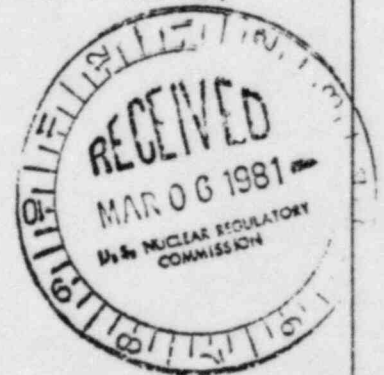


1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 IN THE MATTER OF:) Docket Nos. 50-329-OL
4) 50-330-OL
5 CONSUMERS POWER COMPANY) 50-329-OM
(Midland Plant, Units 1 & 2)) 50-330-OM

6 The deposition of KAMALAKAR RAO NAIDU,
7 called by Consumers Power Company for examination,
8 taken pursuant to the Federal Rules of Civil
9 Procedure of the United States District Courts and
10 the United States of America Nuclear Regulatory
11 Commission pertaining to the taking of depositions,
12 taken before LINDA M. SNODGRASS, a Notary Public
13 within and for the County of DuPage, State of
14 Illinois, and a Certified Shorthand Reporter of
15 said state, taken at the Nuclear Regulatory Commission,
16 Region No. 3, 799 Roosevelt Road, Glen Ellyn,
17 Illinois, on the 26th day of February, A.D. 1981,
18 at 10:20 a.m.



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PRESENT:

MESSRS. ISHAM, LINCOLN & BEALE,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. ALAN S. FARNELL,
MR. RONALD G. ZAMARIN, and
MR. ROBERT G. FITZGIBBONS, JR.,

appeared on behalf of Consumers Power
Company;

MR. WILLIAM D. PATON,
(United States Nuclear Regulatory Commission,
Washington, D.C. 20555),

appeared on behalf of the Nuclear
Regulatory Commission.

REPORTED BY: LINDA M. SNODGRASS, C.S.R.

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I N D E X

WITNESS

DX

CX

RDX

RCX

KAMALAKAR RAO NAIDU

By Mr. Farnell

4

47

E X H I B I T S

EXHIBIT NUMBER

MARKED FOR ID

Naidu Deposition Exhibit

No. 1

4

1 (WHEREUPON, the witness was duly
2 sworn.)

3 KAMALAKAR RAO NAIDU,
4 called as a witness herein by Consumers Power
5 Company, having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FARNELL:

9 Q Mr. Naidu, would you state your full name
10 for the record, please.

11 A Do you want me to spell it out?

12 Q Yes.

13 A K-a-m-a-l-a-k-a-r -- do you want me to
14 spell out my initial?

15 Q Yes.

16 A The middle initial is R-a-o. N-a-i-d-u.

17 Q And your office address is 799 Roosevelt
18 Road --

19 A Yes.

20 Q -- Glen Ellyn?

21 A Yes.

22 Q Okay. And, now, I will show you what has
23 been marked as Naidu Deposition Exhibit No. 1, for
24 identification --

1 A Yes.

2 Q -- as of today's date.

3 A Yes.

4 Q And I will ask you if this is a copy of a
5 resume that you had produced to us today?

6 A Yes, yes.

7 Q Is this resume complete?

8 A Yes.

9 Q As of --

10 A To the best of my knowledge.

11 Q Are the statements contained herein true
12 and accurate, to the best of your knowledge?

13 A Yes.

14 Q You have produced a quantity of documents
15 to us today.

16 A They are mostly -- they are all inspection
17 records, which are in the public document room. And
18 I don't know how these papers got into it. I don't
19 know whether that's part of yours or what. Somebody
20 handed --

21 MR. PATON: Those documents -- I gave to Mr.
22 Zamarin --

23 THE WITNESS: Yes.

24 MR. PATON: -- what you had given to me.

1 THE WITNESS: Okay.

2 BY THE WITNESS:

3 A And, there, Mr. Paton told me. If you make
4 any notes on the inspection reports -- if you would --
5 those notes were annotating something else -- for
6 instance, if there is a generic problem connected
7 with other sites, for example, there were some notes
8 made, there is absolutely -- I don't think it's of
9 any interest to you, but, anyway, it is there. Take
10 whatever you want and make copies. Do what you
11 want.

12 BY MR. FARNELL:

13 Q To the best of your knowledge, are these,
14 what you have produced to us today, all of the
15 documents that concern your activities with the
16 Midland site?

17 A Yes. And others, too, because an inspec-
18 tion report is contributions by other people, by
19 other inspectors, too.

20 Q Contained in these documents, is there any
21 written input that you made into the SALP board
22 meeting?

23 A I remember to have made some, but I don't
24 have a copy of it in my possession which I could

1 readily retrieve. Most of them were verbal, taken
2 out, rewritten, paraphrased, whatever it takes. I
3 can't account for what other people interpret them.

4 Q Okay.

5 (WHEREUPON, there was a short
6 interruption.)

7 BY MR. FARNELL:

8 Q Okay. Naidu Deposition Exhibit No. 1
9 states that from 1974 to the present, you were a
10 reactor inspector, engineering support section.

11 When did you first begin to have responsi-
12 bilities for the Midland project?

13 A Gee, that I would have to get something
14 else to tell you, if you want to be very accurate.

15 Q No. Just a general time period would be
16 fine.

17 A I think 1977.

18 Q 1977?

19 A Yes. Why don't I -- I don't want --

20 Q Fine.

21 A Please.

22 (WHEREUPON, there was a short
23 interruption.)

24

1 BY THE WITNESS:

2 A Yes, 1977.

3 BY MR. FARNELL:

4 Q When you began your inspections at
5 Midland, did you initially do inspections of
6 mechanical -- mechanical-type inspections as opposed
7 to electrical inspections?

8 A Yes. I also might have done concrete
9 inspections.

10 Q Was Midland your -- the only construction
11 site you were inspecting during 1977?

12 A No, no.

13 Q What other sites were you inspecting?

14 A Braidwood, Byron, Calloway, Davis-Besse,
15 Fermi, LaSalle, Midland, Wolf Creek, Zimmer.

16 Q Okay.

17 A In 1977.

18 Q What specific areas of the mechanical
19 aspects of Midland did you inspect in, why don't we
20 say, 1977 and '78?

21 A Whatever active -- construction activities
22 were in progress.

23 Q In 1978, did you continue your inspections
24 of the concrete and mechanical aspects of the Midland

1 site?

2 A There was one inspection I did in 1978.

3 Q Was that in the mechanical and concrete
4 area?

5 A I don't remember.

6 Q Since you have the document in front of
7 you, why don't you tell me for 1979 how many
8 inspections you did of Midland.

9 A Let me put it this way. It looks as though
10 I was there five times. There might not be five
11 inspection reports. There is a -- I can't tell
12 whether there are five inspection reports, but I went
13 there five times.

14 Q Was it your practice to write an inspection
15 report every time you inspected the Midland site?

16 A Normally, yes, but it could be combined
17 with other inspection reports. We can combine two
18 trips into one inspection report. I don't recall that
19 I did that or not.

20 Q Okay. How many for 1980?

21 A In Midland? You are talking about
22 Midland?

23 Q Yes.

24 A Not Ann Arbor, not Jackson Heights, or

1 whatever it is.

2 THE WITNESS: Is that Jackson Heights?

3 MR. PATON: Whatever. Whatever he tells you.

4 BY MR. FARNELL:

5 Q Why don't you tell me how many inspections
6 related to Midland.

7 If you want, other areas, that is fine.

8 A Four.

9 Q Four. Not all of them were at the Midland
10 site, though?

11 A There was one which combined -- Ann Arbor
12 and Jackson was written in one report.

13 Q Okay. How about this year so far, 1981?

14 A I have not been there.

15 Q And you have not done any inspections
16 relating to Midland, either in Jackson or in Midland
17 or Ann Arbor?

18 A No. I have been assigned to another
19 activity called the equipment qualification group.

20 Q It is called the equipment qualification
21 group, is that it?

22 A Probably is.

23 Q And you are assigned to that at the
24 present?

1 A Yes. I'm always borrowed from there.

2 Q Are you still part of Region 3?

3 A Not officially.

4 Q Okay.

5 A I'm part of Region 4, with technical
6 direction from headquarters, if you want to be very
7 specific, since I have promised to tell you all the
8 truth and nothing but the truth.

9 Q With technical direction from headquarters,
10 do you mean I&E headquarters in Bethesda?

11 A Yes. Mr. W. R. Rutherford.

12 Q When were you first assigned to this
13 equipment qualification group?

14 A The papers indicate that I am transferred --
15 assigned to that from January 1st, 1981. January 1st
16 is a holiday, so January 2nd.

