

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

UCLA RESEARCH REACTOR

(Proposed Renewal of
Facility License)

Docket No. 50-142 OL

Location: Los Angeles, Ca.

Pages: 3193 - 3366

Date: Wednesday, February 8, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - -

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
UCLA RESEARCH REACTOR) Docket No. 50-142 OL
(Proposed Renewal of Facility)
License))

University of California at LA
Ackerman Union 3654
404 Hilgard Avenue
Los Angeles, California 90024

Wednesday, February 8, 1984

The prehearing conference in the above-entitled
matter was convened, pursuant to notice, at 8:44 o'clock a.m.

BEFORE:

JOHN FRYE, ESQ., Chairman,
Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

GLENN BRIGHT, Member
Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C.

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APPEARANCES:

On behalf of the Licensee:

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On behalf of the Regulatory Staff:

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United States Nuclear Regulatory Commission
Washington, D. C. 20555

DON CARLSON
Division of Safeguards
United States Nuclear Regulatory Commission
Washington, D. C. 20555

On behalf of the Intervenor, Committee to Bridge
the Gap:

DOROTHY THOMPSON, ESQ.
JOHN BAY, ESQ.
DANIEL O. HIRSCH, ESQ.
DEAN HANSELL, ESQ.
Nuclear Law Center
6300 Wilshire Boulevard
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C O N T E N T SVOIR DIRE

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
RICHARD ROGGE	3276	3288	3306		3298
GALE THOMAS CORNWELL	3311	3321			
SHELDON C. PLOTKIN	3331	3340			
ROGER L. KOHN	3350	3356			

E X H I B I T S

(None)

LAY-INS

(None)

P R O C E E D I N G S

1
2 JUDGE FRYE: Let's go on the record. This is a
3 prehearing conference in the matter of the application of
4 the Regents in the University of California for renewal
5 of their operating license of their Argonaut reactor located
6 on the University of California at Los Angeles, UCLA, campus.
7

8 This conference has not been noticed by publication
9 of a notice in the Federal Register. The purpose of the
10 conference is to deal with procedural matters leading to an
11 exploration of contention 20 by the Committee to Bridge the
12 Gap which deals with security matters at the UCLA Argonaut.

13 We have discussed off the record the procedures
14 which we will follow in conducting this conference and we
15 have agreed that we will begin the conference on the basis
16 that the transcript will be available and placed in the Public
17 Document Room and continue on that basis until such time as
18 we need to deal with protective information at which time we
19 will instruct the reporters to break the transcript at that
20 point and treat the transcript to follow under the terms of
21 the protective order which we have entered.

22 The first item that we wanted to take up was the
23 proposals to amend the protective order which were filed by
24 UCLA and as I understand those proposals, the concern
25 expressed by UCLA has to do with the exception to the protect-
ive order which we had incorporated in paragraph 1(b).

1 Mr. Cormier, do you want to elaborate on that at
2 all?

3 MR. CORMIER: I don't have much to add other than
4 what I explained in my letter except that I had a couple
5 of questions really relating to whether or not the
6 exception clause as it appears was somewhat ambiguous in that
7 it might be interpreted to limit the University's normal
8 actions that it might want to take or need to take in
9 response to carrying out its security obligations. I simply
10 sought to clarify that.

11 In addition, I thought it should stand out as a
12 separate paragraph. I am not sure of the implications of its
13 relationship being in a definition of "authorized person."
14 I didn't know precisely how that worked so I thought to set
15 it out separately as a separate exception clause.

16 Other than that, I think it is explained in my
17 letter.

18 JUDGE FRYE: Yes. Mr. Bay, did you want to elabor-
19 ate at all?

20 MR. BAY: Yes. As I mentioned Monday in our
21 conference call, I believe that the final phrase in the
22 paragraph 1(b) of the protective order as it now stands
23 takes care of the University's concerns and I think it is
24 tightly written and should take care of all the problems.

25 I find Mr. Cormier's language a little bit more

1 ambiguous and seems to create a massive hole in the protective
2 order.

3 JUDGE FRYE: Let me ask you, do you have -- as I
4 understand his concerns, he is concerned that if you come
5 in with some information that needs to be distributed to
6 the various people within the University organization so that
7 they can take it into account and react to it properly and
8 he wants to be permitted to do it. Do you have any problem
9 in that?

10 MR. BAY: We believe that to the extent that we are
11 providing protective information that might have that effect
12 on the University, obviously they have an ongoing and contin-
13 uing duty that we are here to talk about to protect the
14 facility. Appropriate law enforcement agencies should cover
15 those problems and frankly, one of our real concerns which
16 we will talk about at considerable length today and tomorrow
17 is that the University in general is lax with protected
18 information and we are concerned that we don't really want to
19 provide protective information that we believe is sensitive.

20 We believe that we do have information that would
21 be of extreme value to someone who wanted to breach the
22 security of this facility and their normal course of business
23 as we have seen it to date give us no confidence that that
24 would be adequate secured.

25 We believe that the protective order does indeed

1 provides sufficient protection. The other point of this all
2 is that if something were to come up that for some reason
3 the University strongly felt they could not deal with under
4 the terms of the protective order, it would be a very simple
5 matter to get in touch with the Board and say, "Look, here is
6 the problem. We think we might be violating the protective
7 order. Give us a recommendation or a ruling on it or an
8 exception to it." I think that is probably the way things
9 should be handled.

10 MR. HIRSCH: If I may just add a minor matter, we
11 are not concerned that legitimate local law enforcement
12 people not be permitted access. We think that is appropriate.
13 What we are concerned about is that they do so under the
14 protective order with an understanding of nondisclosure
15 and that we have an opportunity to pass on whether or not
16 they should have access to our protected information.

17 For example, one of the people contemplated by the
18 University apparently under this clause is someone whom we
19 feel just last week gave away details of the response plan
20 in a public interview. We feel that what the Board has
21 established is a procedure whereby legitimate people who
22 need the information can get that information so long as
23 there is a commitment to nondisclosure and that they indeed
24 have a need to know and the ability to understand it.

25 We think we should have a right to be able to bring

1 protective information, usually the protected information
2 in our proceedings has to do with the security plan.

3 JUDGE FRYE: Yes.

4 MS. WOODHEAD: They allege that they have something
5 that would be considered protective information. I find it
6 curious. The implication is they have found some way to
7 breach the security system. I am not sure if that is
8 relevant to the contention. The contention says that the
9 security system is inadequate.

10 We have regulations that licensees must meet if
11 they are proposing to give information about breaching a
12 security system which is adequate to meet the regulations.
13 It is irrelevant. The regulations do not propose that every
14 facility be breach proof, so-to-speak.

15 The information as I understand it that CBG would
16 like to propose is more in the nature of law enforcement and
17 not NRC business. I don't know what sort of information they
18 have that would come under a protective order. It might be
19 sensitive information but I don't think it is necessarily
20 the business of the Commission. It sounds more like law
21 enforcement business.

22 JUDGE FRYE: I guess we don't know until we find
23 out what it is.

24 MS. WOODHEAD: That is true. But I find it very
25 curious that an intervenor is proposing protected information.

1 to the Board's attention if a particular individual at the
2 University wishes to pass that information on to may not
3 abide or may not understand the terms of the protective
4 order. That is one concern.

5 The other is that frankly we are little worried
6 that the proposed exception from the University will be used
7 as a huge hole to basically circumvent the protective order
8 and pass on our information to anyone without identification
9 of those people and a chance for us to indicate whether they
10 should have access and to make sure that they understand the
11 no. disclosure responsibilities.

12 So the long and short of it is, we have no problem
13 with legitimate local law enforcement people being given
14 access. We simply feel that it should be done so in the
15 context of the protective order and that parties should be
16 noticed of the desire to notify them and that there should be
17 an opportunity for objection if there is a real concern.

18 JUDGE FRYE: But you all basically do not have
19 any problem with 1(b) as it is now written?

20 MR. HIRSCH: That is correct.

21 JUDGE FREY: Ms. Woodhead, do you have any comment?

22 MS. WOODHEAD: I have no objection to the Univer-
23 sity's proposed addition to the protective order. I would
24 like to take one step backwards though and try to clarify
25 what we are talking about here when we speak of CBG's

1 Usually the only protected information is the security plan
2 and any conversation about it. If they have information that
3 should be known to law enforcement officials, that is the
4 proper place to present it not here. I don't understand where
5 we are going with this.

6 JUDGE FRYE: At some point I think we need to find
7 out what that is but I think that is going to have to wait
8 for the in-camera session.

9 MS. WOODHEAD: I think they should make a showing--
10 If they want to speak ex parte to the Board, I have no objec-
11 tion to that. I don't know about the University but I think
12 they should demonstrate that they have some information that
13 is indeed sensitive and let the Board decide whether it is
14 NRC business or not and if it is not, then they should go to
15 the law enforcement officials and simplify this proceeding.

16 I can't imagine what difference it would make to
17 us if it not relevant to the Commission's regulations as to
18 whatever information they want to propose.

19 JUDGE FRYE: Do you have an objection?

20 MR. CORMIER: I have some comments. I don't know
21 what information they have. Certainly to the extent that it
22 is sensitive in the general sense that it concerns allegations
23 of vulnerabilities, there has been no showing the University
24 has any interest at all in disclosing that information.

25 JUDGE FRYE: True.

1 MR. CORMIER: Therefore, coupled with the fact
2 that the Commission already has enough sanctions it can
3 impose on a licensee for any improprieties in the use of
4 safeguards information, I don't see any reason to include
5 that type of information under a sanction that runs against
6 the licensee to start with.

7 I have already made that objection. I essentially
8 was willing to go along with the Board's protective order
9 because I considered having that sanction imposed against
10 the University was essentially harmless as to the University
11 because we had no intent of disclosing that information.

12 In turn though, I wanted to make sure that the
13 exception was sufficiently broad so that we are not hampered
14 What Mr. Hirsch proposes is absolutely unworkable. There is
15 no way that we, and I don't whether the Commission will
16 assert the authority to do it, but there is no way that we
17 can impose protective order requirements on outside third-
18 party law enforcement agencies. That isn't even half the
19 problem.

20 In dealing with particular regard to the upcoming
21 Olympics, the University deals with a number of officials
22 that are not properly classified as law enforcement agencies
23 and in addition, it has to deal with a number of vendors, a
24 number of facilities people. In the event that the University
25 apprised of some vulnerability which it thinks it wants to

1 evaluate and the evaluation including some cost benefit
2 analysis whether it wants to do anything about it, wherever
3 the allegation of vulnerability comes from whether it comes
4 from CBG, whether it comes from some fanciful session that we
5 have internally here to try to devise vulnerabilities to
6 plan against, wherever it comes from we are going to have to
7 ask people, craftsmen, carpenters, some inside and some
8 outside, some not technically contractors because we
9 deciding whether we want a contract for them yet so it is
10 premature to call them contractors to see whether there is a
11 fix that is cost efficient that we want to take advantage of.

12 JUDGE FRYE: Let me ask you something. I looked
13 back after you suggested the change at 73.21(c) and it says,
14 "No person may have access to safeguards information unless
15 the person has established need to know for the information
16 and is one, an employee, agent or contractor of an applicant,
17 a licensee, the Commission or the United States government."
18 Does that cover your situation adequately?

19 MR. CORMIER: If you look at the first part of 73.21,
20 it talks about formula quantities in power reactors if I
21 follow it correctly?

22 JUDGE FRYE: Yes, it does.

23 MR. CORMIER: Whether or not it is precisely
24 applicable to the University is another question but basically
25 that is the way we operate under an established need to know.

1 JUDGE FRYE: You operate under basically what is
2 said.

3 MR. CORMIER: Sure. We only pass information on
4 a need to know but you have to understand what the need to
5 know includes. Let me give you an extreme case. It is clear
6 to us that the University in responding both under its
7 responsibilities it has from the Commission as well as its
8 responsibilities to state authorities and local authorities
9 has to respond to this considerable media attention concerned
10 with the security of the reactor come the Olympics.

11 In responding to that it has to have the flexibility
12 to indicate to the public that certain measures will be taken
13 or are going to be taken. Indeed, in addition to that it has
14 to be able to time the response it wants to make to the public.
15 There are certain reasons for disclosing certain facets of
16 your security at certain points in time. I am not talking
17 about disclosing anything having to do with the security plan.
18 That is absolutely unnecessary.

19 We are talking about extraordinary measures that may
20 be put in place for the Olympics. The University has to have
21 the flexibility to talk to its public to allay fears or
22 concerns that they have and it has to be able to exercise that
23 discretion without any imposition imposed on us by CBG by
24 virtue of any protective order.

25 JUDGE FRYE: Aside from CBG and this protective

1 order, that still would fit within 73.21, I gather.

2 MR. CORMIER: In our interpretation of established
3 need to know. The need to know may even be the public, in
4 the extreme case to avoid a panic.

5 JUDGE FRYE: The need to know by the regulation is
6 limited to employees, agents and contractors.

7 MR. CORMIER: Yes. If you look at what is safe-
8 guards information in 73.21, it involves details of plans
9 so there is some question. We would never feel a need to
10 disclose details of plans or certainly nothing having to do
11 with our security plan or details of our in-place, ordinary
12 NRC-mandated security system. That is not necessarily what
13 we are talking about here.

14 JUDGE FRYE: Yes.

15 MR. CORMIER: But over and above that to explain
16 general concerns regarding the security of the reactor which
17 may fall within under the University's interpretation, may
18 fall within the Board's definition of protected information.
19 We would like it to because we think that definition ought to
20 be board. We just simply could not operate. We can't hold
21 in any case, we can't hold third parties, law enforcement
22 agencies or anybody else.

23 JUDGE FRYE: They are specifically excepted here,
24 too.

25 MR. HIRSCH: Judge Frye, I guess that Mr. Cormier's

1 examples are precisely the reason why we feel that there is
2 need for our information to be included as the Board has
3 ordered under the protective order. We don't like the idea
4 and the very purpose of this proceeding is to make sure that
5 the response plan for this facility is not in the public
6 press as unfortunately elements of it were released last week
7 by the University.

8 MR. CORMIER: That is false.

9 MR. HIRSCH: We will discuss that as we go along.
10 But that is our concern. For several years we have kept quiet
11 about the details of our specific security concerns about this
12 facility so that this Board in camera can try to resolve
13 those problems.

14 What worries us is that people who will either have
15 had a bad record regarding nondisclosure in the past or
16 who do not have a genuine need to know will be provided access
17 to this information. We feel simply that the protective
18 order since it is our information the University if it has a
19 need to know demonstrate that and that we have an opportunity
20 to show that there is no need to know or that the person they
21 wish to disclose it to does not have a good record regarding
22 nondisclosure.

23 There will be no restriction on people who are
24 indeed trustworthy for the information who have a need to know.
25 All the protective order does is provide a vehicle whereby

1 if there is a genuine reason why that person should not
2 receive the information, that reason can be brought to the
3 attention of the Board. If there is no genuine reason,
4 the University can show it to the people it wishes. All
5 the protective order does is says, "University you want to
6 disclose this to 'X'. identify 'X' and provide the other
7 party an opportunity to indicate whether there is some reason
8 why 'X' should not have that information."
9

10 In the case of emergencies like law enforcement
11 officials, there isn't even that provision. What worries us
12 is that the University is attempting, we believe, to basically
13 have an exemption where they can show any of our information
14 to anyone without them being bound to nondisclosure.

15 MR. CORMIER: Why?

16 JUDGE FRYE: Before you go on any farther, I did
17 a little changing here and let me see what you reaction would
18 be to this change in paragraph (b). The second sentence how
19 says, "Nothing in this definition shall be deemed to deny
20 access by an officer, employee or contractor of a party to
21 information maintained in the normal course of business by
22 that party or to deny access to protected information," and
23 so on "... to the Boards, the Commission," et cetera.

24 I changed that and this is a proposed change.
25 "Nothing in this definition shall be deemed to deny access,
on a need to know basis, by an officer, employee or contractor

1 of a party to protected information," and you strike the
2 rest of the "maintained in the normal course of business
3 by that party," and I did that because I thought it more
4 nearly reflects what is said in 73.21 and because I felt also
5 it might go to the problem that Mr. Cormier was addressing.

6 MR. CORMIER: Let me ask the Board, again I have
7 concern about placing the exception clause under this
8 definition.

9 JUDGE FRYE: That is another issue. We may want to
10 move it out. We can talk about that but just for now, I
11 am just talking about the exception clause itself. How does
12 that sit with you? Do you want to look at it?

13 MR. CORMIER: No. I guess the important notion
14 there is that you are talking about information provided on
15 a need to know basis. I guess I don't know what you do with
16 that.

17 JUDGE FRYE: I just took it from the regulation
18 because that is what the regulation says. That was my
19 guideline.

20 MR. CORMIER: The need to know basis is easier
21 to define when you are talking about details of a security
22 plan because I consider that a more restrictive standard.
23 What the University needs is a more flexible standard and
24 it really needs it. All these concerns are raised in
25 connection with the 1984 Olympics.

1 JUDGE FRYE: Yes.

2 MR. CORMIER: The University to the extent that it
3 can do anything can only bind its own employees. It has no
4 authority outside. The discussions with the law enforcement
5 agencies, I mean they are not just law enforcement agencies,
6 they occur with other agencies outside. The LAOOC is not a
7 law enforcement agency and they are integrally involved in
8 the planning of our security aspects.

9 JUDGE FRYE: They are responsible for security
10 generally for the Olympics.

11 MR. CORMIER: Yes, because they have the ultimate
12 responsibility. The University cannot control how that
13 information is used by them. In addition, as long as there
14 is an understanding -- well, the need to know has to include
15 the public's need to know. That is the problem.

16 JUDGE FRYE: Do you have any objection? Ms.
17 Woodhead said that she didn't have any objection to CBG
18 telling us on a ex parte basis what this information is all
19 about. Do you have any objection?

20 MR. CORMIER: I have no objection to that.

21 JUDGE FRYE: Maybe that is the best way to go about
22 it. What do you all think?

23 MR. BAY: To the end that you then could determine
24 who has the greater concerns?

25 JUDGE FRYE: I suppose, yes, just in the same way

1 that Mr. Cormier gave us a copy of the security plan which
2 indicated what he wanted deleted but it is all right there.

3 MR. CORMIER: I would still like to have some
4 explanation of what interest NRC would have in disclosing
5 of any of this information. Indeed I consider it somewhat
6 ironic that it was largely CBG and other groups like them
7 that initiated all the publicity concerned with the security
8 of this facility that now the University is in the position
9 it doesn't want to be in of constantly responding to the
10 media, to our local public, local officials, to the public
11 media, to the national media on the security of this reactor.

12 We think the security concerns are greatly overblown.
13 That is an issue we are going to decide. Yet we have to
14 respond to them. We have a responsibility to the public to
15 allay their concerns and in doing that, we have to explain
16 certain things. Now under no stretch of the flexibility we
17 want would that require explaining details of our security
18 plan. We would never have to do that. We can never conceive
19 of a situation where we would have to do that and we don't
20 intend to do that.

21 What we are talking about apparently is allegations
22 of vulnerabilities. The initial question is whether allega-
23 tions in a proceeding that as a party litigant they have to
24 advance before they go any further and as a party litigant
25 responding to them we have an absolute right to see, there is

1 a question first of all whether the allegations no matter how
2 detailed amount to the information that you can hold the party
3 litigant protected against. That is the first thing.

4 Secondly, to the extent that there are allegations
5 of vulnerabilities, the University has to be able to respond
6 immediately to any of those no matter where they come from.
7 We can't even anticipate ahead of time what the people would
8 be.

9 JUDGE FRYE: Do you all have any objection to
10 telling us ex parte what this is all about?

11 MR. BAY: No.

12 JUDGE FRYE: What do you think?

13 JUDGE BRIGHT: It looks like the only way we are
14 going to get anything done.

15 JUDGE FRYE: All right. How shall we handle this?

16 MR. CORMIER: We will leave.

17 MS. WOODHEAD: We will leave.

18 JUDGE FRYE: All right. I guess from an administra-
19 tive point of view if we put this in the transcript, it is
20 going to create all sorts of problems. It is probably best
21 not to have it in the transcript. What do you think?

22 MS. WOODHEAD: I think it would be better off the
23 record.

24 MR. CORMIER: I have no objection to it being off
25 the record, not to be part of the proceeding and of course, we

1 certainly trust the Board is not going to rely on that as
2 evidence. You are just taking this information for the sole
3 purpose of advancing this discussion a little further.

4 JUDGE FRYE: That's right.

5 MR. CORMIER: You would not be considering it as
6 evidence.

7 JUDGE FRYE: No. This is a representation of
8 counsel. This is not evidence of record. This is not
9 something that you can base a proposed finding on or a finding.
10 Let's go off the record.

11 (Whereupon, at 9:10 o'clock a.m., the Board and CBG
12 conferred off the record, all other parties having absented
13 themselves from the hearing room.)

14 JUDGE FRYE: Back on the record. We had with the
15 consent of the parties an ex parte discussion with CBG repre-
16 sentatives as to what the information is that they wish to be
17 protected and we agree with them that it is information that
18 should be protected.

19 How one goes about doing that without creating
20 problems for the University or for the Staff is going to be
21 another question.

22 It is our thinking at this point and I want to get
23 the reactions -- first of all, let me say generally without
24 getting into specifics what the information concerns. It
25 concerns explosive and demolition techniques. It concerns

10:10 a.m.

1 means of by-passing alarms. It concerns means of access,
2 doors, locks, penetration points. It concerns problems with
3 response procedure. It concerns means of non-explosive
4 sabotage, chemical, arson, power excursion and it concerns
5 means of avoiding detection after theft.

6
7 Now up to this point we have been talking about
8 the modification to the protective order in very general terms
9 obviously because Mr. Cormier does not know what this informa-
10 tion is at this point. It is our thinking since we have to
11 go through a session where we specify the specific concerns
12 that are raised by the contention so that everyone is on
13 notice of what information is going to be involved that we
14 ought to go into that now with the attorneys only so that
15 the attorneys, particularly you, Mr. Cormier, will be able to
16 look at this and say I need to bring in "A", "B", "C" and "D"
17 as my expert witnesses which you have to do anyway.

18 I also need to convey information "X" to LAOOC.
19 It seems to me at that point we could more profitably deal
20 any modifications that might be necessary to the protective
21 order.

22 MR. CORMIER: I have no objection to that. It
23 sounds like you are willing to discuss with the attorneys
24 more of what was discussed in the ex parte discussion.

25 JUDGE FRYE: No one has objected to your qualifica-
tions. No one has objected to Ms. Woodhead. The only

1 objection we have is that CBG has three over here and you
2 want them to pare that down as I understand it.

3 MR. CORMIER: I think it would be reasonable given
4 the Appeal Board's ruling that access is to be limited to
5 what is absolutely necessary. I think it is consistent to
6 determine what is absolutely necessary. Obviously I am not
7 picking any one specifically. It doesn't make any difference
8 to me. I am just talking about total numbers.

9 JUDGE FRYE: I understand that. The only reason I
10 raised the point is that we can go through this with the
11 attorneys at this point and then worry about who we are
12 going to designate as expert witnesses.

