

ORIGINAL

NUCLEAR REGULATORY COMMISSION

10/12/78

IN THE MATTER OF:

Docket Nos.

CAROLINA POWER & LIGHT COMPANY

(Shearon Harris Nuclear Power Plant,
Units 1, 2, 3 and 4)

- 50-400
- 50-401
- 50-402
- 50-403

INTERVIEW OF LICENSING BOARD MEMBERS
IVAN W. SMITH, GLENN O. BRIGHT, AND
J. VERN LEEDS BY OFFICE OF INSPECTOR
AND AUDITOR

Place - Bethesda, Maryland

Date - Thursday, 12 October 1978

Pages 1 - 69

Telephone:
(301) 347-3700

7810310030

7810310032

T

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

JR9918 1
VAIBEL:mp
dict 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

3 -----x
 4 In the Matter of: :
 5 CAROLINA POWER & LIGHT COMPANY : Docket No. 50-000
 6 (Shearon Harris Nuclear Power Plant, : 50-401
 Units 1, 2, 3 and 4) : 50-402
 7 : 50-403
 8 -----x

9
10 INTERVIEW OF LICENSING BOARD MEMBERS
11 IVAN W. SMITH, GLENN O. BRIGHT, AND
AND AUDITOR

12
13 East-West Towers
4350 East-West Highway
14 Bethesda, Maryland

15 Thursday, 12 October 1978

16 Proceedings in the above-entitled matter were convened,
17 pursuant to notice, at 3:30 p.m.

18 BEFORE:
19 ROGER A. FORTUNA, Assistant Director for Investigation
20 WILLIAM H. FOSTER, Senior Inspector/Auditor
21 DAVID H. GAMBLE, Investigator

22 APPEARANCES:
23 JOHN H. FRYE, III, ESQ., on behalf of the Atomic Safety
& Licensing Board Panel
24 GEORGE F. TROWBRIDGE, ESQ., and JOHN H. O'NEILL, JR., ESQ.,
Federal Reporters, Inc. Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W.,
25 Washington, D. C. 20036; on behalf of Carolina Power &
Light Co.

1 APPEARANCES (continued):

2 CHARLES BARTH, ESQ., Office of the Executive Legal
3 Director, Nuclear Regulatory Commission, Washington,
4 D. C.; on behalf of the Nuclear Regulatory Staff.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1918 1
ape 1 2 MR. SMITH: Would you take a transcript of this
avidl 3 proceeding?

4 I intend now to read my statement.

5 On October 5, 1978, the board wrote to Mr. O. Gene
6 Abston, Acting Director, Office of Inspector and Auditor
7 that the board must decline to be interviewed on the subject
8 proposed by that office in the Shearon Harris remand.

9 Subsequently, through the efforts of Mr. James
10 Kelley, NRC acting general counsel, Mr. Abston, and John
11 Frye, III, who is the boards legal counsel, an arrangement
12 agreeable to the board was arrived at to provide for
13 interviews.

14 This is why we are here today.

15 We submitted a telegram to the parties in this
16 proceeding in which we advised them as follows: "Members
17 of the Atomic Safety and Licensing Board in the Shearon
18 Harris proceeding will be interviewed by an inspector of the
19 commission's office of inspector and auditor in matters
20 deemed appropriate on October 12, 1978, beginning at 3:30 pm,
21 in the fourth floor conference room, West Towers Building,
22 4350 East West Highway, Bethesda, Maryland.

23 Parties to the Shearon Harris proceeding may
24 attend. The transcript of the interview will be filed in
25 the public record of the proceeding."

david2

1 I understand that there are present today among
2 the parties counsel for the applicant and counsel for the NRC
3 staff.

4 Are there any other parties present?

5 (No response.)

6 The arrangement provided that Inspector and
7 Auditor would submit the subject matter of the interview
8 to the board in advance and in writing; that the board
9 would be interviewed as a collegial body; and that the
10 board would continue to feel free to decline to answer
11 questions it believed to be inappropriate.

12 Subsequently, by memo dated October 10, 1978,
13 Mr. Abston advised Mr. Frye of two general areas to be
14 covered in the interview. And I will read those, an
15 excerpt from Mr. Abston's memorandum of October 10, 1978:

16 One. Explore in detail with the ASLB members
17 their views with respect to the seriousness of omission
18 of line inspector's views in the written and oral testimony.

19 Two. Explore in detail with the ASLB members
20 how they believe the dissenting view should have been
21 presented in the licensing proceedings at the time of the
22 Shearon Harris hearing.

23 Sometimes the organizational position and
24 function of the office of inspector and auditor is confused
25 with that of office and inspection and enforcement. The

David3

1 differences in these offices are important in this case.
2 The office of inspector and auditor is under the direct
3 control of the commissioners as a commission and reports only
4 to them. They are charged by the commission's order of
5 September 5, 1978 with conducting an investigation into
6 the subject matter of the board's letter of August 28th,
7 1978.

8 Office of inspection and enforcement is an
9 operational unit of the NRC, reporting to the executive
10 director for operations. Office of inspection and enforcement
11 has the responsibility of making industrial inspections and
12 has industrial enforcement functions.

13 It is a part of the NRC staff, which is a party to
14 the Shearon Harris proceeding. Office of inspection and
15 enforcement was the subject of the board's letter to the
16 commission of August 28, 1978.

17 I am making that explanation solely so the
18 public record can understand the difference between those
19 offices. I know the people present here know that.

20 On the first instance, the members of the board
21 have not to cooperate with the Inspector and Auditor. We
22 recognize that it has important responsibilities in this
23 matter. However, our responsibilities as an adjudicative
24 body are non-discretionary, and we cannot avoid those
25 responsibilities, even where it may be expedient to do so.

david4

1 We believe that we can be appropriately helpful
2 to Inspector and Auditor, and in the process, this interview
3 may assist the board in identifying areas where we have
4 not made our concerns about the events in issue clear.

5 Moreover, we believe that it is possible that this
6 interview may suggest to the board and to the parties
7 additional possibilities for developing a complete public
8 record.

9 We believe that it is appropriate for the
10 board to answer questions which might clarify our letter
11 of August 28 where the meaning may be in doubt. If
12 Inspector and Auditor do not understand our letter, others
13 may not. We certainly want to be accurately understood.

14 Second, the answers to appropriate questions
15 might indicate to the parties areas where we believe the
16 evidentiary record might be developed. This may be true
17 with respect to questions which are too subtle or too
18 complex for immediate response.

19 Then, perhaps we may issue a memorandum indicating
20 a need for record application or a memo in direct response
21 to your questions.

22 Third, there may be some questions which are not
23 appropriate for the board to respond to under the
24 circumstances prevailing today, but which may raise issues of
25 public interest in the Shearon Harris remand. Then we hope

david5

1 that the board could address those issues in our initial
2 decision.

3 In any event, as we indicated, we are without
4 authority to submit to any probing of our mental processes
5 in the exercise of our adjudicative duties. Nothing has
6 relieved us of our responsibility to protect the principle
7 of separation of functions in the adjudicative process
8 and to avoid impermissible ex parte communications.

9 Although, with respect to ex parte communications,
10 we don't see that there is any problem surviving, because
11 of the method by which this interview is conducted.

12 Now, gentlemen, we are ready for your interview.

13 MR. FORTUNA: Could I please have a copy, sir,
14 of the statement that you just made, so I could make some
15 comments in reference to it?

16 MR. SMITH: It's not entirely complete. There
17 were a few asides there.

18 (Document handed to Mr. Fortuna.)

19 MR. FORTUNA: Thank you.

20 Permit me a few moments, if you will, so I
21 can take a closer reading of this document in order to be able
22 to respond to it in a rational and logical manner.

23 (Pause.)

24 MR. FORTUNA: I'm now directing my attention to a
25 written copy of the document that -- is it Dr. Smith or

david6

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

Mr. Smith?

MR. SMITH: No.

MR. FORTUNA: Excuse me.

MR. SMITH: No. Mr. Smith.

MR. FORTUNA: Mr. Smith has just read into the transcript, and I imagine has no bound into the record.

I will read excerpts from the document, and I will make comments on them.

The initial introductory comment is followed by "Subsequently, through the efforts of Mr. James Kelley, NRC acting general counsel, Mr. Abston and Mr. John Frye, III, the panel's legal counsel, and arrangement agreeable to the board was arrived at to provide for interviews. This is why we are here today."

It continues a paragraph or two later, "the arrangement provided --" and that's the area that we are interested in here now that I'm discussing -- "that the office of Inspector and Auditor would submit the subject matter of the interview to the board in advance and in writing."

That is correct in a sense -- and I speak now of the office of Inspector and Auditor, Mr. Abston -- general areas were to be submitted to the board in writing, but more detailed questions could not be, because, in fact, as we all know, if a line of questioning develops, it's most

david7

1 difficult to anticipate where it may lead us.

2 So, as far as matters of interviews with the
3 board would be submitted in advance and in writing, true,
4 in general areas.

5 Secondly, the board, through Mr. Smith, has
6 characterized the agreement as stating that the board would
7 be interviewed as a collegial body. I wish to place
8 some clarification on that as the office of Inspector and
9 Auditor views that and as I view that as assistant director
10 for that office.

11 It was our understanding, and it was the
12 understanding of the office of the Inspector and Auditor that
13 the board members would be here as a group. In addition,
14 Mr. Frye would be here as their legal counsel, but that
15 questions would be directed at and to the individual board
16 members and that we would be receiving individual
17 responses, rather than a single collegial -- if you choose
18 to use that word -- position of the board.

