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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 3:06CR712
Plaintiffs,) Toledo, Ohio
v.) October 25, 2007
DAVID GEISEN, ET AL.) Jury Trial
Defendants.)

TRANSCRIPT OF JURY TRIAL VOLUME 14 OF 15
BEFORE THE HONORABLE DAVID A. KATZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Office of the U.S. Attorney-Cleveland
By: Christian Stickan
Suite 400
801 Superior Avenue, W
Cleveland, Ohio 44113
(216) 622-3818

U.S. Department of Justice
Richard A. Poole
Thomas T. Ballantine
3rd Floor
1400 New York Avenue, NW
Washington D.C. 20005
(202) 514-0838

For the Defendants:

On behalf of David Geisen:
Miller & Chevalier
By: Andrew T. Wise
Richard A. Hibey
Suite 900
655 Fifteenth Street, NW

1 Washington, DC 20005
2 (202) 626-5818

3 On behalf of Rodney Cook:

4 Gordon & Ermer
5 By: Denis F. Gordon
6 John F. Conroy
7 Suite 640
8 1828 L Street, N.W.
9 Washington, DC 20036
10 (202) 833-3400

11 Court Reporter: Angela D. Nixon, RPR, CRR
12 1716 Spielbusch Avenue
13 Toledo, Ohio 43624
14 (419) 260-5259

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1 THE COURT: Ready to proceed?

2 MR. STICKAN: Yes, Your Honor, I am.

3 THE COURT: Please do so.

4 MR. STICKAN: Thank you. Ladies and gentlemen of
5 the jury, we've come to the end of a long case and I want
6 to express our thanks for your attention and your sacrifice
7 in appearing here day in and day out throughout the course
8 of this trial. This is indeed a very worthy service. You
9 should all be proud of your contribution to this process.

10 You might remember at the very beginning of this
11 case when Mr. Ballantine in his opening statement indicated
12 that we were here today because defendants, Dave Geisen and
13 Rodney Cook, concealed information from the NRC. And you
14 will remember that Mr. Ballantine told you that when the
15 NRC asked them about safety-related issues, that is, cracks
16 of the nozzles, could lead to a nozzle leaks if the crack
17 was circumferential. As Mr. Ballantine told you and as the
18 evidence has proven, when the NRC did not accept the first
19 serial 2731, the defendants then made a decision to lie
20 about what happened from that point on.

21 I want to show you what we believe is a visual
22 presentation of what this case is all about. This is a
23 picture of what the NRC in the bulletin 2001-01 was looking
24 for, popcorn deposits at Crystal River. This is what
25 Davis-Besse did in order to do its inspections to look for

1 these deposits. This is their inspection and what they
2 found in 1996. This is what they found in 1998. It's 11
3 RFO, and this is what they found in 2000. And in this
4 tape, again, the 2000 inspection tape, the boric acid was
5 so compacted, so crystalized that the inspection could not
6 even go in through the weep holes. The camera could not go
7 through the weep holes, and you'll see that in this tape.

8 (Videotape playing.)

9 And this is how they, Davis-Besse, had to remove
10 this boron from the head in 2000. And yet this is what
11 Davis-Besse told the NRC that they had found on the head of
12 their reactor. I think you can see what's highlighted
13 here, this visual inspection showed an uneven layer of
14 boric acid deposits scattered over the head. There are
15 some lumps of boron with the color varying from brown to
16 white. The inspection of the RPV nozzles indicated some
17 accumulation of boric acid deposits.

18 In May of 1996 during a refueling outage, the RPV
19 head was inspected. No leakage was identified and these
20 results have been recently verified by a rereview of the
21 video. And then in the table footnote to the table in
22 2735, foot note one in 1996 during 10 RFO, the entire RPV
23 head was inspected. And since the video was void of head
24 orientation narration, each specific nozzle view could not
25 be correlated. And this is what was wasting away on the

1 head of that reactor throughout the course of these
2 inspections. This is what we end up with.

3 I wanted to start out looking at 10 CFR 50.9.
4 We'll talk a lot about that. You'll hear a lot about it
5 today, and that's looming in the background in this case
6 because this is something specific to the nuclear industry,
7 nuclear -- it applies to everybody. You heard numerous
8 witnesses testify that everyone at the plant who dealt with
9 correspondence with the NRC knew that they had a duty under
10 50.9 to follow this regulation, and of course it indicates
11 that information provided to the commission by an applicant
12 for a license or by a licensee or conditions that to be
13 maintained by the application can't or licensee shall be
14 complete and accurate in all material respects. This
15 information must be complete and accurate in all material
16 respects.

17 Before we get started, let me ask you this, would
18 you want anything less from the nuclear industry than this
19 regulation? Would we want anything less than to require a
20 licensee to bring the truth in its totality to the table
21 while important decisions have to be made?

22 Now, you heard some testimony and some
23 argument -- excuse me, argument from counsel, from defense
24 counsel intimating that somehow the NRC had a duty to do
25 something. Well, we were in the middle of a bulletin, and

1 this bulletin dealt with a very important and serious
2 matter, nozzle cracking, and it was important and serious
3 because it could lead to a nozzle ejection, which, in turn,
4 could lead to a loss of coolant which, in turn, could lead
5 to a core melt down. It's not to say that there weren't
6 safety measures in place, but how close to this type of
7 accident do you want to get? Okay. So we shouldn't ask
8 for anything less than a 50.9, and then when Davis-Besse
9 decides that it wants to get an extension on its shutdown,
10 once the bulletin's issued, they're pushing back. They're
11 the one that continuously wants to present evidence, wants
12 to present information to the NRC in order to push back the
13 shutdown for them to say, well, wait a minute maybe some of
14 this information could have been seen in a CFR. The NRC is
15 running around the country, talked to their inspector,
16 that's not the indication, and that's what 50.9 requires.
17 It applies to licensees, okay. And I submit to you that in
18 this business, this is the appropriate procedure to follow.

19 I want to go through some of the testimony and
20 some of the documents and exhibits that you've seen over
21 the course of this trial. And I want to tell you that
22 if -- if my presentation or my statements conflict with
23 what you recall or what you wrote down, please trust your
24 own memories, trust your own memories, okay. But I want to
25 try to go through this and talk about some of the areas

1 that were covered in this trial, talk about the witnesses
2 that are -- that are going to -- that have testified, go
3 over some of their testimony, okay. I'm a little new to
4 the multi-media presentation here so please bear with me.

5 The first slide that we put up, the NRC response
6 to cracking. Okay. You heard a lot about nozzle cracking,
7 I'm not going to get into that. You've already heard a lot
8 about it, but as you know, because of the NRC responded to
9 cracking by sending bulletin 2001-01 to the industry.
10 Mr. Ballantine covered -- presented this slide to you
11 initially. Some of these slides may look familiar because
12 at the beginning of this case, we indicated to you this is
13 what the evidence is going to show. And we're presenting
14 it again to you because this is what the evidence has
15 shown.

16 But at any rate, the bulletin was -- they sent a
17 bulletin out, new cracks had changed the safety analysis,
18 cracks could grow and catastrophically fail. And what the
19 NRC asked for in 2001-01 is to provide a description of the
20 inspections in the last four years, including any
21 impediments to accessibility to the bare metal head.

22 Brian Sheron was the first witness that
23 testified. I don't know if you remember him a few weeks
24 ago, but he was the associate director of project
25 licensing. He talked about a history of how nozzle

1 cracking became a concern for the NRC, and he was
2 responsible for issuing bulletin 2001-01, which is
3 Government's Exhibit 29. Okay. That was one of the
4 documents that you will be getting to look at. The purpose
5 of the bulletin was to request -- as Dr. Sheron testified,
6 the purpose was to request all licensees in high
7 susceptibility category, in the high susceptibility
8 category to submit the results of recent inspections of
9 their head, RPV head, to determine whether or not they saw
10 cracking or to tell the NRC when they intended to shut down
11 to do such an inspection -- okay. Dr. Sheron testified
12 that his staff reviewed responses and was informed that
13 Davis-Besse response was inadequate. There was
14 insufficient evidence to justify operating beyond December
15 of 2001. He also said that on September 28th, 2001, he
16 told First Energy that they will have to -- and Davis-Besse
17 that they will have to shut down by December, 2001 unless
18 they have a better response. And that at this point, the
19 reaction of Davis-Besse was they wanted -- they wanted more
20 time. They wanted to present more evidence.

21 Dr. Sheron also described 50.9, section 50.9,
22 which is Government Exhibit 201, and indicated that
23 information provided to the NRC is provided under oath and
24 affirmation. Again, to underscore the importance of the
25 information and the accuracy and the completeness of the

1 information when it's given to the NRC.

2 This is the bulletin, 2001. You've seen it
3 numerous times. This is one portion of the bulletin, so
4 this is to show -- I mean, this is called -- this is on the
5 concern of the NRC and the concern for a clean head, okay.
6 The highlighted portion, this is the NRC talking in the
7 bulletin, In addition, the presence of circumferential
8 cracking at Oconee, where only a small amount of boric acid
9 and acid residue indicated a problem calls into question of
10 the adequacy of current visual examinations for detecting
11 either axilla or circumferential cracking in VHP nozzles,
12 vessel head penetration nozzles. This is especially
13 significant if prior existing boric acid deposits on the
14 reactor head mask the identification of new deposits. The
15 NRC was signaling a concern.

16 And here is section 1.D, I heard a lot about 1.D,
17 this is what it says right here, and you'll have this
18 document in your hands while you're deliberating, All
19 addressees are requested to provide the following -- are
20 requested to provide the following information, D, a
21 description of the vessel head penetration nozzle and the
22 reactor pressure vessel head inspections, parentheses,
23 type, scope, qualification, requirements and acceptance
24 criteria. That has been performed at your plant or plants
25 in the past four years and the findings. Include a

1 description of any limitations, paren, insulation or other
2 impediments, to accessibility of the bare metal of the RPV
3 head for visual examinations.

4 Very specific. They wanted to know about past
5 inspections and any impediments to those inspections. With
6 respect to the bulletin responses, this went out to
7 everybody, all the licensees in the nuclear industry, that
8 they're in this high susceptibility range. Most plants had
9 planned for refueling outages or planned special shutdown
10 before the end of 2001, as the NRC asked. Davis-Besse
11 essentially stood alone. They planned to wait until March
12 of 2002. And I'll talk about that later. It wasn't
13 like -- it was -- they were determined not to shut down.
14 They were determined to go forward past that
15 December 31st date. And there's -- and we'll talk about
16 the cost that was involved for them to shut down on
17 December 31st.

18 The NRC, however, disagreed with that plan.
19 And -- but Davis-Besse was pushing back. They wanted to
20 have -- and a meeting was set up, a teleconference meeting,
21 you heard about it, on October 3rd where the Defendant
22 Geisen claimed that the most recent inspection was
23 100 percent except for five or six nozzles. Serial 2731,
24 that's the first serial, the first response that went from
25 the -- from Davis-Besse. And essentially, what was going

1 on here was that they were trying to throw information out
2 there to conceal information to -- to give a very ambiguous
3 and incomplete description of the condition of their head.
4 The serial 2731 described the 2000 flange inspections in
5 more detail than the nozzle inspections concealing the
6 flaws behind the nozzle inspections. And you'll see that
7 in the report itself. Inspections of the RPV head, slash,
8 nozzle area indicated some accumulation of boric acid
9 deposits. No visible evidence of nozzle leakage detected.
10 How could that possibly be a true statement in light of the
11 film that you just saw and the evidence that you've heard?
12 No mention of blockage or that inspection through the weep
13 holes creates an impediment to 100 percent visual
14 inspection of the head.

15 The 2731 indicated that the Davis-Besse inspected
16 bare metal head that was accessible through -- this was
17 accessible through weep holes in accordance with the boric
18 acid corrosion control program. But no nozzle count was
19 provided. Okay. We'll talk about the boric acid corrosion
20 control program. A Dr. Hiser testified he was the lead
21 engineer, technical reviewer for the NRC in drafting the
22 bulletin and reviewing responses. He was basically tasked
23 with sending -- crafting the language in the bulletin,
24 sending it out. And then he and his staff would then
25 review what the various licensees provided in way of

1 response. And he basically provided the NRC side of what
2 Davis-Besse presented, so Davis-Besse gave you an idea of
3 how the NRC was viewing the information that was provided
4 to them. A Government Exhibit 60, which is the first
5 serial, serial 2731, he testified that that told him that
6 there was a full inspection of the head with no
7 impediments, that the boric acid corrosion control
8 statement that followed gave those statements credibility
9 and increased his confidence in the inspection that was
10 done.

11 He testified and we showed some of the language
12 earlier on about what Davis-Besse told the NRC. Some
13 accumulation of boric acid meant random scattered patches,
14 something that was not extensive. He also said that no one
15 at -- at FENOC or Davis-Besse told him about large deposits
16 of boron on the head and impediments. He was involved in
17 the October 3rd, 2001 teleconference, and he was told --
18 now he did not remember who it was that told him this, but
19 we have the notes of Mr. Miller, and we'll talk about David
20 Miller's testimony that this was Dave Geisen, or Defendant
21 Geisen.

22 Dr. Hiser testified that there was -- he was told
23 at the October 3rd, 2001 teleconference, that there was a
24 100 percent -- 100 percent inspection of the head in 2000
25 except for five or six nozzles. Okay. He also testified

1 that there was an October 11th, 2001 meeting with the
2 technical assistants of the NRC commissioners, and he
3 described it as jumping out of the loop. In other words,
4 he's already dealing with Davis-Besse, Davis-Besse's
5 already dealing with Dr. Hiser and with people at the NRC.
6 They shoot up the ladder, basically, do an end around, they
7 go directly to the technical assistants, pretty high up,
8 which the technical assistants of the NRC commissioners,
9 and he attends that meeting. And there is a slide
10 presentation, and you'll have that in evidence. It's
11 Government's Exhibit 87 where one of the slides indicates
12 that it verified that CRDM nozzles were free of popcorn
13 deposits and 11 and 12 RFO. Okay. And you'll hear
14 testimony later that it was the Defendant Geisen who
15 prepared that slide and presented it. Dr. Hiser considered
16 that to be a positive finding of no popcorn deposits.

17 Mr. Miller, I think I mentioned him before. He's
18 the supervisor at the Davis-Besse compliance office. He
19 took notes. He testified that he took notes at the
20 October 3rd, 2001 meeting. They were getting ready for
21 this meeting on October 3rd at Davis-Besse. He took notes
22 for their pre meeting, which is Government Exhibit 72.
23 Okay. And in that, he describes the tapes that were being
24 viewed. He took notes on -- at the October 3rd meeting,
25 which is Government Exhibit 78, and his notes indicate that

1 Dave Geisen, DG said that 100 percent of the head was
2 inspected in 2000 except for some areas, and also that
3 Mr. Geisen said that -- that tapes were -- 10, 11 and 12
4 RFO had been reviewed, had been reviewed on October 3rd.
5 Mr. Miller testified that he is in the practice of keeping
6 notes. He did not specifically recall what was said at
7 these meetings, but he testified that his practice was to
8 keep accurate notes. He also said that every bulletin was
9 important. It was common knowledge that correspondence
10 with the NRC had to be complete and accurate. He also
11 testified that there was a desire to keep the plant
12 running, running beyond December 31st, 2001.

13 This is the slide that was presented to the NRC
14 during the technical assistants meeting on October 11th.
15 And if you look at it, the first statement is that all CRDM
16 penetrations were verified to be free from popcorn type
17 deposits using video recordings from 11 RFO and 12 RFO.
18 Okay. And if you'll recall on cross examination, Defendant
19 Geisen was asked by Mr. Poole, is verified a strong word,
20 and he said he agreed that it was. It was a very strong
21 word. And what -- but at any rate, that was a strong word
22 to use. And at one point he testified that even though
23 this strong word was being used to tell the NRC that the
24 penetrations were verified to be free from popcorn deposit,
25 that Andrew Siemaszko was still back on his table. He

1 hadn't completed it yet. How can you use a word like
2 verify when all the information hasn't been provided to
3 you?

4 Serial 2735 is the next -- was the next
5 submission, and again, it repeats the inspection
6 information, including the bare metal head that was
7 accessible through the weep holes and the boric acid
8 corrosion control claims that you heard before. But it
9 also adds a false nozzle-by-nozzle table prepared by the
10 Defendant Siemaszko. That table was also included in the
11 next two serial letters following 2735.

12 Dr. Hiser testified that -- and he was shown
13 Government Exhibit 105, which is the serial for 2735. And
14 he noted that 10 RFO, 1996 inspection results were added to
15 this second submission. He indicated that to him the
16 language about a whole head visual inspection meant that he
17 could see around each nozzle and could examine 100 percent
18 of the head. And as you'll recall in that same submission,
19 it indicated that 65 of 69 nozzles were inspected in 1996,
20 which indicated a high level of effectiveness in that
21 inspection.

22 Dr. Hiser testified that he thought the head was
23 cleaned in 2000 for a qualified inspection in 13 RFO. Note
24 one at the end of the tables, he was shown that footnote
25 that we'll be looking at, and he said that he thought that

1 the entire head had been observed. He wasn't told that
2 only 50 to 60 percent of the head could be inspected for
3 the PCAQ 96551 that Prason Goyal prepared when he had to
4 do the inspection, head inspection in 1996. And he also
5 testified that there was a -- another meeting at the NRC
6 October 24th, 2001, and that there was an analysis and fact
7 slides that were presented by Mr. Geisen. And again, it's
8 confirming the popcorn, but it also -- what we should point
9 out is you heard from Mr. Houston that he testified that on
10 October 24th, 2001, the NRC wasn't very happy because
11 they've been promised tapes, pictures of the inspections on
12 October 24th, 2001, that that had to -- that they had been
13 told that they were going to receive these pictures or
14 tapes and none were provided. And Mr. Huston passed that
15 information along. All right.

16 The next slide is the tables that we've been
17 talking about. And one of the things -- this is from 2735.
18 This is the first time this table appeared with footnote
19 one. And what's interesting about this, and it's been
20 pointed out by Mr. Poole on cross examination, or by
21 Mr. Ballantine on cross examination of Mr. Cook, but that
22 the footnote says in 1996 during 10 RFO, the entire RPV
23 head was inspected. And of course since the video was void
24 of head orientation, each specific nozzle could not be
25 viewed. And we'll talk about testimony -- there was plenty.

1 of testimony about the head orientation and whether there
2 was head orientation.

3 You heard and saw the tapes for the '96
4 inspection of Prason Goyal and he was able to call out the
5 stud holes. But what's interesting is the -- is the -- is
6 the legend that's at the bottom. And it indicates no leak
7 observed, visual inspection satisfactory, no video record
8 required. And there was testimony that, and I think it
9 appears on one of the slides, that there was -- that the
10 tapes had been transferred over to a -- a CD format or a
11 digital format, and that their -- their -- that the -- and
12 that their -- that the tapes in 1996 had to rely upon the
13 recollections of some people. You heard that from the
14 testimony on cross examination of Mr. McLaughlin. You
15 heard that on testimony cross examination of Mr. Geisen,
16 and certainly Mr. Cook. And they were told that in 1996,
17 as part of this table, that there was some nozzles,
18 apparently that there was no video required, no video
19 record was required. So that somebody's memory had to be
20 relied on from 1996 to describe what the inspection was
21 like. Now, how unlikely and improbable is that?

22 But what really seals that deal is that I asked
23 Prason Goyal on the witness stand if anybody ever talked
24 to him about the 1996 tape, and he said no. The very
25 person who did the inspection was not -- was not asked

1 about -- about that inspection. This is the -- the -- this
2 is the slide that was presented, and this was -- of course
3 it's a little bit different. Again, the testimony is that
4 this was prepared by Mr. Geisen. And on October 24th,
5 during this presentation -- or excuse me, October 24th, I
6 believe it was, during this presentation, all CRDM
7 penetrations were verified to be free from popcorn type
8 deposits using video recordings from 10 RFO, 11 RFO, 12
9 RFO. Now they've added 10 RFO. A review of visual
10 recordings as well as eye witness accounts served as the
11 means of the inspection. Well, if they didn't talk to
12 Prason Goyal, then what eye witness were they talking to?
13 And how could they verify the results of that inspection?

14 And again, it indicates that -- you might
15 remember that there was, on cross examination, some
16 questions that were being asked, and I think it was of
17 Mr. Holmberg about whether he was able to view the tapes,
18 whether he was viewing the videotapes on a CD format so he
19 could stop and freeze frame it and wouldn't that be
20 different than if he had to use a VHS and watch that.
21 Well, as it turns out, that's misdirection, because it was
22 already transferred to a file format to allow a
23 frame-by-frame review. Andrew had that as well. Andrew
24 Siemaszko had that available, and Mr. Geisen knew it.

25 In serial 2741, this was a serial -- as you

1 recall, there were questions that were asked during the
2 October 3rd meeting that Davis-Besse had to address. And
3 so the Defendant Cook drafted answers to the NRC questions
4 and prepared a letter. And in this letter, he said there
5 are areas of the RPV head that are not viewable due to the
6 presence of boric acid crystal deposits. The other --
7 another draft said that there was a visual -- the visual
8 inspection won't be enough in 2002 because boric acid was
9 left on the head. These are truthful statements. And yet
10 neither of these truths were included, but then this
11 indicates that the table from 2731 repeated the prior false
12 claims about the past inspections in compliance with the
13 boric acid corrosion control program.

14 Dr. Hiser identified serial 2741, which is
15 Exhibit 111, and he indicated there was no indication that
16 masking deposits were left on the head at the end of -- at
17 the end of 2000. You will have all these documents to read
18 for yourself. You will have these -- in particular, these
19 submissions. You will know what they said. You can read
20 it for yourself. There's no indication that masking
21 deposits were left on the head at the end of 2000. Also on
22 page 3 of that serial, it indicates that no -- there were
23 no gaps on the top four nozzles, which are nozzles one,
24 two, three and four. Okay. And also at 64 of 69 nozzles
25 were inspected in 1996. That was at 2741.

1 Now, what's interesting that -- you've heard a
2 lot about the gaps and gaps that would appear, and -- and,
3 you know, I can't get into the science with you, but I
4 think you heard enough testimony. It's pretty consistent
5 that the nozzle would have to have a gap around its
6 interface with the head in order to show leakage. If it
7 didn't, then no gap, then it would be -- it would not be
8 able to show that leakage, and therefore, could not -- you
9 couldn't do a qualified visual inspection.

10 And throughout the entire course of these
11 submissions to the NRC, the defendant, particularly the
12 Defendant Geisen, knew that at some point, gaps did appear.
13 There were gaps that could show leakage. Okay. But he
14 decided -- he had a meeting, and Mr. McLaughlin testified
15 about it, that they weren't going to tell the NRC. They
16 weren't going to tell them about these gaps, because --
17 because it would be more conservative. It would be more --
18 it's more conservative not to under the probabilistic risk
19 assessment. The problem is those four nozzles couldn't be
20 inspected anyway. They were packed in boron. Okay. Once
21 they had gaps and they opened up, if there was boron that
22 was packed around them, it didn't come -- it didn't
23 necessarily have to come from the flanges. Before they had
24 an excuse, they can say, well, that's flange leakage
25 because it couldn't come nowhere else. But once that --

1 once they realized they had an opening, there's another
2 source of leakage, and that other source of leakage is from
3 the nozzles. And you'll recall that nozzle three, in
4 particular, was the nozzle that was involved with the
5 cavity. So indeed, there was another source of leakage.
6 Okay. But they discounted it and they decided, you know --

7 We heard a lot about engineering judgment, this
8 is an engineering judgment. Well, here's the case of the
9 Defendant Geisen deciding that he's going to substitute his
10 judgment for the NRC's. Does that comply with 50.9? They
11 weren't doing the NRC a favor. They were hiding the fact
12 that they have another source of leakage. And you'll see
13 from the exhibits they were told, I think it was
14 November 15th of 2001, via an e-mail, that from the SIA
15 company, that the gaps -- there were gaps in these nozzles.
16 You'll see that there are representations made to the NRC
17 after that date that there were no gaps.