13 MR. CORMIER: Sure. For the purpose of this
14 discussion, sure.

15 MR. HIRSCH: We have one question, I guess, which
16 is it is our understanding that it is the University's position
17 is any information that is transferred to them, they have an
18 absolute right to transfer.

19 JUDGE FRYE: My point in this procedure and maybe it
20 won't work, but it seems to me that it is a reasonable way to
21 go about it, he doesn't know what the information is at this
22 point.

23 MR. HIRSCH: And we don't have the plan.

24 JUDGE FRYE: Right. If he knows what the informa-
25 tion is, then he can say, "Gee, this is a real problem for

1 me," or "No, it isn't a real problem for me."

2 MR. HIRSCH: One last point, I guess what we need
3 to know before we can determine whether we can work with that
4 is as a precondition is Mr. Cormier then not authorized to
5 disclose after this next session to other people? In other
6 words, it sounds like we are disclosing before we decide
7 whether he can or cannot pass it on.

8 JUDGE FRYE: The next step would be who can it be
9 passed on to.

10 MR. HIRSCH: But he right now claims that he can
11 pass it on to anyone and my understanding of the University's
12 position is that even if the Board determines that he can't
13 pass it on to others except through the protective order
14 as I understand it, you maintain an absolute right to do so
15 anyway, is that correct?

16 MR. CORMIER: No. I distinguish myself as counsel
17 from University staff. If the Board wished to impose upon
18 me and it was the intent of the Board to impose upon me in
19 effect CBG's version of the protective order that I not pass
20 it on to anybody else, that is not a problem for this stage.

21 JUDGE FRYE: Right.

22 MR. CORMIER: I won't pass it on. But as a
23 practical matter, I can't ignore the issues so obviously
24 it has to go to some stage at some point in time.

25 JUDGE FRYE: We would just be discussing who those

1 people are after you know what the information is.

2 MR. CORMIER: Sure. I am bound by the Canons of the
3 profession so I would not feel any need or would I disclose
4 anything in the ex parte or in this conversation.

5 I must preface -- perhaps we should note that Mr.
6 Ostrander --

7 JUDGE FRYE: Mr. Ostrander has arrived.

8 MR. CORMIER: Neill C. Ostrander, representative
9 of the University, has arrived.

10 Based on the necessarily brief description the
11 Board gave just a moment ago of the types of things that CBG
12 has in mind, I must ask the Board whether the Board is
13 assuming that the University itself has not in fact reviewed
14 virtually the same items and the same allegations that CBG
15 purports to put on the table?

16 JUDGE FRYE: I am not assuming anything. We are not
17 assuming anything of that nature at this point. Our point is
18 and it is purely a practical one and that is that when you
19 know what the information is, then I think we can deal a lot
20 more effectively with any problems that the protective order is
21 going to present.

22 MR. CORMIER: Yes.

23 JUDGE FRYE: That is my point.

24 MR. HIRSCH: Just an inquiry, it sounds like Mr.
25 Cormier feels he does know who -- that he has already reviewed

1 at least those areas and knows which people would need access
2 to that kind of information.

3 JUDGE FRYE: He doesn't know because he doesn't
4 know what you know. He doesn't know what your information is.

5 MR. HIRSCH: It sounds as if he does.

6 MR. CORMIER: I think the procedure is fine and
7 when we get into it, I, the University, am precluded from
8 discussing any of the things that we would ordinarily discuss
9 in connection with planning our own security. Obviously we
10 haven't divulged any of that and we had no intention to
11 except as necessary as part of this proceeding, but it would
12 surprise me that anything that CBG put on the table had not
13 been considered by the University already.

14 JUDGE FRYE: That could be. I don't know.

15 MR. CORMIER: That does make a bit of a problem
16 in determining whether it is, in fact, sensitive information
17 that was acquired by the University as part of these proceedings.

18 JUDGE FRYE: We will have to address that when you
19 find out what it is.

20 MR. CORMIER: Yes.

21 JUDGE FRYE: I don't know how else to deal with that.

22 MR. CORMIER: I agree.

23 MS. WOODHEAD: So are you proposing a conference
24 with counsel as our next step here?

25 JUDGE FRYE: Yes. Our next step would be a sort of

1 informal discovery session aimed at specifying the specific
2 concerns of the contention among counsel.

3 MR. HIRSCH: I am a little confused about the
4 schedule. We had asked some of our experts to come in at
5 one o'clock because that is what we thought you wanted to do
6 at that stage.

7 JUDGE FRYE: That had been the original intent, yes.
8 It seems to me that this has to happen before we can realisti-
9 cally talk in terms of experts.

10 MR. HIRSCH: I guess my question is, it seems to me
11 that all we are trying to establish is a procedure whereby
12 experts are identified. If, for example, when the University
13 has additional information about our concerns and we have
14 more information about their plan, there is a need to put
15 forth additional people. It would seem to me that that is
16 what the protective order should do is to have a mechanism
17 whereby Mr. Cormier can say after he has seen the material from
18 us and we can say after we have seen his material, "We believe
19 the following additional people need to be authorized and
20 state the basis." I am wondering whether that isn't the
21 simpler method because if he identifies people an hour from
22 now, we are not going to have any ability to be able to tell
23 you whether we think they should be authorized.

24 JUDGE FRYE: It may be that neither of you will be
25 able to identify people an hour from now. I don't know. I

1 would be a little surprised if you were frankly.

2 MR. HIRSCH: Beyond the ones that have already been
3 identified. The University has already identified 20 people
4 based on their understanding of having to put on an affirma-
5 tive case about their security and we have identified the
6 people we feel at this stage we would need to have access to
7 the plan not knowing what is in it.

8 I guess my confusion is it seems to me that the
9 issue is simply one that is a procedure whereby parties put
10 before the Board a need to have an additional person beyond
11 the ones we have already named see the material. It seems
12 to me that is all we are discussing.

13 MR. CORMIER: I am little confused.

14 JUDGE FRYE: I am a little confused, too.

15 MR. HIRSCH: Let me just back-up. My understanding
16 is that the Board asked all parties to identify who they
17 thought would need access to material. Everyone did that.
18 The University having an affirmative duty to put on its case
19 about its plan identified its people. The staff identified
20 theirs and we identified ours.

21 My understanding is that here we are going to do
22 essentially two things which is to see if their objections or
23 to discuss the objections to people who have been identified
24 and additionally to deal with this one exception which is
25 basically the issue of who beyond the ones who can identify

1 to date could eventually see it and what procedure would be
2 used for that.

3 It seems to us is that the simple mechanism is
4 that there should simply be a mechanism whereby the University
5 if it discovers it wants to show this material to someone
6 it has not designated and has not been approved, then there
7 would simply be a method by which that person is put forward
8 and we go through the same process.

9 JUDGE FRYE: Sure. I don't see any problem with
10 that.

11 MR. HIRSCH: It seems to me that resolves our
12 difficulty.

13 MR. CORMIER: No.

14 MS. WOODHEAD: What?

15 MR. CORMIER: If I understand Mr. Hirsch correctly
16 I have a problem with what he says. Can we clarify the
17 discussion a little bit and distinguish the issue of what
18 authorized persons are going to have access to the information
19 from the issue of what experts are going to provide testimony
20 in the proceedings. They are two separate issues. All I am
21 concerned about now and all we have been discussing so far
22 this morning as I understand it is who is going to have access
23 to protected information.

24 We are not proposing that all those people on our
25 authorized list of persons are going to participate in this

1 proceeding.

2 MR. HIRSCH: You have only proposed three as wit-
3 nesses and there are others that you wish to have as authorized.
4 I guess frankly we have some difficulty with a discovery
5 session that is basically one-sided.

6 JUDGE FRYE: It shouldn't be one-sided.

7 MR. HIRSCH: But it is at the moment because there
8 hasn't been a determination as to whether and how we can
9 access to the plan.

10 MR. CORMIER: Why are we talking about discovery?

11 MR. HIRSCH: I just thought that I understood you
12 wanted us to go through that informal discovery where we
13 detail our protected information to counsel.

14 JUDGE FRYE: Right. But I think they should also,
15 your attorney should also have access to the plan.

16 MR. HIRSCH: That will happen by today.

17 JUDGE FRYE: It seems to me the two should go hand
18 in hand.

19 MR. HIRSCH: That is what we want to make clear.

20 That was my understanding of the intent of this meeting.

21 That is exactly what we should be doing, exchanging that
22 protected information.

23 JUDGE FRYE: The exchange is going two ways here.

24 MR. HIRSCH: As long as it is two ways, we have no
25 problem. I don't want to discover after we have done our side

1 that there is a problem with the two-sided exchange.

2 MR. CORMIER: I guess I have difficulty with that.
3 First of all, under the Commission's case law rules, CBG, its
4 experts and attorney, only get access to the University's
5 protected information, that is, its security plan and details
6 of its security system if in fact they qualify a witness
7 to have access to that and then, only to the extent the
8 witness is qualified for those portions of the plans.

9 JUDGE FRYE: Witnesses? We are not talking about
10 witnesses. We are talking about just the attorney.

11 MR. CORMIER: If it doesn't have a witness who is
12 qualified, it can't proceed with the contention. At least,
13 he can't proceed with access to protected information.

14 MS. WOODHEAD: Yes. That's right. Without an
15 expert qualified to assess the security plan, nobody in CBG
16 can have access. There is no reason for an attorney to have
17 access. He is not an expert. He is reading words just like
18 I do. I have to have an expert tell me what safeguard systems
19 are like and how they work. Without an expert from CBG who
20 can as an expert evaluate the security system, there is no
21 reason for CBG to have access to the plan including its
22 attorneys. The attorneys only represent the experts and the
23 parties' interest. They certainly cannot testify or evaluate
24 the plan.

25 MR. CORMIER: May I add that that is premature

1 anyway because I don't hear CBG complaining about the fact
2 that our security plan is to be regarded as protected
3 information. The only issue we have been discussing this
4 morning has to do with CBG's proposed sensitive information
5 and that is what we are trying to resolve.

6 I don't hear CBG saying that our protected informa-
7 tion ought not to be protected. Presumably, they have
8 conceded the fact that --

9 JUDGE FRYE: I think they have. In fact, one of
10 their problems is that it is not protected enough.

11 MR. CORMIER: That is one of their allegations.

12 JUDGE FRYE: Yes.

13 MR. BAY: I would like to respond to Ms. Woodhead's
14 statement that if we do not happen to qualify an expert that
15 essentially there is no longer a contention and that we have
16 no right to access the security plan.

17 There is very clear precedent in the NRC case law
18 that intervenors have the right to put on a case defensively.
19 I can very easily imagine expensive cross-examination of
20 the witnesses of staff and applicant on whether or not their
21 security plan actually protects the facility from credible
22 threat. To adequately do that, I would need access to the
23 security plan. I think it would be absolutely proper.

24 (Whereupon, the Board members conferred.)

25 JUDGE FRYE: Ms. Woodhead, I presume it was the

1 Diablo decision that you were referring to, do you remember
2 which one it was?

3 MR. CORMIER: It was 410.

4 MS. WOODHEAD: ALAB-410 was the initial standard
5 and then the licensing board ultimately applied that standard
6 at the proceeding there.

7 JUDGE FRYE: Off the record for a second.

8 (Discussion off the record.)

9 JUDGE FRYE: Back on the record. ALAB-410 and you
10 had a comment.

11 JUDGE BRIGHT: Yes. Ms. Woodhead, I am sure you are
12 aware that I fought that thing for several years back and
13 forth at the Commission. I might say just as a point that
14 this situation is somewhat different from what was addressed
15 in 410. There, unless the Mothers for Peace who were the
16 intervenor, they admitted that unless they could get a
17 qualified expert they had no case.

18 In fact, their last hope died going skiing, I
19 guess and they literally withdrew.

20 MS. WOODHEAD: Yes.

21 JUDGE BRIGHT: This doesn't appear to me as being
22 the same situation because we have concrete allegations here,
23 specific points, which were never made in Diablo Canyon that
24 the CBG is making, litigable issues. This is not the case in
25 ALAB-410 or rather that brought forth ALAB-410.

1 MS. WOODHEAD: Nevertheless, Judge Bright, the
2 allegations of inadequate doors, locks and keying systems
3 that appear in the contention were developed with that same
4 security plan. Those are the factual issues. Unless they
5 have an expert in security systems who can explain in what
6 manner these parts of the security system are inadequate they
7 have no case and no reason to see the security plan.

8 No attorney can look at the security plan and make an expert
9 evaluation of the security system and say, "These are the
10 inadequacies." They would have no more information from
11 having their attorney look at it in terms of any scientific
12 explanation than they do at the moment. They know in general
13 what the security system is. They allege for some reason that
14 parts of it are inadequate.

15 If their attorney looks at this part of the security
16 plan, how will he have any information that is significant
17 beyond what they have right now? He cannot assess it as an
18 expert. All he can say is, "This is what it is" and tell the
19 expert who can come up with some testimony which would be
20 expert testimony and not a lawyer's representation.

21 So whether or not Diablo Canyon had specific
22 allegations or not about the security plan, they still had no
23 way of presenting a case to demonstrate the security plan was
24 inadequate unless they had an expert who could testify that it
25 was not.

1 JUDGE FRYE: I am reading from ALAB-410. It says,
2 "Under governing procedural regulation substantially like
3 those now in effect, the intervenors' counsel in Indian Point
4 '2' was given access to the revised security plan as well as
5 to earlier versions and his participation helped us in
6 assuring that the plan eventually adopted for the plant was
7 adequate. See ALAB-243."

8 JUDGE BRIGHT: I think that is the kind of thing
9 I am trying to say, Ms. Woodhead.

10 MR. BAY: Might I also say that I am quite confident
11 that this is going to be a moot issue and if indeed it turns
12 out that we don't qualify any witnesses when we discuss it
13 we might want to take this matter up again although the
14 ALAB-410 itself sets out the proposition that I stated
15 earlier but I am not sure why we are digressing at length
16 into this at the moment.

17 JUDGE FRYE: What I would like if you could point me,
18 Ms. Woodhead or Mr. Cormier, to specific language in here
19 or in any of these other appeal board decisions.

20 MR. CORMIER: In 410 let me direct your attention
21 and I won't have the same page numbers as you have if you
22 got it out of the Official Reporter, but near the end of the
23 opinion before the separate opinions of Judge Quarles and
24 Johnson, it appears to be two pages in front of that, the
25 holding of ALAB-410 was that the licensing board perhaps as a

1 result of guidance did not properly restrict the release to
2 those portions of the plan needed by the intervenor to liti-
3 gate its contention or to limit the portions of the plan to be
4 released in terms of the qualifications of the proposed expert
5 witness. Five paragraphs later --

6 JUDGE FRYE: Does this have a number of letter in
7 front of it?

8 MR. CORMIER: Yes. The Board goes on to delineate
9 in subparagraphs (a), (b) and (c).

10 JUDGE FRYE: All right.

11 MR. CORMIER: Do you have that section?

12 JUDGE FRYE: Yes. I see where you are looking.

13 "What the Board did not do, however, perhaps as a result of
14 lack of guidance was properly to restrict the release of those
15 portions of the plan needed by the intervenor to litigate its
16 contention or to limit the portions of the plan to be released
17 in terms of the qualifications of the proposed expert witness."

18 That seems to me to speak to two things, release to
19 those portions needed by the intervenor to litigate its
20 contention or to limit the portions of the plan to be
21 released in terms of the qualifications of the expert.

22 MR. BAY: I would agree.

23 JUDGE FRYE: You were going to go on to something
24 else.

25 MR. CORMIER: Yes. Under subparagraph (c) of that,

1 "The plan or any portion thereof..." and the Board describes
2 the procedures it would have followed, "... is to be released
3 solely to individuals qualified to review it. It is to be
4 made available to the intervenor's attorney plus any experts
5 it selects who are so qualified. Only those portions of a
6 plan which relate to the expert's area of expertise need be
7 shown that expert."

8 JUDGE FRYE: I think that supports Mr. Bay's point.
9 It says it is going to be made available to the attorney plus
10 any experts.

11 MR. BAY: At this point although it is not directly
12 on point to what we are talking about, but if we are going to be
13 discussing these ALAB decisions out of Diablo I would like to
14 point out for the information of the parties and the Board may
15 well be aware of this, I am not sure.

16 Before I came down yesterday I spoke with Mr. Harry
17 Willis who is the attorney for the Mothers For Peace who
18 handled the security portions of that hearing and when the
19 security portions of that hearing went up to the appeals board
20 and there was what amounted to a trial de novo, there were
21 indeed three intervenor expert witnesses qualified and, in
22 fact, they all saw the entire plan.

23 JUDGE FRYE: I think this point in subparagraph (c)
24 clearly says that it is made available to the attorney plus
25 any experts who are qualified.

1 MR. CORMIER: I see the Board's interpretation. I
2 took a different interpretation but I am willing to defer on
3 that point. I would still have the question whether it is
4 again consistent with the principle here that it be restricted
5 to that which is necessary.

6 JUDGE FRYE: Yes.

7 MR. CORMIER: Whether it needs to be disclosed to
8 all of CBG's attorneys.

9 JUDGE FRYE: That gets us to the next point. Do you
10 need three attorneys?

11 MR. HANSELL: Why don't we caucus on that point.

12 JUDGE FRYE: Everyone else is going with one.

13 MR. HIRSCH: I beg to differ. I note that Mr.
14 Cormier has identified three counsel for the applicant.
15 In the letter that was sent out you identified Christine
16 Helwick and Glenn Woods.

17 MR. CORMIER: If that is the point, I would be happy
18 to delete those two from access to CBG security information
19 given an appropriate restriction on the other side.

20 MR. BAY: It is very clear what our situation is.
21 We have three attorneys who are working on this matter on a
22 pro bono basis with geographic separation between myself who
23 has the longest and greatest involvement particularly in the
24 security area and the other attorneys and two of our key
25 expert witnesses. I don't see any harm. I really fail to see

1 any harm with the three of us being qualified and that makes
2 a great deal of practical significant to us.

3 JUDGE FRYE: Is that because you are in San
4 Francisco?

5 MR. BAY: It is because I am in San Francisco and
6 because Dorothy -- and we are all volunteering as all pro bono
7 and their abilities to squeeze time out from their regular
8 day-to-day duties is somewhat more limited than mine has been.
9 Like I say, I don't see that there is harm. There has been
10 no challenge at all and I don't think there could or should be
11 of any lack of ability or intent to abide by the protective
12 order.

13 JUDGE FRYE: I don't read Mr. Cormier's objection
14 as saying that.

15 MR. HIRSCH: Our question though is if there is no
16 question about them not disclosing material, there is no
17 reason that they can't have access to it. They will be of
18 assistance to this Board in making its decision. I do want to
19 note the irony of the University saying that we are putting
20 forth too many people, proposed people, as authorized indivi-
21 duals. If you look at their list of proposed people --

22 JUDGE FRYE: We are just talking about attorneys
23 now.

24 MR. HIRSCH: But because of the numbers, that is
25 the point he was raising. I don't see what difference it

1 makes if the witnesses were attorneys. He is putting forth
2 20 people who are named and an additional unnamed number that
3 he wants to have access to our material. I find it somewhat
4 ironic that he is claiming that we are putting forth too
5 many.

6 I think that since there is no allegation that any
7 of the three counsel will not abide by the nondisclosure
8 and since they are all pro bono, it would be a real hardship
9 on us if they were not able to help because they can't be full
10 time since they are not being paid, there just seems no basis
11 to restrict them particularly in light of the numbers that
12 they are putting forward.

13 MR. CORMIER: Judge Frye, all we are talking about
14 right now is this next procedure to go into in camera
15 discussions. That is all we are talking about now. If at
16 some point later on, we qualify, this issue may come up again,
17 the number of counsel for intervenor.

18 I understand the inconvenience but on the other
19 hand it is clear from all the appeal boards ruling in this
20 that they take security of protected information very
21 seriously and obviously when you multiply the number of
22 people, that certainly applies to the University and we don't
23 deny that. When you multiply the number of people that have
24 access to this information, you increase the risk that it
25 gets out.

1 Mr. Hirsch has somewhat mischaracterized the status
2 of our authorized persons. The University did not assert nor
3 does it claim that all those people have access to the
4 University security plan. They do not.

5 JUDGE FRYE: Let's just talk about attorneys now
6 really.

7 MR. CORMIER: If there is a practical way for the
8 University to limit it, we certainly would. That protected
9 information definition is much broader than the security
10 plan. All we are talking about now is an in camera examina-
11 tion of the security plan and there are very few people at
12 the University with access to the actual security plan.

13 JUDGE FRYE: Ms. Woodhead.

14 MS. WOODHEAD: We have to distinguish between the
15 security plan to which the University has the right, it is
16 theirs, has a right to look at it and staff has a right
17 as the regulators to distinguish that from CBG's proposed
18 information which I am still convinced is information which
19 should be submitted to the law enforcement authorities and
20 not NRC, but in the event it is relevant to this proceeding,
21 that is a very different matter than the security plan.

22 What CBG is getting access to is the security plan.
23 What we may hear from CBG is something extraneous to that,
24 maybe relevant to it.

25 JUDGE FRYE: That is what you are going to find out.

1 MS. WOODHEAD: But it is not at this point part of
2 the security plan.

3 JUDGE FRYE: True.

4 MS. WOODHEAD: So it is two different kinds of
5 information.

6 JUDGE FRYE: But we are just talking about whether
7 they should have three attorneys.

8 MS. WOODHEAD: It is a very serious question as to
9 whether or not CBG is allowed to have a great number of people
10 with access to the security plan at UCLA. It is a totally
11 different question as to whether the staff and applicant have
12 access to whatever information they propose. It is two
13 different kinds of considerations and I don't think we should
14 confuse them.

15 MR. CORMIER: Again I would recommend for the
16 purpose of this next immediate proceeding, that is all I am
17 concerned about discussing now. I think it would be prudent
18 to limit it to one counsel from the parties.

19 (Whereupon, the Board members conferred.)

20 JUDGE FRYE: We will permit all three to have
21 access. At this point I think we should go into the in camera
22 session.

23 MR. BAY: Could we have a brief moment to caucus
24 here a moment? I think there may be what to my mind would be
25 a much more effective way to handle it procedurally but I need

1 to talk to my colleagues momentarily to be sure that I am
2 correct.

3 JUDGE FRYE: We are always very anxious to hear
4 anything that might work a little more efficiently. We will
5 take a short recess.

6 (Whereupon, a short recess was taken.)

7 JUDGE FRYE: Back on the record. This, I take it,
8 does not involve any protected information?

9 MR. HIRSCH: That is the question. We were a little
10 uncomfortable about the identity of people who will have access
11 to material being publically known. I am wondering whether
12 without having to get a ruling --

13 MR. CORMIER: Why don't we just go in camera now?

14 MS. WOODHEAD: I thought we were talking about
15 witness qualifications.

16 JUDGE FRYE: We are talking about witness qualifi-
17 cations.

18 MS. WOODHEAD: How is that protected?

19 MR. HIRSCH: We are, as you noticed in our letter,
20 although I am not sure you actually did notice, we had
21 requested that the identity of at least our proposed authorized
22 persons not be publically disclosed. We think there might be
23 a problem if people know who has the plan or who knows how to
24 breach the security. That is why we had asked that material
25 related to them not go into the PDR at least without getting

10:44-10:55

3A

1 their permission first.

