

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY & LICENSING BOARD

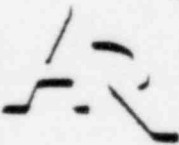
In the Matter of: :
: :
HOUSTON LIGHTING & POWER :
COMPANY, ET AL. :
: : DOCKET NOS. 50-498 OL
South Texas Nuclear Project : 50-499 OL
Units 1 and 2 :

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1 UNITED STATES OF AMERICA

2 BEFORE THE

3 NUCLEAR REGULATORY COMMISSION

4
5 In the Matter of:)6 HOUSTON LIGHTING & POWER)
COMPANY, ET AL.)Docket Nos. 50-498 OL
50-499 OL7 South Texas Nuclear Project)
8 Units 1 and 2)9 Green Auditorium
10 South Texas College of Law
11 1303 San Jacinto Street
Houston, Texas12 Monday
July 20, 198113 PURSUANT TO ADJOURNMENT, the above-entitled
14 matter came on for further hearing at 7:00 p.m.

15 APPEARANCES:

16 Board Members:17 CHARLES BECHHOEFER, ESQ., Chairman
Administrative Judge
18 Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
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WITNESSES:

DIRECT CROSS REDIRECT RECROSS EXAM.

Gerald R. Murphy,
Gerald L. Fisher,
Charles M. Singleton,
Joseph F. Artuso,
Ralph R. Hernandez
and David G. Long
(A Panel)
Resumed

By Mr. Gutierrez 6975

By Mr. Sinkin 7002

EXHIBITS

NUMBER:

FOR IDENTIFICATION IN EVIDENCE

CEU 21(a) 6973 6973

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EVENING SESSION

7:00 p.m.

JUDGE BECHHOEFER: Good evening, Ladies and Gentlemen.

This evening, before we begin, we will start with having oral argument on the question of the confidential informants, but before that, are there any preliminary matters that anyone wishes to raise?

(No response.)

JUDGE BECHHOEFER: Since the oral argument is on a Board-raised question, more or less, I'm not sure who should go first.

Why don't I just start with the Applicants and go across the room.

MR. NEWMAN: We had planned to go first, and Mr. Cowan will be presenting our oral argument.

JUDGE BECHHOEFER: Okay.

MR. NEWMAN: I might just note for the record this evening that with me at the counsel table are Mr. Cowan, f Baker & Botts, our co-counsel, and on my right, Mr. Gutterman, an associate in my law firm.

MR. COWAN: Judge Bechhoefer, Judge Lamb, Judge Hill, my assumption is that you want us to argue for about 20 minutes or less, since you wanted to get the arguments through in an hour, and the way I divide

1 that, it comes to about 20 minutes to the side, so I
2 have planned my remarks with that in mind.

3 What I would like to do this evening,
4 Your Honors, is first of all state our position, state
5 the Applicants' position with reference to each of the
6 questions that you have asked us to brief, to discuss
7 with you very briefly the authorities that Applicant
8 has been able to discover which seemed to relate to
9 those issues, and then to discuss you the one point
10 that all parties seem to agree upon, and that is the
11 prematurity of Your Honors' request for briefing on
12 these issues.

13 In saying that, however, we don't mean to
14 imply that this exercise has been useless. On the
15 contrary, I think that the discipline of reviewing the
16 law at this time has been very helpful to the Applicant
17 in beginning to focus on some of the legal issues which
18 could develop into various very serious legal issues.

19 With that, let me get down to the very
20 basic questions which Chairman Bechhoefer propounded to
21 us some weeks ago, and I'll read those as I proceed in
22 my discussion, for the purpose of putting the discussion
23 in context.

24 First of all, Chairman Bechhoefer asked us
25 to answer the question, may the Staff be required to

1-3 1 identify to the parties and Board, but not necessarily
2 to the public, the names of some or all individuals
3 identified in inspection reports by letters or numbers.

4 You have asked us to assume that a party is
5 seeking identification in order to presents its case,
6 that the inspection report bears upon a factual matter
7 at issue in the proceeding, that the individuals in the
8 report have not been positively identified through
9 other means, and that a conflict or potential conflict
10 with other factual evidence on a significant matter is
11 apparent.

12 Our briefing reveals that the answer to that
13 question should be a categorical and straightforward "no."

14 The authorities that we rely upon are those
15 which are set out in the decision of the Appeal Board
16 of May 8, 1981.

17 We believe that there has been no material
18 change whatsoever in the facts as they existed on
19 May 8, 1981, in the sense that no party has shown or
20 made even a determined effort to show that the names
21 of the informants are, to use the critical language of
22 the Roviario case, essential to a fair determination of
23 this cause.

24 It's our basic position that once Your Honors
25 have heard all the evidence in this case, have had an

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1 opportunity to cross-examine and hear cross-examined the
2 various witnesses, that it will be rather clear to you
3 that the Houston Lighting & Power Company, the Applicant,
4 does have the character and competence to build and
5 operate this plant, that that determination can be made
6 on the basis of the evidence which will be presented in
7 the course of the orderly continuation of this hearing
8 and that it will not be essential to a fair determination
9 of this cause for the names of informants to be revealed.

10 Now, the next basic question which Your
11 Honors have requested us to direct our attention to is
12 an extension of the first question.

13 You have asked us to discuss the first
14 question with respect to participants who are not
15 informants, B, participants who are also informants,
16 and, C, other informants.

17 In propounding that question Your Honors
18 have focused upon a matter that I believe all counsel
19 will agree upon, and that is that none of us, insofar as
20 I can determine from the briefs, have found any
21 authority which would support the proposition that the
22 names of participants who are not informants must be
23 protected.

24 In other words, as we read the cases, and
we find no authority to the contrary, the Board can be

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1 required to produce the names of, and as far as I know,
2 they would be willing to produce the names of,
3 participants who are not informants, and it would be
4 my guess that as the presentation of this evidence
5 proceeds, the names of those persons who are participants
6 but not informants in the Staff I&E inspection reports
7 will become readily apparent.

8 I may be proved wrong about that, but it is
9 my speculation that that would occur.

10 So, Your Honors, in propounding this question,
11 have focused attention of the parties on a very
12 pertinent part, and that is that there is no privilege
13 for participants who are not informants.

14 Now, with reference to the identity of
15 participants who are also informants and, C, other
16 other informants, Your Honors have again focused the
17 attention of counsel on the fact that the cases do
18 in fact draw distinctions between various types of
19 informants, depending upon how actively they are
20 participating in the events in question.

21 The very best case to point up the way
22 that the courts and administrative boards have handled
23 that distinction is a case which the Staff cites in
24 Footnote 11. It's called the Swarez case. It's an
25 opinion by Chief Justice John Brown of the Fifth Circuit.

1 Swarez was decided several years after the
2 Roviario case. The Roviario case, of course, held that
3 the privilege of the Government to withhold the identity
4 of the informants is not an absolute privilege but must
5 vary depending on the circumstances.

6 Judge Brown in the Swarez case collects and
7 analyzes and seeks to categorize all of the informant
8 cases that have been decided up to that point in time,
9 and it's a recent case. It's about a 1979 or 1980 case.

10 Judge Brown says you can take all those
11 informant cases and you can basically split them up
12 three ways.

13 He says on the one hand, on the one extreme,
14 you've got the situation like Roviario, where the informant
15 is in fact an active participant in the events which
16 are under investigation, where the informant himself
17 did in fact engage in active participation.

18 Judge Brown's conclusion is that in a
19 criminal case like Swarez or Roviario, the identity of
20 the informant in that instance must almost always be
21 disclosed where the question is the guilt or innocence
22 of a criminal defendant.

23 At the other end of the spectrum, he collects
24 cases where the informant is nothing but a mere tipster,
25 to use his language, a person who is not in any way a

1-7 1 participant, who merely gives the Government some
2 information which leads to a prosecution, and there
3 Judge Brown says the uniform rule is that the identity
4 of the informant must almost never be disclosed, or
5 never need be disclosed.

6 Now, lying between those two extremes are
7 cases where the informant is neither a mere tipster nor
8 is he a very active participant, and it is in those
9 cases that the judge or the administrative body must
10 perform the balancing function of balancing the social
11 desirability of the Government being able to protect its
12 sources against the need for a fair trial.

13 But even in those intermediate cases the
14 party seeking disclosure must still establish to the
15 satisfaction of the court or the administrative board
16 that the identity of the informant is absolutely
17 essential to a fair adjudication of the cause.

18 Now, passing along to the last aspect of
19 the first question which Your Honors asked us to brief,
20 you asked us to discuss in terms of, one, a total pledge
21 of confidentiality and, two, a limited pledge such as
22 appears in at least one I&E report.

23 The only authority that we found in that
24 connection was the authority which we discuss on Page 20
25 of our brief. It's the same authority which the Staff

1 discusses. It is the Northern States Power Company case,
2 which says that the obligation to protect the identity
3 of informants can exist even where there is no implicit,
4 or where there is no explicit promise of confidentiality,
5 but where from the circumstances there is an implicit
6 assurance of confidentiality.

7 Illustrating the fact that we really have a
8 situation of great prematurity; here, we would respectfully
9 assert that we simply don't have enough evidence in this
10 case yet to determine on a case-by-case basis what
11 assurances of confidentiality were given to various
12 informants and what implicit assurances of confidentiality
13 arise from the circumstances.

14 So, with that, we'd like to pass on to
15 Questions 2 and 3, which you posed to us, recite those
16 into the record and then discuss with you what our
17 briefing shows with reference to Questions 2 and 3.

18 Questions 2 and 3, which Your Honors
19 propounded to us, were as follows: If not, that is
20 if this Board cannot compel the Staff to reveal the
21 identity of the informants, should the I&E report be
22 excluded or stricken from evidence insofar as its truth
23 is concerned, on motion of a party, and in what
24 circumstances, if any, should this be done.

25 And Question 3, I think, can more logically
be discussed with Question 2.

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1 Question 3 is, if admissible, may a Board
2 decline to accord the report of the I&E staff any weight
3 solely because of the failure to identify some or all of
4 the unidentified individuals, and we would like to discuss
5 with you the authorities that we have discovered and the
6 authorities that we think are relevant to those two
7 questions.

8 First of all, as we see it, based on the
9 Federal Rules of Evidence and based on multiple cases
10 admitting hearsay evidence in administrative hearings,
11 we would respectfully show to you that the question is
12 not that of admissibility.

13 We think in all candor that this Board
14 might be headed for trouble if it actually just
15 blanketly excluded from evidence almost any governmental
16 report.

17 Now, that does not mean, however, -- it
18 definitely does not mean -- that a government I&E
19 Inspection Report should be admitted in evidence for all
20 purposes. Nor does it mean that that report should be
21 given much weight, and circumstance can arise where Your
22 Honors would be totally justified, and perhaps compelled,
23 to afford a particular Inspection Report minimal if
24 any weight because of the failure to identify the
25 informant, or because of other reasons which might cast

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1 doubt upon its basic reliability. And there are great
2 bodies of law which relate to those questions and which
3 give Your Honors a considerable amount of guidance in
4 how to go about answering those two basic questions,
5 which really boil down to how do you as a Board handle
6 from the standpoint of weighing those reports once they
7 are in evidence.

8 Now, our basic position is that the I&E
9 Inspection Report should be admitted in evidence, but
10 many, if not all of them, should be admitted into evidence
11 for a very limited purposes.

12 A fair question is, "Well, for what purposes?"
13 There, again, you must almost deal with these reports on
14 a case-by-case basis, but if we focus on 79-19 it is our
15 position that the basic reports in 79-19 should be
16 admitted primarily for showing the reasons why the I&E
17 Staff took the action they did, the rationale of their
18 action, and probably for no other purpose.

19 Perhaps they could be admitted for the
20 purpose of showing the basic foundation, and the factual
21 background upon which HL&P acted. But we say those
22 reports should be admitted for very limited purposes,
23 and that this case can be decided and decided properly
24 with those reports being admitted for very limited
25 purposes.

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1 Now, I don't know that for practical purposes
2 the Staff really disagrees with us too much on that. I
3 am sure that Mr. Reis wouldn't buy everything I say hook,
4 line, and sinker, and I wouldn't expect him to, but
5 focusing on Page 17 of his brief, I believe there is some
6 language there which would support a conclusion that for
7 practical purposes, as far as the hearing is now concerned,
8 the Staff does not differ with us too much.

9 And I focus on particularly the second
10 paragraph on Page 17 in which Mr. Reis seems to say, and
11 we certainly agree with him, that proving the particular
12 incidence cited by the Staff, or the conditions found
13 by the Applicants in their investigation is not essential
14 to the instant Operating License proceeding, and we think
15 that's the essential point for present purposes.

