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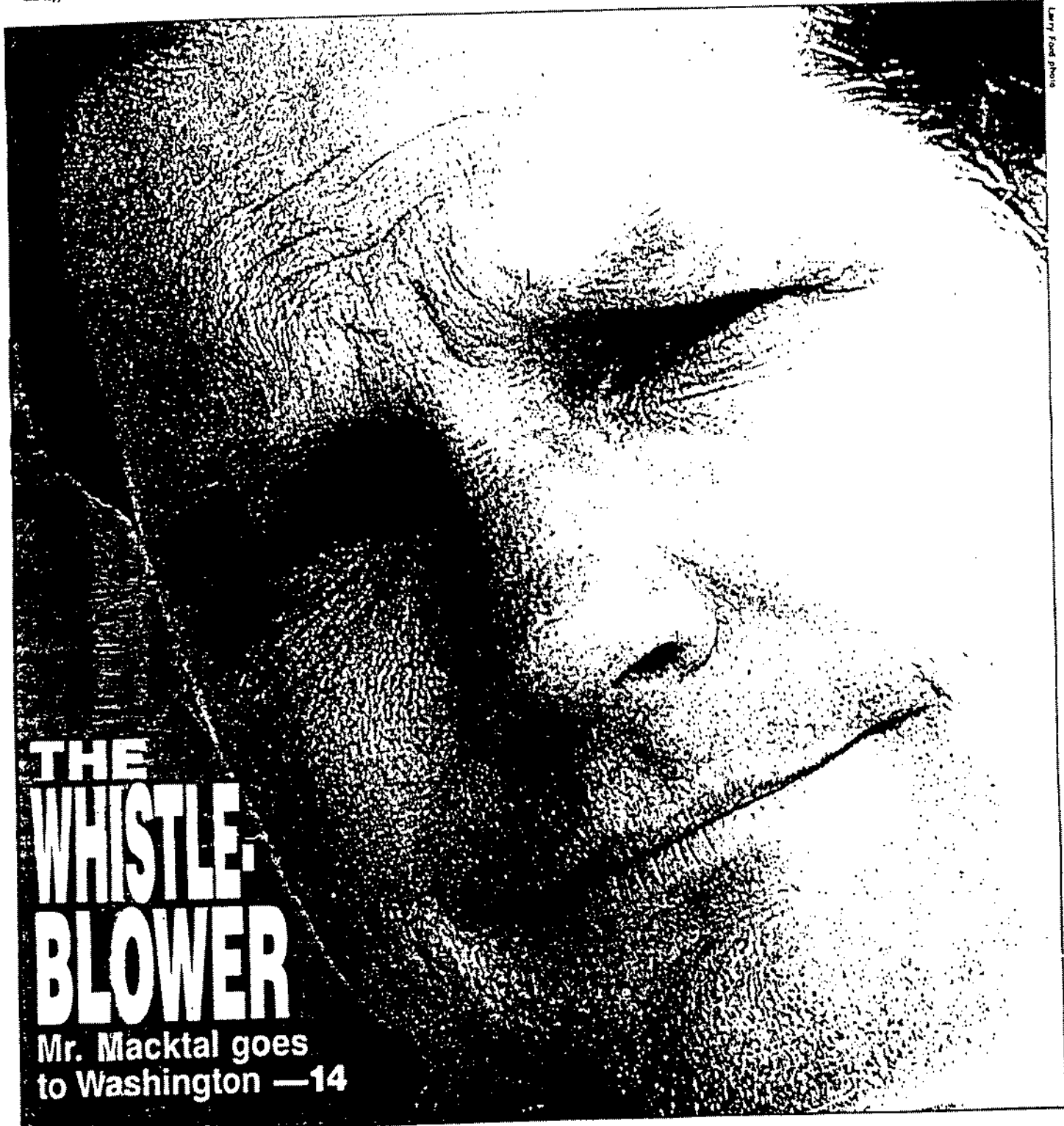
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THE WHISTLE-BLOWER

Mr. Macktal goes to Washington —14

Former Comanche Peak electrician Joseph Macktal, Jr.

