

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Cameo Diagnostic Centre, Inc.
(Byproduct Material License No.
20-27908-01; EA-93-005)

Docket No. 30-29567-CivP and ASLBP No.
94-686-01-CivP

LOCATION: Bethesda, Maryland

DATE: Wednesday, June 22, 1994 PAGES: 55-81

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of: :
CAMEO DIAGNOSTIC CENTRE, INC. : Docket No. 30-29567-CivP
(Byproduct Material License : ASLBP No. 94-686-01-CivP
No. 20-27908-01 :
EA-93-005) :
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Wednesday, June 22, 1994
4350 East-West Highway
Room 428
Bethesda, Maryland

The above-entitled telephone conference commenced
at 3:30 p.m., pursuant to notice.

Before Administrative Law Judges:
Ivan W. Smith, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

1 For the Licensee, Cameo Diagnostic Centre, Inc.:

2 Mr. Paul J. Rosenbaum, President (413) 788-7000

3 155 Maple Street

4 Springfield, Virginia 01105

5

6

7 For the Nuclear Regulatory Commission:

8 Bernard M. Bordenick, Esquire 504-1585

9 Catherine L. Marco, Esquire (Telconf No)

10 Office of the General Counsel (202) 504-1585

11 U. S. Nuclear Regulatory Commission

12 Washington, D.C. 20555

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P R O C E E D I N G S

1
2 JUDGE SMITH: This is a pre-hearing conference.
3 It is being transcribed exactly as the earlier conferences
4 were.

5 We have three items on the -- two items on the
6 agenda today. One is the resuming of the discovery and
7 allowing the proceeding to go forward and the next one is
8 the possibility of ruling on Mr. Rosenbaum's motion to add
9 the issue of due process to the proceeding.

10 Let's go first to the pre-hearing -- to the
11 re-opening of discovery. We receive now, and served on the
12 public record, a report from Judge Bloch that settlement
13 negotiations were not effective and there's no settlement.

14 And we now have the status motion to re-open
15 discovery. If you recall our last pre-hearing conference in
16 May, I think it was, on April 26, we had an extensive
17 discussion of your responsibilities under the discovery
18 regulations, Mr. Rosenbaum.

19 We explained that the staff has a right to know
20 exactly what to expect in the hearing coming up as you do,
21 too, and that with the exception of some interrogatories
22 that ask you to express a legal conclusion as to whether you
23 violated relevant sections or not, we indicated that
24 individually the discovery requests seemed to have merit but
25 that cumulatively, there seemed to be an awful lot of them.

1 And although we didn't get to the point of ruling
2 that there were too many, we broke it off when the idea of
3 having a settlement judge came up.

4 Since that time, Mr. Rosenbaum, you've had
5 virtually two months to contemplate this case and I wonder
6 if you can see now that you are going to have to disclose
7 virtually everything about your case to the staff.

8 MR. ROSENBAUM: Well, Your Honor, I've never
9 attempted to hide anything.

10 JUDGE SMITH: Well, except that you have not
11 disclosed virtually everything about your case to the staff
12 and now it's time to do it.

13 MR. ROSENBAUM: By all means.

14 JUDGE SMITH: All right.

15 MR. ROSENBAUM: Anything they want to know, I'm
16 glad to give them. Let them ask and I'll give it.

17 JUDGE SMITH: All right. They have already asked
18 some 104 --

19 MR. ROSENBAUM: That is not a deliberate owner's
20 task. As I mentioned in a previous motion, everything but --
21 -- the entire case, all the facts are pretty much laid out in
22 the transcript of the enforcement conference hearing.

23 There is no question that -- there should be no
24 question -- there's hardly any questions that anything more
25 can be added to what is already in that transcript.

1 JUDGE SMITH: All right. If you're moving, as I
2 see that you are, to have the transcript of the enforcement
3 conference substituted for the interrogatories, that motion
4 is denied.

5 MR. ROSENBAUM: I'm sorry to hear that.

6 JUDGE SMITH: Now, let's get on with answering the
7 interrogatories. These are the interrogatories of March 22,
8 1994.

9 I re-read the transcript of April 26. We made it
10 clear that when the staff asked you if you have violated
11 certain sections that you can put the staff on their proof.

12 You can just say you prove it, but if you intend
13 to offer evidence to the effect that you have not violated a
14 section, they have the right to know what that evidence is.

