



Tennessee Valley Authority, Post Office Box 2000, Spring City, Tennessee 37381-2000

JAN 26 2000

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555

Gentlemen:

In the Matter of ) Docket No. 50-390  
Tennessee Valley Authority )

WATTS BAR NUCLEAR PLANT (WBN) UNIT 1 - DEPARTMENT OF LABOR (DOL)  
CASE NO. 1999-ERA-25 (CURTIS C. OVERALL V. TENNESSEE VALLEY  
AUTHORITY)

In letters to J. A. Scalice dated July 17, 1998, and  
September 4, 1998, NRC requested that TVA provide copies of future  
filings made to DOL by TVA in connection with Curtis C. Overall's  
Case No. 97-ERA-53. TVA has provided NRC with copies of each of  
its filings in that case.

As you have been made aware, Mr. Overall has filed a second DOL  
complaint which, although separate, involves issues closely  
related to his first complaint. For your information, TVA has  
enclosed its latest filing entitled "Tennessee Valley Authority's  
Motion to Compel Handwriting Exemplars."

*Per  
G. Cavalina*

DO30

U.S. Nuclear Regulatory Commission  
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**JAN 26 2000**

If you have any questions, please telephone me at (423) 365-1824.

Sincerely,



P. L. Pace  
Manager, Licensing and  
Industry Affairs

Enclosure

cc (Enclosure):

Mr. Luis A Reyes  
U.S. Nuclear Regulatory Commission  
Region II  
Atlanta Federal Center  
61 Forsyth St., SW, Suite 23T85  
Atlanta, Georgia 30323

Mr. William R. Borchardt, Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

NRC Resident Inspector  
Watts Bar Nuclear Plant  
1260 Nuclear Plant Road  
Spring City, Tennessee 37381

Mr. Robert E. Martin, Senior Project Manager  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

ENCLOSURE

ADMINISTRATIVE LAW JUDGES BRIEF  
CURTIS C. OVERALL - CASE NO. 1999-ERA-25

TENNESSEE VALLEY AUTHORITY'S MOTION TO COMPEL HANDWRITING EXEMPLARS

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES  
UNITED STATES OF AMERICA  
DEPARTMENT OF LABOR

IN THE MATTER OF	)	
	)	
CURTIS C. OVERALL	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 1999-ERA-25
	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	
	)	
Respondent	)	

**TENNESSEE VALLEY AUTHORITY'S MOTION  
TO COMPEL HANDWRITING EXEMPLARS**

1-5

Pursuant to 29 C.F.R. § 18.21 (1999) and Rules 26, 35, and 37, FED. R. CIV. P., respondent Tennessee Valley Authority (TVA) hereby moves for the entry of an order compelling complainant to provide handwriting exemplars as directed by an expert document examiner retained by TVA. As grounds for its motion, TVA would show:

1. In this proceeding, complainant claims that he was subjected to harassment at home and in the workplace by unknown person(s). According to complainant, that harassment has included his receipt of six anonymous notes which he has characterized as "threatening." The handwriting on the notes complainant claims to have received appears to be disguised.

2. TVA's Office of Inspector General (OIG) was requested to investigate complainant's allegations of harassment. One of the steps in investigating such an allegation is to determine whether the person making the allegation may be

responsible for the alleged activity. The OIG submitted copies of the six notes complainant claimed to have received to two document examiners to compare with samples of complainant's known business writings.

3. The document examiners retained by the OIG found significant similarities between complainant's known handwriting and some of the handwriting on the alleged threatening notes received by complainant. The document examiners have indicated that due to the disguised nature of the handwriting on the alleged threatening notes, they need additional known specimens of complainant's handwriting, including attempts to disguise his handwriting. Complainant refused to cooperate with the OIG in its investigation of his allegations of harassment by refusing to be interviewed or to provide additional handwriting samples.

4. TVA has retained an additional expert document examiner, Larry S. Miller, Ph.D., as an expert witness in this proceeding. Dr. Miller is a Professor of Criminal Justice at East Tennessee State University and is Board Certified by the World Association of Document Examiners, the American Board of Forensic Examiners, and the Tennessee Questioned Document Examiners Association as a Forensic Document Examiner and Court Qualified Questioned Document Examiner. At TVA's request, Dr. Miller compared copies of the alleged threatening notes with complainant's known business writings. Dr. Miller has indicated that there are a number of significant similarities between the questioned handwriting and complainant's handwriting. Dr. Miller has also indicated that due to the disguised nature of the questioned handwriting and the relative size of the handwriting, he needs additional specimens of complainant's handwriting to make additional comparisons. Dr. Miller has stated that he would like to personally obtain those specimens from complainant to observe the manner in which he executes his handwriting as well as obtaining specific letter and word formation.

5. Pursuant to 29 C.F.R. § 18.19 (1999), TVA served a formal request upon complainant to produce a sample of his handwriting under the direction of a handwriting expert selected by TVA. Complainant's formal response objected to the request on various grounds, but stated that he would comply with this request. Copies of the pertinent portion of TVA's request and complainant's response are attached hereto as exhibits A and B, respectively.