FEATURE

LITTLE BIG MAN

By Read Martin

How are they going to keep Joseph Macktal, Jr. down on the farm, now that he's seen D.C.?

The former electrical foreman's story is, so far, a rare whistle-blower's success. Just two months after walking onto Capitol Hill as a disgruntled electrician with a beef against his former boss, he's taken up his cause with Congress, been broadcast by local and national television news before a Senate subcommittee, and been read about in newspapers nationally.

The Stephenville resident says he likes his life in the rural hinterlands southwest of Fort Worth just fine, with pigs and chickens and a tractor. His plain, straightforward demeanor—the "just a regular, little American guy," says one Senate staffer who met him—betrays as much. But there's also the little master of the nuclear power plant where he used to work, nearing completion 15 miles from the house, and the settlement he reached with his former bosses.

On the night of March 10, Macktal gathered documents and tape recorded evidence with \$600 borrowed from his 16-year-old daughter's savings account, slid behind the wheel of his pickup truck, nosed it out the driveway, and sped east. The drive to Washington, D.C., took him two and a half days, sleeping in the truck at night. However, Macktal did not reach the final destination of this trip until seven weeks later, when he had exposed to indignant Senators a questionable settlement between his former attorneys and Brown & Root, contractors of the Comanche Peak nuclear plant. In the settlement, he was barred from testifying about his safety concerns in exchange for \$35,000 cash.

Whatever his motives for challenging the agreement, he says for better plant safety, his former attorneys say for more money—the whistle-blower's journey has been Capraesque. Mr. Macktal Goes To Washington.

"He walked in here one day," says a staffer with the Senate Environment Committee's nuclear regulation subcommittee, which heard his testimony. "That's not real unusual. But we have never gone with one of these people before Ever."

How to make influential friends in Washington: first, you get laid off.

Macktal is 47 years old, married 26 years, with two children—17-year-old Jimmy, a senior in high school, and Tyra Lynn, 16. "I'm just a basic electrician," he says, who worked first in the Air Force, then in civilian jobs for the Navy on nuclear projects in San Francisco. "I was a construction worker, so you follow the work," he says, first to Arizona with his wife, Vicki, whom he met in California.

Vicki's grandmother in Cleburne "had been asking us to move here for years," he says, so on Thanksgiving of 1984 the Macktals decided to move to Texas at the beginning of the New Year. Hired at Comanche Peak, he was making \$15 an hour plus "a lot of overtime," which would have come to between \$45,000 and \$50,000 a year. He didn't last that long.

Shortly after he was hired he was promoted to foreman, and soon "began to see things that were not good construction practice... deviations, problems with the design, things that just didn't fit together." Just one day after taking his concerns to a supposedly identity-protecting in-house review board called SAFETEAM, he was



Larry Ford photo

Former Comanche Peak nuclear plant electrical foreman Joseph Macktal, Jr.: A high price for courage

confronted by a senior manager and shortly thereafter fired, or stippled to forget—the two states' accounts differ. A Brown & Root spokesman says the company can not "account for or comment on any recent safety concerns that Mr. Macktal may now express."

The repercussions have been, in many ways, typical of what whistle-blowers have experientially

at other nuclear plants, says Billie Garde, Macktal's former attorney, a veteran litigator in such cases. "The personal price that these workers pay for their courage is always very high." In the three and a half years since being laid off in January, 1986, Macktal has earned a total of about \$50,000, he says, and been forced to work odd jobs out of state when he can find work at

all because of his bad reputation from his falling out with Brown & Root.

The Macktals have lived apart as Joseph took work in Virginia and Pennsylvania and Vicki worked 40 hours a week for minimum wage as a waitress in Stephenville to bolster their income. "We're gone for sometimes three months."

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'...We were right all along'

Opposition to Texas Utilities nuclear power plant at Comanche Peak has tended to fall into two categories, often overlapping: that it's too dangerous to operate, and it's too expensive to run without resorting to massive rate increases beyond the 20 percent TU has pledged to ask the Public Utilities Commission to approve.

