hands announcement dated  
6 December 9, 1986, on conflict of interest. That is my  
7 handwriting in the upper right-hand corner saying, "Bill  
8 Brown. Time for another training session?"

9 I recognize what I believe to be Bill Brown's  
10 handwriting on the left side where it's quoted as saying,  
11 "Talked with Dale. He will schedule two mandatory training  
12 sessions in March." I believe that -- I am comfortable  
13 that that is Bill Brown's handwriting.

14 The Dale that he's referring to is Dale Powers,  
15 who at that time, in that time frame, was the training  
16 officer.

17 [NRC Exhibit No. D-13 was marked for  
18 identification.]

19 Q. And this was distributed, as these other documents  
20 you indicated, through --

21 A. This would be a yellow announcement distributed by  
22 the standard distribution of such documents.

23 MR. CRADOCK: I move NRC Exhibit D-13 into  
24 evidence as a full exhibit.

25 ARBITRATOR HAYS: Standard objection; standard

1 ruling --

2 MR. DRESSLAR: Standard objection: irrelevant to  
3 the issue. I can't even find -- Same objection.

4 ARBITRATOR HAYS: Same ruling.

5 [NRC Exhibit No. D-13 was admitted in  
6 evidence.]

7 MR. DRESSLAR: Was this defined as a yellow sheet  
8 again?

9 ARBITRATOR HAYS: That's what I thought I  
10 understood him to say, with a sticky on top of it.

11 MR. CRADOCK: I'll ask him.

12 BY MR. CRADOCK:

13 Q. Is this a copy of a yellow sheet?

14 A. Yes, it was.

15 Q. I'm now handing you a document which is marked for  
16 identification as NRC Exhibit E. Have you seen this before,  
17 Mr. Martin?

18 A. Yes, I have.

19 [NRC Exhibit No. E was marked for  
20 identification.]

21 Q. Could you identify it for us, please?

22 A. This is a memorandum from the Director of the  
23 United States Office of Government Ethics dated December 22,  
24 1988, to Paul Bollwerk, Senior Attorney in the Office of  
25 General Counsel.

1 I do not see us as having been specifically a cc  
2 on this. I am of the view that either Mr. Bollwerk sent us  
3 such a copy or Mr. Nebecker sent it to us directly. I  
4 cannot recall how we got that copy of it. I only know what  
5 the subject is about.

6 Q. You did receive a copy of this?

7 A. Yes.

8 Q. Let me call your attention to the second page from  
9 the top marked page 5, where it says "Significant Finding."  
10 Would you read what it says beside that?

11 A. "The region has an effective ethics program."

12 Q. I call your attention to page 8 of the document,  
13 the last paragraph on the page. Would you take a moment to  
14 look over the last paragraph of the page, and running over  
15 to page 9.

16 A. Are you speaking of the paragraph that begins with  
17 "Mr. Brown"?

18 Q. Yes.

19 A. [Reviews document.]

20 Q. Is Mr. Brown who is referred to the regional  
21 attorney here?

22 A. Yes.

23 Q. And could you summarize what it is?

24 A. It is, summarizing, the information that this  
25 reviewer obtained from Mr. Brown about the kinds of conduct.

1 of employees and ethics training that we provide to all  
2 employees in the region, noting that they're provided  
3 information -- written information when they come on board  
4 as part of their orientation; there's semi-annual ethics  
5 training provided for resident inspectors in the region,  
6 participation often by other OGC personnel (Office of  
7 General Counsel personnel), ethics-related memorandums  
8 periodically distributed to the staff, and a reference to  
9 the fact that post-employment information is also  
10 distributed to employees when they leave.

11 MR. CRADOCK: I move NRC Exhibit E into evidence  
12 as a full exhibit.

13 MR. DRESSLAR: Well, I'm not being picky, but this  
14 is dated December 22, 1988. The investigation occurred  
15 apparently on October 19, 1988.

16 We object as irrelevant.

17 MR. CRADOCK: I think we've established a  
18 foundation for entering this exhibit. I think we've shown  
19 that the other exhibits show ethics and conflict of interest  
20 training in the region and in the agency is a continuing  
21 matter.

22 ARBITRATOR HAYS: Well, you did that as to the  
23 areas immediately preceding this incident.

24 I'll overrule the objection and allow it. I'm not  
25 sure .... It's after the fact, but to show pattern.



1 [NRC Exhibit No. E was admitted in  
2 evidence.]

3 BY MR. CRADOCK:

4 Q. Mr. Martin, how long have you known Mr. Kelly?

5 A. For the five years that I've been the regional  
6 administrator.

7 Q. How would you describe your working relations with  
8 him?

9 A. Cordial, the relationship I would have with any  
10 other inspector on the staff.

11 Q. Do you have any knowledge regarding testimony that  
12 he gave before a Congressional committee in 1987?

13 A. Yes.

14 Q. What do you know about that?

15 A. I know that he gave the testimony in the -- I  
16 believe it was the June time frame, that he was identified  
17 by mechanisms not known to me as someone that this  
18 Congressional committee wanted to speak to, and that we were  
19 told or asked to make him available to appear before that  
20 committee, and to appear beforehand to meet with members of  
21 the -- I may switch between committee and subcommittee. It  
22 may have been a subcommittee -- with the subcommittee staff  
23 for the purpose of preparing testimony. And we did so.

24 We did not -- That was it. We were informed  
25 that he was to testify, and we made him available.

1 Q. I'd like to hand you a document that has been  
2 marked as NRC Exhibit F. Have you seen this document  
3 before?

4 A. Yes.

5 Q. Can you identify it for us, please?

6 A. I believe this is -- Yes. As I understand it,  
7 this is the prepared testimony that Mr. Kelly prepared, I  
8 believe in concert with the subcommittee staff, and  
9 presented at his testimony before Congress.

10 MR. CRADOCK: I'd like to move NRC Exhibit F into  
11 evidence as a full exhibit.

12 MR. DRESSLAR: Can I ask a few questions, please?

13 VOIR DIRE EXAMINATION

14 BY MR. DRESSLAR:

15 Q. How did you get a copy of this, Mr. Martin --  
16 I'll tell you what -- Let me not even object to this  
17 admission. There is a copy in the Congressional document  
18 that states exactly what Mr. Kelly said at the hearing.

19 Have you reviewed that document, the  
20 committee/subcommittee report?

21 A. No, I can't say that I have.

22 Q. It's your understanding, though, that this is  
23 exactly what Mr. Kelly said at that hearing?

24 A. My understanding is that this is what he said at  
25 that hearing. I --

1 Q. Do you know -- Go ahead. I'm sorry.

2 A. I was just going to say: I received it after the  
3 hearing was over. What I cannot and do not recall is if Mr.  
4 Kelly provided us a copy or if I got it by another means. I  
5 just cannot remember.

6 MR. DRESSLAR: I would just like to look at the  
7 document to see if ....

8 ARBITRATOR HAYS: Counsel, do you have access to  
9 the original Congressional record?

10 MR. DRESSLAR: I have a copy of the subcommittee  
11 report.

12 ARBITRATOR HAYS: Well, I was going to say, in  
13 the interest of time I'll allow you to hold onto your  
14 objection. And if, in fact, you find any deviations from  
15 it, then call that to the attention of the chair, and I'm  
16 assuming you wouldn't have any objections to corrections  
17 being made.

18 MR. CRADOCK: No.

19 Can I proceed?

20 ARBITRATOR HAYS: Yes, sir. Proceed, counsel.

21 FURTHER DIRECT EXAMINATION

22 BY MR. CRADOCK:

23 Q. Let me ask Mr. Martin. Are you aware of any other  
24 document that indicates what Mr. Kelly testified to before  
25 the Congress?

1           A.    No, not in terms of documents in my possession.  I  
2 believe he was quoted in trade press and other articles as  
3 to what he stated.

4           Q.    All right.  I'm referring to whether there is a  
5 transcript.  Are you aware of another transcript besides  
6 this document that I just handed you?

7           A.    I don't recall having seen a transcript.  I  
8 presume that there is one, but I do not recall having seen  
9 one.  Whether or not the --  I don't know whether one is in  
10 existence in the agency or not.

11          Q.    Is it your understanding that this is the  
12 transcript?

13          A.    No.  My understanding is that this is the document  
14 that was prepared as his prepared testimony, and he read  
15 from this document into transcript.

16                   And if I recall correctly, there were a few  
17 questions directed by the subcommittee to him, which he  
18 responded to.

19                   I believe this is the document he read from as  
20 opposed to a transcript.

21          Q.    Thank you.

22                   Let me direct your attention to page 13 of the  
23 document.  With regard to the second paragraph, would you  
24 read the second sentence of that paragraph for the record.

25          A.    "There are a number of utilities that are doing

1 sound, conscientious jobs in establishing and implementing  
2 fitness-for-duty programs."

3 Q. Continue, please.

4 A. "Also, my management at Region IV has been  
5 supportive of my efforts to encourage the utilities to  
6 implement such preventive programs voluntarily."

7 Q. And is the region mentioned in the next paragraph  
8 also?

9 A. Yes. The first sentence says, "I believe that our  
10 region is in the forefront in these matters."

11 Q. Thank you.

12 Mr. Martin, have you stated whether you know why  
13 Mr. Kelly was asked to testify before the Congress?

14 A. I believe I mentioned when you asked when I became  
15 aware of it that I did not know why or how he was selected.

16 Q. Are you aware of any agency action that was taken  
17 -- that could have been taken against Mr. Kelly as a result  
18 of this testimony?

19 A. No, I do not.

20 Q. Are you aware of Mr. Kelly being praised at one  
21 time by the Commission for his testimony? Do you have any  
22 knowledge of that?

23 A. Yes.

24 Q. What is that?

25 A. I recall a meeting -- I believe it was of the

1 Commission, and I thought it was with regard to the South  
2 Texas facility although it may not have been -- in which the  
3 Commission meeting was held and Mr. Kelly was asked to be on  
4 the phone while the Commission meeting was in progress and  
5 had a two-way conversational capability between the region  
6 and, I believe, the Commission hearing room.

7 I believe it was a Commission meeting which was  
8 touching on the subject of either fitness for duty, alcohol  
9 and drug abuse, those general areas, at which I believe  
10 Chairman Zeck commended Mr. Kelly for his approach on these  
11 matters and urged him to keep doing a good job.

12 Q. Was the chairman, to your knowledge, referring to  
13 Mr. Kelly's testimony?

14 A. I believe he was referring -- I think it's fair  
15 to refer to Mr. Kelly's attitude about wanting to be  
16 aggressive in pursuing serious instances of alcohol and drug  
17 abuse problems, which is related to the position he took in  
18 his testimony.

19 I don't see a one-to-one correlation between the  
20 praise of Mr. Kelly's attitude, as reflected in the  
21 testimony, but rather his approach to these kinds of issues,  
22 which is reflected in the testimony.

23 Q. Now, I'd like to hand you a document that has been  
24 marked for identification as NRC Exhibit G. Have you seen  
25 this before, Mr. Martin?

1 [NRC Exhibit No. G was marked for  
2 identification.]

3 A. Yes.

4 Q. Could you identify it for us, please?

5 A. It is a memo of June 17, 1987, from Mr. Kelly to  
6 the Honorable Sam Gejdenson, Chairman of the Subcommittee on  
7 General Oversight and Investigations.

8 By the way, for the court reporter, that's Sam  
9 Gejdenson, G-e-j-d-e-n-s-o-n.

10 Q. And I note at the bottom of the page that you were  
11 copied on this memo; is that correct?

12 A. Yes, as are all of the Commissioners who were  
13 Commissioners at that time of the agency, as well as Mr.  
14 Stello, the EDO.

15 Q. Do you recall -- if you can tell us -- what, if  
16 anything, you know about this memorandum?

17 A. As I can recall, when Jim came back from  
18 testifying before Congress, I believe he met with his  
19 managers and subsequently with me, describing the very  
20 uncomfortable position he was put in by the subcommittee  
21 staff, and that they used a rather threatening approach with  
22 him, and the testimony, as presented to Gejdenson, was not  
23 what he wanted to say, but was the best he could work out  
24 under these rather severe conditions that he was being  
25 interviewed under by the committee investigators, and that



1 he was going to put in a letter that clarified his view on a  
2 number of these matters, since now he could write that  
3 without being under that kind of pressure.

4 I believe this document reflects that decision to  
5 send that in.

6 MR. CRADOCK: I'll move NRC Exhibit G into  
7 evidence as a full exhibit.

8 MR. DRESSLAR: I have no objection if it's being  
9 offered as merely a letter that Mr. Kelly wrote to the  
10 Honorable Sam Gejdenson, the subcommittee chairperson.

11 ARBITRATOR HAYS: There being no objection, the  
12 exhibit will be admitted.

13 [NRC Exhibit No. G was admitted in  
14 evidence.]

15 ARBITRATOR HAYS: Proceed.

16 BY MR. CRADOCK:

17 Q. Mr. Martin, you said that when Mr. Kelly came back  
18 from testifying, he met with his management and he met with  
19 you. Were you present when he met with his management?

20 A. I don't believe so. I recall Jim and I talking on  
21 this subject and his concern about it.

22 Q. Is there anything more you can tell us about the  
23 meeting he had with you -- Well, first of all, was there  
24 anyone else present besides yourselves?

25 A. I honestly cannot recall whether there was or not.

1 I just cannot remember.

2 Q. If there was someone else present, was it more  
3 than one person?

4 A. If there was someone present, it more than likely  
5 would have been my deputy, Mr. Chapman.

6 Q. Can you recall anything further that transpired at  
7 that meeting, the conversations you had with Mr. Kelly --  
8 the substance of those conversations?

9 A. As I recall, the substance of the conversations  
10 was the fact that Jim felt that -- I'm characterizing what I  
11 sensed was his conversation to me -- that the committee was  
12 using rather high handed methods to extract from him a  
13 series of rather critical statements that were different  
14 than what he wanted to say, in order to create a certain  
15 image for the purpose of the chairman of that committee, and  
16 that his formal testimony was the best that he could work  
17 out, and he was frustrated and he was angry with it and he  
18 was disappointed that that had taken place.

19 That was the sense that was being conveyed during  
20 our discussions and that he had decided that he was going to  
21 at least try to clarify the record by writing something to  
22 let people really know what had happened and what it was  
23 that he really did want to say.

24 This was the document that came out of that. Not  
25 unrelated to that is some work then that we separately

1     undertook.

2             Q.     Which was?

3             A.     Which was to sum up the issues to answer -- to put  
4     together clarification to our own line management, the EDO,  
5     our attitude and issues, the manner that we had dealt with  
6     certain issues that Mr. Kelly alluded to in his testimony.

7             Q.     I'm handing you a document marked NRC Exhibit H.  
8     Have you seen this before?

9                     [NRC Exhibit No. H was marked for  
10     identification.]

11            A.     Yes.

12            Q.     And could you identify that for us?

13            A.     Yes. This is a document that I directed the staff  
14     to prepare from me to Victor Stello, the Executive Director  
15     for Operations. It's dated June 18, 1987.

16                    I told the staff to start preparing this right  
17     after Mr. Kelly's testimony, to make sure that -- If I may,  
18     the copy I have has two -- the first two sheets are two  
19     copies of the same page. I don't know if that was intended  
20     to be the case.

21            Q.     May I see it?

22            A.     Those first two pages are the same.

23            Q.     We'll just excise the second page.

24            A.     When we learned what the nature of Jim's testimony  
25     was, I think the first sentence in this memo of June 18th

1 from me to Victor Stello characterizes what we intended to  
2 do.

3 If I may read it, "The testimony of James A. F.  
4 Kelly before the Subcommittee on General Oversight and  
5 Investigation may have created the impression that Region IV  
6 management is indifferent to fitness-for-duty problems  
7 alleged to exist at powerplants in the region. Not only is  
8 this not the case, it is not what Mr. Kelly intended to  
9 convey."

10 That statement was put in there as a consequence  
11 of having met with Jim and his discussion of his concerns  
12 about the way in which the testimony was extracted during  
13 his meeting with the investigators ahead of time.

14 And so what we did was prepare a document which  
15 the June 18 memorandum and its attachment represents, which  
16 is a summary of some of the kinds of issues as they applied  
17 to Region IV plants that Mr. Kelly touched on in his  
18 testimony and what kind of actions we took relative to those  
19 matters in that time frame.

20 Q. Would you care to elaborate on any of the  
21 attachments to the memo?

22 A. If I may have a moment to scan through.

23 Q. Yes.

24 A. [Reviews document]

25 There's one document which refers to we agreeing

1 to participate voluntarily -- ask NRC employees to  
2 voluntarily participate in a fitness-for-duty program which  
3 was being instituted at the Cooper Nuclear Station.

4 This was in a time frame prior to NRC having any  
5 fitness-for-duty program. So it was voluntarily  
6 participating in it.

7 There was a portion of the testimony which had to  
8 do with the Region IV tendency to refer allegations of  
9 wrongdoing to licensees. We merely identified that there  
10 are policies established by the EDO and by the agency which  
11 have to do with referral, when it's appropriate to refer  
12 allegations of wrongdoing to a licensee.

13 In fact, the practice developed by Region IV  
14 became the model for the agency adopting that method of when  
15 it's appropriate to let a licensee look into allegations of  
16 wrongdoing.

17 It also identified, as Mr. Kelly's subsequent memo  
18 of June 17th also did -- was that in the time frame of this  
19 testimony, the agency had no regulations on the books about  
20 fitness for duty; that is, the controls over alcohol and  
21 drug abuse.

22 We had voluntarily asked the industry to put its  
23 own controls in place, which they were able to do so at a  
24 schedule much faster than if we tried to pass a rule,  
25 because our passing of a rule would have taken years,

1    whereas voluntarily they put programs in in less than a year  
2    at all the powerplants.

3               So there are a large number of staff members --  
4    and I believe it would appear from Mr. Kelly's testimony  
5    that he is probably among those who would have preferred to  
6    see the NRC have rules in place rather than voluntary  
7    programs.

8               There are many staff members in NRC who feel that  
9    way.

10              But, nonetheless, the agency's decision was the  
11   policy statement and the voluntary program. We addressed  
12   those kinds of issues in this document as well.

13              So I think there's a number of things that could  
14   have left wrong -- in my view -- perceptions amongst the  
15   management of this agency when we addressed it.

16              MR. CRADOCK: I move that NRC Exhibit H be entered  
17   into evidence as a full exhibit.

18              MR. DRESSLAR: Mr. Cradock, this page 2 on mine,  
19   is it supposed to be the page 2 of the cover letter or the  
20   transmittal letter?

21              MR. CRADOCK: It's a duplication.

22              MR. DRESSLAR: No, this one here.

23              MR. FEWELL: It's page 2 of the cover letter.

24              MR. CRADOCK: They're out of order.

25              MR. DRESSLAR: I have no objections.



1 ARBITRATOR HAYS: There being no objection, NRC  
2 Exhibit H will be admitted.

3 [NRC Exhibit No. H was admitted in  
4 evidence.]

5 BY MR. CRADOCK:

6 Q. Mr. Martin, regarding Mr. Kelly's testimony  
7 itself, do you have a view as to whether that testimony had  
8 any impact on the region or on the agency?

9 A. In my view it did not.

10 Q. Can you elaborate?

11 A. It did not for the following reasons. Mr.  
12 Gejdenson had made it very clear ahead of time in previous  
13 statements that he has made to the agency -- this is my  
14 memory of that time frame, but he was not alone in this.

15 But there were a number of people who felt the  
16 agency on the matter of fitness for duty, which is  
17 addressing the issue of alcohol and drug abuse in nuclear  
18 powerplants -- among nuclear powerplant personnel, did not  
19 do what they should have done in terms of putting in a  
20 policy statement which invited the industry to voluntarily  
21 put in their own programs on fitness for duty, but rather  
22 should have put in tough regulations, which the NRC would  
23 have enforced, to make them consistent -- a consistent  
24 pattern, functional in that fashion, and therefore directly  
25 enforceable by us.



1           Mr. Gejdenson had made statements along those  
2 lines ever since the policy statement came out, which was  
3 sometime prior to the hearing. I believe that in this  
4 regard this hearing was an attempt by Mr. Gejdenson to  
5 collect together information which was supportive of his  
6 view, which is relatively easily done because it is  
7 certainly a subject about which are diverse views.

