

CASE No. 4-94-037

United States  
Nuclear Regulatory Commission



# Report of Investigation

**SOUTH TEXAS PROJECT:**

**DISCRIMINATION AGAINST A FORMER EBASCO ELECTRICIAN FOR  
RAISING SAFETY CONCERNS**

**Office of Investigations**

**Reported by OI: RIV**

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## SYNOPSIS

This investigation was initiated on October 3, 1994, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if a former Ebasco electrician at Houston Lighting & Power's (HL&P) South Texas Project (STP), Matagorda County, Texas, was discriminated against for refusing to sign-off on a work package as the performer when he, in fact, had not performed the work.

Based on the testimonial and documentary evidence developed during the investigation, it is concluded that the former Ebasco electrician was subjected to the following acts of discrimination as a result of engaging in a protected activity:

1. The former Ebasco electrician was laid off on March 24, 1994, after raising a concern over the taping of electrical cable terminations. The former Ebasco employee was identified for the lay-off by an Ebasco general foreman.
2. The former Ebasco electrician was given an employee evaluation by an Ebasco general foreman after being laid off on March 24, 1994, that was not supported by his work performance.
3. The Ebasco lead modifications superintendent, with the support of an Ebasco general foreman, attempted to deny the former Ebasco electrician employment at STP in June 1994.
4. The former Ebasco electrician was subjected to Fitness-for-Duty (FFD) alcohol and drug testing on May 24, 1994, as a visitor at STP. The procedure refers to "badged visitors" and the former Ebasco electrician was not a "badged visitor" at the time. The former Ebasco electrician was referred to the FFD testing by the Ebasco Labor Relations Representative.
5. The former Ebasco electrician was subjected to a second FFD alcohol and drug testing on June 2, 1994, just 8 days after his previous test. The STP procedure states that alcohol and drug testing is not required if the individual has been tested in the previous 60 days. The former Ebasco electrician was referred for this testing by Ebasco management.

Title: SOUTH TEXAS PROJECT

DISCRIMINATION AGAINST A FORMER EBASCO  
ELECTRICIAN FOR RAISING SAFETY CONCERNS

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Houston Lighting & Power  
P. O. Box 408  
Wadsworth, TX 77483-0408

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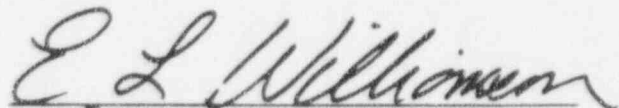
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Reported by:

Reviewed and Approved by:



Daniel D. Murphy, Special Agent  
Office of Investigations  
Headquarters



E. L. Williamson, Director  
Office of Investigations  
Field Office, Region IV

Participating Personnel

Virginia J. Van Cleave, Special Agent  
Office of Investigations  
Field Office, Region IV

Dennis N. Boal, Special Agent  
Office of Investigations  
Field Office, Region IV

Lawrence E. Kokajko  
Allegation Review Team Chief  
Office of Nuclear Reactor Regulation

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## ACCOUNTABILITY

The following portions of this Report of Investigation (Case No. 4-94-037) will not be included in the material placed in the Public Document Room. They consist of pages 3 through 48.

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# TABLE OF CONTENTS

	<u>Page</u>
SYNOPSIS.....	1
ACCOUNTABILITY.....	3
LIST OF INTERVIEWEES.....	7
DETAILS OF INVESTIGATION.....	9
Applicable Regulations.....	9
Purpose of Investigation.....	9
Background.....	9
Interview of Allegor.....	9
Allegation (Alleged Discrimination Against former Ebasco Electrician for Raising Safety Concerns).....	13
Evidence.....	13
Document Review.....	13
Review of STP Access Control Policy and FFD Testing Procedures....	13
Testimony.....	15
Interview of RILEY.....	15
Interview of RENFRO.....	16
Interview of DOUGLAS.....	16
Interview of JOHNSON.....	17
Interview of TEAGUE.....	19
Reinterview of TEAGUE.....	20
Interview of CRAWFORD.....	21
Interview of CRENSHAW.....	22
Interview of HARDWICK.....	23
Interview of McCLARY.....	24
Interview of RODRIGUEZ.....	24
Interview of McCLURE.....	25
Interview of KAMINSKY.....	25
Reinterview of KAMINSKY.....	27
Interview of HINSON.....	28
Interview of SCIBA.....	30
Interview of DAVIS.....	33
Agent's Analysis.....	36
Decision of the Administrative Law Judge.....	42
Conclusions.....	43
SUPPLEMENTAL INFORMATION.....	45
LIST OF EXHIBITS.....	48

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# LIST OF INTERVIEWEES

	<u>Exhibit</u>
CRAWFORD, John C., Electrician, Ebasco.....	16
CRENSHAW, Eranel H., Administrative Technician, Ebasco.....	17
DAVIS, Casey J., Labor Relations Representative, Ebasco.....	29
DOUGLAS, John H., Foreman, Ebasco.....	12
HARDWICK, Rayford E., former Supervisor, Ebasco.....	18
HINSON, Jay W., Manager, Access Authorization, STP.....	27
JOHNSON, William H., Field Electrical Supervisor, Ebasco.....	13
KAMINSKY, Gary A., former Lead Modifications Superintendent, Ebasco.....	23 & 25
KEENE, Earl V., former Electrician, Ebasco.....	2, 3, 4
McCLARY, Linda S., Supervisor, Access Screening Department, HL&P...	19
McCLURE, Carl D., General Foreman, Ebasco.....	21
RENFRO, Arthur D., Foreman, Ebasco.....	10
RILEY, James D., Electrician, Ebasco.....	8 & 9
RODRIGUEZ, Mario A., Laboratory Assistant, STP.....	20
SCIBA, Donald W., former General Foreman, Ebasco.....	28
TEAGUE, Frank G., Site Manager, Ebasco.....	14 & 16

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## DETAILS OF INVESTIGATION

### Applicable Regulations

10 CFR 50.7: Employee Protection (1994 Edition)

10 CFR 50.5: Deliberate Misconduct (1994 Edition)

### Purpose of Investigation

This investigation was initiated on October 3, 1994, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if Earl V. KEENE, former Ebasco Electrician, at the South Texas Project (STP), Matagorda County, Texas, was discriminated against for refusing to sign off on a work package as the performer when he, in fact, had not performed the work (Exhibit 1).

### Background

On March 31, 1994, NRC officials met with staff members from the subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce regarding STP. The committee members were concerned about the number of allegations being brought to their attention by current and former employees at STP. On May 6, 1994, as a result of the concerns expressed by the committee's staff members, James L. MILHOAN, Deputy Executive Director, Nuclear Reactor Regulation (NRR), directed that a team be formed to address these concerns. The team consisted of a senior staff member of NRR and a senior OI special agent. Their charter was to contact the attorneys representing the concerned current and former employees at STP and arrange for the interview of these individuals.

On May 17, 1994, Ms. Timothy SLOAN, an attorney in Bay City, Texas, who represented several concerned employees at STP, contacted OI and requested that her clients be interviewed. SLOAN indicated that one of her clients would meet with the team and discuss his concerns. SLOAN subsequently forwarded a copy of a sworn affidavit of KEENE, dated June 7, 1994, to OI indicating that KEENE had been discriminated against for raising a safety concern (Exhibit 2). An additional sworn affidavit, dated June 13, 1994 (Exhibit 3), was received by OI from SLOAN. As a result, arrangements were made to interview KEENE in Bay City, Texas, on July 12, 1994.

### Interview of Allegor (Exhibit 4)

On July 12, 1994, KEENE was interviewed by the NRC's Allegation Review Team (ART) in the office of SLOAN in Bay City, Texas. KEENE, in a transcribed interview, reiterated and elaborated on the information contained in his affidavits of June 7 and 13, 1994. KEENE said, in early 1994, he took a call from his local electrician's union hall to perform work at STP. KEENE indicated that he had worked at STP on and off since August 1982. KEENE said on March 16, 1994, he was doing electrical work on the demineralization skids with three other electricians. KEENE indicated that, while working in this



area, he was asked by Arthur RENFRO, one of the other electricians, to sign off as the performer on cable terminations performed by RENFRO. According to KEENE, RENFRO was not certified to do the work and he [KEENE] was. KEENE said that RENFRO told him this was the way he [RENFRO] had been instructed to do the work. KEENE related that he reported the problem to James D. RILEY, a union steward, who KEENE said intended to report the matter to Casey DAVIS, Ebasco Labor Relations Representative, and William JOHNSON, Ebasco Field Electrical Supervisor. KEENE stated that 2 days after he reported the incident, he was laid off. KEENE indicated that when he was laid off, his termination notice was annotated "eligible for rehire."

AGENT'S NOTE: The employment records of Ebasco indicate that KEENE was laid off on March 24, 1994. If he surfaced his concerns on or about March 16, 1994, as his testimony reflects, his lay off then occurred 1 week after he raised his concerns; not 2 days as KEENE indicated.

KEENE related that he was subsequently told by RILEY, that he [RILEY] and DAVIS were called into the office of Frank TEAGUE, Ebasco Site Manager at STP. According to KEENE, RILEY was queried about how he handled KEENE's complaint and was told that he [RILEY] had no right to report a safety or procedure violation in that manner. KEENE said RILEY told him that when he informed TEAGUE and DAVIS that he could have reported the incident to the NRC or the project owner, Houston Lighting & Power (HL&P), TEAGUE indicated that RILEY was right in bringing the matter to Ebasco. KEENE said RILEY also told him that he [RILEY] later had a conversation with Carl McCLURE, Ebasco General Foreman, and was told by McCLURE that Donald SCIBA, former Ebasco General Foreman, would stop KEENE from coming to work again at STP.

KEENE stated that he left STP around March 16, 1994, and obtained employment at another location. He said that about May 16, 1994, he received a call from the local union indicating he was being called back to STP on June 2, 1994. KEENE indicated that he was contacted by a friend, John CRAWFORD, Ebasco Electrician, who was also being called back to work at STP. KEENE said he agreed to take CRAWFORD to STP and show him where to go to process for employment at STP. KEENE said that on May 24, 1994, he drove CRAWFORD to STP in his truck. He said they stopped for lunch enroute and each had a beer.

KEENE stated they arrived at STP at about 2:15 p.m. and went directly to DAVIS's office in Building 15, but he was not there. KEENE stated they spoke with DAVIS's secretary, who told them where they could locate DAVIS. KEENE indicated they then stopped to talk with JOHNSON, who said he would try to locate DAVIS. KEENE said about this time, DAVIS and Eranel CRENSHAW, Ebasco Administrative Technician, came out of one of the office cubicles. According to KEENE, when DAVIS observed CRAWFORD, he [DAVIS] told CRAWFORD that he was just the guy he wanted to see. KEENE said that after a short conversation, he left CRAWFORD with DAVIS and told CRAWFORD that he would wait for him in his truck. KEENE said he then had a brief conversation with CRENSHAW, who according to KEENE, was about 12 feet away. KEENE said that CRENSHAW commented that she smelled alcohol and asked him if he had been drinking. KEENE said he told CRENSHAW that he had beer at lunch and was then told by CRENSHAW he would have to go wait in the parking lot. KEENE said he then proceeded to his truck in the parking lot to wait for CRAWFORD.

KEENE said he went to his truck and about 20 minutes later, DAVIS and Rayford HARDWICK, former Ebasco Supervisor, walked up to him in the parking lot. KEENE stated that DAVIS asked him if he had anything to drink, and he [KEENE] told DAVIS that he had a beer at lunch. According to KEENE, DAVIS then said he smelled alcohol, implying that he [KEENE] was intoxicated and asked if he [KEENE] would take a breath test. KEENE said when he asked why, DAVIS told him it was required and if he refused, his access to the plant could be denied. KEENE said he told DAVIS that he would take the test and was then driven to the STP Central Processing Facility (CPF). KEENE said once at that facility, DAVIS filled out paperwork entitled "For Cause Testing." KEENE said he thought this type of testing was reserved for employees.

AGENT'S NOTE: It was determined at the interview that KEENE did not receive and was not wearing a visitor's badge when he arrived at STP. In addition, he was not wearing a visitor's badge when confronted by DAVIS and HARDWICK.