19 Moving on, again reading from the understanding of
20 the board as presented by Mr. Smith of the arrangement: "that
21 the board would continue to feel free to decline to answer
22 questions it believed to be inappropriate."

23 This is not -- I emphasize -- this is not the
24 understanding that the office of Inspector and Auditor
25 appreciates. We understood and continue to understand that

David8 1 agreement to provide that the members of the board would
2 provide answers to any and all questions covered in the
3 general areas which we submitted to the board in writing several
4 days ago.

5 Of course, I would certainly understand that there
6 are certain areas where people have constitutional rights,
7 that they would be unable to answer or perhaps certain
8 inherent rights under the Privacy Act under which they
9 would not be necessitated to answer.

10 But I would suggest by having this in an open
11 meeting, those rights under the Privacy Act would be
12 waived.

13 DR. LEEDS: What constitutional rights are you
14 talking about?

15 MR. FORTUNA: Any that adhere to or pertain to
16 any individual in the body politic of the United States of
17 America.

18 And I'll continue here, one last thing. I
19 make reference to the telegram that Mr. Smith -- I think it's
20 a mailgram, to be more accurate -- that Mr. Smith read
21 from into the record -- and there is a statement which says,
22 "The members of the Atomic Safety and Licensing Board in
23 the Shearon Harris proceeding will be interviewed by an
24 inspector of the commission's office of Inspector and
25 Auditor on matters deemed appropriate by the board on

david9

1 October 23."

2 And it follows as to location and time and place.

3 That is inaccurate -- "matte-s deemed appropriate
4 by the board," in so far as we're concerned when
5 characterizing the arrangement and the attempt that was
6 made to conduct this hearing here today.

7 Now, from what I have just read and spoken to
8 and what Mr. Smith has spoken to, what he feels that the
9 agreement and the arrangement is, apparently we're at an
10 impasse, and I would at this point ask Mr. Smith if, in fact,
11 he believes that that's to be the case.

12 MR. SMITH: My impression would be that I see
13 no obstacle to us proceeding under our different understandings
14 of what the interview is going to be about. You have your
15 responsibility to ask questions, and we have our
16 responsibility to answer them, if at all, in a manner
17 consistent with our responsibilities as adjudicative
18 officers.

19 If you want to proceed with your questions, I
20 think it would be appropriate for you to do so, in the
21 interest of saving time. I am rather confident that our
22 view of the arrangement is an accurate one.

23 MR. FORTUNA: I'm sure that would be your position,
24 sir.

25 MR. SMITH: Furthermore, I didn't understand you --

david10

1 you didn't suggest that I read incorrectly the contents
2 of the mailgram.

3 MR. FORTUNA: No, no. I'm sorry. I's saying
4 that the characterization -- you read it as the words are
5 written there, sir. My only point is we do not understand
6 the agreement to in sumand substance say that the board
7 would be answering only those questions which it deemed
8 appropriate.

9 MR. SMITH: I think that the board -- individual
10 board members might want to take a moment to discuss this,
11 however, because when you introduce elements of the
12 Privacy Act and our individual constitutional rights to
13 an interview, it sort of changes the tenor of it, and --

14 MR. FORTUNA: I do so in no way --

15 MR. SMITH: Let me continue, please.

16 MR. FORTUNA: Yes, sir.

17 MR. SMITH: It suggests we're being invetigated
18 for a possibility of a violation of law and --

19 MR. FORTUNA: I in no way intended --

20 MR. SMITH: -- if this is the case, it s long
21 overdue for you to advise of this now.

22 MR. FORTUNA: Sir, I in no way intended that
23 meaning. If I did, I apologize.

24 MR. SMITH: How else would our constitutional
25 rights arive?

davidll

1 MR. FORTUNA: I was attempting to distinguish,
2 sir, between the understanding that we apparently each have
3 a different view of, and the language, "matters deemed
4 appropriate by the board."

5 All I'm trying to say is that anybody --- any
6 person at any time -- and I'm not suggesting this is the
7 time or place -- whether a board member or a person that is
8 walking out in front of the building here today, certainly
9 in particular situations can decline to answer any question,
10 whether it be asking for the time of the day or where were
11 you last Thursday afternoon at 5:00 o'clock.

12 I was just trying to distinguish that. That's
13 the only thing.

14 I think -- and you can probably correct me if
15 I'm wrong -- that matters deemed appropriate by the board
16 meant more of the concern that you have in the ex parte area,
17 adjudicatory process area. I was just trying to distinguish
18 that from the other, and there was no other meaning, hidden or
19 otherwise, meant by the statement.

20 DR. LEEDS: Sir, in criminal law, as you may or
21 may not know, when you advise a person of his constitutional
22 rights, that phrase is a key phrase. That brings up certain
23 connotations, and whether you intended it that way or not,
24 I heard it that way.

25 MR. FORTUNA: I did not intend it to be that

david12

1 way, and yes, just so the record is complete, I do have a
2 prosecutor's background, and I am aware of the case law
3 that you're referring to, and I have no intention of making
4 any reference to that area.

5 To be quite frank, if I did so, I would reach
6 into my wallet and flop out the famous card that we're all
7 aware of, and I have absolutely no intention whatsoever.

8 I was just trying to distinguish that there are
9 certain things that nobody has to answer to as juxtaposed
10 to adjudicatory matters, ex parte considerations -- and
11 I think that's really what we are talking about here today.

12 MR. SMITH: Mr. Fortuna, I guesst that we all
13 have an interest in getting your very legitimate
14 business over with, and instead of bogging down on it,
15 what my understanding -- our understanding of the
16 arrangement was and what yours is, you do your job and we
17 will do our job the way we see it, and we just simply
18 cannot feel that we are relieved by anything that has
19 happened from what we regard as a very serious and important
20 responsibility to comport ourselves as adjudicative
21 officers.

22 And nothing has happened to change that, and that's
23 the only basis we can answer your questions. I hope you
24 understand that when we do it on that basis, it's for no
25 motive to frustrate you or demonstrate any lack of confidence

David13

1 in you or anything else. It is simply our duty as opposed
2 to your duty. We have different responsibilities, so I
3 think it would be better for us to just proceed with your
4 questions.

5 MR. FORTUNA: I appreciate what you're saying,
6 and we will proceed.

7 Before we get into the specific questions --

8 MR. SMITH: Excuse me a moment before we
9 get into it. .

10 (Board members confer privately.)

11 MR. SMITH: All right, Mr. Fortuna. Also,
12 whatever questions you ask, whether addressed to an
13 individual or not will be regarded as questions to the board
14 and we will try to give you a board answer.

15 If the board can't arrive at an answer, it's up
16 to the individual board member, if he wants to, to respond.

17 MR. FORTUNA: Before I get into questioning,
18 I have to go back, as I was speaking briefly a few moments
19 ago, to a procedure that we have established in the office
20 of Inspector and Auditor, a procedure which we use in almost
21 all of our interviews with individuals.

22 Clearly, this is somewhat different than the
23 normal interview, but I do feel that it bears mentioning,
24 so that the record is complete.

25 And this would be something that I would say, or

davidl4

1 any of the members of my staff would say to any individual
2 that is interviewed, which is essentially this: that there
3 is a statute known as the Privacy Act, as all of us in
4 this room are aware. There are certain provisions in the
5 Privacy Act which necessitate investigative type personnel
6 to make certain statements to individual interviewees.
7 So, as I say this, I address this to all of you, being
8 Mssrs. Bright, Smith and Leeds.

9 The first thing is: what authority do I have
10 here today to come into this room and ask you the questions
11 that I am about to ask? Essentially, ~~that~~ authority is
12 the commission order which we are all familiar with, which
13 is dated September 5, 1978.

14 I don't think there's any need to read the
15 pertinent portions of that record, because I think we're
16 all in agreement the commission did issue that particular
17 order, which essentially provided that the office of
18 Inspector and Auditor was to go out and collect facts in
19 the Shearon Harrison matter and so conduct a thorough
20 inquiry into the basis for and the seriousness of the alleged
21 mission of the concern of the line inspector from the
22 written and oral testimony of staff.

23 Upon completion of the inquiry of the office of
24 Inspector and Auditor, they will report to the commission
25 the results of which -- the inquiry will be made public and

David15 1 filed with the licensing board to whom we have remanded the
2 Shearon Harris proceeding.

3 That is why we are here. That's the authority
4 that we have to speak with you today.

5 I think also the second requirement under the
6 section E (3) of the Privacy Act has just been fulfilled in
7 that it advised you of the nature of the inquiry that we
8 are about to conduct, the general tenor of where it is that
9 we are going with you.

10 Thirdly, what we always tell all our interviewees --
11 and again, it's covered by the commission order -- what are
12 you going to do with this information. And the answer to
13 that is, well, we will put this into a report of interview.
14 Today, this is facilitated because we have a court transcriber
15 who is documenting everything that we are saying at this
16 point.

17 What use will be made of that vis-a-vis the
18 office of Inspector and Auditor? This transcript -- the
19 one that's being taken now -- will be incorporated into the
20 report which will be submitted to the commission and
21 ultimately in the public record, and as I understand, you
22 also have a copy of the transcript, and you can make whatever
23 appropriate use of that that's necessary.

24 So, now we're all aware of how we're taking
25 this information down, where it's going to, and finally,

David16

1 under section E (3) of the Privacy Act, it tells us to ask
2 all of the interviewees that we talk to if they are giving
3 information about themselves -- and, obviously, when we
4 ask you a question, in many instances, you may be
5 making reference to yourself, and therefore it's governed
6 by the Privacy Act, whether or not you have to speak to us.

