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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the matter of:

METROPOLITAN EDISON COMPANY
THREE MILE ISLAND STATION

Docket No. 50-289

Oral Argument

Location: Bethesda, Maryland

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Date: Thursday, July 28, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of: :
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METROPOLITAN EDISON COMPANY, ET AL. : Docket No. 50-289
:
(Three Mile Island Nuclear Station, :
:
Unit No. 1) :
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Nuclear Regulatory Commission
Fifth Floor Hearing Room
4350 East-West Highway
Bethesda, Maryland

Thursday, July 28, 1983

The Oral Argument in the above-entitled matter
convened, pursuant to notice, at 2 o'clock p.m.

BEFORE:

GARY J. EDLES, Chairman
Administrative Law Judge

DR. JOHN H. BUCK
Administrative Law Judge

CHRISTINE N. KOHL
Administrative Law Judge

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P R O C E E D I N G S

1
2 JUDGE EDLES: Good afternoon, ladies and gentlemen.

3 This afternoon we hear oral argument in connection
4 with three motions to reopen the record in the management
5 phase of this proceeding. I should point out that we will
6 not be considering today the overall question of management
7 integrity and capability. Therefore, the speakers should
8 confine themselves to the matters raised in the motions and
9 in the comments submitted in response to our June 16th order.

10 The order of appearance and the time allotments are
11 set out on the sheets at the counsel table. The Union of
12 Concerned Scientists has advised us that it will not par-
13 ticipate at oral argument this afternoon and, as you will
14 note, we have divided their allotted time between the Aamodts
15 and TMIA.

16 I will now ask each party to interduce itself
17 formally for the record, beginning with the Intervenors, and
18 would ask the Aamodts and TMIA please to indicate whether
19 they wish to reserve any portion of their time for rebuttal.

20 MR. AAMODT: I would like to reserve some time.
21 I am joined by my my wife Marjorie.

22 JUDGE EDLES: TMIA?

23 MS. DOROSHOW: I am Joanne Dorshow and I would
24 like to reserve some time.

25 JUDGE EDLES: Staff?

1 MR. GOLDBERG: Jack Goldberg, Counsel for NRC Staff.
2 With me is my co-counsel in the management phase, Mary Wagner.

3 JUDGE EDLES: Licensee?

4 MR. BLAKE: Judge Edles, my name is Ernest Blake
5 with the Law Firm of Shaw, Pittman, Potts & Trowbridge. We
6 represent the Licensee in this proceeding.

7 With me at counsel table is George Trowbridge, also
8 of that firm, and immediately behind me in the audience are
9 Robert Arnold and Philip Clark from the Office of the
10 President of GPU.

11 JUDGE EDLES: For just working purposes, shall we
12 allocate ten of the thirty minutes for rebuttal. Would that
13 be satisfactory?

14 MS. DOROSHOW: That is satisfactory.

15 JUDGE EDLES: If that is fine, Mr. Aamodt, you can
16 begin.

17 ORAL ARGUMENT BY NORMAN O. AAMODT

18 MR. AAMODT: Mr. Chairman, Members of the Board,
19 the Appeal Board has three motions before it to reopen the
20 record of the management phase of the restart hearing. Two
21 were filed by the Aamodt Family.

22 We will demonstrate that those motions are timely,
23 that they concern significant safety-related issues, and that
24 a different decision would have been reached by the Licensing
25 Board had the materials supporting these motions been considered.

1 We filed motions for reopening that were served on
2 September 3 and April 16, 1983. On July 2, 1983, in response
3 to the Appeal Board's order we reconsidered these motions
4 as well as one filed by TMIA in light of more recent information.

5 This information included Tim Martin's assertion
6 that the Hartman allegations concerning leak rate falsification
7 had been verified by the NRC staff prior to transfer of the
8 case to the Justice Department.

9 It also included parallel proposals by the NRC
10 Staff and Licensee for restructuring the Unit 1 organization
11 on the assumption that the data falsification alleged by
12 Hartman absent an investigation tainted all operations
13 personnel connected with Unit 2.

14 We found that this new information provided
15 additional support for our motion to reopen to hear the
16 Hartman matter.

17 This afternoon we ask the Board to evaluate the
18 significance of the matters already provided in support of
19 our motions as well as other matters which may be raised the
20 first time today.

21 Within our present knowledge, three matters
22 stand out as the most challenging to the Licensing Board's
23 conclusions concerning management. These matters all
24 concern management integrity, an issue which takes precedence
25

1 over competency and must be resolved first.

2 These three matters are the Hartman matter; the
3 allegations of the three engineers involved in the Unit 2
4 cleanup, and the compromise of the Radiation Worker Permit
5 Test reported in 1982.

6 These matters, taken individually and together, can
7 be expected to lead to a different conclusion concerning
8 management integrity than that reached by the Licensing Board
9 in their third decision of July 27, 1982.

10 The Licensing Board believed that the responsibility
11 for the cheating incidents lay for the most part with the
12 individual operators who were involved.

13 JUDGE EDLES: Mr. Aamodt, just for one second. Give
14 me again the third of the three items that you ticked off,
15 the Hartman allegation, the allegation of the harassment,
16 and what was the third one?

17 MR. AAMODT: The RWP test issue, the compromise of
18 the Radiation Worker Permit test. I will refer to that as
19 RWP.

20 JUDGE BUCK: Did you refer to that in your brief?

21 MR. ADMODT: I beg your pardon?

22 JUDGE BUCK: Did you refer to that in your brief?

23 MR. AAMODT: Yes, sir; we did.

24 The Board believed -- let me see where we dropped
25 off here. The Licensing Board believed that the responsibility

1 for the cheating incidents lay for the most part with the
2 individual operators who were involved. The Board believed
3 that where it was identified that management had contributed
4 to the operators' culpability through negligence or oversight,
5 management would in due course institute suitable changes.

6 The three matters to which we draw your attention
7 this afternoon provide conclusive evidence that the compromise
8 behavior of the operators originated with high-level management.
9 These three matters demonstrate a pattern of unwritten
10 corporate policy which has placed expediency ahead of public
11 health and safety.

12 These matters reveal a corporate disposition that
13 will direct its employees to engage in criminal action if
14 necessary to carry out its unwritten policy.

15 JUDGE KOHL: Mr. Aamodt, are you going to be directing
16 our attention to the particular evidence that you say
17 demonstrates the involvement of top corporate management as
18 to each of those three points?

19 MR. AAMODT: We have that evidence. It was not
20 my intent in going through here to call it out specifically
21 since it is part of the record now.

22 JUDGE KOHL: If you could just briefly call our
23 attention to exactly what evidence you are referring to as
24 to each of those matters.

25 MR. AAMODT: All right, I will try to do my best

1 in that regard.

2 JUDGE KOHL: You need not do it at this moment, but
3 as you go through your oral argument, keep that in mind. I
4 think we would appreciate just some notation as to specifi-
5 cally what you are referring to in support.

6 MR. AAMODT: I will do my best to do that.

7 I think a good deal of that becomes evident as
8 we go on. Initially here, of course, I am summarizing.

9 These matters demonstrate a pattern of -- these
10 matters reveal a corporate disposition that will direct its
11 employees in criminal actions, of necessary, to carry out its
12 unwritten policy.

13 These matters reveal a corporate arrogance that
14 denies and continues corporate wrong-doing. The patter of
15 deliberate procedural circumvention runs from the Hartman
16 matter of 1978 and 1979 to the 1983 affidavits of three top
17 engineers engaged in Unit 2 cleanup.

18 The Hartman matter is central to our motion to re-
19 open to examine pertinent information contained in the GPU
20 court trial materials.

21 Harold Wayne Hartman, Jr., former control room
22 operator at Unit 2, testified that leak rate data which is
23 required to be reported to the NRC every 72 hours was
24 deliberately falsified for several months prior to the Unit 2
25 accident. All readings above specifications were discarded

1 into the wastepaper basket. Then hydrogen or water was
2 introduced into the system in order to cause the computer to
3 print out a false low reading which was reported to the NRC.

4 JUDGE EDLES: Mr. Aamodt, when you say "testified,"
5 was that at the Federal Court trial at New York?

6 MR. AAMODT: Oh, my, oh my, oh my.

7 JUDGE EDLES: Where is it that he testified to
8 that effect?

9 MR. AAMODT: Yes, at the Federal Court trial at
10 New York.

11 JUDGE KOHL: Is that your only source of information
12 as to the alleged falsified leak rate data?

13 MR. AAMODT: I believe there is another source
14 which is not available to us, which Tim Martin had when he
15 said he confirmed these allegations.

16 JUDGE KOHL: Well, when was the first time that you
17 heard about these allegations?

18 MR. AAMODT: Well, I will go into that in more
19 detail further on, if I may do that. We were aware of Mr.
20 Hartman himself and the fact that there were allegations. We
21 were also, as I point out later on, pointed out that they
22 were historical interest, that they were not available to us
23 because of the action going on at DoJ.

24 There was a development of our awareness which we
25 will call your attention to in the course of the argument.

1 This maneuver of adding water of hydrogen allowed
2 the plant to continue in operation; reports of the true
3 leakage would have required shutdown within four hours.

4 Hartman was aware that data was being falsified and
5 that the plant was being operated in violation of technical
6 specifications. However, Hartman claimed that -- we quote
7 his deposition -- "Everyone knew we were doing this."
8 Hartman alone appeared uneasy. When he expressed his
9 misgivings to his shift managers, the shift foreman, Hartman
10 reported, was only concerned about possible discovery of
11 the falsifications. Hartman was warned, "Make sure you destroy
12 these sheets we" -- not I, we -- "don't want them laying
13 around."

14 Since the feat of falsifying leak rate data was
15 accomplished on the backshift and shifts rotated weekly, it
16 can be reasonably deduced that all operation personnel were
17 involved. Since all were involved, it is unlikely that any
18 personnel at the operational level were responsible for the
19 decision to falsify.

20 Who can conceive that the operators on their own
21 initiative conspired to operate the plant in violation of
22 the technical specifications for several months? That is
23 incredible. The only rational conclusion is that plant
24 management directed the falsification.

25 A deduction that a decision of this moment could

1 and would only have been made by the highest level of
2 management is supported by evidence developed in the Beta
3 study that all decisions, even minor ones, are made at the --
4 as they put it -- top.

5 This was the contention of B&W in the Civil Court
6 trial brought by GPU. B&W described GPU's motivation to
7 falsify leak rates as avoidance of the cost of replacement
8 power which would have been required if the Unit 2 were
9 shut down while Unit 1 is refueling.

10 JUDGE KOHL: Mr. Aamodt, when you say that the
11 Beta study that all decisions, no matter how minor, are made
12 at the top levels, is that referring to the present situation
13 at TMI or --

14 MR. AAMODT: That is a recent study.

15 JUDGE KOHL: Yes, but we are talking about the
16 alleged falsified leak rate data that occurred in 1979.

17 MR. AAMODT: And it is central to our contention --

18 JUDGE KOHL: Does the Beta report state who was
19 making those kinds of decisions at the time the data was
20 falsified?

21 MR. AAMODT: It does not, but it is central to
22 our argument that the management attitudes have not changed
23 over that period of time. The same set of people are --

24 JUDGE KOHL: I guess I am having a hard time
25 understanding ;how a report on present management structure at

1 GPU reflects on who was making a decision that possibly led
2 to falsified records in 1979.

3 Where do you get the connection between management
4 then and management now vis-a-vis the alleged impropriety?

5 MR. AAMODT: Perhaps I can best answer it this way:
6 This is the first time that thought occurred to me and the
7 reason is that we have seen in our eyes, as we have been
8 involved for four years in this proceeding, a consistent
9 attitude on the part of management.

10 In the first days we were aware of the presence
11 of Messrs. Dieckamp and Arnold as the prime movers in the
12 proceeding. We are aware at this day they are still to
13 all intents and purpose top management of people like Mr.
14 Long and so on.

15 JUDGE BUCK: In that connection, was Mr. Arnold
16 in charge of TMI just before the accident?

17 MR. AAMODT: No, sir, he was not specifically.

18 JUDGE BUCK: I don't see your connection here, I
19 agree with Judge Kohl. I do not see the connection between
20 the management before and the management now since a large
21 number of the people involved have been changed, have
22 changed positions.

23 MR. AAMODT: A large number have changed, but a
24 large number, a relatively large number, of key people --

25 JUDGE BUCK: Mr. Arnold being one of the changes.

1 MR. AAMODT: That is right. But on the other
2 hand not changed in the sense that he is not functional in
3 the key line of command.

4 JUDGE BUCK: Right now he is not, you mean?

5 MR. AAMODT: At this moment he is not in that key
6 line of command, but up until a couple of weeks ago he was.

7 JUDGE BUCK: Yes, but was he beforehand?

8 MR. AAMODT: Yes, he was.

9 JUDGE BUCK: Before the accident?

10 MR. AAMODT: Yes, he was.

11 JUDGE BUCK: In direct line with the plant? That
12 is not the way I read their management chart just before
13 the accident.

14 MR. AAMODT: May I confer with my wife just a
15 moment?

16 Mr. Arnold was head of the service group.

17 JUDGE BUCK: Right.

18 MR. AAMODT: Which was in continual operational
19 contact with TMI.

20 JUDGE BUCK: And with Oyster Creek and so on.

21 MR. AAMODT: That is right.

22 JUDGE BUCK: But he was not in a direct line
23 command at TMI at the time of the accident.

24 MR. ADMODT: Not in that sense, but in the sense of
25 being functional. In such a decision as this, he most

1 certainly was.

2 JUDGE EDLES: If I can interrupt for just a moment.

3 JUDGE BUCK: Go ahead.

4 JUDGE EDLES: Let me see if I can understand the
5 connections you are asking us to draw.

6 There is hard evidence in the sense that someone
7 has testified under oath that the operators were falsifying
8 leak rates. That is your position.

9 MR. AAMODT: Yes, sir.

10 JUDGE EDLES: Am I correct that there is at least
11 not yet any hard evidence of management complicity in all
12 of that, and you are asking us to draw the inference that that
13 could not have gone on unless the management knew. Is that
14 correct?

15 MR. AAMODT: That is specifically correct. We
16 are asking you to draw that inference for the purpose of
17 allowing us to examine this and reopen hearings.

18 JUDGE EDLES: And you are saying that the Beta
19 report, although it is a current report and does not trace
20 back, is some indication that top management is now still in
21 control of most of the decision-making that is going on.

22 MR. AAMODT: That is precisely it.

23 JUDGE EDLES: And we are to draw the inference also
24 that they have always been in that posture. Is that what you
25 are trying to say?

1 MR. AAMODT: Yes, sir. In effect --

2 JUDGE EDLES: I am just trying to understand your
3 argument.

4 MR. ADMODT: Yes. I have taken as a given, myself --
5 we will be glad to provide more rgument on that if you would
6 like it -- that that attitude has not changed.

7 JUDGE EDLES: Thank you.

8 MR. AAMODT: Hartman's allegations were confirmed
9 in March of 1980. An investigation undertaken Faegre & Benson
10 for licensing verified that the leak rate data was falsified
11 in the manner Hartman alleged for most of the operating
12 life of the Unit 2 plant.

13 However, this investigation was only recently
14 provided to the parties and the Board, it being served on
15 May 4 of this year. The Faegre & Benson study is new
16 information, therefore, which further supports our motion to
17 reopen.

18 The matter of falsification of information provided
19 to the NRC is most serious. Material false statements are
20 basis for revocation of a license depending on the significance
21 of the statements. Clearly, falsification of leak rates is
22 of great importance as is the withholding of information such
23 as the Faegre & Benson report which confirmed non-compliance.

24 In 1980, the NRC realized that Unit 2 had been
25 operated with leak rates in excess of technical specifications

1 and imposed a fine. However, the illegal operation was
2 attributed to operator error. The deliberate falsification of
3 leak rates is a far more serious matter, not considered by
4 the Licensing Board and could be expected to have caused the
5 Licensing Board to reach a conclusion different than it reached
6 in its management decisions.

7 A conclusion of deliberate falsification would have
8 demanded a recommendation to the Commission to revoke the
9 license of GPU Corporation to operate Unit 1 or any other
10 nuclear facility.

11 The Hartman matter, which is part and parcel of
12 the issue of licensing integrity should have been the first
13 order of business of the Licensing Board.

14 JUDGE EDLES: Why wasn't it?

15 MR. AAMODT: My next paragraph.

16 JUDGE EDLES: All right.

17 MR. AAMODT: The failure of the Licensing Board
18 to consider the Hartman matter lies at the feet of the NRC
19 staff. In March of 1980, the staff claimed that the Hartman
20 matter was locked into the secrecy of the Department of Justice
21 investigation. We dispute the sincerity of that claim.

22 JUDGE EDLES: Did you acquiesce in that position
23 at that time?

24 MR. AAMODT: Yes, sir; we did.

25 JUDGE KOHL: I recall somewhere in your pleadings

1 filed with us that you contacted a Justice Department attorney
2 who supposedly informed you that there were no impediments
3 to the NRC pursuing its own investigation.

4 MR. AAMODT: We have done that generally at two
5 occasions.

6 JUDGE KOHL: When was that?

7 MR. ADDMODT: We did at the close of the re-opened
8 hearing to see whether or not -- at the very close of that
9 hearing. We called to determine whether or not it would be
10 legal for us to get a hold of Hartman.

11 JUDGE KOHL: What prompted you at that time to
12 renew your interest?

13 MR. AAMODT: Our principal interest at that time
14 related to the training program of the operators. We felt
15 that the record was deficient in the area of operational
16 training, the open book exam. I mean, the oral exam.

17 We were aware of the fact that Hartman had made
18 some allegations with regard to the compromise of the oral
19 exam. We thought it would be very useful to have it.

20 JUDGE KOHL: The second set of allegations by the
21 same individual.

22 MR. AAMODT: That is right. All in the same
23 bundle but in context different. We were also aware of the
24 fact that there were falsification of leak rate allegations
25 there also.

1 JUDGE KOHL: Perhaps you should address my earlier
2 question now, and that is as to timing which is the first
3 element that we have to consider on any motion to reopen.

4 MR. AAMODT: Yes.

5 JUDGE KOHL: At what point were you first aware of
6 the Hartman allegations?

7 MR. AAMODT: Review of the B&W court trial.

8 JUDGE KOHL: That was subsequent to the reopened
9 hearing on cheating.

10 MR. AAMODT: Yes, it was.

11 JUDGE KOHL: You already said that you were aware of
12 it.

13 MR. AAMODT: We were aware early on of the fact
14 that Hartman had made such allegations. We were not aware of
15 the scope of those allegations.

16 JUDGE KOHL: Is it correct that Ms. Aamodt testified
17 at the reopened hearing on cheating that she had read some
18 kind of inspection report the NRC staff had prepared, or the
19 Hartman interview, I guess, it was called.

20 MR. AAMODT: Yes, that is right. If you recall,
21 those interviews do not indicate that his allegations had
22 been confirmed. On the contrary, they give the clear
23 impression they were not.

24 JUDGE KOHL: Does the interview refer, though, to
25 the possibility of the falsified data?

1 MR. AAMODT: Yes, it does. Yes, that is right.

2 JUDGE EDLES: What was the date -- and perhaps the
3 staff might have to address this -- what was the date at
4 which the matter was referred to the Department of Justice;
5 do you know?

6 MR. AAMODT: Early in 1980.

7 JUDGE KOHL: I think it was April 1980.

8 JUDGE EDLES: Is that correct, Mr. Goldberg; do you
9 remember?

10 MR. GOLDBERG: March of 1980.

11 JUDGE EDLES: Am I correct that the Commission
12 issued a press release at that time, indicating that they
13 had referred the matter to the Department of Justice?

14 MR. AAMODT: I don't remember that.

15 JUDGE EDLES: You don't remember. All right.

16 MR. AAMODT: As I said, this failure lies at the
17 feet of the NRC.

18 In March of 1980, the staff claimed the Hartman
19 matter was locked into secrecy in the Justice Department's
20 investigation.

21 When the Justice Department informed NRC in a letter
22 from Jensen to Palladino --

23 JUDGE BUCK: Excuse, me, you say in March 1980 the
24 staff stated that the allegation was locked out of their
25 control because of the Department of Justice investigation?