KEENE said he took the breath test four times and registered .015, .013, .012, and .011, which KEENE indicated was well below the limit of .040. According to KEENE he was told this by Mario RODRIGUEZ, STP Laboratory Assistant, who administered the Fitness-for-Duty (FFD) test. KEENE said he was then asked to submit a urine sample which he said he objected to because he was on medication and did not have the prescription with him. KEENE said he was then called into the office of Jay Watt HINSON, Manager, Access Authorization, STP, who was in charge of the FFD testing program, and was confronted by HINSON and DAVIS and told that if he did not submit the urine sample for testing he [KEENE] would be denied access to STP and other nuclear plants for the rest of his life. KEENE said he told HINSON and DAVIS about his prescription drugs and his [KEENE's] not knowing the name of the medication. KEENE said he submitted to the test because he wanted to come to work at STP on June 2, 1994. However, KEENE thought this was a form of harassment for raising a concern during his previous employment at STP. KEENE also indicated he heard from his friends at STP this was an attempt to preclude him from reemployment at STP.

KEENE said, after leaving STP, he went to see his attorney, who recommended he immediately go to the Matagorda General Hospital and submit a urine sample that could be used for further testing if necessary. KEENE said he followed his attorney's advice.

KEENE said the next day, he went to his union hall and spoke with John MUHL [NFI]. KEENE related that he asked MUHL to contact DAVIS and ask DAVIS to provide him with the Ebasco, HL&P, or NRC procedures which require or permit breath testing or urinalysis for visitors at STP. According to KEENE, he was told that DAVIS refused to give him the information, indicating that none of what occurred was his responsibility.

KEENE said he arrived for work at STP on June 2, 1994, at about 7 a.m. and at about 8 a.m., he went to the FFD office for drug testing. KEENE said he then took the required radiation training and picked up his site badge.

KEENE said he reported to STP on June 3, 1994, and was asked to sign a letter related to whole body counts upon completion of work at STP. He said he refused to sign it and when told he had to, he took the letter to Red WALLACE, his Ebasco union steward. According to KEENE, WALLACE said he would raise the issue with DAVIS.

KEENE said he reported back to STP on June 6, 1994, and waited the entire day, along with 20 other electricians, to be sent to work. KEENE said the following day almost all of the electricians [about 40] were assigned a job except for about 4 or 5 who were required to attend GET I training. According to KEENE, he had already attended GET training, so he spent the rest of the day doing nothing. KEENE said he was given no explanation for not being given a work assignment.

KEENE related that on June 8, 1994, he again reported to work at the same location and again the only other electricians at this location were those receiving GET II training. KEENE said that McCCLURE told the electricians that the GET II class had been cancelled. KEENE said McCCLURE asked him if he had any training scheduled, and he [KEENE] told him "no." KEENE said that he told McCCLURE he had been waiting for instructions on where to go and had not heard anything. KEENE said McCCLURE contacted SCIBA on his two-way radio and asked what to do with him [KEENE]. He said he heard SCIBA tell McCCLURE to put him with the carpenters. KEENE said he, along with the other electricians, worked the rest of the day as laborers. According to KEENE, this was a slap in the face for journeymen electricians. He said his union was notified by another electrician.

According to KEENE, on the afternoon of June 8, 1994, he was told by SCIBA to go to Gary KAMINSKY's office who was the Ebasco lead modifications superintendent over his group. KEENE said when he got to KAMINSKY's office, he was told he had to report to the FFD office, and KAMINSKY escorted him there.

KEENE said when he arrived at the FFD office, he heard office personnel discussing the fact that they had lost an employee's urine sample and paperwork. KEENE said he heard enough to believe they were talking about him. KEENE said he was subsequently called into the office by Dr. James HEFNER, the STP Medical Review Officer. KEENE said HEFNER asked him if he knew why he was here, to which he [KEENE] replied, "no." KEENE said HEFNER then told him he had failed the drug test. KEENE stated that HEFNER asked him what medications he was taking and KEENE told him. KEENE said he asked HEFNER which test he had failed, the one on May 24 or June 2, 1994. According to KEENE, HEFNER appeared surprised that he had been tested twice and indicated to him that something was wrong. KEENE said he told HEFNER that he had not used marijuana and that in his [KEENE's] view he was being harassed. KEENE said he told HEFNER that he knew he would be tested on June 2, 1994, and it would have been stupid to use marijuana or be around anyone who used it. KEENE said he was told he could appeal the findings, and he [KEENE] told them he intended to do so. According to KEENE, he was told that they would keep his urine sample for 10 days, and he would be given an appeal package.

KEENE stated that after leaving the FFD office in the CPF, he was asked if he had any nuclear concerns which he [KEENE] would like to bring to the attention of Speak Out, the STP Employee Concern Program (ECP). KEENE said he told them "yes" and was taken to the Speak Out office. KEENE said he told BROWN [NFI], in the Speak Out office, that he had failed a drug test and been denied access to STP in retaliation for reporting a records falsification problem in March 1994. KEENE stated that he expressed his concerns about his passing a drug test on May 24, 1994, and failing the same type test on June 2, 1994. KEENE stated that BROWN took him to see REHKUGLER [NFI], another Speak Out employee. KEENE said he then explained the entire situation to REHKUGLER, who indicated the problem would be investigated.

KEENE stated that in his view, the circumstances surrounding his termination, in March 1994, his being subjected to a drug test on May 24, 1994, while a visitor at STP, and his failure of a drug test and denial of access to STP, were all the result of his raising a concern regarding the falsification of records at STP in March 1994.

### Allegation

Alleged Discrimination Against a former Ebasco Electrician for Raising Safety Concerns

### Evidence

### Document Review

#### Review of the STP Access Control Policy and FFD Testing Procedures

During the investigation Alvin H. GUTTERMAN, an attorney with Morgan, Lewis & Bockius, representing STP, was asked to respond to questions regarding visitors to STP being subjected to drug and alcohol testing. In a letter response (Exhibit 5), GUTTERMAN quoted Sections 5.3 and 5.4 of STP station procedure OPGP03-ZA-0107, which requires that all visitors to STP report to one of several locations to obtain a visitor's badge authorizing access to the Owner Control Area (OCA). In the letter, GUTTERMAN further referred to signs posted at the plant entrance which note that persons may be searched for illegal drugs and alcohol. The letter from GUTTERMAN basically concluded that all visitors to STP could be subjected to FFD alcohol/drug testing if the situation warranted it.

A check of the signs posted at the two major entrances to STP was conducted by OI. Although GUTTERMAN's description of the signs is accurate, there are several points worth noting. First, the signs do not indicate to the visitor that this is a restricted area nor do they identify where a visitor must go to obtain a visitor's badge noted in the station procedure. Second, there are no guards posted at the entrances to issue visitor badges or direct a visitor to where he could obtain a visitor's badge. Although the signs do indicate that persons may be searched for illegal drugs and alcohol, there is absolutely no indication that this might include alcohol and drug testing and that refusal to submit to this test would result in denial of access to STP. An individual not familiar with STP's policy in this matter would not know how to comply



with the station procedure regarding obtaining a visitor's badge or have a thorough understanding of the restrictions placed on him while visiting the site other than those limited restrictions posted on the signs.

A review of Station Procedure OPGP09-ZA-002, Rev. 0, dated July 1, 1993 (Exhibit 6), was performed based on KEENE's assertion that he believed his drug test on May 24, 1994, was a violation of this procedure and administered as an act of retaliation for his raising a safety concern while employed at STP as an Ebasco electrician in March 1994. KEENE alleged that based on his status as an unbadged visitor at STP, he was not covered by the procedure.

Page 3 of this station procedure, paragraph 2.0 scope, paragraph 2, states "Any visitor or short term consultant/contractor is subject to search at any time and any such individual exhibiting behavior suggesting a lack of "fitness-for-duty" may be subject to "for cause" drug and alcohol screening."

Page 5 of this station procedure, paragraph 3.14 visitor, defines a visitor as "Any individual granted access under a visitor's badge who is not a covered individual, but is subject to 'for cause' testing."

Page 5 of this station procedure, paragraph 3.15, Covered Individual, defines a covered individual as "HL&P Nuclear Group employees, other employees who are PA/VA badged for STPEGS, co-owner employees who are PA/VA badged for STPEGS, HL&P applicants for Nuclear Group positions and contractor, vendor, or supplier employees performing work at STPEGS."

Based on information obtained by OI during the investigation, it has been determined that KEENE did not have a visitor's badge and therefore did not appear to fall into one of the other categories required for "show cause" testing.

Station Procedure OHRPOI-ZA-003, Rev 2, dated April 25, 1994 (Exhibit 7), was reviewed regarding KEENE's June 2, 1994, drug test.

Page 5 of this Station Procedure, paragraph 4.1.2, states, "Individuals who are exempted from taking the new-hire/baseline testing are as follows:

- (b) STP rehires or transfers - if the individual has had a drug test within 60 days of reapplication of access or there has not been a lapse of access at STP for more than 30 days."

Although KEENE disputes the findings of his June 2, 1994, drug test, a more basic issue is whether he should have been subjected to a drug test. It appears that KEENE may have been in the exempted category based on his passing the "show cause" drug test he was subjected to on May 24, 1994.

A review by OI of these two procedures indicates that in the first instance KEENE may have been subjected to an alcohol and drug test when he did not fall into the category which required "For-Cause" testing. On the second instance, KEENE may have been subjected to a preemployment drug test which was not required for granting him unescorted access to STP.

## Testimony

The following individuals were interviewed regarding KEENE's allegation that he was discriminated against for identifying potential records falsification.

### Interview of RILEY (Exhibits 8-9)

RILEY, through his attorney SLOAN, provided two sworn affidavits dated June 10 and 14, 1994. RILEY was interviewed on August 31, 1994, and reiterated the information contained in his affidavits. RILEY stated that he was approached on approximately March 16, 1994, by KEENE about what he [KEENE] perceived was a violation of procedures and potential records falsification. KEENE, according to RILEY, related that Ebasco foremen were signing off on work packages verifying work they never observed being performed. RILEY stated that KEENE also stated he witnessed people signing off on work packages as the performer when they did not actually perform the work. He said KEENE told him he [KEENE] was asked by RENFRO to sign-off on work packages as the performer for work he did not perform. RILEY said KEENE indicated to him that he [KEENE] refused to do so and was then told by RENFRO and John DOUGLAS, Ebasco Foreman, that it was always done this way. RILEY said his past experience with EBASCO was that employees who raised safety concerns were conveniently terminated.

Because both he and KEENE had the same supervisor, RILEY said he brought the matter to JOHNSON's attention, and JOHNSON assured him they would be investigated. He said he did not use KEENE's name during their initial discussion. However, before he got a response from JOHNSON, KEENE was terminated in a reduction in force (RIF). RILEY said that shortly after KEENE's termination, he was called into the DAVIS's office. RILEY said when he arrived at DAVIS's office, TEAGUE was there. RILEY said DAVIS explained what his [RILEY's] duties were as union steward and that he [RILEY] may have overstepped his boundaries as a union steward in his handling of KEENE's concerns. RILEY said he did not surface KEENE's concerns as a union steward, but as a concerned employee. RILEY asked if he should ignore these type of complaints, and they both said "no." RILEY said he was told he should encourage other employees to bring their concerns directly to management. He said TEAGUE told him in these type of cases, they could not guarantee the employees confidentiality. RILEY said when he left the office, he felt that no employee could raise a concern without fear of retribution and that KEENE's termination was not justified.

RILEY further stated after KEENE's termination in March 1994, he was told by McCLURE that SCIBA told him [McCLURE] if KEENE ever came back to STP, he [SCIBA] would turn him around [terminate him]. RILEY indicated that in his view, Ebasco employees at STP do not raise safety concerns for fear of retribution.

Regarding KEENE's failing the drug test on June 2, 1994, RILEY said, in his view, it is inconceivable that KEENE would pass a drug test on May 24, 1994, and fail one a week later. He said between May 24 and June 2, 1994, KEENE expressed to him [RILEY] that Ebasco would find a way to turn him around when he returned to work at STP.

### Interview of RENFRO (Exhibit 10)

RENFRO was interviewed on October 26, 1994, and stated substantially as follows:

RENFRO stated that sometime around March 16, 1994, he was working with KEENE when the subject of KEENE signing off for him under the work supervised program arose. RENFRO related that he was not certified to do the work, but KEENE was, and that KEENE was also there when the work was performed. According to RENFRO, KEENE did not refuse to sign off and eventually did sign the document. RENFRO said that the problem was whether or not you could tape breakout points on electrical cables. RENFRO said he was told to tape the breakout points while KEENE indicated that you could not tape them. RENFRO stated that KEENE would not sign the work package until this question was answered. RENFRO stated they then discussed the taping procedure with DOUGLAS.

RENFRO said when this issue was resolved, KEENE signed off on the work package. RENFRO indicated that this procedure was changed after the incident with KEENE. RENFRO reiterated that prior to KEENE's raising the issue, it was common practice to have someone who was certified sign off as the performer if the individual doing the actual work was not certified.