15 Since the staff has also put these questions
16 -- and I'm referring, for example, to Interrogatory 8(b), I
17 believe. Since these questions tend to be conclusions of
18 law, you have, as we explained, a right to say you don't
19 know.

20 But this is the evidence that you intend to offer
21 in the case and you'll leave it up to the board to decide
22 whether you have violated Section 10 C.F.R 35.13(e).

23 All of those options are available to you except,
24 of course, you have to tell the truth. We did make one
25 exception and that is you do not have to file a statement in

1 effect that says, yes, I did violate 10 C.F.R 35.13(e)
2 because, ultimately, that is for us to decide.

3 MR. ROSENBAUM: That is what, please?

4 JUDGE SMITH: That is for us to decide that.

5 MR. ROSENBAUM: Oh, okay.

6 JUDGE SMITH: I would expect the staff to modify
7 that interrogatory accordingly and they have not done that
8 yet.

9 MS. MARCO: That's fine.

10 JUDGE SMITH: Ms. Marco, now you heard the board's
11 criticism --

12 MS. MARCO: Yes.

13 JUDGE SMITH: -- of the very long list of
14 interrogatories you had. I wonder, Has the staff given any
15 thought to a simpler way to satisfy your discovery needs?

16 MS. MARCO: Well, Your Honor, actually, when I
17 took upon writing these interrogatories, I had to look at
18 what I considered to be defenses that were not terribly
19 specific.

20 And in light of that, and in order to make sure
21 that there were no surprises and to be able to make more
22 concrete what those defenses were, I felt the need for the
23 interrogatories. That was why I had them.

24 JUDGE SMITH: Well, we're faced --

25 MS. MARCO: Actually, Your Honor, we'd also be

1 amenable to asking these during a deposition as well, which
2 would, of course, obviate the need for Mr. Rosenbaum to file
3 a written response.

4 JUDGE SMITH: Would you repeat that?

5 MS. MARCO: To ask the same questions or those
6 that are objectionable or really lengthy in a deposition of
7 Mr. Rosenbaum.

8 JUDGE SMITH: That might be simpler. How do you
9 feel about that, Mr. Rosenbaum?

10 MR. ROSENBAUM: I agree with you.

11 JUDGE SMITH: But the difficulty is he -- if he
12 begins to object in the deposition to some of these
13 questions and refuses to answer, then you have another
14 problem.

15 MS. MARCO: That's correct.

16 JUDGE SMITH: I do believe, within my experience,
17 that some of these interrogatories, as I've flipped through
18 them, you don't -- you don't really have to ask them.

19 For example, I'm looking at Interrogatory 19, if
20 you'll look to that one. And you say, "With respect to the
21 November 13, 1992 letter referenced in Interrogatory 18(a),
22 does the licensee dispute that the letter contains the
23 following language?"

24 MS. MARCO: Uh-huh.

25 JUDGE SMITH: And then you cite the actual

1 language of the letter. Now, I can see, perhaps, in
2 -- no, I can't really envision the case where the letter
3 would not speak for itself.

4 You have the letter. It's an NRC official letter.
5 Presumably, you're going to offer it into evidence. And
6 yet, --

7 MS. MARCO: Yes, we hope to do that.

8 JUDGE SMITH: Right. And what do you gain by this
9 interrogatory?

10 MS. MARCO: We'd like to know if there's any
11 objection to what the letter actually states.

12 JUDGE SMITH: That he -- that he doesn't believe
13 that the language is as stated here?

14 MS. MARCO: He does agree.

15 JUDGE SMITH: Well, then in that event, I'm going
16 to direct you to go back through your interrogatories and
17 weed them out and get rid of unnecessary interrogatories.

18 MS. MARCO: That's fine.

19 JUDGE SMITH: You're burdening the board and
20 you're burdening Mr. Rosenbaum unnecessarily.

21 MS. MARCO: Okay. I'd be happy to do that.

22 JUDGE SMITH: So, if there's no objection, I will
23 leave it here that these letters -- these interrogatories
24 will be put in the form of questions, after the questions
25 have been cleaned up by Ms. Marco in Mr. Rosenbaum's

1 deposition.

2 Is that our understanding?

3 MS. MARCO: I'm sorry. Could you please restate
4 that? I didn't quite catch it.

5 JUDGE SMITH: You will -- we'll take up your
6 suggestion that you'll put your interrogatories in the form
7 of questions in the deposition to Mr. Rosenbaum.