2 MS. WOODHEAD: It is a little late. Everything we
3 put out goes into the PDR.

4 MR. HIRSCH: We asked you not to in our cover letter
5 to you. I noticed you did not.

6 MS. WOODHEAD: But you do not have any legal basis
7 to ask that. We don't have secret witnesses at NRC.

8 MR. HIRSCH: All right. I guess since it is
9 already out, there is not much we can do about it now. Then
10 it need not be in camera.

11 MR. CORMIER: I have no objection. As Mr. Hirsch
12 knows I did not serve copies of our pleadings to the Public
13 Document Room.

14 MS. WOODHEAD: They go in there automatically.

15 JUDGE FRYE: I don't think so, not if you didn't
16 send them to them. If I get a letter, for instance, from
17 somebody who just writes in and says thus and so about this
18 reactor, if they don't send it to the Public Document Room,
19 the Public Document Room doesn't pick it up automatically.
20 Someone has to give it to them or rather the Docketing and
21 Service, I should say, not Public Document Room, but I am
22 sure that Public Document Room is in the same category.

23 MS. WOODHEAD: I thought our distribution system
24 sent it to everybody. I don't know. Maybe I am wrong.

25 MR. HIRSCH: It does unless you ask them not to and

1 obviously that will now be in the PDR. It is disappointing.

2 JUDGE FRYE: All right. Do you want to lead off,
3 Mr. Hirsch?

4 MR. HIRSCH: All right. I will begin with the
5 University's proposed witnesses.

6 JUDGE FRYE: We are taking objections.

7 MR. HIRSCH: Objections to witnesses, right? Did
8 I misunderstand something?

9 JUDGE FRYE: I think the burden is on the parties
10 sponsoring the experts to qualify the experts and I was
11 thinking more in terms of your responding to the University's
12 objections although maybe it is better to start out with a
13 reiteration or a summarization of the objections.

14 MR. HIRSCH: Summarizing the objections would be
15 useful.

16 MR. CORMIER: Again I think it is necessary to
17 distinguish the question of accessed information from the
18 question of who is qualified to give testimony in this
19 proceeding. I think CBG's pleadings and objections have
20 confused that issue because apparently the concern they have
21 raised, the only interest they raise in their objections is
22 "Look, these people are not qualified, therefore they should
23 not get access to this information.

24 MR. HIRSCH: That is not correct.

25 MR. CORMIER: The extent that that is the concern

1 they have, the concern is misplaced because the access to
2 information that the University needs for its people which
3 includes the three people identified as witnesses as well as
4 the rest of its authorized persons is based on another ground
5 entirely. It has nothing to do with whether they are so-called
6 security aspects, whatever we may determine that to be.

7 It is that they are the official representatives
8 of the licensee who as a matter of right has access to
9 security information.

10 JUDGE FRYE: Now you are justifying Mr. Ashbaugh,
11 Mr. Ostrander and Mr. Wegst.

12 MR. CORMIER: No. I am just pointing out the
13 importance of distinguishing the concern with accessed
14 information.

15 JUDGE FRYE: Between that and experts.

16 MR. CORMIER: Yes. There are, in fact, -- the
17 situation is unequal and CBG and no cause to complain that
18 the parties are not treated equally. The University is the
19 licensee. It does not have problems with access.

20 MR. HANSEL: Why are we talking about this subject
21 right now? My understanding was that what we were talking
22 about was the qualifications of specific witnesses rather
23 than the terms of the protective order.

24 JUDGE FRYE: Right. I think that is right. You
25 made the distinction. I think that is good. Now do you want

1 to summarize or reiterate your objections to their witnesses,
2 CBG witnesses?

3 MR. CORMIER: Is that what we are talking about now?

4 JUDGE FRYE: Yes.

5 MR. CORMIER: I think they are summarized in my
6 pleading of January 30. I don't know that I need say anything
7 more until I hear from CBG. That was the purpose in submitting
8 the pleading.

9 JUDGE FRYE: All right. Do you have anything
10 further?

11 MS. WOODHEAD: I would just like to emphasize
12 that there are only two men proposed by CBG who even have
13 the appearance of being qualified as security experts and
14 that is Mr. Rogge and Mr. Cornwell who obviously are
15 connected with physical security systems. However, there is
16 nothing on the face of their qualifications that tell us
17 that they have specific knowledge of about the specific kind
18 of security system at UCLA and the burden of proof is on CBG
19 to demonstrate that they have that specific kind of knowledge.
20 At this point, they have not done so.

21 The other people proposed have had no experience
22 or training in security systems and there is no question
23 that they are not experts.

24 JUDGE FRYE: Mr. Bay.

25 MR. BAY: I think we will start off with a

1 radically different view as is not too unusual of what we are
2 trying to accomplish at this moment. We have a contention
3 that says in essence that the security at the facility is
4 inadequate. We are proposing and will put forth an affirmative
5 case with expert witnesses who will set forth what is a
6 credible threat to this facility in terms of sabotage, terror-
7 ism and theft, the types of attack, if you will, and whether
8 the security at this facility in toto is adequate to repel
9 such credible threats.

10 The people that we have put forward as experts are
11 experts to draw such conclusions, to examine whether this
12 plan and the physical security features of this facility are
13 adequate to repel a threat.

14 They have extensive experience in the field of
15 security. They have extensive experience in law enforcement.
16 Again, to look back to the Diablo case our witnesses it
17 turns out are highly similar to the witnesses who were
18 actually qualified before the Appeals Board in their trial
19 de novo as it were.

20 They qualified one Jeremiah Taylor who was the
21 assistant police chief, I believe, in San Francisco and who
22 had been on the force for 20 years and involved in developing
23 security systems for police stations, attack squad procedures,
24 that kind of thing.

25 He really had no expertise in terms of designing

1 security systems for reactors, no site specific experience in
2 that way. He was a police station security designer with
3 20 years of general police experience.

4 Mr. Geafrida was an anti-terrorist expert and
5 trained in training military people in anti-terrorism
6 techniques, a general terrorist, sabotage, security back-
7 ground. Mr. White had some 20 years on the FBI and, in fact,
8 his qualifications and his experience was not largely
9 centered on terrorism or security. In fact, our people,
10 Mr. Theo Taylor and Mr. Hirsch will be more explicit about the
11 qualifications is one of the country's and world's foremost
12 experts on issues of nuclear proliferation or nonproliferation,
13 terrorist attacks.

14 JUDGE FRYE: Let me ask you a question though. He
15 is obviously very well known and a renown individual but
16 does he have specific nuts and bolts kind of expertise on
17 this sort of thing or he is more in a theoretical end of
18 things and the general sorts of measures one takes to prevent
19 proliferation?

20 MR. HIRSCH: Both. He has had considerable exper-
21 ience with the nuts and bolts. He has toured numerous fuel
22 cycle facilities and if you have read any of the works about
23 him or by him you will see 'the details, the specific nuts and
24 bolts, of how material could be diverted from numerous fuel
25 cycle facilities in this country. So he clearly has a nuts

1 and bolts ability. Particularly, however, the primary use for
2 Dr. Taylor is to help us do what you asked us to do which is
3 to define the environment in which this facility exists and
4 help us understand the credible threats to this facility and
5 then interact as to whether the systems here are adequate
6 to deal with that threat. So Dr. Taylor and Dr. Hafemeister
7 both of whom have a good deal of understanding of the safe-
8 guards issues and are published widely in the area, and
9 particularly Dr. Taylor knows the nuts and bolts a good deal.
10 We will be interacting with the people who know the nuts and
11 bolts.

12 You essentially have extraordinary experts from FBI,
13 counterintelligence and so forth who know this stuff backwards
14 and forwards but we have to interact. We have to define what
15 we have here and these are the methods you can use to counter-
16 mand them. Those countermanding measures are ones that within
17 the competence of the people who may be likely to carry out
18 that act.

19 JUDGE FRYE: I am not sure I followed that last
20 statement.

21 MR. HIRSCH: Let me try to be specific. I under-
22 stand that the Board has asked in one of its recent orders
23 that the parties are to basically define the environment in
24 which this facility exists so we have some sense of what the
25 threat is. Then we will examine the specific security to see

1 whether it can stand up to that threat.

2 It seems there are essentially two pieces of
3 information the Board needs to make for site specific judgment
4 for this facility. You have to define that threat, the
5 environment in which the reactor exists, the abilities of
6 people, therefore, in terms of what they might carry out and
7 then we have to look at whether those sufficient features are
8 sufficient to deal with that threat and in interacting together
9 Dr. Hafemeister and Dr. Taylor and Rogge and Cornwell, in
10 particular, will be able to tell you both of that. They
11 will tell you (a) if it takes this to by-pass the alarms,
12 I have to tell you there is someone who could make a nuclear
13 weapon and is not going to be deterred much by that little
14 variant of by-pass in the alarms.

15 The bottom line again is that in particular with Dr.
16 Taylor, he has long experience in terms of reviewing the
17 security of numerous fuel cycle facilities.

18 MR. CORMIER: I think we are going far beyond what
19 legitimately can be discussed and resolved here. None of the
20 statements made by Mr. Bay or Mr. Hirsch appear on the state-
21 ments of qualifications that the parties have to consider.
22 Now I have no idea that Dr. Taylor knows anything about the
23 nuts and bolts. I don't know what Mr. Hirsch means by the
24 nuts and bolts. I don't know what Mr. Hirsch means about
25 defining the environment. But there is nothing on the statement

1 of qualifications that would cause one to believe that Dr.
2 Taylor has the requisite experience. Likewise, taking Mr.
3 Rogge who is the first one on the list, three paragraphs
4 describe his tours of duty with the FBI. Those of us who
5 are familiar with the operations of the FBI know that
6 very few of those agents get involved in security matters.

7 There is no representation. In fact, the only
8 thing that suggests any connection with security matters are
9 the societies and clubs to which he belongs, Society for
10 Industrial Security and I don't know what that means,
11 Association of Former Intelligence Officers which I understand
12 is essentially a social club for ex-FMI agents, California
13 Association of Licensed Investigators and I assume that means
14 he is a private detective but other than that, we have no
15 information as to his qualifications.

16 We have a nice interesting description of where he
17 was in the FBI through his years of professional employment
18 but aside from that, there is nothing there that indicates
19 that he is qualified to review the specific security systems
20 in place at this facility.

21 MR. HIRSCH: I wasn't able to quite finish. I
22 would like to add something if I may.

23 JUDGE FRYE: Certainly.

24 MR. HIRSCH: I think that it is extraordinarily
25 important in dealing with the qualifications of proposed

1 witnesses that we understand the standard that is being
2 applied for them. I think the best way of understanding the
3 standard that is being proposed by the NRC staff and by the
4 University is to take a look at the witnesses they are pro-
5 posing. Obviously they believe that those people meet that
6 standard and if you can judge from anything from that, that
7 will tell us something about our witnesses.

8 The University has put forth a chemical engineer
9 with absolutely no security experience.

10 JUDGE FRYE: We are aware of that. Let's stick to
11 the qualifications.

12 MR. HIRSCH: I would like to be able to turn to
13 the qualifications of the other witnesses.

14 JUDGE FRYE: You are saying what is sauce for the
15 gorse is delectable diet for the gander.

16 MR. HIRSCH: Yes. And if the Board wants to take a
17 look at Dr. Taylor, Dr. Hafemeister, Richard Rogge, Gale Corn-
18 well and the other witnesses, it must do so in the context
19 of the standard that is being proposed by the other parties.
20 We have provided for you a team of the people who wrote the
21 book, people who have decades of experience in physical
22 security.

23 Richard Rogge was special agent in charge of numerous
24 FBI offices in this country and was in charge of the physical
25 security of the field offices throughout the country.

1 G. Thomas Cornwell as indicated in his professional qualifica-
2 tions has training in demolition, sabotage, military intelli-
3 gence, counterintelligence and so forth. They both have
4 decades and decades of physical security experience.

5 I just find it rather extraordinary that we are
6 hearing that people with these credentials are not qualified
7 and are being told that a health physicist and a chemical
8 engineer and a sanitary engineer meet the standard that is
9 attempting to be imposed upon us.

10 Lastly, this is not a game. This is to find out
11 if the place is safe, if it is physically secure. If I were
12 a licensing board and I wanted to make that judgment, I can't
13 think of a better team. I cannot think of a better way to
14 find out whether this is safe than to have two experts in
15 nuclear safeguards, two people who know physical security
16 backwards and forwards, an electrical engineer who knows
17 electrical wiring backwards and forwards and its designed
18 automated security systems and a physicist who both under-
19 stands the site characteristics of the facility and its design
20 sensing systems as a specialist in sensing systems.

21 I can't see a better way to get the information I
22 needed than from that kind of a team and particularly when I
23 compare it with the kinds of teams that are being proposed
24 by the other parties.

25 MR. CORMIER: First of all, the apparent fairness

1 that Mr. Hirsch is suggesting the Board follow in reviewing
2 the qualifications of experts is faulty. Again Mr. Hirsch
3 seems to be annoyed with the fact that the parties are not
4 treated equally in this proceeding. They are not.

5 The University is the licensee. That changes the
6 situation entirely. CBG's experts on a security contention
7 have two hurdles to get over. They have to get over the
8 general standard which is analogous to the Federal rules
9 standard for qualifying expert witnesses.

10 In addition, they have to get over the standards
11 set out in the Appeal Board for access to protected informa-
12 tion and those standards are very specific and the Appeal
13 Board made it clear that they take access to a security plan
14 as a serious matter.

15 JUDGE FRYE: You are back to ALAB-410 now?

16 MR. CORMIER: The whole series, 410 right up to
17 653 which I think is relevant, the most recent action by the
18 Appeal Board resolving a security contention. Bringing in
19 the University's witnesses now is of no relevance to the
20 qualifications of CBG's witnesses. The University's witnesses
21 rise or fall on different sets of standards than apply to CBG.

22 JUDGE FRYE: Do you want voir dire?

23 MR. CORMIER: I would like more written information.
24 I can't even voir dire on the basis of the information that
25 is presented here.

1 MS. WOODHEAD: Mr. Chairman, in my view we need a
2 Board ruling on whether any of the witnesses of CBG, proposed
3 witnesses, are qualified on the paper, not the representations
4 which is testimony of a representative on the qualifications
5 of someone else. That is really not evidence of record.
6 The evidence of record as to their expert qualifications are
7 their professional qualifications which were prepared by
8 them and whether or not that is sufficient of any of the six.
9 I think that is the only question at this point. We can't
10 testify for other people.

11 I think we should have a Board ruling on whether
12 any of these people have been shown to be experts in the
13 specific area of this contention which is the security of
14 locks, doors and key systems.

15 MR. HIRSCH: Judge Frye, I should consult with my
16 colleagues but I suspect we don't have a problem with that if
17 the same decision is made at the very same moment as to the
18 qualifications of Ms. Woodhead's witnesses and of Mr.
19 Cormier's on the paper that the supplied to you. If they
20 want to risk that, that would be fine with us.

21 JUDGE FRYE: We will just disqualify everyone, is
22 that what you are saying?

23 MR. HIRSCH: I suspect you won't.

24 MR. CORMIER: I have no problem with that. Even
25 though the standard is inapplicable, I have no problem with

1 that. The University made it clear the University cannot
2 decide what experts, outside experts, it needs until it knows
3 the allegations. It has not even had discovery. I have no
4 problem if the Board rules that nobody is qualified now.
5 Indeed, I am sympathetic -- somewhat sympathetic to the
6 assertion of Mr. Hirsch. It is clear that we are unable to
7 describe with any particularity the expertise of our proposed
8 witnesses because we don't know what it is we are asking them
9 to do.

10 (Whereupon, the Board members conferred.)

11 JUDGE FRYE: Let's take a short recess at this
12 point so we can confer.

13 MR. HIRSCH: I want to make one additional statement.

14 JUDGE FRYE: We will stay on the record then.

15 MR. HIRSCH: Just simply, it is said that our
16 witnesses have not demonstrated qualification to analyze
17 a specific security system at this facility. I just want to
18 remind the Board that our witnesses have not yet had access
19 to those specific systems to show whether or not they have the
20 qualifications to review them or not, in other words, which
21 particular burglar alarm system or whatever is still in the
22 dark. I just wanted to remind the Board of that.

23 MR. CORMIER: I again refer the Board back to the
24 statement of qualifications proposed by Mr. Hirsch or submitted
25 by Mr. Hirsch. They don't even go that close to even to talk

1 about any security system or any security experience.

2 MR. HIRSCH: I disagree and I again say that if you
3 wish to have --

4 MR. CORMIER: Please point out in Mr. Rogge's what
5 relevant information there would suggest that he is qualified
6 to review the security system at a NRC licensed facility?

7 MR. HIRSCH: If you will show me that for Mr. Wegst--

8 JUDGE FRYE: Wait a minute. Let's just talk about
9 your witnesses at this point.

10 MR. HIRSCH: All right.

11 MR. BAY: "I have security at a facility." May
12 I have his qualifications?

13 (Whereupon, Mr. Bay was handed a document by
14 co-counsel.)

15 MR. BAY: "Has designed security systems for FBI
16 offices. He has long-standing and general" --

17 MR. CORMIER: Where is that in the statement of
18 witness qualifications? It doesn't even talk about what he
19 did in the FBI.

20 MR. HIRSCH: I will read it to you, Mr. Cormier,
21 if that is what you want.

22 MR. CORMIER: No. What are you relying on?

23 MS. WOODHEAD: Are you reading his professional
24 qualifications that you gave us?

25 MR. HIRSCH: Precisely.

1 MS. WOODHEAD: It doesn't say anything in mine
2 about designing --

3 MR. HIRSCH: That was Mr. Bay's representation.
4 I will quote, "In 1969 I was promoted to inspector and
5 reassigned to FBI headquarters in Washington, D. C. where I
6 acted as a personal representative to Director Hoover while
7 inspecting FBI field offices."

8 MS. WOODHEAD: What does that have to do with
9 security systems?

10 MR. HIRSCH: Excuse me a second, please. I again
11 want to remind the parties that the qualifications of witnesses
12 need to be compared with the material that has been presented
13 regarding the other witnesses. Mr. Rogge was trained by FBI
14 at Quantico, Virginia. He has been an assistant special agent
15 in charge for a decade and special agent in charge of the
16 offices. He currently operates a professional security firm
17 and was with the Bureau for 30 years in terms of its security.

18 I frankly am somewhat astonished again when we see
19 the material that is presented to us from the opposing parties
20 that they are raising questions about the degree of information
21 provided on Mr. Rogge.

22 MS. WOODHEAD: May I make this clear one more time.
23 Mr. Hirsch, you are attempting to qualify an expert --

24 MR. HIRSCH: So are you.

25 MS. WOODHEAD: No. We have the security plan. You

1 are absolutely wrong. You are confusing the issue. We have
2 the security plan as part of the NRC and the University as the
3 licensee. We do not need to get access from the Board. We
4 have it under authority as employees. You are attempting to
5 demonstrate that you have an expert who can evaluate physical
6 security systems so he can qualify to be given access. We
7 have access. We don't have to prove anything.

8 JUDGE FRYE: I understand the situation. It is very
9 clear that the question from their point of view is whether
10 you have those people who have access to the UCLA security plan
11 on behalf of the staff may also have access to the information
12 that they want to protect but I don't want to get into that.
13 I want to stay away from that.

14 MR. HANSELL: May I offer a couple of suggestions?
15 Typically in a court proceeding when the issue comes up about
16 the qualifications of an expert normally what happens is that
17 that issue is resolved on the basis of voir dire. Somebody
18 offers a particular witness for a particular purpose and they
19 have the option of asking various questions. Then the opposing
20 parties have an opportunity to question him also.

21 It is a standard procedure and it would seem to me
22 that it would make sense in this situation as well that this
23 proceed through some form of voir dire. It doesn't necessarily
24 have to be the give and take but that is the standard way it
25 is done.

1 JUDGE FRYE: You have a point.

2 MR. CORMIER: Let me respond to it.

3 JUDGE FRYE: Then I have a question.

4 MR. CORMIER: I would like to respond to the previous
5 point that you focussed on, Judge Frye, because that is why I
6 prefaced my remarks that you must distinguish between access
7 to information including CBG's information with the qualifica-
8 tions of witnesses.

9 The University asserts right of access to that
10 information wholly aside from the question about whether any
11 of University's witnesses are qualified as expert witnesses in
12 this proceeding. It is a separate issue.

13 JUDGE FRYE: That information is your security plan.

14 MR. CORMIER: No. Their information. Whatever it
15 is asserts a right of access to their information, whatever
16 allegations they want to make about the facility. Let me point
17 out also that CBG did not take exception to any of University's
18 authorized persons aside from the expert witnesses who are
19 proposed, Dr. Wegst, Mr. Ashbaugh and Mr. Ostrander.

20 If you will note on those expert witnesses Dr.
21 Catton, director of the lab, Mr. Tony Zane and Ms. Jule
22 Bishop were indicated as authorized persons who will have a
23 need to know for this information. CBG took no objection to
24 that.

25 MR. HIRSCH: Excuse me, Mr. Cormier. At page four

1 are our objections.

2 JUDGE FRYE: I think we are getting far off the
3 point.

4 MR. CORMIER: My only point is that that is why it
5 is important to distinguish the question of access to their
6 information from the question of qualifications of expert
7 witnesses. They are separate issues and they have to be kept
8 separate.

9 MR. HIRSCH: May I make just an inquiry so I know
10 what we are doing? Are we now determining whether people
11 proposed by staff, applicant and CBG as proposed witnesses --
12 not dealing with the other authorized people -- but as
13 proposed witnesses will be permitted to testify in this
14 proceed or qualified to and by virtue of that will have access
15 to any protected information generated by any of the parties?
16 Is that what we are doing the way one normally does when a
17 witness is about to go on the stand and there is a determination
18 whether they are qualified to testify or are we resolving
19 whether they have some threshold showing as to whether they
20 are entitled to access to our information or qualified to
21 testify?

22 JUDGE FRYE: I thought we were going the former.

23 MR. HIRSCH: All right. Then I wish to remind the
24 parties that if indeed that is the standard, the people put
25 forward by the applicant and staff as experts must meet that

1 standard as to whether they are qualified to be experts.

2 MS. WOODHEAD: Of course.

3 MR. CORMIER: There is no disagreement there as
4 to whether Staff and the University's witnesses will be
5 qualified as expert witnesses.

6 MS. WOODHEAD: Right.

7 MR. CORMIER: Now the University has indicated that
8 as to it it is premature to even decide what the witnesses
9 are but that is a different issue.

10 JUDGE FRYE: Let me explore something here. Mr.
11 Hirsch, you talked in terms of your witnesses basically
12 presenting two sides of a particular problem, one, the
13 threat side to the means you use to meet the threat.