RENFRO said he was aware that KEENE had failed a drug test in June 1994 and was denied access to STP. RENFRO indicated that this was common knowledge among the Ebasco people at STP. He said he discussed KEENE failing his drug test with his crew [REDACTED]

[REDACTED] RENFRO, when asked whether, in his view, a visitor to STP is subject to an FFD test, replied "no."

RENFRO said he had no problem with KEENE's work. He said KEENE told him that shortly after he was hired that he [KEENE] would not be around long and they would run him [KEENE] off. According to RENFRO, both he and KEENE worked for SCIBA, and although SCIBA did not have a problem with KEENE's work, there appeared to be a personality conflict between SCIBA and KEENE regarding something that had happened somewhere else or at another time. RENFRO said rumors around the site were that SCIBA was going to get him [KEENE].

### Interview of DOUGLAS (Exhibit 11)

On October 26, 1994, DOUGLAS was interviewed and stated substantially as follows:

DOUGLAS stated that he did not have a clear recollection of the March 16, 1994, disagreement between KEENE and RENFRO. However, after reviewing a work package related to the disagreement, he remembered the incident. He said KEENE and RENFRO had a disagreement over taping cable terminations and came to him [DOUGLAS] to resolve the issue. DOUGLAS said that to resolve the issue, he went to SCIBA, his general foreman. DOUGLAS determined that RENFRO's method of taping the cables was the right way. The issue where an uncertified person would do the work and the certified person working with him would sign



off as the performer was discussed with DOUGLAS. He said that this procedure was called "work supervised," was acceptable at the time, but is not being currently used.

DOUGLAS stated that he did not know KEENE very well, but the work he performed was fine, and he had no complaints about KEENE's work. When asked about KEENE'S termination, shortly after raising safety concerns, DOUGLAS stated that he had no input into a layoff. He said SCIBA was the one who determined who would be laid off.

When asked about the relationship between KEENE and SCIBA, DOUGLAS said the rumor around the site was that they had a disagreement a long time ago, and they did not like each other. DOUGLAS declined to speculate on whether this relationship had anything to do with KEENE being laid off. DOUGLAS stated he did not know DAVIS. He also stated that when the May 24, 1994, incident involving KEENE occurred, he was not on the site. DOUGLAS said he had no firsthand information regarding the incident.

DOUGLAS said he was basically familiar with the FFD rule, but had no idea how it pertained to visitors at the site. He said the incident with KEENE had no impact on him leaving STP, and he only returned to the site for personal reasons.

When asked about a falsification issue raised by KEENE, DOUGLAS stated that he [KEENE] apparently raised this issue on the day he was laid off. He said SCIBA looked into the matter and found nothing wrong. DOUGLAS said he was aware that KEENE had failed a drug test and had his badge pulled. He said there were not too many reasons other than failing the drug test, to have a badge pulled. He said this is what everybody assumes when a badge is pulled.

#### Interview of JOHNSON (Exhibit 12)

On October 26, 1994, JOHNSON was interviewed and stated substantially as follows:

JOHNSON related that in March 1994, RILEY came to him with an allegation from a friend regarding possible records falsification. JOHNSON said RILEY came to him because he is his supervisor. JOHNSON said he asked RILEY if his [RILEY's] friend was willing to discuss the matter with him [JOHNSON] and identify the work packages that were in question. JOHNSON said he told RILEY that if he knew what to look for, he would look into the problem. JOHNSON said he told RILEY he would do whatever he could to keep the individual's name confidential, but that it might mean notifying TEAGUE. JOHNSON said RILEY told him he would ask the individual and get back to him. JOHNSON said some time passed before RILEY came back to him with some work package numbers and the name of KEENE. JOHNSON said this occurred on the same day KEENE was laid off, and he told RILEY it would be difficult to talk with KEENE, but he would look at the work package.

JOHNSON stated that he reviewed the packages and could find no indication of falsification. He said that sometime later both TEAGUE and Mike HEAD, Ebasco Training Coordinator/Training Supervisor, looked at these work packages and

could find nothing wrong with them. JOHNSON said he passed this information on to RILEY and told RILEY he could tell KEENE what he found. JOHNSON said RILEY told him he was asked to explain KEENE's concerns to TEAGUE and DAVIS, but he [JOHNSON] did not know much about what took place between them.

JOHNSON said KEENE had worked for him the last time he [KEENE] worked at STP in March 1994. JOHNSON stated that KEENE did not work directly for him, as there was a foreman or general foreman between them. He said he rarely had any personal conversation with KEENE other than "hi." JOHNSON said he was unaware of any information concerning KEENE being laid off for raising safety concerns. He said, in March 1994, they had a big layoff [18-20 people] and that KEENE was one of them. JOHNSON said KEENE's only concern that he was aware of, was the one that RILEY brought to his attention. He stated that he did not tell anyone else that the issue was brought to his attention by RILEY.

JOHNSON also stated that he believed the rest of the crew KEENE was assigned to did not know about the falsification concern. JOHNSON said, after KEENE was laid off, his concerns became general knowledge and shortly thereafter, SCIBA told him [JOHNSON] that he [SCIBA] understood he [JOHNSON] was reviewing some "God damn packages for some crap that Earl [KEENE] said." JOHNSON said that he told SCIBA he did not think it was any of his business. He said SCIBA became very upset and said they were his packages, and they had words over the situation. According to JOHNSON, SCIBA was upset because the allegation was being investigated without his [SCIBA's] being notified. JOHNSON said they had a lengthy discussion about the issue, and SCIBA was angry over the way it was handled.

JOHNSON said the preferred method for raising a concern was to bring it to the attention of your immediate supervisor and give him the opportunity to resolve the matter. JOHNSON said if he could not resolve the issue, the individual should have the right to take it to his boss or straight to the NRC. JOHNSON said that in most cases, he felt he could resolve the issue to the satisfaction of the person raising the concern.

JOHNSON said he was not aware of a meeting between RILEY, DAVIS, and TEAGUE during which RILEY was questioned about why he [RILEY] did not bring the issue to the attention of his immediate supervisor. JOHNSON said that this might be the best way, but he clearly understood why RILEY came to him.

JOHNSON said he knew DAVIS only professionally, and they were not personal friends. JOHNSON said he had no knowledge of any problem between DAVIS and KEENE.

JOHNSON said he was present on May 24, 1996, when KEENE and CRAWFORD came to STP. JOHNSON said KEENE and CRAWFORD were looking for DAVIS's office, and he [JOHNSON] showed them the office. JOHNSON said he was not sure if he was introduced to CRAWFORD. JOHNSON said he did not talk with them very long and did not get close enough to smell alcohol and could not state whether or not they were intoxicated. JOHNSON also could not recall if KEENE and CRAWFORD had visitor badges. JOHNSON said he was not present when KEENE was asked to submit to a drug test and only heard about it through the rumor mill. JOHNSON

said in his view, all visitors to STP are subject to the FFD rule. He said that all visitors to STP are required to have a visitor's badge, but HL&P does not enforce the rule.

The situation wherein KEENE was asked to sign off for work performed by RENFRO was explained to JOHNSON. According to JOHNSON, he was not aware of this situation, but if it occurred, it was a problem and done incorrectly. JOHNSON said the procedure calls for the individual, who performed the work, to sign off as the performer. JOHNSON said even if KEENE stood and watched RENFRO perform the work, it would be technically incorrect for KEENE to sign off as the performer. JOHNSON reiterated this allegation was not brought to his attention. He said the issue brought to his attention was a falsification of records by DOUGLAS. He said he looked into this issue and was unable to find a problem. JOHNSON concluded by reiterating that if RENFRO asked KEENE to sign off as performing the work performed by RENFRO, it was inappropriate.

#### Interview of TEAGUE (Exhibit 13)

On October 26, 1994, TEAGUE was interviewed and stated substantially as follows:

TEAGUE stated that an allegation by KEENE, of records falsification, was brought to his attention by DAVIS. According to TEAGUE, the allegation was that KEENE had observed someone signing off on a work package at his desk, and KEENE felt it should have been done in the field.

Because the issue was serious in his view, TEAGUE related that he had HEAD, his Training and Access Coordinator, look into the situation. TEAGUE stated that HEAD was very knowledgeable about procedures. He said after looking into the situation, HEAD told him that he [HEAD] did not see a problem.

TEAGUE said, while this was going on, he did not believe KEENE was still working at STP, and he also did not think HEAD talked to KEENE. When asked about KEENE's allegation relating to his signing as the performer when RENFRO did the work, TEAGUE replied that this issue surfaced during a Department of Labor (DOL) complaint and was investigated.

According to TEAGUE, it was determined that KEENE actually signed the work package as the performer. TEAGUE said that if KEENE signed as the performer for a job he had not performed, it was a violation of the procedure. TEAGUE said a Site Problem Report (Exhibit 14) had been generated to look into this particular issue. TEAGUE said Ebasco employees had been undergoing training to ensure they understood the correct process and compensatory steps. TEAGUE said he was not aware if all these issues were referred to STP's ECP by KEENE. TEAGUE did say that WOOD, an investigator with STP's ECP, was investigating various parts of KEENE's allegations, and he [TEAGUE] was not exactly sure what WOOD investigated. TEAGUE said KEENE complained to DOL about his being terminated for raising a safety concern, and in his view, the complaint did not have any foundation.

TEAGUE described a meeting he was involved in between DAVIS and RILEY regarding how KEENE's allegations were handled. TEAGUE said DAVIS came to him

with a concern that RILEY, because he was not a steward at the same union as KEENE, may have been confused about his role as a steward versus reporting a quality concern. TEAGUE said he listened to RILEY's explanation of how he handled KEENE's concerns. TEAGUE said he explained to DAVIS and RILEY, but particularly DAVIS, that when an employee has knowledge of a quality concern, they can bring their concerns forward in any way. He said as an organization, Ebasco was very interested in hearing about the concerns and bringing them forward for resolution. He said he was told that JOHNSON had looked into the issue and not being satisfied, brought it forward.

TEAGUE described the meeting with RILEY and DAVIS as cordial, and his interest was ensuring that RILEY understood that he did the right thing because this was a quality issue, not a union issue. TEAGUE agreed that bringing quality issues to management is the best way to handle these issues. TEAGUE said he wished JOHNSON had been able to talk to KEENE before he was laid off. TEAGUE was asked if DAVIS was upset as a result of the meeting he had with RILEY and the fact that TEAGUE supported the manner in which RILEY handled the issue. TEAGUE said he would prefer not to use the word "upset," but agreed that concerned might describe DAVIS. However, according to TEAGUE, everyone agreed at the end of the meeting that it was not a union issue. TEAGUE stated that he did not believe DAVIS had any hard feelings about KEENE as a result of him raising a concern.

TEAGUE related that he did not know KEENE and could not recall ever meeting him. TEAGUE said he was not sure who decided when a person was to be laid off. He said usually the closest supervisor, the foreman, or at least the general foreman, would recommend a list of individuals based on some performance criteria. Then the nonmanual supervisors would either accept it or if they had comments or questions, ask for a change. He indicated that in the case of KEENE, the initial cut was made by SCIBA. TEAGUE said he did not know about KEENE's concerns until after KEENE had been laid off.

Regarding the event on May 24, 1994, KEENE, as a visitor at STP, was subjected to both alcohol and drug testing; TEAGUE said he only knew what DAVIS told him and what was in a written report on the matter. He said he believed the incident was handled properly and in accordance with STP policy. TEAGUE said he believes that visitors are subject to the FFD rules. TEAGUE said all visitors are supposed to be badged, but admitted that he was not totally familiar with the procedures.

AGENT'S NOTE: During the course of the investigation, it was determined that SCIBA and HARDWICK had left Ebasco. As a result, TEAGUE was reinterviewed concerning the reason why HARDWICK and SCIBA had departed and if it was related to KEENE's concerns.

#### Reinterview of TEAGUE (Exhibit 15)

On October 2, 1994, TEAGUE was reinterviewed and stated substantially as follows:

TEAGUE stated that both SCIBA and HARDWICK were no longer employed by Ebasco. He said HL&P had a need for more varied experience, to include more outage experience.



According to TEAGUE, HL&P asked that HARDWICK be replaced, and Ebasco had no problem with that request. He said HARDWICK was offered other employment at the time and declined.

Regarding SCIBA, TEAGUE said work was decreasing, and they no longer needed two general foremen. He said they actually selected SCIBA for the job, but SCIBA decided he would rather not work with the supervision on the site at that time. TEAGUE said the investigation of KEENE's concerns had nothing to do with the departure of SCIBA and HARDWICK.

