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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	-	Docket No. 3:06-CR-712
	-	
Plaintiff,	-	Toledo, Ohio
	-	October 11, 2007
v.	-	Trial
	-	
DAVID GEISEN, et al.,	-	
	-	
Defendant.	-	

VOLUME 7 OF 15
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DAVID A. KATZ
UNITED STATES DISTRICT JUDGE.

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1 (Commenced at 8:35 a.m.)

2 THE COURT: Good morning. Mr. Stickan.

3 - - -

4 PRASOON GOYAL, CONTINUED DIRECT EXAMINATION

08:36:24 5 BY MR. STICKAN:

6 Q. Mr. Goyal, there was an exhibit we had showed before but
7 did not offer; that's Exhibit 97. Do you see that in front of
8 you?

08:36:38 9 A. 97?

08:36:39 10 Q. Yes.

08:36:40 11 A. Yes.

12 Q. Can you identify what 97 is?

08:36:46 13 A. 97 is from Mr. Cook to me dated October 16, 2001.

14 Q. And that's an e-mail; is that correct?

15 A. Right.

16 Q. Was there an attachment to that e-mail?

17 A. Yes. It's from Mr. -- forwarded by Mr. Cook to me, but
18 the e-mail before that is from Andrew Siemaszko to Mr. Cook and
19 Gerry Wolf. There is an attachment to this e-mail.

08:37:37 20 MR. STICKAN: I would ask that Government's Exhibit
08:37:40 21 97 be admitted.

22 THE COURT: Any objections to Exhibit 97?

08:37:45 23 MR. CONROY: No, Your Honor.

24 THE COURT: It will be admitted.

08:37:57 25 BY MR. STICKAN:

08:37:57 1 Q. Mr. Goyal, you entered into what's known as a deferred
2 prosecution agreement with the government, didn't you?

3 A. Yes.

4 Q. What is your understanding of that agreement?

08:38:07 5 A. My understanding is I would give support to the
6 prosecution. At the same time I would provide truthful
7 testimony.

08:38:26 8 Q. It required your truthful testimony?

9 THE JUROR: Our screen isn't working.

10 THE COURT: Is everyone else's screen working?

08:39:23 11 We'll work on it at the break.

08:39:44 12 BY MR. STICKAN:

08:39:44 13 Q. And in the course of your agreement with the government,
14 you admitted to wrongdoing on your part?

08:39:52 15 A. Yes.

08:39:54 16 Q. With respect to the submittals that were sent to the NRC
08:40:01 17 by FENOC; is that correct?

18 A. Right.

08:40:05 19 Q. Your understanding is deferred prosecution means that
20 the government would refrain from seeking an indictment or
08:40:19 21 initiating criminal prosecution if you cooperated in this
22 manner?

08:40:24 23 A. Yes.

24 Q. And cooperated truthfully?

08:40:26 25 A. Yes.

08:40:28 1 Q. And there were -- there are penalties to pay if you're
2 not cooperating in this agreement; isn't that correct?

08:40:34 3 A. Correct.

08:40:52 4 Q. Let me draw your attention to Government's Exhibit 104.

08:41:00 5 A. 104?

08:41:01 6 Q. Right. Can you identify what Exhibit 104 is?

7 A. 104 is NRC letters, Review and Approval Report, serial
08:41:17 8 number 2735.

08:41:21 9 Q. And did -- this is known as the greensheet; is that
10 correct?

11 A. Yes.

12 Q. And various people signed off on this document; is that
13 correct?

14 A. Correct.

08:41:33 15 Q. That would include yourself? You signed off on this
16 document; isn't that right?

17 A. Yes.

08:41:43 18 Q. Let me bring your attention to Government's Exhibit 111.
19 Do you see that in front of you?

08:41:55 20 A. Yes. 111.

08:41:58 21 MR. STICKAN: And I think that's already been
08:42:00 22 identified and admitted, Your Honor.

08:42:03 23 THE COURT: Yes.

08:42:12 24 BY MR. STICKAN:

08:42:12 25 Q. I'd like to draw your attention to page 11.

08:42:32 1 A. Page 11?

08:42:35 2 Q. Okay. And do you see your monitor? I think that's a

08:42:44 3 copy. Does that appear to be page 11?

4 A. Yes.

08:42:49 5 Q. And I wanted to draw your attention to the paragraph

6 under RAI, FRA-4?

08:43:01 7 A. Okay.

08:43:06 8 Q. The last sentence in that paragraph requests this

9 information: Was the Davis-Besse visual examination of April

08:43:20 10 2000 performed using a written procedure?

08:43:28 11 A. Yes.

12 Q. Then there's a response underneath this question; is

08:43:34 13 that correct?

08:43:34 14 A. Yes.

08:43:36 15 Q. And we're looking at the October 30 serial number 2741;

08:43:43 16 is that correct?

08:43:43 17 A. Yes.

08:43:47 18 Q. And the response reads as follows, does it not? I'm

08:44:01 19 just going to read about half this paragraph.

20 The inspection conducted during 12 RFO in April

08:44:07 21 2000 was conducted using procedure NG-EN-00324, Boric Acid

22 Corrosion Control, which was developed in accordance with

08:44:21 23 generic letter 88-04, boric acid corrosion of carbon steel

08:44:26 24 reactor pressure boundary components in PWR plants. That's in

25 quotes. The purpose of this procedure is to provide a

08:44:37 1 symptomatic method to identify and resolve boric acid leakage
08:44:43 2 and/or resultant corrosion. It should be noted -- let me stop
08:44:57 3 right there.

4 Is that what you did in 1996? Were you able to use
5 the boric acid corrosion control procedure to identify and
6 resolve boric acid leakage and/or resultant corrosion?

08:45:14 7 A. No, in '96 there were steps which would not be followed
8 because of these reasons.

08:45:24 9 Q. The next sentence is: It should be noted that several
10 Condition Reports were generated to identify, evaluate, and
11 resolve the boron leakage which was observed in the April 2000
12 visual inspection of the RPV. I guess that's reactor pressure
08:45:45 13 vessel.

14 A. Right.

08:45:47 15 Q. I think you testified yesterday you did not see any of
16 the CRs for 2000; is that right?

17 A. That's correct.

08:46:13 18 Q. And one last exhibit. Exhibit 130. Do you have that
08:46:18 19 in front of you?

08:46:19 20 A. 130?

08:46:22 21 Q. Yes.

22 MR. STICKAN: I'm sorry. I missed one. Sorry,
23 Judge, two exhibits.

24 BY MR. STICKAN:

08:46:36 25 Q. 113. Can you identify 113?

08:46:52 1 A. Okay. 113.

2 Q. Can you identify what it is?

08:46:56 3 A. It's a serial number 2744, response from FirstEnergy to

08:47:08 4 NRC, October 30, 2001.

5 Q. October 30, 2001. Thank you.

08:47:17 6 MR. STICKAN: Your Honor, I believe this exhibit

7 had been identified and admitted.

08:47:22 8 THE COURT: It was identified and admitted on the

9 second; however, your next one, anticipating, 130, has not.

08:47:34 10 MR. STICKAN: 130 will be the last exhibit we'll

11 offer. This exhibit I'd like to get to right now.

12 BY MR. STICKAN:

13 Q. I'd like to draw your attention to the portion of the

08:47:45 14 report that is, I think, titled Spring 1996 inspection. Do you

15 see that? I don't know if it's numbered. It would have 1275,

16 I think, at the bottom.

08:48:11 17 A. Is there any page number or anything? Okay, I see it.

18 Spring 1996 inspection.

08:48:18 19 Q. All right. And specifically I'd like to draw your

20 attention to page 1278. Do you see that at the lower

08:48:27 21 right-hand corner? It's a few pages into the exhibit.

08:48:39 22 A. I don't see the -- the page number on the lower

08:48:47 23 right-hand corner.

24 Q. It would end with 1278. Maybe your copy doesn't have

25 that.

08:48:53 1 MR. STICKAN: Your Honor, if I might approach the
2 witness and help him locate the page.

3 THE COURT: Fine.

08:49:39 4 BY MR. STICKAN:

08:49:39 5 Q. It's hard to see on the screen, but 1278 is a picture of
6 a -- one of the pictures of the nozzles that were taken in 1996
08:49:53 7 as published in this serial; is that correct?

08:49:57 8 A. Yes. Taken from the video.

08:50:06 9 Q. The caption underneath that picture reads as follows,
10 does it not: Some boron piles were observed at the top of the
11 head in the vicinity of previous leaking flanges. Because of
12 its location on the head, it could not be removed by mechanical
13 cleaning but was verified to not be active or wet and therefore
14 did not pose a threat to the head from a corrosion standpoint.

15 Do you see that language?

08:50:37 16 A. Yes.

08:50:41 17 Q. Did anybody talk to you or ask you to verify whether
18 there was any active leakage on the head in 1996?

08:50:50 19 A. No.

08:50:52 20 Q. And, in fact, you published -- I think you testified
21 about PCAQ 551, 96-551; isn't that right?

08:51:09 22 A. Right.

23 Q. Which I think is Exhibit 5. I think it's already been
08:51:14 24 admitted. That's Exhibit 5; is that correct, the first page?

25 A. Right.

08:51:48 1 Q. Let me draw your attention to page 16 of that exhibit.
2 Do you have that in front of you? Do you see that page
08:52:12 3 exhibited on the screen?
4 A. Yes, I do.
5 Q. All right. I think you testified about that before; is
6 that correct?
7 A. Right.
08:52:18 8 Q. And in this PCAQ, it indicates, does it not, the boron
9 acid presently on the head is believed to have come from leaking
10 CRDMs in the past outages -- in past outages prior to gasket
08:52:39 11 replacements which have eliminated most leakage. But because
12 the head has not been completely cleaned, it is not possible to
13 make a clear determination that we do not have active leakage.
14 Correct?
08:52:55 15 A. Yes.
08:52:57 16 Q. All right. I'd like to draw your attention to Exhibit
08:53:03 17 130. Do you have that in front of you?
08:53:12 18 A. Yes.
19 Q. All right. And could you identify what 130 is?
08:53:20 20 A. 130 is an e-mail from Mr. McLaughlin, Mr. Dave Lockwood,
08:53:30 21 and Mr. Dave Geisen. Subject is Davis-Besse CRDM evaluations.
08:53:42 22 Q. And originally this was an e-mail that you received from
23 Mr. R.A. Mattson; is that correct?
24 A. Right.
08:53:49 25 Q. Who is Mr. Mattson?

08:53:52 1 A. Mattson, he was working for the Structure Integrity
08:54:08 2 Associates, SIA.

08:54:12 3 Q. Mr. Mattson forwarded you some information?

08:54:16 4 A. And Mr. Mark McLaughlin.

08:54:19 5 Q. Then Mr. McLaughlin forwarded it to Mr. Lockwood and Mr.
08:54:25 6 Geisen; is that right?

7 A. Right.

08:54:27 8 MR. STICKAN: Your Honor, I'd ask that Exhibit 130
9 be admitted.

08:54:31 10 MR. HIBEY: No objection.

11 MR. CONROY: No objection.

08:54:35 12 THE COURT: It will be admitted. It may be
13 demonstrated to the jury.

08:54:46 14 BY MR. STICKAN:

08:54:46 15 Q. I'd like to direct your attention to the e-mail you
08:54:50 16 received from Mr. Mattson at SIA. It indicates, I believe, does
17 it not, that, "I am sending you four calculations today:
08:55:06 18 W-ENTP-11Q-306 and 309 were changed to include the vendor
08:55:15 19 proprietary statement. No other changes were made."

08:55:18 20 The second one is, "Calculations W-ENTP-11Q-308 and
08:55:25 21 314 are new. The later one is for the refined gap analysis,
22 where we show that all gaps will be open.

23 "I am sending these to Prasoon's attention."

24 And this was an e-mail originally sent to you and
25 Mark McLaughlin, right?

1 A. Correct.

08:55:42 2 Q. Then Mark McLaughlin forwarded this e-mail with his own
08:55:46 3 message to Mr. Geisen and Mr. Lockwood; is that correct?

4 A. Right.

5 Q. And that message says, does it not: Note that the new
6 gap analysis shows all nozzles will show a gap. Is this "new"
7 information to send to the NRC and an excuse to introduce our
08:56:06 8 evaluation of the industry findings? That's what it indicates,
9 correct?

08:56:14 10 A. Right.

08:56:30 11 MR. STICKAN: No further questions, Your Honor.

08:56:50 12 THE COURT: Cross-examination, Mr. Hibey.

08:56:54 13 - - -

08:56:54 14 PRASOON GOYAL, CROSS-EXAMINATION

15 BY MR. HIBEY:

16 Q. Good morning, Mr. Goyal. I represent Mr. Geisen.
08:57:21 17 Your testimony two days ago, I think it was mentioned something
18 called Condition Review Board. Do you remember that testimony?

08:57:34 19 A. Yes.

08:57:35 20 Q. And would you agree that that's also known as the
08:57:39 21 Corrective Action Review Board?

08:57:43 22 A. Yeah. But at that time it was called Potential
08:57:51 23 Condition Adverse to Quality.

24 Q. Then later became CARB? Do you remember that phrase,
25 CARB; Condition Action Review Board? You know that that board

1 is made up of Davis-Besse managers; isn't that correct?

2 A. Yes.

08:58:13 3 Q. And you know also that Mr. Geisen did not become a
4 manager at Davis-Besse until the year 2000; isn't that correct?

08:58:27 5 A. I think I said in my testimony I did not know when he
08:58:33 6 became a member of that board.

7 Q. I'm asking you now, do you know that he became a manager
8 in the year 2000?

08:58:43 9 A. He may have become a member in 2000.

08:58:48 10 Q. You know that -- perhaps you don't, but I asked you at
11 the time you wrote 96-551, that would be in the year 1996?

12 A. Correct.

13 Q. Mr. Geisen was not a manager and was, in fact, in
14 training; do you know that?

15 A. He was not manager. I know that.

16 Q. And it is also true that in 96-551, about which you
17 testified, I think on a couple of days, Dave Geisen's name
08:59:35 18 appears nowhere on 96-551?

08:59:41 19 A. Yes. That is correct.

08:59:46 20 Q. When Dave Geisen was manager of Design Engineering, and
08:59:51 21 you were in the group, your supervisor was Theo Swim; is that
22 right?

08:59:59 23 A. It was Jan Hardin then Theo Swim. Theo Swim was later
09:00:10 24 supervisor.

09:00:13 25 Q. And you're aware, are you not, that the Design

1 Engineering Group is comprised of a number of engineers and
2 personnel; is that right?

3 A. Right.

4 Q. And that there were five supervisors in that group;
5 isn't that right?

6 A. That's correct.

09:00:29 7 Q. And there were 42 personnel, engineering personnel, in
8 the group; would you agree to that number approximately?

9 A. Yeah.

09:00:42 10 Q. Mr. Goyal, you were shown approximately 13 e-mails to
09:00:53 11 and from you in August in the year 2001 regarding serial number
09:00:57 12 2731, the response to the Bulletin 2001-01 that issued on August
09:01:07 13 3rd, '01. Do you remember that?

14 A. I don't know.

15 Q. You were taken through a number of these e-mails that
16 were either written to you or from you; is that correct?

09:01:23 17 A. Right. There were a number of e-mails.

09:01:27 18 Q. Dave Geisen was not involved in those e-mails in the
19 drafting of serial 2731; would you agree?

09:01:37 20 A. Who was not involved?

21 Q. Mr. Geisen. His name did not appear in those, did it?

22 A. Name does not appear, then as far as I was sending the
23 e-mail, his name is not on those e-mails. That's what you're
09:01:59 24 saying?

09:02:00 25 Q. Yes.

1 Now, sir, you were asked by Mr. Stickan this
2 morning about the fact that you are testifying pursuant to a
09:02:18 3 deferred prosecution agreement where you're -- with your
09:02:27 4 cooperative testimony here today, true?

09:02:29 5 A. Right.

6 Q. Sir, there was no deliberate attempt to deceive the NRC
09:02:33 7 or to conceal any information by anyone you know?

09:02:39 8 A. Could you please repeat the question?

9 Q. There was no attempt to deceive the NRC or to conceal
10 any information; isn't that correct?

09:02:49 11 A. Initially when 2731 was written, I had the comment on
09:02:58 12 that document that we are not telling that there is a impediment
09:03:07 13 to the 100 percent head inspection, and that comment was in
14 2731. But after that, if you remember, on 8-30 I sent an e-mail
09:03:23 15 clarifying I had second thought. That I agreed at that time,
16 but on 8/30 I sent an e-mail saying that nowhere do we mention
17 that there is an impediment. So when I sign 2731, there was no
09:03:41 18 problem signing. I was convinced that, yeah. But afterwards,
19 you can see I sent an e-mail to identify the problem.

20 Q. An e-mail that you did not send to Mr. Geisen?

09:03:58 21 A. That is correct.

09:04:01 22 MR. HIBEY: Your Honor, indulge me a moment,
09:04:06 23 please.

24 No further questions.

09:04:09 25 THE COURT: Mr. Conroy.

09:04:11 1 MR. CONROY: I may need a little help.

09:04:24 2 - - -

09:04:24 3 PRASOON GOYAL, CROSS-EXAMINATION

09:04:27 4 BY MR. CONROY:

09:04:27 5 Q. Mr. Goyal, how are you? John Conroy for Rod Cook. How
6 are you holding up? All right?

7 A. Yeah.

09:04:34 8 Q. All right. Good. We won't be long.

09:05:34 9 We've done a lot of talking about 96-551, your PCAQ
10 from 1996 after you did the head inspection.

11 A. Right.

12 Q. And I want to review it with you because I want to make
13 sure we're all clear on exactly what was happening in the
09:05:50 14 aftermath of your writing that PCAQ. Okay. Do you have a copy
15 of it, or can you see it on the screen?

16 A. Yes.

17 Q. You can see it on the screen? Okay. Is that up for
18 everybody?

09:06:08 19 What I want you to do is turn to the portion of
20 that document that contains paragraph 4E. And that is on the
09:06:27 21 third -- the page numbered 3 of that document.

09:06:33 22 A. Page 3.

09:06:34 23 Q. Have you got that?

24 A. Page 3.

09:06:36 25 Q. Okay. And there you start laying out your reasons for

09:06:45 1 why you want -- why you have written the PCAQ; is that right?

2 A. Right.

09:06:50 3 Q. And you go over to the next page, which is 4, and you

09:06:55 4 are explaining what it is that the Boric Acid Corrosion Control

09:07:00 5 Procedure says should be done; is that correct?

6 A. Yeah.

09:07:05 7 Q. And at the bottom of that page --

8 A. I'm on page 3A.

09:07:11 9 Q. I apologize. It is 3A. I thought it was 4. It's

10 3A, which is the continuation of 3. On that page --

11 A. You are on that page?

12 Q. I am on that page. You are explaining what it is that

09:07:29 13 the Boric Acid Corrosion Control Procedure requires?

14 A. Right.

09:07:33 15 Q. And I am going to move that up so that you can see that

09:07:36 16 there's initials at the bottom, and it's dated May 3, '96?

09:07:42 17 A. Yes.

09:07:43 18 Q. And those initials are?

09:07:46 19 A. Those initials were -- I recognize. They were initials

20 of Mr. Ted Meyers.

21 Q. Ted Meyers. And you start speaking in terms of the

09:08:03 22 Boric Acid Corrosion Control Procedure, which is 324?

23 A. Right.

09:08:08 24 Q. And you start explaining what should be done?

09:08:13 25 A. Yeah.

09:08:14 1 Q. Now, did you consult the Boric Acid Corrosion Control
2 Procedure before you wrote this box?

09:08:23 3 A. Yes. Before I -- when I started writing it, I talked
4 to one of my colleagues about what procedure should I be using
5 to document my head inspection. So one of them suggested that
6 I look at 324 procedure.

7 Q. And you did?

09:08:46 8 A. I did.

9 Q. And you read the procedure?

10 A. Right.

11 Q. When you were reading the procedure, were you aware of
12 the difference, or did you recognize that there was a difference
09:08:58 13 in a procedure between using the word "should" and using the
09:09:04 14 word "shall"?

09:09:06 15 A. I do not recall the difference.

16 Q. You don't know that there was a difference?

17 A. Right. I do not recall the difference, that there was
18 a difference there in the procedure reading at that time.

09:09:19 19 Q. Did you lift your language in this PCAQ from the
09:09:24 20 procedure?

09:09:25 21 A. Some of it, yes.

22 Q. So that when you are saying in the procedure: The area
23 should be inspected to determine -- do you see that in the
09:09:40 24 middle of the last paragraph? We talk about the area should be
09:09:48 25 inspected, okay?

1 A. Okay.

09:09:50 2 Q. To see if boric acid could have entered the internals of
3 a component?

4 A. Right.

09:09:56 5 Q. Above that -- I'm trying to find out where other
09:10:17 6 references to the procedure are contained. You say -- bear
7 with me a second. Here we are. I'm sorry. Go back, if you
8 will, to the first page of the procedure.

09:10:36 9 A. Okay.

10 Q. You've got it?

09:10:40 11 A. Of the PCAQ?

12 Q. Of the PCAQ.

13 A. Okay.

14 Q. And you are making reference to the procedure 324
15 Revision 1, Boric Acid Corrosion Control?

09:10:50 16 A. Right.

09:10:51 17 Q. Then on the next page, bottom of this page and the next
09:10:59 18 page, you start talking about the total amount of boron deposits
09:11:04 19 and the amount of boron on each component should be estimated?

20 A. Right.

21 Q. Did you get that from the procedure?

09:11:11 22 A. Yeah.

23 Q. And then in B, "The area of identified boron buildup
24 should be inspected to verify..." you got that from the
09:11:20 25 procedure?

1 A. Right.

2 Q. Then next sentence, "The area should be inspected to

3 determine..." you got that from the procedure?

4 A. Did you move that?

5 Q. I'm sorry; I moved it. The area should be inspected?

6 A. Right.

7 Q. And then we talk about the affected area should be

8 inspected to identify, in part C?

09:11:40 9 A. Yes, any sign of corrosion.

09:11:45 10 Q. Then the next sentence, this should include an estimate,

11 part C?

09:11:50 12 A. Right.

13 Q. All of that came from the procedure; did it not?

09:11:53 14 A. Right.

15 Q. So what the meaning of the word "should" is in the

09:11:57 16 procedure is what is contained in your PCAQ here?

09:12:00 17 A. Right.

09:12:05 18 Q. On page 3A, going back to it, at the bottom, is the

19 review of the PCAQ by your supervisor?

20 A. Yes.

21 Q. Here's what I'm driving at, okay. After you wrote this

09:12:33 22 PCAQ, the boric acid was not entirely removed from the head of

23 the reactor, was it?

24 A. Right. Boric acid was not removed completely.

25 Q. Completely. And yet the reactor restarted, did it not?

09:12:53 1 A. Yes.

09:12:55 2 Q. And you can't restart the reactor if there is a
3 violation of a procedure still open, can you?

09:13:05 4 A. I do not know whether this modification or this
09:13:10 5 Condition Report was a MOD. Like, there are five MOD, 1, 2, 3,
09:13:22 6 4, 5. And if this PCAQ is a MOD restraint, it has to be closed
7 before plant will start. So I cannot answer your question of
8 whether this PCAQ was a MOD restraint or not. As far as I am
9 concerned, I wrote it, the procedure --

10 Q. You thought that it violated the procedure?

11 A. Right.

09:13:47 12 Q. Your boss, Mr. Donnellon, did not agree with you, did
13 he?

09:13:55 14 A. I do not know whether this was communicated to me.
15 It's written there. It's written there. But PCAQs do not
16 come back to the person who wrote it.

09:14:06 17 Q. But as you read the disposition of this PCAQ, you
18 understand that your boss had reviewed it and disagreed with
19 your conclusion that it was nonconformance; is that correct?

20 A. Right.

21 Q. So he did not believe that the procedure had been
09:14:22 22 violated?

09:14:27 23 A. Please repeat again.

24 Q. The last sentence -- I'm sorry; go ahead. You're
09:14:35 25 waiting for me?

09:14:36 1 A. No, I'm waiting for me to tell you. I'm not
09:14:43 2 operations. I'm in design. And I'm writing this Condition
09:14:49 3 Report saying, we didn't meet this procedure. Normally I go
4 through and check the procedure. And I did not have knowledge
5 that they were talking about board restraint or hardware. This
6 might be a software issue, procedure compliance. So I didn't
7 read the same thing what you read in the comment. That's what
8 I'm trying to say.

9 Q. Did you read the comment?

09:15:25 10 A. I read it maybe afterwards. I don't recall when I read
11 this comment.

09:15:31 12 Q. It is clear, however, from Mr. Donnellon's writing on
13 the bottom of this PCAQ that he did not believe -- and I'm
14 looking at the last sentence.

09:15:45 15 A. Last sentence?

16 Q. The last sentence of his comment. He says, "I also do
17 not believe that the vessel head area is nonconforming." Do
18 you see that?

19 A. Yes.

20 Q. That means he did not believe that the vessel head was
21 not in conformance with the procedure; isn't that right?

09:16:09 22 MR. STICKAN: Objection.

09:16:20 23 THE COURT: Overruled. You may answer. Would
24 you restate the question? Do you want me to read it to him?
25 I'll read the question before it because it ties onto that.

09:16:39 1 The question before it was, "The last sentence of his comment he
2 says, 'I also do not believe that the vessel head area is
09:16:46 3 nonconforming. Do you see that?'
09:16:50 4 "Yes.
09:16:51 5 "Question. That means that he did not believe
6 that the vessel head was not in conformance with the procedure;
7 isn't that right?"
09:17:00 8 A. I still didn't understand the question.
09:17:10 9 MR. CONROY: Withdrawn.
10 BY MR. CONROY:
11 Q. Mr. Donnellon wrote in response to your PCAQ that he has
09:17:18 12 signed the justification for going forward with your
09:17:22 13 recommendation; isn't that right? "I have signed the part 4E
09:17:29 14 justification and concurrence as a conservative measure"?
15 A. Yes.
16 Q. So he's going along with you to this point?
17 A. Right.
18 Q. Now he says, "Nozzle cracking is, of course, a
09:17:41 19 significant issue." We're going to agree with that; are we not?
20 A. Right.
21 Q. "However, at present, the probability of occurrence is
22 relatively low." And you would agree with that?
09:17:55 23 A. Yes.
09:17:57 24 Q. "We should remove boron from the reactor pressure vessel
25 head as best we can and so as to minimize dose."

1 Did you agree with that, or would you agree with
2 that?

09:18:14 3 A. Not if you follow the procedure completely that you need
09:18:20 4 to remove all the boron. He's making his own -- in my opinion
09:18:28 5 he's making his own evaluation of what I have written. And in
6 my evaluation, I did not use low probability. In my evaluation
7 what I use was U.S. in 1996 there was no cracking. It was an
8 industry experience which I put in the evaluation. So he is
09:19:01 9 making --

09:19:02 10 Q. A supervisory judgment?

11 A. Right.

09:19:07 12 Q. Which he's entitled to do?

09:19:10 13 A. Yes.

09:19:12 14 Q. And when you say that you believe -- and you believed at
15 the time that you wrote this document that the Boric Acid
09:19:26 16 Corrosion Control Procedure required the removal of all boric
09:19:32 17 acid from the reactor pressure vessel head?

09:19:35 18 A. Right.

19 Q. You are saying that because you believe, as you read the
20 word "should", that it is a requirement?

09:19:55 21 A. I think it goes back to what was the purpose of the
22 inspection of this head.

09:20:07 23 Q. Can we try to just see if we can answer my question?

24 MR. STICKAN: Your Honor, I ask the witness to
25 finish the answer.

09:20:16 1 THE COURT: May I ask you to rephrase the question
09:20:19 2 as to his interpretation of the word "should."
3 BY MR. CONROY:
4 Q. Your interpretation of the word "should" made it a
09:20:29 5 requirement; is that correct?
09:20:33 6 A. If you are looking only from the procedure point of
7 view, yes. But if you are looking in a bigger global picture
8 that what we were trying to do, then it becomes a shall.
9 Q. But now you recognize a difference between should and
09:20:51 10 shall?
11 A. Yes.
09:20:52 12 Q. And should is a recommendation; it is not a requirement?
09:20:59 13 A. True English.
14 Q. True to the procedure at the plant; is that correct?
15 A. Yes.
16 Q. So that if your supervisor decided that we did not have
17 to remove all of the boric acid from the head at the time that
18 you wrote your PCAQ, it would not violate the procedure?
09:21:28 19 A. Should is not a requirement. Shall is a requirement.
09:21:36 20 Q. That's fine. One of the things that you agreed with
21 the government about when you signed this non-prosecution
22 agreement with them was that you had told a falsehood when you
23 said that the inspections that were carried out at Davis-Besse
09:22:15 24 at 10 RFO were done in accordance with the Boric Acid Corrosion
09:22:21 25 Control Procedure?

09:22:21 1 A. Yes.

2 Q. And the reason that you signed it is because you thought

09:22:26 3 that "should" was a requirement; isn't that a fact, or you

09:22:30 4 believed in your own mind that you were required to take that

09:22:33 5 boric acid off?

09:22:43 6 THE COURT: Could you break it down into one

7 question, then another question?

09:22:47 8 MR. CONROY: I'm getting ahead of myself.

09:22:47 9 BY MR. CONROY:

10 Q. You signed a deferred prosecution agreement?

09:22:52 11 A. Yes.

12 Q. You admitted to not telling the truth about the '96

09:22:58 13 inspection?

14 A. Right.

09:22:59 15 Q. And what you didn't -- what you were untruthful about

09:23:03 16 was the fact that you followed the Boric Acid Corrosion Control

17 Procedure?

18 A. Right.

19 Q. But, in fact, you didn't violate the Boric Acid

09:23:12 20 Corrosion Control Procedure, did you?

09:23:15 21 A. If you use the word "should", no. But if you use the

09:23:21 22 word "shall", yes.

09:23:22 23 Q. So you agreed that you had done something wrong when you

24 were really not sure you had done anything wrong?

09:23:31 25 A. (Witness nods.)

09:23:32 1 Q. And as you sit here today, you're not sure you did
09:23:35 2 anything wrong, are you?

09:23:40 3 A. I thought that we did not comply with the procedure.

09:23:48 4 Q. Fine. When you got engaged in a discussion with
09:23:59 5 respect to the first Serial Letter, 2731, this is in August of
09:24:05 6 2001 shifting forward now, initially there was a debate about 95
7 percent of the head being visible or inspected?

09:24:21 8 A. Right.

9 Q. Then it was 90 percent or a majority of the nozzles; do
09:24:28 10 you remember? You were talking there about the as-found
11 condition of the head at 12 RFO; were you not?

12 A. I think. I ask the question, what does 90 percent
13 mean? Are we talking about as-found condition or are we
09:24:46 14 talking after the head? Did not get an answer to that.

15 Q. But you did, your own testimony, did you not, because
16 you said Mr. Cook and Mr. Siemaszko came to your office, and Mr.
09:25:01 17 Siemaszko said to you, I can see the whole head?

09:25:04 18 A. This was written related to my comment on 2731?

09:25:12 19 Q. Right.

09:25:13 20 A. And Mr. Siemaszko -- let me go back.

09:25:18 21 2731 did not address any limitations to the head
09:25:28 22 inspection. And I put down a comment that this does not
23 address any limitations to head inspection. And so the comment
09:25:48 24 needed to be resolved before I signed. That's where Mr.
25 Siemaszko and Mr. Cook came, and Mr. Siemaszko said: No

1 problem; I can see the head.

09:26:06 2 Q. Can see the whole head?

3 A. Whole head. And that's where I signed the greensheet
09:26:19 4 on 8-28. At 8-30 my e-mail went out saying: No, we can't say
5 we can inspect 100 percent head. There was impediment. So I
6 don't know where this 90 percent is coming into picture in that
7 statement because this 90 percent issue wasn't clear; 90 percent
8 of the majority, or was it part of 2731? I can't recall.

09:26:55 9 Q. Well, let me tell you. Okay. The evidence in the case
09:27:00 10 as we're standing here and you're sitting there today is that
11 the 95 percent/90 percent/majority debate all took place before
09:27:10 12 2731 was signed. Do you understand that?

13 A. Right.

09:27:14 14 Q. Do you accept that?

15 A. Based on so many e-mails.

09:27:18 16 Q. Okay. That would mean that that debate was about the
09:27:24 17 as-found condition of the head; would it not? Mr. Siemaszko
18 came and told you that he could see the whole head as left; did
19 he not?

09:27:40 20 A. Yes.

21 Q. So therefore the majority of the nozzle, 90 percent, 95
09:27:45 22 percent, back and forth dialog, whatever you want to call it,
23 was about the as-found condition?

09:27:52 24 A. Yeah.

25 Q. Now, when you were having concerns about what do we mean

09:27:57 1 by 90 percent, or is this as-found or as-left, and you were
2 sending an e-mail about it, Mr. Cook brought Mr. Siemaszko to
3 your office, correct?

4 A. Yeah.

5 Q. Wasn't that Mr. Cook's job? He had to resolve any
6 problems with the language of the document before it could go
09:28:19 7 out for greensheet signing; isn't that right?

8 A. Yeah, resolve the problem. But he also have to see
9 what followed after the greensheet signup.

09:28:32 10 Q. I understand that. But in bringing Mr. Siemaszko to
09:28:36 11 you, he was doing the resolution of a factual problem that's
12 required of the Regulatory Affairs guy, isn't he?

13 A. Yeah.

09:28:46 14 Q. All right. Now, when did you first meet Mr. Cook? It
09:29:01 15 wasn't until the 2731 process started, was it?

09:29:05 16 A. I don't recall when I met him. I think he used to work
17 there, but I don't remember -- Mr. Cook used to work at
09:29:19 18 Davis-Besse, and then he became consultant afterwards.

19 Q. You might have met him on another occasion; you don't
20 know?

09:29:27 21 A. I don't recall.

22 Q. All right. When you spoke during your direct
23 examination that Mr. Siemaszko and Mr. Cook as well as you,
24 yourself, were working on the response to Section 1D --

09:29:46 25 A. Right.

09:29:48 1 Q. -- did you -- did you understand and did you intend for
2 people to understand that Mr. Cook was working on the entire
09:29:56 3 document?

09:30:00 4 A. But I think that was specifically assigned to three
5 people. He was working on, but 1D was -- specifically
6 somewhere it mentioned Section 1D was specifically assigned to
7 three people: Goyal, Cook, and Mr. Siemaszko. I don't recall
09:30:30 8 where.

9 Q. You think that's the case?

09:30:32 10 A. Yeah.

09:30:33 11 Q. What about paragraph 1C? What about paragraph 3A?
09:30:37 12 Who was assigned to that?

09:30:39 13 A. I don't remember.

14 Q. Do you know whether Mr. Cook was -- do you know whether
15 he had the whole document?

09:30:45 16 A. Yeah.

17 Q. He did?

09:30:47 18 A. (Witness nods.)

09:30:52 19 Q. And in your dealings with Mr. Cook, you were never
20 involved, were you, in a scheme with Mr. Cook to lie to the NRC?

09:31:03 21 A. No.

09:31:04 22 Q. And you don't know that Mr. Cook did?

09:31:09 23 MR. STICKAN: Objection.

09:31:11 24 MR. CONROY: I'm asking for his knowledge.

25 THE COURT: Overruled.

09:31:16 1 A. As far as I'm concerned, my comments were not
09:31:21 2 corroborated, either in 2731 or in 2735.

09:31:27 3 BY MR. CONROY:

09:31:27 4 Q. All right. You were concerned when you wrote your
09:31:37 5 comments about impediment?

6 A. Right.

09:31:42 7 Q. With the fact that the whole head could not be inspected
09:31:48 8 through the mouse holes; is that right?

9 A. Right.

10 Q. But you knew that that wasn't so, isn't that right; that
11 you could, in fact, inspect the whole head through mouse holes?

12 A. I couldn't inspect it in '96.

13 Q. Was it not discussed with you that the issue with regard
09:32:06 14 to inspecting the mouse holes was a matter of technique?

09:32:11 15 A. I think what NRC asked at the time in response that you
16 provide the inspection based on technique, what technique we
17 were using. If you use control, maybe you could see the whole
18 thing. But it's not the question. What technique are you
19 using? The technique was on a three-foot pole/wire we attach a
20 light, and another one that has the camera. We stick it through
21 the mouse hole and we see what we can see. I personally
09:32:51 22 performed that inspection. And I know, have a rough idea what
09:32:58 23 we could see. We couldn't reach to the top to clean it because
24 the tools we were using was a broomstick; you attach it, and you
09:33:16 25 scrape and vacuum it. I'm just trying to explain that in my

09:33:41 1 mind; with the techniques we were using, we couldn't see 100
2 percent of the head.

09:33:49 3 Q. But the answer that was being given to the NRC in
4 Section 1D had to do with whether or not that problem would be
09:33:55 5 solved at the next refueling outage; isn't that right?

09:34:01 6 A. Which section? I have to see it. I have to see it.

09:34:08 7 MR. CONROY: Fine.

09:34:38 8 BY MR. CONROY:

09:34:38 9 Q. I'm going to read you the sentence from question 1 D of
10 the bulletin that speaks to this issue.

09:34:53 11 A. Okay.

12 Q. And it says -- well, let me read the whole paragraph for
09:34:59 13 completeness. This is question 1D.

09:35:02 14 A description of the VHP nozzle and RPV head
09:35:09 15 inspections (type, scope, qualification requirements, and
09:35:14 16 acceptance criteria) that have been performed at your plant or
17 plants in the past four years and the findings.

09:35:26 18 Next sentence: Include a description of any
19 limitations (insulation or other impediments) to accessibility of
20 the bare metal of the RPV head for visual inspections -- excuse
21 me, for visual examinations.

22 Is that what you recall?

23 A. Right.

09:35:51 24 Q. Now, with regard to the answer that you were given, was
25 it your understanding that what people understood the question

09:36:01 1 to mean was are there limitations to accessibility of the bare
09:36:06 2 metal for visual examinations in the future in the design?

3 A. No. My understanding was they were looking for the
09:36:18 4 past inspections. What future is going to do when they are
5 asking to assess the current situation, that is your plant
09:36:29 6 susceptible? If you have not performed visual inspections,
09:36:35 7 qualified visual inspections, the plant need to shut down by
8 December 31st. So in future what we do in my opinion has no
9 bearing on. We did provide some future NDE type, all that for
09:37:03 10 future. There was, I think, a logic tree.