14 MR. HIRSCH: Working together on that.

15 JUDGE FRYE: Now I take it that people like Dr.
16 Taylor and Dr. Hafemeister and Dr. Kohn are the threat side.

17 MR. HIRSCH: Not Dr. Kohn so much.

18 JUDGE FRYE: Dr. Kohn is on the other side.

19 MR. HIRSCH: Right.

20 JUDGE FRYE: But Hafemeister and Taylor are.

21 MR. HIRSCH: Primarily. Although Taylor has
22 extensive experience with the systems themselves but their
23 primary input is to tell us what is outside the door. The
24 other people are tell us whether the door is strong enough
25 to keep them out.

1 JUDGE FRYE: All right. As such, do they need to
2 have access to the security plan?

3 MR. HIRSCH: We put them down as people who may
4 because we don't know what is in the plan. My suspicion is
5 that it is going to be difficult for Dick Rogge after having
6 seen a particular alarm system and Dr. Plotkin to say how
7 you loop it. For them not to communicate to Dr. Taylor in
8 some fashion, it takes this level of expertise is that level
9 of expertise that would be within or without the envelope,
10 inside or outside the envelope of the expertise of the threat
11 that you envision.

12 I see it as extremely difficult for that interaction
13 which is what we think the Board needs to occur. You
14 essentially have to have the two interfaced to make a judg-
15 ment.

16 JUDGE FRYE: I suppose at this point we should
17 confer.

18 JUDGE BRIGHT: Maybe we will have an inspiration.

19 JUDGE FRYE: Let's go off the record for a short
20 recess.

21 (Whereupon, a short recess was taken.)

22 JUDGE FRYE: Back on the record, please. We would
23 like to hear from these witnesses. We would like to have
24 them in for voir dire so we can ask them some questions and
25 so the parties can ask them some questions. That is going to

1 present a practical problem in that two of them are not here.
2 They are on the east coast and obviously we can't hear from
3 them today.

4 The thought occurs to us about a session in Washing-
5 ton and do the same thing for those witnesses. How does
6 that strike you, Mr. Cormier, since you are obviously the one
7 that would have to travel along with someone from CBG and any
8 staff witnesses, too, in addition.

9 MR. CORMIER: I have no objection to a proceeding
10 held in Washington. Again I would think that perhaps a first
11 step would be to the extent that the Board wishes to entertain
12 it to permit CBG an opportunity to redo its written qualifica-
13 tions. The University would not have any categorical objection
14 to that so that we have something in writing if we are going
15 to focus a voir dire which we would have the right to do
16 any way.

17 JUDGE FRYE: Maybe the easiest way is just to have
18 two tours of the NEL to the extent that the second one might
19 be necessary, just go with the attorneys this time and then
20 address witness qualifications later and to the extent that we
21 find qualified people, that would mean a second tour.

22 MR. CORMIER: We would have no objection to that.

23 MR. HANSELL: May I suggest just in the interest of
24 time that since four people will be available for CBG this
25 afternoon that they be voir dired this afternoon as experts to

1 testify in this hearing and that staff and the applicant can
2 also make available any of their people this afternoon for
3 that same purpose. It might be an efficient way to go with
4 perhaps a preliminary tour to follow that either today or
5 tomorrow and then to conclude the voir dire in Washington at
6 a mutually agreeable time.

7 MR. CORMIER: The University would object to any
8 consideration of its witnesses as matters presently stand.

9 JUDGE FRYE: I understand that.

10 MR. CORMIER: We don't even know what we are
11 bringing witnesses for.

12 JUDGE FRYE: Until you have been through the discovery
13 session, I can appreciate that point. It does seem to me
14 that we have to get this initial discovery session underway
15 because until we do we are right at dead center and we can't
16 move anywhere.

17 MR. HIRSCH: In order to expedite it, I think that
18 since there are four of our people available for voir dire
19 we should do that and if qualified then take the tour. For
20 people who are not available for voir dire --

21 JUDGE FRYE: Obviously we can't do that.

22 MR. HIRSCH: Right. For any party, it seems to me,
23 none of them can have access to anyone's protected information
24 until such time as that has been completed. For us at least
25 and I think this is important for the Board in terms of its

1 scheduling, since it is the site evaluation that these four
2 will be most involved in who are all local and it is the final
3 determination based on that site evaluation where that is
4 sufficient given the threat, we think that we could be able to
5 proceed with those four being qualified now reviewing the
6 facility and we are willing to have our protected information
7 transferred to whomever becomes qualified today from the
8 other parties and those that are not qualified at this stage
9 will have access only at the time when they are also qualified.
10 At least we can get underway and it seems that it would not
11 cause any delay at all and would indeed avoid the delay if
12 we indeed get the people who are local in and through so the
13 analysis can begin.

14 MR. CORMIER: I must again come back to my initial
15 point. The University's requirement that its personnel have
16 access to whatever this so-called protected information is
17 is a prior question to the question of whether any, which or
18 what University witnesses are qualified as expert witnesses.

19 JUDGE FRYE: Let's do this. Aside from any tour at
20 this point, why don't the attorneys get together and exchange
21 information along the lines the way we did this morning on an
22 ex parte with CBG. Then let's take up the question of who is
23 qualified for what. At that point you are going to know who
24 needs to -- hopefully, you are going to have a much better idea
25 of who needs to have access to this particular information that

1 CBG has. This is not a tour. This would not be a tour.
2 They would have access to the plan. The attorney would have
3 access to the plan and they could hopefully add some specifi-
4 city to the contention after having had that access.

5 MR. CORMIER: How can CBG's attorneys add
6 specificity to the contention if they are going to be
7 restricted from disclosing any aspect of that plan to any
8 witnesses or any CBG representatives?

9 JUDGE FRYE: They would not disclose it to any
10 witnesses. This would be obviously a preliminary stage and
11 then we will talk about who needs access and then we will
12 give those persons we find qualified access.

13 MR. CORMIER: That is what I am troubled with and
14 I am so troubled with it, I think it raises a substantial
15 question that I have to consider motion to stay the proceeding
16 to get it clarified.

17 JUDGE FRYE: Fine.

18 MR. CORMIER: On what basis is it being proposed
19 that the qualifications of University's, licensee's staff, to
20 the so-called allegations of vulnerabilities is going to be
21 based? Is the Board proposing to rule whether or not they are
22 qualified as expert witnesses?

23 JUDGE FRYE: One of the allegations in this conten-
24 tion -- no -- is that the University has not adequately
25 protected information in the past. Now that may or may not

1 turn out to be the case. I don't know. Until you know what
2 that information is, you don't know whom you need to give it
3 to.

4 I am trying to get you in a position so that you
5 know what the information is and you can intelligently
6 address your problems that are raised by that information.
7 The last thing we want to do is to prevent information from
8 getting into the hands of those people who need it.

9 MR. CORMIER: I don't know everybody who is going
10 to need it.

11 JUDGE FRYE: No, you don't, obviously not at this
12 point.

13 MR. CORMIER: Even after I hear the information
14 I am not going to know everybody who is going to need it.

15 MR. HANSELL: How so?

16 JUDGE FRYE: I don't understand that.

17 MR. CORMIER: Let's suppose that CBG alleges that
18 the "XYZ" pipe was constructed half the thickness that it was
19 supposed to be and therefore it is vulnerable to cutting
20 through with the "ABC" tool and producing the "RST" effect on
21 the reactor. Somehow I have to identify and it can't be me,
22 it has to be the staff, identify which plumber or which
23 craftsman either installed or maintains the "XYZ" pipe and
24 is it, in fact, vulnerable to this type of activity or what.
25 If he doesn't know then he has to go out and say, "Well, gee,

1 that question is a question for the vendor or the contractor
2 of this facility." I can't possibly anticipate all those
3 matter and I doubt if I am going to be able to anticipate them
4 after I get the allegations. I may some of them but I don't
5 know how detailed or anything.

6 JUDGE FRYE: No. You don't know at this point.
7 That is the point. I am trying to get you past that point.

8 MR. CORMIER: I am just saying that even past that
9 point it is not certain that I am going to be able to in any
10 way identify all the people who are going to need access to
11 that. I don't understand. I still don't understand what
12 public interest or what other interest is being served by
13 restricting that information.

14 MR. HIRSCH: May I answer that, please?

15 JUDGE FRYE: I have already indicated. You have an
16 allegation that the University has not adequately protected
17 information. Their concern is that that particular information
18 is information that needs to be protected and they don't want
19 it getting out. Now it may turn out to be that the allegation
20 that the University hasn't adequately protected information is
21 not born out and we can't make that judgment but the whole
22 purpose of having a protective order is to protect the informa-
23 tion until we can make the judgment.

24 Now you know what the information is. You need to
25 know what the information is. Right?

1 MR. COPMIER: I think more importantly my staff
2 needs to know what the information is ultimately. There
3 are a few things that I can do with it but I don't think it
4 is terribly useful for the University just that an attorney
5 under a protective order have the information because
6 obviously I won't do anything with it.

7 JUDGE FRYE: All right. But then once you get it,
8 you say I need to show it to Mr. Ostrander or whomever it
9 may be. He will know who this information should be given to
10 and we will deal with that at that point. But you don't
11 know. You can't say that now. You are talking in terms of
12 plumbers and craftsmen and people like that. I don't think
13 frankly and I could be mistaken but I don't think you will
14 find that it is necessary to reveal it to people like that.

15 MR. HIRSCH: Were you contemplating that Mr.
16 Cormier could then after our briefing transmit this informa-
17 tion to Mr. Ostrander before the issue of Mr. Ostrander's
18 ability to be an authorized person is resolved?

19 JUDGE FRYE: No. What I was contemplating was
20 that once he knows ie then he can say, "Yes, I need to give
21 it to him or no, I don't need to give it to him. I need to
22 give it to somebody else." Then we know who he needs to give
23 it to and then we can address that.

24 MR. HIRSCH: All right.

25 JUDGE FRYE: I don't know how else to approach it.

1 Otherwise, we are just on dead center with the thing and we
2 can't do what needs to be done which is to facilitate the
3 exchange here so that we can move on.

4 MR. CORMIER: I understand and I am willing to go
5 along with it but I do want to note for the record that I
6 dont understand on what basis the licensing board can
7 exercise authority to restrict this information to the
8 licensee's and its authorized people acting under the
9 Commission's act who have an established need to know for
10 the information wholly aside from whatever CBG's allegations
11 are and whatever support there is for those allegations. I
12 just don't understand that.

13 MR. HIRSCH: It seems to me that is exactly the
14 issue. Who has an established need to know and it is this
15 licensing board that makes the determination.

16 MR. CORMIER: It is not.

17 MS. WOODHEAD: May I make a suggestion?

18 JUDGE FRYE: Sure.

19 MS. WOODHEAD: May we proceed with the conference
20 among the attorneys to see if there is indeed any information
21 that CBG has that we are interested in getting?

22 JUDGE FRYE: That is what I want you to do.

23 MS. WOODHEAD: And stop this.

24 JUDGE FRYE: We are not going to get anywhere until
25 you know what their information is.

1 MS. WOODHEAD: That is right.

2 MR. CORMIER: I agree. I apologize for extending the
3 discussion.

4 JUDGE FRYE: Once you know what the information is
5 you can say, "Gee, I got a real big problem with this
6 because I have to give it to these people," and then we will
7 deal with that but we are just dealing with something that
8 is very abstract now that we can't solve until you know what
9 the information is and maybe we will do the wrong thing and
10 you can go tearing up to the Commission and they will say,
11 "No, you can't do that."

12 MR. CORMIER: In response to Judge Bright's last
13 remark all I meant is that the University is already held to
14 a standard of established need to know under the Commission's
15 regulations. We are already restricted to limit information
16 to those that have established need to know.

17 JUDGE BRIGHT: I understand that.

18 MS. WOODHEAD: It seems to me at this point we have
19 two questions. What is this information CBG has and whether
20 or not we are even interested in including our people in
21 their information. We may not even be interested in it,
22 number one. Number two, does CBG have an expert witness that
23 can evaluate security systems.

24 We have those two preliminary questions before we
25 go farther.

1 JUDGE FRYE: We do have to get to that point. But
2 let's get this information exchanged and let's let the
3 attorneys take a look at the security plan and those portions
4 of it that you have not expurgated.

5 MR. CORMIER: Oh, I am supposed to give them the
6 expurgated portion?

7 JUDGE FRYE: No, no. Not the expurgated portion,
8 the unexpurgated portion. We will also have to deal with
9 whether there is a problem presented by that.

10 MR. CORMIER: It will take me some time to prepare
11 an expurgated portion. If you will recall the plan that I
12 gave to you had boxes circled around.

13 JUDGE FRYE: Yes.

14 MR. CORMIER: In 20 minutes, I can probably black
15 out those boxes and recopy the plan but I need to do that.
16 I did not do that because we couldn't discuss between ourselves
17 if I had blacked it out.

18 JUDGE FRYE: No, obviously. You would have to show
19 us what you intended to expurgate. Whether that is going to
20 present a problem or not, of course, we don't know until
21 they have seen it, not the expurgated fur the unexpurgated
22 portions.

23 MR. HANSELL: Mr. Chairman, is it your intention that
24 we view the unexpurgated version?

25 JUDGE FRYE: That's right.

1 MR. CORMIER: Unexpurgated?

2 JUDGE FRYE: Unexpurgated. So you will have to go
3 and black out those portions that you put boxes around.

4 MR. HANSELL: No, that is expurgated. Unexpurgated
5 is the complete version. Expurgated is --

6 JUDGE FRYE: I am sorry.

7 MR. CORMIER: I proposed that it would be
8 sufficient for the purposes of our discussion that the
9 University provide an expurgated version at this time.

10 JUDGE FRYE: At this time.

11 MR. CORMIER: Yes. As you have noted, the
12 expurgations are not extensive in the copy that I submitted
13 to you to the Board. What I would propose doing is blacking
14 those out, recopying the plan and provide the expurgated
15 version to CBG's attorneys.

16 JUDGE FRYE: At this time.

17 MR. CORMIER: At this time.

18 MR. HANSELL: Mr. Chairman, let me ask another
19 question. I had assumed that one of the purposes for us to
20 do that right now was for the purpose of being able in some
21 sort of meaningful way to be able to respond to Mr. Cormier's
22 request that certain portions of the plan be expurgated,
23 that is to say, be deleted 'from access to our expert witnesses
24 so that we could look at it and make a threshold determination
25 ourselves or a meaningful determination about whether those

1 portions should be expurgated or not expurgated and the only
2 way that we would be able to do that is to be able to view
3 the unexpurgated version of it. It may be that we may not
4 have any quibble with it or that portions may be insignificant
5 to the points that we are trying to raise or irrelevant to
6 the points that we are trying to raise.

7 I think that probably more would be served by
8 viewing the unexpurgated as distinguished from the expurgated
9 version of it.

10 MR. CORMIER: I must disagree because if they are
11 ultimately going to get the plan and their experts are
12 qualified and assuming the Board goes along with our
13 suggestions for expurgation, that is all they would get
14 any way.

15 JUDGE FRYE: Yes, and I think that if you look back
16 at ALAB-410, they specifically, I think the two technical
17 members of that particular board specifically, indicated
18 certain portions of plans that should not be disclosed.

19 MR. HIRSCH: If I recall, these were dissenting
20 opinions.

21 JUDGE FRYE: There were two.

22 MR. HIRSCH: In the end, they all saw everything.
23 There was nothing expurgated at all.

24 JUDGE FRYE: We may get to that. I don't know,
25 but I think we will start with the blacked out version.

1 Incidentally, they also, I think those two technical members,
2 were relying on a test formulated by Dr. Taylor.

3 MR. HIRSCH: Whom both the intervenors and the
4 applicant in the case had cited.

5 MR. HANSELL: Judge Frye, a procedure when you are
6 dealing with trade secrets and other information that is of
7 value and one side wants to limit access or deny access to
8 experts is simply that you do have an in camera hearing and
9 the entire information is viewed simply with the attorneys
10 and generally the judges there at the same time. I had
11 assumed that that is what we were going to be doing here.

12 JUDGE FRYE: I think that is true of trade secrets
13 but I think this is a little different situation.

14 MR. HIRSCH: How do you anticipate us then being
15 able to make our position known as to whether those are indeed
16 appropriate to be expurgated?

17 JUDGE FRYE: After you see it --

18 MR. HIRSCH: See what?

19 JUDGE FRYE: After you see the plan with the blacked
20 out areas in it, I think you will find that your problems are
21 not as great as you presently perceive them to be. But let's
22 let you start with that and then we will go from there.

23 MR. BAY: Then as I understand it, we will meet with
24 Mr. Cormier and Ms. Woodhead and that meeting will include
25 Mr. Hirsch as much as we are giving more specificity to them

1 in an informal way much as we went through it with you, the
2 two board members, earlier and after we finish with that
3 colloquy it would just be restricted to the attorneys to
4 review the security plan. Thereafter, at some point this
5 afternoon which we need to set a time for we will reconvene
6 and we should have our witnesses available and we can go
7 into voir dire and the qualifications of those witnesses
8 and the University's witnesses that are available.

9 MS. WOODHEAD: One preliminary matter that just
10 occurred to me is that at this point in time no one is under
11 a protective order.

12 JUDGE FRYE: Oh, yes. You are all under a protect-
13 ive order. We entered a protective order.

14 MS. WOODHEAD: Do you mean incorporating the lists?

15 JUDGE FRYE: No. You are right to the extent
16 that we haven't said, "Yes, the attorneys are all right."
17 But the only objections to the attorneys were to the number
18 of attorneys that CBG had designated. No one objected to
19 Mr. Cormier. No one objected to you. So you may assume and
20 if you want us to say, "Ms. Woodhead and Mr. Cormier are the
21 lead attorneys on behalf of their respective parties, they
22 are under the protective order."

23 MS. WOODHEAD: All right. So by inference then
24 you have ruled that the three attorneys for CBG --

25 JUDGE FRYE: No, we clearly ruled earlier.

1 MS. WOODHEAD: -- and Mr. Cormier and myself are
2 under the protective order.

3 JUDGE FRYE: Yes.

4 MS. WOODHEAD: And no one else at this moment is?

5 JUDGE FRYE: No one else at this moment is.

6 MS. WOODHEAD: Right.

7 MR. HIRSCH: Let's make that very clear. The
8 attorneys may not pass on any of the information from this
9 upcoming session to anyone aside from the people who are in
10 that room.

11 JUDGE FRYE: That's right, and the Board.

12 MR. HIRSCH: And the Board. I am sorry.

13 I just want to make a statement about scheduling.
14 To the extent that we can do things that we need to do while
15 you folks are out here now and while our witnesses are here,
16 I think that would be useful, things that involve the
17 attorneys as much as possible or documents. This session
18 seems useful but I am just worried about your having to leave
19 and our witnesses only being available this afternoon.

20 JUDGE FRYE: Are the witnesses only available this
21 afternoon?

22 MR. HIRSCH: It is possible they can be here
23 Thursday but my understanding was that you had asked us to
24 have them available primarily at this afternoon session.

25 JUDGE FRYE: We did. You are correct.

1 MR. HIRSCH: They actually are going to be coming
2 any way because I had to block it out at that time and my
3 understanding was that we were leaving this room around now
4 and then eventually going over to the other facility.

5 JUDGE FRYE: So they are going to arrive at 1:00
6 o'clock.

7 MR. HIRSCH: Somewhere in that time period, 1:00
8 or 1:30.

9 MR. BAY: Why don't we convene at 2:00 at wherever.
10 I believe that we can accomplish the business that we need
11 to and have a moment or two to grab a bite to eat and be able
12 to reconvene at 2:00 which would give us the afternoon to
13 deal with the witnesses and other things that we can. How
14 is that?

15 JUDGE FRYE: Does that sound feasible?

16 MR. CORMIER: I guess I am just confused about the
17 scheduling. Are we going over to the facility this afternoon?

18 JUDGE FRYE: I was assuming that we would go wherever
19 we had a room available to meet.

20 MS. WOODHEAD: We are still continuing the prehear-
21 ing conference to qualify witnesses and it is up to you as to
22 where we do that and you have a problem with that, I see.

23 MR. CORMIER: I have another room until 4:00.

24 MS. WOODHEAD: Oh, you do. Where is that?

25 MR. CORMIER: It is the corner of Pauley

1 Pavillian called the Chancellor's Room. It is relatively
2 quiet.

3 MR. HIRSCH: I wanted to make sure that the
4 information that is presented back to us is the security plan
5 and the other material that we were asking to see, the
6 security inspection reports and security files.

7 MR. CORMIER: I thought it was just -- we are not
8 going into a discovery session. It is just the security
9 plan.

10 MR. HIRSCH: I thought that is what we were doing
11 now.

12 JUDGE FRYE: I thought we were, too. You sent me
13 both packages.

14 MR. CORMIER: Could the Board explain to me what
15 we are doing with this exchange of information now? What
16 are we going to do afterwards?

17 JUDGE FRYE: Hopefully, we are going to be able to
18 specify in a little more detail the contention.

19 MR. CORMIER: Why does CBG need the University's
20 information?

21 JUDGE FRYE: For the same reason that you need their
22 information. I thought when we said security plan, we were
23 talking about the package of materials that you sent to the
24 Board.

25 MR. CORMIER: All I sent to the Board was the

1 security plan and the inspection reports.

2 JUDGE FRYE: All right. That is the package.

3 MR. CORMIER: That is all I have and that is all
4 I prepared expurgated versions of.

5 JUDGE FRYE: Right. That is the package that I had
6 reference to. Does that create a problem?

7 MR. CORMIER: No.

8 JUDGE FRYE: Is that the package you had reference
9 to?

10 MR. HIRSCH: No. There were additional materials
11 you recall and in your Board order there were basically four
12 items and apparently you have only been sent two but let's not
13 delay things now. We do want to see that plan and let's
14 get started and see if that doesn't help us to know where we
15 are.

16 JUDGE FRYE: Yes. Let's get started.

17 MR. CORMIER: Does the Board wish that to occur
18 before we convene this afternoon?

19 MS. WOODHEAD: Do you mean the meeting of the
20 attorneys?

21 MR. CORMIER: Yes.

22 MS. WOODHEAD: I thought we were going to do that
23 right now.

24 JUDGE FRYE: That was my understanding. You all
25 would do that between now and 2:00 and we would convene at 2:00.

1 MS. WOODHEAD: Across the street for witness
2 qualification.

3 JUDGE FRYE: Do we need to have all this on the
4 record?

5 MR. CORMIER: No.

6 JUDGE FRYE: Off the record.

7 (Discussion off the record.)

8 JUDGE FRYE: On the record. We will recess now
9 and reconvene at 2:00. Thank you.

10 (Whereupon, the prehearing conference recessed at
11 12:22 o'clock p.m., to reconvene at 2:00 o'clock p.m., the
12 same day.)

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Sim 1

AFTERNOON SESSION

2:25 p.m.)

1 JUDGE FRYE: Back on the record.

2
3 Where do we stand? Are we ready to go to the
4 witnesses' qualifications at this point?
5

6 MR. BAY: I believe so.

7 MR. CORMIER: Are we supposed to do anything
8 with respect to the information we exchanged?

9 JUDGE FRYE: Well, I am sure there are going
10 to be some problems that will have arisen from that exchange
11 of information, but since the witnesses are here, I wonder
12 whether we shouldn't do that first.

