

OK JFM

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

THREE MILE ISLAND SPECIAL
INQUIRY DEPOSITION

POOR ORIGINAL

DEPOSITION OF:

RICHARD T. KENNEDY

Place - BETHESDA, MD.

Date - Tuesday, October 2, 1979

Pages 1 - 226

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

800 1 240 560

NATIONWIDE COVERAGE - DAILY

T

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

-----X
 :
 In the Matter of: :
 :
 THREE MILE ISLAND :
 SPECIAL INQUIRY DEPOSITIONS :
 :
 -----X

DEPOSITION OF RICHARD KENNEDY

Small Conference Room
1717 H Street, N.W.
Washington, D. C.

Tuesday, October 2, 1979
9:35 a.m.

BEFORE:

For the Nuclear Regulatory Commission:

- ROBERT BERNERO, TMI/Special Inquiry Group
- RALPH G. PAGE, TMI/Special Inquiry Group
- GEORGE FRAMPTON, ESQ., TMI/Special Inquiry Group
- MITCHELL ROGOVIN, ESQ., TMI/Special Inquiry Group
- WILLIAM BALLAINE, ESQ., TMI/Special Inquiry Group
- JEFF LAWRENCE, NRC
- JOHN GUIBERT, NRC
- MARK CHOPKO, NRC

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

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

WITNESS:

EXAMINATION

Richard Thomas Kennedy

3

83

E X H I B I T S

EXHIBIT NUMBER:

IDENTIFIED

5080

3

5081

7

5082

11

5083

83

5084

186

PROCEEDINGS

(9:35 a.m.)

Whereupon,

COMMISSIONER RICHARD KENNEDY

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. BALLAINE:

Q Sir, would you state your full name for the record,
please?

A Richard Thomas Kennedy.

MR. BALLAINE: Would you mark this, please,
Exhibit 5080.

(Exhibit No. 5080 identified.)

BY MR. BALLAINE:

Q Commissioner, I would like to show you what has
been marked as Exhibit 5080. Is this a photocopy of a letter
that was sent to you by the NRC TMI Special Inquiry Group
confirming your deposition here today under oath?

A It is.

Q Have you had an opportunity to read the document
in full?

A I have.

Q Do you understand the information set forth in the
letter, including the general nature of the inquiry, your

1 right to have an attorney present here today as your represen-
2 tative, and the fact that the information you're providing
3 may eventually become public?

4 A. I do.

5 Q. I believe you are represented by counsel here today
6 from amongst the gathering; is that so?

7 A. Mr. Lawrence is one of my personal counsel in my
8 office staff; and Mr. Chopko is in the Office of General
9 Counsel, representing me; and Mr. Guibert is my technical
10 assistant.

11 Q. All right, sir, I'll take that back.

12 (Document returned to counsel.)

13 BY MR. BALLAINE:

14 Q. Commissioner Kennedy, you have gone through this
15 before, so I think you are fully aware of what I will say.
16 But I feel obliged to reiterate it.

17 The testimony that you are giving today has the same
18 force and effect as if you were testifying in a court of law.
19 Our questions and your responses will be taken down and
20 transcribed. You will later receive a copy of that transcript
21 and, of course, have an opportunity to read it and make any
22 changes that you deem necessary.

23 However, to the extent that your subsequent changes are
24 viewed as significant, those changes could arguably be viewed
25 as affecting your credibility. The point of saying that is

1 simply that, of course, you should make every effort to be
2 as complete and accurate now as you can be.

3 A. In making those changes, let me note, my own effort
4 has been to correct obvious editorial errors, so that the
5 sense of what is said is clear. But beyond that, if there is
6 something which seems substantively off track, I would not
7 change the transcript, but rather, submit an additional note
8 to it.

9 Q. Excellent.

10 I know what we would prefer at the Special Inquiry would be,
11 if you read something and it occurs to you, my goodness, that's
12 what I said and it's wrong, it is absolutely appropriate to
13 write a separate note so indicating. And perhaps if you are
14 able to explain, well, I hadn't read something right after, or
15 whatever the reason would be.

16 A. Right.

17 Q. If at any point during the deposition you do not
18 understand a question, of course, feel free to stop and we
19 will either pose a fresh question or try to clarify the
20 nature of the question.

21 Sir, in connection with your testimony, I believe we had
22 asked you to furnish a copy of your resume, simply for the
23 record. Do you have a copy with you, by any chance?

24 A. I thought you already had it. If you do not, it
25 will be here momentarily.

1 Q I don't think that's necessary. Perhaps I can use
2 another vehicle.

3 MR. BALLAINE: For the record, let me note the
4 Commissioner's office had been kind enough at the end of last
5 week to furnish us with an uncorrected version of his deposi-
6 tion before the President's Commission. And we understand, of
7 course, that it was uncorrected. We haven't since seen the
8 corrected version.

9 I don't know if you have had an opportunity to do it.

10 THE WITNESS: It's been completed and should be to
11 you within a day.

12 BY MR. BALLAINE:

13 Q I will go on with the following. Our letter which
14 is marked as an Exhibit 5080 also asked you to bring any
15 documents in your possession or control regarding TMI-2, the
16 accident or precursor events which you have reason to believe
17 may not be in the official NRC files, including a diary or
18 personal working file.

19 A There are none, and the only diary I have was my
20 telephone and visitors log, which simply indicates what
21 telephone calls I received or made without any further note,
22 except that I called X or he called me at a given time, and
23 a listing of times of visits. And if you want that, that
24 will be made available.

25 Q I was going to ask if you are aware whether it had

1 been made available. Yes, we would like it.

2 A. Let me say, that's always a matter, for my office,
3 in the public record. It is in the public document room, and
4 I will provide a separate copy to you.

5 Q. Thank you. That's very kind.

6 A. For what period?

7 Q. Perhaps we can narrow it to the period from March 28,
8 1979, through Monday, April 2, 1979, if that's okay.

9 A. We can provide that before the day is out.

10 Q. Okay.

11 A. As I say, my office makes that available to the
12 public in the public document room every week.

13 But I did look at my files and there are not any matters
14 that are not already for the public record.

15 Q. Commissioner, I show you what has been marked as
16 Exhibit 5081.

17 (Exhibit No. 5081 identified.)

18 BY MR. BALLAINE:

19 Q. Is that a resume of your professional --

20 A. That's a complete biographical sketch, that's right.

21 Q. And it is complete and up to date, or at least
22 generally complete and up to date?

23 A. Yes.

24 Q. I take it, sir, with respect to personal notes,
25 that you didn't keep any kind of diary as you went along?

1 A. I did not.

2 Q. And I take it you also haven't had an opportunity
3 since then to perhaps put your thoughts down on paper, either
4 for purposes of refreshing your recollection --

5 A. I had not. I thought I was getting enough help in
6 that regard.

7 Q. Sir, were there particular people on your staff
8 during, say, March 28 through April 2, who were assisting you
9 in connection with your work regarding TMI?

10 A. Mr. Guibert was there through the day on March 28th,
11 and from that time on a young lady by the name of
12 Claudia Stetler, who was also a technical assistant at that
13 time, an intern in my office, who is no longer with us, who
14 just very recently moved from the city to another position,
15 was there. And Mr. Lawrence was with us, did not participate
16 particularly actively that I can recall. Mr. John Stevens,
17 who is my counsel and who is ill, also was present in the
18 office from time to time.

19 Q. He is ill today?

20 A. He is ill today.

21 Q. Some of these people who are here can speak for
22 themselves. But let me start by asking you whether you are
23 aware whether these people whom you have just identified took
24 any notes during the course of TMI?

25 A. If they did, they were of the sparsest character

1 and probably were thrown away at the time.

2 I'll let those here speak for themselves.

3 Q I wonder if anybody has any.

4 A I think we can speak for Claudia in the sense that
5 we did look for all this sort of thing and talked with Claudia.
6 I think she did not have any except an occasional scratching
7 which had been long since thrown away as being only something
8 that she was reflecting on at the moment on a day, but she
9 didn't -- so far as I know, she did not retain anything. We
10 did not have anything.

11 Q What about the gentlemen who are here? Do they
12 know of any notes they have that perhaps would not have found
13 its way to the Special Inquiry Group or at least been made
14 available?

15 MR. GUIBERT: The only notes I took were telephone
16 conversations, conference calls, when Mr. Kennedy was absent.
17 And as soon as I had conveyed the information to him that
18 day and to Ms. Stetler, I destroyed them.

19 THE WITNESS: And these, I take it, were all
20 covered by transcripts, in any event.

21 MR. GUIBERT: Yes, indeed.

22 MR. BALLAINE: Has everybody had an opportunity to
23 speak about lurking notes that may exist?

24 THE WITNESS: I can assure you, if there are any
25 lurking notes, it's not because we didn't look for them, but

1 we didn't find them.

2 BY MR. BALLAINE:

3 Q Sir, are you aware of any notes prepared by anyone
4 in connection with TMI that, for one reason or another, you
5 have reason to believe may not have been turned over to the
6 Special Inquiry Group or made a matter of public record?

7 A No. I'm aware people made notes. I have no idea
8 of whether they were turned over or whether they weren't.
9 That's for you to inquire of them. I didn't.

10 Q When you say people made notes, you mean that you
11 observed, as distinct from assumption?

12 A Yes.

13 Q Sir, did you read any documents to refresh your
14 recollection in connection with today's testimony?

15 A Not really, other than to read through again the
16 transcripts of the two depositions I have already given. And
17 I would have to say in that regard, the second of those
18 transcripts arrived at dinnertime last evening. So my reading
has been cursory, at best.

19 I did go through a variety of things to try to refresh my
20 memory as to when I was first advised of a number of things
21 that occurred and the sequence, to which reference continues
22 to be made from time to time. And I just have them scratched
23 out here for me my memory being notoriously, I think,
24 inadequate in some respects. I have great difficulty at this
25

1 juncture recalling whether in fact I knew something at that
2 time or now know that I might have known something if only I
3 had had something else in front of me.

4 I am saying that in all honestly. I want you to understand
5 that we are talking about something that occurred six months
6 ago. And when somebody asked me what happened at 10:00 o'clock
7 on Thursday morning in a day in late March, and they ask me
8 that in the first week of October, it is not quite the same
9 as if they had asked me on that Thursday morning in March. So
10 I am having difficulty recalling whether I know something,
11 knew it then, or surmise it because of so many other things I
12 now know. Okay?

13 Q Sir, why don't we mark that as an exhibit, and after
14 I do so I will let you hold it and use it during the course
15 of the deposition. Can we have that marked as 5082.

16 (Exhibit No. 5082 identified.)

17 MR. GUIBERT: Should that indicate that that wasn't
18 prepared by Commissioner Kennedy?

19 MR. BALLAINE: I was going to ask him about it.

20 THE WITNESS: It was prepared by Mr. Guibert at my
21 request, going through the transcripts of calls of various
22 kinds at which I presumably was present.

23 Now, let me add something there which doesn't help your
24 record. I don't know whether it does or not. It makes it
25 more accurate, at least. The fact that a call occurred and

1 that at some point I was present in the room does not necessa-
2 rily mean that at the time I heard the statement made, even
3 though the record is clear that the statement was made. It
4 is possible that I was engaged -- these affairs, as you must
5 have divined by now, were rather loose-knit operations. They
6 were not organized meetings of a character such as this, for
7 example.

8 They were people collected together to obtain information
9 and to exchange thoughts with each other. And it may well
10 be that in a given moment or at some point in the conversation,
11 that one or another of these people was talking with each
12 other, didn't hear a particular statement being made. So it
13 should be understood that this is a reflection of when certain
14 bits of information were conveyed, and therefore at that point
15 I could have and presumably should have been aware of those
16 things.

17 Okay? That's the purpose of that.

18 BY MR. BALLAINE:

19 Q Have you had an opportunity to review this
20 Exhibit 5082 prior to this morning?

21 A I have read it through, yes. I see nothing that
22 I would have difficulty with

23 Q It does appear to be accurate?

24 A Yes.

25 Q Having looked at it, can you say from independent

1 recollection that at least you recall in general the events
2 that are described in this document as having taken place?

3 A. Yes. But I cannot positively say, yes, I heard that
4 thing said at that time. What I am saying is that I could have.
5 I was present when it was said, and therefore it seems to me
6 I am responsible for having that bit of information, and I now
7 know that information to have been passed, so I accept that.

8 Q. Am I correct that you were not personally responsible
9 for the selection of the particular items that are set forth
10 here?

11 A. No. They simply reflect, however, my conversation
12 with Mr. Guibert and based upon a variety of questions that
13 have arisen over time as this event has been studied and
14 looked at, things that seem to have significance at given
15 points in time as the events seem to be unfolding.

16 Q. Okay. For the record, let me indicate that this is
17 a two-page document of notes on long yellow, what I would call
18 legal-sized paper. And there's a listing of 13 numbered
19 events on the left-hand side, and on the right-hand side
20 apparently an indication of a time and a date and the nature,
21 I suppose, of the context in which the event arose.

22 Is that a fair statement or description of the document?

23 A. The right-hand column, I believe, reflects the time
24 and the method by which the information was passed and by
25 whom, to the extent that that was known and could be identified.

1 Q Other than what you have testified to already, sir,
2 can you recall anything in particular that you may have done
3 to refresh your recollection to prepare for today?

4 A Please repeat the question. I am just noting for
5 the question that I indicated the temperature would soon reach
6 the 120-degree level, and you'll wonder if we've been

7

8 (Laughter.)

9 Q Other than the reaction you have already described,
10 can you think of anything else that you have done specifically
11 for the purpose of preparing for this deposition?

12 A No, other than over the past several weeks reviewing
13 all manner of papers, but not with any specific intent to
14 try to cram for this examination.

15 Q Sir, you indicated earlier that there have been two
16 depositions already given. Am I correct that one was a
17 deposition taken by the President's Commission on September 5,
18 1979?

19 A Correct.

20 Q What is the second deposition you were referring to?

21 A The second is taken by -- an interview by the
22 staff of the Subcommittee on Nuclear Regulation of the
23 Committee on Environment and Public Works of the United States
24 Senate, taken on September 26th, 1979.

25 As I say, I received a copy of this document last evening

1 at about 6:00 o'clock.

2 Q Is there any problem with you making a copy available
3 to us?

4 A There is no problem whatever as far as I'm concerned.
5 As soon as we can make a copy, we will provide it to you.
6 Again, it will be unedited.

7 Q That's fine. Thank you.

8 A I would add, for your background, if you are not
9 already aware, tomorrow the Commission is to be examined by
10 the Committee itself in an open hearing at the Senate, pre-
11 sumably based upon these depositions.

12 Q What were the subject matters covered during this
13 deposition?

14 A Principally matters pertaining to the scenario of
15 the event during the first two days. The focus was, to the
16 best of my recollection, on the flow of information, that is,
17 who knew what, when, and how did they learn it; how effectively
18 did the system for providing information work; what was the
19 role of the Commission as contrasted with the staff during
20 this period; and my own views -- and I presume others have
21 been asked the same question -- as to what that role should
22 be or should not be, as the case may be.

23 Q As far as you know by the way, is that deposition
24 completed, or is there a continuation, as expected?

25 A It's left in the way all such depositions apparently

1 are, that so far as one can tell at the moment it is completed,
2 but nonetheless they will keep it open in case we need to add
3 something later. And I'm not exactly sure where that leaves
4 the deposition. I'll let you judge.

5 I would add something in that connection. The Committee
6 itself, the Subcommittee is now going to entertain us tomorrow
7 on the same subject, presumably. So what the relationship
8 between what the deposition is and the hearing, I don't know.

9 MR. CHOPKO: I would note before you go further,
10 this is not a deposition in the classic sense of a pretrial
11 sense. We call it an interview and they don't put the witness
12 under oath. He is asked to sign a statement saying that he
13 voluntarily consents to talk to the investigators generally
14 about the matters related to the Subcommittee's investigation.
15 But in no way do they attempt to put someone under oath and
16 trigger the pretrial protections of the deposition.

17 MR. BALLAINE: Thank you.

18 THE WITNESS: The legalities of all these matters
19 I am sure are of interest to all of you of the profession.
20 I answer the questions in the same way.

21 (Laughter.)

22 B. MR. BALLAINE:

23 Q Sir, prior to the events of Three Mile Island, had
24 you been involved in an emergency situation which had
25 involved the activation of an incident response center at

1 headquarters?

2 A. At this organization?

3 Q. Yes, sir.

4 A. Yes, I think. Let's see. Incident response center --
5 that's a term of art.

6 Whatever the mechanism was that we had in 1975 when the
7 Brown's Ferry fire occurred was activated shortly after the
8 word that the fire was going, was reached. Now, my recollec-
9 tion was -- it's to be recalled -- was in the immediate
10 post-separation period when this organization was separated
11 from the AEC and ERDA was formed. And it's my recollection
12 that to a considerable extent reliance was placed upon the
13 emergency management capabilities of the old AEC, which I
14 believe to have been fairly extensive under the general
15 manager's aegis of that organization.

16 At that time in 1975, I don't believe that this organiza-
17 tion had yet created a full-fledged incident response capability,
18 that responsibility having to a large extent rested with the
19 AEC, the general manager's side of the house of the old AEC.
20 I don't recall -- there may have been others. I don't recall
21 other cases in which the incident response center was activated.
22 Someone might refresh my memory, but I don't recall offhand.

23 Could you?

24 MR. GUIBERT: I asked that question some time after
25 the Three Mile Island accident, and the answer I got was they

1 believe it was put into effect when the Fort St. Vrain release
2 of radioactivity took place.

3 THE WITNESS: I don't recall whether it was or not.
4 I just don't recall. I would not have been surprised that it
5 were, if it were. But I just don't recall that. I can recall
6 something about the incident, but I don't recall precisely.

7 BY MR. BALLAINE:

8 Q Can you think of any other incidents, regardless of
9 whether it involved the activation of the incident response
10 center, in which you considered yourself to have played a
11 role in an emergency response of the NRC to an incident
12 involving a nuclear reactor?

13 A Played a role in emergency response? I don't think
14 so, except in the broadest policy sense, on the one hand. On
15 the other hand, to be informed and to receive information
16 about what was occurring and ask questions, indeed, about what
17 was occurring.

18 Q Are you now thinking of incidents, sir, other than
19 the two that you have already specifically mentioned?

20 A When one speaks of incidents, there are incidents
21 of one kind or another every day. There are matters which
22 involve reactors in which we are advised very promptly. This
23 happens -- it happens, as I say, every day. And very often
24 a notification of these matters to me, as I'm sure to my
25 colleagues, generates questions in my mind. And I can assure

1 you that those questions are rather promptly transmitted to the
2 staff, sometimes more frequently than they might like. But
3 they're transmitted very promptly, simply because I want to
4 know what is going on, what the effect of this is going to be,
5 where do we go from here.

6 Q With respect to the Brown's Ferry fire, sir, did you
7 play any particular role as a Commissioner of the NRC?

8 A Yes. On the evening of the fire itself, the then
9 Chairman was in -- he was out of the city, and he called me
10 to advise me that he had learned of this by a call from someone
11 on the staff, and that the executive director was also out of
12 the city.

13 He asked me, then, to make sure that certain actions were
14 taken. That is, in particular I recall, calling the staff
15 director of the then existing Joint Committee on Atomic Energy
16 to advise him of the situation, to give him -- well, I also
17 called the staff to ask -- to learn precisely where things
18 stood, what was being done.

19 My recollection was and is now -- to the best I recollect,
20 Ed Case was then the acting director of Nuclear Reactor
21 Regulation. My contact was essentially with him to find out
22 what was being done.

23 Others spoke to me throughout the evening to let me know
24 what was taking place and who was proceeding to take what
25 actions.

1 I recall being in touch with someone -- I don't know who --
2 concerning the possible activation of whatever they call it,
3 the emergency center in Germantown at the AEC. And as I say,
4 this was in a sense an effort to be sure that the bases were
5 being touched and that in fact the staff was proceeding in some
6 orderly way to deal with the situation.

7 I remember at some point ascertaining whether or not we had
8 people en route to the site. I believe I was advised we did
9 have. Whether they were already there, I can't remember.
10 That sort of a role.

11 Q Other than what you have just described, did you make
12 any decisions in connection with the emergency response aspects
13 of Brown's Ferry that were significant or important?

14 A Did I personally?

15 Q Yes, sir, as a Commissioner.

16 A No, I don't think so. I would have not expected to.

17 Q That's fine.

18 A I'm answering a different question.

19 Q Do you recall playing any role at all in connection
20 with the Fort St. Vrain incident?

21 A None other than to be advised, I believe -- now we
22 can confirm this one way or another, but I believe the
23 Commission itself met to receive a briefing from the staff
24 on the question, on the issue and what was happening. But
25 I can't swear to that, but I believe that's the case. And the

1 staff then advising what it believed to be the appropriate
2 course of action. It may have gotten some guidance at that
3 point from the Commission in fairly general terms as to things
4 the Commission thought it ought to pursue. That's the best
5 of my recollection.

6 As I say, we can confirm that. And if such a meeting took
7 place, there would, I'm confident, be a full transcript of
8 that meeting.

9 Q When you refer to general guidance, I wonder if you
10 happen to recall anything in particular that the Commissioners
11 did?

12 A I do not recall.

13 Q As of March 28, 1979, what did you believe your role
14 was as a Commissioner in the event of a serious emergency
15 involving a reactor?

16 A Well, it seemed to me that our job was to provide
17 general policy guidance and support. We needed to assure
18 that the organization existed and was in place to deal with
19 the matter, and the support needed by that organization was
20 available to it. That is, whatever resources that were
21 required, that we could make certain that those things would
22 be made available.

23 Moreover, it seems to me we have a responsibility for
24 interface with the public and with other agencies' activities
25 of the government, to assure that, in the latter case, to

1 assure that the principal activities of the government which
2 are or should be involved are brought to bear. It seems to me
3 that was -- that was and still is my view -- that was and still
4 is my view of the role of the Commission.

5 I do not believe that the Commission as a body is in a
6 position to, or should be in a position to directly manage
7 a so-called crisis. It can provide guidance and support. It
8 can provide the policy backdrop for issues. That's what it
9 ought to do.

10 Q If I may, I would like to show you a document that
11 is part of something we have marked previously in depositions
12 as Exhibit 5011. The Exhibit 5011 is a looseleaf binder
13 which bears the legend "NRC Headquarters Incident Response
14 Plan."

15 More specifically, I want to show you that portion which
16 bears the title "NRC 0502, NRC Incident Response Program."
17 (Handing document to witness.)

18 As of March 28, 1979, were you familiar with that program,
19 sir?

20 A. Yes.

21 Q. And you were aware, then, that the only role that
22 is indicated for the Commission in that program is to set,
23 quote, "policy," close quote?

24 A. Certainly.

25 Q. And I take it from your testimony that you agree

1 that that should be the role?

2 A. I most certainly do.

3 (Document returned to counsel.)

4 A. Let me say, totally aside from this Commission, my
5 own background, as you are probably aware, involved participa-
6 tion in a world in which crises were more normal than one would
7 like it to be. And I can assure you that that concept is the
8 only one that I saw that would, in the last analysis, work.
9 You cannot manage crises with the heads of major agencies
10 trying to do the work. They are there principally to answer
11 those questions which transcend the technical or other opera-
12 tional responsibilities of staff, and allow the staff then to
13 do the job which the staff is constituted to do.

14 Q. Prior to the 28th, had you formulated any particular
15 view as to what policy embraced and what it didn't embrace?

16 A. What is policy? The greatest question in organiza-
17 tional management that's ever been written. Nobody ever
18 answers it.

19 Q. I just wondered whether you had formed some kind of
20 view as to what was policy and what wasn't.

21 A. Yes, I have some views as to what policy is.

22 (Pause.)

23 A. I think that policy embraces -- and from our
24 perspective here, certainly --

25 Q. Sir, so that I am clear, I am asking -- your view

1 may be the same, but I want to make sure we're talking about
2 your feeling before the TMI incident.

3 A. It wouldn't be any different, no.

4 Q. All right. I'm sorry. Go ahead.

5 A. That's all right.

6 It seems to me that policy is that underlying set of
7 principles on which -- from which people can proceed to make
8 operational decisions, knowing that those decisions made will
9 move in a given objective direction. Policy is, after all,
10 the statement of how one proceeds to whatever objectives one
11 has set.

12 So that, rather, it seems to me very carefully circumscribes
13 the level of detail to which the policymaker ought to ascend
14 or descend, as one chooses to think about it. He needs to
15 avoid, it seems to me, answering the questions for which, A,
16 he likely does not have the facts, or, B, does not have the
17 full range of competence to bring to bear. And he has to
18 distinguish those things.

19 He needs to be able to say: We want to pursue this course.
20 That is, for example, we want to be certain that appropriate
21 radiological health monitoring is occurring. That means in
22 this circumstance -- and I'm using this as a purely hypo-
23 thetical, okay -- in this circumstance, that means that we
24 want to go beyond our normal standards and reach out another
25 15 miles to put in TLDs or something of that sort.

1 Now, having said that, he has enunciated what I think to be
2 a policy thrust. He has said: We want, in this circumstance,
3 to go beyond the normal standards of radiological health
monitoring.

5 Now, precisely what is done, who does it, how you go about
6 doing it, is an operational responsibility, which I believe
7 can only be performed, in the last analysis, intelligently
8 and reasonably by the staff guys, who, A, have the resources,
9 if the resource providers -- that is, the seniors -- have
10 provided them, use those resources, and put them in place in
11 a way to achieve the objectives which that policy is concerned
12 with.

13 Does that answer the question?

14 Q It does, sir.

15 A Let me just add, if I don't answer the question --
16 and I may not sometimes -- don't hesitate to tell me so. I'll
17 try.

18 Q Okay, thank you.

19 Prior to TMI, sir, did you think that the Commission's
20 role did include making the ultimate decision on whether or
21 not, in a given circumstance, a recommendation of evacuation
22 should be forwarded on to appropriate authorities?

23 A I believe as a practical matter -- let me stop.
24 There are two aspects to the answer: One, there is the aspect
25 of time. After all, if one needs to evacuate, it doesn't do

1 one any good to do so after the fact. You know, it hardly
2 does you any good to evacuate an area after the hurricane has
3 torn it to pieces and killed all the people. If one is going
4 to evacuate in the face of the hurricane, he does it before
5 the hurricane arrives.

6 Now, in this particular kind of circumstance -- and I use
7 it as a hypothetical, again, in general, as is the case -- one
8 has to look and ask, how much time does one have to decide.
9 And I think it would be fatuous for anyone to say that if
10 you only have 30 minutes, the question should be passed all
11 the way up the chain to the end of the line, a meeting occur
12 and discussion occur, and then the matter be decided, at which
13 point it's too late. You just used up the time you had.

14 So if there is lots of time, and, you know, that's a
15 function of a lot of questions -- it depends upon the problem
16 at hand, how rapidly the problem will develop and what kinds
17 of information you're going to have about the nature of the
18 development of the problem -- all those kinds of questions.
19 Once one has ascertained that in fact he does have time and
20 enough time, then it seems to me it is a decision of such
21 magnitude that it ought to go to the top of the pile. That's
22 what decisionmakers at the top of the pile are for, to take
23 those hard ones, because one ought never to think that ordering
24 an evacuation is something to be done lightly, no matter what
25 the purpose of the evacuation. It's a very serious matter.

1 It disrupts people. Not only disrupts people, but it has
2 dangers inherent in it. You know, you don't move people
3 around in large numbers without the likelihood of someone
4 getting hurt. And you just don't do that sort of thing lightly.
5 So it's a very serious matter and a very serious question.
6 So to the extent that it's possible to do so and time would
7 permit, then I think the question ought to be elevated before
8 it's decided.

9 But the level of that elevation depends entirely upon the
10 amount of time there is, because doing it too late could be
11 just as serious as doing it too soon.

12 Q Sir, in your answer I think you indicated that one
13 has to look and ask how much time is available. Was it your
14 belief prior to TMI, then, that it would be the staff that
15 would have to look and ask how much time is available with
16 respect to an evacuation recommendation?

17 A Certainly. But first of all, that kind of recommen-
18 dation, it seems to me, has to initiate, as most decisions in
19 these matters must initiate, on the ground. I think
20 Harold Denton and I think Governor Thornberg both said what
21 I would have said and what I say now: You can't run a crisis
22 from Washington. I think I was saying that a little bit
23 earlier.

24 Ultimately, there has to be someone on the ground who is
25 responsible. That individual has to be someone in whom one

1 can place the kind of trust that that level of responsibility
2 demands. So the first view has to be from the person on the
3 ground, who understands the circumstances as they exist there.
4 One of the things about these sorts of questions -- and let me
5 add, I hope we won't be seeing any more of them. But from the
6 one we have seen and from issues of an order of this kind in
7 other fields, one thing that one learns is that he never
8 knows -- the farther he is from the scene, the less he knows
9 about what is happening, but the more he thinks he knows.

10 Q Sir, prior to March 28, 1979, had the Commissioners
11 had discussions with respect -- specifically with respect to
12 what the Commission would be the Commissioners in an emergency
13 response?

14 A Not to my recollection, except perhaps in the most
15 general sense. I seem to recall -- I seem to recall that
16 there was a briefing at one time or another by staff on the --
17 and I would want to confirm this, because it's a vague kind
18 of recollection. I thought there was some sort of a briefing
19 by staff on the general conception of the incident response
20 plan of the agency.

21 Q Yes.

22 A I'd have to say I don't know whether that occurred
23 after or before Three Mile Island. I think it occurred
24 before Three Mile Island. I believe it occurred -- I would
25 think it might have occurred -- let me put it that way --

1 in connection with the Commission's approval of the manual
2 chapters which dealt with this, at which the Commission at
3 some point would have given its blessing.

4 I note there is an approval date on it. I don't know what
5 it is.

6 Q Then other than as you have just testified, you are
7 not aware of any conversations in which the Commissioners
8 discussed what exactly the word "policy" meant in connection
9 with an emergency response?