8           Therefore -- And then that went into the  
9 Congressional Record.

10           So I think he was pressuring the agency before, as  
11 were other members of Congress, has continued to pressure  
12 the agency since. And with or without Mr. Kelly's  
13 testimony, he would probably have continued to pressure the  
14 agency after.

15           As I recall, if I'm correct, during that same  
16 subcommittee, there were also other members of the agency  
17 management which were heard on the same subject.

18           Q. Do you recall who they might have been?

19           A. I believe it was the Chairman and the EDO, and  
20 perhaps other Commissioners as well, but I believe the  
21 Chairman and the EDO testified.

22           Q. We've had some discussion involving Mr. Lauren  
23 Bush today on the record. Do you know if any action was  
24 ever taken against -- any subsequent disciplinary action was  
25 taken against Lauren Bush?

1 A. I know of none, nor have I heard of any.

2 Q. Once again, was Mr. Kelly admonished in any way to  
3 your knowledge after his testimony?

4 A. To my knowledge, no, he was not.

5 Q. Was his testimony before the Congress a factor in  
6 any way in your decision to request an OIA investigation in  
7 this matter?

8 A. Absolutely not.

9 Q. Isn't it true that two other individuals besides  
10 Mr. Kelly -- those individuals being Mr. Caldwell and Mr.  
11 Yandell -- were disciplined as a result of actions at South  
12 Texas during 1987?

13 A. That's correct.

14 Q. And did either Mr. Caldwell or Mr. Yandell ever  
15 testify before Congress during that period?

16 A. Not to my knowledge they didn't.

17 Q. Do you recall, Mr. Martin, what the disciplinary  
18 action was that was taken against Mr. Caldwell in this  
19 matter?

20 A. I think Mr. Caldwell was -- I think the final  
21 decision was a reprimand.

22 Q. Perhaps we could --

23 A. A written reprimand.

24 Q. Do you remember what the proposal was?

25 A. I believe it was a suspension. I believe it was

1 for a lesser period of time.

2 I know I have recently seen the documents. I  
3 don't have them committed to memory, but I believe it was a  
4 suspension for a lesser period of time.

5 I believe it was settled at a reprimand stage, to  
6 be retained in his file -- I'm going to say that I believe  
7 for six months.

8 Q. Do you recall the discipline that was proposed  
9 against Mr. Yandell?

10 A. I believe that the final decision was reprimand  
11 with Mr. Yandell. In my mind -- I must be going into mental  
12 overload. I have forgotten what the proposal was. I  
13 thought it was more severe than a reprimand.

14 I believe -- I thought it involved a suspension,  
15 but now I have really gone beyond my mental limits.

16 Q. I believe it was a 14-day proposed suspension  
17 resulting in a letter of reprimand, similar to Mr.  
18 Caldwell's case.

19 A. I believe that's correct.

20 Q. Do you know whether they were charged with the  
21 same violations that Mr. Kelly was charged with?

22 A. No, they were not charged with the same  
23 violations.

24 Q. How are they different?

25 A. As I recall, the primary charge against Mr.

1 . Yandell was not carrying out his duties as he should have in  
2 that he did not manage the activities of his personnel at  
3 the South Texas Project in the fashion that he should have.

4           So he basically fell down in his responsibilities  
5 as a supervisor.

6           I believe in the Caldwell issue, the issue there  
7 primarily was based on the bad judgment associated with  
8 applying for a position with HL&P, albeit checking with his  
9 supervisor initially before doing it, but the very bad  
10 judgment of applying for a position with the licensee that  
11 at that point we were in serious -- continuing to be in  
12 rather serious potential contention with -- at a time of  
13 heightened tensions and absent the appearance that the --  
14 while the supervisor exercised bad judgment in condoning it  
15 for which he was admonished, that Mr. Caldwell exercised bad  
16 judgment by entering into those negotiations.

17           Again, it's the appearance issue of the conflict  
18 of interest or the potential for that appearance aspect.

19           Q.   And his supervisor was Mr. Yandell?

20           A.   Yes, his supervisor was Mr. Yandell.

21           Q.   Now, I want to hand you a document that I've had  
22 marked for identification as NRC Exhibit J. Have you seen  
23 this before?

24                               [NRC Exhibit No. J was marked for  
25 identification.]

1 A. Yes.

2 Q. Could you identify it for us, please?

3 A. This was a document prepared for me by the labor  
4 relations branch -- I believe in headquarters -- to  
5 summarize for me the various kinds of disciplinary actions  
6 that have been taken and proposed for various individuals  
7 over the past or issues that were perceived to be similar to  
8 the circumstances that I had to be the deciding official on.

9 So these were the examples, these were cases that  
10 I was made familiar with to get further information in  
11 reaching my decision. I believe one of the Douglas factors  
12 specifically requires me to look at previous disciplinary  
13 actions and how the proposed action compares to those.

14 I think this was meant to support my deliberations  
15 in this regard.

16 Q. There's an individual's name at the top of the  
17 column. I believe his name is Lawrence Martin.

18 A. Yes.

19 Q. Can you tell us what you recall, if anything,  
20 about that particular action?

21 A. What I can remember from that is he solicited  
22 employment with the utility while he was inspecting that  
23 activity; that is, he was assigned to do inspections at that  
24 facility and discussed with them employment.

25 The details I don't remember, if he filed a job

1 application, conversations or both. I don't recall.

2 But I also recall that he put himself on report.  
3 He came in and reported to the regional administrator  
4 sometime later, a few months later, as I recall, that he had  
5 done so.

6 I was not the regional administrator at that  
7 moment. It was a different regional administrator.

8 But he reported himself as having violated it.  
9 That was then referred to OIA. Even though he reported  
10 himself, it was still referred to OIA.

11 OIA confirmed what he reported on himself, and he  
12 was proposed for a 30-day suspension, as listed here. And  
13 it was concluded to be a reprimand.

14 Q. I would note for the record that the regulation  
15 cited is .735-22(a); is that correct?

16 A. Yes.

17 Q. But the regulation, for the record, it does not  
18 contain the same violations in that case as in Mr. Kelly's  
19 instant case?

20 A. I believe that's true. I remember having looked  
21 at that issue once before, but now I cannot recall, you  
22 know, from memory.

23 But that was a difference. The other difference  
24 is he did put himself on report.

25 MR. CRADOCK: I move Exhibit J in.

1 ARBITRATOR HAYS: Any objection, counsel?

2 MR. DRESSLAR: I'll handle it on cross-examination  
3 later, please. I need to check my files and go through some  
4 things that the agency was supposed to have provided, and  
5 I'm not sure they have.

6 ARBITRATOR HAYS: I will hold the objection open.

7 MR. CRADOCK: My recollection is that we have  
8 provided this document, but we can clarify that later.

9 MR. DRESSLAR: I will clarify the record right  
10 now. This document was not provided. There are other  
11 documents that may be -- that are referred to in this  
12 particular exhibit that the agency may have provided.

13 I will determine that at the break.

14 MR. CRADOCK: Fine.

15 MR. DRESSLAR: And there are other objections that  
16 I may have later also.

17 ARBITRATOR HAYS: I'll hold ruling on it.

18 MR. CRADOCK: Fine.

19 BY MR. CRADOCK:

20 Q. Mr. Martin, I want to ask you if you had any  
21 advice from any other party regarding your decision in this  
22 matter.

23 A. Oh, yes. As I mentioned, when I was placed in the  
24 position of having to be the deciding official on this, I  
25 sought out the advice of regional counsel -- my regional



1 counsel.

2 I sought out the advice of the labor relations  
3 branch in + s of the office of personnel, as to what kind  
4 of actions had been taken previously, what I needed to do,  
5 what things do I have to consider.

6 I think I sought out the advice of my deputy, in  
7 terms of reading the record and discussing it with him.

8 In terms of advice as to items they might point  
9 out that I should consider, things that they spotted that  
10 may be of interest.

11 That is different -- I believe also the Office  
12 of General Counsel, because of the issue of the preparation  
13 of the documents and what other legal constraints I should  
14 be sensitive to and aware of in making my decision.

15 In terms of seeking advice, those are the  
16 individuals that I sought advice from. Not concurrence,  
17 just advice.

18 And then I reached my decision about what I should  
19 do.

20 Q. Did you receive direction from anyone or were you  
21 told by anyone what to decide?

22 A. The only issue that could even be construed in  
23 that fashion would be when I first received the OIA report,  
24 I called my boss who was Jim Taylor, the Deputy Executive  
25 Director for Operations, and told him, "Jim, I have the

1 report. I'm now reviewing it."

2 And he said, "Bob, it's an important issue. Make  
3 sure you review it carefully in arriving at your decisions."

4 I said, "Thank you very much."

5 That's the last time I talked to him on that  
6 subject.

7 Q. Did you seek anyone's approval for your final  
8 decision?

9 A. No.

10 Q. The final decision was yours and yours alone?

11 A. The decision was mine.

12 MR. CRADOCK: We don't have anything further at  
13 this time.

14 ARBITRATOR HAYS: I think we will recess. Will  
15 1:30 be sufficient time?

16 MR. CRADOCK: Yes, sir.

17 MR. DRESSLAR: Yes, sir.

18 ARBITRATOR HAYS: All right. We will stand  
19 adjourned until 1:30.

20 [Whereupon, at 12:17 p.m. the hearing was  
21 recessed, to reconvene at 1:30 p.m. of the same day.]  
22  
23  
24  
25

## AFTERNOON SESSION

[1:33 p.m.]

1 ARBITRATOR HAYS: All right. Back on the record.

2 Mr. Cradock, you wanted to renew a motion?

3 MR. CRADOCK: Yes, sir. I would like to renew --  
4 We provided Mr. Dresslar with the rest of Part 0.700 of the  
5 NRC manual, Exhibit B, which was an excerpt.

6 We'd like to renew our motion to move Exhibit B  
7 into evidence as a full exhibit.

8 ARBITRATOR HAYS: Any objection?

9 MR. DRESSLAR: No objection.

10 ARBITRATOR HAYS: Without objection, NRC Exhibit B  
11 will be admitted.

12 [NRC Exhibit No. B was admitted in  
13 evidence.]

14 ARBITRATOR HAYS: You may cross-examine.

15 MR. DRESSLAR: Before we do that, just to clear up  
16 in my mind the situation. We have NRC Exhibit H, and then  
17 it jumps straight to J.

18 There is no NRC Exhibit I?

19 MR. CRADOCK: No. I didn't put an "I" in. I was  
20 afraid it would be confusing.

## CROSS-EXAMINATION

21 BY MR. DRESSLAR:

22 Q. Mr. Martin, you're the person who initiated the  
23

1 OIA investigation against Mr. Kelly; is that correct?

2 A. I was the manager who informed OIA of allegations.

3 Q. You reported it to OIA?

4 A. Yes.

5 Q. And when did you make that report?

6 A. I believe it was in the August 1987 time frame. I  
7 believe attached to the OIA report is a copy of that letter.  
8 I believe it is late August 1987.

9 ARBITRATOR HAYS: Hold it a minute. Do we have a  
10 witness in the back of the room?

11 MR. CRADOCK: No, we do not.

12 ARBITRATOR HAYS: All right. Proceed.

13 BY MR. DRESSLAR:

14 Q. Was that August 31, 1987, Attachment 1 to the ROI?

15 A. I believe that is correct. Yes.

16 Q. Mr. Martin, what do the NRC regulations state  
17 about inspectors taking on a consultation role with the  
18 utility they are inspecting?

19 A. In terms of the regulations, I believe the  
20 regulations do not speak to that.

21 Q. What about internal rules or policies?

22 A. I think internal rules and policies place the  
23 inspector in the responsibility of primarily objectively  
24 evaluating a program activity of a licensee, and whether or  
25 not that activity is being conducted in concert with the

1 regulations. That is his primary role.

2 The secondary role is to answer questions that are  
3 put to him about whether something is or is not, would or  
4 would not be in compliance.

5 Q. So the answer to my question then: Is it proper  
6 for an NRC inspector to be a consultant on site for the  
7 utility?

8 A. It is not proper.

9 Q. Now, Mr. Martin, on what information did you base  
10 your conclusion that you reached that Mr. Kelly had  
11 recommended Mr. Caldwell for the HL&P position in August  
12 1987?

13 MR. CRADOCK: Objection. I'm not sure that's in  
14 evidence.

15 Could you repeat the question, please.

16 BY MR. DRESSLAR:

17 Q. Do you need the question repeated, Mr. Martin?

18 A. I don't think I made --

19 Q. Did you make a recommendation or did you have some  
20 kind of understanding at some point that Mr. Kelly had  
21 recommended Mr. Caldwell for the HL&P position in 1987?

22 A. I remember in the time frame of all of this going  
23 on something like that turning up. I --

24 Q. Didn't you give that statement to the OIA  
25 investigator?

1           ARBITRATOR HAYS: Just a minute. Allow the  
2 witness an opportunity to answer.

3           Proceed.

4           THE WITNESS: I may have given that statement,  
5 hopefully in the context I gave it to you, to the OIA  
6 investigator.

7 BY MR. DRESSLAR:

8           Q. What context was that?

9           A. I believe the context I was trying to give to you  
10 is that I had heard -- and I can't remember the details of  
11 where I had heard it -- but that information, suggestion or  
12 allegation had come to me.

13          Q. Directing your attention to Attachment 48 of the  
14 report of investigation, Volume III -- Have you found it,  
15 Mr. Martin?

16          A. Yes, I have it. I'm reading through it now.

17          Q. Did you tell Ms. Donna Rowe that you had learned  
18 that Mr. Kelly had made a recommendation to the utility on  
19 Caldwell's behalf for that position?

20          A. Yes.

21          Q. And what information did you use to give Ms. Rowe  
22 that statement?

23          A. I'm trying to remember. I believe that was input  
24 I had received from his line, either Mr. Bangart or Mr.  
25 Yandell.

1 Q. You don't recall exactly?

2 A. No.

3 Q. Now --

4 A. Certainly no documented information.

5 Q. Just an allegation?

6 A. Yes.

7 Q. You didn't report that allegation to OIA, did you,  
8 prior to this interview?

9 A. I think I learned it at about the same time I  
10 became aware of the Caldwell solicitation, as I recall.

11 Q. Was that in February 1988 approximately?

12 A. As best I can remember, about the time frame I  
13 became aware of the issue with Caldwell.

14 Q. I'm not trying to trip you up, I just wonder: Was  
15 that in February?

16 A. Yes, that would be on the order of February '88.

17 Q. And you did not report that issue to OIA, did you,  
18 until June of 1988?

19 A. I did not.

20 Q. In your statement to Ms. Rowe, Attachment 48 to  
21 the ROI, about the recommendation by Mr. Kelly on behalf of  
22 Caldwell, that was the same position that Mr. Kelly was  
23 supposed to have allegedly made a request for employment in  
24 August of '87; correct?

25 A. Presumably.



1 Q. Excuse me?

2 A. Presumably.

3 Q. Mr. Martin, when was the letter written by NRC  
4 authorizing an operating license for STP?

5 A. I think the license -- the authorization to load  
6 fuel was approximately -- I think it was August 21, 1987.

7 Q. So the license was issued August 21, '87?

8 A. Yes.

9 Q. Was that upon your authorization?

10 A. No.

11 Q. Was it upon your recommendation?

12 A. Yes. I recommend and ask that with regard to the  
13 physical completion of the facility and its readiness to  
14 operate, in terms of operational programs.

15 The Office of Nuclear Reactor Regulation has the  
16 responsibility to also assess the rest of the readiness of  
17 the facility and then grant the license.

18 Q. So you must have made the recommendation for  
19 licensing sometime before August 21, '87; is that correct?

20 A. Yes. Probably literally just days before.

21 Q. Now, Mr. Martin, there's no evidence whatsoever  
22 that you know of in the file that any member of the public  
23 was aware of the conversation between Mr. George and Mr.  
24 Kelly in August of '87; is that correct?

25 A. That's true.

1 Q. There's also no evidence that any member of the  
2 public knew of the conversation between Mr. Kern and Mr.  
3 Kelly in 1987; isn't that correct?

4 A. That's true.

5 Q. Mr. Martin, directing your attention to Volume I,  
6 case file index, Attachment 1, do you have that before you,  
7 sir?

8 A. Yes, I do.

9 Q. This is the decision letter you issued to suspend  
10 Mr. Kelly for 15 days; correct?

11 A. That's correct.

12 Q. It states in that letter that you sustained Charge  
13 No. 1; is that correct?

14 A. That's correct.

15 Q. Now, you sustained Charge No. 1, Specification A;  
16 isn't that correct?

17 A. That's correct.

18 Q. And none others on Charge 1; is that correct?

19 A. I'm sorry. I think I answered yes too quickly.  
20 You said Charge 1, Specification A?

21 Q. Correct.

22 Did you sustain only Charge 1, Specification A of  
23 Charge 1?

24 MR. CRADOCK: Can you be more specific about where  
25 Specification A is? I think the witness is confused about

1 what Specification A is. Could he identify it or show it to  
2 the witness.

3 ARBITRATOR HAYS: If the witness has some problem,  
4 he can go ahead. I urge him to get a correction before he  
5 answers.

6 THE WITNESS: I'm finding it.

7 BY MR. DRESSLAR:

8 Q. Well, directing your attention to the proposed  
9 letter of discipline, which I believe is Tab 4, Volume I.

10 A. If I may, what I was confused about was in my  
11 finding I did not make a distinction between the two. I was  
12 looking to see if I had drawn such a distinction between --  
13 relative to specifications.

14 I think I just found that Charge 1 was sustained  
15 as a -- I don't believe I subdivided it. I find no  
16 indication that I subdivided the specific specifications.

17 Q. What were your findings then relative to Charge 1,  
18 Specification A, that's in the proposal letter at Tab 4,  
19 Volume I of the index?

20 A. The decision that I prepared was that Charge 1,  
21 which is improper solicitation of employment with STP, I  
22 found sustained.

23 Now, I presume you're now asking me to analyze as  
24 it was structured in the Bangart letter which of these --  
25 Perhaps I have to ask you what it is you're asking me

1 specifically.

2 Q. I'm trying to find out what you used to sustain  
3 Charge 1A. Well, let's put it this way, Charge 1 -- For  
4 lack of a better word, I used Specification A because there  
5 are three separate charges under Charge 1, three separate  
6 allegations. Let's put it that way. Three separate  
7 violations of three different regulations.

8 What did you use to sustain Charge 1A?

9 A. [No immediate response.]

10 Q. Or is it that you didn't sustain all of the  
11 charges in Charge 1?

12 A. With regard to Charge A, 1A, the difficulty I'm  
13 having responding to the questions in the way that you're  
14 asking them is not a difficulty with the information which I  
15 believe you are seeking.

16 The point is that we looked at two charges which  
17 show various factors, what were requirements, how those  
18 requirements were violated.

19 In my review, I did not draw a segregation of  
20 Charge 1A separate from 1B, but rather looked at the  
21 fundamental charge of was improper solicitation of  
22 employment, did it take place.

23 Clearly, if that is sustained in my view has the  
24 high potential of violating both the requirements identified  
25 in A, as well as the requirements identified in Part B.

1 Q. Are you saying there's no difference in --

2 A. No, I'm not --

3 Q. Wait a second.

4 Are you saying there's no difference in findings  
5 you would need to make to find Mr. Kelly guilty of 1A, as  
6 opposed to 1B? They're separate regulations, aren't they,  
7 Mr. Martin?

8 A. Yes, they are separate regulations. One has to do  
9 with actual solicitation/negotiation. The other has to do  
10 with creating the appearance of actual negotiation or  
11 solicitation, as I read those two regulations.

12 Q. I'm not sure I understand what you're saying.  
13 When I read 1B, it talks about using public office for  
14 private gain.

15 Isn't it true, Mr. Martin, that you just sustained  
16 the charge regarding solicitation of employment?

17 MR. CRADOCK: Objection. That's not his  
18 testimony.

19 MR. DRESSLAR: I just asked him the question.

20 MR. CRADOCK: Oh, he has testified to it already.  
21 Asked and answered.

22 ARBITRATOR HAYS: He just asked him the question.

23 BY MR. DRESSLAR:

24 Q. Mr. Martin, isn't it true that you just  
25 sustained --

1 ARBITRATOR HAYS: If the objection is asked and  
2 answered, I'll overrule the objection.

3 Go ahead.

4 MR. DRESSLAR: Mr. Arbitrator, I'd like if  
5 possible --

6 THE WITNESS: No.

7 MR. DRESSLAR: -- the record to reflect that there  
8 was an extremely long pause before Mr. Martin was able to  
9 answer this question.