11 But NRC was asking for the past inspections that
09:37:11 12 have you performed a qualified inspection without any
13 impediment. And we did have impediment. So that was my
14 understanding of this 1D.

15 Q. So your reading -- and I'm placing 1D up on the screen
16 now, and I'm not getting -- I see what's wrong here. There's
17 question 1D. And I believe that's all on the screen.
09:38:14 18 Question 1D talks about the past inspections in the first
19 sentence; does it not?

09:38:20 20 A. Right.

21 Q. And then it asks to include a description of any
09:38:25 22 limitations (insulation or other impediments) to accessibility of
23 the bare metal of the head for visual examinations. And you
24 thought that that was a question about past inspections as
09:38:38 25 opposed to the design of the head?

09:38:40 1 A. Yes. It was -- if you read from the impediment, what
2 it says, has been performed at your plants in the past four
09:38:52 3 years and the findings. So this is continuing after the
4 response. The first sentence talks about performed at your
09:39:04 5 plant in the past four years and the findings, include the
09:39:12 6 description as to accessibility of RPV head for visual
09:39:21 7 examinations. My understanding, your past four inspection was
09:39:27 8 done to bare metal, and did you have any problems in the
09:39:31 9 inspection? That was my understanding of this 1D.

10 Q. But there is no question, is there, Mr. Goyal, that the
09:39:37 11 answer that is provided to that question speaks to future
09:39:43 12 inspections?

09:39:44 13 A. I did not read it that way.

14 Q. Let me read it to you. This is in the Paragraph Number
15 2 in the response, second sentence. "As stated previously, a
16 gap exists between the RPV head and the insulation, the minimum
17 gap being at the dome center of the RPV head where it is
09:40:08 18 approximately two inches, and does not impede visual
09:40:12 19 inspection."

09:40:13 20 Now, you understand that to be a description of the
21 design of the head; do you not?

09:40:18 22 A. Right. And it did impede the inspection in the past.

23 Q. But that's not what the answer says. They're talking
24 in the answer, are they not, about the design of the head?

09:40:39 25 A. Let me go back and put it in perspective. That what

09:40:48 1 are we trying to provide, what information are we giving to NRC?
2 Are we providing future or are we providing past?
3 Q. Yes.

09:40:58 4 A. So if we are combining both of these in the same
09:41:05 5 paragraph, it is very hard for me to figure out which way this
6 information is. I always started -- the intent was to see how
09:41:19 7 good inspection you have done in past four years, have you done
09:41:23 8 a good inspection. And if you didn't do good inspection, shut
9 down and do good inspection. So okay.

10 Q. So okay what?

11 A. I did not read it that way.

12 Q. Oh, but you read it?

09:41:42 13 A. I mean, I didn't think that we were talking about
14 future.

09:41:48 15 Q. Did you not have a discussion with Mark McLaughlin
09:41:54 16 about impediments?

09:41:58 17 A. I had a discussion about my e-mail of 8/30, where you
09:42:07 18 see there is a statement that there is no impediment. A work
09:42:23 19 request had been initiated to cut the holes in the service
09:42:30 20 structure. And in the same e-mail we had -- I had a discussion
21 that we cannot inspect 100 percent of the head because of the
09:42:44 22 mouse holes, inspection to the mouse holes.

23 Q. And did you not have a discussion with Mr. McLaughlin
24 that that problem would be cured the way it was cured at
25 Arkansas Nuclear 1, by using a crawler?

09:42:59 1 A. Yes, I did have a discussion with Mr. McLaughlin, and
09:43:05 2 that's what they used there. But if you are providing a
3 response on the past inspection where you have not used that
4 technique, then how can we take credit for the technique?
09:43:20 5 That's all I'm trying to say.

6 Q. I understand. But, Mr. Goyal, when you sent your
09:43:27 7 e-mail and you had this concern, who did you see about getting
8 your name off the greensheet?

09:43:36 9 A. I didn't see anybody. I sent the e-mail, and I talked
10 to Mark McLaughlin.

11 Q. And is that the e-mail in which you say management needs
12 to know?

13 A. Right.

14 Q. And did you go to your management? I mean, you knew
15 who your management was?

16 A. I knew who my management was. But the recipients also
09:43:57 17 knew who their management was, and one of them, the person in
18 there was in management, Mr. Miller.

19 Q. So you were trying to tell Mr. Miller that you had a
20 concern?

09:44:07 21 A. I was trying to tell Mr. Miller, Mr. Cook, Mr.
22 Siemaszko.

09:44:13 23 Q. Mr. McLaughlin?

09:44:16 24 A. McLaughlin, I don't remember was on that list.

09:44:19 25 Q. You did know at the time that 2731 went out that a

09:44:26 1 complete inspection of the head could be done at 13 RFO using a
2 crawler as was used at Arkansas Nuclear 1; isn't that right?

3 A. Using a crawler, yes.

09:44:40 4 MR. CONROY: I don't have anything further. Thank
09:44:46 5 you.

09:44:46 6 THE COURT: Redirect?

09:44:49 7 MR. STICKAN: Yes, Your Honor.

09:44:49 8 - - -

09:44:49 9 PRASOON GOYAL, REDIRECT EXAMINATION

09:46:51 10 BY MR. STICKAN:

11 Q. Mr. Goyal, you recall Mr. Conroy was asking about future
09:46:57 12 inspections. I think he was going through Section 1D of the --
13 I think it was 2731, which we have marked as Government's
09:47:10 14 Exhibit 60. Do you recall that?

15 A. Yes.

09:47:21 16 Q. I draw your attention -- I'm going to try to put this on
17 the overhead here. See if I can do this without making people
09:47:36 18 sea sick.

09:47:41 19 Do you see Section 3A of the bulletin?

20 A. Yes.

21 Q. Okay. It reads: If the susceptibility ranking for your
22 plant is within 5 EFPW of ONS3, addressees are requested to
23 provide the following information: Your plans for future
24 inspections (type, scope, qualification requirements, and
25 acceptance criteria) and the schedule. Correct?

1 A. Right.

2 Q. There was a question about future inspections, but that
09:48:12 3 wasn't until 3A of the bulletin; isn't that correct?

4 A. Right.

5 Q. 1D was a question about the last four inspections, last
6 four years going back four years; isn't that correct?

7 A. Right. That was my understanding.

8 Q. Do you remember a question by Mr. Conroy about whether a
09:48:34 9 response that was given to Section 1D was supposedly relating to
10 the design of the reactor?

11 A. Yes.
09:48:51

12 Q. Do you remember that question? And, in fact, there is
13 a question about design, but that's question 1C, is it not, a
09:49:11 14 description of the RPV head insulation type and configuration?
15 Do you see that at the bottom of the page?

16 A. Yeah, 1C.

17 Q. Is that question calling for a design response?
09:49:24

18 A. Could you just move it up, please -- I mean down.
09:49:28

19 Q. I'm looking at the bottom of the page.
09:49:36

20 A. Right. 1B. Then the bottom of the page is 1C.
09:49:38

21 Q. Yes. I'm referring to you to 1C.

22 A. Okay.
09:49:45

23 Q. That deals with the design of the reactor; does it not?
09:49:48

24 A. Yes.
09:49:52

25 Q. Okay. Now, do you recall questions by Mr. Hibey
09:49:54

09:50:14 1 regarding whether any of the e-mails went to Mr. Geisen? Do
2 you remember that?

3 A. Right. I think there was a discussion of there were
4 quite a few e-mails, and I don't remember which one went where
09:50:31 5 unless I have them in front of me.

6 Q. Okay. Well, first of all, I want to draw your attention
7 to Government's Exhibit 26. I'll put this on -- I don't know
8 if I can get the whole thing on the screen. Maybe I can zoom
9 out. Do you see that whole document?

10 A. Yes.

09:51:02 11 Q. Now, that is what we've referred to?

09:51:05 12 MR. HIBEY: Excuse me, Your Honor. I want to
09:51:08 13 interpose an objection. This is not proper redirect. This
09:51:13 14 particular document which is up on the screen was written before
09:51:18 15 the bulletin even issued. It is not, therefore, a proper
09:51:25 16 redirect of the cross I put to this witness.

09:51:29 17 MR. STICKAN: Your Honor, if we're going to have a
18 speaking objection, this witness testified --

19 MR. HIBEY: Then let's go to the bench.

20 THE COURT: All right.

09:51:36 21 MR. STICKAN: Do so. Do so.

09:51:39 22 MR. HIBEY: I'm ready to do that if Your Honor will
23 take this at the bench.

09:55:57 24 (Whereupon the following discussion was had at the
25 bench outside the hearing of the jury:)

1 THE COURT: This is Government's Exhibit 60?

2 MR. STICKAN: No, Your Honor.

3 THE COURT: 26. Purpose? The purpose for which
4 you intend to use it?

5 MR. STICKAN: Well, first of all, Judge, I've got
6 some other e-mails to follow this. But the purpose is, one,
7 the defendant -- I don't know if the defendant's challenging
8 whether this is an e-mail or not or the substance of it, but
9 this witness has already testified that they knew the bulletin
10 was coming. And then they issued -- this is the JCO, Justified
11 Continued Operations, memo that Mr. Geisen signed off on. So
12 they knew the bulletin was coming. And they were already
13 making contingency plans to shut down and discussing whether
14 they had to inspect or not. So the bulletin was already being
15 anticipated at that point in time. And he was given an
16 assignment by management to prepare this document.

17 THE COURT: "He" being?

18 MR. STICKAN: Mr. Goyal. That's his testimony.
19 So it ties into the bulletin.

20 MR. HIBEY: The questions I put to him were whether
21 Mr. Goyal copied Mr. Geisen on any of, something like what I
22 counted, 13 e-mails that addressed writing the response to 2731,
23 to the bulletin in the form of 2731, that's what I asked him.
24 Now what they're doing is coming in with documents, whether he's
25 been copied or otherwise addressed, that are before the bulletin

1 ever issued.

2 THE COURT: Well, you didn't, as I recall, touch on
3 anything except the 13 e-mails.

4 MR. HIBEY: Respecting the writing of 2731 to or
5 from him, or commenting on 2731. But 2731, not before the
6 bulletin ever issued. That's what they're trying to do here.

7 MR. STICKAN: Your Honor, if he's trying to leave
8 the impression Mr. Geisen didn't know what was going on with
9 respect to what led up to 2731, which I think is the impression
10 he's trying to leave, this document clearly shows he was
11 involved from the very beginning in what was going on that led
12 up to the response in 2731.

13 THE COURT: He's already testified to that.

14 MR. STICKAN: He's testified --

15 THE COURT: All I'm suggesting is that you are
16 correct, but if he's already testified to it, and he was not
17 crossed on that, then it's not proper redirect. That's the
18 only point that is being made. And the rest is for oral
19 argument on closing.

20 MR. STICKAN: Can I have one minute, Your Honor?

21 THE COURT: Sure.

22 (Discussion had off the record.)

23 MR. STICKAN: Your Honor, I'll move on.

24 THE COURT: Okay.

09:55:59 25 (End of sidebar discussion.)

1 BY MR. STICKAN:

2 Q. Mr. Goyal, with respect to e-mails that were issued, I
09:56:07 3 think Mr. Hibey asked you about e-mails that were issued to
4 various people and whether Mr. Geisen received such an e-mail?

5 A. Right.

09:56:15 6 MR. HIBEY: Objection, Your Honor. That was not a
7 proper characterization of the question put to the witness.

09:56:21 8 THE COURT: Overruled.

09:56:50 9 BY MR. STICKAN:

09:56:50 10 Q. Let me show you what's marked as Government's Exhibit
11 36. It's already been identified and admitted. Do you see
09:57:00 12 that?

13 A. Yes.

09:57:01 14 MR. HIBEY: Objection, Your Honor, to that exhibit.
15 That's the one we just had the sidebar on.

09:57:06 16 THE COURT: No, that was 26.

09:57:12 17 MR. STICKAN: 36.

18 THE COURT: We're now on 36.

19 MR. HIBEY: The same objection, Your Honor.

09:57:29 20 THE COURT: This is the response?

09:57:34 21 MR. STICKAN: Yes, Your Honor.

22 MR. HIBEY: With respect to drafting. That's the
23 point.

09:58:04 24 THE COURT: I'm going to overrule the objection
25 having read the first paragraph.

1 MR. STICKAN: All right. Thank you, Your Honor.

09:58:15 2 BY MR. STICKAN:

09:58:16 3 Q. All right. Can you identify Exhibit 36? Do you have
4 that in front of you?

5 A. Yes. It's an e-mail from me to Mr. Geisen, Mr. Theo
6 Swim, and carbon-copied to Mr. Dale Wuokko.

09:58:41 7 Q. This was an e-mail sent on August 11, 2001, correct?

8 A. Right.

09:58:54 9 Q. In this e-mail you discussed the MOD 5 head inspection
09:58:59 10 recommendations; do you not?

11 A. Right, MOD 5.

09:59:03 12 Q. I'm sorry, the JCO --

09:59:06 13 A. JCO, yes.

14 Q. That's mentioned in this document; isn't that correct?

15 A. Right.

09:59:33 16 Q. Let me point out the second to last paragraph. This
09:59:41 17 e-mail indicates, does it not, that I indicated that we plan for
09:59:46 18 100 percent volumetric examination even if we do not commit to
19 NRC. Directors were in agreement that we should plan for it in
20 the 13th RFO. It was pointed out that we cannot clean our head
21 through the mouse holes, and Andrew Siemaszko is requesting
22 three large holes to be cut in the service structure for viewing
23 and cleaning.

24 Isn't that correct?

25 A. Right.

10:00:09 1 Q. This e-mail was sent to Mr. Geisen; was it not?

2 A. Yes, it was.

10:00:48 3 Q. Let me show you what's been marked Government's Exhibit

10:00:51 4 27. We've already identified this, and it's been admitted.

5 Do you see it? Just so you can see the exhibit sticker. Do
6 you see that?

7 A. Yes, I see 27.

8 Q. And the top header of this e-mail?

10:01:02 9 MR. HIBEY: Your Honor, respectfully, the same

10:01:04 10 objection that was made at the bench.

10:06:31 11 (Whereupon the following discussion was had at the
12 bench outside the hearing of the jury:)

13 THE COURT: Let me explain where I'm having
14 trouble. There were, as I recall, significantly more than 13
15 e-mails. You asked about 13 e-mails. And what I'm concerned
16 with is leaving the impression that those were the only e-mails
17 with the jury.

18 MR. HIBEY: 13 e-mails respecting drafting. This
19 has nothing to do with drafting. This came before the -- this
20 is a July 10th. It hadn't even come out.

21 MR. STICKAN: This is 1D information right here.

22 MR. HIBEY: It could be 1D information, 1E,
23 whatever you want to call it. The point is with respect to
24 drafting, this predates the bulletin. And that was the point I
25 made to this man.

1 MR. WISE: Judge, can we have one minute?

2 (Discussion had off the record.)

3 MR. HIBEY: The bulletin came out August 3rd. This
4 memorandum or e-mail is written on July 10th. It's a month
5 before almost. That's the point.

6 THE COURT: Well, I thought we all were under the
7 impression.-- I was under the impression that FirstEnergy and
8 its staff was aware of the coming of the bulletin and was
9 preparing for a response before August 3rd when it came out.
10 Clear that up through this witness and you can get that on for
11 redirect.

12 MR. WISE: At the risk of incurring the Court's
13 wrath, let me just say this: The reason the question was so
14 narrowly tailored to the drafting of 2731 was because it was
15 specific to that sole point. The government's put all these
16 things in. They have it for argument. The question I think,
17 if the Court goes back and reads it, you'll see the question
18 says: The 13 e-mails relate to the drafting of 2731.

19 THE COURT: I understand that. The question is,
20 is it his objection or it is John Conroy's objection? What does
21 this hit on?

22 MR. WISE: It's our objection because what the
23 government is trying to do is put these exhibits back in front
24 of the jury to show Mr. Geisen's knowledge when the question was
25 about specifically his involvement in the drafting of 2731,

1 period.

2 THE COURT: Off the record.

3 (Discussion had off the record.)

4 THE COURT: That's not the issue. I'm trying to
5 ferret out what John Conroy asked him about. And if John
6 Conroy touched on the drafting, and if John Conroy talked about
7 knowledge, then this is proper redirect.

8 MR. HIBEY: But he started the question by saying
9 "Mr. Hibey asked."

10 MR. GORDON: And he's directed these to Mr. Geisen,
11 not Mr. Cook.

12 MR. BALLANTINE: This e-mail doesn't copy Mr. Cook.
13 So to be fair, I don't think that issue relates to this exhibit.

14 THE COURT: I'm mistaken. It's Mr. Siemaszko.

15 Let's move on. This has been before the jury too
16 much. I'll sustain the objection, only because it's
17 duplication.

10:06:42 18 (End of sidebar discussion.)

10:06:43 19 MR. STICKAN: Your Honor, we have no further
20 questions.

10:06:47 21 THE COURT: You may step down, sir.

22 This is an appropriate time, ladies and gentlemen,
23 to take our mid-morning break until 20 after the hour. Please
24 remember previous admonitions not to discuss the case among
25 yourselves, nor with anyone else, or permit anyone else to

1 discuss it with you. And do not make up your mind on the
10:07:07 2 ultimate issues which you will address when you deliberate at
3 the end of the case. Thank you. Enjoy your break.

10:26:40 4 (Recess taken.)

10:29:03 5 THE COURT: Mr. Ballantine, please call your next
10:29:07 6 witness.

7 MR. BALLANTINE: The United States calls Steven
10:29:11 8 Moffitt.

10:29:13 9 (The witness was sworn by the clerk.)

10:29:27 10 - - -

10:29:27 11 STEVEN MOFFITT, DIRECT EXAMINATION

10:29:39 12 BY MR. BALLANTINE:

10:29:40 13 Q. Good morning, Mr. Moffitt.

14 A. Good morning.

15 Q. Would you please state and spell your full name for the
16 court reporter?

17 A. Certainly. My name is Steven Moffitt. Steven,
18 S-t-e-v-e-n, Moffitt, M-o-f-f-i-t-t.

10:29:54 19 Q. Mr. Moffitt, have you worked at the Davis-Besse Nuclear
20 Power Station?

21 A. Yes, I used to work there.

22 Q. What title did you hold?

23 A. I had two jobs at Davis-Besse. I was the services
10:30:07 24 director and the technical department of engineering director.

10:30:13 25 Q. I'm sorry; did I get two?

1 A. I'm struggling to remember the exact title. My first
10:30:19 2 job there I was in charge of services, services was
10:30:22 3 administration and security, and I'm trying to remember what the
4 third thing was. I'm nervous up here.
5 The second I was in the technical department, which
10:30:35 6 was the Engineering Department.
10:30:37 7 Training was the third part of the first one.
8 Q. In those capacities were you a director?
9 A. Yes, I was a director of both departments.
10 Q. I'd like to go back and have you tell the jury about
11 your background and work up to those jobs. So tell the jury
12 how you, I guess, first came in contact with anything nuclear.
10:30:57 13 A. Well, there was a recruiter in 1975 when I was going to
14 join the Navy. At that time the nuclear business was quite
15 vibrant. I joined the Navy in the nuclear program in '75. I
16 was in that for six years, from '75 to '81, working as an
10:31:16 17 operator in the propulsion plant, which was a nuclear plant that
10:31:20 18 essentially ran a turbine and made the ship move.
19 After the service I went to college on the GI bill
20 in Ohio; I went to Cleveland State for electrical engineering,
21 got my degree in electrical engineering. And then worked for
10:31:34 22 what's now FirstEnergy. It went through different companies
23 over the years; it started as CEI at that time, then Centerior,
10:31:42 24 then FirstEnergy through different mergers. My jobs were
10:31:46 25 primarily in engineering at the Perry plant from '83 to '99.

1 So I was at Perry for 16 years. I spent a good deal of time in
10:31:56 2 operations training and in the control room I was on shift for a
3 while, and I worked on our valve testing program in the
10:32:02 4 maintenance department for a short while. Out of those 16
5 years I was primarily in engineering.

6 Then I went to Davis-Besse in 1999 and, as I said,
7 at that time the training I forgot was the problem area that had
8 been identified at Davis-Besse as having problems, so our chief
10:32:21 9 operating officer instructed me to go there essentially in
10 January of '99. I was in that job until, I believe, September
10:32:30 11 of that year when our engineering director was transferred to
12 the Beaver Valley Station, and I became the engineering director
10:32:37 13 in around September of '99. And I was in that job until after
14 we discovered the corrosion in the head in March of 2002. I
15 left the company in the fall of 2002. Since then I've been
16 outside the nuclear business. I'm in sales of electrical
10:32:55 17 equipment to the power industry.

10:32:57 18 Q. The microphone you've got there is three direction. If
19 you pull it over to the side --

20 A. This way?

21 Q. That's fine. All right. Could you provide the jurors
22 a little more detail about your shift, your move from the Perry
23 Nuclear Power Plant, I think you said you worked, over to
10:33:21 24 Davis-Besse?

25 A. Yes. As we evolved as a company, going back, a little

1 bit of background to your point, Davis-Besse and Perry were two
10:33:32 2 nuclear plants, then later we included Beaver Valley. My point
10:33:36 3 bringing that up is the management of FirstEnergy changed the
4 culture to some extent to where they started transferring
5 management people around to try to have a cross-pollination, if
6 you will, of talents and perspectives and standards consistent
7 with that in -- I'm trying to remember when it was -- '99. I
10:33:58 8 guess it's probably late '98. Lew Meyers, who was at that time
9 our leader, identified the problems in training at Davis-Besse,
10:34:09 10 and although I had no specific background in training other than
11 my Navy time, told me he'd like me to go there, which I thought
12 would be a good opportunity. It was a promotion. I was a
10:34:22 13 manager; it was a director's job, and I took that job.

10:34:26 14 Q. Can you indicate to the jury what the sort of -- I don't
10:34:30 15 want to say food chain, but I just did, the levels there at
10:34:33 16 management at Davis-Besse?

17 A. Yes. The organization started with the individual
10:34:38 18 contributors, then the supervisors that would watch over the
10:34:44 19 daily activities of the people, the supervisors, managers, much
10:34:50 20 like a pyramid at many corporations. I was started at the
21 bottom. Perhaps I'll start at the top; it will be a little
22 easier.

23 The site vice-president, that was the person in
24 charge of the power plant. Working for that person were
10:35:08 25 approximately three or four directors. Under the directors

1 were probably the same number, three to five maybe, managers.
2 Then managers had supervisors, so usually there were more of
3 them, maybe six or seven. Then supervisors would typically
4 have ten to 20 individual employees. So a director, I had about
10:35:29 5 140 employees in my first job, and I think around 110 or so in
6 my second.

10:35:35 7 Q. When did you come to Davis-Besse?

10:35:37 8 A. In January of 1999.

10:35:40 9 Q. And what was the next sort of big event there at
10:35:46 10 Davis-Besse?

10:35:47 11 A. Well, we had the mid-cycle outage in '99, then we had
12 the refueling outage in 2000 were probably two big events, if
13 you will.

10:35:58 14 Q. Before the refueling outage in 2000, did you change
15 jobs?

10:36:02 16 A. Yes. Yes.

17 Q. What job did you then take?

10:36:06 18 A. That was the second of the two I mentioned. I was the
10:36:10 19 services director. Then I became the Director of Technical
20 Services, it was called, essentially in January.

10:36:16 21 Q. Who did you supervise as Director of Technical Services?

22 A. We had two main organization changes. First we had -- I
23 had Regulatory Affairs, System Engineering, and Design
10:36:28 24 Engineering, and then Regulatory Affairs went to another
10:36:31 25 department. And I started a group called Life Cycle

10:36:35 1 Management, which was more long-term engineering activities.
2 So in those jobs I had Mr. Dave Lockwood, Dave Geisen -- I'm
3 sorry. In the engineering job I'm describing, Dave Geisen and
4 Dave Eschelman. Then Mr. Lockwood went off to Regulatory
10:36:53 5 Affairs, and Joe Rogers became the Life Cycle Management
6 director.

7 Q. Which job did Mr. Geisen hold?

8 A. Mr. Geisen was the Design Engineering manager.

10:37:04 9 Q. So what did you do to prepare for the outage in 2000?

10 A. The 2000 outage, my main -- there were two main areas I
10:37:16 11 would describe. One of them was my line organizational goal.
12 The second was probably what I called the organizational
10:37:24 13 dynamics of managing the outage itself.

14 In the former, we were responsible primarily to
10:37:30 15 give modification packages so they'd be ready for the
10:37:34 16 implementation during the outage. During the outage there was
10:37:37 17 a lot of maintenance work that went on. Hundreds of people
18 would come to the power plant, and part of the activities
19 involved making changes to the power plant. So to answer your
20 question, that was probably the main part of getting ready, was
21 making sure that the packages, which are documents and drawings
22 and such things, were ready.

10:37:56 23 Then on the second part it was really to understand
24 how Davis-Besse did refueling outages and what the roles of the
25 different people and expectations and accountabilities would be

10:38:08 1 related to that dynamic.

10:38:10 2 Q. Was this your first outage at a commercial pressurized
3 water reactor?

4 A. It was my first commercial outage other than --

10:38:20 5 Q. Perry?

6 A. -- was BWR, which is a boiling water reactor.

7 Davis-Besse was a PWR, which is pressurized water reactor.

8 Q. Were there differences between the plant designs?

9 A. That reminds me, there was one significant difference I
10 learned about, I was interested in too. The BWR essentially
11 took water, boiled it in the vessel of the reactor, then the
12 boiled water, which became high quality steam, went directly to
13 turbine, which made electricity.

10:38:49 14 PWR, pressurized water reactor, operated at 2,000

10:38:53 15 pounds compared to 1,000 pounds that the boilers, as we called
16 it. Because of that, there was another main difference that

10:39:01 17 the steam generators were between in a PWR was a primary loop

10:39:07 18 and the secondary loop. And these steam generators had a lot
19 of extensive inspections in the 2000 outage. And there was

10:39:17 20 almost like a mission control set up where people from the
21 reactor designer set up a lot of monitoring communications

10:39:27 22 equipment so that as these tubes of these steam generators were
23 inspected, people back at the reactor manufacturer could weigh
24 in on the material condition of the tubes. So that was the
25 biggest difference. And then obviously the design of the

10:39:43

1 reactors are different.

2 The boiling water reactor doesn't have -- I can see
3 this model doesn't have the control rods on top of the reactor
4 but underneath the reactor because there's boiling going on on
5 it. And similarly, the reactivity, which is the gas pedal of
6 the plant, is controlled in a different fashion in a BWR versus
7 a PWR. In BWR it's controlled with what amounts to bubbles; it
8 called a void, coefficient void. Whereas in the PWR, in

10:40:19

9 addition to control rods, which are common, there's boron, which
10 is certainly part of this topic, that controls essentially how
11 much power is being made.

10:40:36

12 Q. Would you tell the jury about the 2000 outage; in

10:40:39

13 particular, anything with respect to what you might have learned
14 about the head of the reactor at Davis-Besse at that time?

15 A. Certainly. The two pieces that I learned about the
16 head, one was on the flanges, the history related to leakage on
17 the flange; then the other was the efforts by Andrew Siemaszko
18 to clean the boron, which we believe was the result of these
19 flange leakages off of the head. Those were probably two main
20 things that I learned related to the head. I'm trying to think
21 if there was anything else. Nope. That's it.

10:41:15

22 Q. Tell the jury about how you came to learn about boric
23 acid being left -- well, boric acid on the head of the reactor.

10:41:24

24 A. I remember Andrew Siemaszko coming to me when I was in
25 the area outside the plant manager's office telling me he had a

10:41:30

1 need for some support because he wasn't successful in getting
2 this reactor head cleaned. He was attempting to do a cleaning.
3 He had a tape with him that he showed me at the time in the
10:41:47 4 operations manager's office. I asked him questions about:
10:41:51 5 What is this; why is it on top of the reactor; where is it
10:41:55 6 coming from?

7 Q. I'm sorry, you said: What is this? What was it that
8 you were seeing on the tape?

9 A. There was boron, boric acid, dried boric acid that was
10 on top of the reactor head. And Andrew described -- Andrew and
10:42:07 11 others described to me this history of flange leakage that we
10:42:11 12 believe to have been the cause of that. It was viewed -- to
13 continue, Guy Campbell was my -- he was a site vice-president,
14 as I described it earlier. Guy was in the area. He was at
15 the plant manager's office, so I had him come take a look at
16 that too. We believed it didn't meet the standards that I
17 discussed about before as far as how we wanted to operate the
18 plant, to have the plant be clean. We didn't view this as a
19 technical issue because of the mindset that this was not
10:42:43 20 detrimental to this metal, the temperature, but we essentially
10:42:47 21 wanted to support -- Guy, we thought, was someone trying to do
22 the right thing.

23 I talked to people in the outage central, which was
10:42:54 24 the nerve center, if you will, of the management of the outage.
10:42:58 25 I believe I talked to the shift engineering manager, although as

1 I sit here today I couldn't swear to it. I do remember there
10:43:05 2 was a difference of opinion related to the -- really whether
3 Andrew should proceed on the reactor head. And then I remember
4 being updated that he was proceeding again. So we felt good
5 about that.

10:43:20 6 Q. And when you say proceeding, what was it that you
7 understood him to be doing?

8 A. He was cleaning the head. I learned later in more
10:43:27 9 detail that there were certain pressures of water that he was
10:43:30 10 using, which I believe was one of the issues within Engineering,
11 whether that was wise or not. But I knew he was getting the
12 support he needed. I believe the support was primarily being
10:43:41 13 needed in the area of health physics. We have had a very
10:43:48 14 robust group of people who would ensure that dose was minimized
15 in the power plant. And there was some debate, I'd call it,
16 whether the right thing to do was to continue or not.

10:44:03 17 Q. I'd like to have you take a look at two exhibits,
10:44:07 18 Government's Exhibit 1 and 15. I'll bring them up to you.

10:44:19 19 A. Okay.

10:44:20 20 Q. Actually, just for the record, is there a document up
21 here that is sitting on the stand?

22 A. Yes, there is.

23 Q. Is that a document that you brought up here?

24 A. It's got Mr. Goyal's name on it, so I would assume it's
10:44:33 25 his.

10:44:34 1 Q. I'm just going to take it off the stand.

10:44:38 2 THE COURT: Thank you.

10:44:41 3 BY MR. BALLANTINE:

10:44:41 4 Q. Starting with Government's Exhibit 12, without getting
5 into the content of the document, can you tell the jury --
6 Government's Exhibit 12?

7 A. I just want to make sure, it is 782.

10:44:55 8 Q. There should be a sticker in the lower right-hand --

10:44:58 9 A. Oh, good. Yes.

10:45:01 10 Q. Without getting into the content of the document, can
11 you explain to the Court and to the jury what it is?

12 A. This is a Condition Report. It was the way that we had
13 our people initiate corrective action at the power plant; they
14 would identify something that could potentially be a problem at
15 a low threshold. Then the management team would review this
10:45:22 16 and see that it went to the right people to be addressed.

10:45:28 17 Q. And what did this particular Condition Report relate to?

10:45:36 18 A. Number 1 related to the need to address the flange
10:45:43 19 leakage on top of the reactor with control rod drive mechanisms.

20 Q. Was this the issue that you were just describing that
21 Mr. Siemaszko had brought to you?

22 A. Yes, this one and the one next to it, 15, together were
10:45:55 23 those two pieces. This one was flanges. I'm not reading every
24 word on it. This one was the boron on the head itself. So
25 there were two -- I'll call them complimentary issues that

1 together added up to what I described.

10:46:10 2 Q. And again, I believe you may have already testified to
3 this, but what is the purpose of a Condition Report?

4 A. We, being Davis-Besse and the nuclear industry in
5 general, would initiate corrective action through a formal
10:46:26 6 process to identify what is the event or the issue that needed
7 to be resolved. So the Condition Report was used by all of the
10:46:34 8 employees. If memory serves me, I had about 3,000 of these a
10:46:40 9 year. From the initiator it would go to the control room, us,
10:46:44 10 because that's the person that was driving the plant
11 essentially, so they would take the first cut as to the
10:46:49 12 significance based on their license capabilities. Then it
13 would go broader to the management team where we would challenge
10:46:56 14 from a cross perspective, if you will, what this issue is about
10:47:01 15 and what could be its potential significance, what's its onus.
10:47:06 16 And if it was something reportable, it would be reported to NRC,
17 as an example. So that's, in general, what the Condition
18 Reports are for.

10:47:19 19 MR. BALLANTINE: Your Honor, I'd move to admit
10:47:23 20 Government's Exhibits 12 and 15 that Mr. Moffitt's been
21 testifying about.

10:47:27 22 MR. GORDON: No objection.

10:47:28 23 THE COURT: Government's Exhibits 12 and 15 will be
10:47:31 24 admitted. I believe the first day of trial we only admitted
10:47:35 25 the photos appended to written material on 12. So both

1 exhibits will be admitted at this time and may be shown to the
10:47:45 2 jury.

10:47:48 3 BY MR. BALLANTINE:

4 Q. These documents, were these things that rose to your
10:47:52 5 level?

10:47:57 6 A. I'm sorry?

7 THE COURT: It's fine.

8 A. I don't remember these two documents in particular. I
9 remember the issue. We, as I mentioned, as things percolated
10:48:09 10 up, there was an issues board and, at the outage management
10:48:13 11 central, I remember this was being tracked as an issue to be
10:48:16 12 dealt with.

13 Q. How did this issue end up getting resolved as you
14 recall?

15 A. There were two issues, and they were resolved in two
16 ways. The flange leakage was believed to have been the
17 problem, and it was resolved by repairing a number of flanges, I
18 believe around four or five flanges. The boric acid on the
19 head was resolved by cleaning the boric acid off the head, but
20 it wasn't totally cleaned off the head. It was believed -- it
21 was resolved by analysis and by intent, I call it. It was
10:48:47 22 disposition. What I mean by that, there was a belief that
10:48:51 23 having this boric acid on a 600 degree head didn't constitute a
24 corrosion issue. That was part of the belief at the time.
25 And then there was an intention in here to have it fully cleaned

1 before it was returned to service. But the reality was that
2 wasn't done.

10:49:09 3 Q. And with respect to that last piece of testimony, I'd
4 like you to have a look at Government's Exhibit 15, and I think
5 there will be a number at the bottom right corner that ends in
10:49:23 6 445. The last page.

10:49:27 7 A. I'm sorry. Yes.

8 Q. I'm going to pull that up on the monitor over here. Is
9 that the way -- you were talking about resolved by intent. Is
10 that -- is this a record of how that was resolved?

11 A. Yes. I believe -- Dave Geisen, who signed this,
12 believed this was going to be fully cleaned before it was
10:49:49 13 returned to the reactor vessel. Let me read that. I haven't
14 read it in a long time.

15 The Reactor Vessel Head will be cleaned of all
16 boron deposits following completion of CRD flange repairs by
10:50:06 17 FTI, which is Framatome. The cleaning is scheduled and will
10:50:08 18 occur first, prior to the head is moved from the head stand. No
10:50:08 19 evaluation is needed to support a Mode 4 entry, therefore this
10:50:15 20 CR can be removed from the Mode 4 restraint list, it says at the
21 top, which is consistent with being on the board and trackings.

22 Q. What does it mean that something is a mode restraint?

23 A. There's different operator modes for the power plants.
24 I think Perry had five and Davis-Besse had six, if I remember.
25 And they're kind of like gears on a car where you would go to

1 different states of how hot the plant was, how much electricity
10:50:39 2 you generated. To answer your question, that's what the word
10:50:42 3 mode means.

10:50:44 4 Depending on what mode you were in, you may
10:50:47 5 identify a condition that would preclude changing modes to the
10:50:50 6 other one. The most often used one was if you were shut down,
7 you wanted to fix things before startup. So that this one in
8 particular dealt with that mode change.

10:51:07 9 Q. You testified about the belief at the plant in 2000 that
10 there was flange leakage. You said you were present for the
10:51:15 11 1999 mid-cycle outage?

12 A. Yes.

13 Q. Were you aware at that time of any reviews that were
14 done of the flanges on the reactor vessel head?

10:51:26 15 A. No.

10:51:32 16 Q. All right. Were you on-site at the end of the 2000
10:51:39 17 outage?

18 A. No, I was at Turkey Point Station in Florida at the end
19 of the 2000 outage.

20 Q. Why was that?

21 A. The industry had an organization called INPO, Institute
10:51:54 22 for Nuclear Power Operations. I was to be a period evaluator
23 at the outage at Turkey Point, which is operated by FPL in
10:52:04 24 Florida.

25 Q. Is that Florida Power and Light?

1 A. Yes. So I went there, if memory serves, two or three
2 weeks is how long those take as an evaluator. So I was gone
3 for the --

10:52:18 4 Q. When you returned to the plant, what were your general
10:52:21 5 duties day-to-day while the plant was running?

6 A. I'll have to take some water to explain all that.

7 Q. It doesn't have to get into a huge amount of detail.

8 A. Briefly then, as a director I oversaw my management
10:52:38 9 responsibilities for my three sections. The way we did that is
10:52:42 10 as far as a team, we would have daily meetings. The daily
10:52:47 11 meetings were a lot of people, more than the jury probably, as
10:52:52 12 far as the people that would be at the morning meetings. The
10:52:56 13 reason I bring it up, it was an important part of our rhythm.
14 I might take something to the control room. The control room
15 would be the first group to talk because they were driving the
16 ship, if you will. Then the other organizations would
10:53:10 17 sequentially go around the table and talk about the affairs of
18 the day.

10:53:13 19 I bring up this meeting because that was an
20 important distributor in the engine, how we did business. In
21 addition to the daily ways we did business, we had metrics that
22 we used as a broader management team where we would have monthly
23 meetings, different color codings for how we were performing
10:53:32 24 with respect to safety, people in production. So we would have
10:53:40 25 different types of meetings.

10:53:41 1 Certainly between that there were a lot of things
2 we would do, safety committee meetings with the employees to
10:53:48 3 make sure they have the right equipment, employee organization
4 things, the modification packages. As you might imagine, there
5 was a lot of just work that goes on at the plant. Then
10:54:00 6 certainly addressing the day-to-day issues that evolve with
7 equipment; a lot of times there were broken valves, pumps,
8 things like that.