10 A No.

11 Q You mentioned a briefing by the staff on a general
12 concept of the emergency response plan, sir. Are you aware
13 of any communications between the staff and the Commissioners
14 as to what the so-called policy role really meant and what it
15 didn't mean?

16 A No.

17 BY MR. ROGOVIN:

18 Q Did you have any idea, Commissioner Kennedy, whether
19 the staff was capable of complying with your concept as
20 expressed before with respect to recommending an evacuation?
21 Let me rephrase that.

22 As you testified before, you indicated that an evacuation
23 is an extraordinarily serious matter, and if the time allowed,
24 that recommendation should come from the Commission itself,
25 rather than from someone on the scene. Was there any

1 understanding that you were aware of that would enunciate a
2 line drawing when the staff on the scene would make such a
3 recommendation?

4 A. No.

5 Q. So that your testimony given before with respect to
6 evacuation is your personal views as to how it ought to be
7 run, rather than how it was on the 28th of March?

8 A. Yes, essentially that's correct. But I want to be
9 sure that I am answering the question correctly as you are
10 asking it.

11 The staff, I think, had in its own mind a fairly clear
12 perception of how it ought to go about deciding these matters.
13 There are, after all, some guidelines in this regard, the
14 radiological protection guidelines that exist, based upon
15 which I think the staff rightly presumed that, under those
16 circumstances, it would take certain kinds of actions.

17 My own view, as I have said, is I think that if there is
18 time the staff ought to go through its analysis and reach its
19 conclusion. But at that point I think it ought to consult
20 the Commission before it acts.

21 Now, only -- I reiterate -- only if there is time to do
22 that.

23 Q. Commissioner, we will get into in some detail
24 circumstances surrounding the evacuation or the precautionary
25 evacuation recommendations. But I think just to close this

1 area as to what the understanding was prior to the accident,
 2 is it a fair statement to say that your perception of what
 3 the staff ought to do, while a sound one, was not necessarily
 4 embodied in any instructions? You couldn't be assured that,
 5 even if there was enough time, that the staff would come with
 6 an evacuation recommendation to the Commission?

7 A. I think that's correct. If I'm wrong, I have some-
 8 body who would correct me. But I think that's correct.

9 BY MR. BALLAINE:

10 Q. Are you aware of anything, by the way, Commissioner,
 11 in writing about how it is that the staff or the Commission
 12 should go about making evacuation recommendation decisions?

13 A. At this point?

14 Q. I'm sorry. As of the 28th of March.

15 A. As I said, there are limits on releases and there
 16 are a variety of such guidelines which would indicate that
 17 certain steps ought to be taken for the protection of the
 18 individuals, of property, and so on. And all of those things
 19 exist and would be the basis for the staff's reaching its
 20 conclusion.

21 Q. So that we are clear, are you now -- when you
 22 refer to such guidelines, are you referring to radiological
 23 guidelines put out by the EPA?

24 A. Yes.

25 Q. Are you aware of anything else in writing that

1 helps to set out guidelines for how and when to make an evacua-
2 tion recommendation?

3 A I am not personally aware. I would think that,
4 however, there are, as there most often are in this organiza-
5 tion, staff documents which implement those. I would be
6 surprised if there are not. There may not be. The EPA state-
7 ments are fairly clear.

8 Q You say staff documents that implement those.
9 Again, you mean those EPA guidelines?

10 A The guidelines, yes.

11 Q Are you aware, aside from the guidelines you have
12 just referred to, are you aware of anything in writing that
13 indicates whether there are situations in which the NRC
14 shouldn't even be involved in evacuation recommendations,
15 the kind of limits of involvement of the NRC in that kind of
16 recommendation?

17 A I'm not aware of that.

18 Wait. Are you speaking of upper limits or lower limits?

19 Q Either one.

20 A Well, I don't mean to sound foolish. Obviously,
21 if there are lower limits -- well, there are limits, which
22 when one reaches certain steps should be taken. Doesn't it
23 follow that below those limits one doesn't take such steps,
24 nor does he at that point get involved in decisions to take
25 them?

1 Q Again, we are talking about EPA guideline limits.

2 A Yes.

3 Q Prior to Three Mile Island, did you, sir, have any
4 view as to how the Commissioners would go about the process
5 of implementing their role, making policy decisions in connec-
6 tion with an emergency response?

7 A No. I guess I saw that instinctively.

8 Q I wonder whether you felt that this was the kind of
9 thing where you would have votes, majority vote carries, some-
10 thing on that order.

11 A I see the thrust of your question. No, as a matter
12 of fact, principally because I don't think -- let me speak
13 for myself. I certainly did not see an incident of this kind
14 developing over a very protracted period. Serious radiological
15 hazard was something which I think was normally -- or a serious
16 reactor accident was a matter which occurred, had a very short
17 life, and then a very long process of recovery or cleanup. It
18 was not a long and protracted crisis that anyone anticipated
19 that I'm aware of.

20 I certainly didn't think of it in those terms. I visualized
21 an accident which would occur, and then the matter was essen-
22 tially finished. You know, it was the big break problem.
23 You had it and you went through all of the steps necessary to
24 assert control, and then you spent time cleaning it up, all
25 of the time being -- attention being focused on assuring

1 radiological protection of public health and safety.

2 But no, I don't think -- I don't recall any discussion of
3 how we would go about that. I don't think it occurred.

4 Q Sir, you indicated, I think --

5 A I have some views about it now.

6 Q We are interested and we'll solicit those views in
7 a moment.

8 A Okay.

9 Q I think you indicated as of the 28th of March, at
10 least, you didn't see an incident of the kind like TMI
11 developing over this long course of time. Was it your state
12 of mind at the time that you simply didn't think that the
13 Commissioners would ever have to make a fairly rapid decision
14 in connection with an emergency response?

15 A Oh, no. I assumed that at some point we might well.
16 But that's a different question altogether. That has little
17 to do with whether we thought we'd have to take votes and all
18 the rest.

19 I'm confident that if one had to make a decision rapidly
20 and promptly, it could be made and would be.

21 Q How did you think it would be made, a rapid decision
22 would be made?

23 A It just didn't occur to me. Just as I said, just
24 instinct tells me, if we've got a job to do and it's perceived
25 by five people as a job they've got to do, they do it.

1 Q I take it you did, though, view it as a decision
2 that could be and would be made collegially by the five?

3 A Yes

4 Q Did you see -- this is prior to TMI -- any
5 particular --

6 A When you say "a decision," you're talking about
7 recommending evacuation, for example?

8 Q For example.

9 A Okay. I want to be sure what focus we have.

10 Q As of TMI, did you personally see any different
11 role or more defined role for the Chairman of the NRC?

12 A I have always seen a different, more defined role
13 for the Chairman. It's no secret that I believe the Chairman
14 of this institution should be not only in name but in reality
15 the first among equals. I believe the Chairman has some
16 authority conveyed him by law in terms of administration,
17 general management responsibility. I believe and have
18 believed, essentially from the beginning, that those respon-
19 sibilities ought to be executed more fully than they have
20 been.

21 And that, of course, means his colleagues, me included,
22 have to cede to him a measure of the responsibilities which
23 are conveyed us by law. But that, it seems to me, is a
24 wholly reasonable and rational interpretation of what the
25 law intends -- not only the law, but good common sense, in

1 my view.

2 I understand hierarchical organizations. As I said, in
3 many occasions they don't trouble me. Indeed, I find by and
4 large they work, which says something for them, because that's
5 the purpose of organization. And I think the Chairman in this
6 kind of a circumstance, and indeed, more generally even,
7 should be the basic source of direct guidance to the staff.

8 Now, I expect that the Chairman in such a case will consult
9 with and take full account of the views of his colleagues

10 Let me give the example of a corporate board of directors.
11 After all, it does run the corporation in the broadest sense.
12 It sets the policy. It makes the big decisions. But those
13 decisions are carried out by the chief executive officer,
14 whoever he may be. He may be the chairman of the board or he
15 may be the president, who would be a member of the board, that
16 being a decision of the board.

17 But there is an individual who acts for, on behalf of the
18 board, to convey the decisions of the board and ensure that
19 those decisions are implemented. Now, I think that's the
20 responsibility of a chairman, and I think the interrelationship
21 between the Commission and the staff in terms of directive
22 activity should be through the Chairman.

23 Q Now, prior to TMI, was it your view that in the
24 event a rapid decision had to be made, an emergency response
25 such as an evacuation recommendation, that the Chairman had

1 the authority to make that decision without consulting the
2 other Commissioners?

A Unilaterally? I do not think so.

4 Q Was it your view --

5 A Wait. Let me go back.

6 In the first place, I believe that that recommendation, as
7 I said, if the situation demanded it, ought to have been made
8 by the man on the ground. Only if time permitted would that
9 question come back to the Commission.

10 I would hope that the need for the answer could be foreseen
11 in such time as to allow the Commission to consider it. When
12 that matter is put before the Commission, it seems to me,
13 then it is a collegial decision, but one which, in the last
14 analysis, then must be announced and carried out by the
15 Chairman.

16 Do I distinguish this properly?

17 Q You do, sir, I believe. I do want to clarify one
18 aspect of it, though.

19 Again, in a situation where a rapid decision has to be
20 made, and assuming there at least is enough time to reach
21 the Commissioners--

22 A Common sense dictates, if he can't reach all the
23 rest of them, I can assure you if he makes that decision and
24 he was unable to contact me in the proper time, he will have
25 my full support for it. That's all I can say to that. I

1 can't tell you what others might think. That's the way I
2 think it ought to be.

3 And again, if he has the opportunity to contact me, I would
4 hope that he would. He certainly -- this or any other
5 Chairman knows that I have no difficulty reaching decisions.
6 Presented with the facts, I make them very quickly. It
7 doesn't trouble me at all to do so. I can do that, and I am
8 sure others would -- can and would.

9 So if he has the time to do that, I think he should. But
10 if he does not have the time to do it, again, we're talking
11 about the public health and safety, and if he believes that
12 that's the course that must be followed in the interest of
13 public health and safety, and has no opportunity to consult
14 the rest of us, that he ought to go ahead and do it. I would
15 feel badly if he didn't and I would support fully what he
16 did.

17 Q Now, let's assume this situation where a rapid
18 situation, and let's assume further that there is enough
19 time for the Chairman to consult the other Commissioners.
20 Was it your view that the decision would be made collegially,
21 or that the Chairman alone would ultimately make the
22 decision?

23 A I think it would be made collegially. Now, let
24 me point out that at one point -- I can't recall, it must
25 have been Sunday -- Sunday? Saturday? It must have been

1 on Sunday -- the Chairman was in fact in Harrisburg, and some
2 of us were out at the incident response center. And we had
3 discussed -- it was at the time the bubble question was boiling
4 up on a continuing basis with unknown results.

5 Some of us concluded that the circumstances looked to us,
6 from the information that we had from the distance which we
7 were viewing it, and recognizing that the end of the day was
8 coming and that nightfall was soon to be with us, making any
9 evacuation more complicated than would otherwise be the case,
10 that we thought that prudence might suggest a precautionary
11 evacuation.

12 But we also recognized that we were looking at this from a
13 considerable distance, and that we were aware that on previous
14 instances those who thought one thing in Bethesda, when they
15 got to Harrisburg, thought something quite different, because
16 they saw the facts and the situation rather differently there.
17 We recognized that and so I remember calling the Chairman at
18 the behest of my colleagues and telling him that our view,
19 from where we sat, suggested that it might be advisable to
20 think in terms of a precautionary evacuation, but that we
21 believed that in this matter, since he was there and knew a
22 good deal more about the actual situation on the ground and
23 its likely development than we could possibly, that we would
24 leave that matter, that decision, to him.

25 If he believed that it should be done, we suggested then

1 that he go to the Governor and say so. If, on the other hand,
2 based upon his assessment there, that was not the course to
3 be followed, we would support that.

4 Do you understand what I'm saying?

5 Q Yes, sir. This conversation you are talking about
6 was one which took place when Chairman Hendrie was at the
7 TMI site?

8 A That's correct.

9 I wasn't trying to recite the conversation, but really
10 trying to give you the thrust -- to try as an explanation of
11 the point that when we say, should we leave the decision to
12 him, yes, there we did. But we decided to. We reached our
13 own conclusion based upon what we knew, and then, recognizing
14 the simple straightforward fact that he probably knew more
15 about the situation, being where he was at Three Mile Island,
16 than we did, and we wanted to be sure of his judgment in that
17 regard. And with that background, then, it was factored into
18 the decision.

19 We were not telling him as a collegial body, you have just
20 been given an instruction by a majority of your peers. We
21 were telling him, the majority of your peers, from its own
22 perception, sees it this way, but recognizes that there may
23 well be factors which it doesn't know or comprehend in the
24 same way as you do on the ground there. That just seems to
25 me simple, straightforward common sense.

1 Q Just to cover one other situation, sir, assume again
2 the need for rapid decision. Assume sufficient time by the
3 staff to at least begin to contact the Commissioners. Assume
4 all the Commissioners are in theory available, but for practical
5 reasons we don't see to make communication with all of them.
6 In fact, let's assume that the Chairman is the one person we
7 can't make communication with.

8 Who, in your view, at least your view prior to TMI, was
9 responsible among the Commissioners for making the final
10 decision?

1 A Well, you know, in my mind there never has been a
12 question that it was a sort of a matter of -- in all these
13 years -- that the next senior man in the group of Commissioners.
14 In that particular circumstance, it would have been
15 Mr. Gilinsky. If Mr. Gilinsky weren't there, it would have
16 been me. And indeed, that is precisely the reason I made the
17 call to the Chairman. Gilinsky wasn't there. We had consulted
18 him. He had the same view as Mr. Bradford and Mr. Ahearne and
19 I had. He wasn't there, so on behalf of my colleagues I
20 called the Chairman.

21 You know, we have always done that in an unwritten, unspoken
22 sort of way. It's just instinctively the way people rationally
23 work, I think.

24 Q In your view, then, the most senior Commissioner
25 available stepped into the shoes of the Chairman and performed

1 the role you described the Chairman performed?

2 A. That's right.

3 Q. Prior to TMI, was there any discussions of which
4 you are aware specifically with respect to the type of role
5 that the Commissioners and the Chairman of the Commission
6 would play as you have described it in an emergency response?

7 A. Have we ever talked about that? No, not that I
8 recall.

9 Q. You're not aware of anything in writing that
10 indicates what you have testified to?

11 A. No. There may be in the archival notes of the
12 original formation of the Commission, and therefore even in
13 the regulations -- I'm not sure of this -- a general hierar-
14 chical arrangement whereby certain people assume certain
15 responsibilities under certain circumstances. I just don't
16 recall that.

17 But as I'm saying, it's just sort of normal instinctive
18 common sense.

19 Q. Do you believe that the other Commissioners have
20 the same view of the respective roles of the Commissioners
21 and the Chairman as you do in an incident response such as
22 TMI?

23 A. That is my impression. But I do not wish to commit
24 to their viewpoint. I think you ought to ask them.

25 Q. Okay. I wonder what's the basis for your impression?

1 Any particular conversation or something in writing?

2 A As I said, I think it's just what I think to be
3 instinctive common sense, and therefore I attribute it to
4 everybody.

5 Q By the way, the views you've expressed as to the
6 roles of the Commissioners and the Chairman, I take it that's
7 still your view?

8 A Yes.

9 BY MR. FRAMPTON:

10 Q Commissioner, I think you said before that the
11 role of the Commission and the staff in an evacuation recom-
12 mendation would be based in large part on the EPA's protective
13 action guidelines which relate to radioactive releases. In
14 your view, in the event of an accident at a commercial
15 reactor which involved substantial releases, who has the
16 responsibility? That is, what entity or agency, private or
17 governmental, has the lead responsibility for monitoring
18 releases, assessing the data, evaluating it and communicating
19 that information to the people who have to make decisions
20 about evacuation?

21 A Well, it has always been the responsibility of the
22 licensee to monitor. Now, I'm not -- there also is a
23 responsibility upon the state and local entities. There is
24 a responsibility of NRC to assure that a lot of those things
25 are done.

1 I'm not confident in my own mind that that's necessarily
2 the way it ought to continue to be. I think the licensee
3 obviously ought to be responsible for doing a lot of monitoring.
4 But I think his monitoring should be essentially confined --
5 well not confined, but it should be essentially directed at
6 his own site.

7 I think activity off that site ought to be the responsi-
8 bility of governmental entities. And I haven't made up my
9 mind whether that ought to be the state or federal agencies.
10 Let me say, the reason I haven't made up my mind is that I
11 am instinctively a states' righter. I believe the states
12 ought to have much greater responsibility in a great many
13 things, public health and safety being one of them. My only
14 problem is, I'm not sure that many of them -- at least some
15 of them are wholly capable in the sense that they have the
16 resources to do a lot of the things that I think ought to be
17 done.

18 Therefore, maybe at least for the time being other agencies
19 should. My own view as to the responsibility here, I think
20 the responsibility for being sure that it's done, either by
21 doing it ourselves or making certain that someone else, the
22 state or local agency is, I think ought to be the responsibility
23 of the NRC.

24 Let me say, I think that divided responsibility for
25 activities at nuclear power reactors as a general proposition

1 I think is unwise. And this is a view I have come to after
2 thinking about some of the things about TMI, not because they
3 became problems in the context of TMI, but only because I've
4 thought about it and it seems to me they might in some time
5 become problems or they might create problems where we just
6 don't need them.

7 Divided responsibilities generally can lead to difficulties
8 at some point. If you see cases in which that arises, you
9 ought to look hard at them to find out if you really want
10 that to obtain over the long run. I personally think we ought
11 to take a hard look at this.

12 I think the responsibility ought to rest with us. Right
13 now I think it's divided.

14 MR. FRAMPTON: Thank you.

15 MR. ROGOVIN: I think a five-minute break is in
16 order.

17 MR. LAWRENCE: Before breaking, I think we ought to
18 make two procedural points, going back to your first couple
19 of questions on notes.

20 The first is Exhibit 5082, which is the note prepared by
21 Mr. Guibert, is undated. I just wanted to state for the
22 record that it was prepared yesterday, October 1st.

23 BY MR. BALLAINE:

24 Q . The first time you saw it, Commissioner, was
25 yesterday?

1 A The first time I saw it was last night.

2 MR. LAWRENCE: Secondly, you made a request. You
3 asked about notes that had been prepared by assistants. I
4 assumed you meant contemporaneous with the event, as opposed
5 to notes that may have been making comments on papers and
6 actions taken subsequent to the events?

7 MR. BALLAINE: I think the question -- in fact, the
8 question probably wasn't focused. I think we would be inter-
9 ested in any notes that purport to describe the events between
10 the 28th and April 2nd, whenever taken.

11 THE WITNESS: So far as I know, there aren't any of
12 those.

13 MR. LAWRENCE: Nor do I.

14 MR. BALLAINE: Even if they were prepared a month
15 later --

16 THE WITNESS: I don't think we have any of those.
17 I'll look again, but if we do you're welcome to them. But I
18 don't think there are any.

19 MR. BALLAINE: Okay.

20 (Recess.)

21 BY MR. FRAMPTON:

22 Q Commissioner Kennedy, just one question to follow
23 up on your last answer. I think you said, if I understood
24 you correctly, that the fact that there really is no lead
25 responsibility for monitoring off-site releases in the event

1 of an accident is something that you think the Commission
2 ought to take a good hard look at.

3 A. There is an inter-agency sort of agreement or under-
4 standing with EPA, and --

5 Q. That agency doesn't assign responsibilities, does
6 it? Isn't that just a list of what resources are available?

7 A. That's my understanding.

8 Q. If the adequate monitoring of substantial releases
9 in the case of an accident is something upon which the
10 public's health and safety depends, isn't the fact that nobody
11 really has responsibility for doing that job something more
12 serious than warranting a hard look?

13 A. As I said earlier -- that's exactly my point. I
14 said earlier that people are responsible. What I am suggesting
15 is that responsibility is divided and a lot of people have
16 responsibilities. I am suggesting that that ought to be
17 corrected. That was precisely the point that I was making.
18 I agree with you, that is something that ought to be looked
19 at. That is exactly what I said, that we should in fact
20 look at -- my own view being that certainly at present my
21 view would be that the NRC should be responsible for this.

22 And that is uncharacteristic of me, as my colleagues would
23 certainly be glad to tell you. Normally, I say that those
24 things are responsibilities that ought to be conveyed to
25 states, if they are governmental responsibilities, and in

1 this case I think they are. They should be conveyed to the
2 states.

3 The only reason I don't do that at this juncture is that
4 I am not wholly confident that all states would be in a position
5 at this point to do so. If they were, I would say it ought to
6 be a state responsibility.

7 Q Do you know whether any action is being taken to
8 draft legislation or an executive order that would ensure that,
9 at least among the federal agencies, if not federal and state
10 agencies, the lead responsibility is being assigned to some-
11 body? Or is the Commission doing anything about changing the
12 situation?

13 A There is some legislation. I think -- it was just
14 referred to. I think it is S. 562 that deals with this ques-
15 tion.

16 Q Thank you.

17 BY MR. BALLAINE:

18 Q I take it, then, with respect to this divided
19 responsibility issue, it's your view that as of today, at
20 least, there's still adequate protection to the health and
21 safety of the public?

22 A Yes.

23 Q Would it be your view if the situation were exactly
24 the same in three years?

25 A My view probably would be yes. But that isn't my

1 concern. My concern is, as I tried to explain earlier, divided
2 responsibility leaves room for things to fall between cracks.

3 Q But even in three years, you still think there would
4 be adequate protection if the same kind of division existed?

5 A All things being equal, if things did not fall through
6 the cracks, the situation would be as it is today. My concern
7 is, as I say, my concern is that we ought to, having the oppor-
8 tunity to look ahead, we ought to do so and eliminate ambigu-
9 ties wherever we find them in authority.

10 Q Sir, with respect to the role which you have des-
11 cribed of the Chairman in the emergency response situation,
12 do you have an opinion as to whether or not that person, that
13 Chairman, should have a certain minimum degree of technical
14 expertise in order to carry out his function?

15 A I'm not convinced that that's necessary. I think he
16 has to be a smart fellow. That is, he has to be someone who
17 can understand what the issues are. I do not think that that
18 requires -- the level of decision that's going to have to be
19 made -- that's what I'm talking about -- the kind of decision
20 that's going to have to be made -- I don't think he has to be
21 an individual who is a technical expert.

22 He needs to be able to comprehend what's being said, and he
23 has to make sure that he has got staff who will look hard at
24 the issues.

25 Q Fine.

1 Sir, I think you earlier referred to the role of the
2 Commissioners of interfacing with the public in an emergency
3 response situation, is that right? Between March 28th, 1979,
4 and the following Monday, April 2, 1979, did you have occasion
5 to speak to members of the media specifically with respect to
6 TMI?

7 A Did I personally?

8 Q Yes, sir.

9 A I just honestly don't recall.

10 Q No recollection of a particular conversation?

11 A No. I may have.

12 But let me add there, that goes to something I have said
13 about my own personal view of the role of the Chairman, a view
14 which hasn't changed all that much because of TMI, simply
15 been reinforced. One of the things which I think that is a
16 proper role for the Chairman is being essentially the arti-
17 culator of the Commission's position, policy viewpoint on
18 matters. And certainly, in a situation in which there is
19 major public involvement, that's a matter which I think, if
20 the Commission is going to speak, it ought to do so through
21 the Chairma.. And that would have been the way I would have
22 looked at that.

23 I do recall on a number of occasions having had calls from
24 a number of people, and I tended -- if not in all, nearly
25 all, and I can't recall any others -- I tended to refer the

1 questions to our public affairs office.

2 Q Okay. So it's your recollection that you may have
3 received calls from the media, but never provided them with
4 any information with respect to TMI?

5 A I do not recall. Let me say the reason -- another
6 reason for that is I think one of the worst things one can
7 do for the public is to speak with several voices, because
8 you can wind up getting terribly confused and absolutely
9 unwittingly, the minute two different people speak on the
10 same subject using different words, people begin to compare.
11 And you now have the kind of problem that indeed arose in the
12 TMI situation -- confusion.

13 Q Sir, just so we are clear, you don't recall a
14 conversation, even an informal conversation with a member of
15 the media, something like an off the record conversation,
16 something of that nature?

17 A (Nods head in the negative.)

18 There was a lady, a girl -- what was her name? I don't
19 know. She worked for People magazine, if you, I assume,
20 include that in the media.

21 Q I do.

22 A She accosted me in the hall on Saturday afternoon
23 and said, could she interview me. And I said, you know,
24 really, I can't; I'm just too busy. She subsequently called
25 several times and I gave her an interview, as I think others

1 did.

2 Q But that was after the 2nd?

3 A Yes, I think so. We can look that up and be sure,
4 but I think it was after the 2nd.

5 Q That's fine.

6 Again, during just this time frame of March 28th through
7 Monday, April 2, did you have occasion to have any conversa-
8 tions with individuals who you connect with the nuclear
9 industry?

10 A Starting when?

11 Q From Wednesday the 28th through Monday, April 2.

12 A Sure, yes, because on Wednesday noon I fulfilled a
13 longstanding commitment to speak before the American Bar
14 Association American Law Institute meeting, which was being
15 held at the Mayflower. And at that meeting, where people,
16 some of whom certainly would have been associated in one way
17 or another with the nuclear industry -- I think I remember
18 Myron Kratzer, for example, was there.

19 Q What's his connection with the nuclear industry?

20 A Well, he worked -- it's nebulous, I guess. He
21 works -- he's part of Energy International Associations or
22 something, International Energy Associates.

23 Q Do you recall the substance of what you said speci-
24 fically with respect to TMI?

25 A No. I may have given him a statement that would

1 have been a summary of my understanding of the situation at
2 the time.

3 Q I just wonder if you have a recollection of what it
4 is you said?

5 A No.

6 Q Any other conversations you can recall between the
7 28th of March and April 2 with people connected with the
8 nuclear industry specifically relating to the TMI incident?

9 A That I recall?

10 Q Yes, sir.

11 A The answer is no, I don't. That is not to say that
12 I didn't. I simply can't recall them. And if you like, I
13 will go back and look through those telephone logs. And if
14 there were any such conversations, I'll try --

15 Q Maybe they'll refresh your recollection.

16 A Yes. At this point I do not remember.

17 Q Again, the same time period, that same time period,
18 28 March through April 2nd, did you have any conversation
19 with individuals, public interest groups, who had been
20 involved from time to time in nuclear issues?

21 A I don't recall.

22 Q During this same time period -- excuse me.

23 A Someone talked to me or I talked to them on Sunday
24 morning in Bethesda -- no, that was someone from a Committee
25 staff on the Hill. And I would have to try to recall who

1 that was.

2 Q In fact -- I take it your answer is still, you don't
3 recall with respect to people associated with public interest
4 groups?

5 A I don't.

6 Q In fact, my next question was, during this period
7 March 28th through April 2, did you have any conversations
8 with either members of Congress or somebody associated with
9 the Congressional staff?

10 A There were some calls. I did not respond to the
11 calls. I had the calls responded to promptly by others. I
12 did not respond to the calls personally.

13 Q And you did start, I think, to recall something
14 happening on Sunday morning?

15 A Yes. I talked to someone on Sunday morning, a
16 staffer of one of the Committees. I simply do not recall
17 which one.

18 Q Do you remember the substance of the conversation?

19 A Only to describe very briefly the situation as we
20 understood it at that time.

21 Q And again, you don't recall what it was that you
22 were describing?

23 A No, not really.

24 Q Do you remember who instituted the call, who placed
25 the call?

1 A They called, whoever it was.

2 Q Called in and asked for the status of the incident
3 at TMI? That's your recollection?

4 A Yes. I think, as a matter of fact, it may have
5 been someone else that they had actually called. The call was
6 given to me simply because the other party wasn't there.

7 Q You indicated that there may have been other calls
8 from people associated with Congress and you referred it to
9 someone else?

10 A I remember Congressman Scheuer, for example, calling
11 my office. There may have been others.

12 Q I just wondered who you referred those calls to?

13 A I referred the calls to Carl Kammerer in our Office
14 of Congressional Affairs, let me say again, principally for
15 the reason that I wanted to be certain that people were getting
16 a clear and not garbled version of what actually was taking
17 place.

18 That is, we were trying to make certain that our Congres-
19 sional Affairs and Public Affairs Offices were being kept up
20 to date and that they were putting out information which we
21 knew to be as reliable as there was. And as I have said
22 earlier, in such circumstances it has been my past experience
23 that one of the worst things that can happen is for several
24 people to start answering questions and, in all good faith
25 and good will, answer them differently.

1 The next thing you know, you have a media or public relations
2 catastrophe on your hands, simply not because of the factual
3 situation, but because of people's comprehension of it being
4 confused and garbled by differing views being put forward.

5 Q Between March 28 and April 2nd, had there been any
6 conversations among any Commissioners about how to handle
7 calls coming into separate Commissioners from Congress or
8 Congressional staff people?

9 A I may have expressed my own view on the matter to
10 one or another of my colleagues at one time or another. I
11 could not swear to that, but I would be surprised if I didn't,
12 as strongly as I feel about such matters.

13 Q You're not aware of any particular agreement that
14 was reached among the Commissioners as to how to handle these
15 types of calls?

16 A No. I can tell you, as I said earlier, however,
17 what my own preference would be in such matters.

18 Q I think that's clear.

19 Sir, directing your attention to March 28th, 1979, did
20 you first hear about an accident at TMI-2 from Mr. John Davis?

