

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Telephonic Prehearing Conference
for Indiana University School of
Medicine

Docket No. 030-09792-CivP and ASLEP No. 94-689 02 CivP

LOCATION: Bethesda, Maryland

DATE: April 14, 1994

PAGES: 1 - 15

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: : Docket No. 030-09792-CivP
Telephonic Prehearing : ASLBP Number 94-689-02 CivP
Conference for Indiana :
University School of Medicine :
- - - - - x

APRIL 14, 1994

NUCLEAR REGULATORY COMMISSION
4350 EAST-WEST HIGHWAY, FOURTH FLOOR
BETHESDA, MARYLAND

BEFORE:

JUDGE JAMES P. GLEASON
Licensing Board Chairman
JUDGE PETER LAM
JUDGE THOMAS MURPHY
ROBERT PIERCE, Legal Assistant
NUCLEAR REGULATORY COMMISSION

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1 APPEARANCES:

2 For the NRC Staff:

3 MICHAEL FINKELSTEIN

4 BERNARD BORDENICK

5

6 For Indiana University:

7 THOMAS GANNON, ESQUIRE

8 JEROME KELLY, ESQUIRE

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P R O C E E D I N G S

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2 JUDGE GLEASON: This is a prehearing conference
3 for an enforcement hearing on an order issued by the NRC's
4 Office of Enforcement on January 18th, 1994. We apologize
5 for the delay in this proceeding, but the recorder is here
6 now.

7 The order calls for the imposition of a civil
8 monetary penalty on the Indiana University School of
9 Medicine. I am Judge James P. Gleason, the Chairman of the
10 Licensing Board which has been appointed to hear this
11 proceeding and her with me in the room is Judge Peter Lam
12 and Judge Thomas Murphy, my associates on the case, and Mr.
13 Robert Pierce who is the legal assistant helping us.

14 I'd like the parties to identify themselves, first
15 the staff and then the attorney for Indiana University
16 School of Medicine, please.

17 MR. FINKELSTEIN: My name is Michael Finkelstein.
18 I'm with Bernard Bordenick. We represent the NRC Staff.

19 MR. GANNON: My name is Tom Gannon. That's G-a-
20 n-n-o-n. And I'm here with co-counsel, Mr. Jerry Kelly.

21 JUDGE GLEASON: All right, thank you.

22 All right, the hearing which was requested by the
23 chancellor of Indiana University -- Purdue University at
24 Indianapolis -- will consider two issues. Whether Indiana
25 University's Medical School which holds an NRC byproduct

1 materials license to possess cobalt-60, CL teletherapy
2 sources for medical use and the irradiation of blood and
3 blood products violated NRC's regulatory requirements and
4 whether on the basis of that violation the order for the
5 penalty should be sustained.

6 University officials have requested for the
7 convenience of its key personnel who will participate in the
8 proceeding to have the hearing held on or near the IU/PUI
9 campus. And we will attempt to accommodate that request.

10 In that connection I want to note that the board
11 would like to at the time of the hearing or prior to the
12 hearing to visit the teletherapy unit prior to the hearing
13 and receive some explanation of its operation. And of
14 course we will make our schedule convenient to making sure
15 that the visit does not interfere with any patient use or
16 utilization of the unit for patients or other purposes.

17 MR. GANNON: I'm sure that can be arranged, Your
18 Honor, this is Tom Gannon.

19 JUDGE GLEASON: All right, thank you, Mr. Gannon.

20 What we thought we would do is we would come up
21 the day before the hearing, and if we could do it in the
22 afternoon of the day before the hearing that would be
23 helpful. But we would, as I say, adjust our schedule to
24 whatever the use of the machinery is.

25 The parties in connection with the prehearing

1 activities have agreed and requested an adoption by the
2 Board of a schedule they have submitted for this proceeding
3 which contemplates a five-and-a-half month period for the
4 commencement of a hearing.

5 Since the issues in this case based on the notice
6 of hearing and the licensee response do not appear at this
7 point, at least, as complicated matters, the Board believes
8 that we might make an effort to shorten that period a bit
9 and reduce it somewhat.