18 Okay. The Dr. Hiser also testified that
19 Government Exhibit 113, which is serial 2744, adds to the
20 note at the end of the table that reinforces the fact that
21 there's no gaps, and you can see that. Read the footnote
22 at the end of 2744. It's a little bit longer than the
23 other footnotes in those tables from 2735 and 2741, and he
24 testified that the photos that were included -- 2744 had
25 pictures that were included in it. Dr. Hiser testified

1 that the photos were consistent with showing a clean head
2 permitting a good inspection. Of course we know those
3 photos did not really tell the story.

4 Okay. As you'll recall, 2744 was the nozzle
5 photo album with photos from Siemaszko, the Defendant
6 Siemaszko and captions that were put into the -- into the
7 serial by the Defendant Geisen. It falsely claimed that
8 the images were representative of the inspections. And it
9 also included the same false table from 2735. The next
10 presen -- the next serial was 2745, and that transmitted a
11 probabilistic risk assessment. I'm not going to get into
12 that, but it concludes that Davis-Besse will be safe until
13 February 2002. And it explicitly -- this, as you remember,
14 probabilistic risk assessment, there has to be a baseline,
15 it has to start somewhere. And the NRC -- I'm sorry, the
16 Davis-Besse was saying that it's starting at 1996. So we
17 know that we had the baseline, the clean head in 1996. And
18 so they indicated in the -- with respect to 1996 that
19 100 percent of the CRDM nozzles were inspected with the
20 exception of four nozzles in the center of the head. And
21 of course those four nozzles were the ones that allegedly
22 had no gap. The defendants reviewed and approved 2745.
23 You heard a lot about the greensheet. There was cross
24 examination on that. I won't get into that, but
25 essentially there were responsibilities that Mr. Geisen had

1 and that Mr. Cook had with respect to verifying the
2 information which they failed to do, which they said they
3 failed to do.

4 In Government Exhibit 113 there was -- there is a
5 photo in there, and there's a caption because of the photo,
6 and you'll see it when you look at the exhibit. And the
7 caption says that it was -- that this nozzle was verified
8 to not be active or wet. Okay. And I think I asked
9 Prason Goyal because he was the one that could have
10 verified it, he did an inspection, that whether he was
11 asked about that, and no one talked to him, no one talked
12 to him about the '96 inspection or the submission, or this
13 submission in particular. Dr. Hiser said that this would
14 have affected his review if he knew this was not the case.

15 Government Exhibit 115, which is serial 2745,
16 indicated considered -- contained a probabilistic risk
17 assessment. He also testified that Mr. Geisen presented
18 the tapes. He ran the VCR showing portions of the tapes
19 from 1996 and 1998, and he jumped from place to place as he
20 was presenting.

21 He also reviewed Government Exhibit 4A. That's
22 the part of that tape you saw in the beginning here today.
23 The 1996 head inspection video which showed large piles of
24 boron on the head which was not what he remembered seeing
25 in 1996. And Mr. Geisen said, well, if you think that

1 tape's bad, the 2000 tape is worse. And I think you
2 remember there was some testimony or cross examination,
3 what does that mean, was it poor quality video, was there
4 some technical problem with it? But Dr. Hiser said that
5 Mr. Geisen did express frustration with what the tape was
6 showing but not that the quality of the tape was poor. In
7 fact, he thought the quality was generally good. He was
8 expressing frustration with the images on the tape.

9 Again, he talks about a November 28th, 2001
10 meeting at the NRC which is Government Exhibit 118. And in
11 that -- in that meeting there were two -- two slides that
12 were presented under the title of it background and
13 deterministic aspects. Background talked about -- it talks
14 about the meetings that were set up previous to this
15 meeting, and it today talks about there was an October 24th
16 meeting that was set up that was supposed to go forward.

17 And again, Mr. Huston testified that that's when
18 the photos and the tapes were supposed to be presented.
19 And again, deterministic aspects of the slide, Mr. Geisen
20 prepared that slide, and, again, it gives the impression to
21 the NRC, that the -- that there was a good inspection with
22 respect to the head to support their outage delay to the
23 outage request. And they asked for -- asked for some
24 technical help. For some reason, and most importantly,
25 Dr. Hiser said that had he known the facts that he knows

1 now, that he would have more evidence to make a stronger
2 evidence for a shutdown. He testified that he was one of
3 the -- one of the people at the NRC that thought that
4 should have been a shutdown. But he made a statement which
5 I think capsulizes what 50.9 is all about. And he
6 indicated that the NRC expects to have all the facts on the
7 table, that the NRC can interpret it one way, the licensee
8 can interpret it another way, but at least they can see all
9 the evidence. They can have a fair exchange of
10 information.

11 Now, we're going to talk about falsity.

12 Mr. Holmberg -- Mel Holmberg presented his analysis of
13 after the inspections and as to what nozzles were
14 available, what could be viewed. That is certainly
15 different than what was being presented with respect to the
16 results of the inspections that Davis-Besse was presenting
17 to the NRC. Mr. -- James Davis presented his analysis that
18 there was a cavity on the head in 2000, and that a whole
19 head visual inspection would have revealed it.

20 And according to Mr. Lloyd, Mr. Goyal and the
21 defendant was -- Defendant Siemaszko told the Defendant
22 Cook that the boric acid corrosion control program could
23 not be complied with. These are just some of the areas
24 that touched on falsity. And we'll talk about Mr. Lloyd
25 and what he testified to. But he interviewed Mr. Cook.

1 Okay. You'll recall that Mr. Holmberg -- I'm not going to
2 go through this entire slide, but he basically revealed --
3 did his review of the tape. He saw the tapes, and he
4 testified -- and those tapes are listed, reviewed
5 government exhibits, and we listed them there. Basically
6 it's the as -- the inspection tapes and some -- and the
7 cleaning tapes with respect to 11 -- 10 RFO, 11 RFO and 12
8 RFO, except 12 RFO is -- had two tapes. And in the process
9 head cleaning tape and then an as-left inspection tape.
10 And he told you what he could see, and he was using fairly
11 generous parameters in order to credit the view of the
12 nozzles. And he indicated that '96, he could see 51 total
13 nozzles that were viewable with only 28 in a condition to
14 make a determination whether there was leakage. '98, 43
15 total nozzles that could be viewed with 18 of the condition
16 to determine leakage. And in 2000, 23 total nozzles that
17 were viewable with only five in a condition to determine
18 leakage. Okay. And Government Exhibit 129 presents these
19 findings graphically.

20 Okay. And we already talked about the cross
21 examination of Mr. Holmberg. It was suggested that maybe
22 Andrew was using a VHS tape, we know that's not true, in
23 doing his analysis. He also suggested on cross with
24 Mr. Holmberg that there was a problem with sound
25 synchronization. Listen to the tape. You are the judges

1 of facts in this case. Listen to the tape and you can
2 judge for yourselves, is there a problem with the sound?

3 And on redirect, Mr. Holmberg testified that it
4 was not accurate to say that 1996 tape was void of head
5 orientation. Okay. And he graphically produced this chart
6 which you'll have in evidence, which indicated which
7 nozzles he could see in 1996, and which were acceptable and
8 which -- the red ones are unacceptable, the green ones have
9 an acceptable visual. And you'll see that in 19 -- I
10 skipped one here, 1998, that again, this is the acceptable
11 nozzles that he could see were in green, and the red
12 nozzles were unacceptable. This patch over here that's on
13 the -- on the head of the reactor, this was designated by
14 FENOC as what they thought was the affected area, where the
15 boron was located. And then this is 2000. You can see
16 there's far fewer nozzles. You'll have this in your
17 possession. And again, the affected areas that were
18 designated by FENOC are in the yellow. So that supports or
19 at least illustrates what Dr. -- what Mr. Holmberg's
20 testimony was. Okay.

21 You remember the testimony of Terry Tabbert. He
22 was one of the early witnesses that appeared. And he was a
23 radiation protection group guy, he was Decon, or Decon.
24 And he testified that he cleaned the head in five or six
25 outages, so he had a history of knowing what the boron was

1 like on the head of the reactor. And prior to 12 RFO, he
2 said he removed the boron with a vacuum and scrapers, and
3 that it had the consistency of powder and little -- a
4 little boron debris. But he also told you that 2000 outage
5 is nothing like he's ever seen, hard crystalized boron.
6 And if you look at Government Exhibit 17A, you saw part of
7 that in the introduction.

8 What I'm telling you -- what my part of the
9 closing -- he de -- he talked -- he identified this tape,
10 and he indicated that they used spud bars to take the boron
11 off the head of the reactor the -- and indicated that 2000
12 was nothing like he's ever seen before. He described the
13 head cleaning effort in 2000, significant boron deposits on
14 the head, and pushing a camera up through the weep hole,
15 some of the weep holes were filled with boron deposits.
16 And you saw that on that part of the tape that we saw at
17 the beginning of this closing. He also testified that
18 boron deposits were left on the head at the end of 12 RFO,
19 such that it became a concern for the I-600-committee to
20 remove it in 13 RFO. And if you remember the
21 I-600-committee was set up, Mr. McLaughlin I think has
22 testified was -- was in charge of it or part of it. I
23 think he was in charge of it. And then they had to -- it
24 was to prepare for the next outage in 13 RFO.

25 Mr. Tabbert was involved because he had a history

1 of cleaning boron, and he was concerned about cleaning the
2 head of the reactor in 13 RFO because he knew what was left
3 behind in 12 RFO, and that's why he wanted to talk about
4 what type of equipment we're going to use and how we're
5 going to be able to clean this head.

6 Mr. Davis testified as an independent expert
7 witness. He's going to -- he has a Masters and Ph.D. in
8 metallurgical engineering, 17 years at the NRC. He was a
9 member of the augmented inspection team that was sent to
10 Davis-Besse after the accident -- after this incident
11 occurred. And his expert opinion was that nozzle three
12 crack initiated in 1990, plus or minus three years. That
13 crack started in 1990 plus or minus three years. His --
14 and of course nozzle three was the problem nozzle with
15 respect to this cavity inspection. His opinion was that
16 the nozzle three crack caused the boron deposits on the
17 reactor head in the '98 and 2000 and maybe 1996. His
18 expert opinion was that the cavity was formed by the
19 corrosion, which first appeared in 1998 with more evidence
20 in 2000. His expert opinion was this, a cavity of this
21 magnitude would not have developed and grown to the
22 sides -- and grown to that size and would not have been
23 visible at the prior inspection. Okay. So basically he
24 said that if during the inspections or at least 1998 and
25 2000, there was evidence that there was a cavity present,

1 they would have been found had that inspection been
2 conducted the way Davis-Besse said they were conducting the
3 inspections.

4 Okay. You heard a lot about void of head
5 orientation. It's on every table that you have in these
6 serials as part of the footnote. While the footnote
7 changes sometimes, the beginning part or at least part of
8 it says that 1996 -- the tape for 1996 was void of head
9 orientation. And I'd like to -- to play the parts of that
10 tape, and you can judge for yourself.

11 I submit you're going to hear Prason Goyal
12 calling out stud holes that do provide orientation to do an
13 inspection.

14 (Video playing.)

15 All right. Does that sound like it's void of
16 head orientation? Mr. Holmberg was able to do the
17 inspection, was able to look at the tape and see what the
18 condition of the nozzles were. That's Exhibit 4 A. You'll
19 have -- you'll have these videos, you'll have -- you'll
20 have the entire video. You'll have the entire submissions.
21 You can judge for yourself. But I submit to you that --
22 that that certainly is not void of head orientation.

23 And I want to talk a little bit about knowledge
24 that evidence regarding knowledge to some of the things
25 that had come up in the course of trial. The Defendant

1 Cook and some of these, Mr. -- Mr. Ballantine has presented
2 to you in the opening. So if you think this looks
3 familiar, some of them are familiar because, again, this is
4 evidence that has been presented during the course of
5 trial, that we indicated up front was the evidence you
6 would see in here. The nozzle count for Mr. Cook was
7 shifted, and it took out any reference of the number of
8 nozzles and in its place wrote, the scope of the visual
9 inspection was to inspect the bare metal RPV head area that
10 was accessible through the weep holes to identify any boric
11 acid leaks, slash, deposits.

12 And why? Why was this change made? And this is
13 Government's Exhibit, I think it's 53, which I'll talk
14 about directly. Mr. Cook indicates that this was to ensure
15 that we state that not all of the head was accessible or
16 inspected for inspection for whatever reason. Well, that
17 doesn't say that. That's not what that language says. Why
18 not just say it? Because this was intended to be
19 misleading.

20 And you'll -- you'll hear -- you've already heard
21 the elements of the offense of count 1, concealment, and
22 the rest of the counts 2 through 5 which deal with false
23 writings. But count 1 in particular, concealing
24 information to deceive the NRC. This language did not say
25 what Mr. Cook said that he was conveying. He said just the

1 opposite. Mr. Cook was warned by his colleagues, and
2 you'll see some of these e-mails as the serial letter does
3 not meet regulatory requirements for completeness and
4 accuracy. That was told to him by Mr. Wuokko. The
5 discussion of the 1998 and 2000 inspections give the
6 impression that we were able to look at all the CRDMs.
7 It's very difficult to look at the CRDMs when there is
8 boric acid around them. We do not say anywhere that the
9 inspection through the mouse holes creates an impediment to
10 100 percent inspection. These are all warnings that were
11 given to not only Mr. Cook but to Mr. Geisen, and they
12 chose to ignore it. They chose to perceive this was -- and
13 I'll talk about this a little bit later. There was no
14 intention that they were going to shut this plant down on
15 December 31st.

16 Defendant Cook, as we indicated, had drafted
17 truthful answers to questions for 2741, but then he edited
18 himself out. He knew the record, the '96 report on the
19 head inspection, he received photos of leakage from other
20 plants, and he saw the video records from Davis-Besse. The
21 Defendant Geisen was also warned by colleagues and
22 consultants. It was pointed out that we can not clean our
23 head through the mouse holes, and Andrew Siemaszko's
24 requesting three large holes to be cut in the service
25 structure for viewing and cleaning. Future inspections

1 will be impeded by a layer of boric acid of considerable
2 depth, access through the weep holes is severely
3 restricted. That came from Mr. Gibbs.

4 We'll talk about Mr. Gibbs. You recall that
5 Prasoan Goyal testified. He was the design engineering
6 that worked at Davis-Besse from '96 to 2002. He was
7 involved with the nozzle cracking concerns since '96 as a
8 member of the B & W owners group materials committee. And
9 you'll recall that he testified as to who they reported to
10 and who they had to deal with. They had to deal with a
11 steering committee. And who was on the steering committee?
12 Ultimately it was Mr. Geisen. And you're going to see
13 testimony, or you've heard testimony that Prasoan Goyal was
14 an advocate of what was known as the modification or a mod
15 to cut holes in the service structure to allow for cleaning
16 or for inspection and cleaning of the reactor vessel head,
17 because of the restrictions that were imposed by having to
18 clean through mouse holes up through the mouse holes.
19 Okay. That mod never went through. It kept getting
20 delayed. Ultimately it was delayed until the 14 RFO -- and
21 Mr. Geisen was part of that process -- because of the cost,
22 because of the money. And that's what was behind this
23 drive not to shut down December 31st. There was large
24 amounts of money involved with respect -- that and cost
25 with respect to the plant.

1 You remember that Prasoon Goyal testified that he
2 inspected the head in '96. And as a result, he wrote PCAQ
3 96-551, you'll have that. You've heard a lot of comment
4 already, that's in evidence -- this document, the inability
5 to comply with the boric acid corrosion control procedure.
6 And PCAQ 96-551 is Government's Exhibit 6. And if you look
7 at it, it indicates that the inspection was limited to 50
8 to 60 percent of the head because of the restrictions
9 imposed by the location and size of the weep holes. It
10 also indicates because the head had not been cleaned, it
11 was not possible to clearly determine whether there was an
12 active leak. And it also indicated the corrective
13 action -- the corrective action was to install the access
14 ports in the service structure. And he communicated this,
15 you know, you have -- there's a lot of e-mails of Prasoon
16 Goyal that are now in evidence, and he communicated the
17 past inspections were limited, and those are the exhibits
18 that will be in front of you 26, 27, 32, 37, 40, 52, 57 and
19 150. He questioned the accuracy of the bulletin responses,
20 past head inspections regarding 95 percent and 90 percent
21 in Government's Exhibit 33 and 43 which resulted in
22 majority of nozzles in Government Exhibit 35, but was
23 eventually changed by Mr. Cook to the area that was
24 accessible through weep holes to ensure that we state that
25 not all the head was accessible.

1 And that's Government Exhibit 53, which is out --
2 and out of this league. He also -- Mr. Goyal also
3 testified that he relayed the need to have a clean head in
4 order to find the small amount of boric acid and deposits.
5 He sent e-mails out to various people. He warned people.
6 He sent pictures out, this is what we're looking for,
7 popcorn deposits. And it's not very large. He relayed
8 reasons why Oconee had missed their leaking nozzles during
9 the prior inspection, because they were looking for a large
10 quantity of deposits and because their head was not clean.
11 He provided the head functions for the cracked nozzles at
12 Oconee to Mr. Cook in Government Exhibit 74 and to
13 Mr. Geisen in Government Exhibit 25, and noted that special
14 attention should be paid to nozzles one through five in the
15 next visual inspection because they were from the same
16 batch.

17 You heard about heats. There is e-mails in there
18 about heats. Nozzle three was from the same heat that
19 the -- that the cracked nozzle of Oconee was from. And
20 Mr. Goyal was trying to tell people this. Again, waving a
21 red flag that he wasn't at -- they did not pay any
22 attention -- discussed the picture from a 1996 head
23 inspection at 2744 where Mr. Geisen added the caption about
24 verifying that this was not an active leak. And he said
25 that no one had asked him whether there was an active leak

1 in 1996. And he also said that his PCAQ, 96-551,
2 specifically stated that because the head was not
3 completely cleaned, it was not possible to make a clear
4 determination that there was not an active leak. Just the
5 opposite.

6 We'll go through some of the exhibits that
7 Mr. Goyal testified to. There were a lot of them, but some
8 of the -- some of the ones I wanted to highlight, this, of
9 course, is the PCAQ 551. And the language that -- that is
10 contained in there, which is difficult to read, I know.
11 I'm trying to pull out my copy so I can hopefully read it
12 for you. He indicated on the first slide, and you'll
13 recall that the boric acid corrosion control, that several
14 steps had to be complied with. I'll leave the original
15 document for your review because my eyes will not hold up
16 under this pressure. But the -- but basically he was
17 pointing out that the boric acid corrosion control program
18 was not being followed. And I think that's on the bottom
19 of the second -- second slide where he indicates that. And
20 his concern was that the above steps may not have been
21 followed to identify the scope of the problem. Okay.

22 He indicates that the PCAQ is a quality document
23 which reported boric acid deposits on the RV head. The
24 deposits were discovered during a visual inspection of the
25 RV head performed through mouse holes while utilizing a

1 video camera. The extent of the inspection was limited to
2 approximately 50 to 60 percent of the head because of the
3 restrictions imposed by the location and size of mouse
4 holes. And he goes on to say the inspection showed various
5 sizes of boric acid amounts scattered in various areas of
6 the head. It is extremely difficult to develop an estimate
7 of the amount of boric acid deposit because of the deposit
8 scatter and limited inspection. And this I think we've
9 already touched on. This PCAQ was written because steps
10 which were outlined, the boric acid corrosion control
11 procedure, could not be fully implemented.

12 Now, we've heard testimony about -- especially
13 from Mr. Cook about should and shall. We're in compliance
14 with the boric acid corrosion control program because it
15 should, should, didn't say shall, but you've heard
16 testimony from Mr. Gibbs that -- especially Mr. Gibbs, that
17 whether it says should or shall, you're dealing with 50.9,
18 section 50.9. You have to, as an engineer, find out what
19 the source of the boric acid leakage is. That's the bottom
20 line for boric acid corrosion control program. That's what
21 the NRC was asking for in the bulletin. And for them to
22 say we used this procedure but we didn't have to comply
23 with that, that's a significant omission. And for them to
24 say, no, we are complying with the procedure just because
25 it says should or shall, that the testimony was that I

1 think Mr. Gibbs may have said it, that a good engineer
2 would have to know that he would have to find that they
3 would have to have a head cleaned.

4 I think Mr. Goyal said that. They cross examined
5 Mr. Goyal on that, and he indicated that we needed a clean
6 head. In the context of what the bulletin was asking for,
7 we needed a clean head. And to say that we -- you know, we
8 complied with this procedure, when PCAQ 551 makes it clear
9 that they didn't, they weren't complying with that
10 procedure. Mr. -- and Mr. Goyal testified that, you know,
11 you have to look at the big pictures here, that's what we
12 are looking for. So should or shall, again, misleading.
13 It was not, there was no effort to find, and could not --
14 they could not establish what the source of that leakage
15 was because of the boron that was left on the head. And
16 that wasn't told to the NRC. Instead they turned around
17 and said we complied with this procedure, and that gave the
18 NRC more confidence in what they were being told. Okay.

19 This is an e-mail that Praseon Goyal sent out,
20 and there are a number of them. This one went to Andrew
21 Siemaszko and copied to Mr. Geisen. And again, he's
22 underscoring what he testified, that he sent this e-mail
23 out to make sure that all of you understood that the amount
24 of boric acid -- that the amount of boric acid observed in
25 the visual inspection is very small, and that it is

1 important to have a clean head for a good visual
2 inspection. If the head is not cleaned, the chance of
3 finding boric acid such as that observed at Oconee are not
4 very good. That was the information he received. He
5 forwarded it on to Mr. Siemaszko and Mr. Geisen. And this
6 was in 2000, December of 2000. He's already telling
7 Mr. Geisen, in particular, that this is what we're going to
8 have to be looking for.

9 There was a trip report. You recall that
10 Mr. Geisen testified that he reads all the trip reports.
11 And this was a trip report that Mr. Goyal prepared. And he
12 indicated that boric acid crystals were detected on the
13 reactor vessel head during the routine visual inspection.
14 They were able to find this leak because their CRDM flanges
15 do not leak and the head was in pristine condition. And
16 this document was copied to Mr. Geisen. This is an e-mail
17 from Mr. Goyal, and it's dated July 10th of 2001. The
18 table currently shows this was for an industry-wide report
19 that they were preparing and contributing to. The table
20 currently shows 100 percent inspection, which is not
21 correct, because of the large boric acid deposits on the --
22 because of the large boric acid deposits on the head, very
23 few CRDMs could be inspected. Also the table shows under
24 result, no leakage detected. This will need to be
25 modified.

1 And this, again, is an e-mail that was sent --
2 copied to Mr. Geisen, sent to Mr. Siemaszko, and again,
3 Prason Goyal is telling these individuals we have to --
4 that there was no 100 percent inspection.

5 Another trip report, okay, that Mr. Goyal
6 submitted. And the -- again, it indicates that this was a
7 meeting on -- in June in Atlanta, and what the lessons
8 learned for Davis-Besse were. And the -- the top four is
9 what I want to zero in on.

10 The service structure access is needed in order
11 to clean and inspect the head. Note, Davis-Besse does not
12 have service structure holes.

13 Secondly, the leaking nozzle may produce very
14 little boric acid.

15 Thirdly, the head needs to be clean in order to
16 see a leaking nozzle. The inspection to look for boric
17 acid should be done in accordance with the procedure.
18 Davis-Besse needs to develop a procedure. These -- this is
19 all information that he's putting out to Mr. Geisen and to
20 others as to what they need to do with respect to having a
21 good inspection. And again, this was copied to Mr. Geisen.

22 Okay. All right. This is another e-mail that's
23 sent out by Mr. Goyal and it goes to Mr. Cook. It's
24 forwarded to Mr. Cook by Frank Henning, and indicates our
25 comments are in bold letters, there are two comments, one

1 relates to the correct date of the -- of the past
2 inspection. The other relates to the future inspection
3 plans in July of this year. Your Mark Flemming asked us
4 for a plant specific data verification for the last
5 inspection. We sent him a fax on July 16th, 2001 stating
6 that the last inspection was partial and detected boric
7 acid accumulation which was attributed to a CRDM flange.

8 Again, this was -- again, this was the industry
9 wide verification that they were trying to gather. And
10 Mr. Goyal's trying to point out that they should be
11 truthful in their submissions instead of indicating that
12 there was a complete inspection that, in fact, this
13 inspection was partial. Okay.