10 MR. CRADOCK: Do you want to answer the question  
11 again in case the record --

12 ARBITRATOR HAYS: The record will so note it. Go  
13 ahead.

14 THE WITNESS: I sustained Charge 1, which was  
15 improper solicitation. That was my finding. That was my  
16 decision, that I felt -- that I found them to be sustained.

17 That, therefore, in my view involves the --  
18 certainly Charge A, solicitation of employment.

19 Attempting to achieve employment status under  
20 those considerations would be using a public office for  
21 private gain.

22 And as I mentioned in my direct testimony, the  
23 impact of that activity by an inspector does adversely  
24 affect the confidence in the government in terms of how we  
25 function and how we are supposed to function.

1 Q. I understand that. We have separate regulations,  
2 though, separate violations that he has been charged with.

3 A. I understand that.

4 Q. What did you use to find him guilty of Charge 1B  
5 then?

6 A. In ....

7 Q. In the record, the ROI.

8 MR. CRADOCK: I want to object to that question on  
9 these grounds. I think the record shows that Mr. Martin in  
10 his findings said that the solicitation of employment was a  
11 violation of the conflict of interest regulations.

12 Parts A, B and C of the proposal are nothing more  
13 than an iteration of those regulations. He doesn't have to  
14 find a separate action for a violation of A, B, and C.  
15 They're all encompassed under the solicitation.

16 I'm pointing out that this is what the record  
17 shows, not testimony.

18 ARBITRATOR HAYS: I'm not sure I understand your  
19 objection.

20 MR. CRADOCK: I'm objecting to the form of the  
21 question. He has answered the question several times I  
22 believe, that he violated Charge 1. He doesn't have to find  
23 that he committed three separate violations to have violated  
24 Charge 1.

25 ARBITRATOR HAYS: If he has said that, I certainly



1 missed it, counsel. So I'm waiting to hear the answer.

2 Proceed.

3 MR. DRESSLAR: If I might, just one comment toward  
4 what agency counsel has just stated. It is the agency's  
5 obligation to prove each charge and specification, each  
6 element of the charge against him.

7 There are a lot of elements we're talking about.  
8 I'm just trying to find out what he used to find Mr. Kelly  
9 guilty of these separate charges.

10 ARBITRATOR HAYS: I understand where you're going  
11 counsel. Proceed with the questioning.

12 BY MR. DRESSLAR:

13 Q. What did you use, Mr. Martin, to uphold Charge 1B?

14 A. I used the same information that I used in the  
15 holding of Charge 1A. By virtue of the review of the  
16 evidence presented and my conviction that Mr. Kelly did  
17 solicit employment under what you have identified as Charge  
18 1A, that once upholding that, that basically placed him in  
19 violation of the other two specifications.

20 Now, if he did not -- if I may suggest -- if he  
21 did not in fact solicit employment, but created a  
22 circumstance where he was appearing to do that, then that  
23 might only have been in violation of one of the three  
24 subparts.

25 Q. Which one?

1           A.    The third, C. Well, B or C in that regard.

2                   I was convinced that Mr. Kelly was soliciting for  
3 employment, based on the testimony provided by Messrs. Kern  
4 and George.

5           Q.    So you found him guilty of soliciting employment?

6           A.    Yes. I believed he was soliciting employment, and  
7 that was the basis of my decision.

8           Q.    Now -- and I hate to belabor this. But Charge 1B  
9 is pretty serious when we're talking about using your public  
10 office for private gain.

11           MR. DRESSLAR: If I could have a little bit of  
12 leeway in this area, Mr. Arbitrator.

13 BY MR. DRESSLAR:

14           Q.    What did you use to determine that Mr. Kelly used  
15 his public office for private gain? You're not telling us,  
16 are you, that merely asking for a job -- if he did that --  
17 is using his public office for private gain, are you?

18           A.    Yes, I am.

19           Q.    Okay. Do you have any evidence to support that  
20 view in the record?

21           A.    To support the view that seeking a job constitutes  
22 any measure of private gain?

23           Q.    Uh-huh.

24           A.    No, I don't. I don't because I -- To me that  
25 would be obvious at the outset.

1 Q. Can you say the same thing for Charge 1C then?

2 A. Yes. As I testified earlier in my direct, the  
3 integrity of the process of not having those potential  
4 conflicts of interest are absolutely mandatory to  
5 maintaining credibility in our process.

6 Inspectors who compromise that credibility or  
7 undermine that integrity of the objectivity of their  
8 activities undermine the inspection process.

9 Q. Are you telling us then, Mr. Martin, that these  
10 three parts of Charge 1 are merely repetitions of each  
11 other?

12 MR. CRADOCK: Objection. Asked and answered.  
13 This is about the fourth time he has asked it.

14 ARBITRATOR HAYS: I'll allow him to answer it. Go  
15 ahead. It may be repetitious, but I'll allow him to answer  
16 it.

17 THE WITNESS: No, I don't think they are the same,  
18 but they are clearly interrelated. And it is possible, I  
19 believe, for a particular kind of violation or conduct to  
20 constitute a violation of multiple requirements.

21 I believe that is the case here.

22 BY MR. DRESSLAR:

23 Q. Now, Mr. Martin, you first learned that Mr. Kelly  
24 was being questioned by Congress, or at least the staff, in  
25 late May or early June of 1987; isn't that correct?

1 A. I think it may have just been in June.

2 Q. Early June?

3 A. It was quite quickly before the hearing time.

4 Q. By that time, you and Mr. Kelly had had a long-  
5 standing disagreement -- or maybe it was just professional  
6 opinion over how to pursue enforcement of utility, drug and  
7 alcohol problems; isn't that correct?

8 A. No. Mr. Kelly had a view which I think was  
9 different than mine. I would certainly not characterize it  
10 as a long-standing disagreement.

11 Q. Was it a disagreement over how to handle those  
12 problems, Mr. Martin?

13 A. I think there were instances where Mr. Kelly may  
14 have wanted a certain kind of enforcement action to be taken  
15 in certain cases and that wasn't within my authority at the  
16 time.

17 I did not view that as a long-standing  
18 disagreement.

19 Q. You knew that he opposed that position, though,  
20 didn't you?

21 A. I knew he had a position on the subject of alcohol  
22 and drug abuse that wished we could take enforcement action  
23 other than I was authorized to do under the regulations in  
24 that time frame.

25 Again, I don't see that as a disagreement in that

1 fashion. It's just a difference in view.

2 Q. How many discussions did you and Mr. Kelly have  
3 about that issue prior to his testimony before Congress?

4 A. I would speculate a few, depending on individual  
5 cases that came up that had to be reviewed and acted on.

6 Q. Okay.

7 A. I couldn't possibly narrow it down any tighter  
8 than that. A few.

9 Q. Mr. Martin, drug-abusing employees at utilities --  
10 operating nuclear reactors is a serious threat to public  
11 safety and health, isn't it?

12 A. Absolutely.

13 Q. Now, it was Mr. Kelly who surfaced drug and  
14 alcohol abuse problems among utility employees and  
15 contractors at the Cooper Nuclear Reactor; isn't that  
16 correct?

17 A. I recall an alcohol abuse case, and it may have  
18 been also a drug abuse case. But I certainly remember an  
19 alcohol abuse case, yes.

20 Q. Did you read about it in the Congressional  
21 testimony, Mr. Martin?

22 A. No, I knew about the case beforehand.

23 Q. He has uncovered problems in other nuclear power  
24 stations, too, hasn't he?

25 A. Yes.

1 Q. Where is the Cooper Nuclear Powerplant?

2 A. In Nebraska.

3 Q. Is that under your jurisdiction?

4 A. Yes, it is.

5 Q. Were you regional administrator at the time that  
6 he uncovered those problems, Mr. Martin?

7 A. Yes, I was.

8 Q. It was you who referred those issues, those  
9 matters of drug and alcohol abuse -- or alcohol abuse, if  
10 you like, back to the Nebraska utility; isn't that correct?

11 A. That's correct.

12 Q. Didn't you do the same thing for the problems Mr.  
13 Kelly uncovered at Fort St. Vrain Nuclear Reactor?

14 A. Yes, I believe that case involved alcohol abuse.

15 Q. Did you do the same thing -- isn't it true -- at  
16 the Riverbend Nuclear Reactor in Louisiana?

17 A. I believe there was a case there, too, as well.

18 Q. Of those three that I just named: Cooper --  
19 Well, first, let me ask you this.

20 Where is Fort St. Vrain Nuclear Reactor?

21 A. Colorado.

22 Q. Riverbend is in Louisiana. What city or nearby?

23 A. St. Francis, I believe.

24 Q. Now, isn't it correct during this period of time  
25 at the Cooper Nuclear Powerplant that Mr. Kelly sought

1 enforcement action against the utility for those drug and  
2 alcohol problems?

3 A. That's correct.

4 Q. The Region IV administration determined not to  
5 take enforcement action, isn't that correct, at that time?

6 A. That's correct.

7 Q. Now, Region IV administration has the authority to  
8 take enforcement action on issues that directly affect  
9 adversely public health and safety at a nuclear reactor,  
10 don't they?

11 A. They do.

12 Q. And ultimately at this region anyway, you are the  
13 official responsible ultimately for accomplishing the  
14 mission of the NRC; isn't that correct?

15 A. That portion of the mission which is assigned to  
16 this office, yes.

17 Q. Mr. Martin, you review the NRC regulations  
18 prohibiting utility employment inquiries by NRC employees  
19 prior to issuing your decision letter, didn't you?

20 A. Yes, I do.

21 Q. Did you also review what has been marked as NRC  
22 Exhibit D-12?

23 A. Yes, I would have -- I'm sorry. I believe you  
24 asked me in the context did I review D-12 in the reaching of  
25 the decision on Mr. Kelly. The answer to that is no.



1 I was aware of this when it came out, reviewed it  
2 when it came out.

3 That was not a document I used in the actual  
4 decision.

5 Q. During this entire series of events, Mr. Martin,  
6 was there a request at any time made for your deputy  
7 regional administrator to make some kind of findings in this  
8 matter?

9 A. In the Kelly case?

10 Q. Yes.

11 A. No.

12 Q. In the Caldwell case?

13 A. No.

14 May I ask for clarification?

15 Q. Yeah, I'm going to try and do that right now, as  
16 soon as I find the document.

17 MR. CRADOCK: Did you understand the question, Mr.  
18 Martin?

19 THE WITNESS: Well, I was asking -- When he said  
20 "findings," I had already identified I had sought advice.

21 I'm trying to --

22 MR. DRESSLAR: Excuse me. I can ask you the  
23 questions, Mr. Martin. If you -- I will be asking the  
24 questions. Your counsel will have an opportunity as to  
25 whatever he wants when I am finished.

1 MR. CRADOCK: Fine. He only wanted to clarify.

2 BY MR. DRESSLAR:

3 Q. Mr. Martin, I'm going to have to find that in a  
4 few minutes, but let me ask you this.

5 What is the difference between pre-operational  
6 inspections and post-operational inspections? What is the  
7 difference in the role of the inspector?

8 A. In the fundamental role of the inspector, there is  
9 not a difference. Not in the fundamental role.

10 The differences reflect themselves more in the  
11 fact that during the pre-operational phase, certain  
12 regulatory requirements are not in effect.

13 For the case at hand, the requirement to have the  
14 security program up, functional, operational, must be met as  
15 a condition of the granting of the license.

16 If it is not prior to operation -- in the pre-  
17 operational phase up and operational, then the license is  
18 not granted. But no violation of regulatory requirements  
19 has occurred. You just have not satisfied the conditions  
20 for licensing.

21 Once licensed, any failure in the security program  
22 is now a violation of requirements because the requirements  
23 are now in full force and effect after licensing.

24 The inspection which identifies the deficiency  
25 before versus the same deficiency afterwards, the same

1 inspection techniques are used, the same inspection skills  
2 and the same finding may come about.

3 The action the agency ultimately takes with that  
4 finding is different because now requirements exist in one  
5 case where they did not in the prior case.

6 Q. After the operational license has been issued,  
7 that's -- Well, let me ask that first.

8 You have pre-operational inspections prior to  
9 licensing and post-operational inspections after licensing?

10 A. That's correct.

11 Q. After licensing then in the post-operational  
12 phase, the inspector would be taking enforcement action; is  
13 that correct?

14 A. No, the inspector does not take enforcement  
15 action. The inspector produces technical findings. The  
16 agency takes enforcement action. It's not a personalized  
17 activity.

18 Q. So the inspector would recommend enforcement  
19 action?

20 A. Yes.

21 Q. That's after licensing has been issued?

22 A. Yes.

23 Q. Can civil penalties be recommended -- I guess,  
24 can they be issued before licensing?

25 A. Yes. Under certain circumstances, yes.

1 Q. And what about after licensing?

2 A. Yes.

3 Q. Are they much more common after licensing?

4 A. Yes.

5 Q. Now, Mr. Martin, HL&P's need for a license --

6 Let me ask you this.

7 You reviewed the proposal letter prior to issuing  
8 the final decision letter on the discipline; is that  
9 correct?

10 A. [No immediate response.]

11 Q. Let me ask it a different way. Did you read Mr.  
12 Bangart's proposal letter before you issued your decision  
13 letter?

14 A. Yes.

15 Q. Did you use that letter in making your  
16 determination as to whether or not Mr. Kelly was guilty of  
17 any of the charges?

18 A. That was -- The proposal letter set out the  
19 bounds to the decision that I had to reach.

20 Q. So then HL&P's need for a license directly  
21 concerned your decision to sustain Charge No. 1; isn't that  
22 correct?

23 A. Absolutely not. HL&P's need for a license had  
24 absolutely nothing to do with sustaining or not sustaining  
25 the charges.

1 Q. So you just ignored Mr. Bangart's findings in that  
2 area or recommendations?

3 A. You would have to point me to the issue where NRC  
4 -- where STP's need for a license was germane to this issue  
5 of conduct -- or this issue of behavior.

6 Q. You did read the proposal letter?

7 A. I did read the proposal, but I'm trying to  
8 understand the characterization that you are placing on it.

9 Q. It says, "Clearly, HL&P in August of '87 had a  
10 financial interest in the matter of the NRC Region IV  
11 physical security inspection because STP/HL&P was eager to  
12 load fuel and obtain an operating license."

13 A. That's --

14 Q. "Receiving acceptable findings for the NRC  
15 physical security inspection was necessary" --

16 MR. CRADOCK: Mr. Arbitrator --

17 MR. DRESSLAR: -- "to obtain this license." Did  
18 you read that prior to --

19 MR. CRADOCK: Mr. Arbitrator, this question --  
20 He's talking about a five-page proposal. Could he be more  
21 specific where he's reading from? It's an unfair question  
22 to the witness.

23 ARBITRATOR HAYS: He's reading from the fourth-  
24 paragraph-from-the-bottom on page 3. It says, "Clearly,  
25 STP/HL&P ...." On page 3.

1 THE WITNESS: Yes, I have found it. I am now  
2 reading it.

3 Those are certainly true statements.

4 ARBITRATOR HAYS: Wait until he finishes asking  
5 his question on it.

6 Go ahead.

7 THE WITNESS: I'm sorry.

8 BY MR. DRESSLAR:

9 Q. Did you consider that paragraph when you were  
10 considering whether or not to find Mr. Kelly guilty of the  
11 charge?

12 A. In the context that this was a factually true  
13 background statement that placed Mr. Kelly's inspection  
14 activities relative to a licensee, yes.

15 I took that statement as being nothing more than  
16 Mr. Kelly had inspection responsibilities at South Texas.  
17 Any inspector at any facility, whether they were looking for  
18 a license or already in possession of a license, the  
19 solicitation of employment by such an inspector is  
20 inappropriate.

21 Q. Let me get to the point, I guess, Mr. Martin.  
22 Isn't that part of the charge against Mr. Kelly that you  
23 sustained? You said you sustained Charge No. 1. That is  
24 part of Charge No. 1. Did you sustain that or not?

25 A. I see that as part of the background information.

1 Q. It's listed right there in the charge. It's not  
2 listed in the background information, Mr. Martin. It's  
3 listed under specific charges.

4 MR. CRADOCK: Is that a question?

5 MR. DRESSLAR: I can make it a question.

6 BY MR. DRESSLAR:

7 Q. Is it under the specific charges or not, Mr.  
8 Martin?

9 A. [No immediate response.]

10 Q. Is it under the specific charges you considered,  
11 Mr. Martin?

12 A. It is in the text under Item A, under Charge 1.  
13 It is in that text.

14 Q. So it's part of the charges?

15 THE WITNESS: Mr. Arbitrator, perhaps -- I also  
16 read a sentence, "'Solicitation' is further defined in NRC  
17 Announcement No. 96 dated July 11, 1986, distributed to all  
18 NRC employees."

19 I do not view that sentence as part of the charge.

20 ARBITRATOR HAYS: Is your answer then that the  
21 paragraph from which he's reading, you do not consider part  
22 of the charge?

23 THE WITNESS: I viewed that as part of the  
24 contextual -- context in which the charge is being made;  
25 that is --



1 ARBITRATOR HAYS: Is that different from the  
2 charge? Is it an integrated part of the charge, inseparable  
3 from the charge, or is it just merely additional information  
4 as you --

5 THE WITNESS: I view that as additional  
6 information.

7 ARBITRATOR HAYS: Proceed, Mr. Dresslar.  
8 BY MR. DRESSLAR:

9 Q. Do you view the first paragraph under Section A up  
10 there on page 3, do you view that as additional information,  
11 too, Mr. Martin?

12 A. No, I do not.

13 Q. What about that next paragraph, "You did not  
14 request"? Is that additional information, too?

15 A. No, I consider that a charge-like context.  
16 There's clearly a charge in there that an individual did or  
17 did not do something.

18 Q. Go on Charge 1B then, please, Mr. Martin. That's  
19 under Tab 4, page 4. Is that paragraph under the Subsection  
20 A additional information or part of the charge? Do you  
21 remember, Mr. Martin?

22 MR. CRADOCK: Could we take one question at a  
23 time, and allow him to examine the document.

24 ARBITRATOR HAYS: Give him a chance to answer.

25 THE WITNESS: I cannot characterize the entire

1 paragraph as being one or the other. It is the contextual  
2 nature of the paragraph. In some respects it describes  
3 background type of information. In other cases the context  
4 within which the statements -- the sentences have been  
5 written formulate charges. They formulate accusations, "You  
6 did things that you should not have done."

7 So I cannot characterize the entire paragraph in a  
8 particular context for you.

9 BY MR. DRESSLAR:

10 Q. How many adverse actions have you made decisions  
11 on, Mr. Martin?

12 A. Very few.

13 Q. How many?

14 A. [No immediate response.]

15 Q. One more? Two more?

16 A. Certainly one more.

17 Q. More than one?

18 A. I think two others.

19 Q. Were they in the same general format as we have in  
20 Mr. Kelly's case as far as the proposal letter is concerned?

21 A. One was. The other was briefer in length, as I  
22 recall.

23 Q. Mr. Martin, if you can't even determine which of  
24 these paragraphs are part of the charge, how would you  
25 expect Mr. Kelly to be able to determine it in making a

1 defense?

2 MR. CRADOCK: Objection.

3 ARBITRATOR HAYS: On what grounds?

4 MR. CRADOCK: Testifying. It's not a question.

5 ARBITRATOR HAYS: Overruled.

6 Proceed.

7 THE WITNESS: The question that you were pursuing  
8 with me is whether or not I could take an entire paragraph  
9 in a letter and characterize it as either a charge or  
10 background, not whether or not I could read the paragraph  
11 and in the reading of the paragraph to draw a distinction  
12 between information which was being written and sentences  
13 which contain charges. I believe I can do the latter.

14 And I believe so could anyone else who reads the  
15 document recognize the distinction between the two.

16 I believe you were asking me, though, to  
17 characterize entire paragraphs in a particular way. When I  
18 got to this one, I could not do it because the sentences  
19 were of both natures.

20 BY MR. DRESSLAR:

21 Q. What about Subsection C, Charge 1C on page 4 of  
22 Tab 4? Can you look at that and tell me in that paragraph  
23 then what are the charges and specifications and what are  
24 not, or what is just background information, Mr. Martin?

25 A. I believe the third and fourth sentences

1 constitute fundamental charges. The fifth sentence is  
2 related.