21 A This is on Wednesday?

22 Q That's correct.

23 A That's correct.

24 Can I refer to my little piece of paper now?

25 Q Yes, you may, it being Exhibit 5082.

1 A. Which, by the way, I want to be sure that I have a
2 copy of, since this is the only extant copy.

3 Q. Absolutely.

4 A. So yes, if I refer to this, it will only be to
5 refresh my memory -- go ahead.

6 Q. Okay. It was Mr. Davis who first notified you
7 about the incident at TMI?

8 A. That's right. It seems to me it was quite early on
9 in the morning, some time before 9:00 o'clock.

10 Q. Do you recall the substance of what Mr. Davis said
11 to you at that time?

12 A. It seems to me he told me -- I'm just trying to
13 recall this, okay?

14 Q. Best recollection, sir.

15 A. And I have to tell you that I may be recalling
16 something I didn't hear at the time, but learned since.

17 Q. We understand. Just your best recollection.

18 A. My best recollection would be that he indicated
19 that the region had advised that early on in the morning --
20 and I don't remember the precise time. I'm sure he gave me
21 some time -- early on in the morning, that there had been a
22 trip, a turbine trip at the Three Mile Island 2 plant; and
23 that -- and I'm sure he referred to additional events that
24 followed.

25 And he indicated that a site emergency and then a general

1 emergency had been called at the plant, and told me that -- I
 2 think at that time -- told me that some people from the
 3 region were already en route to the plant. I think -- this
 4 is a matter of record; we can check -- I think that he told
 5 me that the incident response center was either -- the group
 6 was already -- the EMT was already called or was about to
 7 gather.

8 Q Sir, you referred to a general emergency. At the
 9 time, did you know what a general emergency was?

10 A Yes.

11 Q What was your belief as to what a general emergency
 12 was?

13 A Well, it meant that the entire facilities of the
 14 company were to be mobilized. It entailed a series of radio-
 15 logical protection steps that would be taken, and that there
 16 would be notification of local authorities.

17 Q All right, fine.

18 What, if anything, did you do as a result of Mr. Davis'
 19 call that morning of the 28th?

20 A Mr. Davis, I remember -- Mr. Davis indicated that
 21 he had been unable to reach Mr. Gilinsky. I undertook to see
 22 if I could reach him. I went over to Mr. Gilinsky's office
 23 and learned that he was en route -- at that point, actually
 24 en route to the office. And I let them know that Mr. Davis
 25 had called and as soon as Mr. Gilinsky arrived he would have

1 to call Davis a short time after that.

2 Q You indicated at or about noon, you spoke before
3 an ABA function, is that right?

4 A Yes.

5 Q From the time you had the call from Mr. Davis which
6 you just testified to and your noon speech, did you go to the
7 incident response center at any time?

8 A No, I did not.

9 Q Okay. When you received the call, you were here in
10 what I will call the Commissioners' offices on H Street?

11 A That's right.

12 Q And you remained here during that entire morning
13 period?

14 A That's correct, I remained here throughout the day.

15 Q And did you receive periodic reports as to the status
16 at TMI during the day?

17 A Yes.

18 Q I'm going to ask you how often. Is the answer
19 going to be given on the exhibit that's now being photocopied?

20 A Not necessarily.

21 Q What's your best recollection?

22 A My best recollection was every hour or two we were
23 advised, either -- I think principally by sort of a conference
24 call arranged with the people at the incident response center.

25 Q Was there any particular person or persons at the

1 incident response center who gave you the report?

2 A. It usually was Gossick or -- well, I really can't
3 recall, but surely Gossick, Case, Davis were the people, I
4 think, that we would hear. Others were there who would, I
5 think, from time to time comment or add something.

6 Q. You indicated that the reports you received during
7 Wednesday was principally by conference. You mean a telephone
8 hookup in which all the Commissioners were present?

9 A. Yes. Well, that happened one time, on which I
10 recall -- let me put it another way.

11 We first tried to get together in the Chairman's office as
12 a general proposition, in order that we could -- I think
13 principally because the little conference room was next door
14 and it was a sort of convenient way to go back and forth.
15 Also, his secretary was there, he was not. So she was more
16 or less free to handle the calls and put them through. There
17 were additional telephones. There was a telephone in the
18 little conference room, as well as a couple in the office,
19 three I think. So it made it easy to communicate that way.

20 At one time that did not occur that I can recall. I was in
21 my office and had some visitors, and so -- as a matter of fact,
22 I think they were from the Japanese Atomic Energy Commission,
23 if I'm correct. I recall -- I think they were Japanese, at
24 any rate.

25 They were there. We had only just begun our conversation

1 in a long, planned appointment, and I asked if they could put
2 the call into my office rather than going up to the Chairman's
3 office, as normally was the case.

4 Q But the other Commissioners were on the line during
5 that conversation as well?

6 A They were in the Chairman's office, that's correct.

7 Now, when I say the other Commissioners, it is my recollec-
8 tion that Mr. Ahearne was not at H Street at any time during
9 the day, that he had gone to Bethesda and was there.
10 Mr. Bradford went to Bethesda at some point, and I don't
11 recall when, and then some time after that returned to H Street.
12 So he was in Bethesda for a period during the day, but not
13 all of it, I think spanning about the middle of the day and I
14 just don't recall.

15 Q And Chairman Hendrie was not party to any of these
16 conversations?

17 A To these conversations, not that I'm aware of. He
18 certainly was not present.

19 Q Did you have any conversations with Chairman Hendrie
20 on that day, Wednesday?

21 A Not that I can recollect, and there's nothing in
22 my logs that would suggest that.

23 Q When do you think you last received a briefing, as
24 best you can recall, on Wednesday? What time?

25 A On Wednesday? Around 6:00 o'clock or something of

1 that order.

2 Q What was your understanding of the purpose for
3 being briefed in the manner you have described?

4 A To keep us fully aware of what the situation was, as
5 would always be the case in such circumstances.

6 Q During any of those briefings or any other conversa-
7 tion -- do you recall any conversation with members of the
8 staff other than conversations we have discussed as briefings?

9 A I do not.

10 Q At any time during any of the briefings, do you
11 recall the staff asking for particular direction from the
12 Commissioners?

13 A No, I don't recall that, but I think from time to
14 time questions were asked of them or suggestions offered to
15 them as to things of -- just in a sort of checklist notion
16 to try to be sure that people thought things through and had
17 asked all the questions and had things under way. I recall at
18 some point -- and I don't recall when it was, whether it came
19 from us or from the staff -- there was agreement that addi-
20 tional staff from headquarters should go to the site. And it
21 was at that time that Dick Vollmer and some of his people --
22 I've forgotten how many -- were dispatched. I just don't
23 recall when that was, but that was an example. That matter
24 was -- either I can't recall whether it originated with us or
25 we thought it was a good idea, the staff suggested it.

1 We did ask about -- we did ask about the dispatch of people
2 from the region. We did ask about radiological protection,
3 what additional steps were being taken and the like.

4 Q You also referred to suggestions. Do you have any
5 recollection of any particular suggestions that were made by
6 the Commissioners --

7 A They were of this kind, I think.

8 Q Anything you haven't already described?

9 A No. That's all on the tapes. I really can't
10 recall. I just recall in the general sense, there was a
11 dialogue. They were explaining the situation to us as they
12 saw it and it would be a reasonably free-flowing discussion.
13 People would ask questions to be sure that they fully under-
14 stood what was taking place and what was being said.

15 Q On Wednesday, did you take any particular action as
16 a result of any of the briefings, just on Wednesday?

17 A I can't recall any specifics.

18 Q Okay. Do you recall having your personal staff
19 doing anything in particular with respect to TMI on Wednesday?

20 A I remember John Guibert saying something at some
21 point to me about the similarity of some aspects of this thing
22 with Davis-Besse, which had occurred a long time before, with
23 which he was quite familiar, having worked in that particular
24 organization, the Division of Operating Reactors; not suggest-
25 ing that that's what it was, but there were some aspects of

1 the way the transient seemed to develop.

2 And so I said, well, be sure to talk to the staff and be
3 sure they focus on that, and I think he did.

4 You called them to that effect?

5 MR. GUIBERT: Yes, I called Darrell Eisenhut that
6 morning.

7 BY MR. BALLAINE:

8 Q Do you remember whether during that conversation
9 there was anything more specific said about the nature of the
10 similarities with Davis-Besse, other than what you've testified
11 to?

12 A No, I don't recall anything more specific than that.
13 I don't recall the question of the relief valve coming up, if
14 that's -- maybe John does.

15 MR. GUIBERT: At the time I mentioned this to
16 Commissioner Kennedy -- please recall this was in the very
17 early morning, when we did not have a substantiated scenario
18 of what the events were. And based on the information availa-
19 ble, the scenario sounded like it could have been something
20 similar to what the scenario was at Davis-Besse. But it was
21 only on piecemeal information.

22 BY MR. BALLAINE:

23 Q What was the information you people had at the time
24 so far as TMI was concerned?

25 MR. GUIBERT: That there had been a turbine --

1 BY MR. BALLAINE:

2 Q Turbine trip?

3 A Yes. More than that: there was the turbine trip,
4 following which a pressure transient of some sort had occurred.
5 And I don't remember what we knew about the reactor coolant
6 pumps. Whatever the general nature was of the scenario that
7 we knew by that time was the basis for John's conclusion.

8 Q Other than what you have just testified to, you are
9 not aware of any directions that were given on Wednesday by a
10 Commissioner to somebody on the NRC staff?

11 A Wait. A Commissioner?

12 Q By any Commissioner to a member of the NRC staff.

13 A You asked what did I --

14 Q That's my present question.

15 A That's a new question.

16 Q It is.

17 A Okay. No, I'm not, except the admonition, keep us
18 informed.

19 Q Okay. And other than what you have just testified
20 to, you are not aware of any other suggestions or requests
21 that were made by particular Commissioners to the NRC staff
22 on Wednesday?

23 A I'm not.

24 Mr. Guibert reminds me of a conversation we had about
25 a press release, and this was -- I think this was handled by

1 one of these conference call arrangements.

2 Q Was this an afternoon conversation involving
3 Mr. Fouchard?

4 A Yes, that's right.

5 Q I think we have a record of that, simply where he
6 read the draft press release.

7 A And Commissioners gave him notes and thoughts about
8 it as a precedent to approving it for release, yes.

9 Q Okay. With respect to Wednesday, are you aware of
10 any or were you aware of any conversations involving a
11 Commissioner with anyone connected with the White House or
12 some other federal agency?

13 A I was not.

14 MR. LAWRENCE: I'm sorry, the question was: Are you
15 aware of any other Commissioner?

16 MR. BALLAINE: Yes.

17 THE WITNESS: I'm not. No, I certainly don't recall
18 it.

19 BY MR. BALLAINE:

20 Q These following questions also will just be focused
21 on Wednesday.

22 Are you aware of any conversations involving a Commissioner
23 on that day with anyone connected with the State of
24 Pennsylvania?

25 A I don't recall whether Mr. Gilinsky indicated he

1 had talked with the Lieutenant Governor or the Governor that
2 day. I just don't recall that. I know that there were conver-
3 sations with the Governor and the Lieutenant Governor later
4 on, but I do not recall whether there were any on Wednesday.

5 Q Were there any conversations, as best you recall,
6 involving Commissioners about a need to call the State of
7 Pennsylvania for any reason with respect to TMI?

8 A I have a vague recollection which I simply could
9 not confirm, that we discussed at some point the need for
10 staff to be sure that the State of Pennsylvania had thought
11 about its evacuation plans, its emergency plans. Someone --
12 no, it might have been -- I would have to say it might have
13 been coming the other way, that is, staff may have said, we
14 are doing this, or we may have asked, are you, and the answer
15 was yes.

16 Q When you say "we", do you have any recollection of
17 the particular Commissioners involved?

18 A I can't, because I would have to be able to tell
19 you whether it occurred between X hour and X hour, because
20 two of us were here through the day, one part of the day and
21 two not at all. So I can't, you know -- the permutations are
22 a little complicated.

23 Q On Wednesday, were you aware of any conversations
24 involving a Commissioner with someone connected with Met Ed
25 or GPU?

1 A On Wednesday?

2 Q Yes.

3 A No, I do not.

4 Q Were you aware of any conversations involving a
5 Commissioner about the need to make such communication with
6 either Met Ed or GPU, someone connected with the utility
7 involved?

8 A I do not recall that.

9 Q Am I correct that on Wednesday Commissioner Gilinsky
10 was the most senior member of the Commission present? Is that
11 right?

12 A That's correct.

13 Q Were there any conversations Wednesday about what
14 particular role Commissioner Gilinsky would have in the
15 response, given his status on that particular day?

16 A Not that I'm aware of, not that I can recall.
17 As I said, you know, that by and large has just been a sort of
18 instinctive thing. We have just simply typically deferred to
19 whoever the senior one was.

20 Q Do you remember any conversations during Wednesday
21 involving Commissioners concerning how information would be
22 provided to the media with respect to TMI?

23 A Well, we had this discussion about a press release.

24 Q Other than that?

25 A And at some point -- and I don't recall when this

1 was -- I think we agreed that the preliminary notification
2 that staff was drafting, as sort of updates of the situation,
3 would be made fairly generally available.

4 Q Generally available to the media?

5 A Yes, that's my recollection. And I don't know when
6 that was. I don't think it was on Wednesday.

7 Q Were there any conversations to which you were a
8 party involving the need to establish a particular person or
9 a set of persons as a news contact with major networks?

10 A On Wednesday?

11 Q Yes.

12 A No, not that I can recall.

13 Q Did there come a time after Wednesday when there
14 was, specifically with respect to establishing a contact with
15 major networks?

16 A There was a discussion of that, it seems to me,
17 of that sort of problem, on Friday -- wait, we're talking about
18 major networks?

19 Q Yes, sir.

20 A No. The only things I can recall were on Friday
21 and these pertained to, A, establishing a so-called bullpen
22 for the press in Bethesda, B, to respond to a request for
23 someone to appear on the McNeil-Leher Show. That was a matter
24 of discussion. As I recall, it was elected not to do so. And,
25 C, an understanding that -- I think this occurred on Friday --

1 an understanding that henceforth media relations -- media
2 relations announcements, press statements, would be made from
3 Three Mile Island by Denton or someone representing him, I
4 believe the Governor's office, and Met Ed. And how that was
5 to be sorted out, I --

6 Q Okay. We'll come back to that, I think, later.

7 A But I do not recall that sort of thing coming up
8 on Wednesday.

9 Q You testified earlier to conversations relating to
10 sending Mr. Vollmer to the site. What was your understanding
11 as to what Mr. Vollmer's specific role would be in relation to
12 the role of the people who were already at the site from NRC?

13 A My understanding was that Vollmer would be the
14 senior man and thus -- that is, the senior NRC man, and thus
15 presumably would be in charge. Now, in charge in the sense
16 that he would have general cognizance over all the NRC people
17 who were there.

18 Now, I recognize that that may not have been as clear to
19 everyone, and I don't know whether this was a problem. But it
20 may not have been as clear to everyone as it was to me, because,
21 of course, the people who were already there belonged to the
22 Inspection & Enforcement Office, and principally from their
23 regional office in Region I. There they would normally not
24 be reporting through or reporting to an officer of the NRR,
25 from which Vollmer came.

1 However, as I said, it was my -- I just automatically
2 assumed, I guess, that Vollmer, as a more senior person, would
3 have been the person who was in charge of whatever activities
4 we were conducting.

5 Q Okay. As best you recall, what was the information
6 you received on Wednesday or Thursday that led you to believe
7 that Vollmer would be in charge of the NRC people at the site?

8 A As I said, I can't recall receiving any. Perhaps
9 just an assumption on my part.

10 Q Okay. No recollection of specific conversations
11 with somebody from the staff in which the subject was dis-
12 cussed?

13 A No, I don't recollect that. It may have occurred,
14 but I simply don't recollect it.

e-6

15

16

17

18

19

20

21

22

23

24

25

1 He certainly was in charge of the group he took with him.
2 At least, so it was my assumption.

3 Q Now, I am going to ask a question that may want you
4 to refer to Exhibit 5082. But first I am going to ask you
5 to use your independent recollection and we'll go from there.
6 Do you have an independent recollection of ever being told
7 in substance, that there was superheating in the reactor at
8 TMI-2?

9 A No, I do not.

10 Q Do you have an independent recollection of ever
11 being told that there was, in substance, that there was a
12 possibility of serious damage to the core on Wednesday?

13 A On Wednesday?

14 Q Yes, sir.

15 A No. My recollection of what I was told about
16 damage to the core on Wednesday was fairly early on -- I'm
17 talking about some time, I think, in the morning -- that there
18 probably was some fuel popping, cladding damage, something
19 of the sort, that most likely or probably resulted from the
20 pressure transient which had occurred. That's my recollection.

21 Q From independent recollection, do you recall ever
22 being involved in a conversation in which there was speculation
23 that the core at TMI-2 may have been uncovered for a particular
24 length of time?

25 A On Wednesday?

1 Q Yes, sir.

2 A No, I do not recall that.

3 Q Let's refer for a moment, if we may, to Exhibit 5082.

4 With respect to number one, is it your understanding, sir --
5 and perhaps the gentleman who prepared this document -- I've
6 forgotten who it is -- can answer this also -- that this first
7 notation on the right-hand side next to number one is referring
8 to something that is on a tape?

9 A Yes. Now, that --

10 Q An incident response center tape.

11 A The time and date there are not of the event, but
12 rather, when Davis called me.

13 Q Okay. But in any event, the subject is something
14 that is discussed on a particular tape, on the incident response
15 center tape?

16 MR. GUIBERT: I cannot say -- I have not seen such
17 tape. I am aware that there is a piece of paper which has a
18 list of what items -- chronological recovery, based on the
19 tapes. And this is one of the items that's on.

20 BY MR. BALLAINE:

21 Q Okay. What about all the other items --

22 A Let me say that perhaps it's faulty recollection,
23 but my recollection was that when Davis called me and I heard
24 the beep in the background, it perked my ears up as beeping
25 always does.

1 Q You were being taped.

2 A Well, yes. And that means, in this organization,
3 it's a matter that somebody thinks is a very serious matter,
4 and is a matter which therefore should be a matter of record.
5 The response center operates that way. And as I say, when I
6 hear a beep when I pick up the phone, my ears automatically
7 pick up, and my recollection is that's the way it was. And
8 therefore, there would be a tape somewhere. I'm not sure that
9 I've ever seen it.

10 Q I guess what I want to confirm, if I can, is that
11 with respect to each of the 13 items on these pages, all of
12 the citations, shall we call them, on the right-hand side
13 relate to, as far as you know, to transcripts from -- either
14 from incident response center tapes or from Commission meeting
15 tapes?

16 A No, no. You will see a number on here marked PNO,
17 which are preliminary notifications.

18 Q That's a citation specifically to a document called
19 a preliminary notification?

20 A And it's number. That's correct.

21 Q What about all of the other citations?

22 A The things that say "conference calls" presumably
23 from the IRC, presumably should be on tapes.

24 Q Okay. Is that your understanding as well?

25 MR. GUIBERT: Yes, it is.

1 MR. BALLAINE: By the way, did you refer to a parti-
2 cular document in preparing these citations?

3 MR. GUIBERT: Well, I guess primarily, particularly
4 on Wednesday, I looked at the incident response center channel
5 six transcripts and bounced that against my recollection.

6 THE WITNESS: There also was -- there also were a
7 whole series of chronologies prepared, which I am sure you have
8 more of than you can read.

9 BY MR. BALLAINE:

10 Q Chronologies prepared by whom?

11 A Staff at various times. They were chronologies.

12 Q But as far as you know, each of the matters that
13 are described on Exhibit 5082 relate to conversations which
14 appear on the tape transcript?

15 A Yes, except for the preliminary notifications.

16 Q Or to the preliminary notification.

17 A (Nods head in the affirmative.)

18 Q When did you go home on the 28th, sir?

19 A My recollection is it was -- well, it was after
20 that briefing at 6:00 o'clock or thereabouts, which must have
21 run for, I suppose-- I don't know, 20 or 30 minutes. We
22 could check that for sure, I think. So therefore, I would
23 guess it was somewhere around 7:00 or thereabouts.

24 Q As of the time you left, sir, what was your impres-
25 sion as respects the state of the core at TMI-2, if you had

1 one?

2 A. Of the core?

3 Q. Yes.

4 A. Specifically, some fuel damage level, the extent of
5 which was not altogether clear.

6 Q. What do you mean by fuel damage?

7 A. I'm talking about some cladding, some popping that
8 may have occurred, as I said, as a result of this pressure
9 transient, which is the only thing that I can recall being
10 advised of by staff.

11 Q. An impression of swollen or cracked cladding at all?

12 A. Yes.

13 Q. You did have that impression? Do you mean that
14 perhaps that was a possibility?

15 A. That that was a possibility, yes.

16 Q. What, as far as you knew, was being done to define
17 the outside limits of damage to the core as of the time you
18 went home on Wednesday?

19 A. I don't recall that that was -- I don't recall that
20 that was a major question at that point. My own recollection
21 was -- is that the feeling was, damage yes, but relatively
22 contained. The problem was not the extent of damage; rather,
23 the problem was now getting this machine down into a stable
24 cold shutdown condition.

25 Q. In other words, you weren't aware of anything in

1 particular that was being done to specifically define the
2 extent of damage to the core at that time?

3 A. No, I was not aware of any particular moves.

4 Q. And you were not aware of any instructions or
5 suggestions by the Commissioners (r someone else in your
6 presence to get that better definition of the extent of damage
7 to the core?

8 A. I don't recall any such. It may well have been
9 during that 6:00 o'clock briefing. I don't know. But that's
10 a matter of record. That should be on the transcript.

11 Q. At any time Wednesday, did you have an impression
12 as to whether there was uncertainty among any of the Commis-
13 sioners as to the role they were to perform in connection
14 with this particular incident response?

15 A. Uncertainty?

16 (Pause.)

17 A. Well, I recall I think at some point suggesting to
18 Mr. Bradford in perhaps a conversation in a hallway or some-
19 thing that I thought we would be well advised in remaining
20 away from physically -- the physical premises of the center,
21 simply on the grounds that our presence there would tend to
22 distract the technical staff, which was needed to look at
23 specific technical questions as they were arising. And inevi-
24 tably, the presence of a Commissioner requires, I suppose, in
25 the eyes of staff some attention. And I thought that that was

1 just going to distract an otherwise very busy and intensely
2 involved staff.

3 Now, beyond that I don't -- on Wednesday, I don't think I
4 had any other feelings about the matter. I think I said
5 something along this line to Mr. Gilinsky also at some point,
6 and I think my impression was that he generally agreed with
7 that. Indeed, as I said, both he and I remained here through-
8 out the day.

9 I gather that at some later time in the evening he stopped
10 by. I did not find that unusual. On the way home he sometimes
11 stopped in Bethesda for a few minutes from time to time,
12 anyway.

13 Q Okay. Other than --

14 A Had I been going out to Bethesda on the way home,
15 I probably would have done the same thing.

16 Q But other than as you have just testified, you're
17 not aware of any uncertainty of any of the Commissioners with
18 respect to their role in the incident response center?

19 A Oh, I'd ask them if I were you. I can't answer
20 that.

21 Q At any point Wednesday, do you remember whether you
22 somehow assessed what your role was or what your role should
23 be in responding to TMI, some particular assessment?

24 A No. There was no question in my mind from the
25 outset what my role was.

1 BY MR. ROGOVIN:

2 Q Commissioner Kennedy, when Vollmer was sent out to
3 the site, I take it he was sent by Mr. Gossick, is that --

4 A Yes, I think that's correct, either Gossick or
5 Denton. But it would be at the senior staff level, I'm sure.
6 Let me say, I don't recall now -- and of course, it's a matter
7 of record, and it can easily be checked out -- I don't recall
8 now what the composition of his little group that went with
9 him was.

10 I think a lot of them were health physicists, I think.

11 Q Did you understand that he was given -- do you
12 understand whether he was given specific orders as to what
13 his authority would be at the site?

14 A I do not know that.

15 Q Do you understand whether he was sent there to
16 fulfill a reporting need, a communications need?

17 A I don't think that was the specific purpose. I
18 think that was obviously an adjunct to his mission. He
19 obviously could do that in the sense that he would be an
20 expert in reactor operations, that is, in the sense of techni-
21 cal operation, and he would -- he would thus be able to give,
22 I think, a more full assessment of the situation than might
23 otherwise have been the case.

24 But I think that was only an adjunct to his mission. I
25 think his mission was also to help analyze the situation.

1 I guess -- yes, now that I think it through a little bit, I
2 guess that's what one might call a communications function.
3 Sure, he was trying to find out more about what was really
4 taking place, what was known about the situation, so that the
5 analytical function could be more effectively performed.

6 Q Now, going back to your recollections of the emergency
7 response or the plan for emergencies that the NRC had, were
8 you beginning to see a variance between what the plan called
9 for and the way the NRC was responding?

10 A Was I at that time?

11 Q Yes.

12 A I don't think so.

13 MR. ROGOVIN: All right. I have nothing further.

14 BY MR. BALLAINE:

15 Q Directing your attention to Thursday, March 29, 1979,
16 were you present at a briefing in the morning involving
17 members of the NRC staff with respect to TMI?

18 A Yes.

19 Q And that began at approximately 9:00 a.m.?

20 A Approximately. That's a matter of record, which we
21 can confirm.

22 Q What time had you arrived -- by the way, that brief-
23 ing took place here at H Street, is that right?

24 A Yes.

25 Q What time had you arrived at H Street that morning?

1 A. I don't know. It would be some time around 8:30, I
2 suppose, which is the usual time I get here. But again, I
3 think I can confirm that.

4 Q. That would be from your little diary notes, is that
5 right?

6 MR. LAWRENCE: Let me just clarify. A log is kept
7 of Mr. Kennedy's phone calls, arrivals and departures, and
8 that's available.

9 MR. BALLAINE: Okay.

10 THE WITNESS: Do my arrivals and departures in the
11 morning and the evening show, too?

12 MR. LAWRENCE: I believe so.

13 THE WITNESS: I don't know.

14 MR. LAWRENCE: We can doublecheck.

15 THE WITNESS: At any rate, it would be around 8.30,
16 I suppose. It might have even been earlier than that.

17 BY MR. BALLAINE:

18 Q. Do you recall having any particular conversations
19 or whenever it is you arrived, at the beginning of the briefing
20 with respect to TMI?

21 A. No, I do not recall.

22 Q. Okay. Do you remember doing anything somehow
23 involving the TMI incident in that time interim?

24 A. N I don't recall. That does not say that I didn't.
25 You know, I can imagine that I looked for any notes that might

1 have been prepared by the staff overnight, the usual preliminary
2 notification. I might have talked with the center. Now I
3 simply can't recall when these conversations occurred. But
4 there were a great many that I had at various times, as people
5 briefed me.

6 Q We absolutely understand. In fact, you would help
7 us if you distinguish between don't recall, meaning, I don't
8 think there were any, and don't recall something, meaning you
9 don't remember one way or the other. But I understand that
10 here you're talking about don't recall one way or the other.

11 MR. ROGOVIN: It may be helpful if we were able to
12 obtain your telephone log, and that might refresh your memory
13 in these areas. And you might want to even take a break and,
14 if it's easily obtainable, get it now. Or let's break for
15 lunch and bring it back, because I think that will help.

16 THE WITNESS: Let's do the latter, because it's so
17 many months ago they'll have to go back into the file and get
18 them. And then I will have them reproduce them and we'll have
19 them. Is that all right?

20 MR. ROGOVIN: I think that will be much more helpful
21 to you.

22 THE WITNESS: Fine.

23 (Whereupon, at 12:00 noon, the hearing was recessed,
24 to reconvene at 1:05 p.m. the same day.)

AFTERNOON SESSION

(1:05 p.m.)

Whereupon,

COMMISSIONER RICHARD KENNEDY

was resumed as a witness and, having been previously duly sworn, was examined and testified further as follows:

(Exhibit No. 5083 identified.)

EXAMINATION

BY MR. BALLAINE:

Q Commissioner Kennedy, I want to direct your attention to Exhibit 5083, and note for the record that the exhibit consists of five pages, each page of which bears at the top the legend "United States Nuclear Regulatory Commission Telephone Log."

Can you explain what this Exhibit 5083 is, Commissioner?

A Yes. It comprises the record of my telephone calls in and out on March 28, 29 and 30, and on April 2nd. And at the bottom of each of these is a record of meetings and visitors to my office, that is, meetings which I attended and visitors to my office, indicating roughly the times involved.

Q Who physically prepares this?

A My secretary.

Q And how does she do it? Where does she get the information from? From you or from her being present?

A She receives all the calls, or if she doesn't, one

1 of the other secretaries in the office does. They advise her,
2 and she simply notes the time of the call. She is aware of
3 whether I have answered them or not because I will ask her to
4 do so. Or again, if one of the other girls in the office --

5 Q I just want to be sure you don't sit down at the
6 end of the day and recite a recollection of the events.

7 A No, she makes this up. She keeps track of the
8 meetings and visitors. If she is not clear on when we might
9 have broken a meeting, she will ask me and just make a little
10 note.

11 Q There is no form for March 31st or April 1st, 1979?

12 A That is Saturday and Sunday, and that's the reason.

13 Q As far as you know, there were never any notations
14 prepared for those two days?

15 A There were not. I asked and they were not.

16 I wasn't physically here on Sunday, which I guess was
17 April 1st. I was in Bethesda. And on Saturday I was here in
18 the morning. My secretary was not. My administrative assis-
19 tant was, but did not keep any log.

20 Q You had testified, of course this morning about
21 having logs or notes simply indicating where you were or what
22 you were doing during the day. Does Exhibit 5083 comprise all
23 of the written information that you have in that regard during
24 the period 3-28-79 to April 2, '79?

25 A So far as I know it does, yes.

1 Q Directing your attention to the first page, which
2 is March 28, 1979, periodically next to a name is the letter
3 "K". What does that mean, sir?

4 For example, next to 853 at the top, "Joe Fouchard," there's
5 a "Director, PA," and then there is a "K." Does that mean
6 anything in particular?

7 A I think that means that I called him.

8 BY MR. ROGOVIN:

9 Q If the K is to the left of the name he called you,
10 and if the K is to the right of the name you called him; is
11 that correct, Commissioner?