17 Q Had you worked with this equipment quali-
18 fication group prior to that time or any time during
19 1980?

20 A I can't say. I have to talk to somebody.
21 We have got a big problem.

22 MR. FARNELL: Off of the record.

23 (WHEREUPON, discussion was had
24 off the record.)

1 BY THE WITNESS:

2 A There may have been a phone call, but I'm
3 not sure.

4 BY MR. FARNELL:

5 Q So, as of January 1st, to the present, you
6 have no responsibilities now with regard to Midland?

7 A Officially, no.

8 Q Officially, no.

9 Okay. How about unofficially?

10 A Which means that if somebody wants my
11 assistance or some work to be done on another
12 project, they can ask me, and I can go and help them
13 with -- with some permission.

14 Q Your office is still here in Glen Ellyn
15 at the present?

16 A Yes.

17 Q Could you give me just a brief description
18 of what this equipment qualification group is, what
19 it does?

20 A It has -- the equipment which has been
21 installed or which will be installed in hostile
22 environment, such as radiation, chemicals, spray,
23 and other environment should be capable of with-
24 standing it and performing.

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Also, certain equipment should be able to withstand a seismic event and continue to operate or operate as necessary for the safe shutdown of a nuclear reactor.

In this particular group, we -- it is prepared to look, examine at the test plants, examine the facilities which will be conducting these tests, to assure that these equipment will successfully withstand the environment for which it is supposed to operate.

Q Certain operating plants have been designated as test plants. Is that --

A It is a wide subject. I'm not -- I cannot give you a satisfactory answer.

Q Did there come a time in your inspections of Midland where you -- where your prime responsibility switched from concrete and mechanical to electrical inspections?

A Can you please repeat that question?

MR. FARNELL: Would you read it back, please.

(WHEREUPON, the record was read by the reporter as requested.)

MR. PATON: Off of the record.

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(WHEREUPON, discussion was had
off the record.)

(WHEREUPON, the record was read
by the reporter as requested.)

BY THE WITNESS:

A Yes, sometime around September in '78, or
'79. I don't recall specifically.

MR. PATON: Off of the record.

(WHEREUPON, discussion was had
off the record.)

BY THE WITNESS:

A This is to the best of my recollection,
since I was involved in multiple discipline
inspections.

BY MR. FARNELL:

Q Okay. What do you mean by the term
"multiple discipline inspections"?

A That I was inspecting mechanical areas and
several areas.

Q During 1977, were there inspectors that --
at Midland who had prime responsibility for the
electrical areas?

THE WITNESS: Can I go off of the record.

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(WHEREUPON, discussion was had
off the record.)

(WHEREUPON, the record was read
by the reporter as requested.)

BY THE WITNESS:

A I don't know.

BY MR. FARNELL:

Q Was there any electrical work early on in
1977, to the best of your recollection?

A I do not know.

Q Okay. In 1978 or 1979, when you say you
switched into the electrical area, can you tell us
why you went into that area as opposed to the
mechanical area?

A I cannot tell you why, because the manage-
ment supervisor told me to go and look at the thing,
and I had to look. I take assignments from my
supervisor.

Q Okay. Who was your supervisor at that
time?

A I do not remember.

Q Have you taken any -- strike that.
Prior to the time you first began making
electrical inspections at the Midland site, had you

1 taken any courses in electrical engineering or in
2 electrical inspection, quality assurance?

3 A I'm an electrical engineer, a graduate.

4 THE WITNESS: Please.

5 (WHEREUPON, discussion was had
6 off the record.)

7 BY THE WITNESS:

8 A No.

9 BY MR. FARNELL:

10 Q Have you taken any courses within the
11 NRC or anywhere else dealing with quality assurance
12 inspection?

13 THE WITNESS: Can you repeat that, please.

14 (WHEREUPON, the record was read
15 by the reporter as requested.)

16 BY THE WITNESS:

17 A Can I ask a question?

18 BY MR. FARNELL:

19 Q Sure.

20 A What time period are you talking about?

21 Q Say prior to 1978. Any time prior to 1978.

22 THE WITNESS: Excuse me.

23 (WHEREUPON, discussion was had
24 off the record.)

1 BY THE WITNESS:

2 A To the best of my recollection, I have
3 attended quality assurance training.

4 BY MR. FARNELL:

5 Q Okay. Do you have a vague, a rough, idea
6 as to the dates of the attendance at the training?

7 A No.

8 THE WITNESS: Excuse me. Off of the record.

9 (WHEREUPON, discussion was had
10 off the record.)

11 BY MR. FARNELL:

12 Q During 1979 and 1980, your inspections were
13 in the electrical area at Midland?

14 THE WITNESS: Can you repeat those dates,
15 please.

16 (WHEREUPON, the record was read
17 by the reporter as requested.)

18 BY THE WITNESS:

19 A Yes.

20 BY MR. FARNELL:

21 Q Have you ever conducted at Midland any
22 inspections dealing with soils or geotechnical areas?

23 A No.

24 Q Do you have any formal training in soils

1 or geotechnical areas?

2 A No.

3 I'm sorry. I didn't realize my answer.

4 In soils, I have academic qualifications.
5 I studied that. We had to, as part of the
6 curriculum. I had to study soils and geotechnical
7 areas, but I am not specialized in it.

8 Q How much study have you done in the soils
9 area?

10 A One year.

11 Q Where was that?

12 A In India. Madras, India, 1951 to '52.

13 Q Okay. Was that year that you spent full-
14 time in the soils area, or were there other areas
15 mixed in?

16 A There were other areas mixed in.

17 Q Do you have any idea how many hours or
18 credits you took in geotechnical science?

19 A I have no idea.

20 Q How many, the number of courses you took
21 in that area.

22 A One.

23 Q One. And since that course, you have not
24 had any formal training in the geotechnical or soils

1 area?

2 A No.

3 Q Are you a member of the American Society
4 of Quality Control?

5 A No. I used to be. I'm not anymore.

6 Q When did you stop being a member of that
7 society?

8 A I don't recall specifically. '76 or '77.

9 Q Do you know if you meet ANSI N45.2.6
10 requirements for inspection and testing personnel?

11 A Do I?

12 Q Do you personally meet those requirements?

13 A Yes, I believe so.

14 Q Could you tell me what those requirements
15 are and how you --

16 A I do not recall specifically.

17 Q What is the basis for your statement that
18 you meet these qualifications?

19 A There are various alternatives, such as
20 engineering degree plus experience, and I believe I
21 meet them.

22 Q Has anyone told you that you meet them,
23 or is this just your personal belief?

24 A It is my personal belief.

1 (WHEREUPON, discussion was had
2 off the record.)

3 BY MR. FARNELL:

4 Q During the period 1977 to the end of 1980,
5 did you have any responsibility whatsoever with
6 regard to inspecting the soils at the Midland site?

7 THE WITNESS: Repeat the question.

8 (WHEREUPON, the record was read
9 by the reporter as requested.)

10 BY THE WITNESS:

11 A I had no specific responsibility of
12 inspecting soils.

13 Q You say you had no specific responsibility.
14 Did you have any responsibility?

15 A I have to ask him. I have to consult.

16 MR. PATON: Sure. Let's go next door.

17 MR. ZAMARIN: Go ahead.

18 (WHEREUPON, discussion was had
19 between the witness and his counsel
20 outside the presence and hearing
21 of the court reporter and other
22 counsel.)

23 THE WITNESS: The question was what? What was
24 the question?

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MR. ZAMARIN: Read the question back.

(WHEREUPON, the record was read
by the reporter as requested.)

BY MR. FARNELL:

Q In regard to soils.

A Every inspector has the option to inspect
any activity on site which he is interested in.
I had no -- during my inspections at Midland, I had
no interest in soils.

Q During your inspections at the Midland
site, did you examine the nonconformance reports
submitted by Consumers Power and/or Bechtel?

A That's a very difficult question to answer.

MR. PATON: Do you want to talk about it or --
off the record.

(WHEREUPON, discussion was had
off the record.)

BY THE WITNESS:

A Yes.

BY MR. FARNELL:

Q Would you read these nonconformance
reports while you were at the Midland site, or would
you read them while you were at your office in
Region 3, or did you do both?

1 THE WITNESS: Excuse me.

2 (WHEREUPON, discussion was had
3 off the record.)