14 This involves the meeting at -- I think it's in
15 David Lockwood's office. It's an e-mail from Prason
16 Goyal. This is Government Exhibit 36. It was sent to
17 Mr. Geisen. Let's see if I have it blown up here, a copy.
18 Okay. Mr. Goyal indicates, that he indicated that they
19 plan for a 100 percent volumetric examination, even if you
20 do not commit to the NRC. Directors were in agreement that
21 we should plan for it in 13 RFO. It was pointed out that
22 we cannot clean our head through the mouse holes, and
23 Andrew Siemaszko is requesting three large holes be cut in
24 the service structure for viewing and cleaning. Again,
25 another red flag.

1 An e-mail that from -- that Mr. Goyal sends to
2 Mr. Geisen -- he's forwarding an e-mail. Steve, we are
3 performing a 100 percent qualified visual examination in
4 the next outage in April of 2002. And at the end of this,
5 Prason Goyal indicates, is it possible to go to 1998, that
6 is when a good head exam was done with no nozzle leakage,
7 paren, meaning to the taking any credit for 2000
8 inspection. Okay.

9 Another e-mail, this is from Prason Goyal to
10 Mr. Cook. And it's responding to Mr. Cook's e-mail that
11 says, in response to questions I have received concerning
12 the definition of the majority of the nozzles that were
13 inspected during 12 RFO, Andrew stated that approximately
14 90 percent were inspected. This will be used in the
15 bulletin response. And then Mr. Goyal gets right back to
16 him and says, we need to make sure what 90 percent means --
17 90 percent inspected means. Does this mean prior to the
18 cleaning of the head or after the head was cleaned? I
19 would think prior to the head cleaning. Andrew, please
20 clarify.

21 So Mr. Cook has raised some questions during the
22 preparation. You'll see a number of drafts that are
23 prepared under 2731, and e-mails that Mr. Cook sends to
24 individuals like Mr. -- that Prason Goyal sends to people
25 like Mr. Cook and Mr. Geisen. Keep in mind that Mr. -- on

1 cross examination, Mr. Cook testified that there was some
2 phrases that begs a question. I think he said majority is
3 one of those phrases. Eventually that gets taken out of
4 the -- of the response, but you know, you can see that they
5 don't want the NRC asking questions. They wanted to avoid
6 anything that could raise a concern. And I think on cross
7 examination, Mr. Cook was asked by Mr. Ballantine about
8 other language that was true statements, and Mr. Cook
9 agreed that they were true, and he asked would that beg
10 your question if you said that there was boron left on your
11 head, would that become a question? Of course. Okay.

12 This is Exhibit 53. We've talked about this, but
13 this is an e-mail that Mr. Cook sent out, and it
14 indicates -- well, here's another version, this is 2731.
15 It deleted the reference to 90 percent of the nozzles being
16 inspected during the 2000 inspection and revises the first
17 paragraph of the response to 1.D concerning the scope of
18 the inspections as the scope of the visual inspection was
19 to inspect the bare metal RPV head area that was accessible
20 through the weep holes to identify any boric acid leaks,
21 slash, deposits. And Mr. Cook explains this is to ensure
22 that we state that not all of the head was accessible or
23 inspected for inspection for whatever reason. Does that
24 say that? In this industry, nuclear industry, are we
25 playing games? Should or shall. Putting an e-mail out

1 like this, it doesn't say that. There's nothing in that
2 statement that would tell the NRC that not all of the head
3 was accessible or inspected.

4 This is Exhibit 52, another e-mail that Mr. Goyal
5 sends to Mr. Cook. And I have the following comments. And
6 this is with respect to 2731, another version. Second
7 comment was, subsequent review of 1996 and 2000 inspection
8 videotape results (sic). That's the caption, that's the
9 head. The discussion here gives an impression to the
10 reader that we were able to look at all at CRDMs. It is
11 very difficult to look at the -- the CRDMs when there is
12 boric acid around it. Do we want to reword this? Yet
13 another warning. These are the handwritten notes. This
14 was entered into evidence later on in the trial, last few
15 days, I think.

16 Government Exhibit 55, these are the handwritten
17 notes of Guy Campbell. And he is one of the executives
18 at -- at Davis-Besse, and he -- he writes these comments,
19 how clean did we leave it? What was the quality of the
20 video?

21 These are very pointed comments that Mr. Campbell
22 is making. And most importantly, it says no visible
23 evidence of nozzle leakage was detected. He circled that,
24 and he said, was this masked because of other leakage?
25 They didn't change this. That stayed in the way it was.

1 But he asked a good question. Was it masked because of
2 other leakage? Mr. Cook used his own judgment to decide to
3 not address that issue, leave that language the way it was.
4 Some of the -- some of the things that Mr. Campbell raised,
5 they did incorporate a few things. That was not one of
6 them.

7 E-mail from, copied to Mr. Cook from Prason
8 Goyal, okay, it says we cannot -- we do not say anywhere in
9 our response to the bulletin that inspection through the
10 mouse holes creates an impediment for 100 percent of the
11 visual examination. Management needs to know this. What's
12 important about this e-mail is that on August 28th of 2001,
13 Mr. Cook signed off on the greensheet. And Mr. Cook
14 testified that he said he had raised an issue that had to
15 be resolved. And that Mr. Cook and Mr. Siemaszko came to
16 him and told him that, no, this is just pertaining to the
17 future. You're not reading this right, basically that they
18 were right and he was wrong. And he caved into that
19 direction and he signed the greensheet on the 28th. He
20 knew there was impediment. He couldn't let that lie, so he
21 sent this e-mail after he signed it. And this is what he
22 said.

23 And again, what Mr. Cook testified that they went
24 back to Mr. Goyal and gave him the same speech again. And
25 I would submit to you that Mr. Cook was not going to be

1 deterred. He's got this future speech in his mind, and
2 you've read the bulletin and what it says and what it asked
3 for, impediment, that's something in the future. You know,
4 well, what's the plan of this bulletin, if you're going to
5 ask for impediments, inspections in the future, impediments
6 to inspections in the future, there's already a section C
7 in the bulletin that asks about future inspects. It's just
8 a way of getting around answering that question honestly
9 and accurately. And unfortunately Mr. Goyal caved into
10 that type of pressure.

11 Okay. There were some comments with respect to
12 2731 that Mr. Wuokko made, okay.

13 All right. I want to show you these -- you saw,
14 this is in evidence, Exhibit 50. But from there, it's very
15 interesting because you are the judges of credibility. You
16 saw all the witnesses testify here, you will have to make a
17 determination who you think's telling the truth, who -- who
18 was honest and who wasn't, okay. You saw Mr. Wuokko up
19 there. And we'll -- we have a little slide of him with his
20 pictures on it. Hopefully that will jog your memories if
21 they need to be jogged.

22 And Mr. Wuokko testified that he reviewed -- that
23 he reviewed 2731 and made comments on it and sent it back
24 to Mr. Cook. And these are the comments, Exhibit 50 has
25 them, and Exhibit 42 also has them. He made two sets --

1 gave two sets of them. And the one, I don't know if I can
2 get the whole thing on there. We didn't put this on a
3 slide because we thought it would be a little easier to
4 show you over the document camera. But this is a comment
5 that Mr. Wuokko said: Rod, see comments on letter, why is
6 quote 90 percent, end quote, being deleted? To me, this
7 letter is not, quote, complete and accurate, comma, as
8 required by 50.9 without it. We also need to make it clear
9 that the top of the dome was not inspected due to boron
10 deposits during 13 RFO. Has the person -- and I think he
11 meant 12 RFO. Has the persons making this comment or
12 change been advised of the 50.9 requirements?

13 Dale Wuokko, August 25th, 2001. Mr. Wuokko had a
14 concern that this was not a truthful -- this was not a
15 truthful response. And in fact, Mr. Cook offered on his --
16 in his testimony that Mr. Wuokko wanted his name taken off
17 the greensheet.

18 Now, we're talking about credibility. Mr. Wuokko
19 was very, very certain that he never told Mr. Cook to put
20 his initials on that greensheet. Mr. Cook said he did.
21 But Mr. Wuokko had a lot of concerns about this letter.
22 And he had good reason to not want his name on this
23 greensheet. And that ties in with Mr. Cook's admission
24 that Mr. Wuokko wanted his name removed from it. Okay.

25 All right. This was an e-mail from Prason

1 Goyal, again, to Dave Geisen. And it says -- it talks
2 about a conversation that Mr. Cook had regarding Ocone.
3 And he said, I asked him why they missed the leakage
4 detection of this nozzle in the spring of 2000. He said
5 there were two reasons. One, they did not know what they
6 were looking for. They did not know what they looking for,
7 parentheses. They were looking for large quantities of
8 boron sitting on the head. And two, the head was not
9 clean. Again, a warning what needs to be done. Mr. Cook,
10 this is Exhibit 107, sends out draft responses to the -- to
11 the FRA-4 which I was assigned. These are the questions
12 that the NRC had in the course of their dealings with
13 Davis-Besse.

14 And during the October 3rd conference or
15 questions that were raised, I think some combination of
16 Mark's FRA-4 and mine will provide the necessary response
17 to the NRC's question. And this is the -- this was the
18 attachment to that. The question was for April, 2000
19 inspection provide additional detail regarding the scope of
20 the visual examination, in particular the ability to view
21 the bare metal at the interface of the nozzles and the RPV
22 head. Any restrictions to viewing of the nozzles, and any
23 boric acid deposits from other sources that would have --
24 could have masked leakage from the nozzles, provide
25 documentary evidence, such as photographs, characterizing

1 the condition of each nozzle. And this was a response that
2 Mr. -- Mr. Cook drafted up. And the first part is future
3 speak. He's back to future speak. He will perform a
4 qualified visual inspection during 13 RFO. The inspections
5 will not be compromised by preexisting boric acid as stated
6 in 2735. He does put in, there are areas of the RPV head
7 that are not viewable due to the presence of preexisting
8 boric acid crystal deposits that are resulted from control
9 rod drive mechanism, CRDM, motor two flange leakage.

10 And then the second paragraph, he appears to be
11 talking about past inspections, and the videotapes from the
12 past inspections have been rereviewed, and they did not
13 reveal any boric acid crystal deposits of a configuration
14 similar to those seen at Oconee 3. And again, photos of
15 the nozzles from the inspections will be provided in
16 October -- in the October 24th, 2001 meeting. None of this
17 ultimately appears. It's all taken out. And they
18 basically put back in 2735 language ultimately. The
19 question, though, clearly asks for past inspections. He's
20 still playing the game.

21 This was FRA-4. And what's interesting about
22 this is that the question asked that it says page 27 states
23 the reactor vessel head inspection process is simple and
24 straight forward, such that a written procedure is not
25 necessary for a successful inspection. That's what the

1 NRC's commenting on, what they were told. This statement
2 appears to be conflicting with criteria which states that
3 affecting quality be shall prescribed by documented
4 instructions, procedures or drawing, was Davis-Besse's
5 visual examination of April 2000 performed during --
6 performed using a written procedure?

7 And this is the response Mr. Cook drafted. The
8 inspection conducted during 12 RFO was conducted using the
9 procedure NG-EN-00324 boric acid corrosion control. Okay.
10 This procedure is not safety related. It's not a
11 safety-related detail procedure, but rather a
12 quality-related procedure since the inspections conducted
13 are not ASME code related, you know. He goes on to
14 describe -- okay. He provides a description of what the
15 boric acid corrosion control, fairly good one, fairly
16 detailed description of what the procedure was. Now, how
17 would he know that unless he looked at the procedure? He
18 didn't just simply pull the number down, and just started
19 using the number as he would have you believe. He knew
20 what it required. And he said it -- he set forth some of
21 those requirements right here in this -- in this draft that
22 he presented. Okay. Mr. Lloyd -- and I'll go through some
23 of these very quickly.

24 Ronald Lloyd, as you recall, was with the NRC
25 participating in a special investigation. He interviewed

1 Mr. Cook in July of 2002 as part of lessons learned. He
2 testified that Cook told him that Cook was of the opinion
3 that the Davis-Besse -- that Davis-Besse was not in
4 compliance with the boric acid corrosion control procedure.
5 He also testified that Cook -- that Mr. Cook -- had
6 conversations with Cook. He also said that Cook told him
7 that Cook had conversations, Siemaszko and Goyal and that
8 they told him that Davis-Besse was not in compliance with
9 this procedure. It's a reality to the comment that he
10 himself drafted that we looked at previously. Cook told
11 Lloyd that the boric acid corrosion control procedure did
12 not work, check lists were rarely filled out or lost.
13 That's what he testified to. That's what Mr. Lloyd
14 testified to. And you'll recall that Mr. Lloyd testified
15 that Cook knew this when he was working on a bulletin in
16 2001. And when he was pressed on cross examination, he did
17 not vary from that. He said Cook knew this when he was
18 working on the bulletin in 2001.

19 Jack Martin, consultant with extensive
20 experience, member of the nuclear -- member of the company
21 nuclear review board, he attended a CNRB -- CNRB meeting
22 where Geisen presented information on nozzle cracking.
23 This is in Government Exhibit 119. He recounted that
24 Geisen's presentation, which stated that 1996 was a
25 qualified visual inspection. And he did not recall Geisen

1 telling the board that boric acid was left on the head and
2 thought that if Geisen had said this, he would have
3 remembered it. He ended up interviewing Mr. Geisen several
4 days after the problem was found. He recounted that Geisen
5 did not know boric acid was left on the head until --
6 Geisen told him he did not know boric acid was left on the
7 head after 12 RFO until 2001, but most importantly,
8 Mr. Martin testified that he recounted -- testified as to
9 Geisen's statements to him that Geisen had reviewed the
10 videotapes in August of 2001 to help prepare to respond to
11 the NRC bulletin. He told that to Mr. Martin right after
12 this incident occurred. Mr. Martin has no reason to lie to
13 you. And yet Mr. Geisen would have you believe otherwise,
14 that he did not know until much later. In fact, he didn't
15 even know when he went to the NRC on November 8th.
16 Mr. Geisen didn't know, according to him, what was on those
17 tapes.

18 Mr. Gibbs, consultant 37 years, director of
19 quality assurance at Davis-Besse, at one point was hired by
20 Mr. Moffitt in September of '01 to review preparations for
21 the upcoming 13 RFO. He met with Mr. Goyal and
22 Mr. Siemaszko and he talked to Mr. Siemaszko about head
23 cleaning in 12 RFO. And he also viewed videotapes. He
24 wrote a report, which is in evidence as Government Exhibit
25 65. He had four concerns that he testified to. And that

1 is the access to the head, the existence of gaps,
2 cleanliness of the head and limitations associated with
3 having access which would -- or which would compromise the
4 ability to inspect.

5 You'll remember that when Mr. Gibbs testified,
6 that he was surprised that the access holes had not been
7 installed. He left Davis-Besse thinking that was going to
8 happen. And it still hadn't happened when he showed up in
9 2001 and was hired to review the preparations for 13 RFO.
10 He did prepare a report, as I indicated. He left the
11 report with several people, including a copy with Defendant
12 Geisen, and Mr. Geisen testified that he did receive this
13 report. With respect to the cost, how much is it going to
14 cost a company if they had to shut down on December 31st?
15 Mr. Gibbs testified that when he was at Davis-Besse, that
16 it would cost between \$500,000 to \$700,000 to buy power
17 during an outage. That was back when he was there. This
18 is a report, and in it, he indicates that it is noted that
19 on completion of 12 RFO, the reactor vessel head did not
20 have -- did have, I'm sorry, did have boric acid crystal
21 deposits of considerable depth left in the center top area
22 of the head since cleaning of this area at that time was
23 not successful in removing all the deposits partly due to
24 any preexisting boric acid. I'm sorry, partly due to
25 limited access.

1 Davis-Besse stated in its response to NRC,
2 2001-01, that the top head visual inspections would not be
3 compromised due to any preexisting boric acid crystal
4 deposits given previous experience in removing boric acid
5 deposits from the head the likely need to remove these
6 deposits at the center top head by mechanical means, the
7 severely restricted access allowed by the service structure
8 mouse -- mouse holes for mechanical cleaning. The industry
9 experience of Duke Power that clearly emphasizes the need
10 for good access to the head for cleaning and inspection and
11 the NRC commitments and inspection requirements for visual
12 inspection, the most prudent course of actions to avoid
13 outage delay which would -- which -- to avoid outage --
14 to -- the most proving -- proven course of action to outage
15 delay would be to access holes in the reactor service
16 structure as soon as possible in 13 RFO.

17 So Mr. Gibbs laid it out, laid it out for
18 Mr. Geisen, gave it to him and laid it -- basically put it
19 right in his hands. Mr. -- Mr. Geisen knew about the
20 condition of the head in 12 RFO, and Mr. Gibbs was pointing
21 out that the language in the bulletin that he had read he
22 was pointing out that there was the issues that he had with
23 preexisting boron deposits.

24 Mr. Moffitt, director of engineer, he identified
25 a couple of the exhibits we had in evidence for 2000. On

1 October 3rd, Mr. Geisen was the presenter of past
2 inspection information. Mr. Geisen told Mr. Moffitt that
3 he would vouch for the information provided by
4 Mr. Siemaszko. Mr. Moffitt testified that he believed
5 Mr. Geisen had reviewed Siemaszko's work because Mr. Geisen
6 could answer his questions. He also had a sense that
7 Geisen had looked at the tapes and photos because he
8 described to him about the angles and how the different
9 angles were being used to look at the nozzles. He's the
10 one that testified that Geisen provided information for the
11 facts slide on October 11th. At one point, he went over
12 photos with Mr. Geisen in connection to 2735. That was the
13 second serial.

14 Now, those photos were not sent in until 2744,
15 afterwards. And when -- so these photos were already in
16 the hands of Mr. Geisen. Mr. Moffitt said he challenged
17 Mr. Geisen about what they were submitting. And Mr. Geisen
18 felt -- he felt, though, that Mr. Geisen had a good handle
19 on what was on these photos. Mr. Geisen was able to
20 explain to him why -- why they should be submitted. He
21 also talked to Mr. Geisen about footnote one. And now on
22 redirect, Mr. Moffitt acknowledged that the 1996 10 RFO
23 inspection tape was not clean, and that Mr. Geisen had
24 vouched for that tape.

25 Mr. Huston, we've already talked about. The NRC

1 was not happy with the videos that were produced in the
2 October 24th meeting. He did say that Mr. Geisen was
3 present during the 24th meeting with several slides,
4 including one asserting that all the nozzles had been
5 verified popcorn free using the inspections from 10, 11 and
6 12 RFO.

7 Dave Wuokko we've already talked about. He has
8 two drafts, we already went over one of them. And he did
9 not authorize Mr. Cook to sign the greensheet for him.

10 Ed Chimahusky was an engineer, he was involved in
11 flange inspections, he was more or less the on-site expert
12 on flange leakage. And they -- he testified that he was
13 involved in inspections in '91, '93, '94, '96, '98, '99 and
14 part of 2000. 1998 there was a suspected flange leakage
15 D-10, which may have leaked. 1999 he inspected D-10. That
16 was in mid-cycle outage, and found no leak -- no flange
17 leakage. That's government Exhibit 160.

18 In 2000 D-10 was inspected again. Mr. Chimahusky
19 said he was up there, no change to the boric acid deposits.
20 The flange was not leaking. No one talked to him about his
21 past flange inspections during the bulletin responses in
22 2001.

23 Okay. Mark McLaughlin testified he identified
24 Government Exhibit 130. And that's what indicated that the
25 gaps would open. And Mr. Geisen decided not to give this

1 information to the NRC. He heard Mr -- Special Agent
2 Joseph Ulie testified that he entered Mr. Cook in
3 December -- in October of 2002 in Tennessee. And that
4 basically Cook told him that he viewed the '96 0551 PCAQ in
5 October or November for the purpose of leaving water on the
6 head but recanted that statement.

7 He also -- Mr. -- Special Agent Ulie also
8 testified that he interviewed Geisen on October 29th, 2002.
9 Geisen told him that the head was not cleaned well in 1996
10 and '98. Mr. Geisen also told him that the red photo -- he
11 saw the red photo during the 2000 outage, and that there
12 was significantly more boron in 12 RFO than earlier
13 outages. And again, Mr. Geisen had collateral duties on
14 the B & W owners group steering committee. We're almost
15 done.

16 Randy Rossonme, you remember him because he was
17 the last witness. And we don't have a picture to put in
18 there, but we figured that you'd probably remember him.
19 And he was a Beaver Valley employee, quality assurance
20 supervisor. FENOC employee. He was -- he was brought in
21 to make sure that the root cause team at Davis-Besse, this
22 was after the cavity was found, was going in the right
23 direction. In other words, he was kind of overseeing that
24 they were going to do the right thing, and stay on track.
25 He was sent in by FENOC essentially to do that.

1 He reviewed documents serial responses, and what
2 did he say? He immediately thought that Davis-Besse lied
3 in the responses and he wanted to get to the bottom of it.
4 That was his first reaction having been on site just a very
5 brief time, reads the serial responses and feels that
6 Davis-Besse had lied in those responses. And the way he
7 put it was that was his gut reaction right from the get go.
8 Okay. He testified that he interviewed Cook on June 18th
9 and that Mr. Rossomme said that, you know, he couldn't
10 remember word for word what he was told, but his practice
11 was to type on his laptop while the person that he was
12 talking to was answering his questions. And he had a
13 formatted -- he had formulated questions ahead of time and
14 would type the answers to the questions that he was posing
15 as the person was answering, and sometimes he said it was
16 not intended to be verbatim, but sometimes he did pick up
17 phrases verbatim, and he said that his notes were -- that
18 he was sure of the accuracy of his notes. And in question
19 six of his formatted questions, Mr. Cook told Mr. Rossomme
20 that pursuant to Mr. Rossomme's notes, that Mr. Cook
21 reviewed the videos about the beginning of October.

22 In question ten, which was related to question
23 six, and that question was, if you knew there was boric
24 acid on the head, would that cause you a concern? Cook
25 said that he talked to Siemaszko and Goyal and they showed

1 him condition reports, including 96-551 to show why boric
2 acid on the head was not a concern. And Mr. Rossomme was
3 very sure of this from his notes that this was prior to
4 September 4th, 2001.

5 And on cross examination, Mr. Conroy tried to
6 have him change that testimony, and he would not. Based on
7 his notes, he knew that's what he was told on
8 September 4th, 2001, that Mr. Cook had seen condition
9 reports, including 96-551. There was also question 33 on
10 the form, did you review the videos? Cook said yes after
11 September 4th, 2001. Mr. Rossomme also said it was his
12 habit to offer every interviewee a chance to review his
13 notes. He doesn't recall specifically whether Mr. Cook did
14 or did not, but he gave Mr. Cook the opportunity to look at
15 his notes to make sure they were accurate.

16 Okay. And this brings us kind of full circle
17 back to 10 CFR 50.9, because this is hovering over the
18 entire case. Okay. And the words complete and accurate in
19 all material respects is certainly something that wasn't
20 done in this case.

21 As I indicated at the beginning, there was no way
22 Davis-Besse was going to shut down December 31st of 2001.
23 That train had left the station. Mr. Geisen already told
24 you that shutting down at that time of year would have been
25 very expensive, because the company would have had to

1 purchase expensive outside power at a peak energy season,
2 not to mention to bring in expensive equipment. Keep in
3 mind that Dr. Hiser testified that all of the Babcock
4 Wilcox highly susceptible reactors to the bulletin had all
5 agreed to the shut down except for Davis-Besse. It stood
6 alone in its defiance and it was going to pull out all the
7 stops to avoid the shutdown such as an unprecedented visit
8 to the technical assistants of the commissioners in an
9 effort to leap frog over the NRC officials they've been
10 dealing with, such as Dr. Hiser.

11 Dr. Hiser told them, as he testified to you, that
12 he did not think that 2731 answered the bulletin, and he
13 wanted a nozzle-by-nozzle inspection which led to the
14 October 3rd conference. These defendants were basically at
15 the helm of this trend that was barreling towards
16 catastrophe. There were red flashing lights everywhere
17 from Prason Goyal through his numerous e-mails, from Greg
18 Gibbs, through his reports and Dale Wuokko through his
19 comments on draft 2731.

