

U.S. NUCLEAR REGULATORY COMMISSION  
Office of Inspector and Auditor

Date of transcription May 6, 1985

Report of Interview

Ben B. Hayes, Director, Office of Investigation, NRC, was interviewed concerning his knowledge of a March 8, 1984, incident at Comanche Peak Steam Electric Station (SES) when allegedly a Texas Utilities Generating Company (TUGCO) Quality Assurance (QA) Supervisor detained eight quality control (QC) inspectors in a room and then searched their desks and confiscated inspection reports documenting numerous deficiencies with electrical equipment. During the interview, Hayes provided the following information:

Although Hayes did not specifically recall receiving a telephone call from Garde on the evening of March 8, 1984, during which she notified him of the detention and seizure of inspections records at Comanche Peak, he had no reason to doubt she in fact telephoned him. If Garde notified Hayes on the evening of March 8, 1984, then on March 9, 1984, Hayes would have discussed the incident with Richard K. Herr, Director, Office of Investigation Field Office, Region IV, NRC, to determine what occurred at Comanche Peak SES. Hayes' major concern would have been the seizure of inspection records and ensuring that NRC obtained custody of the records. Hayes did recall that Herr checked with Region IV and learned that the records had already been confiscated by Region IV and were under NRC control. Upon learning that Region IV had seized the confiscated records from TUGCO, OI's involvement in the incident ceased. Had there been an allegation of harassment or intimidation of the QC inspectors, then OI would have investigated. However, no such allegation was ever made.

Sometime in the Summer, 1984, Hayes; Thomas A Ippolito, Deputy Director, Office for Analysis and Evaluation of Operational Data; and Darrell G. Eisenhut, Director, Division of Licensing, Office of Nuclear Reactor Regulation, interviewed those QC inspectors still employed at Comanche Peak who were involved in the March 8, 1984, detention. The purpose of the interviews was to learn from the QC inspectors the circumstances surrounding the incident. The interviews were conducted in the presence of the Chief Executive Officer, TUGCO. The inspectors stated the issue had been resolved and no one had been fired. None of the QC inspectors made any allegation of harassment or intimidation. Generally, the QC inspectors thought TUGCO management had overreacted to the situation and did not understand why management had become so upset with the T-shirts. The claimed inspectors had worn the same T-shirts to work a week earlier and nothing had been said. All inspectors interviewed stated they did not change any of their inspection procedures and still wrote nonconformance reports whenever they observed a deficiency. The inspectors were offended that anyone would think they could be threatened into not doing their jobs properly.

Investigation on May 2, 1985 at Bethesda, MD File # 85-10  
By George A. Mulley Jr., Investigator, OIA Date dictated May 6, 1985

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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 In the matter of: :  
 :  
 TEXAS UTILITIES ELECTRIC :  
 COMPANY, et al. : Docket Nos. 50-443  
 : 50-446  
 (Comanche Peak Steam Electric :  
 Station, Units 1 and 2) :  
 -----x

Glen Rose Motor Inn  
Glen Rose, Texas

July 17, 1984

Deposition of: JAMES E. CUMMINS,  
 called for examination by counsel for Intervenors,  
 taken before J. F. Coughlin, Court Reporter,  
 beginning at 9:12 a.m., pursuant to agreement.

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1 Q At Region IV?

2 A Yes, sir.

3 Q In addition to yourself and the Resident  
4 Inspector for Operations, Resident Inspector for Reactor,  
5 are there other employees, other NRC people, who are  
6 resident on the site during the period of time from  
7 January through, say, the end of May, or were you the  
8 only resident people?

9 A Bob Taylor was here when I arrived, and he  
10 didn't leave the site -- I don't know exactly when he left  
11 the site, but he was here for a couple weeks after I arrived.

12 Q Okay. And other than that?

13 A Not to my knowledge.

14 Q So that you don't have a group of inspectors  
15 or other people below your level who work for you and  
16 who are, like yourself, resident at the site.

17 A No, sir.

18 Q Now if I refer to something called the  
19 T-shirt incident, do you know what I'm referring to?

20 A I certainly do.

21 Q Okay. I'm going to ask you mostly questions,  
22 if not all questions, about that incident, so if we both  
23 understand what we're talking about, I'll just call it  
24 the T-shirt incident. If it gets confusing to you, please  
25 stop me and say, "Wait. Now I'm not sure what you're

1 talking about," okay?

2 A (Nodding affirmatively.)

3 Q Were you on site the day of the T-shirt  
4 incident?

5 A I was.

6 Q Okay. Can you tell me your recollection of  
7 the events that day that you personally observed or that  
8 you personally heard?

9 A The T-shirt incident started for me -- I was  
10 in Dennis Kelley's office. That's the Operations Senior  
11 Resident Inspector. His office is on the opposite side  
12 of the site from mine. And we received a phone call.  
13 I answered the phone, I think, and it was a -- somebody  
14 that was -- started telling us that the Brown & Root  
15 Security and -- this is from memory, so I'm not sure  
16 exactly what was said.