4 BY THE WITNESS:

5 A I have read nonconformance reports at the
6 Midland site, in my motel, in the Midland area, or
7 in the office.

8 BY MR. FARNELL:

9 Q Would that be reading -- would that be --
10 by that I mean the reading of the nonconformance
11 reports be a usual part of your inspection? Was it
12 customary for you to do that?

13 A Yes.

14 Q What would you be looking for when you are
15 reading these nonconformance reports, or what was
16 your purpose in reading them?

17 A The purpose is manyfold.
18 First of all, what went wrong, why it went
19 wrong, and whether remedial action taken was
20 sufficient to prevent recurrences.

21 Q Did you memorialize in written form your
22 findings for your -- what you felt when you read these
23 nonconformance reports?

24 MR. PATON: Off the record.

1 (WHEREUPON, discussion was had
2 off the record.)

3 MR. FARNELL: Strike the question. Strike that
4 question.

5 BY MR. FARNELL:

6 Q After you got done reading the nonconform-
7 ance reports, did you write down your findings
8 regarding these nonconformance reports?

9 A If it was necessary.

10 Q And what form would this writing take?
11 Would it be in your inspection reports?

12 A Yes.

13 Q And if it was not in your inspection
14 reports, then you felt it was not necessary to write
15 it down?

16 A That's right. We customarily -- we read
17 a number of reports, and we look into detailed --
18 we look in detail at those which we are interested
19 in.

20 (WHEREUPON, discussion was had
21 off the record.)

22 BY MR. FARNELL:

23 Q During your inspections at the Midland
24 site, did you review trend analyses?

1 A No.

2 Q Can you tell me why you did not?

3 A It doesn't interest me.

4 Q Is that personally or is that from a job
5 standpoint?

6 Consumers had trend analyses, is that
7 correct?

8 A Yes. I know that Consumers had trend
9 analyses.

10 I did not look at the trend analysis.
11 Is that not sufficient for you?

12 Q When you say it did not interest you, you
13 do not consider it part of your job, or you did not
14 think it was worthwhile, or there must have been some
15 reason?

16 A I had other interesting things to do.
17 No.

18 MR. PATON: That is okay. That is fine. He is
19 asking you why you did not.

20 BY THE WITNESS:

21 A I can only tell you off of the record why.

22 MR. PATON: Now, you better tell him on the
23 record.

24 MR. FARNELL: Off of the record.

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(WHEREUPON, discussion was had
off the record.)

(WHEREUPON, the record was read
by the reporter as requested.)

MR. PATON: Off of the record.

(WHEREUPON, discussion was had
off the record.)

BY THE WITNESS:

A In my area of inspection, I try to identify
the problem and prevent recurrences. As such, I do
not believe that a trend should continue or should
be analyzed. Therefore, I did not view the trend
analysis.

MR. FARNELL: Could you repeat that back to me,
please.

(WHEREUPON, the record was read
by the reporter as requested.)

BY THE WITNESS:

A I would like to amend my statement that I
personally do not believe that I should have reviewed
the trend analysis.

BY MR. FARNELL:

Q In preventing recurrences of problems, you
did not think it would be worthwhile to look at an

1 analysis that showed that problems had been occurring
2 in this certain area, and, therefore, you could look
3 at it and say, "Well, gee, there's a lot of problems
4 there. Maybe I should look more at depth in there,
5 or maybe I should do something about that"?

6 A When I review the NCR's -- the abbrevi-
7 ation for nonconformance reports -- I make that
8 determination, and, therefore, I do not have to go
9 to a separate trend analysis to obtain that
10 information.

11 Q Have you ever heard of something called
12 ALAB 106 reports?

13 A No, sir.

14 Q During 1980, were you requested to provide
15 input to a SALP appraisal of the Midland site?

16 A Yes.

17 Q Who requested that you provide such input?

18 A Mr. Knop.

19 Q Okay. Can you tell me when he --

20 A I don't recall the specific date.

21 Q Can you give me a general day?

22 Was it during the summer or fall?

23 A Fall.

24 Q Did he request this input in writing, or

1 did he tell you over the phone or tell you in
2 person?

3 A I don't recall.

4 Q Do you recall the substance of whatever his
5 communication to you was regarding this?

6 THE WITNESS: Can you repeat that.

7 (WHEREUPON, the record was read
8 by the reporter as requested.)

9 BY MR. FARNELL:

10 Q What did he say to you?

11 MR. PATON: What did he tell you? What was the
12 thrust? What was the general thing, the subject, of
13 his discussion?

14 BY THE WITNESS:

15 A There is a standard requirement of six
16 points or something. Six or seven. I don't remember.

17 Six.

18 BY MR. FARNELL:

19 Q I now show you what has been marked
20 previously as Fiorelli Deposition Exhibit No. 9, for
21 identification, as of February 17, 1981, and ask you
22 if you ever saw this document prior to today.

23 And it is an excerpt from the NRC's
24 Inspection Enforcement Manual dealing with regional

1 evaluation of licensee performance.

2 (WHEREUPON, the document was
3 tendered to the witness.)

4 BY THE WITNESS:

5 A Yes, I am aware of this document.

6 BY MR. FARNELL:

7 Q Okay. When was the first time that you --

8 A I don't know. Probably after April 15th,
9 1980.

10 Q Okay. Did Mr. Knop tell you to refer to
11 that document, Fiorelli Deposition Exhibit No. 9,
12 and provide input on the basis of that document?

13 A I don't recall.

14 THE WITNESS: Can I go off of the record.
15 (WHEREUPON, discussion was had
16 off the record.)

17 BY MR. FARNELL:

18 Q Was it your understanding that your input
19 was to address the -- Item B on Page 2955-3 of
20 Fiorelli Deposition Exhibit No. 9, that is, the six
21 categories of information that is requested?

22 A Yes.

23 Q Okay. Did you provide such input to Mr.
24 Knop?

1 And I will show you what has been marked
2 as Fiorelli Deposition Exhibit No. 11, for
3 identification, as of February 17th, 1981, and ask
4 you if this represents your input to Mr. Knop.

5 (WHEREUPON, the document was
6 tendered to the witness.)

7 BY THE WITNESS:

8 A This contains my input, in addition to
9 others.

10 BY MR. FARNELL:

11 Q Had you ever seen Fiorelli Deposition
12 Exhibit No. 11, for identification, prior to today?

13 A Yes.

14 Q I believe there is a copy in your files.

15 A Yes.

16 Q Okay. The first portion of this Deposition
17 Exhibit No. 11 states, "Notes from Naidu rewritten
18 after verbal discussion."

19 A Yes.

20 Q Okay. Was this rewritten by Mr. Knop?

21 A I think so. I don't know. I cannot say
22 for sure. I believe that that's Mr. Knop's
23 handwriting.

24 Q You had a telephone conversation with Mr.

1 Knop in which he gave you input based on these six
2 categories that we discussed?

3 A I cannot be sure that I had a telephone
4 conversation or a verbal conversation, but I did
5 have a conversation.

6 Q You could have just sat down and talked
7 to him?

8 A Yes.

9 Q Okay. The first of the six categories is
10 "Inadequacy of New Management Controls."

11 Did you tell Mr. Knop that "the new
12 integrated QA organization is still not functioning
13 smoothly in several functional areas"?

14 And I note that this is the first sentence
15 in Fiorelli Deposition Exhibit No. 11.

16 A Yes.

17 Q This Deposition Exhibit No. 11 goes on to
18 state, "Several QA groups were identified by an
19 NRC inspector which there was stated reluctance to
20 work with each other because of personality conflicts
21 or other problems between Bechtel and CPGCo."

22 A Yes.

23 Q You stated that to Mr. --

24 A Yes.

1 Q Okay. The next sentence --

2 A An audit.

3 Q This sentence reads, "Example Audit
4 M-01-55-0 was performed in May, 1980, in which there
5 was a lack of communications between the groups."

6 Would you give me the background on that?

7 A This is going to be a very lengthy one.

8 Q That is okay.

9 MR. PATON: Just go ahead and explain that.

10 (WHEREUPON, there was a short
11 interruption.)

12 THE WITNESS: Please don't write.

13 (WHEREUPON, discussion was had
14 off the record.)

15 (WHEREUPON, the record was read
16 by the reporter as requested.)

17 BY THE WITNESS:

18 A This particular audit in question was
19 performed as a result of an inspection finding from --
20 inspection finding by me, which identified that the
21 Class 1 nuclear instrumentation was installed
22 without the benefit of separation criteria.