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MR. AAMODT: Yes, sir.

JUDGE BUCK: When did you know that, when did you hear that?

MR. AAMODT: Well, we heard that at about that time.

JUDGE BUCK: Pardon?

MR. AAMODT: We heard that at about that time.

JUDGE BUCK: So, you know about the allegations and the fact that it had been transferred to the Department of Justice at that time.

MR. AAMODT: Yes, sir; we did know that.

JUDGE BUCK: Okay, thank you.

JUDGE KOHL: Just to clarify. It was your belief that nothing further, then, could be done while that Department of Justice investigation was going on.

MR. AAMODT: Yes. And the NRC represented that to be the case. I think that is central to the issue.

When the Justice Department informed the NRC in a letter from Jensen to Palladino that Justice did not oppose parallel investigation of Hartman, that was later, that was in 1981, October of 1981.

The NRC staff failed to proceed to examine the matter and reopen hearing.

The NRC was the first party to know that this -- first to know that the material was germane and secondly, to know that it was available, and they failed to call the witness

1 and said, as you have indicated, the burden was on us.

2 The staff informed the Board and the parties in
3 March of 1980 that the Hartman matter was then only of
4 historical interest, when the thrust of the DoJ investigation
5 was to determine criminal involvement of management employees.
6 At the same time, the staff claimed that the issue was one
7 of procedural compliance when the essential element was a
8 matter of false statements.

9 That, I don't recall the document, 1980, by the
10 staff, did characterize the Hartman allegation as an issue of
11 procedural compliance which, incidentally, I find almost
12 amusing. Throughout this hearing, when things seem to go
13 awry, we lay them at the fault of procedures, at the feet of
14 procedures.

15 The staff represented the Hartman allegations had
16 not been verified, whereas their investigator, Tim Martin,
17 unequivocally stated during the May 24 Commission meeting
18 that Hartman's allegations concerning leak rate falsification
19 had been verified in 1980, prior to the transfer of the case
20 to Justice.

21 The fact is that this particular set of allegations
22 regarding leak rate falsification were verified, the other
23 allegations were not. The staff's representation was that
24 they were all not verified.

25 The staff also claimed that the Hartman matter was

1 unrelated to the TMI-2 accident when in fact the staff knew
2 that one of its investigators, Orenstein, had concluded
3 that directions given to the operators to ignore the symptoms
4 of the leaking pilot operated relief valve had caused the
5 operators to ignore the valve and the core inventory was lost
6 through the open valve the morning of the accident.

7 One of their investigators held that it was central
8 to the accident.

9 JUDGE BUCK: Where is the statement in any of the
10 depositions or the statements by the staff or by Hartman,
11 that it was the PORV that was leaking?

12 Hartman in his statements said it was the safety
13 valves.

14 MR. ADMODT: Dr. Buck, I can't answer you.

15 JUDGE BUCK: I have read rather carefully the
16 statements of Hartman and the only thing that I can find that
17 he mentions as far as leaking immediately before the accident,
18 I mean in the weeks before the accident, were the relief valves.

19 MR. AAMODT: Yes, but the fact is, there is a good
20 deal of evidence in the record that the PORV was leaking.

21 JUDGE BUCK: Well, I would like to know where that
22 came from because Hartman, as far as I can see in any of the
23 statements, did not mention the PORV.

24 MR. AAMODT: Dr. Buck, we will be glad to pursue that
25 further and provide you some argument in this area.

1 JUDGE BUCK: Thank you.

2 JUDGE EDLES: Mr. Aamodt, you are beginning to run
3 out of time if you want to save some of it for rebuttal. But
4 given our questions, why don't I give you another two or
5 three minutes to sort of pull everything together?

6 MR. AAMODT: I would appreciate that.

7 The point is that the operators were conditioned
8 to live with that leaky valve. I want to make this point,
9 though, that apparently only Hartman worried and he developed
10 hypertension and he was in Lynchburg, Virginia, the day of
11 the accident.

12 When the relief valve was finally blocked, too late
13 to prevent the accident but in time to avert a catastrophe,--
14 we will have to put this one in, also. We were denied a
15 contention with regard to fatigue and we would like to call
16 the attention of the Board to the fact that the individual
17 who calosed that valve was an individual who came fresh from
18 home to bed to work, well rested. He was the fellow who
19 recognized that the emergency valves should be closed.

20 You have read all that we have to say about the
21 cause of the accident.

22 I would like to summarize in this way and say that
23 the root cause of the accident was management's lack of
24 integrity because they instructed the operators to do something
25 which was illegal so that they, so that the operators, then

1 were conditioned to live with parameters that had they not
2 been living with, they would have recognized as being --

3 JUDGE BUCK: Mr. Aamodt, that is your assumption.

4 MR. AAMODT: Yes, sir.

5 JUDGE BUCK: Supposing that -- hypothetically -- it
6 is shown on the investigation which is still going on that
7 management, higher management, was not involved in any of
8 this, it was a group at the plant alone, is it your contention
9 then that even though that was limited to the operators and
10 perhaps to low-level management, that this would be a cause for
11 reopening?

12 MR. AAMODT: Yes, sir, it would be.

13 JUDGE BUCK: Why?

14 MR. AAMODT: Because I don't see how it could be
15 proven without reopening.

16 JUDGE BUCK: The hypothetical, sir, was that
17 suppose the investigation came up with the firm conclusion
18 that this was limited to a certain number of people at the
19 lower level of management, or just the operators, for example.
20 Take that to be a hypothetical situation.

21 I am asking you, under those circumstances and with
22 the change of the operators -- Unit 2 operators and so on --
23 with none of those operators being involved in the operation
24 of Unit 1, is there any reason at all to call for a
25 reopening on this particular matter?

1 MR. AAMODT: If it could be demonstrated that no
2 one above the operator or senior reactor operator level was
3 involved, that these alone conspired, I would say, no, there
4 would not be.

5 JUDGE BUCK: Thank you.

6 JUDGE EDLES: Mr. Aamodt, one further question.
7 The staff in its July 1 comments to which you have not had
8 a chance to respond since they came in last, has suggested
9 that rather than rule on the motions now we await their
10 consideration of a variety of matters, not simply the
11 Hartman allegation but several others things as well, and
12 that in the absence of that deferral there is no way to
13 really reach a conclusion on some of these things.

14 You were unable to respond in writing. Do you
15 have a view on the staff's proposal that we simply defer the
16 matter pending the outcome of further staff review?

17 MR. AAMODT: Yes, sir. I have a mixed response to
18 that.

19 The first is that certainly, whatever investigative
20 material that the staff can provide us will be very helpful.

21 The second is that it is against the Rules of
22 Practice to allow the staff to resolve safety issues in a
23 case like this.

24 JUDGE EDLES: No, that is not what I am suggesting.
25 All I am saying is -- and that was not what the staff was

1 suggesting, as I understood it.

2 What they were saying is that there are at least five
3 matters which they characterize as open. They say that some-
4 time between now and the end of the year they will have
5 investigated all of those matters and will have various reports
6 available.

7 Their suggestion is, at that time this Board could
8 then consider whether the matter needs to be reopened or not.
9 The implication being that in advance of that time we do not
10 have enough data on which to base our conclusion.

11 I understand that is not your position certainly
12 on the Hartman matter.

13 MR. AAMODT: That is right.

14 JUDGE EDLES: But as to the other matters, do you
15 have a view on the staff's proposal for a deferral?

16 MR. AAMODT: It would be acceptable if there were
17 a proviso, and that was that the plant did not reopen in the
18 meanwhile because the other issue that is so critically
19 important is what happened with those three engineers, and
20 the management who might do what was alleged --

21 JUDGE BUCK: The three engineers you are talking
22 about -- excuse me -- on your three engineers you are
23 talking about Parks and King?

24 MR. AAMODT: Yes, sir.

25 JUDGE BUCK: Those were Bechtel employees.

1 MR. AAMODT: Yes, sir.

2 JUDGE EDLES: One of the problems is that we
3 are proceeding on two tracks. This Board is not the track
4 that happens to be sitting on the basic question of when the
5 plant gets to reopen. So, I am not certain that we could in
6 fact condition our decision on that.

7 MR. AAMODT: I think that is a very important
8 element, however.

9 JUDGE EDLES: I understand that point. But I am
10 interested in your view mainly as to whether you think on
11 the other matters there is enough information or whether it
12 would be useful, sensible, good use of our time, the
13 Licensing Board's time perhaps, your time, to wait now or to
14 go ahead and remand now, or to reopen now or do whatever.

15 MR. AAMODT: Our position is that we feel that there
16 is enough evidence available to say that we are at roughly
17 the same position at which a grand jury would start to take
18 evidence. If that is the case, it seems to me we should now
19 be examining in depth because what we are talking about here
20 is the health and safety of that area -- not only of the
21 people around Unit 1 but any other plants that this management
22 runs.

23 JUDGE EDLES: Thank you.

24 JUDGE KOHL: Mr. Aamodt, I have some questions that
25 relate to your first motion to reopen, the one involving

1 the examination keys that were left unattended, the radiological
2 assessor examinations.

3 MR. AAMODT: Yes.

4 JUDGE KOHL: Why, in your view, is not the corrective
5 action that was taken in response to that incident adequate?

6 MR. AAMODT: Because in the reopened hearing Dr.
7 Long was faced with a situation where the test may have been
8 compromised. He assured the Board that procedures would be
9 in place so that that could never happen again.

10 Then shortly after -- this is in the order of six
11 months -- it did happen. The fact that it happened is not
12 in itself damning, but the fact that on three occasions the
13 radiological assessor had to bring this matter to the
14 attention of the authorities was because the first two times
15 the radiological assessor brought this matter to the attention
16 on GPU management and they ignored him. Then he had not
17 other course but to take it to the NRC and therefore you
18 gave a \$40,000 fine. I would say that the --

19 JUDGE KOHL: Which incident are you referring to
20 on the \$40,000 fine? I am referring to the matter raised
21 in your first motion to reopen, filed last September. I was
22 not aware that there was any fine involved in that.

23 I thought the NRC's inspection report concluded that
24 there had been no violations of any regulations and that the
25 corrective action that had been taken which involved a severe

1 reprimand of the individual who was supposed to be monitoring
2 these examination keys, that that corrective action was in
3 fact adequate and that individual in fact resigned and is
4 no longer employed by GPU.

5 MR. AAMODT: I would like my wife to respond to that.
6 There are two elements involved.

7 MS. AAMODT: There is no fine that I am aware of.
8 I prepared that motion. The essence of the motion was that
9 there was assurance by an individual high in GPU management, Dr.
10 Long, who was then the director of Training, who is now the
11 director of Quality Control Assurance, who assured Judge
12 Milholland that the issue need not be heard because they
13 would secure this test and the answer keys.

14 The second matter is that high-level management
15 ignored the radiological assessor's reports that the test was
16 lying open and unsecured.

17 JUDGE KOHL: When did they ignore it?

18 MS. AAMODT: In May of 1982. There were two reports,
19 evidently, according to the NRC's inspection report, reports
20 to high-level management. The third was to the NRC.

21 JUDGE KOHL: My understanding of the chronology
22 was that there was an incident on May 5 and it was brought to
23 the attention of GPU management. Management spoke to the
24 individual involved. There was a repeat incident the very next
25 day and that at that point management severely reprimanded the

1 individual and he later resigned.

2 At some point in that same time frame the NRC got
3 into the act and performed an investigation over a period of
4 about a month and submitted the inspection report that you
5 referred to, finding that the procedures -- they found that the
6 corrective action that had been taken was adequate.

7 Does not this reflect that the procedures that
8 Dr. Long was referring to do in fact work? The individual
9 was reprimanded.

10 MS. AAMODT: Dr. Long referred to securing the
11 exam. Dr. Long did not refer to any procedures of discipline
12 towards employees who did not secure the exam.

13 JUDGE KOHL: You mean he committed that there would
14 never ever be any violations of this nature again. Was that
15 the commitment, or was the commitment that we have a
16 structure, we have a framework in place that will deal with
17 any breaches of correct operating procedure vis-a-vis
18 training, examinations, et cetera?

19 Exactly what was the nature of Dr. Long's commitment?

20 MRS. AAMODT: Well, I think you are correct in that
21 in each procedure, within that procedure there are methods
22 to have that procedure implemented and it may be that the
23 radiological assessor may be part of that procedure, finding
24 when it is violated.

25 But I think the fact that it happened so shortly

1 after the assurances; the fact that it happened on two or three,
2 we believed it was three occasions from our reading of the
3 report, I think is rather serious, the fact that this was
4 what drew the attention of the hearing was the compromise
5 of examinations at TMI. That was a very important issue.

6 I think that plays into our accord of great
7 significance, this issue.

8 JUDGE KOHL: At the conclusion of your motion to
9 ask that the parties stipulate that the record be reopened
10 for purposes of receipt of the NRC inspection report; is that
11 correct? Do I understand you? There is some reference at
12 the end about stipulating that the record be reopened for
13 receipt of this information. I was not sure what you were
14 referring to, what information. Is it embodied in the form
15 of the inspection report and if so, does that signify your
16 satisfaction with the inspection that was done by the NRC
17 and your basic agreement with what the substance of that
18 report is?

19 MRS. AAMODT: At that particular time I felt that
20 this particular issue may not require a reopening if the
21 matter could be stipulated for use in our appeal of the
22 management issue.

23 JUDGE KOHL: What matter?

24 MRS. AAMODT: The failure of the managemewnt to
25 secure the test. I was interested in this information being

1 before the Appeal Board in their hearing of the management
2 issues.

3 JUDGE KOHL: Are you satisfied with the inspection
4 report description of what occurred with respect to that
5 particular incident?

6 MRS. AAMODT: It doesn't resolve the failure of
7 those who were in charge to see that the test was secured.

8 JUDGE KOHL: What about the recitation of events
9 that occurred, are you satisfied with the summary of, "Who
10 struck John," and are you satisfied that -- I think one of
11 the conclusions of that inspection report is that this seemed
12 to be an isolated incident.

13 MRS. AAMODT: I do not doubt that the report is
14 accurate. Is that what you are asking me?

15 JUDGE KOHL: Yes.

16 MRS. AAMODT: I do not doubt that it is accurate.

17 JUDGE KOHL: I want to know what you want
18 stipulated, what you want entered into the record, and what
19 we could rely on as an accurate accounting of what happened,
20 apart from what conclusions might be drawn from it. I am
21 just trying to get the actual factual description of what
22 happened. Are you satisfied with that accounting in the
23 inspection report?

24 MR. AAMODT: Yes -- if I might -- but that is only
25 part of the problem. On May 7 and May 11 the papers were

1 found laying out there. That was two times in a row, which
2 is rather remarkable. Had there been reactor operator
3 examinations, I doubt that we would have seen that. The NRC
4 might have had some more to say about it had that been the
5 case.

6 But the significance here is that there have
7 also been allegations, and just very recently, about workers
8 within the plant apparently not knowing what they are allowed
9 to do and what they are not allowed to do, and have been
10 found wandering into high radiation areas or nearby.

11 That is the sort of thing these tests are supposed
12 to prevent. The object of these tests is to protect the
13 health and safety of workers. And if the tests which are
14 designed to protect that health and safety have been
15 compromised, we are doing a great disservice by allowing
16 that situation to obtain.

17 JUDGE BUCK: What workers wre found wandering where
18 they should not be wandering?

19 MR. AAMODT: Dr. Buck, I did not come prepared to
20 argue in that area. But in reading the material that I have
21 read over the last few weeks, I did read about an operator
22 who walked into a high radiation area, he had not gone far
23 enough to get serious exposure. On another occasions, one had.

24 But the fact is that there are cases like that. If
25 you would like, we can also provide documentation of that kind.

1 JUDGE BUCK: I just want to know what people are
2 talking about.

3 MR. AAMODT: These are NRC reports.

4 JUDGE EDLES: Thank you very much.

5 Ms. Doroshow?

6 ORAL ARGUMENT BY JOANNE DOROSHOW

7 MS. DOROSHOW: Thank you, Mr. Chairman and the
8 Board.

9 TMIA submitted its motion to reopen the record on
10 May 23, 1983. For months we had watched in amazement some
11 absolutely, what we felt were shocking developments regarding
12 the issues on management competence and integrity of this
13 company.

14 We first saw newspaper accounts of the B&W trial.
15 We then saw TMI-2 whistle blowers coming forward with
16 allegations not only of unsafe cleanup practices but of
17 management involvement and harassment, and retaliation against
18 these people for reporting safety violations.

19 We then got a hold of the B&W record itself and
20 began reviewing that, and saw an enormous amount of new
21 information regarding this company's management integrity,
22 including for the first time details of the Hartman allegations
23 which we had never known before.

24 I should say perhaps an explanation as to some of
25 the questions to the Aamodts, at least when we first became

1 aware of these allegations we knew of press reports that the
2 case had been referred to the Justice Department some time
3 ago. We really had no information other than that about these
4 allegations.

5 JUDGE KOHL: Were you going to sponsor Mr. Hartman
6 as a witness during the reopened hearing on cheating?

7 MS. DOROSHOW: Towards the end of 1981, we obtained
8 a document which happens to be what we now know is a transcript
9 of Mr. Orenstein's deposition of Mr. Hartman during the
10 Regoven investigation. In that deposition Mr. Hartman spoke
11 of transcripts of oral walk-through exams which had been
12 available to the operators.

13 JUDGE EDLES: Excuse me, is Dr. Orenstein's memorandum
14 available?

15 MS. DOROSHOW: It is available. That was submitted
16 in response to Commissioner Gilinsky's request.

17 JUDGE EDLES: I misspoke. Is Mr. Hartman's
18 statement -- under oath, I assume -- available as well or
19 are these simply Dr. Orenstein's recollections?

20 MS. DOROSHOW: What we have was simply Dr. Orenstein's
21 recollection. We know that Mr. Hartman was first interviewed
22 by I&E back in May of 1979, which I believe is the first
23 time that he revealed his allegations to the NRC.

24 JUDGE KOHL: But did your organization have any
25 contact with Mr. Hartman with respect to sponsoring his

1 appearance as a witness in the reopened phase?

2 MS. DOROSHOW: We did attempt through his attorney
3 to get him as a witness during the hearing, for the reopened
4 hearings. We were not able to do that.

5 JUDGE KOHL: But that was going to be on other
6 issues, not on the falsified leak rate data.

7 MS. DOROSHOW: That's right. At that time, all we
8 knew was basically what the staff has reported to the Atomic
9 Safety and Licensing Board during the main management hearings,
10 and basically what the staff revealed was that there is
11 nothing that they felt that Hartman had alleged that would
12 have any effect on the understanding of the TMI-2 accident.

13 I think that related directly to Board Issue 10
14 which was the Board issue which dealt with management's or
15 the company's response to the accident and the relation to
16 the restart hearings.

17 But we knew of none of the details of the allegations
18 until we were able to get a hold of the B&W trial record.
19 We also then found out that the company had done its own
20 consultant report on these allegations which we knew nothing
21 about. This consultant report had in fact come to the
22 conclusion that leak rates were falsified. I doubt now
23 whether the company today is willing to back that report up.

24 But the report, from what we have seen of it, seems
25 to be pretty well done and very thorough and detailed. It

1 It seems to back up Mr. Hartman very well.

2 JUDGE KOHL: Is this the Faegre & Benson?

3 MS. DOROSHOW: The Faegre & Benson report, yes.

4 JUDGE KOHL: But did the authors of that report
5 interview any of the principals?

6 MS. DOROSHOW: They only interviewed Mr. Hartman.
7 They were not permitted to interview anybody else. I think
8 the reason they were given was because the investigation was
9 before the grand jury.

10 JUDGE KOHL: Was your understanding the same as
11 the Aamodts that while that was pending before the grand
12 jury nothing further could be done at the NRC adjudicatory
13 level?

14 MS. DOROSHOW: That is what we understood. We did
15 not even think about approaching it at that time because we
16 understood that there was this issue before the grand jury
17 and that it was just not a subject to be dealt with before
18 the ASLB.