3 The other is either background or general  
4 statements.

5 Q. Mr. Martin, do you recall in August '87 an  
6 employment inquiry involving Mr. Ronald Caldwell -- an  
7 employment inquiry with HL&P?

8 A. I believe that's the information I became aware of  
9 in the February '88 time frame.

10 Q. Is that answer yes, you do recall it?

11 A. If that is the instance you're speaking of, yes, I  
12 do recall it.

13 Q. Now, Mr. Caldwell was an NRC Region IV security  
14 inspector; isn't that true?

15 A. That is correct.

16 Q. Now, the agency accused Mr. Caldwell of making an  
17 improper employment inquiry with HL&P; isn't that correct?

18 A. Yes.

19 Q. And this was in August of 1987 that he made that  
20 employment inquiry; correct?

21 A. That's right.

22 Q. And the penalty imposed upon Mr. Caldwell was a  
23 written reprimand; correct?

24 A. That is correct.

25 Q. Now, this employment inquiry by Mr. Caldwell

1 occurred at the same time as the alleged employment inquiry  
2 for which you disciplined Mr. Kelly; isn't that correct?

3 A. That is correct.

4 Q. Now, you testified earlier I believe that you are  
5 required to report misconduct to the Office of the Inspector  
6 and Auditor, is that correct, that comes to your attention?

7 A. That's correct.

8 Q. And you base that on NRC Exhibit B; is that  
9 correct?

10 A. I believe it was B.

11 Yes.

12 Q. Now, it says under NRC Exhibit B 0.702-03,  
13 Subsection 031, "Employee shall report to the director of  
14 their office all allegations or indications of misconduct."

15 A. Uh-huh, yes.

16 Q. What do they mean, "director of their office"?  
17 What does that mean?

18 A. In the NRC organizational structure, there is the  
19 Office of Nuclear Reactor Regulation. There is a director  
20 of that office.

21 There is the Office of Nuclear Materials Safety  
22 and Safeguards. They are large organizational units.

23 The regional offices are headed by regional  
24 administrators.

25 I believe functionally in this regard the regional

1 administrator is considered the same as an office director.  
2 But it's basically the head of the organizational unit.

3 Q. So you would be the director of the office under  
4 Subsection 032 then?

5 A. Yes.

6 Q. Then it says, "Report to the Director, Office of  
7 Inspector and Auditor, all allegations or indications of  
8 misconduct"; is that correct?

9 A. That's correct.

10 Q. Now, Mr. Martin, Riverbend Nuclear Powerplant,  
11 Louisiana, is under Region IV's jurisdiction; isn't that  
12 correct?

13 A. Yes, it is.

14 Q. During January 1988, several NRC employees were  
15 accused of a conflict of interest involving the utility;  
16 isn't that correct?

17 A. At Riverbend?

18 Q. Louisiana.

19 A. You'll have to help me with some of the background  
20 information.

21 Q. Okay. I will be glad to help you.

22 The conflict of interest involved improper  
23 socialization by NRC employees with utility employees; isn't  
24 that correct?

25 A. Yes.

1 Q. And that would be a conflict of interest, to go  
2 around having parties with utility employees and management;  
3 isn't that correct?

4 A. That's correct.

5 Q. That occurred in January of '88; correct? Around  
6 that time?

7 A. Around that time.

8 Q. You were regional administrator at the time it  
9 occurred; correct?

10 A. Yes.

11 Q. And these allegations of a conflict of interest  
12 came to your attention, didn't they?

13 A. They did.

14 Q. You didn't refer that matter to OIA, did you?

15 A. That's incorrect, I did.

16 Q. When?

17 A. I and jointly with the Deputy Director of the  
18 Office of Nuclear Reactor Regulation referred them to Sharon  
19 Connelly.

20 Q. When did that occur?

21 A. I think it was two or three days after we had  
22 collected sufficient information.

23 Q. When did that occur?

24 A. If the event occurred in January of '88, it was in  
25 January of '88 that the matter was referred to OIA.



1 Q. Didn't you first turn it over to the Office of --  
2 OI -- Office of Investigation?

3 A. No.

4 Q. You never did?

5 A. OI, I do not turn internal matters over to OI.

6 Q. I understand. I'm saying, did you turn that over  
7 to OI?

8 A. The answer to the question relative to misconduct  
9 on the part of NRC employees is no, I did not.

10 Q. Do you have a transmittal letter to OIA, Mr.  
11 Martin?

12 A. I believe I could find it.

13 Q. Could you please produce that for me?

14 A. I will attempt to.

15 Q. What was the outcome of that investigation at OIA  
16 against the Riverbend employees?

17 A. Before I answer that, I have to make sure that I  
18 can make any reference to OIA investigations of another  
19 matter in this context.

20 Is it possible to answer that at a later time  
21 after we check this, or take a break to find out?

22 Q. You can answer it later.

23 You do know that none of those employees testified  
24 before Congress, though, don't you -- the NRC employees  
25 involved?

1           A.    I don't know that.  I mean, I don't know it one  
2 way or the other.

3           Q.    Do you know who testified before Congress?

4           A.    I know at the Gejdenson hearing two individuals  
5 who testified:  Mr. Kelly and Mr. Bush.

6           Q.    None of the NRC employees involved in the  
7 Riverbend incident testified at the Gejdenson hearing;  
8 correct?

9           A.    That may well be true.  Of course, the Gejdenson  
10 hearing was prior to the events at Riverbend.

11          Q.    Who is Mr. Larry Yandell?

12          A.    Mr. Larry Yandell is the Deputy Director of the  
13 Division of Radiation Safety and Safeguards in Region IV.

14          Q.    What was his position during the summer and spring  
15 of '87?

16          A.    I believe he was a branch chief in that same  
17 division.

18          Q.    Now, you testified, I believe, about some  
19 discipline that was taken against Mr. Yandell; is that  
20 correct?

21          A.    You asked me some questions, yes, and I responded  
22 to that about Mr. Yandell.

23          Q.    I think Mr. Cradock, agency counsel, asked you the  
24 questions about Mr. Yandell.

25          A.    Maybe he did.

1 Q. Did you handle that issue as the deciding  
2 official?

3 A. No. My deputy, Mr. Montgomery, was the deciding  
4 official on Mr. Yandell.

5 Q. Did he confer with you about the issue?

6 A. Again we discussed it, but he did not seek my  
7 approval or my concurrence.

8 Q. The issues involved in Mr. Yandell's case directly  
9 involved Mr. Caldwell's inquiry for employment; isn't that  
10 correct -- part of it anyway?

11 A. Part of it.

12 Q. So it directly involved a conflict of interest;  
13 correct -- a conflict of interest issue?

14 A. Yes.

15 Q. As a matter of fact, Mr. Caldwell was applying for  
16 the same position that Mr. Kelly is accused of applying for,  
17 correct, or at least inquiring about?

18 A. I think there was the presumption that Mr. Kelly  
19 was inquiring about the same position. I believe that's  
20 true. I am assuming that the position is the same in both  
21 cases.

22 Q. Now, another thing that Mr. Yandell was charged  
23 with, I believe -- at least the charge that was sustained --  
24 had to do with his relationship with HL&P management; isn't  
25 that correct?

1           A.    I'd have to review the charges. I'd have to  
2 review that case.

3           Q.    I'm sorry, I thought you had because you were  
4 testifying about it earlier.

5           A.    He had asked me certain questions about it. I  
6 remembered to the extent that I recalled some of the  
7 details. You're now asking me a lot more depth of detail.

8                   I do not have those cases committed to memory.

9           Q.    Did you review them before you came to hearing?

10          A.    Not the Yandell case, no.

11          Q.    I'll ask Mr. Yandell about it later, I suppose.

12                   Now, let me go back to your earlier testimony to  
13 agency counsel, Mr. Martin. I believe you stated something  
14 about the Atomic Energy Commission changing or ending, and  
15 then there was a Nuclear Regulatory Commission; is that  
16 correct?

17          A.    That's correct.

18          Q.    Now, what did the change between the Atomic Energy  
19 Commission and Nuclear Regulatory Commission do about the  
20 mission -- What was the change in the mission of the  
21 service because of that?

22          A.    The Atomic Energy Commission, as it was formed by  
23 the Atomic Energy Act of 1954, placed the agency with a dual  
24 role. It had the role both of encouraging the expanded use  
25 of nuclear energy and nuclear materials in science,

1 industry, various applications, and the regulation of that  
2 activity.

3 In the mid seventies, early seventies to mid  
4 seventies, resulting in -- I believe it was called the  
5 Energy Reorganization Act of 1974 -- the decision was made  
6 by Congress that the nuclear industry had grown or expanded  
7 to the point where they should separate the promotional  
8 aspects of the AEC's activities from its regulatory aspects.

9 So those elements of the organization which were  
10 fundamentally regulatory in nature were transitioned over  
11 and formed under a new organization called the Nuclear  
12 Regulatory Commission.

13 The remaining aspects of the Atomic Energy  
14 Commission, which included the national laboratories, like  
15 Oak Ridge and Savannah River and Sandia and Los Alamos, were  
16 then transferred over to a different organization, which in  
17 time through a series of organizational changes, ultimately  
18 became the Department of Energy -- or became the major base  
19 of the Department of Energy.

20 So it was a separation of the regulatory function  
21 from the promotional function.

22 Q. Now, I believe in your testimony on direct you  
23 were talking about Charge No. 2, appropriate conduct in  
24 official dealings. That's at Tab 4, page number 4.

25 A. You're speaking of Mr. Bangart's proposal letter?

1 Q. Right. That is the charge you sustained; correct?

2 A. That's correct.

3 Q. Now, help me on this one too, please, Mr. Martin,  
4 what are the charges against Mr. Kelly in Charge No. 2?

5 A. Taking an action that made it appear he was using  
6 a public office for private gain. That appears to be --  
7 The basic charge is inappropriate conduct in your official  
8 dealings.

9 And then it refers to using a public office for  
10 private gain.

11 Q. So what are the specifics of the charge? What is  
12 he specifically charged with violating -- allegedly  
13 violating the rule?

14 A. That his actions to pursue allegations of -- bias  
15 allegations, of over regulation allegations -- primarily of  
16 bias, by confronting STP management, personally pursuing  
17 them, up to and including suggestions, if not assertions,  
18 that he was prepared to file lawsuits against the company is  
19 inappropriate conduct in dealing with those kinds of  
20 matters.

21 Q. So if we can break it down, the specifics of the  
22 charges are, one, he pursued allegations of bias?

23 A. Yes.

24 Q. And the second one is what?

25 A. This is mental overload. The letter said

1 allegations of bias. There were also a number of charges  
2 then of over regulation.

3 But I don't think that became part of the formal  
4 charge by Mr. Bangart. I think it was primarily the issue  
5 of bias.

6 Q. So over regulation is not part of the charge?

7 A. [Nods head.]

8 Q. Pursued allegations of bias is the sole charge  
9 then?

10 A. That's as I recall it without reviewing the  
11 document again.

12 Q. And part of that charge then I believe you said  
13 was that he considered -- I don't know your exact words, and  
14 I don't want to put words in your mouth -- but he was  
15 pursuing a suit for slander or something? That was one of  
16 the charges, part --

17 A. That he was considering a lawsuit.

18 Q. Consideration of a lawsuit is an improper act?

19 A. If you use that in an exchange with a licensee  
20 representative. That is not the conduct expected of an  
21 inspector or of a manager of this agency when charges of  
22 that kind are levied.

23 Q. If you what? If you use it what? I couldn't  
24 understand.

25 MR. DRESSLAR: Could you read that back, please.



1 THE REPORTER: Answer: "If you use that in an  
2 exchange with a licensee representative. That is not the  
3 conduct expected of an inspector or of a manager of this  
4 agency when charges of that kind are levied."

5 BY MR. DRESSLAR:

6 Q. What's the exchange involved in Mr. Kelly's case?

7 A. The exchange is in a dialogue with a senior --  
8 with a group vice president of the corporation, to allude to  
9 the fact that you're considering a lawsuit in order to get  
10 these kinds of remarks stopped.

11 Q. And what did you rely on -- Was that your  
12 finding, that he did that?

13 A. Yes.

14 Q. What did you --

15 A. And that that was inappropriate.

16 Q. Okay. I'm talking about just factual findings.

17 You found as a matter of fact that he told HL&P  
18 management what?

19 A. That he was prepared to pursue a lawsuit.

20 Q. And where in the record or what in the record did  
21 you use to make that finding?

22 A. The OIA interview of Mr. Goldberg, and I would  
23 have to -- I don't know what tab it is.

24 MR. CRADOCK: I think it's in the record.

25 BY MR. DRESSLAR:

1 Q. Anything else?

2 A. And memoranda that Mr. Kelly provided to me either  
3 directly or by memorandum that he was prepared -- that led  
4 me to conclude from statements in those memoranda that he  
5 was prepared to take such action.

6 Q. Direct me in the record to those memoranda by Mr.  
7 Kelly, please.

8 A. One of those actions that contributed --

9 Q. May I ask what document you're referring to,  
10 please, Mr. Martin?

11 A. Yes. I was going to say, it's NRC Exhibit A.

12 Q. Hold on a second, please.

13 Okay. Go ahead.

14 A. The last page of that exhibit, the last sentence.  
15 "I intend to pursue whatever course is necessary to disprove  
16 these falsehoods."

17 Q. Of course this is a statement to you, isn't it,  
18 not to HL&P management, isn't it?

19 A. Yes, it is.

20 Q. Any other memo by Mr. Kelly that you relied on?

21 A. I'm looking to see. I did not put this package  
22 together, so I have to find out where they're at.

23 MR. CRADOCK: Maybe I can help --

24 ARBITRATOR HAYS: If it will be helpful.

25 MR. CRADOCK: The index to the OIA investigation

1 is in Volume II. You may find a reference to Mr. Kelly's  
2 statements there.

3 MR. DRESSLAR: Maybe I can help you, Mr. Martin --  
4 Well, I don't know.

5 You said memoranda from Mr. Kelly. I'm not sure  
6 of any memoranda from Mr. Kelly.

7 MR. CRADOCK: If you'll look at Volume II, Tabs 2  
8 and 3.

9 THE WITNESS: I was just finding those.

10 Under Tab 2, his memorandum of July 28 to me, his  
11 last sentence, "I am seeking an apology from the utility on  
12 behalf of myself and the agency."

13 BY MR. DRESSLAR:

14 Q. And, of course, that's another statement from Mr.  
15 Kelly to you, isn't that correct, not to HL&P?

16 A. That's correct.

17 If I may, I believe I commented on the fact that I  
18 relied on the statement by Mr. Goldberg of HL&P --

19 Q. I understand.

20 A. -- and comments made by Mr. Kelly to me that led  
21 me to believe that he was prepared to do what Mr. Goldberg  
22 reported.

23 Q. Right. I understand that. We're talking about  
24 Mr. Kelly's comments now, and those comments were solely to  
25 you; correct?

1           A.    The two thus far that you've identified as such  
2   are.

3                   Under Tab 3 again his statement to me in his  
4   memorandum of July 28th that he considers himself to be  
5   slandered by this falsehood.

6           Q.    So again this was purely to yourself; right?

7           A.    That's correct.

8           Q.    Anything else you considered, Mr. Martin, under  
9   that charge?

10          A.    I believe there was an additional memorandum.

11                   No, we've covered the memorandum under this  
12   earlier exhibit.

13                   I believe that covers it.

14          Q.    Okay. Let's go back again to Charge No. 1.

15          A.    Yes.

16          Q.    In your decision letter, Tab No. 1 of Volume I,  
17   the third paragraph with regard to Charge 1, "I find the  
18   statements of Messrs. George and Kern to be more credible,"  
19   could you help me out again, please? What was it exactly  
20   that you found to be more credible? Against what?

21                   In other words, why would you consider Mr.  
22   George's statement more credible than Mr. Kelly's statement?  
23   Mr. George's statement wasn't taken under oath, was it?

24          A.    I can't answer that. I don't know that.

25          Q.    Did you review it?

1 A. I did review it.

2 Q. I think it's at Tab 41.

3 A. I believe it's a report of interview. I don't  
4 know whether OIA's practices are to place interviewees under  
5 oath, what they do.

6 Q. It is their practice to state whether or not they  
7 are under oath when speaking, though; correct?

8 A. I believe that is certainly true whenever it's a  
9 transcription. I don't know what it is on a report of  
10 interview.

11 Q. So you don't know whether or not it was under  
12 oath?

13 A. I do not know.

14 Q. And you didn't know when you made your decision  
15 either?

16 A. Yes, that's true. I did not know then.

17 Q. Were you aware that Mr. Kelly's statement was  
18 under oath?

19 A. Yes.

20 Q. Now, Mr. George and Mr. Kern were part of HL&P at  
21 the time they made their statements; is that correct?

22 A. That's correct.

23 Q. And at the time they made their statements then,  
24 they were still subject to NRC regulation, their conduct or  
25 their activities anyway, at work?

1 A. Their regulated activities, yes.

2 Q. Now, turning your attention to Tab 40 of the  
3 report of investigation, you spoke about that briefly on  
4 your direct. It's in Volume III.

5 A. 40?

6 Q. Right. Tab 40.

7 Just to clear it up in my mind, you gave this  
8 absolutely no consideration in your decision to impose  
9 discipline, Mr. Martin?

10 A. That's correct.

11 Q. I think under Volume IV, the supplemental  
12 investigative report of OIA, there's two statements you  
13 referred to in your direct testimony, one for Mr. George and  
14 one for Mr. Kern in an interview of 11-14-88.

15 A. Yes.

16 Q. And you considered this in your decision to impose  
17 discipline?

18 A. Yes, I did.

19 Q. Let's go with just the report of interview for Mr.  
20 George first. Okay?

21 A. All right.

22 Q. Did you consider the differences in this statement  
23 and the first statement?

24 MR. CRADOCK: Objection. That's not in evidence.

25 MR. DRESSLAR: I thought the report of

1 investigation was in evidence.

2 MR. CRADOCK: There's nothing in evidence about  
3 any differences between statements.

4 ARBITRATOR HAYS: The statements are in evidence,  
5 aren't they, as a part of the joint exhibit?

6 MR. CRADOCK: There's nothing in evidence  
7 regarding statements --

8 MR. DRESSLAR: They're in evidence.

9 MR. CRADOCK: Differences between the statements.  
10 That was his question.

11 He said, "Did you consider the differences between  
12 the statements?"

13 ARBITRATOR HAYS: But the statements themselves  
14 are in evidence, Jim.

15 MR. CRADOCK: My objection is the question  
16 regarding, did you consider the differences between the  
17 statements. There's absolutely nothing in evidence  
18 regarding any differences between statements.

19 BY MR. DRESSLAR:

20 Q. Did you review the November 14, '88 George  
21 statement and did you compare that to the other Larry George  
22 statement under Volume III?

23 A. I did review both statements. I did not  
24 specifically compare them, no.

25 Q. Did you also not specifically compare the two Kern



1 statements?

2 A. That's correct.

3 Q. Mr. George and Mr. Kern were at STP during this  
4 very tense period, weren't they, as employees of the  
5 utility?

6 A. Yes.

7 Q. They were there when the NRC was making hundreds  
8 of findings of deficiencies in the programs of HL&P?

9 A. They were there during the period of time that we  
10 were establishing severe difficulties and deficiencies in  
11 that program.

12 Q. I believe on your direct testimony you stated --  
13 if not, please correct me -- at least to the best of my  
14 written account -- that George and Kern testified with  
15 certainty. Is that close to what you said?

16 A. Uh-huh, yes.

17 Q. When you talk about testified, you just mean the  
18 two reports of interview; is that correct?

19 A. That is correct.

20 Q. How often did you speak with Mr. Goldberg of HL&P  
21 during that period of time between spring and end of summer  
22 '87?

23 A. I would estimate about once every two weeks.

24 Q. Did you have any conversations with someone named  
25 Mr. Constable during that period of time, another HL&P

1 employee?

2 A. I don't recall a Constable of HL&P, no, sir.

3 Q. I'm sorry. An NRC employee.

4 A. Yes, I spoke with him often.

5 Q. Did he tell you in June of 1987 that there were  
6 these allegations of bias being raised against NRC  
7 inspectors, in early June of '87?

8 A. That's nailing me down to a time frame I'm not  
9 sure of.

10 During that period, June/July 1987, I was  
11 receiving inputs of a great deal of friction between my  
12 staff and the HL&P staff in the area of security.