The testimony of former Comanche Peak electrician Joseph Macktal, Jr. before the U.S. Senate subcommittee May 4 renewed attention on his questions about the plant's construction. Now an independent opinion has surfaced that supports some of the charges that TU is underestimating the plant's financial burden to the utility, and thus to rate payers.

A Merrill Lynch analysis of TU stock that was published shortly after the utility's \$10 million settlement with processors last July—including Citizens Association for Sound Energy (CASE) and several individual whistle-blowers—pronounces that a 20 percent rate hike to cover all costs of construction is "double," but that, without a series of events breaking its way, TU will have to ask for more from the PUC in order to cover

its costs. Merrill Lynch's report estimates that "the increase need is close to 37 percent" without changes on its balance sheet. "We think the company has additional ways to bring the rate needs down," the report adds.

But here's the kicker: the estimated price to complete the plant was still \$8.54 billion at the time of the report. That figure is now \$9.16 billion, according to TU. Citizens for Fair Utility Regulation, a Fort Worth group opposing the plant, claims the price tag will soon pass \$10 billion.

TU spokesman Dave Fiorelli, speaking recently before the Irving Rotary Club, said the Merrill Lynch figures represent the opinion of the analyst who wrote it and do not reflect the rate increase that TU will ask from the PUC.

"The bottom line on it is that we've made a commitment for no more than a 10 percent rate increase associated with the first unit, and will do the same thing when the second unit goes into service two years after the first," in early 1990 and 1992, Fiorelli said. "It's not an estimate this time; it's a commitment that we have made. We're

simply not going to ask for more."

Fiorelli declined to provide an estimate of the utility's future rate needs, in effect leaving the door open for further rate-hike requests more years down the road. He says a rise in the price of operating the plant could be reflected in future rate requests.

"Stock analysts do analyses of companies all the time, and there's a whole lot of them out there. You can go pick up 10 of them and read 10 different stories," said Fiorelli. "That happens to be one of many different stories. And what they actually said in there is that in their opinion that's how much money we needed to get Comanche Peak in service. Fortunately for folks in the North Texas area they're not running Texas Utilities, because that's not what we're going to ask for."

Comanche Peak opponent Jim Scherrenbock, who provided a copy of the Merrill Lynch report, says rate payers in Texas Utilities' domain, which covers North and West Texas from Odessa to Lubbock and from Wichita Falls to Austin, can expect to pay closer to the 40 percent figure. "What that report says is we were right all along."

—Read Martin

Little big man

Continued from page 14

without him, and now our kids are getting old." Vicki Macktal says. "I'm sort of an independent person, but we don't want to leave each other alone."

But with only the occasional intrusion into his time of whistle-blowing-related litigation, the down time between jobs allowed Macktal to escape to the Stephenville library, where he began researching the path he would take when he went to Washington.

"Remember, I'm unemployed," he says. "Borrowed some money from my daughter's savings account without her knowing it, hopped in my car and drove back to Washington, went and started knocking on doors. I went to my Congressman, [Charles] Stenholm. Got nowhere. I went to [Senator] Phil Gramm. Got nowhere. I went to [Senator] Lloyd Bentsen. Got nowhere. Went to [Senator Ted] Kennedy's [Labor and Human Resources] committee—finally."

By then it was Wednesday. He had, literally, been door-knocking in Senate and House office buildings since Monday morning, when he had driven an hour and a half from a motel in Fredericksburg, Virginia, to be on Capitol Hill when he thought the legislators would be arriving for work—at 7 a.m. "Not knowing that everybody gets up at 10," he says, laughing. Beginning with a thoughtful audience with a Kennedy aide, Macktal's fortunes began to improve when he arrived at Senator John Breaux's (D-Louisiana) subcommittee offices, the nuclear regulation subcommittee.

"The first time we saw him, we knew we had

a witness

"He has a legitimate wrong—he was wronged," says Breaux's staffer, "and it just so happens that everybody was on paper on this one."