19 I think that is basically how they saw it also.

20 We then obtained the BETA and RHR reports in,
21 I believe it was May of this year, and we found out that these
22 reports had been done several months earlier and that they
23 were not turned over to the NRC at that time.

24 We certainly debated for a long time whether to move
25 to reopen the record in this case because the prospect of

1 more hearings was not particularly appealing to us.

2 But on May 19, when the staff issued its memo,
3 basically withdrawing their previously unwavering support of
4 company management integrity, we realized that this was no
5 longer a matter of debate or choice and that we had invested
6 too much in this proceeding so far that now that we had
7 documented proof of much of what we had been saying -- which
8 had not been presented to the Board before -- we felt it was
9 inconceivable that we not move to reopen the record.

10 We are here now because we really do feel that it
11 is our obligation to see that the evidence in this proceeding
12 be honestly dealt with.

13 JUDGE EDLES: Can I ask you a couple of questions
14 on the Beta and the RHR reports?

15 Forget for the moment the issue of when the
16 reports were submitted and what inferences one draws from that.
17 This seems to me to be reports which are directed not
18 precisely to the same issues that were dealt with by the
19 Licensing Board, which is in a sort of general sense whether
20 the management is really capable of running a nuclear power
21 plant.

22 Why, on the strength of the substance of those
23 reports should we now look to reopen the record?

24 MS. DOROSHOW: Well, it is true, for instance, that
25 the Beta report was done at the request of the company to

1 look into the efficiency of the operation.

2 However, there are a number of findings which we
3 discovered in this report which have direct relevance to many,
4 many of the issues. Much of the evidence that was presented
5 to the ASLB during the restart hearings dealing with issues
6 such as maintenance and Board issues which we were not even
7 involved in but which were directed by the Commission for
8 the Licensing Board to consider -- such as radiation control
9 and radiation waste, and health physics issues.

10 We also were involved to some extent in financial-
11 technical interface issues. We saw those issues come to the
12 fore in the Beta report.

13 It seems on the face of many of these findings,
14 for us to look at many of these findings what we are able
15 to see are findings which have direct relevance to safety.
16 Whether or not it was the purpose of Beta to investigate the
17 safety of this company, we saw specific safety significance
18 problems which are still occurring at this plant.

19 JUDGE EDLES: I understand that, but I am faced
20 to some degree with a Hobson's choice. If every time a
21 management looks to make its operation better by hiring
22 outside consultants, they are then going to be hoisted on
23 their own petard, they are just not going to undertake to
24 do these surveys.

25 Is that not counter-productive to encouraging them

1 to undertake these surveys?

2 MS. DOROSHOW: We are certainly not trying to
3 discourage this company from doing those types of studies.

4 However, what we are concerned about is the fact
5 that what we saw before the ASLB seems to have been a smoke
6 screen. That direct, tangible evidence of the actual
7 conditions, what was going on at the plant, were not presented
8 to the Board.

9 This is the first opportunity that we have really
10 seen of direct tangible evidence of what is happening there.
11 Now, this is a pattern which has come up before in the actual
12 ASLB hearings where during the reopened proceeding, I believe
13 the Licensing Board itself noted -- I can get this quote
14 directly.

15 "The cheating incidents in the reopened proceedings
16 flowing from it appear to have been the first stimulus
17 sufficient to cause the Licensee to pull back the 'paper
18 curtain' and actually view its training and testing program
19 at its point of delivery."

20 Regarding the May proceedings it said, "We did not
21 see what we felt we were seeing." I think that what we are
22 faced with is a parallel situation where we are for the
23 first time getting an opportunity to see really what is going
24 on at that plant. What we see is that the company presented
25 what we believe is a misleading picture of what is happening

1 there. That the witnesses which they presented to the ASLB
2 were portraying a picture, a very favorable picture which
3 was just not what was actually going on there.

4 JUDGE KOHL: Could we focus on one specific area,
5 sort of to clarify or flesh out what you are arguing before
6 us?

7 Let's look at maintenance. What does the Beta
8 report say about GPU maintenance practices that is inconsistent
9 with or conflicts with, or demonstrates a smoke screen, as
10 you describe it, with respect to the testimony adduced
11 before the Licensing Board?

12 MS. DOROSHOW: Well, it is pretty clear that
13 maintenance practices before the accident were very bad and
14 everybody is pretty much in agreement with that.

15 In order to meet its burden to prove that the
16 maintenance conditions at the plant are now satisfactory,
17 this company presented a picture of the maintenance department
18 which was totally revamped, a maintenance department which
19 changed all procedures, changed the way it dealt with the work
20 requests, just changed the way it dealt with the entire
21 department and presented a very, very glowing account of what
22 was going on at the plant, and actually tried to hold this
23 company up to a real standard of excellence.

24 What we see in Beta is not only problems with
25 particulars, but there is a very damaging, very general

1 conclusion that -- I believe the conclusion is that maintenance
2 is still not to a point where equipment reliability can be
3 assumed.

4 That to us means that there are still very serious
5 problems with the maintenance department which should have
6 been, if these conditions existed, they should have been
7 presented to the Board just as their very glowing accounts
8 have been presented, and presented a fair, unbiased account
9 of what was going on at the plant.

10 JUDGE KOHL: But of course they could not have
11 presented the Beta report to the Licensing Board because it
12 was not prepared.

13 Are you suggesting that evidence that was presented
14 at the time of the Licensint Board hearing was distorted or
15 was inaccurate, based on what they knew then?

16 MS. DOROSHOW: That's right. They certainly knew.
17 It is inconceivable that they did not know there were still
18 problems with maintenance.

19 JUDGE BUCK: Ms. Doroshow, may I ask you, you have
20 a list of findings on pages 13 through 15 in your Three
21 Mile Island motion to reopen. You give there a partial quote
22 of what it says in the Beta report. Do you see those? These
23 are basically the findings that you are depending upon now?

24 MS. DOROSHOW: Well, I think that in addition to
25 some of the other paragraphs mentioned in the motion which do

1 deal with Beta --

2 JUDGE BUCK: Well, something bothers me. I find
3 that these quotations are in some cases taken out of context
4 and you have omitted some of the Beta discussion that to my
5 mind tends to change the whole significance of what you have
6 put in here.

7 I might point out on the third one that you have,
8 at the top of page 14, your quote on the finding is,
9 "Weaknesses still exist which tend to degrade the quality.
10 quantity, efficiency of the maintenance work."

11 Now, if you read on page 23 of the Beta report it
12 says, "The performance of maintenance at TMI has improved
13 significantly during the last two years."

14 Then it goes on and says, "However, weaknesses
15 still exist."

16 Now, I think in fairness here you ought to be
17 able to show that this is the second Beta report, basically.
18 I think that TMI management had a previous review by Beta.
19 This is a continuing line.

20 I think it only fair here that the Beta people now
21 say, "Okay, there is a big improvement. It still has farther
22 to go," I think that is a vastly different situation than
23 just putting in your part of the quote which says, "Weaknesses
24 still exist."

25 Now, there are several others of these that go along

1 in the same fashion. On some of them I agree with you, but
2 there are at least half of these findings down here I find
3 that you got partial quotes that change, in my mind, the
4 meaning of the Beta report.

5 MS. DOROSHOW: Well, there certainly was the problem
6 of not being able to place in this brief motion entire
7 paragraphs of a report. However, what we tried --

8 JUDGE BUCK: But this is consistently one way
9 here.

10 MS. DOROSHOW: What we were trying to point out
11 were instances where we felt the testimony which was presented
12 on the company's behalf before the ASLB did not portray an
13 accurate picture of what was happening, and that there were
14 perhaps improvements. I would hope that there were improvements
15 going on.

16 I mean, I would have hoped that there had improvements
17 going on before the accident when there had been also very
18 serious maintenance and all kinds of other problems which were
19 evident. That comes out very clearly in the B&W record.

20 But that, to us, is not enough. What we were told,
21 what the ASLB was told was that not just the company was
22 improving but that the serious problems which had existed
23 before the accident, which had in fact contributed to the
24 accident, were cured and were not going to contribute to
25 another accident.

1 We felt that a number of these findings, parts of
2 these findings, were supportive of that.

3 JUDGE BUCK: Yes, but you did not call up the whole
4 finding of the Beta report, is the problem, what I am saying.
5 You picked out the parts you wanted to pick up.

6 MS. DOROSHOW: Yes, we picked out the parts which
7 we felt were supportive.

8 JUDGE EDLES: Let me see if I can understand the
9 general thrust of at least my understanding of the Beta
10 report and you can correct me if I am wrong.

11 They say at the very beginning that -- and I think
12 I am quoting -- "There is a universal desire to make GPUN
13 a model of the industry." That is, I think, a direct
14 quote from the Beta, the second Beta report.

15 There seems to be agreement that GPUN has not yet
16 made it in terms of being the model in the industry. Is that
17 accurate?

18 MS. DOROSHOW: I believe that is accurate.

19 JUDGE EDLES: Okay. There has been some improvement
20 since the time that the Beta folks looked at GPU, back two
21 or three years ago, in advance of the hearing; is that
22 correct?

23 MS. DOROSHOW: Yes. There probably has been some
24 improvement.

25 JUDGE EDLES: Okay. The Beta report looked both at

1 TMI and Oyster Creek and said -- I think I am reading it
2 correctly when I say, it looks to us like TMI is a lot better
3 than Oyster Creek. Is that an accurate characterization of
4 the report?

5 MS. DOROSHOW: Well, we just know that Oyster Creek
6 did not come out very well in this report. But we know there
7 was the same management, basically the same corporate
8 management that was responsible for both these companies.

9 So we think that even the fact that Oyster Creek
10 had problems, and some very severe problems, reflect on this
11 company's management.

12 But that is not in particular that we are asking --

13 JUDGE EDLES: Would from your experience -- and
14 perhaps I am asking a question that you are unable to answer --
15 if this were Oyster Creek, would that be grounds to shut the
16 plant down at this point, on the strength of the Beta report?

17 MS. DOROSHOW: Well, I certainly think that it
18 would require some immediate investigation. I think that some
19 of those findings are extremely serious and have safety
20 significance. I don't think that the NRC intends to risk
21 public health and safety to the extent of allowing that type
22 of operation to go on.

23 JUDGE BUCK: I guess what bothers me a little bit about
24 the comparison and so on is that the Beta report does point
25 out that TMI had more than usual difficulties. It had a plant

1 that was down. They were trying to clean it up. They had
2 a plant that had been shut down and had to be partially
3 rebuilt in order to fill in with the new NRC requirements.
4 It had Oyster Creek, which was having problems and requires
5 in the near future some major repair work.

6 So that you have TMI by itself and the general
7 management by itself, three major problems. And the Beta
8 report referred to this as saying, "Look, these are extra-
9 ordinary reports but despite this, progress has been made."

10 MS. DOROSHOW: I guess to that I would say that this
11 company presented an appearance to the Licensing Board that
12 it was trying to meet a standard of excellence, and that it
13 was well on its way to meeting that standard.

14 JUDGE BUCK: Well, do you disagree that they are
15 trying to meet a better standard of excellence than they have?

16 MS. DOROSHOW: I have not seen it. I honestly have
17 not. I have seen -- and I think we all have seen -- some
18 enormous problems, and that these problems go to the integrity
19 of the company. These problems go to the fact that they have
20 not responded appropriately to problems which have been
21 pointed out to them. That they do not take corrective actions
22 when problems are pointed out to them. That they dispute
23 very obvious things that the NRC hasd itself pointed out to
24 them.

25 I believe that they are even -- I do not know if this

1 is accurate but someone told me they read in the paper that
2 they are even intending to challenge their recent fine on the
3 material false statement issue.

4 This is the kind of thing that we have seen over
5 and over with GPU.

6 JUDGE BUCK: Can you give us some examples?

7 MS. DOROSHOW: Well, I think that the cheating
8 case was a very large example, and the material false
9 statement issue, and the response the company had to the
10 cheating incidents --

11 JUDGE BUCK: You emphasize the cheating issue. Let
12 me ask you a question. During the investigatio of the cheating
13 issue it appears that the controllers up there, the operators,
14 all apparently seemed to have a very low opinion of the
15 NRC exams and apparently of the NRC.

16 Do you have any personal knowledge of why that was?

17 MS. DOROSHOW: From what I understand, I don't
18 thik they believe that the exams tested what they needed to
19 know to operate the plant, and that they basically viewed the
20 whole process as pretty much a farce. That it was an
21 obligation, a chore that they had to go through but it was
22 basically meaningless.

23 JUDGE BUCK: You mean it did not help them in
24 operating the plant.

25 MS. DOROSHOW: That is right.

1 JUDGE KOHL: Is there some support for that in the
2 RHR report?

3 MS. DOROSHOW: That is right.

4 JUDGE KOHL: Doesn't it go towards employee
5 attitude?

6 MS. DOROSHOW: Well, RHR does definitely go into that
7 issue, and it is substantially the same type of findings
8 which Judge Milholland made in his report in evaluating the
9 training and testing program.

10 JUDGE KOHL: With respect to the whole corporate
11 integrity issue, could we shift our attention a bit to the
12 Parks and King, and Gischel, I believe is the other man, those
13 allegations?

14 What is the connection between those matters which
15 relate to the cleanup operations of Unit 2 and relate to
16 Bechtel employees? What is the relationship to corporate
17 management at Unit 1 and the issues we have to decide?

18 MS. DOROSHOW: Well, first of all, they were not
19 just Bechtel employees, they also involved GPU employees.

20 JUDGE EDLES: Who were the GPU, Mr. Gischel?

21 MS. DOROSHOW: I believe Mr. Gischel and Mr. King
22 I know was.

23 JUDGE BUCK: Mr. King was certainly a Bechtel
24 employee because, as I understand it, he was fired for
25 conflict of interest.

1 MS. DOROSHOW: Perhaps the Licensee can help out on
2 this.

3 JUDGE EDLES: Mr. Blake, do you know who he works
4 for, or used to?

5 MR. BLAKE: Mr. Parks was employed by Bechtel.
6 Both Mr. Gischel and Mr. King were employed by GPU.

7 JUDGE EDLES: Thank you.

8 JUDGE BUCK: Thank you. I got a wrong impression
9 on that, I am sorry.

10 MS. DOROSHOW: Now, there are other issues, of course,
11 that this incident raises.

12 In Mr. Parks' affidavit I believe he at least speaks
13 of problems of more senior management that he was having
14 problems in dealing with.

15 JUDGE KOHL: Was he talking about Bechtel, though,
16 or GPU? He was a Bechtel employee.

17 MS. DOROSHOW: I believe that the situation over at
18 Unit 2 right now is that management is very intermixed and
19 that there are Bechtel and GPU management who are supervising
20 that operation. I got the impression, at least, that it is very
21 hard to even distinguish who is who over there at this point.

22 JUDGE BUCK: I was under the impression at that time
23 that Bechtel was placed in charge of that particular item,
24 amongst other things, and the so-called -- I forgot -- it
25 was the service operation or something that was running the

1 crane test which was the thing that Mr. Parks particularly
2 objected to, was completely in Bechtel's hands.

3 MS. DOROSHOW: Well, what we also saw, though, that
4 Mr. King who was Mr. Parks' superior was intimately involved
5 with the problem and was having problems with people he was
6 reporting to.

7 I believe that Mr. Arnold was somewhat involved
8 in this operation at the time.

9 JUDGE KOHL: How?

10 MS. DOROSHOW: I believe he was at least the GPU
11 Nuclear official who was supervising things as they were
12 progressing. I know that Mr. Arnold was always a person who
13 reported or often reported to the Advisory Panel on the
14 cleanup in Harrisburg as the company was reporting to them
15 on the progress of the cleanup.

16 We never got the impression that Mr. Arnold was
17 out of the picture at all.

18 JUDGE EDLES: Am I -- excuse me. Am I correct
19 that Mr. King was dismissed; is that right?

20 MS. DOROSHOW: Yes, he was dismissed.

21 JUDGE EDLES: He was dismissed for what, conflict
22 of interest?

23 MS. DOROSHOW: That's right.

24 JUDGE EDLES: And as far as I know, up to this
25 point that dismissal has stuck.

1 MS. DOROSHOW: Yes, it has stuck.

2 JUDGE EDLES: In other words, as far as we know at
3 the moment, that dismissal was valid although it is up on
4 appeal, I gather.

5 MS. DOROSHOW: Well, I am not sure whether it is on
6 appeal. I know that, yes, he was specifically dismissed for
7 that reason.

8 JUDGE KOHL: And the initial finding by the
9 Department of Labor was adverse to his interest; is that
10 correct?

11 MS. DOROSHOW: That's right. However, it is
12 important to realize that the Department of Labor did not
13 at all investigate the substance of his safety problems, of
14 the problems he was having with --

15 JUDGE KOHL: Of course, that is not their juris-
16 diction. But they were to investigate -- I don't know
17 whether it was adequate or not -- but their mission was to
18 have considered the harassment and retaliation aspects, which
19 is really what we are concerned with here in terms of the
20 impact on management integrity.

21 MS. DOROSHOW: Yes. Now, I know that Mr. King
22 believes that he was unfairly ruled against for a number of
23 reasons. It is also important to realize that Mr. Parks,
24 who was the first individual who went public, did win his
25 Department of Labor complaint.

1 JUDGE KOHL: Well, as I understand it though, we
2 received a notification yesterday that he has been re-
3 assigned to another segment of the Bechtel organization and
4 that his complaint has been negotiated or compromised.

5 MS. DOROSHOW: Right. but he at least did win his
6 initial charges against the company.

7 JUDGE BUCK: That was against Bechtel.

8 MS. DOROSHOW: That was against Bechtel, yes.

9 As far as the other two people involved, Mr.
10 Gischel and Ms. Wenger, I don't believe either of them so
11 far have gone through a Department of Labor process. At
12 least Ms. Wenger did settle her case, I believe.

13 JUDGE KOHL: What about Mr. Gischel, do you know
14 what role he still has within the company?

15 MS. DOROSHOW: He is there, and perhaps the
16 Licensee could answer that question. I am not sure.

17 JUDGE KOHL: At Unit 2?

18 MS. DOROSHOW: I believe so, although I am not
19 sure. He may not be there. I know he is still with the
20 organization. That, perhaps, is something the company could
21 answer.

22 Another important point with regards to the Parks-
23 King allegations is that it is, I think, important to realize
24 that Rick Parks did not consider the ombudsman a viable
25 option for him. The ombudsman was a new office which was

1 established by the company which the Licensing Board, I
2 believe, found a very important addition to the company.

3 JUDGE KOHL: Is that office that he went to with
4 his complaint, the ombudsman office, the same office that
5 a TMI-1 employee would go to, or is there an ombudsman for
6 Unit 1 and Unit 2, two separate offices?

7 MS. DOROSHOW: I believe there is only one.

8 JUDGE KOHL: One office.

9 MS. DOROSHOW: And it is in, I think the office is
10 in New Jersey but I am not sure.

11 It is important to realize that we did not know
12 this before, but we did find out subsequently that the
13 ombudsman is a senior managemewnt individual. And it is
14 also important to realize that the company, when Mr. Parks
15 did go public, the company made a point to say that Mr. Parks
16 did not go to the ombudsman, which raises in, I think, a
17 lot of people's minds that this office is supposedly
18 completely confidential. How did they know that he did not
19 go to the ombudsman?

20 JUDGE KOHL: Well, I thought you said he did go
21 to him.

22 MS. DOROSHOW: No, he did not go.

23 JUDGE BUCK: Are you talking about Mr. Parks or
24 Mr. King?

25 MS. DOROSHOW: Yes, Mr. Parks.

1 JUDGE BUCK: Well, Mr. Parks would go to Bechtel.

2 MS. DOROSHOW: As far as I understood, these people
3 who were working at TMI were supposed to utilize the
4 ombudsman, and that the company in fact blamed publicly Mr.
5 Parks for not using that. So, I believe the company itself
6 believes that it is something Mr. Parks probably should have
7 done.

8 But I know that Mr. Parks did not consider that a
9 viable option for him.

10 JUDGE KOHL: How about the other two individuals?

11 MS. DOROSHOW: I would imagine the same thing. I
12 just know that Mr. Parks has been a little bit more vocal
13 on that particular issue and has expressed much concern over
14 the fact that somehow the Ombudsman did find out that -- I
15 mean that the company did find out, company management found
16 out that he did not approach the ombudsman.