13 Now, I believe Mr. Constable was one of those  
14 inputs. Some of the resident inspectors, I believe,  
15 provided additional input, either through their line  
16 management, who would have been Mr. Constable at that  
17 moment, or elsewhere, and directly from the involved  
18 security inspectors themselves, that there were a large  
19 number of problems in the interpersonal relations that were  
20 developing.

21 Q. So you learned about these allegations of bias in  
22 early June of '87? At least the initial allegations?

23 A. Yes, that's correct.

24 Q. But you didn't give it to OIA at that time, did  
25 you?

1 A. No, I did not.

2 Q. Now, are you really telling us that back in '87  
3 STP was a state-of-the-art facility?

4 MR. CRADOCK: Objection. I don't understand what  
5 he's asking. He hasn't testified about anything to that  
6 effect.

7 MR. DRESSLAR: Yes, he has. On direct testimony  
8 he said that STP was a state-of-the-art facility.

9 ARBITRATOR HAYS: I believe he did testify on  
10 direct it was state of the art.

11 MR. CRADOCK: I'm sorry. I'll withdraw the  
12 objection.

13 THE WITNESS: STP facility was a state-of-the-art  
14 facility, as far as the reactor facility is concerned.

15 BY MR. DRESSLAR:

16 Q. So you just meant for the reactor?

17 A. I meant in terms of the majority of the  
18 powerplant, yes. The reactor facility.

19 Q. Now, when did the NRC Region IV security  
20 inspection team first go on site to begin pre-operational  
21 inspection of the STP facility? Was that late 1986?

22 A. I think so. I think it was in the fall of '86.

23 Q. And isn't it true, Mr. Martin, that they  
24 immediately uncovered, after their initial inspections, very  
25 severe deficiencies in the security plan?

1 A. Yes.

2 Q. Eventually it turned out that the inspection team  
3 uncovered falsification of records by the HL&P security  
4 division, at least some of the employees; is that correct?

5 A. Yes. It appeared to be falsification. That  
6 matter was turned over to the Office of Investigations, who  
7 did investigate it.

8 That matter has become a matter of public record.  
9 What OI found, however, was no willful intent, but rather a  
10 different kind of issue.

11 But, clearly, there were severely deficient  
12 records relative to the training of the security force.  
13 That was uncovered by those inspectors. That's true.

14 Q. What do you mean there were severe deficiencies?  
15 Weren't there testing records that were altered?

16 A. That's what I'm saying. There were --

17 Q. Were there testing records that were altered by  
18 HL&P employees that were uncovered?

19 A. There were records that -- Yes. There was a  
20 portion of records that were altered. There were also  
21 records that appeared altered because of mishandling of the  
22 basic record information to begin with.

23 Q. Now, it was NRC's position during this period of  
24 time with the severe problems of HL&P, the sort of chaos  
25 with the security division, that HL&P would not -- did not

1 and would not get a license until it was ready; correct?

2 A. That's correct.

3 Q. Now, when that license was issued, they weren't  
4 really ready, were they?

5 A. Yes, they were.

6 Q. How many violations or proposed enforcement  
7 actions were taken after licensing?

8 A. There was a major enforcement action taken, a  
9 civil penalty was assessed for weaknesses in the execution  
10 of their program.

11 Q. And that was right after licensing?

12 A. Right after licensing, which we fully anticipated

13 -- Well, it was not right after licensing.

14 What we did, I believe, was summarize the first  
15 three months or so of activities.

16 I forget when the actual date of the enforcement  
17 proposal went forward and the enforcement action was taken.  
18 It was after licensing.

19 Q. I understand.

20 A. When South Texas was licensed, they were granted  
21 the license with the program meeting minimal acceptable  
22 requirements.

23 We knew going in they were not fully acceptable,  
24 nor were they a superior, state-of-the-art security system.  
25 But they did meet minimum requirements.

1 Q. Was the NRC's security inspection team on site  
2 immediately after licensing, Mr. Martin?

3 A. I don't know that there was a continuous presence  
4 after licensing. There was certainly a heavy presence after  
5 licensing, monitoring the performance of the South Texas  
6 facility during those early months.

7 Q. HL&P management never gave any credence to these  
8 rumors or allegations (as you call them) about inspector  
9 bias, did they?

10 A. At the time Goldberg called me with his concern  
11 about the contentiousness that was developing between the  
12 respective staffs, he at that point I believe indicated to  
13 me that he didn't think bias was involved, but that there  
14 was a contentious attitude between the individuals.

15 Q. So he told you he didn't believe there was any  
16 bias involved?

17 A. I believe that was the exchange we had over the  
18 phone.

19 Q. That was Mr. Goldberg?

20 A. That was Mr. Goldberg.

21 Q. Mr. Martin, do you keep minutes of your meetings  
22 with NRC employees?

23 A. Rarely.

24 Q. You testified about this telephone conference  
25 meeting with the Commissioners and Mr. Kelly. When did tha

1 occur?

2 A. I have tried to reconstruct when that was. I have  
3 a deputy division director who was the technical assistant  
4 to Chairman Zeck at that time.

5 Q. Where were you during this meeting?

6 A. Incredible as it sounds, I can't remember whether  
7 I was in Washington at the other end or I was at this end on  
8 the phone.

9 Q. It's possible that you were in Washington, D. C.;  
10 correct?

11 A. It is possible, yes.

12 Q. Do you know who was part of the conference on the  
13 other side in Region IV?

14 A. I believe it was Jim, and I think Paul Jeck who  
15 was then my deputy was on the phone at the time.

16 Q. You don't have a very good memory of that?

17 A. I remember the instance of the phone call and damn  
18 little else.

19 Unfortunately, I have other staff members who are  
20 in the same boat. They remember bits and pieces. We seem  
21 unable to construct when it occurred.

22 Q. Now, let me again go back to Charge 2 concerning  
23 rumors, pursuing rumors, pursuing these allegations of bias,  
24 as you've stated it.

25 What would the proper procedure have been for Mr.



1 Kelly to have used to report unfounded and unsubstantiated  
2 rumors such as those that were being raised by unnamed  
3 people at HL&P, unnamed HL&P employees?

4 A. To a large extent, to the extent that he informed  
5 me, as did the other security inspectors informed me, that  
6 was the action at that point to take, not to pursue them and  
7 not to resolve the source of them or to chase them down to  
8 identify who was saying it.

9 Q. Now, if these unsubstantiated, unfounded rumors by  
10 unnamed people become an open item in an inspection that the  
11 NRC inspection team is making, wouldn't they be allowed to  
12 speak to HL&P people about it?

13 A. Your premise is heavily based on the "if"  
14 statement.

15 Q. I understand that.

16 A. There is no reason for such a thing to become an  
17 outstanding item in an inspection activity. That's not an  
18 inspection of a regulatory requirement, which is what their  
19 outstanding items should be.

20 We are constantly exposed to circumstances where  
21 people ascribe various reasons to our conduct and our  
22 behavior.

23 I do not expect inspectors to try to chase such  
24 allegations down.

25 Q. What about open positions in the HL&P security

1 division organization? Wouldn't those be legitimate open  
2 items?

3 A. Yes, they would be.

4 Q. So the inspector would be expected to discuss,  
5 "When are you going to get this filled," or something like  
6 that, as an open item?

7 A. Sure, absolutely.

8 Q. That would be discussed both with HL&P employees  
9 and with NRC management?

10 A. Well, the way you asked the question, when they're  
11 going to get somebody -- a particular position filled, I  
12 would presume they would ask the licensee since NRC  
13 management wouldn't know the answer to that.

14 Q. Mr. Martin, didn't you have discussions during the  
15 summer of 1987 where the NRC inspectors complained that they  
16 were being sent down to HL&P on a continuing basis, and that  
17 this put them in a conflict of interest?

18 A. I certainly remember the discussion about the  
19 concern about being sent down to HL&P for prolonged periods  
20 of time.

21 Whether or not they used the term "conflict of  
22 interest," I don't know that that's a good characterization.

23 It certainly put them in a rough position with the  
24 licensee.

25 Q. Do you recall the phrase, "We're being put in an

1 improper position"?

2 A. I think they may have said that, yes.

3 Q. An improper position relative to the licensee?

4 A. I know they were concerned about that.

5 Q. And they raised those concerns with you?

6 A. Yes.

7 Q. And so did --

8 A. Those were an open subject of discussion.

9 Q. And yet you continued to order them down there on  
10 a continuing basis?

11 A. I did. I was fully aware of their concerns, but I  
12 still made that decision, that they had to go down.

13 Q. Let's go to the Douglas factors, Mr. Martin.  
14 That's NRC Exhibit C.

15 Your testimony earlier today was that those were  
16 the Douglas factors that you considered, the ones that you  
17 have mentioned earlier today?

18 A. Could you remind me of the exhibit number?

19 Q. NRC Exhibit C.

20 You stated earlier you considered 1, 2, 5, 8, 9  
21 and 11.

22 A. Would you repeat what you just said?

23 Q. 1, 2, 5, 8, 9 and 11, those are the ones you  
24 considered?

25 A. No, I considered --

1 MR. CRADOCK: Objection. That's not in evidence.  
2 I think he considered all of them.

3 THE WITNESS: I was just going to --

4 BY MR. DRESSLAR:

5 Q. Are those the ones you considered, Mr. Martin?

6 A. Not restricted to those --

7 MR. CRADOCK: Can I get a ruling on my objection.  
8 That's not in evidence.

9 MR. DRESSLAR: I'm trying to get what he  
10 considered into evidence, Mr. Cradock, if you'd let him  
11 answer.

12 MR. CRADOCK: It's in evidence. That's my point.  
13 He said he considered all of them. That's my only point.

14 It's not in evidence that he considered only --

15 ARBITRATOR HAYS: Well, the record will reflect  
16 it, and I don't know that it's going to be too productive to  
17 go back through.

18 The question is, if you want to ask him, did you  
19 consider them all or did you consider individual ones, or  
20 whatever way you want to ask the question, counsel.

21 BY MR. DRESSLAR:

22 Q. Did you consider the portion of No. 5 which talks  
23 about the employee's conduct and its effect upon the  
24 supervisor's confidence and the employee's ability to  
25 perform assigned tasks?

1           A.    Yes.

2           Q.    You did?  Why didn't you mention any of them other  
3 than the lateness of the discipline and the disciplinary  
4 action --  Let me ask you this.

5                   Why didn't you mention No. 1 in your decision  
6 letter, if you considered it?

7                   I'm sorry.  Not No. 1, No. 5.

8                   You did mention No. 1, and you did mention the  
9 mitigating circumstances, No. 11, it looks like.  Why didn't  
10 you mention No. 5 if you considered it?

11           A.    As I stated earlier in my testimony, I considered  
12 all of the Douglas factors.  I believe I mentioned the one  
13 that stood out most predominantly in my mind as the most  
14 important was No. 1.

15                   I also mentioned that because of my personal  
16 awareness of the stress and conditions that existed, I also  
17 considered No. 11 on the other side of that ledger.

18                   I did consider all of the others.  I have not  
19 mentioned all 12 Douglas factors in my decision letter.

20                   Quite frankly, I wasn't advised by counsel that I  
21 am required to address all 12 Douglas factors.  So if you  
22 pick out individual ones, why I did or didn't, that was a  
23 judgment I reached as to whether or not it was necessary or  
24 appropriate.

25                   MR. CRADOCK:  If we're going to go a while longer,

1 could we take a break?

2 ARBITRATOR HAYS: All right.

3 [Brief recess.]

4 ARBITRATOR HAYS: Back on the record.

5 MR. DRESSLAR: Can I ask the identity of the  
6 spectator?

7 MR. CRADOCK: This is Mr. Al Gutterman. He's  
8 counsel for HL&P, outside counsel from Washington, D.C.

9 MR. DRESSLAR: I'm sure he won't be discussing the  
10 testimony with the HL&P witnesses then.

11 ARBITRATOR HAYS: Proceed.

12 BY MR. DRESSLAR:

13 Q. Mr. Martin, directing your attention to NRC  
14 Exhibit J, which is not really in evidence yet -- I said I  
15 would try to cross-examine you and then see what we have.

16 A. I have it.

17 Q. From whom did you receive this -- Oh, Mr. Heul  
18 Meadows. Who is he?

19 A. She is -- I believe her title is personnel  
20 specialist. She's with the labor relations branch. She is  
21 the contact point that we usually use on disciplinary  
22 matters. She's a central employee.

23 Q. You received this from Ms. Meadows on 11-23-88; is  
24 that correct?

25 A. I believe so, yes.

1 Q. Wasn't that prior to the proposed discipline? Why  
2 would you have any involvement, in using a document to  
3 discipline Mr. Kelly prior to the proposed discipline?

4 A. I don't know if it was sent to me to pass on to  
5 Mr. Bangart.

6 Q. It says for you.

7 A. Yeah, I realize that.

8 Q. It did come to you, right?

9 A. It came to me.

10 Q. And the proposed discipline was April 7, 1989;  
11 correct? Tab 4 of Volume I.

12 A. Yes.

13 Q. Do you know someone named Mr. Eric Johnson, Mr.  
14 Martin?

15 A. Yes.

16 Q. Is it true that HL&P quality assurance people  
17 brought to your attention that Mr. Johnson had released  
18 safeguards information to the news media? At least that was  
19 their allegation.

20 MR. CRADOCK: Objection. I'm not sure what the  
21 relevance of this is to the case here.

22 MR. DRESSLAR: The relevance is disparate  
23 treatment. Mr. Martin has testified that he has to refer  
24 all allegations of misconduct to OIA.

25 ARBITRATOR HAYS: I'll overrule the objection and



1 instruct the witness to answer if he knows.

2 BY MR. DRESSLAR:

3 Q. Do you want me to rephrase the question?

4 A. No, that's all right.

5 The puzzled look on my face was based on the fact  
6 that I thought it was my security inspectors that brought to  
7 my attention their conviction that Mr. Johnson had released  
8 safeguards information.

9 I reviewed the information that they asserted was  
10 safeguards information. The information that was released  
11 was not safeguards information.

12 Q. Are you saying you can make independent  
13 investigations then without referring allegations to OIA?  
14 Is that what you're saying?

15 A. I have to make -- As the head of this office, I  
16 have to make judgments.

17 Q. So you are allowed judgment calls in referring  
18 matters to OIA?

19 A. I elect to make judgment calls. I'm responsible  
20 for making judgment calls. I use a very low threshold in  
21 making those calls. But when there is no merit -- none at  
22 all, then I will not make the referral.

23 Q. There was no merit to the allegations about Mr.  
24 Kelly that you reported to OIA either, were there?

25 A. I wouldn't conclude that, no.

1 Q. You told us that HL&P management gave no credence  
2 to these rumors --

3 A. Of bias.

4 Q. -- of bias because they were trying to accept  
5 employment. Those were the allegations, because they were  
6 refused employment. That's what you testified were the  
7 allegations.

8 A. I believe that there was sufficient merit to the  
9 concerns to refer them to OIA.

10 Q. Was it the concern about a conflict of interest  
11 that you were referring, or was it a concern about over  
12 regulation, which was really the charge about the bias?

13 A. There were a number of charges. So I referred the  
14 matter to OIA. I also referred it in a fashion -- since you  
15 have seen the referral letter -- that attempted to  
16 characterize it as I understood it to be at that time.

17 Q. I understand that. You exercised your judgment --

18 A. Yes.

19 Q. -- in both the Kelly case and the Eric Johnson  
20 case; correct?

21 A. Yes.

22 Q. What was it about the Kelly allegations that you  
23 gave credence to?

24 A. You keep ascribing the Kelly allegations --

25 Q. The inspector allegations.

1           A.    What I received was allegations about a series of  
2 issues at the South Texas site, including over regulation,  
3 bias, bias based on conflicts, bias based on -- let me find  
4 a short way to say this -- not being selected for  
5 employment.

6           I attempted to collect information, and I informed  
7 them.

8           Q.    Right. And you collected information that stated  
9 there was no conflict of interest, didn't you?

10          A.    In fact, I believe I sent forward the information  
11 and characterized it in essentially that fashion, that as I  
12 knew it at that point.

13          Q.    Thank you.

14          Now --

15          A.    May I expand slightly on that answer?

16          Q.    I would rather that your counsel let you expand on  
17 it, if he chooses, later.

18          ARBITRATOR HAYS: I think counsel will give you an  
19 opportunity on redirect.

20          THE WITNESS: That's fine.

21          MR. DRESSLAR: Just for my understanding, Mr.  
22 Arbitrator, is the entire ROI in evidence at this time  
23 subject to objection on particular documents?

24          ARBITRATOR HAYS: Yes.

25          MR. DRESSLAR: I have no other questions then.

1 MR. CRADOCK: I have a few.

2 ARBITRATOR HAYS: Proceed with redirect.

3 REDIRECT EXAMINATION

4 BY MR. CRADOCK:

5 Q. Mr. Martin, let's discuss this referral to OIA  
6 first. I want to go back to your decision letter of June  
7 26, 1989, and the testimony that you gave on direct  
8 regarding what you relied on in making your decision.

9 You testified you relied on a number of things in  
10 making your findings, including the statements in the  
11 investigative file, the responses of Mr. Kelly, memoranda  
12 from Mr. Kelly, Mr. Bangart's proposed findings, and other  
13 matters in coming to your conclusion regarding this matter;  
14 is that correct?

15 A. That's correct.

16 MR. DRESSLAR: I would object as a leading  
17 question for the record.

18 MR. CRADOCK: I'm conducting redirect here. I  
19 think I can lead a little bit.

20 ARBITRATOR HAYS: Try not to lead any more than  
21 you are. All right?

22 BY MR. CRADOCK:

23 Q. I want to refer you back to Tab 48 of the  
24 investigation, your report of interview of June 15, 1988, to  
25 Investigator Donna Rowe.

1           Now, I think this was characterized as a finding  
2 perhaps in cross-examination. This is a report of a phone  
3 interview with the investigator; is that correct?

4           A.    Yes.

5           Q.    What information did you have available at hand  
6 regarding employment inquiries of Kelly and Caldwell at that  
7 time, on June 15, 1988?

8           A.    She interviewed me in June by telephone to follow  
9 up on something that I had become aware of in February.  
10 This was my best understanding at the time of trying to  
11 respond into a telephone with questions that she was asking,  
12 what I understood what the Caldwell matter was, when I  
13 became aware of it, what I thought were germane and  
14 pertinent aspects of it and actions we took.

15          Q.    Were you aware of the allegations that Mr. Kern  
16 and Mr. George had made at the time you were talking to Ms.  
17 Rowe on June 15, 1988?

18          A.    I don't think in that time frame, no.

19          Q.    Do you recall when you received the OIA report?

20          A.    That was in, I believe, late September of '88 it  
21 was dated.

22          Q.    Several months after the phone interview with Ms.  
23 Rowe, which was on June 15th?

24          A.    Yes.

25          Q.    Therefore, you didn't see those statements or have

1 access to them, at least until September, several months  
2 later?

3 A. That's correct.

4 Q. And you didn't make your decision in this matter  
5 until approximately a year later; correct?

6 A. That's correct.

7 Q. June 26, 1989?

8 A. That's correct.

9 Q. So it's fair to say that the statement you gave on  
10 June 15th was in reliance on limited information about the  
11 facts in this case?

12 A. Yes.

13 Q. And you became aware --

14 MR. DRESSLAR: Objection to leading the witness.

15 MR. CRADOCK: I've laid a proper foundation to ask  
16 the question.

17 ARBITRATOR HAYS: I don't think that was a leading  
18 question. Go ahead.

19 BY MR. CRADOCK:

20 Q. You relied on information obtained subsequent to  
21 that in making your decision?

22 A. Yes, definitely.

23 Q. And it's fair to say also that the June 15, 1988,  
24 report of interview in no way reflects your knowledge today  
25 and as of the time you made your decision of the facts in

1 this case?

2 A. This reflects what I knew in June of '88, which is  
3 not what I know now.

4 Q. Thank you.

5 Now, I want to bring you back to the question of  
6 charges and what have been called the specifications. In  
7 your decision, on Charges 1 and 2 you find Mr. Kelly guilty  
8 effectively of Charge 1 and 2 in your June 26, 1989 finding;  
9 correct?

10 A. That's correct.

11 Q. You relied in part on Mr. Bangart's proposed  
12 finding, which is Tab 4, and which includes specific Charges  
13 1A, B and C in Charge No. 1; is that correct? I'm just  
14 asking you if that's what Mr. Bangart's proposal letter  
15 includes.