12 A That's right, yes. And the little X's over there
13 indicate whether I did or did not speak to the person.

14 BY MR. BALLAINE:

15 Q I think we talked earlier about whether or not you
16 recalled having any conversations with people connected with
17 Congress. Directing your attention to March 28, 1979, am I
18 correct that, at least according to this log, you did speak
19 with a gentleman?

20 A I did talk with Chuck Trabandt, and I have no recol-
21 lection in what connection.

22 Q You don't even know if it related to TMI?

23 A No. As a matter of fact, I would wonder at that
24 early point if it did. I just don't recall.

25 Q Directing your attention to the bottom --

1 A. Now, it might well have, because he called again, I
2 see.

3 Q. Well, you didn't take that call, I take it, is that
4 correct?

5 A. That's right.

6 Q. And you weren't present during any of the conversa-
7 tions?

8 A. But it may have been another subject.

9 Q. But you didn't speak to him at or about 3:00 o'clock
10 on the 20th -- on the 28th?

11 A. No.

12 Q. Directing your attention to the bottom half of that
13 first page, under "Meetings and Visitors," there is a notation
14 next to 5:00 o'clock that a Mr. Kammerer of OCA came, that is,
15 Office of Congressional Affairs, is that right?

16 A. Right.

17 Q. And there are notations, various notations indicating
18 meeting on Three Mile Island.

19 After reviewing this document, can you testify whether or
20 not all of those designations of meetings on Three Mile Island
21 relate to telephone briefings you received in the incident
22 response center?

23 A. I can't be sure. But I think certainly for the
24 most part. Or, alternatively, they might have been meetings
25 when Commissioner simply got together. But it would reflect

1 that sort of a meeting.

2 But again, we could check that and just match it against
3 the telephone logs, if you want.

4 Q Well, we needn't do that for the time.

5 When you say match it against the telephone log, what
6 telephone log are you referring to? The incident response
7 center's?

8 A The incident response center's.

9 Q Having looked at this on the 28th, though, does it
10 refresh your recollection as to the substance of any parti-
11 cular meeting you had on Wednesday the 28th, other than meetings
12 which specifically involved getting reports from the incident
13 response center about the status of TMI?

14 A Not really.

15 Q Do you recall what you and Mr. Kammera spoke about
16 on that Wednesday?

17 A I do not.

18 Q And Mr. Basye at SEC, I take it that's unrelated to
19 TMI?

20 A That's completely unrelated. That's a morning
21 briefing.

22 Q If you would, sir, I direct your attention to the
23 next page of Exhibit 5083 from March 28, 1979. The notation
24 near the top next to 11:08, which apparently means that you
25 received the telephone call from Chairman Hendrie, which you

1 did answer, is that correct?

2 A. Right.

3 Q. Do you remember the substance of your conversation?

4 A. I have no idea.

5 Q. Going down a little further, at 3:15 it apparently
6 indicates a telephone call from Mr. Shapar, which you did
7 answer; is that correct?

8 A. I called him back at 3:17. That's what that means.

9 Q. "WC" means?

10 A. Will call, and I did call him back a few minutes
11 later.

12 Q. Do you recall the substance of that conversation?

13 A. I do not.

14 Q. Directing your attention to the bottom of the page,
15 a notation of a meeting from the gentleman from SEC again.
16 That's unrelated to TMI?

17 A. That's completely unrelated.

18 Q. Do you recall whether that took place before or
19 after the briefing by the staff on Thursday morning?

20 A. Oh, that briefing by the staff I think is the one
21 shown as meeting on Three Mile Island, 9:45 to 11:00.

22 Q. That's your recollection?

23 A. Yes.

24 Q. There is a notation of Mr. Bickwit --

25 A. General counsel. I have no recollection.

1 Q Do you recall whether it related to TMI?

2 A I do not.

3 Q And what about the last notation?

4 A The last was a discussion of staff papers. I'm not
5 even -- we could look up the subjects, but they were unrelated
6 to TMI. It was a regular Commission meeting scheduled, in
7 which these two staff papers were discussed. And the meeting,
8 so far as I can recall, was wholly unrelated to TMI. I don't
9 think the subject of TMI even came up.

10 Q Other than --

11 A Although -- wait. It may possibly be that at the
12 outset the Chairman may have made some remark, or, too, at the
13 beginning of that meeting, to let the other Commissioners know
14 what had occurred at his briefing. I think after the meeting
15 in the morning, after that staff briefing, at some point the
16 Chairman had gone to the Hill, briefed a Committee. I'm not
17 sure which one, but maybe we could look that up, too.

18 And so, therefore, at the beginning or at some point during
19 this afternoon meeting, which was wholly unrelated to the
20 TMI, he might have conceivably just quickly let the Commissioners
21 know how the meeting on the Hill had gone in the morning.

22 Q Okay. Was Chairman Hendrie present throughout the
23 meeting that is described next to the 3:25 p.m. time period
24 on the second page?

25 A So far as I can recall, he was.

1 Q Were all the Commissioners present at that meeting?

2 A I just don't know. But I have no reason to believe
3 that they were not. But that's a matter of public record
4 which we could confirm.

5 Q Okay. Other than the briefing that you received
6 from the staff in the morning, did you receive any other
7 briefings relating to TMI during the day?

8 A Not that I'm aware, not that I can recall.

9 Q Okay. Now, so that we're clear, I take it this
10 telephone log doesn't give any indication that there was any
11 such other briefing?

12 A No.

13 Q I'm also interested in your independent recollection.

14 A Unless someone -- but if someone had come to the
15 office, that would be on here, too, and I see no evidence of
16 that. So I simply -- I have no independent recollection of
17 any such additional briefing at all.

18 Q Now, I want to direct your attention now to the
19 time of the morning briefing by the staff relating to Three
20 Mile Island on the 29th of March. You previously had testified
21 to your impression as to the state of the core the prior night
22 at the end of your business day; is that right?

23 A (Nods head in the affirmative.)

24 Q Was your impression the same with respect to the
25 state of the core at the commencement of this briefing Thursday

1 morning?

2 A. Essentially, I think.

3 Q. Had you received any other information that you can
4 recall now?

5 A. Not that I can recall.

6 Q. Okay. What about your impression of the state of
7 the plant itself, the condition of the plant? What was your
8 impression immediately prior to the briefing?

9 A. My recollection now of my impression was, on
10 Wednesday evening, that things were not settled down, but
11 certainly on the way to being settled down; that problems were
12 essentially behind us; that the question now was how do we --
13 what do we move to do now or what does the licensee move to
14 do now to bring the machine into a cold shutdown.

15 I don't recall any feeling that that was going to be all
16 that difficult. It would take a little time, but that it was
17 not going to be a major difficulty.

18 On Thursday morning, I think I had that same general
19 feeling. Indeed, I think that my recollection is that follow-
20 ing the briefing there was a -- if I could use the word, there
21 was a slightly enhanced confidence that the worst of all this,
22 whatever had occurred was now behind us, and that indeed we
23 were moving to a recovery phase; and that efforts could be
24 now focused almost entirely in that direction.

25 Q. You refer to a slightly enhanced confidence. Is

1 this a personal sense, a slightly enhanced confidence that
2 you're talking about?

3 A. Oh, yes, I'm giving you my feeling. I don't know
4 what the other people's feelings were. I have enough trouble
5 assessing my own.

6 Q. As you went into -- strike that.

7 You were present throughout the briefing, is that right?

8 A. Yes, I think so.

9 Q. Did the impressions that you have just described
10 change in any way as a result of the briefing?

11 A. As I said, I think as a result of the briefing the
12 feeling of -- what shall I say -- reasonable confidence now
13 that we were moving to a shutdown, a cold shutdown, in a
14 stabilized mode, was, I think, somewhat enhanced after the
15 end of that briefing, as I recall.

16 Q. Going into that briefing --

17 A. You know, let me again assert, we are talking about
18 how we felt at the end of a briefing six months ago. It would
19 have been hard to remember six months less one day ago. It's
20 a good deal harder now to recall what one was feeling or
21 thinking.

22 Q. Okay, I understand.

23 Did you have any particular concerns or questions as of
24 the time of the briefing that you did not actually speak about
25 during the course of that briefing?

1 A. Did I? I don't recall any.

2 Q. Nothing particular that you had thought of raising,
3 that you never did bring to the attention of the people
4 assembled at the briefing?

5 A. Not that I can recall. I don't tend to do that.
6 I tend, if I have a question, to try to ask it.

7 Q. Staff, for example, hadn't prepared any questions
8 or troubled areas that there should be answers provided on
9 or that you were seeking information with respect to?

10 A. No, I don't think so. I don't recall. No, I don't
11 think so. I think it was a pretty straightforward enterprise.
12 The staff came down here, getting ready, getting the Chairman
13 ready to go up on the Hill and discuss this event, whatever it
14 was, whatever its character was at that point. And the purpose
15 was to be sure that everybody understood what the state of
16 knowledge was and what I think the general assessment was.

17 Q. Let me ask you this: Had you done anything in
18 particular to prepare for this briefing?

19 A. Not that I can recall, other than to look at the
20 information that we already had, as I would normally do before
21 such a briefing.

22 Q. And your personal staff hadn't done anything in
23 particular in writing to help you prepare for the briefing?

24 A. Not that I can recall, no.

25 Q. So there weren't any questions written down?

1 A No, no. I don't think so.

2 Q As of the time of the briefing, do you recall having
3 the opinion that something in particular should be done in
4 connection with TMI that, as far as you knew, was not then
5 being done?

6 A I certainly don't recall anything like that now.
7 Again, let me say that if that were -- whatever went on in
8 that meeting I think is a matter of public record, and there
9 is a full transcript of it. I have not read that.

10 Q Now, at the time of this briefing, you were aware,
11 I take it, of the fact that someone would be going over to
12 brief some people from Congress later in the day with respect
13 to TMI; is that correct?

14 A Yes. The purpose -- my recollection is the purpose
15 of this briefing was not only to bring the Commission up to
16 date, but as well to assist in preparing the Chairman, who
17 was the one who was going to the Hill.

18 Q Quite apart from the briefing itself, was there
19 anything at all that was done to prepare the Chairman for his
20 briefing on the Hill?

21 A That I can't attest. I don't know.

22 Q Do you remember any conversations, for example, as
23 respects who would talk in the briefing or what would be said?

24 A No.

25 Q Any conversations that specifically, for example,

1 with respect to, gee, what can we tell the people on the Hill
2 with respect to the actual state of the reactor or the state
3 of the core and the reactor, other than what was said in the
4 briefing itself?

5 A I don't recall anything. I can only recall the
6 briefing itself in the general sense, that is, it was a fairly
7 thorough run-down of what we knew, what the state of knowledge
8 about that machine was, about what the situation was, a summary --
9 as I recall it, a summary of actions that the licensee had
10 taken up to that point, that we had taken -- the NRC, that
11 is -- and where things stood, and an assessment of what the
12 situation -- of where we were in the situation.

13 Now, that's my recollection of what the briefing was, and
14 as I say, its purpose was not only to bring the Commission up
15 to date, but also to provide the basis for the presentation
16 by the Chairman.

17 Q On Thursday the 29th, were you aware of any conver-
18 sation Commissioner Gilinsky may have had during the day with
19 an official of the State of Pennsylvania relating to TMI?

20 A I do not recall any.

21 Q Would it refresh your recollection if I said that
22 he did speak to Lieutenant Governor Scranton some time in the
23 morning?

24 A As I mentioned to you earlier, I know that at some
25 point he did talk to Governor Scranton. I do not know that

1 that was on Thursday. As a matter of fact, I was not aware --
2 well, I don't recall being aware of conversations with either
3 Governor Scranton or Governor Thornburg before Friday. However,
4 that's just a --

5 Q That's your present recollection or lack of recollec-
6 tion.

7 A That's not to say that I didn't know that he had
8 talked to Mr. Scranton. It's quite possible.

9 Q Did you stay down at H Street during the entire
10 day Thursday the 29th?

11 A Yes.

12 Q And after the end of the briefing, do you recall
13 doing anything in particular with respect to the situation
14 at TMI on Thursday?

15 A I do not recall.

16 Q Did your staff do anything in particular relating
17 to TMI on Thursday that you recall?

18 A No.

19 t me say that on Thursday, by the end of the day, it is
20 to be recalled, I certainly went away with the -- I certainly
21 went away after that late afternoon meeting, the long one
22 with those other subjects -- I remember a brief passing
23 comment or two with the Chairman. I went away with the
24 general feeling that the situation was now certainly well in
25 control, and that such problems as we may have had were

1 behind us.

2 Q This is based on some conversation you had with
3 Chairman Hendrie in the afternoon?

4 A We must have gotten something else in the afternoon.
5 Somehow there must have been, as I said, perhaps some general
6 feeling expressed in connection with this longer meeting
7 dealing with these other subjects, perhaps a brief note or
8 something that brought us up to date.

9 Q But you don't particularly recall the source of the
10 information you have in mind?

11 A No. But that was the impression I had when I left
12 here. There is no question in my mind on that. I remember
13 that very well.

14 Q Do you recall anything in particular that the
15 Chairman said to you either during or after this meeting
16 relating to TMI?

17 A No.

18 Q You said when you left here. Did you leave the
19 office after the meeting in the afternoon that's indicated in
20 the log?

21 A Well, it would have been later than that.

22 Q What time, as best you recall?

23 A I don't recall. It would have been probably 6:00
24 or after. That happened to be my wedding anniversary.

25 Q Sir, at any time Thursday were you present when a

1 Commissioner, either yourself or another Commissioner, gave
2 any directions to the NRC staff as respects response to the
3 incident at TMI?

4 A. On March 29th?

5 Q. Yes, sir.

6 A. I don't recall.

7 Q. Were you present when any Commissioner, including
8 yourself, gave any -- communicated some ideas or suggestions
9 to the staff with respect to their response to TMI?

10 A. I'm sure something along this line would have been
11 said during that briefing, that long discussion, which was,
12 what, something on the order of an hour and a half.

13 Q. Other than during the course of the briefing itself?

14 A. Not that I'm aware of. Not that I can recall.

15 Q. Other than what may appear in the briefing itself,
16 are you aware of any requests made by Commissioners of the
17 NRC staff on Thursday with respect to the incident?

18 A. I am not.

19 Q. With respect to Thursday, were you aware of any
20 conversations involving a Commissioner with anyone connected
21 with the White House or another federal agency with respect to
22 TMI?

23 A. No, I am not. Let me say that you asked a question
24 much earlier of a similar nature on Wednesday. And while we
25 were away at lunch, I thought about that. And I don't know

1 whether -- whether I'm recalling reading this, hearing about
2 it or actually remembering it. But it seems to me that at
3 some point on Wednesday early on, the EMT told us that they
4 had notified the White House situation room of the situation.
5 That's a recollection. That would have been a perfectly
6 natural thing for them to have done.

7 But I don't recall a Commissioner knowing anything of the
8 Commission --

9 Q Still talking about Thursday, do you recall any
10 conversation involving Commissioners about any perceived need
11 of communicating with the White House or some other federal
12 agency with respect to TMI?

13 A On Thursday?

14 Q Yes.

15 A No, I don't recall that.

16 Q I take it that means to the best of your recollection
17 there was no such conversation?

18 A Yes.

19 Q Still Thursday, were you aware of any conversations
20 involving a Commissioner with anyone connected with the
21 State of Pennsylvania with respect to TMI, other than what
22 you have already testified to with respect to Commissioner
23 Gilinsky?

24 A No, not at all. I do not recall any such.

25 Q Again, do you recall any conversations involving a

1 Commissioner with respect to the possible need to make some
2 communication with the state for any reason?

3 A. I do not.

4 Q. On Thursday still, were you aware of any conversa-
5 tions involving a Commissioner with someone connected with
6 Met Ed or GPU, somebody connected with the utility involved
7 in TMI?

8 A. No, I don't recall any.

9 Q. Again, that means to the best of your recollection
10 there were none?

11 A. That's correct.

12 Q. Again, do you recall any conversations involving
13 Commissioners about a possible need to be sure to have
14 communications with the utilities?

15 A. To the best of my recollection, there weren't any.

16 Q. On Thursday, what was your understanding as respects
17 the role to be played by Commissioner Gilinsky as distinct
18 from the role of other Commissioners other than the Chairman?

19 A. On Thursday?

20 Q. Yes.

21 A. None.

22 Q. No particular impression that his role was any
23 different from any other Commissioner's?

24 A. No, I would not have thought it was.

25 Q. At any time Thursday was there some assessment

1 made in which you were involved as respects what role, if any,
2 the Commissioners should be taking in connection with a con-
3 tinuing response to TMI?

4 A. I do not recall any. To the best of my recollection,
5 there was none.

6 Q. You indicated earlier that you left probably 6:00
7 or after. Did you receive any information that night with
8 respect to TMI after you left the office?

9 A. I do not recall. I may have called the center when
10 I returned from dinner. I had taken my wife with some friends
11 to dinner. As I indicated, it was my wedding anniversary.
12 And I may have called the center after I returned. But I
13 can't -- I don't recall.

14 Q. Do you have any recollection of hearing about results
15 of a core coolant sample some time Thursday?

16 A. I do not recall that.

17 Q. At any time Thursday, do you recall receiving some
18 information with respect to gaseous releases from the TMI
19 site?

20 (Witness referring to document.)

21 A. I don't remember.

22 Q. I take it you have looked at Exhibit 5082 to try
23 to help refresh your recollection?

24 A. Yes.

25 Q. Is it your best recollection that you did not

1 receive any information Thursday about gaseous releases from
2 the site? You know, I don't want to make you answer that,
3 but I want to make sure that we're clear.

4 A. I simply don't recall any. That is not to say they
5 weren't, there wasn't information. I simply don't recall it.

6 Q. You testified earlier --

7 A. Gaseous releases from the site. I simply do not
8 recall it.

9 Q. I think you testified earlier as to your feeling
10 about the situation at or about the time of the end of the
11 meeting involving the Commissioners in the afternoon. Do
12 you recall whether, at any time subsequently on Thursday,
13 that feeling changed in any way?

14 A. It did not.

15 Q. As of the end of Thursday, did you have any opinion
16 as to the adequacy of information coming from the site?

17 A. Coming from the site?

18 Q. Yes. Or information relating to what was going on
19 at the site.

20 A. Well, that's different.

21 Q. Very different.

22 A. Yes. I had a general impression that the informa-
23 tion being provided to the Commission was adequate and cer-
24 tainly represented a fair synthesis of that available to the
25 staff.

1 Q. Okay.

2 A. Now, as to -- it's a different question as to what
3 was coming from the site. I don't think in a crisis -- and
4 I use that word loosely, not as characterizing the situation,
5 but rather as sort of a descriptive term -- I don't think one
6 ever has the right kind of information. He never gets it when
7 he wants it. He never gets enough of it. As a practical
8 matter, he probably gets more than he needs, but he doesn't
9 know that.

10 Moreover, as I was ruminating on the subject the other
11 day, I noted what happens to me, an often-forgotten fact, that
12 when you get information in a situation of that kind, you
13 are not going to get it necessarily sequentially. You think
14 you do, but you don't. You get A and C and you think you have
15 A and B. Only later do you find out B, and when you find out
16 B you realize some assumptions you made about the summation
17 of A and C to be wrong, because you thought you had two
18 different things, you see.

19 So that's where we were. Now, I'm telling you that that
20 I recognized to be the fact as to the situation at the site.
21 We were not getting everything that we would have liked to
22 have gotten. There's a lot of information, I suspect, that
23 people wished they had.

24 I'm not even sure that people knew what it was they didn't
25 have. Do you follow me?

1 Q Yes. But you did have the impression at the close
2 of Thursday still that NRC people in headquarters were not
3 getting all the information they would have liked to have
4 gotten, is that right?

5 A I think they indicated that from time to time.

6 Q What did you think was being done in order to
7 correct that situation?

8 A I'm sorry?

9 Q What, if anything, was being done to correct that
10 situation regarding the fact that people in Washington were
11 not getting everything they would have liked to have gotten
12 with respect to what was going on at TMI?

13 A Well, there was, I think, a dialogue between our
14 people, the staff, and the people at the site, both our own
15 and the licensees. Our own people at the site were being
16 asked questions.

17 Q You weren't aware of anything in particular that
18 was being done to improve the receipt of information on
19 Thursday?

20 A Not in any specific way, except of course as we
21 mentioned earlier. I think it was on Thursday -- I think it
22 was Thursday that Vollmer went up there. And, as we mentioned
23 earlier, one of his functions would have been to be able
24 better to assess what was taking place.

25 Q Did you indicate earlier that you do remember some

1 kind of conversations with the staff in which staff indicated
2 in substance that they were not getting as much as they would
3 have liked?

4 A Well, the only one I can point to immediately was
5 I remember -- I remember a comment -- I can't remember it
6 verbatim -- which was on Friday. Harold Denton said something
7 about, it just seems that we send staff up there and they
8 disappear.

9 Q They fall into a big hole.

10 A Yes, something like that. And you never hear from
11 them again. And he was at this point decrying the inability
12 to get the answers to certain questions or to get certain
13 information which he was seeking.

14 Q Do you recall staff conversations to that effect
15 prior to Friday?

16 A No, I don't. I don't recall them in any specific
17 way, no.

18 Q Did the Commissioners, to the best of your recollec-
19 tion, at any time Wednesday or Thursday speak about what
20 steps should be taken to improve the flow of information
21 from the site?

22 A I do not recall that, except, as I say, in connection
23 perhaps with the Vollmer matter. I think it was one of the,
24 if not stated, certainly one of the unstated objectives.

25 Let me go back again and say my feeling about this perhaps

1 was predicated in my own perception of such affairs, such
2 matters, that it's just endemic in such situations. You
3 don't get all the information. You think you have more infor-
4 mation than you do and many times it turns out you have more
5 information than you realize.

6 It's just very hard to sort it out, put it together, and
7 deal with it.

8 Q Were you aware of any particular conversations
9 concerning what resources of other agencies, for example,
10 might be called into play specifically in order to improve
11 the receipt of information from the site to Washington?

12 A I do not. No, I don't recall that, not on Thursday.

13 Q Nor on Wednesday, I take it?

14 A Nor on Wednesday.

15 But on Wednesday, it is my recollection we were advised
16 and may have asked just to keep it fresh in people's minds
17 and be sure that steps were being taken -- I believe on
18 Wednesday we were advised of the contacts that had been made
19 with other agencies and what their responses were and were
20 expected to be by the staff.

21 Q Sir, I want to direct your attention now to Friday,
22 March 30, 1979. Do you recall what time you arrived at the
23 office on that day?

24 A Well, we can fairly well look here. It would be
25 somewhere between 8:15 and 8:30, I suppose, since I took a

1 call from Bill Dircks, I see, at 8:45.

2 Q Do you remember anything about the substance of
3 that conversation with Mr. Dircks?

4 A I do not.

5 Q By the way, again, we are referring to Exhibit 5083.
6 We are looking on the document. That's for March 30, 1979.

7 You don't recall whether it had been involved in TMI?

8 A I doubt it would have. I don't think it did. I'm
9 not sure, but I don't think so.

10 Q There is also a notation that telephone call from,
11 I guess, Mr. Gossick to you.

12 A That's right.

13 Q Which you did answer.

14 A No, the other way around.

15 Q From you to Gossick?

16 A That's right.

17 Q Do you remember the circumstances leading up to
18 that call?

19 A I think -- I just don't -- I can't be sure.

20 Q You might want to look at the bottom. There's a
21 notation --

22 A I'm looking at that. Commissioner Ahearne came in
23 at 9:12, and it's my recollection that he had just received a
24 call from someone saying that there had been a release of
25 some magnitude at Three Mile Island. And I think then that

1 I called Gossick, who I think would have been at the center,
2 the EMT in operation. And I think I called him to find out
3 what the word was.

4 I'm surmising. I don't recall.

5 Q You don't really have an independent recollection?

6 A Independently, I do recall that Ahearne did come
7 in. Mr. Ahearne did come in and mention this, mention this
8 release which he had just heard about. Now, it might have
9 been -- that's what I got, then, from the incident response
10 center.

11 Q What is, as best you recall, the full substance of
12 what Commissioner Ahearne and you talked about during this
13 meeting, as reflected on the telephone log at the bottom of
14 the page?

15 A That's about it. I think --

16 Q Just he informed you of release? Nothing more?

17 Well, a release, to the best of your recollection?

18 A I just don't recall any more. You know, I just
19 honestly can't recall.

20 Q Okay. Now, there did come a time thereafter, did
21 there not, when you and other Commissioners were in telephone
22 contact with the incident response center, discussing the
23 possible recommendation of an evacuation from around the
24 site?

25 A That I don't recall occurring until later on, like

1 around 11:00 o'clock.

2 Q Okay.

3 A That was when we were in the Chairman's office.

4 Q Okay. Well, let's still go with the first call.

5 I take it, though, you do recall that there came a time when
6 you were in telephone contact with the incident response
7 center and other Commissioners were hooked in telephonically
8 to the conversation?

9 A No, I think we were all in one room and in telephonic
10 communication with the incident response center.

11 Q And there is a notation at the bottom of your page,
12 9:30 meeting, Three Mile Island, Bradford's office.

13 A Bradford's office.

14 Q This is the telephone communication you were talking
15 about?

16 A I don't think so. There may have been some telephone
17 communications. People were in and out of that room. As I
18 said, as I mentioned much earlier in our conversation, we
19 used the Chairman's office simply because it was easier
20 communications-wise, to get more people involved in such
21 conversations.

22 We adjourned from Mr. Bradford's office to the Chairman's
23 office at about 11:00 o'clock, this indicates here. It was
24 in that time -- my recollection -- but that's my recollection
25 now -- is that we were assessing the situation. The question

1 of evacuation, I believe, arose first in the Chairman's office
2 in that meeting. It ran from 11:00 o'clock until 1:00 o'clock
3 or something of that sort.

4 Q Now, with respect to the meeting on Three Mile
5 Island in Bradford's office, as reflected on this portion of
6 Exhibit 5083, were all the Commissioners, including the
7 Chairman, present during that time?

8 A I believe so. I remember not being there and being --
9 as you notice, it started shortly after I was talking with
10 the incident response center, at something like about 9:20.
11 This meeting -- it shows that I went to this meeting at 9:30,
12 you see. So this meeting was in process when I got there, and
13 I think it just -- I think it just sort of happened.

14 Q When you walked into that meeting in Bradford's
15 office, who was on the telephone at the other end?

16 A I can't recall at all.

17 Q Was it Denton or Case?

18 A I just don't recall.

19 Q No recollection, okay.

20 A As a matter of fact, I don't recall that there was
21 a telephone -- yes, I guess I do recollect now that there
22 was a telephone call, and it was indeed for that reason that
23 I was called to come and join them, that a meeting, in a
24 sense, was being created out of this.

25 Q Yes. Going back to the top portion, where there's

1 an indication of a call with Lee Gossick, and then another
2 one with the incident response center, then it says paren-
3 thetically "talk with Bill Ward." Can you tell us the circum-
4 stances as best you recall of the sequence between those two,
5 what led to each?

6 Q You testified earlier that Ahearne came in and
7 that's why you called Mr. Gossick. Do you recall what
8 Mr. Gossick said at that time?

9 A No, I'm sorry, I don't know.

10 Q And do you recall what led to the conversation noted
11 at 9:20 to the incident response center?

12 A No. I can only surmise that I was looking for more
13 detailed information.

14 Q Okay. There did come a time, though, when there
15 was -- were conversations involving the Commissioners about
16 the possible need to make a recommendation of precautionary
17 evacuation, is that correct?

18 A Yes.

19 Q Your recollection is that that took place some time
20 during the 11:00 a.m. meeting, is that correct?

21 A Yes.

22 Q Prior to the time of that conversation, whenever it
23 took place, had you been present during any conversations
24 involving anybody connected with the NRC concerning the
25 subject of the possible need to make an evacuation recommendation

1 in connection with TMI?

2 A I wish that I could remember the substance of the
3 9:30 meeting. I do not. I simply don't recall. My first
4 recollection of discussion of evacuation was in that meeting
5 in the Chairman's office.

6 Now, the reason for the meeting and for the discussion,
7 it's my recollection, was the need to decide -- the need to
8 talk to Governor Thornburg and to say something on this
9 subject, if we could give the Governor a best judgment in
10 the matter of evacuation, and also to bring the Governor up
11 to date on our understanding and assessment of the situation.

12 Q Let me ask you this: Do you recall there coming a
13 time when Chairman Hendrie said in substance in your presence
14 that he had talked with the Governor and had suggested that
15 people of a certain five-mile sector stay indoors?

16 A He did that. It's my recollection I was present --
17 now, I don't know whether that was directly in his office or
18 in one of these floating meetings that may have gone up and
19 down through the suite of offices. But he was on the phone.
20 I heard him say that to the Governor.

21 Q Okay.

22 A As a matter of fact, we had discussed this, that
23 is, we collegially had discussed this, and it's my recollec-
24 tion that we had reached a conclusion that that was a
25 reasonable course, based upon a variety of inputs from the

1 staff.

2 Q So let me see if I can get a time frame. Is it your
3 recollection that that particular call between Chairman Hendrie
4 and the Governor took place some time during the 11:00 o'clock
5 meeting in the Chairman's office?

6 A Yes.

7 Q It's also your testimony that prior to the conversa-
8 tion, as best you recall, at least, there had been a collegial
9 agreement of the Commissioners to make a recommendation to the
10 effect that it would be desirable to have people within a
11 certain five-mile sector remain indoors; is that right?

12 A Yes. It was discussed. I do not -- I don't believe
13 there was any vote in a strict sense, that is, a voting sense.
14 I don't believe there was any such vote.

15 Q But you do remember being present during the conver-
16 sation?

17 A I remember a conversation and I remember it being
18 concluded that, as I said, for a variety of reasons, that
19 that would be a wise recommendation.