17 JUDGE EDLES: So as not to eat into your ten
18 minutes of rebuttal, why don't you take another minute or
19 so to wrap up for us, please?

20 MS. DOROSHOW: Well, I guess I would only like
21 to point out that much of this new evidence relates very
22 strongly to the integrity issue as did a number of issues
23 in the main hearing, and that the question has come up, of
24 what importance is corporate integrity and is it meaningful
25 at all. Are we just talking about individuals or a

1 corporation?

2 I think that you have to evaluate this corporation
3 by looking at all of the actions of all of the people who
4 represent it -- the directors, the officers, the employees,
5 anyone who is acting for it. And that you must look not
6 just at discreet items but you must look at patterns and
7 you must look at cumulative effects to really understand
8 what the issues are and how management has succeeded in
9 implementing its policies which is by far the most important
10 job they have to do.

11 We believe that what this new evidence reveals
12 very directly is that this company is not capable of
13 implementing its programs and policies, despite what it may
14 try to say to the NRC or to the Board, or the Commission.
15 We have seen this pattern throughout these hearings and
16 this new evidence reaffirms that very substantially that
17 this evidence must be looked at very closely in the context
18 of a hearing.

19 JUDGE EDLES: Thank you very much.

20 JUDGE BUCK: I have just one more question. I
21 get the impression that you think the Beta report was
22 a reasonably well done report; is that correct?

23 MS. DOROSHOW: We really don't know because we
24 have not seen any of the raw data of either the Beta or RHR
25 report. So, it is almost impossible for us to tell at this

1 point, which is one of the reasons why we think the record
2 has got to be reopened.

3 JUDGE BUCK: You have quoted all of their findings
4 with approval and so on and so forth.

5 I just wondered why you think that they were so
6 good in these findings, and yet their finding on integrity
7 you apparently you don't believe; is that correct?

8 MS. DOROSHOW: Their finding with regard to their
9 testimony during the main hearing?

10 JUDGE BUCK: No. The finding on the Beta report
11 that the company -- they had a specific statement in there
12 concerning the integrity of the company and the officers
13 of the company.

14 MS. DOROSHOW: Well, I don't believe that they
15 are specifically looking into that issue. They were doing
16 an efficiency study. There are a number of things that we
17 know they did not look into. They were not evaluating this
18 evidence as safety experts.

19 JUDGE BUCK: Are you saying that they made a
20 finding on something they did not look into?

21 MS. DOROSHOW: Well, I believe that they also
22 stated that they did not see any safety problems with what
23 was going on. I think that the company will even back me
24 up on this that Beta was not to look into those issues. That
25 is not what their purpose was. They did make a number of

1 remarks, I believe, on things that they did not specifically
2 look into and possibly integrity is oine of those issues.

3 JUDGE EDLES: Thank you very much.

4 We will take a ten-minute recess at this point.

5 (Whereupon, at 3:15 p.m. a ten-minute recess was
6 taken.)

7 JUDGE EDLES: We will resume with the argument of
8 staff. Mr. Goldberg, you have 30 minutes.

9 ORAL ARGUMENT BY JACK R. GOLDBERG

10 MR. GOLDBERG: Chairman Edles, Dr. Buck, Judge
11 Kohl, of the three pending motions to reopen the record
12 which are before the Appeal Board at this time, only TMIA's
13 May 23, 1983 motion on the so-called open issues even
14 arguably warrants reopening the record.

15 Therefore, I will concentrate my argument on
16 TMIA's motion after briefly summarizing staff's position on
17 the Aamodt's two motions.

18 JUDGE EDLES: Before you do that, I would just
19 like to talk for a minute with you about the Hartman
20 allegations. Your answer, as I recall, argues principally
21 that the matter is too late, that they should have argued
22 all of this earlier.

23 But what I would like to just discover to make sure
24 I understand it is, what do we now know about Mr. Hartman's
25 allegations in terms of what he has said, who he has

1 involved, where he said it, things like that?

2 MR. GOLDBERG: We have some depositions of Mr.
3 Hartman that have been made available.

4 JUDGE KOHL: Made available to whom?

5 MR. GOLDBERG: Made available, I believe, to all
6 the parties. I believe Mr. Hartman's depositions are
7 attached to the Licnesees Faegre & Benson report.

8 We have essentially just the allegations of Mr.
9 Hartman, no completed investigation by either the Department
10 of Justice or the Commission's Office of Investigations.

11 JUDGE EDLES: His allegations, though, are under
12 oath; is that correct?

13 MR. GOLDBERG: I believe that they were, yes.

14 JUDGE EDLES: And they were given in depositions,
15 you say, in connection with the Faegre & Benson report.
16 Did Mr. Hartman testify at the trial in New York?

17 MR. GOLDBERG: I believe he did. He also was
18 deposed in connection with the investigations into the
19 cause of the accident.

20 JUDGE EDLES: All right, and that is Dr. Orenstein's
21 investigation.

22 MR. GOLDBERG: That is correct.

23 JUDGE EDLES: Do we have depositions from Mr.
24 Hartman on that, or just Dr. Orenstein's recollection of that
25 meeting?

1 MR. GOLDBERG: You certainly have Dr. Orenstein's
2 memorandum concerning that. I am not certain whether the
3 Orenstein deposition of Hartman has been placed before the
4 Board.

5 JUDGE EDLES: Any reason not to?

6 MR. GOLDBERG: There is none that I am aware of
7 right now.

8 JUDGE KOHL: You mean it would be in the future?

9 MR. GOLDBERG: If it has not been placed before the
10 Board, then I am not aware of the reason why it has not and
11 whether there might not be a reason.

12 JUDGE EDLES: I guess my problem, Mr. Goldberg is,
13 I have seen lots of allegations and discussions in newspaper
14 articles and a whole host of things, and I do not think I
15 have ever seen an under-oath deposition or trial transcript
16 on anything that Mr. Hartman said, and I would like to take
17 a look at that if it could be made available.

18 MR. GOLDBERG: The staff of course did, very
19 briefly, summarize the substance of the Hartman allegation
20 about falsification of leak rate data in NUREG-06.80,
21 Supplement 1 and Supplement 2.

22 It very well could be that the Hartman depositions
23 themselves which contain more of the substance of his
24 allegations are part of the Tim Martin documents which were
25 given to the Justice Department in connection with the

1 grand jury proceeding. If that is the case, then that would
2 have been a reason why it had not been sent to the Board and
3 why to this day it may not have been sent to the Board.

4 JUDGE KOHL: What is the underlying legal reason
5 why those materials have not been provided to us?

6 MR. GOLDBERG: The NRC undertook an investigation
7 into the veracity of the Hartman allegations. That investi-
8 gation was on-going and pending at the time that the matter
9 was referred to the Justice Department.

10 JUDGE KOHL: Well, as I understand it, that
11 investigation was only about a month old when it was
12 referred to Justice. That was in April of 1980.

13 MR. GOLDBERG: That is right. It certainly was not
14 complete and to this day has not been completed. OI has
15 resumed the investigation and expects to issue a report on that,
16 I believe, December 30. of this year.

17 But basically we are still dealing with an on-going
18 investigation and one which at the request of the Justice
19 Department we have not been free to discuss the details of
20 the evidence that has been adduced during that investigation.

21 JUDGE KOHL: I would like to explore the legalities
22 of the Justice Department request. Is there any legal
23 reason why the NRC could not pursue their on-going admini-
24 strative investigation while the Justice Department is
25 pursuing its proceeding before the grand jury?

1 What legal impediments exist to this agency really
2 looking into this matter?

3 MR. GOLDBERG: I don't think there is a legal
4 impediment to the agency pursuing their investigation. I
5 think we have to distinguish the agency pursuing an investi-
6 gation with the disclosure for, example, grand jury materials.
7 If some of the same information we have or are developing
8 has been presented to the grand jury, then there may be
9 some impediments in our disclosure of that information.

10 JUDGE KOHL: What is that impediment? Are you
11 referring to Federal Rule of Criminal Procedure 6(e)?

12 MR. GOLDBERG: Yes, and I am not intimately
13 familiar with that at all. It is my understanding that --

14 JUDGE KOHL: Well, if that is going to be asserted
15 as a basis for the staff not turning over documents and
16 not pursuing this investigation, should you not be familiar
17 with it?

18 MR. GOLDBERG: No. We are not making that assertion.
19 We are not asserting that as a reasoning for not turning over
20 information or pursuing the investigation.

21 We ceased our investigation at the request of the
22 Justice Department. It is our belief that the Justice
23 Department preferred us to not pursue the matter any further
24 and to not discuss the details. It was simply an agreement.

25 JUDGE KOHL: This was a belief and a request. I

1 mean, I hear a lot of words that do not have a lot of
2 significance from a legal standpoint, particularly when you
3 are talking about a period of time now that is more than three
4 years.

5 What about the statements in the Aamodt's motions
6 that refer to their conversations with a lawyer that they
7 mention by name at the Justice Department who supposedly told
8 them there was no reason why the NRC could not continue
9 investigating and there is no reason why they would have
10 discouraged Mr. Hartman from having his allegations pursued
11 more fully here?

12 MR. GOLDBERG: I certainly have no first-hand
13 information about that.

14 JUDGE KOHL: Did you make any effort to pursue that?
15 Did you contact the attorney at Justice that they mention
16 in their motion?

17 MR. GOLDBERG: The Commission has been discussing
18 this matter with the Justice Department. It is not something
19 which the NRC staff has had responsibility for within the
20 Commission as far as our liaison with the Department of
21 Justice and the investigation into the Hartman allegations.

22 JUDGE KOHL: Well, what about the NRC staff's
23 responsibility for assuring that the public health and
24 safety is not in jeopardy because of these allegations? How
25 long is this agency going to defer to a Justice Department

1 request, if indeed there was a Justice Department request?

2 MR. GOLDBERG: We have to distinguish between the
3 substance of the Hartman allegations concerning adherence
4 to procedures and actually falsifying leak rate data, which
5 is something that was investigated to the point where we could
6 conclude that because of the changed organizational procedure,
7 the changes in personnel, and the emphasis on adherence to
8 procedures which we have verified in a number of inspections,
9 the problem of adherence to procedures and falsifying leak
10 rate data as Hartman alleged occurred at TMI-2 is not a health
11 and safety problem at TMI-1.

12 That much we have done. We have done that once
13 again in our revalidation program and that is the subject
14 of our Inspection Report 8310.

15 JUDGE KOHL: What about the other dimension to the
16 problem that I see does have an impact on public health and
17 safety, and that is management integrity and what role
18 management had.

19 From what I can see, the reports that we have had,
20 that most recent I&E report, I think 8310, I believe is the
21 number on it, that talks a little bit about the Hartman
22 allegations?

23 It does not seem that there were a lot of people
24 interviewed and any effort made to go beyond the actual
25 falsification of records aspect of it.

1 MR. GOLDBERG: That's correct. It was limited to
2 adherence to procedures. The organization in existence today
3 at TMI-1 vis-a-vis the organization that was at TMI-2 at the
4 time of the Hartman allegations. The Licensee's record for
5 adhering to procedures. The changed organizational structure
6 of the utility now vis-a-vis at the time of the Hartman
7 allegations.

8 That report, in those respects, verified that there
9 are no health and safety problems associated with the Hartman
10 allegations.

11 With respect to the questions -- and by the way,
12 that is how I would distinguish the Aamodt's motion to
13 reopen on the basis of the Hartman allegations and the procedur-
14 al adherence problem. I do not think there is any basis to
15 reopen on that.

16 With respect to the potential questions that may
17 be raised dealing with management integrity, if it turns out
18 that the Hartman allegations are proven true, that is an
19 open issue which we have identified. That is why we believe
20 we need to first of all have the results of the Office of
21 Investigation's consideration of that matter and possibly the
22 results of the Justice Department consideration of the matter.

23 JUDGE KOHL: What if there are no results? What
24 if the grand jury term expires -- I guess it is next spring,
25 January or February of '84 is my understanding. What if it

1 expires yet again and nothing happens once again, but it
2 is still under investigation by Justice? And what if OI
3 completes its report and does find that there is something
4 here, then what? Do we still continue to defer to the Justice
5 Department or when do we start fulfilling the agency's
6 responsibility?

7 MR. GOLDBERG: Not necessarily, although the
8 Justice Department consideration of the matter is uncertain
9 we do know that the Office of Investigations is in the process
10 of completing its investigation.

11 We have an estimate from them as to when their
12 report will be submitted to the Commission.

13 I think that all we can say at this point is --

14 JUDGE KOHL: When is that?

15 MR. GOLDBERG: December 30, 1983. I think we need
16 to at least wait for that to know anything more about the
17 veracity of the Hartman allegations than we know now, and we
18 really know nothing now about the veracity of those allegations.

19 JUDGE KOHL: Is OI constrained in any respect in
20 doing that investigation by the pending Justice Department
21 investigation?

22 MR. GOLDBERG: They may be, it is conceivable.

23 JUDGE KOHL: I think I read something in one of the
24 materials.

25 MR. GOLDBERG: Yes, there is certainly the possibility

1 that if they attempt to interview --

2 JUDGE KOHL: Well, then it might be possible that
3 on December 30 we get an OI report, assuming they are willing
4 to release it, that says, "Gee, we don't know any more than
5 we did before because we were not allowed to talk to so-and-so,
6 and we were not able to fully pursue this because of the
7 Justice Department investigation." Then where are we?

8 MR. GOLDBERG: That is a possibility. As I am
9 sure you know, the Office of Investigations reports to the
10 Commission and is not a part of the NRC staff. We are not
11 privy to what they are developing and what their investigation
12 might --

13 JUDGE KOHL: What do we do in terms of the
14 adjudicatory hearings?

15 MR. GOLDBERG: If we had no conclusion from the
16 Office of Investigations on the matter and the Justice
17 Department is still considering the matter, I think we are at
18 a situation where the burden is on those who would move to re-
19 open the record to come forward and show that there is a
20 significant safety issue which might affect the result of
21 an issue in the proceeding.

22 It is a heavy burden, as the Commission has said.
23 If they cannot do that, the record is not reopened.

24 JUDGE BUCK: I am a little confused by some of
25 your early answers to Judge Kohl's questions because in your

1 latest brief on July 21 you say, "In the June 29 memorandum
2 the staff concluded that the Licensee should have made a
3 more prompt Board notification of its report on the Hartman
4 allegations."

5 Then, in the footnote you say, "The staff has
6 acknowledged that it might also be subject to criticism for
7 not providing additional information on the Hartman report."

8 Then you fall back on, "The staff did not do so
9 to avoid any possible interference with the DoJ investigation."

10 Now, I don't understand that in view of some of the
11 answers you just gave to Judge Kohl. I mean, you are either
12 subject to criticism, or you are clean, or you are something
13 here. I don't know how long you can go on hiding behind
14 the Department of Justice.

15 MR. GOLDBERG: We recognize that we had information
16 in our possession as a result of our investigation into the
17 Hartman allegations which was similar to the material in
18 the Faegre & Benson report.

19 However, we did have an agreement with the Justice
20 Department to not disclose the details of our investigation
21 and for that reason we are reluctant to provide any of the
22 details of the matter which might interfere with the grand
23 jury proceeding.

24 JUDGE BUCK: You just want to go around the back
25 door and have the Licensee do it.

1 MR. GOLDBERG: There was no such agreement between
2 the Licensee and the Department of Justice of which I am
3 aware, which might have provided a reason why the Licensee
4 could not have provided that information.

5 Secondly, the Licensee was not necessarily aware
6 of what information this Commission had with respect to the
7 Hartman allegations. Therefore we understand their obligation
8 to be to promptly report relevant material information to the
9 Board.

10 They did not do so and that was the basis for our --

11 JUDGE BUCK: Well, but the -- what do you call it?

12 JUDGE KOHL: The Faegre & Benson Report.

13 JUDGE BUCK: In the Faegre & Benson report, the
14 staff had interviewed Mr. Hartman back in 1979 and so on,
15 so you must have known.

16 MR. GOLDBERG: That is exactly why, Dr. Buck, we
17 did not conclude that there was a material false statement
18 by omission in not providing that report because we did have
19 essentially the same. The Commission, the staff who was
20 working on this problem did have essentially the same
21 information.

22 But the Appeal Board did not have that information.
23 The Licensing Board at the time did not have that information.

24 JUDGE KOHL: Well, did the staff then mislead the
25 Licensing Board and the parties by giving such a limited

1 treatment to this whole issue in Supplements 1 and 2 to the
2 SER that were before the Board and that were in the possession
3 of the parties?

4 The treatment there was very cursory and did not
5 indicate that you had this information in this several volume
6 Faegre & Benson report.

7 MR. GOLDBERG: I don't believe it was misleading.
8 I think it was pretty clear from a reading of 0680, Supplements
9 1 and 2 that there was a matter which potentially involved
10 criminality, which was serious enough for referral to the
11 Justice Department.

12 In fact, the Justice Department accepted the
13 referral and convened a grand jury to consider the matter. I
14 think that suggests that there were some serious allegations
15 which provided a basis for referral to the Justice Department.

16 JUDGE KOHL: Well, my recollection of what this
17 supplement said was not quite phrased in quite the manner
18 that you have done so here.

19 I thought there was some reference to this just
20 being of some historical importance which certainly gives
21 the impression that it has no impact on future management,
22 future operations at the plant.

23 Is that not somewhat misleading? That is not the
24 same thing as saying, "Gee, there is something here that is
25 of such gravity that we have referred it to the Department of

1 Justice and we are leaving it up to them because we feel there
2 is criminal significance."

3 I don't recall that phrasing in the SER supplement.

4 MR. GOLDBERG: The statement that the matter at the
5 time was considered only of historical significance is one
6 which we have clarified in our April 18, 1983 comments.

7 JUDGE KOHL: Yes, that was three years later.

8 MR. GOLDBERG: Yes. What we were talking about when
9 we said that it only appeared to be of historical significance
10 was the procedural adherence problem underlying the Hartman
11 allegations because even at the time that we prepared 0680
12 Supplements 1 and 2, we had concluded that the actions that
13 the Licensee had taken to address the procedural adherence
14 problem were adequate and sufficient with respect to the
15 basis for the Hartman allegations that records were falsified,
16 a situation existed which allowed leak rate data to be
17 falsified.

18 So, that is the significance of our statement that
19 this thing only appeared to be of historical significance.
20 It had been corrected from a procedural point of view, from
21 an organizational point of view.

22 As far as the veracity of the Hartman allegations,
23 as we pointed out to the Commission recently in response
24 to Commissioner Gilinsky's questions, of course there could
25 have been no staff position on the veracity of the Hartman

1 allegations at the time of those --

2 JUDGE KOHL: What about management attitude? What
3 about that other dimension? Perhaps there is a third dimension
4 then. You keep talking about the procedural aspects and the
5 veracity of the allegations. What about the implications
6 for management attitude that would have permitted falsified
7 data and whether or not those same management attitudes exist
8 today?

9 MR. GOLDBERG: Yes. There is a concern about that.
10 That is precisely why we have identified that as one of the
11 open issues.

12 JUDGE KOHL: That is now. But where was that
13 concern in 1980, and '81, and '82?

14 MR. GOLDBERG: The management implications, if any,
15 at that time were not known. We had the bare allegations of
16 Mr. Hartman. We were not able to fully investigate that.
17 We had an investigation underway but we were not able to
18 pursue it to a conclusion at that time.

19 JUDGE KOHL: Are you saying that it did not occur
20 to the staff that there might be management implications; is
21 that your position, even though at the same time you had
22 referred it to the Justice Department?

23 MR. GOLDBERG: I cannot say that it had not occurred
24 to the staff. I think one thing that has to be understood is
25 that there were a very limited number of individuals who were

1 involved in the investigation of the Hartman allegations and
2 whom the Justice Department had asked to not disclose the
3 information that they were developing.

4 This information was not even available to the
5 staff in general. It was available to those individuals
6 who were involved in the investigation, and by agreement
7 with the Justice Department they did not discuss the details
8 of what they were developing.