7 And the answer is: no, you don't have to speak
8 to us.

9 So, at this point I will break off and speak
10 to you individually rather than corporately.

11 Mr. Bright, do you have any objection at this
12 point to us continuing with the line of questioning?

end 1

1 MR. BRIGHT: I have no objection as long as you
2 understand --

3 MR. FORTUNA: You're reserving your right?

4 MR. BRIGHT: No. You have to understand one thing.
5 It's a peculiarity in this particular situation. Of the
6 four gentlemen on this side of the table, one of them is not a
7 lawyer. That's me. So I must say that if any problem of a
8 legal nature comes up, I will have to confer with my legal --

9 MR..FORTUNA: Why don't I start at the other end of
10 the table and work back. Maybe that will help you out.

11 Mr. Leeds?

12 DR. LEEDS: Yes?

13 MR. FORTUNA: At this time are you willing to proceed
14 and allow us to ask you questions?

15 DR. LEEDS: Within our letter and the agreement
16 that I understand, yes. But I certainly reserve the right
17 under those agreements not to answer you.

18 MR. FORTUNA: Understood.

19 Mr. --

20 DR. LEEDS: I'm not waiving that.

21 MR. SMITH: I think we've already said it.

22 MR. FORTUNA: Fine. Let's proceed then.

23 I'll address this first to Mr. Leeds.

24 MR. SMITH: Do you understand my point, that the
25 Board will accept any questions that you address, questions

1 to the Board?

2 MR. FORTUNA: Yes, I understand it.

3 MR. SMITH: And so it would probably save some time
4 if you just asked the questions to the Board.

5 MR. FORTUNA: It's my understanding you will not
6 answer individually?

7 MR. SMITH: That's right, unless we cannot answer
8 as a board, then it will be up to the individual. But first
9 we are going to approach this collegially, whether you
10 understood that's to be the arrangement or not. We are sitting
11 now as members of the Board and we are all going to try to
12 formulate Board responses. Everything we have done so far
13 now has been a Board effort in this case.

14 MR. FORTUNA: Do you see any serious difficulties
15 between the notes of Mr. Floyd Cantrell and Mr. Daniel and
16 Mr. Brownlee's testimony, other than what you noted in your
17 8/30/78 letter?

18 MR. SMITH: No. We stated our concerns in the letter
19 along that line. If, as indicated in the opening statement,
20 certain statements made in the letter are not clear to you,
21 we want to clarify them. But we gave you all the information
22 we had in the letter. We gave the Commission in the letter
23 of August 30 all the information that we had.

24 MR. FORTUNA: Let me just read for a moment from
25 page 4 of the letter that you gentlemen sent to the Commission

1 on the 30th. Do you have that in front of me, so we're all
2 tracking it together.

3 I'm reading now from the top left-hand side here
4 on page 4. It says:

5 "Supervising inspectors' testimony:

6 "One, there has been a high turnover of middle
7 and upper management in the past three years, personnel met
8 or exceeded the minimum of qualifications required by the
9 facility technical specifications."

10 And now I'll read from the opposite side:

11 "Line inspectors' notes."

12 We are still taking the 6/30 letter where it says:

13 "The plant has experienced a high turnover of
14 middle and upper management personnel in the past three years.
15 As a result, persons have been promoted or reassigned to
16 positions for which they are not qualified as the tech spec
17 or FSAR may imply."

18 Would you please provide us with your views or
19 view, as the case may be, with respect to the seriousness
20 of the differences between the supervising inspector's
21 testimony and the line inspector's testimony?

22 MR. SMITH: Of course, you recognize that the entire
23 subject matter relates to safety. That permeates our entire
24 concern, so that will be true of all of our answers, because
25 the entire subject matter relates to the ability of the

1 Applicants to construct and operate a plant safely, either
2 directly or indirectly.

3 With respect to the specific questions and specific
4 comparison item No. 1, we regarded the answers on the face
5 of them as far as they went as being contradictory.

6 MR. FORTUNA: Could you help us understand the
7 contradiction? Would you point it out to us.

8 MR. SMITH: I can't help you. Well, let me give
9 you --

10 MR. BRIGHT: I could merely make the observation
11 that if I'm interested in safety, if a statement comes out
12 that says that as a result persons have been promoted or reassigned
13 to positions for which they are not qualified, that to me is --
14 it doesn't say the same thing as was said in the supervising
15 inspectors' testimony, in which you read this: -

16 "Personnel met or exceeded the minimum qualifications,"
17 et cetera, et cetera.

18 This is I'm okay, you're okay sort of thing,
19 whereas the other one would raise a flag, to anyone in this
20 business.

21 MR. FOSTER: Could you give us some help or
22 clarify for us what the line inspector is talking about when
23 he says what the "tech spec" may imply?

24 MR. SMITH: We can't elaborate upon it. See, we
25 pick this language up, as you know, from the testimony

1 and the notes, and we can't elaborate further on it except
2 to say that our view of it is something that would have prompted
3 us to inquire further, and we certainly believe it was.

4 MR. FOSTER: I see.

5 Let me be a little more specific.

6 DR. LEEDS: Mr. Foster, just a second, please.

7 MR. SMITH: You understand that as of the time
8 we wrote this to the Commission and today, we have never
9 seen this line-inspector, so we know nothing more than what
10 those notes say and nothing more than what we sent to the
11 Commission, and that is it. That is entirely it. We know
12 nothing more and we wouldn't know anything about it until we
13 have a chance to hear this man testify.

14 MR. FOSTER: I can appreciate that. But again am
15 I to understand --

16 MR. SMITH: We don't accept the notes as true.

17 MR. FOSTER: Fine. But am I to understand then
18 that one of the differences here between what appear in the
19 supervising inspectors' testimony and what appeared in the
20 line inspectors' notes was one was saying tech specs require
21 and the other was saying tech specs imply?

22 MR. SMITH: We told you earlier that the statements --
23 we reviewed the statements as being contradictory.

24 MR. FOSTER: I guess what I'm asking is, what
25 are the contradictions?

1 MR. SMITH: Mr. Bright told you what they are, and
2 the contradictions are that the line inspector said that
3 persons have been promoted or assigned to positions to which
4 they are not qualified; the supervising inspectors say personnel
5 met or exceeded minimum qualifications. These are contradictory
6 statements. At least we thought they were, and we thought
7 they were solely to the point, and no further, in which we
8 believe further inquiry should have been made.

9 MR. FORTUNA: I'll repeat it just one time and
10 we'll drop it. The trouble I'm having is trying to understand
11 supervising inspectors' testimony, "Personnel met or exceeded
12 the minimum qualifications," whatever they may be.

13 The other chap, the line inspector, is saying in
14 his notes, "As a result, persons have been promoted or assigned
15 to positions for which they are not qualified," modified by
16 "as a tech spec or FSAR may imply."

17 I guess I'm having difficulty understanding does a
18 tech spec or FSAR apply anything.

19 DR. LEEDS: Mr. Fortuna, may I make a suggestion
20 here. I think that question is misdirected, because I can't
21 put myself in the mind of that gentleman whom I have never
22 seen. You have in your hands the same document that we have.
23 I might well want to ask him that question when I see him --
24 Mr. Cantrell -- but at this point I can't tell you what he
25 thought, as Mr. Smith has said.

1 MR. FORTUNA: But there is language there that you
2 say in your mind -- in the mind of the Board -- is a contradic-
3 tion. I'm just trying to appreciate what you perceive the
4 contradiction to be.

5 DR. LEEDS: As far as I'm concerned, the two documents
6 speak for themselves. We read them and we said it raised a
7 problem in our mind, and that's where it is.

8 MR. FORTUNA: Okay. Let's move on. I'm still
9 making reference to the 8/30 letter that you gentlemen directed
10 to the Commission, and I again read, under item No. 2,
11 under supervising inspectors' testimony:

12 "The start-up and operations of the two Brunswick
13 Units was demanding and resulted in extended work weeks that
14 continued from weeks to months. Recognition of staffing needs
15 may have been not fully recognized."

16 And now I jump over to item No. 2 on the line
17 inspector's notes, and in your letter you stated:

18 "At Brunswick they apparently underestimated the
19 problems and the need for people. As a result, personnel
20 were assigned extended work weeks that continued from weeks
21 to months and in some cases to years."

22 And I'm wondering again, please, if you could
23 provide us with your views and view?

24 MR. SMITH: You will note that, Mr. Fortuna, in some
25 cases, the "years" was underlined and emphasized. The fact

CR9918

pe 2

davidl

1 that we had it underlined is noted also.

2 MR. FORTUNA: I see. I'm sorry. In other
3 words, that is the key, the difference between those.

4 MR. SMITH: Yes. We thought that was a significant
5 difference that would have warranted further inquiry.

6 MR. FORTUNE: Okay. We'll move on then.

7 Now, let's take a look further down on the same
8 page of the 8/30 letter and under the supervising
9 inspectors' testimony it begins: "CP & L management has
10 increased visibility and participation, made organizational
11 changes in management to use QA management capabilities.
12 (Written testimony, page 15) Nucleus of trained personnel
13 is available for Harris plant. QA/QC procedure for Harris
14 reflects experience from Robinson and Bruswick."

15 And now I go across to the line inspector's
16 notes. "CP & L probably can obtain the technical manpower
17 and develop the management need for the Harris plant, if
18 commission requires specific improvement as a condition of
19 the license."

20 Then there is a note making reference to the
21 line inspector's notes at page 1, and then it continues:
22 "CP & L management still does not appear to have committed
23 the required manpower and financial resources to assure
24 that plant problems are identified promptly."

25 And it continues on. Could you help us understand

David2

1 the distinctions between those two as perceived by you --
2 you, the board?