16 A. The difficulty I have is "relied upon." It served  
17 as the basis or the articulation of what the charges were  
18 that I had to make a decision on.

19 Q. I understand.

20 A. If that means relied upon it, then yes, in that  
21 regard.

22 Q. And my question is: If you look at page 3 of the  
23 proposal there is a definition of "solicitation" down there  
24 toward the bottom of the page. Would you take a look at  
25 that?



1 A. Refer me to it again. I'm sorry.

2 Q. There's a definition of "solicitation" on the  
3 bottom of page 3 which starts with the word "Solicitation."

4 A. Oh, yes.

5 Q. Would you take a look at that?

6 A. Yes.

7 Q. Is this the definition of "solicitation" that you  
8 used in making a finding in this matter regarding the  
9 solicitation of employment at HL&P?

10 A. Yes, it is.

11 Q. And you found that Mr. Kelly had committed that  
12 solicitation as defined there and in the NRC announcement,  
13 which is cited above --

14 MR. DRESSLAR: I'm going to object again to  
15 leading question.

16 MR. CRADOCK: I'm asking questions based upon  
17 evidence that's in the record. I have a proper foundation  
18 to ask these questions.

19 ARBITRATOR HAYS: Well, the problem is, you keep  
20 framing your answer in the question.

21 MR. CRADOCK: I believe I can ask him -- If the  
22 evidence has already been admitted, I believe I can ask  
23 questions --

24 ARBITRATOR HAYS: If you ask him that and say, "Is  
25 it true that you testified that."

1 MR. CRADOCK: Well, I'll rephrase my question.

2 ARBITRATOR HAYS: Okay.

3 BY MR. CRADOCK:

4 Q. Is it true that in making the finding of improper  
5 solicitation, you relied upon -- or did you rely upon the  
6 definition of --

7 MR. DRESSLAR: Objection. Leading question.

8 MR. CRADOCK: He has already testified that he  
9 relied upon --

10 ARBITRATOR HAYS: I'm going to give him some  
11 leeway. We're not in a court of law.

12 You're an experienced lawyer. So just ask him the  
13 question and let him be responsive in his answer. It's  
14 going to mean a lot more to me if he is.

15 BY MR. CRADOCK:

16 Q. I believe your last answer was you used the  
17 definition of "solicitation" as stated on page 3 of the  
18 proposed finding; correct?

19 A. Yes, I did.

20 Q. Now, do you know where that definition comes from?

21 A. I'd have to look at the preceding sentence to be  
22 able to refer you to where it comes from, which is  
23 Announcement No. 6 dated July 11, '86.

24 If you had asked me that without that, I would  
25 have had to research it. But the document, page 3,

1 identifies the source.

2 Q. Now, let me refer you back to NRC Exhibit D-12. I  
3 think you were asked some questions about this on cross, and  
4 I want to clarify if I can.

5 A. D-12. Okay, I have it.

6 Q. Is this announcement, to your knowledge, the  
7 announcement that's referred to here in the proposed  
8 finding?

9 ARBITRATOR HAYS: Counsel, my notes indicate that  
10 he answered that he did not use this document in the making  
11 of his decision.

12 MR. CRADOCK: And I'm asking him -- I think he  
13 was confused when he was testifying.

14 ARBITRATOR HAYS: Well, let the record reflect  
15 that his previous answer was he didn't use it. If you're  
16 inquiring about whether --

17 BY MR. CRADOCK:

18 Q. Can you answer the question?

19 A. Having heard the discourse back and forth, could I  
20 get a restatement of the question, please?

21 Q. All right. To your knowledge, is this the  
22 announcement that's referred to in the proposed finding on  
23 page 3?

24 A. It's the announcement that's referred to.

25 Q. Now, you stated that you used that definition of

1 "solicitation." When you found Mr. Kelly guilty of Charge  
2 No. 1, were you limiting yourself to any particular  
3 regulation in doing so?

4 A. I was reviewing the issue in the context of the  
5 fundamental charge, the fundamental charge being improper  
6 solicitation of employment. I did not restrict myself --  
7 nor did I do a one-by-one correlation to each of the  
8 subordinate matters identified.

9 Q. Let me ask you this. In making your decision, was  
10 it your position that Mr. Kelly was guilty of violating the  
11 regulations cited in A, B and C in the proposed finding when  
12 he committed the solicitation?

13 A. Yes.

14 Q. Now, you were subject to some questioning  
15 regarding several utilities and reports by Mr. Kelly of  
16 incidents of either drug and/or alcohol abuse. I believe it  
17 was Cooper, Fort St. Vrain and Riverbend.

18 Those reports by Mr. Kelly, do you have the  
19 authority under NRC regulations to take action other than  
20 what you took regarding those reports?

21 A. Let's go back. I believe the actions I took at  
22 that time were commensurate with the regulations and with  
23 the authority that I have.

24 With regard to the Cooper case, at the time of the  
25 Cooper case there were no specific regulatory requirements

1 imposed on the industry relative to drug and alcohol abuse.

2 Those programs that existed were voluntary  
3 programs, albeit voluntary at the request of NRC, but NRC  
4 has been trying for ten years to get rules in relative to  
5 these kinds of matters unsuccessfully.

6 Within a year after requesting it of the industry,  
7 the industry placed such rules on themselves.

8 In that kind of a case where the tie to senior  
9 management at the facility did not exist -- this was a  
10 problem at lower levels -- it is then in accordance with  
11 agency policy appropriate to refer such matters back to the  
12 companies for the companies to do their own internal  
13 reviews, and we review it what it is that they've done.

14 In the case of St. Vrain, I would say the same  
15 general premise existed. However, one aspect was different.  
16 That is an aspect of the allegations reached higher into the  
17 organization -- reached into a higher level of management of  
18 the organization.

19 If the case being referred to is the one that I  
20 believe I'm remembering -- and I think I am correct in this  
21 -- the nature of the allegation that came in included an  
22 allegation from an individual who felt physically  
23 threatened, in jeopardy of physical harm.

24 In such cases were I to pursue such an instance,  
25 albeit some inference of the allegation raised to a higher

1 level of management -- if I were to pursue it in the way  
2 that had been suggested to me by the staff, I cannot afford  
3 protection.

4 I have no authority to afford physical protection  
5 to the individual. I felt by dealing with the senior  
6 executive in the corporation, he had more resources  
7 available to him to protect that individual than I had  
8 available through the agency.

9 The third case was Riverbend, I think -- Could  
10 you remind me of the third case?

11 Q. Riverbend, I believe, was the case that something  
12 occurred in January of 1988.

13 A. I think that was something else. I think that was  
14 an OIA matter. I think the Riverbend allegation had to do  
15 in the time frame of the June testimony, which I think would  
16 have been really covered by my general comments under the  
17 Cooper case.

18 Back at that time frame, it was appropriate to  
19 permit -- and still is, for that matter -- when we think  
20 that reasonably the company can review allegations and  
21 dispense with the matter, we are authorized to turn them  
22 back under certain conditions to the licensees.

23 Q. Regarding the Caldwell case and the Yandell case,  
24 once again could you state for us how you distinguish, if  
25 you do, those cases from Mr. Kelly's case and the penalties

1 imposed.

2 A. In the Yandell case, that was a failure on the  
3 part of the supervisor to use the judgment and carry out his  
4 responsibilities in a fashion that we believe is incumbent  
5 on him, that he's expected to carry them out, in terms of  
6 managing the activities of his staff and dealing with issues  
7 as they arise.

8 It also has to do with not using the kind of  
9 judgment that should have been used, recognizing the  
10 sensitivity of his potentially -- and as I recall the case,  
11 there was some uncertainty during the course of the  
12 evolution of that case as to whether he did prior to Mr.  
13 Caldwell seeking contact or after Mr. Caldwell sought  
14 contact with the vice president of operations of HL&P for  
15 employment.

16 Whether he granted that approval before or after,  
17 but in any event for the nature of that case, the  
18 circumstances and the tensions that continued to exist even  
19 at that time, that it showed particularly poor judgment.

20 Mr. Caldwell's case is a question of he did  
21 identify it to his supervisor. He identified that he did or  
22 was going to -- and I'm not trying to make -- I think now  
23 everyone in essence agrees that he approached his supervisor  
24 before making the contact, and then was reassigned back onto  
25 duty, essentially an issue that took place over a 15-minute



1 time frame.

2 Those are clearly elements in my mind that differ  
3 in at least essential manners.

4 Q. You were asked about the Lawrence Martin case. Do  
5 you recall anything further about that, Exhibit J?

6 A. What I remember of the Lawrence Martin case is --  
7 I believe I testified earlier that this was a man who did  
8 solicit employment while he was a field inspector at the  
9 site.

10 He identified his action on his own. I believe  
11 there was some question, although a disagreement, as to  
12 whether he asked his supervisor for permission or not.

13 The supervisor I think in that case didn't say  
14 that he didn't give the permission, he just didn't remember  
15 whether he did or not.

16 He put himself on report. That was in turn  
17 referred to OIA. OIA come back and confirmed, and then the  
18 decision was handed down by the division director.

19 This was an action taken by the division director  
20 and was not appealed.

21 That's about all I can remember of that case.

22 Q. I'd like to refer you back to Charge 2 regarding  
23 Mr. Kelly's actions in pursuing rumors with HL&P management.

24 Now, you were referred to several statements made  
25 by Mr. Kelly regarding the question of -- I believe --

1 apology and whether he threatened a lawsuit.

2 Did you rely on any other documents that you can  
3 recall, or any other information, in making your decision  
4 regarding Mr. Kelly's committed wrongdoing and using his  
5 public office -- or apparently using his public office for  
6 private gain?

7 A. As my memory best serves me now, I used the memos  
8 that I referred you and Mr. Dresslar to, from Mr. Kelly to  
9 me which established in my mind a willingness to pursue -- a  
10 willingness and an intent to pursue matters in that fashion,  
11 and the report of interview provided by OIA of Mr. Goldberg  
12 that he had been approached for that purpose, or at least  
13 identified to him the intent to do that.

14 That in my judgment was inappropriate.

15 Q. Now, you mentioned at one point that you talked to  
16 Mr. Goldberg a number of times. You talked to him at one  
17 point -- I believe you testified -- regarding problems, the  
18 difficulties that were going on between STP/NRC personnel.  
19 Among them the issue of whether there was over regulation  
20 going on.

21 Did Mr. Goldberg ever submit anything to you in  
22 writing regarding these objections that he voiced to you, do  
23 you recall?

24 A. Yes, he submitted two documents, two sets of  
25 notes, which are I believe part of the attachments to the

1 OIA file.

2 Q. Let me direct your attention to Tab 5 and Tab 6 in  
3 the OIA report, Volume II.

4 A. Tabs 5 and 6 are the notes that Goldberg told me  
5 some members of his staff had prepared and had provided him  
6 copies of. I asked him to send them on to me.

7 Q. Would you identify them for us, please, starting  
8 with 5?

9 A. Tab 5 is a document labeled as being meeting  
10 minutes, identifying a meeting of July 15 between a  
11 gentleman named Rehkugler of HL&P Nuclear Assurance and  
12 Larry Yandell.

13 The document summarizes a series of exchanges  
14 between Yandell and Rehkugler relative to the status and the  
15 readiness for operation of the HL&P South Texas plant.

16 Attachment 6 is labeled as meeting notes of a July  
17 20 meeting between a number of individuals: Yandell, Kelly,  
18 Caldwell, Power, Geiger -- Powell of HL&P Licensing/HL&P  
19 Nuclear Assurance for Mr. Geiger.

20 The other three names: Yandell, Kelly and  
21 Caldwell all being NRC personnel.

22 The meeting being held on July 20, which discussed  
23 a number of other conflict kind of issues.

24 One of the statements in there discussing  
25 conflicts, opinions and strongly held views about various

1 subjects.

2 These two documents I asked Goldberg to send them  
3 to me since I knew they had already been prepared, they  
4 existed. I wanted to have a copy of them available to me.  
5 He agreed to mail them up to me.

6 He mailed them up to me just in an envelope, no  
7 transmittal letter.

8 Q. Do you know how this meeting came to be called,  
9 this July 20th meeting?

10 A. I don't recall.

11 Q. Let me refer you to the third page of the meeting  
12 notes. Can you summarize --

13 MR. DRESSLAR: What tab is that, Mr. Cradock?

14 MR. CRADOCK: 6.

15 BY MR. CRADOCK:

16 Q. The third page of the meeting notes, would you  
17 summarize what the second paragraph indicates.

18 MR. DRESSLAR: Mr. Arbitrator, for the record I'm  
19 going to object to this document -- if he's going to offer  
20 it into the record.

21 I mean, it's in the record. I'm going to voice my  
22 objection to this document as purely hearsay.

23 MR. CRADOCK: My understanding when the documents  
24 were moved in, was that the objections would go to the  
25 weight, am I correct, and not to the admissibility?

1 ARBITRATOR HAYS: Well, I think the issue of  
2 relevancy was there, which goes to the admissibility.

3 MR. CRADOCK: Let me just respond to the objection  
4 if you'd like.

5 ARBITRATOR HAYS: All right.

6 MR. CRADOCK: These notes recant in Mr. Geiger's  
7 words -- and Mr. Geiger is going to be a witness here today  
8 or tomorrow -- what transpired at the July 20th meeting,  
9 which is one of the prime factual bases for the violations  
10 charged in Charge No. 2, using or appearing to use public  
11 office for private gain..

12 ARBITRATOR HAYS: Conditioned on the fact that Mr.  
13 Geiger is going to appear and testify, I will conditionally  
14 allow you to answer the question.

15 BY MR. CRADOCK:

16 Q. Could you answer the question, please?

17 A. The paragraph you referred me to states -- it's a  
18 one-sentence paragraph: "Mr. Kelly also stated that he has  
19 retained counsel and believes he has grounds for a lawsuit,  
20 and if we don't straighten this out, he will sue for  
21 slander."

22 Q. Now, did you rely --

23 MR. DRESSLAR: For the record, I'm going to object  
24 to that particular testimony as hearsay also.

25 ARBITRATOR HAYS: Well, again --



1 MR. DRESSLAR: Because they're using it to prove  
2 that Mr. Kelly committed the acts about which he is charged.

3 ARBITRATOR HAYS: The issue is what Mr. Martin  
4 relied upon in making his decision regarding Charge 2.

5 MR. DRESSLAR: Maybe I'm confused, but he has  
6 testified several times, Mr. Arbitrator, about the documents  
7 he relied on, and he never mentioned these documents.

8 MR. CRADOCK: He didn't say he didn't rely on  
9 anything, that's not his testimony.

10 MR. DRESSLAR: But he never mentioned these are  
11 the documents that he has relied on in his testimony that I  
12 can recall.

13 He talked about some Kelly memoranda and the  
14 Goldberg report of interview; and that is it; those are what  
15 he relied on.

16 MR. CRADOCK: Let me see if I can recap what the  
17 record says about that.

18 Mr. Martin testified at the outset that he relied  
19 upon a number of things. He has testified twice under my  
20 examination, what he made his decision on in this matter as  
21 to both charges, including the statements in the OI  
22 investigative report. He did not limit himself to the Kelly  
23 statements --

24 ARBITRATOR HAYS: That was a global -- you know,  
25 when he referred to it. He said he generally referred to a

1 lot of documents, but there was no specificity with regard  
2 to this document.

3 MR. CRADOCK: He never limited himself to --

4 ARBITRATOR HAYS: Obviously, if you ask him, he's  
5 going to say he did rely on it.

6 MR. CRADOCK: That's my question.

7 ARBITRATOR HAYS: Again that's at this point  
8 pretty blatant hearsay except that Mr. Goldberg is going to  
9 appear tomorrow --

10 MR. CRADOCK: Well, maybe I can understand  
11 something. Are we abiding by the rules of hearsay in this  
12 proceeding?

13 ARBITRATOR HAYS: Well, we're going to stay fairly  
14 close to the rules of evidence because it makes a little  
15 more workable session, counsel.

16 But I'll go ahead and allow you to answer the  
17 question, subject to curing any hearsay objection when he  
18 arrives tomorrow.

19 MR. CRADOCK: I assume you don't want me to object  
20 when I encounter a hearsay question in this proceeding.

21 ARBITRATOR HAYS: You can object if you wish.

22 MR. CRADOCK: Well, I'm abiding by the rules of  
23 this proceeding, which are that there are no rules of  
24 evidence. I know what the hearsay rule is, and I know that  
25 there has been a lot of hearsay evidence put in today.



1 I haven't objected to any, but if we're going to  
2 start abiding by the hearsay rule, I'd like to know about  
3 it.

4 ARBITRATOR HAYS: You're at liberty to object to  
5 anything you want to, counsel; and I'm prepared to rule on  
6 it as it comes.

7 MR. CRADOCK: Can I get a response to my question?

8 ARBITRATOR HAYS: Ask the witness.

9 BY MR. CRADOCK:

10 Q. Do you recall the question?

11 A. No. You asked me if I relied upon this statement?

12 Q. Yes, I did.

13 A. I did not.

14 Q. You did not rely upon this statement?

15 A. I did not rely upon this statement. This  
16 statement was part of the context of the material which was  
17 transmitted to OIA.

18 What I attempted to rely upon was reports of  
19 interview that were conducted by our people or direct  
20 statements that were made by Mr. Kelly to me.

21 Q. When you say reports of interviews of people,  
22 could you be more specific about what statements?

23 A. The reports of interview of Mr. Goldberg, Mr.  
24 Kern, Mr. George, the memoranda -- four memoranda which I  
25 believe I identified. Those were the primary documents that

1 I relied upon in making a decision and the transcripts --  
2 those things that constituted agency collective information.

3 Q. Did you rely upon statements made by -- I'm  
4 referring you to the July 20th meeting. Did you rely upon  
5 evidence regarding the July 20th meeting and statements  
6 taken of people who were in attendance at that meeting?

7 A. Only in the sense that they were collected through  
8 the OIA interviews.

9 Q. That's my question.

10 A. As they were collected through the OIA interviews.  
11 This document only served as background material that I  
12 forwarded to OIA as issues that were being developed --  
13 issues that were being perceived as conflicts between my  
14 staff and contained various charges.

15 In terms of reaching decisions, I tried to use  
16 documents or portions of documents, such as the OIA report  
17 -- portions of the OIA report which constituted collection  
18 of facts or information by the agency or information  
19 submitted directly to me by the participants, which in this  
20 case were memoranda from Mr. Kelly.

21 Q. Now, Mr. Martin, you testified that a license was  
22 issued in this matter in August of 1987; is that correct?

23 A. Yes.

24 Q. Did you issue any orders to your people,  
25 specifically the inspectors, to the effect that they should

1 ensure that that license was issued by that time or by any  
2 particular deadline?

3 A. No, not by any deadline, only that when the plant  
4 was ready, then I would cut loose the letter saying the  
5 plant was ready. But no deadlines were established, not  
6 time deadlines or any other kind of deadline.

7 Q. Did you issue any instructions to the effect that  
8 they should license in any event?

9 A. Absolutely not.

10 Q. What would your instructions be in that regard?

11 A. Continue to assess when the plant is ready, when  
12 the system is ready. Now, that's a judgment of when the  
13 security system was ready. It's a judgment call that's made  
14 by a lot of people involved in giving the input and advice,  
15 staff people -- NRC staff people.

16 Q. You gave some testimony regarding -- in response  
17 to questions about whether you had discussions with the  
18 inspectors about being down there on a continuing basis  
19 during this period of time in the summer of '87.

20 A. Yes.

21 Q. Was there anything extraordinary about their being  
22 down there on site for extended periods of time?

23 A. Extraordinary, no. It is not normal. It is not  
24 usual for inspectors who are normally region-based  
25 inspectors to be in that sort of a prolonged, on-site

1 involvement. That is not normal.

2 But the conditions at South Texas relative to  
3 their security program and the state it was in in May, June,  
4 July, August was not normal.

5 It is not uncommon when you have a highly abnormal  
6 set of conditions at a plant, be it security, be it health  
7 physics, be it reactor engineering or any other technical  
8 discipline, to impose the burden on the staff to be in a  
9 much higher state of virtually constant attendance. That is  
10 not uncommon.

11 It's not the rule, it's not the most normal  
12 practice, but it is not extraordinary measures. That was  
13 certainly the case of the security program at South Texas in  
14 that time frame.