10 MR. GANNON: And Your Honor, I would have no
11 objection to shortening the period of time.

12 JUDGE GLEASON: Is this Mr. Gannon?

13 MR. GANNON: Yes.

14 JUDGE GLEASON: All right, fine.

15 At the outset we would like to call attention to
16 the Commission's encouragement that -- and also provisions
17 in NRC regulations -- which provide for a settlement or
18 compromise of proceedings of this type. And accordingly we
19 would urge both parties to make an effort to -- if possible
20 -- to resolve their differences.

21 I wonder if the parties at this time are able to
22 estimate or to give any estimate of the number of witnesses
23 they are contemplating will be providing testimony during
24 the proceeding.

25 Mr. Finkelstein, could you respond to that?

1 MR. FINKELSTEIN: I don't think we would have more
2 than ten witnesses in this case. But I really can't give
3 you at this time a --

4 JUDGE GLEASON: I understand.

5 MR. FINKELSTEIN: -- a number.

6 JUDGE GLEASON: I understand. Mr. Gannon, do you
7 have any idea?

8 MR. GANNON: Yes, Your Honor. We would have
9 likely no more than three to five witnesses.

10 JUDGE GLEASON: All right. Well, then it seems to
11 me that we're talking probably a two- to three-day hearing
12 at the most. It would appear to us that a
13 fifty-day period which is what is in the proposed schedule -
14 - or it would appear to us that rather than an eighty-day
15 period which is in the proposed schedule might be shortened
16 to approximately around fifty days to complete the discovery
17 process.

18 Mr. Finkelstein, do you have any problems with
19 that or do you have any comments on it?

20 MR. FINKELSTEIN: I would not have a problem with
21 a fifty-day discovery period. I think discovery in this
22 case is going to be fairly simple.

23 JUDGE GLEASON: Mr. Gannon?

24 MR. GANNON: I agree with that, Your Honor.

25 JUDGE GLEASON: All right, then the other aspect I

1 could mention, and it doesn't seem to me that we need to
2 necessarily provide time periods for summary disposition
3 motions. I don't see where any time objective is being
4 served by providing that kind of period which -- for motions
5 that might not ever materialize.

6 MR. FINKELSTEIN: Judge Gleason, this is Mike
7 Finkelstein. Does that mean that we could file a summary
8 disposition motion up until the hearing?

9 JUDGE GLEASON: Yes, it does. Yeah, I would think
10 so. I mean I have no problem with that. But I just don't
11 at this point see any necessity for our programming time for
12 that if they are -- if you people have such motions to file
13 we can handle it and adjust the schedule at the time that
14 you file it. And we would allow you to file it right -- not
15 perhaps right up to the time period, but let's say at least
16 a ten-day or two-week period prior to the hearing.

17 So we would propose to eliminate that time period
18 that's currently in the schedule. Do you have any problems
19 with that, Mr. --

20 MR. FINKELSTEIN: This is Mike Finkelstein. We
21 have no problems with that.

22 JUDGE GLEASON: Mr. Gannon?

23 MR. GANNON: I have no problem, Your Honor.

24 JUDGE GLEASON: All right. I would like to ask -
25 - I'd better get the proposed schedule before me. Hold it

1 just a minute, please.

2 [Brief pause.]

3 JUDGE GLEASON: On page two of that schedule under
4 the prefiled written testimony there is the word "optional."
5 I was unable to understand the significance of that word in
6 that context. Can anybody enlighten me on that, please?
7 Mr. Finkelstein?

8 MR. BORDENICK: This is Bernie Bordenick speaking.

9 JUDGE GLEASON: All right, Bernie.

10 MR. BORDENICK: What we meant by that use of that
11 word optional was in enforcement cases, unlike licensing
12 cases where there's a provision in the -- I don't remember
13 the exact section off-hand -- we're filing a direct
14 testimony -- prefiling direct testimony as writings. That
15 would not be applicable in an enforcement case.

16 But the Staff for its part would like to retain
17 the option of filing or prefiling written direct testimony
18 and leave to the licensee the option of whether it wanted to
19 do the same. So in other words they could present their
20 direct case verbally or in writing. As would be applicable
21 to the Staff.