16 We simply do not need to, nor is there any
17 justification for litigating in detail every single
18 incident that is described in 79-19, and if that were
19 necessary this hearing would last beyond life expectancy
20 of almost anyone in this room, conceivably, with the
21 exception of Mr. Gay, who is a pretty young man.

22 JUDGE BECHHOEFER: Mr. Cowan, let me ask you
23 a question. And I ask the Staff this, too.

24 Would you draw any distinction between reports
25 which originated prior to the Show-Cause Order, and those

1 which originated after?

2 MR. COWAN: Oh, sure, Judge. You have got
3 to draw great distinctions between these. We were
4 discussing --

5 JUDGE BECHHOEFER: I don't think you have
6 admitted to some of the allegations in some of the later
7 reports.

8 MR. COWAN: I'm not sure that I fully
9 understand the implications of your question, or what
10 you are driving, but I think our basic position is --

11 JUDGE BECHHOEFER: Reports like 81-11.

12 MR. COWAN: You must almost look at these on
13 a case-by-case basis.

14 For example, there was one in there by a
15 divorced wife, who is talking about what her husband,
16 who didn't even work on the South Texas Project did.
17 You know, obviously, that is perhaps admissible, but if
18 that's going to be given any weight it would be very,
19 very minimal.

20 There is another report in there that deals
21 with a fellow who was subjected to a hoax of some kind,
22 and who thought he had some x-rays of welds on Comanche
23 Peak and South Texas Project, that it turned out somebody
24 had played a practical joke on him.

25 Well, you know, obviously, those have to be

1 treated on a case-by-case basis.

2 I would like to talk to you about the
3 authorities, though, that we think are particularly
4 significant. When the Board begins to analyze the
5 purpose for which these reports are admitted, because
6 if the reports are admitted for the truth of the matters
7 contained therein, or if this Board feels it is compelled
8 to or authorized to take action which is seriously
9 adverse to the Applicant on the basis of those reports,
10 we will run into very serious questions under both the
11 statutes creating this Board, the Administrative Procedure
12 Act, and the Constitution of the United States.

13 And the cases we particularly want to focus
14 on are those which appear on Pages 8 through 14 of the
15 brief which we have filed, the first of which is Green
16 versus McElroy, 1959 Supreme Court case.

17 It was a situation that has a rather pointed
18 fact situation if you accept it from the standpoint of
19 the person who is being harmed by government action.
20 That was a case where a fellow who was a very highly
21 skilled Engineer with a defense contractor had had the
22 fortune or misfortune, whichever the case may be, earlier
23 in his career to be married to a very active Communist.
24 And this lady to whom he was married to had taken him to
25 all kinds of Communist's meetings. She had subscribed to

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the "Daily Worker", and the question came up at some point in time as to whether or not this fellow was entitled to a security clearance, and he had to have the security clearance to do his job, the only job for which he was trained.

The government board making the decision denied him a security clearance, and also denied him access to the identity of, and denied him an opportunity to cross-examine people who apparently would controvert his position that he was never engaged in all of these activities but just went along to get along with his wife whom he was now divorced.

The government wrote that case and used some language which is directly applicable to our case if these reports are admitted for all purposes, or are admitted for the purpose of taking very adverse action against the Applicant. The Supreme Court said "Certain principles have remained immutable in our jurisprudence.

One of these is where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.

While this is important in the case of

1 documentary evidence, it is even more important which
 2 the evidence consists of the testimony of individuals
 3 whose memory might be faulty, or who in fact might be
 4 perjurers, or persons motivated by mallice, vendictiveness,
 5 intolerance, prejudice or jealousy.

6 Now, that basic principle down through the
 7 years has been applied to multiple cases. Applicants
 8 admission to the bar. Applicants for welfare benefits.
 9 People who are getting dishonorable discharges from the
 10 service. People who have been terminated from government
 11 employment. People who apply for White House fellowships.
 12 And the fact that there has been a pledge of confidentiality
 13 make absolutely no difference in the application of that
 14 principle as is demonstrated by the Wertz versus Baldor
 15 Electric Company, which appears on Page 12 of our brief.

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1 MR. COWAN: So the point is that if we
2 ever get to the point where this Board feels that it
3 is obligated to admit these I&E Inspection Reports for the
4 truth of the matters contained therein or to take action
5 seriously adverse to the Applicant on the basis of those
6 reports themselves, then we run into very, very serious
7 constitutional and statutory problems, which, frankly,
8 we don't think we need here because we are persuaded
9 that when all the evidence is in and Your Honors have
10 had an opportunity to discuss it and analyze it and
11 cross-examine the witnesses, that there will really be
12 no serious question concerning the competence and
13 character of the Houston Lighting & Power Company to
14 build and operate this nuclear plant.

15 Our position and the authorities we rely on
16 is stated more fully in our brief, and unless my
17 colleagues think there is something else that is
18 imperative that I mention, I'll stick to my 20-minute
19 limit.

20 JUDGE HILL: Mr. Cowan, could I ask you
21 a question?

22 MR. COWAN: Yes.

23 JUDGE HILL: Your earlier statement about
24 Judge Brown and the --

25 MR. COWAN: Yes, sir, that's the Swarez case.

3-2
1 JUDGE HILL: Did he make any strong
2 distinction about the criminal versus civil and
3 administrative law?

4 MR. COWAN: No, sir, he did not. He, in
5 collecting those cases, as I remember the Swarez case,
6 was talking primarily about criminal situations; but
7 if you get into the cases, you will find that there
8 does not appear to be any drastic difference between
9 the way that courts have handled criminal and civil
10 litigation in this area.

11 Of course, it's something that has to be
12 weighed, and it's not an easy thing to weigh.

13 One of the cases that Judge Brown includes
14 in his compilation is a case that I tried as a Trial
15 Judge, and I refused to give the informant's name.
16 There wasn't anything in the world that would have
17 made me give that informant's name, and I was sure
18 I was right, and conducted an in-camera hearing,
19 which I thought solved the problem, and I got
20 reversed.

21 The first criminal case I ever tried, and
22 the Court of Appeals reversed me for not giving up
23 the name of the informants, and the way that Judge Brown
24 categorizes that case is that the informant there was
25 in fact an active participant himself in the events

3-3 1 which led up to the criminal prosecution.

2 But no, Judge, I don't perceive Judge Brown
3 in that case or in other cases making any great
4 distinction between the criminal area and the civil
5 area, except that obviously, where a fellow's liberty
6 is at stake, the Courts of Appeals are very, very
7 careful in allowing a fellow to go to the penitentiary
8 if somehow or another they believe that he was denied
9 access to certain evidence which might have been
10 helpful to him in establishing a defense.

11 JUDGE BECHHOEFER: Do you have any
12 comment on the cases which CEU cites, which they
13 term the "potential witness exception"?

14 MR. COWAN: Which page are those on,
15 Judge? I read that --

16 JUDGE BECHHOEFER: Starting on 11 of
17 their brief.

18 MR. COWAN: Excuse me, sir. Did you
19 say page 11?

20 JUDGE BECHHOEFER: Page 11, yes.

21 MR. COWAN: You are talking about the
22 cases which are collected in the last paragraph on
23 that?

24 JUDGE BECHHOEFER: Yes.

25 MR. COWAN: Well, I will have to confess

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1 that I just got their brief today and I have not read
2 all their cases.

3 Their conclusion, however, is that, "Most
4 courts will not recognize an informer's privilege if
5 the source will later be caused to testify at trial and
6 his or her identity revealed publicly at that time."

7 On the surface of it, that seems to be a
8 rather reasonable proposition because if in fact the
9 informant has agreed to appear as a witness, he has, it
10 seems to me, waived the privilege.

11 But I have not, in all candor, read those
12 cases and, therefore, am not prepared to discuss them
13 with a very great degree of intelligence.

14 JUDGE BECHHOEFER: I haven't read them
15 myself. I just received the brief today, too. It was
16 NRC's fault, I think.

17 (Counsel conferring.)

18 MR. COWAN: Mr. Newman has suggested and
19 I think, again, that it's appropriate for me to
20 emphasize again that with reference to the informants
21 in 79-19, there is no need to disclose those informants,
22 because those matters, at least those factual matters,
23 are not essential to a determination of the cause,
24 because while we believe that we have not admitted all
25 of the facts contained in 79-19, we have agreed with

3-5 1 the Staff's ultimate conclusion that improvements in
2 the quality assurance program were required.

3 In the light of those matters, it may well
4 be that all Counsel agree that it is not necessary to
5 litigate every identical factual matter set forth in
6 79-19.

7 JUDGE BECHHOEFER: Do you have any opinion
8 on the suggestion of cross-referencing that CEU made?

9 MR. COWAN: I think that makes some sense,
10 Judge, particularly since I wouldn't have to do it. I
11 can see it would be a very burdensome thing to do.

12 I would also observe, however, that that
13 might be something that would pretty well shake itself
14 out as we go down the road and listen to this testimony.
15 I really don't know.

16 It may well be premature to put that burden
17 on the Staff, because I'm sure my attitude would be
18 different if I had to do it.

19 JUDGE BECHHOEFER: Okay, Mr. Gay.

20 Are you finished?

21 MR. COWAN: Yes, sir.

22 JUDGE BECHHOEFER: All right, Mr. Gay.

23 MR. GAY: Mr. Chairman, I think it's
24 already rather clear that CEU is in substantial
25 agreement with the argument of the Applicant.

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1 As Mr. Cowan has pointed out, I think all
2 Counsel are agreed that it is premature for the Board
3 to make a ruling tonight that all names, all informants,
4 must be disclosed, that it must be taken on a case-by-
5 case basis and there must be an examination of the
6 facts regarding a particular situation.

7 However, CEU does feel that it is going to
8 be necessary for us to get into this matter at some
9 point this hearing and CEU will be moving at
10 various times in this proceeding for the disclosure
11 of informants that have come to the NRC.

12 There are two things that I think would
13 expedite the process of us getting into a balancing
14 consideration on a case-by-case determination.

15 One is the one you just mentioned with
16 regard to the cross-referencing of the informants.

17 The second is that I think that the Staff
18 should be ordered at this time to come forward and
19 to let the parties and the Board know precisely which
20 letters in the various I&E Reports have been offered
21 confidentiality, and to reveal the names of the
22 participants who were not informants.

24 I think that would expedite the
25 consideration of the I&E Reports. It would facilitate
the work of all the parties and the Board in evaluating

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1 on a case-by-case basis what is necessary for a full
2 and fair determination within this proceeding.

3 It is clear from the reading of all the
4 briefs, I believe, that there is a presumption of full
5 disclosure, not only in the NRC, but generically speaking,
6 in all statutes and enactments of decisions of
7 courts that relate to the informant issue, that the
8 burden is upon the NRC once a request is made for a
9 disclosure for them to come forward and state that
10 confidentiality had been offered, to explain the nature
11 and extent of that confidentiality and to cite some
12 particularity to the exemption that they are relying
13 upon to keep that name secret.

14 The one point that I might disagree with
15 Mr. Cowan on is I think it would be appropriate on
16 some occasion to have an in-camera conference; not
17 necessarily an in-camera proceeding, but an in-camera
18 conference to discuss the particular individual whose
19 disclosure is sought, and to argue that point in camera;
20 and then for the Board to make a decision whether it
21 is right and proper for a full and fair determination
22 for that name to be placed in the record and considered
23 by the Board.

24 One point that was mentioned in CEU's brief
25 that I think is very important is that there is a

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1 distinction between the decision to keep names secret
2 during the discovery process and to enact a balancing
3 approach on a case-by-case basis when you are in the
4 middle of an adjudicatory proceeding; and that is that
5 it would be an abdication of responsibility for the
6 Board to let the NRC Staff make all decisions regarding
7 informants and their relevancy or the disclosure of
8 that individual as a relevant matter within th s
9 roceeding.

10 It is something that has to be taken up
11 individually by the Board, and the NRC Staff cannot
12 merely rely upon the fact that they have at some point
13 in the past in order to expedite a proceeding or
14 expedite an investigation given some confidentiality
15 to a particular informant.

16 It is for the Board to decide in the process
17 of adjudication as to whether or not that confidentiality
18 was appropriate and remains appropriate for the
19 consideration of the issues that the Board has before
20 it.

21 The issues in this proceeding are somewhat
22 complex in that they are not just the ordinary factual
23 situation of did this occur or did it not occur or
24 what were the consequences.

25 But you have before you the consideration

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1 of an on-balance issue, of whether or not HL&P has
2 the character and competence to operate this facility.

3 That cannot be determined on the basis of
4 an isolated incident or an isolated I&E Report.

5 It cannot be determined on the basis of
6 79-19 alone.

7 It has to be evaluated in the broad
8 context of all the I&E Reports, all the allegations
9 that have been issued, and in context of what was
10 management's response to particular allegations that
11 were brought to its attention or that it should have
12 known about.