20 Question whether 50.9 was being heeded, and as I
21 indicated, these are people, you know, we've talked about
22 using engineering judgment or making judgment calls. Well,
23 this was a situation where the defendants themselves
24 gambled that their judgments are better than the NRC and
25 better than 50.9. And I would ask you to consider what the

1 improbable, impossible-to-believe story that Mr. Cook tells
2 you that he is engaged in some kind of future thinking,
3 future speaking, or that the '96 inspection was done were
4 only, I guess, the bad nozzles were taped but the good
5 nozzles weren't. How do you do that with a camera on a
6 stick, and then to fill in the gaps? You're going to go
7 talk to the person who actually did the inspection back in
8 1996, which was Prason Goyal, but they didn't. They
9 didn't talk to him. Okay.

10 Mr. Geisen admitted to Mr. Martin that he viewed
11 these tapes in August of 2001 in preparation for his
12 response to the bulletin, and Geisen knew that there was
13 boron on the head from viewing those tapes.

14 Ladies and gentlemen of the jury, Mr. Poole will
15 do our closing -- our closing rebuttal. But again, I thank
16 you for your attention. I know this has been a long
17 opening (sic) as it's been a long case. So I thank you for
18 being attentive. But -- but at the end of this case, we
19 did say we're going to come back and submit to you, tell
20 you that we believe that the evidence in this case supports
21 each and every element of each and every charge in this
22 case with respect to both of these defendants.

23 THE COURT: Thank you very much, Mr. Stickan.
24 Ladies and gentlemen, we'll now take our mid-morning break
25 for 15 minutes. Please remember not to discuss this case

1 among yourselves or with anyone else or permit anyone else
2 to discuss it with you. Please don't make up your mind
3 until you've heard all of the closing arguments, final
4 instructions are completed and you are in the jury room
5 deliberating of your verdict. Enjoy your rest.

6 (A brief recess was had.)

7 THE COURT: Mr. Hibey, please.

8 MR. HIBEY: Thank you, Your Honor. May it please
9 The Court and counsel. Morning, ladies and gentlemen.

10 I rise to speak for David Geisen. At the outset,
11 let me say that we recognize and respect the duty that you
12 are discharging. You demonstrate that every day when you
13 rise upon your entrance and leaving. The Court and I will
14 thank you for discharging your duty as citizens. We know
15 what we -- but indeed I will join, and this is probably the
16 only agreement I will have with counsel for the other side
17 in thanking you for your time and attention and devotion to
18 the work that we have here at hand. And with that, I'd
19 like to turn to comments about the evidence that you have
20 heard over the past several days in the month that we spent
21 together.

22 Mr. Stickan said in his opening that this is what
23 Davis-Besse did and what Davis-Besse said. It is not a
24 case about what Davis-Besse did or Davis-Besse said. This
25 is a case about Dave Geisen. This is not about

1 Davis-Besse. And whenever there's argument that slides in
2 and out of what the corporation might have done at a
3 certain time, please remember that we are here to focus on
4 the question in the case of my client, Dave Geisen. What
5 is it that Dave Geisen did? What is it that he said? What
6 did he know? When did he know it? And at the core of a
7 question like that in the face of criminal charges, we ask
8 ourselves at what point in time did Dave Geisen decide that
9 he would jettison his life as a responsible engineer who
10 had spent in his professional life, life in nuclear
11 engineering, to give it up in favor of lying and deceiving
12 the Nuclear Regulatory Commission.

13 Now, there's another point I'd like to make
14 before we move in to discuss that question in greater
15 depth. And that is this, there's no evidence in this case
16 of a possible core meltdown as referenced by Mr. Stickan.
17 The public safety was never at risk regarding the event at
18 Davis-Besse.

19 The alarming embodiment in that statement simply
20 evidences the basis, if you will, upon which a structure of
21 the government's case has been built. And what is that
22 structure? It's a structure that's based upon hindsight in
23 the taking of information, if you will, and making a leap
24 in the characterization of that information in accurate
25 times and converting it, if you will, into information that

1 they now say Dave Geisen believed to be false and that he
2 intended with the knowledge of its falsity to hoist it upon
3 the NRC with the intent to deceive. It's a case that is
4 fueled by the speculation that arises when witnesses
5 were -- from the NRC were asked about the famous red photo,
6 about which you will hear a little more. It's a case
7 that's inflamed and is designed to inflame you by the fact
8 of the cavity that was discovered in February, March of
9 2002. It's accompanied by a total lack of science to
10 support any sentence of an argument that there was
11 corrosion, activity on the head due to the nozzle leakage
12 as the government's expert suggests that there was no
13 flange leakage involved to account for the presence of
14 boron on the head, as the government's expert has stated.

15 That the cavity was observable in 2002, as the
16 government's expert has stated, and then as to the other
17 expert that the nozzles that were described as being
18 present or free of boron or not was, according to a
19 standard that he, that expert, Holmberg, applied, and we'll
20 talk about that standard as we go. And then of course the
21 case is aided, not by transcript but by the summaries
22 offered by, in our case two witnesses, who came before you
23 to recite either from their memory or from their memory of
24 the transcript, attempting to attribute to Mr. Geisen
25 statements that simply were not made.

1 Now, in the visual presentation that comprised
2 the oral argument, you just heard there were many
3 references to the testimony of Dr. Hiser. And of course
4 much of that was offered to you for your consideration in
5 various power points that you saw. The key here, of
6 course, is that it's your recollection of what Dr. Hiser
7 said which controls. It's not what's in some panel that's
8 been printed up as a visual assist to you today. And so I
9 trust that you will allow your recollection to control in
10 the consideration of the testimony that we reviewed, and
11 considerable testimony of Dr. Hiser was referenced in this
12 case.

13 What do we know? I leave it to you to conclude
14 that what we know is that Dr. Hiser never wanted
15 Davis-Besse to remain open after December 30th, 2001. He
16 never found the information in the serial letters to be
17 sufficient to justify the continued operation of
18 Davis-Besse beyond December 30th, 2001.

19 Indeed -- let me stop there for a moment.
20 Neither did Dr. Sheron. If you go back, perhaps you have
21 it in your notes or in your recollection, that Dr. Sheron
22 himself said that nothing, not serial letters, form the
23 basis for the decision to allow Davis-Besse to stay open.
24 That decision was made on the basis of the -- what they
25 call the compensatory measures that were offered by the

1 company after November 21st to persuade the NRC that it
2 should allow the company to remain open.

3 But back to Dr. Hiser. Dr. Hiser, it is no
4 surprise, believes that he was deceived. After all, this
5 happened on his watch. Here he is, one of the top people
6 in the Nuclear Reactor Regulation. This is the potential
7 embarrassment to the Nuclear Regulatory Commission that
8 this should have happened. But this unshakeable feeling
9 needs to be factored into what he says now, and how much we
10 should credit his after-the-fact testimony in the case
11 against Dave Geisen. For my purposes, not on the case of
12 Rod Cook and not any issue you might have if there are any
13 with the company, First Energy or Davis-Besse, Dave Geisen.
14 So in that context, what is the first thing that Dr. Hiser
15 talks about? He talks about 2731. He talks about 2731 as
16 a deceived person sitting in that witness stand. And he
17 focuses on the fact that the word some conjured for him a
18 certain image. And how can we know what that image was at
19 the time that letter was written? When next to the word
20 some is the word accumulation. And the word accumulation
21 suggests the presence of boron on the head. I think the
22 good news, ladies and gentlemen, for purposes of this
23 discussion, is that while we can site to a parsing of the
24 word some accumulation and what it was that hit his memory
25 bank at the time he read 2731, we can quickly exit 2731

1 from our consideration and from Dr. Hiser's statements
2 concerning it, for one simple reason. That we learned, as
3 the evidence came in, that Dave Geisen had nothing to do
4 with the drafting of 2731. The evidence is before you in
5 two, three very significant regards.

6 First of all, Prason Goyal. Prason Goyal said
7 so. Prason Goyal, the author of so many of these e-mails
8 that Mr. Stickan was pleased to cite to you, is the author
9 also of 13 e-mails in the month of August, all having to do
10 with the writing of 2731. Commenting on the language as it
11 was evolving through drafts of 2731 -- and I invite you to
12 go back and look at those exhibits and ask you to find Dave
13 Geisen's name in the address line of any one of those
14 exhibits, including and especially the e-mails before and
15 after the greensheet was signed on the 28th of August,
16 2001. Dave Geisen is nowhere on those e-mails.

17 Point two, as we said, Prason Goyal said that
18 Dave Geisen had no role in the writing of 2731.

19 Point three, Steve Moffitt, from this bench, from
20 this stand, said also -- perhaps you will remember the
21 word. Dave Geisen was not involved in the, quote,
22 wordsmithing, of 2731 and was not expected to because of
23 his role as a design man, design engineering manager.
24 Obviously a level that was not engaged in the actual
25 authoring of the document. So the question then becomes,

1 what is it in Dr. Hiser's testimony that we can look to
2 that focuses personally on Dave Geisen? And what we know
3 is that on November 8th, 2001, at the headquarters in
4 Rockville, Maryland, Dr. Hiser experienced an interaction
5 with Dave Geisen -- with Dave Geisen alone for Davis-Besse
6 in a meeting involving the staff of the NRC and including
7 Dr. Hiser.

8 All right. So what happened at that meeting?
9 First of all, before we get to the actual happening of the
10 meeting, here's an important fact I would ask you to
11 consider. On November 8th, Steve Moffitt instructed Dave
12 Geisen to take the tapes to the NRC and to show them.
13 There was no preplanning, there was no preparation. There
14 was no build up to it. It was the instruction that it was
15 given to him and said, Dave, the staff is up there, bring
16 these tapes to them and play them for them. Well, you
17 know, this man is charged with a scheme. A scheme is a
18 plat, plot, a plan of action, something to be pursued after
19 great deliberation or some deliberation.

20 Where is it in the evidence, ladies and
21 gentlemen, that suggests that on that occasion or any
22 occasion, for that matter, but we're talking about this
23 occasion because we're talking about Dr. Hiser and his
24 prospective that you have a situation going into, that was
25 basically laid onto a man who was flying onto this area to

1 Washington and is told he's to go up to this meeting.

2 All right. Here's what Dr. Hiser said on direct
3 examination. He saw the '96 tape for half hour, he
4 guesses. Quote, in retrospect, he saw the good portions.
5 When did he see the whole tape, you might ask? Well,
6 that's in Mr. Ulie's company and preparing his testimony.
7 That's how you get to the seven minute take that
8 selectively identifies what this man five years ago said he
9 saw that night and what he didn't see, and then he tells
10 us, think about it, he was watching the tape for a half
11 hour, but at 2:26 -- let me make that a little clearer.
12 You will recall that he was asked, did you see this, and
13 then they would call out here in the courtroom the time is
14 2:26, the time is 4:12, the time is 5:42, the time is 5:14
15 and he says, I didn't see that. I didn't -- did see that,
16 oh, I did see this. I didn't see that. That's pretty
17 good. But is it? When you consider some of the other
18 things he said about that meeting, for example, Dave Geisen
19 controlled the remote. And you heard it again in closing.
20 And I think they even wrote it out that Dave Geisen would
21 jump and fast forward, yet at the same time, we know from
22 his testimony that he has no knowledge of Dave Geisen
23 selective portions of the tape the staff reviewed.

24 Well, here's what he said on cross examination
25 about that meeting. of the 8th of November. It turns out

1 Dave Geisen didn't hold the remote. He pushed a button for
2 a VCR to operate it. Dave's control of the pictures was
3 not exclusive. Indeed, it wasn't just showing the good
4 pictures as he said here from the stand. Now we learned,
5 yes, the staff would ask him to rewind and go backward, go
6 forward, stop, move it on, and we learned that in the VH --
7 VHS format when you do that, the thing doesn't go like that
8 and you can actually still see what's going on, just may
9 move a little more slowly or a little more quickly but it
10 doesn't move blindingly. And so when you probe him and ask
11 him, did you think for one moment that he was deliberately
12 withholding any tape, the answer is no. Indeed Dr. Hiser
13 believed they had access to the entire tape.

14 And then when Dave recommended not looking at the
15 2000 tape, he had no impression that in so stating Dave
16 Geisen was attempting to scare him off from viewing the
17 2000 tape. Of course it took us to confront him with his
18 earlier testimony in another proceeding before he would
19 finally concede that that's what he said on another
20 occasion. And he admits, ultimately does he not, that on
21 November 14th, 2001, Andrew Siemaszko came to the NRC
22 specifically to talk about the inspection which he
23 conducted in the year 2000.

24 Now, doesn't that by itself, ladies and
25 gentlemen, support Dave Geisen's version of what transpired

1 at that meeting when he said he could not explain what the
2 tapes were showing and indicated that the person who could
3 was not he.

4 Now, when we asked him about, is it a fact that
5 Mr. Geisen's opinion of the tapes was that they were of
6 very poor quality, and therefore, didn't merit the careful
7 analytic consideration that apparently the staff wanted to
8 go through, but that he, Dave Geisen could not provide.
9 Dr. Hiser was adamant, adamant, that, no, it was more than
10 just the poor quality of the tapes. It was the fact that
11 they were not interpretable, that there was no way anybody
12 could understand what was on the tapes because you could
13 see the tapes well enough to do that. Again, we had to
14 point out to him that on a previous occasion, he said,
15 Dr. Hiser said -- Mr. Geisen told us that these tapes were
16 of poor quality. And that's why they shouldn't be shown.

17 And when he was confronted with that prior
18 statement, his response, I suggest to you, is stunning,
19 given the theme of this power point presentation you just
20 witnessed where one of the first panels is we need a
21 complete and accurate statement from the licensee. And
22 where one of the last statements was we need a complete and
23 accurate statement by the licensee.

24 Well, let me suggest to you that you are entitled
25 to a complete and accurate statement by the witness from

1 the witness stand under oath. And when he was confronted
2 with that prior statement in which he said Dave Geisen said
3 that the quality of the tapes is the reason why you
4 shouldn't see them, he said that's just not a complete
5 answer by him, meaning Dr. Hiser. That Dr. Hiser had not
6 made a complete answer on the prior occasion and now he
7 wanted to give context to what he was saying. We also
8 extracted from Dr. Hiser on his testimony and cross
9 examination that Dave Geisen did not agree or disagree,
10 rather, with the staff when they said that they could not
11 give any credit for the condition of the head in 2000, and
12 that he, Dave Geisen, definitely, definitely agreed that no
13 credit could be given. And again, you will recall we had
14 to remind Dr. Hiser that he had testified to that
15 previously.

16 Why is it that this witness felt so -- so
17 deceived that the prism through which everything he gave
18 his testimony on from this stand should be colored by that
19 sense of deception? Well, if we follow his testimony, it
20 would appear that the triggering event, according to
21 Dr. Hiser, is the red photo. He became, shall we say,
22 deceived person when he saw the photo. Yeah, if you think
23 back at his testimony on direct examination by the
24 government, not only did they not show him the photo, but
25 they didn't ask him a question about the photo. And that

1 his only reference to the red photo came at the very end of
2 his testimony when in a summary kind of fashion he said,
3 You know, if I had known then what I know now, things would
4 have been different, especially when you see that
5 photograph, not even talking -- not even specifically
6 identifying the red photo, but photographs.

7 Why is it that an event which was so seminal to
8 his thinking that he had been deceiving that related that
9 eureka moment, that ah ha moment, I've been deceived is not
10 discussed at all on direct examination? Well, it's because
11 it gives us context, doesn't it, by which to measure the
12 overall credibility of what you were hearing, because on
13 cross examination when we finally got to a discussion
14 regarding the red photo which was so important to his
15 mindset, we learned resident inspectors of the Nuclear
16 Regulatory Commission in direct charge on behalf of the
17 commission of a power plant, Davis-Besse, have access to
18 all the condition reports that are generated within the
19 plant, that the resident inspector, one of two, for the
20 Davis-Besse plant, had the red photo. Dr. Hiser's group in
21 Rockville never contacted the resident inspectors about
22 Davis-Besse, even though they were in charge. Dr. Hiser
23 said in previous testimony, in previous testimony, the red
24 photo would have set off alarms anywhere in the Nuclear
25 Regulatory Commission. It didn't, did it? In the end, he

1 had to admit that what the NRC would have done, which is
2 the hindsight -- the hindsight mindset of this prosecution
3 and of this man, what the NRC would have done was based on
4 hindsight, was based on speculation, and uncertainty, as
5 you will recall that he said on a prior occasion, I wish I
6 had talked to the resident adviser, the inspectors.

7 What we would have done was based on speculation,
8 and of course nothing is certain, so let us not be steam
9 rolled by the suggestion here that everything is -- has got
10 this great clarity to it. It doesn't. And it's important
11 here to understand that because what they're doing is
12 importing all of that hindsight into the present moment and
13 sticking it in Dave Geisen's knowledge and intent, and it
14 doesn't belong there because the evidence doesn't support
15 it. Indeed, if in the end Dr. Hiser concedes that Dave
16 Geisen's conduct in November of 2001 did not indicate that
17 the man was lying or being deceitful. We've talked about
18 hindsight. We've talked about the speculation that comes
19 from the red photo.

20 Let us talk about the science, because it's with
21 the science that we have some idea about the inflammatory
22 nature of the evidence regarding the cavity. Dr. Davis,
23 you remember Dr. Davis? He testified here, and then later
24 when Dr. Bullen testified, Dr. Davis was in the courtroom
25 watching him. Dr. Davis did not appear here as an employee

1 of the Nuclear Regulatory Commission. He did not have the
2 endorsement or the authority of the Nuclear Regulatory
3 Commission when he testified. It is suggested that he was,
4 quote, an independent witness. Well, the matter of his
5 independence is a very interesting idea, isn't it? Does it
6 mean if he was a member of the NRC he's not independent?
7 I'm not going there. Is he an independent witness
8 according to what you saw and heard here? Hardly.

9 The time line he offered for the existence of the
10 cavity and when it was observable was not the product of
11 independent research. He simply accepted a root cause
12 report that was written under compressed circumstances
13 immediately after the event. He then submits a report for
14 your consideration, the date of it is June 6th, 2007. It's
15 written in response, if you will, to the exponent failure
16 report about which Dr. Bullen testified, and we'll get to
17 it in a while.

18 But what did he do with that report? That report
19 being his report of June 6th. It was a total copy job. Of
20 course we had to find that out on cross examination because
21 he doesn't use quotation marks. Apparently he cut English
22 class when they taught about quotation marks and the
23 responsibility to quote other people's words and to cite
24 them as such. Instead, he simply puts down on paper the
25 conclusions of a different report, of the root cause report

1 or of the MRP. You know, just on the basis of that
2 testimony alone, we put his report in evidence. Using his
3 testimony and referencing just page 2, although I suggest
4 you can do it for pages 1, 2 and 3, and part of 4.

5 Here's what's original about his work. That.
6 What about his conclusion? You can do it for yourselves
7 when you get into the deliberations. Now, this is a man
8 who claims there was no flange leak in the year 2000, that
9 began and caused boron to spew all over the vessel head.
10 Yet, he ignores the documentation. You've got condition
11 reports, you've got work orders, you've got reference to
12 nonconforming reports, all focusing on the D-10 flange.
13 And what they're saying in that documentation and what they
14 had to do to repair was to address a steam cut in that
15 flange, a steam cut which under pressure would cause boron
16 to spew at high rates of speed and in great quantity across
17 the surface of the vessel. And he ignores it. It's
18 inconsistent with his theory.

19 Well, what about Dr. Davis? The augmented
20 inspection team report that you were a member of and you
21 contributed to writing, there's a whole section there about
22 flange leakage and particularly flange D-10. Oh, that,
23 well, we later determined that was a mistake. Oh, did you
24 correct it? No. So are we to believe that perhaps he
25 knows that that statement is wrong in the AIT report? Have

1 we got an incomplete and inaccurate statement? Do we have
2 a false statement? Do we have the intent to deceive? I'll
3 leave it to you to conclude those questions. But it gives
4 you some sense of the complete absence of integrity of this
5 particular analysis and science that's offered for your
6 consideration. And to top it off, you have a film.
7 They've been showing movies here all month, but the one
8 they don't feature is on D-10 flange until we showed it.
9 Was there a steam cut there? You might sit back and say
10 steam cut, I don't know from paper cut, that's certainly my
11 view. But we have experts come in here and you can -- you
12 can rely on them, can't you? I mean Dan Bullen, Dr. Dan
13 Bullen offered himself up as a witness and gave his
14 testimony and reported on the condition of that flange and
15 described it for you as the movie of that flange ran. He's
16 not alone, is he, because one of the government witnesses,
17 Mr. Chimahusky who had not seen that movie previously
18 looked at it and said, yes, likely that that is a steam
19 cut.

20 In short, there is no NRC document offered. Put
21 aside the opinion of Dr. Davis and whatever he might have
22 written for the case. There is no NRC document that says
23 that that D-10 flange was not leaking in the year 2000, and
24 thereby accounting for the presence of boron in large
25 quantities on the head. And then there's the exponent

1 failure report that Dr. Davis was confronted with, and he
2 had to admit that the NRC has considered that report and it
3 does not stand rejected. And that the NRC recognizes that
4 that cavity, which Dr. Davis -- Dr. Davis alone appears to
5 say was observable years before, that the NRC, he had to
6 admit, recognizes that that cavity could have formed
7 rapidly in the latter part of the year 2001. And let me
8 remind you, ladies and gentlemen, that would have been
9 after any of the statements that were made in the serial
10 letter.

11 Let us go on to the science of Mr. Holmberg.
12 Mr. Holmberg testifies that when he is on the job as an
13 inspector for the Nuclear Regulatory Commission, and I
14 believe he's out of the regional inspector's office in this
15 area, when he goes in to a plant to check on the nozzle
16 inspection practice of a particular plant, he doesn't look
17 at every nozzle. Checks out 10 percent in order to verify
18 that the way in which the inspection is or has been carried
19 out is an appropriate way, according to him, and therefore,
20 the findings can be supported. Well, let's stop right
21 there. Isn't that what Dave Geisen did with Andrew
22 Siemaszko? Steve Moffitt will tell you that he never
23 expected Dave Geisen to go nozzle by nozzle. That is the
24 work of Andrew Siemaszko. Andrew Siemaszko, who, quote,
25 owned the head. Andrew Siemaszko, the system's engineer in

1 charge of the head, in charge of its cleaning, in charge of
2 its maintenance, Andrew Siemaszko who was sent by the
3 company to another plant in Arkansas to watch and
4 understand how you conduct one of these cleanings, how you
5 conduct one of these inspections. This is the man on whom
6 the company relied, the upper management relied. Let's not
7 get so over personal to think that only Dave, Dave Geisen
8 himself relied to the exclusion of everybody else.
9 Everybody was in on it.

10 Everybody understood what the job was of the
11 respective people. I'm getting ahead of the game here. I
12 want to talk about Mr. Holmberg. One thing that is really
13 significant about Mr. Holmberg, ladies and gentlemen, is
14 that he invented, he invented the standard by which he was
15 judging for the government and also presumably for you, how
16 the nozzle inspection that Andrew Siemaszko carried out,
17 how good that was or how bad that was. But he invented a
18 standard. And it's my own standard, oh, yeah, he used
19 words like reasonable, it's reasonable this and it's
20 reasonable that. I'm not here to denounce his effort to
21 try and figure something out. Nobody knows whether that
22 standard had any basis, whether the standard he used had
23 any standards at all. He invented it. It had no basis in
24 any of the regulations. If there was a regulation, they
25 would have flashed it up on their power point presentation

1 a little while ago.

2 The important thing, in addition to the fact that
3 he invented the standard, is that he never took into regard
4 for one moment the standard that Andrew Siemaszko used as
5 reported in 2744. When you look at those photographs of
6 the 2744 that they wish to condemn on the grounds that they
7 are not representative, and use Holmberg's testimony for
8 that proposition, there's one thing about that part of 2744
9 that I would ask you to take into account, and it is this:
10 In those boxes that accompany so many of the pictures, when
11 you read the language in the boxes, the -- the language in
12 the boxes next to the pictures tells you how Andrew
13 Siemaszko, as reported by Dave Geisen, yes, as reported by
14 Dave Geisen, but as informed by Andrew Siemaszko, how
15 Andrew Siemaszko carried out his inspection of the nozzles.
16 And Holmberg never tested it. And my wonderful partner,
17 Andy Wise, on cross examination, challenged Mr. Holmberg
18 with respect to certain nozzles and the way in which they
19 were looked at and pointed out the difference between
20 Holmberg's approach and Siemaszko's approach. I am not
21 here to tell you that Andrew Siemaszko's approach as
22 reported by Dave Geisen is better or worse. I'm not here
23 to tell you that Dr. or Mr. Holmberg's analysis is better
24 or worse. I'm here to tell you they are different. The
25 difference also is that in the case of what was presented

1 in 2744 was disclosed, therefore, it could be tested.
2 There is no concealment here. There is no willful burying
3 a head in the sand. There is no deliberate ignorance.
4 It's out there.

