

ORIGINAL

DOCKETED
USNRC

OFFICIAL TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA '99 APR 19 P1:31

NUCLEAR REGULATORY COMMISSION

SECRETARY
ADJUDICATIONS STAFF

**Title: TELECONFERENCE OF
GARY ISAKOFF**

Case No.: 99-765-02-EA

Docket No.: IA-98-006

Work Order No.: ASB-300-742

LOCATION: Rockville, MD

DATE: Wednesday, April 14, 1999

PAGES: 1 - 13

**ANN RILEY & ASSOCIATES, LTD.
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034**

20262

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - - -X

In the Matter of: :
TELECONFERENCE OF : ASLBP No. 99-765-02-EA
GARY ISAKOFF : Docket No. IA-98-006

- - - - -X

Two White Flint
3rd floor, ASLBP Room B51
11545 Rockville Pike
Rockville, MD 20852
Wednesday, April 14, 1999

The above-entitled matter came on for prehearing
teleconference, pursuant to notice, at 1:30 p.m.

BEFORE:

CHARLES BECHOEFER, NRC Chairman
RICHARD COLE, NRC Member
CHARLES KELBER, NRC Member

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034

1 APPEARANCES:

2 On behalf of the Interviewee: [Via Telephone]

3 JOHN F. O'RIORDAN, ESQUIRE

4 Connolly Epstein Chicco Foxman Oxholm & Ewing

5 515 Market Street, Ninth Floor

6 Philadelphia, PA 19102

7

8 On behalf of the NRC: [Via Telephone]

9 L. MICHAEL RAFKY, ESQUIRE

10 U.S. Nuclear Regulatory Commission

11 Mail Stop O-15B18

12 Office of the General Counsel

13 Washington, D.C. 20555

14

15 STAN ROTHSTEIN

16 U.S. Nuclear Regulatory Commission

17 Office of Enforcement

18 Washington, D.C.

19

20 DENNIS DAMBLY

21 U.S. Nuclear Regulatory Commission

22 Office of the General Counsel

23 Washington, D.C.

24

25

ANN RILEY & ASSOCIATES, LTD.
Court Reporters
1025 Connecticut Avenue, NW, Suite 1014
Washington, D.C. 20036
(202) 842-0034

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

WITNESS
[NONE.]

EXAMINATION

E X H I B I T S

NUMBER
[NONE.]

IDENTIFIED

P R O C E E D I N G S

[1:30 p.m.]

CHAIRMAN BECHOEFER: Good afternoon, ladies and gentlemen. This is Charles Bechoefer. I am the chairman of the Licensing Board. With me is Charles Kelber.

Would you identify yourselves?

JUDGE KELBER: I am Charles Kelber.

CHAIRMAN BECHOEFER: And --

JUDGE COLE: Richard F. Cole.

CHAIRMAN BECHOEFER: That's the members of the Licensing Board.

Would the other people on the call for the benefit of the reporter identify themselves so that your voices can be heard?

MR. RAFKY: This is Michael Rafky, R-a-f-k-y, from the NRC Office of the General Counsel.

MR. ROTHSTEIN: Stanley Rothstein from the NRC Office of Enforcement.

MR. DAMBLY: Dennis Dambly from the NRC Office of the General Counsel.

MR. O'RIORDAN: Donald O'Riordan, attorney for Gary Isakoff.

MR. ISAKOFF: Gary Isakoff.

CHAIRMAN BECHOEFER: This telephone conference constitutes the first prehearing conference in this

1 enforcement proceeding. The Licensing Board -- well, we had
2 a request for a hearing on behalf of Mr. Isakoff that was
3 filed on March 16. It was assigned, or this Board was
4 designated to hear that. On April 6th we issued an order
5 where we granted Mr. Isakoff's request for a hearing. Mr.
6 Isakoff has a right to a hearing in an enforcement
7 proceeding of this sort where he is faced with various
8 penalties. So on April 6th we granted that, and we also
9 scheduled this conference. We scheduled it for ten o'clock
10 this morning, and at Mr. Isakoff's request it was changed to
11 this time.

12 The purpose is to set some schedules for the
13 proceeding, and also perhaps to find out if there are any
14 particular issues within the broad issues specified by the
15 Commission, any particular issues that any of the parties,
16 either of the parties would wish to stress, call our
17 attention to, and that might have some affect on the amount
18 of discovery that would be appropriate. But why don't we
19 start with -- to see whether there are any issues that
20 either of the parties wish to highlight, shall I say?

21 MR. O'RIORDAN: Well, for Mr. Isakoff, at least my
22 review of the decisions, the conclusions that were reached
23 here hinge in large part on credibility determinations. Mr.
24 Isakoff has not been confronted with chapter and verse of
25 what various people said against him, and in large part he

1 views these allegations and the conclusions that were
2 reached as a result of the allegations as a part of
3 political infighting at Temple Hospital, and he would like
4 to be confronted with the interviews of the various people
5 who raised allegations against him.