TEAGUE related there were a lot of rumors going around about why KEENE was dismissed in June 1994. TEAGUE said that he heard RENFRO had discussed the issue with his crew. TEAGUE said he called a meeting and informed his supervisors not to discuss rumors which he believed resolved the issue.

#### Interview of CRAWFORD (Exhibit 16)

On July 12, 1994, CRAWFORD was interviewed and stated substantially as follows:

CRAWFORD said, in May 1994, he received a call from CRENSHAW to report to STP for preemployment processing. He said on May 24, 1994, he had been working in Bay City until around lunch time. CRAWFORD stated that he and KEENE stopped enroute to STP and had lunch, and each had a beer with lunch. He related that when he got to STP, he went to CRENSHAW's office and began to fill out the paperwork required for employment. CRAWFORD said that CRENSHAW said she smelled alcohol on KEENE's breath and asked him to step outside. CRAWFORD said CRENSHAW also asked him [CRAWFORD] if he had been drinking and he said "no."

CRAWFORD said that after he completed the paperwork, he went outside but could not find KEENE. He said he waited a short while and KEENE and DAVIS showed up. According to CRAWFORD, KEENE laughingly said he had been asked to take a breathalyzer and urinalysis test. CRAWFORD said he thought this was very strange because neither he nor KEENE were working at STP. CRAWFORD said that KEENE told him that had he refused, he would have been denied access to STP.

CRAWFORD said when he and KEENE reported to work at STP on June 2, 1994, they did not do any electrical work and were put to work as carpenters which was unusual for electricians. CRAWFORD said that after a few days, he was told to report to Building 15, where he found KEENE with KAMINSKY. They wanted to know if CRAWFORD could get a ride home since he had to come to work with KEENE. CRAWFORD said he told them that he could get a ride with someone else. CRAWFORD related that he asked KEENE what was wrong, and KEENE said he would tell him later. He said he saw a pink slip in KEENE's hand so he assumed he was being terminated. CRAWFORD said he later learned that KEENE had failed the FFD drug test.

According to CRAWFORD, it was common knowledge that KEENE was a whistle-blower and they were out to get him. He said everybody he talked with at the site said KEENE was a good electrician. CRAWFORD stated that he was asked by many people what happened to KEENE. It soon became common knowledge that KEENE had failed the FFD test.

CRAWFORD concluded by stating that he did not think KEENE would fail the FFD drug test because he had passed a test in late May and knew he would be tested when he came to work. CRAWFORD said it was very odd.

CRAWFORD was not at STP when KEENE was terminated in March 1994 and had no first hand information about him raising some concerns.

Interview of CRENSHAW (Exhibit 17)

On October 26, 1994, CRENSHAW was interviewed and stated substantially as follows:

CRENSHAW stated that she first observed KEENE in the hallway of Building 15 in the presence of CRAWFORD, JOHNSON, and DAVIS. CRENSHAW said she could not recall the exact date, but did recall the circumstances. CRENSHAW said at the time, DAVIS was her supervisor. She said she was asked by DAVIS to take CRAWFORD to her office and help him process in. CRENSHAW stated that she immediately smelled alcohol on CRAWFORD, and she asked him if he had been drinking, to which he replied "no." She related that she did not see any other signs of impairment, walking funny, slurred words, etc. CRENSHAW said when she asked KEENE if he had been drinking, he told her that he had a few beers or something like that. She said because KEENE said he had some beer to drink, she told him he would have to go outside and wait for CRAWFORD, which he [KEENE] did. CRENSHAW said KEENE caused no trouble and left the building. She said that after a few minutes, she went to see DAVIS and told him about KEENE. CRENSHAW stated that she believed the Continued Behavior Observation Program at STP required her to do so. CRENSHAW could not recall whether the program applied to visitors, but she felt she was required to inform DAVIS. She said DAVIS's only comment was that he appreciated the information. CRENSHAW stated that she did not see KEENE the rest of the day and did not know what happened to him until she was told the next day. She said that later in the day, CRAWFORD returned looking for KEENE because he [CRAWFORD] could not find him. CRENSHAW said if KEENE was a regular employee, they would have called FFD and taken him there for "show cause" testing. When asked if either KEENE or CRAWFORD were wearing visitor's badges, she replied, "no." She stated that the STP procedure required they have badges and someone should have taken them to central processing, but this did not occur. However, because KEENE was a visitor, she was not sure what was supposed to be done. She indicated that KEENE had been to STP before, and she felt that he was aware of the rules. For this reason, she did not make a big issue of it and sent him to his truck to wait.

When asked if she ever recalled a similar situation, CRENSHAW said that she remembered an incident that had occurred in 1992 or 1993. CRENSHAW related that a carpenter showed up at her office to fill out the paperwork required to work at STP. She said she smelled booze on him and asked if he had been drinking. When he replied "yes" that he had a beer at lunch, she told him about the FFD rule at STP and gave him a copy of the rule to read. She said she called Larry GEORGE, her site manager at the time, who told her to get him off the site because they would not be hiring him. She told the man to leave, which he did. To her recollection, the individual never returned to the site. CRENSHAW stated the individual was not subjected to drug/alcohol testing prior

to his departure. She said that she had been working at STP for about 15 years, and this was the only other instance she recalled where a visitor was asked to leave because of alcohol.

When asked about KEENE's termination, she said there were rumors about his attitude. CRENSHAW said KEENE was extremely nice to her and never caused her any problems. She said she did not give the visitor badge issue much thought because KEENE had been at STP on many occasions and in her view, knew the rules. CRENSHAW said that both she and DAVIS were aware that KEENE had been scheduled to return to STP in the first part of June. When asked if DAVIS did not want KEENE working for EBASCO, she replied, "Yes, in my personal opinion, he and several others."

CRENSHAW said she did not know that visitors were subject to "for cause" testing. However, she believed she handled the situation correctly by referring the matter to DAVIS. CRENSHAW said she was not aware of any concerns filed by KEENE. She also said this would have little to do with someone being selected for a reduction in force which she said is decided by the foreman and general foreman on each shift. CRENSHAW said the selection is usually based on performance and absenteeism. She did not know why KEENE was released in March 1994.

CRENSHAW concluded by stating she was aware there have been various other instances of "show cause" testing for regular employees, but only the two she mentioned involved a visitor.

#### Interview of HARDWICK (Exhibit 18)

On October 26, 1994, HARDWICK was interviewed and stated substantially as follows:

HARDWICK stated that on May 24, 1994, he was asked by DAVIS to accompany him [DAVIS] to the STP parking lot. HARDWICK said that DAVIS told him one of his [DAVIS] clerical employees had smelled alcohol on the breath of an EBASCO employee who had been sent to the parking lot. HARDWICK related that it was his understanding the person was not yet assigned to the field, but was hired by EBASCO. HARDWICK said he did not know the individual was only a visitor at STP.

HARDWICK said he and DAVIS confronted KEENE, and he [KEENE] agreed to take a breath test. HARDWICK said he gave DAVIS the keys to the company truck and returned to his office and called the FFD office to inform them that DAVIS and KEENE were coming. HARDWICK said he had no further involvement in the situation.

HARDWICK said, in June 1994, he received a letter from KEENE's attorney concerning a document falsification issue. HARDWICK said that prior to the May 24, 1994, issue with KEENE, he had reviewed a concern about document falsification and did not find any evidence of wrongdoing. HARDWICK said that when he received the letter, he connected the concern with KEENE. HARDWICK indicated that any time they "turned around" [refused to hire] an employee sent to STP by the union, he reviewed the documentation. HARDWICK said he never saw any documents like this relating to KEENE. HARDWICK said that



conversations about the "turn around" of KEENE may have taken place, but he was not party to them. He said conversation about "turning around someone" was not uncommon, but the actual process was rare.

HARDWICK said, in June 1994, when he was notified that KEENE'S access was going to be revoked, he directed KAMINSKY to ensure that KEENE was properly out processed.

#### Interview of McCLARY (Exhibit 19)

On October 26, 1994, Linda McCLARY was interviewed and stated substantially as follows:

McCLARY stated that she has been employed in STP's FFD program since June 1986 and is currently supervisor for the HL&P Access Screening Department. McCLARY said she was aware of the "for cause" testing procedures under the FFD because she was on call for the process. McCLARY explained that the STP FFD program, which HL&P initiated on January 1, 1986, applied to any visitor in the owner controlled area.

McCLARY said she could recall only one other incident where a visitor to STP was considered for the FFD "for cause" testing. She said in 1986 or 1987 a Xerox representative smelled of alcohol and was requested to take the test. She said he refused and was barred from STP for 3 years. McCLARY said the STP FFD required an employee smelling alcohol on another individual to report it to their supervisor. She said under the STP FFD rule, it was not acceptable to ask the individual to leave STP.

McCLARY said she recalled that DAVIS called her on May 24, 1994, and asked if there was a requirement that a visitor to STP smelling of alcohol be subjected to "for cause" testing. McCLARY said this was the first time DAVIS ever called and asked any questions about the FFD program. However, she said it was not unusual for her to receive this type of call. McCLARY said she could not recall the specifics of the conversation with DAVIS or if DAVIS mentioned the name of the visitor. McCLARY said the conversation lasted 1 or 2 minutes, and she had no contact with DAVIS or KEENE on that day. She said she told DAVIS that visitors are subject to "for cause" testing. McCLARY said before she went to work for HL&P, she worked for Ebasco, and DAVIS was her supervisor.

McCLARY said she met KEENE in June 1994, the day that HL&P determined he tested positive for his FFD test. McCLARY said she advised KEENE of his appeal rights and the right to request the test results after he met with HEFNER. McCLARY said she did not recall if he protested the results of the test, but he thanked her for the information.

#### Interview of RODRIGUEZ (Exhibit 20)

On October 25, 1994, RODRIGUEZ was interviewed and stated substantially as follows:

RODRIGUEZ said he has been a laboratory assistant in the FFD program at STP since 1988. He said he conducts the majority of tests for HL&P. RODRIGUEZ said he recalled KEENE being brought to his facility by DAVIS on May 24, 1994. RODRIGUEZ related that HINSON, his supervisor, gave him permission to test KEENE after KEENE and DAVIS had spoken with him [HINSON]. RODRIGUEZ said it was very unusual to test a visitor. He said he could only recall this happening once before, and he could not recall the circumstances or specifics of that test.

RODRIGUEZ said KEENE took and passed the breathalyzer test. He said KEENE then wanted to leave without taking the urinalysis test for drugs. RODRIGUEZ said he told HINSON about this, and HINSON met with KEENE about the issue. RODRIGUEZ said, after his discussion with HINSON, KEENE agreed to take the test, which he also passed.

#### Interview of McCLURE (Exhibit 21)

On October 26, 1994, McCLURE was interviewed and stated substantially as follows:

McCLURE stated that he has known KEENE for more than 10-15 years. He said he was not KEENE's supervisor, was not involved with his termination or drug test, and denied knowledge of these issues. McCLURE further denied telling RILEY that SCIBA would try to stop KEENE from coming to work at STP. He also denied talking to RILEY about KEENE failing the drug test in June 1994. McCLURE said that visitor badges at STP were not enforced. In addition, he was not sure if visitors were subject to the FFD rule unless they exhibited some unusual behavior. McCLURE said there were almost no restrictions on people driving onto STP, and he did not think someone coming to the site [i.e., wife picking up her husband] needed to be badged. He concluded by stating that SCIBA had asked to be laid off, and he took his place as general foreman. He had no idea why SCIBA requested to be laid off.

AGENT'S NOTE: McCLURE displayed an uncooperative attitude throughout the course of the interview.

#### Interview of KAMINSKY (Exhibit 22)

On October 26, 1994, KAMINSKY was interviewed and stated substantially as follows:

KAMINSKY was interviewed concerning his knowledge of KEENE'S allegations. KAMINSKY stated that he has known KEENE for a while and has been his supervisor on two or three occasions. He said that KEENE has the qualifications needed for the job, but there have been some problems with KEENE regarding his "attitude and absenteeism." KAMINSKY was unable to explain the specific problems he had regarding KEENE's absenteeism other than on occasion KEENE did not come to work.

As for the attitude issue, KAMINSKY stated that he did not have a personal problem with KEENE, but some of his direct supervisors, foreman, general foreman, and fellow craftsmen have voiced displeasure in working with KEENE.