20 Q And that was consistent with your own opinion, I
21 take it?

22 A It was, because there was a considerable discussion --
23 all this must be on record. There was considerable discussion
24 that I recall about where the plume was and whether, if one
25 ordered evacuation, he would be complicating rather than

1 mitigating the situation, whether you would be evacuating
2 people into the area through which the plume had not yet
3 passed and thus exposing them further, the extent of attenua-
4 tion that was taking place as the plume extended out further
5 away from the plant.

6 I remember asking where the plume was and the rate at which
7 it was moving. And my recollection is it was essentially not
8 moving at all. For a while, it was almost dead calm, as I
9 remember, for quite some time. And thus the general -- I
10 think the consensus certainly seemed to be that the best
11 thing to do -- and I remember somebody made a calculation --
12 I can't remember who it was. It might have been Brian Grimes
13 who had done the calculation and said that remaining indoors
14 would reduce the effects by a factor of ten or some such
15 number. I don't remember what the number was, but a very
16 substantial factor.

17 And given the relatively low level of the total release
18 and the likelihood of its attenuation further as it went out,
19 all these factors coming together, it's my recollection that
20 there was a consensus that the thing to do would be, as a
21 precautionary measure, suggest that people be urged to stay
22 indoors for the next hour or two or some relatively short
23 period of time.

24 Q Okay. Now, prior to the time when the Chairman
25 actually telephoned the Governor in your presence, had the

1 staff given -- do you remember the staff giving any recommen-
2 dation to the effect that people within a certain five-mile
3 sector ought to be evacuated as a precaution?

4 A I did not know this. To my recollection, I did not
5 know this. I now realize that in fact the staff had some
6 discussions, had come to some sort of conclusion, and I don't
7 know specifically at what level and who, but that a recommen-
8 dation to that effect was passed from a member of the State
9 Programs staff to someone associated, I believe, with the
10 Governor's office.

11 Q All right. So that we're clear on this, though --

12 A But at the time I did not know that.

13 Q You did not know about a staff recommendation, that
14 the staff was recommending to anybody?

15 A I did not know that. I do not recall knowing that.

16 Q Okay. Nor, do I take it, do you recall hearing in
17 substance that the staff had told someone to place a call to
18 someone connected to the state transmitting that recommenda-
19 tion for a precautionary evacuation?

20 A Well, I don't recall it. I may have. I don't
21 recall that.

22 BY MR. ROGOVIN:

23 Q Commissioner, reflecting back now, wouldn't you
24 consider that to be an extraordinary situation, where a
25 representative of the NRC had given advice to the State of

1 Pennsylvania for a precautionary evacuation and that informa-
2 tion was not told to you or perhaps some of the other Commis-
3 sioners as well?

4 A. If I may rephrase that slightly.

5 Q. Certainly.

6 A. I find it extraordinary now even more than I did
7 then, and I thought it extraordinary then that I didn't know
8 it.

9 Let me say that I would add to that, that is the kind of a
10 thing which I would expect to know, and indeed, insist upon
11 knowing.

12 Q. And indeed, in pursuit of the discussion this
13 morning, it might be the very thing that you personally
14 believe that the Commissioners in a collegial fashion should
15 consider and determine whether or not such advice be forwarded?

16 A. If there is time to do that, most certainly.

17 Q. And under these circumstances there appeared to be
18 time to do that?

19 A. That's correct.

20 BY MR. BALLAINE:

21 Q. Okay. So your complaint, then, is twofold.

22 A. It's not a complaint.

23 Q. I'm sorry. That's my characterization. I apologize.
24 Let me see if I can clarify this.

25 Is it fair to say that, first, in your opinion the

1 situation, at least as you became aware of it, was such that
2 the staff should have come to the Commission to make a final
3 decision with respect to an evacuation recommendation to the
4 state that Friday morning, before deciding on their own and
5 notifying somebody from the state of their recommendation?

6 A. Let me say that I think that the staff was acting
7 on its own best judgment.

8 Q. But your assessment was they should have?

9 A. Certainly, in retrospect, and indeed, at the time,
10 my assessment was that it was a matter that we should have
11 known about, and that, indeed, before an action of that kind
12 was taken, I think that at the very, very least, the Commission
13 should have been informed about it. I do not think the
14 Commission should have had to, as it did -- I recall the
15 conversation with Governor Thornburg and Commissioner Hendrie.
16 I don't think the Commission should have had to sit there
17 wondering who it was who passed what information, at what time,
18 and under what conditions. I think it should have known that
19 when Chairman Hendrie was speaking to the Governor. There
20 should have been no question in his mind about precisely
21 who had sent what to whom. I don't think that was the situa-
22 tion.

23 Q. You had referred to --

24 A. By that, let me say that I am not challenging the
25 judgment that the staff made in the matter, because it had

1 its own set of parameters and it had its own set of responsi-
2 bilities. What I am questioning as a basic postulate is
3 when the staff can act on its own without any reference to the
4 Commission.

5 There is always going to be a gray area. Somebody is going
6 to have a different view of the time pressures than others.
7 Here I think there was enough -- I think there was enough
8 reason to believe that there was some additional time avail-
9 able.

10 Q. There was time, and I take it that even if there
11 weren't time and the staff had had to act, they still should
12 have immediately notified the Commissioners of what they had
13 done?

14 A. That's correct.

15 Q. And it's your recollection they did not do so as of
16 the time --

17 A. I do not recall being informed.

18 (Discussion off the record.)

19 BY MR. BALLAINE:

20 Q. Let me ask you this, Commissioner, if I may. I
21 think you had referred earlier to some calculations that
22 Mr. Grimes did in connection with the Commissioners' consi-
23 deration of what recommendations to make to the Governor --

24 A. That is my recollection.

25 Q. Do you have a recollection as to what recommendation,

1 if any, you did receive from the staff prior to the time that
2 Chairman Hendrie actually placed the telephone call with
3 Governor Thornburg?

4 A I don't recall. I think -- and you know, I'm just
5 not sure of this, but I think that we were told that it was
6 a sort of some of this and some of that feeling at that point.
7 Again, this is a matter of record. We could go back and look
8 at what they said.

9 Q I'm interested in your impression.

10 Did you have any impression as to what Brian Grimes'
11 recommendation was, for example?

12 A Yes. I think Grimes' recommendation at that point
13 was nothing more than, it's my recollection, nothing more
14 than, have them stay indoors.

15 Q Did you attach any particular weight to Mr. Grimes'
16 recommendation?

17 A I did, because when I added it together with all the
18 other things they said, it made sense. Remember, I mentioned
19 the one theory that if you -- in the first place, you didn't
20 know which way that plume was moving. If in fact it was
21 going to move in a given direction, you might move people
22 directly under it, which would be precisely the opposite
23 effect from what you are seeking.

24 Moreover, it was going to be attenuated. The amount of
25 fallout, sort of radioactivity, that would reach the ground

1 was going to be relatively small. And it was that which led
2 Grimes to believe, I think -- at least it was my impression --
3 that led Grimes to believe that remaining indoors would add
4 a very substantial and certainly adequate measure of protec-
5 tion.

6 Q I wonder if you remember a recommendation of anyone
7 on the staff other than Brian Grimes prior to this first
8 telephone call between Chairman Hendrie and Governor Thornburg?

9 A No, I don't remember any specific one. As I said,
10 I do -- I seem to recollect, I think I recollect, that the
11 discussion was to the effect that, look, some believe that
12 we really ought to, others believe that it really isn't
13 necessary yet. That's my impression, and I could be wrong.

14 Q You can't associate those competing thoughts with
15 any particular staff members?

16 A No, I can't. I remember Grimes only because somebody
17 asked a question -- I don't remember in what context -- some-
18 body asked a question, what would the effect of remaining
19 indoors be. And I don't recall the specific answer, but the
20 answer was, it would mitigate the effects by a very substantial
21 order.

22 Q Now, the conversations that you have just been
23 testifying to, that took place prior to the first telephone
24 call between the Chairman and the Governor, is it your recol-
25 lection -- your best recollection, at least, that they all

1 took place in Chairman Hendrie's office?

2 A As I said, either there or in his suite of offices,
3 because I recall that there was another conversation with the
4 Governor, and I can't recall the timing of this one.

5 Q It was a later conversation, right?

6 A It was not in his office. That second one was in
7 another office, and that's when he said something about the
8 women and children.

9 Q Okay. We'll get to that later.

10 But your recollection is that there were no such conversa-
11 tions with the staff about a recommendation in Commissioner
12 Bradford's office?

13 A I just don't recall that. I truly do not.

14 Q To the best of your recollection, were you present
15 during -- strike that.

16 Were you present during all of the conversations that took
17 place when -- in Chairman Hendrie's office, as distinct from
18 Commissioner Bradford's office? It might have been in any of
19 them?

20 A I cannot say. I simply can't recall, because
21 people did go in and out. I may have gone in and out for a
22 minute or two or three. But I just have no recollection.

23 (Discussion off the record.)

24 BY MR. BALLAINE:

25 Q When we were off the record, we refreshed or tried

1 to refresh the Commissioner's recollection by indicating our
2 understanding as to certain chronology of events on Friday
3 morning with respect to discussions of evacuation leading to
4 the first telephone conversation between Chairman Hendrie and
5 Governor Thornburg, to which Commissioner Kennedy has already
6 testified.

7 Commissioner, I understand in some respects your recollec-
8 tion has been refreshed as a result of this off-the-record
9 conversation.

10 A. Indeed, since that conversation with
11 Governor Thornburg began shortly after 10:00 o'clock, which
12 was therefore almost immediately following our adjournment
13 to Mr. Hendrie's office, much, if not all, of the discussion
14 leading up to the conclusion to suggest a remaining indoors
15 advisory must have occurred, I suspect, in the discussions in
16 Mr. Bradford's office.

17 I simply didn't recall the train of events there accurately.
18 But I think that must be correct. I think I do recall that
19 at a point in those discussions in Mr. Bradford's office
20 Mr. Hendrie indicated, I just ought to go and call
21 Governor Bradford -- Governor Thornburg. And I remember
22 saying something to the effect, well, why don't we all adjourn
23 to the Chairman's office? It works out better for communica-
24 tions there anyway.

25 So I think that that is correct as to the general substance.

1 I don't think I would change anything I've said. I would
2 only suggest that I think I was getting it out of time phase
3 a little bit, not recalling a little bit of what had occurred
4 in Mr. Bradford's office.

5 Q So you do believe the substance of the conversations
6 about recommendations prior to the first call between the
7 Chairman and the Governor took place at least substantially
8 in Commissioner Bradford's office?

9 A I think that's likely true.

10 Q But even at this point, you don't know or have a
11 recollection as to when the call was placed? In fact, I
12 gather that it's still your recollection that it took place
13 about 11:00, but I don't want to overstate it.

14 You also recall that these conversations took place before
15 10:00, and that the call was placed at 10:00?

16 A No.

17 Q Okay, you don't have a recollection of that.

18 MR. CHOPKO: Let me ask, is there a transcript?
19 Were there transcripts made of those meetings?

20 MR. LAWRENCE: I believe so. I have seen the
21 "Nucleonics Week" version of it.

22 MR. BALLAINE: Let's take a break now.

23 (Recess.)

24

25

pv MM

BY MR. BALLAINE:

1
2 Q Sir, you have testified to being present during
3 what, to your knowledge, was the first telephone
4 conversation between Chairman Hendrie and the governor of
5 the State of Pennsylvania Friday morning; is that right?

6 A Right.

7 Q And did there come a time when you were present at
8 the second telephone conversation involving the chairman and
9 the government on Friday morning?

10 A Yes. It was later, and I cannot, without checking
11 the record, I could not tell you at what time it occurred.
12 In any event, that conversation took place in
13 Chairman Hendrie's suite of offices. He actually was in one
14 of the smaller offices dedicated to an assistant. And at
15 that time the chairman indicated that he believed that a
16 precautionary advisory urging or recommending that pregnant
17 women and small children in a radius -- and I can't recall
18 whether it was 10 miles or five, I don't know which now --
19 actually leave the area.

20 Q Could you hear Governor Thornburg's voice during
21 these conversations?

22 A No, I could not.

23 Q You only heard Chairman Hendrie's side?

24 A The first conversation I could because it was held
25 in the chairman's office, and there we put the incoming call

pv MM 1 on the squawk box so it could be heard.

2 Q The second one was not on the squawk box?

3 A The second one was not, that I can recall. I
4 don't recall being able to hear the governor's voice. I
5 don't think I could.

6 Q But it is your recollection --

7 A It's my recollection that it was not.

8 Q But it is your recollection that the chairman did
9 say, in substance, to the governor that he believed a
10 precautionary advisory evacuation involving pregnant women
11 and --

12 A He suggested that.

13 Q -- Small children is appropriate?

14 A Yes. And that was because --

15 Q Hopefully, I will elicit that information in
16 ensuing questions. By the way, do you remember anything
17 else that was said by Chairman Hendrie during this
18 conversation?

19 A No, I don't. Again, I think that should be on
20 tape, though. I'm not sure. I'm just not sure. It might
21 not have been, because -- it might not have been, because
22 the conversation was being held in this office. At one time
23 there may have been three commissioners actually in that
24 room, but not for long. And it may not have even been
25 that. Maybe one of them was standing outside the door; for

405 11 03

pv MM 1 example, me. I know Mr. Bradford was nearby, but I do not
2 recall whether either or both of us were in the room at the
3 same -- for any length of time.

4 Q And tapes were only made if three commissioners
5 are in the room -

6 A Yes.

7 Q Okay. Now, prior to the second conversation, had
8 there been conversations involving the commissioners with
9 respect to some further recommendation for evacuation, apart
10 from the nature of the recommendation made during the first
11 call involving Chairman Hendrie and the governor?

12 A Well, I believe there was. I believe it was -- I
13 believe that subject underlay most of the discussion that
14 was going on; it would come up and was discussed in a clear,
15 straightforward way; other times it seemed to be -- it
16 seemed to be something that was underlying, if you will,
17 conversation on other subjects like release rates, potential
18 release rates, and so on and so on, and also concerns that
19 would be expressed in terms of questions of the staff about
20 conditions at the site.

21 And so, I would say, "Yes," that there has been
22 additional discussions. Now, I cannot place these in time,
23 but there certainly was discussion of the possibility that
24 these puff releases, one of which had occurred, might recur,
25 and indeed might recur at unspecified and unplanned -- in an

pv MM 1 unplanned way. That is, they might occur when people had
2 not expected them. So that this added a measure of concern.

3 Q Do you recall anything in particular that led
4 Chairman Hendrie to have the second conversation with the
5 governor?

6 A I do not recall why the second conversation
7 occurred.

8 Q Prior to the conversation, did you have any belief
9 to the effect that the chairman would make the type of
10 recommendation to the governor that you have just described
11 him having made in the second conversation?

12 A I don't think so. I don't recall that subject
13 coming up, really, in any particular way.

14 However, let me say that -- in other discussions -- when
15 one is looking at relatively low -- and I use the word -- I
16 use the word here carefully, I hope, "relatively low" --
17 levels of radiation, one recognizes that there is likely to
18 be a greater effect in the case of pregnant women,
19 particularly on the fetus, and in the case of very small
20 children, because of bone tissue in them, in the fetus and
21 very small children. But the effects of relatively low
22 levels of radiation will be greater and therefore it's a
23 matter of greater concern.

24 So, if you have a radiation level which might not cause
25 you undue alarm, something about which you would be a little

pv MM

1 careful and be precautionary and even want people to stay
2 indoors for a period of time, if it looks like that might
3 persist or repeat for a time, you might be more concerned
4 about that particular group of people.

5 Now, I think that's generally understood, and wouldn't
6 therefore wouldn't take much discussion. People would
7 automatically think in those terms, I believe.

8 Q But prior to the second conversation between
9 Chairman Hendrie and Governor Thornburg, to your knowledge,
10 there hadn't been any particular conversations specifically
11 alluding to the appropriateness of recommending or not
12 recommending that pregnant women and small children be
13 evacuated from an area at TMI?

14 A I do not recall any. There may have been. I do
15 not recall any.

16 Q Do you recall whether you even knew that
17 Chairman Hendrie would be having another conversation with
18 the governor before it took place?

19 A As I indicated, I have no recollection why that
20 second conversation was originated. But let me say that,
21 again, is a matter of, I'm sure, the record somewhere. We
22 can dig that out of the transcripts.

23 Q Did you agree -- was it your opinion as of the
24 time of the second conversation between the chairman and the
25 governor that there ought to be a precautionary advisory

7405 11 06

pv MM

1 evacuation involving pregnant women and small children from
2 the area of Three Mile Island?

3 A I suspect my action would have to be characterized
4 as tacit agreement. I did not -- I don't recall my view
5 being solicited. When I heard the suggestion, quickly made
6 and obviously thought about for a second or two, I did not
7 protest, remonstrate, or suggest otherwise.

8 Q When you say you "heard the suggestion," now, you
9 mean you heard it during the conversation?

10 A My recollection is that Mr. Bradford, during the
11 conversation with the governor and the conversation as I
12 recall it was going around again, the precautionary indoors
13 thing and how long that might last and so on, and any
14 possible extensions and the like of that sort of thing, my
15 recollection is that Mr. Bradford had a suggestion: what
16 about a precautionary evacuation of pregnant women and
17 children?

18 And I think the chairman at some point said "children,"
19 but changed that then to say "small children," which was
20 what was meant. And that's my recollection of what
21 happened. And as I say, I had heard this, the chairman when
22 he heard the thought, I think he focused on it. He focused
23 on it, I'm sure, in the context that I just outlined, of the
24 way one would think about this problem. It sounded
25 reasonable to him. I was standing there and, as I say, did

7405 11 07

pv MM

1 not urge otherwise; and therefore I think he just elected to
2 proceed with that.

3 BY MR. ROGOVIN:

4 Q Commissioner, let me interrupt and ask a
5 question. This can't be the model that you were talking
6 about this morning --

7 A It certainly is not.

8 Q -- For collegial determination for something as
9 significant as the mass evacuation of pregnant women and
10 children under the age of six? And that's a wrenching
11 experience and a potential threat in and of itself. Isn't
12 that correct?

13 A That's correct.

14 Q And as you're describing it, it's made in the
15 midst of a conversation as a "what about," rhetorical-type
16 question, by one of the commissioners and picked up and
17 transmitted to the governor of the state in question. Is
18 that a fair summary?

19 A Well, I wouldn't put it in quite those terms. I
20 think -- as I said, you would have to cast it back against
21 the recognition of when low levels, relatively low levels of
22 radiation take on greater significance, and here they do in
23 the case of pregnant women and very small children. And
24 with that -- within that context and recognizing that, as I
25 said earlier, we at some point in this time frame we were

7405 11 08

pv MM

1 advised that there was some likelihood that there would be
2 additional puff releases of unknown duration which would
3 again put radiation into the atmosphere under circumstances
4 which could best be, I suppose, described as -- well, what
5 -- random. That is, certainly not planned, no one would
6 know that it is precisely at this point in time.

7 So, against that backdrop, no, it is not the ideal model
8 that we were talking about earlier about the way these kinds
9 of decisions ought to be made.

10 But on the other hand, neither is it a sort of casual,
11 callous, or crass kind of decisionmaking which I was afraid
12 the tenor of your question might suggest.

13 Q The next question may very well. The ante moved
14 from a conversation that was intended to keep people
15 indoors, which was a beneficial means of modest protection
16 against random puff releases, the ante moved substantially
17 upwards without any additional input that anyone had
18 identified from the staff, any technical data coming in from
19 the field, moved basically on a question of one of the
20 commissioners; and without any discussion it was transmitted
21 immediately to the governor.

22 A Now, I want to go back to what I have been
23 saying. There was additional input somewhere in this time
24 frame, as I said. We became aware that we might expect
25 additional releases of the kind we had already seen, and

pv MM

1 that they may well come in unplanned circumstances and at a
2 level that we weren't confident of. And therefore, that was
3 upping the ante in the sense that -- of the likelihood of
4 exposure was going to increase, and increases of exposure in
5 the case of pregnant women and very small children, very
6 young children, seriousness of those exposures is much
7 greater.

8 And therefore it was just -- it was one step up. It was
9 not, in my judgment, not an unreasonable course at all; and,
10 indeed, given the circumstances and given the fact that the
11 timing of these matters was not going to be understood and
12 known, the timing of these releases, it was judged best to
13 move.

14 Q That was, Commissioner, the motivation for the
15 advisory to stay indoors; wasn't it? Wasn't that the
16 driving force for an advisory to stay indoors?

17 A I don't recollect that the continuous puff -- the
18 likelihood of a number of puff releases -- was the only
19 driving force there. I think the driving force there was
20 what had already occurred.

21 Q One further question: Do you have any
22 recollection of hearing during this period of time that the
23 governor had asked the chairman's advice regarding the
24 pregnant-woman advisory, and the governor said that his
25 secretary of health had recommended such an approach?

7405 11 10

pv MM

1 A No, I don't recall that, but I would not be
2 surprised if it were true.

3 Q Is it possible that the conversation brought the
4 advice from two staffs at the same time?

5 A It could well have. I don't recall that. I don't
6 know that. But, as I said, for the reasons that I have
7 tried to explain, that would not be surprising to me.

8 I just wanted to be sure, again, however, that the import
9 of your question as you had phrased it, I think I would not
10 agree with. That is that it was an almost capricious sort
11 of decisionmaking process. I don't think that it was that
12 at all. It reflected understanding of the situation and
13 understanding of its implications. And putting those two
14 things together, reaching a conclusion which I certainly
15 would have had no difficulty -- had no difficulty at all --
16 in accepting, even though it was not a matter of give and
17 take in discussion. It was to me reasonable.

18 BY MR. FRAMPTON:

19 Q Commissioner, it's been said that you cannot
20 evacuate people; you evacuate families. So that an advisory
21 of this type can be expected to result in a large-scale
22 evacuation. The studies that we have seen in fact estimate
23 that perhaps as many as 400,000 people left within a period
24 of hours after this advisory.

25 I wonder if this is something that you discussed at the

pv MM

1 time prior to the telephone call or during the telephone
2 call or were aware of. That is, did you talk about the
3 possibility that perhaps half a million people might be
4 evacuated as a result of this?

5 A Oh, we were acutely aware of the fact that we were
6 up against the environs of Harrisburg, Pennsylvania, in
7 which we were talking of a population of something of the
8 order of half a million people. We understood that very
9 well. And as I indicated, I think, much earlier in our
10 discussion, one cannot take any kind of evacuation step
11 lightly because it has its own costs which have to be borne,
12 and these may well involve aspects of the public health and
13 safety as well as economic costs. And that's perfectly well
14 understood. I understand that. Did we understand that? Of
15 course, we understood that.

16 The question, I suppose, was, you know, how do you
17 balance that, and that comes to a judgment. You certainly,
18 as I indicated earlier -- from my perspective, at least --
19 You don't move to these matters, to these decisions,
20 quickly, loosely. You do it in response to a genuinely
21 perceived syndrome of events and circumstances.

22 Q Commissioner, that wasn't my question. Perhaps
23 you misunderstood. My question was very specific. It was
24 whether you discussed the fact that an advisory of this type
25 might cause a general evacuation?

7405 11 12

pv MM

1 A An advisory of this specific type?

2 Q Do you remember any discussion ever?

3 A I do not recall any such discussion, but let me
4 just add there that does not go to say that it was not in
5 the minds of the five people involved. It was. I am
6 confident of that.

7 Q I understand.

8 Now, my second question is whether you were aware or
9 there was any discussion among the commissioners as to
10 whether the people at the site or in the state government
11 agencies were opposed to this sort of recommendation or had
12 been trying to express that opposition to the NRC staff?
13 Did you learn anything about that?

14 A I did not.

15 Q Do you recall whether there was any discussion
16 here at H Street about the chairman or you, the commission
17 as a body, trying to reach anyone at the site in order to
18 determine, first-hand, what the situation was there?

19 A I don't recall any discussion.

20 Q Do you know if that was ever done during the
21 period of 10:00 a.m. to noon on Friday?

22 A Well, my recollection is that there was contact
23 with the site. I'm not sure that it was -- that it was
24 direct, but I think there was contact with the site by the
25 EMT or the incident response center in getting answers to

7405 11 13

pv MM

1 questions which the commission would have.

2 Q That's my question. You were then relying on the
3 incident response center for the information that was being
4 made available to you here at H Street?

5 A I don't recall any direct contact between
6 commissioners here and the site on Friday morning. I don't
7 recall any. There may have been some, but I just don't
8 recall any.

9 You know, that's another thing we could confirm. If it
10 occurred, there should be some record of it, I should think.

11 MR. FRAMPTON: Thank you.

12 BY MR. ROGOVIN:

13 Q Commissioner, I have one additional question. You
14 had indicated that the impact of evacuation was well known
15 to you and the commissioners. I assume that there had been
16 some discussion by the staff --

17 A There had been discussion by the commissioners of
18 this general proposition.

19 Q Was there ever any discussion either with the
20 staff or the commissioners regarding the triggering of
21 Price-Anderson or what the economic impact of an evacuation
22 would be?

23 A I don't recall any.

24 Q Was there ever any discussion in the selection of
25 the recommendation, the terms of the recommendation, as

pv MM 1 advisory rather than recommending -- or a precautionary
2 recommendation as opposed to a more dramatic order to leave?

3 A No, I don't recall any.

4 But let me say that it does not surprise me that I do not
5 recall any, simply on the ground that I would expect
6 anything that this agency would do in this regard would be
7 advisory in nature.

8 Q Advisory to the governor. But the advice you are
9 recommending to him is to zss&v -- I x&vss *Ø& yad a number
10 of alternatives, but in the context of an advisory or a
11 precautionary -- I guess precautionary is the term -- a
12 precautionary recommendation to pregnant women and mothers
13 with children under a certain age, as opposed to a more
14 dramatic order by the governor recommending an order of
15 evacuation?

16 A I don't recall that. I don't recall any
17 discussion of that kind.

18 Let me add that we also were trying to take -- I think --
19 it certainly was in my mind we were trying to keep in mind
20 that it was precautionary. There was not at that point a
21 dangerous radiation level which would have required the
22 removal of the people from the area. The problem was, as I
23 said, these possible unplanned, if you will, puff releases
24 that might come along at any time, and it was not clear as
25 to whether that was going to be able to be brought under

pv MM

1 control or not.

2 Q Because of the instability of the situation?

3 A That's correct. Well, the instability of the
4 situation with, therefore, a likelihood of radiological
5 hazard.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q But the choice -- someone must have given some
2 thought to the selection of the term "precautionary" as
3 opposed to an evacuation.

4 A I tried to just explain it.

5 Q I understand.

6 A We certainly would have said evacuate the area if
7 a release had just occurred which was going to put X rem over
8 a circumference of 20 miles. You know, we would have said
9 evacuate and do it now.

10 Q That's too late. I mean, you've got --

11 A No, it's never too late.

12 Q For some people it will be too late.

13 A For some people it may be too late, that's right.

14 Q But when you've got a situation where it's cooking
15 and you still haven't reached the boiling point, like a
16 hurricane 150 miles off coast with a good reason to believe
17 that it's heading for the Florida coast. It may veer off,
18 but you still may not give a precautionary warning, but you
19 tell the people to evacuate, that our best judgment is that
20 we think it's coming this way.

21 A I think we are involved in semantics. When we said
22 precautionary evacuation, we meant evacuate as a precaution.
23 That's what precautionary evacuation meant: Evacuate those
24 people as a precaution, not because there is imminent actual
25 danger.

1 Do you see the distinction I'm trying to make?

2 Q I do. I think it's on my point, then.

3 A Do you see the distinction I'm trying to make?

4 Q Yes, very much so.

5 I have nothing further.

6 BY MR. BALLAINE:

7 Q Earlier, Mr. Frampton asked you, I think in substance,
8 whether there was conversation involving Commissioners about
9 trying to reach the site. Do you recall any conversations
10 involving the Commissioners at any time prior to the second
11 call between Chairman Hendrie and the Governor about trying
12 to speak specifically to somebody connected with the utility,
13 Met Ed, GPU, somebody associated with the utility at TMI?

14 A I can't put all this in sequence, but it all should
15 be on the record in the tapes. At some point in these con-
16 versations, the question of what ought to be done at the site
17 in general terms, what the situation was, what the utility
18 was doing, how it was interfacing and relating with the NRC
19 people who were there, these questions did come up. And I
20 remember there was a discussion that said, you know, we
21 really ought to get -- I remember I suggested at one point
22 saying, you've got to get the president. It sounds like the
23 President of the United States. I didn't mean the President
24 of the United States; I meant the President of Met Ed or GPU,
25 saying, you know, tell your guys to be in touch with our

1 people and do as is being suggested and don't do anything
2 without consulting us.

3 And the way to do that is get to the top of the pile,
4 don't try to get some assistant superintendent at the plant,
5 who is going to be taking his instructions from his own
6 hierarchy.

7 Q You say this conversation took place after the
8 first telephone conversation?

9 A Don't you remember, I said I can't --

10 Q I want to get our best time frame.

11 A What I am suggesting is that we can absolutely
12 ascertain, because it's on the tape.

13 Q Okay.

14 A And I honestly can't remember. We're talking about --
15 we're talking about a several hour period, and interrupted by
16 all kinds of things, and involving a whole series of different
17 kinds of subjects. I can't put them in -- I really can't
18 put them in train.

19 Q Do you know whether or not there was communication
20 made after the statement you have just testified to with
21 somebody involved with the utility?

22 A Chairman Hendrie did talk to --

23 Q Bob Arnold?

24 A I don't recall. I would have guessed it might have
25 been Herman DeCamp. But I don't recall.

1 Again, he made the phone call. I believe we were all
2 sitting there when he did, and therefore, again, it should be
3 taped.