9 JUDGE BUCK: Mr. Goldberg, is not the Licensing
10 Board supposed to be a judge of safety matters?

11 MR. GOLDBERG: Yes.

12 JUDGE BUCK: All right. Now why, under the
13 circumstances, if you did not know whether or not this was
14 a matter of management integrity or anything else, should not
15 the Licensing Board at least have been aware of what was
16 going on, the fact that there was an investigation and if
17 necessary an in-camera hearing put up?

18 It seems to me that the staff has suddenly taken
19 on itself the decision of whether a matter is a safety issue
20 or not.

21 MR. GOLDBERG: We had determined that there was no
22 safety issue as far as the procedures and actually falsifying
23 leak rate data itself. We did report to the Licensing Board
24 in 0680, Supplements 1 and 2, the substance of the allegation
25 about falsification of leak rate data and we did that to the

1 extent that we thought it was appropriate to do so in view
2 of the pending grand jury proceeding.

3 JUDGE BUCK: But the grand jury is not looking at
4 safety. We are supposed to do that.

5 MR. GOLDBERG: We did that, and we revalidated that
6 aspect of the Hartman allegations recently when we verified
7 that as far as adhering to procedures and their record of
8 adherence to procedures, and as far as the changes in the
9 organization and personnel, that type of problem as alleged
10 by Hartman is unlikely to occur at TMI-1.

11 We don't think there is any health and safety
12 problem that has been ever deferred at the request of the
13 Justice Department.

14 JUDGE EDLES: But you have not, as of this point,
15 reached any conclusions with regard to the veracity of Mr.
16 Hartman's allegations and presumably you have not yet
17 reached any conclusions with respect to the argument that
18 Mr. Aamodt makes, that we should draw the inference that this
19 could only have occurred with management knowledge or
20 complicity.

21 MR. GOLDBERG: That is exactly right, and that is
22 exactly why the staff has asked the Appeal Board to defer
23 ruling on reopening on this basis.

24 JUDGE EDLES: But let me ask you this on that point,
25 I guess I don't quite understand, given that you have not yet

1 reached a position, what there is to defer. I mean, how are
2 we going to ever decide it? Will we get an affidavit from
3 somebody saying that, "By the way, I told the truth?"

4 I guess I can't figure out, short of a reopening
5 of the record and getting Mr. Hartman to testify, and getting
6 other people to testify as to what they saw or did, or heard --
7 why are we deferring?

8 MR. GOLDBERG: Well, I think in the Vermont Yankee
9 case we talked about the analogy between reopening the
10 record and motions for summary disposition.

11 We are in a situation where we have a motion to re-
12 open on the basis of the Hartman allegations. The staff is
13 considering the matter. There is an Office of Investigation
14 investigation underway which will give us material which will
15 enable us to respond to that motion on the merits and take a
16 position as to whether it is a significant safety issue which
17 might affect the result in the proceeding.

18 JUDGE EDLES: And you can foresee circumstances,
19 given what we know now, in which you would be comfortable with
20 saying that there is no basis upon which to reopen the record
21 to deal with what Mr. Hartman said?

22 MR. GOLDBERG: That is certainly conceivable.

23 JUDGE EDLES: Give me a "for instance."

24 MR. GOLDBERG: The Office of Investigations might
25 present us with evidence which demonstrates fairly conclusively

1 fairly conclusively that there is no management involvement
2 in the matter. That in fact, as was suggested before, the
3 records -- if they were falsified and that has not even been
4 proven yet -- was done by some low-level employees.

5 I mean, it is conceivable that the outcome of the
6 investigation is such that there is no basis to reopen the
7 record because no significant safety issue is presented which
8 would change the result of any issue that was litigated in
9 the proceeding.

10 I guess it is also important to realize that with
11 respect to the management issues that were specified by the
12 Commission the evidence on the Hartman allegations in 0680,
13 Supplement 1 and 2, was put in the record in connection with
14 the issue 10, I believe it was, of the March 1980 order which
15 dealt with management's response to the accident. It was put
16 in the record in that context.

17 Now, of course what is also under consideration is
18 whether the veracity of those Hartman allegations implicates
19 management such that management integrity is called into
20 question.

21 JUDGE EDLES: Mr. Goldberg, there is a reference in
22 one of the Board notifications -- I think it is to Mr. Dircks'
23 memo -- in which he says that the Commission might consider
24 a reopening. I think he says something to the effect that
25 it will merely advance the inevitable.

1 Why don't you explain to me what he means by that?

2 MR. GOLDBERG: Yes. The staff in its memorandum to
3 the Commission of July 15 on how it intended to implement
4 the Commission's June 28 guidance did suggest to the
5 Commission that they may want to consider ordering a hearing
6 on management competence and integrity before restart.

7 We of course suggested that the Commission might
8 wish to do that in its discretion and with a scope of issues
9 which it felt was appropriate.

10 We distinguished that, of course, from the motions
11 to reopen the record before the Appeal Board in that before
12 the Appeal Board can reopen the record it necessarily must
13 find, as a matter of law, that the Commission's standards
14 for reopening are satisfied.

15 JUDGE EDLES: Does this Board have sua sponte
16 jurisdiction to reopen the record, quite apart from the
17 motions before us?

18 MR. GOLDBERG: With respect to --

19 JUDGE EDLES: As we did in the design phase of the
20 case?

21 MR. GOLDBERG: Yes. With respect to the issues
22 that have been placed before the Appeal Board, yes, I believe
23 so.

24 JUDGE EDLES: So, in other words, we could operate
25 at least in part on the same standard that you are urging before

1 the Commission; is that correct?

2 MR. GOLDBERG: I think that the Commission in fact
3 just needs to find it in the public interest to hold a hearing
4 for it to order a discretionary hearing.

5 I think the Appeal Board would necessarily have to
6 find that they need to hear further evidence on the issues
7 which are before them.

8 JUDGE EDLES: But in the design phase, as I recall
9 it, we made a finding that we were unable on the basis of
10 the then existing record to reach a conclusion one way or
11 the other.

12 If we were to make a similar finding here, quite
13 apart from the motions that are before us, would it be
14 within our authority to reopen the record?

15 MR. GOLDBERG: Yes, it would.

16 I guess I would just like to briefly summarize that
17 with respect to certain aspects of some of the motions before
18 the Appeal Board I think it is clear at this time, without
19 awaiting the resolution of any of the open issues, that
20 there is no basis to reopen on some of the asserted grounds.

21 The Aamodt's motion to reopen on the unsecured
22 Radiation Worker exams does not satisfy the standards for re-
23 opening. As the staff's Inspection Report 80207 demonstrates,
24 it was an isolated incident, attributed to a single
25 individual. The Licensee took prompt corrective action and

1 there is no safety issue which is raised which might affect
2 the result of any issue in the proceeding.

3 With respect to the Aamodt's April 16 motion to re-
4 open the record on the basis of the 1978 management audit,
5 that management audit of course is not new information. It
6 was produced in discovery in March of 1980, over three years
7 ago and, furthermore, does not even address issues that are
8 relevant to the issues in the restart proceeding since it
9 addresses the Licensee's pre-accident organization before
10 organization and restructuring which was the subject of the
11 restart proceeding.

12 With respect to TMIA's motion to reopen the record,
13 eight grounds for reopening are asserted. Some of them
14 provide no basis whatsoever for reopening the record and
15 the Appeal Board should so rule. Namely, the credibility of
16 Region I in its inspection report; the credibility of Mr.
17 Stello in his review of the B&W record.

18 I do not think that there is any safety issue raised
19 by those grounds that is relevant to any issue in this
20 proceeding, and those aspects of the TMIA motion should be
21 denied.

22 JUDGE EDLES: Mr. Goldberg, help me out with a little
23 bit of what will go on hypothetically in the event the record
24 should be reopened.

25 I understand what would happen if we wait, pursuant

1 to your request we defer our consideration. Six months from
2 now you come in and tell us, "All is well," and we agree with
3 you. That is the end of the case. Presumably we then under-
4 take to review the merits of the matters that are now before us
5 on brief and dispose of the case. I understand that scenario.

6 Let us assume, though, that we were to decide to
7 reopen the record. What would happen if we were to do that
8 now or if we were to do that six months from now. Would there
9 be any time saving in doing it now? Could you get started
10 now?

11 I guess what I would like your help on as a trial
12 lawyer is, exactly what would go on from a practical point
13 of view, depending on whether we do it now or later, if we
14 do it?

15 MR. GOLDBERG: I think that on some of the matters,
16 some of the open issues, there is no practical way of
17 getting underway at this time before we have some of the
18 results which are expected in the relatively near future.

19 For example, the investigations into the Parks and
20 King allegations. We expect to have an OAI report on the
21 technical issues by August 1, just a few days away, and on
22 the harassment aspect by October 1.

23 On the Hartman allegations we expect a report at
24 the end of December.

25 On those things, I think, we can profit by waiting

1 to see what the investigation concludes.

2 On the B&W record review our estimate is that we
3 will have a NUREG document by the end of September which will
4 deal with all the effects -- if any -- of the content of the
5 B&W record on any of the restart issues, any of the staff's
6 statements in NUREG-06-80, any of the Licensing Board's
7 conclusions. In that we will further identify potential
8 integrity issues which may be raised by the documents.

9 JUDGE EDLES: Are you telling me roughly that if we
10 were to reopen tomorrow that not much would get done for the
11 next six months anyhow?

12 MR. GOLDBERG: There are some things that certainly
13 could be accomplished, for example, on the B&W record and
14 the Beta and RHR reports are available to all the parties.
15 If the Appeal Board were inclined to reopen the record,
16 certainly they could profit by beginning discovery on the
17 underlying bases for the statements in Beta and RHR.

18 If the Appeal Board were inclined to reopen on
19 the B&W record, that record also is available to the parties
20 and they could profit by beginning discovery on that.

21 However, the one thing I would be concerned about
22 if the Appeal Board did believe that a reopening were
23 warranted on some of these issues is that discovery against
24 the staff at this time might impact on the schedules that
25 we have presented to the Appeal Board and to the Commission

1 for completing the review of those open issues.

2 JUDGE EDLES: So, you would have to work overtime,
3 in other words, or put more people committed to it.

4 MR. GOLDBERG: The staff is already working overtime
5 to meet the schedule that we have presented.

6 JUDGE EDLES: Let me ask you this, is not that
7 schedule principally designed toward meeting the Commission's
8 restart decision? I mean, it seems to me at least to be on
9 a faster track than this proceeding, even if we were to deny
10 the motions to reopen and begin work on the merits.

11 MR. GOLDBERG: That is correct. We, independent of
12 any motions to reopen the record have been asked by the
13 Commission to complete our review as soon as practical, and
14 we are doing that. We will do that regardless of the motions
15 to reopen the record.

16 JUDGE KOHL: Mr. Goldberg, for purposes of
17 deciding the motion to reopen, what standard should we
18 apply? You, I believe, drew the analogy earlier, or made
19 a comparison between motions to reopen and a motion for
20 summary disposition.

21 A motion for summary disposition is in turn similar
22 to motions for summary judgment in Federal Court practice.

23 Do not courts accept as true for purposes of
24 deciding motions for summary judgment the allegations made in
25 support of such motions?

1 MR.GOLDBERG: Well, I believe that generally someone
2 who moves for summary judgment would support their motion with
3 affidavits and some factual basis for ruling.

4 One of the issues involved is whether there is
5 a material issue of fact in dispute and whether the movant
6 is entitled to a judgment as a matter of law.

7 So, I think there is not only a legal argument and
8 allegations that need to be made to prevail on a motion for
9 summary judgment but also a demonstration by affidavit that
10 there is no material issue of fact in dispute.

11 JUDGE KOHL: What I am getting at, though, is just
12 for purposes of deciding whether to reopen, as distinguished
13 from the ultimate outcome of that decision.

14 Should we accept things like the Beta report, for
15 example, as casting some doubt on the earlier conclusions
16 of the Licensing Board with respect to management integrity
17 for purposes simply of reopening and letting this matter be
18 aired more fully at a hearing?

19 MR. GOLDBERG: I think as far as the stance for
20 reopening, the Appeal Board in this case, in their recent
21 order of June 30 in denying the Aamodt's motion for the
22 provision of information stated there the standards that they
23 would use, and those are the well-known standards of a timely
24 motion, issues raised that are significant, and whether a
25 different result might have been reached had the newly proffered

1 material been considered initially.

2 I think those parties moving to reopen the record
3 have the burden of establishing that each and every one of
4 those standards is satisfied.

5 For the purposes of the Beta report and RHR reports
6 on their face, I think the staff does have concerns about
7 the statements in there on their face. We had said that they
8 do raise questions about the soundness of the management
9 record on number of issues.

10 However, that is not enough in our judgment to
11 conclude that the standards for reopening are satisfied, that
12 it is necessarily a significant safety or environmental issue
13 which might cause a different result to be reached.

14 I think it is necessary to use those standards and
15 that is why we said that we have to undertake further
16 evaluation and analysis before we can come to a position on
17 the significance of those reports and whether they likely
18 would affect the results in the proceeding.

19 JUDGE EDLES: Mr. Goldberg, let me run this through
20 one more time just to make sure I understand it.

21 At the moment you are not prepared to make a judgment
22 as to whether or not the standards for reopening, the
23 traditional tripartite standards, have yet been met. Yet,
24 in the Dircks memorandum there is a very strong suggestion to
25 the Commission that it might well forestall the inevitable.

1 Does "forestall the inevitable" mean awaiting the
2 demonstration of the three factors, or does it mean reopening
3 the record because that is just a sensible public policy
4 thing to do, quite apart from whether the three factors are
5 met?

6 MR. GOLDBERG: Apart from whether the standards for
7 reopening the record are satisfied after careful analysis,
8 we suggested that the Commission consider the advisability
9 of holding hearings on management competence and integrity
10 because we recognize that, whatever the results of our
11 review of the open issues and whatever position we ultimately
12 arrive at on management integrity, it is going to be the
13 subject of a great deal of dispute and criticism by one or
14 more of the parties that inevitably because of the nature
15 of the issue we are dealing with there are going to be
16 requests to the Commission to, in its discretion, hold a
17 hearing on the matter.

18 That is why we believe that consideration to that
19 now would be a worthwhile endeavor. It was something which
20 we can foresee as a real possibility and simply wanted to
21 suggest to the Commission that it may be sensible for the
22 Commission, in its discretion, to think about that. That
23 would certainly be apart from the strict standards for re-
24 opening the record. Yes.

25 JUDGE KOHL: So, it is requests to reopen that

1 you feel are inevitable, rather than satisfaction of the
2 three criteria that we have to apply.

3 MR. GOLDBERG: Yes. At this time, even if the
4 result of the review of the open issues is such that the
5 standards for reopening, if we conclude the standards for re-
6 opening have not been satisfied on any of the issues, we still
7 believe that it is going to be the subject of a hearing
8 request before the Commission, and that the Commission may
9 at least at this time want to think about that possibility.

10 JUDGE EDLES: In other words, if the American
11 public is to have confidence in our proceedings -- am I
12 paraphrasing you correctly -- if the American public is to
13 have confidence in our proceedings, we had better look at
14 this more carefully?

15 MR. GOLDBERG: We suggested that --

16 JUDGE EDLES: Now, if you have different words, give
17 them to me now.

18 JUDGE BUCK: Are you suggesting the Commission
19 itself look at it when you say reopen the hearing? Are you
20 suggesting that the Commission itself do it?

21 MR. GOLDBERG: No, not necessarily the Commission
22 itself hold the hearing. The Commission, of course, would
23 in its discretion if it thought it was in the public interest,
24 order that hearing be held. It would not necessarily be
25 before the Commission, and that clearly was not our suggestion.

1 The Commission may wish to order a hearing before
2 the Licensing Board or have this Appeal Board consider certain
3 issues even though maybe the strict standards for reopening
4 have not been satisfied.

5 I don't have any further prepared remarks, but I
6 would be happy to answer questions.

7 JUDGE BUCK: I have another thing but, Chris, go
8 ahead.

9 JUDGE KOHL: I have a few more questions about the
10 grand jury proceeding and the nature of the agreement between
11 the agency and the Justice Department.

12 Am I correct in my understanding that the grand
13 jury term expires in February of 1984?

14 MR. GOLDBERG: I am not certain of the date. I
15 believe it had a term of 18 months and it was convened some-
16 time back.

17 JUDGE KOHL: Well, is this not the second grand
18 jury to which this has been presented?

19 MR. GOLDBERG: Yes, this is the second one; that
20 is correct.

21 JUDGE KOHL: At the termination of the earlier
22 grand jury, what did the agency do in terms of recommencing
23 its own investigation or in perhaps clarifying the nature
24 of its understanding or agreement with the Justice Department
25 in terms of this agency's own responsibilities?

1 Was there any effort made, or was this just sort of --

2 MR. GOLDBERG: I had no knowledge as to whether
3 there was any communication at that time, any clarification
4 at all. I have no knowledge.

5 JUDGE KOHL: Who in this agency does have knowledge
6 as to the agreement with the Justice Department, and how
7 long we would be willing to stay our hand?

8 MR. GOLDBERG: I believe the Commission's Office
9 of Inspector and Auditor is the Commission's liaison with
10 the Department of Justice. It is through their office that
11 referrals are made to the Justice Department.

12 JUDGE KOHL: Do you happen to know what the
13 statute of limitations is on the crimes that are being
14 considered by the grand jury?

15 MR. GOLDBERG: No, I don't.

16 JUDGE KOHL: Could you find out and let us know,
17 please?

18 MR. GOLDBERG: Yes.

19 I might mention, if the Appeal Board is interested,
20 the attorney representing some of the operators who are
21 before the grand jury is present and has expressed to me --
22 although he is only here as an interested observer -- his
23 willingness to respond to questions from the Appeal Board and
24 inform the Appeal Board to the extent that he is permitted to
25 do so with respect to the status of the grand jury proceeding.

1 He may be able to answer some of the specific
2 questions that you have, if that is your preference.

3 JUDGE KOHL: My principal concern, though, is
4 the staff's role in all of this and exactly what the nature
5 of the agreement is with the Justice Department.

6 Is there some way that you could provide that? You
7 say OIA has that information. Is that a staff office?

8 MR. GOLDBERG: No, it is not. That is one of the
9 problems, we are dealing with some Commission level offices
10 which do not report to the staff. We are not privy to the
11 information that they developed, the agreements that they have
12 or may have, or understandings they may have with the Justice
13 Department.

14 It is really beyond our authority to direct them
15 to provide any information. We can simply request --

16 JUDGE KOHL: Is it beyond your authority to do any
17 exploratory work yourself on behalf of the staff offices that
18 you do represent in terms of contacting the Justice
19 Department lawyers. Or don't they talk to you? Do they only
20 talk to OIA?

21 It is very confusing from our standpoint.

22 MR. GOLDBERG: I understand that. I think it may
23 very well be inappropriate for us to talk to the Justice
24 Department lawyers who are involved in the grand jury
25 proceeding.

1 The Commission does have an office responsible for
2 that, and I think we would certainly have to at least check
3 with them to see whether they had any objection to our talking
4 to the Justice Department attorneys.

5 JUDGE BUCK: I want to open up perhaps a new
6 matter -- my colleagues will probably shoot me for it after-
7 wards. But I want to go back to the cheating situation for
8 a minute.

9 As I remember the record on the cheating, part of
10 the cheating involved NRC exams. That we had an NRC training
11 man go up there, write an examination, a bunch of questions,
12 the answers to which he did not know. Many of the questions
13 he did not know the answer to.

14 So, he handed out the exam and then, instead of
15 proctoring the exam went out and found the answers, got the
16 answers by talking to the management of the training
17 department of TMI.

18 Now, I am puzzled about whether or not, or I wonder
19 whether or not anything has been looked into with respect
20 to that particular method of giving an exam and leaving the
21 room unproctored.

22 I am wondering whether this is part of the problem
23 with the TMI operators and their lack of respect for the
24 NRC which becomes very plain in all of the statements that
25 they have made, and I wonder if this is not perhaps one of the

1 things that has given the employees of TMI the thought that
2 the exams really don't matter, whether they cheat or not
3 because the NRC walks out of the room.