22 That was the basis for the use of the word
23 "optional."

24 JUDGE GLEASON: I see. Well, I have to say that I
25 always feel a lot more comfortable and I think the

1 proceeding moves a lot quicker if we do have prefiled
2 testimony.

3 MR. BORDENICK: Right.

4 JUDGE GLEASON: Direct testimony.

5 MR. GANNON: Your Honor, this is Tom Gannon. I'm
6 just curious how we would have the opportunity to cross
7 examine such written testimony.

8 JUDGE GLEASON: Well, I don't understand. What we
9 would do is -- I guess you're not clear in our proceedings,
10 Mr. Gannon.

11 What we do is the testimony is filed into the
12 record at the introduction of the witness who identifies the
13 testimony. And then we generally or I generally ask him so
14 summarize that testimony very briefly. And then it's open
15 to cross examination just as if he were delivering it orally
16 at that particular time.

17 MR. GANNON: I see, Your Honor, thank you.

18 JUDGE GLEASON: Do you have any problems with
19 filing prefiled testimony, Mr. Gannon?

20 MR. GANNON: No, Your Honor.

21 JUDGE GLEASON: All right, fine. Well, then I
22 think that we'll include that in the order, because as I
23 indicated before it just goes a long way to facilitating the
24 process and makes us all very familiar with the case as it
25 occurs.

1 I notice there was not any time allocated for the
2 filing of and responses to any admissions concerning
3 documents or matters of fact as provided in the regulations.
4 Was there a particular reason for not doing that, Mr.
5 Finkelstein, or Mr. Bordenick?

6 MR. FINKELSTEIN: Yes, that is included in the
7 discovery period which I guess is not fifty days.

8 JUDGE GLEASON: I see. All right, fine. Well,
9 you can file those requests right up to the time of the
10 hearing. In fact we could receive responses even at the
11 hearing, dispose of them at that time depending on what the
12 time period is and whether you'd like some more time before
13 the hearing to do it, so -- but we'll include some
14 notification of that in the schedule we publish.

15 Is there any information that can be provided at
16 the present time -- I guess this goes to Mr. Gannon
17 -- we had been advised as I indicated earlier that the
18 University would like to have the hearing at or near the
19 University. And that certainly is agreeable to us. I
20 presume it is with the Staff, Mr. Finkelstein?

21 MR. FINKELSTEIN: That's correct.

22 JUDGE GLEASON: Yeah. Is there any information
23 you can provide us at this time as to where that might be or
24 -- we were told to I think contact a radiation safety
25 officer to get that worked out, a Mr. Max Richards. And of

1 course we can do that.

2 But have you inquired at all, Mr. Gannon, in that
3 connection?

4 MR. GANNON: No, Your Honor, I haven't. How many
5 people do you suppose will be at this hearing? That would -

6 -
7 JUDGE GLEASON: At a University I suppose you
8 never know. I don't know. We generally like to provide,
9 you know, of course space for the parties and of course the
10 Board. And you know, space for the witnesses to testify and
11 then generally fifty to a hundred places if people show up,
12 because certainly the public is invited if they want to
13 come.

14 So one never knows.

15 MR. GANNON: Well, we have a conference, Your
16 Honor, a conference center, Your Honor. But we have not
17 checked on availability yet.

18 JUDGE GLEASON: All right. Suppose you talk to
19 Mr. Max Richards about that and then we'll be in touch with
20 him too at the proper time, all right?

21 MR. GANNON: I understand that there's a need for
22 some security as well. Could you elaborate on that?

23 JUDGE GLEASON: Yes, we have found because of the
24 public's interest in radiation and its potential for harm,
25 if you will, at times if it's not handled properly that

1 there are a number of individuals and people that get very
2 excited and concerned and they show up at a lot of these
3 cases and sometimes there have been disturbances that have
4 occurred.

5 We would not, you know, anticipate such an event
6 at an enforcement proceeding like this but one never knows
7 what can happen. So that we always like to alert the people
8 who are responsible for the facility that we're going to sit
9 in, sometimes it's a court house, it may be the local police
10 -- we contact our own security people here at the Agency and
11 between them they work out some kind of an arrangement to
12 make sure that if there is any trouble that ensues that they
13 are able to handle it.