6. When contacted to schedule the production of handwriting samples, complainant's counsel refused to produce such handwriting samples. In a November 18, 1999, letter, complainant's counsel objected to providing handwriting exemplars on the ground that the "proposed handwriting analysis would be inadmissible [sic] under *Daubert*" (Nov. 18, 1999, letter, copy attached hereto as exhibit C). That objection is without a basis in law. The issue in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), was the admissibility at trial of scientific evidence under Rule 702, FED. R. EVID.; it does not speak to discovery under Rule 26, FED. R. CIV. P. *Wilstein v. San Tropai Condominium Master Ass'n*, 1999 U.S. Dist. LEXIS 16376 (N.D. Ill. Oct. 7, 1999), held that:

Handwriting exemplars are within the scope of Rule 26(b) as long as they are relevant to the claims asserted and reasonably calculated to lead to admissible evidence. FED. R. CIV. P. 26(b). For purposes of discovery, "it is difficult to imagine any document or thing which could not be ordered produced under appropriate circumstances" [at \*30-31].<sup>1</sup>

7. The courts have also held that handwriting analysis by experts is admissible in evidence under *Daubert*. The United States Court of Appeals for the Sixth Circuit, which is the court responsible for reviewing decisions of the Department of Labor under 42 U.S.C. § 5851 (1994) for matters arising in Tennessee, expressly held in *United States v. Jones*, 107 F.3d 1147 (1997), that a handwriting expert's testimony is admissible under *Daubert*. See also *United States v. Velasquez*, 64 F.3d

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<sup>1</sup> Copies of unreported cases cited herein are attached.

844, 850 (3d Cir. 1995) (“the district court properly admitted Ms. Bonjour’s handwriting analysis testimony because her testimony met all three of the requirements of Rule 702.”); *United States v. Paul*, 175 F.3d 906, 910 n.2, 911 (11th Cir. 1999) (handwriting analysis testimony is admissible evidence and document examiner’s testimony could assist the jury); *United States v. Starzeczyzel*, 880 F. Supp. 1027 (S.D.N.Y. 1995) (forensic document examination testimony by expert was admissible); *United States v. Hines*, 55 F. Supp.2d 62 (D. Mass. 1999) (expert testimony on subject of handwriting analysis was admissible at trial).

8. Complainant’s counsel also objected to providing new “artificially produced exemplars from a ‘testing’ situation” as opposed to the use of “previous handwriting samples.” That objection is without merit. The courts routinely compel the production of handwriting exemplars for the purposes of litigation. *Gilbert v. California*, 388 U.S. 263 (1967); *Kalfas v. E.F. Hutton & Co.*, 1987 WL 10831 (E.D.N.Y. Apr. 30, 1987); *United States v. Jackman*, 1997 WL 161948 (D. Kan. Mar. 28, 1997); *Wilstein v. San Tropai Condominium Master Ass’n*, 1999 U.S. Dist. LEXIS 16376 (N.D. Ill. Oct. 7, 1999); *United States v. Vanegas*, 112 F.R.D. 235 (D.N.J. 1986). Moreover, the courts have regularly compelled the production of exemplars in a different style than the witness would normally use. *In re Special Federal Grand Jury*, 809 F.2d 1023 (3d Cir. 1987) (witness compelled to provide handwriting sample in style different than normal style); *United States v. Sumpter*, 133 F.R.D. 580, 583 (D. Neb. 1990) (defendant compelled to provide “contrived” handwriting exemplar since “[a]ny argument that the handwriting sample is so contrived and abnormal as to make identification speculative, inconclusive, or untrustworthy should be made to the jury and would go to the weight and credibility of the expert’s testimony, not to its admissibility.”)

9. Since the identity of the person or persons who wrote the alleged harassing notes is an issue in this case, and since there is a genuine issue as to whether

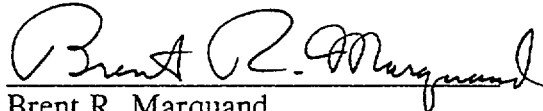
complainant may have authored some or all of the notes, TVA's motion to compel should be granted and complainant should be ordered to produce handwriting exemplars under the direction of Dr. Miller.

Respectfully submitted,

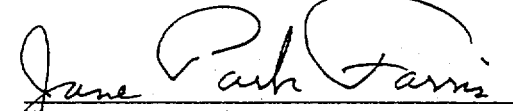
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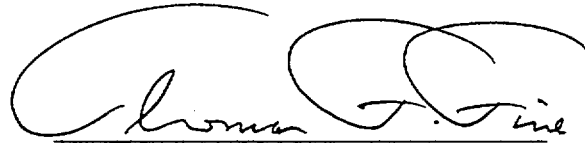


**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion has been served on complainant by mailing a copy thereof to:

Lynne Bernabei, Esq.  
Bernabei, Katz & Balaran, PLLC  
1773 T Street, NW  
Washington, D.C. 20009

This 5th day of January, 2000.

A handwritten signature in cursive script, appearing to read "Thomas J. Fine". The signature is written in black ink and is positioned above a horizontal line.

Attorney for Respondent