3 MR. SMITH: Mr. Fortuna, we think the difference
4 between the -- unless there is some confusion about the
5 organization of this letter -- the difference between all of
6 item number three which continues on to the next page of
7 the supervising inspector's testimony, and the difference
8 between that and the line inspector's notes are clear on their
9 face.

10 And we simply cannot make it any clearer.

11 MR. FORTUNA: Let me ask you a more specific
12 question, then. As I read through both item three in your
13 letter -- both the line inspector's notes and the
14 supervising inspector's note -- I went back into documents to
15 try to read all the material that surrounded the information
16 that's here in your letter under three, and I'm wondering if
17 you could explain to us now why references -- and this is
18 under supervising inspector's testimony -- references to
19 construction and engineering were dropped -- under supervisory
20 inspector's testimony, when you paraphrase it, there is no
21 reference to construction.

22 MR. SMITH: I don't know -- your point -- I
23 wish you would elaborate on your point, because it may be
24 helpful to us.

25 DR. LEEDS: Excuse me. You mean --

David3

1 MR. FORTUNA: Maybe it would be more helpful
2 if I read the whole thing.

3 DR. LEEDS: Why don't we get back to where we
4 were talking about. You must have some reference in the
5 original document which we supplied with our letter to the
6 commission.

7 MR. FORTUNA: The specific reference to which
8 that question was directed is the first paragraph under
9 item three of the supervising inspector's testimony.
10 In the paraphrasing of this paragraph here, all references
11 were dropped to construction engineering, and we would like
12 to know why.

13 MR. SMITH: You make a reference to "all
14 references being dropped." Would you point out specifically
15 where they were dropped?

16 MR. FORTUNA: What I'm doing now is going into
17 the pack of material that was attached to the letter that you
18 gentlemen sent to the commission several weeks ago. And
19 it's page 15 of the written testimony which was handed out
20 by the inspectors and bound into the record in the Shearon
21 Harrison CP hearing.

22 Take a few moments time here to be able to --

23 I'll read from this so that we have it in the
24 record and it will be before all the people in the future
25 when they sit down and read it, so they won't have to thumb

david4

1 through documents.

2 Page 15, as I said earlier, of the written
3 testimony of the inspectors that came to testify. It's
4 under the conclusion section, and it begins: "During the
5 last 12 to 18 months of construction work on BSEP Number One,
6 CP & L management increased their visibility and participation
7 in the decision making activities, due in part to the
8 high cost of time and money for the corrective work at the
9 Brunswick facilities. CP & L has made organizational
10 changes in management to better utilize the engineering
11 and construction QA management capabilities.

12 CP & L is now assuming complete management of
13 the construction and QA activities for the Harris project,
14 which the did not do at the Robinson and Brunswick
15 facilities.

16 The slippage of both the Brunswick and Harris
17 project schedules has resulted in a nucleus of trained
18 personnel being available for use on the Harris project.
19 The QA/QC procedures for the Harris project reflect the
20 knowledge and experience gained through the construction
21 phases of the Robinson and Brunswick construction programs.

22 The licensee has met the need for training
23 welders, QA/QC personnel, and others needed to produce
24 qualified workers for relative remote sites, such as
25 Brunswick and Harris."

David5

1 That's the whole piece, as it were, and then
2 we get over here under item three in the 8/30 letter --
3 I'm sorry, it's not the 8/30 letter to the commission
4 regarding CP & L management.

5 What I'm trying to understand is -- and let's take
6 a quick look over on the righthand side under "Line
7 Inspectors Notes." "CP & L probably can obtain the technical
8 manpower, and develop the management needed for the Harris
9 plant, if commission requires specific improvement as a
10 condition of the license."

11 Contrasting the two 3's back and forth against
12 each other, the reader may consider that the type of
13 management that the line inspector speaks of and the type
14 of management that the supervising inspector is talking
15 of are the same type of management; yet, when I go back
16 through and take a look at the full verbiage here in the
17 written testimony provided in the Harris hearing, I find that
18 the supervisory inspectors that were sponsoring this
19 testimony were addressing construction management, and it
20 appears from item number three in your letter to the
21 commission, making reference to the line inspector's notes,
22 that he's making reference to operational plant type
23 manangement.

24 MR. FOSTER: The line inspector was the principal
25 operational inspector.

David6

1 MR. SMITH: I think your observation might
2 be helpful to us to inquire. I might say that there was
3 no effort on the part of the board -- you use the word,
4 "drop." We did not drop anything, nor did we purport to have
5 the verbatim quote from the report.

6 In fact, that is why we burdened the letter to
7 the commission with the entire package and with references
8 to pages.

9 So, in direct answer to your question, nothing
10 has been dropped.

11 Now, you may quarrel with the way we have
12 excerpted material from the reports, and we want to hear
13 what you think about it, because if we have misunderstood it,
14 that certainly should be brought to our attention before
15 the remand. But in direct answer to your question: nothing
16 was dropped. Perhaps something you thought should have
17 been included wasn't included, but nothing has been
18 dropped.

19 MR. FORTUNA: Do you feel it's a valid comparison
20 to compare the personnel being discussed by Cantrell in
21 his notes -- plant management operational type personnel
22 with personnel being discussed by Dance and Brownlee,
23 construction type personnel?

24 MR. SMITH: We'll have to go back to our original
25 answer. The only thing the line inspector's notes did for

david7

1 us was to tell us that. Had we known about the notes,
2 we would have inquired further.

3 MR. FOSTER: Were you aware at the time of the
4 August 30 letter that Mr. Cantrell was the principal
5 operations inspector?

6 MR. SMITH: When?

7 MR. FOSTER: At the time you drafted your
8 August 30 letter.

9 MR. SMITH: No. What do we know about him ?
10 We know about his notes and we knew what Mr. Barth said about
11 him in his letter.

12 DR. LEEDS: We have a lette from Mr. Barth
13 containing Mr. Cantrell's notes, and that letter is contained
14 as an appendix or an addendum to our letter to the commission.

15 MR. FOSTER: Excuse me. Let me ask that again.
16 At the time of your August 30 letter, were you aware that
17 Floyd Cantrell was a principal operations inspector at
18 Brunswick?

19 MR. SMITH: The answer to the question is: I don't
20 recall being aware of it at any one given time, no.

21 DR. LEEDS: I don't.

22 MR. SMITH: I know one thing about his -- that he
23 was quoted very heavily throughout the supervising
24 inspector's report, so I assume his notes were germane to the
25 report.

david8

1 MR. FOSTER: I guess what we're trying to
2 clarify here is again, do we have a good basis for comparison
3 here or are we talking about apples and oranges?

4 MR. SMITH: Exactly. We don't know, and that is
5 exactly what the board would want to inquire about. It
6 seemed to us that in comparing the attitudes of two people
7 further inquiry was needed. We certainly don't prejudge
8 how it will come out. We don't know. The only thing
9 we know is there was enough in our view to inquire further.

10 MR. FORTUNA: Let me just make a reference
11 briefly to the first page of Mr. Cantrell's note, which I've
12 dated 9/16/77, in which he states, "the following information
13 is submitted in response to your request to provide
14 information of the operating experience of Brunswick."
15 Whatever that's worth.

16 Let me move on --

17 DR. LEEDS: Wait a minute. You brought this up,
18 and I want to say something to the point.

19 MR. FORTUNA: Yes, sir.
20
21
22
23
24
25

end 2

tape 3 1
davidl 2

DR. LEEDS: Let me tell you this: that is I
got a letter like this containing information that I saw
in here, that would raise my concerns so that I should
inquire further. I don't care who it came from. I wouldn't
care if it came even unsigned.

If I had something that raised the safety
concerns, as I view my task on these boards, my duty is,
once something comes to my attention, so I should inquire
further, that I ask.

Now, this particular letter here came to our
attention when we were in a very unusual posture, as you
know. We had written our final decision, and as I understand
it, I -- and correct me if I'm wrong -- we concluded we had
lost a jurisdiction. If we had not lost jurisdiction, we
would not be in the posture we are today, and I think when
you start saying, do you know what it is, I don't know
who this man is.

And we have said that to you a couple of times,
and we did not do that just because he said it. I don't
even know he exists. I have Mr. Barth's word that he was --
I think he said he was an inspector. I'm not sure. But
I have nothing more than the piece of paper you have here,
and to push further and ask me what I think he said, I think
is just clearly inappropriate.

We're not making a decision.

david2

1 MR. FORTUNA: I'm sorry if you misunderstood
2 what we're trying to get to. Again, we were working with
3 the same documents you were working from, notes versus
4 written testimony.

5 DR. LEEDS: They speak for themselves.

6 MR. FORTUNA: Again, what we're trying to
7 clarify here in our own mind, were we talking about
8 two different types of personnel here? Are we comparing
9 construction personnel to Mr. Cantrell's exposure to the
10 operations personnel, which may not be a fair comparison
11 to site as differences.

12 MR. SMITH: That's a good point. That's a point
13 that I think we thank you for, and it's a point that we
14 will want to inquire into. But I just want also to point
15 out, among our concerns, the supervisory inspectors in
16 supplying their testimony to us, relied very heavily upon
17 the report from the line inspector.

18 So, whatever the relevance and the line inspector's
19 note to the supervisory inspector's testimony -- whatever
20 it may be, at least the witnesses recognized some relevance
21 themselves.

22 DR. LEEDS: And the second thing is I have a letter
23 from Mr. Barth: "It has come to our attention that one of
24 the inspectors at the applicant's Brunswick facility felt
25 that his views on the management capabilities of applicant to

david3

1 staff and operate the Harris facility had not adequately been
2 presented to the licensing board."