17 Q Okay.

18 A I'll do my best.

19 They said somebody was going through their  
20 files and desks, and I think at that time they said that  
21 they had had some of the QC inspectors in Tolson's office.

22 And Kelley got on the phone -- I'm not sure  
23 when he got on the phone, another extension, and listened  
24 in on the conversation. And the individual that called  
25 requested that NRC send a representative or somebody from

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1 NRC come to the safeguards building.

2 Q Okay, and the person that called, did that  
3 person identify themselves?

4 A No, they didn't.

5 Q Did they give you anything on the telephone  
6 to give you reason to believe that they knew what they  
7 were talking about. I mean, did they say they were an  
8 employee of the plant or what? How did you know who you  
9 were talking to?

10 A We didn't know who we were talking to.

11 Q And when they called, did they call to talk  
12 to you, or did they just call to talk to whoever happened  
13 to answer the telephone? Did they ask for you, do you  
14 remember?

15 A No, they didn't.

16 Q Were you the one who answered the phone?

17 A Yes, I was.

18 Q I see, okay.

19 A To the best of my memory.

20 Q Okay. What did you do then?

21 A After we hung up the phone from talking to  
22 the individual, Dennis Kelley called the Region IV office,  
23 and from Dennis Kelley, I got the word that we were not  
24 to intervene, that we were to stay out of it at the present  
25 time.

gc 1-8  
1 Q Now would that be the standard procedure?  
2 As a Resident Inspector, if you receive a call indicating  
3 that there's some condition on the plant site and that  
4 someone who purports to be an employee is asking you to  
5 look into it, would you normally call Region IV to determine  
6 whether to look into it or not?

7 A It would depend on the circumstances. But  
8 most of the time, if I get phone calls, I try to go on and  
9 investigate the problem. I do have constant communication  
10 with the Region at the same time, so, as I say, it would  
11 depend on the circumstances.

12 Q Why, in this instance, was the decision made  
13 to call Region IV before responding to the call?

14 A I don't know.

15 Q It was not your decision, then?

16 A Kelley and I together might have made the  
17 decision. We were both in his office, and he called the  
18 Region.

19 Q And you were not on that phone call.

20 A No, I wasn't.

21 Q When you heard the information from the  
22 person, what was your reaction to what you heard? The  
23 anonymous caller, how did you react to that?

24 MR. BACHMANN: I have to object to that  
25 question. He stated that he perhaps discussed it with

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1 Kelley, and Kelley called the Region. I don't see what  
2 you mean.

3 You mean physical reaction?

4 MR. ROISMAN: No, no, no. What did he think  
5 when he got the telephone call?

6 BY MR. ROISMAN:

7 Q Did you think that you had received -- was  
8 this a serious or a not serious thing that was being  
9 alleged, or did you think that you were getting a crank  
10 call or maybe someone playing a joke or what did you  
11 think when you heard what the person on the other end of  
12 the phone told you? What was your mental reaction?

13 A I thought it was a legitimate call. I  
14 didn't have any basis for not believing it, and I  
15 couldn't be sure of the facts that this individual was  
16 relating to us, but I thought it was legitimate. I thought  
17 that something was going on out there.

18 Q In your judgment, if the things that this  
19 individual recounted to you were going on, were they  
20 serious things or so-so or pretty innocuous? How would  
21 you classify them?

22 A Without having any more knowledge about it,  
23 I wouldn't even classify it.

24 Q At all?

25 A Without looking into it, I wouldn't.

1 I wouldn't think that any situation like that, where you're  
2 given information, should be responded to, that you should  
3 investigate it.

4 Q And by investigate you would mean what? Go  
5 to the place where the event was purportedly taking place  
6 and see for yourself?

7 A Not necessarily. At that time, whatever they  
8 were doing was getting so much attention that it couldn't  
9 be covered up, so a follow-up inspection or investigation  
10 would uncover any wrongdoings. That was one thought I had.

11 Q Did you have any thought that if this was  
12 happening in any way like they were describing it, that  
13 the NRC's presence at the point of the event might have  
14 a beneficial effect, either diffuse what otherwise might  
15 be an explosive situation or give some comfort and support  
16 to the work force or "show the flag," as they say, with  
17 respect to management? Did any of those thoughts cross  
18 your mind?

19 A I didn't make any conclusion of that type.

20 Q When you got the information from Keller  
21 that Region IV had said to stay out of it, did you just  
22 acquiesce in that, or did you call back Region IV and  
23 try to get more information -- why did you have to stay  
24 out of it? How did you respond to that directive from  
25 Region IV?



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1 A Well, I was still in Kelley's office. We  
2 received another phone call from Bill Hunnicutt. That's  
3 what I was told by Kelley. And he reiterated to us that  
4 we were not to intervene, that we were to stay out of it.

5 Q So when Mr. Kelley made the call to Region IV,  
6 he did not speak to the man who was your supervisor at  
7 Region IV apparently. He must have spoken to someone else.