13 MR. CORMIER: Okay.

14 MR. BAY: We will start with Mr. Richard Rogge.

15 JUDGE FRYE: Okay.

16 Whereupon,

17 RICHARD D. ROGGE

18 was called as a witness on behalf of the Intervenors and,
19 having been first duly sworn by Judge Frye, was examined
20 and testified as follows:

21 JUDGE FRYE: Thank you very much.

22 MR. BAY: Judge Frye, as you know, due to my
23 responsibilities in this proceeding, over the lunch hour I
24 have had virtually no time to meet with the witnesses which
25 Mr. Hirsch has. Normally we would be restricted to one

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1 questioner, which we can do, but we would prefer in light
2 of these specific circumstances that in the questioning if
3 I miss a few things that Mr. Hirsch can come along with them.
4 If that is not acceptable, then Mr. Hirsch will do it.

5 JUDGE FRYE: Any objection?

6 MR. CORMIER: No objection.

7 MS. WOODHEAD: No objection.

8 JUDGE FRYE: Okay.

9 VOIR DIRE DIRECT EXAMINATION

10 BY MR. BAY:

11 Q Mr. Rogge, could you state your name for the
12 record, please.

13 A Richard Daniel Rogge.

14 Q Could you tell us what your present occupation is.

15 A I am a security consultant, private investigator
16 and private patrol operator licensed by the State of
17 California.

18 Q Could you give us a brief summary of your educa-
19 tional background?

20 A I graduated from New York University with a BS
21 degree in commercial law in 1952.

22 Q Could you a brief summary of your employment
23 background?

24 A I entered on duty as a clerical employee with the
25 FBI in 1947. I attended night school the entire time. I

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1 received my degree and was appointed a Special Agent of the
2 FBI on May 21st, 1952. After that period, a period of train-
3 ing in Quantico, Virginia, I was assigned to the Philadelphia,
4 Pennsylvania Field Office as a Special Agent handling all
5 types of investigations, including in the criminal category.

6 I then was transferred to Washington, D. C. where
7 I handled primarily security type investigations involving
8 sabotage and espionage against the United States.

9 In May 1958 I was transferred to FBI headquarters
10 as a supervisory agent in charge of several offices handling
11 bank robberies and extortion, and during this period I was
12 exclusively assigned for 13 months investigating the assassina-
13 tion of President John F. Kennedy.

14 At the end of this period in February of 1965,
15 I was transferred to the Richmond, Virginia office of the
16 FBI as Assistant Special Agent in charge. Subsequent assign-
17 ments in '66 and '67 took me to Los Angeles and Philadelphia
18 in the same capacity, and subsequently I returned to FBI
19 Headquarters in January of '69 and assumed the title of
20 Inspector for Mr. Hoover at which time I took out teams of
21 agents for 13 months inspecting the safety, security and
22 performance of FBI offices throughout the country.

23 At the conclusion of this period I was appointed
24 Special Agent in charge of the FBI office in Honolulu and
25 subsequent assignments took me in the same capacity to

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1 Richmond, Virginia and Buffalo, New York, and I retired there
2 because of the cold weather on July 1st, 1977.

3 I am now personally involved in, as I told you,
4 my own businesses, but from that period I began working with
5 a firm called Burke Security out of Buffalo, New York. I
6 opened the Office on Contract Security here in Los Angeles.
7 The first one opened in March of 1980, and I am still with
8 them in the capacity as an Executive Consultant.

9 I don't think I have missed anything.

10 Q Which brings you to Dick Rogge Protective Services?

11 A Yes, sir.

12 Q And that is your own business?

13 A Yes, sir.

14 Q Could you describe what types of protective
15 services you have performed?

16 A Well, I can go all the way from actually hiring
17 and contracting with firms to place guards. I do not do
18 that. I do primarily consulting with that license. I have
19 done, oh, let me see, my most recent one was in November
20 of '83.

21 Q What type of consulting?

22 A Well, I generally go in and determine if the
23 security they now have can be enhanced or whether there is
24 a need for contract security guards in that and then I give
25 them a paper on it.

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1 Q What types of facilities or institutions or
2 persons have you dealt with?

3 A Well, I have dealt with one firm and three plants
4 that is in the defense industry requiring me to get secret
5 clearance. Another one I would consider a large manufacturer,
6 and another one was in the production of sugar.

7 Q As to let's say the defense manufacturer, which
8 you mentioned first, what type of services were you rendering
9 for them?

10 A Well, in other words, they did not feel their
11 facilities were completely set up and they wanted to know
12 where there were holes in their security, and I made recommen-
13 dations based on a review of not necessarily their procedures,
14 generally they did not tell me their procedures, but they
15 permitted me to go in and take a look at it. And on the basis
16 of that, I would tell them what I saw based on my experience,
17 what I felt could be done to either enhance it or better it.

18 Q What types of threats to the facility's security
19 were you concerned with?

20 A I didn't hear your first word?

21 Q What types of threats to the facility's security
22 were you concened with?

23 A Really they were all different. They were all
24 handling defense contacts. One in particular was handling
25 highly classified data for a foreign government.

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1 Q As I understand it then, part of what you were
2 doing then was attempting on your own inspection to figure
3 out how that security could be breached?

4 A To a degree I would say yes, that could be a part
5 of it, but in this it was more complete. In other words, I
6 would work both inside and outside the plant.

7 Q When you referred to inside, what did you mean?

8 A As opposed to a perimeter review of a plant.

9 Q Is this an area and type of review that you would
10 say you have a great deal of experience in?

11 A No, I don't like to classify it as a great deal.
12 I think I have more than the average layman. I believe I
13 am a professional.

14 Q Let's go back to earlier days when you were working
15 with security regarding sabotage and espionage against the
16 United States. To the extent that you can, can you give us
17 a better idea of what type of work you were doing at that
18 time?

19 A Really, it would be detecting and penetrating
20 efforts by foreign governments to steal secrets from this
21 country through various sources. Individual cases I am
22 prohibited about talking about.

23 Q Certainly.

24 A However, my primary, not to get away from the
25 question, my primary experience came when I was acting as an

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1 assistant and special agent in charge and as an inspector
2 wherein part of my job was to ensure that each office, each
3 FBI office I went to was secure not only from penetration,
4 but communications lapses, to ensure that the crypto analysis
5 sections were protected, the gun vaults were protected, that
6 the ammunition storage areas were protected and to ensure
7 that the alarms in the various resident agencies, which are
8 small offices off the mainland, had adequate controls, for
9 example, dial in callers, should there be a penetraton or
10 an accidental penetration of the office.

11 Q Now in doing those reviews of the security, were
12 you a general administrator or were you actually doing other
13 duties?

14 A No, you are correct. I generally administered.
15 In other words, the equipment utilized and the nature of the
16 protective devices was usually directed by experts from
17 Washington, D. C. Then we would know the codes and what
18 they desired and we would ensure that these were adhered to
19 out in the field.

20 If we found, for example, current regulations
21 regarding the penetration of a front office, we would then
22 bring this to the attention of the laboratory or the people
23 involved, the electronics 'experts and the would then endeavor
24 through their knowledge of the market place to try to develop
25 either themselves or purchase a more sophisticated system.

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1 Q So you would look at the existing system and
2 advise them if you thought that was inadequate?

3 A We would test it based on their specifications
4 and if we found flaws in it, yes, then we would indicate that
5 there is a need for a revision.

6 BY MR. HIRSCH:

7 Q Mr. Rogge, you mentioned that for a period of
8 time you were assigned by J. Edgar Hoover to review field
9 offices of the FBI; is that correct?

10 A Yes.

11 Q And you mentioned that that involved review of the
12 security of those offices?

13 A Yes, sir.

14 Q Could you describe to the extent that you can,
15 what that review entailed?

16 A Every office has to be protected both during the
17 day and night. In other words, you have to have access to
18 citizens who wish to come in to make complaints and furnish
19 information, but yet you have to take basic precautions to
20 ensure that your receptionists are protected from being
21 injured or compromised if they let someone in.

22 We also had to ensure that certain alarms were
23 available to these employees. We also had to be in charge
24 of, and I don't think I am violating anything to say that
25 we have emergency plans which are the sole responsibility

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1 of the agency in charge and he oversees these. Now he is
2 the general administrator of them. In other words, he over-
3 sees that these things are handled and that goes with reloca-
4 tion, what to do in various emergencies and all of these
5 matters were under my jurisdiction for the periods when I
6 was acting as an administrator for the FBI.

7 Q During this period when you were investigating
8 the security of the facilities did you investigate that by
9 attempting to penetrate?

10 A Yes, we did.

11 Q To the degree you are permitted, could you explain
12 that?

13 A Well, in other words, we would endeavor at
14 different hours of the night to try to get into to take a
15 car, get into the office if we could at night, go up a
16 stairwell that was not utilized maybe by the cleaning people,
17 or try to go in with the cleaning people, things of this
18 nature. And if we did, we would try to bolster this, and
19 I think -- I am not going to say there were any such violations,
20 but there is a tendency in many places -- familiarity breeds
21 a laxness that at times can be capitalized on if you wanted
22 to, and we always tried to avoid that.

23 Q Do you have experience analyzing, for example,
24 intrusion detection systems and problems that may occur?

25 A The types, no I have not.

Sim 10

1 Q Have you experience in terms of the problems
2 regarding the setting of them to impulse alarms?

3 A Oh, yes, indeed. Yes.

4 Q Would you explain that please.

5 A Well, in other words, as the head of an office,
6 if security was breached either through earth movement or
7 otherwise an explosion in the neighborhood or a heavy truck
8 going by, this would be reported not necessarily to me
9 immediately. It would be reported. It would go through
10 my desk and we would analyze on that basis whether this system
11 was an imperfection in the type of system and whether we
12 would have to go to more mechanical means as opposed to
13 electronic means, and, yes, we did make changes of existing
14 security in that regard if that answers your question.

15 Q Well, let me pursue it. Did those changes involve
16 looking at the sensitivity that was established to see
17 whether the sensitivity had been tuned up so high in order
18 to avoid ---

19 A Well, we had one location that I specifically
20 recall where earth movement was constantly sending false
21 alarms and it was my understanding that it was set rather
22 high, but possibly an intrusion through the door would not
23 have been detected.

24 Q In your reviews were you also responsible for
25 assessing response to an intrusion signal?

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1 A Absolutely, yes.

2 Q Can you describe to the extent you can that?

3 A I have to think. As you know, all FBI agents
4 are armed. So it would be not unusual that an armed response
5 would be made. However, there were certain actions that
6 were to be taken with regard to first notified and who would
7 respond and the nature of the response. I don't think I
8 should go into the nature of it. It is probably not the same
9 now, but in essence it was an armed response.

10 Q Have you worked with Mr. Cornwell on security ---

11 A I am here because of Mr. Cornwell. He requested
12 that I participate.

13 Q Are you being paid to be here today?

14 A I have received nothing. I did get a cup of
15 coffee, yes.

16 Q And have you done an external site review of
17 the facility?

18 A Yes, sir, I have.

19 MR. BAY: I believe with the submitted statement
20 of qualifications and with the responses to questions that
21 we have laid a proper foundation to qualify Mr. Rogge as
22 an expert witness as to security matters in this proceeding.

23 JUDGE FRYE. Mr. Cormier, any questions?

24 MR. CORMIER: Yes. I feel the voir dire
25 questioning would be prejudiced if all the other witnesses

Sim 12

1 were present at the same time.

2 JUDGE FRYE: Any objections to the other witnesses
3 leaving the room?

4 MR. BAY: I don't see the necessity of it if we
5 are not into secured material.

6 MR. CORMIER: It has nothing to do with security
7 material even if that may come up, but it has to do with the
8 basic principles underlying cross-examination of several
9 witnesses.

10 MR. BAY: What you are saying is that they will
11 be clued in to what you are going to ask and have a chance
12 to think of a better response?

13 MR. CORMIER: I raised my concern and I hope
14 it was understood.

15 JUDGE FRYE: He wants to sequester the witnesses.

16 MR. BAY: Well, frankly, I do not know NRC rules
17 on that and can only respond as I might in a court of law,
18 in which case I think I am stuck with it. I don't have any
19 idea of what the NRC ---

20 JUDGE FRYE: But you don't want to do it I take
21 it?

22 MR. BAY: I would prefer not to.

23 MR. HIRSCH: Why don't we simply object and you
24 can make a ruling.

25 JUDGE FRYE: There is an Appeal Board decision,

Sim 13

1 if I am not mistaken, which says we may not do that. Isn't
2 it in the Midland case from some years ago where the Licensing
3 Board attempted to sequester witnesses or did sequester
4 witnesses?

5 MR. CORMIER: The intervenor asked that the
6 staff witnesses be sequestered, or be excluded from testimony,
7 and the holding was I believe is you cannot exclude the staff
8 from the substantive portion of the testimony. I would
9 suggest there is a distinction to be made about what we
10 are doing here in substantive testimony. But I am not that
11 familiar with it. I recall reading that case.

12 MR. BAY: I would also note that I am not sure
13 how timely Mr. Cormier's request is.

14 JUDGE FRYE: We would I think prefer to sequester
15 the witnesses. We will have to rely on Mr. Cormier's interpre-
16 tation of that Appeal Board case which I haven't read in a
17 long, long time now.

18 MS. WOODHEAD: I have an excerpt of it here and
19 it says that sequestration may be ordered upon showing that
20 witness credibility is an issue," and it is in the Midland
21 case.

22 MR. HIRSCH: Is there a showing of witness
23 credibility in this case? ,

24 MR. CORMIER: Sure. That is basically it.

25 MR. BAY: We are not talking about a factual

Sim 14 1

2 situation where we are either trying to parse versions of
3 a set of circumstances. We are talking about the qualifications
4 of these men as individuals and as expert witnesses.

5 JUDGE FRYE: How are you prejudiced if they are
6 sequestered?

7 MR. CORMIER: It is just a matter of convenience.
8 Beyond that I see no ---

9 JUDGE FRYE: Let's go on and sequester them.

10 MR. CORMIER: It is just very likely that I am
11 going to be asking the same questions to four people in a
12 row. After a while we all know the answers.

13 JUDGE FRYE: So I would ask the other witnesses
14 if you don't mind waiting outside, and then we will call
15 for you.

16 (The other witnesses left the room.)

17 (Pause.)

18 VOIR DIRE CROSS-EXAMINATION

19 BY MR. CORMIER:

20 Q Mr. Rugge, thank you for taking the time to come
21 here today.

22 A Thank you.

23 Q We all consider this an important investigation
24 and I am sure you understand that the University is very
25 concerned to protect the its security information and concerned
that information regarding it go to those that are qualified,

Sim 15

1 and that is the purpose of going through this exercise.

2 You mentioned you were here because of Mr. Cornwell;
3 is that correct?

4 A Yes, that is correct.

5 Q Could you explain your relationship with
6 Mr. Cornwell?

7 A I met Mr. Cornwell in connection with several
8 organizations that we mutually belong to, the American
9 Society for Industrial Security -- do you want to know the
10 name of the organizations? In other words, there are several
11 that we have gotten to know each other through, and I was
12 asked to come along when he got this request from Mr. Hirsch
13 in view of the fact that I had done several security consulting
14 jobs and he felt that I might be able to lend some expertise
15 to what he was doing.

16 Q I see. Can you tell us what he was doing that
17 your expertise would be a necessary addition to?

18 A I think he is more knowledgeable at least based
19 on my knowledge with him of the mechanical alarms. He has
20 had a lot of knowledge with electronic alarms that I am not
21 familiar with that phase of it. I know if they are there
22 or not there. Generally what I do when I go in for a client
23 is I try to keep aware of any number of the same items and
24 I present these to my client without advice.

25 In other words, I say this is available today to

Sim 16

1 handle this particular thing and I permit them to choose
2 whichever one they want to.

3 Q I see. You said in your capacity as an agent
4 of the FBI, if I understand correctly, you had general adminis-
5 trative responsibility over security for various facilities.

6 A Well now, not as a Special Agent, but only as
7 an administrator.

8 Q Only as an administrator?

9 A Right. In other words, every agent has to maintain
10 certain security within their space, and that is normal.
11 However, as an administrator, you were required to have
12 the entire responsibility not only for your own office, your
13 headquarters office, but for every satellite office likewise
14 within your territory.

15 Q That went with the office, right?

16 A That went with the job, yes, sir.

17 Q So would it be fair to characterize that respon-
18 sibility that to the extent you were, you were the chief
19 security officer for those you supervised or that facility
20 your supervised?

21 A I think you could say that in addition, yes. I
22 wore that hat.

23 Q I see. But it, wasn't because of any particular
24 expertise in the electronics or the technical ---

25 A No. The electronics were dictated by I said

Sim 17 1 our headquarters. We were then told what to use, and on the
2 basis of the specifications that were furnished to us, we
3 then ensured that they were carried out this way.

4 Q I see. The FBI had some regulations or the agency
5 had some regulations about what security measures had to
6 be in place?

7 A Yes, sir, they did.

8 Q And they would probably have some regulations
9 about what types of equipment performing to certain specifica-
10 tions had to be in place?

11 A Yes.

12 Q And your responsibility as a chief security
13 officer, so to speak, would be to ensure that those regulations
14 were complied with?

15 A Correct.

16 Q And if you complied with those regulations, then
17 your security was satisfactory?

18 A Well, in other words, you test it. For example,
19 I had an ongoing responsibility that it depends on the size
20 of your office. Satellite offices, they are called resident
21 agencies. They had to be inspected a certain number of times
22 per month, depending on its size. A smaller one, once a
23 month at minimum, and a larger one twice a month, and that
24 had to be by either myself or my assistant who would do that
25 inspection.

Sim 18 1 Q But basically you are inspecting against a set
2 of requirements, FBI requirements?

3 A Yes, sir, that is correct.

4 Q And of course with any set of requirements, it is
5 always possible to impose more rigorous standards and probably
6 from time to time the FBI imposed more rigorous security
7 standards?

8 A Yes, they did. That is correct.

9 Q But your responsibility was to see that whatever
10 standards they were were complied with?

11 A Well, let me give you an example. Again, I am
12 telling you from public source information. At the time of
13 the media Pennsylvania breakin by terrorists, when they went
14 in and they stole a lot of files. At that time they enhanced
15 security throughout the nation as a result of that. In other
16 words, that would add to what you just said. They added on
17 security that now everybody had to do.

18 A I see. Have you ever consulted for any NRC
19 licensee?

20 A No, I have not.

21 Q Are you familiar with the NRC regulations that
22 apply?

23 A No, sir, I am not.

24 Q Is it not true that any security system can
25 be enhanced?

Sim 19

1 A That is a true statement, yes.

2 MR. BAY: I think we are starting to get more
3 into cross-examining the witness.

4 JUDGE FRYE: Well, just for that one question.

5 MR. CORMIER: That is not going anywhere.

6 BY MR. CORMIER:

7 Q You do not profess any familiarity with intrusion
8 detection devices themselves?

9 A Yes, to a degree that I know what to look for,
10 whether there are intrusion devices.

11 Q You would spot them?

12 A Yes, that is correct, or the lack of.

13 Q Do you have any background as a locksmith?

14 A No. As a locksmith, no.

15 Q Do you profess any particular expertise having
16 to do with locks and how they are constructed and how they
17 operate?

18 A No, I am not an expert locksmith.

19 Q But do you profess other than that, do you profess
20 any expertise as to locks or locking devices?

21 A I think that I could tell just from general
22 security principles the type you should stay away from.

23 Q Can you tell us what types of locks in general?

24 A In other words, just normal security procedures
25 would dictate deadbolts as being your most secure and every

Sim 20

1 day on the market I am aware of I have lists of the new
2 numerous ones that are brought on the market, including those
3 that are used for security by the government. I can't
4 tell you the brand name, but I have it in my reference.

5 Q You indicated that one of the firms that you
6 consulted for was in the defense industry?

7 A Yes.

8 Q Can you indicate what types of enhancements in
9 that situation you recommended?

10 A Primarily it was violations of existing law.
11 For example, they had a key entry system, and the scientists
12 utilizing this laboratory in order to stop getting up from
13 their desks to answer vendors' calls gave the code to the vendors.
14 So that it was 134 people that had the code to the thing
15 when only seven were supposed to have it. Another instance
16 was on their front door where everybody had duly marked
17 tags and all except in the morning when gentlemen would open
18 the door and seven people would walk in with breakfast trays,
19 things of this nature, or when the guard on duty was monitoring
20 the machine that was supposed to tell you precisely which
21 doors were opening and let the cleaning person sit by the
22 door while he went to the bathroom and things of this nature
23 I would find out during my' survey of it and bring it to their
24 attention, or cleaning people going in the building at night
25 and never being cleared.

Sim 21

1 Q Okay. These are all things you did in your
2 capacity as a security consultant?

3 A As a security consultant.

4 Q How long have you been in that business?

5 A Since 1980, February of 1980.

6 Q How many employees does Dick Roggy Protective
7 Services have?

8 A I am the sole one.

9 Q The sole one, okay. Essentially then you are
10 a consultant and you go in and consult with the client?

11 A Well, my background is I represent a contract
12 guard company and for me to go into an identical business
13 would be against the best interests of my employer, so to speak.
14 I have the license to do it, but I primarily do consulting
15 work. In other words, I actually operated contract security
16 guards here in Los Angeles for the period of February '80
17 until about a year later when I decided I didn't care to
18 be that actively involved in the business and went out as a
19 consultant for them.

20 Q You had guards that would be sent out to
21 facilities?

22 A Right. I actually went out and supervised,
23 set them on, gave advice as to the number of guards and
24 specified the training they should receive. I did all that
25 work.

Sim 22

1 Q I see. You indicated that amongst your assign-
2 ments you had occasion to consult for some firm having to
3 do with sabotage?

4 A No, I never said that. I said that one of my
5 assignments in the FBI during the period from about '54 to
6 '58 involved investigating espionage and sabotage.

7 MR. CORMIER: I see. Okay. I missed it in my
8 notes.

9 No further questions.

10 JUDGE FRYE: Ms. Woodhead.

11 VOIR DIRE CROSS-EXAMINATION

12 BY MS. WOODHEAD:

13 Q Mr. Rogge, I am not sure you know who everybody
14 is here.

15 A No, I really don't, but you are very nice people.

16 (Laughter.)

17 Q I am Ms. Woodhead. I am the attorney for the
18 Nuclear Regulatory Commission Staff here.

19 A Yes, Ms. Woodhead.

20 Q I just have a couple of questions I would like
21 to ask you.

22 Is it true, isn't it, that you have never designed
23 a security system in terms of the hardware being installed?

24 A No, I have never. Including hardware?

25 Q Yes.

INDEX

Sim 23

1 A No, ma'am.

2 Q All right. Have you had any experience in the
3 fabrication or the assembly of keys and locks for security
4 purposes?

5 A I have had some basic understanding of locks. I
6 had to know that during my prior service with the FBI, but
7 that was merely a course that familiarized me with locks at
8 that date and time.

9 Q And that is the types of locks you are talking
10 about?

11 A Yes.

12 Q You didn't get into it to the extent that you
13 learned how they were assembled and fabricated, the materials,
14 et cetera?

15 A No, ma'am.

16 Q All right. And have you had any particular
17 experience or training in understanding security doors in
18 terms of the ways doors are fabricated and put together for
19 security purposes?