15 Therefore, I directed that the inspectors be down  
16 there. It is a burden on them. However, it is a burden  
17 that is carried continuously by resident inspectors. They  
18 are always on site, so it's not a unique burden to a staff  
19 member.

20 MR. CRADOCK: That's all I have at this time.

21 ARBITRATOR HAYS: Cross.

22 RECROSS-EXAMINATION

23 BY MR. DRESSLAR:

24 Q. Mr. Martin, is the general rule that NRC  
25 inspectors do not go on site until the utility has stated

1 they are ready for inspection?

2 A. No, it's not the general rule.

3 Q. Is it the general rule that for a security  
4 inspection, that they don't generally go on site until a  
5 utility is able to state that "We are ready for inspection"?

6 A. No, that's not true either. There are during the  
7 pre-operational phase aspects of the pre-operational  
8 inspection program that are conducted long before the  
9 security program is fully operational.

10 Q. I'm talking about the situation as existed in the  
11 summer of 1987 at HL&P. Is it usual or is it uncommon --  
12 let me put it that way.

13 Is it uncommon for security inspectors to be on  
14 site on a continual basis telling the utility, "This is what  
15 you need to do to get licensed"?

16 A. The way you just asked that question, that is not  
17 only unusual, it is highly improper. I consider the  
18 question to be speculative.

19 MR. DRESSLAR: I have no other questions.

20 MR. CRADOCK: That's all.

21 ARBITRATOR HAYS: You may sit down to some other  
22 seat.

23 [Witness excused.]

24 ARBITRATOR HAYS: Do you have another witness?

25 MR. CRADOCK: Yes, we do. We'll call Mr. Larry

1 George.

2 Whereupon,

3 LARRY G. GEORGE

4 was called as a witness, and having been first duly sworn by  
5 the Notary Public, was examined and testified as follows:

6 ARBITRATOR HAYS: If you would, state your name  
7 for the record and spell it, please, and give us your  
8 address.

9 THE WITNESS: My name is Larry G -- Gordan George.  
10 It's Larry, L-a-r-r-y, Gordan, G-o-r-d-a-n, George, G-e-o-r-  
11 g-e.

12 My address is 24 Valhalla Drive, Bay City, Texas.

13 ARBITRATOR HAYS: Proceed, counsel.

14 DIRECT EXAMINATION

15 BY MR. CRADOCK:

16 Q. Mr. George, would you please state your  
17 occupation.

18 A. I am the supervisor of plans, screening and  
19 safeguards information at South Texas Project.

20 Q. How long have you had that position?

21 A. I've been in that particular position since  
22 February of 1989.

23 Q. What did you do prior to that?

24 A. Prior to that, I was the screening supervisor --  
25 access control supervisor, excuse me. I was in the position



1 from I guess December of '87 through February of '89.

2 Q. Can you tell us what your duties were and what was  
3 your job in 1987 prior to December?

4 A. Prior to December -- for, I guess, October and  
5 November I was the acting operations division manager; and  
6 prior to that, the summer of 1987 I was -- I guess  
7 August/September time frame, I was the functional manager  
8 over the security operations division.

9 Q. All this was in the security department at STP?

10 A. Yes.

11 Q. Do you know an individual there by the name of  
12 Andy Hill when you were working there in 1987?

13 A. Yes, sir, I sure did.

14 Q. Incidentally, what were your duties again during  
15 the summer of '87, what were you actually doing there?

16 A. Well, the summer of '87 -- during the month of  
17 August, end of July, August, early September -- I was in  
18 charge of the security guard force. We use a contractor  
19 down there, and the contractor reported to me. I was  
20 basically responsible for the day-to-day operation of the  
21 security guards, making sure we had enough people there to  
22 do what we needed to do. If there were any problems, to  
23 handle that. The day-to-day affairs is what I would call it.

24 Q. What was Mr. Hill's job?

25 A. Andy Hill was the security department manager.



1 Q. Did he remain there throughout 1987?

2 A. No. Andy left sometime in mid August of 1987.

3 And when I say left, he was no longer the security  
4 department manager. He moved out to the training facility  
5 and worked directly for our vice president of operations as  
6 an assistant.

7 Q. You say he left in August. Do you recall having  
8 any conversations with anyone regarding his position after  
9 he left?

10 A. Yes.

11 Q. Do you recall who you had those conversations or  
12 conversation with?

13 A. Sure. Mr. Kelly.

14 Q. Could you tell us approximately when the  
15 conversations with Mr. Kelly took place?

16 A. It was probably the second week of August.

17 Q. Can you recall how long after Mr. Hill left that  
18 conversation took place?

19 A. No. I really don't have -- I know Andy was out  
20 at the training facility, but I don't know how long he had  
21 been out there. It could have been a week, or it could have  
22 been less, or it could have been more.

23 Q. Would it be fair to say that it was within two  
24 weeks?

25 A. Probably.

1 Q. Now, I'm going to refer you to the administrative  
2 file in this case. You'll find a Volume III up there.  
3 There's four looseleaf binders.

4 I'll direct your attention to Tabs No. 40 and 41,  
5 Mr. George.

6 A. Okay.

7 Q. First, let me refer you to Tab No. 41. Would you  
8 take a look at that for a moment.

9 A. Okay.

10 Q. Have you seen this before?

11 A. Yes.

12 Q. And could you identify it for us, please, Mr.  
13 George?

14 A. Sure. This is a statement that I provided to  
15 Donna Rowe on February 2, 1988, regarding a conversation I  
16 had had with Mr. Kelly about a position assignment.

17 Q. When is the statement dated?

18 A. February 2, 1988.

19 Q. Could you summarize for us what you told Ms. Rowe  
20 in that conversation?

21 A. Sure. I told her that sometime in August of 1987,  
22 when I was the acting operations manager that Mr. Kelly and  
23 myself had had a conversation about Andy Hill's position at  
24 the site, and that Mr. Kelly had made -- questioned me about  
25 would I think that he would be considered for that position.

1 Q. Would you turn to Tab No. 40, please.

2 A. Okay.

3 Q. Take a moment and look at that.

4 A. Okay.

5 Q. Could you identify that --

6 MR. DRESSLAR: Mr. Arbitrator, I'm going to object  
7 to --

8 MR. CRADOCK: I haven't asked a question.

9 MR. DRESSLAR: -- Attachment No. 40 being entered  
10 into evidence -- or have it removed from evidence at this  
11 point on the basis of it not being relevant.

12 The deciding official has already testified that  
13 he did not utilize that document in any manner in reaching  
14 his decision.

15 MR. CRADOCK: Well, it's corroborative of Tab 41,  
16 which was relied upon. We have the witness here to testify  
17 as to both of them.

18 I think I ought to have the opportunity to  
19 establish its relevance to the case by asking him about the  
20 document.

21 ARBITRATOR HAYS: Well, the question still is:  
22 How does it reach the issue of relevance inasmuch as Mr.  
23 Martin stated that he did not utilize it? I'm having a hard  
24 time understanding relevance with that kind of threshold  
25 statement.

1 MR. CRADOCK: Well, I can ask --

2 ARBITRATOR HAYS: I understand what the witness  
3 may testify, and it may corroborate the other documents.  
4 The question still goes, if it was not involved in the  
5 decision making process, how is it relevant?

6 MR. CRADOCK: I'll withdraw the question on Tab  
7 40.

8 ARBITRATOR HAYS: Well, that doesn't go to the  
9 issue of admissibility of the document. Go ahead --

10 MR. CRADOCK: If you'll allow me to question, I  
11 can establish its relevance.

12 ARBITRATOR HAYS: I don't know that you could cure  
13 the problem inasmuch as the decision maker has already  
14 stated he didn't rely on it or consider it.

15 MR. CRADOCK: The way I view it is that the  
16 witness is here; he has made several statements for the  
17 record. I would like to examine him --

18 ARBITRATOR HAYS: I'm not arguing with that. Had  
19 you had a different answer from the decision maker -- but  
20 the decision maker said he didn't consider that.

21 MR. CRADOCK: I recognize that.

22 ARBITRATOR HAYS: Whether he should or shouldn't  
23 have is no longer -- or whether it's proper or whether the  
24 matter that he was talking about was relevant --

25 MR. CRADOCK: It goes beyond that to the issue of

1 credibility here. There's going to be an issue of whether  
2 Mr. Kelly is correct about what transpired between these  
3 gentlemen or whether Mr. George is correct.

4 ARBITRATOR HAYS: In the event that Mr. Kelly  
5 takes the stand, you may want to cross-examine him with  
6 regard to the document, so I'm not going to throw it out at  
7 this point.

8 But I would ask you to move on insofar as the  
9 direct evidence is concerned.

10 MR. CRADOCK: Are you directing me not to question  
11 him on it?

12 ARBITRATOR HAYS: Not on that document at this  
13 time, no.

14 MR. CRADOCK: I agreed a moment ago to waive  
15 questions on it.

16 ARBITRATOR HAYS: Okay. That's fine.

17 BY MR. CRADOCK:

18 Q. Now, you've summarized what the memorandum of  
19 February 2, 1988 states. You stated that Kelly indicated to  
20 you, as this document states, that he was inquiring as to  
21 work for himself in 1987?

22 A. That was the impression that I had, yes.

23 Q. Is there any question in your mind but that he was  
24 inquiring for himself?

25 A. No, not at the time we had the discussion.

1 Q. Could you tell us what your reaction was, if any,  
2 to Mr. Kelly's inquiry?

3 A. Well, first, I was probably flattered that Jim  
4 would ask my opinion about the situation and whether he  
5 would be considered or not.

6 I was a little surprised because I didn't think  
7 there would be a chance that the utility would consider Jim  
8 for the position based on the things that had just recently  
9 transpired over the licensing of Unit 1.

10 Q. Could you elaborate, please?

11 A. As to what had just happened?

12 Q. What had just transpired, yes.

13 A. Well, if you're asking why I don't think he would  
14 be considered --

15 Q. Yes.

16 A. -- is that basically what the question is?

17 It's because we had just gone through three months  
18 of constant inspection by the NRC folks. The original fuel  
19 loading for Unit 1 was scheduled for the 1st of June, and I  
20 think we loaded fuel about August -- well, it was August 21,  
21 1987.

22 So there was a significant delay in the licensing.  
23 That delay was attributed to two factors in the utility's  
24 mind. There were some problems with security and the second  
25 -- That was one factor. And the second factor would be



1 the NRC inspectors, the three inspectors that were  
2 constantly down there and constantly doing their job.

3 The utility held them somewhat responsible for the  
4 delay. So I didn't think that it would be a wise thing for  
5 the utility to hire someone from the region.

6 Q. What did you do, if you recall, after that  
7 conversation with Mr. Kelly? Did you talk to anybody else  
8 about it?

9 A. Yeah. I discussed it with Larry Kern who was my  
10 supervisor at the time. I don't know, it was later on that  
11 afternoon, or it could have been -- Yeah, I think it was  
12 later on that afternoon.

13 He and I talked constantly, and we discussed  
14 everything that usually happened on a daily basis.

15 It was one of these things, "Oh, by the way, Jim  
16 and I were talking earlier, and this is what he told me."

17 Q. What was the substance of the conversation? What  
18 was the substance of what Mr. Kern told you, if he told you  
19 anything?

20 A. Well, when I told him that Jim had asked me about  
21 being considered for a position down here, Larry said that  
22 Jim had also made the same statement to him earlier.

23 Q. Did he tell you what his reaction to it was?

24 A. He was surprised.

25 Q. Did he tell you whether he had a positive or



1 negative reaction to it? I'm talking about Mr. Kern.

2 A. I don't remember. I know we both -- I hate to  
3 say this, but we both kind of chuckled, thinking that it was  
4 kind of silly for somebody to expect to be hired by the  
5 utility, based on everything that was happening.

6 We thought that was unusual. That was basically  
7 his concern. But it was ....

8 Q. He thought it was silly, you said?

9 A. Yes.

10 Q. -- to be inquiring.

11 This had been Andy Hill's position that Mr. Kelly  
12 was inquiring of you about; right?

13 A. [No immediate response.]

14 Q. This had been Andy Hill's position, the position  
15 that was vacated by Andy Hill that Mr. Kelly was inquiring  
16 about?

17 A. Yes. I'm sorry.

18 MR. DRESSLAR: Mr. Arbitrator, may I object on  
19 leading the witness again, please?

20 MR. CRADOCK: He has already testified to that.

21 ARBITRATOR HAYS: Go ahead. I'll overrule the  
22 objection.

23 BY MR. CRADOCK:

24 Q. Was Mr. Hill a good friend of yours?

25 A. Yes.

1 Q. Did his friendship with you have any impact that  
2 you know of on your memory of what happened with Mr. Kelly?

3 A. As far as the accuracy of the information I gave?

4 Q. Yes.

5 A. No.

6 Q. How well do you know Mr. Kelly?

7 A. We were fairly close.

8 Q. Would you consider yourself friends?

9 A. Yes.

10 Q. Socially?

11 A. Professionally.

12 Q. Now, I'd like to refer you to another statement  
13 that's contained in Volume IV of the administrative file,  
14 Mr. George.

15 There's a statement approximately six pages in.

16 A. November 14th, my statement?

17 Q. Yes.

18 A. Yes.

19 Q. Can you identify that for us? It's a November  
20 14th --

21 A. Yeah. This was obviously a statement that I had  
22 looked at on the 17th of November. The statement itself is  
23 dated November 14th. I received it obviously on the 17th.

24 It's basically the same as Tab 41 that I  
25 identified earlier.

1 Q. This was another summary of a phone conversation  
2 taken subsequently of you by the investigator in this case?

3 A. Right. The same incident.

4 Q. Regarding the same incident with Mr. Kelly?

5 A. Right.

6 Q. And it says again that he inquired -- in your  
7 words, that he inquired of a job for himself; is that  
8 correct?

9 A. Right.

10 Q. Now, you stated that you did not feel it was  
11 appropriate for Mr. Kelly to be inquiring about employment  
12 at STP; correct?

13 A. I said that I thought it was unusual, I think is  
14 the word that I used, that he would inquire. As far as  
15 appropriateness, if he was asking me for a job, yeah, that  
16 would be inappropriate.

17 But Jim was asking my opinion. He had been  
18 contacted -- If memory serves me correctly, he had been  
19 contacted by a head hunter about the position. They  
20 identified the position to him and said, "Hey, those people  
21 at STP are looking for a security manager. Are you  
22 interested in it?"

23 He relayed that to me and said, "Hey, these guys  
24 were looking for a job and called me up. Do you think?"

25 Q. He was asking for your opinion about whether he

1 might be considered for the job?

2 A. That was the impression that I had, yes.

3 Q. Now, if you thought that he might be considered --  
4 if it was appropriate for him to be considered for the job,  
5 was there any way that you may have helped him in acquiring  
6 this job?

7 A. If I knew someone who was qualified for the  
8 position, who was willing to move to Bay City, Texas and  
9 work down there and come to work for HL&P, and met the  
10 qualifications, I would probably have passed that along to  
11 Mr. Vaughn, maybe have given Mr. Vaughn a speedy memo or  
12 something to that effect, saying, "Hey, I know this person."

13 But as far as hiring, that was Mr. Vaughn, our  
14 vice president's sole responsibility.

15 Q. There have been statements made in the pleadings  
16 filed by Mr. Kelly that you were in danger of losing your  
17 job about this time. Is that true?

18 A. No, not to my knowledge it was not true. We were  
19 -- Larry Kern and I were in temporary positions over on  
20 the operations side. We previously worked in the support  
21 division, and we were over here -- "over here" being the  
22 operations side.

23 As far as I knew, we were okay. We knew we  
24 weren't going to be there forever. But as far as being  
25 employed, we weren't worried about that.

1 Q. Did Mr. Kelly ever mention Mr. Caldwell's name to  
2 you when he was inquiring about this position, do you  
3 recall?

4 A. During the conversation that we had somewhere  
5 around the second week of August, no. When we talked  
6 outside the admin building about this incident, he didn't  
7 mention Mr. Caldwell's name.

8 I talked with Jim -- and I have no idea when; it  
9 could have been a week later; it could have been three days  
10 later; it could have been two weeks later -- and he told me,  
11 "Oh, by the way, the other day when we were talking about  
12 that position down there, I was asking for Mr. Caldwell."

13 I said, "Okay."

14 Q. Now, he made that statement to you regarding  
15 Caldwell sometime toward the latter part of August 1987?

16 A. Well, it would have been after the 10th or the  
17 second week.

18 Q. The initial statement that he made to you -- the  
19 initial inquiry to you was in mid August; correct?

20 A. Yes, the second week.

21 Q. And you say sometime after that -- you don't know,  
22 a week, ten days, two weeks --

23 A. No, I can't --

24 Q. -- he come down and told you, "By the way, I was  
25 inquiring as to Caldwell when I inquired"?

1           A.    I think we were talking on the phone, I'm not  
2   sure. And he said something to the effect -- I don't  
3   remember the exact words -- but "Oh, by the way, that  
4   conversation we had the other day about Hill's position, I  
5   was asking for Ron Caldwell."

6           Q.    When he told you that, did that change your  
7   perception that you had the first time that he talked to you  
8   about the job, that he was inquiring as to a job for  
9   himself?

10          A.    Well, there was a doubt in my mind. Maybe I  
11   missed something the first time around. "Hey, maybe I made  
12   a mistake. I'm not sure."

13               And then as I thought about it, I said, well, I  
14   was fairly certain that it was Jim that he was asking for,  
15   because if it would have been someone else with the NRC, or  
16   if he had said NRC in general, I probably wouldn't have said  
17   what I said to him about no, it's not going to happen,  
18   because there could have been an inspector somewhere else.  
19   It could have been a Region II or a Region I or a Region V  
20   inspector that may have fit in in the position in that time.

21               So, you know, I still thought it was Jim. And,  
22   frankly, when he mentioned to me that it was Ron, I just  
23   assumed that there was probably some investigation going on  
24   up here, and he may have thought I misinterpreted our  
25   conversation as to him asking me for a job first time

1 around.

2 MR. CRADOCK: That's all I have.

3 ARBITRATOR HAYS: Cross-examine.

4 CROSS-EXAMINATION

5 BY MR. DRESSLAR:

6 Q. Mr. George, my name is Walter Dresslar and I  
7 represent Mr. Kelly in this matter.

8 A. Okay.

9 Q. I'd like to ask you some questions about the South  
10 Texas nuclear project and about your involvement in this  
11 particular case.

12 I hope you feel comfortable with me questioning  
13 you.

14 A. So far.

15 Q. Let's hope we can keep it that way.

16 Who asked you to testify at this hearing, Mr.  
17 George?

18 A. Good question. I guess it came down from Mark  
19 McBurnett's office, who is our licensing department manager.  
20 One day he came in and said, "Hey, there's going to be a  
21 hearing in Arlington" -- well, at first it was going to be  
22 in Washington, and then he said it was moved to Arlington --  
23 and you, Larry Kern, Jim Geiger, Mike Powell, Roy Rehugler  
24 and himself were going to be testifying.

25 I said, "Okay, fine."



1 Q. Who contacted you to testify once it was finally  
2 arranged?

3 A. I don't know that anyone did.

4 Q. You just showed up today?

5 MR. CRADOCK: I'll stipulate that we asked Mr.  
6 George to appear.

7 BY MR. DRESSLAR:

8 Q. Did your employer, HL&P, tell you to testify?

9 A. No, we weren't told to testify. In an arena of  
10 cooperation, the utility tries to cooperate as much as they  
11 can with the NRC. It was -- We were told that we were  
12 going to cooperate.

13 And since I work for the utility, I took the hint.

14 Q. Mr. George, during the spring of 1987 what was the  
15 situation like at the South Texas Project relative to  
16 security?

17 A. You're talking May/June?

18 Q. Yeah, from April to the end of the summer.

19 A. April, May, June?

20 Q. Yeah.

21 A. We were real busy. We were working probably 16 to  
22 18 hours a day, seven days a week. We were trying to --

23 My position was a general supervisor over plans and support.

24 We were responsible for the background  
25 investigations and the screening and fitness for duty and

1 the psychological evaluations of the folks that were going  
2 to be required to have unescorted access into the protected  
3 area. So we were fairly busy doing that.

4 Security is broken up into two divisions: support  
5 and operations. I was in the support division, so I really  
6 wasn't involved with the operations division in the spring  
7 of 1987. That was Larry Riley's group.