3 MR. SMITE: Your question suggests that we made
4 an inadequate analysis of the inspector's notes
5 compared to the witnesses' testimony.

6 MR. FORTUNA: That wasn't meant in our
7 submission.

8 MR. SMITH: The fact is we have made no analysis
9 for the purpose of making any judgment in an adjudicative
10 decision. We know that the line inspector was requested to
11 provide information in anticipation of testimony before us,
12 and this is what he said. And he said some things that we
13 believe were inconsistent with the testimony, and it could
14 be from a different vantage point. We do not know. But
15 our point was simply that these are points that should be
16 pursued in the evidentiary hearing.

17 MR. FORTUNA: Again, our reason for asking the
18 question was to clarify the significance of these items
19 as you layed them out here in the letter.

20 MR. SMITH: We thank you for that, because that's
21 a point that is worthy of pursuing. I'm sure that we're
22 going to hear about it in the evidentiary hearing. If the
23 vantage point was different, we want to hear about it,
24 and furthermore, if we have failed to do it, want to invite
25 you also to provide us with other areas that you think might

vid4 1 be worthy of inquiry.

2 MR. FORTUNA: Okay.

3 MR. SMITH: Or anything else you want to bring
4 to our attention.

5 DR. LEEDS: I am sure that you know in our
6 proceedings that we have notices to the public that invite
7 them to make written or oral statements and to ask questions
8 they'd like to have answers to, and often the board
9 directs the parties to respond to these things.

10 MR. FORTUNA: Let's proceed on.

11 The next question is: do you view Dance's and/or
12 Brownlee's omission -- well, say alleged, for the sake of
13 conversation at this point -- of Cantrell's recommendation
14 of conditions in the CP as significant?

15 MR. SMITH: Significant enough to write a letter
16 to the commission. In the adjudicative sense, it's
17 premature to say. We haven't heard.

18 MR. FORTUNA: In your view, do you believe it is
19 incumbent upon the region to recommend conditions in a
20 license? Is that appropriate? Is that typical? Is it
21 something that's normally done?

22 MR. SMITH: I don't know. I think your
23 reference there is the fact that Cantrell in his notes made
24 a reference to conditions.

25 MR. FORTUNA: Yes.

1 MR. SMITH: Again, we want to tell you, we
2 did not take Cantrell's notes as being dispositive of
3 anything other than a suggestion or a hint. More than
4 a hint; a strong requirement that this board find out
5 what the man is talking about.

6 If an inspector believes that conditions are
7 needed, we don't write his conditions into a permit. We
8 find out why he thinks --

9 MR. FORTUNA: Let me now read from the supervising
10 inspector's testimony. I'm referring to page 17 of the
11 written testimony which was bound into the record and
12 sponsored by the two testifying inspectors from Region II.

13 And it begins: "Region II inspection of the
14 licensee's activities does not result in the maintenance
15 of a tabulation of the number of engineering and/or QA
16 personnel utilized by the applicant.. Rather, adequacy of
17 the performance has been our concern. CP & L construction
18 and QA have been staffed adequately for the status of the
19 Harris project.

20 Additional CP & L and constructor (Daniel
21 Construction) are programmed to be available when authorized
22 to initiate construction activities.

23 Region II is not aware of any additional operations
24 personnel that have been added to manage the Harris plant,
25 nor would we expect any additional operations personnel at

vid6

1 this early date."

2 Now, let's move on to Cantrell's notes. In your
3 letter to the commission -- and I'm reading under Cantrell's
4 notes, being a line inspector's notes -- I'm reading under
5 number three: "CP & L probably can obtain the technical
6 manpower and develop the management needed for the Harris
7 plant, if the commission requires specific improvement as
8 a condition of the license."

9 MR. FOSTER: I think what we're trying to get to
10 here again is in reference to the written testimony where
11 we have region II is not aware of any additional operations
12 personnel that may be added to manage the Harris plant, nor
13 would we expect any additional operations personnel at this
14 early date.

15 Would this part of the written testimony have
16 been a more valid comparison to make, in view of the fact
17 that Mr. Cantrell was an operations inspector?

18 Is this the type of personnel he's talking about?

19 DR. LEEDS: You have to ask Mr. Cantrell the
20 kind of people he's talking about. That's what we'll do
21 when we talk to Mr. Cantrell. You can't ask me.

22 MR. SMITH: Bear in mind, every question we put --
23 we were aware that Mr. Cantrell was writing in response to a
24 request from his supervisors who are testifying in the
25 construction permit proceedings. He was asked for his views

'avid7

1 in the construction permit proceeding.

2 MR. FORTUNA: Let me rephrase the question.

3 Given the fact that Mr. Cantrell's experience
4 was primarily as operations inspector at Brunswick
5 II and I --

6 MR. SMITH: Now, where does that fact appear?

7 MR. FORTUNA: In his notes. The first line.

8 MR. SMITH: Show me.

9 MR. FORTUNA: The first line. We made
10 reference to it earlier.

11 MR. SMITH: His experience consists primarily
12 of what?

13 MR. FORTUNA: He was the principal operations
14 inspector.

15 MR. SMITH: That's not what you said.

16 DR. LEEDS: Are you talking about the first
17 sentence of his notes?

18 MR. FORTUNA: "The following information is
19 submitted in response to your request to provide information
20 on the operating experience of Brunswick."

21 MR. SMITH: Do you know what the board question
22 was?

23 DR. LEEDS: You're making an interpretation of
24 what he's saying, and I haven't made any interpretation of
25 what he's saying. I don't know what Mr. Cantrell's experiences

d8 1 were prior to, during, after this letter was written.

2 He may have been on the construction part also.
3 You don't know, do you, from this letter?

4 MR. FORTUNA: From the letter, no, sir.

5 DR. LEEDS: And I have only seen the letter,
6 so I can't possibly know.

7 MR. SMITH: We have no information other than
8 this.

9 MR. FORTUNA: Let me just read again under
10 supervising inspector's testimony, item three: "CP & L
11 management has increased visibility and participation,
12 made organizational changes in management to use QA
13 management capabilities."

14 And there's a reference to written testimony,
15 page 15. The next sentence: "Nucleus of trained
16 personnel is available for Harris plant. QA/QC procedure
17 for Harris reflects experience from Robinson and Brunswick."

18 And I stop there. And the only point I'm trying
19 to make to better understand the comparison is, again, it does
20 not appear on the supervisory inspector's testimony that the
21 reference was to construction.

22 MR. SMITH: Nor was the question to which they
23 were responding limited to construction.

24 MR. FORTUNA: I'm talking about written testimony.

25 MR. SMITH: I'm talking about the question to

1 which the written testimony responded.

2 MR. FORTUNA: The written testimony -- let's
3 take this out and take a minute with this.

4 MR. SMITH: Let me give you a general answer
5 to your question. Even if I had known that Mr. Cantrell --
6 which does not appear here in any record -- has no experience
7 other than as an operating inspector -- even if I had known
8 that, it would not have changed my view one wit.

9 It would have been a sorry thing if we tried
10 to ignore this based on the fact that the man is in a little
11 bit different discipline.

12 DR. LEEDS: I'll repeat what I said earlier. I
13 don't care what his position was. If I had received that
14 letter, and I was in a position to act, i.e., I was in
15 session and hadn't written my decision, I would have had
16 Mr. Cantrell in, and I don't care whether he was a line
17 inspector, operating inspector or just happened to be walking
18 by one day.

19 Those letters raise serious allegations which I
20 think we should have ventilated in the hearing, and it would
21 be our duty to complete the record.

22 MR. FORTUNA: Let me announce again -- I think
23 we briefly touched on it earlier. That information was not
24 received by the board at any date. I'm talking of the
25 hearing time now, other than the line inspector's conclusions.

David 10

1 This is Cantrell we're talking about. What
2 information was not received by the board at the time of
3 the Harris hearing, other than the line inspector's
4 conclusions with respect to CP & L's management
5 commitment to required manpower and financial resources and
6 the resultant conclusion drawn by the line inspector that
7 a condition be placed in the license requiring specific
8 improvement?

9 DR. LEEDS: Mr. Fortuna, with all due respect,
10 that question I can't even answer, because it's not
11 logically correct. What information was not received. If
12 I don't know about it, how can I possibly --

13 MR. FORTUNA: Let's do it this way. Here's
14 what we're trying to get at. And maybe I did it rather
15 inarticulately.

16 There were certain things raised in the letter,
17 as I read it, a general concern that we want some more
18 information, that certain things weren't aired; had they
19 been raised earlier, we would have taken a further look.
20 Okay. I'm just curious and wondering, other than the
21 conclusions of the line inspector and his ultimate conclusion
22 there should be a condition in the CP, are we talking about
23 anything else within the confines of the information before
24 you? You know, the notes or any other type of thing.

25 MR. SMITH: We had no information other than his

Davidl

1 notes.

2 MR. FORTUNA: Just the notes?

3 MR. SMITH: That's all we had.

4 MR. GAMBLE: Is there anything in the notes,
5 other than the conclusions and his recommendation of
6 conditions that you did not have at the time of the hearing?

7 MR. FORTUNA: Was something else left out by
8 the testifying supervisory inspector?

9 MR. SMITH: I guess each will have to answer
10 individually on that, and I don't mind that I read all of
11 the notes. And I think that we had a consensus. We
12 were wondering if we weren't burdening the commission already
13 with too much information. And I wouldn't be prepared to
14 answer that now, without going all the way back through the
15 notes.

16 Has anything been left out that could be
17 germane? That's entirely possible. Our purpose right then
18 was to demonstrate to the commission there were some matters
19 we felt were important, that had been omitted and that
20 we would want to inquire. There could be other points in there,
21 but right now I don't remember them.