9 Then corporate --

10:54:12 10 Q. At one of these management meetings did you come to
11 learn of renewed interest in the industry with respect to
10:54:20 12 control rod drive mechanism nozzles, particularly cracking of
13 those nozzles?

14 A. Yes.

15 Q. Tell the jury about how you learned of that issue.

16 A. There was a new issue, as it was characterized to us,
17 that related to circumferential or circular cracking of the
18 control rod drive penetration into reactor head. Up to that
19 time there had been axial cracking of the head, is what I
10:54:44 20 learned subsequent to this. But at that time this was
21 something new.

22 Q. You said "the head". Were you referring to the
23 Davis-Besse head?

24 A. It's a good question. The issue was an industry issue.
10:54:54 25 It applied to Davis-Besse as well as to other pressurized water

10:54:58 1 reactors. So this was brought to our attention from another
10:55:02 2 power plant for the kind of review I described with the
3 Condition Reports where we would challenge each other as to what
10:55:10 4 does this mean to us, that kind of thing.

5 Q. Who was it who brought this issue to your management
6 team?

7 A. I remember Dave presented the issue to the management
10:55:19 8 team in a general sense, drawing pictures and describing the
10:55:25 9 J-weld and what this meant compared to normal.

10 Q. And what was your understanding of the cause of this --
11 causes of these cracks?

10:55:41 12 A. I don't know if I could testify to cause. I know
10:55:45 13 attributes that contributed to susceptibility.

10:55:49 14 Q. What were those? Were these things Mr. Geisen related
15 to you in his management meetings?

10:55:54 16 A. He was the management representative. At the
17 management meetings, I don't remember as I sit here. I couldn't
10:56:02 18 testify I remember the cause and the attributes that contributed
19 to it. My recollection of that one was more general. Here's
20 what this issue is. And then I suspect, although I can't
10:56:15 21 swear, I recall we talked about general susceptibility, how it
10:56:19 22 applies to us, that would certainly be logical.

23 Q. Did there come a time when Mr. Geisen made another
10:56:25 24 presentation about this subject?

25 A. Yes. I believe there were two, although they weld

1 together in my mind, if you will. We had a couple of guests
2 from the NRC. We went over issues that we thought would be of
10:56:38 3 interest to them when they visited the power plant. And we put
4 together more of a presentation for those. And David gave the
5 presentation on what this particular issue is, what we're doing
6 about it, how we're keeping abreast of things, what we're going
7 to do in the future.

8 Q. Were there sort of three general areas that you -- that
9 were focused on during this presentation?

10:57:01 10 A. Yes.

11 Q. What were those?

12 A. Well, the first one was susceptibility. As I mentioned
10:57:06 13 before, I'm not sure I could state a cause. But how
10:57:10 14 susceptible you are related to a time and temperature model, it
15 was called. That was similar in my mind, as I was considering
16 this, to how many miles you might have on a car. It was how
17 hot had the plant been and how long had you been running? The
18 industry had shown that those were the main factors related to
19 how susceptible you were, much as we age. The other issues
10:57:38 20 were: Where do you fit into that; are you connected with the
21 industry; and what are you going to do as far as future
10:57:47 22 inspections to make sure you don't have a problem? That's --
23 although I still can't remember both meetings, one at a time, I
24 remember we had presentations, and those were the areas at the
25 senior level where we communicated with the regulator.

1 Q. Did Mr. Geisen have a background for being the presenter
10:58:06 2 for these meetings at these meetings?

3 A. Dave was on the Steering Committee. I wouldn't know
4 that he would be a subject matter expert, but he was certainly
5 the representative on our team, as was I as Engineering
6 director, which made sense why he would be the one that
7 provided -- he is certainly a capable engineer.

8 Q. As a Steering Committee for what?

9 A. I don't remember exactly what steering committee he was
10:58:31 10 on, either EPRI or B & W Owners Group. But I remember he was
11 on a committee that essentially allocated focus for the industry
10:58:40 12 group that was involved, which issues would get which funding,
13 kind of like a deliberation congress or something.

10:58:50 14 Q. Approximately when -- I mean season of the year,
10:58:54 15 month -- were these meetings where the NRC guests, as you called
16 them, came to your plant?

17 A. It must have been in the spring or summer of 2001, but
10:59:06 18 I'm not certain. It might have been a little bit earlier.
19 I'm sure it was not after August when this bulletin came out; it
20 was before that.

10:59:17 21 Q. You mentioned a bulletin. When did you first become
10:59:21 22 aware that the NRC might be issuing a bulletin?

23 A. I don't know exactly when, but I believe in the summer
24 of 2001 we heard that there may be a bulletin. Certainly in
25 August of 2001 there was a bulletin.

10:59:35 1 Q. And what was your understanding of what a bulletin --
2 just generically what an NRC bulletin was?

3 A. A bulletin was a pretty high level document. There
4 were not many of them. The NRC would issue things, I forget
5 their exact names. Informations, letters, things like that.
6 A bulletin was more of a high-level quick-response type thing.

10:59:56 7 We had -- you had a very limited amount of time to reply to it.

11:00:00 8 So it is something -- as the name implies, bulletin.

9 Q. Do you remember how much time there was to respond to
10 the bulletin?

11 A. We had a month, 30 days.

12 Q. So when did you -- or tell us about how you came to
13 learn the bulletin had been issued.

14 A. I learned in the second half of August, roughly. I know
15 where I was at the beginning of August; I was at another -- as
11:00:26 16 often, I was at an INPO. In this case I was a mentor at the
17 D.C. Cook plant in Michigan the first week; I was on vacation
11:00:34 18 the second week, so certainly when I got back from vacation I
19 knew of the bulletin.

11:00:39 20 Q. What was your responsibility with respect to the
11:00:43 21 bulletin?

22 A. I was the Director of Engineering, so all the technical
23 information that went into the bulletin was my responsibility.

11:00:52 24 Q. Were you involved in the preparation of the bulletin in
25 any way?

1 A. I was not involved in the actual preparation of the
11:00:58 2 bulletin response, which is what I'm assuming you're referring
3 to.

4 Q. You're right. Thank you. I meant the bulletin
5 response.

11:01:04 6 So -- well, did you keep abreast of how Davis-Besse
11:01:08 7 was responding?

8 A. Yes. I remember generally a meeting that I held in my
11:01:14 9 office with the key players. I believe it was on August 28
10 because I checked my calendar the last couple years, and it was
11:01:22 11 essentially pulsing, do we have the right people involved, maybe
12 15-, 30-minute type meetings with the key players involved in
13 responding to the bulletin.

14 Q. Who were those key players?

15 A. I remember Lonnie Worley. I'm going make assumptions,
16 and I don't really want to do that. I remember about five
11:01:51 17 people in there. It would be people in Regulatory Affairs; it
18 would be people in Engineering. I remember Lonnie was there
19 because he was my peer. I would guess Dave Lockwood was there;
20 I'm not positive. I doubt Mr. Cook was there. I'm not sure
11:02:05 21 if Dave Geisen was at that particular meeting because I don't
11:02:08 22 have that kind of recollection that I could swear in the
23 courtroom to that. But I remember we had such a meeting, and
24 it was maybe five or six people. I believe we had some type of
11:02:19 25 matrix that showed; it was a very big response. We were

1 responding to it.

11:02:26

2 Q. When a communication goes out to the NRC, is there a
3 document, an internal document? Was there an internal document
4 within Davis-Besse that tracked who was responsible for
5 different parts of it?

11:02:42

6 A. Yes. A routing sheet, I call it, known as a greensheet
7 that would track, as I suggested on this matrix. Then you break
8 that down into a lot more detail, and the Regulatory Affairs
9 group would make sure that all the appropriate parties had an
10 opportunity to contribute and review the product as it went
11 through draft.

11:02:58

12 Q. I'd like you to take a look at Government's Exhibit 59,
13 which has been offered and admitted. Is that the document you
14 were referring to?

11:03:12

15 A. That's correct. This is the initial bulletin response

11:03:17

16 from September 4th of 2001.

11:03:21

17 Q. All right. I'm going to bring that up for the jury to

11:03:25

18 see. I want to ask you about -- do you have the first page up

11:03:33

19 on here?

20 A. Yes, sir.

11:03:35

21 Q. I'm going to ask you to look at -- I have it as the
22 fifth page. I don't know if you can see it on the monitor and
23 match it up with what you have in front of you.

11:03:49

24 A. Yes.

25 Q. There are two blocks that I'd like to draw your

11:03:55 1 attention to. The first is the top one. Which block is that?

11:04:04 2 What does that block --

3 A. That's Design Engineering Manager block.

4 Q. Who initialed that block?

5 A. Mr. Geisen.

11:04:11 6 Q. Then there's another block with your name on it?

7 A. Yes.

8 Q. At that point you were the Director of Technical

9 Services?

10 A. That's correct.

11 Q. Who signed off on that block?

12 A. Mr. Geisen.

11:04:21 13 Q. What were the circumstances that Mr. Geisen was signing

11:04:25 14 for you?

11:04:26 15 A. I don't know exact circumstances, but it wasn't unusual

16 to have alternates, which would be the next level in the

17 organization if someone was absent or assigned to some other

11:04:39 18 function. So I'm sure he was authorized to do this as my

11:04:42 19 alternate.

11:04:43 20 Q. What were you doing at the end of August of 2001?

21 A. At the end of August we had a couple events. We had

11:04:51 22 Senator Voinovich's visit, but more importantly, we had a INPO

11:04:56 23 evaluation. I mentioned earlier how I had gone to Turkey Point

24 for their evaluation; I was the host peer on preparation for

25 that evaluation, which was coming up for essentially the entire

11:05:06 1 month of September.

11:05:08 2 Q. You've testified, I think, that a bulletin is a pretty
3 important thing to respond to?

4 A. Right.

11:05:13 5 Q. So was there something about an INPO evaluation that
6 would take you away from sort of direct supervision of the
11:05:22 7 bulletin?

8 A. Well, the INPO evaluation, by necessity, when it's going
9 on you're not doing your regular job if you're on the evaluation
11:05:30 10 team. Some of these activities occurred in preparation for the
11 INPO. So I don't want to suggest the evaluation was at the
11:05:39 12 exact same time. My recollection at this time, I was pretty
11:05:42 13 much preoccupied with getting the site ready for the evaluation
14 team. And certainly throughout the month of September I was a
15 part of that team to Davis-Besse.

16 Q. Was an INPO evaluation a big deal?

17 A. Well, I was just speaking yesterday about it to someone.
11:06:01 18 An INPO eval. is essentially how the industry measures its
11:06:08 19 performance against its peers from a different perspective than
20 a regulatory performance. Regulatory performance is to make
21 sure you're in compliance with regulations and operating safely
11:06:21 22 for the public. INPO is intended to be a higher bar where you
23 take the best practices of your peers in the industry and apply
11:06:30 24 them to your power plant. So the INPO evaluation was a big
25 team, maybe 20 people would come to your site and be quite

1 intrusive and coming down at the working level up through the
2 executive level and finding how you're doing, then making sure
11:06:47 3 what they saw needs to get to excellence were being implemented.

4 Q. After the bulletin response went in and you were working
11:06:58 5 during the INPO evaluation, what was your expectation about what
6 would happen concerning this issue?

11:07:06 7 A. My recollection was the bulletin was framed as a bunch
8 of information request type, show us the design of your power
9 plant, your inspection history, your susceptibility -- I think
10 that was it. Anyway, it was a big document. We answered the
11 question. Then I wasn't sure how we would hear back as far as
12 the response to that in September. I certainly heard back on
11:07:35 13 September 28 when we got a call; "we" being Guy Campbell, from
11:07:42 14 Bob Saunders, was our chief nuclear officer, that Brian Sharon,
15 who was a very senior person in the NRC, Dr. Sharon had called
16 Bob Saunders and indicated that -- this is secondhand
11:07:56 17 admittedly. What Guy told me was that -- Guy Campbell -- was
18 that Dr. Sharon felt we didn't have enough information to
11:08:05 19 satisfy them as far as continued operation beyond year's end.

11:08:10 20 Q. I'd like to go back or come back to September 28 in just
21 a moment. But before we do, were you involved at all in
11:08:24 22 getting resources for Davis-Besse, outside resources for
23 Davis-Besse to prepare for the 13th refueling outage? I don't
24 need to be -- did you speak with Greg Gibbs during that time?

25 A. Certainly. Well, wait. I know I called Greg Gibbs

1 into Davis-Besse to help Mark McLaughlin. I know he said that
2 he talked to me after he was done. I don't remember talking to
11:08:47 3 Greg. And I don't know if I talked to him before. I would
11:08:51 4 assume I must have because I commissioned him to provide
5 oversight for Mark McLaughlin because I wasn't going to be in my
6 job in preparation for the refueling outage.

11:09:02 7 Q. Okay. So you hired or had --

11:09:05 8 A. Yes.

9 Q. -- Mr. Gibbs brought on site to assist with preparation?

11:09:09 10 A. Yes. Greg, I thought, was a very capable person.

11:09:12 11 Greg was my predecessor as the Engineering director, and I
12 thought he was very senior and very wise, in addition to being
11:09:19 13 knowledgeable. And I had used him before to help mentor some
14 of our people as they work together, and because I just couldn't
15 help Mark as a sponsor because of INPO, I asked Greg through
11:09:36 16 Yvonne, if I remember my admin, to come in, and then he was to
17 take a look at our level of preparation for the upcoming outage.

18 Q. Do you recall what findings he made?

19 A. I know I've read his report after we found the event.
20 And his report, the bottom line was he thought the group was on
21 the right track as far as in general. I know he expressed
22 differences of opinions internal to the group related to
11:10:03 23 modification. Those were probably the key issues I remember.

11:10:09 24 Q. All right. So now turning to September 28, what were
25 you doing on that day?

11:10:13 1 A. On that day that was the goal line of the INPO
2 evaluation. So we -- as I described earlier, INPO talks at a
3 very high level of the organization. This is what they call
11:10:28 4 their site exit. So the team assembled, and the team being the
5 INPO evaluators, and then our team being the hosts at
11:10:38 6 Davis-Besse, people including our vice-president. So on the
11:10:42 7 28th we were having our debrief, which is sometimes painful, but
8 it's a growth process if you're objective about it, but you're
9 criticized in front of your boss, essentially, as to you should
10 do this better by doing it this way. And then we respond as
11 far as where we see the issue and how we're going to address
11:11:04 12 that. I remember in general that it was a detailed inspection.
13 It was -- I certainly felt tired from the whole thing. That
11:11:15 14 was the 28th.

15 Q. Well, at some point during that meeting were people
16 called out?

17 A. I don't know if it was during the meeting or if it was
18 right while we were exchanging good luck and so longs after, but
19 it was right when people were still there, I remember Guy
11:11:29 20 Campbell and Dave Lockwood, I believe Dave Geisen, although I
11:11:34 21 can't swear to it right now, but certainly Guy and David
22 Lockwood were called out for a call with Bob Saunders. That
23 was the call I talked to earlier where Dr. Sharon had talked to
24 Bob Saunders.

25 Q. So you believe that Mr. Geisen was called out?

1 A. I think so. I think so. I'm not absolutely -- I know
2 I wasn't because I was the INPO host peer. So for whatever
3 reason, Guy didn't elect to have me on that call. He took
11:12:01 4 probably people that were closer to the issue is, what I would
11:12:04 5 guess.

11:12:05 6 Q. When the INPO -- when that meeting was over, when the
11:12:09 7 folks had left, did you later on come to learn what that call
8 was about?

9 A. Absolutely.

10 Q. And what was your understanding of what that call was
11 about?

12 A. Guy Campbell personally discussed it with me and
13 instructed me to take an enhanced role, I'll call it, with
11:12:25 14 respect to the issue of circumferential cracking. Guy had
11:12:30 15 personal knowledge on that as a technology and he believed that
11:12:34 16 the NRC and the industry had differences of opinion as far as
11:12:39 17 these growth rates and these type of details. The message I
18 got was I was to get involved personally now and, as the
19 Engineering director, come up to speed on the issue, and then
11:12:53 20 engage in the dialog at the NRC to either reach some middle
21 ground or to form one group to find that the other one was, in
22 fact, on the right path. So it was quite a challenge, and I
11:13:07 23 remember that discussion; I remember where I was.

24 Q. Why was this an important issue? What were the possible
25 outcomes that Mr. Campbell was concerned about?

1 A. Well, certainly the outage was scheduled for the year
11:13:20 2 next, 2002, in March or April of that year. The way that Guy
3 communicated it was it required the shutdown by December 31,
4 around Christmastime. So that the impact was rather
5 significant seeing as how the plant had been running well for a
6 year and a half, and we didn't -- we being the people I just
11:13:42 7 discussed Guy was involved with -- didn't feel that this issue
8 was at that level.

9 Q. I'm sorry. At what level?

10 A. As far as the crack propagation, the critical flaw
11 sizes, all these things that I learned much more about in the
12 month of October.

11:13:58 13 Q. And so what -- I mean, what's the consequence? Why is
14 shutting the plant down a big deal?

15 A. There's a lot of different pieces to that. Certainly
11:14:08 16 the fuel -- I guess step back.

17 The way we came to understand it was we had a
18 24-month fuel cycle. And the opinion at that time would have
11:14:20 19 necessitated only 18 months. So to illustrate the difference
11:14:24 20 between those views was quite severe. It wasn't just this
21 outage; it was for the next 20, 40 years you would not be
22 operating at your full tank of gas as you saw it. Then there
23 was fuel; there was cost; there was certainly morale, a
11:14:39 24 Christmas outage; there was dose. And in my opinion there was,
11:14:45 25 looking back self-critically, I believe we had -- we believed

1 our own sense of confidence. I think that was one of the
11:14:54 2 things that we didn't do well as a team at Davis-Besse.

3 The plant ran quite well. It had a history of
11:15:00 4 good reviews. And we believed it ourselves. And I know Guy
11:15:04 5 believed that about this issue. And so that was why December
6 versus April became this issue of great discussion.

7 Q. And you mentioned some other factors. I think you said
11:15:17 8 fuel cost and morale. Can you break those out a little bit for
9 the jury? What's the issue with respect to fuel?

10 A. Well, the fuel, I don't remember the exact fraction, but
11:15:23 11 take that head off the reactor, then you essentially put about a
11:15:26 12 third or a quarter or a half of the fuel that's in the reactor
13 comes out and goes to a pool. Then you get this new fuel,
11:15:34 14 which is the most costly aspect as far as expensive pieces of
11:15:39 15 the plant; it has to be fabricated and delivered in trucks and
16 unloaded into these pools of water. And so refueling outage
17 required fuel to refuel. And the availability of the fuel
11:15:58 18 wasn't certain at that time, I believe. And so that was one of
19 the factors.

20 Q. So if you went into an outage at the end of December,
11:16:07 21 2001, was there a desire to be able to turn that into a
11:16:11 22 refueling outage? Is that the idea?

23 A. Well, we certainly wanted to span an operating cycle,
24 let's say, and minimize dose on the employees. And so those
25 two aspects of it, at that time it was 18 months versus 24. It

11:16:27 1 was shut down in December and potentially again in April. So I
11:16:30 2 understood the issue as to why those were certainly relevant
3 considerations.

11:16:36 4 Q. You also mentioned morale. What was the issue over
11:16:45 5 morale?

11:16:46 6 A. I think being in tune to the people, to be hurried into
7 an outage during the holiday season certainly wasn't what may
8 have been at their best performance. I remember we worked
9 people a lot of hours in doing certain upgrades and --

11:17:03 10 Q. And then cost?

11:17:04 11 A. Well, cost, particularly if we didn't have fuel. If we
12 didn't have it, you'd run two outages. I described the outage
13 earlier. I would guess there's over 500 people that come onto
14 the site for the outage. Certainly that's not cheap. Then
15 all the effort in taking the machine apart and putting it all
16 back together adds up to a lot of money.

11:17:25 17 Q. Is there an expense associated with buying power when
18 the plant is shut down?

11:17:29 19 A. That was out of my expertise, but my general
11:17:33 20 understanding -- because that's the transmission world -- is
21 that you have certain contingency plans to have power available
22 if you should have outages, so I don't know that I'd want to
23 testify under oath related to that kind of detail.

11:17:51 24 Q. All right. So what was your reaction to the meeting
25 with Mr. Campbell? What was the next thing that happened?

11:17:58 1 A. Well, to be honest, my reaction was very disappointed
2 because I was tired, and we thought we were at the goal line of
3 this INPO eval. I realized I had to learn and lead, and I
11:18:09 4 wasn't sure that we would be making an issue of this. I hope I
5 answered your question.

6 Q. Then what did you do? I take it you pulled your --

7 A. Certainly. Well, we had set up a call on October 3rd
8 of 2001 to talk to the NRC's experts because, you know, we had
11:18:33 9 provided all this information, and their executives communicated
11:18:37 10 to ours that there wasn't an adequate amount of information to
11:18:41 11 justify the operation. And so I was instructed to try to
11:18:46 12 assemble the meeting of the minds, if you will, to ascertain
13 their basis to communicate ours and to hopefully resolve the
14 issue.

11:18:54 15 Q. So please tell the jurors about that October 3rd
11:18:59 16 telephone call.

11:19:00 17 A. I've got not as good a recollection as before. I read
18 documents over that, refreshed my memory on it. October 3rd,
19 we had three main groups on the call. It was in my office; Guy
11:19:13 20 Campbell was there with me, but I was leading the call. Other
11:19:17 21 people included Mr. Geisen, Mr. McLaughlin, Mr. Lockwood,
11:19:25 22 probably four or five other people maybe and -- on our end.
23 Framatome was our reactor designer; they were viewed as our
11:19:33 24 experts related to the principal issues involved, these cracks,
11:19:38 25 these growth rates, these critical sizes, so we had them on the

1 call. And then I remember Mr. Allen Hiser as being the expert
2 of the NRC was on the call, and some of the other NRC people
11:19:51 3 were on it.

11:19:52 4 So that call we wanted to find out a couple things.
11:19:57 5 I believe they wanted to know what the -- I believe they
11:20:03 6 understood our previous inspections to not have been
11:20:08 7 comprehensive in that the 2000 outage did not inspect all of the
8 penetrations. They wanted to know how much did you inspect.
9 That was part of it. We wanted to know, and they wanted to
10 know, what the basis for the more detailed issues were, what are
11:20:24 11 the crack growth rates that you're assuming in contrast to what
11:20:29 12 we're assuming. And then there was -- I thought the people who
13 were the experts were speaking the same language, if you will,
14 and understood what we were communicating.

15 So in some ways I felt good, but in other ways I
16 felt rushed because there was certainly a sense of time pressure
17 that, in retrospect, I wish I would have contributed to
11:20:56 18 alleviating. But that was certainly part of it, too. There
19 was: We need this information and when can we visit? And we
11:21:04 20 committed in a few weeks to have a meeting and to give
21 information in advance of that.

11:21:08 22 Q. Who brought information about -- you mentioned that the
23 past inspections were something the NRC was asking about. Who
24 brought that information into the call?

25 A. On the call David Geisen was our presenter for that

1 information to the NRC. Then Allen Hiser was talking as far as
2 his understanding from the NRC's side.

11:21:45 3 Q. At the end of that call, was there a commitment made?

11:21:49 4 You said there were documents to be produced to the NRC in a
5 meeting that was planned. What was the commitment that you all
11:21:55 6 had made?

7 A. We made a commitment to get the detail because the
8 bulletin response was viewed as being much too general. We
9 wanted to know -- "we" being the industry -- the NRC wanted to
10 know and we wanted to give them more detail related, I believe
11 exclusively, to what they were asking for related to the extent
12 of the previous inspections because there were several that we
11:22:20 13 discussed on that phone call. And so we essentially ended the
14 call saying that we were going to get some information to them,
15 and we're going to meet with them, actually sit down and talk
16 with them about it.

17 Q. Were they looking for a nozzle-by-nozzle evaluation of
18 the reactor vessel head?

11:22:39 19 A. They wanted to know essentially how many nozzles had you
11:22:43 20 looked at, which ones did you look at, and what did you see.

11:22:47 21 Q. Did you think you would be able to get them that
22 information?

23 A. Yes.

24 Q. Why?

25 A. Because I knew that we had the tapes because I knew

11:22:55 1 Andrew showed me one in 2000. I learned between the 28th and
2 the 3rd that we actually had tapes for the preceding outages,
11:23:04 3 videotapes. And I learned that we would be able to put a
4 calibrated eyeball with a new perspective because I believe the
11:23:12 5 tapes were not required nor did they really look for this. But
6 we believed we'd be able to take a look and get them that
7 information. That was the idea.

8 Q. How did you get that information without the tapes?

11:23:23 9 A. I talked with different people within our group. I
10 talked with Mr. Eschelman, Mr. Geisen, Mr. Lockwood. It was
11:23:30 11 brief, as you might guess, being the boss, between the 28th and
12 the 3rd. I was able to get their support to explain these
11:23:38 13 things to me.

11:24:03 14 Q. So the next milestone date at the end of that October
11:24:07 15 call was October 17. Was there an event between October 3 and
16 October 17?

17 A. There were visits on the 11th. We met with the NRC's
18 TA, technical aides or assistants. Then we met with some of
19 the staff of the NRC as well.

11:24:23 20 Q. Tell the jury about how that happened. How did those
11:24:26 21 meetings come about?

22 A. I really don't know how they came about. I know
11:24:33 23 that -- I know what my leadership's intention was; let me put it
24 that way. I know that Guy Campbell, who wanted to communicate
25 to the NRC that he wanted essentially a timeout, there was a

1 sense communicated to me that we were rushing this thing and
2 that we believed we had more information, and we didn't want the
3 NRC to proceed without giving us the opportunity to sit down and
4 talk. So I don't know who arranged it; certainly someone who
5 had some sort of pull, I call it. But we found ourselves
11:25:10 6 talking to the technical aides and communicating the beliefs
7 that we had at the time related to the issue. And the big
11:25:18 8 picture of that meeting was to call a -- if not a timeout, to
9 certainly at least give these guys an opportunity to talk.
10 That was the way that we believed it was.

11:25:28 11 Q. So a meeting with the -- let me back up.

12 You're referring to the NRC commissioners'

11:25:35 13 technical assistants?

11:25:36 14 A. Yes.

15 Q. So who are those people?

16 A. My understanding is that the commissioners are

11:25:41 17 appointed, I guess, by the president. I'm not sure who. But

18 they're not necessarily the technical people. So they will

11:25:50 19 have adjutants, if you will, to advise them related to the

20 technical matters because they may have different business

21 background and things like that. So that was the way I viewed

22 them, as being adjutants, to use a military term, that would be

23 advisors as far as what is the issue.

24 Q. And was a meeting with them unusual?

25 A. I really don't know. It was certainly unusual to me.

1 Q. I mean, you said that you thought it took some pull to
11:26:20 2 get a meeting like that. Why did you think that?

3 A. Well, because I think that they're very senior people.
4 That was the way I viewed it. We went in a very impressive
5 room, much like this one. People were sitting up high and we
6 were presenting information. So the impression made to me was
11:26:36 7 this was quite a meeting.

11:26:40 8 Q. Where did the meeting take place?

11:26:42 9 A. Washington -- or Rockville, Maryland.

11:26:46 10 Q. But the Washington, D.C. area?

11 11 A. Right.

12 Q. During that trip did you visit with the Congressional
11:26:52 13 delegation?

14 A. Yes.

15 Q. What was the purpose of that meeting?

16 A. That was arranged by our government-type people for
17 essentially the same basic message, was what I understood. It
18 was a little less technical in its presentation. It was
11:27:03 19 tailored more to what we perceived as their understandings and
20 what was the message as well related to the topic.

11:27:12 21 Q. All right. So how did you learn that you were going to
22 Washington -- that you were going to Rockville?

11:27:19 23 A. I'm trying to remember. I remember being excited by
11:27:27 24 it. It made quite an impression. How did I learn I was going
25 to Rockville? I guess Guy Campbell told me. It's just

11:27:37 1 speculation. It would make sense to me. But I don't really
2 remember as I sit here today.

3 Q. I guess all I'm really trying to get into is can you
4 tell us about the trip? What was the preparation that you made?

11:27:47 5 A. Oh, sure. I mentioned the time pressure and,
6 unfortunately, the preparation was pretty night-before type
7 thing. We were in a hotel; we were in an office. We had
8 someone who was adept at computers to make the presentations.
9 And we were literally tailoring these presentations for the next
11:28:15 10 day. And so that was what we were doing for the tech aides
11 because it was quite a preliminary discussion.

11:28:31 12 Q. What sort of media were you using to get your point
11:28:35 13 across?

14 A. There was a PowerPoint that Mr. Gerry Wolf -- that was
15 his assignment, was to create the PowerPoint.

11:28:45 16 Q. You say he was to create the PowerPoint. Was he
11:28:48 17 somebody who had the technical knowledge to put into it?

18 A. He was a capable individual, but he was a generalist as
19 far as his background. He was a Regulatory Affairs person.
20 So he understood the issues, but he certainly was not an expert
11:29:01 21 on the topics.

22 Q. So were there drafts of the PowerPoint? Tell the jury
11:29:06 23 about how the PowerPoint was put together.

11:29:15 24 A. It was pretty much an on-the-spot type thing. We were
25 in a room, first in an office that FirstEnergy had, then back at

1 the hotel the night before, and we were putting together the
11:29:26 2 PowerPoint pretty much fluidly. We were creating it, if I
3 remember, three or at least two PowerPoints the night of the
4 10th. It was done more by committee than by any sort of
5 disciplined or structured process, I would say.

11:29:45 6 Q. Let me have you take a look at Government's Exhibit 87.

7 MR. BALLANTINE: Your Honor, I'm not certain
8 whether this has been admitted or not.

9 THE COURT: 87?

11:29:54 10 MR. BALLANTINE: Yes, Your Honor.

11:30:00 11 THE COURT: Yes.

11:30:03 12 BY MR. BALLANTINE:

11:30:03 13 Q. Is that the final product of the preparations you were
14 talking about?

11:30:07 15 A. Yes, this is the presentation we gave to the tech aides.

11:30:17 16 Q. I'm going to show the first page of that document to the
11:30:20 17 jury -- do I have that up on the screen now -- of the
11:30:26 18 PowerPoint?

19 A. Yes, sir.

11:30:39 20 Q. So were these the main presenters at that meeting?

21 A. Yes.

22 Q. Could you tell the jury what the role of each was?

23 A. Sure. Guy Campbell, as I mentioned earlier, was
24 primarily sending a message that he wanted the opportunity to
11:30:57 25 discuss further, so he was the executive, I'd say, at this

11:31:02 1 meeting. I was the Director of Technical Services, so I was
11:31:05 2 the chief engineer. Mr. Geisen was the Design Engineering
3 Manager. Mr. Lockwood was the Reg Affairs person, which is
11:31:14 4 interface with the NRC. Then Mr. Fyfitch was certainly our
5 subject matter expert related technically to the topic.

11:31:25 6 Q. I'm going to ask you to turn three pages in to the page
7 that says: Today's Objective.

11:31:31 8 A. Right.

9 Q. Was that the overall objective of that meeting?

11:31:35 10 A. Yes. That's got the 24 months for the reason said
11 before; we thought we wouldn't be able to operate for 24 months
12 at the time.

11:31:44 13 Q. How was it you were going about to persuade them, the
11:31:47 14 technical assistants, that this was an appropriate outcome?

11:31:52 15 A. I don't know that we were trying to persuade them on a
11:31:55 16 technical basis, but we were certainly trying to indicate that
17 we believed there was more information, and we wanted an
11:32:02 18 opportunity to get their subject matter experts with ours. So
19 I don't know if I'd -- I'd say certainly we wanted to tell them
20 here's the issue, here's the bulletin response, here's the other
21 information we believe we have that's relevant. We want it to
22 be heard essentially, and then here's why we think we're okay on
11:32:22 23 this circ. crack issue.

11:32:25 24 Q. I'm going to ask you to turn to page 7. There's a
11:32:36 25 heading on the screen, Facts.

11:32:38 1 A. Yes.

11:32:42 2 Q. Who presented this slide?

3 A. I don't know who presented this particular slide. It
4 was likely either me or Mr. Geisen, but I can't swear I remember
5 a particular slide.

11:32:55 6 Q. During the preparation, where was the information for
7 this slide coming from?

8 A. David gave us the information at the meeting the night
11:33:02 9 before.

10 Q. And what kind of information are we talking about here
11 on this slide?

11:33:07 12 A. The kind of information here was back to what I
11:33:11 13 mentioned earlier. We had talked with Allen Hiser and the
11:33:14 14 others on the 3rd. So a week later we were telling the TAs
15 that we've got these tapes from the earlier outages. We had
11:33:24 16 looked back at them and believed that if we put together what we
17 saw in 2000 and in 1998, we believed at that time that those two
11:33:35 18 outages together gave us enough assurance that we had a
11:33:38 19 reasonable basis.

11:33:40 20 Q. I want to read, just to put us on the same page, the
21 first flag. It says: All CRDM penetrations were verified to
22 be free from popcorn-type boron deposits using video recordings
23 from 11 RFO or 12 RFO.

11:33:59 24 I'd ask you to give us your understanding of what
25 that sentence meant.

1 A. Well, the issue related to this, I'm not sure how much
11:34:10 2 briefing has been done. I guess we're up to speed on what
3 popcorn meant, the jurors?

4 Q. I think that's fair.

11:34:16 5 A. So the idea was when we had done these earlier
11:34:19 6 inspections -- "we" being the people at Davis-Besse -- they were
7 done with this intention that they were able to take those tapes
8 in and put a new set of eyeballs on it, if you will, look for
9 this particular type of popcorn, as they called it, boron. And
10 that between what was seen on those nozzles that could evidence
11 this boron in 2000 and '98, if you put those together, you could
11:34:45 12 have both pieces of the puzzle. You could say now we can start
13 our baseline in '98, which is what was communicated.

14 Q. I'd like to come back to that issue of baseline in a
11:34:55 15 moment. But before we do, you were talking about sort of an
16 overlay of the 11th and 12th refueling outage tapes?

17 A. Yes.

18 Q. Is that reflected in this sentence in some way?

19 A. That's what the boron was meant to convey, because we
20 couldn't see them -- you could not see everything in both. It
21 wouldn't have been logical to even go back to the earlier one,
22 could you have seen it on the last one. So that's why it said
23 this one or that one taken together.

11:35:23 24 Q. Was there a different version of this earlier, an
11:35:26 25 earlier draft?

1 A. I've seen drafts subsequent to the discovery that had
11:35:30 2 "and" in it. And I -- my memory, I actually recall the 10th in
3 2001 where we talked about that and said the way it was worded
4 and saying it verified from 11 and 12. We didn't want to
5 communicate that because that would probably imply that both of
11:35:51 6 them by themselves could stand alone. So we changed the "and"
7 to the "or," and the "or" then made it a correct statement.

8 Q. And who was feeding this information about these past
11:36:05 9 videos?

10 A. At the 10th, Mr. Geisen was our representative for the
11 people -- the plant in that area of those of us that were there.

11:36:16 12 Q. I said I wanted to come back to the baseline. Why is
13 it that a baseline was important?

11:36:22 14 A. This was really the issue, as I understood it, and it
11:36:29 15 was the one that took up the most of the time in the month of
16 October when we went through all of these discussions. And the
17 issue was mentioned, this time and temperature. In other words,
18 when would this start? So, in other words, when would you first
19 have this problem? Then in addition to that, when did you last
20 look that you could say you saw the condition so you know it
21 didn't have it then? Then you'd say, how long does this take to
22 get to a size where it would be a real problem? Then you say,
23 how big does a crack get, which was the topic, when that crack
11:37:07 24 is a problem. So with that background, when was the baseline?
25 In other words, when did it last have a good sense of assurance,

11:37:15 1 was the starting point.

11:37:16 2 Q. Did you come to argue this or did Davis-Besse come to
11:37:20 3 present this more formally to the NRC?

11:37:22 4 A. Yes. We had a meeting on the 24th, which was the
11:37:26 5 conclusion to my commitment on the 3rd on these topics.

11:37:30 6 Q. And I guess I'm asking ultimately, did you present
7 something called a Probabilistic Safety Assessment?

8 A. Absolutely.

9 Q. Is it that sort of a formal presentation of what you
10 were just describing?

11:37:42 11 A. No, because the perspective is different.

12 Q. Okay. Perhaps you could explain the difference.

13 Again, if I may withdraw the question.

14 What I'm asking about is how is this baseline issue
11:37:56 15 related to probabilistic safety analysis?

11:37:59 16 A. Well, it certainly is a factor in probabilistic safety
17 analysis. As it is -- we looked at the world in two terms: A
18 deterministic, which is like a structural mechanics type issue;
19 and probabilistic, which is a tool designed by the industry to
20 go beyond just what are the requirements, but how can you make
11:38:19 21 sure the plant is safe. So we used both those tools.

22 To answer your question, the starting gun, if you
11:38:25 23 will, related to the analysis on the probabilities and the
24 consequences as tie in with the deterministic, through that
25 aspect of it.

11:38:38 1 Q. After the meeting -- what was the result of that TA's
11:38:45 2 meeting in Washington?

3 A. It was kind of: Thank you very much for coming here;
11:38:48 4 we appreciate it. It wasn't a commitment on either end. I
11:38:52 5 think we got a sense that at least the seed was planted that we
6 wanted to be heard on the 24th. So I believe we felt generally
11:39:00 7 good because of that aspect of things.

8 Q. And then did you return to Ohio?

9 A. Yes, sir.

10 Q. What happened after you returned to Ohio?

11:39:09 11 A. Shortly after we returned, Mr. Geisen came to me and he
12 was quite sad that he had -- he told me that, in fact, we had to
13 go back earlier, that after he got the details from his staff,
14 the baseline was actually 1996 versus 1998. And I could tell
11:39:30 15 he was quite disappointed because he has a great ownership for
11:39:38 16 this. And that's what he told me on that topic.

11:39:42 17 Q. And what did you do?

11:39:44 18 A. We went to talk to Mr. Lockwood, who was our Reg Affairs
19 manager. And we told him that we now know we have to go back
11:39:52 20 to '96. And I told David Lockwood I wanted them to tell me
21 what we should do because he's our conduit with the NRC. And
22 then we gave him some time. Then we came back and saw David
11:40:04 23 again, and he told us that we needed to correct this in a
24 revision or an update, I forget the exact term. Then I called
25 Mr. Campbell to let him know as well that we had to come back.