20 A Not how they are manufactured, but I knew the
21 type of doors that offered us the most security and the type
22 of locking devices we would need on, for example, FBI offices.

23 Q In terms again, of a type that you knew of?

24 A Well, I couldn't give you like a product name,
25 but I knew that we wanted an all steel frame and all steel

Sim 24

1 door with reinforced outsides around the door so no one
2 could penetrate. Likewise I knew in our vaults. I am trying
3 to give you a general view. In other words, you had like
4 a double floor around or surrounding our crypto vaults and
5 our firearms faults. So it was like a double barrier that
6 you had to go through and they were actually constructed that
7 way.

8 MS. WOODHEAD: Yes, I understand.

9 I have no further questions.

10 Thank you.

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11 VOIR DIRE BOARD EXAMINATION

12 BY JUDGE BRIGHT:

13 Q Mr. Rogge, the general tenor of your testimony
14 leads me to believe that under the criteria that are set
15 for us to some degree or other, as far as most of them you
16 probably are not the kind of expert we are looking, but there
17 was one thing that was very interesting.

18 You stated that you had conducted a perimeter,
19 what was it?

20 A A perimeter check of the -- I was told it was
21 the nuclear facility of Boelter Hall.

22 Q And that was with the idea of seeing how one
23 would get in?

24 A It was the general assessment like I would do
25 on any other building despite what was in the building,

Sim 25

1 without care of what was within, but just to determine from
2 the exterior what I could see the precautions taken and with
3 only that thought in mind.

4 Q Now on that particular topic would you consider
5 that you are an expert?

6 A Well, others can ---

7 Q Let's not be modest.

8 A Well, yes, I have enough self-image to say in
9 that regard yes, I do. I think I have more experience in
10 that line than most people.

11 Q Do you think it would make that kind of assessment
12 easier if you actually knew what was inside?

13 A No, sir, it would not.

14 Q It would not.

15 A Because I do not know the inherent dangers of
16 nuclear energy. I know just basically what I read in the
17 paper about it.

18 Q I am sorry. That wasn't exactly what I meant.
19 On the very narrow subject of penetration of that exterior,
20 would it be of value to you, and don't worry about what
21 happens once somebody gets inside ---

22 A Okay.

23 Q --- would it be of value to you to know what
24 was inside?

25 A It would either enhance to change the judgments

Sim 26

1 I have already made based on my external review, yes, that
2 could be. In other words, if I find out -- may I give you
3 an example. In other words, if I looked at two doors. If
4 I find out that on the other side of that door there are
5 high concrete abutments, yes, then I would say that definitely
6 is not the way I envisioned it. However, if it is a straight
7 hallway in, that would enhance what my views are from an
8 outside point of view.

9 JUDGE FRYE: But it doesn't matter I gather to you
10 from your point of view whether what is on the other side is
11 Fort Knox or ---

12 THE WITNESS: It really does not. I am just saying
13 if you wanted me to go in, yes, I could go in. But if you
14 assess it, it depends. I have to explain that everywhere
15 you go financial considerations are generally more prevalent
16 than the security aspects. In other words, it is an unproduc-
17 tive item. Most firms, they take their losses and they say
18 well, that is an acceptable loss. However, when you go in you
19 give them your best shot and they pick from that, from raise
20 a fence right down to height of fences and gauge of wire
21 and things of that nature and they choose what they want and
22 what they can afford and how far they want to go.

23 Now to get back, to your question, yes, if ins³⁰
24 I see other things that I could not see from the outside, well,
25 then I know.

Sim 27

1 BY JUDGE BRIGHT:

2 Q You also mentioned that you had quite often
3 looked at what you termed as interior security which I assume
4 is the idea that someone in the outfit is going to do you
5 in or is going to steal you blind or something like that.
6 Did I interpret that correctly?

7 A Yes, you did.

8 Q Or steal a document.

9 A Right. One of the jobs I had, for example, they
10 were losing oscilloscopes and the primary cause was they had
11 no control system for these because they were dealing with
12 a highly educated individual primarily with a Ph.D. and they
13 just didn't want to be annoyed with such, and they would
14 just leave them anywhere they were last using them and,
15 unfortunately, others were taking them out and they were losing
16 them.

17 But by the mere installation of a control system
18 within the office that issued them, they cut that down to
19 nothing, if that is what you had in mind. In other words,
20 those are internal controls to stop obvious theft.

21 Q Would this include, oh, such things as keys
22 and accessibility thereof?

23 A Absolutely. Who has the key and what kind of a
24 charge-out system. I am really not aware of a key that can't
25 be duplicated. Despite the fact that this key may not be

Sim 28

1 be duplicated, there is always someone that can duplicate
2 a key.

3 Now I understand they are bringing on the market
4 several systems of keys that are more difficult to duplicate
5 than others and those you have seen with blanks and they
6 drill varying depths of holes on either side. However, I
7 have been told by a fellow in the key making business that he
8 thinks he could duplicate it, but I don't know.

9 JUDGE BRIGHT: That is all I have.

10 BY JUDGE FRYE:

11 Q Mr. Rogge, you indicated that you could spot
12 intrusion devices or the lack thereof, and I wondered if you
13 could elaborate on that a little bit more?

14 A Well, in other words, by examining a door you
15 can tell whether there is an intrusion device around the
16 frame where the door operates because you have to have a
17 contact there.

18 For example, you can look at these doors here
19 and I don't see anything on these doors that would indicate
20 that if someone entered this during the weekend that anybody
21 would know about it.

22 Now if you had sophisticated eyes within there,
23 they would stand out.

24 Q I take it, too, from your other testimony that
25 you can spot where intrusion devices ought to be. Am I

Sim 29

1 correct on that or not?

2 A I would make recommendations as to where I would
3 put them that I feel would be less apt to be taken apart or
4 destroyed. In other words, you would have to have some
5 system that can't be disabled that quickly.

6 Q Is this the same sort of thing that you did when
7 you were concerned about security in the FBI?

8 A Primarily we had to deal with doors and windows
9 and also file cabinets. In other words, we had security
10 cabinets like in most defense industries and, depending on
11 the type of material carried therein, we would have to have
12 certain tests, and I don't recall what they are now, to
13 avoid penetration.

14 We also had strict requirements as to the type
15 of material that could be kept overnight. There was some
16 material that could not be retained and it must be returned
17 immediately to headquarters and only retained there, and then
18 we would maintain control of this information both in and
19 out.

20 Q That is basically accounting for pieces of paper?

21 A Exactly right.

22 Q Basically what we are concerned with here are
23 two things. The regulations require that the university
24 take measures to protect against theft of special nuclear
25 material at the laboratory and the regulations talk in terms

Sim 30

1 of doing that by providing for early detection and tracing
2 of the material should someone get in and find it. We have
3 also help that the University is required to take some
4 measures to protect against potential sabotage although we
5 are still in the throws of working out what sort of a threat
6 ought to be considered and what sort of protective means
7 out to be taken as a result of that threat.

8 I guess our concern basically is what expert
9 knowledge have you got that would help us in those events.

10 A I have not only attended, for example, the
11 military bomb schools during my course of duty in there, but
12 I have, oh, probably late last year or the middle of last year
13 I attended a lecture by who I consider one of the foremost
14 bomb experts in this area for the Los Angeles Police Department,
15 and of course the quality and types of sophisticated explosives
16 of today are beyond your imagination. I mean, just an
17 ordinary attache case or even smaller, such devices can be
18 carried that are very destructive, for me to tell you that,
19 and I can't go beyond that, but I know it is possible.

20 So, in other words, you try to avoid such
21 materials from being brought in, if that is what you are
22 interested in.

23 MR. HIRSCH: May we have some further brief
24 voir dire?

25 JUDGE FRYE: Okay.

Sim 31

VOJR DIRE REDIRECT EXAMINATION

BY MR. HIRSCH:

1
2
3 Q You indicated that you had done an exterior
4 site review of the external security of the facility.

5 A At your request, sir.

6 Q Can you indicate roughly when that was?

7 A If I might, past recollection recorded, you have
8 your -- I think it was July 27th on a Friday?

9 Q It was some time ago, some months ago?

10 A Yes, July 27th I believe.

11 Q Roughly how long did that security review take?

12 A An hour and fifteen minutes, two hours at the
13 outside.

14 Q And did you review drawings of the facility?

15 A You did show me some drawings, yes.

16 Q Did you examine the loading zone, for example,
17 the loading area?

18 A I was told, and I do not recall really reviewing
19 it in depth, but I was advised that the two doors to the
20 rear of Boelter Hall was where they bring in the loading.

21 Q In other words, you don't know what is on the
22 other side of the doors, but you examined the exterior ---

23 A No, I have no idea.

24 Q But did you examine the exterior of those doors?

25 A Yes.

Sim 32

1 Q Did you examine some of the locks and doors that
2 are on the exterior of the facility?

3 A No. I could not see the locks because they were
4 shielded.

5 Q The doors you saw however?

6 A Yes, I saw the doors.

7 Q Do you feel from your experience in the security
8 matters that you can draw an opinion from the external site
9 review as to whether you could penetrate those doors?

10 MR. CORMIER: I would object to that on voir dire.

11 JUDGE FRYE: I think it is getting more into the
12 substance of things, yes.

13 MR. HIRSCH: I will move on.

14 BY MR. HIRSCH:

15 Q You indicated that regulations came down from
16 time to time from the FBI specifying certain security
17 measures at your FBI offices; is that correct?

18 A Yes, that is correct.

19 Q And these were updated from time to time?

20 A What was that?

21 Q These were updated from time to time?

22 A Yes.

23 Q And you were therefore able to examine the new
24 regulations and determine whether or not your clients needed
25 to change security measures?

Sim 33

1 A That is correct.

2 Q When you reviewed this defense contractor you
3 indicated I believe that there were some violations of the
4 law that you found; is that correct?

5 A No. I did not find -- well, I would rather not
6 go into that really.

7 Q Were the standards that were provided to you to
8 judge the security of the facility against?

9 A I was merely asked to assess it as you asked me
10 to assess it.

11 Q Based on your experience with assessing facilities?

12 A Right. I was not given any specifications.

13 MR. HIRSCH: That is all I have.

14 MR. CORMIER: No further questions.

15 MS. WOODHEAD: No questions.

16 JUDGE FRYE: To come back to Mr. Hirsch's question
17 of a minute ago, you saw the door at the loading dock, is it?

18 THE WITNESS: No, sir. My recollection is it is
19 just straight with the ground on the driveway.

20 JUDGE FRYE: Okay. It is the access door. It
21 is a large door I gather.

22 THE WITNESS: Yes, a double door.

23 JUDGE FRYE: Do you have the expertise to evaluate
24 that door from a security standpoint?

25 THE WITNESS: I am afraid to say the wrong

Sim 34

1 thing. Do I think it is secure?

2 JUDGE FRYE: I am not asking you for your opinion
3 as to whether the door is secure or not. What I am asking
4 you is ---

5 THE WITNESS: Well, the door was secure, yes, sir.

6 JUDGE FRYE: Well, what I was asking you for is
7 what expert knowledge do you have which permits you to reach
8 the conclusion that the door is or is not an adequate barrier?

9 THE WITNESS: Just based on everything that has
10 gone before here.

11 (Board conferring.)

12 JUDGE FRYE: Thank you very much, Mr. Rogge.

13 THE WITNESS: It has been a pleasure, everyone.
14 Thank you for being so courteous to me.

15 I would like for the record to say that I am
16 for nuclear energy.

17 (Laughter.)

18 JUDGE FRYE: You are not required to be for or
19 against.

20 THE WITNESS: No, I don't have to be for or
21 against, but I am for it.

22 (Laughter.)

23 JUDGE FRYE: Now let me say, Mr. Cormier, I
24 don't know whether you plan to stay or not.

25 THE WITNESS: I will do whatever you say. Well,

Sim 35

1 I have to. I have a ride.

2 JUDGE FRYE: Do you want him to wait outside
3 or inside?

4 THE WITNESS: I can wait outside.

5 MR. CORMIER: As a courtesy to him, if you want
6 to take up that matter now, then maybe we can take a few
7 minutes and resolve it. Otherwise, I would prefer to just
8 go through all four of them.

9 JUDGE FRYE: No, no. I was just asking whether
10 you still wanted him outside the building while the others
11 come in.

12 MS. WOODHEAD: While we go forward with the
13 other witnesses.

14 MR. CORMIER: Oh, I am sorry. No, no, that is
15 fine. He can stay.

16 JUDGE FRYE: Either stay here or go out, whichever
17 you prefer.

18 (Discussion off the record.)

19 Whereupon,

20 GALE THOMAS CORNWELL, SR.

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21 was called as a witness by the Intervenors and, having
22 been first duly sworn by Judge Frye, was examined and
23 testified as follows:

24 JUDGE FRYE: Thank you very much.

25

1 VOIR DIRE DIRECT EXAMINATION

2 BY MR. BAY:

3 Q Mr. Cornwell, could you state your name for the
4 record.

5 A Gale Thomas Cornwell, Senior.

6 Q And could you give us a brief resume of your
7 education.8 A I have an associates arts degree from Mt. Sat.
9 College, and that is about it.10 Q And could you give us a brief overview of your
11 occupational history?12 A I enlisted in the United States Army at the
13 age of 16 years and went in the parachute troops. I went
14 through parachute jump school and parachute demolition
15 sabotage school, or I think it was called airborne demolition
16 sabotage school at that time. I received in a commission
17 in France in 1945 and served with the service until 1956.18 I went through a number of schools, Air Force
19 primary flight, Air Force helicopter, Army primary flight
20 tactical flight and Army helicopter. During those years with
21 the service I served primarily with military intelligence
22 and counterintelligence and criminal investigation division
23 with duty involving primarily intelligence investigative
24 work.

25 Since that time I came out on disability in '56.

Sim 37

1 I have worked as a private investigator or insurance investi-
2 gator or in the security field. I am licensed as a private
3 patrol operator. I am a qualified manager of security by
4 the State of California and currently I am the Director
5 of Corporate Security for a large California firm that does
6 business throughout the world, a manufacturing firm.

7 Q Working from the present back could you describe
8 for us your functions in your current position?

9 A I am responsible for seven facilities in the
10 Los Angeles area. This involves a supervision of security
11 patrols, for the alarm installations, for monitoring of those
12 systems and for an executive security detection program. We
13 protect two multimillionaires 24 hours a day, 365 days a
14 year. That is about it.

15 Q And as to those facilities, did you or have you
16 participated in the design of the security systems for them?

17 A Yes, all of them.

18 Q And could you describe what your role in that
19 was?

20 A Well, I started out when I first joined them
21 to survey the facilities and determine what type of
22 security was needed and arranged for the contract security
23 and in-house security. I purchased and installed and service
24 all of the related electronic hardware in those facilities
25 to protect the person's property and assets of the corporation.

Sim 38

1 Q Do you consider yourself to be familiar with
2 security hardware?

3 A Yes.

4 Q And what does that encompass, alarms or keys?
5 Can you give us an idea of what you consider to be security
6 hardware?

7 A Well, access control to the facilities is one
8 aspect of it. Radio communication is another important aspect.
9 The installation of detection devices such as magnetic alarms,
10 penetration alarms, pressure alarms, ultraviolet, infrared
11 and ultrasonic, the whole spectrum of security defense.

12 Q And you have a working familiarity from your
13 job and background of these various kinds of hardware?

14 A I have that type of hardware in all of our
15 facilities.

16 Q Were you actually responsible for the actual
17 selection and installation?

18 A Yes. I have the sole responsibility for them.

19 Q Could you describe what kinds of functions you
20 performed in the counterintelligence days with the military?
21 What did that involve?

22 A Well, what you do when you fight a war primarily.
23 We were in World War II involed in intelligence activities
24 and missions behind the enemy lines and destruction of targets.
25 Later on I became specialized in aircraft, causes of aircraft

Sim 39

1 accidents and determining whether or not those accidents
2 were caused by mechanical failure or sabotage, or determining
3 the cause of the accident.

4 Q And from your days in demolition and sabotage
5 do you have a working familiarity with various types of
6 explosive and demolition devices?

7 A Yes.

8 Q Do you consider that knowledge to be current?

9 A No. The state of the art has greatly improved
10 since I was involved in actually working with explosives.
11 I wouldn't consider myself an expert.

12 Q But you have a working familiarity with the
13 area?

14 A Right.

15 Q Is that also true for sabotage and terrorist
16 techniques in general?

17 A Well, sabotage and terrorist techniques I have
18 to keep pretty much up to date on because I am involved in
19 protecting executives who are targets and who are traveling
20 throughout the world. So I keep pretty much up on terrorist
21 activities and techniques.

22 Q Would you consider yourself an expert in the
23 protection of persons and property against sabotage and
24 terrorism?

25 A Yes.

Sim 40

1 Q Your statement of professional qualifications lists
2 a series of organizations and awards. Could you tell what
3 the World Association of Detectives is?

4 A I don't belong to the World Association of
5 Detectives any more.

6 Q Okay.

7 A I can tell you who I belong to.

8 Q Okay, please. I am a member of the Police
9 Officers Association of Los Angeles County, the California
10 Peace Officers Association, the International Association of
11 Chiefs of Police, the National Association of Chiefs of
12 Police, the Association of Former Intelligence Officers,
13 Narcotic Enforcement Officers Association and the American
14 Society for Industrial Security. I think that about covers
15 it.

16 Q The American Society for Industrial Security,
17 could you tell us a little about that group?

18 A You have to be a professional manager of security
19 to become a member of the Society.

20 Q Is it a social group or a technical group?

21 A No, it is a technical group.

22 Q Is one of the functions of the group to keep its
23 members up to date on industrial security matters?

24 A Oh, absolutely. In fact, we had a meeting
25 yesterday. We have a meeting once a month of our chapter

Sim 41

1 and we have an annual meeting of the Association. I forgot
2 one association that I belong to, which is you are invited.
3 I was elected a member of the British Institute of Professional
4 Investigators a few years ago and was recently elected a
5 member of that organization.

6 Q When you earlier said that you were familiar
7 with security hardware, are you also familiar with how to
8 get around security hardware?

9 A Yes.

10 Q Would you consider yourself to have expertise
11 in that area?

12 A Yes.

13 Q In your current work is evaluating a system and
14 choosing hardware and designing the security for your clients,
15 is that a major consideration?

16 A Yes.

17 (Pause.)

18 BY MR. HIRSCH:

19 Q Mr. Cornwell, you mentioned that among the alarms
20 that you are familiar with are magnetic door alarms?

21 A Yes.

22 Q Do you know how to bypass such alarms?

23 A Yes.

24 Q Are you familiar with testing procedures for
25 alarms?

Sim 42

1 A Yes.

2 Q That would include what kinds of intrusion alarms
3 again?

4 A Well, you test all of them. For example, in
5 my facility where we have three shifts, we run what we call
6 authentication patrols at the start of each shift. The
7 corporate headquarters has 179 contact locations, for
8 example, and at the beginning of each shift the security
9 officers go through the whole series to make sure that that
10 contact point is working. If it isn't working, then we have
11 to post a physical guard on that location and get a work
12 order for its repair and it has to be repaired of course
13 immediately or as quickly as possible the following day.

14 We run the authentication patrols on each shift
15 three times a day.

16 Q As part of your responsibility are you responsible
17 for assessing whether doors are of sufficient construction
18 to be adequate security?

19 A Yes.

20 Q And is that also true with the locks?

21 A Yes.

22 Q Key control systems?

23 A Yes. That is access.

24 Q When you say access what do you mean?

25 A Well, access may be through a key or through a

Sim 43

1 Card or through an electronic system where an opening is
2 triggered by a radio impulse or an electronic impulse.

3 Q Do you also have responsibility for response
4 to signals?

5 A Yes.

6 Q You mentioned that you have a demolition and
7 sabotage background.

8 A Yes.

9 Q And I also heard you say that you may not be up
10 to date on the most, is this correct, the most fancy of
11 the demolition techniques recently?

12 A That is true.

13 Q But you do know how to demolish or sabotage a
14 facility with other ---

15 A I am familiar with the handling of dynamite and
16 the older type explosives. The latest one that I worked
17 with was Composition C, and I think it is still being used.
18 I am familiar with that.

19 Q Could you describe some of the other explosives
20 that you are familiar with?

21 A I am really not. Dynamite, TNT and the
22 Composition C.

23 Q And have you used those for demolition purposes?

24 A Yes.

25 Q Could you describe without breaching any

Sim 44

1 confidences a little bit of your sabotage background?

2 A I won't talk about that.

3 Q Okay. Have you conducted an external site review
4 of the nuclear energy lab?

5 A Yes.

6 Q Was this in the company of Mr. Rogge?

7 A Yes.

8 Q Have you worked with Mr. Rogge in other matters?

9 A Yes.

10 Q In that site review did you examine the exterior
11 of doors, for example at the NEL?

12 A Yes.

13 Q Were these doors within your experience in terms
14 of an ability to assess whether they are adequate from a
15 penetration standpoint?

16 A I would not consider them adequate.

17 Q Well, I guess my question was is it within your
18 experience to make that judgment? Are you familiar with
19 that kind of door?

20 A Yes.

21 Q Mr. Rogge indicated that he was here because
22 of you, that you asked him along.

23 A Yes.

24 Q Could you explain why?

25 A I was asked if I would consider doing an

Sim 45

1 inspection of the facility as a public service by Dr. Plotkin,
2 and I have worked with Dr. Plotkin on a number of investiga-
3 tions. It is primarily aviation cases where we were working
4 to determine the cause of a crash. So I said I would be
5 happy to take a look at it and give him the benefit of my
6 opinion and I felt it would be good to have someone like
7 Dick Rogge with his government background with the Bureau
8 also participate. So I asked Dick if he would and he did.

9 Q You felt that he would complement or add to
10 your review; is that correct?

11 A We didn't confer. We made the inspection and
12 he went his way and I went mine, and he wrote his report
13 and I wrote my report. He sent me a copy of his and I sent
14 him a copy of mine and on reading it I found that we agree.
15 It may be in a different language, but we agree basically.

16 Q Are you being paid?

17 A No.

18 MR. HIRSCH: That is all I have.

19 MR. BAY: With this statement of professional
20 qualifications submitted and the answers to the questions
21 we have just asked we believe we have established a founda-
22 tion for Mr. Cornwell as an expert witness in these
23 proceedings.

24 MR. CORMIER: Mr. Cornwell, I am the Attorney
25 for UCLA in this matter and I appreciate you taking the time

Sim 46

1 to come over today. I would like to ask you a few questions
2 about your background.

3 VOIR DIRE CROSS-EXAMINATION

4 BY MR. CORMIER:

5 Q Have you had any education in electronics?
6

7 A No.

8 Q You indicated that you are the director presently
9 of the corporate security of a large firm.
10

11 A Yes.

12 Q Are you free to tell us what type of business the
13 firm is in? Manufacturing?14 A Manufacturing.
1516 Q And is it manufacturing of a product that requires
17 special protection?

18 A They think so.

19 (Laughter.)
20

21 Q I hope you agree?

22 A I have no objection to telling you who I work
23 for with the understanding that that is private and I am
24 not going to see it in the Times tomorrow.
25

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MR. CORMIER: I would prefer that you not.