5 Let us move to the next prong of the government's
6 case. The use of summary witnesses. Remember we've talked
7 about hindsight and we've talked about speculation. We've
8 talked about the inflammatory suggestions that the cavity
9 really puts the lie to what these -- what these men are
10 being charged with? We've talked now about whatever passes
11 for the science, that the government offered in this case
12 to support their position, let us talk now about the use of
13 summaries.

14 In the case of Dave Geisen -- and I'll leave it
15 to Mr. Conroy to address the other summary witness. The
16 case of Dave Geisen, there were two summary witnesses.
17 First was Mr. Martin whose picture they just flashed up on
18 the screen here a few minutes ago. Mr. Martin did -- is
19 not a formal investigator. He interviewed 15 people over a
20 period of two or three days five years ago. He didn't keep
21 his notes. And he tells you that his -- his interview of
22 Dave Geisen was not intended to be verbatim. There's one
23 really significant fact, excuse me. I'm going to have a
24 little bit of a coughing jag if I don't get some water. If
25 you'll excuse me. Thank you for your patience.

1 What I'm about to tell you may be, may be
2 emblematic of the case of this prosecution. I use the word
3 emblematic because we're in good company, polite company.
4 But this is really significant. Mr. Stickan got up here
5 and told you that Mr. Martin, who we've already recognized
6 was not a formal investigator, didn't keep his notes, have
7 had a memorandum that he typed up. Said that Dave Geisen
8 said that he saw the videos of the previous inspections in
9 August of 2001 in connection with preparation of the
10 responses to the NRC. And you know that the response that
11 was due is 2731, right?

12 This is Defendant's Exhibit Number 9. I'm just
13 going to move it up quickly to let you see 9. I put the
14 paper clip there. This is the typed written version of
15 Mr. Martin's notes of the interview he took of Dave Geisen
16 five years ago, indeed more than five years ago. Indeed on
17 March 27th shortly after, okay. I know I became aware of
18 it -- the I in that is Dave Geisen -- I know I became aware
19 of it in reviewing the videos of the inspections while
20 preparing for the NRC interactions in August 2001. He
21 didn't say in preparation for the responses. He didn't say
22 in preparation for 2731. He's talking about interactions.
23 Isn't it possible that Mr. Martin simply got the date
24 wrong? You know from Prason Goyal that Dave Geisen had
25 nothing to do with drafting 2731. You know from Steve

1 Moffitt the same. And at the first interaction, the first
2 interaction that Dave Geisen had with the Nuclear
3 Regulatory Commission was on October 3rd in the year 2001,
4 after 2731 by a mile.

5 Now, summaries and -- they can be funny things
6 when they're not in the hands of professionals and you can
7 get this kind of merging of facts that can be confusing and
8 inaccurate. And I suggest to you that you may conclude
9 that in this instance that's exactly what happened with
10 Jack Martin, but it doesn't stop there. One would argue,
11 wouldn't it be better if you had a transcript -- if
12 somebody was going to be charged, as this man has been,
13 wouldn't it be better to have a transcript of an interview
14 that was taken up. At least you'd know that there was more
15 fidelity in the transcript to what was said than somebody
16 trying to remember and take it down, write a bunch of
17 notes, type it up and then toss the notes and leave a typed
18 written memorandum.

19 Well, you have that with Mr. Ulie, or do we?
20 There we have him testifying in detail to his job as a
21 criminal investigator, something he never told Dave Geisen.
22 And he came up here supposedly to provide the summary of a
23 184-page transcript of the testimony of Dave Geisen. A
24 summary. This is my summary of what he said in response to
25 a particular question. No. He takes the opportunity of

1 being a summary witness to say he said it but it doesn't
2 make it right. Well, that's a great summary. All of a
3 sudden he's subjecting into the picture his sense of
4 credibility of what he believes or disbelieves in a
5 witness.

6 So when he gets to 96-551, the famous Prason
7 Goyal condition report that he wrote in 1996, four years
8 before Dave Geisen became a manager, four years, when he
9 asks Dave Geisen when did he see it, and Dave said in his
10 testimony, because Mr. Wise brought it out, that it was
11 either in the fall of '01, that's five years later, or in
12 the spring of '02, after the event. And then on
13 reflection, a little later on in his testimony, he thought
14 it was in the spring of '02. Our professional investigator
15 here tells us that his summary of that is Mr. Geisen
16 recanted, recanted. That's a loaded word, isn't it? It
17 means he said it and then he took it back. That's not what
18 happened here. Even the prosecutors haven't used the word
19 recanted.

20 Here's the big question. Here's the big
21 question. Your life as you know it is on the line. Your
22 career as a teacher, as a nurse, as someone in business,
23 whatever, it's on the line. It turns on the testimony of a
24 witness who will summarize what you said one day five years
25 ago. How many of you would want Mr. Ulie to be that

1 summary witness?

2 MR. POOLE: Your Honor, object to this.

3 MR. HIBEY: These summaries are odious.

4 MR. POOLE: I wish to pose an objection to this
5 last portion of the argument and ask that it be struck.

6 MR. HIBEY: I think it's proper argument, Your
7 Honor. This is a cornerstone of the government's case. It
8 was referred to by Mr. Stickan in his closing argument.
9 There is no question about it that the credibility of the
10 summary witness is as much at issue as the credibility of
11 any other witness who swore the oath before this jury. And
12 I suggest to you it's perfectly proper.

13 MR. POOLE: Counsel's speaking response to my
14 unspoken objection doesn't even address the point that I
15 wish to make.

16 THE COURT: Let's make it at side bar. Excuse
17 me, ladies and gentlemen.

18 (A side bar conference was had on the
19 record.)

20 MR. POOLE: Our objection is this, Your Honor,
21 counsel has addressed the jury, which is composed of
22 teachers and nurses and business people, and invited them
23 to put themselves in the shoes of the defendant with Agent
24 Ulie sitting in judgment of them. It's the inviting the
25 jury to put themselves in the shoes of the defendant that

1 we believe is inappropriate argument.

2 MR. STICKAN: I'd like to add to that, Judge,
3 he's also using the threat of punishment which is totally
4 inappropriate for closing. As you know, your fate is going
5 to be in the hands of a witness like this.

6 THE COURT: Well, that always -- that's always
7 the case. I'm going to overrule the objection.

8 (Side bar concluded.)

9 MR. HIBEY: So I've now said what I'm going to
10 say about the use of these summaries as a cornerstone in
11 the structure of a case that's built on the alarmism.

12 We'll just turn quickly to the case which we
13 present. I'm not going to spend a great deal of time on a
14 witness that I put on over several hours, namely
15 Dr. Bullen. It's safe to say that he accounted for what
16 the situation really was with the stat. That was the
17 product of independent research, had nothing to do with us.
18 The suggestion it was bought and paid for by the company
19 actually with its claims has nothing to do with us. The
20 man testified for a private in which ten Ph.D.'s spent
21 6,000 manhours, albeit at a great expense of a million
22 dollars, something like that, to analyze not something
23 theoretical and hypothetical about what the industry
24 averages were. But what was wrong with the damaged piece,
25 what was going on about that cavity, what the -- crack

1 growth rate analysis was based upon that equipment, what
2 the modeling was done to take into account elements of
3 stress, chemistry, mechanics, things that you never heard
4 from Dr. Davis. All pointing to the intersection of events
5 between the nozzle leaking in nozzle three and the creation
6 of this cavity under enormous pressure, pressure that
7 created a jet stream of water that cut at the rate of twice
8 the speed of sound. Remarkable. And someone who took us
9 through the story of the flange at detail, which I will not
10 repeat, whose science is more reliable in this case? What
11 analysis would you choose to rely on to conclude when this
12 cavity came into existence?

13 And I would ask you to conclude in the end,
14 therefore, that with respect to this cavity, it had nothing
15 to do with anything. It happened well after any statements
16 were made, and they tell you nothing about the knowledge of
17 Dave Geisen or his intent on those occasions when he did
18 speak or otherwise make presentations to the NRC.

19 And so it comes down to Dave Geisen and his
20 testimony. We know from Steve Moffitt that this is an
21 honest and excellent engineer. We know that his
22 professional life has been spent in nuclear engineering.
23 We know that he was in the Nuclear Navy in the submarine
24 service. We know that he believed the head was cleaned in
25 the year 2000. We know he was not alone in that belief.

1 You heard that from Steve Moffitt. You know that The
2 Outage Insider, the little newspaper of the 12 RFO,
3 celebrate the cleaning of the head by Andrew and his team.
4 And the celebration did not end there. Pizza and beer all
5 around for the team with Mr. Siemaszko leading the way and
6 Mr. Tabbert acknowledging two things, that the boron he
7 believed came from flange leakage because of the long
8 history of flange leakage at Davis-Besse, and that they
9 had, in his words, the successful cleaning of the head.

10 This is Dave Geisen whose disappointment when he
11 learned in October that the head in 2000 had not been
12 cleaned was registered to Steve Moffitt immediately upon
13 learning that he went to him and told him, and Steve
14 Moffitt testified for your consideration to the great
15 disappointment that Dave had and the need that Dave
16 expressed to correct the situation. I think I said the
17 head cleaning, I think I mean the nozzles, and that they
18 went to their superior, Dave Lockwood, and then it was
19 determined by Dave Lockwood that the matter would be
20 cleared up in 2735. This is not deliberate ignorance on
21 his part. This is not trying to hide the ball. This is
22 someone who's trying to get it right because he understands
23 that's the code of the nuclear community. My goodness, you
24 are dealing with nuclear power. People can -- can have
25 serious consequences from something like that within the

1 plant itself. And so what you have is a situation in which
2 this man is trying to get it right, and he relies on those
3 who he understands will assist him in doing that.

4 Reliance here is not an alien concept, friends.
5 It's part and parcel of how things work in the nuclear
6 community. The team concept is predicated on trust, and
7 what is that trust? It's the trust that others will do
8 their jobs, that managers are not expected to do certain
9 things, but that other people are and that managers have a
10 right to rely on the professionalism of the people they
11 work with.

12 On top of that, you know, as we have said time
13 and time again, Dave Geisen had nothing to do with 2731.
14 We have said that Prason Goyal is certainly one of the key
15 witnesses to that proposition. But there's more to what
16 Goyal has said. According to Mr. Stickan, Prason Goyal
17 was trying to tell people about the condition of the head.
18 How many personal conversations? We had Mr. Goyal, we had
19 Mr. Goyal -- government had Mr. Goyal on the stand for a
20 day-and-a-half. How many personal face-to-face
21 conversations did Prason Goyal testify to with Dave
22 Geisen? None. None. Dave Geisen signs off on the
23 greensheet apparently, his only official contact with 2731,
24 and immediately turn it over to identify what the duties
25 are of those who signed greensheets, and that's certainly

1 fair. And we don't walk away from that. We understand
2 that. But the reality of how that greensheet evolves with
3 signatures, the managers look for the signatures of those
4 below them. The manager then tells you -- in the case of
5 Dave Geisen, he said I looked to see if things were in
6 order. This is not an in-depth redo of every line in the
7 piece. It couldn't be. It's not realistic to expect it.
8 But it is realistic for a manager such as Dave Geisen to
9 expect that those who are below him in the chain have done
10 their jobs. This is what they come to rely on. And this
11 is what he did here.

12 On cross examination, he was asked about
13 warnings, and of course you heard that word in the final
14 argument today. Well, he had warnings about the condition
15 of the head now. I keep thinking of this phrase death by a
16 thousand cuts, and I think also conviction by carbon copy.
17 They take an e-mail that's in the year 2000, nine months
18 before there was ever a bulletin, that's a warning. And
19 then they show us another one. That's a warning. It's a
20 trip report, and that's a warning. As if Dave Geisen had
21 nothing else to do but to take sentences of Prason Goyal
22 written and insert it or bury it in various memoranda and
23 e-mail to give him a present tense notion of what the
24 situation is. When you don't have Goyal for one moment
25 going to Dave and saying, Dave, we got a problem here. And

1 a proof of that really comes around the greensheet time.
2 Goyal writes an e-mail that says management ought to know.
3 He doesn't send it to Dave. He writes an e-mail concerned
4 about the condition of the head, then he signs the
5 greensheet. And then the next day Prason Goyal, according
6 to his testimony from the stand, says, well, the e-mail I
7 wrote after I signed the greensheet was my correction.
8 Correction? Who made the correction? Did Dave Geisen?
9 No. Did any one of those e-mails say it was urgent? No.

10 The Gibbs report we hear, according to
11 Mr. Stickan in final argument, is that the Gibbs report was
12 laid into the hands of Dave Geisen. Gibbs said he put it
13 on Dave Geisen's desk as a courtesy copy. He didn't see
14 Dave Geisen. He didn't talk to Dave Geisen. He never saw
15 Dave Geisen during the four days he was there. And that
16 when it came time for him to have a face-to-face meeting
17 with somebody about his report, it wasn't with Dave Geisen,
18 it was with Mark McLaughlin. And Gibbs himself said on
19 examination, did he not, that he never said 2731 was
20 inaccurate. He never said it was false, and he never said
21 it was misleading anywhere in his report.

22 Dave believed the head was clean in 2000.
23 Therefore, the widening of the mouse holes or the weep
24 holes was not essential to the cleaning of the head,
25 although it would have made it easier. And he believed --

1 he believed that those who did the past cleanings
2 participated in the drafting of 2731.

3 2744, pictures and captions, Steve Moffitt said
4 Dave never vouched for the tapes. He took them as
5 representative based upon his discussions with Andrew
6 Siemaszko. And he believed Andrew Siemaszko had spoken
7 with others. And we know from Prasoon Goyal's testimony
8 that he and Andrew Siemaszko spoke. They're very quick to
9 play a tape that has Prasoon Goyal going through hole two
10 and Prasoon Goyal referencing a -- some stud numbers. But
11 ladies and gentlemen of the jury, please remember the
12 testimony of Prasoon Goyal who stated from this stand under
13 oath that he had a conversation with Andrew Siemaszko, and
14 that Andrew Siemaszko asked about head orientation for '96
15 and that Prasoon Goyal indicated to him that there was not
16 sufficient information provided by Prasoon on the tape to
17 allow for appropriate header orientation. Then they come
18 in and they play a tape here. Is it the tape that Andrew
19 Siemaszko used? Is it the machine Andrew Siemaszko used?
20 You don't know that. We don't know that. No evidence was
21 put on. We don't know what equipment Andrew Siemaszko used
22 and to what extent he could hear, perhaps what you heard
23 here, and how telling that was for him especially in light
24 of his conversation with Prasoon Goyal. And with respect
25 to the language in 2744 about head being verified as free

1 from wet boron, Dave said he thought he got that
2 information from Ed Chimahusky, but he wasn't sure. He was
3 never certain. Chimahusky came in here and said I didn't
4 tell him that. Fair enough.

5 That's what you're here for. You've got to
6 resolve those things. I suggest to you that Dave honestly
7 believed that it was information he got from Chimahusky
8 when apparently it wasn't. Does that make him a liar?
9 Does that make him someone who possesses a guilty
10 knowledge? Does that make him someone who has an intent to
11 deceive?

12 SIA, the gap analysis, you've heard a bit about
13 that. Very tricky stuff scientifically, but the idea being
14 there needs to be a gap so that if there's nozzle leakage,
15 the stuff percolates up so that they can detect it. Who's
16 in charge of that? That whole gap analysis was in
17 anticipation of the 13th RFO, and who had charge of it?
18 Mark McLaughlin. And so when the decision was made that
19 SIA had finally figured out that all of the four -- all of
20 the nozzles on the head had sufficient gap for the
21 detection of the leakage, the decision was made not by Dave
22 Geisen, it was made by people north of him like Dave
23 Lockwood. That -- that that would not be offered to the --
24 to the Nuclear Regulatory Commission as part of the risk
25 assessment. Why? Because it would be too aggressive and

1 that they feel comfortable with the data that they had,
2 that they could project that there would not be a
3 circumferential crack that would go to a flaw size before
4 the 13th refueling outage began. Yes, it was a judgment,
5 an engineering judgment, and that should not be denigrated,
6 perverted into a lie, cover up, a fraudulent act.

7 The witnesses have testified, Mr. McLaughlin as
8 well as Mr. Geisen, that it was anticipated in the 13th
9 refueling outage there would be more than a visual
10 inspection of the nozzles. There would be a non
11 destructive examination of those nozzles, a scientific
12 empirical examination of each one of those nozzles to
13 accompany the visual. When our summary witness was on the
14 stand and he gives testimony regarding Mr. Geisen
15 explaining precisely that, he's asked to set aside was the
16 word -- set aside the part about non destructive
17 examination, and let's just tell me what his answer was
18 with respect to visual. How can you do that? Qualified
19 examination in 13 RFO, anticipated visual and non
20 destructive examination, Eddy current testing and similar
21 scientific equipment analysis of each of these nozzles.

22 So in the end, this is a case about Dave Geisen's
23 honesty, his integrity, his professionalism, his fidelity
24 to the truth as he knew it. We're not saying he got
25 everything right. We're not saying that the information he

1 got was accurate and perfect in every respect. What we are
2 saying is that he believed that to be the case because he
3 trusted and honestly held the belief that what he was being
4 told was the truth, that he had the integrity of not
5 shirking his responsibilities so that when he did find that
6 incorrect information had been conveyed in October, he
7 immediately tried to correct it, as you will recall Steve
8 Moffitt testifying to. And his professionalism, of course,
9 is justified by the reliance he placed on the members of
10 the team, Andrew Siemaszko and everyone else who had some
11 role in the operation of that power point. Then I think
12 you may conclude that there was no scheme here. There was
13 no lying. He omitted nothing from 2731. He had nothing to
14 do with it. On October 3rd the sources of his information,
15 as he testified to, were 2731 and Framatome.

16 You take a look at that 10-3 handwritten note of
17 Dale Miller. They say, well, this is the one that tells
18 you that Dave Geisen said all these things, and they
19 have -- but take a look at the placement of the source of
20 information Framatome gets in at the end of the statements
21 attributed to Dave Geisen. And you have his testimony here
22 that from 2731 and Framatome and systems engineering, he
23 said the things that he said that day.

24 And then when you get to the technical assistants
25 meeting, which is being suggested by the government was a

1 high-handed act to go over the head with the staff and take
2 it to the commissioner's technical assistants, you're
3 expected, therefore, to blame Dave Geisen for that if
4 indeed that's what happened. And then they point out
5 the -- the slide presentations that were made at that time.
6 When you heard from Steve Moffitt, how those slides were
7 composed and that the use of the word or instead of the
8 word and was designed for what purpose? To give clarity
9 and not to mislead the NRC.

10 And remember this is against the background of
11 the work that Andrew Siemaszko not only was doing, but had
12 done and had recorded and that Dave Geisen had relied on
13 say, well, it's only 11th and 12th, what about the 10th?
14 The 10th was covered as well, but the 11th and 12th were
15 all that were called for in the serial letter the first
16 time around.

17 And then you come to 2735. It said the entire
18 head was inspected and video was devoid of head
19 orientation, but there's no evidence that Dave knew
20 otherwise. You now know that Goyal and Siemaszko did talk
21 about this. The meeting of 10-24, that's -- that's a
22 meeting with the NRC where Dave spoke again. The focus,
23 according to Steve Moffitt, was on crack growth rates, and
24 the information that Dave referenced in the slide
25 presentation was from Andrew Siemaszko, a trusted and

1 reliable engineer. Those are the words of Steve Moffitt.

2 2741, the request for additional assistants or
3 information by the NRC, there's no evidence that Dave had
4 anything -- of that.

5 2744 is the picture we've already talked about.

6 2745, which was the risk assessment, there's no
7 evidence, ladies and gentlemen, that you can call on that
8 demonstrates that Dave Geisen, beyond a reasonable doubt,
9 had guilty knowledge or intent associated with that
10 particular serial letter. November 8th we have discussed
11 at length.

12 Let's go to November 14th. November 14th really
13 proves the truth of November 8th as it's been described
14 here and as Dave Geisen testified to it. He said I didn't
15 have the information to satisfy the NRC in that
16 November 8th meeting and I told them so. And then they
17 brought in the person who did, and who was it? Andrew
18 Siemaszko. And Andrew Siemaszko is the person on the 14th
19 of November who spoke to the NRC according to the testimony
20 of Dr. Hiser. Siemaszko swore on a stack of bibles
21 regarding his inspection data.

22 And then on November 28th when the probabilistic
23 risk assessment is discussed with the NRC, that discussion,
24 to the extent that it involved Dave Geisen, was based upon
25 Dave Geisen's knowledge at the time, not a guilty

1 knowledge, not a fraudulent intent, but is honestly held
2 understanding of what the state of things were. And then
3 they talk about him going before the nuclear review -- the
4 Company Nuclear Review Board, not even the Nuclear
5 Regulatory Commission as if somehow that is the way of
6 proving the lie to the commission. He goes before the
7 Nuclear Review Board and reports on the 29th.

8 We've covered a lot of territory. No matter how
9 hard I try to keep my voice down when I do these things,
10 doesn't happen. I hope I haven't intruded on your space by
11 the fact -- the fact that I did raise my voice. I get
12 excited about the case. We're down to this, in a few
13 minutes -- maybe not a few minutes but later in the day,
14 this case will be submitted to you for your judgment.

15 Please remember the standard. The standard is
16 reasonable doubt. Andrew Wise told you in opening
17 statement a man's innocent. We don't shy away from that.
18 But we understand that what the law requires that if you
19 have a reasonable doubt, you believe the government has not
20 proved its case beyond a reasonable doubt, you must acquit.
21 We're reminding you of that because as lawyers, we have a
22 duty to.

23 But understand we stand here before you arguing
24 that the man is innocent. You may decide at some point
25 that he might have been negligent, that he could have been

1 more astute, that he should have been over Andrew
2 Siemaszko's shoulder or at his side joined at the hip,
3 whatever you want to say, but that's not the evidence here,
4 is it? But it's also not the evidence that at any time
5 during this entire situation Dave Geisen disbelieved what
6 he was saying or what has been attributed to him, that Dave
7 Geisen knew that when he looked the NRC straight in the eye
8 that he was telling the NRC lies, that Dave Geisen indeed,
9 as I asked at the very beginning of my remarks, had come to
10 the threshold of a moment in time when this man was simply
11 going to spit on his life as he knew it, abandon his
12 responsibilities to science, to his family, to his
13 employer, to the people, and decide to lie and cheat in
14 order to keep Davis-Besse going for 45 days more.

15 You're being asked for five verdicts, counts one,
16 two, three, four and five. We ask you to return a verdict
17 of not guilty on each count. Thank you very much for your
18 time and attention.

19 THE COURT: Thank you. Ladies and gentlemen,
20 it's my understanding that you've ordered in. We'll take a
21 break. Be back in place at 1:30 to hear the balance of
22 closing. Please remember during this critical time in this
23 trial, do not discuss this case among yourselves nor with
24 anyone else. Don't permit anyone else to discuss it with
25 you. Do not read, listen to or watch anything touching on

1 this case in any way. And do not make up your minds on the
2 ultimate issues you will decide at the end of the case when
3 it is submitted to you. Enjoy your lunch.

4 (A brief recess was taken for lunch.)

5 THE COURT: Mr. Conroy?

6 MR. CONROY: Good afternoon, ladies and
7 gentlemen. What do you figure the odds are that this is
8 going to go well? Ladies and gentlemen, the fundamental
9 systematic overarching problem with this case is that it
10 is not fair. It has not been fairly investigated. It was
11 not fairly charged, and it has not been fairly presented to
12 you. In the upshot of that kind of a problem is that we
13 have strings of things flying in the air, but it doesn't
14 tie together in any kind of a cohesive manner. And so it's
15 very hard to decide what it is we're going to argue to you
16 to try to sort out the problem that we have not created.