8 MS. MARCO: I understand. Okay.

9 JUDGE SMITH: And Mr. Rosenbaum agreed to that.
10 The board thinks that's probably the best way that we're
11 going to have to get a response to these interrogatories.

12 So, we will approve that approach.

13 MS. MARCO: Your Honor, what about the production
14 requests?

15 JUDGE SMITH: Production of documents?

16 MS. MARCO: Yes. It was in that discovery
17 package.

18 JUDGE SMITH: Well, I think we covered that at our
19 pre-hearing conference that these documents -- I haven't
20 seen any that should not be produced.

21 MR. ROSENBAUM: There aren't any.

22 JUDGE SMITH: Then, if there aren't any, if they
23 have them all -- if there aren't any more, you say that.

24 MR. ROSENBAUM: Okay.

25 JUDGE SMITH: If they have -- if they have all of

1 the documents, you identify them.

2 MR. ROSENBAUM: Okay.

3 JUDGE SMITH: See, it's a -- would you point to
4 the exact interrogatories you're referring to, Ms. Marco?

5 MS. MARCO: Well, I'm referring to the -- any of
6 the documents that we have asked for, any and all of them.

7 JUDGE SMITH: As to each interrogatory, identify
8 all the documentation. Ask that question again. When you -
9 - follow it up in your interrogatory -- in your deposition
10 questions. Then, ask him specifically, Do you have any
11 document that supports your response to this question?

12 MS. MARCO: Okay, I will do that.

13 JUDGE SMITH: And then take his reasoned response.
14 He says, Well, no, I don't have any, or, You already have
15 it, or, simply, No, I don't know.

16 MS. MARCO: All right.

17 JUDGE SMITH: Okay with respect to resumption of
18 discovery. Is that all we have then? We'll begin it
19 effective today and you can reschedule your deposition.

20 MR. ROSENBAUM: Your Honor, you'll have to forgive
21 me for being so enormously ignorant. Resumption of
22 discovery translates into what as far as I'm concerned?.

23 JUDGE SMITH: We had previously approved a
24 discovery schedule.

25 MR. ROSENBAUM: For 90 days, right.

1 JUDGE SMITH: Right. And that was going along,
2 not very successfully as far as I could see, until about,
3 what, 70 days of it had passed?

4 There was a deposition scheduled for a week in
5 early May and the staff had not received a satisfactory
6 response to your interrogatories so they asked for a
7 pre-hearing conference, or somebody did, to resolve it.

8 We suspended discovery to allow a settlement judge
9 to work on the case. That failed and now we're just back to
10 where we were.

11 MR. ROSENBAUM: May I inject a piece of
12 information that perhaps you're not aware of?

13 JUDGE SMITH: Well, now, you agreed with the
14 settlement judge -- you agreed before the settlement judge
15 you would not reveal negotiations before him.

16 MR. ROSENBAUM: Yeah.

17 JUDGE SMITH: So, other than that, tell me what
18 you want to tell me.

19 MR. ROSENBAUM: Okay. You're like the preacher in
20 Vermont who preaches a sermon and says, I'm going to tell
21 you what I'm going to tell you, and then when he gets
22 through, I told you what I was going to tell you. But
23 that's neither here nor there.

24 Judge Bloch and I had a phone conversation a
25 couple, three days ago. And we --

1 JUDGE SMITH: Do you object to this, Ms. Marco?

2 MS. MARCO: Yes, I do. I object to any discussion
3 that relates to settlement negotiations or discussions with
4 Judge Bloch.

5 JUDGE SMITH: Maybe what you have to say, Mr.
6 Rosenbaum, would be -- would be helpful, but there was an
7 agreement -- I understand why the staff does not want that
8 confidentiality violated.

9 People take positions in settlement negotiations
10 solely for the purpose of settlement which they would not
11 take in a hearing. And she has a right to keep that
12 confidential.

13 MR. ROSENBAUM: Okay. I -- I tried to make it
14 easy for everybody.

15 JUDGE SMITH: Well, do you have -- independent of
16 your conversation with Judge Bloch, do you have a proposal
17 which would lead to the settlement of the case, or partial
18 settlement?