23 As a result, 95 percent of the installa-
24 tion had to be dismantled. The drawings from which --

1 the drawings which were used to install the
2 instrumentation tubing were approved by various levels
3 of engineering disciplines in the Bechtel organiza-
4 tion and by Consumers Power, even though the
5 separation criteria was incorrect.

6 I reviewed, also, the specification for
7 this activity and had some unresolved question --
8 matters.

9 As a result of the discussions -- of my
10 discussions with the licensee, they agreed to conduct
11 an audit of this activity to ascertain what else was
12 deficient.

13 One of the participants of this audit was
14 Mr. Shaffer.

15 (WHEREUPON, there was a short
16 interruption.)

17 BY THE WITNESS:

18 A I lost my train.

19 When I -- during my inspection on site,
20 when I asked Mr. Shaffer as to the status of the
21 audit, he informed me that he did not know about it.

22 Several months later, I found that the
23 audit report had been issued and that the responses
24 to the audit were -- excuse me.

1 (WHEREUPON, discussion was had
2 off the record.)

3 BY THE WITNESS:

4 A (Continuing) -- were late.

5 As a result of discussions, I found that
6 the person who actively participated in preparing
7 the responses was a gentleman sitting two doors next
8 to Mr. Shaffer.

9 Mr. Shaffer's immediate boss did not know
10 the status of the audit report.

11 I, therefore, thought that it was
12 necessary for people to be more communicative within
13 the particular group to realize the activities in
14 progress.

15 MR. ZAMARIN: One moment.

16 (WHEREUPON, discussion was had
17 off the record.)

18 BY MR. FARNELL:

19 Q Who did Mr. Shaffer work for? Was it
20 Consumers or Bechtel?

21 A Consumers.

22 Q Consumers. Okay.

23 Who was the man two doors down from him
24 who actively worked on the preparation of the

1 responses?

2 A He was from Bechtel.

3 Q Do you know his name?

4 A I think it's Haller.

5 Q Okay. And who was Mr. Shaffer's boss, to
6 the best of your recollection?

7 A To the best of my recollection, it's Mr.
8 Hank Leonard.

9 Q In your opinion, the responses to the
10 audit were issued late by Consumers, responses to
11 your audit?

12 A It's not my audit. It's their own audit.

13 Q When were these responses issued?

14 A I don't recall.

15 Q Do you recall how late they were?

16 A They were later than what their procedure
17 required.

18 (WHEREUPON, discussion was had
19 off the record.)

20 BY MR. FARNELL:

21 Q Can you tell me what their procedures
22 asked for?

23 A I don't recall.

24 Q Can you give me some order of magnitude as

1 to how late they were?

2 Were they a day late, two days, a month,
3 three weeks?

4 A Several weeks late.

5 Q Did you ever find out why they were late?

6 A Yes.

7 Q Could you tell me why they were late?

8 A I don't specifically recall, but they had
9 adequate -- they had a valid reason for being late.

10 Q That is, in your opinion, there was a valid
11 reason for them being late?

12 A Yes.

13 Q Did Mr. Shaffer have any responsibility for
14 the preparation of the answers?

15 A No. The answers are prepared by Bechtel.

16 (WHEREUPON, discussion was had
17 off the record.)

18 BY MR. FARNELL:

19 Q Just so the record is straight, Mr.
20 Shaffer is with Consumers Power, and his boss, Mr.
21 Leonard, is with Consumers Power, and Mr. Haller
22 is with Bechtel?

23 A Yes.

24 THE WITNESS: Off of the record.

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(WHEREUPON, discussion was had
off the record.)

BY MR. FARNELL:

Q This all refers back to prior to the new
quality assurance organization whereby Bechtel and
Consumers are integrated?

A Yes. At the time of my inspection.

Q At the time of your inspection, they were
not integrated?

A They were partially integrated. They were
integrated.

Q Had the new quality assurance organization
taken place at that time?

A I do not recall, but they were organized,
and the seating arrangement was integrated.

Q Okay. I do not understand what you mean
by "seating --" "seating arrangement."

A They arranged the seats and desks and
chairs and cubicles in the Consumers Power hall,
which indicated that they were organized,
reorganized, for the, what, integrated QA
Department.

(WHEREUPON, there was a short
interruption.)

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(WHEREUPON, the record was read
by the reporter as requested.)

BY MR. FARNELL:

Q Is it your belief that Mr. Leonard should
have known of the status of the audit when you
apparently asked him about it?

A I am going to answer it a different way.
It is my belief that Mr. Shaffer should
have been aware of the status of the audit and that
Mr. Leonard should have informed him of the status,
since he was a participant in the audit.

Q Mr. Leonard is Mr. Shaffer's boss, is
that right?

A I believe so.

Q But Mr. Shaffer did not have a -- Mr.
Shaffer participated in the discussion, but he was
not responsible for preparing the answers, is that
correct?

A That's correct.

Q Mr. Haller was the individual preparing
the answers?

A Yes, I believe so.

THE WITNESS: Can I go off of the record?

MR. FARNELL: Sure.

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(WHEREUPON, discussion was had
off the record.)

BY MR. FARNELL:

Q This example of Audit No. M-01-55-0 that
you have given me is one example, in your opinion,
of this area we are talking about.

Are there any other examples?

A There may be. I cannot recall.

Q If there are such examples, would they be
written down anywhere?

MR. FARNELL: Off of the record.

(WHEREUPON, discussion was had
off the record.)

BY THE WITNESS:

A I don't remember.

BY MR. FARNELL:

Q Okay. Page 1 of --

A Excuse me one moment. Let me see this.

(WHEREUPON, there was a short
interruption.)

BY MR. FARNELL:

Q Page 1 of Deposition Exhibit No. 11 --
the statement refers to personality conflicts.
Can you give me any examples of the

1 personality conflicts to which you were referring
2 there?

3 MR. PATON: Off of the record.

4 (WHEREUPON, discussion was had
5 off the record.)

6 BY MR. FARNELL:

7 Q Let me ask you a preliminary question,
8 first.

9 Are these personality -- alleged
10 personality conflicts a significant concern to you
11 concerning the new quality assurance program?

12 A Yes, I believe so.

13 Q Okay. Why don't you tell me what these
14 personality conflicts are.

15 A I guess you want to have names.

16 Q Please.

17 MR. PATON: Off of the record.

18 (WHEREUPON, discussion was had
19 off the record.)

20 THE WITNESS: What was the question again.

21 (WHEREUPON, the record was read
22 by the reporter as requested.)

23 BY THE WITNESS:

24 A There was an individual by the name of

1 Ed Jones, retired army officer, whose services were
2 employed by Consumers Power, who felt that he was
3 not getting adequate direction from his immediate
4 supervisor, by the name of Mr. Haller.

5 Mr. Haller worked for Bechtel Power
6 Corporation.

7 THE WITNESS: Don't write this.

8 (WHEREUPON, discussion was had
9 off the record.)

10 (WHEREUPON, the record was read
11 by the reporter as requested.)

12 BY MR. FARNELL:

13 Q What was the personality conflict?

14 A He did not get adequate direction.

15 Q From Mr. Haller?

16 A Mr. Haller.

17 Q Okay. And did he let that be known or --
18 that, to me, does not represent a personality
19 conflict. That represents, perhaps, lack of
20 supervision or something.

21 But what was the personality -- did they
22 hate each other, or did they not work together well?

23 A In the areas I was inspecting, the problems
24 were not being readily identified to take proper

1 corrective action.

2 While discussing this matter with Mr.
3 Jones, I came to the conclusion that proper direction
4 was not being given to inspect the respective areas
5 which should have been inspected.

6 Q When was this inspection that you refer to?
7 What date was that?

8 A After the -- sometime in October.

9 Q 1980?

10 A 1980.

11 Q After your conversations with Mr. Jones,
12 did you report your conclusion to anybody from
13 Consumers or Bechtel, that there was not this
14 adequate supervision?

15 A During our inspections, we had several
16 informal discussions with Consumers Power, the
17 licensee, and, to the best of my recollection, I
18 informed several key licensee representatives on site,
19 such as Mr. Dennis Keating.

20 Q Any others that you can remember?

21 A I do not recall specifically.

22 Q This was after you talked to Mr. Jones
23 and found out this lack of supervision that you
24 talked to Mr. Keating?

1 THE WITNESS: Can you hold off.

2 (WHEREUPON, discussion was had
3 off the record.)

4 BY THE WITNESS:

5 A Yes.

6 BY MR. FARNELL:

7 Q What did Mr. Keating say to you?

8 A I don't recall.

9 Q Did you put in your inspection report any
10 mention of Mr. Jones or his lack of supervision that
11 you believe you found?