11:40:16 1 I guess the -- at that time we felt that we were still within
2 the analysis. Even though we started that starting point
3 earlier, we still felt that we wouldn't hit that critical flaw
11:40:29 4 size. So on the highest level it didn't have an impact as to
5 the conclusion, but it certainly changed the starting point.

11:40:35 6 Q. What was the nature of your concern about upon learning
7 that this information was wrong?

11:40:42 8 A. Well, the main nature of my concern was to make sure
9 that we communicated what was right and analyzed the impact of
10 that.

11:40:54 11 Q. Was there a particular, I guess, legal term that came to
12 mind?

13 A. I asked Mr. Lockwood to make sure that we were
14 materially accurate in our presentation.

11:41:10 15 Q. All right. What was the next event that sticks out in
16 your mind with respect to this bulletin response?

17 A. We just left the 11th, so -- well, the 17th we presented
18 the information that corrected this and gave more information in
11:41:28 19 preparation for the 24th.

11:41:30 20 Q. And what -- when you say presented more information,
21 what was it that you presented?

22 A. There was -- it looked like what you gave me before;
11:41:38 23 it's the response. It looked very similar to the response to
24 bulletin --

25 Q. Was that Serial Letter 2735? You don't know?

1 A. I don't know the numbers.

11:41:55 2 Q. While we're discussing it, do you remember what -- who

11:42:00 3 was going to be signing this document?

4 A. Yes.

11:42:02 5 Q. Who was that?

6 A. Mr. Lonnie Worley was going to sign it because Mr.

11:42:06 7 Campbell was off site. He was his alternate.

8 Q. Why was that of significance to you?

9 A. Well, I counted Lonnie as my friend. And so I knew he

11:42:16 10 didn't have a technical background. So I wanted to make sure

11 that we were right. So certainly important.

11:42:26 12 Q. And right with regard to this nozzle-by-nozzle analysis?

13 A. Well, everything, but certainly including that. There

14 was a lot that went out on that, if I remember.

11:42:35 15 Q. What did you do -- did you have an interaction with Mr.

16 Geisen with respect to making sure that this document was right?

17 A. Yes.

18 Q. What did you do?

19 A. Dave and I went over -- they're either photos or

20 computer printouts. I can't remember. They were not the

11:42:52 21 tapes; that was similar to what went out later on later

22 submittal. And I challenged Dave to make sure that we had a

11:43:01 23 good sense that we knew what we were submitting because he had

24 done the oversight for Andrew Siemaszko who tabulated the

25 information. So we looked at different photos, and if the

1 nozzle was obscured, said why is this obscured? Where is the
2 flange that leaked to cause this? What does the table show
11:43:23 3 regarding what I'm seeing with my eyes? And I felt very good
4 that Dave had a good handle on what was in the photos.

11:43:34 5 Q. Is Exhibit 105 the document that is going out over Mr.
11:43:42 6 Worley's signature?

7 A. Yes, sir.

8 Q. And that's been previously admitted, so I'm going to
11:43:50 9 bring up this table.

11:44:21 10 Is this the table that we've been talking about?
11 It is on the monitor there; page 1 of 2 of Attachment 2 of that
12 document?

11:44:36 13 A. Yes, sir. That's right. 2735.

11:44:41 14 Q. You said that you had a set of photographs?

11:44:44 15 A. Right.

16 Q. You were looking at them with Mr. Geisen?

17 A. Right.

18 Q. And what were you doing with respect to those
19 photographs?

20 A. Yes, I remember. And there was also a map that someone
11:44:55 21 had made that -- a picture was a thousand words to me as well.

11:45:01 22 There's all these different terms which had a definition

11:45:04 23 section, evidence, these things, and we had these photos and

11:45:09 24 this map. The map showed how we believed at the time that the

11:45:13 25 flanges had leaked and covered the area that included some of

1 these photos. There we are. That's good.

2 So if you look at that, like, number 15, I would
11:45:23 3 find the photo perhaps, I don't remember number 15, and see that
4 it was obscured, and ask David, well, which one is this? Then
5 we would see that 15 had boron around it from this map. You
6 can see that there was this flow of this boron around it. So I
11:45:39 7 would make sure that, in fact, we didn't take credit for that
11:45:42 8 nozzle for that outage. And that was what we looked at.

9 Q. And when you were looking at photos, had you looked at
11:45:51 10 the videotapes?

11 A. I only looked with Andrew back in the 2000 time at the
11:45:56 12 tapes. He had to have them made into photos.

13 Q. What was your understanding of where Mr. Geisen was
11:46:01 14 getting information about these photos?

15 A. Mr. Geisen was -- I remember after the October 3rd
16 talking with Mr. Geisen and Mr. Eschelman and communicating that
11:46:10 17 we need to make sure we have more than one person providing the
18 information. Mr. Geisen informed me at some time, I don't
19 remember when, that he had reviewed the information. He could
11:46:20 20 essentially vouch for this information. So I believed he had
21 done the review of Andrew's work. And I know from pulsing him,
22 if you will, that every single thing I asked him, he understood.
23 And so I drew a good sense of confidence related to this, that
24 this was a good job.

25 Q. And to be clear, when you say related to this

1 information, the information is the video record of these past
2 inspections?

11:46:46

3 A. Yes.

4 Q. Was that what he was saying he could vouch for?

5 A. I don't know that he -- well, certainly it was part of
6 it. I don't remember asking him that type of detail. I've

11:46:56

7 known Dave quite well. I had confidence in him. And I asked
8 him essentially who -- you know, who reviewed this stuff, who
9 would say I was in review for Andrew? He said he did it.

10 Q. He said what?

11 A. That he could essentially vouch for it, that he had
12 reviewed it. However, he went and took the tapes and then went
13 from every one of them to every photograph. His exact
14 technique, I didn't inquire.

11:47:22

15 Q. Did you have the sense that he had looked at the

11:47:26

16 videotapes at all?

11:47:27

17 A. Yes, I had the sense he looked at the tapes and the
18 photos, the tabulations, yes.

19 Q. Did he indicate to you that with respect to some of
20 these pictures that you were looking at that there were
21 different angles of particular nozzles?

11:47:35

11:47:41

22 A. Yes, we were able to look at some of them, and he showed
23 different angles of the photos and showed this trailing of the
24 boron down the two sides that was coming from the right place.
25 So I believe -- and I do -- that he, you know, had looked at

1 these.

11:48:39 2 MR. BALLANTINE: The Court's indulgence.

11:49:04 3 BY MR. BALLANTINE:

11:49:04 4 Q. I'd like to turn back now to the -- I think it's the
5 previous page that we were looking at on the monitor. I direct
6 your attention to Attachment 2, page 1 of 2.

7 A. Yes.

11:49:25 8 Q. I'm going to enlarge the top half of it. There's a
11:49:30 9 column that talks about the 1996 inspection.

10 A. Right.

11:49:33 11 Q. There's a note that says see note 1.0?

12 A. Right.

13 Q. I'm going to switch to the next page and bring up that
14 note.

11:49:56 15 Is that the note that is referred to there on the
11:50:02 16 document?

17 A. Yes, sir.

18 Q. And it says in 1996 during 10 RFO the entire RPV head
19 was inspected. Since the video was void of head orientation
20 narration, each specific nozzle view could not be correlated?

21 A. Right.

22 Q. How did you work through that with Mr. Geisen in
11:50:18 23 preparation for Mr. Worley signing this document?

24 A. Well, we considered the fact that they had seen
11:50:23 25 everything, and it was clear; we just could not correlate each

1 individual nozzle was still acceptable, because we believed that
2 they'd seen everything. And the reason that I understood they
3 couldn't was that there were not enough verbal clues as they
11:50:39 4 went back and listened to this tape to say, I'm going in through
11:50:43 5 this mouse hole, or, I forget what the other word for it was,
6 but there was a way to draw a conclusion as to what you saw.
11:50:50 7 But what was communicated was in the entirety we knew that we
8 had looked at everything, and that we just couldn't say which
9 one was which.

10 Q. And what was Mr. Geisen's basis for saying that?

11:51:01 11 A. I don't remember that he -- essentially people were
12 still here, perhaps Mr. Goyal or someone from '96 that was given
13 the information. What happened was the different outages,
14 since there was no requirement to do these, people did them
11:51:21 15 differently. And so Andrew had to get the information through
11:51:25 16 reviewing the tapes and talking to people; I don't know who
11:51:28 17 specifically. I think it was Prasoon was there in 1996, but
11:51:32 18 I'm not -- whoever did it went through the process of talking to
19 Andrew and, I believe, Dave. I know I talked to Dave about it,
20 and that's how I learned about what this meant.

11:51:47 21 Q. After this went into the NRC, was there a follow-up
22 meeting with the NRC?

23 A. Yes, we committed to having that meeting on the 3rd.
24 And we had that meeting on the 24th.

11:51:59 25 Q. What was the nature of that meeting?

1 A. Well, that was finally the meeting that the earlier
2 timeout type meetings were setting up for the discussion. So
3 that was the first meeting that I led versus Guy. So I
11:52:14 4 remember that we did a lot of time preparing for the main
5 issues, particularly this crack growth rate, the critical flaw
11:52:25 6 size, and it was a very broad meeting. It included a lot more
7 people.

11:52:33 8 Q. I'd like you to look at Government's Exhibit 108. This
9 has been previously admitted. And if you page into about the
10 seventh page, do you see a set of slides?

11:52:52 11 A. Yes, sir.

11:52:53 12 Q. Are those the slides that were presented at the meeting
13 we're discussing?

14 A. Yes, sir.

11:52:59 15 Q. And again, you're listed at the top there as an
11:53:04 16 attendee: Steven Moffitt, Director. Under that is Mr.
17 Geisen's name?

18 A. Yes.

19 Q. What was Mr. Geisen's role at this meeting?

20 A. Well, by this time we had evolved into those two
11:53:16 21 perspectives that I mentioned earlier. There was a
22 deterministic way to look at things -- like mechanical
23 engineers -- and there was a probabilistic way. The reason I
24 say that is David represented the former and then Mr. Byrd was
25 by then involved in these meetings on the latter. He was our

11:53:31 1 probabilistic person. Then certainly the more details of the
11:53:36 2 deterministic were the real subject matter experts, which
3 included the host of people from Framatome, Dr. Peter Scott,
11:53:47 4 Alvin McKim; Stephen Fyfitch was certainly an expert on this.
11:53:55 5 So there was a lot of detail that went into this deterministic
11:53:58 6 discussion.

7 Q. How were these slides prepared?

8 A. I don't remember. I believe we had more time for
9 these. It would make sense because we had from the 17th to the
11:54:08 10 24th. I don't remember. I would hesitate to guess under
11:54:21 11 oath -- Mr. Wolf is there, so it's safe to assume that they were
11:54:26 12 similarly channeled through Gerry Wolf, who made these, and I
13 seem to recall us having some discussions with some of these
14 Framatome folks the day or the evening before as well. But I
15 recall we were not as rushed by that time because there was more
16 time to prepare.

11:54:45 17 Q. I'm going to ask you to take a look at -- I think
18 it's -- well, it's page 9 of the presentation.

19 A. Okay.

11:54:52 20 Q. This is a similar slide to the one we discussed already.
21 But it has some changes I want to go through with you. But
11:54:59 22 first of all, where did the information for this slide come
11:55:02 23 from?

11:55:05 24 A. I hesitate to say where it came from. It came from
11:55:10 25 David and the staff at Davis-Besse. I don't know that this was

1 prepared the night before like the others. So it came from the
2 plant versus Framatome for sure.

11:55:22 3 Q. Is it the deterministic side or the probabilistic?

4 A. Deterministic. This is the background information.

5 Q. And who was presenting that part of the -- who was
6 making that part of the presentation to NRC, the deterministic
7 side?

8 A. Mr. Geisen presented the deterministic side, but so did
9 the Framatome people.

11:55:42 10 Q. Okay. But I think you just testified, these weren't
11:55:46 11 Framatome facts?

11:55:47 12 A. Right. That's correct. That's correct.

11:55:54 13 Q. The 10th refueling outage has been added to that first
11:55:59 14 sentence; is that correct?

15 A. Yes.

11:56:01 16 Q. This goes back to the issue of baseline?

17 A. Exactly.

11:56:05 18 Q. So what does that -- just to go over it again, what does
19 that mean?

20 A. Well, since the issue, in addition to the time and
11:56:15 21 temperature model, is when did you put your eyes on this, or the
22 visual inspection, then how big a crack could become a problem
23 when you last put your eyes on it was the starting of. It's
24 the same description as before, except for by then we had
25 updated information based on what we learned after the 11th to

1 the 10th instead of the 11th as the starting point.

11:56:40 2 Q. All right. And I want to ask you about this first

11:56:45 3 bullet here, that a review of visual recordings as well as

11:56:50 4 eyewitness accounts served as the means of the inspection.

5 Did you have an understanding at this time of what

11:56:56 6 that meant?

7 A. I'm trying to remember. The 24th. This would be

11:57:00 8 consistent with what I mentioned earlier on that '96 -- I had to

9 find people that were there since we didn't have the

11:57:08 10 orientation. So I believe that that's what was intended to be

11:57:11 11 communicated.

12 Q. Well, what was your understanding of how these video

13 records were made?

11:57:18 14 A. My understanding at the time, I believed it was a

11:57:23 15 boroscope. I've since learned it was more of a rudimentary

16 device with essentially a straight stick with a camera on it.

11:57:30 17 But I remember thinking at the time it was this probe, much like

18 this, that would go up through the mouse hole then move around,

11:57:39 19 not looking at the nozzles necessarily at the interface but more

20 looking overall at the condition. There was no procedure; I

21 know this; that's why there were differences on how people did

22 it. And I know from looking at Andrew's it was like this worm

11:57:56 23 crawling around, which is why we made the photos; you would have

11:57:59 24 a way to correlate them.

11:58:02 25 Q. I guess I'm trying to get, what was your understanding

1 of what it meant to say there were eyewitness accounts?

2 A. We had people that were involved in the inspections.
3 People would say: I did this one. That was what I understood,
4 people did it.

5 Q. But your understanding was that the inspections were all
11:58:20 6 done with a camera up through the weep holes?

7 A. Yes, sir. That's correct. I believe that was in
8 there just to designate the kind of information, like on that
9 first column of that table. That's why I think we said those
11:58:33 10 words. But I've got to admit, I haven't looked at those words
11 in years.

11:58:40 12 Q. All right. Did -- the second. It's not on the screen
13 right now. I'm having a little bit of a problem.

11:59:11 14 What's the second star on that slide read?

11:59:14 15 A. I don't have it in front of me.

16 Q. It's Exhibit -- it's in that stack. You're going to
17 have to help me. There's a lot of stars.

11:59:28 18 The second star on page 9 of the presentation.

19 A. Yes. This is what I mentioned yesterday actually when
11:59:35 20 you asked me it. This is that AVI format. I'm not familiar
21 with that. This talked about the fact that the -- this moving
11:59:46 22 video was made into still shots, if you will, to allow for a
23 more comprehensive assessment.

11:59:53 24 Q. And what's your recollection of how that was done?

11:59:57 25 A. I don't remember the gentleman's name, but we had a very

12:00:03 1 likable and capable computer fellow over in training. And I
2 heard sometime that he was involved in taking the information
12:00:10 3 and formatting them into AVI, whatever, the pictures, if you
4 will.

12:00:20 5 Q. AVI, you believe that to be a digital file of some kind?
6 A. I'm certainly not an expert, but I read it to be PDF and
7 some of the things I know how to use on my computer. It says
8 frame by frame review, so that makes sense.

12:00:36 9 Q. So when was that done?
10 A. I would have to make an assumption, but it would seem
11 logical that it was done between October 3rd when we committed
12 to providing this, the tabulation, and -- well, I saw some of
13 them on the 17th, if my memory is good. So it was in that time
14 frame. But that is an assumption. I don't know why it would
15 have been done earlier, nor could it have probably been done
12:01:02 16 later.

12:01:03 17 Q. What was the next -- tell us about how this meeting
18 went, this October 24th?

12:01:09 19 A. That's a good question. That meeting went way over our
20 heads, to be honest, because -- I don't mean that to sound -- in
12:01:19 21 that meeting there were the Ph.D.s, the people who we hired
12:01:25 22 essentially, and the people who -- the very capable people NRC
12:01:29 23 had on their staff discussing -- the principal issue was how
12:01:38 24 fast do these things grow and how big can they get? I recall
12:01:42 25 most of the discussion centered on the first of those. Crack

12:01:47 1 propagation rate was the term that I remember. And there were
12:01:53 2 very strong feelings on both sides of the discussion.
3 I remember hearing feedback that they thought we
12:02:02 4 were professional and well prepared, so I felt good about that.
5 But I know from discussions afterwards there was more
6 information that was being requested in order to continue. So
7 all in all I felt good. We had our meeting at least, and we had
8 a chance to bring in the people that understood this very
12:02:20 9 important issue of circ. cracking. So kind of thinking back
10 and talking, but that was my take-away from that, the 24th. It
11 was a very big meeting; people from the public there, people on
12:02:34 12 conference calls and things.

13 Q. So then when you all left, what was the next step for
14 Davis-Besse?

12:02:42 15 A. I don't remember that we made any specific commitments
16 on the 24th. I know that we got a bunch of requests for
12:02:51 17 additional information about that time frame. And so I viewed
18 that as that there was a very robust information exchange. I
19 don't remember the exact sequence after the 24th. There were
20 certainly more meetings culminating in an executive meeting with
21 both parties where the issue of continued operation beyond
12:03:10 22 December 31st was concluded.

12:03:12 23 Q. Did you submit or did Davis-Besse submit additional
12:03:18 24 letters?

25 A. Yes.

1 Q. I think there's -- Exhibit 113 is up there in front of
12:03:23 2 you.

12:03:25 3 A. Okay.

12:03:33 4 Q. It's not? It's empty?

12:03:37 5 A. I don't seem to have it.

12:03:56 6 MR. WISE: We'll stipulate. It's in evidence.

7 THE COURT: He just wanted him to have it in front
8 of him.

12:04:03 9 BY MR. BALLANTINE:

12:04:03 10 Q. I wanted you to take a look at that. So was that a
12:04:06 11 subsequent response?

12:04:07 12 A. Yes.

13 Q. What's the date of that?

12:04:09 14 A. October 30.

12:04:12 15 Q. If you just flip through photographs. You were
16 referring earlier to a set of photographs you were looking at
17 with Mr. Geisen. Are those the photographs?

18 A. These are very similar. I don't know if they're
12:04:23 19 exactly the same photos, but this is the type of stuff we were
12:04:26 20 looking at on the 17th, and very similar to what I saw Mr. Hiser
21 present in Washington as far as the interfaces and things.

12:04:36 22 Q. What was it -- Mr. Hiser was presenting?

12:04:39 23 A. Perhaps that's not relevant. I'm sorry. We had had
12:04:43 24 the opportunity to watch the NRC's own presentation of this
25 topic and they used very similar photographs to the ACRS.

12:04:52 1 Q. You mentioned the ACRS. Did you appear before the
12:04:57 2 ACRS?

3 A. Yes. Yes.

4 Q. What is the ACRS?

5 A. Advisory Committee on Reactor Safeguards.

6 Q. What's the function of the ACRS?

7 A. They are like a very senior level of people who provide
12:05:10 8 an oversight to the NRC. Not like -- this is just my sense of
9 it. Unlike the tech assistants who are advisors, they're viewed
10 as a more august type of body to look at a lot of technical
11 issues. They had very senior people from the industry on.

12:05:30 12 Q. And what was your purpose of appearing before them?

13 A. Well, we were in the same essential mode where we were
12:05:38 14 discussing that we had this information from previous
12:05:41 15 inspections that we believed gave us a safe sense regarding
12:05:46 16 circumferential cracking, and we wanted to present that to them.
12:05:50 17 I don't know.

12:05:53 18 Q. I didn't hear that.

19 A. I don't know how we got in front of the ACRS, but I know
20 I certainly was hoisted up as the leader for that discussion.
21 And at that meeting we presented much the same message.

12:06:07 22 Although it was later, so I forget. We may have had the 10th
12:06:12 23 outage starting time.

12:06:14 24 Q. During that meeting did you present to the ACRS
12:06:18 25 Davis-Besse had done a qualified visual inspections?

1 A. Yes, we said we had, we believed we had a qualified
2 visual inspection in '96, that the others had additional
12:06:27 3 information.

4 Q. What, in your mind, did it mean to say you had a
12:06:30 5 qualified visual inspection?

6 A. There were definitions related to what -- and I forget
7 all the different terms. There were things like effective and
8 other types of inspections. Qualified meant that you had the
9 ability to do an accurate assessment. In other words, it's a
10 good baseline.

12:06:49 11 Q. And how did you know or how did you come to believe that
12 Davis-Besse had done a qualified visual inspection?

12:06:56 13 A. Well, I had -- I'm trying to remember when that was, but
12:07:01 14 by that time I certainly would have been recording '96 being a
15 good inspection. I remember Mr. Geisen talking to me about
12:07:09 16 that, that we believe '96 is qualified. And the other ones
17 certainly we knew we had obscured nozzles, so they were not
12:07:16 18 qualified.

19 Q. When was the date of that meeting?

12:07:19 20 A. It escapes me. I don't want to testify... It was
12:07:26 21 after the 24th, I believe. Maybe November, early November.

12:07:29 22 Q. And had you then returned to Washington for that?

23 A. Yes. Yes.

12:07:34 24 Q. Well, perhaps you don't remember the exact date, but the
25 day before then had you had other meetings with the NRC?

12:07:45 1 A. Yes. The day before we had the meeting, and it was, I
2 think, technically a public meeting. I think -- I don't know
3 if NEI -- It blurs in my mind.

4 There was a meeting. It was a public meeting.
5 The NRC was there. They were discussing the basis related to
12:08:05 6 this 18 versus 24 months. And it was a very professional-type
7 meeting where there were a lot of details. So I was at that
8 meeting representing us at a table and there were others from
12:08:18 9 FirstEnergy there as well.

12:08:20 10 Q. And after that meeting, did anyone from your group go
11 back to the NRC?

12:08:30 12 A. Yes. Mr. Geisen went to the NRC to show them the
13 videotapes themselves.

12:08:36 14 Q. Why was it that Mr. Geisen was taking the videotapes?

15 A. Well, for the entourage that we had, he was the most
12:08:42 16 qualified. We believed he was the right guy.

17 Q. And did you talk to him about what tapes he was going to
18 present?

19 A. No.

20 Q. When he returned from the meeting, what was his -- did
21 you talk to him about the meeting that he had?

22 A. I don't remember the details, but I remember he was
12:08:59 23 disappointed because he didn't feel that -- I hesitate to put
12:09:04 24 characterization. It wasn't a good feeling insofar as the
12:09:10 25 people felt it was after hours and the quality and the ability

12:09:15 1 to go through things wasn't what they wanted. There were
12:09:19 2 aspects of it that I remember he felt disappointed, and he felt
12:09:23 3 as if he hadn't had a chance to really explain things is the
4 memory I have as I sit here.

12:09:34 5 Q. I want to ask you a few questions now about what
12:09:38 6 happened subsequent to the event at Davis-Besse at the 13th
12:09:46 7 refueling outage.

8 A. Sure.

12:09:48 9 Q. Were you -- well, did -- were you aware of
12:09:53 10 investigations that were ongoing?

11 A. Yes.

12:09:57 12 Q. Did you have contact with the prosecutors in this case
13 about that?

14 A. Yes.

12:10:00 15 Q. What was that contact?

12:10:01 16 A. Well, I was a target of the investigation, so I
17 certainly had contact from that perspective. I had talked to
12:10:11 18 the Lessons Learned Task Force and lots of investigators and
12:10:15 19 talked with yourself in that role from the prosecutor
12:10:19 20 perspective.

21 Q. What did you understand it meant to be a target of the
12:10:23 22 investigation?

23 A. Target of investigation meant, like, target of hunting.
12:10:28 24 There was cross-hairs, and I was likely to be indicted or
12:10:31 25 potentially could be indicted on this.

12:10:33 1 Q. Did you come and meet with the prosecutors after the
2 time that you received a letter indicating you were a target?

12:10:41 3 A. Yes.

12:10:42 4 MR. WISE: Could we approach briefly?

5 (Whereupon the following discussion was had outside
12:12:20 6 the hearing of the jury:)

12:12:20 7 MR. WISE: I just wanted to find out where we're
8 going with this line of questioning because my worry is that the
9 suggestion to the jury is going to be that Mr. Moffitt was a
10 target, came in and talked to the prosecutors, and I guess
11 presumably was then not indicted, suggesting to the jury that
12 the government believed what he had to say. If Mr. Ballantine
13 is looking to pull a sting on an issue of whether he was at one
14 point a target -- I don't anticipate going into that, so I
15 wanted to clarify where we're going with this line of
16 questioning.

17 MR. BALLANTINE: We wanted to establish that he's
18 here not -- not as the basis of some sort of exchange with the
19 government, but he's here -- he's obviously under subpoena, but
20 there's no exchange, no deal in exchange for his testimony.

21 THE COURT: I think they have the right to ask him
22 whether there was.

23 (End of side-bar discussion.)

12:12:28 24 BY MR. BALLANTINE:

12:12:28 25 Q. What were the circumstances that you came and met with

1 the prosecutors in the case?

12:12:34 2 A. Essentially I wanted a chance to be heard and tell my
12:12:41 3 perspective on things. And I had that chance. That was the
4 circumstance.

5 Q. Did you meet -- were there conditions with respect to
6 the meeting about how things that you told the prosecutors could
7 be used?

12:12:54 8 A. I think I met at least twice in 2005, if I remember, and
9 there was something called a proffer that was -- I signed,
12:13:02 10 either I or my attorney signed.

11 Q. What was your understanding of what that agreement
12 meant?

12:13:07 13 A. A proffer meant that what I provided for the prosecutors
12:13:13 14 would not be used against me personally, but leads could be
12:13:18 15 developed, and those could be used against me or others.

12:13:22 16 Q. Leads could be developed and those could be used against
17 you?

18 A. That was my understanding. Although I must admit, I
12:13:28 19 came by that understanding just within the last two days, more
20 than I had back then. I was not really understanding that in
21 that much detail, what the proffer meant, at the time.

22 Q. Well, without -- without talking about conversations you
23 may have had with any attorney you had at the time -- were you
24 represented at the time?

25 A. Yes, sir.

12:13:49 1 Q. And subsequent to that meeting, did the government
12:13:57 2 indicate to you that your status had changed?

12:14:01 3 A. Yes. Yes.

4 Q. What was your status at that point?

5 A. I was a subject of the investigation instead of a
6 target. I certainly felt relieved at that point. I remember
7 that quite clearly.

12:14:11 8 Q. What was your understanding of what it meant to be a
12:14:14 9 "subject"?

10 A. Subject is I was certainly fair game, if you will,
12:14:19 11 whether developments occurred, but at the time there wasn't a
12:14:23 12 likelihood that I had done wrongdoing and could be prosecuted.
13 That was my understanding.

14 Q. As you're here today, is there any agreement between the
15 United States and you in exchange for your testimony?

16 A. No, I've just cooperated with the United States since
17 March of 2002 on this.

12:14:42 18 Q. Similarly, I guess, has the NRC taken action? Has the
19 NRC taken action against you?

20 A. Yes, NRC took an action against me in January of 2006.

21 Q. What was that?

22 A. It barred me from licensed activities at nuclear
12:14:58 23 facilities.

24 Q. Did you contest that?

25 A. Yes.

12:15:00 1 Q. And what were the circumstances of that?

12:15:09 2 A. Well, the NRC said I deliberately misled them, which was
3 not right. I never misled the NRC. And so I exercised my
4 right to a hearing. Things went on and on for a few months.
5 And I was happily afforded something that's called a mediation,
6 an ADR. The result of that was something I could live with.
12:15:20 7 Myself, because I would take my lessons learned from there,
8 because no one wants another Davis-Besse, I would communicate
9 that with future leaders, and in exchange I would get a stepwise
10 opportunity, should one avail itself, to get back into licensed
12:15:36 11 activities.

12:15:38 12 Q. Did you accept responsibility for --

12:15:41 13 A. I accepted responsibility by virtue of my position,
12:15:44 14 which is like the buck stops here, and the right thing to do, I
15 should.

12:15:51 16 Q. Was there any agreement between the NRC and you or you
17 and the prosecutors in this case with respect to your testimony
12:15:59 18 and the resolution of the NRC action against you?

12:16:03 19 A. No, I didn't have any sense that there was something
20 tied to that, that was communicated to me at least. I remember
21 you weren't sure when it happened when I -- when we talked.

12:16:21 22 Q. Then the last couple questions I want to ask you: When
23 was the last time you saw videos of the 2000 as-found
12:16:30 24 inspection?

12:16:34 25 A. I'm not sure if Andrew showed me the as-found or not.

1 He may well have. Andrew showed me in 2000 a tape, and I
2 remember that. Whether it was as-found, as-left, in-between,
12:16:49 3 I'm not certain.

4 Q. Did you look at videos during the meetings you talked
5 about between you and the prosecutors in this case?

6 A. Yes. Yes.

7 Q. What was your reaction to those videos?

8 A. I was disappointed. And because of the emotion of being
9 in that type of situation, I was shocked at the distinction
12:17:08 10 between what I saw. But there wasn't -- I don't know that I
11 looked at 2000. '96 certainly disappointed me because I looked,
12 like, from these pictures on here and the representations, I
13 understood '96 was a relatively clean head. From what I saw in
12:17:24 14 your offices in Cleveland, the '96 didn't -- wasn't the same as
15 my understanding and belief of what '96 looked like. So I was
16 pretty emotional, I remember, at that time about that.

12:17:45 17 MR. BALLANTINE: The Court's indulgence.

12:17:49 18 (Discussion had off the record.)

19 MR. BALLANTINE: Thank you. I have no further
20 questions for Mr. Moffitt.

12:18:00 21 MR. WISE: Judge, I'm happy to start after lunch if
22 the Court wants to take a break.

23 THE COURT: Ladies and gentlemen, rather than break
24 up cross-examination, redirect, we're going to take our
12:18:12 25 afternoon break now. We'll resume at 1:30. Please remember

1 my previous instructions: Do not read, listen to, or watch
12:18:32 2 anything touching on this case in any way. Do not talk among
3 yourselves about this case or permit anyone to talk to you or
4 you to them. Do not make up your minds on the ultimate issues
5 which you will address during deliberations at the end of the
6 case.

12:18:53 7 Enjoy your lunch hour. Take an umbrella. And
8 we'll see you at 1:30.

12:35:56 9 (Lunch recess taken.)

10 THE COURT: Mr. Wise.

11 - - -

12 STEVEN MOFFITT, CROSS-EXAMINATION

13 BY MR. WISE:

13:35:39 14 Q. Good afternoon. Mr. Moffitt, it's been suggested that
15 I speak too fast. So if I get speaking too quickly, let me
16 know.

17 A. Sure.

18 Q. You worked with Dave Geisen for a little over three
13:35:53 19 years?

20 A. That's correct.

21 Q. For two of those years you were his direct supervisor?

13:35:57 22 A. That's correct.

23 Q. Fair to say you had almost daily interactions with him?

13:36:01 24 A. That would be fair.

25 Q. Would it also be fair to say he was something of a go-to

13:36:05 1 guy for you?

2 A. Yes. That's correct.

3 Q. Someone that you relied upon?

4 A. Absolutely.

5 Q. For a variety of tasks?

13:36:11 6 A. Yes, sir.

7 Q. Based upon your work with Mr. Geisen, did you have an

13:36:16 8 opinion about his integrity?

9 A. Yes, sir.

13:36:18 10 Q. What was that?

11 A. I felt he had very high integrity.

13:36:21 12 Q. Did you have an opinion about his honesty?

13 A. Yes, sir.

14 Q. What is that?

15 A. I felt he was an honest man.

13:36:27 16 Q. Let me take you back to the 2000 outage. Do you recall

13:36:32 17 how many modifications were planned for the plant during that

18 outage?

13:36:36 19 A. I don't recall the number, but it was significant. In

13:36:40 20 other words, it wasn't one or two, I would guess. Just guess

21 it was dozens.

22 Q. "Dozens", meaning two dozen, or many more than that?

23 A. I hesitate to speculate. I know there was a very heavy

13:36:53 24 load on the design organization because I just got involved in

25 it for a number of months before the outage. I remember going

13:36:59 1 over them with Mr. Theo Swim to periodically pulse how we were
13:37:03 2 doing at getting our packages out. Also I remember our
13:37:08 3 sergeant in on the engineering firm supporting that effort as
4 well. Based on these recollections, I would guess a couple
5 dozen, three dozen, something like that.

6 Q. Were the modifications limited to just the reactor
13:37:19 7 vessel head or were they throughout the plant?

8 A. Throughout the power plant, yes.

13:37:23 9 Q. At the time that the 2000 outage occurred, you said that
10 you had recently taken a new job?

11 A. Yes, sir.

13:37:30 12 Q. And that was as the Director of Engineering Services?

13 A. Yes, sir.

13:37:33 14 Q. Dave Geisen had also recently taken a new job?

15 A. Yes, I hired Dave into that job from his role as a
13:37:41 16 supervisor in Electrical Systems Engineering to design basis.

13:37:45 17 Q. The job that he had taken over was the Manager of Design
18 Basis Engineering?

19 A. Correct.

20 Q. Is it fair to say as you went into the 2000 outage,
21 Design Basis had been a source of problems for the plant?

22 A. That was my opinion, as well as the opinion shared by my
23 colleagues, which is why there was an opportunity to have a new
13:38:09 24 manager after the previous manager had resigned. And that's
25 why I brought Dave -- posted the job. I thought he was far and

1 away the most capable individual for that job.

13:38:20 2 Q. But the problem in general terms that Design Basis had
13:38:25 3 encountered in the previous years was an inability to get
4 modifications planned in a timely fashion and completed in a
5 timely fashion; is that fair?

6 A. I would say that that's certainly fair, and I would --
7 if I could, I would add in addition I didn't feel that the
13:38:40 8 culture of support from the people in Design Engineering to the
13:38:45 9 actual people who turned the wrenches and worked within the
10 operations was where it needed to be, which is why, frankly, I
13:38:52 11 encountered some difficulty with the style of David's
13:38:56 12 predecessor in that role. I know he resigned, and I know Dave
13:39:00 13 brought those type of attributes to that job.

14 Q. Would you agree with me when Mr. Geisen assumed his
15 position in early 2002 he had a significant challenge ahead of
16 him?

17 A. He certainly did.

18 Q. During the outage, I believe you said to Mr. Ballantine
13:39:13 19 that you saw the videotape of a precleaning inspection of 12
20 RFO?

21 A. I saw a videotape that -- why am I forgetting his name?

22 Q. Andrew Siemaszko?

23 A. -- Andrew Siemaszko brought. The reason I hesitate is
24 there were different videotapes made. I've learned that there
25 was a pre, a post, a perhaps intermediate, so I hesitate to

13:39:39 1 speculate it was the pre. It still needed to have work done on
2 it, from what I saw.

3 Q. He brought it to you to seek your support in further
13:39:46 4 cleaning of the head?

5 A. Yes, sir.

6 Q. When you viewed the videotape, you said you watched it
7 with Mr. Campbell, correct?

8 A. That's correct.

9 Q. Mr. Geisen was not with you when you watched that
13:39:55 10 videotape?

11 A. Correct.

12 Q. I take it you never spoke with Mr. Geisen about what you
13 saw on that videotape during the 2000 outage, correct?

14 A. I do not believe I did. I believe I spoke with the
13:40:05 15 shift engineering managers, although my memory is not perfectly
13:40:09 16 clear. I definitely don't remember speaking to Dave about it.

17 Q. Mr. Siemaszko wanted to use a water technique to clean
18 the head?

19 A. Yes, sir, that's correct.

20 Q. Fair to say that you were impressed by Mr. Siemaszko's
13:40:19 21 initiative?

22 A. Yes. I thought he was a fellow trying to do the right
13:40:23 23 thing.

13:40:24 24 Q. Do you recall that during the 2000 outage Davis-Besse
25 had a plant-wide newsletter?

1 A. Yes.

2 Q. Was it called the "Outage Insider"?

3 A. I believe so. I'm not certain, but I believe that's
4 correct.

13:40:45 5 Q. May I approach?

13:40:51 6 Mr. Moffitt, I'm handing you what's been previously
7 marked as Defense Exhibit 5 for identification. Would you take
8 a look at that, please?

9 A. Yes, sir.

10 Q. Do you recognize what that is?

11 A. I recognize this as the "Outage Insider", Day 29 at the
12 end of April, yes.

13 Q. Does that appear to be a fair and accurate copy of that
14 document?

15 A. Yes, sir.

16 Q. And was the "Outage Insider" a document that the plant
17 produced in its normal course of business?

13:41:15 18 A. Well, during the outages obviously. We also had an
13:41:18 19 online newsletter as well. So we had two different types, one
13:41:22 20 for the outage and one for online.

13:41:25 21 MR. WISE: Your Honor, I would move Defense 5 into
22 evidence.

13:41:28 23 THE COURT: Any objection?

13:41:30 24 MR. BALLANTINE: No, Your Honor.

25 THE COURT: It will be admitted.

13:41:39 1 MR. WISE: Your Honor, if I could publish this to
2 the jury through the projector.

13:41:45 3 BY MR. WISE:

13:41:53 4 Q. Mr. Moffitt, I have up on your monitor screen what I've
5 just shown to you and what is marked as Defense Exhibit 5.

6 A. Yes.

13:42:04 7 Q. Will you take a look at that?

8 A. Okay.

13:42:06 9 Q. And let me again ask you to turn your attention back to
10 the time of 12 RFO. Do you recall recommending that Andrew's
11 work on the head be covered by the "Outage Insider"?

12 A. It wouldn't surprise me that I did that just based on my
13 nature, but I don't have a current recollection of that
14 specifically.

15 Q. Okay. And, if you will, take a look with me at Defense
16 5. Would you agree that that document is the report of Andrew's
17 efforts?

18 A. Yes.

13:42:41 19 Q. And this is a document that is distributed throughout
20 the plant?

21 A. Yes.

13:42:45 22 Q. And it is expected that all managers and supervisors
13:42:50 23 and, in fact, engineers would read this document?

13:42:53 24 A. I don't know that I'd say all because I'm under oath,
13:42:56 25 but it would be expected that it would be widely viewed. It's

1 like the newspaper for the power plant, and so just as some
2 people read it and some don't... it was widely distributed,
3 though.