13 In some of those issues there's absolutely
14 no way that you can evaluate the management response
15 unless you know who the individuals are and whether
16 or not those individuals mentioned in I&E Reports were
17 charged with safety-related work at the South Texas
18 Project.

19 I think that it is imperative that the
20 Staff facilitate this hearing by revealing to the
21 parties and to the Board those participants that were
22 not informants and to further cross-reference all
23 the informants such that we might know whether or not
24 there was one particular informant involved, whether
25 there was two or three, or whether there are many

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informants aware of a multitude of problems at the plant that perhaps the Applicant should have been aware of and dealing with over a period of time.

JUDGE BECHHOEFER: Do you draw any distinction between the reports prior to the show-cause order and those after?

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1 MR. GAY: Mr. Chairman, I think that 79-19
2 is somewhat of an island unto itself with regard to the
3 I&E reports.

4 I agree pretty much with what Mr. Cowan
5 stated, that it's somewhat pointless for us to get into
6 a big battle over the informants in 79-19, because I
7 think there are admissions there and we need not litigate
8 those particular issues.

9 We're all familiar with the background of
10 79-19, but I think that otherwise the reports before
11 79-19, and particularly those after, should be evaluated
12 and we need some strong investigation into the individuals
13 that are involved in all of those reports, and I do not
14 draw a particular distinction.

15 That concludes my remarks.

16 JUDGE BECHHOEFER: Oh, okay.

17 Mr. Sinkin, do you have any remarks, or do
18 you join Mr. Gay's?

19 MR. SINKIN: Mr. Chairman, we did not have
20 counsel available to prepare a brief on this topic,
21 and I personally did not have the time to do so.

22 I did engage in discussions with Mr. Jordan
23 on the major points of his brief, and we join in that
24 brief and its discussion.

25 I do have two or three observations that I

4-2 1 would like to make regarding the subject.

2 First of all, in response to your question
3 about the difference between reports before 79-19, I&E
4 reports, and reports after 79-19, we do draw one
5 distinction.

6 We think that when the NRC has been pushed
7 to the point of taking an action of the level of an
8 Order to Show Cause, and when that Order to Show Cause
9 goes to the second highest level of disciplinary action,
10 that is, an Order to Show Cause why the license should
11 not be suspended just short of the level of revocation,
12 then we think the Applicant is on notice that any further
13 such conduct is certainly to be discouraged and will be
14 viewed with extra, as extra pernicious, if you will, and
15 that therefore I&E violations, actual violations after
16 79-19 should perhaps bear more weight than those before.

17 We also do not endorse the distinction made
18 as far as 79-19 goes, between admissions to conclusions
19 and admissions to specific facts.

20 If, to use a criminal analogy, if a defendant
21 stands before the Court charged with robbing a bank and
22 admits to robbing that bank, it's foolish for the
23 Defendant later to say that the facts were not admitted to
24 as to how the bank was robbed.

25 We think that the evidence in 79-19, though

4-3 1 limited by the fact that persons are not identified, is
2 still evidence of what went on at the South Texas Project
3 and in the specifics is evidence, and that once it was
4 admitted to that 10 CFR 2.202 comes into play, then it
5 cannot then be denied in any form before the Nuclear
6 Regulatory Commission nor its appointed Licensing Boards.

7 JUDGE BECHHOEFER: I take it the logical
8 extension of that is, though, that none of the informants
9 in 79-19 or in the matters covered by the Show Cause
10 Order, none of the informants would then have to be
11 revealed, I would take it, if you followed your analogy.

12 MR. SINKIN: Following the logic as far as
13 79-19, no, we do not believe they need to be revealed.

14 As far as the logic of the brief submitted
15 by CEU, that it's important to be able to correlate the
16 activities of persons in 79-19 with either previous or
17 later activities reported in I&E reports, or important
18 to know whether those persons were in a position of
19 authority and are still in a position of authority at
20 the project.

21 On those broader points, the identities of
22 the people in 79-19 are relevant.

23 I think a case in point has already appeared
24 in these proceedings, the fact that through discovery
25 the Invervenors were able to produce documents regarding

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1 a particular incident, regarding a particular individual,
2 Mr. Singleton, we were able to identify him in that event,
3 and his appearance here as a witness then opens him to
4 comparison with his activities at the plant.

5 Without that kind of information, we may
6 have a witness sitting here testifying who indeed has
7 engaged in violations of NRC regulations, but neither
8 the Intervenors nor the Board are aware of that fact,
9 and I think it goes to the credibility of the testimony
10 of the person and goes to the credibility of the
11 Applicants saying that they have cleaned up their act
12 if people who have engaged in violations of an I&E nature
13 are still in positions of authority.

14 As far as the point made by Mr. Cowan that
15 the I&E reports not be admitted for the truth of what
16 they contain, we strongly endorse the NRC Staff position
17 on that matter, that as the nature of the document, they
18 bear great weight and should be considered as truthful
19 unless shown not to be, and that the time to challenge
20 their truthfulness was the time when they were issued.

21 It is a little bit false for the Applicants
22 to take the position that they don't have the chance to
23 cross-examine their accusers, or they have a due process
24 problem.

25 The Applicants have known since the day they

4-5 1 applied for a construction permit that one day they would
2 sit here before a Licensing Board, or they may not have
3 known Intervenors would successfully be Intervenors, but
4 certainly it had to be considered a realistic possibility
5 that there would be Intervenors and there would be a
6 hearing before a Licensing Board, and that a day of
7 reckoning would come, and that on that day of reckoning
8 everything they had done that had been documented by
9 either the Intervenors or the NRC Staff, they would be
10 called to account for.

11 And if there was any I&E report that found
12 a violation of NRC regulations that they objected to or
13 did not feel was accurate or did not feel was true, the
14 time to make those objections and to argue about that
15 was at the time the I&E report was issued.

16 I think that concludes the observations of
17 CCANP on the issue.

18 JUDGE BECHHOEFER: Okay. Mr. Gutierrez?

19 MR. REIS: Mr. Chairman, I will be making a
20 few remarks.

21 JUDGE BECHHOEFER: All right.

22 MR. REIS: I think it's obvious from
23 Mr. Cowan's statement and Intervenor's statement, that
24 we all agree that we can't pass on the questions of
25 causing a source to be revealed and whether the Board

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1 should order sources to be revealed without specific
2 factual context and without knowing exactly why and
3 having full facts before us in particular instances.

4 And particularly, we can't pass on
5 Constitutional problems, and in the abstract. I think
6 it's a very fundamental principle of Constitutional law
7 that Constitutional questions are not passed on as an
8 academic matter but you need actual fact situations
9 developed in order to pass on those questions.

10 One of the reasons why we need fact situations
11 is because of the policy involved, and the very strong
12 policy involved, a policy that runs to the benefit of
13 the Government, not to the benefit of the person who
14 happens to talk to the Government, but to the benefit of
15 the Government, to the NRC, to keep information flowing
16 to it, about what are going on in plants, and the ability
17 of the NRC, except in the most dire circumstances, to be
18 able to stand by a pledge of confidentiality to people
19 who come to it and say, I want to tell what I know that
20 went on that might affect the public health and safety.

21 There is a real fear and a real problem of
22 perhaps drying up sources, not only at the South Texas
23 site but throughout the nuclear industry, and the NRC
24 has to have an open door and an open mind and a closed
25 mouth when it hears these matters, go out, report, and

4-7 1 see what should be done, but don't tell the names except
2 if there are extreme overriding circumstances.

3 Now, this policy is not just one for the NRC,
4 it's even in lesser areas like Fair Labor Standards Act,
5 as you know, in our briefs before to the Appeal Board and
6 to you here, we cite a lot of Fair Labor Standards Act.

7 Certainly the considerations and the policies
8 for keeping those sources secret are not the same as we
9 have here, where we're concerned not with retribution
10 against a few workers, which is bad enough, and very bad
11 in a sense, but public health and safety and the duty to
12 protect the public health and safety, and we have a
13 much greater area to protect.

14 This policy of the NRC which I talk about
15 here came to the fore in this case but it is not a new
16 policy of the NRC. It was a policy in the case we cite
17 in the Northern States Power case.

18 It was reiterated by the Commission in
19 adopting Part 21 of 10 CFR.

20 Now, in making an balancing and using this
21 policy in determining whether those are the circum-
22 stances to take the extraordinary step of making --
23 saying a source, a confidential source should be revealed,
24 two things are necessary.

25 As Mr. Cowan said before, it has to be

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1 essential for a proper determination. There must be
2 facts in dispute that cannot be determined without it.
3 The evidence cannot be speculative. The evidence cannot
4 be cumulative.

5 But another thing is very important, there
6 must be no other sources available. It is on the one
7 who wants the Government to reveal its source to show
8 that it could not gather this information in another way,
9 in another manner.

10 Both burdens are on those who wish to have
11 the Government reveal its source.

12 In Northern States Power case the Commission
13 particularly said, or the Appeal Board specifically --
14 particularly said it must be demonstrated conclusively
15 that there are no other sources, that this information
16 cannot come forward in some other way, and this is the
17 balancing that must take place.

18 The policy must be weighed against it, and
19 the burden of showing, A, that it is essential in looking
20 at that policy, it must be weighed, and the policy must
21 be weighed against the effort that must be made to show
22 whether they could gather the information from other
23 sources.

24 Now, there was talk before about the difference
25 between criminal and civil proceedings, and whether there

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1 was a difference.

2 We submit that most of the cases show there
3 is a difference. If we go back and read the cases
4 outlined in in re United States, and particularly the
5 Fair Labor Standards Act cases, where I indicated the
6 policy was not as strong as keeping sources confidential
7 as in NRC cases, you will see that the courts are much
8 more readily adaptable to keeping the Government sources
9 confidential in civil penalty cases and civil proceedings
10 generally than in criminal proceedings.

11 Now, one other thing I want to get to, or
12 several other things, but one other point I want to make
13 right now is that in seeking the other sources and talking
14 about what is essential, of course it isn't the names
15 that are essential and it isn't showing whether they
16 could learn names or learn the names, it's whether they
17 can learn the facts. It's not whether they could get
18 the name from some other source of a governmental
19 confidential source. That isn't the question.

20 The question is can they learn the facts
21 that are recounted in the Government report so that they
22 could investigate those facts and see what is there.

23 Of course, as indicated in the Constitutional
24 cases, one cannot answer charges one does not know, but
25 there is a different sense in trying to answer charges

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1 which are plainly detailed and spelled out in myriad
 2 detail, and cases where those charges aren't spelled out,
 3 and I submit in some of the cases in the Applicants'
 4 brief what you have is not a situation of unknown sources
 5 but unknown facts, and the people didn't know what fact
 6 situations they had to answer.

7 That isn't true in all the cases, but that
 8 is true in a substantial number of them.

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1 JUDGE BECHHOEFER: Let me ask you one
2 question.

3 I wasn't clear what the Staff's decision
4 was on the people who were participants but not
5 informants.

6 There are some letters of that sort in a
7 number of the I&E Reports.

8 MR. REIS: Very often, Mr. Chairman --
9 We don't intend to make them public unless there is
10 a showing and a need for.

11 Often if we have seven workers in a
12 unit, for instance, we have to give them all letters
13 to protect the ones who talk to us; and in some places
14 we have to, in our reports, refer to everyone who is
15 around or may be involved in an incident by letter
16 rather than by name, just so the sources themselves
17 will be protected.

18 As you know, if you were to discuss six
19 people of the seven people in a unit in a report by
20 name and then just discuss one by letter, and it's a
21 seven-person unit, it won't take a great deal of
22 intelligence to figure out who that seventh person
23 was.

24 So we would object strongly to setting
25 forth the names of other people who took part in

5-2 1 things, unless there is a showing of a real need.

2 Now right now I will say probably that
3 that need would be less. It would not be the same. It
4 would not be the same burden that others would have
5 to go through, but we do have a reason for the actions
6 we take --

7 JUDGE BECHHOEFER: You are basing this on
8 some privilege that attaches to the people who actually
9 are informers?

10 MR. REIS: No. No, I am --

11 JUDGE BECHHOEFER: If I asked you about a
12 participant now --

13 MR. REIS: No, I am not saying --

14 JUDGE BECHHOEFER: -- who you have not
15 given confidentiality to, presumably.

16 MR. REIS: No, I am not saying that,
17 Your Honor.

18 I am saying that I am just asking the
19 Board not to order the revelation of any names to any
20 letters in the reports unless a real reason appears
21 for it, because it may not directly affect the one
22 who we granted confidentiality to -- it may not directly
23 affect that person who was not granted confidentiality,
24 but it could affect those who pledges of confidentiality
25 were made to.

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1 Therefore, a willy-nilly across-the-board
2 order, as Mr. Gay asks, that we identify all those
3 people in the reports who have letters, do not have
4 names, who no pledge of confidentiality was given to,
5 could affect the Government's Inspection and Enforcement
6 Program.