When asked to be specific about who had these problems, KAMINSKY said he "couldn't do that" and did not recall any names. He said concerns have been brought to his attention about people not wanting to work with KEENE, and these were primarily personality conflicts. Again, he did not furnish any specifics. KAMINSKY was shown two Ebasco Employee Evaluations dated March 1, 1991, and August 3, 1992, in which he evaluated KEENE's performance (Exhibits 23 & 24).

AGENT'S NOTE: These evaluations, cover six categories: skill, cooperation, attendance, physical fitness, personal habits, and safety attitude. There are three ratings: good, fair, and bad. In each of these evaluations, KAMINSKY rated KEENE "good" in each category which is the best rating.

KAMINSKY said he completed both of the evaluations, and his signature appeared on the evaluations. KAMINSKY merely commented on the evaluations and did not give any specifics regarding these evaluations. KAMINSKY was then asked about an evaluation by SCIBA dated March 25, 1994 (Exhibit 25). On this evaluation, SCIBA rated KEENE "good" in the skill and physical fitness category and "fair" in the other four categories. When asked if he had discussed KEENE's performance with SCIBA, KAMINSKY said "yes." He said he could not speak for SCIBA, but he did not think SCIBA was completely satisfied with KEENE's performance. The only specifics KAMINSKY had regarding his discussion with SCIBA, about KEENE's performance, was KEENE's attitude and attendance. He could not recall any discussion with SCIBA about KEENE raising a safety concern.

When asked about a falsification concern raised by KEENE, KAMINSKY stated that KEENE did raise some concerns to SCIBA, but not directly to him [KAMINSKY], about signing off on work packages. He said he did not remember exactly what SCIBA told him about this concern, but he [KAMINSKY] said the concerns were investigated. When asked if SCIBA was upset with KEENE for bringing the concern forward, he replied "no." When asked if he had any knowledge of DAVIS having any problems with KEENE, again he answered "no." KAMINSKY could not recall exactly when he became aware of KEENE's concerns.

During the interview, the concern KEENE expressed, about signing off on a work package as the performer when he did not perform the work, was described to KAMINSKY. He said this was an unacceptable way of doing work. KAMINSKY stated this allegation came to his attention as the result of an investigation by HEAD or DAVIS. KAMINSKY said he did not know the status of the investigation. KAMINSKY related that he did not know anything about the incident where KEENE, while visiting STP, was asked to take an alcohol and drug test. KAMINSKY said he was familiar with the STP FFD rule, but was not sure how it applied to visitors. He stated that he believed "badged visitors" were subject to the FFD program. However, KAMINSKY, did not believe that a person just visiting the site was subject to the FFD rule.

AGENT'S NOTE: Subsequent to the initial interview of KAMINSKY, information was developed from DAVIS indicating that an attempt was made by KAMINSKY to stop KEENE from returning to work for Ebasco in June 1994. As a result, a reinterview was conducted.

Reinterview of KAMINSKY (Exhibit 26)

On October 27, 1994, KAMINSKY was reinterviewed and stated substantially as follows:

KAMINSKY stated, as an Ebasco superintendent, he had the right to hire or fire any employee without discretion and could also deny or refuse to hire a person. KAMINSKY said when an individual came to the job site, they could be denied the right to employment and be "turned around" for no reason. He said he had exercised this right on two or three occasions since he became superintendent in April 1991. KAMINSKY said these "turn arounds" were documented and resulted from performance and attitude problems. KAMINSKY stated that justification for this process was a poor employee evaluation or similar written comments.

KAMINSKY said DAVIS usually called him from the union hall and provided him with information regarding who was being employed by Ebasco. KAMINSKY stated that about six times in the past, he has told DAVIS on the telephone that he did not want a specific person. KAMINSKY said he did this with KEENE, in May 1994, when he was told that KEENE was coming back to STP in June 1994. KAMINSKY said DAVIS told him he would talk the matter over with him when he [DAVIS] returned to STP. KAMINSKY said DAVIS, upon his return from the union hall, reviewed KEENE's employment evaluation sheets and told him [KAMINSKY] there was not an adequate reason to deny KEENE's employment.

AGENT'S NOTE: This occurred prior to KEENE being subjected to an FFD test on May 24, 1996, while a visitor at STP.

KAMINSKY said he had worked with KEENE several times in the past as a general foreman, craft supervisor, and lead supervisor, and that KEENE had an attitude problem. He said KEENE argued about directions and whether he should be assigned certain tasks and was frequently late, absent, or left early. KAMINSKY related that KEENE was rebellious, did not readily accept directions, and argued about things such as why he had to do certain jobs. He said KEENE's work was sufficient. KAMINSKY stated there were some individuals who were hesitant to work with KEENE, but he could not recall names or specific facts.

KAMINSKY stated that his evaluations of KEENE did not reflect any derogatory information. He said he improperly filled out KEENE's evaluation because he had not been properly trained and did not realize their importance. KAMINSKY said as a result of this, he had to accept KEENE at STP in June 1994, but if he had properly evaluated KEENE, refusing to accept him would not have been a problem.

KAMINSKY said he talked with SCIBA about KEENE, and SCIBA told him he [SCIBA] was concerned about KEENE's absenteeism and the reluctance of other people to work with KEENE. KAMINSKY was not able to relate any specific negative events that involved SCIBA and KEENE.

KAMINSKY said that SCIBA told him he did not want KEENE back at STP, and this occurred prior to KEENE's layoff on March 24, 1994. KAMINSKY stated this



contributed to his [KAMINSKY] decision that he did not want KEENE back at STP in June 1994.

AGENT'S NOTE: SCIBA was the individual who placed KEENE's name on the layoff notice for March 24, 1994.

KAMINSKY recalled telling DAVIS that he wished he had evaluated KEENE differently in the past. KAMINSKY stated he did not believe he had a personality conflict with KEENE. KAMINSKY said that shortly after KEENE left STP, in March 1994, he became aware that KEENE had raised a safety concern about possible document falsification. KAMINSKY said he never discussed this issue with KEENE and this did not enter into his desire to deny KEENE employment at STP. After his meeting with DAVIS, he met with his five foremen and discussed preparation of the employee evaluations.

AGENT'S NOTE: Noteworthy is the difference in KAMINSKY'S recollection of events between his interview on October 26, 1994, and October 27, 1994. It would appear that sometime between the two interviews, KAMINSKY became aware of the information provided by DAVIS on the afternoon of October 26, 1994, concerning his discussion with DAVIS regarding KEENE's return to STP in June 1994.

#### Interview of HINSON (Exhibit 27)

On October 25, 1994, HINSON was interviewed and stated substantially as follows:

HINSON stated that he is the access authorization manager for STP and manages the day-to-day operation of the Access Authorization Program. HINSON said this included the FFD access screening program as well as the ECP. HINSON related that the ECP investigates Section 210/211 allegations, allegations of wrongdoing, employee misconduct, and industrial security issues. He said he has occupied this position since April 1992 and that the FFD program, at STP, began in 1986 or 1987. HINSON said he knew KEENE and first got involved with him when DAVIS called regarding a possible "for cause" test. According to HINSON, DAVIS told him he had a visitor at STP and that one of his clerical staff had detected the odor of alcohol on the individual and when asked, the individual admitted he had been drinking. HINSON said DAVIS asked if a "for cause" test was within the FFD policy, and he [HINSON] told DAVIS yes.

AGENT'S NOTE: This is somewhat in conflict with the testimony of DAVIS, who stated that he tried to call HINSON, but was not successful in contacting him.

HINSON said a short time later, DAVIS arrived at his office with KEENE. HINSON stated DAVIS filled out the necessary paperwork for a "show cause" test, signed the request, and it was used as a basis for testing KEENE. HINSON related that for the year, through September 1994, there had been 6 cases of "for cause" testing out of about 3,000 employees at STP. He said he could tell if they were current employees. HINSON said to him "a 'for cause' test is a 'for cause' test, and they were all people on the project."

HINSON said he explained the FFD procedure to KEENE and the only issue that arose was that he [KEENE] had just been to the rest room and would need some time before he could give a urine sample. He related that KEENE was not argumentative or upset by the process. When asked if KEENE's status as a visitor was unusual, HINSON said he could not remember any other "for cause" test being administered to a visitor. HINSON said KEENE passed the breathalyzer test and had he failed it, he [KEENE] would have been denied access to STP for 3 years. HINSON's definition of a visitor is a noncovered employee who is inside the controlled area. HINSON said this included the entire 10,000 acres at STP less the protected area. HINSON stated that there is no sign at the entry to the project which gives this level of detail. He said the sign on the north side of STP says alcohol, explosives and firearms are prohibited at STP. HINSON maintained that anyone at STP that showed signs of use of alcohol and was reported by a supervisor or manager, was subject to "show cause" testing, and if he failed, he was denied access to STP for 3 years. HINSON related that the vast majority of testing is done for preemployment and reiterated that KEENE is the only visitor that he knows of that was subjected to "for cause" testing.

HINSON said that after KEENE completed his testing, he left with DAVIS. HINSON stated he did not know KEENE personally, but in checking his record, he determined he had been in and out of STP several times. He said although he is in charge of the STP ECP program, he was unaware of any concern filed by KEENE. HINSON was asked if the "for cause" test counted for unescorted access to the site. He said the regulations say that a person must have passed the test within 60 days of being granted unescorted access and that in the case of KEENE, there may have been a clerical oversight.

AGENT'S NOTE: HINSON had a difficult time explaining how KEENE's "for cause" test got lost in all the paperwork and why he still should have taken the test for preemployment.

HINSON said when an individual failed a test, part of the specimen was retained by the testing laboratory in case of an appeal. HINSON said that KEENE's lawyer asked that the sample be sent to the Dallas Crime Lab but that laboratory was not an NIDA laboratory, so STP did not approve the request.

HINSON stated that when KEENE was brought into the FFD center for testing on May 24, 1994, they did not check his previous test record at STP. He said he could not recall DAVIS telling him that KEENE had worked at STP in the past or that he would be coming back to STP in June 1994. When asked about what constituted a visitor and the FFD procedure calling for testing of "badged visitors," HINSON had a difficult time explaining how not getting a visitor's badge was a violation of the site access procedure. HINSON defined "shall" as requiring you do something and "should" as optional. It was pointed out to HINSON that the site access procedure says all visitors "should" check into the visitor's access point. HINSON said if KEENE was not wearing a visitor's badge someone at Ebasco should have taken him to get a badge. Although he could not say who at Ebasco was responsible, he guessed it would have been DAVIS whose job, in part, handled the processing of incoming workers for Ebasco. HINSON said he did not recall if KEENE was wearing a visitor's badge, but in his mind, it did not make any difference.

HINSON said if KEENE had failed the alcohol test, he would have had DAVIS escort him off the site and notified the security department that he had failed the test and to deny him access to STP. HINSON said he is aware that KEENE submitted some concerns to ECP after he failed the drug test in June 1994, but does not know the content of the concerns. HINSON gave an explanation of the limits allowable in drug testing and basically what is an unacceptable level. In addition, HINSON went over the documentation and how the system works.

AGENT'S NOTE: On October 25, 1995, a review was conducted of the documents associated with KEENE'S testing on June 2, 1994. These documents were reviewed by OI, and there did not appear to be any discrepancies, and the procedures for completing KEENE'S testing appeared to have been properly handled.

#### Interview of SCIBA (Exhibit 28)

On November 8, 1994, SCIBA was interviewed and stated substantially as follows:

SCIBA stated that he has been working at STP for Ebasco since 1990 and for about 4 1/2 years has been a general foreman. He said he knows KEENE and that KEENE worked for him two or three times. SCIBA said he believes that KEENE was part of the initial group that he [SCIBA] came to STP with in 1990. He stated, at that time, they both worked for KAMINSKY. SCIBA said their relationship over the years was strictly work and that he never socialized with KEENE. He related that KEENE was an average electrician, and he had no problems with his work. SCIBA said he did not know KEENE well enough to have any personality conflicts with him. He indicated that in March 1994, DOUGLAS brought KEENE to him regarding electrical wiring taping. SCIBA said he contacted engineering and was told how and why they did the taping. As far as he knew, this was the only thing that KEENE brought to his attention.

SCIBA said about a week after KEENE had been laid off, in March 1994, JOHNSON told him about a falsification issue raised by KEENE. SCIBA stated that KEENE alleged there was a records falsification. He said, after KEENE was laid off, everybody talked about the issue. SCIBA said there were rumors, and people questioned him about the way they signed the documents. SCIBA was asked if he had any discussion after KEENE was laid off about not bringing him back to STP. He replied "as far as discussing it with anyone, I don't recall discussing it with anyone."