8 A I don't remember. It could have been Doyle.  
9 I think it was Doyle, but I'm not sure.

10 Q So it's possible that Hunnicutt, even after  
11 that conversation, yet called back a second time or had  
12 a second conversation to say, essentially, as far as you  
13 recollect from what Mr. Kelley told you, to tell you the  
14 same thing.

15 A That's right.

16 Q All right. What else happened after that  
17 with reference to the T-shirt incident that you can remember?

18 A When I went back -- I went back to my office  
19 after that, and when I got back to my office, I received  
20 another phone call from another individual who stated the  
21 same thing, that some of the QC inspectors were  
22 sequestered, and he didn't know where they were, and he  
23 hadn't seen them sequestered, but that he requested that  
24 the NRC intervene a second time. And I told him that we  
25 had been directed by Region IV management not to intervene

mgc 1-12 at this time.

2 Q And you say this was a different caller than  
3 the first one?

4 A I don't know.

5 Q Okay, I'm sorry. I thought you had indicated  
6 that it was.

7 A No.

8 Q So you don't know if it was the same person  
9 or a different person.

10 A No, I don't.

11 Q But the substance of what you were told in  
12 the second call was essentially the same as the substance  
13 of what you'd been told in the first?

14 A To the best of my memory, yes.

15 Q And how much time would you say transpired  
16 between when the first call and the second call occurred?

17 A Probably an hour. Thirty minutes to an hour.

18 MR. BACHMANN: I think maybe it might be  
19 beneficial for the state of the record to indicate  
20 approximately what time the first call came in.

21 MR. ROISMAN: Okay, sure.

22 BY MR. ROISMAN:

23 Q If you have a recollection of when you think  
24 you got the first call --

25 A It was probably between eleven and twelve

mge 1-13 1 o'clock. And I would say the second call was between  
2 twelve and one.

3 MR. ROISMAN: Okay.

4 End 1

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BY MR. ROISMAN:

1 Q After you received the second call and you  
2 indicated what you had told me you indicated to this caller,  
3 what did the caller tell you?  
4

5 A I don't remember if he told me anything. I  
6 know one of the callers said that I've got to get off the  
7 phone now, and that might have been him, but I don't recall  
8 of any response to what I told him.

9 Q Did the caller seem upset or distraught, or  
10 was it your recollection that it was sort of a calm, just  
11 reporting piece of information to you?

12 A I can't answer. I don't know. I didn't read  
13 anything into his voice at the time.

14 Q Was the caller insistent on the NRC being  
15 involved or did the caller merely indicate that they wanted  
16 the NRC to know about what was happening?

17 A To the best of my recollection, the caller was  
18 not calling for himself. He said something like the people  
19 being held or sequestered -- I don't know what term he used --  
20 would appreciate, he thought, the NRC intervening.

21 Q I want to go back again, well, was there  
22 any further conversation between you and this caller, during  
23 the second call?

24 A I don't recall any, no.

25 Q I want you to tell me again, I'm having some

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1 difficulty understanding when, under normal circumstances,  
2 would you -- on your own volition -- call in Region I?  
3 Would you get a complaint from the plant site? What do your  
4 job responsibilities tell you about that?

5 A I'm not sure that that is clarified in my  
6 job responsibilities.

7 Q What is your perception of what your  
8 responsibilities are, when you get a complaint from someone  
9 on the site that something is happening of a concern to the  
10 work force, that relates to things within the jurisdiction  
11 of the Nuclear Regulatory Commission? What do you understand  
12 your responsibilities are?

13 A I would have to deal with it on a case basis.

14 Q What are the factors that you weigh in, in  
15 deciding how to deal with it? What things do you look for?

16 A I've really never sat down and tried to make  
17 a determination as to what I would respond to what I would  
18 call Region IV. I don't know what factors would affect me.

19 Q Would it be affected at all by the magnitude  
20 of the safety implications --

21 A Yes.

22 Q -- of what was happening?

23 A Yes.

24 Q And which way would that cut? If we can, let's  
25 just take a hypothetical. If you got a call and it said

1 someone is down here sabotaging a piece of the reactor. I  
2 am looking at it right now. I want the NRC to come down and  
3 do something. Would that be a "Let's call Region IV" or would  
4 that be a "Let's run over there and see it right away" kind  
5 of thing?

6 A I would respond to anything like that physical,  
7 a fire or flooding in the buildings or anything like that,  
8 I would go directly to it and try to observe as much as I  
9 could.

10 Q And what if you received a call that someone  
11 was doing something to physically injure an employee on the  
12 plant? Would that fall into the same category as if they  
13 were trying to physically injure the plant?

14 (Pause.)

15 A No.

16 Q Why not?

17 A I am not a policeman to protect the people  
18 out there from physical injuries, just like I'm not a  
19 safety man to protect them from personal injury, when they're  
20 climbing on staging and things like that. My job is to make  
21 sure that they build the plant in accordance to the require-  
22 ments that are set up by the Regulatory Commission.

23 So there are probably a lot of activities, in  
24 the personnel area, that I don't get involved in.

25 Q Would it affect your answer at all, that if

1 the information that you're receiving was that the employee  
2 who was being injured? was being injured by someone to  
3 prevent him from reporting safety problems?