12 A No. We do not write such things in the
13 inspection report.

14 Q Can you tell me why?

15 A It is not part of the inspection report.

16 Q Are there any other personality conflicts
17 that form the basis of --

18 A I do not recall offhand.

19 Q The first sentence under Item 1 on Page 1
20 of Fiorelli Deposition Exhibit No. 11 states,
21 "Several QA groups were identified by an NRC
22 inspector."

23 That NRC inspector is you?

24 A I am not sure, but it is quite possible.

1 Q Can you tell me what the several QA groups
2 were which were reluctant to work with each other?

3 And I am paraphrasing from the same
4 sentence.

5 A The QA group of the integrated Consumers
6 Power Department and the Bechtel QA, for which
7 there was still representation in a different room.

8 Q Have those two groups since merged into
9 one?

10 A I don't believe so.

11 MR. FARNELL: Could you read me back his last
12 statement.

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY MR. FARNELL:

16 Q That was at the Midland site, you were
17 referring to?

18 A Yes.

19 Q And what time was that, approximately?

20 A Same time.

21 Q Around October of 1980?

22 A Yes.

23 Q Did you make known to anyone in Bechtel's
24 or Consumers' your belief that these two groups were

1 reluctant to work with each other?

2 A I don't recall.

3 (WHEREUPON, discussion was had
4 off the record.)

5 BY MR. FARNELL:

6 Q Can you tell me any incident or incidents
7 that led you to the belief that these two groups
8 were not -- were reluctant to work with each other?

9 A By the way in which they answered some of
10 the audit findings in the report, in the audit
11 report, which you mentioned earlier.

12 Q M-01-55-07

13 A Yes, yes.

14 MR. FARNELL: Could you read back his answer,
15 please.

16 (WHEREUPON, the record was read
17 by the reporter as requested.)

18 BY MR. FARNELL:

19 Q How did the way in which they answered
20 these audit reports show that they were reluctant
21 to work with each other?

22 A I don't recall specifically.

23 (WHEREUPON, discussion was had
24 off the record.)

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(WHEREUPON, the deposition was
recessed to 1:00 p.m., this date,
February 26, 1981.)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:) Docket Nos. 50-329-OL
) 50-330-OL
CONSUMERS POWER COMPANY) 50-329-OM
(Midland Plant, Units 1 & 2)) 50-330-OM

February 26, 1981,
1:25 p.m.

The deposition of KAMALAKAR RAO NAIDU,
resumed pursuant to recess at the Nuclear Regulatory
Commission, Region No. 3, 799 Roosevelt Road, Glen
Ellyn, Illinois.

PRESENT:

MESSRS. ISHAM, LINCOLN & BEALE,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. ALAN S. FARNELL, and
MR. ROBERT G. FITZGIBBONS, JR.,

appeared on behalf of Consumers Power
Company;

MR. WILLIAM D. PATON,
(United States Nuclear Regulatory Commission,
Washington, D.C. 20555),

appeared on behalf of the Nuclear
Regulatory Commission.

REPORTED BY: LINDA M. SNODGRASS, C.S.R.

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KAMALAKAR RAO NAIDU,

called as a witness herein, having been previously
duly sworn and having testified, was examined and
testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. FARNELL:

Q Did this perceived reluctance to work with
each other affect the Midland project in any manner
that you are aware?

A To the best of my knowledge, it was my
opinion that this situation should be brought to
the management for improvements to be made in this
area, and that was the reason that this information
was given to Mr. Knop to weigh their suggestions
with the management of Consumers Power during their
SALP meeting.

Q Had this reluctance that we are talking
about caused any problem at the Midland site, or
was this just something that you thought was a
perception that might happen in the future?

A We are requested to give our input, which
may in any way help Midland in the future, Consumers
Power in the future, to facilitate easier construc-
tion without problems. Therefore, it was my opinion--

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in my judgment, I thought that if certain actions were taken to correct the situation, there would be progress in the Midland construction site without problems.

Q Okay. Are you aware of any problems that were caused by this perceived reluctance to work with each other, any specific areas with which problems had occurred?

A Yes. There were instances where results have identified problems, and corrective actions taken were reported as complete by Consumers, whereas, when I identified it personally, this did not appear to be the case.

Q Could you tell me each one of these -- the examples to this?

A One example would be the case of correcting the nonconforming condition of welds in lower cable spreading rooms.

In this particular case, Consumers Power thought that all the nonconformances were corrected in November, 1978, whereas, in fact, it was the -- the last correction was made somewhere in 1980.

Another instance would be the personnel access hatch.

1 Q Why don't you tell me a little bit more
2 about this personnel access hatch.

3 Give me a brief summary of that, and then
4 any others that you might have.

5 A Isn't two enough?

6 Q We want them all.

7 A What should I say now, more of the
8 personnel access -- the personnel access hatches
9 had several weld deficiencies which were reported
10 as complete.

11 Can I go back and correct that sentence?

12 Q Yes.

13 A There were several problems identified on
14 the welds -- weld attachments to the personnel hatch.
15 These -- it was reported to us that these weld
16 deficiencies were corrected. When we went to inspect
17 the final disposition, we determined that the
18 corrective action taken was not complete. This
19 indicates that the proper information was not given
20 to Consumers QA, which resulted in an erroneous
21 report to the NRC that the corrective action was
22 completed.

23 Q Okay.

24 Q We thought that -- I personally thought

1 that the situation should be improved so that
2 Consumers Power are -- Consumers QA personnel are
3 kept informed accurately of the completion of the
4 disposition of deficiencies.

5 Q Are there any others?

6 A I do not recall specifically.

7 Q You do not recall any other examples?

8 A Not offhand.

9 Q Okay. Is there any document that you know
10 of that would set forth these other examples, if they
11 exist, besides the lower cable spreading item and
12 the personnel hatch item that we just discussed?

13 A Perhaps.

14 Q You do not recall as you sit here right
15 now?

16 A I cannot offhand give you all of the
17 details.

18 Q Going back to the first example you
19 mentioned, the lower cable spreading room support
20 welds.

21 A Yes.

22 Q Okay. You said in November, 1978,
23 Consumers Power reported to the NRC that --

24 A I believe that date would be correct.

1 (WHEREUPON, discussion was had
2 off the record.)

3 BY MR. FARNELL:

4 Q Did Consumers report this in a letter or
5 a document?

6 A Yes.

7 Q Do you recall who the document came from?

8 A From Mr. Stephen Howell, Vice President of
9 Consumers Power.

10 Q Do you know who that document was addressed
11 to in the NRC?

12 A Mr. James Keppler.

13 Q Mr. Keppler referred that document to you?

14 A Yes. That would be normal, even if Mr.
15 Keppler -- the letter is addressed to Keppler, and
16 then it drifts down to the inspector, who actually
17 handles the situation.

18 Q Okay. What happened after you received
19 this letter?

20 Did you go and reinspect --

21 A On several occasions, I went to reinspect
22 it, and there was always to be confusion, and we had
23 to start all over again by bringing all of the people
24 associated, knowledgeable, or who would be

1 knowledgeable, in this matter, and it continued until
2 such time that it was determined that there was no
3 documentation available that these welds were, in
4 fact, corrected.

5 I believe that the last weld was corrected
6 in 1980.

7 Q At that time was it your opinion that all
8 of the welds had been corrected that you were
9 concerned about?

10 A I couldn't make the determination, unless
11 I see the documentation or the welds itself.

12 You have to realize that from 1978 to 1979
13 or '80, a lot of progress had been made in the lower
14 cable spreading room, additional supports, cable
15 pans, and cables have been installed, and it is not
16 readily accessible for visual inspection.

17 I cannot tell you at this point whether
18 they were fixed or not, because we first had to rely
19 on the mechanism which has been established that the
20 licensee informs us that the certain activity has
21 been completed, whereupon we verify whether, in
22 fact, that this activity was completed and whether
23 it was satisfactory.

24 Therefore, a lot of the delay occurred

1 because the respective documents were not available
2 and the people who were associated with this activity
3 were not available, for discussions.

4 Q Who did you talk to at Consumers or
5 Bechtel regarding this confusion, as you call it?

6 A We do not go and talk to Bechtel directly.
7 We go to Consumers Power QA. And I believe in this
8 particular case I talked to Mr. Dennis Keating, who,
9 in turn, summons or invites people associated with
10 this responsibility.

11 Q Approximately how many meetings did you
12 have with --

13 A I cannot recall offhand.

14 Q Were any of these meetings, the substance
15 of those meetings, set forth in any documents or
16 any minute notes or anything like that?