22 DR. LEEDS: One thing about this is you've got
23 to realize that these notes, if I can sort of cast this
24 in the frame we have been in -- if we had not written our
25 decision, those notes would have triggered in my mind a need

David12

1 acquire further -- where this inquiry would have led me,
2 I don't know.

3 I can't possibly guess what that would be, but
4 it would have triggered that. It came in afterwards,
5 after we had issued our decision. If the record had been
6 open at that time, i.e., we had not issued our decision,
7 I would have in quired further.

8 It was a triggering mechanism. But I find in
9 your question you're wanting to say, is there anything
10 else in there? All I needed to be was triggered into
11 inquiring further, and then the mechanism for this
12 inquiry is for the board to direct questions to the parties,
13 hold another hearing.

14 There are all kinds of mechanisms on that. It was
15 a triggering situation.

16 MR. FORTUNA: I can appreciate that, doctor. Let
17 me explain a little bit more what we're trying to get to here
18 again. One of the items we are charged with is determining the
19 seriousness of the omission. Okay. And the purpose of our
20 question was: is there anything else besides what we have
21 highlighted here in your letter, in Cantrell's notes, that
22 did not appear in the written or oral testimony that you
23 received?

24 And if you are not prepared to answer that at
25 this point, fine. But any forthcoming information in this

vid13

1 regard we would appreciate.

2 MR. SMITH: I will simply say I do not remember
3 myself. I thought we picked the highlights of it enough
4 to demonstrate our general concern. But as for taking
5 further details, I don't remember. Nothing occurs to me
6 right now.

7 MR. FORTUNA: At the time of the Shearon Harris
8 hearing, was it your understanding individually or board,
9 whatever, that you would receive any staff views that
10 would differ from the testimony given?

11 MR. SMITH: Are you talking about the entire
12 testimony?

13 MR. FORTUNA: Yes.

14 MR. SMITH: I think we have to point out to you
15 that you're coming into an area now where you would come
16 quite close to commenting on testimony outside the
17 adjudicative process. Now, if you want to move on, as I
18 thought you would, to what we think should be the
19 general position of staff in dissenting views, that's another
20 matter.

21 MR. FORTUNA: Let's try it a different way.

22 MR. SMITH: Let me point out, maybe the answer
23 can be found in our letter. The first two paragraphs --
24 the first two numbered paragraphs of page 3, particular
25 the first full paragraph.

vid14

1 MR. FORTUNA: The paragraph beginning, "Board
2 member Leeds inquired"?

3 MR. SMITH: Right.

4 Wait a minute. Give me your question again.
5 Maybe I misunderstood it.

6 MR. FORTUNA: What was the board's position at
7 the time of Shearon Harris? What did you guys expect to
8 receive in the way of testimony with respect to staff
9 dissenting views?

10 MR. SMITH: Oh, we didn't know about any staff
11 dissenting views.

12 MR. FORTUNA: In general, we're talking about
13 not in this particular case or this situation. In
14 general, you walk into a hearing and you feel staff testimony
15 would include dissenting views? Do you feel this would
16 happen if there were any dissenting views?

17 MR. SMITH: I think that is something that that
18 individual board members might have a feeling on, and that's
19 about all it is. It is a feeling.

20 MR. GAMBLE: Could we get your feeling on it?

21 MR. SMITH: Again, your question is about the
22 Shearon Harris?

23 MR. FORTUNA: Still talking in general. During
24 the time frame 1977 and let's winnow it to the summer,
25 the fall, is there anything on the books in NRC -- is there

vid15

1 any understanding -- is there any proceeding that you
2 or any other board member had as to how something like
3 this would be handled?

4 MR. SMITH: Well, I'm not -- I'm not aware
5 nor am I aware right now of any specific rule which requires
6 a witness to give the views of somebody who isn't present,
7 so I couldn't answer the question in a general way. It
8 would have to be in the context of a piece of testimony.
9 Just bear in mind that these witnesses come in and we don't
10 place under oath the staff of the Nuclear Regulatory
11 Commission.

12 We place under oath a man who comes to the
13 hearing room and raises his hand and says, "I swear to
14 tell the truth," and we assume that the facts, unless he
15 states otherwise, the facts he gives are his testimony.

16 MR. FORTUNA: Okay. Let's just assume that you
17 put a body on the stand and you swear him and you begin,
18 either yourself or the board or one of the attorneys or
19 one of the parties to the hearing develops a line of
20 questioning and answers come down on the record.

21 In any hearing like that -- let's put in back
22 in the '77 time frame -- was the expectation of the board --
23 you fellows, or any of the board members for that matter --
24 that an individual was charged with a responsibility, if he
25 was aware of what he was saying, was drawn from the input

vid16

1 of maybe five to 10 people -- whatever the number may be --
2 if one of these individuals, or several of those individuals
3 had a view different from the view that this individual
4 was espousing, if he was charged with the responsibility
5 of coming forward and saying, "I am Joe Doe; here's what
6 I've got to say, but by the way, I have to also advise
7 you in the testimony that I bring to you is based on the
8 input of several other people, whatever number it may be --
9 don't entirely agree with me. And I now will present to you
10 that view or views."

11 MR. SMITH: I couldn't answer that in a vacuum.
12 And I think this is individual expectations again. I think,
13 speaking generally, that one thing that I am confident of,
14 that if a witness is asked if there are opinions or
15 evidence inconsistent with his testimony, then I expect
16 him to tell me if there is, or expect him at least not to
17 say that there is not, because that would be perjury.
18 Whether he has an affirmative duty to come forward and
19 volunteer to the board testimony or information that he
20 has which he doesn't believe in, I would have to -- I
21 couldn't answer that in a void.

22 I'd want to see it. Certainly, there has to
23 be a point where the information he has inconsistent with
24 his testimony he regards as insignificant, and there has to
25 be a point where it's very important. It has to be answered

vid17

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

in the context of specific subject matter. That's my
view. I'm not answering for the board here.

003

1 DR. LEEDS: I think that's a difficult question to
2 answer in general, unless there was a specific rule for the
3 person to come forth with it.

4 MR. FORTUNA: Let me tell you why we asked the
5 question. Can I refer you to page 6 of your August 30th
6 letter, first paragraph?

7 "We believe that the omission of the concerns of
8 the line inspector from the written and oral testimony raises
9 serious questions as to whether the testimony before us was
10 the product of insufficient candor, negligence, or a result
11 of an ill-conceived policy of presenting the consensus views
12 of the staff in the form of sworn personal testimony."

13 MR. SMITH: Okay. That's what I'm coming to.
14 Sometimes staff testimony and generally will clearly
15 indicate at the outset that the witness is coming forward
16 with a staff policy. And then I have had cases where I have
17 been presiding and where I've asked a witness, well, in
18 addition to -- aside from being a staff policy, do you
19 yourself support this testimony?

20 And I am inclined to think that's a pretty good
21 idea. But if the witness is testifying concerning a staff
22 policy, then I think that should shine through in his
23 testimony somewhere, if his views happen to coincide exactly
24 with the staff policy; no problem.

25 But a witness I don't think should come to a

kds2

1 hearing and testify as to, it is his professional opinion
2 that certain conditions exist when he does not believe that.
3 That is simply perjury, isn't it? I mean, as I understand it.

4 But if he comes to the hearing and states that he
5 is presenting the testimony of the staff, I don't have any
6 problems with that.

7 Now, as to whether the staff has the responsibility
8 to come forward with a dissenting opinion, or have had at the
9 time when this came up, I think there is no way you can
10 divorce from that individual, profession judgment.

11 MR. FORTUNA: Was it your understanding with
12 respect to Mr. Dance's and Mr. Brownlee's testimony that they
13 were presenting the staff position?

14 MR. SMITH: They stated early in written point of
15 view and the written testimony that their testimony reflects
16 the views and records of the office of inspection and
17 enforcement. That's what I understood it to be.

18 MRL FORTUNA: I see.

19 MR. SMITH: I had no understanding other than
20 that.

21 MR. FORTUNA: Let me ask then, based on this
22 premise, would you fully have expected Mr. Dance and Mr.
23 Brownlee to come forward then with a dissenting view?

24 MR. SMITH: I want to point out to you -- no, I'm
25 not going to answer that, because I think that's inappropriate,

kds3

1 because we have to go back and judge this.

2 But I want to point to you in addition to the
3 written testimony there were the questions of Dr. Leeds
4 which we provided, and I commended those to you.

5 DR. LEEDS: Let me make one comment about this.
6 When you talk about the duties and coming forth and
7 everything, I'd like to explain why I think we cannot answer
8 that in the abstract.

9 I think Mr. Smith made it quite clear, but I
10 think I want to try to say it for my own self also. There
11 certainly is a spectrum of things that one would say you
12 would not have to bring forth.

13 It's a spectrum of things where I think one might
14 want to bring forth; and in between, there's going to be a
15 gray area. And I think that's a kind of situation that you
16 have in these situations all the time.

17 And, as he said, there are some things that are
18 insignificant.

19 MR. FORTUNA: Did I understand from that, Dr.
20 Leeds, it is up to the judgment of the people testifying
21 what they should include or not include?

22 DR. LEEDS: See, that's what I'm trying --

23 MR. FORTUNA: These gray areas?

24 DR. LEEDS: See, I'm trying to avoid that kind of
25 question, because there's a very -- is it up to the judgment?

kds4

1 I don't know whether this person you are talking about has
2 the authority to make that decision. I don't know what his
3 responsibility is, because I don't even know who this person
4 is.