4 Q Are you able to place this phone call in relation
5 to the other conversations you've been talking about?

6 A No. It occurred in this time frame. That's the
7 best I can do. But you know, as I said, we will do it if you
8 would like. There's no sweat. I can go through the tapes --

9 Q Talking about going through the tapes. That's not
10 your job, sir. You don't have to worry about that.

11 A No problem. It's all there.

12 Q Do you recall now the substance of that conversation,
13 or at least what you heard of the conversation of
14 Chairman Hendrie and somebody connected with the utility?

15 A I don't recall the substance of the conversation,
16 except to say that it certainly went along the lines that I
17 mentioned earlier: The objective to get the company calling
18 for help from other people, for one thing. In other words,
19 urging them to get as much assistance from experts outside
20 as they could muster.

21 Secondly, be sure that they are in touch with our people.
22 Now, at some point -- no, it was after this that the question
23 of public affairs, public relations, came up. But that was
24 later. That was not in this time frame.

25 Q Okay. Putting aside what Chairman Hendrie said

1 during the second telephone conversation to the Governor and
2 putting aside what Commissioner Bradford said, I gather during
3 that telephone conversation, during the course of it --

4 A. Remember, that's my recollection.

5 Q. Right.

6 Putting aside those two things said with respect to the
7 possibility of evacuating pregnant children -- pregnant women
8 and children, can you recall anyone saying anything on that
9 Friday prior to the second call with respect to that possible
10 alternative means of an evacuation recommendation?

11 A. That specific one?

12 Q. Yes.

13 A. I do not recall.

14 Q. It didn't come up at any time?

15 A. I don't recall it.

16 Q. Okay. Am I correct that at some time at or about
17 the second call, the Commissioners also were hearing radio
18 reports?

19 A. I heard one.

20 Q. And when was this? Prior to the second call to
21 the Governor?

22 A. No, I think it was at the same time. I think the
23 call was actually going on and there was some call to the
24 effect that people were leaving the area in large numbers.

25 Q. Had you been listening to the radio or to your

1 knowledge had any other Commissioners been listening to the
2 radio prior to that time?

3 A. I don't have any knowledge of that.

4 Q. Earlier, you talked about various recommendations
5 from the staff, or at least -- yes, recommendations from the
6 staff in connection with the first telephone call placed
7 between Chairman Hendrie and the Governor. Do you recall any
8 additional recommendations, different recommendations that the
9 staff provided after that first call and prior to the second
10 call to the Governor?

11 A. Again, I cannot tell you the timing of these things.
12 But it's all on the record and on the tapes.

13 At some point I recall that Roger Mattson made a strong
14 representation that we should be evacuating. And my recollec-
15 tion is that -- though I have no recollection of
16 Harold Denton strongly supporting that view, neither do I
17 have any recollection of his demurring in it.

18 Q. That recommendation was for a full precautionary
19 evacuation, is that correct?

20 A. Yes, it was a strong recommendation for an evacua-
21 tion out to some distance, and I don't recall whether he even
22 stated what it was. But it was a full-scale evacuation, that's
23 correct.

24 Q. Do you recall any other particular recommendations
25 from the staff?

1 A. No. I do believe at that time, however, my impres-
2 sion was that there were two different sets of views in the
3 staff: some who believed evacuation was something that should
4 be undertaken without delay; and others who did not believe it
5 was yet indicated.

6 BY MR. ROGOVIN:

7 Q. How did you, Commissioner Kennedy, how did you
8 greet the Mattson recommendation for a full-out evacuation?

9 A. With considerable concern.

10 Q. And how did -- I take it you ended up not favoring
11 that?

12 Did you ever get a chance to vote on it? I guess that's
13 the question.

14 A. That was not where I was. It was not a question of
15 not favoring it. Again, from everything that we could get --
16 and I think it was -- my recollection, there was some discus-
17 sion of these very points: how much time do we have, you
18 know, what is the measure of seriousness, and the pregnant
19 women-children business factored into this, because that made
20 the problem a little less acute. If they were, in a sense,
21 out of the way, if you will, the problem becomes a little
22 less acute, a little less -- you've got a little bit more
23 time.

24 So my impression certainly was, after a discussion of the
25 subject, that there was time. And it was about this time

1 that I remember the Chairman saying that we probably ought to
2 beef up our strength and presence up there, and that we
3 probably needed somebody even more senior than Vollmer. Now,
4 again, you know, we are putting together an awful lot of
5 stuff into a day, and I can't remember where it all fits, as
6 I've tried to tell you.

7 But at some point the Chairman went over to brief the
8 President, I gather, and staff at the White House on the
9 situation. He came back and indicated -- I believe it was
10 at that time, he came back and indicated that Denton was the
11 man. Denton was going to go to Three Mile Island. At that
12 point, given that fact, my own conclusion -- and I believed
13 it to be based -- as far as I was concerned, it was based
14 upon my perception of what the staff generally felt, that is,
15 that there was time, knowing that Denton was going there and
16 would have a lot of expert help with him, I thought if we
17 have got a little time, let's wait until we've got another
18 opinion, if you will, before we launch what will be an
19 irretrievable effort to evacuate.

20 And that's a very serious question. And since we have a
21 little time, let's take it.

22 Well, you know, when Denton got there, he later confided
23 to us that his view from there was rather different from his
24 view here, which did not surprise me all that much, as you
25 probably gleaned from my earlier comments about the way these

1 things typically develop.

2 BY MR. BALLAINE:

3 Q Sir, in connection with the decision as to whether
4 or not to recommend evacuation, do you think it's appropriate
5 to take a conservative approach?

6 A I certainly do. But now you better define conserva-
7 tive, because there are those who would say you are conserva-
8 tive by ordering precautionary evacuations well in advance.
9 Others say you are conservative by waiting until you have
10 reached a point not in which the situation is irretrievably,
11 but at which you had enough time to look it all the way
12 through and still be able to move in time to accomplish your
13 purpose.

14 Q Which view did you take, now, which of those conser-
15 vative views?

16 A The latter.

17 Q Is it your --

18 A In no sense do I believe that that in any way
19 impinges on the public health and safety. Indeed, I think it
20 is less likely to than the former, although some would argue
21 that the former's more conservative.

22 Q Is it your testimony that as far as you knew,
23 everybody on the staff agreed there was enough time to look
24 at the situation further?

25 A I'm not sure everybody -- I would never say -- let

1 me say that I would never say that in this staff everybody
2 agrees on any subject.

3 Q Who on the staff, as best you recall, was of the
4 view that you had enough time?

5 A I can't recall, but I got the impression, as a
6 result of discussion and comments made -- I can't recall by
7 whom -- that in fact there would be a period of time which
8 would be adequate to make those decisions.

9 Q Is there someone on the staff whom you recall was
10 of a view that you did not have enough time and that the
11 evacuation should be made early?

12 A I don't know --

13 Q Mr. Mattson?

14 A As I told you, Mattson. But of course, Mattson's
15 view was different some hours later, too, when he went to
16 Three Mile Island.

17 Q Anyone other than Dr. Mattson?

18 A I don't recall anyone else.

19 BY MR. ROGOVIN:

20 Q Commissioner, were you nervous after -- through
21 this? I mean, here you were, part of a group that was making
22 a very important recommendation regarding evacuation. Did
23 you have second thoughts or in any fashion feel unsure?

24 A Mr. Rogovin, let me tell you the story of the young
25 private who came in the Army and said to the sargeant, how

1 do I get to be like you so I won't be scared? And the
2 sergeant said, learn to lie like hell.

3 Anybody who tells you he isn't nervous when he is making
4 serious decisions is lying to you. That doesn't in any sense
5 impede making decisions. If it does, then he's not only
6 nervous; his competence is in question.

7 Q I take it you were nervous when you made the
8 decision?

9 A I might have -- nervous? No, I wasn't nervous.
10 Concerned. Concerned. And with that is a little edge of
11 nervousness, I suppose. You always want to be right, you know.

12 Q Aside from the academic benefit of being right,
13 there are hundreds of thousands of lives --

14 A You want to be right when you're dealing with people.
15 That's exactly the point. Academic rightness is not anything
16 more than superficially attractive.

17 BY MR. BALLAINE:

18 Q Between the first call to the Governor and the
19 second call to the Governor, is it your best recollection that
20 you received for the first time advice from the staff that
21 there might be additional puffs, unspecified, unplanned puffs
22 of gaseous radioactivity from the plant?

23 A What was the first part? I'm sorry.

24 Q Let me start all over again.

25 Is it your best recollection, between the two conversations,

1 you received for the first time information from the staff
2 that there would be or could be unspecified, unplanned release
3 puffs that might recur?

4 A. It's my recollection that that's correct, that it was
5 in that time frame. That's the best of my recollection.

6 Q. And that's information you got from the staff?

7 A. Yes, that's right. Now, this was their assessment,
8 and this came to them from Three Mile Island.

9 Q. During that --

10 A. Just let me qualify that by saying again, we are
11 trying to take an enormous number of individual subjects, all
12 of which were discussed in one way or another by a host of
13 people over a five or six-hour period, and try to put them
14 neatly in line. And I'm having difficulty doing that, because
15 I simply can't remember that precisely. But it's all down, so
16 far as I know, on the tapes. That can be all sorted out.

17 Q. I guess we want to be sure we are ruling out some
18 other source, other than through the tapes.

19 Again, during the same time interval, can you think of any
20 other piece of information that you received that you related
21 to this judgment that had to be made about evacuation recommen-
22 dation?

23 (Pause.)

24 A. Well, it's my recollection, as I indicated to you,
25 that there was information about the amount of time that we

1 might have to make decisions.

2 Q Okay. Anything else that you can think of?

3 A Offhand, I can't.

4 Q When you first heard about the release, by the way,
5 you heard that it was a 1200 MR reading per hour, is that
6 correct?

7 A That's correct.

8 Q When you heard that, was it your belief that that
9 was the largest reading that had been made up to that point
10 at TMI?

11 A Yes.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

e-12

1 Q By the way, to clarify this, I think you did say it
2 in another deposition, is it your recollection that when you
3 first heard about that reading, you understood it was a reading
4 taken right over the plant?

5 A Right over the stack, that's right. I asked a
6 question, I think. I said where was that reading, and I think
7 someone said, it's right over the stack -- right over the
8 plant. And I said, over the stack? and they said, yes, or
9 something to that effect.

10 Because I was concerned about where they were reading it.
11 It was one thing if it was 1200 MR out of the vents. It is
12 a little different if it is 1200 MR right over the stack. And
13 I was trying to figure out where they were reading it.

14 BY MR. FRAMPTON:

15 Q Commissioner, in light of your statement at the
16 beginning of the deposition about the difficulties of managing
17 a crisis at long distance, I would like to know whether you
18 and the other Commissioners had any reluctance to be involved
19 in making the recommendations about evacuation to the Governor
20 yourself in light of the information or the lack of first-hand
21 information that was available to you here in downtown Washington?

22 You were getting your information as it was filtered and
23 interpreted by the Incident Response Center, and of course in
24 hindsight it appears that at some point in this chain a lot of
25 the information that ultimately reached you was inaccurate.

rmg 2
1 I wonder whether there was any discomfort among the
2 Commissioners at the time about whether you had enough infor-
3 mation to really form a basis for making these kinds of
4 decisions?

5 A. If I can go back and refer to Mr. McGovern's question
6 about nervousness, I guess if there was any point of nervousness,
7 that would have been it. You know, that always is a source
8 of concern, that one wonders whether he has either all the
9 information he needs or all the right information that he
10 needs when he makes a decision.

11 But that's the human condition, I'm afraid. And -- so I
12 would have to come back to your question.

13 Yes, not reluctance. That wouldn't be quite the way I would
14 put it. Rather, that measure of concern. Are you really doing
15 the right thing, remembering, as was rightly pointed out, you
16 are dealing with thousands of people and their personal welfare.

17 So it is not a decision to be taken lightly and without
18 absolute assurance, and you are never going to have absolute
19 assurance that you have got all the information you need, the
20 right information you need to make that decision. You still
21 have to make it.

22 I don't know whether that answers the question. I don't
23 think I was reluctant, but I was concerned.

24 Q. I guess I am interested in whether there was any
25 perceived need for additional information or more detailed

rmg 3

1 information as to what was actually happening.

2 A Yes, sure. Precisely thinking of the 1200 MR, I
3 do remember the 1200 MR business because I remember after that
4 we said where did -- somebody tried to find out where did that
5 measurement come from because, you know, it is a pretty
6 remarkable little number.

7 It suddenty came out, it was unlike anything we had seen,
8 and somebody said, where did it come from? And it was some
9 time before we were able to ascertain exactly how it was
10 obtained.

11 And I remember distinctly, and I know it is on tape because
12 I have seen it someplace because somebody said, we calculated
13 it.

14 It was month's later -- well, weeks later, at least, I
15 remember the Staff was up briefing us in an initial go at what
16 happened and I remember someone saying, we still don't know
17 where that 1200 MR figure came from.

18 Well, now, it turns out that in fact -- I think it does,
19 I am not absolutely positive, I think it does -- it turns out
20 that the ARMS aircraft actually did get it. But that's the
21 sort of problem I am talking about. You have information but
22 you don't know what it is, and you don't know whether it is
23 information you ought to act upon or whether you ought to
24 wait just a minute to take another look.

25 That's the problem that you have, and that's one of the

rmg 4

1 reasons I think you have to rely more intensively on that
2 fellow on the ground and he has to be a fellow of experience
3 and stature enough so that you can just put him there and
4 expect his judgment to be sound and effective, because he is
5 going to get that information a lot more quickly and he is
6 going to be able to put it in context a lot more quickly than
7 anybody else.

8 Q I take it there was, it wasn't anyone of the
9 Commissioners who said aloud, we just don't have enough
10 information to make any recommendation to anybody sitting here
11 right now?

12 A I don't think I remember anybody saying that. But
13 I do think there were on many occasions people certainly
14 expressed an interest in getting more information. I don't
15 think to put it in that particular context, but that was there
16 all the time, the feeling that there were things that we
17 needed to know that we didn't.

18 BY MR. BALLAINE:

19 Q At any time Friday up to and including the time of
20 the Governor's second call conversation with Chairman Hendrie,
21 were you ever present when someone said that there had been
22 some kind of a recommendation made from people who were actually
23 at the site? Did you ever hear anything like that?

24 A I don't remember one.

25 Q As far as you knew, there never had been a recommendatio

1 made from people at the site?

2 A I didn't say that. I said I just don't remember any.

3 Q Do you recall whether there was ever any conversation
4 about the possible need to actually talk to people at the site
5 and get their recommendation?

6 A Let me say I recall, but I have no idea in what
7 context. Whether I recall because I read it, or because
8 somebody has told me that since, or what, that's another problem
9 we have now.

10 It is very hard to say whether you are recalling something
11 that you knew at the time, or that you have subsequently
12 learned, or that you should have known at the time that you have
13 subsequently learned.

14 You know, it is very hard to sort that all out. And in this
15 case I am suggesting that I think that someone said at some
16 point from the site that they didn't think that evacuation was
17 indicated.

18 But I would not attest to the fact that I knew that at the
19 time.

20 Q Do you even recall how you came to receive this
21 information?

22 A That's what I said, I don't know. I honestly don't.

23 Q Do you think it would have been appropriate to get
24 the recommendation of people on the site at about the time that
25 these decisions were being made on Friday?

rmg 6

1 A Yes. But wasn't it at that time that everybody was
2 having a great deal of difficulty getting people at the site,
3 for one thing? And when they did, you know, trying to figure
4 out which people at the site, who would know what.

5 You just don't get the first guy who answers the phone. You
6 need to have somebody who has a sort of an overview of the
7 information that is available and is able to sort this out.

8 The question is, could we get him, and many times nobody
9 could get him. Remember, as I said earlier, Denton's saying --
10 well, you saying to me they fall in a hole. You send them up
11 there and you lose them.

12 Q Would you have attached great weight to any recom-
13 mendation received from somebody at the site?

14 A I can't answer that question. I wouldn't want to
15 characterize how much weight, but I certainly would have taken
16 that into account.

17 BY MR. MC GOVERN:

18 Q But Commissioner, you earlier said if there had been
19 an emergency, you were prepared in effect to give your proxy
20 and all the other Commissioners give their proxy to the lead
21 man at the site. So the way you were structured, whether you
22 had much confidence in him or not --

23 A I didn't say I didn't have confidence in him.

24 Q Even no matter what the situation was, the NRC had
25 arranged things so that that man would have made a decision.

rmg 7

1 A. Yes.

2 Q. And I guess the question is, whether seeking that
3 man's views as you were formulating your own opinion would not
4 have been of some assistance?

5 A. The answer to that question is yes, very simply.

6 BY MR. BALLAINE:

7 Q. Did there come a time on Friday when you were aware
8 of conversation between Chairman Hendrie and the President of
9 the United States?

10 A. When he came back and briefly reported it.

11 Q. That was on Friday?

12 A. Friday afternoon.

13 Q. You had no indication prior to that time that there
14 would be a conversation between the Chairman and the President
15 or some other White House official?

16 A. Yes. The Chairman had been summoned to the White House.

17 Q. Did you hear that he had been summoned to the White
18 House before he physically went?

19 A. Yes.

20 Q. Why don't you tell us the circumstances under which
21 you learned that he was being summoned to the White House.

22 A. He said so.

23 Q. Prior to the time he said so on Friday, had there been
24 any conversations involving the Commissioners about the need
25 to involve the President of the United States or White House

rmg 8

1 officials in connection with the Incident Response Center?

2 A I don't know whether that was before or after. At
3 some point there was discussion of how we might involve them
4 in helping us solve some of the communications difficulties
5 we were having. I do not know whether -- I do not now recall
6 whether that was before he went to the White House or after
7 he returned.

8 Anyway, the problem was solved after he returned.

9 Q Did Chairman Hendrie say what took place at the
10 White House when he went there?

11 A I am sure he did. I am trying to recall specifically
12 what that entailed. It certainly indicated, I believe, the
13 President's personal concern, the need to keep in very close
14 contact with Governor Thornburg, the fact that the President
15 was also aligning his own staff, and I think assigned the task
16 of coordinating the activities of his own staff in this regard
17 to Mr. Jack Watson.

18 And I think gave promise of assistance to us in the sense
19 that we needed communications help and possibly other agency
20 help, that Mr. Watson had been empowered to assure that that
21 would be provided.

22 And that the President believed that there should be a
23 stronger posture of NRC at the site.

24 But as I say, I think that was a conclusion already reached
25 by the Chairman, and we certainly supported that, in any event.

rmg 9
1 So that's roughly my recollection of the general subject
2 matter. I am sure there was much more than that.

3 Q Sir, do you know a man by the name of Bob Wallace?
4 Does that name mean anything to you?

5 A. Bob Wallace? I don't think so. Should I?

6 Q. No. Not necessarily.

7 MR. CHOPKO: Could you identify him for the record?

8 BY MR. BALLAINE:

9 Q. It is somebody who is identified on one of the
10 transcripts, and it is not a name familiar to anybody, and I
11 think the man's name is not really Wallace but somebody whom
12 Chairman Hendrie talked to and we will ask him. But
13 wondering if he is somebody known to Commissioners.

14 A. Would it have been Jay Wallace?

15 A. Bob Wallace is the way it is identified. Who's
16 Jay Wallace?

17 A. Jay Wallace, he's unfortunately deceased.

18 Q. He is NCR --

19 A. Yes, and he is deceased. But I don't know Bob
20 Wallace, I'm sorry.

21 Q. You mentioned that there had been some conversations
22 about the need to send someone like Mr. Denton to the site.
23 Is that correct?

24 A. Yes.

25 Q. Was that a decision of the Commissioners?

rmg 10 1 A. It was the view of the Chairman and I think shared
2 by the Commissioners, I would put it that way.

3 Q. It is your recollection that it was the Chairman
4 that first suggested the idea?

5 A. That's my recollection. But as I say, the
6 Commissioners generally supported that view.

7 Q. Do you know what instructions Mr. Denton received
8 when he was going to the site?

9 A. Specifically, my recollection is that he was to be
10 the NRC's man in charge, and that he would be the President's
11 man in charge.

12 Q. Are you saying this based on being present during
13 the conversation with Mr. Denton?

14 A. (Nods affirmatively.)

15 Q. Who was involved in the conversation you are talking
16 about?

17 A. Mr. Hendrie, who talked with Mr. Denton on the phone.

18 Q. Was anything said to Mr. Denton with respect to his
19 authority to make any further or different evacuation
20 recommendations?

21 A. I do not recall any.

22 Q. To the best of your recollection, there were none,
23 you said?

24 A. I do not think so; I do not recollect any.

25 Q. What instructions were given to Mr. Denton, if any,

rmg 11
1 with respect to his dealings with either the media or the
2 Governor of the state of Pennsylvania?

3 A He was to be the liaison, if you will, with the
4 Governor of Pennsylvania and was to work very closely with him.
5 And he was also to be, I think -- I don't know how particularly
6 specifically it was characterized -- but the essence was that
7 he was to be in effect the principal spokesman.

8 Q Principal spokesman. Also to the press, that was
9 the direction given to him?

10 A That's my recollection. If it wasn't at that time,
11 it was conveyed to him in the not-too-distant future from that
12 time, not too long away.

13 Q What direction did he receive with respect to dealings
14 between his people at the site and Met Ed, the utility people
15 at the plant trying to deal with the reactor?

16 A Well, their role was that of advisor on the one hand
17 and counselor, as it were, and also final safety authority.
18 That is, if the -- now, I'm not sure whether he was given
19 this instruction, or whether he asserted this himself.

20 In any event, it was wholly in accord with the Commission's
21 view. That is, that he -- his people would be advised by
22 company personnel before they would take steps and actions
23 which might have any health and safety implication.

24 And this was an outgrowth of some of the activities which
25 the company had engaged in which had caused minor -- small

rmg 12

1 releases which created great concern and turned out that they
2 were activities which were generally within their authority,
3 that is, the company's authority.

4 But in the circumstances were the kinds of things that one
5 would like to have known about before they occurred. The
6 purpose here was to make sure that that would be the case.

7 And let me add, I think there was a clear implication
8 understood by all parties although not written or positively
9 stated, that the NRC people had a veto. That is, if Denton
10 said, don't do it, the company wasn't going to. I think that
11 was the way it was understood.

12 Q So that I am clear, you don't recall whether or not
13 you actually heard Mr. Denton being told to take the action
14 you have just described?

15 A No, I'm not --

16 Q It was your impression as to what he was supposed
17 to do?

18 A That's correct, and it was certainly the way he
19 proceeded, and indeed was, as I said, consistent with the
20 views of the Commission.

21 Q Are you personally aware -- strike that. Were you
22 present during any conversations involving a Commissioner and
23 somebody at the utility in which there was a discussion of the
24 kind of relationship with Mr. Denton and the utility that you
25 just testified to?

rmg 13

1 A I can't recall this for sure. But I believe that
2 the Chairman did express these views to a senior official of
3 the company.

4 Q Is this during the conversation you testified to
5 earlier that you believe was with Mr. Dieckamp, or was this
6 another conversation?

7 A I think that's a different conversation. I'm just
8 not sure, but I think it was a different conversation.

9 Q Do you think there may have been two conversations
10 Friday, though?

11 A I think maybe.

12 Q And you think it was Chairman Hendrie that was
13 talking in both those cases?

14 A I think so. That's the best of my recollection.

15 Q Do you recall that Friday a press room -- hearing
16 that Friday a press room was set up in the East West Towers
17 Building where the Incident Response Center was located?

18 A Friday, yes. As a matter of fact, someone suggested
19 that and I recall Commissioner Gilinsky asked me what I thought
20 about it. I said I thought it was a splendid idea, it ought
21 to be done forthwith and they ought to be provided with whatever
22 facilities will make their job easier in terms of telephones
23 and the like.

24 And I think he then acted upon that matter. The Chairman
25 was doing something else. I think Commissioner Gilinsky went

rmg 14

1 ahead and said, Go ahead and do that.

2 Q Do you recall hearing that there was anything specific
3 that happened to led to Commissioner Gilinsky to make the
4 suggestion that you just indicated?

5 A No. No, it didn't. It would have been the most
6 natural thing in the world to do, and it just didn't occur
7 to me that anything prompted it other than just good, sound
8 logic, management.

9 Q I take it no such suggestion had been made, at least
10 in your presence, at any time Wednesday or Thursday?

11 A No, not that I can recall.

12 Q Did you ever hear of a Mailgram being sent by somebody
13 connected with the media to Chairman Hendrie complaining about --

14 A A Mailgram?

15 Q The information coming from the Incident Response
16 Center with respect to TMI?

17 A I did not recall that. A Mailgram, you said?

18 Q Yes, sir.

19 A No, I don't recall that.

20 Let me say that at that time there was a good deal of mail
21 coming in and out of the place, and I don't have any recollection
22 of ever seeing that.

23 Q I just wondered if somebody brought that to your
24 attention.

25 A They may have, but there were usually dozens of such

rmg 15

nd #13

1 things each day, not those particularly, but letters, telegrams
2 of all kinds. I don't recall that one.

3 Q On Friday afternoon there was a press briefing
4 involving Dudley Thompson and Brian Grimes. Do you recall
5 whether or not you knew in advance of a briefing Friday
6 afternoon that there would be a briefing?

7 A I suspect that I probably did, but I don't recall.

8 Q Do you recall whether on Friday there were ever any
9 conversations involving a Commissioner concerning how to
10 coordinate any briefing by people at the Incident Response
11 Center with NRC people working at the site?

12 A By a Commissioner?

13 Q Involving a Commissioner.

14 A No, I don't recall. I can only say there should
15 have been.

16 Q Any recollection of a conversation at any time --

17 A Let me say that it was sometime Friday again --
18 you know, Friday was a day, it was about a week long.

19 As I recall it, there was a -- on sometime on Friday there
20 was, I think, a clear indication that -- I think it was on
21 Friday that henceforth statements ought to be made, press
22 releases from the site.

23 Q Would it refresh your recollection if I suggested
24 it happened Saturday night? It happens to be what the
25 records indicate.

rmg 16

- 1 A. Okay.
- 2 Q. You are not sure?
- 3 A. You are right, it was Saturday night, and I remember
4 the reason. Okay.
- 5 Q. We will get to that.
- 6 A. Yes. Okay.
- 7 Q. Do you recall whether at any time between Wednesday
8 and Saturday prior to the event that you just had in mind in
9 which there was a conversation involving a Commissioner as
10 to limitations on what information should be provided to the
11 media by people, NRC people working at the Incident Response
12 Center?
- 13 A. I don't think so. I don't recall any.
- 14 Q. Never any consideration as far as you can recall
15 about --
- 16 A. Not that I can recall. Should I?
- 17 Q. I don't think so. I don't know.
- 18 A. I don't recall any.
- 19 Q. Other than matters you have already testified to,
20 do you recall any directions given by a Commissioner on Friday
21 to a NRC Staff member with respect to the emergency response?
22 Any particular direction that stands out in your mind?
- 23 A. Am I misunderstanding the question?
- 24 Q. Other than matters that you have already testified
25 to, do you recall whether on Friday there were any other

rmg 17
1 particular directions given by a Commissioner to an NRC Staff
2 member in connection with the TMI emergency response?

3 A. Not that I know of. I don't recall any, I don't know
4 of any.

5 Q. Again, other than matters you have already testified
6 to, were there any other suggestions or requests made by a
7 Commissioner to a NRC Staff member in connection with a response
8 that sticks out in your mind?

9 A. No, nothing. None that come to mind.

10 Q. Again, other than matters you have testified to,
11 are you aware of any Commissioner conversations with anyone
12 either connected with the White House or another federal
13 agency in connection with TMI, conversations that stick out
14 in your mind as something we haven't covered?

15 (Pause.)

16 A. Well, I don't know how I came to know it, whether I
17 knew it then or learned it since, but there were -- there were,
18 I gather, I understand some conversations between some
19 Commissioners and people in DOE and people in the White House
20 and people in EPA, maybe in HEW. ?

21 Now, I think some of that arose out of the involvement of
22 the President and the White House.

23 Q. Can you be more specific now in any further contact?
24 Who were the Commissioners, for example?

25 A. I think Commissioner Gilinsky and Commissioner Bradford.

rmg 18

1 had contacts. Beyond that, I don't know. And I am not sure
2 specifically of what they were. I was only vaguely aware that
3 they were in touch.

4 I think from time to time they would say, well, they had
5 just talked to somebody and that would be it.

6 Q Does this have to do with contacts with then-Secretary
7 Califano and a gentleman by the name of Costle, C-o-s-t-l-e?

8 A Yes.

9 Q Are these the contacts you are thinking of?

10 A Yes. Also, I think Jessica Tuchman.

11 Q Jessice Tuchman Matthews?

12 A Yes.

13 Q Do you remember the circumstances leading up to
14 these contacts?

15 A No, I don't.

16 Q You simply heard about them somewhere along the line?

17 A Yes, that's right.

18 Q Is it your best recollection you did not know these
19 contacts were made before they were actually made?

20 A Certainly not in all cases. Nor did I know what
21 their import or content was, necessarily.

22 Q I think you have testified to what you believe may
23 have been two conversations involving Chairman Hendrie and
24 somebody connected with the utility. Can you think of any
25 other conversations you are aware of taking place of on Friday

rmg 19

1 involving a Commissioner and somebody connected with a utility?

2 A. Connected with a utility?

3 Q. Yes, sir.

4 A. No, I can't. It's my recollection that the Chairman --
5 I think I recollect that the Chairman at some point called
6 possibly another utility or an industry figure, some other
7 industry figure, to elicit support and assistance for the Met Ed
8 operations.

9 Q. Do you remember whether you knew in advance that the
10 Chairman would be doing so?

11 A. I think so. I think he said, you know, something to
12 the effect that he'd call somebody.

13 Q. Do you remember the name of the gentleman?

14 A. No, I do not. This is a long week.

15 Q. Was it long and narrow, or long and thin?

16 A. About the same.

17 (Laughter.)