19 Would you like it to go back to Judge Bloch?

20 MR. ROSENBAUM: Well, that's precisely what I'm
21 trying to say if Ms. Marco would allow it. It's not going
22 to jeopardize her position one iota. It would enhance her
23 position and all I say is that I asked Judge Bloch to
24 consider -- to have NRC staff consider where they want to
25 have another meeting. Period.

1 That's the whole story.

2 MS. MARCO: Your Honor, that is -- that's fine,
3 but we still would ask that discovery be allowed to proceed.

4 JUDGE SMITH: All right. I think, given the
5 history of the case so far, if you want to try to continue
6 working with Judge Bloch to settle this case, that certainly
7 we would encourage that.

8 MR. ROSENBAUM: He's said he's going to talk to
9 the staff.

10 JUDGE SMITH: But, wait a minute. But I think
11 that the case has been delayed now for two months to give an
12 opportunity for the parties to settle. That has not
13 happened.

14 MR. ROSENBAUM: Okay.

15 JUDGE SMITH: And I -- I think we're going to
16 allow discovery, based upon Ms. Marco's motion, to proceed
17 right on schedule, right as she has moved, but I would also
18 urge you, parallel with that, to try to settle and if you
19 think Judge Bloch could help, he certainly has our blessings
20 to -- to step into the case for that purpose.

21 MR. ROSENBAUM: Well, --

22 JUDGE SMITH: We won't -- we won't re-appoint him
23 or anything, but we'll just let him do it and I will tell
24 him that after this conference if that's okay with Ms.
25 Marco.

1 MS. MARCO: That's okay.

2 MR. ROSENBAUM: The door is open.

3 JUDGE SMITH: Okay. In the meantime, however, the
4 staff is going to issue its notice of deposition and you'll
5 proceed with completing discovery and going to hearing
6 unless you settle it.

7 But, as far as this board is concerned, we're
8 going to proceed without delay to hearing. Judges Cole and
9 Kelber have nodded agreement with that. I don't know
10 exactly where we are on the hearing, but a schedule resumes
11 as of today.

12 If you need more time, if you have to reschedule
13 your deposition, well, we would allow that, but you can go
14 back to the regular schedule as of right now.

15 Now, the next issue is that the licensee has moved
16 to add a new issue to the proceeding.

17 MS. MARCO: Your Honor, you proposed a schedule.
18 Are you going to adopt the one that we submitted?

19 JUDGE SMITH: The one that you submitted in your
20 motion of March 22?

21 MS. MARCO: That's June 22.

22 JUDGE SMITH: Oh, excuse me.

23 MS. MARCO: I mean --

24 JUDGE SMITH: Yeah. Excuse me. That was your
25 original request.

1 Yeah. I have it before me. I have the schedule
2 and what you have here is, what I recognized
3 -- now, see, here's what I got confused on.

4 On page 4 of your motion, "Event, commence
5 discovery..." and that -- oh, you are asking for a new order
6 approving discovery schedule.

7 I thought you were -- I misread it. On page 4,
8 you say, "Commence discovery." That would be as of today,
9 right?

10 MS. MARCO: That's correct.

11 JUDGE SMITH: Then the licensee's response to the
12 status of discovery requests of March 22, we've ruled upon
13 that.

14 MS. MARCO: Okay.

15 JUDGE SMITH: End discovery -- well, I don't know
16 about that, because we have the deposition.

17 MS. MARCO: Yes.

18 JUDGE SMITH: But let's go on to the next. When
19 you conclude discovery and report so to the board, then we
20 will approve the motion for summary disposition as you
21 stated.

22 That's straight from the rules.

23 MS. MARCO: Okay.

24 JUDGE SMITH: How does that sound, Mr. Rosenbaum?

25 MR. ROSENBAUM: Sounds okay to me, from the little

1 I know. I must confess I'm intimidated by these legal
2 proceedings, but --

3 JUDGE SMITH: Well, yes, I know you are, Mr.
4 Rosenbaum, and the board has, while sympathizing with you,
5 has admonished you that you are in very deep water here.
6 This is a difficult proceeding.

7 MR. ROSENBAUM: Yep, I acknowledge that. And were
8 it not for the gravity of the entire situation, I would back
9 off all together. But this -- as a patriotic American, I
10 cannot do that.