4 A Yes.

5 Q And then what would the situation be, if that  
6 piece of information were before you? Would that be one of  
7 those incidences that you would respond to, as you would  
8 respond to a report that someone was physically damaging the  
9 plant?

10 A I can't answer the question. It would take  
11 conjecture on my part. I think I would respond.

12 Q In the conversations, the two conversations  
13 that you have already testified to that morning, did the  
14 caller communicate to you any sense that the workers were  
15 being intimidated or harassed, or in some way being  
16 disadvantaged by management's conduct because of something  
17 related to their job performance?

18 A I don't recall.

19 Q Do you think that it is the kind of a thing  
20 that might have happened, that you wouldn't remember it, but  
21 they might have mentioned that and you wouldn't remember  
22 that?

23 A There could be a lot of information in those  
24 phone calls that I don't remember.

25 Q No, but I'm wondering whether this is the kind

1 of information -- I mean there are certain kinds of things  
2 that someone could say in a phone call to you that would stick  
3 in your mind. Would that be the kind of thing that would  
4 stick in your mind?

5 A I can't answer. I don't know.

6 Q Tell me what happened after the second  
7 telephone call. I take it, from what you've testified, that  
8 the person told you essentially what you heard in the first  
9 call and you reported to them what your directives were from  
10 Region IV and the phone call ended. Is that correct?

11 A That's right.

12 Q Then what did you do after that, with reference  
13 to the T-shirt incident. Did you tell anybody about the  
14 second call?

15 A Yes, I was in contact with Region IV and I  
16 did tell them that I had had another call.

17 Q Who did you contact?

18 A I talked to Doyle Hunnicutt. We talked a  
19 number of times that afternoon.

20 Q And did he give you any further directions,  
21 after you reported the second call?

22 A He said our position was still not  
23 to intervene.

24 Q Were you at all surprised at that? That that  
25 was the position that you were getting from Region IV?



1 A I don't remember.

2 Q What was your next connection with the  
3 T-shirt incident that day?

4 A It was the following afternoon, when I  
5 received a call -- oh, that day?

6 Q Yes, that day.

7 A I don't remember any further connections that  
8 day.

9 Q Where was your office, in reference to the  
10 safeguards building? Which office, yours or Mr. Kelley's  
11 office, is closest to that building?

12 A To that building, it would probably be --  
13 Kelley's office is maybe slightly closer. The offices were  
14 about the same distance apart. We were located on either  
15 side of the Unit 1 and Unit 2 buildings. So physically,  
16 we are probably about the same distances. I am a little  
17 closer to Unit 2, probably, than he is. And he is on the  
18 Unit 1 side, but he is outside the security fence area.

19 Q Would you describe Mr. Kelley for me? Is he  
20 an old man, a young man, a tall man, a short man, fat man,  
21 thin man, bald headed, full haired, full head of hair?

22 A I think he's 46 years old. He is probably  
23 about 6-2 or 3 feet tall. He's got gray hair. He's got a  
24 beard, it's gray, someplace between gray and dark hair. He  
25 is not fat. He probably weighs 170-75 pounds.

1 Q Thank you. All right, now, you were going  
2 to tell me what your next connection was. Let me just  
3 step back with you a second. After this telephone call that  
4 you made to Doyle Hunnicutt, to report on your second phone  
5 call from someone at the site, did you have any conversations  
6 about the T-shirt incident with any other persons that day,  
7 in your official capacity?

8 A I had a conversation with the Region.

9 Q Other calls?

10 A No, Chet Oberg was working -- other calls?

11 Q Yes, other calls, after this last call,  
12 when you called Hunnicutt and reported on the second  
13 telephone call. That's all I want to focus on. It's after  
14 that time. Did you have further communication, either with  
15 Mr. Kelley or with someone else on the site, or with someone  
16 at Region IV or elsewhere?

17 A Chet Oberg was working. He is a Region IV  
18 reactor inspector. He was working out of our office, our  
19 trailer onsite and so he and I had a conversation about it.  
20 He had received a phone call, too, from somebody and also a  
21 visit from somebody.

22 Q I'm sorry, I need to get his name again.

23 A Chet, C-H-E-T, Oberg, O-B-E-R-G, Oberg.

24 Q When did you learn of him having received the  
25 call and the visit?

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1 A I don't recall. I don't recall if it was  
2 after I received that call at my office, or whether it was  
3 before. I think it was after, but I'm not sure. He may  
4 not have been at the office when I got back. I don't remember

5 MR. BACHMANN: I think maybe there is  
6 confusion on the question. You asked him when he found out  
7 that Oberg had received the call?

8 MR. ROISMAN: Yes, right.

9 MR. BACHMANN: I think he was answering when  
10 Oberg received the call.

11 THE WITNESS: Oh, I don't know when he  
12 received the call.

13 MR. ROISMAN: That's right. I wanted to know  
14 when he learned from Oberg, if that had happened.

15 MR. BACHMANN: All right.

16 THE WITNESS: I don't remember. I was telling  
17 you I don't remember exactly when he related it to me, but  
18 he did relate it to me.