18 Q. Let me direct your attention now to Saturday,
19 March 31, 1979. Do you recall there coming a time when
20 Chairman Hendrie had a press conference concerning events at
21 Three Mile Island?

22 A. It was late Saturday afternoon as I recall.

23 Q. Were you present?

24 A. For part of it, yes. He had already begun when I
25 arrived. My recollection is that we left -- we left the

rmg 20
1 offices at H Street -- I have forgotten what time. I stopped
2 for a bite of lunch and then drove up to Bethesda and the
3 press conference had already begun when I arrived, and I don't
4 recall what time that was.

5 Q I take it you did not stay there for the entire
6 press conference by involving Chairman Hendrie?

7 A Yes, I did, from the time I got there, but as I say
8 the press conference had already begun when I arrived. So I
9 was not there for the entire conference, only the latter
10 portion of it after my arrival.

11 Q I take it you knew in advance of the conference
12 that such a conference had been held?

13 A Yes. We had discussed -- the Commissioners had
14 discussed that and concluded that the press was getting restive
15 and they were putting everyone and the Staff under great
16 pressure. And quite reasonably the networks and the writing
17 press were all there and were looking for something more than
18 the usual routine handout, I think.

19 Q Had there been any conversations in advance of this
20 press briefing in which Commissioners discussed what would or
21 would not be said at the conference?

22 A I don't recall that. We were all in possession, so
23 far as I am aware, we were all in possession of the same basic
24 information.

25 Q When you say we, you mean --

rmg 21

1 A. The Commissioners.

2 Q. The Commissioners and the people at the site?

3 A. I am talking about the Commissioners.

4 Q. Among the Commissioners.

5 A. Yes. We were all in possession of the same, basically
6 the same information. And as to the answers to the questions,
7 I think it was eminently clear to all concerned that the
8 Chairman (a) is the principal spokesman for the Commission
9 and therefore was certainly the appropriate man to handle the
10 task.

11 Q. What, if anything, was done to coordinate this
12 particular press conference involving Chairman Hendrie with
13 the contacts between NRC personnel at the site and press
14 members at the site?

15 A. I do not know.

16 Q. Do you recall whether there were any conversations
17 about the need to coordinate the Commission being provided
18 the two places?

19 A. I do not recall any.

20 Q. You agree that there should have been coordination?

21 A. Oh, of course. Of course there should. Let me
22 say in that connection, however, simply because I don't recall
23 any conversations does not mean that none took place, because
24 the director of our public affairs office was the public affairs,
25 officer, if you will, at the site with Denton.

rmg 22

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

Q. Mr. Fouchard?

A. Fouchard. And his principal assistant.

Q. Ingram?

A. Ingram was in charge here and was the man who actually pulled together the press conference which Mr. Hendrie conducted.

Q. But you just don't know what coordination was undertaken?

A. What contact there was between those two offices then at that point I simply don't know.

Q. Do you recall Chairman Hendrie saying during the course of the press conference that under certain circumstances there might be a possible need to evacuate people as far as 20 miles?

A. Yes, he did say something of this order. I'm not sure what the words were. Obviously, they are on tape but there was some comment to this effect.

I am not sure, but it may have been in response to a question. It was not part of his prepared remarks or something.

Q. I am interested in the distance that he suggested evacuation might be necessary. Do you remember the 20 mile figure?

A. I don't remember the figure. I don't remember that. You know, that is a matter of the record and I am sure it is one the tape, the public record.

rmg 23 1 Q. Do you remember whether or not, prior to the actual
2 press conference, anybody from the Staff had ever discussed
3 20 miles as an appropriate distance for evacuation people from
4 the site under any circumstances?

5 A. Now, at some point a number like that was mentioned
6 to Governor Thornburg.

7 Q. How do you know that? By the Chairman?

8 A. I was there.

9 Q. You remember hearing that?

10 A. Yes. But I can't tell you again when that was,
11 whether that was Friday or Saturday. But I know that that was
12 done, because I remember -- I remember Governor Thornburg
13 testifying about it, saying -- he gasped and he did.

14 Q. But you actually have a separate recollection of
15 Chairman Hendrie saying that.

16 A. I recollect.

17 Q. To your recollection, is that the first time you
18 had heard 20 miles being used?

19 A. 20 miles -- no. I am trying to recall now how did
20 Chairman Hendrie get the number, how did we arrive at that
21 number, and I don't recall.

22 But that is something that I am confident is in the record.

23 Q. Okay. Do you have any independent recollection of
24 anybody on the Staff using that 20 mile figure?

25 A. No, I don't.

rmg 24

1 Q Prior to the press conference, had there ever --

2 A That doesn't say --

3 Q I understand. It is just that you don't recall.

4 A I don't now recall.

5 Q Prior to the press conference, had there been any
6 formulation by the Commissioners as to in what circumstances
7 people would be evacuated out to what distances in the event
8 of something happening at TMI?

9 A At TMI?

10 Q Yes.

11 A No. Not in any specific way. That was initiated
12 that day, I believe, on Saturday.

13 Q We will get to that in a second.

14 A Okay.

15 Q At the time that the Chairman referred to the
16 possibility --

17 A Excuse me. Now, remember there are the guidelines
18 and there are the basic emergency plans and all those things.
19 So when I answer the question no, not specifically, it is in
20 the context of all those other things exist; okay?

21 Q Okay. And again, guidelines are referring to EPA
22 guidelines?

23 A EPA guidelines and our own implementation, whatever
24 they are, together with the emergency plans.

25 Q You indicated I think a moment ago that there did

rmg 25

1 come a time when precautionary evacuation plans were prepared
2 on Saturday?

3 A. I don't recall specifically the genesis, but on
4 Saturday evening I believe Mr. Gilinsky asked the Incident
5 Response Center to prepare some -- what shall I call them --
6 I think emergency plans for deciding on evacuation.

7 That is, the idea was to draw up the scenario of events,
8 consider the consequences of the events, and then look at
9 the response that would be appropriate in reference to those
10 consequences; okay?

11 Q. But you don't know what led to Commissioner Gilinsky
12 making that request of the Incident Response Center?

13 A. No. But let me say it was a perfectly logical
14 and reasonable thing to have done.

15 Q. It was a good idea?

16 A. Of course,

17 Q. Had there ever been any discussion of this idea prior
18 to Saturday?

19 A. Not that I recall. Should have been.

20 Q. There should have been?

21 A. In my view.

22 MR. BALLAINE: Let's take a 5-minute break.

end #14

23 (Brief recess.)

24 BY MR. FRAMPTON:

25 Q. Commissioner, early in the deposition you were

rmg 26

1 speaking about mention that Mr. Guibert made to you concerning
2 the Davis-Bessie incident on the morning of Wednesday,
3 March 28. And since he and I had a short discussion about
4 that during the lunch break, we thought we would just put that
5 conversation on the record, if that's agreeable to both you
6 and to him.

7 A It's fine with me.

8 MR. GUIBERT: It is fine with me.

9 MR. FRAMPTON: Mr. Guibert, what do you recall about
10 your conversations with Commissioner Kennedy and then with
11 Mr. Eisenhut that morning concerning the subject?

12 MR. GUIBERT: First of all, let me say I am not
13 positive of the time. I can't recall whether it was immediately
14 after I was aware of the first report of the incident, or
15 whether it was after the first briefing.

16 And by the first briefing, I mean the first conference
17 call that the Commissioners had in the Chairman's conference
18 room. I suspect it was before then.

19 Based on the original set of information which was a turbine
20 trip, some problem in terms of a high pressure in the primary
21 system, and some level of release of material water to the
22 containment.

23 My initial thoughts on that were, particularly when I
24 recognized this was a B&W reactor, pressurized water reactor,
25 was that I had heard something similar to this once before. And

rmg 27

1 that was with respect to the Davis-Bessie event which had
2 occurred, I think, in late 1977.

3 I mentioned that to Commissioner Kennedy, who had mentioned
4 to me at that time that I should bring that up to Staff, which
5 I did. I called Darrell Eisenhut, and my recollection was
6 that he was in a conference in his office with several other
7 members of the staff which they interrupted to take my
8 telephone call, and I mentioned to him something along the
9 lines of, Darrell, as you are sitting here thinking about this
10 as the information comes in, think in terms of Davis-Bessie.

11 Because even though we don't have much, from what I know
12 we don't have much in terms of what the sequence of events was,
13 at the point it sounds from what we know already very similar
14 to what happened there.

15 MR. FRAMPTON: Do you recall what his response was
16 or the response of other people who might have been listening
17 at the other end?

18 MR. GUIBERT: At least as far as I could tell, he
19 said, yes, we will.

20 MR. FRAMPTON: And you had previously worked for
21 Mr. Eisenhut yourself?

22 MR. GUIBERT: Yes, I had. I had served as his
23 technical assistant for about a year and a half.

24 MR. FRAMPTON: And in that role, have you had occasion
25 to look at the analysis of that Davis-Bessie transient or work

rmg 28

1 on it or have something to do with it? Is that why you remembered
2 it?

3 MR. GUIBERT: I guess I remembered it primarily
4 from the point of view that I was the Office of Nuclear
5 Reactor Regulations coordinator for abnormal occurrence reports
6 to Congress, and as such reviewed events and took recommendations
7 from other Staff members in NRR as to whether something should
8 be reported or not.

9 This particular event had become one of interest from that
10 point of view, as well as from the point of view of several
11 Staff members within DOR taking a particular interest in the
12 event, even though it had been under the purview, so to speak,
13 of the Division of Project Management and Division of Systems
14 Safety, because the plant had not yet been transferred to DOR.

15 There were some Staff members who were interested in it,
16 and I had some discussions with such Staff members and
17 ultimately had some discussions with Mr. Eisenhut.

18 MR. FRAMPTON: So he was informed and knew about
19 the Davis-Bessie transient and some of the possible implications
20 of it at the time or after the incident occurred?

21 MR. GUIBERT: I can't speak to how much detailed
22 information Darrell may have had regarding the whole sequence
23 of events, but I think he knew in general terms that it had
24 involved the lifting of relief valve and perhaps some concern
25 regarding a drop of level in the primary system, at least

rm g 29

1 below the pressurizer.

2 And I think he was aware that there had been some concern
3 regarding potential fuel damage, which had turned out negative
4 in that case. But he was aware, I think, of the general
5 sequence of events.

6 MR. FRAMPTON: Do you recall what other Staff
7 members of DOR were particularly interested in this whom you
8 talked about it to?

9 MR. GUIBERT: I think one individual who was
10 particularly interested in DOR was a fellow named Dom Dianni
11 who at the time was in the engineering branch, subsequently
12 moved up to become a project manager in one of the project
13 manager branches in DOR.

14 He has discussed the event with myself as well as with
15 other people in DOR, and sometime, I don't remember the exact
16 date, but sometime, I think, in March of '78 I had met with
17 Mr. Dianni and Mr. Ted Marsh from the Reactor Safety branch
18 in DOR to discuss the event.

19 MR. FRAMPTON: Were you aware at that time that
20 Toledo Edison had adopted or was going to adopt a procedure
21 to deal with perceived problems arising out of that transient?

22 MR. GUIBERT: I can't say that I was.

23 MR. FRAMPTON: Was there any discussion by you prior
24 to the Three Mile Island accident with anyone about the
25 possibility that DOR ought to inform other B&W licensees about

rmg 30

1 adopting some kind of precautionary procedures based on that
2 incident?

3 MR. GUIBERT: My primary concern with the incident
4 was more of a generic concern regarding how it initiated.
5 It initiated due to some failures in what I will call, for
6 lack of a better term, a steam generator water level control
7 system.

8 And interestingly enough, I think the record shows -- and
9 by the way, I will add that over the last couple of months
10 there have been individuals who called me on this to put the
11 record together -- Carl Berlinger in DOR in particular.

12 I think the record shows about a day or two after this
13 meeting that I had an event occurred at Rancho Seco which,
14 although not directly equatable to the Davis-Bessie event,
15 at least was similar from the point of view that the initiating
16 transient was also caused by an inadvertent failure in the
17 steam generator water level control system.

18 It goes by several different names at different plants,
19 but that is in essence what it is. And my particular concern
20 was one of whether or not we were adequately reviewing that
21 system from the point of view of is it causing them troubles
22 as well as from the point of view of not performing to mitigate
23 the problems.

24 That's the nature of my discussion and concern with
25 Darrell Eisenhut at that time.

rmg 31

1 MR. FRAMPTON: Thank you.

2 BY MR. BALLAINE:

3 Q Okay, Commissioner.

4 You testified to being present during a good portion of
5 the press conference held by Chairman Hendrie on Saturday,
6 the 31st of March. Did you have occasion at any time during
7 or after that press conference to talk with a member of the
8 press or the media with respect to TMI?

9 A There was a young lady whose name was -- I note from
10 my log, Dolly Langdon of People magazine. Her interest was
11 in interviewing me and other Commissioners for the human
12 interest sort of side of the event.

13 I explained to her that however much I thought that was a
14 worthwhile effort, I didn't feel that I could take the time
15 to do that. I think that was about the extent of my
16 conversation with her.

17 Subsequently she sought an interview and I provided it. I
18 don't remember when that was. I don't remember when it actually
19 came -- oh, yes, there is it. It was on Monday, the 2nd.

20 Q There doesn't appear to be a checkmark, by the way --
21 I see, on the last page.

22 A Yes.

23 Q And we are now referring to Exhibit 5083. Okay.

24 Other than the conversation with the lady you have just
25 referred to, are there any other communications with members

rmg 32 1 of the press on Saturday at or about the time of the press
2 conference involving Chairman Hendrie?

3 A. I do not recall any. Saturday was March 30?

4 Q. 31st, sir.

5 A. March 31.

6 Q. Was Saturday.

7 A. I just don't recall any.

8 Q. Okay. I think you indicated earlier that there did
9 come a time Saturday when a decision was made to have all
10 dealings with the media come from the site, rather than
11 headquarters; is that correct?

12 A. That's my recollection.

13 Q. Okay. Do you recall whether you played any part in
14 making that decision, arriving at that decision?

15 A. No. I don't recall playing any part in it, although
16 if asked that's exactly what I would have felt was the course
17 to be followed, and I may well have expressed my view in this
18 regard.

19 Q. Had that course ever been discussed prior to
20 Saturday night among the Commissioners?

21 A. I don't think so. Up until Chairman Hendrie's
22 press conference that afternoon, however, ever since Harold
23 Denton had arrived in Three Mile Island, I think that there
24 had been a natural deference in that direction, simply because
25 he was the expert on the ground and he also carried that

rmg 33 1 additional cachet as being the representative of the President.

2 Q Let me direct your attention now to Sunday, April 1,
3 1979. President Carter went to the site on that day; is
4 that correct?

5 A Yes.

6 Q Were you aware that the President was going to the
7 site before he did so?

8 A Before he did so? Yes.

9 Q Okay. Did you have a discussion among the
10 Commissioners as to the appropriateness of his going to the
11 site?

12 A No.

13 Q Did you have a personal opinion as to the appropriate-
14 ness of his going to the site?

15 A I thought it was wholly appropriate.

16 Q Is it fair to say that over the weekend Commissioners
17 spend a substantial time discussing the hydrogen bubble in
18 the reactor and the possibility of an explosion?

19 A That is fair to say.

20 Q What did you think was going to be the Commissioners'
21 role with respect to these two related problems?

22 A The Commissioners' role, it seemed to me, was one
23 of assuring that whatever assistance might be brought together,
24 brought to bear on the problem from anywhere in the country,
25 should be brought to bear.

rmg 34

1 And secondly, it was clear that we were going to be faced
2 with a decision as to evacuation if the situation continued
3 to develop as it seemed to be developing.

4 However, let me note that as time went on it seemed that
5 the amount of time that would be available might be rather
6 extensive, so that there was time to think the problem through.

7 Q So that you did believe the Commissioners would be
8 in a position to make a decision on evacuation?

9 A Yes. However, having said that, there were certain
10 kinds of scenarios which we could conceive with less likelihood,
11 perhaps, of eventuating, in which it might be necessary for
12 a decision to be made more rapidly, and that was taken into
13 account of the development of that contingency plan to which
14 we referred to earlier in one of your questions.

15 Q All right. Sir, in connection with the role you did
16 play in the NRC's response to the Three Mile Island incident
17 during this time frame that we have been talking about so far,
18 do you think that your capabilities were used wisely?

19 A My capabilities were used wisely?

20 Q Whatever contributions you had to make, that they
21 were called upon and used wisely?

22 A Oh, I think so. I don't think they were called upon.
23 I think they were by and large volunteered. Moreover, when
24 the Staff wanted something I found no reticence on their part
25 about asking. And to the extent they felt they had what they

1 needed and could go ahead and do things, they went ahead and
2 did things. I think they did it well.

3 (Kennedy Exhibit 5084 identified.)

4 BY MR. BALLAINE:

5 Q. Commissioner, I put before you an exhibit marked as
6 5084. The first page of it bears the date March 13, 1975. It
7 consists of seven pages in total.

8 You have seen this document before, have you not?

9 A. Yes.

10 Q. Is this a copy of a document that was shown to you
11 during your testimony, your deposition testimony before the
12 President's Commission?

13 A. I believe it is.

14 Q. Prior to the time, when was the last time you had
15 seen that document or another copy of that?

16 A. Well, I didn't recall seeing it indeed, but I note
17 the date is 1975, and thus given the fact that I suppose in
18 the intervening period between March 1975 and October 1979
19 I may have been on the average 600 pieces of paper a week --
20 that's how many, 30,000 a year times --

21 Q. That's what I wanted to get at.

22 A. You understand, I don't recall.

23 Q. I just wondered if you recalled having seen it before.

24 A. No, I don't. But I am confident that I did, because
25 it says so. I just want to assert that it is not likely that

rmg 36

1 I am going to remember all the documents that passed my desk
2 since 1975.

3 Q That's quite understandable. Those questions were
4 not asked in the President's deposition. I was wondering --

5 A Oh, they did. They asked if I had seen it before.
6 I said I didn't think so. Maybe that was a different document.

7 Q I take it then that you do not recall the circum-
8 stances leading up to the preparation of this memo that's
9 before you?

10 A No. How would I? You will note it was addressed
11 not to the Commissioners, but to a Commissioner. And it says
12 here that it was done in accordance with that Commissioner's
13 oral request. So you know, beyond that I can't imagine what
14 the circumstances would have been. And since I had nothing
15 to do with them, I wouldn't want to testify.

16 Q I take it you also would not know what action, if
17 any, the Commission took as a result of this memorandum?

18 A So far as I know, as to this particular memorandum,
19 there is no specific action taken related specifically to it.

20 Q Related to the document before you?

21 A Specifically to it. Now, as to the matters discussed
22 in it, I am confident that if we wanted to sit around and
23 spend a few days we could develop a rather extensive list of
24 things that have been done that would relate to the subject
25 matter of the document. I could not do that this afternoon,

rmg 37

1 but we can certainly do it.

end #15

2 Q. Thank you.

3 Sir, with respect to a decision by the NRC as to whether
4 or not to license the operation of a nuclear power plant,
5 is it fair to say that the statutory mandate charges the NRC
6 with the responsibility for ensuring that there is no undue
7 risk to the health and safety to the public in connection with
8 the operation of a power plant?

9 A. That's right.

10 Q. What do you believe those terms no undue risk mean?

11 A. You mean beyond what they say?

12 Q. Yes.

13 MR. CHOPKO: I take it you are not asking for a
14 legal conclusion?

15 MR. BALLAINE: I am asking what he believes they
16 mean.

17 THE WITNESS: That's the reason for my question.
18 They mean what they say.

19 BY MR. BALLAINE:

20 Q. Okay. No further meaning beyond the four corners
21 of the words.

22 A. That's right. You know, what is no undue risk?
23 It means just that, that you have ascertained that you have
24 adequately protected against risk to the public health and
25 safety.

rmg 38

1 BY MR. MC GOVERN:

2 Q Does it mean that, though, Commissioner? You have
3 adequately protected against risk?

4 A Yes.

5 Q I would think that --

6 A Adequately protected against risk to the public
7 health and safety. Okay, you know, against undue risk, undue
8 risk to the public health.

9 Q It's like when crime reaches an unacceptable level,
10 one begins to wonder what is the acceptable level prior to
11 reaching that top-off point.

12 But I think what we are interested in pursuing with you
13 is that it is clear that the NRC is not acting as a guarantor
14 of 100 percent, zero risk.

15 A] There is no such thing as zero risk.

16 Q But there is, as I understand it, a risk posture
17 that is substantially higher, or the lack of accident could
18 be substantially higher if we were prepared to pay the money.
19 And I use the example of our space program, where a conscious
20 decision was made early on that they were going to seek safety
21 out to a certain decimal point, recognizing that it was going
22 to cost many millions of dollars more because of those extra
23 decimal points that they were aiming at.

24 And what we are dealing with here is a statute that says
25 no undue risk. And one might speculate that that's a pulsating

rmg 39

1 standard, that you licensed reactors 10 or 15 years ago under
2 that standard, and since then have found a whole host of
3 additional requirements. In other words, that reactor could
4 not be licensed today as it stood.

5 So that what we are interested in is the moving nature of
6 the definition.

7 A Yes, I understand. I understand the nature of the
8 question.

9 Starting with the posture that there is no such thing as
10 zero risk, the question is: How close to whatever the upper
11 limit is do you want to go and at what point are you willing
12 to accept some level of risk; that's really the question.

13 Q Yes.

14 A Okay, I understand. Well, that's philosophical,
15 I suppose. I don't think it's quite accurate to say that
16 we would not license a reactor today that was built some
17 years ago and is now operating. I don't think that is fair
18 to say. You wouldn't build it, so the question wouldn't arise.

19 Whatever it takes to make, as time has passed and new
20 design criteria have been developed based upon new knowledge,
21 new technical understanding, as the industry will be glad to
22 tell you we have had little or no reticence about ratcheting
23 them upwards.

24 And that ratcheting has not been limited to new plants. It
25 has been backfitted. And if the judgment is that without that

rmg 40

1 new fix the old plant simply does not meet that standard of
2 no undue risk, then the plant will be shut down until it's
3 fixed, until that fix is installed.

4 And if the fix -- and if they don't want to put it in, they
5 don't operate the plant. And as an example of that, and I
6 discussed that as an example in my other deposition with the
7 President's deposition, the Indian Point matter where they
8 concluded it simply isn't worth trying to fix it. The amount
9 of investment that would be required would exceed what they
10 would consider the value, and therefore the plant is shut down
11 and will probably, although the decision is theirs, it will
12 probably sit there. We won't let it open until they fix it.

13 Now, it seldom ever comes to that. They conclude that,
14 in fact, the value in fact is that it ought to be -- they will
15 go ahead and fix it, and then it will be allowed to operate.
16 But only if we do that.

17 Q. Commissioner, isn't there a delicate balance, and
18 perhaps your example is very poignant, that only once did a
19 company conclude on a -- presumably on a dollars and cents
20 basis, that the fix --

21 A. I think so.

22 Q. -- that the backfit was too expensive for their
23 forward operation.

24 Doesn't that highlight a delicate balance that exists
25 between the standard of no undue risk to health and safety

rmg 41

1 and the economics of the industry?

2 A. I'm not sure that it does.

3 Q. If you took your Staff --

4 A. There are obviously economic considerations involved,
5 clearly.

6 Q. You see, what we are interested in doing is giving
7 the public as clear a picture and have the public understand
8 that the NRC is not a guarantor. I believe the perception of
9 the American public, at least many people in the American
10 public, views the NRC as some sort of guarantor, a savior,
11 a position between it and the industry to make sure nothing
12 goes wrong. Nothing. Zero risk.

13 And if that is true -- if that is how they perceive it,
14 they should have people like you, Commissioners, express
15 exactly what you view the equation to be. And that is what
16 this area of question really is.

17 A. I understand that. And let me say that I don't
18 think I can give you an equation. It is a judgment, it is a
19 balance. But it starts with a presumption that the public
20 health and safety has been protected to an adequate, reasonable
21 level. That is, that there is not an undue risk.

22 Risk, there is. Of course -- there is no way in which you
23 can make this a risk-free society in this field or any other.

24 If you look at the likely consequences and the probabilities
25 of an accident together or an incident and conclude that either

rmg 42

1 the consequences are so small or the probabilities so small
2 or both as to be all but de minimis, then the question is,
3 how much do you want to pay to protect against that?

4 If you can further circumscribe those situations, take a
5 look at them and see if you can take even those instead of
6 trying to prevent those necessarily, recognize that they may
7 happen, however, and probably -- and then try to circumscribe
8 those with other systems so that again, even if they happen,
9 the consequences are further diminished.

10 Now, it seems to me that is the only way you can deal with
11 the problem, unless you want to delude yourself into thinking
12 that there is some way in which you can come to that zero
13 risk.

14 Q But coming back from a different direction, you
15 have spoken as the regulator. Coming back from industry's
16 position, industry goes into a nuclear reactor or a vendor
17 goes into the business because he thinks that corporately
18 there is a profit to be made. Indeed, they ought to be
19 encouraged that that is what the system is all about.

20 If, on the other hand, they must deal with a regulator
21 who presses down risk close to the zero line, you are pressing
22 against that man's profit margin. And that is what I want to
23 talk about, that economic pull and tug that exists and how
24 do the Commissioners grapple with that.

25 A Well, I don't grapple with the economic question

rmg 43

1 very much until I am satisfied in my own mind that that very
2 small risk question has been resolved. That is, I am dealing
3 with not a major or important risk.

4 If I am satisfied with that, then the question of economics
5 may enter. Is it worthwhile, then, to get some small incremental
6 increase -- some small incremental reduction in risk. Is it
7 worth doing that in terms of the cost that is going to be
8 entailed, which after all is going to be paid by the consumer
9 who you are protecting against that risk.

10 And that is a question that has to be dealt with, but only --
11 only after one satisfied himself, in my judgment, that he is
12 talking about that kind of an incremental increase in effec-
13 tiveness, and not an important one.

14 Let me turn it around the other way. You cited the
15 industry's concern for its profit. Of course, it is going to
16 look for some kind of income, profit from a very substantial
17 investment.

18 But, as I have stated on a number of occasions, this is
19 a business in which safety is perhaps its most important product.
20 And if a vendor can't develop a reputation for producing a
21 machine which will operate against the highest standards of
22 safety, meet those standards, perhaps surpass them, and do it
23 in a way in which the operator of that machine who isn't going
24 to be the guy who built it can operate it with a measure of
25 confidence that he knows how to do it, that that machine isn't

rmg 44 1 going to run away from him, that he isn't going to lose his
2 investment and perhaps damage a lot of people, then I dare say
3 that that vendor probably isn't going to sell much of that
4 product, and I think that's the way the system works.

5 And that's the way the profit motive rubs up against the
6 responsibility of American industry.

7 Our problem in this country, I believe, has been for some
8 time that we have lost the incentive to excel. There used
9 to be a time when if you went down to buy a General Motors
10 automobile or anybody else's or Chrysler, you bought it because
11 it was the best automobile in the place.

12 And what did the best automobile mean? Not just the
13 cheapest, not just the fastest, but an automobile that was
14 really first-class in the way it was built. Standards of the
15 day.

16 I don't think we do very much of that any more. And I
17 think that applies everywhere. It applies to the guy who goes
18 and builds a plant and suddenly finds out, if one can believe
19 this -- I have difficulty in doing it -- who builds a plant
20 and finds that he has poured several million yards of concrete
21 and left out a few tons of rebar which is still sitting out
22 there on the ground which belongs in that concrete.

23 Now, if you can build things like that, no amount of
24 safety regulation is going to help you. You have got to get
25 back to the basics. That is, the incentive of the people who

rmg 45
1 are working on the job, the people that are managing those
2 jobs, the people that are designing them, and finally the
3 people that are operating them.

4 BY MR. FRAMPTON:

5 Q Commissioner, do you think that the economic incen-
6 tives on the manufacturers of equipment for commercial plants
7 is really demonstrated by experience to be an efficient
8 incentive to safety when you look at the fact that most of the
9 problems that occurred at TMI-2 in its history and the problems
10 that caused this accident are problems in the secondary side
11 of the plant, the part of the plant that is not under the
12 purview of the NRC?

13 Nor is it within the NRC of the QA/QC program of the
14 utility program itself, and where the only incentive is not
15 regulation but the desire of the vendor to produce the product
16 that will perform, and yet that is where the problem are.

17 What does that tell you about this theory?

18 A Well, you just told me that I am right. I agree
19 with you 100 percent. That is precisely the problem.

20 If that incentive doesn't rise people to build a good product,
21 all the regulation in the world isn't going to guarantee it.
22 That's exactly my problem.

23 People have the notion if you just pile enough regulators
24 on top of a system, you are going to get something from it.
25 I say you are going to get regulation from it, you are not going

1 to necessarily going to get better product. The incentive has
2 to come from people. It has to come from, you know, the basic
3 ethic.

4 Maybe -- I'm giving a political speech, for God's sake.
5 Maybe we need to go back to basics, back to school were kids
6 used to be taught -- I remember, you remember -- kids used
7 to be taught that to do things right was important. And if
8 you didn't do things right, you paid a price for it when you
9 were 5 years old and 6 years old.

10 Now, I think, you probably get a medal -- not as good a
11 one, but you get a medal anyway. It doesn't make a difference
12 whether you do it right or not.

13 Now, let me just tell you that that is wrong, and that is
14 exactly why I read the other day that a plant closed down for
15 a day because a half dozen workers didn't come in because the
16 subway wasn't running. So they just didn't come in.

17 But I will bet you if you had taken a look to find out where
18 they were, they weren't home either. They used an excuse not
19 to go to work.

20 There was a time people didn't do that, because if they
21 did, they didn't come to work the next day. There was a whole
22 ethic that was different.

23 Q. Well, for better or for worse --

24 A. Don't tell me we are going to accept it.

25 Q. -- the public or a large segment of the public

rmg 47

1 regards this agency, the Nuclear Regulatory Commission, as
2 the agency which has the principal responsibility in the country
3 for doing what it can to make sure that commercial nuclear
4 power plants are as safe as the public would like them to be.