4 Q. And if you look with me at the last two paragraphs.

5 A. Yes.

13:43:10 6 Q. Would you agree with me that what the "Outage Insider"
7 reported was that Andrew had successfully cleaned the head?

13:43:18 8 A. Does it start with "Next challenge"?

9 Q. Yes, sir.

13:43:34 10 A. Yes, that's what it states.

11 Q. Thank you.

13:43:38 12 MR. WISE: Your Honor, I'm done with this if the

13:43:41 13 Court wants to kill the screen.

13:43:41 14 BY MR. WISE:

13:43:43 15 Q. Now, Mr. Moffitt, you said that you went to Turkey Point
16 before the end of the 12th refueling outage, correct?

17 A. Yes, sir, that's correct.

18 Q. So you were not present at the meetings right before the
19 plant came back on-line?

20 A. That's right. We typically had a restart readiness
21 meeting where we would collectively view the power plant
13:44:02 22 activities.

23 Q. Mr. Ballantine asked you some questions about Mr.
24 Geisen's service on the Steering Committee.

13:44:08 25 Do you remember those questions?

1 A. Yes, sir.

13:44:10 2 Q. Is it fair to say that the Steering Committee was a
3 committee that focused on high level issues at many, many power
4 plants?

13:44:18 5 A. Oh, yes. It was one of those I can't recall if it was
13:44:21 6 NEI or it was the B & W Owners Group, but either one of those
7 would be accurately described. If it was NEI, it was all
13:44:33 8 reactor power plants. If it was B&W, it was the Babcock &
9 Wilcox design.

10 Q. It was not focused solely on nozzle cracking?

13:44:43 11 A. Absolutely not.

12 Q. Davis-Besse had others who were subject matter experts
13 on circumferential cracking, correct?

14 A. Certainly subject matter experts on the metallurgy and
15 the nozzles. Circumferential cracking was a new issue, as we
16 viewed it in 2001. So I hesitate to say that in 2000 someone
17 was an expert on something that was new.

18 Q. Very fair. I mean to bring you forward now into 2001.

19 A. Okay.

13:45:14 20 Q. I believe you said to Mr. Ballantine that Mr. Geisen was
21 not the plant expert on circumferential cracking.

22 A. Absolutely.

23 Q. Would you agree that Prasoon Goyal probably was?

24 A. Absolutely.

25 Q. Did there come a time that Mr. Campbell needed to be

13:45:28 1 prepared for a meeting with someone about the issue of
13:45:31 2 circumferential cracking?

3 A. I remember that time.

4 Q. Did you set a meeting for Mr. Campbell with Mr. Goyal?

5 A. Yes, with them to communicate directly so that Guy would
6 be prepared. I forget the exact meeting, but he was going to a
13:45:43 7 meeting and wanted to get more information.

8 Q. The presentations that you described Mr. Geisen
9 giving -- I believe you described two -- is it fair to say those
13:45:52 10 were high level discussions?

11 A. Yes, they were with executives from the regulator, both
12 of those meetings, executive meetings.

13:46:01 13 Q. One was with Commissioner Merrifield; is that correct?

14 A. Yes, sir.

13:46:05 15 Q. If you know, is Commissioner Merrifield an engineer?

13:46:10 16 A. I certainly don't know. He was certainly a very
13:46:14 17 intelligent person.

13:46:16 18 Q. The bulletin that we've been discussing this morning
13:46:20 19 came out in August of 2001, correct?

20 A. Yes, sir.

21 Q. And you said on direct that you were at that point
13:46:26 22 involved in an INPO review?

23 A. That's correct. Actually, not a review. I was
13:46:32 24 involved with INPO and the actual -- it was called a mentor. I
25 was a mentor at INPO at the D.C. Cook plant in southern

1 Michigan.

13:46:41 2 Q. Also preparing for an upcoming visit?

3 A. That was looming in September.

4 Q. Was that a significant event for the plant?

5 A. It was a very significant event.

6 Q. This was a session where you were being basically
7 reviewed by a peer review organization, correct?

8 A. Very large peer review. We would periodically have such
13:47:02 9 things, but this was the one every two years we would go to
10 other people's plants and they would come to us and would have
11 maybe 15 or 20, even, people, and that was what was coming up in
12 September of 2001.

13:47:16 13 Q. I take it that that upcoming visit occupied a great
13:47:22 14 majority of your time during August and even throughout
15 September, correct?

16 A. Absolutely.

17 Q. And Mr. Geisen was involved with assisting you in
18 preparing those efforts?

19 A. As plant management in general was very much gearing up
20 for that. And in addition to myself, there was a gentleman
21 named Mr. Glenn McIntyre, who was also a focal point in
13:47:42 22 preparation for the INPO evaluation.

23 Q. Is it fair to say that the initial bulletin response at
24 least, 2731, was not high on your radar screen during August and
13:47:53 25 September?

1 A. That would be a fair assessment.

2 Q. Or on Mr. Geisen's radar screen during August and
3 September?

4 A. That would be my assumption.

5 Q. You viewed your role as a director as making sure that
6 the support that was needed by Regulatory Affairs was marshaled
7 by the organization in a timely manner; is that fair?

8 A. That's fair. It sounds like my words, too, "marshal".

13:48:17 9 Q. They are your words.

10 A. Then it's more than fair. That's perfect.

11 Q. You were not involved in the construction of various
12 drafts of 2731?

13 A. That's correct; I was not.

14 Q. Or in conversations about the drafts?

15 A. That's correct. Well, I was involved in conversations
16 about the response, but not in the wordsmithing of the drafts
13:48:36 17 would be accurate.

18 Q. And as far as you know, Mr. Geisen was not involved in
19 the wordsmithing of the drafts either?

20 A. That's correct, too. I have no knowledge of him being
13:48:46 21 micromanager or doing that type of activity.

22 Q. And is it fair to say that you would not expect one of
23 your managers to be micromanaging the wording of the drafts of a
24 response?

25 A. Not only would it be fair to say that, but we tried to

13:49:01 1 inculcate a culture where the management would not be so
13:49:05 2 preoccupied with details that they would miss the big picture.
13:49:09 3 We showed movies of airplane crashes and other things where that
4 preoccupation led to a loss of a big picture. So our training
13:49:17 5 reinforced that behavior, so that if everyone was looking at a
6 switch, and no one sees the oncoming plane, there's an event.
13:49:25 7 So that was the way we wanted people to behave.

13:49:28 8 Q. You said that Mr. Geisen signed the greensheet for you
13:49:31 9 on 2731?

13:49:32 10 A. Yes, he did.

11 Q. If you had signed the greensheet, your review, I take
12 it, would have been to make sure that the people with relevant
13 knowledge to the questions that were being answered had had
14 input into the response?

15 A. That would be one aspect. I would also make sure in
16 general that the appropriate range of issues as, I understood
13:49:55' 17 them, were addressed. But that would be the principal one.

13:49:58 18 Q. And I take it that your expectation for Mr. Geisen
19 signing in your stead would be the same?

20 A. That's correct.

21 Q. And, in fact, in his role as a Design Engineering
22 Manager it would also be the same?

23 A. Absolutely.

13:50:10 24 Q. You mentioned bringing in Mr. Gibbs to assist Mr.
25 McLaughlin?

1 A. Yes.

2 Q. And it was obvious, I think, you have a very high regard
3 for Mr. Gibbs?

4 A. Yes, I do. Mr. Gibbs is a very good guy.

5 Q. He is one whose opinion, I take it, you trusted?

6 A. Yes.

7 Q. And you have valued?

13:50:27 8 A. Very much.

9 Q. Do you recall ever hearing from Mr. Gibbs that there
13:50:31 10 were problems with the accuracy of 2731?

13:50:35 11 A. Absolutely not.

12 Q. Had Mr. Gibbs sounded that alarm to you, I take it you
13 would remember it?

13:50:40 14 A. Yes, that would be a significant thing to say.

15 Q. And would have acted on it?

16 A. Yes.

13:50:46 17 Q. Let me turn your attention to September 28, which I
18 believe is the date that you learned of the call from Dr. Sharon
13:50:55 19 to Mr. Saunders.

20 A. Yes.

21 Q. You said that you were wrapping up the INPO exit
22 interviews at that point?

23 A. Yes, it was the exit team interview with a bunch of
24 people at one time.

13:51:07 25 Q. And Mr. Geisen was in that meeting as well?

1 A. Yes, he was.

2 Q. He had been involved in the events after the preceding
3 month involving INPO?

13:51:17 4 A. Right.

5 Q. I assume you had not spoken with Mr. Geisen at that
6 point about the first bulletin response?

7 A. That's correct. We were precluded from doing our normal
13:51:28 8 jobs at that time, so for me to have done that would have
9 violated the framework of what the INPO post peer was to do.

13:51:36 10 Q. But certainly Mr. Geisen had not come to you with any
13:51:39 11 concerns about the accuracy or any of the statements made in
13:51:44 12 2731?

13 13 A. That's correct. He did not.

13:51:46 14 Q. You said that you had a conversation with Mr. Campbell
13:51:50 15 after he pulled you aside to ask you to get more involved?

16 A. Yes. Well, that was the same conversation. We were
17 outside the security building, and that's where on September 28
13:52:01 18 he indicated that.

19 Q. And you described to Mr. Ballantine covering topics such
13:52:07 20 as the availability of fuel and the cost of an early shutdown,
21 things like that?

13:52:12 22 A. Those certainly became factors, but my recollection with
13:52:15 23 Guy's discussion was more along the line of his personal
13:52:18 24 expectation of me now to shift gears and to become more
25 personally involved in the technical issues. I don't know that

1 Guy and I discussed that level because we're standing out in
2 front of the security building. But the expectation was more
3 along the lines that I was to get involved in this as a topic.

13:52:38 4 Q. Was there ever a time that you were involved in a
13:52:42 5 conversation with Mr. Geisen where you suggested to him that he
6 needed to make sure that the plant stayed open because of the
7 cost or the availability of fuel or anything like that?

8 A. No.

13:52:53 9 Q. Was there ever a time that you suggested to Mr. Geisen
10 that he needed to keep the plant open in order to make sure that
11 you all stayed on schedule?

12 A. No.

13:53:02 13 Q. Did you ever know Mr. Geisen in your dealings with him
13:53:06 14 to be cavalier about issues of safety?

15 A. No.

13:53:13 16 Q. You talked about a call with the NRC that took place on
17 October 3.

18 A. Yes.

19 Q. I take it that between September 28 and October 3rd
20 there was probably a frenzy of activity?

13:53:25 21 A. That would be a good characterization. I know from my
13:53:29 22 perspective there was.

23 Q. Do you recall meetings the day before to prepare for the
24 October 3rd call?

25 A. I remember a meeting. I believe on reviewing all the

1 stuff in the last few years there may have been two. But I
13:53:40 2 remember one of them, yes.

3 Q. Do you recall a discussion about what some of the
4 language in 2731 meant?

13:53:49 5 A. I recall that we -- in preparation for the meeting went
6 over that very topic, yes.

7 Q. Do you recall that there was a section in 2731 that
13:53:59 8 talked about how a rereview of videotapes had been done?

9 A. I don't remember that on October 3rd -- or 1st, as I sit
10 here today. I know that those words were in our presentations.
11 But I don't have a current memory, as I was telling Mr.
12 Ballantine before. I can't swear I remember on October 1st or
13 2nd that --

13:54:18 14 Q. As you went into the October 3rd phone call, it was your
13:54:21 15 understanding that any rereview of videotapes that had been done
13:54:24 16 had not been done by David Geisen, correct?

17 A. That's correct.

18 Q. That he was getting information from the sources that
19 you would expect him to go to to get that information, correct?

20 A. Right. Dave was briefing me at that time going over
13:54:39 21 more the high-level information related to the topic, not
22 looking at the details.

13:54:46 23 Q. The inspections that had been done had been done by
24 Systems Engineering?

13:54:53 25 A. I believe they were done by people in Systems and what

1 became Design Engineering, both, if memory serves. I believe
2 that the '96 was done by Design. I know 2000 was Systems
3 because I was there. And I'm not sure about '98.

4 Q. When you say the '96 was done by Design, you're
13:55:11 5 referring to Prasoon Goyal?

6 A. That's correct.

7 Q. When you're referring to 2000, you're referring to
13:55:17 8 Andrew Siemaszko?

9 A. Yes, sir.

10 Q. You're also aware Framatome had been involved in the
11 actual doing of the inspections?

13:55:23 12 A. That's correct.

13 Q. And your expectation as you went into October 3rd was
14 Mr. Geisen had accumulated the information that he now possessed
13:55:30 15 about the past inspections from those who had done the
13:55:33 16 inspections; is that fair?

17 A. Right. Right. Yes.

13:55:35 18 Q. Now, on October 3rd when the call was held with the NRC,
19 Mr. Siemaszko was not present at that time?

13:55:44 20 A. I believe that's true. I don't remember everybody
21 there, but I don't believe Andrew was there.

22 Q. And your recollection is that Mr. Geisen is the one who
23 spoke to the topic of the past inspections?

24 A. Yes, sir.

13:55:55 25 Q. I take it that had Mr. Siemaszko been there, he might

13:55:59 1 have been the one to have spoken about the inspections he had
2 done?

13:56:02 3 A. Oh, yes. In fact, that's why we brought him personally
13:56:05 4 to Washington later, was to eliminate any interpretation or --
13:56:10 5 you know.

13:56:12 6 Q. On direct I think you used the phrase a couple times
7 that Mr. Geisen was representing that issue.

13:56:18 8 A. Yes, on our team that was his role for his purview, you
9 might say.

10 Q. By that I take it what you mean is that of the folks
13:56:26 11 assembled on the team, he was the one who had the most relevant
12 information?

13:56:30 13 A. Right. He had the staff that worked for him that would
14 be funneling things up through the different areas just as
13:56:37 15 Framatome was doing for their idea.

13:56:39 16 Q. Do you recall what Mr. Geisen said about the past
17 inspections on the October 3rd call?

13:56:47 18 A. I've read a lot of things over the last five years, and
13:56:51 19 I'm trying to honestly say what I recall right now. I recall
20 David talking about the fact that we had these tapes, and they
21 would allow us the opportunity to put a new set of eyes
13:57:04 22 essentially on it. There was a dialogue with Mr. Hiser where I
13:57:09 23 got the general sense that these are two characters speaking the
24 same language, if you will. They understood the details of the
25 topic at hand. To say as I sit here now that I recall, you

13:57:22 1 know, exact words, I don't think would be right. I remember we
2 talked about that we had these past inspections, and I know they
13:57:31 3 were interested in knowing more.

4 The other big piece was your crack growth rates,
5 why do we see things different. Those were probably the big
13:57:38 6 two pieces that I can remember.

7 Q. Let me be a little more specific. There was a point
8 during the conversation where the topic of the 2000 inspection
9 was addressed, the last inspection?

13:57:48 10 A. We talked about past inspections. I believe we talked
11 about '96, '98 and 2000. But I'm not certain about that. I
13:57:55 12 believe we definitely talked about '98 and 2000.

13 Q. And on 2000, Dave Geisen did not say that the entire
14 head and all of the nozzles had been inspected?

13:58:11 15 A. Right. Absolutely not. That would have caught my
13:58:15 16 attention because I knew that to be incorrect.

17 Q. And I take it that at no time during this call did Mr.
13:58:20 18 Geisen say to the Davis-Besse team alone, folks, we've got real
13:58:25 19 concerns about these inspection results?

13:58:27 20 A. No, David never said we had real concerns about the
13:58:30 21 inspection results.

13:58:31 22 Q. During that call, Davis-Besse offered to provide at some
23 point the photos and the videotapes of the past inspections?

24 A. Yes, that's correct.

25 Q. And I take it that you also have no recollection of Mr.

1 Geisen being reluctant to provide those materials?

13:58:48 2 A. That's correct.

13:58:50 3 Q. Do you recall a time at which the Davis-Besse team
13:58:55 4 inquired of the NRC what the NRC's technical basis was for their
5 belief that Davis-Besse should shut down?

6 A. Yes. We asked that question on October 3rd. That was
7 the main question that Guy Campbell had, was what's the basis
8 for that? Because their basis was only for an 18-month
13:59:15 9 operating cycle, which confounded the people that -- that know
10 more detail related to the topic.

11 Q. And you did not get an answer on that call; is that
12 fair?

13 A. That's correct.

13:59:25 14 Q. Were you told that it was predecisional?

13:59:27 15 A. Yes.

16 Q. What did you understand that to mean?

17 A. It's a good question. I believe decisional meant that
18 there's a potential for an order. And so, you know, we read
13:59:39 19 that to mean that the train was on the tracks, essentially, to
20 say it the way I understood it, but we also were concerned
21 because we didn't have access to what was supposed to be this
13:59:52 22 basis that was different than what our reactor designer was
13:59:56 23 telling us. So when it was said it was predecisional, I was
24 thinking of those two ways about that word.

25 Q. You described the October 24th meeting as a free

14:00:07 1 exchange of ideas, or something close to that?

2 A. Yes.

3 Q. Is it fair to say the October 3rd phone call was not of
4 that character in your mind?

5 A. It left a different taste in my mouth, that it was one
14:00:17 6 of a contentious nature. Although, like I said, the people who
14:00:23 7 understood these topics were communicating, and the NRC afforded
14:00:27 8 us an opportunity to give them more information. But I thought
9 that the general -- not ambience, but the way we communicated
10 was not the way I was hoping we'd communicate.

11 Q. Okay. You said you committed to give them more
12 information?

13 A. Yes.

14 Q. Including the nozzle-by-nozzle table which was produced
15 later?

16 A. Yes.

14:00:49 17 Q. And including -- I think you already said our commitment
18 to provide the photos and the videotapes?

19 A. That's correct.

20 Q. Now, after the call on the 3rd, tasks were divided among
21 the Davis-Besse team, correct?

22 A. That's correct.

23 Q. And Mr. Geisen was given essentially two main tasks, one
24 being managing the construction of the nozzle-by-nozzle table
25 and the presentation of past inspection information, correct?

14:01:20 1 A. That chartered both Davids to work out between
2 themselves. I did not tell David Geisen specifically, David,
14:01:32 3 you are to do that, because there were so many different
4 engineers involved from both their sections. I just want to be
5 careful how I respond to that. But he -- that was something he
6 was doing, yes.

7 Q. It did come to your knowledge that that was an issue
8 that Mr. Geisen --

9 A. Right.

10 Q. -- did take the lead of managing?

11 A. Yes, that's correct.

14:01:51 12 Q. He was also task force managing the beginning
14:01:55 13 preparation of this crack growth rate model you talked about?

14 A. Yes.

15 Q. I take it the crack growth rate model was a fairly
14:02:03 16 intricate model?

17 A. That was the majority of the issue.

14:02:06 18 Q. That was my next question.

14:02:08 19 A. Right.

20 Q. You guessed ahead of me.

21 A. Sorry.

22 Q. No, that's fine.

23 But let me turn you for a second back to the past
24 inspection information. I take it you understood coming out of
14:02:19 25 the October 3rd call that Mr. Siemaszko was going to be doing

14:02:23 1 the -- for lack of a better word, the ground level work on
14:02:29 2 compiling the nozzle-by-nozzle table?

3 A. Yes, that's correct.

4 Q. And he was assigned that task because he had, in fact,
14:02:34 5 done the last inspection?

6 A. Right.

14:02:36 7 Q. He had also been sent to Arkansas to watch Arkansas do
14:02:42 8 an inspection, correct?

9 A. I know he went to another plant, but I don't know for
10 sure it was Arkansas. I wouldn't doubt it. It was the same
14:02:49 11 kind of PWR, so that seems correct.

12 Q. In plant lingo is it fair to say Mr. Siemaszko owned the
13 head?

14 A. Yes. He was the reactor system engineer, and that was
15 his -- we encouraged ownership of the different components
16 throughout the plant on our system engineers. Then we had a
17 discipline perspective on our design engineers. And that was
14:03:12 18 his system.

14:03:13 19 Q. Now, you had said that during the 2000 outage you had
20 been impressed with Mr. Siemaszko's initiative.

21 A. Yes. That's correct.

22 Q. I take it that when we're talking about October 2001 you
23 still were impressed with his initiative?

14:03:26 24 A. Yes.

25 Q. Had no doubts about his integrity?

1 A. No, I had no doubts about his integrity.

2 Q. No doubts about his competence?

3 A. No, I had no doubts about his competence. He was hard
14:03:35 4 to understand as he spoke, but he came to me with resolutions of
14:03:38 5 topics, so I actually kind of liked the guy as a person.

6 Q. And when that task was assigned to Mr. Siemaszko, that
7 did not trouble you?

8 A. No. No.

9 Q. And I take it that your expectation for what was going
10 to happen with the construction of the nozzle-by-nozzle table
14:03:53 11 was that Mr. Siemaszko was going to do the reviews and Mr.
12 Geisen was going to check his work?

13 A. I didn't -- let me answer that in two questions. I
14 expected that Andrew was doing the work. And I recall going to
14:04:06 15 his work station and seeing him busily about his business. I
16 didn't prescribe that, Mr. Geisen -- that, Dave, you are to
17 check this work. So I think that's what you were asking me.

18 Q. Yeah. I was.

14:04:21 19 And let's talk about October 11, then we'll get
20 back to the conversations that preceded October 17th. Okay?

14:04:28 21 A. Okay.

22 Q. You described a meeting with the commissioners'
14:04:32 23 technical assistants?

24 A. Yes.

14:04:34 25 Q. You were not entirely clear, I don't think, on whose

1 idea it was to meet with the technical assistants.

2 A. Well, it was someone higher up than Dave Geisen and me
14:04:45 3 for sure. And I don't -- I interfaced with my manager, which
4 was Guy Campbell. And whose idea it was, it wasn't us, I know
5 that.

6 Q. Mr. Geisen was not setting meetings with the tech
14:05:00 7 assistants?

8 A. Absolutely not. I don't know who he'd call to do that.

9 Q. Or congress?

10 A. No.

14:05:09 11 MR. WISE: Your Honor, if I could have the Court
14:05:11 12 turn the projector back on.

14:05:11 13 BY MR. WISE:

14 Q. I want to show you, Mr. Moffitt, a page from
14:05:16 15 Government's Exhibit 87, which I believe Mr. Ballantine showed
14:05:20 16 you on direct.

14:05:21 17 A. Yes.

14:05:22 18 Q. This was a slide that was presented to the technical
14:05:28 19 assistants during the October 11 meeting, correct?

20 A. Yes, that's correct.

21 Q. Let me ask you this as a preliminary matter. The
14:05:35 22 PowerPoint slides that were used during those presentations, did
14:05:39 23 they capture all of what was presented, or were they intended to
24 be a guide for discussion?

25 A. No, these were like an outline in a school paper. This

1 was what were the topics, then we wanted to have a dialogue
14:05:52 2 about each of those topics.

3 Q. And Mr. Ballantine drew your attention to the first
4 flag, which was the sentence that reads, "All CRDM penetrations
5 were verified to be free from popcorn-type boron deposits using
14:06:06 6 video recordings from 11 RFO or 12 RFO."

14:06:10 7 A. Right.

8 Q. And you discussed the editing of this slide; do you
9 remember that?

10 A. Yes, I do.

11 Q. What was edited was the last line, the 11 RFO or 12 RFO?

12 A. That's correct.

13 Q. The initial slide said 11 and 12 RFO?

14:06:24 14 A. Right. I remember that from the 10th.

15 Q. The edit to that slide was suggested by Mr. Geisen,
14:06:30 16 correct?

17 A. I believe that's correct. I'm not absolutely certain,
18 but that would seem quite logical.

19 Q. And your understanding was it was based on what he
14:06:38 20 understood the videos to show based upon his communications with
14:06:41 21 Mr. Siemaszko?

22 A. Absolutely.

14:06:43 23 Q. The initial slide, when it said 11 RFO and 12 RFO,
14:06:48 24 suggested that the 12th RFO video standing alone supported a
25 statement that the penetrations were verified to be free?

1 A. Right. And we knew that wasn't right because I was
14:07:00 2 there.

3 Q. So in essence the change, the edit that was made,
14:07:04 4 weakened the language of the slide, correct?

5 A. I'm hesitant to say weakened. I think it made it
14:07:10 6 accurate because the way it was worded could lead someone to
14:07:14 7 draw the wrong conclusion that we verified them all and both.
14:07:17

8 Q. It could lead someone to conclude that 12 RFO was better
9 than it actually was?

10 A. Right. Right.

14:07:27 11 MR. WISE: Thank you, Your Honor.

14:07:35 12 BY MR. WISE:

13 Q. And just so that we're clear, there was not any sense on
14 your part on October 11th that Mr. Geisen was suggesting this
15 change based on Mr. Geisen's having viewed the videos, correct?

14:07:47 16 A. That's correct.

14:07:50 17 Q. Now, at some point after the meeting on the 11th, you
18 described that Mr. Geisen came to you, and I believe you said
19 that he was upset or disappointed?

20 A. Yes.

21 Q. And what he said to you was that the data for the
22 nozzle-by-nozzle table was either complete or near complete,
23 correct?

14:08:10 24 A. Could you repeat that? You do speak quickly. You gave
25 me a good preview.

14:08:16 1 Q. I'm trying my best.

2 What Mr. Geisen said to you when he came to you was

14:08:22 3 that the data for the nozzle-by-nozzle table was now complete?

14:08:29 4 A. Data was now complete. I don't remember that -- that

5 part of it right after October 11th about that part. It's

14:08:38 6 logical because he came to realize we had to go back to '96,

7 which would go hand-in-hand with that piece of it.

14:08:45 8 Q. And this is the time frame that Mr. Siemaszko was

9 preparing the nozzle-by-nozzle table, right?

10 A. Yes. That's correct.

11 Q. And do you recall that that table was -- it was filed

12 with the NRC as part of Serial Letter 2735?

14:09:00 13 A. Could I see it? I mean, I don't doubt your numbers.

14:09:05 14 Q. You'll have to take me on faith for this one.

14:09:08 15 A. I accept it subject to checking on it.

16 Q. When Mr. Geisen came to you and said that we had to go

17 back to 1996 --

18 A. Right. Yes. We had to go back to '96.

19 Q. -- did he at any point say to you, let's not tell

20 anybody about this?

14:09:26 21 A. No. It was the opposite.

14:09:28 22 Q. What did he say to you?

14:09:30 23 A. Dave was very disappointed because he made a mistake to

24 me. And I think he valued our relationship, and he felt bad

25 that he communicated something wrong. Rather than saying, let's

14:09:41 1 not tell people, we went to talk to the right people to tell
2 them right away.

3 Q. You never got the sense that he was trying to cover up
4 his mistake?

5 A. Certainly not.

6 Q. Or conceal it from either you --

14:09:51 7 A. No.

8 Q. -- or from the NRC?

9 A. That's why he came to me.

14:09:57 10 Q. The effect of the change was that the analysis now had
11 to go back to 1996?

12 A. That's correct.

14:10:07 13 Q. At that time, we're talking around the October 17th

14:10:12 14 time, I'm just trying to get a sense of how Mr. Geisen

14:10:16 15 communicated his mindset. Was there any suggestion that he

14:10:23 16 believed that Mr. Siemaszko had deceived him?

14:10:28 17 A. No.

14:10:29 18 Q. Is it fair to say that Mr. Geisen's sense was that Mr.

14:10:33 19 Siemaszko had done the data review and had come up with a result

20 that was different from what they had initially expected to

14:10:40 21 find?

22 A. Yes. That's fair to say that.

23 Q. And is that what was communicated in 2735 with the

24 table?

25 A. Yes. That's why we updated the previous one, to show

1 that we had to go back to '96.

14:10:54 2 Q. Now --

14:10:56 3 A. In fact, I don't know if the previous one talked about
4 that. I'm struggling.

14:11:03 5 Q. Okay.

6 A. The October 17th I think was the first time we got into
14:11:08 7 that level of detail that talked about starting points and that.
8 So --

14:11:12 9 Q. But certainly there had been previous representations,
14:11:15 10 for example, on the phone call --

11 A. Right.

14:11:17 12 Q. -- on the 3rd that the 2000 inspection was 100 percent
14:11:25 13 except for some number of nozzles on top of the head?

14:11:29 14 A. Are you saying for what was cleaned or what was
15 inspected?

16 Q. What was inspected.

14:11:34 17 A. What was inspected, I don't know that we communicated
14:11:41 18 except for a few on the top of the head were inspected in 2000.
14:11:45 19 Because there -- like the map, there was more boron that
14:11:50 20 precluded that inspection. I want to make sure I'm very clear
14:11:53 21 because I think people have confused what was clean versus what
22 was inspected and what was a nozzle and what was a flange. But
23 I think that the -- we were saying that it was cleaned except
24 for what was up at the top, in reviewing things in the last five
25 years. But I think at that time we weren't saying there were

1 only five.

14:12:14 2 Q. Certainly the table at least in 2735 presented a fuller
14:12:18 3 picture of what you knew, believed to be the situation?

4 A. It literally had a picture, the one that Mr. Ballantine
14:12:24 5 showed that was the circle that showed where the flow came and
6 what was -- that was the idea, was the picture.

14:12:31 7 Q. I want to focus you now on your conversations with Mr.
8 Geisen about his verification of Mr. Siemaszko's work. Do you
9 remember that testimony?

14:12:41 10 A. Yes.

14:12:42 11 Q. You said that at some point you showed Mr. Geisen still
12 pictures?

13 A. Yes.

14 Q. Those were taken from -- your understanding was from the
14:12:51 15 videotapes of the inspections?

14:12:53 16 A. That's correct.

17 Q. I believe you said they were similar to the photographs
14:12:57 18 which were later included with one of the serial letters?

19 A. That's right.

20 Q. And when you went to Mr. Geisen, your purpose was to try
21 to gain a better understanding of how the calls were being made
14:13:10 22 in the document that was going to be filed?

23 A. Right. I felt that I should make sure that we had done
24 a good second check of Andrew's work.

25 Q. Is it fair to say that before that conversation with Mr.

1 Geisen you had not done a first check of this work?

14:13:26 2 A. I hadn't, no, that's correct.

14:13:28 3 Q. And you didn't at that point have an understanding of

14:13:32 4 either what Mr. Siemaszko was looking at, right?

5 A. Right -- well, I want to be careful with that question.

14:13:40 6 I'm not sure I understood it.

7 Q. You hadn't sat down and looked at pictures from the

14:13:44 8 video before this?

14:13:45 9 A. That's correct.

10 Q. And you hadn't discussed with Andrew Siemaszko how he

14:13:48 11 was making his calls?

14:13:49 12 A. I did walk over at some time to Andrew's office, I said,

14:13:53 13 where he was working. I'm struggling to make sure I've got the

14 14 time frame right, Mr. Wise. I'm not sure when you're talking

15 about.

16 Q. I'll try to be more clear. My understanding, correct

14:14:02 17 me if I'm wrong, is we're talking about a conversation you had

18 with Mr. Geisen right before the 2735 document with the table

14:14:12 19 was filed.

14:14:13 20 A. Okay. Good. Thanks.

21 Q. That was the document Mr. Worley was going to sign?

22 A. I remember that. I remember where I was and how we

23 went over things.

24 Q. That's why you wanted to check to make sure Mr. Geisen

14:14:23 25 had reviewed Andrew's work?

1 A. Right.

14:14:25 2 Q. Now, what Mr. Geisen explained to you during that
3 conversation was the methodology that Andrew Siemaszko was using
14:14:33 4 in constructing a table, right?

5 MR. BALLANTINE: Objection, hearsay.

14:14:44 6 MR. WISE: It goes to the basis for his knowledge
14:14:46 7 of what he was testifying about, his conversation with Mr.
8 Geisen.

14:14:53 9 THE COURT: I think it comes under the general
10 global exception. Overruled.

14:14:58 11 BY MR. WISE:

14:14:58 12 Q. Mr. Geisen explained to you what Mr. Siemaszko's
14:15:02 13 methodology had been, right?

14:15:06 14 A. I believe that's correct, because I remember that by
15 that time, since I had still photos, that it had been explained
16 to me, whether it was Dave on October 17 or Dave or someone
14:15:18 17 between the 3rd and the 17th, I can't swear under oath I
14:15:22 18 remember, but I certainly remember that when we had our review
14:15:25 19 together, David Geisen and me, we had other people in Dave
14:15:30 20 Lockwood's office. And I had these pictures, and we had the
21 table, and we had the map. And we went over that to see if it
14:15:37 22 just made sense. And he was able to communicate how they came
14:15:42 23 to the conclusions that were represented in the tables.

24 Q. He was discussing things with you like whether there was
14:15:50 25 boron on the uphill or downhill side?

14:15:52 1 A. Yes.

2 Q. He was discussing things like whether you saw evidence
3 of flange leakage on the upper part of the nozzle?

14:15:58 4 A. That's correct.

14:15:59 5 Q. He was discussing things like whether a boron deposit
14:16:03 6 appeared to be like popcorn or appeared to have rolled down the
14:16:06 7 head?

8 A. Right.

14:16:07 9 Q. At no point during this discussion did Mr. Geisen tell
10 you, I, Dave Geisen, have looked at these videotapes, did he?

14:16:16 11 A. That's correct.

14:16:17 12 Q. And your understanding was that he was verifying
13 Andrew's work based on his review with Andrew of Andrew's
14:16:27 14 methodology?

15 A. Yes. That's right.

14:16:34 16 Q. Now, you discussed the October 24th meeting that you
14:16:39 17 described as a more free flow of information?

18 A. Yes.

14:16:42 19 Q. Do you recall a request at that meeting from the NRC
14:16:47 20 saying they really wanted to see the videotapes and the photos?

14:16:52 21 A. On the 24th? I think we had sent them the photos by
22 the 24th, if memory serves.

23 Q. I think you are right.

24 A. So I don't think that that would be logical.

25 Q. It would not.

1 Do you recall a request for the videotapes on that
2 day?

14:17:07 3 A. I don't remember on that day specifically.

14:17:10 4 Q. But you do remember at some point before the November
14:17:13 5 8th presentation of the videos that the NRC said we would like
6 to see these videos?

7 A. Yes. That's correct.

8 Q. Do you recall at any point when that request was made
9 Mr. Geisen being resistant at all to showing the videos?

10 A. No, certainly not.

14:17:28 11 Q. Let's fast forward to November 8th if we could. That
12 was the day that I believe you described that Mr. Geisen showed
13 the videos to the NRC in the evening?

14:17:39 14 A. Yes.

15 Q. Do you recall that the meeting was set up at the last
16 minute?

14:17:46 17 A. I don't remember how it was set up at the last minute.
18 I know people stayed after work because I remember meeting a lot
19 of accounts at that aspect of it. I know we were on quite a
14:18:04 20 whirlwind tour. So I wouldn't doubt that it was set up at the
21 last minute.

22 Q. In fact, your team was actually in Washington D.C. and
23 Rockville for an already-set meeting of the staff?

24 A. Yes. We were there, if memory serves, for a couple
25 meetings; one the same night that Mr. Geisen took the videos to

1 the NRC, and the next day I believe we had meetings. That might
2 have been the ACRS that I talked about earlier. I think, if
14:18:30 3 memory serves, that was the next day. So there were several
14:18:33 4 meetings with this presentation between them.

5 Q. Do you recall that Mr. Geisen arrived to the Washington
6 D.C. area after the rest of the team?

7 A. I really can't recall that.

14:18:42 8 Q. Okay. Do you recall that he was given the videos by Mr.
14:18:47 9 Lockwood?

10 A. I've read that, but I can't swear under oath I recall
14:18:51 11 that happening. I have no reason to doubt it.

14:18:54 12 MR. HIBEY: It's quite logical.

13 BY MR. WISE:

14 Q. Do you have any recollection of Mr. Geisen bringing the
14:18:59 15 videos from Ohio out to Washington?

16 A. No, I wasn't involved in that kind of detail, so I don't
17 have recollection of --

14:19:09 18 Q. Is it fair to say it was unusual to meet with the NRC
14:19:12 19 after hours?

14:19:13 20 A. Yes. It would be unusual.

14:19:16 21 Q. When Mr. Geisen was told that he was going to be the one
14:19:19 22 to show the videos to the NRC that evening, I take it that he
14:19:23 23 did not resist or refuse?

24 A. No. He was a trooper. That's probably a good
25 characterization of Dave in general.

14:19:32 1 Q. And you said that when he came back from the meeting, he
14:19:35 2 seemed unhappy?

3 A. He was unhappy with the reception and the general tone
4 of the discussion, I remember that.

5 Q. Do you recall him telling you that the NRC staffers that
6 were there were asking him questions that he couldn't answer?

14:19:49 7 A. I don't recall that detail. I recall, as I said, that
8 he was an unhappy camper, you might say, on how things went on
9 the presentation.

14:20:00 10 Q. Let me ask you this: Do you recall that on November
11 14th Andrew Siemaszko was brought to Washington D.C. --

12 A. Yes. Absolutely.

13 Q. -- to speak about specifically the inspections?

14:20:11 14 A. As I said to Mr. Ballantine, that's why we brought him,
15 was to eliminate any translation or layers of interpretation,
16 but to rather have the direct person who did this communicate
17 with the NRC people.

18 Q. And is it fair to conclude that that was in part because
19 Mr. Geisen was unable to answer the NRC's questions on the 8th?

20 A. I think that's quite logical. Although my memory isn't
21 clear of everything that wound up bringing Andrew to Washington.

14:20:40 22 But it makes sense, yes.

14:20:42 23 Q. You testified on direct about the ACRS meeting.

24 A. Yes, sir.

25 Q. And Mr. Ballantine asked you about the use of the term

14:20:50 1 qualified visual inspection?

2 A. Yes.

14:20:53 3 Q. You did not believe that a qualified visual inspection
14:20:59 4 was the same thing as a VT2 inspection, did you?

14:21:05 5 A. I've got to admit even that term escapes me. There's
6 different codes of mechanical engineering standards. I don't
14:21:18 7 know how to answer that question. I believe the codes and
14:21:20 8 standards were different than the terminology employed in the
14:21:23 9 bulletin. And I believe qualified and effective and perhaps
10 other words were used in the bulletin whereas the VT2 I think is
11 part of the mechanical engineering code, and that has different
14:21:39 12 requirements and connotations. I'm not -- I'm an electrical
13 engineer, so I can't profess expertise, but that was my
14:21:46 14 understanding of that.

14:21:51 15 Q. Do you remember Mr. Geisen telling you in his view a
14:21:54 16 qualified visual examination was a term that had been discussed
17 with Mr. Hiser on the October 3rd call?