14 So it's kind of more of a precautionary thing in
15 the light of our experience and that's about all I can say
16 about it.

17 MR. GANNON: Well, he have our own police force.
18 So I'm sure arrangements can be made for security.

19 JUDGE GLEASON: Right. All right, fine. Well,
20 that will take care of that.

21 Is there anything that has to be discussed with
22 respect to the issues in the case? Are they clear as far as
23 you're concerned, Mr. Gannon?

24 MR. GANNON: Yes, Your Honor, generally. They
25 are.

1 JUDGE GLEASON: All right. And Mr. Finkelstein,
2 I'm sure there's no problem that you have with respect them.
3 Of course they are general issues and there will be a number
4 of things in support or opposed to those issues, so we'll
5 just wait and see what's produced in the hearing phase of it
6 on that question.

7 Excuse me, I'm going to go off the -- be out of
8 communications for a minute so I can discuss something with
9 my colleagues. Hang on a minute.

10 [Discussion off the record.]

11 JUDGE GLEASON: Well, I think that as far as my
12 colleague and I are concerned that about runs through the
13 items that we wanted to clear up. We will issue -- are
14 there any other matters that would like to be discussed by
15 any of the attorneys?

16 MR. GANNON: No, Your Honor.

17 MR. KELLY: Your Honor, this is Jerry Kelly with
18 Indiana University Medical Center. I'm not clear on the
19 summary disposition timing. I may have mis-heard, but I was
20 wondering if the schedule could be set such that a decision
21 on summary disposition might be -- that the motions for
22 summary disposition might be due before a week or some
23 period of time before the hearing date so that depending on
24 the ruling on summary disposition there might be a period of
25 time when this motion could reflect on settlement.

1 JUDGE GLEASON: Well, why don't we -- we certainly
2 will keep that in mind, Mr. Kelly. And we certainly don't
3 want to do anything that would impede a settlement of any
4 kind. Let me give that some consideration and I'll
5 certainly try to make allowance for it in drawing up the
6 schedule.

7 Hang on just a minute, please.

8 MR. KELLY: Thank you, Your Honor.

9 JUDGE GLEASON: Excuse me, I wanted to let you --
10 I guess I didn't indicate. I'm going off the
11 -- out of communication here. I'll be right back with you.

12 [Discussion off the record.]

13 JUDGE GLEASON: All right, we're back with you.
14 That about concludes the areas that we wanted to discuss.
15 If there are no other matters, why we will get an order out
16 immediately or in the next day or so and you people can
17 commence your discovery as of the conclusion of this
18 prehearing conference.

19 All right, thank you so much, gentlemen. We'll be
20 seeing you soon.

21 MR. FINKELSTEIN: Thank you.

22 MR. GANNON: Your Honor --

23 JUDGE GLEASON: Yes.

24 MR. GANNON: -- Tom Gannon. I would like to
25 clarify one thing. Although we have said that the issues

1 are as set out in this proposed order we would like to
2 reserve the right to waive any issues prompted by discovery.
3 Would that be possible?

4 JUDGE GLEASON: Yes, as long as they're within the
5 confines of the general issues that the hearing is
6 predicated upon. I mean there are a lot of sub-issues that,
7 you know, that can be brought up.

8 MR. GANNON: That's fine. That's fine, Your
9 Honor.

10 JUDGE GLEASON: All right, thank you, gentlemen.

11 MR. FINKELSTEIN: Thank you.

12 MR. GANNON: Thank you.

13 MR. BORDENICK: Thank you.

14 MR. KELLY: Thank you.

15 [Whereupon, at 10:45 a.m., the hearing in the
16 above-entitled matter was concluded.]

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REPORTER'S CERTIFICATE

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

NAME OF PROCEEDING: Telephone Conference for
Indiana University School
of Medicine

DOCKET NUMBER: 030-00792-CivP

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the
original transcript thereof for the file of the
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B C Hochbas

Official Reporter
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