17 Let me give you an example of why this gets
18 confusing and why it's going to be difficult for me, but
19 I'll do the best I can to give you some help with what it
20 is you're going to be deciding.

21 This morning Mr. Stickan reiterated a statement
22 that Mr. Ballantine made in his opening statement in the
23 case, which is that 2731, the first serial letter, was
24 rejected by the NRC, at which time the defendants, and I
25 believe at that point they were talking about David Geisen

1 as opposed to a particular defendant -- decided to push
2 back, to lie. Well, if that's the case, then 2731 isn't
3 involved in the case. And why have we spent all of this
4 time examining who did what and misrepresented what and
5 didn't say what about the first serial letter if, in fact,
6 the government wants to concede in both its opening and
7 closing that the first serial letter didn't have anything
8 to do with it?

9 So it's hard to sort out what it is we're about
10 to defend against, and this has been true since the start
11 of the case. This has been absolutely on the mark since
12 they charged the case. And what I have done, what I've
13 taken the liberty of doing is laying out for you an
14 argument that maybe we all can follow and get to the bottom
15 line here.

16 When we started -- when I started, I said let's
17 play -- let's play detective. Let's consider three things
18 that are going to apply to this defendant, Mr. Rod Cook.
19 Motive, means, and opportunity. What I'm going to discuss
20 with you now is means. Because they have gone nowhere near
21 motive. Why did we do it. Or opportunity, what would have
22 made him think he could get away with it.

23 There has been a lot of discussion about means,
24 who knew what, when did they know it, what issues were
25 raised, what issues were presented. What did Mr. Cook know

1 as he was drafting the documents. And so what I think
2 maybe as helpful as anything is to take some issues, some
3 witnesses, some documents, discuss them briefly, I hope,
4 and then ask you to do the job that you're all waiting to
5 get on with.

6 Issue one, again, it's in 2731. This is the one
7 that we don't count but nobody was trying to lie here. But
8 the issue is 90 percent, 80 percent, 70 percent, majority.
9 And how did all that play out, what were these warnings
10 that people were having, what was Dale Wuokko's commentary
11 and how did it relate to what Rod was doing? The question
12 of repetitiveness and whether or not Prason Goyal was on
13 board with the fact that there were no impediments to a
14 full visual inspection at the next refueling outage, the
15 2741 draft language that Mr. Cook supposedly held back and
16 concealed from the NRC was it was more truthful than what
17 actually was sent in. The timing of Mr. Cook seeing videos
18 with regard to past RPV head inspections, and the timing of
19 Mr. Cook seeing condition reports with regard to past RPV
20 head inspections.

21 I believe that if we cover those points, that
22 will take care of the fundamental issues that have been
23 raised with regard to Rod Cook.

24 With regard to the witnesses who support those
25 propositions, I want to talk to you about Ronald Lloyd. I

1 want to talk to you about the Dales, Dale Miller and Dale
2 Wuokko. I want to talk to you about Joseph Ulie, the chief
3 investigator. And I want to talk to you about Randy
4 Rossomme who was the last witness that was brought in by
5 the government. And with regard to documents, I want to
6 talk to you about the NRC communications procedure, the
7 Davis-Besse procedure writers guide, the boric acid
8 corrosion control procedure, Rod's e-mail of the 27th of
9 August in which he said he can't see the whole head. We
10 don't want to tell him we can. And some documentation on
11 the 90, 80, 70 sequence. At that point, connect, move on
12 to questions of motive and opportunity. But remember what
13 I asked you when we began this. An individual is not going
14 to be a good candidate for defendant in a criminal case
15 such as this if they are lacking motive, means and
16 opportunity.

17 Motive and opportunity have not been challenged.
18 They don't exist on the record in this case.

19 Means we're going to discuss a little bit now.
20 The 90, 80, 70 issue gets presented to you basically
21 through Dale Wuokko's comments to 2731. Wuokko, and we're
22 going to -- we're going to discuss it in a little bit more
23 detail, not harmful witness was hardly something who was
24 leaping to rise at the fence and trying to keep him from
25 going under the bus. He was perfectly prepared to protect

1 himself when he testified here, but he was not going to go
2 out of his way to make sure that anybody else stayed out of
3 trouble. And what happened is that he wrote a comment
4 while he was only looking at the document for format and
5 ground that said, hey, make sure that everybody's complying
6 with 50.9 on this 90 percent thing because if it's -- you
7 know, if we just say majority, that may not be complete and
8 accurate in terms of section 50.9. Nobody here is arguing
9 that anybody knew that, anybody didn't know what 50.9 was
10 all about. Everybody knows you have to tell the truth to
11 the NRC. It's common knowledge that was said from the
12 witness stand. We all know you've got to tell the truth to
13 the NRC. It's engineer, engineer, we have to be able to
14 talk to each other about the same problems and the same
15 language. So there's no issue here.

16 The question is, is the individual, according to
17 Wuokko's comment who was talking about 90 percent complying
18 with his obligation to be complete and accurate if he's
19 taking out 90 percent, where did it go? In order to get
20 the answer to that and why Wuokko's comment was not well
21 taken, we've got to go back to the beginning of the
22 sequence.

23 Rod did not get assigned to work on this project
24 until the 8th of August. The bulletin came in on the 3rd
25 of August. He got assigned to work on it on the 8th. On

1 the 9th a -- an exchange of documents took place between
2 Andrew Siemaszko and Prason Goyal, and they were talking
3 about writing up section 1.D on the past history of
4 inspections so that they could answer the bulletin. And
5 Mr. Siemaszko sent a draft to Mr. Goyal, and it said as
6 found 12 RFO. I could inspect 95 percent of the nozzle.
7 Mr. Goyal says, are you sure you can really do that?
8 Siemaszko comes back with a new draft that says, I could
9 inspect the majority of the nozzles. That is the first
10 draft that Rod Cook sees.

11 He five, six days later on the 18th of the month
12 gets out the first substantive draft of 2731. He's
13 gathered enough information from enough sources to put out
14 the first draft. And in it, he puts out what engineering
15 told him, which is we were able to -- to inspect at 12 RFO
16 a majority of the nozzle interface. That results in
17 comments from both Dale Wuokko and Dale Miller who
18 immediately recognize the NRC is not going to be crazy
19 about majority. They like precision. What's the
20 percentage? We've got to give them a number or they're not
21 going to be happy.

22 Rod goes back to Siemaszko. Siemaszko says I
23 can -- I could see 90 percent of the nozzles, okay, Andrew
24 that's what's going in the draft, and that's what did go in
25 the draft, 90 percent. Back out it goes and Prason gets

1 it. Immediately he says, wait a minute, are you sure you
2 can see 90 percent of the nozzles if there's boric acid up
3 there? Everybody agrees there was some boric acid left on
4 the top of the head. Are you sure you can see 90 percent?
5 Rod then goes to Siemaszko and he says, Andrew, could you
6 see 90 percent of the nozzles? This question has been
7 raised. Andrew says, well, maybe 80 percent. You know, I
8 think I could see 90 percent but somebody else might say
9 80 percent. Can you stand behind 80 percent? Maybe
10 70 percent. Are you sure on 70? Well, you know, other
11 people might see it differently. We're going to go back to
12 majority. Are you satisfied with that? Yes. Back out to
13 the public, to the greensheeters goes majority of the
14 nozzles.

15 That is what resulted in Wuokko's comment, wait a
16 minute, what happened to 90 percent. We had it in there.
17 Now it's out again, whoever is writing this, do they know
18 what the problem is? And then he goes off to be with
19 Senator Voinovich or to training or someplace where he's no
20 longer available to look at these things, although that's
21 not true. And Rod's -- you know, Rod is in a position of
22 having to tell him, look, your comment is fine but it's not
23 well taken, we can't go with 90 percent. It's not the
24 right number. If we're going to be complete and
25 accurate -- I think you heard Rod testify to this when he

1 was on the stand, if you're going to be complete and
2 accurate here, we can't use 90 percent because he can't
3 stand behind it. So we're going to use majority of the
4 nozzles.

5 And finally, and so just so you know, Wuokko is
6 satisfied with that. Finally, Rod gets out an e-mail on
7 the 27th of August in which he says -- and I want to get
8 this right, but it's a -- it's an exhibit that the
9 government was using in its first closing here. It says we
10 want to make sure that we tell them that we couldn't
11 inspect the entire head or it wasn't available or it wasn't
12 accessible for inspection for whatever reason. We don't
13 want to mislead them into thinking that we could see the
14 entire head. The significance of that, in large measure,
15 is the fact that at the time they are drafting up this
16 document, there is no reason to think that the NRC is going
17 to have any questions about it. All they are doing here in
18 90, 80, 70, majority and back and forth is exactly what the
19 process is designed to do, which is to sort out factual
20 anomalies that they have got until they can get to an
21 answer that they are satisfied with. And ultimately, Rod
22 decides that maybe the best way to put this is to say the
23 only way we can say is that we cleaned the portions that
24 were accessible through the mouse holes. We can't be any
25 more specific than that because otherwise we are not going

1 to be complete and accurate in our response. And that
2 ultimately is the version that gets sent out.

3 Now, Rod testified, and I think it's probably
4 true, I'm sure it's true because he said so, that he meant
5 to leave majority of the nozzles in there. You'll note as
6 you go through 2731, they don't ask him, they were trying
7 to give as much information as they could. It's not
8 something that the -- that question wouldn't be necessarily
9 asked for, but they were going to try to give it to them to
10 be as complete as possible in explaining their past
11 inspections, so rather than hiding anything from anybody,
12 they are trying to get them as much accurate information as
13 they can. It's been totally and unfairly misinterpreted.
14 That's 90, 80, 70, majority. Inspections were conducted in
15 accordance with the BACCP.

16 Now, here I may ask you for -- actually be able
17 to give you some help in your deliberations. First,
18 throughout the letters, it was repeated that inspections of
19 the head were conducted in the past '98, 2000, in
20 accordance with the boric acid corrosion control procedure
21 at the Davis-Besse plant. And I made a point throughout of
22 trying to get people to differentiate between the terms
23 should and shall. Why was I interested? What difference
24 did it make to me? Rod has testified, and nobody has
25 questioned it, that he had never read the boric acid

1 corrosion control procedure when he was drafting up the
2 bulletin responses. Why would it make a difference to me
3 on his behalf to get to the bottom of should and shall and
4 how that procedure works? If he didn't know about it, he
5 certainly can't be held responsible for its contents, and
6 he knew it -- it existed but he had never read it. The
7 answer's this. The whole point of having inspections in
8 accordance with the BACCP is because it allows the
9 government to drag into this case the unrelated and
10 unnecessary evidence with regard to this cavity that was
11 found. The cavity had nothing to do with what these guys
12 were talking about in that bulletin. The bulletin had to
13 do with circumferential cracking. When they finally opened
14 up the head and they found the cavity and they also looked
15 at the circumferential cracks, they were about what they
16 would have expected based on the analysis that had done in
17 the letters, but something else was there that was
18 unrelated, and had they found it six weeks earlier, they
19 would have had another six weeks to work on it. It would
20 have been that much safer. But it didn't have anything to
21 do with the bulletins.

22 The way that it gets into the case is that if the
23 hole in the head was there in the year 2000 and could be
24 seen and was not seen because boric acid was on the head
25 and covered it, then there would be proof that the boric

1 acid corrosion control procedure was not complied with in
2 2000 in '98 and that, therefore, the statements in 2731 and
3 on that said it was complied with would be false, because
4 the hole covered by the boric acid which should have been
5 on the head now -- I'm sorry, the hole which was covered by
6 the boric acid which should have been on the head kept them
7 from being able to say legitimately that the boric acid
8 corrosion control procedure was complied with. The problem
9 is that the boric acid corrosion control procedure doesn't
10 say that. It's -- it's couched in terms of should.

11 And when we get to talking about 96-551 Prason
12 Goyal for 1996 condition report or PCAQ, whatever it was
13 back then, we're going to see that in accordance with the
14 procedure, that PCAQ, which said we're in violation of the
15 boric acid corrosion control procedure was dispositions,
16 was dealt with, was closed by Prason's supervisor with the
17 approval of the quality control supervisor who holds the
18 keys to restart any nuclear power plant and with the
19 approval of the co-inspector who says what we are doing
20 here, what you are doing by dispositioning and closing this
21 DR is okay within the meaning of the ASME code, American
22 Society of Mechanical Engineers. All of those people
23 signed off on 96-551, and so did Prason.

24 When you read it, you will say -- you will see
25 that he said in the course of that PCAQ, okay, I

1 understand, boric acid at 600 degrees is not corrosive
2 because it's dry. That's the industry understanding. I
3 can go along with that. That is how that was dealt with.
4 But the bottom line point is that if, in fact, as the
5 procedure sets forth, all that has to be done is boric acid
6 should be removed if it's found on the head, just what the
7 procedure said in 2000, that means that a document like
8 96-551 in which an engineering judgment is made that we
9 don't have to take it off, there's a reason that it's there
10 and it's not harming anything and we can leave it there.
11 That is within the procedure, and that's what happened.

12 What is the significance of that for the purposes
13 of the trial? My view, it was -- it eliminates the need to
14 consider any expert testimony whatsoever. If the head had
15 a hole in it or it didn't have a hole in it, it doesn't
16 make any difference if it didn't have to have -- if they
17 couldn't see it because there was boric acid on top of it.
18 You didn't have to take the boric acid off, doesn't prove
19 anything. Whether or not the hole was there and there was
20 boric acid on top of it doesn't violate the boric acid
21 corrosion control procedure. And since it doesn't violate
22 the boric acid corrosion control procedure, then it is
23 irrelevant for consideration of whether or not the letters
24 were telling the truth when they said these inspections
25 were conducted in accordance with the boric acid corrosion

1 control procedure. It just shortens up the case. It makes
2 it more manageable. It doesn't make any difference to
3 Mr. Cook because he never saw the boric acid corrosion
4 control procedure in the first place. What it does is
5 simplify the issues and gets us down, if you will, to the
6 task at matter.

7 The 2741 draft, this is the material that
8 Mr. Cook supposedly concealed from the NRC because he
9 drafted information that was not put into the final version
10 of 2741, and that was an act of hiding it from the NRC.
11 Without going into all of the ways, we can go into some of
12 the ways, but without going into all of the ways in which
13 that statement made no sense, question was about past
14 inspections and asked about future inspections. He was
15 under a time gun. He was trying to get this next response
16 started, get people moving on it. He sent out a draft, and
17 it didn't make a whole lot of sense, didn't make any sense.
18 They're talking about past inspections and he answered
19 about future inspections. But the key is they are charging
20 him with concealing that information in the draft from the
21 NRC.

22 What actually happened? He put the information
23 in the draft and circulated it. He circulated it to other
24 people in company he circulated it to people outside the
25 company. He circulated it to the general scientific

1 community. It stayed in the draft for nine days. And it
2 was ultimately found or it would have remained there by his
3 boss two levels up, a guy by the name of Dave Lockwood who
4 wrote N.G. next to that paragraph which caused Rod to look
5 at it again, and said, oh, that's no good. He's right.
6 I'm answering the wrong question.

7 The proper question with the proper answer which
8 everybody signed off on was given by Mark McLaughlin who
9 was charged with answering about future inspections in that
10 letter. Rod finished up the answer in response to the
11 question actually asked about past inspections, and that
12 went into the letter.

13 But there was no concealing, even if there was an
14 error which clearly he made in drafting that document.
15 There was no concealment of what he was about. He was
16 circulating it to the world. If he was trying to keep it
17 from the NRC, would he be sending it to Framatome? Would
18 he be sending it to EPRI? Of course not. What he had done
19 was make a mistake. The mistake was caught, the mistake
20 was corrected, and that was the end of that.

21 Videos and timing. This involves a face visit,
22 an overlap here because it also involves the witness Ulie.
23 There was testimony that Mr. Cook -- as a matter of fact, a
24 couple of times there was testimony that Mr. Cook said he
25 saw videos of past head inspections. Now, what he would

1 draw from that remains an open question, but there's a real
2 question as to whether or not he saw videos of past head
3 inspections in October of 2001, October 24th. The thing
4 that ties it all together there is he repeats every time
5 he's asked I saw those things. I got a copy of videos, 10
6 RFO, 12th RFO. All he got on the day when they were taking
7 those videos to Washington to show them to the NRC. And he
8 did look at them that day, and he said there's boric acid
9 on the head more than I thought we were talking about.

10 Did he do anything about it? No. The NRC was
11 looking at the same videos the same day. There was nothing
12 to tell anybody, nor did he realize it was that big of a
13 concern. But had he realized it was a big concern, the NRC
14 had the information. It was in their hands. They could
15 deal with it as they wanted to at that point.

16 Much has been effortly -- in an effort to push
17 that timing back into October because he said October in
18 one of his interviews. The reason for that is because that
19 would push his viewing of the videos to a point in time
20 before the last bulletin response went out. Therefore, he
21 could be charged with knowledge to some degree of the
22 nature of the boric acid on the head before the last
23 response.

24 In point of fact, the last response had gone out
25 November 1st, the 2745 probability study. The travel to

1 Washington with the videos was November 8th, a week later.
2 If you can untie his seeing of the videos from the day they
3 took them to the NRC, it might be of some value
4 inferentially, but it might be of some value, but they
5 didn't. They can't. What he did was what a lot of people
6 would do, I remember that that happened about D day, it was
7 right around D day, that's sort of about the 26th or 27th
8 of May, isn't it? No. It's the 6th of June. What you
9 were remembering was the date that some event took place
10 that triggered your memory of when you saw something or did
11 something. And his association is with the day they took
12 the videos to Washington to show them to the NRC. Why?
13 Because that's when Regulatory Affairs would have needed
14 them. Regulatory Affairs wanted to have a copy of anything
15 that the plant filed with the NRC. And they were taking
16 those videos down with the possibility that they would be
17 filed with the NRC as an exhibit. And so he got a copy of
18 them so he could have them in his office files so that they
19 would be able to respond to questions that came in about
20 it. That's why the date was significant. That is why it
21 was the 8th of November. That is why it took place after
22 the last serial letter went out. And that is why -- and
23 the government knows that this has been entirely unfair.

24 Same problem with regard to condition reports,
25 and when he read them, Agent Ulie wanted to have it known

1 that Mr. Cook said he saw condition report 96-551 in
2 October or November of 2001.

3 Now, the path of fact that doesn't constitute any
4 kind of an admission against interest because November is
5 after the last bulletin response went out. But what he
6 said in response to Mr. Ulie's direct question, when did
7 you actually see the documents, he said, I didn't see those
8 until the AIT team came up. And the AIT team didn't come
9 on board until after the hole in the head was found, and
10 that wasn't until March of 2002. So you can't put, if you
11 will, guilty knowledge into Rod Cook's head from looking at
12 videos or looking at CR's or PCAQ's unless you can drive
13 the date back behind November 1st. And they never could do
14 that. They were trying -- they brought in Ronald Lloyd,
15 they brought in Randy, I would call him Rossomme, to
16 testify to try to bolster the notion that the timing of
17 Rod's knowledge of certain events was earlier than he said
18 it was. Where was it they have never managed -- so we have
19 to talk about Rossomme, but that takes care of the issues
20 as I see it.

21 The witnesses. Well, now that brings us to
22 Ronald Lloyd. Interesting character. He is a retired NRC
23 investigator. And he gets a call two to three weeks before
24 he's testifying on the stand which will probably be a
25 week-and-a-half perhaps before trial began. And he shows

1 up to talk about a five-year-old interview, set of
2 interview notes which he has a perfect memory of,
3 absolutely clear recollection of everything that Rod Cook
4 was talking to him about. The difficulty for Mr. Lloyd is
5 two fold, one is he had his facts all screwed up. And the
6 other one, his memory wasn't anything near as good as he
7 wanted you to believe.

8 He says in his interview notes, which you will
9 have with you, Defendant's Exhibit 8, that Rod spoke to him
10 about Andrew telling him about 90, 80, 70. And I asked
11 him, I said, are you clear whether or not at that time we
12 were talking about the as-found condition of the head or
13 the as-left condition of the head? And he said, oh,
14 absolutely we were talking about the as-left condition of
15 the head. Well, no, they weren't. They were talking about
16 the as-found condition of the head. As left the head was
17 represented as being effectively cleaned. As found they
18 were talking about what percentage of the head they could
19 look at in 1998 and 2000.

20 And you do need to keep in mind when you're
21 evaluating what it is Andrew was trying to convey, that the
22 time they did those inspections, they weren't inspecting
23 nozzle interfaces. They were just looking at the condition
24 of the head generally. And so when he's saying 90, 80, 70,
25 he's basing it now on a recollection of what he did years

1 ago and looking at videotapes which he actually did, which
2 he, in fact, actually did.

3 So Mr. Lloyd has his facts dead wrong about a key
4 point that the government tries to raise out of his
5 statement. It was not as left. It was as found. And he
6 also makes a point that both Prason and Andrew said the
7 plant wasn't in compliance.

8 The section 3214, which is the boric acid
9 corrosion control procedure at the time that Cook was
10 developing the response to 2731. It's kind of hard to not
11 feel sorry in this for poor Prason. Here's a man who says
12 that he never looked at any of these CR's or PCAQ's in
13 2001. And here he's being given credit for telling Rod
14 about it prior to the first bullet response. But the fact
15 of the matter is, he -- he never could have correctly said
16 that the plant was not operating in accordance with the
17 procedure because it was, should, shall. They didn't take
18 it off, they disposition it, they closed it. He approved
19 of it, it was a proper handling of that -- of that boric
20 acid technically as an engineering judgment, problems, but
21 technically in accordance with the written procedures of
22 the plant, it was -- it was disposed of. It was handled
23 properly. And he wound up entering into a guilty plea in
24 effect with the government for violation of a procedure
25 that never took place. Not fair.

1 Dale Miller and Dale Wuokko are the next
2 witnesses we'll discuss.

3 Mr. Wuokko, with regard to his comments, the only
4 reason that I would want to jump to those, if you will,
5 Mr. Miller and Mr. Wuokko was the fascinating game of
6 dodgeball that they were playing with who was in charge of
7 the supervision of Mr. Cook when his document -- when the
8 bullet responses were being prepared. Mr. Miller was
9 absolutely clear it was Mr. Wuokko. Mr. Wuokko couldn't
10 have been any more clear that it was Mr. Miller, leaving
11 Mr. Cook very effectively on his own. And his solitary
12 situation is something that we need to keep in mind when
13 we're assessing -- when you are assessing his state of
14 mind. Now, what is going on in his mind when he's trying
15 to get his responses out? And one guy says, I don't have
16 anything to do with it. All I was doing was collecting
17 some information from other utilities. And the other guy
18 is saying I'm with Senator Voinovich and I'm in training, I
19 can't budge, you know. That is all revision's history.

20 Dale Wuokko, when he gave his office of
21 investigation statement to Agent Ulie and his team in 2002,
22 October of 2002, said with regard to 2731, I saw that, I
23 reviewed it, it looked okay to me or I wouldn't have signed
24 it. He never mentioned anything about Cook not being
25 permitted to initial for him. He said I looked at it. It

1 looked okay to me or I wouldn't have signed it.

2 What happens then is that in January of 2006 an
3 indictment gets returned in this case. It does not include
4 Dale Wuokko. But in -- in August, six months later, a box
5 of documents is found at Davis-Besse that basically came
6 out of Dale Wuokko's office, and it had Rod Cook's name on
7 it. And in it are found the substantive comments that
8 Wuokko made on 2731, the two documents which from front to
9 back covered with Dale Wuokko's comments -- substantive
10 comments on the draft.

11 What's the problem? The problem is that it has
12 been throughout the proceedings and even here when he was
13 on the stand, about position that all I did, I knew it, all
14 I did was look at those documents for format and grammar.
15 Well, you've got the evidence. If that's format and
16 grammar, I'd hate to see a substantive review because he
17 was all over that document.