SCIBA then stated that he did ask KAMINSKY about it and was told that KEENE was coming back to STP. He said he asked about KEENE specifically because he [SCIBA] was upset that he had been accused of falsifying records. SCIBA said KEENE did not accuse him personally, but he accused the foremen, and they were upset about it also. SCIBA claimed not to know much about the issue other than, that KEENE alleged that the foremen falsified documents.

SCIBA stated that KEENE also raised an issue about electricians not being qualified to do electrical cable terminations and still performing the work. He said a lot of electricians were not qualified to do the electrical cable terminations, so when they did a termination, a qualified electrician checked



it and then signed off on the package. SCIBA said KEENE was qualified to do this work. He stated they had brought a lot of electricians in to start a new job, but the job did not come through, so in March, they had to lay off some of them. SCIBA said he identified four or five individuals who were to be laid off, including KEENE. He stated that JOHNSON or KAMINSKY would call, tell him he needed to lay off a certain number of people, and ask for names of people to be laid off. SCIBA said he picked them based on attendance, skill, attitude, personal habits, and physical fitness. SCIBA said he was generally not questioned about who or why he selected someone to be laid off. He stated if one of his bosses asked why, he would tell him. SCIBA indicated that he laid off a lot of people, 100 or so, during his time at STP and sometimes wished somebody else did it because it made him look like the bad guy. He said this is one of the reasons he left STP. SCIBA said when they laid off a person, an Ebasco Employee Evaluation was completed.

He was shown an Ebasco Employee Evaluation (Exhibit 24) that he completed on KEENE for the March 24, 1994, lay-off. He was also shown two other Ebasco Employee Evaluations prepared by other individuals for KEENE during his previous employment at STP. He said the signature on the evaluation for the March 24, 1994, lay off was his, and he discussed how he rated KEENE. SCIBA also reviewed the previous evaluations given to KEENE. After reviewing the documents in which KEENE was given the best rating by all the other individuals, SCIBA said "he [KEENE] is a good electrician; and he can weld too."

AGENT'S NOTE: This differs from SCIBA's earlier statement where he characterized KEENE as an "average electrician."

SCIBA said he did not think that KEENE's work as an electrician had deteriorated over the years, but he did have an absenteeism problem. SCIBA stated that he did not consult with anyone prior to completing KEENE's evaluation, but sometimes a foreman has come to him about a problem with a particular person. He said sometimes, while a person is at STP, he does a great job, and the next time he does not do as well. He said he might have a personal problem that affects his work. SCIBA again was asked if KEENE's performance had deteriorated over the years and replied "no." He said his evaluation pretty well fit KEENE except he might have rated him a bit low on safety attitude. He reiterated that he did not get any input from others when completing KEENE's evaluation. He said DOUGLAS was upset about KEENE's falsification concern, but this was after KEENE was laid off. SCIBA said he did not rate anyone until about a year and a half ago. It was pointed out to him that KEENE's rating was "fair" versus "good" on his other evaluations. SCIBA was asked how many people he rated "fair" or "poor," and he said about 1 in 10. He said he indicated KEENE was eligible for rehire, and he had never checked the ineligible block for any of the individuals laid off at STP.

When asked if Ebasco could refuse to hire an individual at STP, SCIBA replied, "they can." SCIBA said he believed it happened on one occasion. He said he did not have the right to do it, and it would take someone in management or supervision. SCIBA said he is never told in advance who is coming to work at STP, but he gets a list just before they get there.

SCIBA stated he was told by KAMINSKY that some people were going to be hired and brought back to STP and that KEENE would be brought back in May or June 1994. SCIBA stated he could not recall, but did not believe he told KAMINSKY that he [SCIBA] did not want KEENE at STP. SCIBA said that when KEENE arrived, he had a hard time getting his badge, so he stayed in a building outside the protected area for some time. He related that KEENE was laid off and security would have to explain the reasons.

He said he did discuss JOHNSON's investigation into KEENE's concerns with JOHNSON. SCIBA said the matter was confusing, and he was upset that KEENE had not come to him with the problem. He said he talks with KAMINSKY about a lot of work related problems, but does not recall specifically talking about problems related to KEENE.

SCIBA reiterated that other than the taping issue, KEENE never raised a problem with him prior to being laid off in March 1994. He also reiterated that it would be difficult to deny anyone reemployment at STP, and if it occurred, it would have to be done by someone higher in the organization than him. He said he did not recall if he ever told KAMINSKY or DAVIS that he did not want KEENE back at STP, but he could have said it. He stated that a lot of people were upset about the investigation and the fact that KEENE reported this without going through the channels. SCIBA said it was not a question that he did not want KEENE back at STP, but whether Ebasco wanted him back. SCIBA said that KEENE was not denied employment and returned to work at STP. When asked specifically if anyone had told him that they did not want KEENE back at STP, he replied all of his foremen said they would rather not have him back.

According to SCIBA, they were all upset about the investigation. He said DOUGLAS asked to be laid off and was nervous about the investigation. SCIBA said DOUGLAS also had some personal problems. He indicated that everyone was trying to get the job done right and had done a good job. SCIBA related they had been complimented for doing a good job and then this [investigation] happened. He said the foremen felt they were being abused. SCIBA discussed at length KEENE's taping concern and how everybody was upset about how the issue was handled.

SCIBA was asked if he was ever told by anyone that, if given the chance, they would keep KEENE from coming back to STP. SCIBA stated that JOHNSON said KEENE would never come back to STP. He stated he thought JOHNSON was trying to make him [SCIBA] happy because he told JOHNSON that everyone was upset about the investigations. SCIBA said he did not know why KEENE was denied access to STP in June 1994. He said he had nothing to do with KEENE's departure, whether he was laid off, fired, or quit.

AGENT'S NOTE: From the testimony of the other Ebasco employees interviewed during the investigation, it is very difficult to believe that SCIBA did not know KEENE was denied access to STP for failing the FFD test. According to information obtained by OI the fact that KEENE had failed his drug test was common knowledge.

SCIBA stated that he had no specific knowledge of KEENE being given a "for cause" FFD test in May 1994, although he heard that rumor. SCIBA said as a result of KEENE's complaint, he was interviewed by DOL and provided them with a sworn statement.

#### Interview of DAVIS (Exhibit 29)

On October 26, 1995, DAVIS was interviewed and stated substantially as follows:

DAVIS stated that he has worked for Ebasco since 1979 and has been at STP since January 1983. He said in April 1983, he started working in labor relations, and in August 1984, he became Ebasco's labor relations representative for various sites in the area of Houston, Texas. He said his job at STP is to administer, negotiate, and interact with local and national craft organizations and other organizations that have collective bargaining agreements with Ebasco. DAVIS said in 1987, he started getting involved with access screening, wrongful discharges, workmen's compensation, and employment discrimination issues [Section 210]. He said he was the access screening director for Ebasco at STP until August 1994 when he left the site. He said he has known KEENE for some time but is more familiar with his wife and attorney, Timothy SLOAN. DAVIS said SLOAN's sister, Susie PHILIPS, is an Ebasco employee and used to work at STP.

All the issues raised by KEENE were described to DAVIS by OI, and he was asked to explain his knowledge of each concern including the issue that KEENE was asked to sign-off as the performer of work completed by RENFRO. DAVIS said he was familiar with the issue, but became aware of it at least 1 day after KEENE was laid off in March 1994. DAVIS stated that he learned about the concern when TEAGUE asked about it. He said the incident was looked into by HEAD and various other individuals. DAVIS said this was the extent of knowledge of this concern.

DAVIS said he knew RILEY. DAVIS stated he met with TEAGUE and RILEY to talk about RILEY's responsibilities as a local 66 steward versus a GPPMA steward. He related they only asked him to encourage an individual with concerns to go to their respective stewards with the concerns. According to DAVIS, KEENE went to RILEY, and he [RILEY] was not his union steward. DAVIS stated that, as a contract issue, Ebasco would prefer that an employee deal within the guidelines of their contract. DAVIS said Ebasco merely encourages this, but employees can take their concerns wherever they choose, including to the NRC. DAVIS said that at the start of the meeting, RILEY might have perceived it as confrontational, but as the meeting progressed, and he explained his position, things improved. DAVIS said in his view, this was not a confrontational session. He said that as a result of the meeting, KEENE's falsification issues were addressed by either HEAD or JOHNSON. DAVIS stated that he thought the issue was resolved.

DAVIS said when KEENE was selected for lay-off in March 1994, he [KEENE] asked him [DAVIS] if he could go to the FFD facility on the night before the lay-off and process out. KEENE said he had found new employment in Austin, Texas, the following day. DAVIS said he allowed KEENE to go through the FFD

process early, and he [DAVIS] caught some heat for doing so. DAVIS said he had nothing to do with the lay-off, but KEENE seemed extremely interested in his new employment in Austin. He stated that he had the feeling that KEENE was not coming back so he asked KEENE if he had any problems, but KEENE did not respond.

He reiterated that he had known KEENE for some time and had socialized with KIMBLE and SLOAN even before they were married. When asked how he found out about the records falsification, he said he was told by TEAGUE that a records falsification issue had been raised by an electrician, but KEENE's name was not used. DAVIS indicated he was later given KEENE's name by TEAGUE. He said as an Ebasco employee, he is always concerned about records falsification issues, not only for Ebasco, but for H&P and would like the opportunity to address the concerns promptly.

AGENT'S NOTE: There is a discrepancy between the statements of DAVIS and TEAGUE regarding how they found out about KEENE's concerns. TEAGUE said he was told by DAVIS, and DAVIS said he was asked by TEAGUE to look into the matter.

DAVIS was asked to review and comment on the Ebasco Employee Evaluation forms prepared on KEENE by KAMINSKY and SCIBA. He explained his definition of good, fair, and poor. According to DAVIS, good means adequate. DAVIS was asked why KAMINSKY would make a comment about KEENE being slow talking and slow walking without annotating KEENE's Ebasco Employee Evaluation with some negative comment. He replied that when hiring someone at STP, Ebasco supervisors had the right to reject anyone for employment. He said in this case [KEENE], the evaluations were all fine except for a few "fair" marks. DAVIS said if supervisors have problems with employees, they should document them. DAVIS said KAMINSKY described KEENE as a slow talking, slow working kind of guy, who people in the field said maintained this kind of pace at work unless he was properly supervised. He said KAMINSKY complained about KEENE, not so much about the quality of his work, but KEENE's failure to take an active interest in his work.

DAVIS said he had no problems with KEENE, who came to his office periodically and talked with him. He said he had no knowledge about KEENE raising safety issues during the construction phase at STP. In addition, DAVIS said he did not know of anyone who harbored any animosity toward KEENE. He said the foreman and general foreman, in KEENE's case, DOUGLAS and SCIBA select people to be laid off. When asked about any problem between SCIBA and KEENE, DAVIS said that KAMINSKY's description of KEENE might be the result of him talking with SCIBA. He said he never talked directly with SCIBA about KEENE.

DAVIS stated a supervisor can deny employment to a rehire without any reason, but they usually had to go through either TEAGUE or himself. DAVIS said people are a valued commodity, and he has defended a number of people who had a personality clash or other issue with supervision. DAVIS said one of the individuals he defended was KEENE. He said KAMINSKY told him, after KEENE had left the site in March, that KEENE was a slow walker and slow talker and that he would prefer not to have him back if he [KAMINSKY] had a choice. DAVIS said he checked KEENE's file and found nothing that would justify denying his



rehire. He said this happened in May 1994 when KEENE took a union call for return to work in June 1994. DAVIS said there was nothing in KEENE's file disqualifying him and that the worst thing was going from "good" to "fair." DAVIS said he encouraged supervisors to make an honest evaluation. He stated that those reviewing the evaluations, like JOHNSON in the case of KEENE, have the right to discuss the evaluation with the foreman or general foreman.

DAVIS was asked to describe what happened on May 24, 1994, regarding KEENE's "for cause" FFD testing. He related that CRAWFORD had been on the STP denial of access list for a long time. DAVIS stated, at his request, STP removed CRAWFORD from this list. He indicated that he had made arrangements for CRAWFORD to visit HL&P investigators and prepare the documentation required for him to return to work at STP. This was required because individuals who had been denied access to STP were not allowed on site.