4 Can you tell me whether any investigation of that
5 method of operation of NRC has been made and, two, whether
6 or not anybody has really looked at this as being the cause
7 of the unhappiness with the NRC on the part of the operators?

8 MR. GOLDBERG: Well, in general that subject was
9 addressed in the reopened proceeding on cheating. I think
10 your restatement of the facts is somewhat of an over-
11 simplification of precisely what happened.

12 JUDGE BUCK: In what way?

13 MR. GOLDBERG: Well, it was not the case that the
14 NRC examiners prepared an exam and just did not know what
15 the answers were and figured they would go there and pass
16 out the exam and then find out the answers.

17 They prepared an exam to the best of the information
18 that we had on the plant procedures and hardware. It was
19 a sound exam and that we knew --

20 JUDGE BUCK: But Mr. Goldberg, TMI has been one of
21 the most investigated plants in this country for the last four
22 years. NRC has a whole office up there with many, many
23 experts.

24 Now, if the training department were such that it
25 did not know the answers, why did they not go to NRC people and

1 find out ahead of time?

2 MR. GOLDBERG: What our standard practice is for
3 administering the written reactor operator and senior reactor
4 operator exams is to, after we prepare an exam which we believe
5 is up to date, after we pass the exam out, we go over that
6 exam with the --

7 JUDGE BUCK: Who is "we?"

8 MR. GOLDBERG: The NRC examiners go over the exam
9 with knowledgeable people from the utility to make sure
10 that because of their intimate knowledge with the plant
11 procedures and hardware first of all the questions are
12 worded clearly and unambiguously, and second of all that the
13 answers which we believe are correct to the questions do
14 represent the latest plant conditions as far as procedures and
15 hardware.

16 JUDGE BUCK: And you wait to do this while the
17 students are writing the answers to the exam?

18 MR. GOLDBERG: Yes. The first thing we look at
19 are the questions themselves to determine whether --

20 JUDGE BUCK: Now, wait a minute. The first thing
21 we look at, what do you mean by that?

22 MR. GOLDBERG: The NRC examiner and knowledgeable
23 representatives of the utility --

24 JUDGE BUCK: This is during the exam?

25 MR. GOLDBERG: During the exam. They would first

1 review the questions to ascertain whether or not there are
2 any ambiguities and, if so, correct that immediately with
3 the students.

4 JUDGE BUCK: But my point is that you are running
5 in and out. You say you correct it immediately. You mean
6 you run in and out of the room, correcting the questions?

7 MR. GOLDBERG: I will address that in a second.
8 The proctor does leave the room for the purpose of going over
9 the exam.

10 Since the cheating proceeding, we have developed new
11 standards for administering exams. We have recognized that
12 that has been a problem and has been a source of unhappiness of
13 the operators. We have taken steps -- although I would not
14 call it an investigation as you have. We have considered
15 that matter, revised our procedures. There is assurance now
16 of a hundred-percent proctoring during the exam.

17 But we still feel it is necessary to review the
18 exam questions with knowledgeable utility officials to make
19 sure that in the interim between writing the exam and
20 administering the exam that there have not been some new
21 procedures or hardware changes that were taught to the
22 examinees which might affect what the correct answer on the
23 question might be.

24 JUDGE BUCK: Well, all I can say is, I don't
25 blame the operators up there for being unhappy when the NRC

1 in a situation like that -- I think it is unfair to the
2 people who are writing the questions if the examiner has to go
3 and talk to management of TMI about whether the questions are
4 written clearly and whether they are up to date, and spend most
5 of the time, apparently, during the exam -- which was the record
6 in this case -- going over the exams with the management.
7 No wonder they complain.

8 MR. GOLDBERG: The only other thing I would like to
9 add in response to your concern is that what we are talking
10 about here, of course, are the written exams. There certainly
11 was a lot of dissatisfaction on the part of the operators
12 with the NRC written exams.

13 However, we also administer an oral exam which I
14 think most of the operators agree accurately tests their
15 ability to react to transients; to cause them to think on
16 their feet and react to uncertain situations. It is much
17 less susceptible to being defeated by coaching and things like
18 that.

19 JUDGE BUCK: That is because the examiner presumably
20 knows the answer on the spot.

21 MR. GOLDBERG: Well, I think it is due to a number
22 of factors.

23 JUDGE BUCK: And you say this has been changed now?

24 MR. GOLDBERG: The written exam administration
25 procedures have been strengthened on the part of the NRC. We

1 are aware of the problems that were created by the absence
2 of a proctor during the administration of TMI exams.

3 JUDGE BUCK: It is not only the absence of the
4 proctor that I am trying to get over, sir. It is the
5 appearance that the NRC examiners don't know what the Sam Hill
6 they are talking about. So, they have to go to the management
7 of the company that they are in to find the answers, and the
8 students know this. Why should they have any respect for
9 the exams?

10 MR. GOLDBERG: The staff still believes that it is
11 necessary to do that, to check the questions and answers
12 with the utility. That has been our practice and that is
13 still our practice.

14 JUDGE BUCK: Well, I am sorry, I think that is --
15 I used to teach at the college level, I did for several years.
16 If I had given an exam I didn't know the answers to and had
17 to wander around during the exam asking the other professors
18 what the answers were, I would have been kicked out the next
19 week.

20 JUDGE EDLES: Does the staff now consult with the
21 licensee officials before the day of the exam?

22 MR. GOLDBERG: I don't believe so, but I am not
23 certain.

24 Excuse me, I mean, we do get, we do ask to be kept
25 up to date as to their procedures and hardware.

1 JUDGE EDLES: I understand that. I am talking about
2 these final checks.

3 MR. GOLDBERG: I don't believe so.

4 There may be some staff person in that area here
5 who might be able to respond to a question along those lines,
6 if you would like.

7 JUDGE EDLES: If it can be a quick "yes" or "no."

8 JUDGE KOHL: Is there an examiner here?

9 JUDGE EDLES: I guess now. Thank you.

10 Mr. Goldberg, do you want to take just one minute
11 to pull it all together since we took up an awful lot of your
12 time?

13 MR. GOLDBERG: Just to summarize our position, the
14 five open issues which we have identified in the May 19
15 memorandum to the Commission and which formed part of the
16 basis for TMIA's motion to reopen the record, certainly do
17 raise questions about the soundness of the management record
18 in a number of areas.

19 However, we do not believe it can be determined
20 at this time that there are significant safety issues which
21 might change the result of the issues in the proceeding.
22 Therefore, we think it is wise to defer a ruling until they
23 are developed further so that a sound decision on the
24 significance can be determined.

25 JUDGE EDLES: Thank you very much.

1 Why don't we take a five-minute break for the
2 reporter, please, before we get to Mr. Blake?

3 (Whereupon, at 4:20 p.m. a five-minute recess was
4 taken.)

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1 JUDGE EDLES: Mr. Blake.

2 Before you get started, what do you think about
3 the Staff's motion to defer, request to defer?

4 MR. BLAKE: We oppose it.

5 ORAL ARGUMENT BY ERNEST BLAKE, ON BEHALF
6 OF THE LICENSEE.

7 MR. BLAKE: Judge Edles, Judge Kohl, Dr. Buck:

XXXXX 8 I have a brief statement and then I'd like to
9 address some of the points made by the other parties that
10 preceded me.

11 JUDGE EDLES: Mr. Blake, could you just turn
12 the mike up or speak into it so that everyone can hear you?

13 MR. BLAKE: The standards for reopening do not
14 appear to be in question in this case. In fact, the
15 three-pronged test of timeliness, the significant new
16 evidence, the safety question, and whether or not a different
17 result might have been reached if new material had been
18 considered initially apply here. No party has argued
19 those.

20 There are three motions pending before the Board.
21 We responded in writing to all three.

22 JUDGE EDLES: Could I interrupt again and ask
23 you to respond to the codicil to the three standards,
24 which is this notion that I am putting forward, that if the
25 Board is unable to reach a decision one way or the other on

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1 the matter, that it may have jurisdiction sua sponte to
2 reopen the record, apart from the standard.

3 MR. BLAKE: Judge Edles, I must say that prior to
4 today I had not considered that notion, so in some sense
5 I am thinking out loud, but it appears to me that where
6 the Appeal Board would be considering in this instance
7 whether or not to add to the record additional information
8 in order to reach a determination, that the grounds, the
9 bases which it ought to apply, would parallel, in fact
10 be synonymous with, the desire, advanced by a party to add
11 additional evidence to the record.

12 And so insofar as I have had an opportunity to
13 think about it since you initially advanced it, I have not
14 been able to distinguish the Board's interest in raising it
15 sua sponte from the Board's interest in having a complete
16 record and needing to make the same type of determination
17 based on a motion to reopen by a party.

18 Of the three motions, the first was filed by
19 the Aamodts in September '82 and it related to the discovery
20 of radiation worker examinations in an unattended, unlocked,
21 training supervisor's office.

22 In our response, we described the facts and our
23 reasons for opposing the motion. In short, this occurrence,
24 which was uncovered by the Licensee, determined to be
25 attributable to one individual, not to be representative of

1 other trainers, not to have led to compromise of the exam,
2 to have the subject of prompt Licensee corrective action,
3 including immediate severe reprimand to the individual
4 involved, who resigned before final disciplinary action was
5 taken.

6 We stand on our September 20 written response
7 to that Aamodt motion.

8 JUDGE KOHL: What about Mrs. Aamodt's argument
9 that the testimony of Dr. Long was to the effect that this
10 sort of thing just wouldn't happen in the future, and yet a
11 few months later it did. Does that give good cause for a
12 lack of confidence in the training department and the
13 Department of Nuclear Assurance?

14 MR. BLAKE: Judge Kohl, Dr. Long, any more than
15 any other individual, is unable -- and in this case did not
16 make any such absolute assurance. He can do no more than
17 say, "We're putting in place procedures which we believe
18 will be adequate, and we'll do our darnedest to enforce
19 them." And that was the nature of Dr. Long's testimony.

20 In fact, I believe that this very case is
21 evidence of implementation of that. Here we -- initially
22 when the exams were filed on May 5th, they were found by
23 an individual, probably unique to this company's organization,
24 the radiological control assessor, who has free will to
25 roam throughout the plant, reports to high levels of

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1 management, and his total objective is to uncover any
2 problems that he can. Unlike what the Aamodts said
3 subsequent to the initial uncovering of that. When
4 management was informed of this problem by the radiological
5 control assessor, they went to the individual the next day,
6 told him in no uncertain terms what they felt about this,
7 and on May 7th -- two days after this -- it wasn't the
8 radiological control assessor that found the documents, it
9 was management themselves, the training management who were
10 following up themselves on the fact that this had occurred
11 who found it the second time. There was no third time.
12 After that second time, that was when the fellow was
13 severely reprimanded, and it did not occur on a third
14 occasion, nor has it to this date, to my knowledge.

15 The second motion was again by the Aamodts and
16 it was dated April 16th, 1983. It seeks reopening on five
17 different grounds. We opposed the motion in our response
18 of May 9th. Again in short the first ground was the
19 Hartman allegations which the Aamodts argue was newly-
20 discovered, significant information.

21 In fact, the Hartman allegations are not
22 newly-discovered, significant information. They have been
23 known or should have been known to the Aamodts long before
24 April of 1983.

25 Later in my argument I will address specifically

1 some of the questions which the Board has raised in this
2 respect.

3 The second ground is a 1978 management audit.
4 This document was available to the Aamodts in 1980, and it
5 certainly has no meaning now on the present organization in
6 place to restart TMI-1.

7 The third ground is the Aamodts' characterization
8 of Mr. Arnold's testimony in the B&W-GPU litigation.
9 The Aamodts have mischaracterized that record and provided,
10 in any event, no significant safety information.

11 The fourth ground is the advancement of B&W
12 technical expertise. It is certainly not new information
13 that B&W has technical depth in some areas which is more
14 advanced than that of this Licensee; nor is it true that
15 Licensee cannot and does not draw on that expertise where
16 appropriate, including in support of training.

17 The fifth and last ground in that motion is
18 the operator capability for handling emergencies. Here
19 the Aamodts rely on a B&W counsel characterization of the
20 TMI-2 operator's ability to cope with information available
21 to them in the TMI-2 control room in March of 1979.

22 There is nothing new here beyond the array of
23 investigations and data which have been around for some time
24 relating to that accident.

25 And again, I cannot see how it is material in any

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1 event to today's operators at TMI-1.

2 JUDGE BUCK: Do I gather that there was no
3 sworn evidence to this effect?

4 MR. BLAKE: I cannot specifically say that there
5 was no sworn evidence, but my -- in fact, to the contrary,
6 Dr. Buck. I would expect that within the B&W-GPU litigation
7 record, B&W did in fact address through witnesses, and
8 therefore through sworn testimony, of the operator's --

9 JUDGE BUCK: The reference here was a quote
10 from an attorney, is what you said? Okay. Thank you.

11 MR. BLAKE: In sum, again, as to the second
12 motion, we stand on our written response.

13 The third motion is that of TMIA, dated May 23,
14 1983. This motion cites eight areas where TMIA seeks the
15 record to be reopened, substandard argument, warranting
16 response, provided only as to one of the eight, that the
17 reports by Beta and RHR contain new information of safety
18 significance which might lead to a different result than
19 that reached by the Licensing Board initially in this case.

20 TMIA attempts to support its position by selective
21 cites to these reports. It is Licensee's position that
22 the significance, the safety significance of these documents,
23 can only be judged by viewing them as a whole.

24 One deals with efficiencies of operation,
25 manpower, allegations of resources, costs; the other with

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1 unsubstantiated opinions by the operators offered to a
2 consultant chosen for acknowledged expertise in industrial
3 psychology, despite his lack of nuclear experience.

4 This, in the case of RHR, was merely the first
5 step in providing recommendations to management. No
6 attempt was made during this initial phase to evaluate or
7 substantiate the opinions expressed.

8 While our written response provides observations
9 on the newness and the significance of the various excerpts
10 from these reports cited by TMIA, we urge the Appeal Board
11 to consider these reports in the context of their stated
12 purposes, and to consider the individual statements cited
13 by TMIA in the context of the entire reports.

14 JUDGE EDLES: To what degree can we take official
15 notice of all of these things as opposed to trying to get
16 the draft persons of the various reports, particularly the
17 RHR report, where the same individual presumably had
18 basic responsibility, as testified earlier at the hearing?
19 Mr. Wegner, I believe?

20 MR. BLAKE: In the case of the Beta --

21 JUDGE EDLES: The Beta report.

22 To what degree can we simply draw inferences
23 from the documents themselves without actually trying to
24 get these people under oath and on the stand and pursue
25 some of the lines that you are now suggesting to us, as to

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1 what the purpose of the report was, what data they were
2 told by management in terms of what they were to do, why
3 they drew certain conclusions, to what degree Mr. Wegner,
4 for example, felt he was undertaking a different project
5 in 1983 than he was doing in 1981; things of that nature?

6 MR. BLAKE: Judge Edles, I don't think you really
7 need to go so far as a legal notion as to take official
8 notice in order to make the type of assessment that you are
9 talking about in order to dispose of these motions.

10 I believe the reports have been provided to you;
11 all the parties have them; you have each of the parties'
12 respective views on their significance, and the meaning of
13 some statements in them. I wouldn't apply your ability to
14 review the reports in their entirety and attain your own
15 assessment about their value and what their stated purposes
16 are in order to dispose of these motions. I just wouldn't
17 assign something called official notice to that need.

18 I have not previously considered whether or not
19 if the Appeal Board wanted to take into consideration
20 ultimately in determination of this case, whether it would
21 be open to them, to take official notice of --

22 JUDGE EDLES: For example, there are two covering
23 letters involved.

24 MR. BLAKE: Yes, sir.

25 JUDGE EDLES: Which purport to set out the view of

1 the draftsman in those cases as to what they were setting
2 about to do. Those are not under oath statements. If you
3 pursued them and had them under oath, you may be able to
4 discover that, you know, they didn't mean exactly what
5 they said; or maybe you could get some embellishment.

6 I guess what I'm trying to drive at, at this
7 point, for the purpose of the motion to reopen, is to what
8 degree can we rely on things like those letters which are
9 just sort of -- I mean I understand the purpose for which
10 they were written, and I am not disagreeing with the content
11 of the letter, necessarily.

12 All I'm saying is to what degree can I rely on
13 those sort of unsworn statements, unexplained-- they haven't
14 been subjected to cross-examination--in ruling on a motion to
15 reopen?

16 MR. BLAKE: Well, it is my view that the letters
17 in that respect have the same value as the reports them-
18 selves have. The reports, after all, were just written by
19 the same people, and to that extent have the same
20 authenticity, veracity or credibility as you would assign
21 to the letters.

22 It is not, however, sufficient -- necessarily
23 sufficient, in my view -- that all we have is one person's
24 opinion and that alone is enough to warrant reopening the
25 record in any event, any more, in this case, than it is

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1 with allegations made by individuals in other contexts
2 and in this case. Something more needs to attach. You need
3 to be able to apply those facts. You need to bring to bear,
4 for the Appeal Board to make such a determination,
5 corresponding facts; facts with which -- so that you can get
6 a sense of whether or not it is an accurate description.

7 We don't necessarily have that here, but we do
8 have very complex reports, and for that reason very
9 believable reports.

10 JUDGE KOHL: Would it be fair, then, to treat
11 the reports as matter that would be attached to a motion
12 for summary judgment in Federal District Court? Assume
13 for purposes of deciding the motion to reopen under the
14 three criteria that we have to apply; can we assume that
15 the reports say what they say? And if there are questions
16 raised as to say the adequacy of present maintenance
17 operations at the facility, are we free to rely on those
18 expressions of lack of complete confidence in those
19 procedures? Can we use that as a basis for saying, yes,
20 the significance criterion under the Wolf Creek doctrine
21 is satisfied?

22 MR. BLAKE: I would say that when you have reports
23 from an established organization like this, you may come
24 very close, Judge Kohl, to establishing such a standard with
25 a report. In my view, it ought to be given a good deal more

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1 weight than an individual statement here or there. But in
2 this particular case the Appeal Board faces, as you have
3 already earlier observed, even a more awkward situation
4 where the very credibility of the author is challenged
5 by the individuals who say based on this, I want to reopen
6 the record.

7 So you have a particularly awkward, I think,
8 situation in this instance.

9 In TMIA's motion, in particular in their
10 discussions of RHR and Beta, I would hope to point the
11 Appeal Board in assessing the significance of these reports,
12 particularly in the case of Beta, to its recommendations.

13 There is not one recommendation which imparts
14 the need to take prompt action to cure a significant safety
15 concern. They just are not of that type. The bottom line
16 on the Beta report is that this organization could function
17 probably more effectively with 200 less people. Certainly
18 we ought not open the record now to take to task or explore
19 the problems that a company has because they have over-
20 committed resources and have tried to do too good a job in
21 responding to lessons from the TMI accident.

22 I would next like to focus on the Staff's
23 position.

24 As I understand it, the Staff's position as of
25 today remains that expressed in its written responses to the

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1 three motions.

2 It agrees with the heavy burden on the proponent
3 of an order to reopen. It opposes both Aamodt motions
4 to reopen, but it takes no position presently on TMIA's
5 motion as a whole; recommending, instead, that the Appeal
6 Board defer determination on six of the eight issues which
7 TMIA argues should be reopened.

8 One can hardly fault the Staff for not taking a
9 position on the substance of the issues until it under-
10 stands the facts and reaches an opinion.

11 The issue now, however, is in what posture should
12 the case remain while the Staff completes its studies and
13 comes to a position.

14 In my view, the answer is clear: The Appeal
15 Board has before it the arguments of the Intervenors who
16 propose reopening, and Licensee's responses opposing the
17 motions.

18 In two of the three cases the Appeal Board also
19 has the Staff's opposition to the motions. The Appeal
20 Board should decide now all three motions. That the Staff
21 has not yet reached a position on one of the motions should
22 not operate effectively to stay Appeal Board action.

23 If the Staff subsequently determines that the
24 record should be reopened, it is free like any party to so
25 move.

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1 If that turns out to be the case, they bear the
2 same burden as any other party seeking to reopen a record.