19 BY MR. ROISMAN:

20 Q And what he described to you of his phone call?

21 A Very similar --

22 Q Very similar to what you had also heard?

23 A Yes, and also from the visit from an individual.  
24 I don't know who the individual was.

25 Q Where did Mr. Oberg tell you he had received

1 .he call and had the visit? What was the physical place  
2 where that happened?

3 A In the NRC trailer.

4 Q In the trailer where you were working?

5 A That's right, in my office.

6 Q What was your reaction when you realized that  
7 now either or more persons had made at least three telephone  
8 calls and even risked a physical visit to the NRC trailer  
9 to express their concern about this event? Did that affect  
10 your thinking as to whether the right thing was being done  
11 by the NRC here?

12 A I didn't draw a conclusion about that.

13 Q Did you communicate what Mr. Oberg had  
14 communicated to you back to Region IV?

15 A Yes. To the best of my recollection, I don't  
16 remember specifically all the conversations. There were a  
17 lot of calls back and forth between the region and us that  
18 afternoon, or between myself and the region that afternoon.

19 Q All right and at any time, in which you had  
20 conversations with the region, did you explore with them the  
21 wisdom of their policy that the NRC should be staying out of  
22 this event? Did you question their judgment on that?

23 A I may have asked if they wanted me to co-inter-  
24 vene, or to look at what was going on, but I don't really  
25 recall making any or questioning their wisdom -- I don't

1 remember the specifics of our conversations.

2 Q I understand.

3 This whole matter, would it have normally  
4 fallen under your jurisdiction, or Mr. Kelley's jurisdiction,  
5 or someone else, if you all were going to have gotten  
6 involved in it? Was there some line of authority that we  
7 could say that it was your business, or it was Kelley's  
8 business, or it belonged to one of the other people on the  
9 site?

10 A The people involved were construction oriente  
11 people but I don't draw a line like that. I think any  
12 NRC inspector onsite should look at anything that is going  
13 on at the time.

14 Q So that if it were something that the  
15 resident inspectors were going to have looked into, would th  
16 normal thing to have been was that the first resident  
17 inspector contacted would have followed through on it, unles  
18 for some reason they didn't have the time to do it? Is that  
19 how you all divide up your responsibilities?

20 A That is hard to answer. Our responsibilities  
21 are divided based on him being in operations and me in  
22 construction. In a situation like this, my opinion would be  
23 that any NRC inspector that got information should respond t  
24 it. It is hard to divide a personnel situation up into  
25 construction or operations, although we do have clearly

1 defined areas that we are normally working in. That doesn't  
2 keep me from writing up something in operations, if I see  
3 a deficiency. I certainly will write it up and vice versa  
4 for him and construction, although he may call me and let  
5 me follow it up, rather than him following it up.

6 Q Maybe you need to clarify for me the  
7 distinction between construction and operations. And I  
8 believe you also said that Mr. Smith was reactor.

9 A He works for Kelley. He's a resident inspector  
10 that works for Kelley.

11 Q What is the distinction then between  
12 construction and operations, as it is used to define Mr.  
13 Kelley's responsibilities and your responsibilities?

14 A The construction inspector follows the building  
15 of the plant up to the point that it goes into the  
16 pre-operational testing. At that point, the operations  
17 inspector will start picking up on the systems when they are  
18 turned over from construction to the operating group.  
19 Then the operations inspectors start picking up. They have  
20 procedures that they follow to witness operational testing  
21 and to review the pre-operational testing and to review their  
22 procedures and to also review the plant procedures.

23 The distinction is that when the construction  
24 turns a system or a room over to operations, or to the  
25 people that are going to operate the plant, these cases took

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1 cooperation. And that's where Kelley's responsibility, and  
2 really the dividing point is pre-operational testing. That  
3 is the first phase that he gets into.

4 Q I see. All right, now when that first day  
5 -- when the T-shirt incident first occurred -- was there  
6 anything that day that you can remember, any other involvement  
7 that you had after that information that you got from  
8 Oberg and your contacting the Region, as you remember it, to  
9 advise them of what you had learned from Mr. Oberg?

10 A I don't recall anything else.

11 Q You indicated that there was sort of back and  
12 forth during the day of contacts between the region and you  
13 and the other resident inspectors on the site. What was the  
14 purpose of that? What were you hearing, or what were you  
15 communicating?

16 A There were conversations back and forth every  
17 day.

18 Q No, but as to this particular event?

19 A I'm not saying that all the conversations  
20 related to the T-shirt incident, but we -- there were  
21 conversations that did relay information, that I don't  
22 remember any further information than the phone calls I got  
23 relaying that back.

24 Q Do you have any recollection of Region I  
25 initiating a phone call to you anytime after, say, 12 o'clock

1 where they wanted you to give them more information about  
2 what was happening on the T-shirt incident?