11 And I would like to see it to the end unless Judge
12 Bloch can effect a settlement.

13 JUDGE SMITH: When I say "deep water," I meant
14 deep water in the sense of it being not a simple matter for
15 a layman to handle.

16 MR. ROSENBAUM: Oh, hardly that at all.

17 JUDGE SMITH: I mean, these concepts are difficult
18 even when you're familiar with them.

19 MR. ROSENBAUM: Part two represents a work of
20 significant complexity.

21 JUDGE SMITH: The vagueness that is left here in
22 this discussion is, Do we end discovery 20 days after
23 issuance of today's oral order? Should that stay or should
24 we wait until you've actually rescheduled the deposition,
25 Ms. Marco?

1 MS. MARCO: I would keep it open.

2 JUDGE SMITH: Keep it open?

3 MS. MARCO: Uh-huh.

4 JUDGE SMITH: All right. Then, the staff -- the
5 parties will notify us when discovery is completed?

6 MS. MARCO: That's correct.

7 JUDGE SMITH: All right. Then -- then, the rest
8 of the motion -- the rest of the schedule will kick in.

9 MS. MARCO: That's correct.

10 JUDGE SMITH: Now, we have here a faxed motion
11 from Mr. Rosenbaum dated June 10, I believe, seeking to add
12 another issue for hearing.

13 It was not served upon the other board members,
14 nor did I ever receive a hard copy of it.

15 And I would point out to you, Mr. Rosenbaum, that
16 that is your responsibility to do that.

17 MR. ROSENBAUM: Well, I was unaware of that. I
18 will take care of that immediately.

19 JUDGE SMITH: Although faxes are helpful in
20 informing people early of what you want, they do not
21 substitute for formal service of copy.

22 When I looked at this, I had no way of knowing
23 whether you had even informed the staff of the -- that you
24 were filing this motion.

25 MR. ROSENBAUM: Well, I did inform Ms. Marco.

1 JUDGE SMITH: Yes, but the public record has to
2 have the motion.

3 MR. ROSENBAUM: And I sent a copy to I guess it
4 was the Secretary of the Commission.

5 JUDGE SMITH: Right. But there's no indication on
6 your paper that there was --

7 MR. ROSENBAUM: Well, you're right. I was
8 negligent about that and it will not happen again. I assure
9 you of that.

10 JUDGE SMITH: In any event, at 2:00 o'clock this
11 afternoon, Ms. Moran, the Clerk to this board, called Ms.
12 Marco at my request to ask if Ms. Marco would object to us
13 disposing of this motion during this pre-hearing conference.
14 And she stated that she did have concerns about it.

15 And then I talked to her and I told her that the
16 board feels that this motion should be disposed of this
17 afternoon in the pre-hearing conference.

18 Ms. Marco wanted to continue to address it in
19 writing formally and take the --

20 MS. MARCO: Your Honor?

21 JUDGE SMITH: Yes.

22 MS. MARCO: Actually, upon reflection, I do
23 believe it would be in the best interest to dispose of this
24 orally, by an oral response.

25 JUDGE SMITH: All right. Well, the board hoped

1 you would arrive at that conclusion. Would you make your
2 oral response?

3 MS. MARCO: Yes. Your Honor, the staff strongly
4 objects to allowing this issue in this proceeding.

5 The issue, as I understand it, and it is not
6 terribly clear, is -- we consider it to be quite vague as to
7 what it actually means.

8 You said, and this is quoting it, "... whether an
9 NRC staff and its actions after December 11, 1992,
10 effectively and with malice denied due process rights to
11 licensee."

12 We -- when we look at the order, we don't believe
13 that it is an appropriate issue in the proceeding because
14 the proceeding was instigated by an order that imposed civil
15 penalties on the licensee.

16 And that order was based on two violations. And
17 due process rights, that doesn't come up in any manner. It
18 doesn't -- he has not shown in his motion how it relates
19 whatsoever to the order.

20 And because of that, we don't believe it's
21 appropriate.

22 JUDGE SMITH: Mr. Rosenbaum?

23 MR. ROSENBAUM: Yes.

24 JUDGE SMITH: The basic objection, as I understand
25 Mr. Marco, is that your motion is -- is in the abstract. It

1 doesn't have any factual background nor could we see any
2 when we read it.

3 And you just have not explained how it relates to
4 the proceeding.

5 MR. ROSENBAUM: I think it's all one package. I
6 think it -- it should not be divorced from the entire issue
7 of whether or not I committed any irregularities.