17 A I believe it's in my last report. However,
18 interim inspection meetings were not recorded,
19 because I didn't feel that there was any necessity
20 to document records or meetings which were not very
21 fruitful.

22 Q During the time from November of '78
23 through 1980, you said that Consumers made progress
24 in fixing these welds.

1 A No, I did not say that.

2 Q I thought that was what you said.

3 What did you see in that regard?

4 A Construction activity progressed in the
5 lower cable spreading room. That means they put
6 some more supports, they put the cable pans, they
7 do a lot of activity, which tends to overcrowd the
8 room, and those welds which are initially put in
9 there to hold the supports become very inaccessible
10 for visual inspection.

11 Q At the time you -- or, at the end of 1980
12 when you had your last inspection, did you consider
13 that the problem of the -- these lower cable spreading
14 room support welds was resolved?

15 A Yes.

16 Q And it was resolved satisfactorily?

17 A Yes.

18 Q Going to your second example, which is the
19 personnel hatch.

20 A Yes.

21 Q And I see in Fiorelli Deposition Exhibit
22 11, Page 3, you talk about Unit 2 personnel hatch.

23 A Yes.

24 Q Can you tell me when Consumers first

1 reported to you that they had finished corrective
2 work on the deficiencies that you had?

3 A I do not recall specifically.

4 Q Do you have --

5 A I was once asked to go and look at the
6 corrective action taken on the personnel hatches
7 of Units 1 and 2, whereupon I verified the corrective
8 action taken on Unit 1. I could not get to Unit 2,
9 because there was some activity going on here which
10 precluded my access to the welds on the Unit 2.

11 However, during a subsequent information -- subse-
12 quent inspection, it was made clear by one of my
13 colleagues that this -- the welds were not fixed.

14 Q Okay. Who is that colleague of yours?

15 A Mr. Tom -- T. E. Vandel.

16 Q Do you know when he had that conversation
17 with you wherein he stated that the welds hadn't
18 been fixed?

19 A Subsequent to the inspection. And I do
20 not recall exactly the time frame of it.

21 Q Okay. Did you go and verify his opinion
22 that the welds had not been fixed?

23 A No. It was brought to Consumers Power
24 personnel's attention, and they were -- they

1 acknowledged that the welds were not fixed, and this
2 situation continued for some more time, and I think
3 that only in -- sometime in 1980, that this matter
4 was resolved.

5 Q Do you know when Consumers acknowledged
6 that the welds were not fixed?

7 A At the time when we looked at it.

8 Q I thought that Mr. Wandel had told you
9 that the welds had not been fixed, and at the time
10 he told Consumers.

11 A Yes.

12 Q And then Consumers told you that they said,
13 yes, he is right, that the welds have not been fixed.

14 A I do not have to ask Consumers Power.
15 It was known to everybody during that inspection
16 that the welds were not repaired.

17 Q Okay. You mean you indicated to me that
18 Consumers Power acknowledged --

19 A Yes, at that time.

20 Q Okay.

21 A But there was no necessity for Consumers
22 to come back to me and tell them that I agree or
23 disagree with --

24 Q Yes, but I am asking, when did Consumers

1 acknowledge that?

2 Did they acknowledge it to you, or did they
3 acknowledge it to Mr. Vandel?

4 A They acknowledged it to Mr. Vandel.

5 Q Okay. Do you know who acknowledged it?

6 A Mr. Dennis Keating.

7 Q Did he acknowledge it in a letter or in
8 a conversation?

9 A During the exit interview.

10 Q During the exit interview?

11 A Yes.

12 Q Okay. Did you have any conversations with
13 Mr. Keating concerning these welds after that exit
14 interview?

15 A I don't believe so.

16 Q Did you have any more involvement at all
17 with these welds?

18 A I don't believe so.

19 Q To your knowledge, have these welds been
20 fixed?

21 A To the best of my recollection, it was --
22 the issue was laid to rest sometime in 1980.

23 Q It was resolved satisfactorily to the NRC?

24 A Probably.

1 Q You do not know?

2 A I do not know.

3 Q The last paragraph, the first page of
4 Fiorelli Deposition Exhibit No. 11, reads, "Better
5 overview and coordination is needed including closer
6 management attention," and then in brackets, "QA
7 Manager at site," and then question mark and then
8 brackets.

9 A Yes.

10 Q Is that a statement that you made to Mr.
11 Knop?

12 A Yes. I made the statement to Mr. Knop
13 that it would be in the best interests of Consumers
14 Power if Mr. Walt Bird was on site so that he could
15 have a very prompt overview of the organization and
16 could be cognizant of the day-to-day events and
17 that he would have -- he might have a better control
18 on the situation, which would considerably improve
19 the effectiveness of the quality assurance
20 organization.

21 MR. FARNELL: Could you read that first part
22 of that back, please.

23 (WHEREUPON, the record was read
24 by the reporter as requested.)

1 BY MR. FARNELL:

2 Q Did you bring your feeling regarding Mr.
3 Bird to the attention of Consumers Power?

4 A No. There is nothing I could bring to the
5 attention of Consumers Power.

6 Q Have you ever met Mr. Bird?

7 A Yes.

8 Q You did not want to go up to Mr. Bird or
9 call him on the phone and say, "I think you should
10 be on site more"?

11 A No.

12 Q Do you know Mr. Keeley, Mr. Gil Keeley?

13 A I don't recall knowing him very personally.

14 Q Have you ever met him?

15 A I don't recall.

16 (WHEREUPON, discussion was had
17 off the record.)

18 BY MR. FARNELL:

19 Q When did it -- when did you first develop
20 the opinion that it would be in Consumers Power's
21 interest to have Walt Bird on site?

22 A When Mr. Knop asked me what -- how the
23 organization could better improve.

24 Q So that was at the time you prepared your

1 SALP input?

2 A Yes.

3 Q Did you think that Mr. Bird was not
4 spending enough time on site?

5 A There were very few occasions when I met
6 Mr. Bird on site when I was there during an
7 inspection.

8 Q Did you have any personal knowledge of how
9 many times he had been on site?

10 A Not specifically.

11 Q How about generally?

12 A I have no specific answer.

13 Q Okay. So your opinion was based on the
14 fact that you had not seen him this time since you
15 had been there on inspections?

16 A No. There were certain -- every time I
17 had a significant finding, then the personnel at the
18 site had to call him, apprise him, and get back to
19 me.

20 And, furthermore, during our exit inter-
21 views, our findings were not translated, communicated
22 to him, which resulted in his calling us back at the
23 office and rehashing some of our findings.

24 Q Do you know for a fact that your findings

1 were not communicated to him?

2 A I do not know.

3 But all that I know is that he called back,
4 and he said that he didn't know that I said this
5 and this and that I had some items of noncompliance.

6 Q Can you give me any specific instances
7 where this happened?

8 A I don't recall, but I think specifically
9 in, I think it is, 1978, one of the supervisors
10 called me and said, "Mr. Walt Bird informed us that
11 you -- he did not know that -- that you had a specific
12 finding."

13 And I said -- then I told other people,
14 and they were knowledgeable that we had a finding.
15 I'm not sure that -- whether Walt Bird was there or
16 he was not there, but there were occasions when the
17 message was not being communicated to him.

18 Q That was in your -- in your view?

19 A In my opinion, yes.

20 Q Do you know who that supervisor was that
21 informed you that Mr. Bird had not been informed
22 of this?

23 A Yes. Mr. R. L. Spessard.

24 Q He worked for the NRC?

1 A Yes.

2 Q Okay. Do you know what those findings
3 were?

4 A I do not recall them from memory.

5 Q Okay. Do you think Mr. Bird is qualified
6 to do the job that he has right now?

7 A I have no opinion one way or the other.

8 Q Is it your job to have an opinion?

9 A I don't think it's my job to have an
10 opinion, but certainly if some --

11 THE WITNESS: Can you read that question back.

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 BY THE WITNESS:

15 A Not specifically.

16 BY MR. FARNELL:

17 Q Do you think it is in the best interests
18 of Consumers Power to have someone other than Mr.
19 Bird as the Quality Assurance Manager at the Midland
20 project?

21 A I wouldn't be able to give you a definite
22 statement, since I don't know the others who are
23 qualified or what the experience of the other
24 gentleman would be.

1 Q Do you think Mr. Bird has done an adequate
2 job of quality assurance at the Midland site?

3 A I have no direct involvement with Mr. Bird.

4 Q So you do not --

5 A Other than special occasions.

6 Q Based on your special occasions, do you
7 have an opinion?

8 A I could not --

9 MR. PATON: As I heard the question was --
10 whether he did an adequate job of quality assurance
11 is the way I heard the question.