7 Now, if a question comes up with a
8 particular person or the particular time, we will look
9 at that, and again, we have to see the facts; but the
10 idea of just saying that every time there's a letter
11 in a report, if we didn't give a pledge of confidentiality,
12 we have to reveal his name, I think would be very
13 wrong and would certainly hinder the Agency's Enforcement
14 Program.

15 JUDGE BECHHOEFER: Would you base it just
16 on, as I said before, to protect the privilege that
17 you've given the informants?

18 MR. REIS: Well, it's to protect the
19 privilege that's given the informants, but there is
20 no real need for it; and until there is a need to show,
21 I think it would be an abuse of discretion of the Board
22 to just order the names across the board to be
23 revealed, unless there is a need in a particular case
24 shown for it, unless somebody questions it, unless
25 there is a question of the veracity of the report,

5-4 1 unless there is a question of -- some other question
2 where somebody could be harmed by not having the name.

3 JUDGE BECHHOEFER: Now, what about informants
4 who are appearing as witnesses?

5 MR. REIS: Your Honor --

6 JUDGE BECHHOEFER: The cases cited by CEU?

7 MR. REIS: As Mr. Jordan and Mr. Gay say in
8 their brief, it's in most cases. It is not in all
9 cases.

10 I think the NRC policy is stronger than
11 those cases. From what they say and what I read it
12 here, there is a split of authority -- and I just got
13 this brief today, also. I didn't have it before.

14 Further, there's the other important
15 point that although the informer's privilege does not
16 attach to them, that's if the Government (if I read --
17 I looked at a couple of those cases, and those were
18 cases where the Government was putting on those witnesses.)

19 We are not putting on any of the confidential
20 sources, at least to this date, and I don't contemplate
21 at this time doing it at all, and I don't see any need
22 for it. We think a case can be made without it.

23 As Mr. Cowan so aptly admitted, if you
24 look at their answers to either the show-cause order or
25 the notice of violations, the words are a little different.

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1 In the show-cause order it says we
2 concede the incidence of intimidation and harassment,
3 generally.

4 Well, I got a shake of the head there and
5 I'll read it, then. In response to the second paragraph
6 on page 9, this talks about the show-cause order, and
7 I'm reading from the second page of Staff Exhibit 91.

8 "The substance of the allegation with
9 respect to certain incidents of harassment and
10 intimidation is conceded in response to the first item
11 of non-compliance. We also note the extensive remedial
12 action which have been and will be implemented to
13 prevent recurrence of these conditions."

14 So we don't think it's necessary and we
15 don't think that by any stretch of the imagination, at
16 least as we know the record at this time, that the
17 balancing test could be applied so as to require the
18 revelation of the sources here.

19 JUDGE BECHHOEFER: What about the more
20 recent reports, the ones that were subsequent to 79-19?

21 MR. REIS: We haven't seen any material
22 disagreement yet. The only one we've had substantial
23 testimony on, I think the names came out without the
24 Staff revealing anything; and it is only on the Staff
25 that is protecting its confidential sources.

5-6 1 It's on the Staff not to reveal these things.
2 So I would have to have a particular fact situation to
3 know what we're talking about, and to know that there
4 was a dispute of some type.

5 JUDGE BECHHOEFER: I take it you would want
6 to wait and see on a case-by-case basis?

7 MR. REIS: Definitely, Your Honor.

8 JUDGE BECHHOEFER: How would you handle it
9 procedurally, if and when we get to that stage?

10 MR. REIS: Well, I think at that point we
11 would have to make arguments on balancing, and it might
12 be well to make the arguments in camera.

13 I don't know enough about it at this point,
14 and I don't know what instance we're talking about
15 where this will come up.

16 Frankly, I don't see it coming up.

17 I think this is much going to go the way
18 that the question of the First Amendment rights of the
19 newspapers went, and I don't think we're going to get
20 to it.

21 Now, we had some questions before, and
22 before I get to the last two questions the Board asked
23 about not striking -- whether the reports should be
24 stricken and what weight should be given to them, I'd
25 like to go to some other matters that were mentioned

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1 by other Counsel, and one was the purpose for which the
2 report is admitted.

3 As we indicate, we don't feel in view of the
4 Applicants' admissions and the admissions that they
5 made essentially in three separate documents all filed
6 on May 23rd, 1980, and those are Staff Exhibits 47, 90
7 and 91, we don't feel that these incidents have to
8 be gone into in detail.

9 We think the important thing is that the
10 Applicants essentially admitted that there was a fault
11 set out.

12 In the preparatory paragraphs, particularly
13 the second and third paragraphs, of Item 9, Compliance 1,
14 and that that is it on those issues.

15 From the admissions made by the Applicants,
16 we also feel there are strong arguments that could be
17 made, and we set out some of them and cited the
18 Third Circuit Case of McNeil vs. Butz, the fact where when
19 allegations are essentially admitted, one does not
20 have the right to learn the nature or the name of his
21 accuser. He then becomes his accuser and there's
22 sufficient evidence to sustain the charges, and here
23 the fact that they concede or said, "We won't dispute
24 them," and said, "We'll set forth remedial actions," as
25 to the general allegations in the third and fourth

1 paragraphs of Violation No. 1, Notice of Violation No. 1
2 that I talked to before, we think that's enough.

3 But even in applying a constitutional
4 test, I think the cases again show a question of
5 balancing and there is a question of balancing, and a
6 particular question of balancing the fairness as to
7 what is there and can they rebut and what evidence
8 they can get through rebut without knowing the name
9 of the Government sources.

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5-9 1 Now, there was also the question that
2 was raised as to what if the person participated in the
3 action, as well as an informer.

4 I want to emphasize in connection with that
5 that it is the Government's privilege. It doesn't weigh
6 upon whether one was a right-doer or a wrong-doer or
7 anything else.

8 It's the Government's privilege to
9 effectuate the policies that I talked about before,
10 about the very strong policies which are based upon
11 the need of people to come to us and tell us what is
12 happening at nuclear plants.

13 So it doesn't turn on that; and although we
14 might tell somebody, "No, we'll keep everything you
15 say in confidence because we want to learn more about
16 it so that we can put an end to certain practices," it
17 doesn't matter.

18 For instance, if a welder came to us and
19 said, "Oh, I didn't do these welds correctly" -- Well,
20 let's take something that didn't happen or could not
21 possibly be connected with anything in this proceeding,
22 because I was using a complete hypothetical and I want
23 to make it clear.

24 Let's say it was a question of tightening
25 bolts. Somebody said, "Oh, I was pressured. I didn't

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1 have enough time on the job, so I only tightened every
2 third bolt."

3 Yes, he was a participant. He told us he
4 didn't tighten every third bolt, but we have a strong
5 reason for him to come to us, because in his coming to
6 us we say, "What are the pressures on the job? What
7 caused you to do this? Why did you have to do this?"

8 We want these people to come to us. So it
9 doesn't turn on whether they are participants as well
10 as informers.

11 The informer's privilege is the Government's
12 privilege and extends across the board.

13 Let me also point out that as we go through
14 these things we'll see that we can go into very many
15 of these matters without using names.

16 Either they are not disputed and the names
17 aren't necessary, or that the name is just not material
18 as to the action that happened.

19 So let us go through that and see.

20 The last thing I wanted to get to is --

21 JUDGE BECHHOEFER: Do you think the names
22 would sometimes be necessary to know whether a given
23 incident is the same as another reported incident?

24 MR. REIS: I think that the parties and
25 the Board, with an examination of the documents and

5-11 1 hearing the testimony in every instance has known so
2 far whether it is the same incident or a different incident.

3 I don't think anybody has been confused
4 about that as this proceeding has developed and I don't
5 think they will be.

6 So far, that situation has not happened at
7 all.

8 JUDGE BECHHOEFER: That was the thing we
9 were worried about in the discovery order, if you
10 recall?

11 MR. REIS: Yes, I know, and that situation
12 I don't think will happen or is about to happen. I
13 think there are always facts and surrounding circumstances
14 that differentiate one instance from another, and you
15 can tell.

16 You can identify the concrete pour or the
17 date or the particular material being welded, or what
18 have you, and you can tell whether one instance is the
19 same as another instance.

20 JUDGE BECHHOEFER: What's your reaction to
21 the cross-indexing proposal?

22 MR. REIS: Again, in order to protect the
23 Government's right to get information to itself freely
24 and fully, in order to develop things freely and fully,
25 and many times that's true, between one report and

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1 another report, we'll give the -- we'll call somebody
2 A in one report and Q in another report.

3 Again, it's so to the extent possible we
4 can honor our pledges of confidentiality for the people
5 who come to us and encourage them to come to us.

6 Until specific situations are shown where
7 somebody has sustained the burden of showing they
8 need the information, that there is a specific case, I
9 don't think that any kind of an across-the-board order
10 should be issued of that sort.

11 It's suggested that the question might
12 be, are the wrong-doers being weeded out, if there
13 were wrong-doers, and we think they were.

14 I think that question can be directly put
15 to the witnesses without revealing the name. Is E
16 still working for Brown & Root at the South Texas
17 site? Is he still --

18 JUDGE BECHHOEFER: These are the Staff
19 inspectors when they get on the stand?

20 MR. REIS: Often the Staff inspectors
21 would know. Often, if it really becomes important, I
22 imagine there are other ways of finding it out. We
23 could check and we could ascertain that.

24 If it is really important, it could be
25 ascertained without the names.

5-13

1 JUDGE BECHHOEFER: Do you have any
2 comments on Mr. Cowan's discussion of weight?

3 MR. REIS: Well, yes. That --

4 JUDGE BECHHOEFER: It's a little bit
5 different from yours, I think.

6 MR. REIS: Yes, it is.

7 Again, we feel that the evidence must be
8 developed in the procedure to see what weight should
9 be given. In the Hampton case, the Appeal Board itself,
10 and was sustained by the courts, indicated that there
11 is great weight to be given to inspection reports, and
12 they are to be considered in evidence with substantial
13 weight.

14 That was the inspector's testimony in that
15 case, and we are having the inspectors verify their
16 reports on the stand.

17 JUDGE BECHHOEFER: Did that case involve
18 a question of confidentiality?

19 MR. REIS: I don't believe that case
20 involves a question of confidentiality.

21 It involved in that particular case the
22 Applicant's word versus NRC. I don't think there was
23 a question of confidentiality.

24 However, we do set forth in our brief the
25 test in -- here it is -- in Baker vs. Aclona Homes

5-14

1 Corporation, and we think it's followed not only in
2 that case, but in others, that you have to look at the
3 timeliness of the report.

4 You have to weigh it against the special
5 skill or experience of the official, whether a hearing
6 was held, which I don't think applies in this case, and
7 possible motivational factors.

8 You also have to consider it, naturally,
9 against other testimony, and whether there is other
10 testimony on the same instance, on the same issue, and
11 weigh all those things in determining what weight to
12 give them.

13 I think those things can only be developed
14 through hearing and cannot be talked about in the
15 abstract.

16 Again, as Mr. Cowan closed on the need to
17 develop specific facts in the situation, I think I've
18 put strong weight on that, and all I can do in closing
19 is say again that no ruling on this type of question is
20 at all possible in the abstract; but the more we go
21 into it, the more we look at the cases, whether they
22 involve constitutional law, whether they involve the
23 question of what is essential for a fair determination
24 of the proceeding, whether they involve what are the
25 other sources available to know what information was

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5-15
1 there, were there other sources available to the
2 parties, all of them turn on factual premises.

3 So no ruling is possible at this time.

4 I would also like to say, because this is
5 an NRC proceeding and because they are public reports
6 prepared by public officials -- you asked before about
7 the weight.

8 They are inherently trustworthy. The
9 rules of evidence show them to be inherently trustworthy
10 as to what was found by the inspector at the time.

11 Maybe not every word that was told to him
12 at the time, but what his conclusions were at the time
13 as to what happened, when, on what date, and they are
14 in that sense inherently trustworthy and it takes
15 some burden to overcome their inherent trustworthiness.

16 JUDGE BECHHOEFER: I believe there have
17 been some questions raised about certain details as
18 we've gone through the hearing.

19 MR. REIS: I think we'll --

20 JUDGE BECHHOEFER: Maybe not crucial
21 details but --

22 MR. REIS: That's right, and it's a
23 question of whether it is a crucial detail, whether
24 it's important, whether the details get to the point
25 where the report is inherently untrustworthy.

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At that point, the report should not be accepted; but it's a question of balancing evidence where you all the way through -- and it's not much different than other questions that come in, whether they be hearsay -- and I think the Federal Rules of Evidence list 18 exceptions to the hearsay rule.

So exceptions in hearsay coming into proceedings is not odd. In each case the truth of the hearsay and the reliability of the hearsay is weighed.