18 And what now becomes the problem? Oh, if all I
19 said -- if what I was saying was format and grammar and now
20 it turns out in the light of the indictment that I'm all
21 over this thing, substantive in reviewing it, am I going to
22 get blamed? Not if I deny that I ever got back that Cook
23 ever gave it to me to sign, that I allowed him to put my
24 initials on it. It's all okay if I can stay away from the
25 responses to my comments. And that's basically all that

1 was going on here. He was just giving himself some
2 business so that he didn't have to answer for his own
3 comments. He saw that document. He resolved his issues
4 with Rod. He let him sign his initials to it. He never
5 raised that as a problem until it became clear that his --
6 that his comments were much more than -- and then it became
7 an issue for him and he ducked. Understandable to some
8 extent, but he ducked.

9 We've been over Joseph Ulie. It's hard to say
10 much more about what was going on here, except that it's
11 borderline appalling to have that team go down to Memphis
12 and hook up with Rod and take his four-and-a-half hour
13 interview on the basis that this was a fact-finding
14 exploration by the NRC into what really happened at the
15 power plant when point of fact, they're doing a criminal
16 investigation of Rod. It's not fair to do it that way. It
17 just isn't. And they have stretched and pulled and twisted
18 the information in that OI report until they could get
19 something out of it, and even that could -- he didn't do
20 it. This didn't happen. He was giving people the best
21 help he could, and getting them the best answers he could,
22 and they have twisted this thing to make him look like a
23 guilty person and it's not fair.

24 Randy Rossomme, at least he admitted he couldn't
25 remember what was in his notes. But he did say with regard

1 to Rod's professed knowledge of the videos, that he said he
2 saw them in early October. The next sentence he admits was
3 written there was in connection with taking the videos to
4 Washington to show them to the NRC. That was what he was
5 fixed on it. He didn't get -- he didn't get to prep for
6 these interviews, he didn't have, you know, time to go over
7 the areas of inquiry. He just went in, sat down, gave him
8 the best information he could, and goodness, he got the
9 date wrong, but he had the event right. He consistently
10 had the event right. That was when they went to Washington
11 to show them the videos, November 8th, after the last
12 bulletin response went out. So that no knowledge with
13 regard to seeing videos can be attributable to Rod Cook
14 based upon evidence presented by the government.

15 Now, there are some documents that I would call
16 to your attention because they're in evidence. I want you
17 to, if you would, make sure you have in mind the NRC
18 communications procedure, the one that governs how
19 Davis-Besse handles communications for the NRC. It's in
20 evidence, and it's plain on its face.

21 Regulatory Affairs gathers information. The
22 substantive information is provided by the lead department
23 in charge of answering the technical questions. In the
24 case of the bulletin, and particularly with regard to 1.D,
25 that the department was engineering, the engineer was

1 Andrew Siemaszko. His help was being provided by Prason
2 Goyal, and they were getting that information to Rod Cook
3 who specifically expressly was not involved in verifying
4 under the procedure the information that they were
5 providing to him. It's the only way they can get the thing
6 out. Somebody has to be in charge of assembly while other
7 people are putting together the technical information, and
8 that's what we did -- that's what he did in accordance with
9 the procedure.

10 The procedure in the very next subsections goes
11 on to say -- and if I'm not mistaken. I think it's the
12 6.2.1, 6.2.2 of this procedure. It goes on to say the role
13 of regulatory affairs for which he worked in this process
14 is to assemble the document, to get it clear, to get it
15 properly formatted, to get it into a condition in which the
16 NRC is going to accept it as readable and acceptable,
17 proper. And that's what he did. That's all he was
18 assigned to do. That's all he ever did. It isn't fair to
19 impute whatever knowledge or lack of knowledge was
20 attributable to others to him simply because he was at the
21 hub of the wheel. It's the spokes that have the
22 information, the hub is just the gathering hole. And all
23 he was the hub of the wheel.

24 Now, this brings us back to the two other
25 considerations that I would ask you to have in mind when

1 you are conducting your deliberations. Motive and
2 opportunity.

3 There is no earthly reason why Rod Cook would
4 have involved himself in a scheme to lie to the NRC in
5 order to get the Davis-Besse power plant several extra
6 weeks to conduct an inspection. Actually it turned out to
7 be six, to conduct the inspection. And point of fact, at
8 the time they were doing this, I suppose it would have been
9 closer to ten weeks that they would have been seeking an
10 extension. He has no dog in that fight. He is not
11 interested. I mean, he's interested, I'm sure he's
12 perfectly pleased to have things go well for Davis-Besse,
13 but he's got 30 years in the business. He's making
14 \$150,000 a year as a contract engineer, if you will. He
15 goes from plant to plant, as you heard him go through the
16 litany of places he's been around. And he's been around.
17 He knows the business. He knows his own workings. He's
18 got a terrific reputation. He's very capable. There is
19 nothing in his contract that is going to give him one dime,
20 that is going to give him one step up the promotional
21 ladder, that is going to give him so much as a pat on the
22 back for doing anything improper. He had no conceivable
23 motive to do something like this, and every reason not to.
24 He's got a wife, grandchildren. It doesn't compute. It's
25 not fair to give him that kind of impugned venality when

1 it's not there. There's no proof of it. They didn't even
2 try to establish a motive for Cook to do anything like
3 that. The obvious reason is, believe me if they could
4 have, they would have, but it wasn't there.

5 Now, that also raises the ancillary other side of
6 the coin, question of opportunity. What I meant by
7 opportunity from the outset is how in the world was Rod
8 Cook going to get away with this if he did. And I don't
9 want to delay you but there's -- there's something I want
10 to point out here in this indictment which you will have
11 with you. The defendants, Cook, Siemaszko and Geisen, are
12 charged in the indictment together, with others known to
13 the grand jury, of being engaged in a scheme to persuade
14 the NRC to give Davis-Besse an inspection extension. That
15 is absolute unadulterated hope. There's no proof of it.
16 There is absolutely no indication of it. There's no logic
17 to it. And it did not happen.

18 There wasn't any scheme. The only scheme that
19 you could possibly argue is one dreamed up by Cook by
20 himself without anybody asking him to do it because he
21 thought, for whatever reason, he wanted to lie to the NRC
22 on behalf of Davis-Besse. That does not compute. It does
23 not make any sense, and it didn't happen. And to charge
24 that in absence of any proof is unfair.

25 Likewise, and I think perhaps interesting for

1 your deliberations, paragraph 12 of this indictment says
2 based on the information contained in the serial letters,
3 the NRC agreed to FENOC, that's First Energy Nuclear
4 Operating, FENOC's proposal that it be allowed to operate
5 Davis-Besse beyond December 31st, 2001. Based upon the
6 information contained in the serial letters, that is not
7 true. The first government witness, Brian Sheron, took the
8 stand and said, oh, we did not like and were not satisfied
9 with the answers that we got in those bulletin responses.
10 And on the 15th of November we had a shutdown order for
11 that plant ready to be signed. And it was through
12 subsequent negotiations and an agreement that was
13 negotiated that they went on. Davis-Besse shortened the
14 time that it would have to its next RFO. Nuclear
15 Regulatory Commission gave them an extra six weeks going
16 out to do the inspection. They agreed on February. All of
17 that took place after the bulletin responses.

18 Why is that important? Because an element of a
19 violation of false statements act is that it be material to
20 the considerations of the agency. It wasn't. They said it
21 wasn't. They have charged in here as being the fact upon
22 which this indictment is based. It was the notice that was
23 given to defendants on what they had to defend. And I
24 guaranty that they're going to try to walk away from it.
25 They will now try to walk away from it, but that's what it

1 says, and that's what the charge is here, as you can read.

2 I haven't -- oh, I'm sorry, I got -- I was --
3 opportunity. I just want to briefly run through
4 opportunity.

5 What was the likelihood if Rod Cook on his own
6 decided to scheme to misrepresent things or hide things
7 from the NRC that he was going to get away with it? Better
8 still, what are the odds that he would think he could get
9 away with it so that he would take on a project like that.

10 The documentation of what was going on in the
11 drafting process was being sent inside and outside the
12 company. The condition of the head of the plant was a
13 matter of record contained on these condition reports and
14 PCAQs, which were all over the plant, were retained and
15 read by the Nuclear Regulatory Commission inspectors on
16 site, which Mr. Lloyd, in confessing what the lessons
17 learned task force was actually up to, said was known to
18 the branch director of region three and to the people in
19 Washington who listened in on the phone calls with the
20 plant inspector every day. That had to be expected if by
21 anybody with Rod Cook's knowledge of the business. He knew
22 everybody would know what was going on. And he also knew
23 that if he said that the head was cleaned and having no
24 idea whether it was or wasn't, based on some scheme that he
25 dreamed up by himself and it was wrong, his success would

1 last exactly as long as it took to shut that plant down and
2 take the support structure off the head so you could look
3 at it because it would have been full of boric acid. They
4 would have seen that the statement was incorrect. He's
5 done. He had no opportunity to succeed at a scheme to
6 defraud the Nuclear Regulatory Commission, not a snowball's
7 prayer on the head of a nuclear reactor. And he didn't do
8 it. And to claim under those circumstances that they
9 really believe he did, that's unfair.

10 We asked you when you come to court and agree to
11 serve as a juror, to give up a lot, for which we are
12 grateful. We ask you to give up your families. We ask you
13 to give up your jobs. We ask you to give up essentially
14 your freedom, and we ask you to give up your time. We ask
15 you to give up a lot. And you have done that for us with
16 great grace, but the one thing we demand that you don't
17 give up when you come to be a juror is your common sense.
18 You must not give up your common sense. And if your common
19 sense is at work, it will tell you what's going on in this
20 case. It is 20/20 hindsight. It is payback. It is, as
21 Brian Sheron would have admitted it, the act of having to
22 shoot somebody for something going wrong, but it doesn't
23 make it fair. And so we ask you on behalf of Rod Cook to
24 return a verdict of not guilty. Thank you.

25 THE COURT: Thank you, Mr. Conroy. So as not to

1 break up the government's -- as you know, the burden of
2 proof beyond a reasonable doubt rests on the shoulders of
3 the government. And for that reason, they have an
4 opportunity for response, and they get the last close. So
5 as not to break up that close, we'll take our afternoon
6 recess at this time of 15 minutes.

7 Please remember what I've told you before. Do
8 not discuss this case among yourselves or with anyone else,
9 nor let anyone else discuss it with you. And do not make
10 up your minds on the ultimate issues which you will soon
11 begin to deliberate upon as you enter the jury room. Enjoy
12 your rest.

13 (A brief recess was taken.)

14 THE COURT: Please proceed.

15 MR. POOLE: Thank you, Your Honor.

16 Ladies and gentlemen of the jury, this is it.
17 This is the last time I'm going to be able to speak to you,
18 and soon the case will be in your hands. As a
19 representative of the government in this case, prosecution,
20 we speak first and we speak last. The opportunity -- the
21 reason we get that opportunity is that the government bears
22 the burden of proof. We have to prove to you beyond a
23 reasonable doubt that the crimes alleged in the indictment
24 were committed by these defendants. And we submit that
25 we've done that.

1 Of course counsel made quite a few arguments
2 during their closing arguments, and I'd like to respond to
3 those now. I'm not sure exactly how long it's going to
4 take, but I'm going to finish the comments I've got and
5 then I'll sit down.

6 Let me start with some areas of -- you heard
7 Mr. Hibey say on -- in his argument that this is not a case
8 about Davis-Besse or the First Energy Nuclear Power Company
9 and what they do. This is a case about Rod Cook and David
10 Geisen and what they do. It's about what they knew. And
11 we'll talk about agreement with that on that proposition.

12 You'll recall that Mr. Cook's lawyer, Mr. Conroy,
13 said in his opening statement that this is not a case about
14 nuclear energy. Obviously there's a nuclear power plant
15 involved but it's a case about lying, and that's what you
16 as a jury are going to be held upon to decide.

17 Mr. Hibey made an interesting comment earlier in
18 his argument about Mr. Geisen, when did -- when did he --
19 he decide to lie, how did this happen? I submit to you
20 that based on evidence you've already seen and already
21 heard, there's good evidence to suggest that Mr. Geisen, in
22 the year 2000 -- 2000, signed off on a mode restraint. I'm
23 going to show this to you now.

24 Government's Exhibit 12.

25 Government Exhibit 15. Do you have that?

1 Enlarge the relevant part. This is, you'll recall, the
2 last page of the condition report done during the 2000
3 outage. It relates to the cleaning. And if you just read
4 the last sentence, it says the cleaning is scheduled and
5 will occur prior to the head is moved from the head stand,
6 no evaluation is needed to support a mode four entry.
7 Therefore, this CR can be removed from the mode four
8 restraint list.

9 What that means is the head cleaning was removed
10 from the list of things that had to be done before the
11 plant could start up again. Dave Geisen signed off on that
12 at the time believing the head cleaning would be done,
13 would be completed. Much later, he found out it wasn't
14 done. The boron was left on the head.

15 Now, you'll recall that there was testimony
16 about -- actually, it was when I cross examined him about
17 the consequences of having to shut down and inspect the
18 reactor vessel head. The discussion occurred in the
19 context of a document that he called recommendation. Some
20 have referred to it as a justification for continuing
21 operations.

22 You'll recall this is a document that was written
23 in June of 2001, and it was written by Praseon Goyal. And
24 the purpose of this memorandum related to how they would
25 handle inspection of the reactor vessel head if there was

1 an emergency shutdown. The example was given was a tornado
2 or some other kind of upset that would cause the plant to
3 shut down unexpectedly. And the question was that was on
4 the table, okay, there's been this emergent cracking with
5 the reactor head nozzles. If we have an emergency shut
6 down, do we need to inspect the nozzles before we come back
7 up? And that led to an extended conversation on cross
8 examination between myself and Mr. Geisen about what
9 happens when you shutdown. Well, we have to either buy
10 power or create power from alternative power sources to
11 keep -- keep the consumers happy, you know, keep the power
12 flowing to households in Northern Ohio. If we were to
13 inspect, it would require us to disassemble the reactor
14 vessel, take off the head, move it to the head stand.
15 Before any of that could occur, it would have to be
16 depressurized and cooled, and -- an inspection would
17 require first visual inspection, assuming one's possible
18 given the boron problems they had. And then to the extent
19 individual inspection was not possible, a non destructive
20 examination using Eddy current or ultrasonic testing, which
21 would take time and cost money, and in the event that
22 cracks were found, additional time, additional money
23 repairing the affected nozzles.

24 So taking the plant down early was a big deal,
25 and they knew in June how long before -- well, months

1 before the bulletin was issued, months before the bulletin
2 responses had been decided we're not going down for this
3 inspection if we can avoid it.

4 And I'm going to show you the signature page now.
5 Approved by D.C. Geisen. So he knew that they didn't want
6 to go down, and he knew why. He told you. The missing
7 piece of this, of course, is there's no bulletin yet.
8 They're not responding to the bulletin. So there are --
9 there's more intervening developments that occur before
10 Dave Geisen knows that he's going to be signing off on a
11 false greensheet.

12 Let's talk about the state of Dave Geisen's
13 knowledge in the months leading up to the -- to the first
14 bulletin response, 2731. I'm not going to redisplay these
15 e-mails because you've seen them many times, but there was
16 Government's 22, an e-mail from Prason Goyal regarding
17 Ocone 1, says Dave wanted me to make sure that all of you
18 understood that the amount of boric acid observed in the
19 visual inspection was very small, and that it is important
20 to have a clean head for a good inspection. If the head is
21 not clean, the chances of finding boric acid such as that
22 observed at Ocone 1 are not very good. And this at a time
23 when the reactor vessel head had boron deposits left from
24 the last outage.

25 The government's Exhibit 23 is a trip report done

1 by Prason Goyal, a trip to the Babcock & Wilcox owners
2 group materials committee meeting. And again, it reports
3 back to lessons from Oconee, boric acid crystals were
4 detected on the reactor vessel head during routine visual
5 head inspection. They were able to find this leak because
6 their CRDM flanges did not leak and the head was in
7 pristine condition.

8 Prason Goyal to David Geisen and others,
9 March 26th, 2001, essentially says we have five nozzles
10 that are of the same heat or batch of metal as the cracked
11 nozzles at Oconee 3. And it listed nozzle 3, nozzles 7,
12 nozzle 11, 23, 28, 34, 50, 56, 63, nine cracked nozzles at
13 Oconee from the same subset, I believe, batch of metal.

14 July 10th, 2001, plant specific data
15 verification. That's an e-mail from Prason Goyal
16 correcting an entry in a -- in a plant specific data
17 verification form that said the table currently shows
18 100 percent inspection, which is not correct because of the
19 large boron acid deposits on the head, few -- few CRDMs
20 could be inspected. And this is referring to the 2000
21 inspection.

22 Exhibit Number 28, July 12th, 2001. This is all
23 in the period leading up to the bulletin response. I
24 participated in the -- from Prason Goyal sent to Theo
25 Swim, but copies, Dave Geisen among others, lessons learned

1 from Oconee and new power plant AN01, service structure
2 access is needed in order to clean and inspect the head.
3 Note, Davis-Besse does not have service structure holes.
4 The leaking nozzle may produce very little boric acid. The
5 head needs to be clean in order to see a leaking nozzle.
6 The inspection should be done in accordance with a
7 procedure. Davis-Besse needs to develop a procedure and so
8 forth.

9 You'll recall that in our discussion, Defendant
10 Geisen and mine about these e-mails we talked about whether
11 there were warnings. Clearly there are, and he admitted
12 that.

13 The next item, an e-mail from Prasoon Goyal to
14 Dave Geisen and others regarding the NRC bulletin response.
15 This is August 11th, which was apparently the first meeting
16 of the individuals who were responsible -- going to be
17 responsible for -- for preparing portions of the -- of
18 2731. It says, among other things, it was pointed out that
19 we cannot clean our head through the mouse holes, and
20 Andrew Siemaszko is requesting three large holes be cut in
21 the service structure for viewing and cleaning.

22 You recall Defendant Geisen's response when he
23 was asked about these? He said, yeah, I got them. I get
24 20 to 50 e-mails a day, I don't remember them, but I'm sure
25 I got them and I probably read them. Well, these e-mails,

1 most of them are a page long or less. If you imagine that
2 one-page e-mail might take two minutes to read, we might be
3 talking about 80 minutes a day, an hour a day, an
4 hour-and-a-half. Those of you that have e-mail are going
5 to be familiar with what it's like to read 20 to 50 e-mails
6 a day, and it's just not that impossible.

7 So the last one I want to call to your attention
8 is Praseon Goyal to Dave Geisen, CC to Dave Geisen and
9 others, subject NRC bulletin, and this is the one with that
10 intriguing suggestion by Praseon Goyal, this is
11 August 17th, 2001, is it possible to go back to 1998, that
12 is when a good head exam was done with no nozzle leakage,
13 meaning not taking any credit for 2000 inspection?

14 Do you recall his response when I asked him about
15 that? He said, well, it really didn't tell me anything
16 new, so it didn't make an impression because we knew the
17 2000 inspection was no good because of flange leakage.
18 Asking boric acid flange leakage on the head that precluded
19 inspection, that precluded them from finding the kind of
20 tiny little popcorn deposits that were identified at
21 Ocone. And he knew that in advance of this submission and
22 in advance of signing that first greensheet.

23 We submit to you that based on all this evidence,
24 he knew that 2001 inspection was not a good inspection. He
25 told you that he looked at it. I think he said initially,

1 I just wanted to make sure the right people looked at it
2 and reviewed it. And then he said, well, I looked at it to
3 see if it sounded okay to me. But you'll recall there's
4 that language on the back of the greensheet that says that
5 the technical supervisor is responsible for the technical
6 accuracy of the response to the NRC. If you look on the
7 back of the greensheet where his signature is, you'll find
8 that language. We enlarged it for you and showed it to him
9 and he conceded, yeah, yeah, I was responsible for
10 technical accuracy.

11 We submit that taking the evidence all together,
12 it's clear that by the time he signed that greensheet he
13 knew -- he knew that that submission, 2731 concealed
14 material facts, concealed the fact that the inspection was
15 not a good inspection, concealed the fact that there were
16 impediments to inspection because of the geometry of the
17 reactor vessel head and the size and location of those
18 mouse holes. He knew that there were impediments from
19 boron left on the head. Said as much, he said he knew 2000
20 wasn't a good inspection because of flange leakage. I
21 encourage you to take a good look at Government's Exhibit
22 60, which is 2731. That submission -- and you won't find
23 the discussion of those impediments in there. And the
24 reason for that is by the time the bulletin response is
25 being drafted, David Geisen knew several things. He knew

1 that there was boric acid left on the head at the end of
2 the last cleaning. He knew that if the plant shut down
3 early in the fall of 2001 to inspect the head, first of
4 all, it was going to be a bad time of year, extensive by
5 replacement power.

6 Second thing he knew that this would be an
7 extended outage because they had to take apart, cool and
8 depressurize the reactor, take off the reactor vessel head,
9 put it on the head stand, do a visual inspection. Now with
10 a pristine head and no nozzle leakage, that would -- could
11 have been the end of the inspection. But what he knew is
12 there were boric acid deposits left on the head, that the
13 cleaning wasn't complete, and that there could not be a
14 visual inspection. And the visual inspection in the fall
15 of 2001 would be incapable of assessing whether there were
16 cracked nozzles on the reactor vessel head. He knew it
17 would be an extended outage which required non destructive
18 examination to determine if there were cracks in the
19 nozzles that had masking boron deposits. And he knew that
20 a likely result of that would be -- people would be asking,
21 well, how come we don't have a good baseline. Why can't we
22 do a visual inspection? Well, the answer is because back
23 in 2000, Dave Geisen signed off on a recommendation that
24 the reactor be allowed to start up without completion of
25 the cleaning.

1 As the saying goes, if you're in for a dime,
2 you're in for a dollar. Once he began down this road and
3 began to learn more, he dug himself in deeper. Now, by the
4 time he knew that there wasn't a complete cleaning in 2000,
5 he also knew that Andrew Siemaszko was not a real reliable
6 source. Andrew Siemaszko was the one who was tasked with
7 that cleaning. He's the one who called off the cleaning
8 before it was complete. Terry Tabbert told you that. And
9 Andrew Siemaszko it was the individual that Dave Geisen
10 said he relied on to create the table of the
11 nozzle-by-nozzle inspection table that was included in
12 serial 2735. That's the table that said that in 1996,
13 there was no head orientation narration, but there was
14 100 percent inspection of the reactor vessel head. And we
15 know from Prason Goyal that's not true. Dave Geisen
16 claims that he relied on Andrew Siemaszko for that
17 information. And he later vouched for the accuracy of the
18 table in 2735 when Steve Moffitt challenged him. He said I
19 checked Andrew's work and it's good. And 2735 went in.
20 But that must have been an uncomfortable moment for
21 Mr. Geisen. He knows that Andrew Siemaszko is the
22 individual that didn't finish the cleaning, but he also
23 knows that the consequence of not proceeding down this road
24 is going to be a shutdown. The discovery of large
25 quantities is of boric acid on the vessel head and the fact

1 that Dave Geisen's the individual who signed off on the
2 mode restraint that allowed the plant to come up with
3 finishing the cleaning.

4 Let's talk a little bit about the relevance of
5 the testimony of Alan Hiser and Brian Sheron. You'll
6 recall that they were the government individuals that
7 testified early in the trial. Dr. Sheron testified that he
8 was kind of the high-level manager who made the decision to
9 allow Davis-Besse to continue to operate until February of
10 2002. He said he did so based on input from his staff.
11 And he said further that in allowing Davis-Besse to
12 continue to operate, he didn't just rely on the serial
13 letters. He also relied on compensatory measures.

14 Now, counsel wants to argue that the fact that he
15 did rely solely on those serial letters shows that they're
16 really irrelevant to what the NRC did. That's not true
17 because he went on to testify that had he been told the
18 whole truth, not only would he not have allowed them to
19 continue operating longer, he would have shut them down
20 immediately. Allen Hiser gave you the same information.

21 But more important, more important is this: You
22 have jury instructions in front of you. I don't think you
23 need to refer to them now, but nowhere in those
24 instructions will you find an instruction that said the
25 government must prove to you -- must prove to you that the

1 NRC relied on the serial letters. What you will find is an
2 instruction that says that the government must prove, thank
3 you, that the serial letters concealed material facts and
4 made false statements about a material fact, not that they
5 were relied on, but concealment of a material fact, false
6 statement of concerning a material fact.