8 The issue, really, is the performance of NRC
9 staff. My entire defense, if I can use that term, is
10 predicated on the idea that NRC staff has conducted
11 themselves in a manner that is, if not illegal, certainly
12 unprofessional and certainly ought to be disclosed.

13 JUDGE SMITH: Even if what they did was factually
14 accurate, is that what you're saying?

15 MR. ROSENBAUM: Yeah.

16 JUDGE SMITH: Okay.

17 MR. ROSENBAUM: You know, the easiest thing in the
18 world would be to back away. No question about it. The
19 easiest thing in the world would be to pay the \$500 that the
20 NRC counsel suggested and back away.

21 MS. MARCO: Your Honor, we object to that. We
22 object to any -- any --

23 JUDGE SMITH: You are absolutely right, Ms. Marco.

24

25 You should not refer to any concessions or

1 anything that the staff may have done during your settlement
2 negotiations.

3 MR. ROSENBAUM: Okay.

4 JUDGE SMITH: I might say that we've perceived all
5 along that -- that money may not be the driving issue here
6 in this proceeding.

7 MR. ROSENBAUM: That is correct.

8 JUDGE SMITH: And so we're not terribly shocked by
9 it, but, nevertheless, it simply is not fair and --

10 MR. ROSENBAUM: Well, I apologize. I did not
11 know. I will not --

12 JUDGE SMITH: Well, please do not do that. It
13 puts -- here's what it does. There's going to be future
14 cases of people much like you that also have concern, and if
15 they go to a good-faith settlement negotiation and then use
16 that against the staff, or attempt to, it's going to put a
17 chilling effect upon all types of settlement.

18 MR. ROSENBAUM: You're right.

19 JUDGE SMITH: I'm sure that you would really be
20 upset if the staff came to us now and said that you,
21 yourself, had agreed to settle it for a reduced amount,
22 because the very reason you wanted a settlement judge is
23 that you didn't want that information to come to us.

24 So, really, it's more than just a request, Mr.
25 Rosenbaum. It is an important admonishment for you not to

1 reveal what happened in the settlement negotiations.

2 MR. ROSENBAUM: I shall adhere to your
3 recommendation scrupulously. I don't know what to say now
4 except that I'm prepared to go forward.

5 JUDGE SMITH: All right. Well, the judge -- the
6 board has given much thought to this motion. We've
7 discussed it from several angles.

8 We were prepared -- even if Ms. Marco was not
9 willing to discuss a theory, we were prepared to deny the
10 motion, your motion on our own motion on the following
11 grounds and on the following reasons:

12 One is, it would -- your time for answering the -
13 - the notice of violation in the imposition of the civil
14 penalty has long since passed, not that would necessarily
15 preclude you from adding a new issue, but, certainly, it
16 would put some burden upon you to explain why you did not
17 raise that issue when you filed your initial answer.

18 The second reason that it is denied is -- are for
19 the reasons stated by Ms. Marco that, What does it all mean?
20 How does it relate to the case? And we agree with her. And
21 so, for that reason standing alone, the motion deserves to
22 be denied.

23 But then there's a third reason which perhaps even
24 you have overlooked. And that is, whatever the staff has
25 done in this case, you are entitled to a new hearing upon an

1 entirely clean slate.

2 This is a process that the NRC and other
3 regulatory agencies use. They give the people who they feel
4 have been aggrieved by the staffs an opportunity for a fresh
5 hearing by an independent panel of judges.
6 And that tends to wipe out any unfairnesses that were
7 invoked upon you before.

8 In other words, that is why we are here, to assure
9 that you have due process even if it was not afforded to you
10 by the staff during their investigation and settlement --
11 and enforcement conferences.

12 Finally, however, if in the very remote
13 possibility it should develop during this hearing that the
14 staff gathered evidence illegally against you, there is some
15 possibility that that evidence could not be produced in the
16 case.

17 I'm not predicting that that has happened. I have
18 never -- I've never seen it, but we might make it a parallel
19 to a criminal proceeding.

20 If the police were, for example, were to deny the
21 due process of a person charged with a crime, usually the
22 remedy for that is to exclude the evidence that they
23 gathered by failing to follow due process procedures, not to
24 acquit the person charged with the offense.