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1 JUDGE BECHHOEFER: Can you draw any
2 distinction between hearsay and double hearsay. We
3 believe some cases were cited to us, which I haven't
4 read yet.

5 MR. REIS: Your Honor, I don't think that's
6 necessarily a valid distinction. In looking at the
7 cases -- and I looked at them very quickly this
8 afternoon -- I thought there were cases going the other
9 way, some of which we cited.

10 Some similar reports, for instance, one
11 we cite which the color of light that the traffic officer
12 reported in his report, although they talk about him
13 being inherently reliable. If you go through the opinion
14 I think in depth you will find that he only could learn
15 that by talking to people, and yet they accepted that,
16 and I think that when an investigator, an experienced
17 investigator goes out and investigates a matter, and he
18 is trained to weed out the wheat from the chaff, and
19 draw a conclusion. And he does that every day.

20 Now, he is not a Judge. He doesn't
21 ultimately find that in a civil proceeding under the
22 federal rules of evidence his conclusions which are
23 based in part upon what he hears and what he talks to
24 people, and what he learns through an oral process, as
25 well as doing calculations, or making measurements are

1 entitled to some weight, unless they are shown to be
2 faulty, as the Federal Rules of Evidence says.

3 JUDGE BECHHOEFER: Have you finished?

4 MR. REIS: That's all, Your Honor.

5 (Bench conference.)

6 JUDGE BECHHOEFER: The Board has at least
7 concluded one matter. We are not going to have a blanket
8 ruling at this time.

9 We note that you all agreed on that, and
10 we were convinced. Beyond that, we do appreciate the
11 briefs, because we think it will be useful for us when
12 and if we get specific questions which we will have to
13 rule on, so we do appreciate the effort that you all put
14 in.

15 MR. GAY: Mr. Chairman, I realize you are
16 taking this decision under advisement. I just want to
17 make sure that, to put it in a positive frame that CEU
18 would like to move that the Board order the two points
19 that I addressed this evening with regard to ordering the
20 NRC Staff to reveal the names of those individuals
21 mentioned in the I&E Reports that were not offered
22 confidentiality.

23 And, second, that there be a cross-referencing
24 of those individuals who are informants.

25 JUDGE BECHHOEFER: We will not rule at the

1 moment on any of the questions, other than the fact that
2 we won't issue a blanket ruling.

3 Before the witness panel resumes, we will take
4 a short break, about 15 minutes.

5 (A short recess was taken.)

6 JUDGE BECHHOEFER: Back on the record.

7 Did you wish to --

8 MR. HUDSON: Yes, Your Honor.

9 One preliminary matter before we get started.
10 At the last hearing CEU put in Exhibit I believe it was
11 No. 21. It was NCR #S-C881, in which several of the pages
12 were not legible, and we pledged to provide at the next
13 hearing session a legible copy, or a more legible copy
14 of that exhibit. I have just passed that document out to
15 all of the parties, given three to the court reporter and
16 one to each of the judges.

17 What we did was simply copy the NCR file
18 itself. There are certain differences, however, between
19 our exhibit and that which was submitted by CEU.

20 The principle difference is on Page 9 of our
21 exhibit. That page was also Page 9 of CEU's exhibit. If
22 you will notice in the bottom left-hand corner there is
23 a note that SHE-BOLTS were used on this pour, and that a
24 cosmetic repair was required.

25 Those are the notes that also appear on the

1 bottom of CEU's Exhibit. However, on our copy of this
2 there is also a note that states: "Structural Repairs,
3 RC B," and then there is a date which is either 4-3-79 or
4 4-8-79.

5 Then immediately below that on the original
6 which was cut off in copying is another phrase that again
7 says "Structural Repairs, RC B," and the date 4-11-79.
8 Apparently this was added to this pour card at some later
9 date, and wasn't on the copy that CEU received.

10 The next page in our version, which is the
11 back of that pour card was not in the CEU version at all.
12 The next page in CEU's document was the front of another
13 pour card.

14 And this back of the pour card also relates
15 to the cosmetic repair that was noted on the front, and
16 the structural repairs. I would note this pour card is
17 for the containment internal wall pours. As you will
18 recall, this NCR dealt with both shell pours and
19 containment internal wall pours. And this particular
20 change deals with the containment internals.

21 With regard to the remainder of the document,
22 some of the pages are in a different order in our exhibit
23 that in CEU's, but my review of that difference in order
24 revealed them not to be significant. The pages themselves
25 are the same; they just appear in different places.

1 I think those are the only differences
2 between the two documents.

3 With that introduction, I would move the
4 substitution of this document, due to its greater
5 legibility, for the earlier Exhibit CEU 21.

6 MR. GAY: Mr. Chairman, because there are
7 differences, why don't we mark this one CEU 21(a)?

8 MR. HUDSON: I have no objection to that.

9 JUDGE BECHHOEFER: Let's mark this CEU 21(a).

10 (The document above-referred
11 to was marked CEU Exhibit
12 No. 21(a) for identification.)

13 JUDGE BECHHOEFER: Does anyone have any
14 objection to admitting CEU Exhibit 21(a)?

15 (No response.)

16 JUDGE BECHHOEFER: Without objection,
17 CEU Exhibit 21(a) will be admitted.

18 (The document heretofore marked
19 CEU Exhibit No. 21(a) for
20 identification, was received
21 in evidence.)

22 MR. HUDSON: One further preliminary matter
23 ~~from~~ our point. I would like to have the witness panel
24 introduce themselves for the benefit of the Board, and
25 the court reporter, since we seem to have lost their

1 name tags, with the exception of Mr. Long, who cleverly
2 kept his own.

3 Whereupon,

4 GERALD R. MURPHY
5 GERALD L. FISHER
6 CHARLES M. SINGLETON
7 JOSEPH F. ARTUSO
8 RALPH R. HERNANDEZ
9 DAVID G. LONG

10 having been previously duly sworn, resumed the stand as
11 witnesses herein, and were examined and testified further
12 as follows:

13 WITNESS LONG: David Long.

14 WITNESS HERNANDEZ: Ralph Hernandez.

15 WITNESS FISHER: I'm Gerald Fisher, Brown &
16 Root.

17 WITNESS SINGLETON: Chuck Singleton,
18 Brown & Root.

19 WITNESS MURPHY: Gerald Murphy, Brown & Root.

20 WITNESS ARTUSO: Joseph Artuso, Construction
21 Engineer Consultants.

22 JUDGE BECHHOEFER: I believe the Staff was
23 in the middle of its cross-examination. Mr. Gutierrez?

24 MR. GUTIERREZ: Yes, Mr. Chairman.

25 JUDGE BECHHOEFER: Will you continue.

MR. GUTIERREZ: Thank you.

CROSS-EXAMINATION - Continued

1
2 BY MR. GUTIERREZ:

3 Q Panel, we have already reviewed together
4 your testimony in some detail. I just want to tie up some
5 loose ends in my mind.

6 Mr. Artuso, on Page 21 of your testimony you
7 are asked if you have a conclusion relative to the extent
8 of the voiding problem.

9 In answering you say that the problem is not
10 unique within the industry.

11 My question to you is: In analyzing the
12 voiding problem, the extent of the voids prior to the
13 remedial action, was the extent of voiding typical or
14 slightly more severe or more severe than what you would
15 expect to find within the nuclear power plant industry?

16 BY WITNESS ARTUSO:

17 A Do you mean in other constructions?

18 Q That's right. In your answer to Question 33,
19 you draw a comparison among the industry and say that the
20 problem of voids is not unique.

21 My question to you is: Specifically the
22 extent of the voiding at South Texas when compared with
23 other voiding you are familiar with within the industry,
24 is it fair to say that it is more extensive than what
25 you would expect to ordinarily occur within the industry?

1 BY WITNESS ARTUSO:

2 A The voids that occurred in the STP Unit 1
3 containment, other than Lift 15, were probably less
4 extensive than you would normally find in other
5 construction.

6 Now, I want to qualify that in one respect.
7 Containments are unique in that they have a liner on one
8 side, so you can't see that face after you have placed
9 the concrete.

10 This is not a very common method of
11 construction in other types of construction, other
12 facilities.

13 Q Without excluding Lift 15, is the extent of
14 voiding on Lift 15 more than you would expect when
15 compared to what you see throughout the industry? And
16 by "the industry" I am referring to the nuclear industry.

17 BY WITNESS ARTUSO:

18 A Oh, you mean the nuclear industry?

19 Q Yes. I'm sorry. I thought I made that
20 clear.

21 BY WITNESS ARTUSO:

22 A Fine. As far as the nuclear industry is
23 concerned the voids that were encountered at STP were
24 less in magnitude than several very startling examples
25 on other containments.

1 Many containments have had problems in
2 their -- Many nuclear power plants have had problems in
3 their containments where there has been a high rebar
4 congestion, and this has been very obvious normally from
5 just one side.

6 Q Again, Mr. Artuso, my question is not
7 relative to whether you have seen nuclear power plants
8 that have more severe voiding, but what you would expect
9 of a typical containment within the nuclear power
10 industry.

11 When you evaluated the voiding problem at
12 South Texas, when compared to the norm -- not when
13 compared to obviously plants that may be less, but when
14 compared to the norm how do you find the voiding situation
15 at the South Texas Project?

16 BY WITNESS ARTUSO:

17 A I would say that the voids in the South
18 Texas Project would be typical of voids -- of other
19 containments in the nuclear industry, with a similar
20 design. With areas of high steel concentration and
21 obstructions, such as occurred at South Texas, you would
22 find similar voids in other containments probably standing
23 today, if they had that same configuration.

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1 BY MR. GUTIERREZ:

2 Q Do you consider those voids to be acceptable
3 if left uncorrected?

4 BY WITNESS ARTUSO:

5 A I would say it would be preferable to have
6 those voids corrected, yes.

7 Some of the smaller voids that were repaired
8 were very minor. It could have had no effect on the
9 ability of the structure to perform as designed.

10 Q Mr. Artuso, do you think it's a desirable
11 quality control practice to make a tap test post-placement,
12 after the forms are stripped?

13 BY WITNESS ARTUSO:

14 A Do you mean on a liner that remains in place?

15 Q Yes.

16 BY WITNESS ARTUSO:

17 A I would say that if you can prove that you
18 have eliminated any possibility of significant voids by
19 the method of placement and by the arrangements of the
20 placements, that you only confuse the situation by
21 attempting to sound for voids.

22 As you notice from the report, there are
23 many areas that sounded hollow and yet there were no
24 voids, because there is a separation many times between
25 the liner and the concrete, and as soon as that

7-2 1 separation occurs you'll pick up a hollow sounding noise,
2 while in fact you would expect some separations because
3 of just the difference in materials, probably the thermal
4 coefficient difference.

5 Q You seem to be saying that you can satisfy
6 yourself during the actual placement that if the actual
7 procedures are followed and you can satisfy yourself of
8 that, that the post-placement test is not only unnecessary
9 but would add an element of confusion. Is that what
10 you're saying?

11 BY WITNESS ARTUSO:

12 A Yes. You would probably find certain hollow
13 places after you would find hollow noises or sounds after
14 you placed the concrete, and then you'd have to go in
15 there and destructively check for a void, so you would
16 be in effect weakening your structure. You wouldn't be
17 helping yourself.

18 Q Do you think, based upon your evaluation,
19 that the procedures followed for Lift 15 and Lift 8
20 were sufficient to satisfy Brown & Root that their
21 procedures guaranteed no voids?

22 BY WITNESS ARTUSO:

23 A Well, in retrospect, you'd have to say that
24 since voids did occur, presumably the procedure wasn't
25 the best. However, after the corrective action that was

1 taken in the change in procedures, then you would be
2 well assured that following those procedures you would
3 not have any voids.

4 WITNFSS LONG: Mr. Gutierrez?

5 MR. GUTIERREZ: Yes.

6 WITNESS LONG: Dave Long here.

7 I'd like to tell you that with regard to
8 these new procedures that you made reference to a while
9 ago, Lift 7, which was the first lift in Unit 2
10 containment shell, poured after the implementation of
11 these new procedures, was sounded and no voids were
12 indicated.

13 BY MR. GUTIERREZ:

14 Q Mr. Long, do you have an explanation why
15 those procedures weren't in place before?

16 BY WITNESS LONG:

17 A As far as hindsight, you can always look
18 back and say where there might be a possibility of some-
19 thing being better, but at the time they were thought to
20 be sufficient.

21 In hindsight, we acknowledge that they may
22 not have been the best.

23 Q Mr. Artuso, turning to Page 45 of your
24 testimony, again referring to your conclusion relative
25 to membrane seals, Question and Answer 83, you're asked,

7-4

1 assuming damage did occur, what would be the consequences,
2 and you go on to say that there would not be a consequence
3 because a cut in a membrane will not enlarge significantly
4 with the passage of time and will not permit any
5 significant amount of water to interact with the concrete,
6 and you do go on.