Macktal's safety concerns were not addressed at the hearing. Macktal says the committee has now investigated the "what" of his case; it has yet to answer the question, "why?" If the confidentiality clause was indeed a cover-up and not merely a poorly worded, misrepresented clause as his former attorneys claim, why was it implemented and what was it meant to conceal? Macktal says he is concerned about the placement of backup electrical systems side by side at the plant, for instance. A terrorist would only have to throw one grenade to wipe out the primary and backup systems, he says. Again, Brown & Root is not responding publicly to his charges. But Juanita Ellis, who monitors the plant's construction as president of the watchdog group that settled with plant owner TU Electric, Citizens Association for Sound Energy (CASE), says she is convinced that Comanche Peak's operators are working in good faith to address design flaws.

It also just so happened that Macktal's motives for pressing this case were called into question in the hearings, which also exposed fissures in the anti-nuke movement.

Macktal's former attorney Billie Garde, who with attorney Anthony Ruisman is being sued by Macktal, used to work with Macktal's present counsel, Mike and Steve Kohn, at the Government Accountability Project (GAP), a public-interest law firm. Attorneys with GAP had helped Macktal draw up a complaint under federal whistle-blower protections with the Labor Department in 1986. Macktal's commercial settlement had dealt with this Labor Department

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something," says a subcommittee staffer, who declined to be identified further. "He had the [agreement]. The lawyers had been imprudent enough to contest this with the Department of Labor. They had huge files. It just so happened that this little guy recognized that something was wrong. He couldn't figure what it was, he didn't have the code on the crime, but he knew."

"The key to him from our perspective," says Dan Burkowitz, counsel to the subcommittee, "was that, just on the face of it, what Senator Breaux saw was [Macktal's] credibility didn't really matter. On its face the agreement itself was illegal. We didn't need to get into the merits of his safety concerns or his dispute with Brown & Root. He was paid not to appear."

Before the subcommittee, which convened May 4, Macktal charged that his public interest lawyers had sold him out by exchanging his silence for cash. The charge may have helped speed his case to a hearing, he believes: the Democrats wanted his testimony because of the chance to bash the Nuclear Regulatory Commission, which reversed its approval of Macktal's settlements just days before the hearing. The Republicans, Macktal says, relished the opportunity to attack the public interest lawyers, who have been some of the most effective opponents of nuclear power.

Agreements similar to Macktal's were unearthed at Connecticut's Millstone reactor, and a second at Comanche Peak, and the subcommittee referred Macktal's pact to the U.S. Justice Department for possible violations of three U.S. codes, on bribery of a witness, obstruction of proceedings before agencies, and tampering with

complaint, giving \$20,000 to his counsel and \$15,000 to himself in 1987. His affidavit says Ruisman warned him that TU Electric and Brown & Root would "pursue you to the ends of the earth" if he violated the confidentiality clauses of the agreement. Violation of the clauses meant he had to return the \$35,000 plus interest and additional lawyers' fees.

When the Kohns and GAP split acrimoniously following the July, 1986, settlement GAP helped reach between (CASE) and TU Electric, Macktal says he went straight to the Kohns to reopen his case. This raised the specter of the Kohns having a conflict of interest in opposing their old workmates. Garde suggested in her testimony. Also, though Macktal says he is only seeking "back pay and my old job back," the Kohns asked GAP last August for a \$750,000 settlement to be paid to Macktal and a second whistle-blower.

Accusations that Macktal is out to milk Brown & Root, implications in the construction industry that he is insubordinate, and especially publicity surrounding these charges hurt Macktal on top of the injuries of the past three years, he says. But he claims no regrets and says he would speak up again given a second chance.

"This is going to come as a shock to you, but I'm not against nuclear power. I'm for nuclear power. I tried for months to say just, Joe, keep your job, keep your mouth shut, don't say anything about it. But I started seeing things and seeing things and it just became uncontrollable, uncontrollable. I said, 'Man, they let things go like this, this thing's going to blow up in a couple of years.' Yeah, I would speak out again." ■