12 Is that the question?

13 MR. FARNELL: Yes.

14 BY THE WITNESS:

15 A The question is too broad. You can --
16 I don't think I can satisfactorily answer a question
17 whether a person adequately did a job on quality
18 assurance.

19 BY MR. FARNELL:

20 Q Because you feel the division is too
21 limited, you have only been there a few times and
22 looked at a few things? Is that what you are
23 saying?

24 A No. Quality assurance is a wide subject.

1 It's a wide subject. It involves quality control,
 2 it involves organization, it involves inspection,
 3 it involves achievement and proper auditing, and,
 4 therefore, the direction which is given is what is
 5 more important, and, therefore, I cannot answer
 6 your question.

7 Q Okay. Have you ever recommended to Mr.
 8 Knop or Fiorelli or Keppler that Mr. Bird -- strike
 9 that.

10 Have you ever recommended to anyone at
 11 Region 3 that Consumers Power place someone else
 12 other than Mr. Bird as Quality Assurance Manager
 13 at the Midland site?

14 A I recommended that it would be more
 15 effective if Mr. Walt Bird came to the Midland site.

16 Q But you never recommended that someone
 17 else take his position?

18 A Not to my recollection.

19 Q Do you believe Mr. Bird has been cognizant
 20 of quality assurance issues at the Midland site
 21 during the time that you have had involvement with
 22 it?

23 A I have no direct involvement with Mr. Bird.
 24 I operate in conjunction with the QA personnel on

1 site, and they refer the matter to him. Therefore,
2 I cannot guess whether he is cognizant or not.

3 Q So, basically, you just do not have any
4 opinion on that subject?

5 A Right. Yes.

6 Q Do you have any opinion concerning the
7 adequacy of Mr. Gil Keeley in regards to quality
8 assurance?

9 A I don't recall having extended conversa-
10 tions with Mr. Keeley.

11 Q You use the words "extended conversations."
12 Have you ever had any non-extended
13 conversations with Mr. Keeley?

14 A Not to my recollection.

15 Q Okay. During the time -- strike that.
16 When did the new quality assurance
17 organization first come into effect in Midland?

18 A To the best of my recollection, in 1980.

19 Q Do you have any date that stands out in
20 your mind?

21 A No.

22 Q Late part of 1980?

23 It was after the SALP period, wasn't it?

24 A No. Prior to it.

1 Q Do you know when the SALP period was?

2 A Excuse me, but there is no SALP period.

3 Oh, I'm sorry. There is a SALP period.

4 No. There is a period for which they form
5 an opinion for the SALP, not a SALP period.

6 Q Do you know when that -- when that was?

7 A Later part of 1979 up to a certain point
8 in 1980.

9 Q Encompassed within that period, the new
10 quality assurance organization had commenced?

11 Is that your understanding?

12 A Yes.

13 Q Okay. You will be happy to know we are
14 moving to the second page.

15 Page 2 appears to have the notation
16 "2" in the not quite upper left-hand column, and I
17 believe this refers to the second category of
18 information with regards to SALP, which is the
19 communications within the function of the group and
20 between other groups providing technical input.

21 Is that your understanding of what that
22 number 2 signifies?

23 (WHEREUPON, the document was
24 tendered to the witness.)

1 BY THE WITNESS:

2 A This 2, I don't know.

3 BY MR. FARNELL:

4 Q I ask you to look at Fiorelli Deposition
5 Exhibit No. 11, and I think you will see that it
6 goes one, two, three, four, five, six, which I
7 believe corresponds to these numbers.

8 A Yes.

9 Q And if you were asked to give input on the
10 basis of these numbers -- I would assume that that
11 is what No. 2 refers to.

12 A It says "some of the inspectors." It
13 doesn't say "one individual inspector."

14 Q Okay. Was it your opinion that Bechtel
15 is still more interested in protecting Bechtel than
16 informing CPCo of problem areas?

17 MR. PATON: Would you read that question back.

18 (WHEREUPON, the record was read
19 by the reporter as requested.)

20 BY MR. FARNELL:

21 Q As of the date you gave your SALP input.

22 MR. PATON: Okay. Go ahead.

23 (WHEREUPON, discussion was had
24 off the record.)

1 BY THE WITNESS:

2 A Yes.

3 BY MR. FARNELL:

4 Q What was the basis for that opinion?

5 A In my area, there was an instance where
6 a three-phase cable had water coming out of one of
7 its phases. This problem was identified somewhere
8 in 1978, and I cannot conclude that it was protection
9 or some other thing which prevented them from taking
10 corrective action such as -- such as rejecting the
11 cable in its entirety for manufacturing defects.

12 There was some -- many problems in the
13 wiring design, which was incorrectly interpreted.

14 Q Is this another example, or is this still
15 the same?

16 A Another example.

17 Q Okay.

18 A They were -- there was another example
19 where safety-related cable trays was initially not
20 designed as a -- safety-related equipment, or was
21 not characterized as safety-related, if you want
22 to amend that one particular word.

23 And then there was the instance of
24 installing instrument tubing inside the containment

1 without the benefit of separation for missile
2 barriers and jet impingement.

3 And as stated there, there was a Part 21
4 on DeLaval turbines.

5 And then there was another instance where
6 safety related diesel generators were dropped or
7 were damaged during transit from their stored --
8 can you correct that from stored to storage facility
9 to the diesel generator building.

10 In these instances, I felt that Consumers
11 Power could have been better informed, and the
12 activities better regulated, to prevent unnecessary
13 damage and extended delays in resolving the problems.

14 Q Okay. As you probably know, we are going
15 to go over each and every one of these examples.

16 To go to the first one --

17 A Incidentally, can you tell me how long we
18 are going to be here, approximately?

19 MR. FARNELL: Let's go off of the record.

20 (WHEREUPON, discussion was had
21 off the record.)

22 (WHEREUPON, a recess was had.)

23 BY MR. FARNELL:

24 Q The first example was the three-phase

1 cable with water coming out.

2 A Yes, yes, yes.

3 Q How did you determine that -- strike that.

4 Keep in mind the three-phase cable.

5 Did you determine that Bechtel had not
6 informed Consumers as quickly as it should have in
7 that instance?

8 A The problem about the condition of the
9 cable, how it occurred on that, it was predominantly
10 a manufacturing defect, should have been brought to
11 Consumers Power's attention.

12 Q Eventually, it was brought to Consumers
13 Power's attention, is that correct?

14 A It was brought to Consumers Power's
15 attention that water was coming from the -- from one
16 of the conductors of the three-phase cable.

17 However, the root cause was a manufacturing
18 defect was not readily admitted or diagnosed.

19 Q What is your basis for the statement that
20 Consumers Power was not -- did not know what the
21 root cause was?

22 A Because of the nature of the fixes,
23 remedial action which was being taken, such as --
24 analyzing the water for its chemistry, trying to

1 purge the water out of a cable satisfactorily, were
2 some of the remedial actions being proposed at that
3 time.

4 Q How was this problem with the three-phase
5 cable resolved?

6 A I do not know whether it has been resolved
7 as yet.

8 Recently, I was informed that this matter
9 was reported as a 50.55(e).

10 Q Can you recall how recently it was?

11 A Less than three weeks.

12 Q Less than three weeks.

13 How does this three-phase cable incident
14 show that Bechtel is more interested in protecting
15 Bechtel than informing Consumers Power of problem
16 areas?

17 A Because Bechtel purchased this cable with
18 their own specifications. Bechtel performed the
19 inspections. Bechtel certified that this cable is
20 good for release to the site.

21 Q So did you consider what Bechtel was
22 proposing as a fix as an example of trying to protect
23 their interests?

24 A I do not know whether I want to say that.

1 I just logically conclude that when we
2 were -- the other licensee was not in a position to
3 determine that it would have been in the best
4 interests to procure new cable and adequately
5 supervise the manufacture of the cable.

6 Q So your statement is based on the fact
7 that you believe that if Consumers had known the
8 true condition or the true root cause of the
9 problem, it would have purchased new cable instead
10 of trying to repair the old cable?

11 A That is my opinion.

12 Q Have you talked to anyone in Consumers
13 Power about the three-phase cable problem?

14 A Yes. At that time, I remember to have
15 had discussions with Mr. Mike Shaffer.

16 Q Did he indicate in any way that Bechtel
17 had not informed Consumers Power about the true
18 nature of the problem with the three-phase cable?