7 But my question to you is, doesn't that
8 answer depend on the size of the cut? Are you comfortable
9 in just making a categorical statement, any cut, it
10 doesn't matter?

11 BY WITNESS ARTUSO:

12 A The use of a waterproofing membrane such as
13 this is more of a damp-proofing rather than a absolute
14 assurance that water won't penetrate the structure.

15 When you consider the thickness of that
16 concrete and the soundness of the concrete, the membrane
17 probably is superficial.

18 Q Do you remember the question I specifically
19 put to you?

20 BY WITNESS ARTUSO:

21 A You mean the size of the cut?

22 Q That's right. I'm asking you whether your
23 answer to that at all depends on the size of the cut.

24 BY WITNESS ARTUSO:

25 A Well, I guess you'd have to say the size of

1 the cut as well as the location of the cut.

2 WITNESS HERNANDEZ: Mr. Gutierrez, may I add
3 a point there?

4 BY MR. GUTIERREZ:

5 Q Yes. Please.

6 BY WITNESS HERNANDEZ:

7 A On my testimony, Ralph Hernandez, on Page 64,
8 we have provided in our engineering evaluation the reasons
9 for providing waterproofing.

10 The addition of waterproofing was a means of
11 providing an additional means of providing water-tightness
12 for the containment, and by itself we concluded that it
13 was not necessary.

14 We have adequate protection of the reinforcing
15 through concrete cover. We have provided a 3/8-inch
16 carbon steel liner which provides a leak-tight membrane,
17 and in and by itself the waterproofing only serves to
18 add an additional means of providing for water-tightness.

19 Q I understand that. I believe that was
20 Mr. Artuso's testimony as well, that you all seem to be
21 saying the membrane doesn't make any difference, but the
22 fact remains, Mr. Hernandez, is it not correct that you
23 committed to constructing that membrane. Is that correct?

24 BY WITNESS HERNANDEZ:

25 A That is correct, sir.

1 Q And once you commit to building that, you
2 also commit to building it properly, is that correct?

3 BY WITNESS HERNANDEZ:

4 A That is correct, sir.

5 Q So given that, and all of your explanations
6 as to why it's not necessary on the record, but given that,
7 then my question to Mr. Artuso was, doesn't his conclusion
8 on Page 45 depend upon the size of the cut, that it
9 wouldn't make any difference?

10 BY WITNESS HERNANDEZ:

11 A That's assuming there is a cut and that cut
12 has not been repaired.

13 Q That's correct.

14 Mr. Artuso, did you follow that discussion
15 between Mr. Hernandez and I?

16 BY WITNESS ARTUSO:

17 A Yes, I did.

18 Do you want me to comment on it?

19 Q Do you disagree with it at all?

20 BY WITNESS ARTUSO:

21 A No.

22 Q Mr. Singleton, I was a bit uncertain, relative
23 to Containment Unit 1, what were your responsibilities
24 relative to rebar inspection on Containment Unit 1?

25 / / /

1 BY WITNESS SINGLETON:

2 A. During what time span?

3 Q. Well, take it from Lift 1 up to the very top.

4 BY WITNESS SINGLETON:

5 A. I participated in some pre-placement
6 inspection and concrete placement inspection on several
7 of the lifts of Unit 1. I'd have to go back and check
8 the records to see exactly which lifts. Lift No. 1
9 I wasn't involved in.

10 After I received certification I was assigned
11 to the fuel handling building, Unit 1, which was my
12 primary responsibility of pre-placement inspection and
13 concrete placement and post-placement.

14 After being promoted to lead inspector, I
15 was assigned responsibility of Power Block Unit 2, which
16 was the safety-related areas in Unit 2, and another lead
17 inspector had responsibility for Unit 1.

18 I helped in Unit 1 during times of manpower
19 shortages or need for additional inspectors.

20 Q. I understand that from your prior testimony.
21 I'm trying to get a feel for what percentage of time
22 during the construction of Unit No. 1 you were actually
23 assigned there. Can you estimate a percentage?

24 BY WITNESS SINGLETON:

25 A. No, sir. I, you know -- it's nothing I can

1 put my finger on, you know, to say two percent or three
2 percent of the time. It's just something --

3 Q But it's in that ballpark, it wasn't 50 or 80
4 percent of the time, is that what you're saying?

5 BY WITNESS SINGLETON:

6 A Well, it was less than 50 percent.

7 Q Close to two, ten percent?

8 BY WITNESS SINGLETON:

9 A I couldn't say; it's a wild ballpark figure.
10 I participated in inspections in the fuel handling
11 building when I was needed, in the reactor building to
12 assist in inspection of post-placement, batching and
13 placing. It's not something I kept track of. It's not
14 something that was recorded in my mind that I -- a
15 certain amount or percentage of time, no. I couldn't
16 really tell you. Less than 50.

17 Q Now, how about Containment Unit 2, what
18 percentage of your time during the construction of that
19 containment were you assigned?

20 BY WITNESS SINGLETON:

21 A I was the lead inspector responsible for
22 Level II inspectors who were charged with the pre-
23 placement inspection in that area.

24 Actual physical hands-on inspection, that
25 was not my responsibility. It was supervising the

1 Level II inspectors who had that requirement.

2 Q For all lifts?

3 BY WITNESS SINGLETON:

4 A Yes, for all lifts.

5 Q Do you have personal knowledge who the lead
6 inspectors were on Unit 1 and Unit 2?

7 BY WITNESS SINGLETON:

8 A At the -- Dan Swayze was lead inspector for
9 Power Block Unit 1, and I was the lead inspector for
10 Power Block Unit 2.

11 Q This is now only relative to the containment
12 buildings.

13 BY WITNESS SINGLETON:

14 A Well, the power block was -- he had fuel
15 handling, MEA, and Containment Unit 1, and I had the
16 same buildings in Unit 2.

17 Q And that's true throughout construction for
18 Dan Swayze, all of Unit 1, to your knowledge?

19 BY WITNESS SINGLETON:

20 A Until such time that Mr. Swayze was -- left
21 the job.

22 Q Was Roger Forte ever lead inspector, to your
23 knowledge?

24 BY WITNESS SINGLETON:

25 A After Mr. Swayze left the job, and during the

7-10 1 time of the Forte -- Mr. Forte worked for Mr. Swayze, I
2 believe, during that time span in Unit 1.

3 See, Roger Forte was a Level II inspector
4 assigned to the reactor buildings, Unit 1 and Unit 2,
5 and so were any of the other inspectors. They may work
6 in Unit 1 one day and work in Unit 2 the other day, but
7 the over-all responsibility for the power blocks, Unit 1
8 and 2, rested on either Mr. Swayze or myself.

9 Mr. Forte was an inspector working for
10 Mr. Swayze in Unit 1 and for myself in Unit 2.

11 After Mr. Swayze left and I assumed the
12 position of QC supervisor in March of '79, Mr. Forte
13 worked for me at that time.

14 Q In what capacity?

15 BY WITNESS SINGLETON:

16 A Pardon?

17 Q In what capacity did Mr. Forte work for you?

18 BY WITNESS SINGLETON:

19 A Yes, sir. When I took over in March of '79
20 he worked for me.

21 Q No, but my question is in what capacity did
22 Mr. Forte work for you after Mr. Swayze left?

23 BY WITNESS SINGLETON:

24 A I'm sorry, I didn't understand that.

25 Q What was his job?

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BY WITNESS SINGLETON:

A. He was a Level II pre-placement inspector,
Reactor Building Unit 1 and Unit 2.

Q. Was he ever a lead inspector, to your
knowledge?

BY WITNESS SINGLETON:

A. When I took over he was lead inspector,
Unit 1 and Unit 2 Reactor Buildings.

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1 BY MR. GUTIERREZ:

2 Q Let me just get a feel for the time frame
3 in which Mr. Forte was Lead Inspector. He was Lead
4 Inspector basically when Mr. Swayze left the jobsite;
5 is that when he began his job as Lead Inspector, to your
6 knowledge?

7 BY WITNESS SINGLETON:

8 A To the best of my knowledge.

9 Q And do you have any personal knowledge when
10 he left that position?

11 BY WITNESS SINGLETON:

12 A Mr. Swayze or Mr. Forte?

13 Q Mr. Forte?

14 BY WITNESS SINGLETON:

15 A When Mr. Forte left the job?

16 Q When he left his job as Lead Inspector?

17 BY WITNESS SINGLETON:

18 A I would say it would have been sometime in
19 July, August, or September 1979.

20 Q Mr. Hernandez, your testimony addresses
21 L&P's role in development and implementation of the
22 concrete placing activities.

23 In reviewing Brown & Root's plans, designs
24 for the placement of concrete, did HL&P at any time
25 advise them that there might be a problem with the design

1 of the horizontal shear ties or the spacing of the
2 horizontal shear ties? Was there any discussion in the
3 planning stage relative to that problem?

4 BY WITNESS HERNANDEZ:

5 A You are talking with respect to the
6 containment design?

7 Q Yes, sir.

8 BY WITNESS HERNANDEZ:

9 A At no point did we make that comment.
10 We were more concerned, I might add, with
11 regard to the configurations of the horizontal stiffeners
12 at that point in time.

13 Q And what point in time is this?

14 BY WITNESS HERNANDEZ:

15 A During the original review of the design of
16 the containment liner, the 3/8" carbon steel liner.

17 Q What was the concern?

18 BY WITNESS HERNANDEZ:

19 A The concern was to insure that the liner
20 itself, in conjunction with the anchorage system, the
21 horizontal channels, which was the vertical angles,
22 would provide adequate means of vibrating concrete.

23 We did at that time put, or it was agreed
24 between Brown & Root Engineering and HL&P Engineering to
25 provide weep holes for the horizontal channel. Okay?

1 It is obvious that this is what we have done on the
2 modifications for lifts past Lift 15, is to go back and
3 increase the size of the weep holes for the horizontal
4 stiffener.

5 Q Now, during that same initial review period,
6 did HL&P provide any review or feedback back to Brown &
7 Root about any potential rebar congestion problem? Was
8 any discussion had relative to that?

9 BY WITNESS HERNANDEZ:

10 A With regard to Unit 1 containment?

11 Q Yes, sir.

12 BY WITNESS HERNANDEZ:

13 A Yes, sir. There was a lot of discussion with
14 regard to rebar configuration on the Unit 1 containment.
15 In fact, as a result of that Brown & Root and HL&P agreed
16 in terms of providing the solid-sleeve cadweld design
17 for penetration of the bottom liner, and items such as
18 that. It was discussed. It was agreed upon.

19 We provided that. We agreed on the means of
20 testing for that solid sleeve cadweld. There was a
21 concern at that point in time.

22 We also looked at the reinforcement drawings
23 for the containment shell and containment mat with regard
24 to configuration of layup of the reinforcing.

25 Q And as a result of the problems in Lift 15

1 have any of those decisions been rethought and subsequent
2 design changes been made?

3 BY WITNESS HERNANDEZ:

4 A Yes, sir. We have relocated the stirrups
5 on the Unit 2 configuration.

6 Q The stirrups, you say?

7 BY WITNESS HERNANDEZ:

8 A The horizontal shear ties.

9 Q Now, earlier when we were in San Antonio you
10 testified about the short lift you poured in order to
11 elevate the channel.

12 Was there any discussion relative to the
13 position of the channel in the lift when you first
14 reviewed Brown & Root's design for Unit 1?

15 BY WITNESS HERNANDEZ:

16 A No, sir. As I stated before, when we made
17 the original plans for the concrete, the manner of
18 constructing the containment shell was not identified at
19 that point in time that the eight-inch stiffeners would
20 pose the problem that they have indeed provided with
21 regard to the additional reinforcing.

22 Q Now, going to Page 59, you were asked whether
23 the void detection and repair program was adequate. And
24 you say "Yes."

25 Is the void detection and repair program you

1 are referring to that program which followed discovering
2 of voids in Lift 15?

3 BY WITNESS HERNANDEZ:

4 A Yes, sir. It is. It is with respect to the
5 void investigation and subsequent repair for the voids
6 that were identified resulting from Lift 15 and Lift 8
7 and the extension to Unit 1 and Unit 2 containment.

8 Q Mr. Hernandez, do you think it is a
9 desirable post placement QC test to perform a routine
10 tap test after the forms are stripped after replacement?

11 BY WITNESS HERNANDEZ:

12 A Mr. Gutierrez, I would rather rely on, one,
13 the adequacy of the concrete specification. I would
14 rather rely on the adequacy of the concrete construction
15 procedure, as well as insuring that I had adequately
16 supervised and adequately qualified inspectors, as well
17 as the adherence, or -- excuse me. As well as the
18 location of site engineering personnel to witness the
19 pour.