8 Q. You have no independent knowledge about what  
9 happened in the operations division?

10 A. Sure. There were some problems over there. There  
11 were several issues. I think probably the biggest issue  
12 that we had was the training of the security officers. The  
13 training -- state training program was not completed. It  
14 was inadequate, to say the least.

15 And then there was another problem, the protected  
16 area intrusion detection system. There were some problems  
17 in that area.

18 But the biggest issue, I guess, would be the  
19 training issue -- the state training and the regulatory  
20 training.

21 Q. Did you become involved in the operations area of  
22 security at some point?

23 A. Yes, I'm afraid so. When the training issue came  
24 to light, which was identified May 1987, in June what we did  
25 -- Andy Hill asked -- We had several people there that

1 had previous nuclear experience.

2 The bottom line: We had some folks that were  
3 doing the training -- were giving nuclear training. They  
4 were Wackenhut employees, they were people with no nuclear  
5 experience whatsoever.

6 To make a long story short, he was looking for  
7 folks with nuclear experience to come in and retrain the  
8 security officers.

9 That was June 1987 that I became involved. My  
10 involvement was that on the back shift I was basically a  
11 trainer. I came in and did training.

12 Q. Were you ever interviewed by the Office of  
13 Investigation with the NRC regarding the training problems  
14 at STP?

15 A. I don't remember being talked to by OI regarding  
16 training. I remember being talked to regarding fuel  
17 handling.

18 I wrote the interim fuel storage plan. And in the  
19 fuel storage plan, it said that we were going to do training  
20 of the security officers.

21 They interviewed me as to what I meant by that  
22 particular training statement.

23 Q. I'm not trying to pick on you, Mr. George, but it  
24 wasn't some problems with training, was it? There were very  
25 severe problems, weren't there?

1           A.    It depends on your point of view, where you're  
2 looking at it from.

3           Q.    Were you aware that an OI investigation was being  
4 conducted at the South Texas Project during the summer of  
5 1997?

6           A.    Yeah.

7           Q.    Does OI investigate allegations against utilities  
8 for wrongdoing?

9           A.    I don't know. I would assume so, yes.

10           MR. CRADOCK: I'm going to object to this line. I  
11 don't know where we're going here. It doesn't seem to be  
12 relevant to Mr. George's testimony. All he's testifying to  
13 is a conversation he had with Mr. Kelly regarding --

14           MR. DRESSLAR: Well, we can call him later if  
15 you'd like. I thought we were going to try to expedite this  
16 hearing. We were going to try and use him on cross-  
17 examination instead of waiting and having him come back in  
18 two days.

19           MR. CRADOCK: I just don't know where you're  
20 going, counsel.

21           MR. DRESSLAR: We're getting to the situation at  
22 South Texas, the tensions and why there were tensions.

23           MR. CRADOCK: We can stipulate --

24           ARBITRATOR HAYS: I'll allow it. We might as  
25 well, if we can, get through with him and let him go home,

1 subject to your right of recall.

2 Go ahead.

3 BY MR. DRESSLAR:

4 Q. There were severe problems with the STP training  
5 program; isn't that correct?

6 A. Yes.

7 Q. What was your responsibility in the area of  
8 reporting problems in that area?

9 A. Well, it was no different than anybody's else at  
10 the plant. If you were aware of training deficiencies or  
11 you were aware of any kind of deficiency or wrongdoing, you  
12 were obligated to bring that to the attention of your  
13 management.

14 Q. When did you become aware of that?

15 A. Aware of --

16 Q. The training problems.

17 A. I guess it surfaced in -- I want to say May of  
18 '87.

19 Q. Did you report it to your management, or was there  
20 a need for it?

21 A. It was already reported. I came in as the fix.

22 Q. You came in to fix the problem?

23 A. Yes.

24 Q. You did a good job on that, didn't you?

25 A. Well, I like to think so, yeah.

1 Q. In this fix -- as you call it -- situation, your  
2 boss was Mr. Kern; is that correct?

3 A. Yeah. Larry Kern took over as acting department  
4 manager in August, mid August. During the process of the  
5 fix, from the time that I went over and started actually  
6 doing the training, Andy Hill was still in charge at that  
7 time. That was in June.

8 Q. When did Andy Hill leave the position or when was  
9 he removed from -- Was he removed from his position as  
10 division manager for security?

11 A. Department manager, yes. And that was mid August,  
12 I believe.

13 Q. Mid August he was removed?

14 A. Yeah, the best I can remember.

15 Q. Now, was Mr. Hill told that he had a certain  
16 number of days to find another position, or do you know?

17 A. I don't know that for a fact, no. That's  
18 standard, though.

19 Q. Did he eventually leave HL&P?

20 A. Yes.

21 Q. How soon after his removal as department manager  
22 for nuclear security?

23 A. Probably about two weeks.

24 Q. Now, Mr. Kern was assigned to the acting position  
25 as department manager; is that correct?

1 A. Yes.

2 Q. Do you know how long he was going to be in this  
3 acting position? What was his appointment for, how long?

4 A. We were told up front it would be -- it was a  
5 temporary position, probably four or five weeks, something  
6 like that.

7 Q. Now, prior to Mr. Kern being placed in that acting  
8 position, what was your position with the utility?

9 A. I was still in plans and programs over on the  
10 support division. I was just a volunteer, you might say, in  
11 the operations division, helping out with the training.

12 Q. And who was your boss in that other position?

13 A. Larry Kern.

14 Q. Did he bring you over with him?

15 A. No, actually I came over way before Larry did.  
16 Larry got involved probably mid July, and I had been there  
17 since June.

18 Q. Maybe I'm misunderstanding. You were at one point  
19 volunteering in the operations end of it?

20 A. Yeah, like I said earlier, Andy Hill was asking  
21 for folks that wouldn't mind working the night shift, to  
22 come in -- people with previous nuclear experience to come  
23 in and help out to retrain the security officers, which I  
24 did.

25 Q. Okay. And then Mr. Kern came over later, and you



1 came over officially anyway later also?

2 A. Yeah. What happened, when Larry took over as the  
3 acting department manager, we initiated a functional manager  
4 -- five functional managers concept: operations, training,  
5 plans and procedures, systems and equipment. I was the  
6 operations functional leader.

7 Q. Mr. Kern was your boss?

8 A. Yes.

9 Q. And you worked well with Mr. Kern?

10 A. Sure.

11 Q. Now, you and Mr. Kern were able to fix this  
12 training problem, isn't that correct, or at least work well  
13 toward it?

14 A. Yes.

15 Q. Mr. Kern wanted the permanent manager position,  
16 didn't he?

17 A. You'll have to ask Larry that because I don't know  
18 whether he did or not.

19 Q. You never spoke to him about that?

20 A. Yeah, we talked on and off. There were pros and  
21 cons for the job. Whether he really wanted it, I can't say  
22 because I think he was approached one time by the human  
23 resources folks and asked whether he wanted it or not, or  
24 would he take it if it was offered to him.

25 I don't remember whether he said yes or no.

1     Whatever he said, later on he and I talked -- or after it  
2     was decided he wasn't going to get it, I know that there was  
3     some relief there, because it was a headache position.

4             So I can't say. Larry will have to answer that  
5     question.

6             Q.    I understand. What do you mean, it was decided he  
7     wouldn't get it?

8             A.    Well, the job --

9             Q.    Do you mean he was under consideration for it?

10            A.    Yeah, I would assume so, yes.

11            Q.    Mr. George, how many permanent nuclear security  
12     managers were there before Mr. Kern was assigned as acting  
13     manager?

14            A.    Just one, Andy Hill.

15            Q.    Was there a position similar to Andy's prior to  
16     him becoming the permanent manager?

17            A.    "Him" being Andy?

18            Q.    Yes.

19            A.    Yeah, when -- Do you want the history? Do you  
20     want --

21            Q.    Go ahead and give me the history of that position.

22            A.    HL&P security was corporate security in the  
23     beginning. There was a supervisor over nuclear security.  
24     His name was Walt Wunderlick. There were some people prior  
25     to Walt, but that was in the late seventies.

1           Walt was a security supervisor. Walt left, turned  
2 in his notice in '84, '85, something like that; and Andy  
3 Hill was hired in.

4           When they brought Andy Hill in, they made it a  
5 division rather than just a supervisor's position under  
6 corporate.

7           And so when Andy came in, we were the nuclear  
8 security division under corporate security.

9           And then about -- I guess it was about a year  
10 after Andy had come in -- or maybe even not a year, maybe  
11 eight months -- we became a department, and we broke off  
12 from corporate security.

13           So we reported in the nuclear chain of command  
14 rather than the corporate chain of command.

15           Q. And Andy maintained the same position in that,  
16 though?

17           A. Yes. Andy was the first and the only department  
18 manager until he left.

19           Q. Did you work for HL&P when Mr. Andy Hill came on  
20 board?

21           A. Yes.

22           Q. Where did Mr. Andy Hill come from?

23           A. TVA.

24           Q. And prior to that where did he come from? Do you  
25 know?

1 A. The NRC.

2 Q. Was he an NRC inspector prior to coming to TVA?

3 A. Yeah. He was a Region II inspector.

4 Q. Now, Mr. George, you've been interviewed  
5 apparently by NRC investigators on at least a couple of  
6 occasions; is that correct?

7 A. Well, on the fuel handling building -- the interim  
8 fuel storage plan-issue, yes, and this issue, yes.

9 Q. Let's stay with this issue.

10 A. Okay.

11 Q. You've been interviewed two times on this issue by  
12 NRC investigators?

13 A. Yes.

14 Q. Now, the first time you were interviewed, was that  
15 February 2, 1988?

16 A. I don't really have the slightest idea.

17 Q. If you can refer to Volume III, Tab 41.

18 A. Yeah, February 2, 1988.

19 Q. Was that the date of the interview?

20 A. I really don't know.

21 Q. This actually isn't your statement, it's an  
22 investigator's summary of your statement; correct?

23 A. Yes.

24 Q. -- or summary of something you told her?

25 A. Yes.

1 Q. Did that person identify who they were when they  
2 contacted you?

3 A. Yes.

4 Q. Did you interview in person that first time?

5 A. I don't recall.

6 Q. Do you recall who it was that interviewed you  
7 without looking at that document?

8 A. Yeah -- I looked, but, yeah, it was Donna Rowe.

9 Q. What did she tell you when she opened the  
10 interview?

11 A. I can't remember. I can tell you what I think she  
12 said. Probably typical. "I'm so-and-so, Office of  
13 Investigation, conducting an investigation at the South  
14 Texas Project regarding a memo you gave Andy Hill dated such  
15 and such a date," the one we're not supposed to talk about.

16 Q. You're making it difficult for me. You're telling  
17 me you gave that memo we're not supposed to talk about to  
18 Ms. Rowe prior to February 2, 1988?

19 A. No, that's not what I said. She had that memo.

20 Q. Did you give it to her --

21 A. She was knowledgeable of that memo.

22 Q. Did you give it to her?

23 A. No.

24 Q. Did you ever receive the transcript of the first  
25 interview you gave to Ms. Rowe?

1 A. Transcript being?

2 Q. Did you ever receive a document like Tab No. 41?

3 A. Yes.

4 Q. You received this one?

5 A. Yes, I believe so.

6 Q. When did you receive it?

7 A. I don't have the slightest idea.

8 Q. Why did you get it? Did they tell you?

9 A. Well, in November, I believe -- having looked at  
10 the other one, I think I got it to verify.

11 Q. I understand that. I'm talking about the February  
12 statement.

13 A. No, I really don't -- I don't remember whether I  
14 got it or not.

15 I have a -- The reason I say that is I have a  
16 copy of this. I don't know when I got it.

17 Q. Who would have given it to you?

18 MR. CRADOCK: I'm going to have to object. I  
19 don't know what difference this makes. He said he has seen  
20 a copy of it. He says it's his statement. What is this  
21 relevant to? How he got it or who gave it to him doesn't  
22 seem to mean anything.

23 MR. DRESSLAR: It goes to bias on the part of the  
24 investigation.

25 ARBITRATOR HAYS: I'll allow him to answer the

1 question. I'll overrule the objection.

2 Proceed.

3 THE WITNESS: I'm sorry, I really can't remember  
4 when I got it or how I got it.

5 BY MR. DRESSLAR:

6 Q. Did you ever see any statements by anybody else  
7 similar to the one you got in February?

8 A. Yeah, I saw Larry Kern's statement.

9 Q. Any others?

10 A. Yeah, I saw, I believe, Dave Sheesley's statement  
11 and Mark McBurnett. But that was in a packet we received  
12 when we were notified of the hearing, and I saw those  
13 statements.

14 Q. Mr. George, how often were you at the STP site  
15 during August of '87?

16 A. Every day.

17 Q. Was that your permanent work site?

18 A. Yes.

19 Q. You may have gone into this in a little bit of  
20 detail earlier, but what were your duties in August of 1987?

21 A. Early August we were still cleaning up the  
22 training program. I was doing some barrier work. If you  
23 need to know what barrier work is, there were some  
24 penetrations into some vital areas that we were checking to  
25 make sure they didn't exceed the 96 square inch limit. I



1 was doing work like that.

2 Whenever Larry Kern took over as the acting  
3 department manager, we initiated the five functional leader  
4 group, at that time I took over the day-to-day affairs of  
5 the security guard force.

6 Q. Now, you had no authority to hire employees,  
7 correct, at the division management level?

8 A. Correct.

9 Q. As a matter of fact, you had absolutely no  
10 involvement in that area of HL&P management; correct?

11 A. Clarify that a little bit.

12 Q. Well, you had no authority regarding hiring at the  
13 division management level while you were at HL&P?

14 A. That's true.

15 Q. You don't consider yourself an employer, do you?

16 A. No.

17 Q. Now, during this time period we're talking about,  
18 which is 1987 -- let's say from April to September 1, that's  
19 the critical period.

20 The NRC inspectors had uncovered hundreds of  
21 serious deficiencies in the HL&P program; correct? Let's  
22 say hundreds of deficiencies, some of them serious.

23 A. I'll take your word for the hundreds. But, yeah,  
24 there were deficiencies.

25 Q. Do you know if Mr. Kelly uncovered several of

1 those deficiencies as an inspector?

2 A. Sure.

3 Q. Now, you stated I believe earlier that the  
4 inspectors' actions resulted in severe delays or delays in  
5 licensing for the plant; correct?

6 A. I didn't say it resulted in that. That was the  
7 impression of the utility in my mind.

8 Q. You don't think it was?

9 A. I haven't really thought about it. Probably an  
10 opinion.

11 Q. So you're saying the utility held them responsible  
12 for the delays?

13 A. Well, like I said earlier, when I was telling Jim  
14 why I didn't think he would be considered for the position,  
15 yeah, that's what I thought, that the utility considered  
16 some of the things our fault probably, and some of the  
17 things the fault of the inspectors.

18 Q. When you say utility, you mean management?

19 A. Yeah.

20 Q. Now, during this conversation you say you had with  
21 Mr. Kelly, and afterwards I suppose, you never felt he would  
22 be under any consideration for the job, did you?

23 A. Correct, I did not.

24 Q. As a matter of fact, no one did, did they --

25 MR. CRADOCK: Objection --

1 MR. DRESSLAR: -- on the utility side that you  
2 spoke with?

3 MR. CRADOCK: Objection. That's not in evidence.  
4 Assuming facts not in evidence.

5 MR. DRESSLAR: I'm asking him whether he thinks or  
6 spoke with people --

7 ARBITRATOR HAYS: Go ahead. Modify it like you  
8 wanted to, did he speak with anyone.

9 BY MR. DRESSLAR:

10 Q. Did you speak with anybody about NRC inspector  
11 employment at HL&P during that period of time besides Mr.  
12 Kelly?

13 A. And besides Mr. Kern?

14 Q. No, not beside Mr. Kern.

15 A. Mr. Kern.

16 Q. Did you report this interview to anyone but Mr.  
17 Kern -- Let me rephrase that.

18 You didn't really report it to Mr. Kern, did you?  
19 You just sort of mentioned it?

20 A. Casual conversation.

21 Q. Now --

22 A. Do you want who I reported it to?

23 Q. Excuse me.

24 Were there any procedures in effect at HL&P/STP  
25 during that period of time for reporting allegations of

1 inspector misconduct?

2 A. I don't know.

3 Q. Was there a liaison between the HL&P force and the  
4 NRC? Do you know Mr. Powell?

5 A. Yeah, Mike Powell. Yes, yeah, you could call him  
6 a liaison.

7 There were probably more than just Mike over that  
8 period of time, but, yeah.

9 Q. Let me ask this again: There were no procedures  
10 for HL&P for reporting inspector misconduct?

11 A. Yeah, like I said, I don't know whether there any  
12 HL&P procedures.

13 Q. There were never any shown to you?

14 MR. CRADOCK: I think he has answered it twice.  
15 Asked and answered. That's the basis.

16 MR. DRESSLAR: I'll accept that, he doesn't know  
17 that there were any.

18 THE WITNESS: Any HL&P procedures, anything  
19 written on HL&P letterhead that says if somebody asks you  
20 for a job, go tell somebody?

21 MR. DRESSLAR: I didn't say that. I --

22 THE WITNESS: Misconduct. I'm sorry.

23 BY MR. DRESSLAR:

24 Q. What about NRC rules or regulations concerning  
25 reporting of inspector misconduct?

1 MR. CRADOCK: Objection. I don't think he's  
2 qualified.

3  
4 MR. DRESSLAR: Could we let him answer the  
5 question.

6 BY MR. DRESSLAR:

7 Q. Do you know of any --

8 ARBITRATOR HAYS: No, I'm not going to let him  
9 answer that question because he really isn't qualified to  
10 answer that.

11 I'll sustain that objection.

12 BY MR. DRESSLAR:

13 Q. Did HL&P train you in NRC regulations?

14 A. No, no formal training.

15 Q. Informal?

16 A. No.

17 Q. You never saw the NRC regulation regarding  
18 inspection process?

19 MR. CRADOCK: Objection. He said no formal c  
20 informal training. You've ruled on the question.

21 ARBITRATOR HAYS: But he may have seen them.

22 THE WITNESS: Is that the inspection modules?

23 MR. DRESSLAR: Right. I suppose.

24 THE WITNESS: I know what the inspection module:  
25 are.

BY MR. DRESSLAR:

1 staff over the phone.

2 MR. DRESSLAR: I have no other questions.

3 ARBITRATOR HAYS: Redirect?

4 MR. CRADOCK: Just one.

5 REDIRECT EXAMINATION

6 BY MR. CRADOCK:

7 Q. You testified that you have no problem with the  
8 supplemental statements you were just looking at and you  
9 made the notations on. There's no problem with their  
10 accuracy?

11 A. Correct.

12 Q. With respect to yours, I should say.

13 A. Correct.

14 Q. Back to a previous statement you gave February 2,  
15 1988 --

16 A. Tab 40?

17 Q. Tab 41.

18 That's an accurate reflection of what you told Ms.  
19 Rowe as well?

20 A. Yes.

21 Q. And you have no question about its accuracy?

22 A. Correct.

23 MR. CRADOCK: That's all I have.

24 MR. DRESSLAR: I have no other questions either.

25 ARBITRATOR HAYS: Do either one of you anticipate

1 recalling this witness?

2 MR. CRADOCK: No, sir.

3 ARBITRATOR HAYS: Can he go back home?

4 MR. CRADOCK: He can.

5 ARBITRATOR HAYS: All right. We'll stand  
6 adjourned until 9:00 in the morning.

7 [Witness excused.]

8 [Whereupon, at 5:14 p.m. the hearing was recessed,  
9 to reconvene at 9:00 a.m. on Wednesday, December 13, 1989,  
10 in the same place.]

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## C E R T I F I C A T E

DOCKET NO.: FMCS 89-12267  
CASE TITLE: Kelly and NTEU v. NRC  
HEARING DATE: December 12, 1989

I hereby certify that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing in the above cause to the best of my knowledge and belief.

DATED this 16th day of December 1989.

*Betty Morgan*

Betty Morgan, Reporter



To: Jimmy Blanton  
NUDOCS Project Officer  
Information & Records Management Branch  
Office of Information Resources Management

7/30/94

From: *f* Jean Rathje *LR*  
Senior Records Management Specialist  
Public Document Room  
Office of the Secretary

Subject: **DESIGNATED ORIGINALS - ADVANCE COPY DOCUMENTS  
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