5 And I guess my question to you is, if this is your view
6 of the overall situation and if extending the depth and
7 breadth of regulation isn't going to make that much of an
8 impact in decreasing that margin of risk, what is it that the
9 NRC should now be doing to make an impact on that situation?

10 A. Okay, having said what I believe about where much of
11 the problem lies, that people look to regulators to resolve
12 which is with American labor and American management -- I'm
13 blaming both of them, because it wasn't the labor that was to
14 blame for leaving the rebar on the ground and pouring millions
15 of yards of concrete without it -- that was the QA/QC program,
16 that was a simple management exercise.

17 You know, it was the kind of thing for which people used
18 to get fired. Now, I guess they make them vice-presidents,
19 I don't know, but that's management.

20 By the same token, the people who pour concrete and leave
21 holes in the wall are laborers, and that is quality, and if
22 a guy doesn't care about quality, neither you nor I nor
23 any other regulating agency is going to help much in the long
24 run.

25 Now, having said that, what I am trying to say here, and I

rmg 48
1 will come to what the regulator can do, but for God's sake
2 let us not do what has been done in this country for the last
3 15 years that I know of, and try to rest all the solutions
4 to all of our problems on one more federal agency and 500
5 more regulators, all of whom get overpaid, because it won't
6 do any good.

7 The problem lies with people and they have to get back to
8 the basic kinds of educational thrust, you know, the kind of
9 thing that causes people to want to do well. And that's inside,
10 that's not regulators that cause that; okay?

11 Now, having said that --

12 Q. What little contribution should this agency --

13 A. What this agency can do is not solve that problem,
14 and if the people of the United States start out with the
15 assumption as you made it, that we are here and we are going
16 to be the saviors, we are going to solve all regulatory --
17 we are going to solve all safety problems, they are going to
18 sadly mistaken, they are going to be misled.

19 And I, for the length of time that I am in this agency,
20 will not allow that. It's wrong, it's untrue, we aren't.

21 Now, what can we do? Well, first of all, we can inspect
22 tighter. We can drive companies to look at themselves. And
23 I have enough faith, you know, to believe that there are a
24 hell of a lot of people out there, just a lot of people out there,
25 who believe that doing a first-class job is important.

1 And I believe when they are shown by reasonable people who
2 are not in the business of merely sticking it in their eye,
3 but of seeing to it that they are helped to do the right kind
4 of a job, that they will develop the kind of attitude that
5 will make this a workable proposition. And without it, it is
6 not going to be a safe proposition, in my judgment; it just
7 isn't.

8 BY MR. MC GOVERN:

9 Q Commissioner, you put your finger on something that
10 troubles me no end. Your description of the sloth and the
11 sloppiness in construction and in maintenance. And I have
12 likened the NRC's inspection program to the philosophy we
13 have in our income tax collection: self-assessment.

14 Now, the self-assessment system is proudly touted by our
15 Commissioners as the American way of doing things. They don't
16 tell the public that without withholding tax we would be
17 stolen blind. It would be like any one of the South American
18 countries with an income tax.

19 Yet you are using the same self-assessment system. You are
20 conducting paper audits. And you have already indicated you
21 don't have that much confidence in the current work ethic.

22 Why should the public feel comfortable when they aren't
23 told that the utility is supposed to put down all of its problems
24 and the inspector comes in and matches the problems and the
25 machinery, the pumps and valves that aren't working against

rmg 50

1 a list of repairs, and if they are a match then his audit is
2 satisfactory and complete?

3 A. There are two aspects to that question.

4 First, what else could you do? As a practical matter, some
5 measure of self-assessment is the only answer. That goes in
6 part to what I was saying earlier. It is just simply physically
7 impossible for this or any agency that I know of, unless we
8 are going to become another HEW, to perform the kind of audit
9 that would be required to look at every just safety system in
10 the plant, to say nothing of all of the rest of it, and you
11 are right about the balance of plant business. That enhances
12 my argument; you are right about that.

13 But if we can't -- if we can't rely upon them, that's what
14 we have to find out. If we can't rely on them, then we just
15 ought to stop them.

end #16

16 Q. That's the conundrum. That's the problem that is
17 coming into focus at this point, that we are beginning to see --
18 the self-assessment system required Davis-Bessie to describe
19 exactly what happened. And my understanding is that they
20 didn't describe exactly what happened.

21 The failure on the part of operators certainly was not
22 described. And yet that was an accepted factor.

23 It is back to my IRS situation. You tell me on the return
24 that you have a building that has a useful life of 40 years
25 and I will debate with you what the depreciation should be.

MM gsh 1 Yet, someone's going to find out there and find out it's a lot
2 empty, with no building on it. And that is to me a very
3 troublesome feature.

4 And maybe the type of inspection program that gives
5 you a candid picture of what's really going on there is a
6 necessary item before you can take the next step--!because
7 it may be that you are satisfied and it may be that you will
8 want to say, we cannot police this industry because they're
9 not policing themselves and that the American public is
10 sadly mistaken to believe that there is no undue risk to
11 health and safety.

12 A I am asserting that this industry does not -- and
13 I've told this industry that -- if this industry doesn't take
14 the responsibility for safety upon its own back, if it sits
15 and waits for us, then there isn't going to be any industry.

16 I've told them that and it's right.

17 If we can't at some point have a reasonable presumption
18 based upon a reasonable kind of checking, and checking, of
19 course, is necessary, but a reasonable measure of checking
20 that self-assessment, if we can't assume that they are doing
21 an honest job of self-assessment, then I think it ought to
22 be stopped because there is no way at that point that safety
23 can be guaranteed in any significant measure.

24 It has to rest with them. That's the message that I'm
25 trying to convey. It has to rest with them. It cannot be put

MM gsh

1 on the back unless you want to have a million people in this
2 agency who can go around and check every valve.

3 And remember, it's not only every valve, but the alignment
4 of each of those valves. And to be sure that every single
5 pipe has been laid in that plant precisely as it was
6 designed and that the design itself in every respect was
7 precisely according to the highest safety standards.

8 You know, there's no way in the world that a single
9 agency can do that in respect to every plant unless it wants
10 to build every one of those plants itself.

11 Now that's an idea that somebody has come up with, you
12 know.

13 But what is to say that a plant built by, you know, some
14 federal agency is necessarily going to be any better than the
15 quality of the workmanship that went into it?

16 And the answer is, nobody's going to say that.

17 Q Commissioner, you have made your job more difficult
18 by not seeking standardization of plants.

19 A I agree with that.

20 Q And you have -- this is one of the problems that
21 come with it.

22 Let me go back to my financial concern. I have seen in
23 other depositions and other inquiries the question of whether
24 TMI was a Class IX accident. And the debate goes on.

25 It would seem to me that TMI was a Class IX or X or XI

MM gsh 1 financial disaster of the highest magnitude, and I have
2 seen figures that indicate they almost will -- the original
3 cost may be duplicated in the repair.

4 Now how many of the utilities in this country could bear
5 that kind of a cost? Is that a factor that the NRC considers
6 at the outset in licensing?

7 Just how much weight is given to the financial viability
8 of the utility?

9 A Not a great deal, although we do examine the
10 financial qualification, there is some suggestion that we
11 ought not to even do that. But we do look at the financial
12 qualification as one of the considerations. Is the utility
13 capable of building that plant, bearing the cost of
14 producing that plant in accordance with the standards that
15 have been laid out and the plans that have been approved,
16 and then operating it effectively?

17 Is it prepared to pay that cost?

18 Q Would you factor in now consideration of that plant
19 being shut down or --

20 A I don't think that's for us to do. I think that's
21 for the public utilities commissions to do.

22 Q Well, in considering the financial viability, what
23 I am concerned about is, again, the tension that exists
24 between a utility operating a plant and operating with a
25 balance sheet in mind, and the regulator's desire that if

MM gsh 1 there is any unsafe situation, that they immediately shut
2 down.

3 And I would see this as a tension of some enormity.

4 A Not for me, as the regulator's side of this thing.

5 Q Well, carrying my question out, if you go to --
6 Bob, you have been telling me about some of the smaller
7 utilities. I don't think that you have to name them. But
8 there are utilities that are much, much smaller than GPU that
9 are operating reactors. And if they had a serious problem
10 where they had to shut down for 2, 3, 4, 6 months and you
11 projected that at the licensing stage, you might come
12 quickly to the realization that there's no way that they
13 could financially maintain that position.

14 And it is conceivable in the operation of a plant that
15 they will have to shut down, and you are putting them in that
16 tension-ridden situation where they may not see a shutdown
17 as being a safety issue; whereas, you would have if you were
18 overseeing them on a day-to-day basis.

19 A I guess I am not understanding the question. If,
20 in fact, we thought that plant ought to be shut down for
21 a safety reason, there are no economic considerations that
22 would say that we shouldn't do it.

23 Q I appreciate that. I don't doubt that in the
24 slightest.

25 What I'm saying is why give them the license in the first

MM gsh 1 place?

2 If you could project that within the next ten years they
3 will be shut down for a six- to eight-month period and that
4 that type of a shutdown will cost them X-million dollars,
5 an amount that they cannot afford --

6 A That's for them to decide. You know, they are
7 doing their financial planning; I'm not.

8 Q But what I am saying is that when you give them the
9 license knowing that there is this possibility when it comes
10 to safety issues -- and the licensee is the first line of
11 defense on safety issues, you are not there; he is there.

12 what I am saying is that he may be driven --

13 A We're correcting that. We're going to be there,
14 too.

15 Q He may be driven by the economics of the situation
16 to take an undue risk to health and safety.

17 A I don't think he -- let me put it this way. I
18 think it would be very hard for him to do that without our
19 being aware of it.

20 Q Not if you have paper audits and he's writing the
21 paper.

22 A Well, they're not all paper audits. There are
23 some hands-on inspection done, too. Not enough, I'll agree
24 with that. Not enough.

25

MM gsh 1

BY MR. FRAMPTON:

2 Q You mentioned before that you think the agency can
3 put more pressure on companies to clean up their act, so to
4 speak.

5 Do you think that's possible under a framework in which
6 the only direct pressure is applied to electric utility
7 companies, most of which do not have a substantial nuclear
8 expertise and only indirect pressure is available to be
9 applied on the people who build the plants, build the
10 reactors and are in a position to assess overtime the
11 operating problems for particular designs or particular
12 installations?

13 A I agree with the basic thrust of that question, or
14 the point that underlies it, that there ought to be a much
15 greater attention to vendor inspection.

16 I have always thought that.

17 The problem is where are you going to get the people to
18 do that. And that, again, comes back somehow one has to
19 believe or be able to believe in the basic competence and
20 good faith of the people who are building these things.
21 Otherwise, they just ought not to be built.

22 And that's true of a lot of other things. I'm not just
23 talking about this industry. It's true of a lot of other
24 things.

25 After all, we have the chemical industry to look at. And

MM gsh 1 what I am trying to say is I think we ought to have a much
2 more direct influence on the manufacturers.

3 But it goes way beyond that because it's an enormous
4 industry. It reaches down to all kind of pipe and valves,
5 all kinds of motors and pumps, and they are made all over
6 the place. They have to be made against standards.

7 The ANSI standards are there and they are presumably being
8 reinforced and enforced.

9 It's a very elaborate system, but it finally depends upon
10 the quality of the work that's being done.

11 And one hopes -- I certainly do -- that we will be paying a
12 lot more attention to quality than we have in the past.

13 Q Given just the concerns that we have discussed
14 right here on the record and that you have expressed or that
15 we have expressed about things that need to be done better,
16 does that subset of things and any additional things that
17 you may have in mind give you any pause about whether the
18 continued operation of existing plants or those for which
19 construction permits have been granted would, if none of
20 these things are done, pose a "undue" risk of harm to the
21 public safety?

22 A If I thought that this industry was going to do
23 nothing, and I am speaking about this industry in its
24 broadest context, both the utilities and the principal
25 vendors of the steam supply systems and their architect

MM gsh 1 engineers, if I thought that they were going to do nothing in
2 the way of self-examination, if I thought they were to do
3 nothing about improving the way they do business — that is,
4 their own quality standards and performance over the next
5 five to ten years — then I would say forget it. There is no
6 way in which we can rely credibly on what I believe to be
7 a very important energy source and one which I believe is
8 safe and far less environmentally damaging than almost
9 anything else that one can conceive.

10 Q Well, then, does that affect your retrospective
11 evaluation of whether the judgment that had been made as of
12 March 27, 1979, that there was no undue risk was accurate?

13 A I think that was a reasonable judgment.

14 Q At that time?

15 A Sure.

16 Q But I take it now that you are saying if you thought
17 there would be business as usual, you would not find that
18 acceptable.

19 A I want business as usual to be, as everybody knows,
20 that's a thing with me, business as usual — I want to be
21 the highest order of standards.

22 You know, business as usual in this agency ought to be the
23 highest accolade that could be paid to it.

24 Okay?

25 Q Is it —

MM gsh 1 A It's going to be if it isn't.

2 Q Has it been in the past?

3 A I believe it has.

4 BY MR. ROGOVIN:

5 Q One of the things that I find very interesting is
6 the process -- you look at the vendors, the licensee,
7 prospective licensee, and the NRC all seem to get together at
8 the outset and the licensee really hires the architect
9 engineer and the vendors as his champions.

10 I get the impression that the utility -- I'm not talking
11 about all the utilities. I know some of them are superbly
12 managed and have high technical competence. But many of the
13 utilities really don't have any of those qualities. And so
14 they hire them and they hire the champions to do battle with
15 the NRC.

16 And indeed, an honest battle goes on and a proper license
17 is issued.

18 And, in effect, the keys of the car are then flipped over
19 to the least competent in the grouping to now do the most
20 dangerous of all things -- to run, to operate.

21 And when you look at the NRC, the truly -- there are more
22 talented people in the licensing process than there are in
23 the operating side of the NRC, or so it seems.

24 A You mean operating side -- you mean inspection?

25 Q Inspection, yes. And that the talent on both sides

MM gsh 1 of the equation, the utility and the regulator, seems to
2 slope downward during the operating phase and really reaches
3 magnificent heights in the licensing stage.

4 Is that an undue characterization?

5 A That's an interesting characterization. I guess I
6 hadn't thought of it that way. I don't think I fully accept
7 your characterization of the inspection staff. I think, first
8 of all, I think they are, for the most part, are we using the
9 wrong people?

10 BY MR. BALLAINE:

11 Q I'm wondering whether the technical talent. That's
12 what he's talking about.

13 BY MR. ROGOVIN:

14 Q The technical talent. I'm not denigrating the
15 engineers.

16 A I'm talking about the technical talent.

17 Q I'm talking about the highest levels. You have
18 fewer higher level technical people in I&E than you seem to
19 have on the other side.

20 A I guess if that's so, I was unaware of it. I know
21 an awful lot of those people, and there are an awful lot of
22 extraordinarily able people, many, many of whom, by the
23 way, come from the other sides of the House.

24 And if it were up to me, as a lot of these fellows would
25 be glad to tell you, a hell of a lot more of them would be

MM gsh 1 moved from the other --

2 Q Move them around more?

3 A They would be moving around all the time because
4 in this agency, and I see some heads nod because they have
5 heard me on this subject for the last five years -- they
6 know full well that I have always believed, and I believe even
7 more strongly today than five years ago, that there is
8 nothing which so strengthens an organization as to have the
9 people in it understand each other and the jobs that they
10 have to do.

11 Each, then, is reinforcing the other in terms of the job
12 that has to be done.

13 There has been a notion in this agency since its
14 foundation -- well along before its foundation -- when the
15 regulatory activity began, the notion was first you have to
16 separate all regulatory activity. That's, you know,
17 inspection and enforcement, everything else. You have to
18 separate that from the rest of the agency, the AEC.

19 Now, secondly, you have got to separate the enforcement
20 guys from anybody else because there's a conflict of interest.

21 Well, you know, if you keep that up, you begin to
22 separate men and wives and all kinds of problems begin to
23 arise.

24 It's ridiculous. You decide what the mission of the
25 agency is and the pursue that mission. And if the mission of

MM gsh 1 the agency is the operation of safe reactors, then you find
2 out how to do that best.

3 And one of the ways is correct the very problem that you
4 are talking about to the extent that it exists.

5 There ought to be in this agency and anything like it the
6 highest quality of talent on both sides of the issue. And
7 they ought to be interrelated, not separated.

8 Q It certainly seems from a short examination that
9 there are fierce loyalties within divisions.

10 A There are fiefdoms, each independent of the other.

11 Q This then leads us into perhaps a few minutes of
12 discussion of the organizational structure of the NRC
13 itself.

14 And I am interested, and I think your analysis of
15 collegial work and how it can work is a very reassuring one.
16 And yet, I'm troubled that since the dawn of time, or at
17 least the turn of this century, advisory group after advisory
18 group, including the AEC in 1961, has said that that collegial
19 agencies just don't work, they don't have the adequate
20 leadership. They don't have accountability, that they suffer
21 in a host of ways.

22 And as you can well appreciate, with all of these
23 groups re-examining the NRC, there's doubtless going to be
24 focus on that point.

25 Perhaps you would like to give us your views as to how

MM gsh 1 you would see the NRC operating.

2 A You are suggesting -- those who say this are, of
3 course, suggesting that the American corporate structure hasn't
4 functioned well at all since the turn of the century.

5 Is that what I'm led to believe?

6 Q I don't think they're saying that at all,
7 commissioner. I think the chief executive office, whether
8 he be chairman of the board or president, is indeed that.
9 But we don't have many agencies in government -- the
10 Federal Reserve Board perhaps is separate and distinct, but
11 we don't have many agencies that have a board of directors.

12 A What I am suggesting is that that's the way I think
13 this or any collegial agency functions best. And if it is
14 constructed and functions in that way, the very aspect of
15 collegiality adds an important dimension to its work and its
16 efforts.

17 That's exactly my point.

18 There should be a chief executive officer. It is my
19 view that that's what the chairman should be. Indeed, I
20 think that that is essentially what the law now says.

21 The law did convey in an amendment to the original
22 proposition, convey certain administrative functions and
23 responsibilities to the chairman.

24

25

MM gsh 1 I believe those functions perhaps ought to be strengthened,
2 but in any event, should be pursued.

3 Q That's a minority view, is it not, about existing
4 law?

5 A Oh, I don't know whether it's a minority view or
6 not. It's at least a view.

7 Q No, I mean a minority among the commissioners.
8 From the depositions I have read, I see each one of them as
9 a 20 percent shareholders.

10 A Well, so I am I. I'm a 20 percent shareholder.
11 But I'm suggesting that that in no way is inconsistent with
12 having a chief executive officer to whom have been conveyed
13 certain of the responsibilities.

14 Q It's that conveyance that's missing.

15 A The 20 percent -- but the law is there. The 20
16 percent that I'm talking about is 20 percent of perhaps 90
17 percent. Do you see?

18 I have 20 percent of all of the substantive questions and
19 issues that are the responsibility of the agency.

20 But I don't have 20 percent of the execution
21 responsibilities. Those things are a matter, having decided
22 them, then a matter for the chairman to execute.

23 Our proble, I think, from time to time has been we have
24 more executers than we really need. And I don't think that
25 anything works very well that way because execution doesn't

MM gsh 1 take place.

2 Another thing --

3 Q Where are these executers to be found? Where would
4 one find the executers?

5 A Well, we've got five of them.

6 Q Okay.

7 A I don't think you need more than one.

8 BY MR. FRAMPTON:

9 Q So there is no person who for the last year has
10 functioned as the chief executive officer of this agency, in
11 your view?

12 A Well, not to the extent, in my judgment, that the
13 law would permit, and I think the law ought to demand.

14 Let me just say that I have no difficulty whatever in
15 seating any responsibilities I might think I have in this
16 regard to the chairman. None. I think that that's the
17 way it ought to be.

18 I think the chairman ought to be the spokesman for this
19 agency. I think there ought to be, you know, everybody rushing
20 off and doing his own thing with the press if he wants to.
21 I don't think that that makes any sense. You don't see that --

22 You know the Federal Reserve Board is an example of an
23 agency which functions very well this way. Maybe it's because
24 you have people who are governors of the Federal Reserve Board
25 know very well who they are.

MM gsh

BY MR. OGOVIN:

1
2 Q Indeed, there is a lot of policy that they are
3 involved in. I don't mean to be offensive by this, but I
4 see in attempting to fathom what it is that a commissioner
5 does, I see that you don't "commish" very much, that you are
6 involved in a lot of public meetings or meetings where a lot
7 of the administrative detail of the NRC is pursued. But
8 when it comes down to what the American public is waiting
9 for you to do to give that final okay, saying that this
10 plant is ready to go on line and it not an undue risk to
11 health and safety.

12 There are other adjudicatory boards that really undertake
13 that and you are an ultimate appeal within the agency, but
14 really pursuing that role.

15 A That's a fair statement. I'm not sure that I
16 would take that to be a condemnatory note. I think that
17 represents a rational organization.

18 I don't think that the commission itself -- let me put it
19 this way. Let me turn it around.

20 I think the commission can involve itself more in the
21 adjudicatory process. I think it can involve itself more in
22 the licensing process. But I don't think that the commission
23 can over time be that final license issuer in all licensing
24 matters.

25 It just won't work.

MM gsh 1 It is too involved and too extensive a process involving
2 too elaborate and I think necessary an adjudicatory process
3 to arrive at a conclusion and decision for the commission
4 to involve itself.

5 Moreover, to the extent that it does, it denies itself
6 the opportunity to be that final level of appeal, whatever
7 level you want to put that at.

8 You can't have it both ways. And these agencies were
9 created to keep a lot of that stuff out of the courts, I
10 think.

11 And for us to change --

12 Q But it seeps into the courts.

13 A Of course. But the question is does one want to
14 drive it all there? One has to think as he looks at the
15 structure whether that's the inevitable result of what
16 otherwise might seem to be a worthwhile change to involve
17 the commission more deeply in the licensing process.

18 There comes a point when you can't have it both ways.

19 Q Well, it could be argued, though, that the
20 management could well still be conducted by the single
21 executive and the adjudicatory function for which commissions
22 have historically played such an important role. The
23 commissioners should be limited to that adjudicatory
24 activity.

25 A There's a lot of other activity which is beyond --

MM gsh 1 that's associated with the health and safety business, which
2 is in a sense policy-making. It is policy-making. It's a
3 question of what should the standards be concerning low
4 level radiation? What should we be doing about waste?

5 Q We will not get into that question.

6 A But all of those questions are questions that are
7 before the commission and it is not accurate to say that what
8 the commission does and all -- and I think the record will
9 clearly show this -- I think one ought to get from the
10 Secretary of the commission a list of the policy papers which
11 the commission has dealt with over the past three years,
12 four years, I don't care. And one will find a very, very
13 large panoply of questions and issues on which policy
14 guidelines had to be established.

15 Let us go back to one that some of our present company
16 will certainly call -- safeguards.

17 We started with almost zero and created an entire policy
18 framework. Now you know that took time and it took very
19 careful consideration by the five guys who finally made
20 all those decisions, and a hell of a lot of extraordinarily
21 good and effective staff work to get it to a position where
22 they could reach wise decisions.

23 And I think the decision-making has been sound and good.

24 Having said that, let me say that I think it's too slow.
25 It can move more rapidly. It can be done. And that in no

MM gsh 1 sense says that that takes away from that single executive.
2 I don't mean that at all.

3 We don't need to get in the business of all the personnel
4 actions in the place. We don't need to get in the business,
5 in my judgment, and we don't very much, of a lot of the budget
6 stuff.

7 We did at the beginning.

8 Remember, you are talking about an agency that is less
9 than five years old, an agency that came into being as a
10 non-agency, essentially.

11 The agency that came into being was what is now the
12 Office of Nuclear Reactor Regulation. All the rest of that
13 has, by and large, been created since in response to actual
14 needs and statutory mandates.

15 All the administrative support that exists had -- 90
16 percent of it, at least, has been created out of whole cloth
17 since. It didn't exist. It was all performed for this
18 agency by its parent out in Germantown.

19 So when one hears about all the great administrative
20 deficiencies, one ought to say as compared with what? And
21 I am not for a second suggesting that this is any paragon.
22 It isn't. But neither is it by any odds the worst I've ever
23 seen.

24 MR. ROGOVIN: Mr. Ballaine, do you have anything
25 further?

MM ash

1 THE WITNESS: I'd like to add some more things about
2 the collegial business.

3 I believe and, you know, when I came to this agency, I
4 came from an atmosphere in which collegiality was not
5 considered next to godliness by any manner or means. It was
6 an atmosphere in which hierarchy was understood and either
7 accepted or acceptance was soon arranged for it.

8 So this kind of a body raised questions in my mind, you
9 know, what's its purpose?

10 Obviously, you could run this place better with one guy.
11 Any one of us could do it better than the five of us are
12 was my sort of general impression.

13 That isn't true. However hackneyed the expressions might
14 be, they are true.

15 That five people with different perspectives and backgrounds
16 can provide wise decision-making when you're talking about
17 establishing standards and you're talking about establishing
18 policy in any kind of a realm.

19 It's true that it's less efficient, but that can be
20 corrected, as I suggested, by conveying those things in which
21 efficiency becomes that important to somebody to whom you
22 see to your responsibility and say that's your responsibility.
23 Carry on. You have my proxy.

24 BY MR. ROGOVIN:

25 Q Well, you make compelling arguments. And I heard

MM gsh 1 all through your discussions as to how during the TMI
2 accident you viewed your role as a commissioner.

3 But one cannot always anticipate that attitude in a
4 collegial body. And what we are looking at is the totality
5 for here, today, tomorrow.

6 A Certainly. Let me say that I have one other view,
7 and that is that in this town, as a practical matter, one of
8 the quickest solutions to all problems is reorganizing.

9 And I would urge, as I know you are, because I know the
10 kind of people that you are, I would just urge that it not
11 be forgotten that reorganizing often does nothing but
12 paper over problems, not solve them.

13 The nice thing about reorganizing, though, often has been
14 in agencies that I have seen in earlier incarnations, is that
15 it allows the problem to be papered over long enough for
16 the reorganizer to move on to even greater reorganizations.

17 MR. BALLAINE: Apparently, there's unanimity on that.

18 (Laughter.)

19 THE WITNESS: It's a very typical syndrome and it's
20 a fascinating management concept. People make great
21 careers of it and some of them very successful.

22 But when they finally get to high positions where
23 reorganizing won't hack it any more, they usually disappear
24 from the scene fairly quickly.

25 One other thing about this. I do believe that you are right

MM gsh 1 about the problem of, you know, what about -- never mind how
2 you guys do it, but what about tomorrow?

3 There are ways to deal with that, too.

4 And I regret personally that we did not pursue what wise
5 heads suggested we should back in 1975: The development of
6 a -- I think a rule which governed our own functioning as
7 commissioners.

8 It was suggested because -- you know, I mentioned the
9 small list of functions that were conveyed to the chairman
10 by the amendment to the Energy Reorganization Act early
11 on in 1975.

12 I think it occurred in the summer. That came with a
13 measure of acrimony because however it was initiated makes
14 no matter. The fact was it appeared in the Senate without
15 the commissioners having had an opportunity to think about it
16 much, much less express themselves.

17 And there was some expressions of pain and anguish on the
18 part of some commissioners, I among them. Not because I
19 disagreed with it, but because it seemed to me that was an
20 evidence of a failure of the basic concept.

21 If it was true that those things ought to be conveyed,
22 that was something that had they not been conveyed, we ought
23 to at least have discussed. And having discussed them, I
24 would have certainly put my name in the hopper and created
25 a majority for them.

gsh 1 Anyway, it finally was resolved and was passed and
2 became law.

3 Subsequently, commissioners who have succeeded to the
4 chairmanship have been careful not to execute those very
5 much. And I think that's a reflection of the conditions
6 under which they came into being.

7 I think that's unfortunate.

8 It was suggested at the time, and I remember, I believe
9 it was commissioner, then later Chairman Rowden, who suggested
10 that once that was put into the law, we ought to codify it
11 in a sense into just how we would do business, how we would
12 relate to one another.

13 We ought to write it down and we ought to agree on it.
14 We ought to thresh it out.

15 We didn't. I regret that. But I don't think it's too
16 late to do it. I think it ought to be done. And I think
17 the Three Mile Island matter gives a good basis for doing
18 that because it posed a whole lot of interrelationship
19 problems that people hadn't thought very much about.

20 And I think it can be done. Five reasonable men can do
21 almost anything if they set their minds to it.

22 Q Commissioner, I think I won't disappoint you in
23 closing by saying that we are closing the deposition. Like
24 old soldiers never die, depositions never close. But there
25 is a reasonable likelihood that we would not be coming back

MM qsh 1 to you. But if we did, we might do it on an informal basis
2 to discuss a few odds and ends.

3 MR. ROGOVIN: I want to thank you and your staff
4 for your full cooperation. It's been a long day. You have
5 been charming and a delight to interview.

6 Thank you.

7 THE WITNESS: If there's any way that we can help
8 you at any time, you know that's what we're here for. And if
9 we have agreed to provide anything -- I'm not sure that we
10 have --

11 MR. BALLAINE: I don't think there's anything
12 outstanding at this time.

13 THE WITNESS: Fine.

14 MR. CHOPKO: Except the Hart deposition, the Hart
15 interview.

16 THE WITNESS: As a matter of fact, we will see that
17 you get that. And we have completed the review of that and
18 the editorial changes.

19 Those should be already on their way to you from the
20 other one. And if something arises out of this on either
21 side, I would trust that we would be able to discuss it and
22 deal with it in whatever way seems appropriate.

23 Okay?

24 MR. ROGOVIN: Thank you.

25 THE WITNESS: I thank you for your courtesy. It's

MM gsh 1

been a pleasure.

2

(Whereupon, at 5:40 p.m., the hearing was adjourned.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25