20 I think you build quality into the pour. I
21 don't believe you build quality into the concrete pour
22 through the tap test.

23 I think you are left with the results of
24 having to evaluate the tap test, which we have found to
25 be at times, as stated by many people here, it can be

1 completely erroneous through the separation of the
2 concrete and the liner, and I am not in the position of
3 saying that I would like to indiscriminately go back and
4 bore a hole through the carbon steel liner. I would rather
5 build by quality into the construction practice.

6 Q I understand the doer philosophy I think is
7 what you are alluding to, that you would rather build
8 the quality into the plant. But my question more is
9 whether you think the tap test as a QC, as a backup to
10 that doer philosophy, is a desirable feature?

11 BY WITNESS HERNANDEZ:

12 A I do not believe it is a desirable feature
13 without having the knowledge of were there any unusual
14 circumstances indicated in the pour.

15 I could go out tomorrow and find the
16 transition between a thickened pad plate and possibly
17 the 3/8" carbon steel liner, and I may just indiscriminately
18 tap on that. I may get a difference in sound. It may
19 be because I am tapping at the junction between a very
20 stiff portional liner, and a very think portional liner.

21 Now, to go on the basis of that, and to
22 use that as a basis for my evaluation to drill or not,
23 I think it would be eroneous. I think that what I would
24 need to do is evaluate the circumstances. Was there any-
25 thing unusual with regard to that specific portion of the

1 pour? Were there mechanical breakdowns?

2 Has the pre-pour, or the post-placement
3 meetings identified anything with respect to that pour?

4 My position is to not indiscriminately go and
5 drill through the liner on the basis of a tap test.

6 Q Let me ask Mr. Long a question. Mr. Long,
7 you stated that in the early part of 1979 HL&P provided,
8 I guess you were checking the checkers in concrete
9 placement, and you had various check lists.

10 Specifically on Page 76 you describe those
11 check lists, and on Page 77 Check List C.23 and C.24.

12 Do you know whether HL&P's check list, which
13 I would assume is a description of that in-process quality
14 built-in procedure that Mr. Hernandez was alluding to, do
15 you know whether those check lists ever reported during
16 1979 problem in cleanliness of pre-placement pour, or
17 accessibility of pours for inspectors?

18 BY WITNESS LONG:

19 A Without further research into the documents
20 themselves, I don't right off the top of my head know
21 that answer. I could not tell you.

22 Q Is it those types of things that would trigger
23 a post-placement test for possible voids if there were
24 irregularities marked in those check lists?

25

1 BY WITNESS LONG:

2 A. I would say the thing that might trigger
3 HL&P/QA's desire to perform a post-placement tapping test
4 on the liner, the containment, would be an indication of
5 voids on the external face. since concrete is poured on
6 the internal between the two faces of rebar, indication
7 on the outside might tend to indicate something on the
8 inside.

9 But like, as Mr. Hernandez testified earlier,
10 an indication of a void on a liner is merely an indication.
11 You will not know anything until it is evaluated, and more
12 than likely it is going to be a separation. Maybe a few
13 mills. You never know.

14 Q. Well, this gets to a concern. You say that
15 post-placement checking of surface is an indication of
16 voiding, because you can see surface voiding. But isn't
17 it true you only can see one side of the lift? The other
18 side is on the liner. How do you satisfy yourself that
19 there is not voids on the other side, without doing
20 something?

21 BY MR. LONG:

22 Q. As I testified earlier, in Lift 7 we have
23 implemented the new procedures, and this was the very
24 lift after these new procedures came about. And the
25 channel itself, the 3-inch channel that we referred to was

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raised to the upper portion of that lift.

And since this was the major cause of our voiding behind the liner in Unit 1 and Unit 2, the Lift 7 of the shell wall in Unit 2 was sounded, and based on the results of that sounding, which indicated no voiding, or no hollow sounding indications, we therefore determined that the procedures were adequate, and the concrete was, indeed, solid.

Q So, from tapping, you determined there were no voids on Lift 7?

BY WITNESS LONG:

A That is correct.

MR. GUTIERREZ: I think that's all the questions I have. I am just paging through my notes, to make sure that is the case.

Mr. Chairman, the Staff passes the panel.

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1 MR. SINKIN: Mr. Chairman and Judge Hill,
2 before the Board engages in their cross, I just want
3 to check that the Board did receive CCANP's motion to
4 resume cross-examination.

5 Did you receive a copy of our motion?

6 JUDGE HILL: I didn't.

7 MR. SINKIN: You did not? I was afraid of
8 that.

9 We did file on the 15th of July a motion
10 to resume cross-examination, giving various reasons
11 therein, referring to the involuntary interruption of
12 cross-examination on June the 26th in San Antonio.

13 We suggested in that motion that we could
14 either resume our cross-examination either at the
15 completion of the NRC Staff's cross-examination or
16 at the resumption of the hearing.

17 I didn't raise the point when Mr. Gutierrez
18 began his cross-examination, because completing his
19 cross-examination made more sense to me; but I did
20 want to raise the point that we have filed that motion.

21 I regret that it wasn't received by the
22 Board. Perhaps we can -- I have at least two copies
23 here that we can give to the Board now.

24 JUDGE BECHHOEFER: Did anybody else get it?
25 Did the Applicant?

9-2 1 MR. HUDSON: Yes, we received it, Your Honor.

2 MR. REIS: The Staff has. I think we
3 received it on Friday.

4 JUDGE BECHHOEFER: Well, I'll have to read
5 it first.

6 MR. SINKIN: An alternative suggestion,
7 Your Honor, would be that the Board proceed with their
8 cross, since you have just received this motion, and
9 the motion be taken under advisement until tomorrow;
10 and maybe when the Board finishes their cross would be
11 an appropriate time to resume the CCANP cross.

12 (Board reviews document.)

13 JUDGE BECHHOEFER: Are the parties prepared
14 to address it, because we haven't received it and
15 I didn't know whether the other parties, other than
16 the Staff, had received it.

17 MR. HUDSON: Yes, Your Honor, we received
18 the motion Thursday of last week, I think, and we are
19 prepared to address it, if you want to.

20 JUDGE BECHHOEFER: Okay.

21 MR. HUDSON: Okay. We basically don't
22 have a very strong position on this because we were
23 not privileged to all the discussions between the
24 CCANP and the Board.

25 However, we think the Board's decision was

9-3 1 probably reasonable in light of facts which you know
2 which you haven't told us.

3 Those principally are -- or the factors I
4 think need to be considered, is that this is not a
5 case in which Mr. Sinkin was simply allotted a certain
6 amount of time and you cut him off at the end of that
7 allotted time.

8 He filed a cross-examination plan, it's
9 our understanding, in which he chose the amount of time
10 that he would need.

11 The Board didn't set it for him. Mr. Sinkin
12 was given that amount of time.

13 We are led to believe that he exceeded the
14 time initially allotted, and there were two Bench
15 conferences that we can recall at which he was
16 presumably warned that he was exceeding his time and
17 that he needed to marshal his resources and get on
18 with his cross-examination.

19 He was given an extension of that time.
20 We, again, don't know the amount of all of these
21 things, but it appears to us that with that even
22 limited factual background that we know that the Board
23 has made a reasonable decision which it has the
24 discretion to make, and we see no basis for reversing
25 that decision, once made.

9-4 1 That's all of the remarks we have.

2 MR. REIS: In essence, the Staff would
3 make similar remarks.

4 We don't know what went on between the
5 Board and Mr. Sinkin.

6 We do know that apparently there were two
7 extensions.

8 The Staff does not feel strongly about
9 this matter.

10 MR. GAY: Mr. Chairman, CEU also received a
11 copy of the motion of CCANP. Mr. Jordan in Washington
12 received that.

13 My feeling is it is very appropriate for
14 the Board to encourage parties to expedite cross and
15 to move the cross-examination along and to perhaps even
16 request some suggestion as to the amount of time that's
17 going to be taken and to make every effort to avoid
18 duplicative cross.

19 However, I think that it's got to be clear
20 that parties in this proceeding who are Intervenors
21 have some due process rights, just like the Applicant
22 has due process rights.

23 Those due process rights go to the heart
24 and to the crux of the Intervenors' opportunity to
25 make their case through cross-examination.

9-5

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1 I don't know Mr. Sinkin's questions that
2 he has in mind to ask. I think that to the extent that
3 they are not duplicative, he deserves an opportunity to
4 ask those questions.

5 (Bench conference.)

6 JUDGE BECHHOEFER: The Board has decided
7 that we would grant the motion to the extent that we
8 will allow Mr. Sinkin to cross-examine until the end
9 of the evening, which is 10:00, when we were going to
10 break.

11 The Board will then start its questioning
12 in the morning.

13 FURTHER CROSS-EXAMINATION

14 BY MR. SINKIN:

15 Q I would begin with Mr. Hernandez.

16 Mr. Hernandez, on page 58 of your testimony,
17 you say that you participated in all phases of the
18 investigation and the repair on the shell walls regarding
19 the voids, that you interviewed STP construction and
20 QA personnel.

21 I'm wondering if during your interviews with
22 those personnel, did anyone ever mention to you voids
23 other than those in Lift 15?

24 BY WITNESS HERNANDEZ:

25 A. This has to do with not only Lift 15. This

9-6 1 has to do with the entire investigation of Unit 1 and
2 Unit 2 containment.

3 There were no identified areas through the
4 discussion with the construction and the QA/QC
5 personnel where they identified a specific void area.

6 We did, however, look at all the pour
7 card packages, as well as interviewed the participants
8 in the pour.

9 Q So you did not engage in questioning
10 people and actually asking them, "Were there any lifts
11 (sic) you were aware of, other than in Lift 15?"

12 BY WITNESS HERNANDEZ:

13 A Yes, we did.

14 Q You did conduct such questioning yourself?

15 BY WITNESS HERNANDEZ:

16 A Yes, we did. It was not only myself; it
17 was also conducted at the same time with -- Mr. Murphy
18 was also available there, as well as another Brown &
19 Root engineer from --

20 Q My question was really, during those
21 interviews, when you asked the question, "Do you know
22 of any voids or suspect any voids other than Lift 15";
23 did anyone ever mention anywhere else there might be
24 voids?

25 //

9-7

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1 BY WITNESS HERNANDEZ:

2 A No, sir, not to my recollection. The points
3 were specific.

4 During the investigation, it was our intent
5 to be able to identify or pinpoint any specific area
6 that there were identified void.

7 We gave anonymity to the individuals. They
8 were brought in separately.

9 We characterized these by asking information
10 from every person that we knew had participated in the
11 pour.

12 Q All right. On page 69 of your testimony
13 you note that in answering certain interrogatories that
14 CCANP incorrectly identified a number of pours, apparently
15 confusing S's for 5's and that sort of thing.

16 I'm wondering if you can tell me what
17 document you used to learn that those were incorrectly
18 identified, if any?

19 BY WITNESS HERNANDEZ:

20 A Well, in the basis for our information, we
21 had your responses to the interrogatories, for one.

22 In addition to that, we're fairly familiar
23 with the notation for the concrete pours.

24 As I might identify, I believe in the
25 testimony we said "apparently."

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We cannot -- I cannot, in my judgment,
identify what pours you were looking at.

However, going back and making the
assumption that an S was a 5 or 3, we made these
assumptions that these were the specific pours that
you were identifying?

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10-1

1 BY MR. SINKIN:

2 Q Did you consult the nonconformance logs?

3 BY WITNESS HERHANDEZ:

4 A Yes, sir, we did.

5 Q On Page 71 of your testimony, the last line
6 continuing on 72, you said in light of the availability
7 and use of the FREA system to resolve these problems, by
8 which you're referring to the deletion, addition or mis-
9 location of rebar, it is unreasonable to assume that
10 construction perscnnel would attempt to intimidate QC
11 personnel about the reporting of mislocated or omitted
12 rebar.

13 Did you ever ask any of the QC inspectors
14 that question specifically, or were you relying on the
15 existence of the FREA system?

16 BY WITNESS HERNANDEZ:

17 A I was relying on the existence of the FREA
18 system.

19 However, I have been in discussions with QC
20 personnel with regard to areas of intimidation.

21 Q And during those discussions did any of them
22 ever mention any intimidation to you?

23 BY WITNESS HERNANDEZ:

24 A Not with respect to reinforcement or any-
25 thing like that, with regard to mislocation of rebar.

1 There is a means whereby construction can
2 readily, or at that point in time during the FREA system,
3 whereby construction could readily identify to engineering
4 that reinforcing should be removed or should be moved for
5 the purposes of constructability.

6 Those were then forwarded through a simple
7 process, a document, where by they were sent to
8 engineering for disposition.

9 If engineering agreed with the disposition,
10 it was so noted on the FREA document itself, and similarly
11 sent to construction. That allowed the modification of
12 the rebar arrangement.