3 At present, however, the Staff has identified no
4 basis for reopening. The one specific instance of a
5 potential problem identified by the Staff and characterized
6 at the time ominously as allegations of falsification of
7 license operator training records and failure to meet NRC
8 requirements for training and requalification both before
9 and after the TMI-2 accident, turned out, after investigation
10 by the Staff, to be a matter of no consequence.

11 In this circumstance we urge the Appeal Board
12 not to defer its decision, but to rule now and deny the
13 motions to reopen based on the motions and the responses
14 before it, without prejudice to any later motion by the
15 Staff to reopen the record, if after investigations it
16 sees that as warranted.

17 I would like to turn now to some of the points
18 made by the other parties.

19 In Mr. Aamodt's presentation to the Appeal
20 Board, he talked about the Hartman allegation and the fact
21 that despite our argument that in fact it is not in our
22 view newly-discovered significant information, the Aamodts
23 felt estopped to raise it earlier, having relied in part
24 at least on the Staff's statements in their SER supplement.

25 JUDGE KOHL: Was that reliance justified?

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1 MR. BLAKE: That reliance may well have been
2 justified at the time, but not sufficient. In any event --

3 JUDGE KOHL: I don't understand what you mean.
4 What's the difference?

5 MR. BLAKE: Well, I would -- let me go back to
6 the beginning of the case which was in the summer of 1979.
7 We have already referred, and the other parties have
8 referred, to the fact that accompanying the referral to the
9 Department of Justice in about April of 1979, there was
10 considerable publicity about these allegations.

11 In fact, Mr. Hartman in May of 1979 was inter-
12 viewed by I&E, which interview was placed in the Public
13 Document Room in September of 1979.

14 Subsequently, throughout this period was
15 when the parties were raising contentions, raising their
16 concerns, advancing their positions. This subject area
17 never arose at all during that period.

18 The Staff's SER did not come out until about
19 March, I believe the SER Supplement No. 1 came out in
20 about March of 1980, after everybody had raised their
21 contentions and advanced their concerns. No party --

22 JUDGE KOHL: But as I understand it, the Staff
23 itself really hadn't initiated its own investigation until
24 about March of 1980, and then it terminated that investiga-
25 tion about a month later when it referred it to the

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1 Department of Justice.

2 MR. BLAKE: You're right, ma'am. You're right,
3 that the -- and if I said '79 with respect to the publicity
4 that was associated with the referral, I was wrong. I
5 certainly meant '80. Because it was following all the
6 publicity that attached to Mr. Hartman's appearance on
7 television which led to the Staff's looking again into
8 this issue and shortly thereafter the referral to the
9 Department of Justice.

10 JUDGE KOHL: Focusing, then, on the spring of
11 1980, though, there seems to be several key events here.
12 The referral to Justice in April of 1980, and I believe
13 someone mentioned there was a press release that came out
14 at that time. And I think a month later the Commission
15 itself issued an order on another matter in which it made
16 some reference to the referral to the Department of Justice.

17 Then at what point did the SER come out, the two
18 supplements?

19 MR. BLAKE: SER Supplement No. 1 -- if I was
20 giving '79 for that, I was intending '80. The SER
21 Supplement came out in, I believe, March of 1981. I may
22 have misspoken before if I said '80.

23 Okay. I have been corrected, fortunately for
24 the record purposes. Supplement No. 1, Mr. Goldberg informs
25 me, was November of '80. Supplement No. 2, the second time

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1 time where this investigation report was referred to, was
2 March of 1981.

3 Both of those were long subsequent to the
4 parties' raising of concerns or raising of contentions,
5 and long after the publicity which accompanied the referral
6 to the Department of Justice.

7 So all I can say is --

8 JUDGE KOHL: So contentions -- just to get the
9 time frame -- contentions were due before the Licensing
10 Board some time between the April 1980 referral to Justice
11 and the November 1980 SER Supplement 1?

12 MR. BLAKE: Actually, long prior to that, with
13 discovering wending its way through 1980. The hearing
14 actually opened October 15th of 1980.

15 JUDGE KOHL: What I am trying to determine,
16 though, is given these various signals, mostly emanating
17 from the Staff or from some Commission entity, didn't that
18 give perhaps a false impression to other Intervenors that
19 this was an area that they had to approach with a hands-off
20 position? Were they not misled into thinking maybe some-
21 thing would be done more quickly by the Department of Justice?
22 This just wasn't a matter that they should be pursuing
23 at an NRC adjudication? And if that was the impression
24 they got, were they justified in thinking that, based on
25 the tangible evidence we have?

1 MR. BLAKE: The emanations, as I understood
2 particularly the Aamodts to rely on, came from an SER
3 which came out months and months after, in a very public
4 way, folks were alerted to those allegations being raised.
5 To the extent earlier than that, they were concerned that
6 they shouldn't be raising it in an NRC proceeding, but
7 indeed had an interest in it, I as an attorney -- and I
8 suspect you as well -- would be somewhat remiss never to
9 say boo about it and just expect that that is the case.

10 JUDGE EDLES: Mr. Blake, the matter appears to be
11 a serious one.

12 MR. BLAKE: Yes, sir.

13 JUDGE EDLES: The Aamodts, you say, didn't raise
14 it and would perhaps have been remiss in that. The
15 Staff didn't raise it. The Licensing Board didn't raise it.
16 Isn't a reasonable inference from all of that not that no
17 one thought it was important, but that somehow they felt
18 either it had fallen in the cracks or that someone else
19 was looking at it? Isn't that the more reasonable inference
20 than that it wasn't so important, and as a consequence, the
21 Aamodts didn't pursue it?

22 MR. BLAKE: Well, I think it differs with the
23 various entities that you have identified. I think the
24 Staff has tried to articulate why they were not continuing
25 to pursue it. I think --

1 JUDGE EDLES: Why didn't the Licensing Board
2 pursue it? They did a very thorough job, as well as I can
3 tell, and would not have left major and serious matters
4 unattended. Why didn't they pursue it?

5 MR. BLAKE: I suspect that a major reason why
6 the Licensing Board did not was that no party had ever raised
7 as a concern.

8 JUDGE EDLES: Did the Licensing Board ever raise
9 issues on its own that parties had not raised? They did
10 in other areas, I know.

11 MR. BLAKE: They may have in terms of rounding
12 out an area or one area or another. I can't recall at the
13 moment a specific item having been raised, but the reason --

14 JUDGE KOHL: Doesn't this fall under item 10,
15 though, under the -- I thought somebody made some reference
16 earlier that this could be considered under issue 10 in
17 the Commission's order instructing the Licensing Board as
18 to what issues it should be pursuing, presumably irrespective
19 of whatever contentions the public participants might raise?

20 MR. BLAKE: Well, I had heard that view
21 expressed here today. I must say issue 10 was of some
22 confusion to us. Read in the broadest way, it encompassed
23 the entire hearing, and all lessons learned as a result of
24 the accident.

25 In another way, and in fact the way I read it and

1 presented evidence on it, it was, how did officials react
2 on the day of the accident and immediately in the wake of the
3 accident?

4 The fact of the matter is that the evidence
5 on issue No. 10 went in by stipulation. Nobody throughout
6 this proceeding showed great interest in what had gone
7 before or what it led up to or what was involved on the
8 day of the accident. It just wasn't an issue in the
9 proceeding.

10 JUDGE KOHL: I think we all agree with that. I
11 think the problem is why wasn't there any interest? Was
12 there something that somebody was doing or not doing, as
13 the case may be, that led to that lack of concern?

14 MR. BLAKE: Well, I can't explain why nobody
15 asked about any area at all. It certainly wasn't just
16 because of this SER statement about this one narrow aspect,
17 and I'm not sure, quite frankly, that I would agree that
18 it is linked to the accident, had someone attempted to raise
19 it.

20 JUDGE KOHL: Let me ask you something about
21 something that is more within the Licensee's domain, and
22 that is the 1980 Faegre & Benson report that deals with
23 these allegations.

24 MR. BLAKE: Yes.

25 JUDGE KOHL: If that had been provided earlier

1 than May of this year, we'll say some time back in 1980,
2 before the hearing got underway, might that not have piqued
3 parties' interest in pursuing this, or perhaps indeed the
4 Licensing Board, if the Board had been presented with a copy
5 of this?

6 MR. BLAKE: I don't know what the answer would have
7 been at that point in time, but I can pretty well predict
8 what answer you will get if you ask the other parties that
9 today. I just don't know, Judge Kohl. I can't explain why
10 virtually nobody looked into the causes or the day of the
11 accident.

12 JUDGE KOHL: Why wasn't it provided, though?
13 Can you elaborate on that particular point?

14 MR. BLAKE: I must say that our position is not
15 final in this respect, but I can tell you as a general
16 matter that that Faegre & Benson work was initially
17 commissioned in the wake of the public allegations, and in
18 the face of expected litigation and in the Grand Jury setting,
19 and it was very closely held and regarded as work product.

20 It was not until the second Grand Jury was
21 empaneled actually in March of this year, in response to
22 your earlier questions about how long they will be, that
23 we opted because of a new set of Grand Jurors being
24 empaneled to provide it at that point to the Department of
25 Justice.

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1 JUDGE KOHL: It wasn't provided to the first
2 Grand Jury?

3 MR. BLAKE: No. No, it had never been provided
4 to the first Grand Jury. We opted, when the second Grand
5 Jury sat, to provide it at that point to the Grand Jury,
6 to the counsel who represent other individuals, and to the
7 NRC as well.

8 JUDGE KOHL: I guess I'm at a loss to understand
9 why it would not, when it dealt with the very subject
10 matter that the Grand Jury was pursuing, why information
11 would not have been provided. But I don't expect you to
12 answer that.

13 MR. BLAKE: Let me speak up going back to your
14 question about the nexus of this Faegre & Benson report
15 or the Staff's discussion of the Hartman allegations.
16 I already tried to describe what I regarded as, for
17 whatever reason, no interest, contentions, or argument
18 about the accident, the events leading up to the accident,
19 the day of the accident; with one exception, the withholding
20 of information, some questions were asked about that in
21 the course of the hearing.

22 But in general no one looked into those questions.

23 I have also indicated that my reading of issue 10
24 was really something very closely related, subjects very
25 closely related to the accident, or how did management react

1 in the face of the accident and thereafter.

2 The Hartman allegations in fact had to do with
3 leak rate falsification, but as Judge Buck has pointed out,
4 the operators were not confused on that day of the accident
5 by the possibility that the PORV was leaking.

6 In fact, since an outage during the last two
7 weeks of January 1979, just prior to the accident, it had
8 been very clear from temperature indicators which were
9 on the pipes downstream of the safety valves, each of the
10 two safety valves in the PORV, that what in fact was leaking
11 was one of those safety valves. And they had that noted
12 for the next outage as a replacement item. But there was
13 no belief on the operator's part that the PORV was leaking.

14 The confusion with all three of those is that it
15 is a common header on the discharge side and therefore
16 the steam heats up all three. But clearly the temperatures
17 had been such as to be identifiable as linked to one of
18 the two code safeties.

19 So I didn't see it as linked in that respect.
20 There has been no management complicity throughout the
21 Hartman allegations, either initially or in the Faegre &
22 Benson report.

23 JUDGE KOHL: Well, the Faegre & Benson report,
24 though, didn't even entail, as I understand it, interviewing
25 the principal parties involved with the possible exception

1 of Mr. Hartman. I thought the inherent limit on that
2 report was it was only going to look at the records that
3 were involved, sort of the objective data, without getting
4 into the --

5 MR. BLAKE: It wasn't as though that was all
6 they were going to look into, but in fact --

7 JUDGE KOHL: Well, that was the scope of the
8 report.

9 MR. BLAKE: As they were able to get, because
10 counsel who represented the individuals would not allow,
11 with a sitting Grand Jury, these investigations on behalf
12 of the company to interview their client. I think they
13 recommended, obviously their clients made the determination,
14 but as I understood it, that was their recommendation.

15 JUDGE KOHL: Well, so to the extent that you say
16 there was no evidence casting doubt on management or suggesting
17 that management might have been involved in that, we really
18 have no record, because none of -- Faegre & Benson
19 didn't encompass that aspect of it. We know nothing about
20 the Grand Jury matter, the NRC Staff did little or nothing
21 on that point until recently, and the OI investigation is
22 just now getting underway. We don't know any details about
23 that. There is just no record on that point. It is an
24 unexplored area in terms of adjudication.

25 MR. BLAKE: It's not totally unexplored. Even

1 the -- you don't have an allegation from the allegor, Mr.
2 Hartman, that we were told by the supervisor, we were told
3 by the manager of operations, we were told by X, to falsify
4 leak rates. That's not the case here. You don't have
5 that in terms of upper management of the company involvement,
6 even in his instance. Indeed there is none that I know of.

7 JUDGE KOHL: What about Mr. Hartman's testimony
8 at the B&W trial? Were there not allegations made there?

9 MR. BLAKE: Well, I don't know what specific
10 language you are referring to, Judge Kohl --

11 JUDGE KOHL: Well, there were some references --

12 MR. BLAKE: And I'm not familiar sufficiently
13 with it, but it is certainly my understanding --

14 JUDGE KOHL: I'm not, either. I'm just going
15 on the basis of what the Aamodts and TMIA have in their
16 motion, and they do make references to various portions
17 of the transcript, and I guess in both of their cases
18 they haven't had the opportunity to fully review that
19 record, either, just as the NRC Staff hasn't. But he did
20 testify, did he not?

21 MR. BLAKE: Yes, he did, he testified there, and
22 you also have available to you in terms of statements by
23 Mr. Hartman in, I think it's Volume 4 of the Faegre &
24 Benson report, Judge Kohl.

25 JUDGE EDLES: Dr. Buck was kind enough to point

1 out that really I hadn't read far enough; a cardinal sin,
2 my law professor once told me.

3 MR. BLAKE: Judge Kohl, I don't know that you
4 have any identification other than what I've heard
5 the reference, for example, today to "we," which is a heck
6 of a way to tie to the highest management --

7 JUDGE KOHL: Well, I would agree.

8 MR. BLAKE: -- some sort of complicity in
9 falsification of leak rate tests.

10 JUDGE KOHL: I would agree that that doesn't
11 provide a foundation for making any findings; but does it
12 provide a basis for further exploration at a hearing where
13 these matters can be explored, where people can be brought
14 in to testify and be cross-examined?

15 MR. BLAKE: Well, it is my view that that sort
16 of statement, and reliance on it, is not sufficient in
17 this case to reopen on Hartman; particularly where you have
18 the other factors involved. Such as there is no indication
19 of practices that were in place, or the same leak rate
20 test infirmities which existed at TMI-2 even existed at TMI-1.
21 You certainly have no indication today that those sorts of
22 practices are in place and, in fact, you have, based on the
23 Staff's investigation and review of practices, procedures
24 and people in place at TMI-1 just the opposite.

25 So I would not --

1 JUDGE KOHL: Well, again, that's a different
2 dimension to the problem about possible management attitudes
3 that might have existed at the time that would have permitted
4 people to think they could pursue this kind of behavior.
5 Again that's a different dimension to the problem than
6 whether or not procedures, different procedures are in place
7 now and are being followed and are working well.

8 MR. BLAKE: Judge Kohl, it isn't just the
9 procedures. You had statements by management of respect
10 for the procedures evidenced by the people. All of these
11 factors I just think you have to take into consideration
12 if we -- or other particular statements or some meaning is
13 being taken from what Mr. Hartman has said.

14 I have already, I believe, addressed the
15 statements with regard to the RWP tests and how many times
16 they were uncovered.

17 In the case of TMIA, it was stated, if I heard
18 Ms. Doroshow correctly, that the Faegre & Benson report
19 concludes that falsification occurred. That is just not
20 true. It just plain does not make that conclusion.

21 JUDGE BUCK: Mr. Blake, could you get a little
22 bit closer to the microphone, please.

23 MR. BLAKE: I'm sorry, Dr. Buck.

24 With respect to the Beta report, Ms. Doroshow
25 indicated that many statements in the report were relevant.

1 I have to agree that many statements in that report are
2 relevant, but that's not enough, not enough to reopen the
3 record. It's not just relevance.

4 With respect to the betrayal of the company's
5 case in the course of this restart proceeding, and on
6 maintenance in particular, again I have to take issue with
7 Ms. Doroshow's characterization.

8 Our case on management -- and this may be one
9 explanation why the Board did not on its own raise the
10 issues -- was to address all the issues identified by the
11 Commission. We only had the broadest of contentions
12 other than the Aamodts' contention on training in particular,
13 which we had to emphasize, and TMIA's on maintenance, we
14 had only the broadest that there's something wrong with
15 management.

16 And therefore we put on virtually every high level
17 manager in the company who appeared as a witness. In the
18 maintenance area in particular, virtually all the managers
19 at TMI-1 -- involved in TMI-1's maintenance. All were
20 subject to cross-examination.

21 TMIA themselves, through subpoena, had 13
22 individual witnesses who were employees of the company
23 that appeared at TMIA's request. This was not an instance
24 of one sophisticated witness somehow putting across to the
25 Licensing Board what in fact wasn't the case. There were a

1 wide array of individuals, and all subject to cross-
2 examination, which in many instances was extensive.

3 With respect to an exchange between Ms.
4 Doroshow and you, Judge Kohl, to the ombudsman, Ms.
5 Doroshow makes the point that somehow the ombudsman
6 process doesn't work, and gee, there's no reason why,
7 there's no real difficulty in determining why it doesn't
8 work, since the company found out that Parks didn't go
9 there, and not do it if he is a confidential source.

10 I could be wrong, but I believe that the Parks
11 affidavit, which you now have available to you, in his
12 own statements was how the company actually learned that
13 Parks didn't go to the ombudsman.

14 But even if that's not the case, in this
15 situation I do not regard it as a breach of the confidence
16 in the way in which it was articulated to be associated
17 with the ombudsman, that the -- an individual never goes to
18 him, it would be disclosed after the fact that he hadn't
19 gone and hadn't taken advantage of the company process
20 like that. But the confidentiality was attached to people
21 who go to the ombudsman, who do raise a concern.

22 I may have extended my time.

23 And therefore the company doesn't inquire into
24 who it was that raised these concerns, and that hasn't
25 occurred. There has been no indication of that.

1 JUDGE KOHL: Is it the same ombudsman that is
2 one office for Units 1 and 2? Is that correct?

3 MR. BLAKE: Yes, there is one ombudsman office
4 within the GPU Nuclear Company who in fact would have
5 responsibility for concerns wherever they might be raised
6 within that division, or any of the three operating divisions,
7 TMI-1 and 2 or Oyster Creek.

8 Finally, with respect to the Staff's suggestion
9 to the Commission that a hearing be held, and the questions
10 which you had on that, Judge Edles, I would commend you to
11 our reaction to that, which was filed yesterday.

12 I have no more. Thank you.

13 JUDGE BUCK: May I ask a few questions on the
14 Beta report, primarily?

15 We got yesterday your letter basically in
16 answer or responses on the recommendations to the Beta
17 report from the company.

18 MR. BLAKE: Yes, sir.

19 JUDGE BUCK: And I really haven't had a chance
20 to go through it in detail, but let me say first of all
21 there are a lot of -- you're attacking this thing on the
22 basis of individual findings in this report. As to what
23 you have already accomplished -- would you agree with the
24 recommendations, first of all, how much you have accomplished
25 towards answering the recommendations or doing what the

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1 recommendations ask? But I wonder, perhaps you know and
2 perhaps you don't -- it is a management problem, really --
3 whether or not the management is taking a good look at this
4 Beta report to see one, two or three major items that Beta
5 is trying to tell them.

6 Do you know how much has been done on that?
7 Because I think this report does focus on some large areas.
8 Have you been with management on this enough to know what
9 they're looking at basically on the overall problem?

10 MR. BLAKE: No, I'm sorry, Dr. Buck, that I have
11 not, but I can offer what I think would be a well-seasoned
12 guess here.