6 MR. RAFKY: We think all of the issues are raised
7 in the order of importance, and part of what we want to do
8 in the case is present our witnesses and testimony because
9 we think they are strong and we think we have a good case.

10 JUDGE COLE: Is this Mr. Dambly?

11 MR. DAMBLY: Yes, it is.

12 JUDGE COLE: Before you speak, if you would
13 identify yourselves. Otherwise, it is very difficult for
14 the reporter to get down who --

15 MR. DAMBLY: That was Michael Rafky.

16 JUDGE COLE: Oh, Michael Rafky. Okay, thank you.

17 CHAIRMAN BECHOEFER: Voices tend to sometimes
18 sound similar.

19 JUDGE COLE: You sounded just like Mr. Dambly, Mr.
20 Rafky. (Laughter)

21 MR. RAFKY: Thank you.

22 MR. DAMBLY: I didn't recognize the southern twang
23 there myself. (Laughter)

24 CHAIRMAN BECHOEFER: Well, in any event what
25 periods of discovery would the parties deem to be

1 appropriate prior to our trying to establish a time frame
2 for the hearing? Both parties have rights to further
3 discovery.

4 So Mr. O'Riordan, do you have any idea how much
5 discovery you think you would wish to have?

6 MR. O'RIORDAN: We would like some documentary
7 discovery, and we would like the ability to examine some of
8 the witnesses. I can't foresee discovery taking longer than
9 60 or 75 days.

10 MR. RAFKY: This is Michael Rafky. We would have
11 no problem with either of those two numbers in terms of
12 discovery time.

13 CHAIRMAN BECHOEFER: Okay. Let me go on mute for
14 a minute.

15 [Discussion off the record.]

16 CHAIRMAN BECHOEFER: On the record.

17 The Board thinks that at least we should start out
18 with 60 days, and if need be, it can be extended for cause.
19 But the Commission's recent policy statement, while it is
20 not specifically applicable to enforcement cases, does have,
21 does suggest a certain period for discovery, and I think 60
22 days would fall within that in terms of -- that would amount
23 to approximately two rounds of at least interrogatories,
24 that type of thing.

25 Why don't we preliminarily, at this stage at

1 least, set a 60-day period. Is that satisfactory for both
2 of the parties?

3 MR. RAFKY: That's fine for the Staff as well.

4 MR. O'RIORDAN: For Mr. Isakoff that's fine.

5 Thank you.

6 CHAIRMAN BECHOEFER: So that would bring us to
7 approximately June 15 -- well, let me look here -- assuming
8 discovery started, the formal period started fairly soon.

9 JUDGE KELBER: Starting next Monday.

10 CHAIRMAN BECHOEFER: Why don't we start it next
11 Monday, which is --

12 JUDGE COLE: April 19th.

13 CHAIRMAN BECHOEFER: -- April 19th, and --

14 JUDGE KELBER: June 18th.

15 CHAIRMAN BECHOEFER: -- June 18th is a Friday so
16 that would be a good day to end it.

17 JUDGE KELBER: Yes.

18 CHAIRMAN BECHOEFER: Why don't we have the formal
19 period run from April 19 to Friday, June 18.

20 MR. O'RIORDAN: Okay.

21 MR. RAFKY: That's fine with the Staff.

22 MR. O'RIORDAN: That's fine with Mr. Isakoff.

23 CHAIRMAN BECHOEFER: Okay, now, beyond that in --
24 if this were a licensing proceeding there would be a
25 requirement to have testimony prepared in prefiled form. In

1 a case like this, it may be done that way, but it also may
2 be just having oral testimony, and when credibility is at
3 issue, oral testimony is usually appropriate.

4 Do the parties have any thoughts on which way they
5 would prefer to go?

6 MR. O'RIORDAN: We would prefer oral testimony on
7 behalf of Mr. Isakoff.

8 MR. RAFKY: The Staff would also like to put on
9 live witnesses.

10 CHAIRMAN BECHOEFER: Okay.

11 Will there be any so-called expert witnesses of
12 any sort, because if there were, I think it would be
13 desirable to have their qualifications filed sometime before
14 we go up for a hearing.

15 MR. O'RIORDAN: On behalf of Mr. Isakoff, there is
16 a possibility we would be calling an expert witness, and we
17 wouldn't be able to say yeah or nay on that point until we
18 have seen some of the documentary discovery.

19 MR. RAFKY: The Staff might also need an expert
20 witness, but we are also not prepared to say right now
21 definitively.

22 CHAIRMAN BECHOEFER: If there were expert
23 witnesses, we would just as soon be served, but it doesn't
24 have to be two or three weeks in advance, as the case would
25 be for prepared testimony, but it would have to be sometime

1 before we went up for the hearing. We would like to be
2 apprised of who the people are and it might save some time,
3 and indeed if the parties wish, they could send a statement
4 of prepared testimony and it could be bound in the record --
5 not prepared testimony, but prepared statement of
6 qualifications and that could be just bound in the record
7 and would save a little bit of time.