13 Q In your discussions with those personnel
14 about intimidation, did anyone ever mention intimidation
15 that did not concern rebar?

16 BY WITNESS HERNANDEZ:

17 A No, sir. We were called in -- I was called on
18 one specific instance where -- at the direction of QA to
19 see if they could identify any areas of intimidation.
20 They could not at that point in time.

21 The people that I discussed this with did not
22 identify any situation with regard to intimidation.

23 We also asked with respect to the investi-
24 gation that was cited before, where the Containment
25 Unit 1 and Unit 2, if there was anything unusual or if

1 they had been forced to accept anything that was not what
2 they believed to be as it should be.

3 There was no indications of that, with
4 respect to Unit 1 or Unit 2.

5 Q Mr. Long, in your testimony on Page 75 you
6 talk about the program prior to January of 1980, the
7 role of HL&P's site QA, and in Answer 4 you detail a
8 number of things that HL&P QA did since commencement of
9 construction.

10 Can you identify for me in those areas an
11 example of a problem that HL&P QA found before Brown & Root
12 found it?

13 Can you think of an example of such a problem?

14 BY WITNESS LONG:

15 A One particular problem I could remember, I
16 don't recall a particular pour number, but I recall an
17 excessive lateral movement of concrete.

18 Q Were there many? Would they range from zero
19 to ten or a hundred?

20 BY WITNESS LONG:

21 A I only recall one instance of that.

22 Q Did HL&P ever find any voids prior to
23 Brown & Root finding them?

24 BY WITNESS LONG:

25 A HL&P, per se, did not have a void detection

1 program where they went behind as each form was removed.

2 More than likely, Brown & Root would be the
3 first one because they had the primary post-placement
4 inspection responsibility. We would follow up on their
5 detection of those voids and ascertain the severity of
6 that void.

7 Q On Page 76 you talk about the formalization
8 of the surveillance activities during pre-placement,
9 placement, and post-placement.

10 Can you tell me, in January of 1981 what
11 percentage of Category I placement had been completed
12 on the Reactor Containment Building No. 1?

13 BY WITNESS LONG:

14 A I couldn't give you that information. I
15 don't know.

16 Q Do you know in January '80 how much of RCB-2
17 had been built?

18 BY WITNESS LONG:

19 A With respect to QA, we did not keep up with
20 construction schedule or cost, so we did not worry about
21 percentage complete. We worried about making sure that
22 that placement was indeed done in accordance with the
23 procedure.

24 Q But a lift number for January 1980 isn't
25 floating about in your head somewhere?

1 BY WITNESS LONG:

2 A No, sir, it's not.

3 Q On Checklist C-2.4, Page 77, surveillance of
4 concrete placement activities, did that checklist in any
5 way concern itself with the total yards to be poured?

6 BY WITNESS LONG:

7 A It did not have a specific item that checked
8 for total yardage. We merely observed what the total
9 yardage was, and as far as any inspection characteristic,
10 that did not have anything to do with the quality of the
11 placement as far as we were concerned.

12 Q In Checklist C-2.7, the surveillance of the
13 concrete, was that surveillance done when the concrete
14 left the truck or arrived at the pour?

15 BY WITNESS LONG:

16 A That was done when the concrete left the truck,
17 but the point at which the concrete left the chute of the
18 truck was at the pour.

19 Q Let me be sure I understand that. You have
20 the truck down here and you've got the pour going on up
21 here. The concrete leaves the truck and goes through
22 some mechanism up to the top of the pour?

23 BY WITNESS LONG:

24 A When it leaves the truck it either goes
25 through a pump, conveyor, bucket, whatever. The concrete

1 was sampled before it went into the pump or conveyance
2 system.

3 Q When it left the truck?

4 BY WITNESS LONG:

5 A Yes, sir. That's correct.

6 Q Just for general information, when you refer
7 to a pencil vibrator in your testimony, are you talking
8 about one of a one-inch size or less?

9 BY WITNESS LONG:

10 A That's correct. Operated by electric motor.

11 Q Mr. Murphy, I might ask you a question for a
12 moment.

13 We talked about the pumps breaking down on
14 Lift 15, but I don't recall that there was ever a
15 specific description of just what went wrong with the pump.

16 Can you tell me what broke down?

17 BY WITNESS MURPHY:

18 A No, I'm sorry, I cannot give you a specific.

19 Q Can any other member of the panel describe
20 specifically what went wrong with the pumps on Lift 15?

21 BY WITNESS LONG:

22 A It can be a multitude of things from
23 hydraulic failure to engine failure, so, you know, on
24 the mechanic that operated, or that fixed the pump could
25 be the one to tell you just exactly what went wrong with it.

10-7 1 Q Mr. Long, on Page 87 of your testimony, at
2 Lines 29 through 34, you talk about a random sampling of
3 a few cadweld folders uncovering a number of documentation
4 problems.

5 Did you ever find any instance in which the
6 examination checklist differed from the field notes of
7 the cadweld inspector?

8 BY WITNESS LONG:

9 A We only checked the actual QA vault record.

10 The field notes of the QC inspector in charge
11 of cadwelding was not a quality record.

12 Q Let me be sure I understand your process.

13 The cadweld inspector would look at a cadweld
14 and would write in his book the results of his inspection,
15 he would forward that card to the vault, it would be
16 turned in to a final examination check and the final
17 examination check would be filed, and what I hear you
18 saying is that the field notes of that inspector are not
19 considered a quality record.

20 BY WITNESS LONG:

21 A I don't get your -- what are you classifying
22 as field notes?

23 Q The cadwelder inspection little card on which
24 he says preparation, set-up, final U, or rejected, or
25 accepted, or whatever, where the actual inspector writes

1 something down as opposed to the man at the vault turning
2 it into an EC.

3 BY WITNESS LONG:

4 A That's true. I was referring to field notes
5 as scribbling on a piece of scratch paper.

6 Your usage of field notes is a cadweld
7 inspection book which was turned in to the QA vault,
8 and we did perform surveillance on that documentation.

9 Q Then my question is, did you ever find an
10 examination check prepared at the vault that differed
11 from the cadwelding inspection book?

12 BY WITNESS SINGLETON:

13 A Mr. Sinkin, if I could clarify that a little
14 bit, the cadweld inspection book, once it was completed,
15 was forwarded to the vault, and that was the record.
16 There was nothing copied off the cadweld inspection book
17 onto another piece of paper in the vault.

18 The cadweld inspection book that the cadweld
19 inspector put his notes of verification, the clean-up,
20 the fit-up, and everything, that was the one document
21 that was forwarded to the vault, and that was the
22 document that you're talking about.

23 What you're talking about as field notes and
24 that cadweld inspection book are the same.

25 Q Let me take one more stab at it. An

1 examination check is one sheet that summarizes for a
2 large number of cadwelds often what the status of each
3 inspection step was?

4 BY WITNESS SINGLETON:

5 A That's what we refer to as a cadweld
6 inspection book.

7 Q That's not a book, though. That's a single
8 sheet. Maybe if I mention the name Mr. Shlayfer, Mr. Art
9 Shlayfer, would prepare, for example, an examination check,
10 a final examination check document, but Mr. Shlayfer never
11 inspected a cadweld.

12 Does that refresh your memory or help
13 clarify the situation?

14 BY WITNESS SINGLETON:

15 A I guess the terminology changes; now they're
16 called cadweld inspection books because it's a cardboard,
17 three-sided folded book.

18 Prior to that, we didn't have the cadweld
19 inspection book, we had examination checks. Examination
20 check was filled out by the inspector in the field. He
21 had a little notebook where he said okay, I inspected
22 this cadweld, this cadweld, this cadweld, went back to
23 his inspection area, his field shack, took his field notes,
24 copied it onto the examination check, forwarded that to
25 the vault, and that's what Mr. Long and them would be

1 reviewing.

2 Q Mr. Long, on Page 92 of your testimony you say
3 that since -- at Line 14 -- since I&E Report 79-14
4 indicated that there was no substance to the allegation
5 no further action was warranted.

6 I just wanted to ask you, do you know if any
7 further action was taken. You say it was not warranted,
8 but you may have decided to do something anyway.

9 BY WITNESS LONG:

10 A To my recollection, no further action was
11 taken.

12 Q Did you participate in the investigation of
13 79-14 in any way, either in an entrance interview or
14 providing information or an exit interview?

15 BY WITNESS LONG:

16 A Yes, I believe I did.

17 Q Do you remember what role you played in that
18 particular investigation?

19 BY WITNESS LONG:

20 A If I recall the report correctly, I worked
21 with Mr. Hubacek and one of the Brown & Root QC inspectors
22 directly involved with the waterproofing membrane
23 inspection.

24 Q Mr. Murphy, in terms of the Lift 15 placement,
25 after the breakdown in that placement, was any disciplinary

1 action taken against the person in charge of the concrete
2 pour?

3 BY WITNESS MURPHY:

4 A I am not absolutely sure of this, but I think
5 that there was some disciplinary action taken against
6 possibly a concrete foreman. I'm not aware of that. I
7 was not physically present down there. I do not spend
8 time down there, but to answer your question, I do
9 believe that there was some action taken.

10 Q Do you know if someone was fired over that?

11 BY WITNESS MURPHY:

12 A I think that that was the action.

13 Q Do you know how long that person had been
14 with the company?

15 BY WITNESS MURPHY:

16 A No, I do not.

17 Q Do you know anything about his qualifications
18 for the work he was doing? Was he a good concrete
19 supervisor, or foreman, or whatever?

20 BY WITNESS MURPHY:

21 A I would not -- I did not know the man personally.
22 I don't even know him by name.

23 Q Any other member of the panel have any
24 information on that point?

25 / / /

1 (Witnesses shake heads.)

2 Q Mr. Murphy, what is the purpose of the polar
3 crane?

4 BY WITNESS MURPHY:

5 A The purpose of the polar crane is to set the
6 vessel itself, set the steam generators initially, and
7 then thereafter to service these vessels during the
8 operation.

9 Q By "set" do you mean move from outside to
10 inside?

11 BY WITNESS MURPHY:

12 A That's correct. And that generally is the
13 only time that is done.

14 Q And has the polar crane been so used for the
15 vessel and the turbine generator?

16 BY WITNESS HERNANDEZ:

17 A Mr. Sinkin, the generator is not located in
18 the containment.

19 Q The turbine generator is not located in the
20 same building. I was curious because you did say steam
21 generator.

22 BY WITNESS MURPHY:

23 A Steam generator.

24 Q Was it so used for the reactor vessel and the
25 steam generator?

1 BY WITNESS MURPHY:

2 A Yes, it was.

3 Q Mr. Artuso, you were discussing void
4 detection programs, and I had intended to ask you some
5 questions about that also.

6 I don't want to go over what's been done,
7 but I don't think you were asked, do you know about other
8 plants? You have compared the voids at STNP to other
9 nuclear plants, particularly the containment shell voids.

10 Do you know at other nuclear plants if there
11 is routinely a test program to attempt to identify voids?

12 BY WITNESS ARTUSO:

13 A I would say that to my knowledge of many of
14 these plants, I know of no routine sounding program to
15 detect voids.

16 Q The voids that you know of that have been
17 detected, what was the impetus for looking for them, or
18 were they just obvious?

19 BY WITNESS ARTUSO:

20 A In one case they were located accidentally
21 when a penetration was made through the liner for other
22 reasons. That was BC Summer. At Crystal River the voids
23 were found from the surface, the outside surface, and
24 found to penetrate completely through the liner. The
25 same at Three Mile Island. They were located from the
outside.

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1 MR. SINKIN: Well, Mr. Chairman, I appear
2 to be six minutes early. I'm searching diligently for
3 something to ask, but I seem to have finished.

4 JUDGE BECHHOEFER: I think we'll adjourn for
5 the evening.

6 We'll see you at 9:00 o'clock tomorrow
7 morning. I understand it will be in this room, rather
8 than in the little one.

9 MR. SINKIN: 9:00 o'clock?

10 JUDGE BECHHOEFER: 9:00 o'clock, yes.

11 (Whereupon, at 9:52, the hearing was
12 adjourned, to reconvene at 9:00 a.m., Tuesday,
13 July 21, 1981.)

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This is to certify that the attached proceedings before the
NUCLEAR REGULATORY COMMISSION

in the matter of: HOUSTON LIGHTING & POWER COMPANY
SOUTH TEXAS NUCLEAR PROJECT UNITS 1&2

DATE of proceedings: 20 July 1981

DOCKET Number: 50-498 OL; 50-499 OL

PLACE of proceedings: Houston, Texas

were held as herein appears, and that this is the original
transcript thereof for the file of the Commission.

Lagailda Barnes
Official Reporter (Typed)

Lagailda Barnes
Official Reporter (Signature)