5 So I don't think you can answer these questions in
6 the abstract. That's what my problem is. If you give me a
7 real live person, tell me what his duties are and so forth and
8 so on, tell me what he did say, and didn't say, then I might
9 be able to answer the question for you at that time; but I
10 can't answer it in the abstract.

11 MR. FORTUNA: Am I to understand Mr. Smith's
12 position is that would be inappropriate to pursue, specifically
13 with the Shearon Harris matter here?

14 DR. LEEDS: Yes. That's the problem.

15 MR. FORTUNA: Let's move on to the area Mr. Smith
16 commended to us somewhat earlier. The next question is based
17 on this area, which is -- am I correct in stating that is the
18 letter that you folks sent to the Commission that you believe
19 that you were misled by the testimony of the supervisory
20 inspectors?

21 DR. LEEDS: What does the letter say?

22 MR. FORTUNA: Page 3.

23 MR. SMITH: Page 3, the final sentence in the
24 second paragraph.

25 MR. FORTUNA: "We now believe we were misled."

kds5

1 I think it's clear, but I just want to make sure at this
2 jumping off point.

3 MRL SMITH: We selected those words advisedly.

4 MR. FORTUNA: Let's see if we can't focus in on
5 the transcript of the testimony and extract out from that
6 those portions which would lead us to the conclusion that --

7 MRL SMITH: You are entering into an area here
8 which most certainly is going to be inappropriate, but I
9 won't --

10 MR. FORTUNA: Well, let's reference the letter
11 then, because we have characterized the letter.

12 MR. SMITH: I didn't want to foreclose you from
13 asking your questions. You can ask your questions. I just
14 wanted to warn you that it's a very difficult area for us to
15 get into.

16 MR. FORTUNA: All right. Let's start off this
17 way then. Let's go to the beginning of the letter here --
18 and it begins with, "Gentlemen;" and then the second para-
19 graph: "Although this is an administrative, not an
20 adjudicative communication, the time within which ALAB-490
21 may be reviewed is still running."

22 What we are talking here to is it's characterized
23 the letter as administrative rather than adjudicative; so
24 now let's make reference back to page 3. And in there we do
25 have references to portions of the transcript.

kds6

1 And it says on page 3, "While the transcript
2 indicates that witnesses were not always directly responsive
3 to Dr. Leeds' questions" -- and we get an e.g. in there --
4 transcript 2077, lines 18 through 25 -- "the voice inflections,
5 emphases, and general demeanor of the witnesses were such that
6 the board believed them to be assuring us that no significant
7 management problems existed at the time of the hearing with
8 respect to Shearon Harris."

9 Therefore, let's address ourselves, since we make
10 reference to it in the letter, to the transcript page 2077,
11 lines 18 through 25.

12 DR. LEEDS: What is your point about adjudicatory
13 and administrative? You highlighted that sentence.

14 MR. FORTUNA: Yes. All right. And the reason
15 being that you gentlemen very politely and understandably
16 from the position that you are taking say, look, Roger, and
17 the other gentlemen here at the table, there's going to be
18 certain point where you may be touching on points where we
19 may be unable to answer. I'm not trying to give you a hard
20 time, but we just view that as our obligation.

21 MR. SMITH: Sure.

22 MR. FORTUNA: All right. I go to the letter
23 though, which the introduction -- and you correct me if I
24 misunderstand -- is characterized as administrative, rather
25 than an adjudicative communication, and you reference into the

kds7

1 transcript page 2077, lines 18 through 25; so I'm now
2 focusing this on page 2077 of the transcript, lines 18
3 through 25, feeling confident -- and you correct me if you
4 feel differently -- that we are able to discuss this.

5 DR. LEEDS: Well, the problem I have with that,
6 sir -- let me explain. Maybe I don't understand why you are
7 highlighting this question, but I think I understand why you
8 are highlighting adjudicatory/administrative statement you
9 made.

10 And at this point in time when we wrote this letter
11 we were not in any control whatsoever of the Shearon Harris
12 proceedings. Right now we have a remand on our hands, and
13 it puts us in a different posture.

14 MR. FORTUNA: But if we can skirt the remand
15 issue, are we all right then?

16 MR. SMITH: We can't get into this testimony. We
17 can expand upon this and tell you why we believe testimony
18 was credible or not credible, or discuss the demeanor of the
19 witnesses, or impressions of them at all, because these very
20 people may come before us.

21 Furthermore, there's an equally important point in
22 that we did the most that we thought that we could do
23 administratively, consistent with our adjudicative position.
24 We cannot permit you to probe into the mental processes by
25 which we function. We can't do it. That's flatly unlawful.

kds8

1 MR. FORTUNA: Not to be disrespectful, but to
2 perhaps bring this back into focus -- and I emphasize "not
3 to be disrespectful," but so all of us can understand -- as
4 I recollect earlier this month -- in fact, just a few days
5 ago -- a communication which you have copies of, because you
6 attached it to your letter to us on October 5th, was sent
7 from the Office of Inspector and Auditor to the Office of
8 General Counsel; and a memorandum was sent back from the
9 Office of General Counsel under Mr. Kelly's signature, back
10 to the Office of Inspector and Auditor.

11 And this memorandum provided that in fact the
12 ex parte adjudicatory problem, and an interpretation was
13 rendered, as I understand, of a formal opinion. And as I
14 also understood it, the Office of General Counsel and the
15 commissioner are the only two bodies that are able to render
16 formal binding opinions as to what a regulation means.

17 And again, as I understand it, ex parte is the
18 topic of one of those regulations and, in sum and substance,
19 Mr. Kelly said there is no problem; therefore, proceed.

20 Therefore, could you help us understand why the
21 position that you now take would be different from the ruling
22 that Mr. Kelly handed down several days ago?

23 MR. SMITH: I don't think this is going to be
24 helpful to you. In the first place, I won't acquiesce to
25 your statement that our position is different than Mr. Kelly's.

kds9

???

1 Second, we rely upon our understanding of why Mr.
2 Kelly has worked out this arrangement with Mr. Absten.

3 MR. FORTUNA: You are saying then that the formal
4 opinion rendered by the Office of General Counsel is vitiated?

5 MR. SMITH: In the first place, I'm not calling it
6 a formal opinion. I'm not going to discuss Mr. Kelly's
7 opinion. He doesn't need my judgment of his opinion. He's
8 a general counsel. I'm not going to acquiesce to your calling
9 it a formal opinion or anything.

10 MR. FORTUNA: Well, let's read the opinion.

11 MR. SMITH: You read the opinion. I have read it.

12 MR. FORTUNA: Perhaps that makes the case, or at
13 least it will help us understand the case.

14 MR. SMITH: I read the opinion. Mr. Kelly did
15 not tell us to answer questions about the testimony, and I'm
16 not going to; and I recommend you move on to another subject
17 matter.

18 MR. FORTUNA: Okay. Let it be clear at this point
19 again, one of the things -- the purpose of the interview is
20 to determine the seriousness of the omission from written and
21 oral testimony. We can't really do that unless we can
22 discuss this with you.

23 MR. SMITH: That may be one of the heavy prices
24 the Nuclear Regulatory Commission pays to preserve its
25 adjudicative process. That is our responsibility, and it's

1 different than yours.

2 I'm sympathetic to your problem. See, you are
3 missing two points: One is that Kelly talks about ex parte.
4 Okay. I didn't even mention ex parte in my answer. That's
5 an entirely different point. But I don't want to get into
6 a debate with you on the law, nor do I want to defend our
7 decisionmaking process.

8 And I won't do it, and I am telling you we can't
9 comment upon the credibility of those witnesses.

10 MR. FORTUNA: Yet, you did so in the communication
11 to the Commission.

12 MR. SMITH: The letter speaks for itself.

13 MR. FORTUNA: And the letter, and only the letter,
14 and no further elaboration on the part of you gentlemen?

15 MR. SMITH: I have nothing more to say.

16 MR. FORTUNA: Was the oral testimony given to
17 you by Mr. Dance at page 2078 of the transcript, lines 7
18 through 15, one of the bases for concluding that you had been
19 mislead?

20 You made reference to page 2077 in your letter
21 to the Commission. You said that you were mislead, as a
22 conclusion, and above that, a sentence or two above, you made
23 reference to the transcript at page 2077.

24 Is it fair for us to infer or to assume from that,
25 that line or lines was one of the areas in the oral testimony

kdsll

1 upon which you base your decision that you were misled?

2 And then I move on again and I say, let's take a
3 look at page 2078, lines 7 through 15. And are those lines
4 another one of the bases for concluding that you had been
5 misled?

6 I'm not asking you to interpret it or anything,
7 but just to focus in on the portion of the transcript. I'm
8 not asking you what thought went through your mind other than
9 those two areas, at least two of the areas.

10 MR. SMITH: We believe that in sending to the
11 Commission the papers that we did, we sent to them everything
12 that was desirable and necessary for them to understand our
13 position; and we didn't send them anything more superfluous.

14 As a matter of fact, we didn't have anything more
15 to send; but we sent them what we thought was the entire
16 package. We didn't send them things we did not feel were
17 unnecessary or irrelevant to our concerns.

18 So I think from that you can infer that the entire
19 thing, taken in context, when points are compared against
20 points, that everything is the basis.

21 But I don't want to comment upon specific testimony.

22 MR. FORTUNA: So, in other words, if I asked you
23 the question: What was misleading about Dance's or Brownlee's
24 testimony --

25 MR. SMITH: Don't ask.

kds12

1 MR. FORTUNA: All right.

2 DR. LEEDS: I think in addition to the fact that
3 we sent everything to the Commission, the Commission has a
4 copy of the entire record itself already. So you know,
5 there's nothing that I know of that is not in the public
6 document or in the Commission headquarters.