3 A I don't recall. I don't remember any such  
4 phone call.

5 Q To the best of your recollection, that is the  
6 only phone call that was initiated by Region IV to the site,  
7 with regard -- I mean, to you, or as well as you know, to any  
8 of your other resident inspector people, relevant to the  
9 T-shirt incident, the second communication to Mr. Hannicott,  
10 when he called into Mr. Kelley's office while you were there?  
11 Is that the only Region IV initiated call that you can  
12 remember?

13 A I can't answer for Kelley's side. I don't  
14 know.

15 Q Okay.

16 A But on my side, I don't recall. I know I  
17 talked to the Region a number of times. I don't remember  
18 who originated the calls.

19 Q When was the next time that you had any  
20 contact with the T-shirt incident?

21 A On the following day, about 4 o'clock.  
22 Eric Johnson called me and told me, go get the material that  
23 the licensee had taken from the individuals involved. And I  
24 went to Ron Tolson's office and we went back in the vault and  
25 I picked up a box of material from them. And there were --



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1 we thumbed through it very quickly. And any originals in  
2 there we tried to run copies of and I took the copies, not  
3 the originals, because the copies could have been their  
4 working documents. And I took the information, that box of  
5 information, and a box about two foot by 18 inches. And I  
6 took it back to the trailer, the NRC office construction.

7 Q How did you know that there was any documents  
8 that the Applicants had seized?

9 A I don't remember.

10 Q How did you know that they were in Mr. Tolson's  
11 office?

12 A Eric Johnson, I think, when he was talking to  
13 me, said that he had talked to Chapman and I don't really  
14 know how I knew in Mr. Tolson's office. I may not even have  
15 known they were in Tolson's office. I just used that as a  
16 starting point. I don't recall. I can't answer that  
17 question. I don't know the answer.

18 Q Who was Eric Johnson?

19 A Eric Johnson is a Branch Chief in the  
20 Arlington Office, USNRC. And at that time, he was the  
21 immediate supervisor over Doyle Hunnicutt, so he was my  
22 second step in command.

23 Q When he told you to go and get the documents,  
24 did he do that by phone or in person?

25 A By phone.

1 Q And when you get the documents from Mr. Tolson,  
 2 did he personally take you to where the documents were --  
 3 if you would strike that, I'm sorry.

4 A Did you speak to Mr. Tolson?

5 A Yes, I did.

6 Q What did he say to you?

7 A I think he tried to call Dave Chapman, I  
 8 don't recall, prior to turning the documents over to me.

9 Q Did he seem reluctant to give them to you?

10 A I don't remember.

11 Q How long after you got to his office did you  
 12 physically get possession of the documents?

13 A Within 15 to 30 minutes.

14 Q Did you know why you were coming to get the  
 15 documents?

16 A No, I didn't.

17 Q Did you even know what might be contained in  
 18 the documents that you were coming to get?

19 A No, I didn't.

20 Q Did you ask Mr. Johnson any of these questions?

21 A No, I didn't.

22  
 23  
 24  
 25

1 BY MR. ROISMAN:

2 Q Was that normal, that you would be told to go for  
3 something for Mr. Johnson and not know particularly what you  
4 were getting or why you were getting it? Was that a standard  
5 procedure in your relationship with him?

6 A I can't answer that as being standard.

7 Q Had it ever happened before, that you can remember?

8 A I don't recall. I don't recall ever going and  
9 getting material like that before either.

10 Q No, but in a sense, had you ever been asked by  
11 Mr. Johnson to essentially run an errand --

12 A Yes. Right.

13 Q -- where you were just acting as a messenger?

14 A I don't recall any specific incidents.

15 Q No, I understand.

16 A But if somebody calls me and wants something, I  
17 will generally go do it.

18 In this case, as far as going out and getting this  
19 type of -- a box of material that's been confiscated or  
20 collected by the Licensee, that's -- that is not a normal  
21 function that we serve out there.

22 Q What were you directed to do with the material  
23 after you had seized it? You know, what did Mr. Johnson tell  
24 you to do with it?

25 A I don't remember any specific instructions.

1 Q Were you supposed to tell him after you got the  
2 documents?

3 A I don't recall.

4 Q What did you think you were going to do with the  
5 documents after you got them?

6 A I can tell you what I did with them.

7 Q Well, when you went to get them, did you have any  
8 idea what you were going to do with them?

9 A No. Oh, I knew I was going to lock them up in our  
10 trailer. That's what I did.

11 Q You locked them up, but you did not look through  
12 them?

13 A No, I didn't.

14 Q I mean, except to -- you've already testified, to  
15 separate the original out.

16 A Yes.

17 Q And how did you know, when you got the documents  
18 from Mr. Tolson, that you had gotten all the documents that  
19 had been seized?

20 A I didn't.

21 In fact, I think Tolson, at the time, told me that  
22 the personal documents of the individuals had been returned to  
23 them. And they had had the documents for a day and a half or  
24 a day, some period of time, before I got them from them.

25 So, I can't answer that question.

1 Q Did you make any attempt to pin Mr. Tolson down  
2 to make him make a representation to you that you either were  
3 getting all the documents, other than the personal ones, or  
4 that you weren't?