JUDGE FRYE: Before you get into that, Mr. Cornwell, while I am sure no one here would divulge it, the transcript is going to be publicly available and you might not want to say anything.

THE WITNESS: If I tell you the type of product it probably could be easily identified.

MR. CORMIER: I see.

BY MR. CORMIER:

Q Do you work for this corporation full time?

A Yes.

Q How long have you worked for the corporation?

A Four years.

Q And prior to that you were in business for yourself in consulting?

A Well, I have always been in business for myself consulting for different clients. Prior to that I was with a security department of a financial firm.

Q Did this firm that you are presently working for have a security system prior to your employment there?

Sim 48

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A Yes.

Q You were involved in enhancing the system?

A Yes. They had a million dollar a year shortage and it wasn't working for them and so they hired me to redo it.

Q May we assume that that was an inventory shortage?

A Yes.

Q I see. You indicated that you arranged for both contract security and in-house security.

A Correct.

Q I understand you employed an outside firm that supplies guards to ---

A We have what is called a mix. I have in-house employees that work under my supervision and I contract with four or five contracting firms, vendors.

Q You indicated that you purchased and installed hardware for this firm.

A Yes.

Q Do you mean you personally installed it or you are responsible for the installation?

Sim 49

1 A I personally installed some of it, and let me
2 explain. Hardware related to the protection of our executives
3 is something that we don't want contractors to see and some
4 of that I get involved with personal installation of that
5 because we don't want it to be known.

6 I work on some of the systems in the facility
7 myself and I respond to them when we have a problem and
8 I contract out as much work as I can that is not confidential
9 or in the secret category and supervise that.

10 Q What kind of systems have you personally
11 installed?

12 A The DADCO monitoring system, what we call DADCO.

13 Q And what does DADCO stand for?

14 A I think it is door alarm device company. It is
15 a monitoring system that records on computer printout, a
16 bypass of a contact point or the violation of a contact
17 point and the resetting of that contact point.

18 Q And you personally installed that?

19 A Well, part of it, and I personally supervised
20 the installation of it, and I service it. Most of our
21 facility digital communicators now are radionics alarms.
22 I am just trying to think. I think now we have radionics
23 in all of the facilities, all seven facilities. No, I take
24 it back. We have Westec, a Westinghouse in one and radionics
25 in the rest of them.

Sim 50

1 Q Those are companies, or those are brand names,
2 I understand?

3 A Those are brand names. These are digital
4 communicators that when an alarm is signaled it communicates
5 that alarm to a contract central station and to my central
6 station.

7 I am somewhat unique because of the executive
8 protection program. We have a dual system. We simulcast.
9 When an alarm is signaled it goes to a contract central
10 station and then it comes to my central station. We do that
11 to avoid the possibility of coercion at one point or the
12 other.

13 Q You stated that you were familiar with certain
14 facility hardware and you mentioned some detection devices.

15 A Yes.

16 Q Could you describe those devices again?

17 A Ultrasonic, infrared and ultraviolet.

18 Q You indicated that you had samples or types of
19 those types protection devices in place at your facilities.

20 A Yes.

21 Q Can you mention the brand names or model numbers
22 for those devices?

23 A Oh, I can't tell you the model numbers.

24 Q Can you tell us who your vendor is?

25 A It is not a vendor. A manufacturer you mean.

Sim 51

1 Q A vendor manufacturer.

2 A Arrowhead is one of my primary manufacturer,
3 Racon is another and MGI.

4 Q And these are devices which you have contracted
5 for with the manufacturer to ---

6 A No, we purchase them from the manufacturer and
7 then we install them. These are motion detection. You know,
8 however you do it and however you cut the baloney, it is
9 still baloney. It detects motion and you can use some devices
10 in certain areas, you know, you can't put one in a computer
11 room that you can use in the phone switchboard area. We
12 buy them from the manufacturer and install them and service
13 them and maintain them.

14 Q Did you install them personally?

15 A Some.

16 Q Which ones did you install personally?

17 A Which ones specifically?

18 Q Yes, specifically.

19 A Well, at one time or another I probably have
20 installed each of every type. We are talking about a lot
21 of hardware.

22 Q I am talking about detection devices only. Have
23 you installed ultraviolet devices?

24 A Yes.

25 Q What type of ultraviolet device have you

Sim 52

- 1 installed?
- 2 A Arrowhead.
- 3 Q Have you installed infrared devices?
- 4 A Yes. Arrowhead again.
- 5 Q Have you hardwired those devices?
- 6 A Yes.
- 7 Q Have you installed magnetic devices?
- 8 A Yes.
- 9 Q What types of magnetic devices?
- 10 A A magnetic device is a magnetic device.
- 11 Q You don't distinguish between various types
12 devices?
- 13 (At this point in the proceedings the witness
14 produced a magnetic device from his pocket and handed it
15 to Mr. Cormier.
- 16 A Is that made by Ademcc?
- 17 Q Aritec.
- 18 A Okay, Aritec.
- 19 Q Do you know whether this is a balanced or
20 unbalanced device?
- 21 A What do you mean by a balanced or unbalanced
22 device?
- 23 Q Well, the question is unimportant.
24 With C-4?
- 25 A With what?

Sim 53

- 1 Q C-4.
- 2 A C as in Charlie dash four?
- 3 Q Yes.
- 4 A Not really.
- 5 Q You indicated of the explosives you were familiar
6 with dynamite, TNT and Composition C?
- 7 A Right.
- 8 Q And you are not familiar with C-4?
- 9 A No. It doesn't ring a bell.
- 10 Q You did state that you are not current in
11 conditions or explosives?
- 12 A That is correct.
- 13 Q You don't profess any expertise in that?
- 14 A No.
- 15 Q Did you state that you had conducted a perimeter
16 tour of the nuclear facility at UCLA?
- 17 A Yes.
- 18 Q And I believe you discussed that you had reached
19 some opinions regarding one exterior door?
- 20 A Well, not just one exterior door, but the overall
21 layout.
- 22 Q Okay.
- 23 A Dick and I were provided with a deluge of
24 blueprints and photographs and material which we just looked
25 at briefly and then we toured the outside of the facility and

Sim 54

1 and went inside, but did not actually go into the reactor
2 room.

3 Q Were you presented with photographs of the interior
4 of the reactor room?

5 A Yes.

6 Q You were?

7 A Yes.

8 Q Those photographs showed the reactor?

9 MR. BAY: Where are we going with this?

10 THE WITNESS: I don't know what a reactor looks
11 like, if you want to know the truth about that. It was a
12 big thing with some guy standing on top of it that was supposed
13 to have something to do with it.

14 JUDGE FRYE: Mr. Cornwell, hold on a second.
15 Where are we going with this?

16 MR. CORMIER: I am not going anywhere any more.

17 JUDGE FRYE: Okay.

18 MR. CORMIER: I have no further questions.

19 JUDGE FRYE: Ms. Woodhead.

20 MS. WOODHEAD: Mr. Cornwell, I am the attorney
21 for the Nuclear Regulatory Commission.

22 BY MS. WOODHEAD:

23 Q I am interested in your perimeter tour. Can you
24 tell me exactly what doors you looked at? You said you
25 went inside the facility. When you toured the facility I

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Sim 55

1 have the idea that you went to Boelter Hall ---

2 A It was Boelter Hall and I think our first point
3 of entry was a couple of double doors down there, which
4 really troubled me, those double doors. Then we walked
5 around that area and then we took the elevator up to the
6 floor where there is a cafeteria or something there. Then
7 we went out around an area which we were told that the
8 reactor was inside that area.

9 Q Did you have an escort on your tour?

10 A Yes.

11 Q Who was your escort?

12 A Dan here.

13 Q And he pointed out the doors that led into the
14 reactor room?

15 A Yes, and the blueprints and the photographs.

16 MS. WOODHEAD: I see.

17 I have no further questions.

18 (Board conferring.)

19 JUDGE FRYE: The Board has no questions.

20 Any further redirect?

21 MR. BAY: No.

22 JUDGE FRYE: Mr. Cornwell, thank you very
23 much for coming down to be, with us.

24 I suggest since we have been at it for a while,
25 why don't we take a 15-minute break and let the reporter

Sim 56

1 get a breather.

2 (Short recess.)

3 JUDGE FRYE: We can go back on the record,
4 please.

5 I see we have Dr. Plotkin. Have you been
6 previously sworn in this proceeding?

7 MR. BAY: Yes, in Contention 2. Isn't that
8 right?

9 MR. CORMIER: I don't think so.

10 Whereupon,

11 SHELDON C. PLOTKIN

12 was called as a witness on behalf of the Intervenors and,
13 having been first duly sworn by Judge Frye, was examined
14 and testified as follows:

15 VOIR DIRE DIRECT EXAMINATION

16 BY MR. HIRSCH:

17 Q Would you please state your full name for the
18 record.

19 A Sheldon C. Plotkin, P-l-o-t-k-i-n.

20 Q Would you please indicate your education.

21 A I have a bachelor's degree in electrical
22 engineers from the University of Colorado in 1946. I have
23 another bachelor's degree in aeronautical engineering from
24 the University of Colorado in 1949. I have a doctorate in
25 electrical engineering from the University of California at

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Sim 57

1 at Berkeley in 1956.

2 Q Would you describe your work experience beginning
3 with the Los Alamos experience in the '40s.

4 A I had a position at Los Alamos Scientific
5 Laboratories from '47 to '48 designing and developing electronic
6 instrumentation for nuclear physics experiments. I worked
7 at the U. S. Air Missile Test Center at Point Mugu from
8 1947 to 1950 and that job entailed the evaluation and conducting
9 flight tests having to do with naval missile testing.

10 I was a teaching assistant at the University
11 of California at Berkeley for four years and then I was for
12 the last two years, 1954 to '56, I was in charge of all of
13 the electronic equipment for the Cosmic Ray Laboratory.

14 From '56 to '58 I worked for a company now called
15 Energy Systems in Palo Alto designing and developing high-
16 power pulse modulators as a radar pulse supply.

17 Then from that position I was with the University
18 of Southern California for three years on the faculty of the
19 Electrical Engineering Department in charge of electronics
20 courses. I was also in charge of the electrical engineering
21 laboratories.

22 At the same time for two years of the three I
23 was a consultant for Hoffmann Electronics. Then from '61
24 to '67 I worked for Hughs Aircraft Company in a variety of
25 capacities doing dynamic systems analysis and satellite

Sim 58

1 communication development.

2 A significant fraction of the time was spent
3 with the computer control test facility which was a matter
4 of process control, the automation of factories.

5 For a short time I was in a group called the
6 Consultation Department of the Data Processing Division and
7 that was a consulting group of about 12 that did consulting
8 work for the rest of the company.

9 Then from Hughs Aircraft I went to TRW and I
10 was there for about two years. I worked for about a year
11 on the automation of highways and then the other year was
12 spent in a variety of civil system development.

13 One of the systems developed was an automatic
14 external security system for the California Department of
15 Corrections.

16 I was also called upon to evaluate the off-hours
17 security system for Buildings 5 and 6 which were new at the
18 time.

19 Then from TRW I went to work for the Rand
20 Corporation doing satellite communication work at first and
21 then a transportation system and a couple of other projects
22 having to do with the evaluation of a couple of Vietnam
23 programs and then I began development of a small internal
24 combustion system at Rand.

25 That takes us up to '71. In 1971 I started

Sim 59

1 private practice as a consulting systems and safety engineer.
2 I do accident analysis for a living primarily, not entirely,
3 but almost entirely, and that takes about 50 percent of
4 my time. The other 50 percent is spent doing public service
5 work through the Southern California Federation of Scientists.

6 JUDGE BRIGHT: Could you define accident
7 analysis?

8 THE WITNESS: For most accident analysts, they
9 will confine their attention to some particular type of
10 accident that their background lends itself toward. In my
11 case I am a system engineer and as such I deal with inter-
12 acting elements and I claim expertise in analyzing any
13 accident for its basic aspects.

14 I take the analysis through as far as my background
15 allows me and then I call in associates for phases and
16 background where I need something in depth. That is how
17 Mr. Cornwell and I became acquainted.

18 BY MR. HIRSCH:

19 Q Could you identify your professional affiliations?

20 A I am a member of the IEEE, which is an electrical
21 engineering society. I guess it is the largest technical
22 society in the world, at least it was at one time we were
23 told. The Systems Safety Society, the Southern California
24 Federation of Scientists and then several honoraries.

25 Q The work that you did at TRW regarding the

Sim 60

1 automated security system for the California State Prisons,
2 was that under contract?

3 A Yes.

4 Q The contract was with whom?

5 A The California State Department of Corrections.

6 Q Could you please describe that in a bit more
7 detail and what do you mean by automated security systems?

8 A I am not too sure how the whole thing came about,
9 but it was some years ago. I think that the Department of
10 Corrections had budget problems and they were concerned with
11 saving money somehow or other and thought that maybe they
12 could do something with their security system that would
13 eliminate the guards and the salaries for the guards and
14 therefore save some money.

15 TRW bid on the contract and of seven or eight
16 bidders TRW won to do the study and I was put in charge of
17 that study, not at first. Another fellow had it for a month
18 or so before I took over and it was a matter of looking
19 into all the various apparatus that could be used for
20 surveillance of the external areas of the prisons and see
21 if that whole thing could be automated in a satisfactory
22 way and in the process eliminate guards and salaries for
23 them and perhaps save some money.

24 In the end it turned out that we could get by
25 with half the guards. We couldn't eliminate all of them

Sim 61

1 though. There are certain kinds of jobs that the guards
2 do that could not be automated. But for the most part half
3 of them could be relieved of their jobs and the automatic
4 equipment was specified for that particular application.

5 What is important is the basic systems criteria
6 that one establishes. That is different for each case and
7 when one has to recognize that. Then one has to take into
8 account all the functions that have to be fulfilled and
9 many times, and in fact in that particular case one particular
10 function was not amenable to any apparatus that was on the
11 market at the time.

12 I don't know if I answered the question or
13 rambled on too long.

14 Q Well, let me expand on it. Were these automated
15 security systems detection systems?

16 A Yes, detecting the prisoners leaving in such
17 a way that the guards would not think it is a false alarm
18 and so forth. The system was designed in such a way that
19 it couldn't be defeated by the prisoners even though they
20 would know everything there was to know about the system,
21 which was one of the criteria.

22 Many times in a security system you think that
23 you can be so secretive about your apparatus and the system
24 that you have designed that you don't have to worry about some-
25 body knowing about it, that it will be kept secret and you

Sim 62

1 can rely on that.

2 In the California state prisons, if you know
3 anything about a prison, they don't operate unless the
4 prisoners do most of the work and most of the operating.
5 Consequently, they will know everything there is to know about
6 any system in that prison.

7 Q Could you describe without breaching any
8 confidences the nature of some of those detection systems
9 with which you worked?

10 A Well, the ones we looked into were acoustic,
11 electromagnetic, also seismic sensors and barrier type
12 detectors. What is kind of interesting was that at that time
13 there was nothing on the market that would detect a person
14 going over a chain link fence which seems like a rather
15 simple thing, but it is not as simple as it would seem.

16 Many of the devices, the detecting devices that
17 were considered were simply ones that were either thought
18 of by myself or colleagues and then analyzed to see if they
19 would be adequate.

20 The purpose of at least my approach to the
21 study was determine which areas required functionally
22 some type of apparatus that may not be on the market. We
23 can get into a discussion of the difference between a systems
24 analysis and an operations analysis. The two are different
25 and I might just mention that.

Sim 63

1 An operations analysis is a matter of doing
2 a shopping list of all the apparatus that is available and
3 then putting that apparatus together in a "best system."
4 A systems engineering analysis doesn't do that. A systems
5 engineering analysis starts with functions and it doesn't
6 worry about equipment available. It puts things together in
7 sort of block form as to what functions have to be performed
8 and then after one has the functions spelled out, then one
9 sees what apparatus devices will fit into the different
10 functions.

11 In that way many times you will find a function
12 that requires apparatus that none are available for.

13 Q Did part of your analysis involve attempting
14 to determine how the systems could be compromised or bypassed?

15 A Yes, that is fundamental. All detectors
16 generally can be fooled in one way or another. There is a best
17 technique, at any rate, for getting around any one particular
18 detector. The object is to make sure that you have sufficient
19 number of detectors. One kind of behavior that will defeat
20 one will be exactly what the next one is sensitive to and
21 so forth. All this is part of the study.

22 JUDGE FRYE: Dr. Plotkin, I don't want to put
23 any restraints on you, but we are running under somewhat
24 of a time deadline here. I think if you keep your answers
25 briefer we might be able to get to Dr. Kohn as well.

Sim 64

1 MR. HIRSCH: I will try to make my questions
2 short also.

3 BY MR. HIRSCH:

4 Q The work at TRW in terms of Buildings 5 and 6,
5 you described those as access security systems; is that
6 correct?

7 A Yes. They had gone out for bid for various
8 companies to put in a security system for after hours access,
9 and I was called in to evaluate those proposals.

10 Q You say that in part your expertise is as an
11 systems engineer; is that correct?

12 A Yes.

13 Q Is it fair to say that a systems engineer attempts
14 to assess the interactions of components?

15 A Yes, rather than how each component works. It is
16 how they all fit together, how one relates to another.

17 Q Also you are, and let me see if I have this,
18 an electrical engineer -- is it electrical engineering is
19 what the degree of Doctorate is in?

20 A Yes.

21 Q And just for definition for us tell us what
22 electrical engineering is?

23 A It is a department in the university that deals
24 with electrical phenomena and that gives a degree in
25 electrical engineering, and many of the courses are the same

Sim 65

1 as in other departments having other names.

2 Q So basically your doctorate and your electrical
3 engineering experience gives you, is this correct, you have
4 had experience in terms of analyzing electrical systems and
5 electrical wiring and electronic systems?

6 A Yes. My formal education is in electrical and
7 aeronautical engineering.

8 Q One more question. Are you being paid?

9 A I wish I were. No.

10 Q Have you toured the exterior of the facility?

11 A Yes.

12 Q Have you toured the interior of the facility?

13 A Yes, I have toured the interior. I haven't been
14 able to view it as I would like though. Well, I can explain,
15 but that is enough.

16 Q Have you reviewed drawings of the facility?

17 A Yes.

18 MR. HIRSCH: No more questions.

19 JUDGE FRYE: Mr. Cormier.

20 VOIR DIRE CROSS-EXAMINATION

21 BY MR. CORMIER:

22 Q Dr. Plotkin, you said that you were at Hughs
23 Aircraft from '61 to '67? '

24 A Yes.

25 Q Can you tell us what you did after Hughs Aircraft?

Sim 66

1 A From '67 to '69 I was with TRW. From '69 to
2 the early part of '71 I was with the Rand Corporation.

3 Q So you at TRW from '67 to '69?

4 A Yes.

5 Q And it is in that capacity that you did this
6 contract work for the California Department of Corrections?

7 A Yes.

8 Q Was it also at that time that you did the security
9 for Buildings 5 and 6?

10 A Yes.

11 Q What else did you do at TRW during that period
12 of time?

13 A As I say, the first year approximately, and I
14 don't remember you know dates exactly, was spent with the
15 high-speed ground transportation contract doing automatic
16 highway work.

17 Q Okay. What did you do during the second year?

18 A The second year was contributions to a large
19 number of civil systems, being non-military.

20 Q Non-military like what?

21 A Like a prison security study. There was a
22 ticketing system for the Washington subway, an air suspension
23 system for a high-speed train from LEX to Palmdale. There
24 was a low-cost-housing proposal that I made during that time.

25 Q Oh, so you were on a lot of projects then?

Sim 67

1 A There were a number of which the prison security
2 contract was about three months I would say. Maybe it
3 was four. I don't remember.

4 Q And your responsibility there was the prison
5 contract to evaluate the ---

6 A No, design and develop a system and provide
7 options and rationale for all parts.

8 Q I see.

9 A I have talked to them since and they claim if
10 they ever build a new prison in California that they are
11 going to use my external security system.

12 Q Can you tell us what your external security
13 system consists of?

14 A It consists of four barriers, an infrared barrier
15 along the walls, a seismic sensor across the yard, a contact
16 sensor near the fence and then a fence detector designed
17 by electrician at Lompoc.

18 Q Did you install that equipment?

19 A No. They haven't built a new prison in these
20 years. What I say is when they do build a new prison, they
21 claimed when I last talked to them, which was about four
22 or five years ago, they said that they were going to use
23 that system if they ever built a new prison.

24 Q I see. That system that you recommended is
25 not installed now?

Sim 68

1 A No. The system itself isn't, but all the pieces
2 are installed in various places. In fact in my accident
3 analysis, you know, one of the barriers we have for machines
4 is the infrared wall.

5 Q I understand that, but the system you designed
6 for the California Department of Corrections is not installed
7 at any of the facilities in the California Department of
8 Corrections?

9 A That is correct.

10 Q So there is no real operational test of the
11 effectiveness of that system? It looks good on paper, but
12 there has been no operational ---

13 A No, that isn't true either. What I said is
14 all the components have been tested. They are old tried and
15 true techniques that have been tested and do work individually.

16 Q And what are the components of the system?

17 A As I said, an infrared wall, a Westinghouse
18 seismic sensor, which was what I finally ended up choosing.
19 There may be something better today. This was some years
20 ago. Then a contact sensor in the proximity of the first
21 fence and then the acoustic sensor that was developed at
22 Lompoc. As far as I know, that is the only prison where
23 that fence detector is installed. Most people don't even
24 know about it as a matter of fact.

25 Q Is this equipment available from various

1 manufacturers?

2 A Everything is available except the acoustic
3 sensor. That has to be made up. There is a fellow at
4 Lompoc that it cost him \$20 to make it and I think we
5 can manage to fabricate that equipment if necessary.

6 Q You indicated that your work for Buildings 5 and
7 6 at TRW had to do with access security systems.

8 A Yes.

9 Q Can you explain what that is?

10 A Well, at night they don't have guards all over.
11 People do come to work at night and they have to have some
12 way of opening the doors and checking.

13 Q Is it the card in the slot or combinations?

14 A I would just as soon not get into the system they
15 used. I had some criticisms of it that they didn't listen
16 to and I would rather not talk about that.

17 Q I see. So that system is not in place or is
18 it in place?

19 A Yes, it is.

20 Q It is in place?

21 A Yes. It was up to me to evaluate the proposals.
22 What I tried to say is that I thought they left an element
23 out of their system which is not the best security system
24 it could have been. So I would rather not talk about it.

25 JUDGE FRYE: This is I take it an automated

Sim 70

1 system for controlling access after hours?

2 THE WITNESS: No, it is not automated. It is
3 actually controlled. It is a TV camera system. I wanted
4 it automated.

5 BY MR. CORMIER:

6 Q Have you been involved in the electronics of
7 any of these particular devices yourself?

8 A I don't know what you mean by involved. Have
9 I actually been in the laboratory and built them?

10 Q Have you designed any of the electronic devices
11 that are being used or are being proposed for the California
12 Department of Corrections?

13 A No, not really in the sense that you are -- when
14 you talk about design I think of my job designing and
15 developing high-power pulse modulators. I drew out the
16 circuitry and made sure the draftsmen had the plans right
17 and watched to see the construction and checked it out and
18 so forth. I have not done any of that with these security
19 detectors.