14:22:00 18 A. I don't remember saying discussed with Mr. Hiser, but I
19 do remember Dave being quite happy and confident that the
14:22:08 20 quality of the '96 -- that it could be characterized as
14:22:11 21 qualified. And I testified earlier that I recall David and
22 Allen, Mr. Hiser, speaking the same language. So that wouldn't
23 surprise me if that was something he said to me. I just can't
14:22:25 24 honestly say I remember.

25 Q. And do you recall a discussion about whether qualified

1 in essence meant that a nozzle's gap would open up and you were
2 able to view the nozzle to tell whether it was a leaker?

3 A. I know that now; I don't know that I knew that in 2001.

14:22:50

4 Q. Mr. Moffitt, this question may seem absurd, but let me
5 ask you: Did you ever instruct Mr. Geisen to lie to the NRC?

6 A. Absolutely not.

7 Q. Did you ever instruct him to mislead the NRC?

8 A. No.

14:23:00

9 Q. Did you ever instruct him to do anything to paint a
10 better picture than what the NRC might believe to be the case?

11 A. No.

14:23:10

12 Q. Based on what you know of him, do you think he would
13 have done it if you would ask?

14 A. No.

14:23:17

15 Q. You said to Mr. Ballantine that you've now seen the 1996
16 video.

14:23:21

17 A. That's correct.

14:23:22

18 Q. That was a video that you saw after you learned about
19 the existence of a cavity in the head?

14:23:27

20 A. Yes.

21 Q. And you describe it as upsetting?

22 A. Yes. The first time I believe I saw it was at the Carl

14:23:35

23 Stokes Building in Cleveland when I was talking with Mr.

24 Ballantine and the other people. I'd certainly read a lot

25 about the root cause and other things, but that was the first

1 time. And it was upsetting because it was a gut-type thing and
2 emotional to look at it and compare that to what I believed it
3 was like.

4 Q. Do you recall seeing a 2000 video that Mr. Siemaszko
5 brought to you during the outage?

6 A. During the outage of 2000 Andrew showed me the video
7 during part of the testimony I described in the ops. manager's
8 office.

9 Q. When you saw that video, that was at the time that you
10 believed what you were seeing was flange leakage?

11 A. Absolutely.

12 Q. And flange leakage that you thought was going to be
13 cleaned?

14:24:21 14 A. When Andrew -- when Andrew showed me that, I believed it
15 was flange leakage. And as I testified, I was in support of his
14:24:29 16 efforts to get the barriers to cleaning done.

17 Q. And when you saw that video, I take it, you had a very
14:24:35 18 different reaction than you did when you saw the 1996 video
14:24:39 19 after you discovered the existence of the cavity, correct?

14:24:42 20 A. Yeah. And if I could explain why I appreciated it,
21 there were two different -- when Andrew and I were looking at it
22 in 2000, it was believed to be part of a housekeeping or a
23 broken component, that flange is leaking. When I looked at it
24 then with Mr. Ballantine and others, then I was looking at it
25 from the perspective that this started the clock that we talked

1 about as a baseline for a different topic, not the corrosion,
2 but when was the last time we saw things good. So the reason I
14:25:16 3 elaborate a bit is there were different reasons why things hit
4 you differently on that as a topic.

5 Q. And different facts that you knew about the condition of
6 the head?

14:25:23 7 A. Right.

8 Q. I take it you would agree with me that your review of
9 the '96 videotape was in part a result of knowing what now
14:25:32 10 existed?

14:25:33 11 A. I don't understand the question. I'm sorry.

12 Q. That's fine. I take it that part of what bothered you
13 about seeing the '96 videotape was now having the benefit of
14 hindsight?

15 A. Yes.

16 Q. And knowing there's a cavity in the head?

14:25:45 17 A. Absolutely.

14:25:47 18 MR. WISE: Thank you, Mr. Moffitt. That's all I
14:25:51 19 have.

14:25:57 20 MR. CONROY: No questions, Your Honor.

14:25:58 21 THE COURT: Redirect, Mr. Ballantine.

14:26:00 22 MR. BALLANTINE: Thank you, Your Honor.

14:26:02 23 - - -

14:26:02 24 STEVEN MOFFITT, REDIRECT EXAMINATION

14:26:03 25 BY MR. BALLANTINE:

14:26:03 1 Q. Mr. Moffitt, who is responsible for the technical
2 accuracy of documents that are submitted to the NRC?

3 A. I think everyone who provides the information and their
4 management chain that reviews and approves it.

5 Q. And what do you feel is -- what was your understanding
6 of what it meant to be responsible for that technical accuracy?

14:26:25 7 A. My belief is that as a manager, I gain the assurance
8 that the people that are doing the work are qualified and
14:26:34 9 capable. I check things to satisfy myself and make sure that to
10 the best of my ability I'm communicating accurate information as
14:26:43 11 an individual contributor. I believe that I formulate a basis
12 for what I'm communicating. And communicate that more as a
13 nugget, then as you go up in the organizations, it's more of a
14 pile of things than nuggets.

15 Q. You say you check things to satisfy yourself that
16 they're correct. What do you mean by that?

17 A. Well, the example we talked about with looking at the
14:27:05 18 photographs, understanding how the conclusions were made, seeing
14:27:09 19 if the ones that were obscured were, in fact, communicated as
14:27:14 20 obscured. It's that kind of thing that would make sense in how
14:27:18 21 you make sure something's right.

14:27:20 22 Q. I'd like to talk about that for a moment. Who did you
23 understand the individual contributor to be with respect to the
14:27:28 24 past inspections of Davis-Besse?

14:27:30 25 A. There were different people there at different times

1 because Andrew was new, like some of us. So I know that he was
2 the person that had done the 2000 outage. I either knew or I
3 know now that Mr. Goyal had done or been involved in the '96.
14:27:47 4 I'm not sure who was '98; I believe it was not Andrew because he
5 was new. But Andrew had the lead to communicate with all of the
14:27:56 6 individuals and formulate that information. And Andrew was the
7 most single knowledgeable person, which is why we brought him to
14:28:02 8 Washington.

9 Q. Did you understand -- you just described three people
10 who did inspections in '96, '98 and 2000?

11 A. Yes, sir.

12 Q. With respect to the bulletin response, what was -- who
13 was the individual contributor who was addressing the past
14:28:24 14 inspections?

15 A. Andrew Siemaszko.

14:28:26 16 Q. And how was it that he was going about doing that?

17 A. Well, I knew Andrew had the tapes, and I had walked by
14:28:33 18 and seen him working on things. And I came to understand that
14:28:38 19 he was taking the tapes, converting them to a medium that he
20 could focus on instead of this moving worm, as I've already
14:28:45 21 described. So I believe Andrew was going with the information
22 from the tapes, putting those into pieces that he could analyze,
23 then tabulating those in these tables.

14:28:58 24 Q. Did you think that that was a job that one person could
25 be -- you could have just one person to rely on?

1 A. Well, I think that it was something that I could have
14:29:12 2 done because I came up through the ranks as an engineer myself.
14:29:16 3 I think that Andrew had help with the people to help formulate
4 the media. And when I talked to David and Mr. Eschelman, I
5 know that they were not reluctant to commit resources -- which
14:29:29 6 were considerable in their organization -- to helping them. So
7 I didn't sense that he was -- if I'm inferring in your question,
8 I didn't sense this is too much for this character.

9 Q. Did you think that it was something that had to be --
10 that should be verified?

14:29:42 11 A. Yes, absolutely, just like calculations.

12 Q. And did you communicate that to David Geisen and David
14:29:50 13 Eschelman?

14 A. Yes, sir.

15 Q. I think you've testified to this, but tell the jury
14:29:54 16 again what that communication was.

17 A. Well, I'm good with places. I remember outside my
18 office having both managers, both gentlemen, Dave and Dave, and
19 communicating that point that this kind of unusual -- typically
20 we will design, like, those MOD, modifications, there will be
14:30:14 21 sheets where the individual signs off, then his manager or
14:30:17 22 supervisor signs off. Here this was nothing like this. This
23 was being done more extemporaneously.

24 So I talked to them to make sure we had the same
14:30:26 25 mindset: defense in-depth; that we're not relying on any

1 individual, something similar to a calculation, looked at the
2 method, looked at examples, and could vouch.

3 Q. You used the term defense in-depth. That's, I guess,
4 an industry term. What did you mean by using that term here?

14:30:45 5 A. The industry, as I understand it, was originally based
6 on defense in-depth. If one spare tire was good, two would be
14:30:54 7 better. Then we moved into the more probabilistic word as we
14:30:57 8 learned more about the equipment. But defense in-depth would
9 be, to use an example, we have a pump that can safely keep the
14:31:05 10 reactor covered; we won't just have one, we'll have two. Then
11 the power to supply to that pump, we won't just count on the
12 wires from the transmission, we'll have a standby diesel
14:31:17 13 generator. Everything we'd have two of things. So if
14 anything went wrong, no single thing would cause a problem.
15 That's the idea.

14:31:24 16 Q. How is it you're applying that analogy to the situation
17 of reviewing the past inspection?

18 A. It's quite analogous to the modifications and
14:31:32 19 calculations was that if an individual made a mistake, someone
20 should make sure that there was a -- there was an overlapping or
21 a logical way to gain that assurance so that no single
14:31:43 22 mistake -- obviously barriers failed in this event, and more
23 people know more about it than I can, but that was part of it.

14:31:51 24 Q. After you spoke with Mr. Eschelman and Mr. Geisen about
25 this topic, did there come a time when you asked Mr. Geisen, who

1 can vouch for these inspections?

14:32:04 2 A. Yes. I don't remember exactly when, but I remember
3 talking to Dave, and he told me he could vouch for the work.

14:32:09 4 Q. He told you he could vouch for the work?

5 A. Yes. And I thought that was good because I have a lot
6 of confidence in Dave.

14:32:23 7 Q. Mr. Wise asked you about the slides and asked you
14:32:27 8 whether they were -- I think you indicated they were a guide to
9 the conversation that took place.

14:32:32 10 A. An outline, yes.

11 Q. What, if anything, was said about impediments to the
12 past inspections?

14:32:45 13 A. Well, that's why we talked about the "or". That's why
14 we had to go back to '98. So I'm sure -- I don't remember
15 exact words people said, but --

14:32:57 16 Q. The word "or" was in the slide. I'm asking what else
14:33:01 17 there was in that conversation about impediments to the past
18 inspections.

14:33:06 19 A. I can't testify under oath I remember the exact words,
20 but it is only logical that we talked about why you couldn't see
14:33:14 21 everything in 2000 since we had a slide. But that's
14:33:18 22 speculating, and I won't speculate.

14:33:25 23 Q. After the meeting with the technical assistants you
24 talked about Mr. Geisen coming to you with an issue about going
25 back to 1996.

1 A. Yes.

2 Q. Did you -- did anybody at Davis-Besse communicate to the
14:33:37 3 technical assistants that that had been wrong?

14:33:41 4 A. I don't know that. I took it to reg. affairs and was
14:33:45 5 essentially told to make the update. Whether someone called
6 them or not, I don't know.

14:33:51 7 Q. The update to?

8 A. Putting in an update on the 17th as we had communicated
9 on the 3rd. So between the time David told me, which is
14:34:01 10 probably the 11th or 12th, within five days we had an update
14:34:05 11 signed and on the docket. But whether, you know -- I certainly
12 didn't find the numbers of the technical assistants and call
13 them.

14:34:16 14 Q. Do you know what part of the NRC that update went to?

14:34:20 15 A. I don't know that it just goes to one or all. I have
16 no way to know that.

17 Q. Would the technical assistants in the normal course of
14:34:29 18 things receive Serial Letter 2735?

19 A. There were a lot of folks on the topic at this time. I
20 wouldn't speculate whether they were looking into it in that
14:34:37 21 detail or not.

14:34:41 22 Q. On November 14th, Davis-Besse brought Andrew Siemaszko
14:34:47 23 to a meeting with the NRC?

14:34:49 24 A. Yes.

25 Q. Why was that again?

1 A. Because we wanted to be able -- as you saw in that one
2 table, there were different words used. No inspection -- I
3 can't even as I sit here just looking at it. And we wanted
4 someone to be able to directly communicate the status of the
5 reactor vessel head to the people who were involved and working
6 with us on resolving the issue.

14:35:10 7 Q. Why Andrew Siemaszko?

8 A. Because Andrew was the person who was the subject matter
9 expert on the review. That was his task.

10 Q. Why didn't you bring Prasoon Goyal to talk about the
14:35:22 11 1996 inspection?

12 A. I don't think I knew Prasoon's involvement in much
13 detail regarding the previous inspection at that point. I knew
14 he knew about the circ. cracking, but I don't know that he would
15 be the expert. And I don't know that he was involved in the
14:35:35 16 tabulation of these, to what extent. So Andrew seemed like the
17 right guy. He was certainly the person that had the lead.

14:36:00 18 Q. Mr. Wise asked you about the crack growth model --

14:36:04 19 A. Yes.

20 Q. -- and the work that Mr. Geisen did on that.

14:36:08 21 A. Yes. Yes.

14:36:11 22 Q. We're taking about the crack growth model. What is it
14:36:15 23 that's -- what's the model designed to show?

14:36:18 24 A. There was a model called the Peter Scott Model, which
14:36:22 25 was the model that was used by reactor designers. Then Mr.

14:36:26 1 Hiser was using some other probabilistic models. But those
2 were two, the backgrounds. And to answer your question, the
3 model was used to say: Based on when your starting point was,
14:36:39 4 '96, '98, how big would an initial crack be, how fast would a
5 crack grow and then, most importantly, how do you make sure you
6 have an adequate safety factor that that crack would not result
7 in a loss of coolant accident from the control rod drive
14:36:57 8 mechanism penetration. So that's what the model was.
9 Q. So the end result, the answer, or the question that's
10 being asked is: Will this plant be safe to operate until the
11 next outage?
14:37:13 12 A. That was always how we started the question. Every
13 meeting was: Is the plant safe?
14:37:18 14 Q. And the factors that go into that are, how big a crack,
14:37:25 15 circumferential crack did the nozzle sustain --
14:37:27 16 A. Yes.
17 Q. -- without separating from the head?
18 A. That's correct.
14:37:30 19 Q. And the factors that go into that are: How fast will a
20 crack grow --
21 A. Right.
22 Q. -- and how long has it had to grow?
23 A. Yes.
14:37:41 24 Q. So Mr. Geisen is working on, I think you said, the crack
25 growth rate model?

1 A. He was working on that and other things like -- that Mr.
14:37:54 2 Ulie asked me about. There was this other -- Structural
14:37:58 3 Integrity, I believe, is their name; was doing another analysis
4 comparing with this, looking at the fit, how tightly the CRDM
14:38:09 5 nozzle fit into the head. So there were several things that
6 were within his responsibility. Those are two.

14:38:15 7 Q. So the crack growth rate model is dependent on the other
8 thing that I think Mr. Wise asked you about, which is whether he
9 was working on these past inspections?

14:38:30 10 A. Could you repeat?

14:38:32 11 Q. That wasn't very well worded. I asked that poorly.
12 Mr. Wise asked you about what it was that Mr.
13 Geisen was working on at the time?

14 A. Yes.

15 Q. He took on the crack growth rate model?

16 A. Right.

17 Q. And the other thing was past inspections?

18 A. Yes. That's correct.

14:38:48 19 Q. And those -- the past inspections feed the crack growth
20 rate model?

14:38:55 21 A. Absolutely.

22 Q. So if you have past inspections that go back before
23 1996, if you had to go back before 1996 to start the model, does
24 that have an effect on the outcome?

14:39:06 25 A. It would have to be analyzed with the time and

1 temperature model I described earlier because it's similar to
2 aging; it could have an effect certainly. And we -- our
14:39:17 3 analysis started in '96. So if we had found, as I wish we
4 would have, that '96 was not a good baseline, then we would have
14:39:27 5 certainly had to look at it from those perspectives: Do we have
14:39:30 6 a '94 baseline, or would the time and temperature model give us
7 the confidence that that starting point would be adequate?

14:39:39 8 Q. So these are two issues that go hand-in-hand, the past
9 inspections and the crack growth rate model?

10 A. Certainly, because the past inspections are the starting
11 point of when we would assume a conservatively-sized crack would
12 have been there because we hadn't looked at it before then.

14:39:57 13 Q. And all of these are feeding into -- I'm sorry.

14 A. I said before then; I meant since then.

14:40:03 15 Q. So all of this is feeding into the ultimate question of
14:40:06 16 whether or not Davis-Besse is going to shut down by the end of
14:40:10 17 2001?

14:40:11 18 A. I think the ultimate question -- and I don't mean to be
14:40:14 19 argumentative, but it's an important one -- I believe the
20 ultimate question is: Are we safe? And we believed we were.
14:40:20 21 And I tried my best to insulate the people from those others.
22 I failed in that myself because we didn't catch this. But I
23 don't believe that was the ultimate question. I really don't.

14:40:38 24 Q. The 1996 video that you saw at the offices in
25 Cleveland --

14:40:47

1 A. Right.

2 Q. -- do you think that video gives a valid baseline for
3 the model that you were using?

4 A. I was, as I said, shocked by it because I didn't study
5 how many nozzles could you look at, but we represented that it
6 was essentially clean, and what I saw was not essentially clean.
7 So I would have expected to be able, not that if I could, but if
8 I took each one of those, I would expect to have the same kind
9 of assessments of the nozzles that you and Mr. Wise discussed.

10 Q. The 1996 video we're talking about was one of the videos
11 that Mr. Geisen vouched for?

14:41:22

12 A. Mr. Geisen vouched for --

13 MR. WISE: Objection.

14:41:26

14 THE WITNESS: I'll be careful with that answer.

14:41:29

15 MR. WISE: Objection, Your Honor.

14:41:33

16 THE COURT: Overruled.

14:41:35

17 A. Mr. Geisen vouched for the characterization of the '96
18 inspection. I'm just being careful. I don't say vouched for
19 the videos, which is, I think, what you asked me.

14:41:49

20 MR. BALLANTINE: Thank you. I have no further
21 questions.

14:41:50

22 MR. WISE: Nothing.

23 THE COURT: Thank you, sir.

14:42:22

24 MR. POOLE: Your Honor, the government's next
25 witness will be Mr. Walter Huston.

14:42:54 1 (The witness was sworn by the clerk.)

14:42:57 2 - - -

14:42:57 3 WALTER HUSTON, DIRECT EXAMINATION

14:45:29 4 BY MR. POOLE:

14:45:29 5 Q. Good afternoon, Mr. Huston.

6 A. Good afternoon.

7 Q. Did I pronounce your last name right?

8 A. You did.

9 Q. Like the city?

10 A. Without the first "O". It's pronounced the same.

11 Q. Pronounced like the city Houston.

12 Mr. Huston, would you state your full name and

13 spell it for the record?

14:45:43 14 A. Roger William Huston, H-u-s-t-o-n.

14:45:48 15 Q. Mr. Huston, what city do you live in?

16 A. Live in Alexandria, Virginia.

17 Q. How are you employed?

18 A. I'm a consultant.

19 Q. What kind of consultant?

20 A. At this point I do regulatory engineering consulting
21 with the Department of Transportation for pipeline safety.

14:46:07 22 Q. In the course of your career have you done work for
14:46:10 23 FirstEnergy?

24 A. Yes, I have.

14:46:12 25 Q. And have you done work related to the Davis-Besse

14:46:17 1 Nuclear Power Station?

14:46:17 2 A. Yes, I have.

14:46:21 3 Q. Were you doing work for Davis-Besse in 2001?

14:46:26 4 A. Yes, sir.

14:46:28 5 Q. Related to the bulletin responses?

14:46:31 6 A. Yes.

14:46:32 7 Q. Describe, please, for the jury the nature of the
14:46:38 8 consulting you did related to the bulletin.

9 A. With respect to my nuclear practice at that time, I was
14:46:46 10 serving as a shared resource in Washington for a number of
14:46:51 11 utilities. I attended meetings at the Nuclear Regulatory
14:46:56 12 Commission, I monitored the paperwork that was coming out. My
14:47:02 13 job has pretty much been overcome at this point because all that
14:47:08 14 paperwork is available on the web; at that time it wasn't. My
14:47:13 15 purpose was basically intelligence gathering, letting my clients
16 know what was being developed at the NRC, what were current
14:47:20 17 trends, what was likely to affect them in the future.

14:47:26 18 Q. So did that work include attending meetings in
14:47:29 19 Washington and reporting back to Davis-Besse?

14:47:32 20 A. Yes. That was a major piece of my practice.

14:47:38 21 Q. I'm going to show you now Government's Exhibit 108
14:47:42 22 previously admitted into evidence and ask if you recognize it.

14:48:07 23 A. Yes, sir, I do.

14:48:10 24 Q. Are those the NRC's minutes and a set of meeting slides?

25 A. Yes, it's an NRC meeting summary attached to which are

14:48:24 1 PowerPoint slides used at a meeting.

14:48:27 2 Q. Which meeting was it?

14:48:33 3 A. A meeting between the NRC and FirstEnergy on October 24,
4 2001.

14:48:34 5 Q. All right. Did you attend that meeting?

6 A. I did.

14:48:39 7 Q. I'm going to hand you now Government's Exhibit 109,
14:48:45 8 which Your Honor has not admitted, and ask you to identify that.

14:48:57 9 A. Yes. This is pages copied of a bound notebook in which
10 I took notes from meetings that I attended. It is covered by a
14:49:12 11 list of the meetings in that book that were relevant to the
14:49:19 12 bulletin. I created that list after I was interviewed by the
13 NRC Office of Investigations, and they made copies of pages from
14:49:30 14 the book that were relevant to each of these meetings. I
14:49:36 15 haven't flipped through here to see whether all of them are
16 included in this list. I don't believe all of them are, but
14:49:43 17 some of them are.

18 Q. Do some of those pages contain your notes of that
14:49:48 19 October 24th meeting? And I'll call your attention to pages 94
20 to 98.

14:50:03 21 A. Yes, sir, pages 94 to 98 are here, and they do reflect
22 that October 24th meeting.

14:50:09 23 Q. As you sit here today, can you recall independently of
24 the notes the events of that meeting?

25 A. No, sir.

14:50:25 1 MR. POOLE: Your Honor, we would move for admission
2 of pages 94 through 98 -- I can give you the NRC numbers -- and
3 not the remainder of the pages, and we'll ensure that those
4 pages are the ones that are included in the final exhibit.

14:50:49 5 MR. WISE: I would object on foundation and on
14:50:54 6 hearsay grounds.

14:50:59 7 MR. POOLE: I didn't understand the last phrase.
8 MR. WISE: I would object on foundation and hearsay
14:51:06 9 grounds.

14:51:07 10 MR. POOLE: Your Honor, we offer it as past
14:51:10 11 recollection recorded. This is the October 24th meeting we
12 discussed.

14:51:57 13 (Discussion had off the record).

14:53:31 14 THE COURT: The motion is sustained.
15 Mr. Huston, you may review pages 94 to 98 of those
16 notes to attempt to refresh your recollection and testify then
17 from your recollection if it is refreshed.

14:53:48 18 THE WITNESS: Thank you, Your Honor.

14:54:33 19 BY MR. POOLE:

14:54:33 20 Q. Mr. Huston, I think I can help you by telling you the
14:54:37 21 questions I will have are related to the notes on pages 94 and
14:54:41 22 95.

14:54:42 23 A. Thank you.

14:55:15 24 I have reviewed pages 94 and 95.

14:55:18 25 Q. Let's go back to the meeting slides. I want to ask you

1 some questions about them. I think you said you recall
14:55:32 2 attending this meeting?

14:55:34 3 A. Yes. I do recall attending. I do have my own
14:55:39 4 handwriting notes, and my name appears on the NRC's list of
5 meeting participants in their memo.

6 MR. POOLE: Your Honor, at this point we'd like to
7 display to the jury a page from the meeting handout, Exhibit
8 108, which is in evidence.

14:55:55 9 THE COURT: Very good.

14:56:01 10 BY MR. POOLE:

14:56:01 11 Q. So is this a list of the FENOC participants and
14:56:08 12 consultants at the October 24th meeting?

14:56:12 13 A. This is a list that was prepared and included in FENOC
14:56:16 14 slides to describe their attendees. I cannot say with
14:56:20 15 certainty that all of these people were there or that there were
14:56:23 16 not some others there who weren't on this list.

17 Q. Was Mr. Geisen there?

18 A. Yes.

14:56:30 19 Q. I want to ask you some questions about his role in this
14:56:36 20 meeting. Can you tell the jury which of the slides among these
14:56:44 21 were presented in his portion of the discussion?

14:56:48 22 A. My notes reflect that.

14:56:54 23 MR. WISE: Objection.

14:57:00 24 BY MR. POOLE:

14:57:00 25 Q. Do you recall?

14:57:01 1 A. Yes, I recall, as my memory has been refreshed by my
14:57:07 2 notes, that Mr. Geisen did present a major portion of these
3 slides.

14:57:13 4 Q. Could you go through the slides. You can do so
14:57:19 5 silently, but just take a look and give us the page numbers, if
14:57:23 6 you would, of the portions that he presented.

14:57:36 7 A. I cannot say for certain, but I believe that Mr.
8 Geisen's presentation began with Slide 4, and it proceeded
14:57:46 9 through the discussion of the probabilistic risk analysis, which
14:57:53 10 begins on Slide 18, which was presented by Mr. Byrd. So Mr.
14:58:08 11 Geisen presented slides 4, I believe, through 17 .

14:58:14 12 Q. Just for clarification, your reference to probabilistic
14:58:19 13 risk analysis, he did not do?

14 14 A. He did not present that. It starts at Slide 18 in this
15 package.

14:58:38 16 Q. I'd like to ask you questions about some of these slides
14:58:42 17 and about the discussion. Let's turn to page 6 -- and I'll
18 display that for the jury -- a set of bulletins about
19 Davis-Besse's bulletin response. I'll call your attention to
20 the last item on the page. Do you recall a discussion of
14:59:11 21 inspection plans for the 13th refueling outage which was then a
14:59:16 22 future outage?

14:59:17 23 A. I recall the discussion of inspection plans for a future
14:59:22 24 outage. I'm aware that Davis-Besse numbers their refueling
14:59:28 25 outages. I would not independently know then or now whether

1 the 13th refueling outage was indeed the one that was coming up.
2 I presume it was because it's here on the slide.

3 Q. Okay. This bullet item says: Committed to perform a
14:59:42 4 qualified visual inspection of reactor pressure vessel head in
14:59:49 5 13 RFO currently scheduled to begin in March.

15:00:02 6 Do you recall any discussion, any caveat, if you
7 will, about the inspection at the 13th refueling outage related
8 to boron left on the head in the last preceding outage?

15:00:15 9 A. No, I do not.

15:00:17 10 Q. All right. The page I just showed you is page 6. Is
11 that right?

12 A. That's correct.

13 Q. Are you confident that that was one of the pages
15:00:55 14 presented by Mr. Geisen?

15:00:57 15 A. I'm confident that that was one of the pages that was
15:01:01 16 within that section during Mr. Geisen's presentation. I
17 believe all of those slides were used, but at this point I can't
18 say with certainty that a slide wasn't skipped.

15:01:12 19 Q. Okay. Let's talk about the next slide, which is page 7.

15:01:17 20 A. Yes, sir.

15:01:22 21 Q. It's headed "Analyses". Davis-Besse's evaluation is
22 based on our visual inspections performed in 10, 11 and 12 RFO.

15:01:34 23 The next item says: The inspection results afford us assurance
24 that all but four nozzle penetrations were inspected in 1996.

25 All but 19 penetrations were inspected in 1998. And all but 24

1 penetrations were inspected in 2000.

15:01:52 2 Do you recall Mr. Geisen presenting that
3 information?

4 A. I recall a discussion of that, yes.

15:02:00 5 Q. And take a minute to refresh your recollection with your
6 notes if it helps. Do you recall Mr. Geisen addressing that?

15:02:12 7 A. What I -- yes, what I recalled was that was part of Mr.
8 Geisen's presentation. There were questions asked by the NRC
15:02:22 9 during the course of that presentation to which there were
15:02:26 10 responses from Davis-Besse staff. I cannot say with certainty
11 as a matter of fact; from my notes I believe that those
12 responses came from one of the other people who were in
15:02:41 13 attendance rather than from Mr. Geisen.

14 Q. Okay. Let's turn to Slide 9.

15:02:54 15 A. Yes, sir.

15:02:57 16 Q. Display it to the jury. All CRDM penetrations were
17 verified to be free from popcorn-type boron deposits --

15:03:09 18 THE COURT: Slow down, please.

15:03:09 19 BY MR. POOLE:

15:03:11 20 Q. -- deposits using video recordings from 10 RFO, 11 RFO
21 or 12 RFO. A review of visual recordings as well as eyewitness
15:03:21 22 accounts served as the means for this inspection.

23 Was this statement within the portion presented by
24 Mr. Geisen?

25 A. Yes, sir.

15:03:32 1 Q. Was there further discussion during this presentation
15:03:43 2 regarding review of the videotapes?

3 A. Yes, sir.

15:03:48 4 Q. Can you tell the jury what that discussion was?

15:03:53 5 A. The NRC was very interested in understanding whether the
15:03:58 6 videotapes had been reviewed, whether the quality of the
7 videotapes was good enough to have observed the kind of boron
15:04:07 8 deposits that they were interested in, and the NRC was --
9 indicated that they had been promised a copy of the videotapes
15:04:17 10 that had not yet been received, and they expressed some degree
15:04:21 11 of -- how should I express it? They were not very happy having
12 not received that information.

15:04:33 13 MR. POOLE: Thank you. That's all the questions
15:04:35 14 we have.

15:04:38 15 MR. WISE: Nothing, Your Honor.

15:04:40 16 MR. CONROY: Nothing, Your Honor.

17 THE COURT: Thank you, sir, you may step down.

15:04:52 18 MR. POOLE: Your Honor, the next witness will be
15:04:54 19 lengthy. This would be a good time for a break.

20 THE COURT: Ladies and gentlemen, we'll take our
21 mid-afternoon break now for roughly 15 minutes. Please
22 remember my previous instructions not to discuss this case among
15:05:05 23 yourselves, nor with anyone else, nor permit anyone to discuss
24 it with you. Do not make up your minds on the ultimate issues
25 which will be yours to decide at the end of the case.

1 Enjoy your break.

15:24:29 2 (Recess taken.)

3 THE COURT: Please call your next witness.

15:24:34 4 MR. BALLANTINE: Your Honor, the United States

15:24:35 5 would call Dale Wuokko.

15:24:42 6 (The witness was sworn by the clerk.)

15:24:54 7 - - -

15:24:54 8 DALE WUOKKO, DIRECT EXAMINATION

9 BY MR. BALLANTINE:

10 Q. Good afternoon, Mr. Wuokko.

11 A. Good afternoon.

12 Q. That microphone is directional, so if you can point it

15:25:04 13 toward your --

15:25:05 14 A. Better?

15:25:08 15 Q. Mr. Wuokko, could you state your full name and, in

16 particular, spell your last name for the court reporter?

17 A. My name is Dale Wuokko, spelled W-u-o-k-k-o.

15:25:20 18 Q. Mr. Wuokko, where do you work?

19 A. I work at Davis-Besse.

15:25:23 20 Q. How long have you worked at Davis-Besse?

15:25:25 21 A. Since October, 1984.

15:25:28 22 Q. What's your background in the nuclear industry?

23 A. I've been a Supervisor of Licensing, and Supervisor of

24 Compliance.

15:25:39 25 Q. Prior to working at Davis-Besse, what did you do?

1 A. I worked for seven years at Consumers Power in Michigan
2 in the Safety and Licensing Department as a licensing engineer.

3 Q. What's your educational background?

4 A. I have a bachelor of science in civil engineering.

15:25:58 5 Q. What's the nature of the work that you do at
6 Davis-Besse?

7 A. Today?

15:26:02 8 Q. Yes, for starters.

15:26:04 9 A. I'm the compliance supervisor. And I supervise a staff
10 that coordinates interactions with NRC inspectors both to
11 on-site inspectors and also visiting inspectors.

12 Q. And it's your job under the umbrella, I guess, of
13 Regulatory Affairs?

14 A. This is under actually Regulatory Compliance now.

15 Q. In the 2000, 2001 time frame, what were you doing?

16 A. I was a Supervisor of Licensing.

15:26:36 17 Q. At that point was the umbrella called Regulatory
18 Affairs?

19 A. That's correct.

20 Q. As a Supervisor of Licensing, who would you interact
15:26:46 21 with outside of Davis-Besse?

22 A. My primary contact in the NRC was the NRR, Office of
23 Nuclear Reactor Regulation, a project manager outside the
24 Washington D.C. area. I contacted him by phone.

25 Q. And just so the jury has an idea, how is that broken up?

1 You were communicating through NRR. Are there other folks at
15:27:11 2 the plant communicating with a regional office?

15:27:13 3 A. That's correct. At that time there was a compliance
15:27:17 4 supervisor; interacted with the regional office; and I, as a
15:27:25 5 licensing supervisor, interacted with the headquarters office.

15:27:29 6 Q. What's the name of the compliance supervisor?

7 A. At that time was Dale Miller.

8 Q. So you were both named -- your both names were Dale; is
15:27:37 9 that right?

10 A. That's correct.

11 Q. Did that ever cause any confusion?

15:27:40 12 A. A few times, yes.

15:27:47 13 Q. Mr. Wuokko, when was it that you first came to the
15:27:52 14 understanding there was a renewed interest in the entry about
15:27:56 15 control rod drive mechanism cracking?

16 A. In April of 2001 we were preparing for an NRC
15:28:05 17 commissioner visit. And as part of that, one of our
15:28:09 18 Washington-based consultants, Roger Huston, identified the issue
19 of control rod drive mechanism cracking as a hot issue in the
15:28:21 20 NRC and that the commissioner may be asking questions about
21 that.

22 Q. What was the response at Davis-Besse to that piece of
23 information?

15:28:27 24 A. The group putting together slides prepared some backup
15:28:33 25 slides in case there were some questions asked by the

15:28:36 1 commissioner.

2 Q. And who was it? Was there someone who was being

15:28:40 3 prepared to present to the commissioner? Was there a person at

4 Davis-Besse who was going to be doing the presentation?

5 A. Dave Geisen was going to do that portion of the

6 presentation if needed.

7 Q. And was it needed, do you know?

8 A. I can't recall with certainty.

15:28:55 9 Q. After that, what was the next event with respect to

15:29:00 10 nozzle cracking which you recall?

15:29:02 11 A. In about the June 2001 time frame the vice-president,

15:29:06 12 Guy Campbell, had returned from an industry meeting, and he

15:29:11 13 identified that the discussion had included the possibility of

14 the NRC issuing a bulletin to the industry.

15:29:19 15 Q. And what did you do within licensing with respect to

16 that information?

15:29:24 17 A. Well, Guy Campbell mentioned -- brought that up to Dave

15:29:30 18 Lockwood, who was the manager of Regulatory Affairs at that

19 time. Dave related to me that I should be aware of that and

20 also be looking for a date that the bulletin would get issued.

21 Q. So what did you do? What was your next interaction

22 with anybody about the bulletin?

23 A. I contacted the project manager at that time and

15:29:54 24 informed him that I would like to be informed as soon as

25 possible if he had a date that he knew that the bulletin would

1 be issued by.

2 Q. And you're saying the project manager at --

15:30:05 3 A. This is the project manager at the office of NRR, which
4 is the NRC.

15:30:13 5 Q. When did you become aware that the bulletin had been
15:30:17 6 issued?

15:30:18 7 A. I believe it was on -- it would have been August 6th, I
15:30:26 8 believe, 6th or 7th. 7th probably.

15:30:29 9 Q. And what did you do when you learned that?

10 A. One of my staff members was initially assigned to
15:30:35 11 coordinate putting together the response and working with the
15:30:39 12 other groups on-site. So I made sure that he was aware of it.
15:30:43 13 And Frank Kennedy was that individual. And he put together a
15:30:48 14 kick-off meeting to start the response to the bulletin.

15:30:54 15 Q. Did the response to the bulletin stay within your
15:30:58 16 organization?

15:30:59 17 A. Only until about August 9th.

15:31:03 18 Q. Why was it that it was transferred out of your
15:31:07 19 organization?

20 A. At that time Frank also had responsibility for major
21 industry evaluation, and he relayed to me he would have little
22 time to work on the bulletin. In addition, I was tasked with
23 Senator Voinovich's visit. I had the responsibility to prepare
24 for that visit. And I was also going to be out of the area for
25 seven days the month of August.

1 Q. So what action was taken?

2 A. So I met with Dale Miller and Dave Lockwood, Dave

15:31:41 3 Lockwood being the manager, and expressed that I had concerns on
4 being able to support the bulletin and being able to respond in
5 a 30-day time frame and asked for some help on it.

6 Q. Did you get help?

7 A. Yes. It was transferred, the responsibility for the
15:31:58 8 response to the bulletin, from my group to Dale Miller and with
9 Rod Cook as the lead.

15:32:05 10 Q. Who was Rod Cook in the organization?

15:32:08 11 A. Rod Cook was a consultant that was hired in to assist
15:32:13 12 the compliance group.

15:32:18 13 Q. What was it that you understood Rod Cook was going to be
15:32:23 14 doing? What does it mean to be the person that was managing the
15:32:27 15 response to this bulletin?

16 A. Rod would interact with the technical department, obtain
17 the information from those departments, and put it into a letter
15:32:38 18 to be ultimately submitted to the NRC. That would also include
15:32:43 19 review and approval of that memo internal at Davis-Besse.

20 Q. Had he done this kind of work before?

21 A. Yes.

22 Q. Did the work involve resolving conflicts?

23 A. Yes.

15:32:52 24 Q. What is somebody doing his job expected to do if there's
15:32:58 25 a conflict or comment?

1 A. If the comment is provided and it's not going to be
2 incorporated into the letter, you're expected to get back with
3 that originator of that comment and tell him why it's not being
15:33:11 4 incorporated.

15:33:13 5 Q. Did Mr. Miller ask you to retain some, I guess, not --
15:33:19 6 either responsibility or action with respect to this bulletin
7 response?

8 A. Yes, he did. After our meeting with the manager he
9 approached me and asked me if I would look at the bulletin since
10 he had never supervised a bulletin response before, if I would
11 look at it for format to make sure it met the expected NRC
15:33:37 12 standards.