5 A I didn't.

6 Q Did you consider it in any way to be a confronta-  
7 tional situation between you and Mr. Tolson, you taking  
8 something from him that he wanted to keep?

9 A No.

10 Q After you got the documents, was the next thing  
11 that you did to take -- and made the copies, to take them  
12 back and lock them up in the trailer?

13 A Yes, it is.

14 That was Friday afternoon, to the best of my  
15 recollection.

16 Q Did you advise Mr. Johnson that they -- that you  
17 now had the documents and that they were in your trailer?

18 A I don't recall.

19 Q All right. What was your next involvement with  
20 the T-shirt incident? Or now we will add the documents to  
21 our list of things -- either with the documents or with the  
22 incident itself?

23 A The following Monday the Licensee came and told me  
24 that they wanted the documents back. Mark Welch and  
25 Dan Hicks gave me a call, and I let them have the box of

documents back. And in the meantime, I called the Region.  
And as soon as I got in touch with the Region, they said,  
"Don't let them have them back." So, I went and got them  
back from them. They had them for approximately 15 to 30  
minutes. And when I went to get them back, they were locked  
up in Dan Hicks' office.

Q Why, in that instance, did you decide to give them  
the documents and then call the Region, instead of calling the  
Region first?

A I tried to call the Region first, and I couldn't  
get anybody. So then, a few minutes later, I did make contact  
with the Region.

Q But why did you decide to give them the documents  
until you had talked to the Region?

A I don't know.

Q Did you feel that if you had told them they  
couldn't have them, that they could, somehow or another,  
compel you to give them to them?

A No.

Q And you have no recollection of why you would have  
given them back the documents, even though you sensed that you  
should talk to the Region first, before you actually talked  
to the Region?

A That's true.

Q Did you ask the Applicant why they wanted them

1 back?

2 A To the best of my recollection, they stated that  
3 they needed them back to see if there were any areas,  
4 anything in the documents that they needed to pursue or to  
5 take any actions.

6 Q Did you make an index of the documents before  
7 you gave them back to them?

8 A No, I didn't.

9 Q Do you have any basis for knowing that the  
10 documents that you got back from them some 15 or 20 minutes  
11 later were all the documents that you had seized from them  
12 the preceding Friday?

13 A No, I don't.

14 Q Did you propose to the Applicants that they  
15 examine the documents in your trailer if they wanted to see  
16 if there was anything relevant in there for them?

17 A No, I didn't.

18 Q When you got the instruction from the Region that  
19 you should get the documents back, what did you do to  
20 accomplish that?

21 A I went to Dan Hicks' office, and his office was  
22 locked. So, I went and got him out of a meeting in the area  
23 of John Merritt's office. And we went back, and he unlocked  
24 his office, and he gave me the box of documents.

25 Q Was Dan Hicks the one who actually picked them

3/6  
up from you?

2 A Mark Welch picked them up from me.

3 Q When you went to get them and discovered that they  
4 were locked up in Mr. Hicks' office, did it trouble you that  
5 they were not apparently being immediately reviewed by the  
6 Applicant to find any problems that the documents might  
7 disclose?

8 A Trouble me?

9 Q Yes. You told me, just a moment ago, that the  
10 Applicant had told you that they wanted to see the documents  
11 so that they could determine whether there was any problems  
12 that they needed to address. But you decided to give it to  
13 them, even though you didn't yet have a clearance from  
14 Region IV to do so.

15 And then, when you went to get them back, you  
16 found that they were locked up in a room, as opposed to being  
17 actively reviewed by a group of people looking for the  
18 problem.

19 Did that give you any pause or make you wonder  
20 about what was happening?

21 A No.

22 Q When you went to Mr. Hicks and told him that you  
23 wanted them back, did he have any reaction, one way or the  
24 other, to your request to get them back?

25 A No.



1 Q Did he ask you why?

2 A I don't recall.

3 Q Did you know why? Other than Region IV had told  
4 you to get them back, did you know why you should have them  
5 back?

6 (Pause.)

7 A No, I didn't.

8 Q Did you ask Region IV why they wanted you to get  
9 them back?

10 A I don't recall.

11 Q Do you recall why you thought you should contact  
12 Region IV before you gave them up?

13 A They are the ones that told me to get them.

14 Q What did you do with the documents after you got  
15 them back from Mr. Hicks?

16 A I took them back and locked them up in our trailer  
17 again. They stayed locked up in a supply cabinet in our  
18 trailer.

19 Q Did you report back to Region IV that you had  
20 gotten the documents back?

21 A Yes.

22 Q Did they ask you whether you had gotten all of  
23 the documents back?

24 A I don't recall.

25 Q Did they give you any further instructions at that

time as to what to do, either about the documents or the  
T-shirt incident?

A I don't recall any.

MR. BACHMANN: I think just to clear up a little  
bit on the record. Tony, I get the impression sometimes when  
Mr. Cummins says, "I don't recall," he can mean either "I  
don't remember" or "no, to the best of what I can remember."