7 MR. FORTUNA: All right, we will move on.

8 Let me ask the board what they consider evidence
9 in the construction permit hearing. Any, not this particular
10 one.

11 MR. SMITH: You are asking me the legal definition
12 of evidence that comes into the record? Of course, I don't
13 think you need our explanation for that. Why don't you get
14 to the point.

15 Your point is, you are wondering how that word
16 was used in the testimony. That's why you are asking that
17 question.

18 MR. FORTUNA: That's correct.

19 MR. SMITH: Well, we are not going to tell you.
20 We are not going to answer questions about that testimony
21 either directly or indirectly.

22 MR. FORTUNA: I didn't ask you questions about the
23 testimony.

24 MR. SMITH: Is that why you asked the question,
25 what we believed evidence to mean?

kds13

1 MR. FORTUNA: I don't have to explain to you the
2 basis for my questions.

3 MR. SMITH: Well, yes, sir, you do, if you want
4 an answer from me.

5 MR. FORTUNA: All right. Fair enough. We are
6 near the end.

7 MR. SMITH: Gentlemen, I tell you, I am personally
8 disturbed that you approach us in this manner.

9 MR. FORTUNA: I apologize.

10 MR. SMITH: And I think it's a direct threat to
11 the adjudicative process, and I hope the Commission pays close
12 attention to this.

13 MR. FORTUNA: Yes, sir.

14 MR. SMITH: You have one more question, is that
15 what you said?

16 MR. FORTUNA: No; I said we are near the end.

17 MR. SMITH: All right.

18 MR. FORTUNA: I am making reference now to the
19 two questions which were asked by Dr. Leeds, essentially,
20 the "no evidence" questions.

21 I think we are in the ball park, and we understand
22 which questions we are talking about.

23 You believe those two questions that were asked
24 will be construed to being able to tell the witness or
25 elicit from the witness that you were looking for -- you,

kds14

1 the board -- a response of whether there were any dissenting
2 staff views?

3 MR. SMITH: We are not going to comment on that,
4 Mr. Fortuna. I want to avoid all the ill feelings we can.
5 I can assure you that every question you ask is comment
6 upon how we view the evidence is going to be. We may give
7 it to you in our initial decision, but we are not going to
8 give you our impression of the testimony and what we meant
9 by evidence.

10 MR. FORTUNA: I understand that, believe me. We
11 are not trying to be disrespectful, or argue with you in any
12 way, shape or form.

13 Gentlemen, we have no further questions. We
14 appreciate your time, we appreciate your candor.

15 MR. SMITH: Let me ask you, Mr. Fortuna, one of
16 the reasons why we granted this interview was that we wanted
17 to satisfy your -- help you discharge your responsibilities.
18 We also wanted to leave open the possibility that your
19 questions might suggest to us areas in which the record
20 could be developed.

21 And it is my view that each of your questions --
22 the tenor of them, the tenor was with respect to each of
23 your questions that there was something wrong with our letter
24 to the Commission; perhaps an observation, in each instance
25 that my letters to the Commission was not justified.

kds15

1 Do you have any advice for us in the other.
2 direction, any advice for us which suggests we should go in
3 the direction of being concerned here?

4 I mean, is there any questions that you might ask
5 us, why we didn't express a concern here; why didn't we
6 express a concern there? Do you have any information that
7 will lead towards a development of a full record?

8 MR. FORTUNA: Sir, what we are --

9 MR. SMITH: Each of your questions had implicit
10 in them that something that we did in this letter was not
11 justified by the record you looked at. You never pointed to
12 anything which anybody could infer suggested that maybe we
13 ought to inquire a little bit further along this line.

14 Is there anything that we overlooked that maybe
15 you can help us with? :

e-4

1 MR. FORTUNA: Sir, what we were trying to do and we
2 were tasked by the Commission to do was to find out about the
3 seriousness of this, and the Commission will receive a copy of
4 the report, and it will be available to the public, as we all
5 know. We were trying to go through with each and every individu-
6 al that was involved in this situation, asking a line of ques-
7 tions.

8 It doesn't make me feel good or make me happy to
9 come in here, and certainly, I was not attempting to browbeat
10 or --

11 MR. SMITH: No, it's not a question of that.

12 MR. FORTUNA: The point we're trying to make is: ask
13 all of the tough questions of anyone and everyone so there will
14 be a complete record available to the Commission so they can
15 make whatever determination they deem appropriate.

16 MR. SMITH: I understand your purpose. That wasn't
17 exactly my point. My point is: the tenor of your questions was
18 on the side of, well, maybe this wasn't justified or maybe that
19 wasn't justified or maybe we overlooked this explanation.

20 But none of your questions went to the direction of
21 we overlooked a more serious problem or something is there and
22 why didn't we inquire further.

23 I mean, none of it was in any direction except to
24 suggest that our concerns expressed in this letter were not
25 founded. That was the tenor of each of your questions.

1 MR. FORTUNA: Mr. Smith, we're limited to the context
2 of the letter, for all intents and purposes.

3 MR. SMITH: I just wonder. My question is: have I
4 overlooked anything or have you overlooked anything that could
5 be helpful to the Board?

6 MR. FORTUNA: You have sort of set the pace. I am
7 not happy, but I understand how you -- we're kind of operating
8 within your framework, so if we kind of got stuck with what we
9 did ask you --

10 MR. SMITH: Well, we advised you to ask any questions
11 you wanted, and we have the responsibility for not answering.

12 Have I miscast your questions? Have I been unfair
13 to you in describing them the way I did?

14 MR. FORTUNA: You are entitled to whatever your
15 opinion of our questions is, sir. I certainly don't want to
16 argue with you about them.

17 MR. SMITH: It's clear the tenor of your questions
18 was to see if you could develop a basis suggesting that some-
19 thing is wrong with the letter to the Commission.

20 MR. FORTUNA: We wanted to know how serious the mis-
21 sions are. That's all. And in order to explore and try to
22 develop and help the Commission understand, and we hope that we
23 have. Perhaps we have not. We take a poke and a look and a
24 question and in every possible area. That's all.

25 DR. LEEDS: Let me cite two examples to you. If I

1 remember from this afternoon, an hour and a half of conversation,
2 one was your opening comment which contained the legal phrase:
3 "your constitutional rights."

4 MR. FORTUNA: I thought I explained that, and I
5 apologize if --

6 DR. LEEDS: You did. But the question came first,
7 and then you explained.

8 The second instance that I remember specifically was:
9 you read to me once or twice a statement about the administra-
10 tive thing and then you said -- but you commented on the evi-
11 dence in the letter and tried to imply that we were inconsistent
12 in the letter or that we were doing wrong or something like that.
13 That's the implication I took of that.

14 MR. FORTUNA: Let me again explain it to you.

15 DR. LEEDS: Wait a minute. The problem I have is:
16 when you say to me you want to explain it to me, then you explain
17 after I have already gotten a view of one direction. I had a
18 view again today in this discussion that you were, in a sense,
19 saying to us what we had done was wrong.

20 MR. FORTUNA: Let's go back to the --

21 DR. LEEDS: I think our duty, as I tried to say to
22 you earlier, is: I don't really care who brings it to my atten-
23 tion as a Board. When I am sitting as a Board, we would have
24 inquired into this matter.

25 MR. SMITH: Of course, we're not seeking your

1 approbation of what we do. We're just wondering if there's any
2 help you can give to the Board.

3 MR. FORTUNA: I think at this point it may be pre-
4 mature since we have a lot of other folk to talk to.

5 MR. SMITH: You have to file your report.

6 MR. FORTUNA: I would just like to answer a question
7 raised by the Doctor. And that was: why did I on several
8 occasions make reference or try to or attempt to, or whatever the
9 word is, characterize the letter that you wrote to the Commis-
10 sion as administrative rather than adjudicatory. Because that's
11 the language that we used in the letter.

12 What I was attempting to do, to be quite honest, is:
13 if the letter was characterized as it was and as I understand it
14 to be in the opening paragraph, as administrative rather than
15 adjudicatory, then it was perfectly appropriate to get into and
16 discuss the lines 18 through 21 of page 2077, and your response
17 was that at that time it couldn't. And now it's before us
18 again.

19 DR. LEEDS: Well, I think my response was: we were
20 in a different posture at the time, and I'am not so sure we
21 could discuss it even further with you at that time, except that
22 we discuss in this letter, I think, as much as we thought we
23 should discuss so that the Commission's attention would be
24 brought to these matters. And we were careful to include all of
25 the pieces of information in the appendices so they could decide

1 for themselves.

2 MR. FORTUNA: And, again, as I say, because I think,
3 as far as I am concerned, it is important that it be reiterated,
4 that line or those phrases I was referring to so we could, on
5 behalf of OIA, try to develop those sections of the transcript
6 which were made reference to in the letter.

7 I hope I didn't try to in any way say that you
8 shouldn't have put a reference to page 2077 or anything like
9 that. I was just attempting to get into discussing page 2077.
10 That's all.

11 And I think you characterize my reference as somehow
12 inferring that you had done something wrong. No, I was just
13 trying to get into a discussion on 2077 because Mr. Smith had
14 said: adjudicative, no; other things, yes. So, I was attempt-
15 ing to try to convince you that since page 2077 was in the let-
16 ter that was characterized as administrative rather than adju-
17 cative, it would be perfectly appropriate to discuss those.

18 If I left with any other impression, I apologize.

19 Thank you very much.

20 (Whereupon, at 5:15 p.m., the interview was concluded.)

21 * * *

end#5