15:33:38 13 Q. And did you review an earlier draft of the bulletin?

14 A. Yes, I did.

15:33:45 15 Q. At this point I want to back up for a moment and ask you
16 a couple questions about your memory of that, of looking at --
17 of doing that review of the draft of the bulletin. Do you
18 recall that there was an investigation of issues surrounding the
19 bulletin responses in -- after 2002?

15:34:17 20 A. Yes. You mean the NRC investigation?

21 Q. And an investigation ultimately from folks from the
15:34:25 22 prosecutor's office.

23 A. Yes, sir.

15:34:30 24 Q. Did you -- and that was your first interaction with the
15:34:34 25 prosecutor's office with respect to that investigation?

1 A. I received a letter identifying me as a target.

2 Q. What was your understanding of what that meant?

15:34:43

3 MR. WISE: Could we approach?

15:38:01

4 (Whereupon the following discussion was had at the
5 bench outside the hearing of the jury:)

6 MR. WISE: I wanted to give the Court and the
7 government notice of our view on this. We are in the same place
8 with Mr. Wuokko as we were with the last witness who was asked
9 about his target status. We do not intend to go into this at
10 all. I think it's improper for the government to be eliciting
11 that they spoke with folks, evaluated their status, and
12 designated that they are not non-targets, non-subjects, et
13 cetera, Your Honor. And if this is allowed in, I just want the
14 Court to know we are going to be renewing the issue on the fact
15 that Mr. Geisen and Cook were offered DPAs and turned them down
16 because if the government is putting in front of the jury
17 prosecutorial discretion decisions, even under the guise of
18 pulling a sting on an area we said we're not going to cross on,
19 I think that becomes relevant. So I wanted to put everyone on
20 notice.

21 THE COURT: We're on notice. Let me respond this
22 way: In the several hundred criminal trials of which fully 50
23 percent of them have cooperating witnesses who have been offered
24 either deferred or immunity or a reduced sentence, the
25 prosecution always, I underscore the word "always", brings it

1 out so as not to give the defense the opportunity to appear to
2 elicit it on cross-examination as a surprise.

3 MR. WISE: But that's not what you have here.
4 This is not a situation where Mr. Wuokko has been offered a
5 defendant PA or a plea. All he's being asked to testify to and
6 all the last witness is asked to testify to is at some point you
7 were told you were a subject. Now you're not a subject or
8 target. That's not a plea offer or resolution of the case.
9 That's just the status in the prosecutor's mind.

10 THE COURT: And they're moving on, I presume.

11 MR. BALLANTINE: Yes, Your Honor. I mean, I need
12 to get through that he was a target, ask him if there was a
13 deal.

14 THE COURT: He's going to say no. Then he's
15 moving on. That's it. Which was the same with the last one.

16 MR. WISE: I agree. I didn't want there to be a
17 suggestion when we raise this, the issue as to these gentlemen's
18 DPAs, that they're somehow sandbagged. Because we're not
19 intending to cross on this issue or suggest they are at all
20 biased by their status by how the prosecutor is evaluating them.

21 (End of side-bar discussion.)

15:38:05 22 BY MR. BALLANTINE:

15:38:05 23 Q. Mr. Wuokko, you were explaining what you understood
15:38:08 24 "target" to mean, the status you were told. Explain what you
15:38:12 25 understood the status of "target" to mean.

1 A. I understood target to mean I could potentially be
2 charged with a crime.

15:38:19 3 Q. Did you meet with prosecutors?

4 A. Yes, I did.

15:38:24 5 Q. At that time did you recall having completed or done
15:38:31 6 Serial Letter 2731?

15:38:38 7 A. No, I did not.

15:38:40 8 Q. How did you -- let me ask you this: Was there any
15:38:45 9 bargain between the United States and yourself with respect to
10 your testimony today and your status?

15:38:51 11 A. No.

15:38:57 12 Q. Mr. Wuokko, how is it that you became aware that you've
13 done or remember that you've done Serial Letter 2731?

14 A. I did have some vague recollection back in the initial
15:39:10 15 proffer with the government; however, in 2006, in the summer of
16 2006 during -- when others were making some office moves, they
17 discovered several boxes that contained copy or the original
15:39:29 18 correspondence with my handwritten comments on it on the first
15:39:36 19 letter.

20 Q. I'm going to ask you to take a look at Government's
15:39:39 21 Exhibit 42. I believe that's in the folder up there. Is that
15:39:54 22 the document that you're discussing?

15:39:56 23 A. Yes.

15:39:57 24 Q. And can you give the jury a little more detail about how
25 that document was found?

15:40:04 1 A. My secretary was ordered to reduce unnecessary clutter
2 around the offices. She was going to each staff member's
15:40:19 3 office. And one of the staff members had several boxes; one of
15:40:23 4 them had Rod Cook's name on it. And she asked me what should
5 be done with those. And I told her, without looking at what was
6 in the box, to take those and put those into a secure office
7 that had been set aside previously for -- with the legal staff.
8 This was a locked area.

9 Q. Had there been a request earlier from the NRC and from
10 the Department of Justice for documents related to the Serial
11 Letter responses?

12 A. Yes.

13 Q. And is that why you did that? Is that why you had it
14 put in a locked room?

15 A. Well, I was aware that there had been a subpoena earlier
16 on that information. So having Rod's name on the box, I
17 thought best to have the lawyers look through it before anything
15:41:07 18 was done.

19 Q. And then how did you come to learn that this document,
20 Exhibit No. 42, had been among those found?

21 A. I had left the plant for about a week's vacation. And
22 when I came back, I was informed by FirstEnergy's legal counsel
23 that they had found these documents.

15:41:26 24 Q. So as you look at Government's Exhibit 42, could you
25 identify what it is that Government's Exhibit 42 is?

15:41:35 1 A. This is an e-mail of a draft of Serial Letter 2731.

15:41:43 2 Q. Is there any handwriting on it?

3 A. Yes.

4 Q. Whose handwriting is on it?

5 A. It is my handwriting.

15:41:54 6 Q. If you could, tell the Court what the context is of that

15:41:57 7 handwriting.

8 A. These are my comments as of my initial review of the

9 draft Serial Letter. These are my comments that I read and

10 provided back to Rod Cook.

15:42:08 11 MR. BALLANTINE: I'd like to move to have

15:42:10 12 Government's Exhibit 42 admitted into evidence.

15:42:16 13 MR. CONROY: No objection.

15:42:17 14 MR. WISE: No objection.

15 15 THE COURT: It will be admitted, may be displayed

15:42:22 16 to the jury.

17 BY MR. BALLANTINE:

18 Q. Would you have a look at the screen in front of you?

19 Is that a copy of the document you have in front of

20 you, Government's Exhibit 42?

21 A. Yes, sir.

15:42:35 22 Q. Tell the jury about the process you went through to

15:42:38 23 review this with Mr. Cook.

15:42:40 24 A. Okay. What I typically did with questions from the NRC,

15:42:48 25 whether it was a request for additional information dealing with

15:42:52 1 another topic or such, was to first of all read through the
2 questions that the NRC had provided and make sure what was
3 actually written in this letter corresponded word-by-word, that
4 they were consistent.

15:43:07 5 Q. How was it that you were being -- just give the jury a
15:43:11 6 sense of where you were doing the review, what it was that you
7 were about, how is it that you got the review to do, how is it
8 that you then got it to Mr. Cook.

9 A. Okay. I did this review in response to what Dale
15:43:24 10 Miller had asked me to do, to look at it for the format to make
11 sure it met what the NRC's expectations were. So I had asked
15:43:36 12 Rod to e-mail me this. And this was actually the week I was
13 out of the office on vacation. Rod did e-mail it to me. And
14 the Tuesday I came back -- I downloaded this at home and then
15 reviewed it that evening because I knew the next three days I'd
16 be preparing for Senator Voinovich's visit to the plant.

15:44:02 17 Q. All right. Now, if you could give a -- you were about
18 to go into an explanation how it is you do these kind of reviews
19 for documents that are going to be submitted to the NRC.

20 A. One of the first things to do is look at the questions
21 that the NRC has asked to make sure those are captured correctly
22 in the letter. Typically the format is the question is first
15:44:26 23 stated, then the company's response is stated underneath to each
15:44:29 24 question. So it's a question, response, question, response.

15:44:34 25 Q. At this point I'd like you to direct your attention to

15:44:37 1 attachment 1 of the exhibit, or document, and page 2 of 4.

15:44:47 2 A. Okay.

15:44:49 3 Q. Is there a paragraph at the top of that that has some
4 highlighting on it?

5 A. Yes.

15:44:57 6 Q. I have a color copy of the exhibit here. You have the
15:45:01 7 original, I take it, in front of you?

8 A. Yes, I do.

15:45:37 9 Q. I'm going to do it in black and white. So looking at
10 that page -- I'm putting it up. Here we go.

15:46:16 11 MR. BALLANTINE: Sorry, Your Honor, this sort of
12 washed out on the computer. I'm having trouble getting the
15:46:22 13 DOAR to work.

15:46:35 14 All is well.

15:46:35 15 BY MR. BALLANTINE:

16 Q. So taking a look at that paragraph, please tell the
17 jurors about the edit to the heading, first of all, and how it
18 is that you go about -- how you end up making these changes or
15:46:49 19 making these comments.

20 A. Okay. The first is just, in bulletin request item 1D,
15:46:56 21 is simply putting it into the standard format response. That
15:47:01 22 was completing what I told Dale Miller I had agreed to and that
23 I would do.

24 Q. Then you said you went through, check and see if the
15:47:10 25 questions that the NRC asked for had been answered?

15:47:14 1 A. That is correct. What I did, I read through this.
2 And typically when I review these, I have a highlighter in my
3 hand, and I go through, and I'll highlight the points I feel are
4 important to look for in the response itself.

15:47:26 5 Q. So had you -- when you first read this, were you
15:47:30 6 highlighting it at the time or did you read through it first
15:47:33 7 then come back to this part?

15:47:35 8 A. Typically I read it and highlight it as I read through
9 it.

15:47:39 10 Q. And in this case you've indicated with a note in the
15:47:44 11 upper right that -- what does that note say in the upper right?

12 A. That note states that these are not answerable.

13 Q. And what is it that's not answered?

14 A. Well, besides the highlighting here I had also
15:47:57 15 underlined the -- put squiggles to highlight these. And I was
16 pointing out that these items here, for example, type, scope,
15:48:07 17 qualification, requirements, and acceptance criteria, did not
15:48:10 18 appear to be answered in the response below.

15:48:15 19 Q. Did you get into some more detail about that as you got
20 into the response?

15:48:21 21 A. Right. This response, "These are not answered below,"
22 was something that I wrote after reading the response itself.
23 I went back and added that as a note. But these notes
15:48:33 24 underneath, I was again looking for these -- what I had
25 highlighted to see if I could find it in what the company's

1 response was to those. And so these notes that are, if you
2 will, in circles and balloons are my additional comments.

15:48:50 3 Q. All right. So the first one I want to draw your
4 attention to on the screen here is this one here. I circled it
5 in purple on the screen.

15:49:03 6 What was the purpose of your making this note to
7 the draft?

8 A. Well, if you go back to the very first paragraph on that
15:49:12 9 page, and it points to qualifications, that first line again in
15:49:22 10 parentheses: Type, scope, and qualification requirements and
11 abstinence criteria. So I was trying to address -- point out
12 at that point that if we had information, using an inspector
13 that was qualified to use one of these visual techniques, either
14 one or two or three, which is a detailed look, that that should
15:49:43 15 be added here.

15:49:45 16 Q. If that had not been done, would you expect the response
17 to indicate that there was not a qualification requirement for
15:49:54 18 the person who did the inspection?

15:49:56 19 A. The response would have been better had it said that
15:49:59 20 there were no qualified techniques used.

21 Q. And does that also apply to the second part of that
22 first bubble we're taking about, the acceptance criteria issue?

15:50:11 23 A. Yes.

15:50:18 24 Q. Now, I'd like you to look at the balloon on the lower
25 right-hand part of the document. Do you see that on the

15:50:25 1 monitor?

2 A. Yes.

15:50:27 3 Q. Could you read that comment to the jury? I'm not sure
15:50:30 4 it's easy to read.

15:50:31 5 A. That comment states: What does -- this is in quotes --
15:50:35 6 positive evidence mean? Better to explain, or NRC will question
15:50:39 7 too.

15:50:40 8 Q. Could you explain what you meant when you put that down
9 there?

10 A. Well, I didn't really understand when I read this that
11 -- and it stated positive evidence existed. I didn't think
15:50:51 12 that that was clear to -- that that would likely be clear to the
15:50:55 13 NRC when reviewing this letter. So I was advocating that
14 positive evidence should be explained or a better description
15 applied.

15:51:05 16 Q. There's a balloon on the left-hand margin that reads:
17 Was head viewed after cleaning to verify cleaning? Then another
15:51:14 18 remark: Acceptance criteria. What topic was that related to?

15:51:19 19 A. That dealt with, in my mind was the acceptance criteria
20 from -- again, from the NRC's question that we looked at
21 earlier. I thought the NRC would be looking for a statement if
22 the head had indeed been viewed after the cleaning was done to
23 verify it was clean and that it had met some established
24 acceptance criteria for cleanliness; that is, removal of the
25 boron.

15:51:52 1 Q. Now looking at the bottom, you have circled the second
2 to last sentence on that page. There was a sentence that said
3 a majority of nozzles were inspected. You circled the word
4 "majority" and wrote a comment to that. What was that comment
5 and why were you concerned with the wordage there?

6 A. The comment states: What's a majority? Better to be
15:52:13 7 specific than vague. NRC request is for this.

15:52:17 8 The NRC was interested in knowing if all of the
9 nozzles in an area of the head had been inspected. By using
15:52:25 10 the word majority was, in my opinion, pretty vague and not
15:52:29 11 specific. It could mean 51 percent; it could mean 99 percent.

12 Q. Did you address any of these comments with Mr. Cook?

13 A. I provided the original back to Rod.

14 Q. Did you talk to him about this specific issue of what
15 majority meant?

16 A. Yes, I did ask him what majority did mean.

17 Q. What did he tell you?

18 A. He told me that he had talked to Andrew Siemaszko and
15:52:54 19 that the -- well, actually what I asked him was why was not --
20 why weren't all the nozzles inspected. And Rod said he had
21 talked to Andrew Siemaszko and Andrew said that he had scrubbed
22 the head as best as he could; that there was some boron tightly
15:53:11 23 adhering to the reactor vessel head itself that they could not
15:53:15 24 remove. And so, therefore, they couldn't inspect all of the
25 nozzles. So that's why the words majority were being used.

15:53:24 1 Q. So approximately when did you have that conversation
2 with Mr. Cook?

3 A. When I provided these comments back to Rod.

15:53:32 4 Q. Did you talk about anything else in this bulletin or was
5 that --

6 A. No, other than saying here's the comments that I had
15:53:40 7 from my weekend to review.

8 Q. If you turn to the next page, page 3 of 4, there's a
15:53:49 9 balloon there. What was the purpose of that balloon?

15:54:03 10 A. This one was the last statement in that paragraph that
15:54:08 11 reads: Subsequent video inspection of the clean RPV head and
12 nozzle was performed for future use.

15:54:14 13 Again, I was questioning was a qualified inspector
14 used for that video inspection? Was there a procedure that had
15 been followed? What was the acceptance criteria to say that
15:54:26 16 the head was clean or not?

15:54:28 17 CR stands for Condition Report. That is -- which
18 was a problem report. If you identify any problems; for
19 example, if the head hadn't been cleaned, or if they had run
20 into some problems, I would have expected them to write a
21 problem report. So that question, once you write the problem
22 report, an evaluation would be done, then there would be a root
23 cause, and that's what this means here, root cause, where it
15:54:52 24 explains what the cause of that condition was.

15:54:56 25 So in conclusion: As written, the response doesn't

1 address the specifics asked by the request. That was my
2 opinion.

15:55:07 3 Q. These things you expected Mr. Cook to get back to you
4 about?

5 A. I expected that Rod would appropriately address these
15:55:14 6 comments.

15:55:16 7 Q. Well, what happened next? Did you review another
15:55:19 8 draft?

9 A. Yes, I did.

15:55:21 10 Q. What were the circumstances of your reviewing the second
15:55:24 11 draft or another draft?

12 You can go ahead and take a look at Government's
15:55:32 13 Exhibit 50 if you want.

15:55:41 14 A. This was a draft that was e-mailed to me on Friday,
15:55:46 15 August 24, 2001. In that I referenced that I previously looked
16 at a second -- another draft. In between what we just looked
15:55:59 17 at and what we're now looking at there was another draft that
15:56:02 18 was provided to me, but I only partially looked at that draft,
19 and I didn't finish that. When I was e-mailed this in Exhibit
15:56:10 20 50, I then looked at Exhibit 50.

15:56:22 21 Q. Were you just getting e-mails from Mr. Cook, or how was
22 it that you received this draft?

15:56:27 23 A. Yes. This was provided by e-mail.

15:56:29 24 Q. And were you just getting all the drafts or did he ask
25 you specifically to look this one over?

1 A. I was only getting some of the drafts.

15:56:40 2 Q. Again, does this -- the copy you have up there, does it
3 have your handwritten comments on it?

4 A. Yes, sir.

15:56:47 5 MR. BALLANTINE: Your Honor, I move to admit
6 Government's Exhibit 50, publish it to the jury.

7 MR. CONROY: No objection, Your Honor.

15:56:53 8 THE COURT: It will be admitted without objection.

15:57:02 9 MR. BALLANTINE: Your Honor, I think the jurors'
10 monitors may be turned off.

15:57:06 11 THE COURT: One moment. I can only do one thing
12 at a time. These things weigh 200 pounds.

15:57:18 13 BY MR. BALLANTINE:

15:57:18 14 Q. I'd like to start with this cover page. So it appears
15 that you printed out this e-mail from Mr. Cook?

16 A. Yes, I did, at work.

17 Q. What were the circumstances where you did the -- the
18 circumstances in which you did this review?

15:57:30 19 A. Well, again, on the 22nd, 23rd, and 24th of August we
15:57:38 20 were preparing for Senator Voinovich's visit, which was going to
21 be on Monday, the 27th. So I took this home because that was
15:57:49 22 the only time I was going to have any time to review it.

23 Q. So you reviewed it over the weekend?

24 A. That's correct.

15:57:56 25 Q. Why don't we get to that now. How did you deliver your

15:58:01 1 comments to Mr. Cook?

2 A. I dropped them off with him on Monday morning prior to
3 Senator Voinovich's visit.

4 Q. Having looked at this cover sheet, there's some -- are
5 there some general comments on the cover sheet?

15:58:14 6 A. They're overall comments, yes. I'd call them summary
15:58:21 7 comments.

8 Q. Summary comments. What were the summary comments that
9 you made to Mr. Cook?

10 A. They were addressed to Rod. It states: See comments on
11 letter. Why is the 90 percent being deleted? To me, this
15:58:35 12 letter is not complete and accurate as required by 50.9 without
13 it. We also need to make it clear the top of the dome was not
14 inspected due to boron deposits during 13 RFO. Has the persons
15 making this comment/change been advised of the 50.9
16 requirements? And I signed it and dated it.

15:58:55 17 Then I also added three important areas of comments
18 herein: The above regarding completeness; Number 2,
15:59:03 19 preservation of current licensing bases; and 3, resolution of
15:59:08 20 boric acid crystal deposits found and if the source cannot be
21 found by VT2.

15:59:17 22 Q. So, first of all, I'd like to ask you about -- I get
15:59:22 23 we'll get to the 90 percent issue later in the document. But
15:59:27 24 did this relate at all to your earlier questions about the
15:59:30 25 majority of the nozzles being inspected?

1 A. Yes. The original exhibit we had looked at here
15:59:39 2 contained "majority". And I had questions on that. The next
15:59:45 3 copy I received, which we don't have here, I believe, had 90
4 percent in it. This copy itself had deleted and -- as
5 referenced in this note from Rod, had deleted the reference to
15:59:59 6 90 percent of the nozzles being inspected in its entirety.

16:00:02 7 Q. And so what was your concern about that being taken out?

8 A. I did not believe it presented a complete and accurate
16:00:09 9 picture to the NRC of the head condition.

16:00:17 10 Q. And while we're on this page, the three important areas
11 of comments herein which you referred to at the bottom, the one
16:00:24 12 was the one I guess we were just talking about with respect to
16:00:29 13 90 percent; is that right?

16:00:31 14 A. I'm sorry?

15 Q. Well, the body says: Three important areas of comments
16 herein. You read them to the jury. Can you explain to them
17 what those three things mean?

18 A. Yes, the first one concerned my question on
19 completeness. The second concerned preservation of current
16:00:48 20 licensing basis, that --

16:00:50 21 Q. What does that mean?

22 A. Well, when the plant was issued an operating license,
23 there were certain requirements that were the rules in effect at
24 that time that the plant had to meet. As time evolved, the
16:01:05 25 rules changed, but the plant did not have to meet later evolving

16:01:09 1 rules. So that was called the bases for the reason the license
2 was issued. And so it was important to make sure you stayed
3 within current licensing or -- well, the current licensing bases
4 at that time.

16:01:25 5 Q. And the third issue?

16:01:34 6 A. The third one concerned a flow diagram that was added; I
7 had questions on that.

16:01:38 8 Q. I want to touch on one more thing on this page. Here
16:01:44 9 if you look on the monitor I'll circle you indicate a refueling
10 outage.

11 A. Yes, sir.

16:01:49 12 Q. It says 13 refueling outage; is that correct?

13 A. No. It was an error on my part. I should have put 12
16:01:59 14 RFO.

15 Q. But you were talking about the most recent refueling
16:02:02 16 outage?

17 A. That is correct.

16:02:13 18 Q. Mr. Wuokko, if you would now look at Attachment 1. It
16:02:20 19 says page 2 of 19. I want to go back to the same question,
16:02:25 20 same area of the bulletin response that we were talking about
16:02:29 21 with your previous letter. When you're looking at the question
22 again, this is the paragraph under NRC bulletin request item 1D,
16:02:54 23 that's quoting the NRC's request; is it not?

24 A. That is correct.

16:02:57 25 Q. And you've highlighted a section of that request. I'll

1. go ahead and read it. Include a description of any limitations
2 (insulation or other impediments to accessibility of the bare
3 metal of the RPV head for visual examinations). At what point
4 in your review of this version of the document did you highlight
5 that sentence?

16:03:21 6 A. Well, I read through the statement itself, and I believe
16:03:26 7 I highlighted that as I was reading through it the first time.
16:03:30 8 But I added the note not at that time; I came back later and
9 added that note.

10 Q. The note you're referring to is in the right-hand
11 margin?

16:03:39 12 A. Yes.

13 Q. What does that note say?

16:03:41 14 A. Note: NRC is requiring licensees to inform them of any
16:03:48 15 impediments.

16 Q. Why did you go back and make that note?

16:03:51 17 A. When I went to the next page, I noticed that there was
18 no longer any discussion of a majority or 90 percent of nozzles
19 being inspected. So I was aware from my previous conversations
16:04:04 20 with Rod that not all of the head had been inspected. So I
21 added a comment there and, to make sure Rod understood or saw
22 where that was coming from, I added this note back on page 2 of
16:04:20 23 19.

16:04:23 24 Q. At this point I want to ask you about a smaller edit
25 further down the page under the section that reads: April 1998

16:04:36 1 inspection results.

16:04:38 2 A. Yes.

16:04:39 3 Q. Did you add the term "crystal deposits" between the word
4 "acid" and the word "scattered" in the first sentence of that
5 response?

16:04:50 6 A. Yes.

16:04:51 7 Q. And you explain why in that bubble around it?

16:04:56 8 A. Well, when I read through this, it states there was an
9 uneven layer of boric acid scattered over the head. And that
10 would imply it was in a liquid state. And as far as I knew, it
11 was only within a crystal, a solid state. So I recommended
12 that those words be added, crystal deposits.

16:05:49 13 Q. Can you turn to the next page, page 3 of 19. There's a
14 block that you've highlighted in yellow on the right-hand
15 margin. And that's where I'd like to direct your attention
16 next.

16:06:10 17 Is this the area that we're talking about with
18 respect to the percentage of the head that had been inspected?

19 A. Correct.

16:06:16 20 Q. So what have you done here?

21 A. I recommended -- I suggested wording that should be
16:06:21 22 inserted into the letter as stated there.

16:06:28 23 Q. Would you go ahead and read the note to the jury?

16:06:31 24 A. Approximately 90 percent of the nozzles were inspected.
25 Boric acid crystal deposits at the dome center of the RPV head

16:06:46 1 prevented inspection of the remaining ten percent area.

16:06:50 2 Q. It appears you drew another bubble underneath there with
3 an arrow pointing to that recommended language. Why did you
4 draw that bubble in that area?

5 A. As I stated earlier, I did not think that the -- to my
6 knowledge all the information was being provided to the NRC
16:07:08 7 regarding the top of the head. So I put a note to make this
8 stand out, that it was important to add this, and also added a
9 reference, see NRC request on prior page, which is the note on
16:07:21 10 page 2 of 19.

16:07:23 11 Q. You mentioned it's based on your knowledge. Let's talk
12 about that for a moment. What was the basis for your knowledge
13 of the condition of the head of the reactor?

14 A. The discussion I referred to earlier with Rod.

15 Q. Had you done any work with the head of the reactor in
16 the past?

16:07:41 17 A. None.

16:07:48 18 Q. Looking over in the left-hand margin, you have a bubble
19 with an arrow pointing to it. It seems to be talking about the
20 sentence subsequent: Video inspections of the clean RPV head
16:08:01 21 and nozzles was performed for future reference. You made some
22 edits to that sentence, and you have a bubble with an arrow
16:08:09 23 going over to it. What is the purpose of that comment? First
24 of all, what was that comment? What was its purpose?

25 A. When I read through this sentence which stated

1 subsequent video inspection of the cleaned RPV head and nozzles
16:08:21 2 was performed for future reference, it implied to me that the
3 entire head had been cleaned and videoed. But I knew that
16:08:32 4 based on my prior conversations that that was not an accurate
16:08:36 5 depiction. So I added some edits to that to make it what I
6 felt to be more accurate, and also put the note in, again, the
16:08:49 7 statement is only true where the boron deposits were removed, to
8 indicate why I was making edits to that sentence.

16:09:01 9 Q. Then finally on this page you have a note directed
16:09:07 10 towards the paragraph that reads: Subsequent review of 1998 and
11 2000 inspection videotape results. That's here on the monitor.

16:09:16 12 Can you explain to the jury why you made that
16:09:19 13 comment?

14 A. This was the first time that I had seen a paragraph
16:09:23 15 added to that that discussed what the inspection videotape
16:09:29 16 results were. So I read through that paragraph. And the
16:09:33 17 concluding sentence, I questioned if that was an accurate and
16:09:38 18 complete description of what was on the tapes. Not that I had
19 seen the tapes or such, but it was a concluding statement. So
20 I was challenging Rod to make sure that that was complete and
21 accurate.

16:09:53 22 Q. The term "complete and accurate;" is that a term of art?

16:09:57 23 A. That's tied back to 10 CFR 50.9 requirements, all
24 information needs to be complete and accurate to the NRC.

25 Q. So it's a regulatory requirement?

1 A. Yes, sir.

2 Q. Was that something that folks within Regulatory Affairs
3 were familiar with?

4 A. Yes.

16:10:19 5 Q. All right. Tell the jury about -- I think you've
16:10:24 6 already told the jury about how you delivered this edit to Mr.
7 Cook. What happened during the rest of that day?

16:10:30 8 A. Okay. I dropped these off with Rod when I first came to
16:10:36 9 work on Monday, August 28. And I told him I had comments
16:10:41 10 provided here, and three of them -- three areas highlighted that
11 he needed to look at. Then I went out to coordinate Senator
16:10:49 12 Voinovich's visit because he was coming to the plant that day,
13 was going to take a plant tour, meet with various people, and
16:10:56 14 also hold a press conference at the end of the day.

15 Q. Did you meet with Mr. Cook again?

16:11:02 16 A. At the end of the day around 5:00 Rod Cook came into my
16:11:08 17 office, this was after I just returned to my office, and asked
18 me if I had reviewed the draft that he had left in my in-basket.

19 Q. What was he referring to?

20 A. He had provided another draft of the Serial Letter to
21 me, hard copy.

22 Q. What did you tell him?

16:11:24 23 A. I told him that I had been busy all day; I hadn't had a
24 chance to look at it, and the next day I wouldn't have a chance
25 either because I was in training all day. So I also indicated

1 that I wouldn't have time. He didn't need me to review it
2 because I wasn't the supervisor for this, so he did not need my
3 review and approval of it.

4 Q. What happened next?

16:11:44 5 A. He asked if I would at least look at it for typos
6 because I was good at catching typos.

7 Q. Did you agree to do that?

8 A. I agreed and said I would take it to training with me
16:11:58 9 tomorrow and look at it on breaks.

10 Q. Would you tell the jury about the way the training
11 happens at a nuclear power plant?

12 A. Well, the training is regimented. At that time it
13 started at 7:00. It was a full day; there was a schedule. It
14 started promptly at 7:00, couldn't be late. You took typically
16:12:19 15 ten-minute breaks every hour. You were expected to be back
16:12:25 16 immediately following that break. If you weren't, you were
16:12:28 17 basically written up for not being back in the classroom when
18 expected. In addition, your attention was to be focused on the
16:12:37 19 training; you were not to be doing other work on the side.

20 Q. So it wasn't study hall; you couldn't be there doing
16:12:44 21 other work while the training session --

16:12:46 22 A. It was not study hall.

16:12:48 23 Q. Did you review that draft for typos?

24 A. Yes, I reviewed it on my first break.

16:12:54 25 Q. And then what did you do?

1 A. I scanned through it and I went and used the company
2 phone and called Rod and told him I had reviewed it and I didn't
3 catch any typos.

16:13:08 4 Q. And what did you do with the copy that you had, the copy
5 of the draft that you had?

6 A. I was done with the copy. I hadn't marked up on it.
7 I hadn't marked it up at all. Again, this was a ten-minute
16:13:21 8 look, scanning through these, seeing if any typos had jumped out
9 at me. They hadn't, so I just threw that copy away.

16:13:30 10 Q. What's your understanding of what a greensheet review
16:13:34 11 involves within -- with the documents going to the NRC?

12 A. The greensheet is referenced in a procedure, a plant
13 procedure that discusses how the review is to be conducted.
16:13:51 14 There's also instructions on the back of the greensheet that
15 talks about how the review is to be conducted. And basically
16:13:59 16 you're looking at the letter to review it and identify to the
17 best of your knowledge if there's any errors on it, is it
16:14:08 18 complete, is it providing the necessary information to the NRC.

16:14:13 19 Q. Did you come to learn that there was a signature block
20 for you on the greensheet for Serial Letter 2731?

16:14:22 21 A. I didn't realize that there was a signature block for me
22 until 2002, preparing for my first interview with the NRC Office
16:14:34 23 of Investigation.

16:14:35 24 MR. BALLANTINE: And this is Government's Exhibit
16:14:37 25 59, Your Honor. I'd like to display a page of it to the jury.

16:14:42 1 THE COURT: It's been admitted.

16:14:56 2 BY MR. BALLANTINE:

16:14:56 3 Q. I'm going to zoom in on a portion of the document. Do
4 you see that portion on the screen?

16:15:05 5 A. Yes, I do.

16:15:11 6 Q. I'm going to highlight this block. So does that
7 indicate your name?

16:15:18 8 A. Yes.

16:15:19 9 Q. And where the signature or the initials would go, what
10 is indicated there?

11 A. It states, per telecon., 8-28-01.

12 Q. Was that the date of the telephone conversation you had
13 with Mr. Cook?

14 A. Yes.

16:15:34 15 Q. And did you -- did he ask you if he could sign your name
16 or indicate that you had approved the document?

17 A. No.

16:15:46 18 Q. If he had asked you if he could, what would you have
16:15:51 19 told him?

20 A. Well, as I told him the night before, I didn't have the
21 time to review, do a complete review of that document, so that I
22 would have needed additional time to go through the entire
16:16:04 23 document to review it before I had signed off.

24 Q. Do you know when this document left Davis-Besse?

16:16:09 25 A. This was submitted to the NRC -- Serial 2731 was

16:16:16 1 submitted to the NRC on September 4th.

2 Q. Was there time for you to do a greensheet review between
3 the 28th of August and the date that it left the plant?

16:16:29 4 A. Probably. This was never provided back to me after
5 that date of August 27th or 28th.

16:16:39 6 Q. Did anybody indicate to you that it was going out with
7 this notation on the greensheet?

8 A. No.

16:16:47 9 Q. What was your next -- what was the next event that
10 sticks out in your mind with respect to nozzle cracking at
16:16:55 11 Davis-Besse?

12 A. Next month, September, around the 29th, 28th of
13 September Bob Saunders, who was the Chief Nuclear Officer and
16:17:04 14 president of the company, received a phone call from the NRC
16:17:07 15 stating that that response was unacceptable to the NRC.

16:17:15 16 Q. And what happened after the -- the power station got
17 that notice from the NRC?

16:17:22 18 A. Well, Mr. Saunders informed Guy Campbell at the plant
19 and eventually was filtered down to my manager and Dale Miller,
20 and it also -- that's where I learned of it, I believe, from
21 Dale Miller. And then there were some -- following that there
16:17:43 22 were phone calls set up with the NRC to discuss the particular
16:17:46 23 concerns that the NRC had.

24 Q. What was your job as a supervisor of licensing with
25 respect to meetings with the NRR?

1 A. Well, with NRR I was a point of contact with the project
2 manager. Every nuclear power plant has a project manager
3 specifically assigned out at headquarters to work with that
4 plant. And their job is to coordinate submittals that we
5 provide to the NRC for their review and approval; and likewise,
6 should the NRC have questions back to us, they would typically
7 inform me of those questions or tell me if a letter was being
8 sent, or if the NRC wanted me, they could contact me. This is
9 to prevent just -- this is to make it more effective rather than
10 calling anybody at the plant to set up the meeting. So I serve
11 as a point of contact for the project manager.

12 Q. Were you the point of contact with respect to these
13 meetings about bulletin responses?

16:18:45 14 A. The initial phone call I was the contact, but as the
15 meetings later on, more of that was directed to Dave Lockwood,
16 the manager of Regulatory Affairs.

16:18:59 17 Q. The jury has heard some testimony about a telephone call
18 on October 3rd. Were you involved in that telephone call?

19 A. I was initially in that conference room.

20 Q. And what happened in the course of that phone call that
21 took you out of there?

22 A. Two additional -- well, the phone call was set up on a
16:19:17 23 speaker phone, which it's called a bridge line, and there's --
16:19:21 24 calls were made into that, and it could only accommodate so many
25 outside callers. And evidently what happened was all the lines

1 were taken up, and nobody else could dial in. And there were
2 two -- there was a company attorney and a governmental affairs
3 individual that also wanted to listen in on the phone call, so I
4 was asked to go and get an additional speaker phone that they
5 could call in on on that phone; we could turn on that speaker
16:19:49 6 phone so they could listen to the other speaker phone. So I
7 left the room to try to find a second speaker phone.

8 Q. So were you in attendance for most of the meeting?

16:19:58 9 A. The majority of the meeting I was out of the room.

16:20:07 10 Q. Mr. Wuokko, I'd like you to have a look at what's been
16:20:11 11 marked as Government's Exhibit 159.

16:20:19 12 Are you able to identify that document?

16:20:21 13 A. Yes.

16:20:22 14 Q. What is it?

16:20:23 15 A. This was a -- if you will, a news bulletin that was
16:20:28 16 issued by the plant communications staff on important issues.

17 Q. And what's the date of this news bulletin?

18 A. This is October 3rd, 2001.

16:20:36 19 Q. Did you have a habit of keeping these bulletins as they
20 came out?

21 A. Typically, no.

22 Q. Well, did you keep some of them?

16:20:46 23 A. This one I did keep.

16:20:48 24 Q. Why was that?

25 A. Because this was a --

16:20:56 1 Q. Could you repeat that answer?

2 A. This was becoming an important issue, receiving a lot of
16:21:03 3 NRC attention, and so I put it into one of my files I was
4 keeping on these issues.

16:21:11 5 MR. BALLANTINE: Your Honor, the government would
6 move to admit Government's Exhibit 159.

16:21:18 7 THE COURT: Any objections?

16:21:20 8 MR. CONROY: No, Your Honor.

16:21:22 9 MR. HIBEY: No, Your Honor.

10 THE COURT: It will be admitted.

16:21:25 11 BY MR. BALLANTINE:

16:21:25 12 Q. After the October 3rd phone call, what work did you do
13 on bulletin responses for Davis-Besse?

16:21:31 14 A. I was provided copies of those and I reviewed them.

15 Q. And what was -- what kind of review did you do?

16 A. Again, for looking at the format and looking at general
17 acceptability.

16:21:46 18 Q. What was your understanding of the -- how the technical
19 issues you had raised with Mr. Cook had been resolved?

16:21:53 20 A. I had assumed they were resolved appropriately,
16:21:58 21 correctly.

22 Q. If you hadn't resolved them, would you have expected him
23 to bring the comments back to you?

24 A. If I was wrong in a comment I had made, I would have
16:22:07 25 expected Rod to come back and tell me I was wrong on this and

16:22:10 1 this is why it doesn't go into the document.

16:22:15 2 MR. BALLANTINE: Your Honor, the government has no
3 more questions for Mr. Wuokko.

16:22:18 4 THE COURT: Cross-examination?

16:22:21 5 MR. WISE: Nothing from us, Your Honor.

16:22:26 6 - - -

16:22:26 7 DALE WUOKKO, CROSS-EXAMINATION

16:23:45 8 BY MR. CONROY:

16:23:45 9 Q. Mr. Wuokko, good afternoon. John Conroy on behalf of
16:23:51 10 Rod Cook.

16:24:06 11 Let me start by asking you if you are familiar with
12 a procedure written at Davis-Besse that controls NRC
16:24:26 13 communications responses?

16:24:28 14 A. Yes, I am.

15 Q. And you would be familiar with that in part in your role
16 as a supervisor in Regulatory Affairs; is that correct?

17 A. That's correct.

16:24:39 18 Q. I want to show you what is marked as Defendant's Exhibit
16:24:47 19 6 for identification. I have a copy here that I can use to put
20 up on your screen.