7 Okay, what's a material fact? A fact is material
8 if it has the capacity to influence the agency, not that it
9 actually did so, but it just has the capacity, so sort --
10 it's the sort of fact that could influence agency
11 decisions. I think it's clear from the evidence that the
12 kind of facts they withheld and the kind of facts they
13 misrepresented are precisely the sort of facts that the NRC
14 was looking for and does rely on.

15 Let's talk about Dr. Davis and Dr. Bullen.
16 Remember those were the two experts that we had to testify?
17 Dr. Davis was the white haired older man who was a
18 metallurgist, wrote his dissertation on primary water
19 stress corrosion cracking at Ohio State 39 years ago.
20 Worked for the -- has worked for the NRC for 17 years,
21 leads audit teams who are responsible for deciding whether
22 aging nuclear power plants, 40 year old nuclear power
23 plants can continue in operation or whether they have to be
24 shut down because they've ceased to be sufficiently
25 reliable that we can count on their safety. So in other

1 words, he's a technical expert entrusted by the NRC and
2 some of the most important technical decisions they make.

3 He testified that, in his opinion, the cracking
4 initiated in 1990, plus or minus a couple of years, that
5 went through wall. He said there's some evidence in '96,
6 but certainly by '98, and that a cavity began to develop in
7 '98, which was then larger, which was then visible to a
8 bare metal head inspection, which was larger in 2000.

9 Now, counsel made much of whether he was
10 independent of the NRC or whether he's an employment. They
11 seem to want to argue on one hand because he was
12 independent of the NRC and didn't speak for the NRC at this
13 trial, that he was somehow unreliable, but they seem to
14 also want to argue that he was biased because he was an NRC
15 employee. We submit to you that what we told you, what the
16 evidence that we presented through that witnesses is that,
17 A, he is an employee of the Nuclear Regulatory Commission,
18 B, what he told you was his opinion, and not an official
19 finding or official position of the agency. That's his
20 position before you.

21 There was some discussion about whether his work
22 was original and whether it constitutes science. All
23 right. So it's not science. It's engineering. You can
24 say it's applied science. But what he did was use the kind
25 of tools and the kind of information that he uses every day

1 in his job to make some of the most important decisions
2 that the NRC makes. He relied on the most reliable source
3 of material available, which in this case was the root
4 cause report and industry reports. He relied on his own
5 observations at the plant when he was there early after the
6 discovery of the corrosion hole. And he drew his own
7 conclusions based on the best information available to him.

8 Dr. Bullen, on the other hand, was the expert
9 called by defendants. He was hired by FENOC as a part of
10 an effort to pursue a \$200 million insurance claim to try
11 to recover part of the -- part of the money they spent
12 replacing the reactor vessel head. In support of that
13 claim, they needed to establish that the event there, the
14 wastage cavity, was an unforeseeable event, an event at the
15 moment there were those insurance-related words sprinkled
16 throughout the report. And the report supported that claim
17 to the tune of a million-and-a-half dollar fee by
18 concluding that the hole in the reactor vessel head
19 developed late in 2001, I think he said October, November
20 and then grew rapidly until it was discovered in 2002.

21 Now, what's the consequence of those two
22 witnesses? It's just this, if you credit Dr. Davis'
23 testimony, then you have one more piece of evidence to
24 demonstrate to you that the inspections that they did
25 weren't what they claimed. If they did the inspections,

1 Dr. Davis said you would have found a corrosion hole. If
2 you credit Dr. Bullen that the corrosion hole happened late
3 and grew rapidly, then what we have here is a situation
4 where the actions of these defendants, the false statements
5 and the concealment, resulting in continued operation.

6 He said an immediate shutdown, and we know that
7 had the NRC been given all the information, they would have
8 shut down immediately in the fall of 2001. So if you
9 believe Dr. Bullen, the actions of these defendants were
10 the last clear chance to discover that cavity before it
11 caused serious wastage in the head. Had it been shut down
12 in the fall of 2001, it would have found the cracking,
13 perhaps would have found the beginning of the cavity, if
14 you believe Dr. Bullen early in the development of this
15 rapidly developing corrosion hole.

16 So that's what's at stake here. The government's
17 case is about lying. We have multiple pieces of evidence
18 that demonstrate to you that the submissions were false.
19 Dr. Davis' testimony is one piece of evidence to establish
20 that falsity, and that's of significance here.

21 With respect to Your Honor, may I ask how much
22 time I have left? I forgot to start a watch.

23 THE COURT: At least 15 minutes.

24 MR. POOLE: At least?

25 THE COURT: At least.

1 MR. POOLE: Eight?

2 THE COURT: Fifteen.

3 MR. POOLE: Fifteen, thank you.

4 THE COURT: Actually a little over 20 minutes.

5 MR. POOLE: Thank you. All right.

6 About Mr. Holmberg, I'll just say this: You
7 heard him testify that he reviewed the videotapes to try to
8 find out how many nozzles were inspected or not. You heard
9 him say that he had to develop his own standard because
10 there really wasn't an appropriate standard for --
11 preexisting standard for him to use. He couldn't use the
12 present day standard. It would be unfair to judge the
13 inspections in 2000 and before based on what's known today.
14 So he developed his own standard, the more generous one,
15 and applied it consistently and carefully in his
16 examination of the videotapes and came up with the tables
17 you've seen.

18 You can look at the videotapes yourself. Look at
19 the serial letters and ask yourself which is more accurate.
20 Does it look to you like the Holmberg graphic, you know,
21 showing which nozzles were inspectable, is more accurate,
22 or is the table in the serial letters to the NRC more
23 accurate? We suggest that's an easy comparison.

24 One argument that Mr. Geisen's counsel made was
25 to imagine yourself as -- as a citizen. He imagined you to

1 imagine a nurse or a teacher or a business person placed in
2 the -- in the position of these defendants and to imagine
3 how awful that would be.

4 Now, that argument was designed to appeal to
5 sympathy or your natural desire to empathize with a fellow
6 human being. However, in doing that, we submit to you that
7 what Mr. Hibey did was to ask you to violate your oath as a
8 juror. If you read those instructions, never mind that you
9 promised to make a decision on this case based on the facts
10 that are in evidence and the law that's going to be read --
11 has been read to you by The Court and has been provided in
12 those instructions. The type of sympathy and empathy that
13 you naturally feel as a human being is not relevant to
14 determining whether these defendants committed the crimes
15 they're charged with in this indictment. And we submit to
16 you that your job as a juror is difficult, as it is
17 sometimes, is to do just that, base your -- your decision
18 on the evidence and on the law.

19 All right. I'll turn to Mr. Cook now. One of
20 the arguments that Mr. Cook's counsel, Mr. Conroy, made at
21 the outset was an argument that the NRC rejected serial
22 letter 2731, that they didn't like it, presumably didn't
23 rely on it.

24 Well, we've already talked about reliance. The
25 government's burden is not to show that the NRC relied on

1 it. The government's burden is to show that in this case
2 that it concealed a material fact in a matter within the
3 jurisdiction of the Nuclear Regulatory Commission. So when
4 counsel suggests that 2731 is out of the case, that's not
5 so. Instructions don't say it's out of the case, and this
6 Court is not going to tell you that it's out of the case.
7 So that's just wrong.

8 Counsel referred in opening and again in closing
9 to motive, means and opportunity, suggesting to you that
10 those are the government's burden in this case.

11 Now, I'm going to address those in a minute, but
12 to be clear in those instructions, the government or The
13 Court explained to you what the government's burden is,
14 it's to prove the elements of the offenses charged from the
15 indictment, and the elements are what's listed in the jury
16 instructions.

17 But let's talk about a motive. Now, Mr. Cook was
18 a well-paid consultant when he worked at Davis-Besse and
19 many places before. Now, as a consultant -- this came out,
20 it came out that he's somebody who doesn't have benefits or
21 doesn't get paid vacation or job security in return for
22 which he was compensated well for doing important work.
23 But consultants, if you know anybody that is involved in
24 consulting, can be hired and fired at will. Consulting can
25 be kind of a high wire act. And finding satisfaction in

1 that kind of field requires that you be okay living that
2 kind of life. Because staying employed as a consultant
3 means getting results for your clients.

4 We suggest that that's why Mr. Cook was hired,
5 that's why they kept him on, and that's what they expected
6 from him when he was drafting the serial letters.
7 Certainly they didn't want from him a serial letter that
8 was going to be obviously false, that the Nuclear
9 Regulatory Commission would reject or that would get them
10 in trouble, but they have a result they wanted. They
11 showed back in June when they wrote the justification for
12 continuing operations, if they wanted that plant to stay
13 open until it was economically advantageous for them to
14 shut down, late in the winter of 2002. And that's the
15 result Mr. Cook set out to get.

16 What I'd like to -- in connection with that
17 motive, you heard counsel, Mr. Stickan, say this morning
18 that the place and power ran from 500,000 to 700,000 for an
19 outage, I believe that information was from Mr. Gibbs'
20 testimony. And that it was old information, so presumably
21 higher today. What he meant to say was 500,000 to \$700,000
22 a day for replacement power, which in the course of weeks
23 and months is going to add up to serious money.

24 All right. Let's talk about -- about his motive
25 for falsification and concealment. All right.

1 Does the jury have that? All right.

2 This is an e-mail from Frank Kennedy to Rodney
3 Cook. It forwards a Prason Goyal e-mail. I'll see if I
4 can zoom in on that a bit. Prason Goyal said it appears
5 that the NRC is looking for plant specific information.
6 This will create a difficult situation for us when they
7 review our past inspection results.

8 Now, this is August 8th, 2001, very early in the
9 process of putting together the response to the bulletin,
10 and Goyal is telling others, including Rod Cook, we have a
11 problem with our past inspections. This is the point at
12 which Rod Cook knew that he'd need to use something else.
13 We really don't want to focus on past inspections, what are
14 we going to do? Well, let's reinterpret 1.D, that's the
15 question about past inspections. We don't want to talk
16 about that, so let's -- let's just pretend that when
17 they're talking about impediments and those other things,
18 we think that means future inspections and we're going to
19 use that device, avoid talking about the impediments to
20 past inspections.

21 We now know in hindsight that the information
22 that was withheld about those past inspections, things like
23 masking boron deposits and impediments to inspection, were
24 directly relevant to the continued safe operation of
25 Davis-Besse. In fact, the impediments and the bad prior

1 inspections allowed a corrosion hole to develop, allowed
2 boron to remain on the head for years and years without
3 ever being cleaned off. And with this pretense that he was
4 just going to talk about future inspections, Rod Cook was
5 responsible for withholding that information from the
6 Nuclear Regulatory Commission.

7 Now, I ask you to remember him sitting up there
8 as a witness. I think you'll agree he's a strange duck.
9 And he was a little hard to understand the responses that
10 he gave to some questions on the stand. And I ask you if
11 you recall seeing anyone worse in this man for withholding
12 that information, that critical safety information from the
13 NRC. I saw none.

14 Mode, means and opportunity. Let's talk about
15 means. Rod Cook was the one central guy who could decide
16 what comments would affect the submissions to the NRC. He
17 was the one who was responsible for resolving differences.
18 He's the guy in a position to make a difference. So he had
19 means, either to make submissions to truthful or to make
20 the submissions that were actually used.

21 He says he relied on Andrew Siemaszko. This is
22 the same Andrew Siemaszko that didn't finish cleaning the
23 head. And then Andrew Siemaszko told him, Defendant
24 Siemaszko, that 90 percent to 80 percent, 70 percent,
25 majority of the head, kept changing, had been inspected in

1 2000. He ended up just taking that information out. It
2 was clear that Andrew didn't know and that they didn't know
3 how much had been inspected in 2000. And he didn't have
4 the self-confidence to blatantly lie about that. But what
5 he failed to do was to tell the truth, which would have to
6 have been in 22731 to add a sentence that says how much of
7 the head was inspected in 2000. We don't know. But that's
8 not what he wrote.

9 Remember Mr. Rossomme, the engineer from a sister
10 plant at Davis-Besse, a FENOC employee that came in and
11 testified that when he interviewed Mr. Cook, Cook told him
12 that he saw the videos in early October. He said that
13 Mr. Cook told him, Defendant Cook, that the condition -- he
14 reviewed the condition reports before 2731, the first
15 submission was even written.

16 Now, counsel questioned Mr. Rossomme for the
17 recent statement. You can make your own judgment about
18 that. You'll remember he was the last witness. He was the
19 witness, one, who was responsible for quality control at --
20 at a sister nuclear power plant. We submit to you that his
21 answers were careful. They were precise, and they were
22 based on notes that he told you were as close to verbatim
23 as he could make typing on his computer while he was
24 listening to somebody talking to him.

25 Mode, motive, means and opportunity. Mr. Conroy

1 questions whether Mr. Cook could have expected to get away
2 with it with the sub mixes to the NRC that he knew to be
3 false or knew they concealed material facts. Well, nobody
4 at the plant knew that there was a corrosion hole
5 developing. The expectation at the plant was that when
6 they shut down, they'd do an inspection, yeah, there was
7 boric acid on the head, so they probably have to do -- to
8 do a non destructive examination. They were already
9 planning on doing that, and this was they were planning on
10 doing it in the winter of 2002 when it was economically
11 more convenient, and when they were going to be prepared
12 for it.

13 And given the history of cracking in the
14 industry, they probably find some cracked nozzles and they
15 machine those out as had happened at other plants. And the
16 plant would go up and life would go on. No one would
17 question -- well, it is unlikely that the accuracy of the
18 responses, the serial letters would be questioned under
19 those circumstances. It wasn't until the corrosion hole
20 was discovered that NRC people poured in, industry
21 consultants poured in, and the entire industry began to ask
22 the question, what the heck went on there, how could they
23 have missed this corrosion hole, and how could they have
24 truthfully answered those questions posted them by the NRC
25 and have had this on their reactor vessel head?

1 So we submit to you that he had every expectation
2 that he'd get away with it, that the falsity of those
3 statements would not be noticed.

4 In his opening, Mr. Cook's -- Defendant Cook's
5 lawyer said Defendant Cook was not involved in what went on
6 inside containment. And by extension that he -- he really
7 didn't know about inspection of the reactor vessel head,
8 wasn't really familiar with the boric acid corrosion
9 control proceeding -- procedure, but when Prason Goyal --
10 the guy who had done the inspection, the one at Davis-Besse
11 who was the most expert in the reactor vessel head problems
12 and the cracking issue, when Prason Goyal came to Cook and
13 told him about impediments, Cook told him he was wrong, no
14 you're wrong, that's a technique problem. You have bad
15 technique. This is a man who had actually done the
16 inspections, and he knows nothing about it. You have bad
17 technique so we're not going to say anything about that in
18 the submissions to the NRC action because we're wrong and
19 we're talking about future inspections anyway.

20 And then Mr. Cook, who is also the one that's not
21 an expert on boric acid corrosion control is telling you
22 here today that Prason Goyal, who did know something about
23 it, entered into a deferred prosecution agreement because
24 he believed he had done something wrong. Counsel wants you
25 to believe that Prason Goyal committed a horrible mistake.

1 In his opening, Defendant Cook's --

2 Three more cards, Your Honor.

3 THE COURT: We're fine.

4 MR. POOLE: In his opening, Defendant Cook's
5 lawyer said, among other things, nothing that the
6 government told you in its opening statement is true. We
7 submit to you that in retrospect, now that you've seen the
8 evidence, that that statement made by Defendant Cook's
9 counsel is about as accurate as the letters that he wrote
10 to submit to NRC, which is the cite not accurate at all,
11 false and misleading.

12 All right. I have some housekeeping issues I'd
13 like to discuss with you. You're going to have in the jury
14 room with you the government's exhibits and the defendant's
15 exhibits. I can't speak to defendant's exhibits, but the
16 government's exhibits are chronological. The first 125 are
17 chronological. Those are the ones that we identified
18 early. So to find -- it will be relatively easy to find an
19 exhibit by date if it's one of those ones at the beginning
20 of the exhibits. The last exhibits after about 125 are
21 jumbled, so it'll take a little more searching to find
22 those, but I offer you that suggestion to help you review
23 them.

24 There are videos that are a part of the evidence.
25 They're available for you to review, and should you decide

1 you want to do that, The Court will instruct you further.
2 But we submit that we proved our case. Those serial
3 letters concealed material facts as alleged in the
4 indictment. The serial letters alleged in counts two
5 through five contained false statements and were false
6 writings on material matters within the jurisdiction of the
7 Nuclear Regulatory Commission. Those are the elements of
8 the crime.

9 We submit to you that David Geisen and Rod Cook
10 knew it, and we've shown that to you. Based on all the
11 evidence, including the testimony of the defendants
12 themselves, you heard here in court, we submit to you that
13 the verdict that this evidence supports is that these
14 defendants committed the crimes they're charged with in the
15 indictment. Thank you for your attention.

16 THE COURT: Right to the minute, Mr. Poole.

17 Ladies and gentlemen, please pick up your jury
18 instructions. Turn to page 25. I want to read this again,
19 that is as it leads into the remainder -- short remainder
20 of the jury instructions.

21 If as to -- as you know, if as to a count in the
22 indictment, the government has proved by evidence beyond a
23 reasonable doubt all essential elements of the charged
24 violation as to the defendant, you, the jury, shall find
25 the defendant guilty as to that count of the indictment.

1 There is nothing really any different in the way
2 a jury should consider the evidence in a criminal case from
3 that in which all reasonable persons treat any question,
4 depending upon evidence presented to you. You are expected
5 to use your good sense. Consider the evidence in the case
6 for only those purposes for which it has been admitted and
7 give it a reasonable and fair construction in the light of
8 your common knowledge of the natural tendencies and
9 inclinations of human beings.

10 If the accused be proved guilty as to one count
11 of the indictment, say so. If not proved, say so. Keep
12 constantly in mind that it would be a violation of your
13 sworn duty to base a verdict on anything but the evidence
14 in the case.

15 Remember also that the question before you can
16 never be will the government win or lose the case. The
17 government always wins when justice is done, regardless of
18 whether the verdict be guilty or not guilty.

19 The verdict must represent the considered
20 judgment of each juror in order to return a verdict on any
21 count. It is necessary that each juror agree thereto. In
22 other words, your verdict on any count must be unanimous.
23 When I refer to the defendant or a defendant, it is because
24 you must consider the evidence against each defendant on
25 each count, and as you will see in a moment, return a

1 separate verdict as to each defendant, as I previously told
2 you earlier in these instructions.

3 At page 13, that concludes the part of my
4 instructions explaining the rules for considering the
5 testimony and other evidence and the law regarding the
6 crimes charged. You will notice that some things, as I
7 told you, are said more than once, and that is because of
8 their importance.

9 Now I will explain some things about your
10 deliberation, deliberations in the jury room and the
11 possible verdicts. Upon retiring to the jury room, you
12 should first select one of your number to act as your
13 foreperson, who will preside over your deliberations and
14 will be your spokesperson here in court.

15 Once you start deliberating, do not talk to the
16 jury officer or to me or to anyone else except each other
17 about the case. You will have a copy of these instructions
18 with you in the jury room for your assistance during your
19 deliberations.

20 These instructions should answer any questions
21 that you have. However, if during your deliberations you
22 should desire to communicate with The Court, please reduce
23 your message or question to writing, signed by the
24 foreperson and pass the note to Cindy, my courtroom deputy,
25 who will bring it to my attention. I will then respond as

1 promptly as possible, either in writing or by having you
2 return to the courtroom so that I can address you orally.
3 I caution you, however, with regard to any message that you
4 might send, that should you -- you should never state or
5 specify your numerical division regarding your verdict at
6 the time the question is asked. It is not appropriate for
7 you to advise anybody of where you are in your
8 consideration of a verdict. It is your duty as jurors to
9 consult with one another and to deliberate with a view to
10 reaching an agreement, if you can do so without violence to
11 individual judgment.

12 Each of you must decide the case for yourself,
13 but only after an impartial consideration of all the
14 evidence in the case with your fellow jurors. In the
15 course of your deliberations, do not hesitate to reexamine
16 your own views and change your opinion if convinced it is
17 erroneous, but do not surrender your honest conviction as
18 to the weight or effect of the evidence solely because of
19 the opinion of your fellow jurors, or for the mere purpose
20 of returning a verdict.

21 Remember at all times that you are not partisans.
22 You are judges, judges of the facts. Your sole interest is
23 to seek the truth from the evidence in the case. You must
24 make your decision based only on the evidence that you saw
25 and heard here in court. Do not try to gather any

1 information about the case on your own while you are
2 deliberating. For example, do not conduct any experiments
3 inside or outside the jury room. Do not bring any books
4 like a dictionary or anything else with you to help you
5 with your deliberations. Do not conduct any independent
6 research, reading or investigation about the case. And do
7 not visit any of the places that were mentioned during the
8 trial.

9 Your verdict, whether it is guilty or not guilty,
10 must be unanimous. To find a defendant guilty of any
11 count, every one of you must agree that the government has
12 overcome the presumption of innocence with evidence that
13 proves him guilty beyond a reasonable doubt. To find him
14 not guilty, every one of you must agree that the government
15 has failed to convince you beyond a reasonable doubt.
16 Either way, guilty or not guilty, your verdict must be
17 unanimous.

18 If you decide that the government has proved the
19 defendant guilty, then it will be my job to decide what the
20 appropriate punishment should be. Deciding what the
21 punishment should be is my job, not yours. It would
22 violate your oaths as jurors to even consider the possible
23 punishment in deciding your verdict.

24 Your job is to look at the evidence and decide if
25 the government has proved the defendant guilty beyond a

1 reasonable doubt. These verdict forms that you now have in
2 your hands have been prepared for your convenience. They
3 are for your use in recording the unanimous verdict as to
4 the guilt or innocence of the accused with respect to the
5 crimes charged in the indictment.

6 Let's go over those verdict forms now.
7 Relatively straight forward and simple, you will see that
8 we have prepared a general verdict form for each defendant.
9 And we have divided it by count as to which each defendant
10 is charged. You'll note that with respect to David Geisen,
11 there are five separate counts of the indictment. You are
12 to fill in as to each of those counts by the numbered count
13 corresponding to the number in the indictment, guilty or
14 not guilty, whichever your verdict is on each of the five
15 counts. You are to circle that either guilty or not guilty
16 area. The same thing is true with respect to Rodney Cook,
17 for the four counts of the indictment in which he is named.
18 counts one, two, three and five. The same thing, there is
19 a spot that says guilty, one next to it not guilty,
20 whichever your verdict is, you will circle that term guilty
21 or not guilty.

22 After you have reached your verdict, which as I
23 previously said must be unanimous, that verdict form is to
24 be signed by the foreperson. You will take these forms
25 with you to the jury room, and as I said, when you've

1 reached a unanimous agreement as to the guilt or innocence
2 of the accused with respect to each of the crimes charged
3 in the indictment, you will have your foreperson fill in,
4 sign the form designed to record the verdict upon which you
5 unanimously agreed as to the crimes charged in the
6 indictment. You will then return the completed verdict
7 form to the courtroom.

8 You will, of course, call Cindy to the number she
9 has given you to do that. During your retirement to
10 deliberate on the verdict, you will be in charge of my
11 courtroom deputy, Cindy Reynolds. When you arrive at your
12 verdict, you will notify her, and she, in turn, will notify
13 me.

14 Let me finish by repeating something that I said
15 to you earlier. First, I apologize for my voice, but about
16 that I can't do anything.

17 Additionally, nothing that I've said or done
18 during this trial was meant to influence your decision in
19 any way. You decide for yourselves if the government has
20 proved each defendant guilty beyond a reasonable doubt as
21 to each count of the indictment he is charged.

22 One word before we part. It's 4:00. You should
23 decide among yourselves whether you wish to deliberate for
24 a while or until you complete your deliberations or
25 deliberate for a while and then go home or go home and

1 return. If you do return tomorrow morning, you will agree
2 upon a time, either 8:30 or 9:00 or 8:45, whatever time.
3 When you return, we'll go through the same process you have
4 in the past, reporting upstairs and then to the jury room,
5 directly. You will not -- at any time, either when you
6 return, if you decide to do so in the morning after a break
7 or after a break for a meal, you will not start
8 deliberating until all 12 of you are in the room ready to
9 deliberate.

10 Cindy will now escort you with your jury charge
11 and verdict forms to the jury room. And we'll shortly have
12 the exhibits to you. Thank you.

13 (Jury retired to deliberate at 4:05 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

Angela D. Nixon, RPR, CRR

Date

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