13 Beta has been closely involved with this company
14 in terms of overseeing, pointing out problems, right along.
15 So I would expect, based on the track record, that they
16 have been very closely involved and understand very well
17 what the important points, or those regarded by Beta as
18 more important and, in fact, are focusing on. I cannot
19 identify for you what those one or two might be.

20 But these Beta individuals who survived in
21 Admiral Rickover's organization and at the highest levels
22 for all those years are not shrinking violets. They --

23 JUDGE BUCK: No, I gathered that from the
24 report. I don't know them at all, but I gathered from the
25 report that they don't pull any punches on things.

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1 MR. BLAKE: No, sir.

2 JUDGE BUCK: But -- well, let me just run down.

3 It seems to me I recognize that you have to answer these
4 things on the basis of findings, and that you have
5 accomplished a lot of that, but to me the report says
6 about three different things here:

7 One, because of the size of the total problem
8 that's been existing at TMI for the last four years, that
9 you have -- the management has in a sense tended to solve
10 problems by hiring more people.

11 Now, as a result of that, I think what Beta is
12 saying, that you've got engineers and scientists that you
13 have made into management people, and now it turns out that
14 some of those people really don't want to be managers and
15 some of them probably don't have the ability to be
16 managers. I think they are telling you very pointedly here,
17 take a good look at those people as to whether they are
18 good managers or whether they really want to be managers,
19 and this is extremely important when you come to a
20 technical organization. I know, because I've done this
21 before.

22 That goes on then really to say, okay, once you
23 get a manager in there, make sure the manager solves his
24 own problems and not go topside, and I suspect that some
25 of the things that have been going up in the management

1 from your lower level management has been because you had
2 inexperienced managers in there. And I think this is what
3 Beta is trying to tell you.

4 One of the important things the co-management --
5 this was about Oyster Creek, and I'm glad they didn't say
6 it about TMI, or I would have been much more worried than I
7 am -- but there is a statement made in there that the
8 problem at Oyster Creek was the employees have of leaving a
9 mess when they finish for the day or finish a job; in
10 other words, in not cleaning up after themselves. And it
11 has been my experience that that is a very dangerous
12 symptom of pure lack of discipline in the organization,
13 and I think that has to be attacked immediately. It doesn't
14 apply to TMI, they don't find that sort of thing in TMI,
15 and I'm very glad they don't.

16 I was disappointed in Beta's seeming lack of
17 emphasis on management training. I really do believe that
18 you have got to do, or TMI has got to do a real basic job
19 on training their managers how to manage. TMI -- or Beta,
20 rather, sort of mentions it, but they don't emphasize it,
21 and I was a little disappointed in that, because I think
22 they should have.

23 Another thing that I don't agree with Beta on
24 is taking the coffee breaks away. I'm an old coffee break
25 drinker, and I wouldn't want my coffee break taken away in the

1 morning. I think that's a morale builder.

2 MR. BLAKE: I think you will be happy to find
3 that the company is resisting that recommendation.

4 JUDGE BUCK: Yes, I noticed that that was one
5 of the things they objected to.

6 Now, let me ask a couple of questions and perhaps
7 you can give me an answer here.

8 You used the word "manning" here. Is that the
9 equivalent of what the Beta people use as "staffing"? Is
10 that what you mean by manning?

11 MR. BLAKE: I'm not sure exactly where you are
12 referring to. I would say as a general matter that is
13 correct.

14 JUDGE BUCK: I'm looking at the first chart
15 that you have -- or the second chart, rather.

16 MR. BLAKE: I'm getting a nod from the gentleman
17 who would know.

18 JUDGE BUCK: And they've got some blocks showing
19 this and they've got training personnel, efficiency,
20 manning and organization.

21 I'm assuming that manning concerns the staffing
22 problem that Beta is talking about; is that correct?

23 MR. BLAKE: I am told that that is correct.
24 You are right, Dr. Buck.

25 JUDGE BUCK: All right.

1 Now I notice that under training you've got
2 three blocks here. You've got in this next chart a whole
3 series of blocks which concerns the office of the president,
4 Oyster Creek, TMI, technical functions, nuclear assurance,
5 administration, communications, radiation and environmental
6 control, maintenance and construction, and human resources, I
7 guess it is. And I notice that you seem to be considering
8 training only in technical functions, nuclear assurance,
9 and administration. And it seems to me the training has
10 got to go up into the office of the president, too. And
11 I'm talking about management training here.

12 MR. BLAKE: Well, I think the chart that you are
13 referring to talks about lead responsibility for reacting
14 to these problems, and it's my understanding --

15 JUDGE BUCK: Okay, if that's what it means, I
16 can understand why it wasn't put in.

17 MR. BLAKE: It may well require considerable
18 coordination and oversight on a number of these areas.

19 JUDGE BUCK: Okay.

20 Well, as I say, I haven't had a chance to go
21 through this in detail, but all I'm trying to get over to
22 you is I think that you've got two or three principal
23 problems, and I hope that those are being looked at in
24 concert, shall we say, with the details, and that you're
25 not getting lost in the details.

1 MR. BLAKE: Judge Buck, not only have you gotten
2 it across to me, but as well with Mr. Arnold and Mr. Clark
3 here, I'm sure it will have even more --

4 JUDGE BUCK: Okay. Thank you.

5 JUDGE EDLES: Mr. Blake, one or two just
6 remaining questions.

7 The Licensing Board relied heavily on the Clark-
8 Arnold tandem which they thought was a nice combination,
9 package combination.

10 Mr. Arnold no longer has principal responsibility,
11 as I understand it, very much in the way of responsibility
12 for TMI-1. He has responsibilities now for the TMI-2
13 operation.

14 To what degree does that undermine the Licensing
15 Board's finding that this tandem was a very nice package
16 to have available?

17 MR. BLAKE: Well, Judge Edles, in my view, very
18 little, if any. And the reason that I say that is as we
19 described to the Staff particularly in a June 20 meeting
20 with the Staff on what this shift in responsibilities
21 really meant, and subsequently provided to the Commissioners
22 with excerpts from it which detailed precisely what this
23 shift in responsibilities within the office means, in fact
24 what has occurred is that primary responsibility has shifted
25 within the office of the president between the three

1 operating divisions as well as in some of the support
2 divisions.

3 Both these individuals, however, are still
4 involved, as they were before. Mr. Arnold is still
5 president of the company. Mr. Arnold still talks on as
6 frequent a basis with Mr. Clark as he did before.

7 What you have now, though, is a greater involvement
8 of Mr. Clark in TMI-1 decision-making than you had previously.
9 You still have Mr. Arnold.

10 JUDGE EDLES: Mr. Clark, presumably as vice
11 president, continues to report to Mr. Arnold?

12 MR. BLAKE: Mr. Clark is an executive vice
13 president and, in fact, from an organizational graph stand-
14 point, is within the office of the president, unlike the
15 other vice presidents in this organization. In many
16 respects it is a parallel organization, but in fact Mr.
17 Clark does report to Mr. Arnold.

18 JUDGE BUCK: But he's free to go to the Board
19 of Directors if he wants to?

20 MR. BLAKE: That's right. As well, in fact, he
21 has very real outside opportunities available to him to
22 go above Mr. Arnold, if that were necessary.

23 JUDGE KOHL: Did those opportunities exist
24 before then, or --

25 MR. BLAKE: Those opportunities did exist before

1 that, but to my knowledge they have never had to be exercised.

2 JUDGE KOHL: I guess I'm still somewhat unclear.
3 on whether or not this is just a cosmetic change, or what
4 the significance is, if any.

5 You said it doesn't change the tandem operation
6 that the Licensing Board viewed favorably, yet presumably
7 if the change was made, it was made for certain reasons.
8 What's the significance from our standpoint?

9 MR. BLAKE: What you had -- let me describe it
10 the way I envision it, but let me refer you as well to
11 Mr. Dieckamp's June 10 letter and descriptions given by
12 Mr. Dieckamp, Mr. Arnold and Mr. Clark in those excerpts
13 which have been provided to the Appeal Board as well as to
14 the Commission.

15 Previously where you had this division in
16 responsibility, that is primary responsibility for the
17 various divisions within the organization, and you had Mr.
18 Arnold in a position as having primary responsibility; for
19 example, now, or at TMI-1, it wasn't clear, although I
20 think as a practical matter it occurred on important
21 decisions, that you'd have Mr. Clark on a normal matter
22 involved in decisions for TMI-1.

23 Now with Mr. Clark having TMI-1 as the
24 primary responsibility, the normal course for problems
25 within the TMI-1 organization are going to go to Mr. Clark,

1 as well if they are problems of some magnitude, you have
2 Mr. Arnold involved.

3 So I think you get the best of both worlds here,
4 with the change in organization. It was obviously with
5 concerns about TMI-1 and emphasis on Unit 1 that that shift
6 was made.

7 JUDGE EDLES: Thank you very much.

8 Ms. Doroshow, you have 10 minutes remaining
9 for rebuttal. You are not obligated to take your full 10
10 minutes, but you have them available to you.

11 REBUTTAL ARGUMENT BY MS. DOROSHOW,
12 ON BEHALF OF INTERVENOR TMIA.

13 MS. DOROSHOW: Thank you. I don't know that I
14 will take the 10 minutes, but I will just bring up a couple
15 of points which I think are somewhat important.

16 I thought that I should note that when we did
17 get Mr. Orenstein's interview with Hartman, or of his
18 deposition in the Rogovin Report, we only did get, during
19 the September-October time period when we were talking about
20 trying to get Mr. Hartman to appear during the reopening
21 hearings, we only did get pages of that document. We did
22 not get any extensive information regarding the leak rate
23 allegations at that time.

24 What we got were primarily the allegations
25 regarding the oral walk-throughs.

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1 With regard to the Beta and RHR reports, and
2 the fact that Licensee insists that we view these things
3 with regard to the stated purpose which in Beta's case
4 we are looking at an efficiency study basically, and in
5 RHR's case we are looking at subjective views of operators.
6 Well, we believe that Beta's purpose was to perform an
7 efficiency study, but that is not necessarily relevant here.

8 Clearly in the context of the efficiency study
9 they reached a number of findings which are highly material
10 to those findings which are involved in safety aspects at
11 this plant in our case.

12 What we see are findings and conclusions which
13 appear on their face to signal safety implications, and
14 that is the type of thing that we are most concerned with.

15 With regard to the RHR report, which are
16 subjective impressions of operators on many issues, we
17 believe that these subjective impressions are at least as
18 important as the paper procedures which the company has
19 put up as in response to the accident and various concerns
20 which were raised in these proceedings.

21 If this is how this company is perceived, if this
22 is how the goals of the company are perceived, and the
23 priorities of the company are perceived by the operators,
24 that certainly gives good indication as to how these
25 programs and policies are going to be implemented by the very

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1 people responsible for implementing them; notwithstanding
2 Licensee's testimony to the contrary.

3 We still see enormous disrespect for the
4 training program out of these studies, and enormous
5 disrespect for management's concern for operators' concerns
6 with regard to safety issues, and we believe that the Board
7 must look at those studies with that point in mind.

8 With regard to the issues which have been raised
9 on Board Issue 10 and why the Hartman allegations were not
10 pursued, we did not become involved with Board Issue 10
11 and the company response to the accident until very late
12 in the hearing when we saw that the issue was slipping by
13 the board, and we became very concerned by that.

14 Board Issue 10 was not a contention of any party.
15 We did not have contentions regarding the accident, but we
16 saw it become a very important issue as we saw the Board
17 not handling it in a way we thought it should handle it,
18 and that is why we became involved.

19 So we did not litigate many of the issues which
20 we believe should have been litigated by the Board.

21 With regard to Licensee's characterization of how
22 their case was portrayed at the ASLB hearings, we saw
23 the company present a number of management witnesses in
24 response to specific Board issues, not necessarily at all
25 in response to the Intervenors' contentions. And these

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1 again were not issues that were being litigated by any of
2 the parties. These were Board issues which supposedly were
3 being examined by the Licensing Board, and I think our
4 Appeal Board brief explains in somewhat more detail the
5 types of problems which we saw in that process, and our
6 feeling that the Licensing Board was not really taking
7 its responsibility in delving into these issues properly.

8 And finally, with regard to the ombudsman issue
9 once again -- and I would just like to point out that
10 when Mr. Parks did go public and held his press conference,
11 I believe it was one Wednesday or Tuesday afternoon, I
12 attended Mr. Arnold's press conference immediately following
13 that, and that was the first time the issue of the ombudsman
14 was raised, and Mr. Arnold did note at that press conference
15 that Mr. Parks did not go to the ombudsman.

16 I don't believe Mr. Parks mentioned that fact
17 in his press conference or in his affidavit.

18 JUDGE EDLES: Could I ask you one quick question?
19 You mentioned that we ought to reopen for the purpose of
20 looking at the credibility of the Region I inspection
21 report and the credibility of the Stello report, and I
22 guess I'm not quite sure what you mean by that.

23 MS. DOROSHAW: Well, a number of events have
24 happened in the past few months, and we have been trying to
25 keep up, as I'm sure all the parties are trying to keep up.

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1 Last March Mr. Stello presented a report
2 on his review of the B&W trial record. I think that that
3 report has been virtually discounted by the entire NRC at
4 this point.

5 It seems that they have undergone an entire new
6 investigation into that record, that they have not come to
7 conclusions yet. Certainly they are still in their
8 screening process, so they say. They have spent a number of
9 Staff hours on it.

10 We are concerned that that report not be
11 presented as a credible report, because it seems that
12 neither the Commission or the Staff at this point views it
13 as such.

14 JUDGE KOHL: You mean the Stello report?

15 MS. DOROSHAW: The Stello report.

16 JUDGE EDLES: Then I understand what you have in
17 mind.

18 MS. DOROSHAW: Thank you.

19 JUDGE EDLES: If you have nothing further, we
20 have nothing further.

21 MS. DOROSHAW: Thank you.

22 JUDGE EDLES: Mr. Aamodt?

23 Same deal, 10 minutes.
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REBUTTAL ARGUMENT BY MR. AAMODT,

ON BEHALF OF INTERVENOR THE AAMODT FAMILY.

MR. AAMODT: Thank you. I hope I can use them effectively.

Before I start what I would like to close with, I just have three brief responses to some comments of Dr. Buck's earlier.

With regard to Mr. Arnold's involvement at Unit 2, there is a pretty good set of evidence in the GPU lawsuit, B&W lawsuit covering his involvement, and I think that would support the comment that I made.

JUDGE BUCK: Excuse me, Mr. Arnold's position where?

MR. AAMODT: At Unit -- I didn't hear you, Dr. Buck.

JUDGE BUCK: You said something about good evidence of Mr. Arnold's --

MR. AAMODT: Deep involvement at Unit 2 as it has been throughout the proceeding here at Unit 1.

JUDGE BUCK: Well, this is after the accident, you're talking about?

MR. AAMODT: And prior to the accident, as well.

JUDGE BUCK: Where do you find it prior to the accident?

MR. AAMODT: That is in the GPU lawsuit, with B&W.

1 There is considerable reference there. I just wanted to
2 point that out.

3 JUDGE BUCK: You mean in his capacity of
4 director of a division? That covered both Oyster Creek --

5 MR. AAMODT: Yes. I'm just saying that supports
6 my comment about the fact --

7 JUDGE BUCK: Yes, I understand that. This is
8 not direct management of TMI, that's my problem.

9 MR. AAMODT: I see. All right.

10 And also with regard to the leaking pore, B&W
11 also in page 114 of the trial transcript makes a case for
12 the fact that what Hartman was measuring was a leaking pore.

13 And I'd like to also -- you made a comment about
14 the lack of respect that people had for operators and
15 generally perhaps through the organization. And I wonder
16 if it wouldn't pay us all to think about what really elicits
17 respect.

18 In the case you cited that elicited respect for
19 you was the fact that you had adequate integrity to have
20 done what was required of you properly and could be counted
21 on.

22 JUDGE BUCK: I don't understand you, sir.

23 MR. AAMODT: What I'm saying is that which
24 elicits respect, perhaps the most single largest element,
25 is integrity. If a person has integrity --

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1 JUDGE BUCK: My concern, what I was talking
2 about a little while ago, was the lack of respect for the NRC.

3 MR. AAMODT: And I would suggest, Dr. Buck, that
4 if we reopen the hearing that that might also be examined
5 somewhat. There are bases for that which we have in the
6 past cited.

7 And, for example, I would like to --

8 JUDGE BUCK: That I understand. I understand
9 that. But that's not what we are here to discuss. I'm
10 trying to get across --

11 MR. AAMODT: I'm saying that this lack of
12 respect is also an indication of the fact that there's some
13 lack of integrity in management, and that is an additional
14 basis for examining integrity.

15 The point I'd like to make is that the issue of
16 competence is quite secondary to the issue of integrity.
17 Whether -- to build a competent organization is a matter
18 of hiring people whom you can trust to do their job. The
19 question is whether you can trust them to do their job.

20 Our concern here, our motion is not as Licensee's
21 attorney suggested, to reopen on the basis of the Hartman
22 allegation. Our motion is to open on the basis of a weight
23 of evidence that suggests that the perception of management's
24 integrity has finally built to a point where we can see that
25 it challenges the health and safety of the area.

1 The first item that we would offer in support
2 of the finding that management's integrity should be
3 examined in a reopened hearing is the -- in terms of time,
4 is the Hartman issue.

5 The second one that we'd like to look at the
6 second time is the cheating hearing, the cheating incident.
7 You recall the Special Master pointing out that it was
8 very difficult to draw evidence out. Apparently the
9 operators, the witnesses, had been coached. That would be
10 another example of lack of management integrity.

11 Certainly the question of the three engineers is a
12 lack of management integrity. I'd like, if I might, to
13 read to you an example of how that relates in a perhaps
14 somewhat different manner than we had indicated before.

15 As you recall, on April 25th, Lowan Gried
16 provided Licensee a report of purportedly their investigation
17 into the King allegations. They were in fact simply an
18 investigation into those allegations that related
19 to procedural compliance.

20 However, that report found that the procedures
21 have not always been followed. The safe use of the Polar
22 Crane is still under review, which was a principal allega-
23 tion of several people, the system for making ITS determina-
24 tions is still under review and should be improved, another
25 allegation. The issue of whether NTS classification are

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1 properly balanced is unresolved, another issue.

2 Procedures for management safe review have
3 not always been followed.

4 Compliance with procedures in some cases has
5 not been honored.

6 Our investigation was not exhaustive enough
7 to conclude that exclusion of significant safety issues
8 from minutes of meetings never happened.

9 And then Mr. Arnold provided a covering letter
10 to that document that he sent to the NRC, and he summarized,
11 if you recall, in that covering letter with a paragraph
12 lifted out of context in the report that essentially made
13 the case that the issues are whether technical analyses,
14 procedures and practices are adequate to keep the physical
15 operation safe.

16 I would say that a management that is competent
17 is a management that faces its problems. When its people
18 that operate the plant don't operate it well, they recognize
19 it and say we're going to make them operate it well. If
20 they cheat on exams, they say I recognize they cheated on
21 exams. We're going to prevent it from happening again.

22 If procedures are violated, they can be counted
23 on that there are people in there who will be sure the
24 procedures are not violated.

25 The fact of the matter is that when the cheating

1 examination was made by I&E, management insisted on having
2 its management personnel present in the room when I&E
3 conducted its investigation, and that challenged both the
4 integrity of I&E and the integrity of Licensee.

5 The issue here is integrity. If we get integrity,
6 we can easily get competence.

7 I hope you reopen the hearing.

8 JUDGE EDLES: Thank you very much.

9 I want to express the Board's thanks to all
10 the participants this afternoon, for your candor and for
11 your helpfulness, and the three motions will now stand
12 submitted.

13 (Whereupon, at 5:45 p.m., the hearing
14 was adjourned.)

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CERTIFICATE OF PROCEEDINGS

1
2
3 This is to certify that the attached proceedings before the
4 NRC COMMISSION

5 In the matter of: TMI Restart

6 Date of Proceeding: Thursday, July 28, 1983

7 Place of Proceeding: Bethesda, Maryland

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

10
11 Elizabeth Hansen
12 Official Reporter - Typed

13 *Elizabeth Hansen*
14 Elizabeth Hansen
15 Official Reporter - Signature