21 MR. CONROY: It is not in evidence yet, Your Honor,
16:25:02 22 but I would like to refer the witness to it.

16:25:10 23 MR. BALLANTINE: Is there a spare copy I could look
24 at, Your Honor, and follow along?

16:25:17 25 MR. CONROY: This may be a better way.

16:25:41 1 BY MR. CONROY:

16:25:41 2 Q. Do you recognize that document, sir, as being the
16:25:45 3 Davis-Besse NRC communications procedure? Take your time.

16:25:52 4 A. Yes, it is.

16:25:54 5 Q. I would ask you if you would to have reference to
6 Section 6.2 of that procedure?

16:26:03 7 A. 6.2. Okay.

16:26:14 8 Q. And at 6.2.1, if I put this on the machine --

16:26:23 9 MR. CONROY: The jury's not going to see it?

16:26:28 10 THE COURT: That's correct.

16:26:54 11 BY MR. CONROY:

16:26:54 12 Q. 6.2.1, Mr. Wuokko.

13 A. Yes, sir.

14 Q. Says, if I'm reading this correctly: The lead
15 department responsible for preparation of docketed
16 correspondence shall prepare the draft correspondence containing
17 the required information, and a commitment list (attachment 3),
18 verify the completeness and accuracy of the information, and
19 following the lead department director's concurrence, provide
20 this draft to Regulatory Affairs. This correspondence should
21 normally be provided to Regulatory Affairs a minimum of ten
22 working days prior to its required submittal to the NRC.

23 Is that a correct reading of 6.2.1?

24 A. Yes, sir.

25 Q. That is as you understood it; is that correct?

1 A. Yes, sir.

2 Q. With regard to 6.2.2, this document says: Regulatory

16:28:02 3 Affairs shall review the draft correspondence for format,

16:28:07 4 content, completeness, clarity, and general acceptability, and

5 prepare a proposed submittal to the NRC; is that correct?

16:28:17 6 A. That's correct.

7 Q. And that is the procedure, as you understood it, that

8 was in effect in 2001?

9 A. Yes.

16:28:24 10 Q. And with regard to the lead department as mentioned in

11 6.2.1 with regard to the bulletin response --

16:28:39 12 A. Yes.

13 Q. -- did you understand that that department was

16:28:42 14 Engineering?

15 A. That is correct.

16:28:44 16 Q. And so that it would be engineering's responsibility to

16:28:48 17 provide the information for this letter to Regulatory Affairs,

16:28:54 18 Regulatory Affairs would put it in proper form, then forward it

16:28:58 19 for ultimate signature and forwarding to the NRC?

16:29:02 20 A. That's correct.

16:29:04 21 Q. It was not Rod Cook's job to verify the accuracy of

16:29:11 22 technical information in the bulletin responses, was it?

16:29:16 23 A. The procedure requires that the lead department, in this

24 case Engineering, would have provided complete and accurate

16:29:25 25 information.

16:29:27 1 Q. All right. Thank you. Now, you, during the
16:29:32 2 preparation of the bulletin responses, were busy elsewhere?
3 A. Correct.
4 Q. As was your supervising engineer, Mr. Kennedy ?
16:29:51 5 A. Correct.
16:29:52 6 Q. So you enlisted Mr. Cook to come in and deal with
16:29:55 7 getting this response out; is that correct?
8 A. No.
9 Q. Who did?
10 A. That was discussed at a meeting with Dave Lockwood, the
11 manager; and Dale Miller, the compliance supervisor. And Dave
16:30:08 12 Lockwood made that decision that Mr. Miller and Mr. Cook would
13 have the lead.
14 Q. And which you thoroughly concurred?
16:30:17 15 A. I concurred with that decision.
16:30:26 16 Q. When the first bulletin response was being drafted,
16:30:30 17 2731, this is the first bulletin response you were provided the
16:30:35 18 drafts on which you made your comments?
16:30:38 19 A. That's correct.
16:30:39 20 Q. And you did not anticipate Mr. Cook getting back to you
21 as to each and every comment verbally; is that correct?
22 A. Correct.
16:30:47 23 Q. You expected him to give you a new draft to review
16:30:52 24 incorporating not just your comments, but the comments of other
25 people who were making input into the document itself; is that

16:31:01 1 right?

16:31:01 2 A. Correct.

16:31:04 3 Q. And when that process had been completed, you were sent
4 a final draft; is that right?

16:31:13 5 A. The process would have had me look at a final draft. I
6 don't believe I ever was provided a final draft.

16:31:19 7 Q. And it is your position that you never approved anyone
16:31:26 8 putting your initials on your line on the greensheet for 2731;
9 is that right?

10 A. Correct.

11 Q. But you did sign 2735?

16:31:38 12 A. Correct.

13 Q. And 41?

14 A. Correct.

16:31:40 15 Q. 44?

16 A. I believe so.

17 Q. And 45?

18 A. Yes.

16:31:45 19 Q. And you did give testimony under oath, did you not, to
20 the Office of Inspections of the U.S. Nuclear Regulatory
16:31:56 21 Commission in 2002; is that correct?

22 A. Yes.

23 Q. Do you recall that testimony, Mr. Wuokko?

16:32:03 24 A. Not all of it.

16:32:04 25 MR. CONROY: I don't have multiple copies of it

1 with me, so I'm going to have to put this on the machine and go
2 through it with him, Your Honor.

16:32:18 3 THE COURT: Has this been utilized?

16:32:22 4 MR. CONROY: It has not. It would need to be
5 marked as Defense -- let me just get it marked.

16:33:04 6 BY MR. CONROY:

16:33:04 7 Q. All right, sir. The date of this testimony was October
16:33:16 8 10th, 2002. And I want to ask you if you recall being asked
9 these questions and giving these answers. Okay. Have you got
10 it there on your screen?

16:33:34 11 MR. BALLANTINE: Your Honor, he hasn't -- he needs
12 to be asked a question if Mr. Conroy intends to impeach him with
13 this document.

16:33:45 14 MR. CONROY: I believe I've asked him the question.

16:33:47 15 MR. BALLANTINE: What was the question?

16 16 MR. CONROY: The question was: Did you agree to
17 let your signature be put -- your initials be put on the
18 greensheet for 2731?

16:33:58 19 THE COURT: And he responded no.

16:34:05 20 MR. CONROY: He responded no.

16:34:13 21 BY MR. CONROY:

22 Q. Now, do you recall that Agent Ulie questioned you on the
16:34:18 23 10th of October, 2002?

24 A. Yes.

16:34:23 25 Q. And he asked you whether or not you would confirm -- and

1 I'm now reading from page 68: Do you have that at the top, page
16:34:36 2 68?

16:34:40 3 A. Yes, 68.

16:34:45 4 Q. Special Agent Ulie: Would you just confirm that these
16:34:51 5 are the greensheets? If you would confirm that you did sign
16:34:55 6 off on serial numbers 2731, 2735, 2741, and 2744?

16:35:07 7 And your attorney, or an attorney who was there
16:35:11 8 whose name was Mr. Gutierrez?

9 A. Correct.

16:35:16 10 Q. -- said: What was the first one?

11 And Mr. Ulie replied: 2731.

12 And you said: Well, actually, on Serial 2731 it's
16:35:27 13 indicated per telephone. I didn't actually sign off on that.

14 Was that your testimony?

15 A. Correct.

16:35:36 16 Q. Then Special Agent Ulie asks you: Do you recall reading
17 that over?

16:35:42 18 Is that right?

19 A. Correct.

16:35:47 20 Q. And you said: I do recall reading -- yes, I do recall
21 reading this serial?

16:35:53 22 A. Correct.

16:35:54 23 Q. Special Agent Ulie said: Okay.

24 You said: At least in the draft form.

25 And he said: Uh-huh.

1 And you said: On 2735 I did sign off on the
16:36:05 2 greensheet. On 2741 I did sign off on the greensheet. And on
16:36:10 3 2744, I did sign off on the greensheet.

16:36:14 4 Special Agent Ulie: Okay. Did you see any of the
5 photos that were going to be included in these submittals prior
6 to their submission?

16:36:27 7 And the answer was -- Mr. Gutierrez said before you
8 ask that, Joe, I think it's important for the record.

16:36:35 9 Agent Ulie: All right.

10 Mr. Gutierrez: Could you explain to Mr. Ulie what
11 you think your signature represents as Supervisor of Licensing
16:36:44 12 on these concurrences --

16:36:46 13 MR. BALLANTINE: I'm not sure there's impeachment
14 going on here.

16:36:50 15 MR. CONROY: Otherwise I'm going to be taking it
16 out of context, Your Honor. It goes on a while.

16:36:55 17 THE COURT: I understand that. But didn't he
18 indicate already that he signed off on the other ones except for
16:37:06 19 31?

16:37:06 20 BY MR. CONROY:

16:37:09 21 Q. Mr. Wuokko, -- this is Mr. Wuokko: Well, actually, on
22 this 2731, the first response to the NRC, because my role had
16:37:20 23 changed, I was reviewing -- doing a sanity check, if you will,
24 to make sure there were no glaring errors in the letter going
25 off to the NRC, to the responses -- to be responsive to what the

1 NRC was asking for.

16:37:33 2 On this one they were all prepared by Rod Cook, so

3 Dale Miller's role as the supervisor would have been to review

4 Rod's work, really, at that point.

16:37:43 5 Again, my role interfaced with the NRR. I thought

6 it was important to know what the letters stated, also going to

7 the NRC, again, should they call me, so I'd have some

8 information of what the letters contained as far as information

9 provided to them.

16:38:00 10 MR. BALLANTINE: Your Honor --

11 THE COURT: I think enough is enough.

16:38:03 12 MR. CONROY: All right. Then I will move on to

16:38:06 13 page 71, if you will, sir -- I apologize. I'm going to have to

14 wait a second. I'm missing a page. I'm going to have to come

15 back to this.

16:39:13 16 (Discussion had off the record.)

16:39:35 17 MR. CONROY: I apologize.

16:39:36 18 THE COURT: Mr. Conroy, you cannot read those

16:39:41 19 unless you ask him a question. If he does not answer in

16:39:44 20 accordance with prior statements, you can use them for

16:39:47 21 impeachment purposes.

16:39:50 22 BY MR. CONROY:

23 Q. Did you read 2731, sir?

16:39:53 24 THE COURT: We already went there.

25 BY MR. CONROY:

1 Q. And did you agree to let it be signed?

16:39:59 2 A. I read some drafts of 2731, but I did not agree to use
3 my signature for approval.

4 Q. I'm referring now to page 70 at the bottom and page 71
16:40:14 5 of your testimony to the OI in October of 2002. And now we are
16:40:20 6 referring to 2731.

16:40:25 7 When I read that letter -- last line -- I did not
16:40:28 8 identify anything that was incomplete or inaccurate in that
9 letter or I wouldn't have signed it.

16:40:34 10 Is that your testimony then, sir?

11 A. It was at that time, yes.

16:40:46 12 MR. BALLANTINE: I'm sorry, how do we know that's
13 the letter he's referring to?

16:40:53 14 MR. CONROY: Your Honor, I was prepared to read the
16:40:55 15 whole thing. I'll put it all in.

16:40:57 16 THE COURT: Why don't you show him where it asks --
16:41:00 17 right above where you were reading.

16:41:32 18 (Discussion had off the record.)

16:42:17 19 MR. BALLANTINE: Your Honor, I'm not sure how much
20 further we're going with this.

16:42:23 21 MR. CONROY: That's as far as we're going with
22 this, Your Honor.

16:42:36 23 BY MR. CONROY:

24 Q. Now, Mr. Wuokko, you have known Rod Cook for many years;
16:42:45 25 is that correct?

16:42:45 1 A. Since 1985, yes.

2 Q. And you've worked with him for many years?

3 A. Correct.

16:42:52 4 Q. You've always known him to be a reliable, trustworthy

16:42:57 5 engineer; isn't that right?

16:42:59 6 A. Yes.

16:43:01 7 Q. And that was one of the reasons why you were prepared to

16:43:06 8 let him work on this -- you concurred in his working on the

16:43:10 9 bulletin response; is that right?

16:43:12 10 A. Yes.

16:43:14 11 Q. And were you personally familiar with issues of

16:43:33 12 circumferential cracking in 2001?

16:43:38 13 A. Just to the extent of reading what was in the bulletin.

16:43:42 14 Q. Do you know that Mr. Cook had any more background in it

15 than you?

16:43:46 16 A. No, I don't.

16:43:56 17 Q. And when he was given the job of assembling the first

18 bulletin response, you expected him to perform his duties

16:44:09 19 essentially without direct supervision; did you not?

16:44:13 20 A. It had been transferred to Dale Miller as his

21 supervisor. I expected Dale Miller would be supervising him.

16:44:21 22 Q. So if Dale Miller's testimony were that he was expecting

23 you to be supervising Mr. Cook, then somebody is wrong about who

24 was supervising; isn't that right?

25 A. That's right.

16:44:41 1 Q. And your review, I thought that you said that you agreed
16:44:51 2 to review the drafts of 2731 for format; is that what you've
3 testified?

4 A. Correct.

5 Q. But your comments on 2741 -- 2731, excuse me, are more
6 than format; are they not?

16:45:13 7 A. That's right. It wasn't correct just to let those
16:45:16 8 things slide by.

16:45:19 9 Q. So you did a full review?

10 A. Of the draft that I had in front of me.

11 Q. Well, you did two. I mean, there's at least two drafts
12 here?

16:45:26 13 A. Right.

14 Q. You indicated there was a third that you saw?

16:45:29 15 A. I reviewed that portion of that between the first and
16 the third.

17 Q. So you would have expected, having done that much
16:45:36 18 review, that your name would appear on the greensheet as a
19 reviewer; would you not?

16:45:42 20 A. No, because Dale Miller was Rod's supervisor.

21 Q. But you knew it was there?

16:45:49 22 A. I didn't know my name was on the greensheet.

16:46:24 23 Q. Let us go over a bit some of your comments. If Mr.
16:46:42 24 Cook found some of your comments or suggestions in these drafts
16:46:49 25 to be inappropriate, you would not have expected him to include

16:46:53 1 them, would you?

16:46:54 2 A. That's correct.

3 Q. And if he had found them to be inappropriate, you would
4 not expect him to have said, and these remarks are
16:47:08 5 inappropriate, and put some reference to them in there; he would
6 just leave them out?

16:47:27 7 A. Typically the individual resolving the comment would get
8 back to the originator of those comments to discuss why they
9 weren't included.

10 Q. But he did, didn't he, by sending you back other drafts?

16:47:46 11 A. Typically it's done face to face.

16:47:49 12 Q. But you were in training, and Mr. Cook was on a
13 deadline, and he was getting comments from all over the place,
16:47:55 14 wasn't he?

15 A. That's true, I believe.

16:48:02 16 Q. So under the circumstances, you really wouldn't -- you
16:48:07 17 wouldn't have required him to get back to you personally on each
16:48:10 18 of your comments, would you?

16:48:12 19 A. Under those circumstances, that's correct.

16:48:18 20 MR. POOLE: I didn't hear that answer.

16:48:21 21 A. I said, under those circumstances, that's correct as
22 stated.

16:48:26 23 BY MR. CONROY:

16:48:26 24 Q. Do you know whether Mr. Cook dealt with your comments,
25 your first set of comments from Government's Exhibit -- I'm not

1 sure what exhibit number it is.

16:48:50 2 MR. BALLANTINE: 42.

16:48:51 3 BY MR. CONROY:

16:48:51 4 Q. Is 42 the e-mail of 8-20, with 8-21-01?

16:49:00 5 A. Yes.

6 Q. That's right?

7 A. 8-20 does have my handwritten comments on it.

8 Q. That is Exhibit Number what?

9 A.. Exhibit 42.

16:49:09 10 Q. All right, sir. I'd like to put that up. We have a

11 copy that seems to print better than the actual numbered exhibit

12 we've got. So I'm going to put this up representing that it's

16:49:39 13 the same as your Exhibit Number 42.

14 A. Okay.

16:49:50 15 Q. All right. So now I want to -- if I raise this higher,

16:49:59 16 Your Honor, somehow can I --

16:50:02 17 THE COURT: No.

16:50:08 18 MR. CONROY: I'm trying to get the whole page in.

16:50:13 19 THE COURT: We'll get an expert involved.

16:50:25 20 MR. CONROY: This is fine for the purpose.

16:50:31 21 BY MR. CONROY:

22 Q. Your first set of comments on 2731 that you gave to Mr.

23 Cook with a date of 8-21 were on the entire document; isn't that

24 correct? They were not limited to just Section 1D?

25 A. That's correct. I went through the entire document.

1 Q. And what I would like to do is just show the jury what
2 those comments entailed by just going through the pages one by
3 one. There's no comment required.

16:51:04 4 A. When I said entire document, the entire document that
5 was provided, which was not the final document.

6 Q. Right. This is just your comments on what was provided
7 to you here; is that right?

16:51:18 8 A. That's correct.

16:51:19 9 Q. All right. These are the pages (document shown). Were
10 you following along with me as I turned those over?

16:52:32 11 A. Yes.

12 Q. That was your first set of comments on the first draft
13 that you got? That was your set of comments on the first draft
14 that you got?

15 A. That is my recollection.

16 Q. And that encompassed not just Section 1D, but this
16:52:48 17 entire document?

18 A. Correct.

16:52:54 19 Q. And Section 1D, as you were reporting on it -- and this
16:52:59 20 is on page 2 of 4 in this draft -- at the top begins the
16:53:23 21 comments on Section 1D. Is that right?

22 A. Correct.

16:53:29 23 Q. Section 1D did not have any particularly greater
16:53:34 24 significance than other sections in the document, did it?

16:53:39 25 A. As far as my review, no.

16:53:46 1 Q. And as you understood the bulletin, all of these
16:53:52 2 paragraphs that had to be answered had to be answered correctly,
16:53:58 3 accurately, completely, and all of that had to be handled by Mr.
4 Cook; isn't that right?

16:54:04 5 A. Correct.

6 Q. In terms of getting the information together?

7 A. That is correct.

16:54:18 8 Q. Now, I want to direct your attention, if I might, to
9 page 1 of 4.

10 Are you with me there?

16:54:50 11 THE COURT: Same exhibit, sir?

16:54:52 12 MR. CONROY: Same exhibit, page 1 of 4.

16:54:55 13 A. Okay.

14 BY MR. CONROY:

15 Q. Now, your comments on this page have no bearing on past
16 inspections at all, do they?

16:55:06 17 A. I'm sorry. I don't understand the question.

16:55:09 18 Q. The questions are not about past inspections here.
16:55:12 19 They are about other matters entirely?

16:55:27 20 A. That appears to be true on this page.

16:55:31 21 Q. And then we move on to Section 1D. Now, with regard to
16:55:41 22 the bubble at the top of page 2 of 4 on the right, that says
23 these are not answered below.

16:55:59 24 Did you come to find out that ultimately they were
16:56:03 25 answered to your satisfaction?

1 A. No.

16:56:07 2 Q. You mean you did not review what you got back?

16:56:13 3 A. You said ultimately. What ultimately went to the NRC,
4 I never reviewed.

16:56:19 5 Q. Did you review interim drafts?

16:56:23 6 THE COURT: No, you can't see anything, right? It
7 has not been moved nor admitted.

16:56:35 8 MR. BALLANTINE: Your Honor, I believe I moved both
9 of these documents. This is Government's Exhibit 42.

16:56:41 10 THE COURT: That's why I asked the question. My
16:56:44 11 apology to you, sir.

16:56:46 12 MR. CONROY: Your Honor, should we stop? It's
13 getting to 5:00. I'll go on.

16:56:53 14 THE COURT: How much longer do you have?

16:56:56 15 MR. CONROY: I'm going to be a while.

16:57:00 16 THE COURT: Is that a promise?

16:57:02 17 MR. CONROY: It's a promise.

16:57:06 18 THE COURT: Mr. Ballantine?

16:57:16 19 (Discussion had off the record.)

16:58:00 20 THE COURT: Let me explain. If there is a
16:58:04 21 possibility or a probability that we can finish a witness who is
22 from out of town, we, as I told you at the beginning, will
23 attempt to do so. So let's see how we cruise through this next
24 series of questions.

16:58:27 25 I'm sorry. I was looking at Exhibit 41 rather

1 than 42. That's my error. I apologize.

16:58:37 2 BY MR. CONROY:

16:58:38 3 Q. Again, what I'm asking you to do is follow along with me
4 with your copy that's in evidence. Mine appears to be
5 readable; not very, but it's better.

16:59:12 6 Now, what I was asking you about was the comment at
16:59:15 7 the top right that says these are not answered below. Did
8 there come a point when you saw in any draft that those were
9 answered?

16:59:34 10 A. I couldn't say for sure.

16:59:39 11 Q. Looking at paragraph 3 after the words, "which
12 provides," and it asks: Was this inspection completed using a
13 qualified inspector VT2 or VT3? If yes, add, was a procedure
14 used, and the acceptance criteria.

17:00:05 15 Do you see that bubble?

16 A. Yes.

17 Q. Was any draft prepared and sent to you that answered
18 that question?

17:00:21 19 A. I don't recall seeing a draft that included this
20 information.

17:00:30 21 Q. With regard to the first paragraph indented which talks
22 about 1998 inspection reports performed during 11 RFO and has a
23 bubble on the left that says: Was head viewed after cleaning to
17:00:43 24 verify cleaning acceptance criteria? Did you get a draft at any
17:00:48 25 point that answered that question for you?

17:00:50 .1 A. I received no draft that addressed these questions
2 specifically.

17:00:58 3 Q. Did you get a draft in the last paragraph on page 2 of
17:01:04 4 4, bottom right, where it asks: What's a majority? Better to
5 be specific than vague. NRC request is for this.

6 Did you ever get any answer to that question?

17:01:18 7 A. I received no draft that I read that answered that
17:01:22 8 question.

9 Q. You received no draft that you read that answered that?

10 A. That's correct.

11 Q. Did you know that a debate was taking place between
12 Engineering and Mr. Cook with regard to what percentage of the
17:01:34 13 head could be viewed?

14 A. No, I did not.

15 Q. Did you understand that as -- when you wrote this
16 question, did you understand that what you were referring to was
17 the as-left condition of the head after 12 RFO?

17:01:51 18 A. State that again, please.

19 Q. Were you -- when you said, "What's a majority," were you
17:01:58 20 talking about the as-found or the as-left condition of the head?

17:02:02 21 A. The as-found.

22 Q. The as-found condition?

23 A. Yes.

17:02:05 24 Q. Therefore, if the debate that was going on in -- not
17:02:20 25 debate, but the discussion that was going on between Mr. Cook

17:02:24 1 and Engineering, if there was one, that is talking about what is
2 a majority, 90 percent, 95 percent, if that discussion was
3 taking place, it was your understanding that was about the
4 as-found condition?

5 A. I wasn't aware that there was any ongoing discussion
17:02:39 6 whatsoever.

7 Q. But your question was as to the as-found condition?

8 A. That's what I believe my question dealt with, yes.

17:02:46 9 Q. So that the sentence that talks about the RPV head was
17:02:50 10 cleaned with demineralized water, and that's the last sentence
11 on that page, and then it says, "To the greatest possible extent
17:03:08 12 while maintaining the principles of as-low-as-reasonably-
13 achievable regarding the dose and method," would reply to the
14 as-left condition; is that correct?

15 A. Correct.

17:05:20 16 Q. At the risk of not recalling where I was at, we're going
17 to move on.

17:05:24 18 Oh, I was asking you about as-found and as-left,
17:05:27 19 and you clarified that, so we're moving on from there.

17:06:03 20 With regard to the e-mail that you sent to Mr. Cook
17:06:08 21 on the 24th of August, and on which you have comments dated the
17:06:15 22 25th of August, '01, and that exhibit number is --

17:06:21 23 MR. BALLANTINE: 50.

17:06:23 24 BY MR. CONROY:

17:06:23 25 Q. -- 50. Do you have that one, sir?

1 A. Yes, sir.

17:06:27 2 Q. Let me just show you. Now, this also was commentary on
3 the entire bulletin; is that correct?

17:06:38 4 A. That is correct.

5 Q. Let me just review with you what your comments extended
6 to this time.

17:08:10 7 So again, your comments covered the entire bulletin
8 response, all paragraphs?

9 A. Yes, sir.

17:08:23 10 Q. And these were provided to Mr. Cook on the 25th,
11 response was to go out on the 4th of September; is that correct?

12 A. No.

13 Q. They were not provided to him on the 25th?

14 A. No.

17:08:36 15 Q. When were they provided to him?

16 A. The morning of the 27th.

17 Q. On the 27th of August. So he had to incorporate these
18 and any others that he had by -- in time to turn them around and
17:08:50 19 have them approved for transmittal on the 4th of September; is
20 that correct?

21 A. That's correct. But actually the target at that time,
22 I believe, was still to get it out by the end of August 30th.

23 Q. There was a time crunch?

17:09:05 24 A. There was a deadline, yes.

17:09:08 25 Q. And your comments were designed to help him ensure that

17:09:16 1 the response was complete and accurate?

17:09:21 2 A. Yes.

17:09:22 3 Q. You were trying to be complete and accurate?

4 A. When I reviewed, if I spotted anything that I had a
5 question on, I capitalized it to make sure that the company's --
17:09:32 6 to ensure to the best of my knowledge that it was going to be
17:09:36 7 looked at to make sure it was corrected.

8 Q. And you expected Mr. Cook to be doing the same thing?

17:09:42 9 A. Yes.

10 Q. And you had every expectation that he would be doing the
11 same thing?

12 A. Yes.

13 Q. And in doing that, you expected him to be relying on
14 information provided by Engineering?

15 A. That is correct.

17:09:55 16 Q. And that specifically applied to Section 1D?

17 A. Yes, sir.

17:10:07 18 Q. Now, you had three -- on the cover e-mail you had three
19 areas that you wanted Mr. Cook to be attentive to. One was the
20 above re: completeness. And that is where you mention Section
17:10:32 21 50.9?

17:10:33 22 A. Correct.

17:10:34 23 Q. Was it your understanding that people in the plant did
24 not understand the requirement to be complete and accurate in
17:10:41 25 responses given to the NRC?

17:10:43 1 A. I would expect everyone at the plant, although they may
2 not be able to reference 50.9, would expect all information to
17:10:53 3 be complete and accurate to the NRC.
4 Q. It was common knowledge?
5 A. I believe so.
17:10:58 6 Q. So to the extent that you were asking Mr. Cook to check
7 with people to understand if they knew their obligations to be
8 complete and accurate, that was somewhat gratuitous, was it not?
17:11:19 9 A. When I read this, the impression I had was that somebody
17:11:26 10 had talked to Rod about not including that. And I wanted to
11 make sure that Rod had some support, if necessary, to respond to
12 that to say we need to be complete and accurate.
13 Q. So if Mr. Cook did not understand the requirements of
14 50.9, he could tell somebody that there was such a section?
15 A. Certainly.
16 Q. But you knew he knew what it was?
17 A. Well, again, I was -- I was flagging this to Rod to
17:11:58 18 remind whoever it was, if somebody indeed was saying you don't
17:12:02 19 need to include this information, that yes, we did -- that yes,
20 it did need to be included.
21 Q. And if a legitimate discussion was taking place as to
22 what percentage of the head could be seen as found at 12 RFO,
23 you were unaware of it?
24 A. I was unaware of any discussion like that.
17:12:26 25 Q. Now, your Concern Number 2 at the bottom of this e-mail

1 has to do with the preservation of current licensing basis?

2 A. Correct.

3 Q. That has nothing whatsoever to do with past inspections,
17:12:41 4 does it?

5 A. That's correct.

6 Q. And Number 3, resolution of boric acid crystal deposits
7 found, and if the source cannot be found by VT2. What are you
8 talking about there?

17:12:59 9 A. In the submittal, this is Attachment 1, page 17 of 19,
17:13:04 10 the diagram that's shown there.

17:13:10 11 Q. And that is this document on its side?

12 A. That's correct.

13 Q. And I don't know what to do about that.

14 A. I don't either.

17:13:25 15 Q. In any event, that is the portion that you're referring
16 to?

17:13:29 17 A. Yes.

18 Q. Again, not related to Section 1D?

17:13:50 19 (Discussion had off the record.)

17:13:52 20 MR. CONROY: Gee whiz. I got it.

17:14:08 21 BY MR. CONROY:

17:14:08 22 Q. This relates to future inspections, doesn't it?

17:14:11 23 A. Yes, sir.

24 Q. Not past?

25 A. That's correct. It does not relate to 1D.

17:14:30 1 Q. And again, when we get to page 2 of 19, and in the
17:14:43 2 right-hand margin your note: NRC is requiring licensees to
3 inform them of any impediments.

17:14:52 4 A. Yes.

17:14:54 5 Q. Did you get a draft that explained to you that that had
6 been dealt with?

17:15:03 7 A. I'm sorry, what was the question?

8 Q. Did you get an answer to the note that you put in the
9 right margin with regard to any impediments being dealt with?

17:15:14 10 A. Now, this dealt with the approximately 90 percent. I
17:15:19 11 did not get a verbal response to that.

17:15:24 12 Q. And you don't know whether or not you got a draft that
13 dealt with it?

17:15:29 14 A. The only drafts that came out, I don't know if they
17:15:33 15 dealt with it or not because after the 27th and my review of the
16 draft for typos, I did not review any other additional drafts.

17 Q. But this comment, on the 27th, or the one that you
18 dropped off to him on the 27th --

19 A. Correct.

17:15:51 20 Q. -- and the next page, 3 of 19, in which on the middle on
21 the right you were talking about approximately 90 percent of the
17:16:03 22 nozzles were inspected, that's your writing?

23 A. Correct.

24 Q. That, again, refers back to this as-found situation that
25 you were referring to in your first set of comments?

1 A. Correct.

17:16:19 2 Q. And you were aware of no internal discussions that were
17:16:22 3 going on about what percentage was actually involved?

4 A. That is correct.

17:16:28 5 Q. And likewise when you add at the bottom below that,
6 "important to add, see NRC request on prior page," it's all got
7 to do with the 90 percent?

8 A. That's correct.

17:17:04 9 Q. Now, when you got --

17:17:08 10 A. I'm sorry.

17:17:10 11 Q. -- a draft, you were in a position to make any comments
12 that you wanted on it, were you not?

13 A. As long as time permitted.

14 Q. And it was not uncommon at Davis-Besse for someone to
17:17:30 15 provide the initials on a greensheet of people who were not
16 available at the time? Is that right?

17:17:36 17 A. I wouldn't say that was the common practice.

18 Q. So that if there had been testimony that it was, that
19 would be in error?

17:17:44 20 A. I don't know what their testimony is. All I can say is
21 what I'm familiar with. It's not encouraged to have someone
22 else's initial for -- rather than the actual person.

23 Q. But given circumstances necessitating it, it could be
17:18:03 24 done?

17:18:03 25 A. It could be done.

17:18:11 1 MR. CONROY: The Court's indulgence for a moment,
2 Your Honor.
3 THE COURT: All right.
17:18:46 4 MR. CONROY: You're right, Your Honor. Nothing
5 further.
17:18:54 6 THE COURT: Redirect?
17:18:56 7 MR. BALLANTINE: Thank you, Your Honor.
17:18:58 8 - - -
17:18:58 9 DALE WUOKKO, REDIRECT EXAMINATION
17:18:59 10 BY MR. BALLANTINE:
17:18:59 11 Q. Could I have Defendant's Exhibit 16 or whatever that
12 testimony was?
17:19:10 13 THE COURT: That was used but not admitted.
17:19:22 14 MR. BALLANTINE: Right.
17:19:22 15 BY MR. BALLANTINE:
17:19:36 16
17:19:36 17 Q. I've been mispronouncing your name all day. Could you
17:19:41 18 pronounce it for me?
17:19:42 19 A. It's Wuokko, W-o.
17:19:47 20 Q. Mr. Wuokko, could you take a look at what's been marked
21 for identification I think as Defendant's Exhibit 6 up there.
22 Do you still have that up there?
23 THE COURT: 6 or 16?
24 MR. BALLANTINE: I'm talking about 6 at this point,
25 Your Honor.

1 A. Yes, I do.

2 BY MR. BALLANTINE:

3 Q. If you could, look at page 9. Is that the NRC
17:20:08 4 communication procedure?

5 A. Correct.

17:20:12 6 Q. You were asked about this earlier by Mr. Conroy; is that
7 right?

8 A. Yes.

17:20:16 9 Q. And 6.2.2, that indicates that Regulatory Affairs is to
10 review the draft correspondence for format, content,
17:20:29 11 completeness, clarity, and general acceptability?

12 A. Correct.

17:20:32 13 Q. Were your comments addressing content and completeness?

17:20:42 14 A. My comments were addressing the format, and they were
15 questioning the completeness.

17:20:53 16 Q. After you questioned the completeness -- I'd like you to
17 look at the next page, page 10, 6.2.6.

17:21:01 18 Does that say Regulatory Affairs and lead
19 department shall resolve any comments received under the
20 proposed submittal? Disagreements which cannot be resolved
21 shall be elevated to the next level of management for
22 resolution. If this resolution results in significant changes
23 to the proposed submittal, Regulatory Affairs shall reroute
17:21:21 24 proposed submittal repeating steps 6.2.4 through 6.2.6.

17:21:27 25 Did I read that accurately?

1 A. That's correct.

17:21:29 2 Q. Based on that part of the procedure, would you have
17:21:32 3 expected Mr. Cook to come back to you to resolve your comments?

17:21:42 4 A. It was a procedural requirement that he come back and
17:21:49 5 resolve those comments with me.

17:22:11 6 Q. Do you have Government's Exhibit 42 in front of you
7 still?

17:22:14 8 A. Yes.

17:22:15 9 Q. And Mr. Conroy asked you some questions about your
10 review of that document?

17:22:19 11 A. Yes.

17:22:24 12 Q. Where in that document -- that was the first edit that
13 you looked at. Where in that document were there issues of
17:22:35 14 non-responsiveness to the NRC's questions?

17:22:50 15 A. It looked to me in the request item 1D that there was
17:22:57 16 information missing that the NRC was looking for.

17:23:02 17 Q. That was the part that we were talking about on your
18 direct examination; is that right?

19 A. That is correct.

17:23:08 20 Q. The other edits that you made, were they by and large
17:23:15 21 format and typo edits?

17:23:18 22 A. Yeah. These were grammatical or format type
17:23:26 23 corrections.

24 Q. What were the most important edits to this document that
25 you made or comments?

1 A. Well, the most important comments were the ones in
2 reference to the 1 Delta.

17:23:37 3 Q. And with respect to Government's Exhibit 50, do you
4 still have that up in front of you?

17:23:45 5 A. Yes.

6 Q. Government's Exhibit 50, you indicated the three areas
7 that you thought were of particular concern; is that right?

8 A. Yes, sir.

9 Q. And one of those was the one we went over, the issue of
17:23:58 10 completeness and accuracy?

11 A. Yes.

17:24:00 12 Q. And which part of the bulletin would that respond to or
17:24:03 13 relate to?

17:24:04 14 A. That's 1D.

17:24:15 15 Q. Finally, Mr. Wuokko, would you expect a responsible and
17:24:24 16 trustworthy engineer would get back to you before signing off on
17:24:27 17 a greensheet for you?

17:24:32 18 A. Yes. But I wouldn't have the person -- it would have
19 to be greatly unusual circumstances to have somebody sign off on
20 the greensheet for me.

21 Q. But if that were to happen, you would expect that
17:24:49 22 another responsible and trustworthy engineer would have told you
23 that that was what he was going to do or ask you if he could?

24 A. Yes.

17:24:56 25 Q. Did Mr. Cook ask you if he could sign off on the

17:24:59 1 greensheet for Serial Letter 2731?

2 A. No.

17:25:02 3 MR. BALLANTINE: No further questions, Your Honor.

17:25:07 4 MR. CONROY: Can I do it from here?

17:25:11 5 - - -

17:25:11 6 DALE WUOKKO, RECROSS-EXAMINATION

7 BY MR. CONROY:

8 Q. Mr. Wuokko, with regard to 6.2.6 --

9 A. Yes.

10 Q. -- it says: Regulatory Affairs and the lead department

17:25:21 11 shall resolve any comments received on the proposed submittal;

12 doesn't it?

17:25:29 13 A. Yes.

14 Q. The lead department was not Regulatory Affairs, was it?

17:25:34 15 A. That is right.

16 Q. And it wasn't you who was in the lead department, was

17 it?

17:25:38 18 A. Correct.

17:25:39 19 Q. So that if Mr. Cook had pulled together, for example,

20 two engineers from the Engineering Department, and resolved the

21 issue of 90 percent majority of the nozzles or 95 percent, he

22 would be doing exactly what this regulation requires, wouldn't

23 he?

17:26:06 24 MR. BALLANTINE: Your Honor, this question assumes

25 facts not in evidence.

17:26:21 1 A. It states --

2 THE COURT: Excuse me. It's hypothetical. It's
17:26:27 3 totally hypothetical. There's no information here.

17:26:31 4 MR. CONROY: I can change it.

5 THE COURT: Please.

17:26:34 6 BY MR. CONROY:

7 Q. If you knew that Mr. Cook had gotten Mr. Goyal and Mr.
8 Siemaszko together to determine what portion of the head could
9 be examined at 12 RFO, whether it was 90 percent or a majority,
10 he would be doing what this regulation requires; would he not?
17:26:52 10

17:26:55 11 A. What this procedure requires, yes.

17:26:58 12 MR. CONROY: Thank you. Nothing further.

17:27:01 13 THE COURT: Thank you very much. You may step
14 down.

17:27:13 15 After the jury leaves there are some exhibits up
16 there.

17:27:18 17 Ladies and gentlemen, we'll now take a long break,
17:27:25 18 for 15 hours or so. Please remember as we leave one another,
17:27:36 19 and I know it's difficult, but do not read, listen to, or watch
20 anything touching on this case in any way. Do not talk about
21 this case among yourselves or with anyone else, or permit anyone
22 else to discuss it with you. And do not make up your minds on
23 the ultimate issues which you will all have to decide when you
24 retire at the end of the case in the jury room.

17:28:01 25 Drive carefully, relax, have a good evening. We'll

1 see you -- 8:30? 8:30.

2

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C E R T I F I C A T E

6

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

9

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11 _____
Tracy L. Spore, RMR, CRR

Date

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1 DALE WUOKKO, RECROSS-EXAMINATION

2 BY MR. CONROY:

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