MR. ROISMAN: Mr. Cummins, if that is happening,  
if there is some ambiguity that is developing, it is  
certainly all right, if you wish to do that, to tell me, in  
answer to the question, "I believe the answer is no, but I'm  
not 100 percent certain," versus "I have no recollection at  
all. I have no way of telling you whether I think the answer  
to your question is yes or no."

Okay?

Will that be easier, for you to give me an answer  
on some of these questions, to use both of those ways of  
answering them where appropriate?

THE WITNESS: That is, when I say I don't recall,  
it does mean that something could have happened. I just  
don't remember it.

MR. ROISMAN: Okay. That's right.

But it doesn't mean, when you say, "I don't recall,"  
that --

THE WITNESS: It didn't happen.

1 MR. ROISMAN: -- "I'm pretty sure it's no, but I  
2 can't say for certain." It means you really don't have a  
3 recollection at this moment whether it's yes or no?

4 THE WITNESS: That's right.

5 MR. ROISMAN: Okay. All right.

6 THE WITNESS: That's what I mean to convey.

7 MR. ROISMAN: The only thing that's acceptable is  
8 that you tell me what you know truthfully. And other than  
9 that, I just want to make sure -- and I think all your couns  
10 wanted to do is make sure that we weren't building in here  
11 some confusion that we wouldn't -- that we wouldn't understa  
12 what you were trying to say.

13 I think we do now understand what you mean when y  
14 say, "I can't recall" or "I can't recollect."

15 THE WITNESS: Things could have happened that I  
16 just don't remember right now.

17 MR. ROISMAN: Okay. That's fine.

18 BY MR. ROISMAN:

19 Q After you got back to your office and had locked  
20 up the documents the second time -- and I may have asked yo  
21 this, but bear with me -- did you then communicate with the  
22 Region that you had the documents back?

23 A Yes, I'm sure that I did.

24 Q Did they give you any further instructions with  
25 regard to what you should do with those documents at that

1 time?

2 A No. I don't recall any further instructions. I  
3 don't remember any specific instructions about those  
4 documents or for me to take any actions with those documents.  
5 If there was any there, I don't remember.

6 Q And did you get any instructions or directions  
7 with regard to what to do about the T-shirt incident in  
8 general at that point?

9 A No.

10 We're talking about the next -- the Monday --

11 Q We're talking now about the Monday following the  
12 T-shirt incident, that's correct.

13 A No.

14 Q And did you, on your own, take any steps to do  
15 anything about the T-shirt incident?

16 A No, I didn't.

17 Q Did you believe, as of that Monday, that you were  
18 still under the directive from Region IV not to do anything  
19 with it except as specifically directed by them?

20 A Yes.

21 Q Should -- if someone had come to you, as someone  
22 apparently did to Mr. Oberg, on Monday -- they came to him on  
23 Thursday, if they had come to you, like that, but it was on  
24 Monday, and said, "I really want you to look into this thing,"  
25

1 your reaction would have been, "I have to go to Region IV and  
2 get the okay to do that"?

3 A It would depend on the circumstances.

4 Q Well, the only circumstance that I'm positing now  
5 is that someone simply comes to you and says, "I want you, as  
6 the resident inspector, to look into the event that happened  
7 last Thursday that is called the 'T-shirt incident.'" That is  
8 all you've got.

9 Q Was your understanding of your directions from  
10 Region IV, at that time, that you would not take any action  
11 on that request until you had talked to Region IV?

12 A That was not clearly defined -- "Don't do anything,  
13 until you talk to us, about the T-shirt incident" -- that was  
14 never made clear.

15 Q We were just told, on that first day, not to  
16 intervene.

17 Q So, your perception of your responsibilities were  
18 that you, in your judgment, subsequent to that first day,  
19 you thought you should intervene, that you had your normal  
20 authority to do so, without the necessity of having to talk  
21 to Region IV?

22 A Yes.

23 Q I never got the perception that I had to talk to  
24 Region IV except on that first day, when they told us not  
25 to intervene in the ongoing activities at that moment.

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BY MR. ROISMAN:

2 Q And what was the next connection that you  
3 had, after having gotten the documents from Mr. Hicks  
4 and calling Region IV, with either the documents or the  
5 T-shirt incident after that Monday?

6 A My involvement in it?

7 Q Yes.

8 A I don't recall any direct involvement that  
9 I had -- oh, I'm sorry -- yes, I did.

10 The next direct involvement I had was a  
11 few weeks later. Doyle Hunnicutt and I interviewed three  
12 of the QC inspectors. And I don't remember what the date  
13 was. It was approximately three weeks after that, in  
14 April probably.

15 Q And in that intervening period, roughly  
16 three weeks, you had no further involvement with the  
17 T-shirt incident.

18 A No.

19 Q What about the documents? Were they  
20 still locked up?

21 A The documents were in the trailer, and --

22 Q Go ahead.

23 A The documents were copied by Doyle  
24 Hunnicutt and copies distributed of the documents to  
25 different people, but Doyle Hunnicutt did that. I didn't