8 If discovery ends June 18th, when would be a time
9 frame that various people would be looking at for a hearing?
10 The hearing would be in the Philadelphia area. I can't tell
11 you precisely where.

12 MR. O'RIORDAN: On behalf of Mr. Isakoff, this is
13 John O'Riordan, I would think probably within 30 days after
14 the 18th we would exchange credentials and reports of expert
15 witnesses, and then a hearing could be scheduled any time
16 after that that would be convenient for the Board and for
17 the NRC.

18 MR. RAFKY: On behalf of the Staff, we would be
19 prepared I would think sometime early to mid-July to have
20 the hearing, if that's acceptable.

21 CHAIRMAN BECHOEFER: Off the record for one
22 minute.

23 [Discussion off the record.]

24 CHAIRMAN BECHOEFER: On the record.

25 Well, I think we would tentatively schedule the

1 hearings for sometime during the week of July 19.

2 Is that all right with various people?

3 MR. O'RIORDAN: On behalf of Mr. Isakoff, that's
4 acceptable.

5 MR. RAFKY: That's also acceptable to the Staff.

6 CHAIRMAN BECHOEFER: Then the qualifications would
7 be sometime the week earlier, we could be sent that. We
8 won't need that more than a few days or two before we leave.

9 JUDGE KELBER: How long a hearing?

10 CHAIRMAN BECHOEFER: Well, that depends on the
11 witnesses.

12 Do you have any idea how long the hearing is
13 likely to be, how many witnesses? We are just aiming for
14 that week of July 19th, but ideally we might not want to
15 start until like a Tuesday through Thursday, which would be
16 very desirable if we could do it all in three days.

17 I had a fairly recent hearing which I did in three
18 days in the same general area, and it was pushing it a bit,
19 so we don't know the number of witnesses. Do the parties
20 now have any idea or not?

21 MR. O'RIORDAN: On behalf of Mr. Isakoff, at this
22 point not having seen what it was the NRC relied on, we
23 don't have a good grip on how many witnesses will be
24 required.

25 CHAIRMAN BECHOEFER: Okay.

1 Well, we will leave it generally for the week of
2 July 19, and we will determine later how much of that week,
3 or maybe whether we can even do it in one week, you never
4 know. We would hope to be able to do it within a week,
5 though.

6 Does the Staff agree on that?

7 MR. RAFKY: That sounds reasonable to us.

8 CHAIRMAN BECHOEFER: Now, is there anything else
9 that people would wish to raise at this stage?

10 MR. O'RIORDAN: Nothing on behalf of Mr. Isakoff.

11 MR. RAFKY: The Staff has nothing further either.

12 JUDGE KELBER: Then I have one request. This is
13 Judge Kelber. There is a reference to a form called the DDB
14 and something called a bar phantom, and I wonder if we could
15 please get a description or a sample of each of those, what
16 they are. It just helps in understanding the complaint if
17 we know what these signify.

18 I think the Staff might be in the best position to
19 get a sample or a description.

20 MR. RAFKY: We would be happy to send copies to
21 the Board.

22 JUDGE KELBER: I thank you.

23 CHAIRMAN BECHOEFER: Okay. That would help, and
24 at our request I might note the Staff did forward copies of
25 both the reports of investigation that are involved and the

1 inspection report that was involved. We think that is quite
2 helpful, and of course with further discovery there is
3 likely to be more documents and backup, et cetera.

4 So is there anything further that the parties wish
5 to raise before we sign off?

6 MR. O'RIORDAN: On behalf of Mr. Isakoff, who is
7 it at the NRC who I am to be dealing with, you Mr. Rafky?

8 MR. RAFKY: Yes, it will be me.

9 MR. O'RIORDAN: Okay, great. Thank you.

10 CHAIRMAN BECHOEFER: Mr. Rafky, anything further?

11 MR. RAFKY: No. We have nothing further, Your
12 Honor.

13 CHAIRMAN BECHOEFER: Okay.

14 Well, this conference is hereby concluded. We
15 thank you all for being here, and we look forward to meeting
16 those of you that we have not already met when we get to
17 Philadelphia.

18 We will have to locate a hearing space in
19 Philadelphia. We will take care of that, though. Try to
20 make it convenient for everybody.

21 With that we will sign off.

22 MR. RAFKY: Thank you very much.

23 MR. O'RIORDAN: Thank you.

24 [Whereupon, at 1:55 p.m., the teleconference was
25 concluded.]

REPORTER'S CERTIFICATE

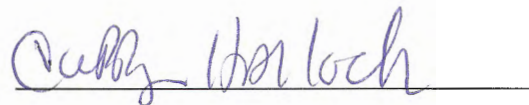
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

NAME OF PROCEEDING: TELECONFERENCE OF
GARY ISAKOFF

CASE NUMBER:

PLACE OF PROCEEDING: Rockville, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Cappy Hallock

Official Reporter

Ann Riley & Associates, Ltd.