DAVIS related that he first became aware that KEENE was on site when JOHNSON brought CRAWFORD and KEENE into his area. He said "hi" and took them to see CRENSHAW, whose office was behind his [DAVIS's]. According to DAVIS, JOHNSON asked to talk with him for a minute. He said while he was talking with JOHNSON in the hallway, KEENE came by walking very slowly and headed for the parking lot. DAVIS indicated that when he returned to his office, CRENSHAW followed him and closed the door. DAVIS stated that CRENSHAW told him KEENE reeked of alcohol, and KEENE had told CRENSHAW he had a couple of beers at lunch. DAVIS said he told CRENSHAW he would address the problem. DAVIS stated he then read the STP FFD procedure about visitors. He said he interpreted a visitor as somebody who entered the protected area with an escort. DAVIS said he tried to call the FFD and talk with either BROWN or HINSON, and neither one was available. DAVIS then called McCLARY, who had been the FFD coordinator for years and was the best person to talk with other than BROWN or HINSON and explained KEENE's situation. DAVIS said McCLARY checked her procedure and told him that based on the facts provided by him, she felt KEENE was subject to the FFD rules.

DAVIS said he then called HARDWICK and explained the situation to him. He stated he went to the parking lot with HARDWICK and found KEENE standing beside his truck. He said he smelled alcohol and asked KEENE if he had been drinking. He said KEENE told him he had a couple of beers at lunch. DAVIS stated he asked KEENE if he would take a "for cause" test, and KEENE said fine, with no protest. He said he then transported KEENE to the FFD office for testing.

DAVIS related that when they arrived at the FFD center, HINSON was there, but did not appear to know why he and KEENE were there. DAVIS said he filled out the "for cause" testing request and signed it. He said KEENE signed the document and gave it to HINSON. DAVIS stated that RODRIGUEZ administered the alcohol test which KEENE passed. RODRIGUEZ informed HINSON that KEENE refused to take the drug test. HINSON then talked with KEENE explaining the test procedure and the consequences of not taking the test. DAVIS said, at that point, KEENE agreed to take the test. DAVIS said after KEENE took the test, he took KEENE back to his truck.



DAVIS was asked to define what the procedure meant by "a visitor" to STP. His definitions did not appear to cover KEENE. DAVIS stated that KEENE did not have a visitor's badge. He said the problem he had defining "a visitor" was why he called McCLARY. DAVIS stated he had been at STP for about 11 years and has never referred a visitor to the FFD center "for cause" testing. He said he had been told about one other instance regarding a visitor but the circumstances were slightly different.

DAVIS said he reported the incident to TEAGUE who had no problems with what happened. DAVIS said, in addition, he discussed this issue with WOOD, the ECP investigator looking into KEENE's complaints. DAVIS said "for cause" testing for anyone is a rare event on site. He said the testing of KEENE was not retaliatory. DAVIS also said that KEENE did not have a visitor's badge on May 24, 1994, and that it was his [DAVIS] responsibility to see that he had one. He said KEENE and CRAWFORD both should have had a visitor's badge. DAVIS maintained that, in his view, KEENE was subject to FFD testing in his status as an unbadged visitor to STP. However, DAVIS admitted that KEENE was not a badged visitor. DAVIS said his decision in the matter was based primarily on what he was told by McCLARY.

DAVIS said there is little to no real control over people coming to STP. DAVIS said he was aware that KEENE failed a drug test in June 1994 but is unaware how he found out about it. He said this information should be held close and released on a need-to-know basis. DAVIS concluded his statement by stating that he is no longer at STP because when Raytheon took over Ebasco, they consolidated the office.

#### Agent's Analysis

An agent's analysis was performed to examine those factors involved in determining if discrimination occurred.

#### 1. Protected Activity

On or about March 16, 1994, KEENE raised several concerns regarding the manner in which nonsafety related work was being performed by Ebasco personnel at STP. The first concern involved the taping of electrical cable terminations, which arose over a disagreement between KEENE and RENFRO, who were working together on the project. To resolve the issue, the matter was brought to DOUGLAS's attention, who after deciding he could not resolve the issue, brought it to SCIBA's attention. The issue was ultimately resolved to KEENE's satisfaction by Ebasco engineering.

The second concern raised by KEENE was that foremen were signing off on work packages at their desk without going to the field to check the work. KEENE brought this issue to RILEY's attention, who in turn notified JOHNSON, who investigated the concern.

The third concern raised by KEENE involved him signing off as the performer for work performed by RENFRO. It is unclear whether this issue was brought to the attention of Ebasco or the STP/ECP or both. However, ultimately, both became involved in the resolution of this

concern. It would appear that KEENE had established that he was engaged in protected activity.

2. Knowledge of KEENE's Protected Activity

Testimony by the various individuals interviewed during the investigation disclosed that several Ebasco managers were aware that KEENE had raised concerns regarding work practices by Ebasco employees at STP before KEENE's March 24, 1994, termination.

RENFRO indicated that he was involved in both the taping of electrical cable terminations concern and the refusal by KEENE to sign off as the performer on work performed by RENFRO before KEENE's March 24, 1994, termination. DOUGLAS stated that he was aware of KEENE's concern about taping the electrical cable terminations prior to KEENE being laid off on March 24, 1994, and brought this issue to SCIBA's attention.

SCIBA stated that he was aware of KEENE's concern about the taping of electrical cable terminations prior to KEENE's being laid off on March 24, 1994, and learned of the falsification allegations raised by KEENE shortly after he was laid off.

JOHNSON stated that RILEY brought KEENE's concern about foremen signing off on work without going to the field to check the work prior to KEENE's being laid off on March 24, 1994, but did not know it was KEENE that raised the issue. This was supported by RILEY's testimony. JOHNSON became aware of KEENE's identity on the day KEENE was laid off, March 24, 1994.

DAVIS and TEAGUE became aware of KEENE's concerns after KEENE had been laid off on March 24, 1994, but prior to KEENE being subjected to FFD drug and alcohol testing on May 24, 1994.

KAMINSKY became aware of KEENE's allegations after KEENE was laid off on March 24, 1994, but prior to KEENE's getting a call from his union to report to work at STP on June 2, 1994.

DAVIS was aware of KEENE's concerns shortly after KEENE was laid off on March 24, 1994, and discussed this with TEAGUE.

SCIBA, KAMINSKY, JOHNSON, and DAVIS all stated they were not aware of either the alleged falsification issue or KEENE's refusal to sign off as the performer on work performed by RENFRO prior to KEENE being laid off on March 24, 1994. This seems inconsistent with the testimony of the individual's interview by OI regarding the "rumor" mill at Ebasco. According to the testimony obtained by OI, there were only 18-20 members of the crew in which KEENE worked, and rumors about what was happening within the group were an everyday occurrence. This was most apparent on the day following KEENE's denial of access to STP for failing an FFD drug test, an issue that was supposed to remain confidential. With the exception of SCIBA, almost every individual interviewed was aware on the day he was removed from STP that he had failed the FFD drug testing.

RENFRO even announced to his crew that KEENE had been terminated for failing a drug test. It is difficult to believe that KEENE's raising of quality concerns did not get the same degree of attention, especially since KEENE was considered a problem, and he had made allegations about the way other Ebasco employees on his crew performed their work.

3. Unfavorable Action Taken Against KEENE

KEENE was terminated on March 24, 1994, exactly 1 week after surfacing the aforementioned concerns. Upon his termination, KEENE was given the lowest employee evaluation that he had received as a result of his work at STP. SCIBA was the supervisor who identified KEENE for the lay-off and the individual who completed his Ebasco Employee Evaluation.

KEENE, while visiting STP on May 24, 1994, was subjected to a "for cause" FFD alcohol and drug test. As a nonbadged visitor at STP, KEENE did not fall into the test category covered for the test by STP FFD procedure.

At an undetermined date, in May 1994, prior to KEENE's accepting a call from his union hall to start work on June 2, 1994, KAMINSKY asked DAVIS if KEENE could be stopped from coming to work at STP. According to KAMINSKY's testimony, this was based, at least in part, on SCIBA's desire that KEENE not return to STP. Only DAVIS declining to do this until he reviewed KEENE's personnel record precluded this act of discrimination.

On June 2, 1994, KEENE was required to take a preemployment FFD test. KEENE tested positive for marijuana and had his access to STP denied. Regardless of the outcome of the test, the STP procedure did not require KEENE to be retested within 60 days after the last successful test. In this case, KEENE had been tested on May 24, 1994, less than 10 days prior to this test.

4. Did the Unfavorable Action Result from KEENE Engaging in a Protected Activity

KEENE raised his concerns during the week of March 16, 1994, and he was laid off on March 24, 1994. SCIBA stated that he was aware of the concern raised by KEENE regarding taping electrical cable terminations. Although SCIBA denied knowing about KEENE's other concerns prior to submitting his name for the layoff, the close association between the workers on SCIBA's crew suggest that SCIBA was aware of KEENE's other concerns.

The testimony furnished by RENFRO, DOUGLAS, JOHNSON, RILEY, CRENSHAW, and KAMINSKY indicate that SCIBA did not like KEENE and did not want him on the site. Even the concern raised by KEENE, regarding his refusal to sign off as the performer for work performed by RENFRO, would suggest there was a shortage of certified electricians, which KEENE was, and would support keeping him on the job. In addition, the testimony obtained by OI, from the individuals interviewed during the investigation, characterized KEENE as a good electrician. SCIBA,

himself, stated that KEENE was a good electrician. For these reasons, OI believes that KEENE was laid off, at least in part, for his engaging in a protected activity.

When KEENE was laid off, on March 24, 1994, he was given an Ebasco Employee Evaluation by SCIBA. In his previous three evaluations, KEENE's rating was "good" in all categories. There were no negative comments on any of these evaluations. On the evaluation prepared by SCIBA, dated March 24, 1994, KEENE was rated "good" in Skill and Physical Fitness and only "fair" in Cooperation, Attendance, Personal Habits, Safety Attitude. During his interview, SCIBA was unable to articulate why KEENE was listed "fair" in any category except attendance. He admitted to OI that he might have rated KEENE a bit low on safety attitude.

From the testimony of RENFRO, DOUGLAS, JOHNSON, and KAMINSKY, it was clear that SCIBA did not like KEENE. Although SCIBA indicated that KEENE did not agree about how things should be done, KEENE's refusal to sign off as the performer for work he did not perform was determined to be a valid concern. In addition, KEENE's concern about taping electrical cable terminations was at least partially supported by Ebasco engineering.

What appears to be a refusal by KEENE to accept the way things were done may have been his way of ensuring that things were done right. In the view of OI, SCIBA's reason for rating KEENE "fair" are weak at best and in the view of OI, the "fair" ratings on KEENE's Ebasco Employee Evaluation were the result, at least in part, of KEENE engaging in a protected activity.

On or about May 20, 1994, KEENE received a call from his union to report back to work for Ebasco at STP on June 2, 1994. This information was conveyed telephonically to KAMINSKY by DAVIS. KAMINSKY asked DAVIS to basically deny employment to KEENE. KAMINSKY, in his first interview with OI, did not mention this discussion with DAVIS. It appeared to OI, that after his first interview, he became aware of the information provided to OI by DAVIS and during reinterview, KAMINSKY recalled discussing the issue with DAVIS. KAMINSKY said this attempt to deny KEENE employment at STP was at least partially in concert with SCIBA's desires. SCIBA told OI that he asked KAMINSKY about denying KEENE employment because he was upset over KEENE complaining about possible falsification of records on the part of a foreman. SCIBA also told OI that some of the craft people did not want to work with KEENE. DAVIS told KAMINSKY that not hiring KEENE would have to be justified and said he would check KEENE's personnel records. DAVIS stated that KEENE had good evaluations and could not be denied employment. In the view of OI, this was an attempt to deny employment to KEENE for reporting a quality concern at STP and was an act of discrimination.

On May 24, 1994, KEENE escorted CRAWFORD to STP to show him where to go to prepare the required documents for his reemployment at STP. KEENE readily admitted to CRENSHAW and later to DAVIS and



HARDWICK that, while enroute to STP, he and CRAWFORD stopped for lunch during which he [KEENE] drank some beer. When he arrived at STP, he took CRAWFORD to see DAVIS and to process for employment. KEENE and CRAWFORD met briefly with DAVIS who referred CRAWFORD to CRENSHAW for employment in processing.

CRENSHAW testified that she smelled alcohol on KEENE's breath and told him he would have to wait for CRAWFORD in the parking lot. CRENSHAW characterized KEENE's behavior as very cordial, and he left to go to the parking lot without any argument. CRENSHAW said she felt obligated to notify DAVIS about KEENE. DAVIS told OI that he was not sure exactly what to do because of KEENE's visitor's status. DAVIS said he contacted McCLARY and that KEENE did qualify for "show cause" drug testing. DAVIS stated that once he determined that KEENE qualified for drug testing, he went to the parking lot with HARDWICK. DAVIS asked KEENE and he agreed to submit to a breathalyzer test. DAVIS told KEENE that the consequence of not taking the test was denial at all nuclear plants. HARDWICK said he did not know that KEENE was merely a visitor to STP. DAVIS drove KEENE to the FFD facility where KEENE took the alcohol breath test and was then asked to take a urinalysis test. When KEENE objected, he was told by HINSON that refusal to submit to the test would result in denial of access to all nuclear sites.