25 Well, in this case, if the evidence should develop

1 that the staff illegally seized evidence against you or
2 denied you due process, it is a matter that just might be
3 considered in whether the evidence they adduce is
4 admissible.

5 I might say that I've never seen, in my many years
6 of presiding over cases here, the situation come up where
7 there was evidence so tainted that it couldn't
8 -- by the staff that it could not be offered into evidence.

9 So, that would be our ruling. The motion is
10 denied on those grounds. Are there any questions about
11 that?

12 MR. ROSENBAUM: I think your ruling is altogether
13 fair. I will not raise any objections.

14 JUDGE SMITH: Do you have any questions, Ms.
15 Marco? Since you've won, I guess not.

16 MS. MARCO: Thank you, Your Honor.

17 JUDGE SMITH: Do we have anything further this
18 afternoon? I'm going to orally inform Judge Bloch that he
19 is free and welcome to continue to try to effect a
20 settlement in this case, but in the meantime, we have done
21 what we have done and we're proceeding with the case.

22 MR. ROSENBAUM: Your Honor, one minor/major
23 problem. I do not have a copy of the transcript of our last
24 conference and how might I get a copy of the transcript of
25 this present conference?

1 Do I have to go through the hoops of paying some
2 stenographer some outlandish sum of money?

3 JUDGE SMITH: No. In the first place, the court
4 reporters do not earn outlandish sums of money. They're
5 fairly paid.

6 Where is the public document room in this
7 proceeding, Ms. Marco?

8 MS. MARCO: Yes. I believe through the public
9 document room that you can get the transcript. I think it
10 is -- oh, where?

11 JUDGE SMITH: Yeah. Where? Is there a local
12 public document room?

13 MS. MARCO: No, but there's a -- there's one in
14 D.C. If he called, I believe that they could send it to
15 him.

16 JUDGE SMITH: Free?

17 MS. MARCO: That is what I've heard from the
18 -- yeah, at nine cents a page. I've heard that from whoever
19 was in charge there when I called before to check on this.

20 JUDGE SMITH: The -- normally, when we have
21 parties who are outside of the Washington, D.C., area
22 --

23 MS. MARCO: Uh-huh.

24 JUDGE SMITH: -- we set up local public document
25 rooms so that they can -- the public and the parties

1 involved can examine the record of the proceeding and, in
2 fact, have it made public. It's never --

3 MS. MARCO: Are they out there where he is,
4 though?

5 JUDGE SMITH: What?

6 MS. MARCO: I thought that they were around
7 nuclear power plants and I don't believe there is one near
8 where he is.

9 JUDGE SMITH: Well, they're set up on a case-by-
10 case basis.

11 MR. ROSENBAUM: There is a nuclear power plant
12 outside of Vermont, which is about 75 miles north of here.
13 Can you confirm that I can find it up there?

14 JUDGE SMITH: No, I can't confirm that. I think
15 the better thing for you to do, Mr. Rosenbaum, is in
16 consultation with Ms. Marco who will help you on this,
17 contact the public document room for what you want.

18 MR. ROSENBAUM: Okay. Let's make it easy for
19 everybody concerned. Okay.

20 JUDGE SMITH: All right. Anything further?

21 MR. ROSENBAUM: Nothing further at this end, Your
22 Honor. I want to compliment you and thank you for being so
23 eminently fair and straightforward.

24 JUDGE SMITH: Ms. Marco, anything further for you?

25 MS. MARCO: No. Just -- do you want me to contact

1 the PDI and get it to him then? Is that what you're saying?

2 JUDGE SMITH: Yeah. Help him. Help him get this.

3 MS. MARCO: Oh, okay.

4 JUDGE SMITH: In accordance with the standard
5 procedure.

6 MS. MARCO: All right. That's not a problem.

7 JUDGE SMITH: Yeah. Thank you.

8 MS. MARCO: Okay. Thank you.

9 JUDGE SMITH: Thank you, parties, for joining us.

10 MR. ROSENBAUM: Thank you, Your Honor.

11 JUDGE SMITH: We're adjourned.

12 [Whereupon, the telephone conference was
13 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: Cameo Diagnostic Centre

DOCKET NUMBER: 30-29567-CivP

PLACE OF PROCEEDING: Bethesda, MD

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

Sabrina Flapchun
Official Reporter
Ann Riley & Associates, Ltd.