20 Q Were you involved in evaluating different
21 types of detectors?

22 A Yes.

23 Q Can you mention the different manufacturers
24 that you considered?

25 A No. That was a long time ago and I don't

Sim 71

1 remember the manufacturer, except Westinghouse was the
2 seismic sensor. I remember that.

3 Q I see. And you haven't done apparently by your
4 own testimony any security work since '69 when you left
5 TRW?

6 A Oh, I have done some, yes. I have had one
7 accident analysis having to do with a store that was broken
8 into in which the system didn't work and I was called in
9 to evaluate it. Through the years the infrared barrier,
10 for example, is the same thing that I specify in accident
11 cases regarding machines. A person gets caught in a punch
12 press, for example, and he can be protected by the same
13 infrared wall that one uses for the prisons, and the infrared
14 beam is the same thing I used for the vehicle spacing sensor
15 for my automatic highway.

16 Q Isn't it true that those infrared sensors fail
17 all the time?

18 A Not the ones I was going to use.

19 Q I see. The infrared is a good system?

20 A Oh, yes, very good. It can see 50 percent
21 through fog better than the human eye which is advantageous.

22 Q How far does it see? Does it see any great
23 distance?.

24 A It depends on the power.

25 Q Can you tell us what it means to loop a circuit?

Sim 72

1 A I am not familiar with the term. I imagine
2 it means feeding back the power supply so that if one part
3 fails it doesn't knock out the rest of it. That is the
4 usual way that one does that sort of thing. You do that
5 with missiles.

6 Q With respect to detection devices, does the
7 expression looping a circuit mean anything?

8 A Oh, it does and it doesn't. I don't use the
9 term, but from just the words it indicates that one loops
10 the power supply back so that severing of the power supply
11 lead at any one point will not knock out the system and it
12 keeps running. One needs two or three severances of the
13 power supply lead in order to stop the equipment from
14 operating.

15 Q In your work for either the California Department
16 of Corrections or Buildings 5 and 6 at TRW were you involved
17 with key systems?

18 A No.

19 Q Do you have any experience with key systems,
20 security systems?

21 A I have some lock experience, but that is small.

22 Q Would you describe your lock experience, please?

23 A Well, it turns out the classified locks that
24 are used throughout the aerospace industry really aren't
25 very good. It turned out that the locksmith educated me

Sim 73

1 when I was at Highs Aircraft regarding the fundamental way
2 the locks worked and just exactly what is wrong with them
3 and so forth. So I have some lock experience, but I
4 certainly don't hold myself out to be a lock expert and I
5 would defer to someone with more extensive experience.

6 Q Do you have any experience with security doors?

7 A I don't know what you mean. There are various
8 kinds of security one can have with doors. There are
9 fire doors in buildings and there are various detecting
10 type mechanisms that one uses for doors. I have some
11 familiarity. Again, as a systems engineer, how the whole
12 thing relates together is where I claim some expertise, and
13 if one wants to know about such devices in depth, then I
14 would defer to someone else.

15 Q Can you explain, if you have any experience
16 having to do with door detection devices, what that
17 experience consists of?

18 A There are very simple ways for detecting doors
19 being opened. The usual technique is by the microswitch
20 interlock, and this is what is done on equipment all the
21 time. One can certainly do that with any kind of a door
22 and then one can do that same sort of thing with normal
23 doors, you know, like to a room, for example, with some
24 kind of a device that opens or closes a switch the same
25 say the microswitch works. This can be done magnetically

Sim 74

1 or perhaps some other way.

2 Q Have you had any experience in evaluating different
3 door detection systems?

4 A I have never been hired, if that is what you mean,
5 to do that kind of a job, no.

6 MR. CORMIER: No further questions.

7 JUDGE FRYE: Ms. Woodhead.

8 MS. WOODHEAD: No questions.

9 (Board conferring.)

10 JUDGE FRYE: The Board has no questions.

11 Redirect?

12 MR. HIRSCH: No questions.

13 JUDGE FRYE: Thank you very much, Dr. Plotkin.

14 (Pause.)

15 JUDGE FRYE: Has Dr. Kohn been previously sworn?

16 MR. BAY: Yes, he was on a panel in October.

17 JUDGE FRYE: ^{350A} I thought so. So you have been
18 sworn in this proceeding.

19 (Discussion off the record.)

20 Whereupon,

21 ROGER L. KOHN

22 was called as a witness for the Intervenors and, having
23 been previously duly sworn, was further examined and testified
24 as follows:
25

Sim 75

1 VOIR DIRE DIRECT EXAMINATION

2 BY MR. HIRSCH:

3 Q Could you please state your name for the record.

4 A Roger L. Kohn. For the reporter, that is
5 K-o-h-n.

6 Q Would you please describe your education.

7 A I have a bachelor's degree in physics with
8 honors from Haverford College in 1963, and an MS and Ph.D.
9 from Stanford University in applied physics. I think the
10 years were 1965 and 1968. I then of course have a J.D. from
11 UCLA in 1983.12 Q Did I hear that you have a doctorate in applied
13 physics?

14 A In applied physics.

15 Q And would you please describe your work experience.

16 A During my time at Haverford College I had the
17 run of the physics department to myself. I think I had
18 one of the only keys. I had an experimental project in
19 laser physics, but we also had a faculty that was fairly
20 interested in nuclear physics and I think the highest
21 grade I ever got in my life was in the nuclear physics
22 course at Haverford.23 After 1963 I had a number of summer jobs inter-
24 spersed with my formal education, including a summer at
25 Los Alamos and a summer at Bell Laboratories and two summers

Sim 76

1 at the radiation laboratory at Johns Hopkins.

2 From 1963 through 1968 I worked on my degrees
3 at Stanford and was a half-time research assistant in the
4 microwave laboratory where I did device research and laser
5 research.

6 In 1968 I left with my degree and went to Bell
7 Labs for four years where I worked at two different locations,
8 one in what was called the active optical device group which
9 I guess was a name change. It originally was called I
10 think something like electron devices or gaseous discharge
11 devices. It changed with the times as did the projects
12 I worked on. I also spent some time Homedale location of
13 Bell Labs doing coherent optical laser work.

14 I then went briefly to Livermore Laboratories.
15 There was a big reorganization. So I didn't get into things
16 very deeply there and I moved on to the Aerospace Corpora-
17 tion where I spent about five years from 1973 to 1978 and
18 where I had a number of diverse projects. Some of them
19 are research oriented where I was interested in developing
20 new lasers. Some of the projects were applications of
21 lasers to other devices.

22 We had a dual commitment at the laboratory which
23 was in fact the electron device laboratory to both device
24 research and development and to mission oriented research
25 and development, which is to say we often collaborated with

Sim 77

1 people in other departments at the Aerospace Corporation
2 in doing such things as systems analysis on complex
3 satellite or other laser range finders and often electron
4 devices or optical devices separate from lasers.

5 After leaving the Aerospace Corporation, I spent
6 two years at Pacific Sierra Research where I was much
7 more into the use of my talents as a systems analyst. Indeed,
8 although my formal title was I think senior scientist, I
9 was often put down under the title of systems analyst on
10 contract work where that was a better descriptive term for
11 what I did as opposed to what my position in the company
12 was.

13 I worked on a number of contracts at that time.
14 Some of them again included working on the microaspects
15 of lasers and various kinds of sensors, thermal, optical,
16 and acoustic sensors. Some aspects were overall systems
17 analysis, either looking for error sources or accumulated
18 faults in complex optical systems and recommending designs
19 for such systems or organizing laboratory support in order
20 to help other agencies, in particular military agencies
21 develop expertise in certain areas of the systems analysis.

22 Subsequent to 1980 I was in law school.

23 Q Would you just briefly describe the Los Alamos
24 work.

25 A The Los Alamos work was a three-month project

Sim 78

1 where I was located in the Experimental Reactor Division, I
2 don't know what it is called these days, and where I was
3 involved in nuclear particle detectors and studying various
4 effects causing errors in readings of nuclear particle
5 detectors in the environment of a reactor.

6 Q Would you please describe what experience you
7 have in field of sensing and detecting systems?

8 A It turns out, although it may not be clear in
9 my resume, I was looking at it before, that almost every
10 project I have ever worked on had a sensor or detector aspect
11 to it. So that while I never called myself a sensor expert
12 per se, it occurs to me that my older resume which I changed
13 because I was getting into lasers and system analysis was
14 very explicit and went down a list, but basically -- well,
15 not basically. I will go down the list.

16 I have done extensive work in various kinds of
17 optical detectors, that is photo detectors designed to
18 detect light level as well as complex imaging systems
19 designed to detect whole scenes at various wave lengths,
20 ncluding ultraviolet through the infrared, and some of them
21 include motion detection, that is change of the image from
22 time to time.

23 I have worked, for example, at Bell Labs in
24 acoustic scanners and imaging systems. I want to make
25 sure I don't miss anything. Of course, I mised nuclear

1 particle detectors. I not only worked on those at Los Alamos,
2 but also one of my summer stints at Bell Labs was the
3 development of a new type of nuclear particle detector, or
4 new at that time. I understand it is well used now.

5 The aerospace five-year period included a year
6 during which I worked on a device which we hope to be an
7 accelerometer. It was in some respects a very fundamental
8 project, but we were continually called upon to justify our
9 spending the money to work on it and the justification was
10 that it would make an excellent accelerometer, that is in
11 effect a motion detector.

12 In order to justify the research we had to compare
13 its effectiveness to other kinds of things like laser gyros
14 to argue that it was or was not an effective device.

15 I guess one of the points that I would like to
16 make is that I consider that this is a fairly diverse
17 assembly of studies which I believe I have acquired expertise
18 in, and I wanted to point out that even though there may
19 be some holes in it, there are a lot of principles like
20 doppler shift which are sufficiently similar in microwave,
21 infrared, visible optical and acoustical devices that I would
22 not feel that I was in any way too inexperienced to act
23 as a professional if I were called upon to work on a
24 sensor which somehow didn't fall in the exact category that
25 I had already actually worked on with my bare hands.

Sim 80

1 Q Would you explain to me what you mean by a sensor
2 operating on the principle of doppler shift?

3 A If you bounce a wave, a sound wave or a light
4 wave off of a moving object, the frequency or wavelength will
5 shift. And if you look for the difference, you can get a
6 measurement of the speed of the device as well as a direction
7 and there are a lot more subtle effects which I have not
8 recently studied, but it is a fairly general property.
9 Sometimes it is very useful and sometimes it is a nuisance
10 because it causes errors in equipment where you don't want
11 that to occur.

12 Q Have you toured the exterior of the nuclear
13 energy lab?

14 A You mean walk around the outside of the building?

15 Q Yes.

16 A Yes, I have done that.

17 Q More than once?

18 A I guess several times at least.

19 Q Have you toured the interior?

20 A I believe I have done that twice.

21 Q Is it correct that you participated in the
22 reviews of the vulnerability of various components of the
23 facility to destruction?

24 A Which reviews?

25 Q Let me be more specific, as part of the reviews

Sim 81

1 of accidental destruction of the facility.

2 A Yes.

3 MR. HIRSCH: That is all I have.

4 JUDGE FRYE: Mr. Cormier.

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5 VOIR DIRE CROSS-EXAMINATION

6 BY MR. CORMIER:

7 Q Dr. Kohn, you said you participated in the
8 review of the vulnerabilities of certain components of the
9 system as part of the accident analysis?

10 A Yes.

11 Q What components did you analyze yourself?

12 A What do you mean by myself?

13 Q What components do you think you can express
14 an opinion upon yourself?

15 A Well, as part of looking at the reactor and looking
16 at the plans and discussing with other experts that we have,
17 it appears to me that there are some problems involved in
18 the combustibility of materials and leakage through cracks
19 and access ports, which I have seen drawings of or seen
20 physically there or discussed with other members of our
21 present and past panel.

22 Are you interested in the sensor problem? I mean
23 I have worked around the lab and noticed sensors and we have
24 discussed whether or not they could be defeated in terms
25 of security and sabotage.

Sim 82

1 Q Have you ever designed a security system?

2 A Not as a professional. I built my home set.

3 Q Have you ever installed a security system
4 professionally?

5 A No.

6 Q Have you ever worked on commercially available
7 detection systems?

8 A Yes.

9 Q What systems?

10 A I have installed two home burglar alarms and
11 two car burglar alarms. While that may be worth a chuckle,
12 the fact is what I do when I buy a system is I go and
13 I do what a professional would do. I look up the reports
14 of how they work and how sensitive they are and what the
15 error problems are.

16 I mean I don't turn off being a professional
17 when I go home and install my own burglar alarm. So I
18 have some knowledge, including a catalogue of alarm parts
19 at home which I gave gone through. I wouldn't call myself
20 a professional alarm installer, but I would say, as I
21 say, that I don't turn off my professional capabilities
22 or research when I do a project that I am not assigned
23 on a job for pay.

24 Q Do you have any training as a locksmith?

25 A I have changed the pintometers on my own locks

Sim 83

1 and I am well aware of how locks work.

2 Q Do you have any experience on security locks?

3 A What do you mean by a security lock?

4 Q What do you mean by security locks?

5 A I didn't bring up the question.

6 Q Do you have any experience with any security
7 locks, anything that you would call a security lock?

8 A If you are talking about solenoid remote driven
9 locks or special pick proof locks, I probably could not
10 say that I have a professional expertise in the area.

11 MR. CORMIER: I have no further questions.

12 VOIR DIRE CROSS-EXAMINATION

13 BY MS. WOODHEAD:

14 Q Do you have any expertise in security door
15 construction?

16 A No professional in my job capabilities.

17 MS. WOODHEAD: No more questions.

18 JUDGE FRYE: Redirect?

19 MR. HIRSCH: No questions.

20 JUDGE FRYE: Dr. Kohn, thank you very much.

21 Let's see, we have to be out of here at five,
22 do we not?

23 MR. CORMIER: 'I think we can probably push
24 it a little bit. Do you want me to find out?

25 JUDGE FRYE: No, no. I think it is probably

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Sim 84

1 a good time to stop.

2 Let me ask with some degree of fear and trembling
3 what was the result of you all's lunchtime talks?

4 MR. CORMIER: Well, perhaps we ought to go
5 back into In Camera to discuss the information.

6 JUDGE FRYE: All right. Well, I didn't want
7 to go into any detail tonight. I just was going to get an
8 overall assessment.

9 MR. CORMIER: In a word, I heard nothing that
10 would lead me to believe that there is any protected informa-
11 tion in what they are talking about.

12 MS. WOODHEAD: I agree. I think they have
13 no information that is concrete information of any sort
14 whatsoever. What we heard at lunch was allegations of things
15 that might happen, but they don't have any concrete informa-
16 tion that they can come up with right now that could be called
17 information, and I don't agree that it should be protected.

18 JUDGE FRYE: We will get into that tomorrow.
19 You had a chance to look at the security plan?

20 MR. BAY: Yes. I did a very rapid review of the
21 expurgations in both the inspection reports and the security
22 plan and I do have numerous concerns to raise about the
23 expurgations in both documents.

24 JUDGE FRYE: Okay. Now I assume that you may
25 want to make some arguments with regard to witness

Sim 85

1 qualifications in light of the voir dire.

2 MR. CORMIER: Yes.

3 JUDGE FRYE: So we have that as well to do. I am
4 just trying to get an idea of what we have to try to accomplish
5 tomorrow.

6 Is there anything else? Well, we have our
7 tour tomorrow, don't we?

8 MR. HIRSCH: There is also voir dire of the
9 applicant's witnesses.

10 JUDGE FRYE: Okay.

11 MS. WOODHEAD: For what reason?

12 MR. HIRSCH: The same reason as voir dire of
13 our witnesses.

14 MS. WOODHEAD: I disagree.

15 JUDGE FRYE: Well, we have got this other
16 argument to deal with.

17 MS. WOODHEAD: One more thing, Judge Frye. We
18 didn't finish clarifying the contention.

19 MR. CORMIER: We hardly got started clarifying.

20 JUDGE FRYE: Well, I kind of had a feeling you
21 probably hadn't gotten anywhere along those lines.

22 MS. WOODHEAD: Right, yes.

23 JUDGE FRYE: Well, give some thought overnight
24 to what would be the most profitable thing to take up first
25 and then second and so forth. We can get started at

Sim 86

1 8:30 tomorrow morning here.

2 MR. CORMIER: 8:30 here.

3 MS. WOODHEAD: In this room?

4 MR. CORMIER: Yes.

5 JUDGE FRYE: And we will be In Camera tomorrow.

6 MR. BAY: At times when we are talking about
7 the qualifications of the witnesses it will probably
8 be all right. The scheduling of the up-coming hearing
9 shouldn't be, and there are a few other little matters
10 with the protective order that I think we will need to
11 talk about to clear up some ambiguities. They are not
12 subsequent changes. It is just figuring out what it all
13 means in practical terms. There may be portions where there
14 is no particular need for them to be In Camera.

15 JUDGE FRYE: Well, looking at it from the other
16 point of view, when we talk about CBG's information, at
17 least up until we make a decision on it, that is going
18 to be In Camera.

19 MR. BAY: That is true.

20 JUDGE FRYE: When we talk about the expurgations
21 from the security plan, that is going to be In Camera and
22 the tour is going to be In Camera.

23 MR. BAY: And I suspect then when we talk
24 about to some degree the argument over the qualifications
25 of the witness, it might also impinge on those areas. I

Sim 87

1 suspect there will be some argument along the lines of what
2 experts are qualified to see what secured information will
3 generate a considerable amount of argument.

4 JUDGE FRYE: Yes, and that I think would have
5 to be In Camera, too.

6 MR. CORMIER: I would suggest that the whole
7 session be In Camera. I don't see how we can sort out or
8 go in and out constantly. It doesn't seem to be practical.

9 JUDGE FRYE: No, I don't think we can sort it
10 going in and out. I think if we are going to have a portion
11 that is not restricted or not In Camera, then that should be
12 the first portion or the last portion so that the transcript
13 can be segregated easily.

14 MR. HIRSCH: Since I may well not be here tomorrow,
15 since I am returning to teaching duties, if there is something
16 you need of me now, it would probably be useful if there
17 is anything.

18 JUDGE FRYE: One thing unrelated to this. I
19 wrote you to ask for the authors of the ---

20 MR. HIRSCH: I will provide that. I was out
21 of town I guess when the letter arrived. I will provide
22 that within days when I get back.

23 JUDGE FRYE: Okay, good.

24 MR. HIRSCH: I have a couple of similar things.
25 You asked to be kept informed. You asked the staff in

Sim 88

1 particular to keep you informed of the LEU rule. This is
2 just to inform you that on Monday the Commission decided
3 without objection to direct the staff to begin the drafting
4 of the regulation that will convert all university reactors
5 with the possible exception of the University of Missouri,
6 Columbia and MIT, and Option B which would have exempted
7 lifetime cores was rejected at least at that stage by the
8 Commission.

9 JUDGE FRYE: So they are proposing a rule that
10 would require ---

11 MR. HIRSCH: --- all to convert except for the
12 University of Missouri, Columbia and MIT.

13 JUDGE BRIGHT: Do they have any money tacked
14 on to it?

15 MR. HIRSCH: There was a letter from Congressman
16 Ottinger and several other Chairmen of Energy Committees
17 pledging to put the money into the DOE budget.

18 Also, since I probably will not be here tomorrow,
19 I would like, if it is possible, just to make a very brief
20 statement in terms of witnesses and how we perceived the
21 interaction between them, if that is permissible.

22 JUDGE FRYE: Yes.

23 MR. HIRSCH: We basically attempted to provide
24 the Board with a panel that would have the expertise
25 collectively to provide you with the information you need,

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1 someone who is has actually installed the equipment, has
2 chosen the equipment, is in charge of testing the equipment
3 and is familiar with keys and locks. Mr. Cornwell said
4 that he doesn't handle the electrical engineering. That
5 is Dr. Plotkin. The physics of the detector systems, the
6 basic principles on which the work is Dr. Kohn, the doppler
7 systems and how sensitive devices work and has a basic
8 familiarity with the vulnerable parts of the facility in
9 terms of the physics of the reactor.

10 Now as you heard from Mr. Cornwell and
11 Mr. Rogge, they don't care what is inside the building, but
12 they can tell you how they can get in. Dr. Kohn and
13 Dr. Plotkin are there to interact in terms of what portions
14 are vital and what needs to be protected in terms of people
15 getting in, in addition to this issue of how one bypasses
16 the electronics and problems with the systems.

17 Mr. Rogge has long experience in law enforcement
18 and FBI response, a review of security and the ability to
19 penetrate facilities. Of course, Dr. Taylor and
20 Dr. Hafemeister have the nuclear safeguards background in
21 terms of what the particular characteristics are of the
22 security problems for facilities such as this. They each
23 provide the other as is done in any technical area with
24 the expertise that each other needs.

25 I think it is an extraordinary team and I think

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1 that they can provide you with the fol arg:

2 How someone can get in either with detection
3 or without appropriate response if detected.

4 JUDGE FRYE: That is Mr. Rogge?

5 MR. HIRSCH: Mr. Rogge and Mr. Cornwell and
6 Dr. Kohn and Dr. Plotkin in terms of how the systems can
7 be bypassed.

8 JUDGE FRYE: Okay.

9 MR. HIRSCH: Dr. Taylor additionally.

10 They can help you assess what that threat is so
11 that if Mr. Cornwell tells you that you need a home run
12 system, as he described it in terms of the wiring, and
13 Dr. Plotkin, after reviewing the wiring, says it isn't that
14 kind of a system, and they can be bypassed in such and such
15 a way.

16 Dr. Taylor or Dr. Hafemeister can tell you
17 whether that level of sophistication is within the envelope
18 of the threat.

19 So basically I think that already several of them
20 can tell you how you can get in, several of them can
21 tell you how you can bypass the systems so that detection
22 wouldn't occur, several of them can help you assess what the
23 threat is and compare that, against the capability of the
24 system.

25 If I were a Licensing Board, I would call on

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1 people like that. I hope we find a good way so that those
2 concerns and those scenarios as to how someone could get
3 in and either do damage or steal material from which a
4 weapon could be made are assessed carefully and either patched
5 up, if they exist, or if there is an attitude problem, some
6 other solution found.

7 But together they have long experience and the
8 kind of experience I think you need.

9 One other thing. Mr. Bay tomorrow can just
10 remind you of the standard that was used at Diablo in terms
11 of the people that were chosen there.

12 JUDGE FRYE: Okay.

13 Anything else this evening?

14 (No response.)

15 JUDGE FRYE: We will stand adjourned until
16 8:30 tomorrow morning then.

17 (Whereupon, at 5:05 p.m., the prehearing
18 conference recessed, to reconvene at 8:30 a.m., Thursday,
19 February 9, 1984.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: UCLA Research Reactor
(Proposed Renewal of Facility License)

Date of Proceeding: Wednesday, February 8, 1984

Place of Proceeding: UCLA, Los Angeles

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

Marilynn Nations
Official Reporter - Typed

Marilynn Nations
Official Reporter - Signature

Mary Simons
Official Reporter - Typed

Mary Simons
Official Reporter - Signature