Although it appears that all the proper steps were taken, OI has some concerns with the whole process. DAVIS was aware that KEENE had raised several concerns while employed with Ebasco in March 1994. DAVIS, according to RILEY, was upset because KEENE made his concern known to RILEY, a union steward for a union other than the one of which KEENE was a member. DAVIS brought this concern to TEAGUE who called RILEY into the meeting. TEAGUE admitted siding with RILEY, and DAVIS was told by TEAGUE that raising a quality concern was not a union concern. This, from RILEY's description of the meeting, did not make DAVIS happy. TEAGUE did not feel that DAVIS was upset as a result of the meeting, but did think DAVIS was concerned. DAVIS was asked by KAMINSKY to deny KEENE reemployment at STP, and DAVIS did not automatically deny the request. DAVIS said he was aware that KAMINSKY, speaking for SCIBA and some of the craft people, did not want KEENE to return to work at STP. CRENSHAW stated that DAVIS, as well as others, did not want KEENE to come back to work at STP.

KEENE admitted to CRENSHAW and DAVIS that he had a beer or two prior to coming to STP. DAVIS, in his testimony to OI, stated that the nature of his job required him to be familiar with access screening procedures and discrimination issues; however, he elected to call McCLARY, his former employee. McCLARY stated this was the first time DAVIS ever called her about an issue. McCLARY also indicated that prior to going to work for HL&P, DAVIS was her supervisor. In the view of OI, DAVIS may well have seized upon an opportunity to have KEENE tested knowing that if KEENE failed the alcohol test, he would be denied access to STP. In addition, OI was concerned with the interpretation by DAVIS and the FFD personnel that KEENE qualified for "show cause" testing. The procedure clearly stipulates that "badge visitors" were subject to FFD drug testing.



KEENE did not have a badge and therefore in the view of OI, did not meet the criteria cited for "show cause" testing.

During the entire existence of the FFD testing program at STP, only one other visitor had been required to take an FFD test, and his situation was completely different from that of KEENE. In testimony taken by OI during the investigation, most individuals interviewed stated they did not think an "unbadged visitor" to STP would meet the requirements for being subjected to an FFD drug/alcohol test.

HINSON and others argued that the sign at the entrance to STP notified visitors that they are subject to drug/alcohol testing. In the view of OI, the sign on the entrances specifies what items are prohibited on STP and notifies individuals that they are subject to search. A search could mean a search of your vehicle and may be even a search of your belongings. Using the sign at the entrance to STP as the basis for referral to the STP FFD Center for "show cause" testing is a very broad interpretation of the word "search."

Also worth noting is the fact there are no guards at the entry to STP and no sign informing visitors that they should report to Building 15 to get a visitor's badge. The individuals interviewed by OI admitted that a visitor's badge is required while at STP, but nearly all stated this requirement is not enforced.

In OI's view, DAVIS's concern over KEENE's condition could have been resolved in several other ways. KEENE could have been driven off STP by CRAWFORD. CRENSHAW asked KEENE to wait in the parking lot and that is apparently what he was doing. If DAVIS was concerned about KEENE driving at STP while intoxicated, he could have notified the local police and had KEENE escorted off STP. According to testimony to OI, the only other visitor that was referred for testing and refused testing, was directed to leave the site. HINSON said that if KEENE had failed his alcohol test, he would have been directed to leave the site. It would appear this option was open to DAVIS.

DAVIS told OI that he had known both KEENE and (REDACTED), his wife, for a long time. He said they had socialized together and based on his description, were well acquainted. Unless there was some underlying reason, it would appear to OI that DAVIS would have done whatever he could to assist KEENE. Instead, DAVIS read the STP FFD procedure and struggled over whether a visitor to STP was subject to the STP FFD "for cause" testing. DAVIS, who is the Ebasco Access Control Manager, ultimately called McCLARY to determine if KEENE, as a visitor to STP, could be referred to the FFD program for testing. 7C

It appears to OI that DAVIS's referral of KEENE to the STP FFD Center for alcohol/drug testing was not covered by the STP procedure and was, at least in part, another act of discrimination against KEENE for engaging in a protected activity.

On June 2, 1994, upon his return to work at STP, KEENE was subjected to a preemployment alcohol/drug test. KEENE was not allowed to work with the other electricians until the results of his FFD testing were received. During this waiting period, KEENE alleges that he was not given any work and when he was given work, it was as a carpenter's helper. Whether this was another attempt by Ebasco supervisors to treat KEENE unfavorably could not be determined. KEENE also alleged that his urine sample on June 2, 1994, may have been tampered with. KEENE had a drug test on May 24, 1994, which was determined to be negative. Then on June 2, 1994, he tested positive for marijuana. KEENE, after being denied access at STP, accepted employment with Ebasco at a local refinery and was again tested on June 24, 1994. This test was again negative. KEENE stated that he does not currently use drugs and has never used drugs. In his previous preemployment testing at STP, he never tested positive. A thorough review was conducted of the documentation associated with KEENE's June 2, 1994, drug testing. There did not appear to be any irregularities with the documentation or the process utilized to test KEENE. Short of some individual admitting that he tampered with KEENE's urine sample, there is no realistic way to substantiate KEENE's allegation.

What is evident, however, is that KEENE, regardless of the outcome of the June 2, 1994, drug test, was not required to be tested. The STP procedure states that an individual who has tested negative in the last 60 days is not required to be retested. Because KEENE was tested on May 24, 1994, albeit "for cause," he could have been granted access to the job site immediately upon his return to work on June 2, 1994. In the view of OI, this was another instance of KEENE being discriminated against, at least in part, for engaging in a protected activity.

#### Decision of the DOL Administrative Law Judge

A review was conducted of the DOL Administrative Law Judge findings in the KEENE discrimination filing with DOL (Exhibit 30).

On June 5-6, 1995, Administrative Law Judge, C. Richard AVERY, held a formal hearing on KEENE's complaint. As a result of the evidence provided at the hearing, AVERY concluded as follows:

1. KEENE's lay-off on March 24, 1994, as a reduction in force, was a pretext for retaliation. KEENE's termination was an adverse action taken against him as a result of his protected activity.
2. Regarding the alcohol/drug testing episode on May 24, 1994, AVERY concluded that DAVIS, on behalf of EBASCO, would have liked to discourage KEENE's return to STP. AVERY found the testing to have been retaliatory in nature and motivated by KEENE's previous protected activity.
3. AVERY found that lowering KEENE's rating on March 24, 1994, was most likely retaliatory for having engaged in a protected activity.

AGENT'S NOTE: AVERY did not address either the issue of KAMINSKY attempting to have KEENE denied employment at STP in June 1994 or the treatment of KEENE upon his return to STP in June 1994. Neither of these two issues were a part of KEENE's complaint to DOL. The OI report addresses these two issues because they surfaced while investigating KEENE's original allegations of discrimination.

### Conclusions

Based on the testimonial and documentary evidence developed during the investigation, it is concluded that KEENE was subjected to the following listed acts of discrimination as a result of engaging in a protected activity:

1. KEENE was laid off on March 24, 1994, after raising a concern over the taping of cable terminations. KEENE was identified for the lay off by SCIBA.
2. KEENE was given an Ebasco Employee Evaluation by SCIBA after being laid off on March 24, 1994, that was not supported by his work performance.
3. KAMINSKY, with the support of SCIBA, attempted to deny KEENE employment at STP in June 1994.
4. KEENE was subjected to a "for cause" FFD alcohol and drug testing on May 24, 1994, as a visitor at STP. The procedure refers to "badged visitors" being subject to FFD testing, and KEENE was not a "badged visitor" at the time. KEENE was referred to the FFD testing by DAVIS.
5. KEENE was subjected to a second FFD alcohol and drug test on June 2, 1994, just 8 days after his previous test. The STP procedure states that alcohol and drug testing is not required if the individual has been tested in the previous 60 days. KEENE was referred for this testing by Ebasco.

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## SUPPLEMENTAL INFORMATION

On December 21, 1995, William P. SELLERS, Esq., Senior Legal Advisor for Regulatory Enforcement, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice, Washington, D.C. 20001, was apprised of the results of the investigation. Mr. SELLERS advised that, in his view, the case did not warrant prosecution and rendered an oral declination.

On August 7, 1995, Billie GARDE, an attorney with Hardy & Johns, Houston, Texas, who represented KEENE during his DOL hearing, contacted OI:RIV regarding testimony obtained during the DOL hearing that KEENE's former supervisor at STP admitted that he had performed hundreds of electrical cable terminations when he was not qualified to do so. According to GARDE, someone else signed for him as the performer.

As a result of GARDE's concerns, OI:HQ obtained a copy of the entire transcript of the DOL Administrative Law Judge (ALJ) hearing regarding KEENE's discrimination by Ebasco at STP. A thorough review of the transcript disclosed that RENFRO, who was not KEENE's supervisor at STP but a fellow electrician, admitted that he performed electrical cable terminations. RENFRO admitted that he was not qualified to do them and had a qualified electrician sign off for him as the performer.

During the OI investigation, RENFRO made this same admission to OI. According to RENFRO, he was working under what he described as the "work supervision" program which allowed this practice. As a result of KEENE's raising this concern, the issue was investigated by OI, Ebasco, and HL&P. JOHNSON, TEAGUE, and KAMINSKY all testified to OI that if KEENE was signing off as the performer for work he did not perform, it was a violation of the procedure and unacceptable. KEENE's allegation resulted in this practice being determined to be unacceptable and was discontinued.

The electrical cable termination work was being performed on a nonsafety related system and resulted from a shortage of qualified electricians working on the system and a lack of understanding of the station procedure covering the work. This was addressed in the Allegation Review Team's report.

In the view of OI, this lack of qualified electricians [KEENE was qualified] had a significant bearing on OI's conclusion that KEENE's termination on March 24, 1994, was an act of discrimination for his raising the aforementioned concern. The transcript of the ALJ is not an exhibit to the report but is being retained in OI:RIV and is available for review.



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## LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Report, dated October 3, 1994.
2	Affidavit of KEENE, dated June 7, 1994.
3	Affidavit of KEENE, dated June 13, 1994.
4	Transcript of Interview with KEENE, dated July 12, 1994.
5	Copy of Letter to Daniel D. Murphy from GUTTERMAN, dated December 7, 1994.
6	Copy of Station Procedure OPGP09-ZA-002, Rev. 0, dated July 1, 1993.
7	Copy of Station Procedure OHRPOI-ZA-003, Rev. 2, dated April 25, 1994.
8	Affidavit of RILEY, dated June 10, 1994.
9	Affidavit of RILEY, dated June 14, 1994.
10	Transcript of Interview with RENFRO, dated October 26, 1994.
11	Transcript of Interview with DOUGLAS, dated October 26, 1994.
12	Transcript of Interview with JOHNSON, dated October 26, 1994.
13	Transcript of Interview with TEAGUE, dated October 26, 1994.
14	South Texas Project Electric Generating Station, Station Problem Report, dated December 15, 1994.
15	Transcript of Reinterview with TEAGUE, dated October 26, 1994.
16	Transcript of Interview with CRAWFORD, dated July 12, 1994.
17	Transcript of Interview with CRENSHAW, dated October 10, 1994.
18	Report of Interview with HARDWICK, dated November 18, 1994.
19	Report of Interview with McCLARY, dated October 26, 1994.
20	Report of Interview with RODRIGUEZ, dated October 25, 1994.
21	Transcript of Interview with McCLURE, dated October 26, 1994.

- 22 Transcript of Interview with KAMINSKY, dated October 26, 1994.
- 23 Employee Termination/Evaluation of KEENE by KAMINSKY, dated March 1, 1991.
- 24 Employee Termination/Evaluation of KEENE by KAMINSKY, dated January 18, 1994.
- 25 Employee Termination/Evaluation of KEENE by SCIBA, dated March 24, 1994.
- 26 Report of Reinterview with KAMINSKY, dated October 27, 1994.
- 27 Transcript of Interview with HINSON, dated October 25, 1994.
- 28 Transcript of Interview with SCIBA, dated November 18, 1994.
- 29 Transcript of Interview with DAVIS, dated October 26, 1994.
- 30 DOL Administrative Law Judge decision by AVERY, dated September 29, 1995.