19 A I don't recall that he so specifically
20 informed me, but I do recall that they were investi-
21 gating other means to purge the cable of the water
22 and to take other remedial actions to fix that
23 particular reel of cable.

24 Q Is that all you remember?

1 A That is the extent of it.

2 Q Do you know who -- which NRC inspector is
3 currently working on the three-phase cable problem
4 or monitoring it?

5 A No.

6 Q How did you find out that the 50.55(e)
7 report had recently been issued?

8 A Mr. Knop informed me that Consumers Power
9 notified the 50.55(e) item.

10 Q Did he say anything else to you other than
11 that about this three-phase cable problem?

12 A No.

13 Q Did you say anything to him?

14 A No.

15 Q The second example I believe you cited
16 dealt with wiring design.

17 A Yes.

18 Q Could you give me a little synopsis of
19 that, please.

20 (WHEREUPON, discussion was had
21 off the record.)

22 BY THE WITNESS:

23 A As I recall, the equipment in Units 1 and
24 2 were taken as a mirror, and, therefore, the

74
1 terminals were not correctly identified, and the
2 connections were made in the terminals, which was
3 subsequently found to be erroneous. This involved
4 extensive rewiring modifications, both on paper and
5 physically re -- pulling out wires and rerouting
6 them.

7 This matter was reported as a 50.55(e)
8 item subsequently.

9 Q Do you know the approximate date that it
10 was reported as such?

11 A I do not recall.

12 Q Was it 1980?

13 A No. 1979.

14 Q Could you tell me how this shows that
15 Bechtel is still more interested in protecting
16 Bechtel than informing Consumers Power?

17 A I don't know how you can pin that on me.

18 Q It does not -- does it in any way?

19 I can explain it to you. I asked you for
20 examples of where Bechtel was more interested in
21 protecting Bechtel than informing Consumers.

22 MR. PATON: Still more interested.

23 MR. FARNELL: Right. Still more interested.
24

1 BY MR. FARNELL:

2 Q And you cited this wiring design, and you
3 have given me a description of what the wiring
4 design problem was.

5 And now I just want to find out how that
6 wiring design problem shows that Bechtel is still
7 more interested in protecting Bechtel than informing
8 Consumers Power.

9 A In the sense that Bechtel performed the
10 design and performed the coordination between the
11 NSSS suppliers and their own design work.

12 Q Did Bechtel inform Consumers Power of this
13 problem in a timely manner?

14 A I cannot specifically answer that question.

15 Q Did Bechtel hold back any information from
16 Consumers Power, to the best of your knowledge?

17 A To the best of my knowledge, the time taken
18 to bring this matter to their attention. In view
19 of the fact that construction activities were
20 suspended for a period of time in 1979, I had to
21 conclude that this was the case.

22 Q That what was the case?

23 A That information was not readily related
24 to Consumers Power.

1 Q That is the sole basis for

2 A Yes.

3 Q -- for your opinion?

4 A Yes.

5 Q Did you hear anyone from Bechtel say,
6 "We didn't provide the information in a timely
7 manner"?

8 A No.

9 Q Did you hear anyone from Consumers say,
10 "We didn't receive this information in a timely
11 manner"?

12 A No.

13 Q Has this wiring design problem been
14 corrected, to the best of your knowledge?

15 A It has been corrected on paper, to my
16 knowledge. It has to be implemented on the site.

17 Q Has the NRC approved the paper?

18 A The NRC does not approve those papers.
19 The NRC finally inspects the final installation of
20 it.

21 Q Okay. The third example you gave me was
22 safety-related cable trays.

23 A Yes.

24 Q Which were not characterized as safety-

1 related equipment.

2 A That's right.

3 Q Could you give me a brief synopsis of that
4 problem.

5 A Safety-related cable trays and their
6 attachments are normally considered as safe "Q"
7 listed equipment, which is a euphemism of Bechtel
8 to designate safety-related equipment.

9 This equipment was originally purchased,
10 manufactured, installed, as non-safety-related
11 equipment.

12 It took NRC two years to convince them
13 that this was, indeed, safety related.

14 Thereafter, tests had to be made to prove
15 that this equipment could be treated as safety-
16 related equipment.

17 To the best of my recollection, these
18 tests were not completed as of August, 1980.

19 Q Were you involved in the discussions
20 between Consumers, Bechtel, and the NRC concerning
21 whether these -- this equipment should be "Q" listed?

22 A Not originally.

23 Q You came in at some -- some point?

24 A Yes, yes.

1 Q Can you tell us when you came in?

2 A In the latter part of 1979.

3 Q When did Consumers determine to make this
4 equipment "Q" listed?

5 Was it Consumers or Bechtel that made that
6 decision, first?

7 A As far as the NRC goes, it is Consumers
8 Power.

9 Q When was the decision made?

10 A I believe in 1979.

11 Q After you became involved in this, or before
12 you became involved in it?

13 A Before I became involved in it.

14 Q Can you tell me how this example of safety-
15 related cable trays and attachments is an example
16 that Bechtel is still more interested in protecting
17 Bechtel than informing Consumers Power of problem
18 areas?

19 A Because Bechtel performed the design, the
20 original design, and procurement, supervised the
21 manufacture of the equipment, I believe that they did
22 not want to go back and retrofit and accept that that
23 should have been quality-related equipment.

24 Q Was Consumers Power involved in these

1 discussions with the NRC concerning whether safety-
2 related cable trays should be "Q" listed?

3 A Yes.

4 Q So Consumers Power was informed of this
5 dispute?

6 A Yes, yes.

7 Q So I cannot see, then, how this is an
8 example that Bechtel is more interested in protecting
9 Bechtel than in informing Consumers Power of problem
10 areas.

11 A If Bechtel would have told Consumers Power,
12 "There is no way we can get around this safety-
13 related equipment. Let us from now on treat this
14 as safety-related equipment," to the best of my
15 knowledge, it would have been very fruitful for
16 Consumers Power to go on the presumption that this
17 should be safety-related equipment, the tests would
18 have been accelerated, and all of the other
19 calculations and documentations would have been
20 ready for Consumers Power.

21 Q This basically was a disagreement among
22 Consumers, Bechtel, on one side, and the NRC on the
23 other, as to whether or not it should have been
24 safety-related, isn't that correct?

1 A Disagreement between NRC and Consumers
2 Power and Bechtel. It always relates that, because
3 we directly deal with Consumers Power, and the
4 Consumers Power architect/engineer advises Consumers
5 Power. If the advice is not correct, it is quite
6 possible that we have extensive delays in under-
7 standing.

8 Q As far as you know, there was no
9 difference of opinion between Bechtel and Consumers
10 as --

11 A I cannot give an answer to that question.
12 I do not know what happened between Bechtel and
13 Consumers Power.

14 Q You were not apprised or made aware of
15 any difference of opinion between Bechtel and
16 Consumers concerning this, were you?

17 A Not to the best of my knowledge.

18 Q The fourth example you gave us was
19 installing equipment tubing inside the containment
20 without a barrier.

21 Could you give me a brief synopsis of that
22 problem.

23 MR. FARNELL: Off of the record.
24

1 (WHEREUPON, discussion was had
2 off the record.)

3 BY THE WITNESS:

4 A I would like to correct your question,
5 maybe.

6 BY MR. FARNELL:

7 Q Fine.

8 A I said -- I stated that instrument tubing
9 was installed without the benefit of separation for
10 missile barriers and steam impingement. That is,
11 individual instrument lines have to be separated by
12 a minimum distance of 18 inches, and this was not
13 accomplished.

14 Q When did the NRC first become aware of
15 this problem?

16 A Five minutes before I went for an
17 inspection.

18 And this is the way it happened. I told
19 one of Consumers Power's engineers that I would like
20 to go and see this installation, and he sent some
21 advanced people to look at it, and knowing that I
22 was looking for separation criteria, they immediately
23 recognized that the separation criteria was
24 violated and decided to dismantle the installation

1 and notify me that they have voluntarily dismantled
2 the installation.

3 Q Who is this CPCo engineer you talked to?

4 A Mr. Mark DeWitt.

5 Q DeWitt?

6 A DeWitt.

7 Do you recognize that name?

8 Q No.

9 Do you know when this occurred?

10 A I suppose that's his name.

11 It should be -- to the best of my
12 recollection, it is the latter part of 1979 or earlier
13 part of 1980.

14 Q Prior to the time that Consumers recognized
15 this problem, to your knowledge, had Bechtel
16 recognized this problem?

17 A I don't believe that they ever looked for
18 this problem.

19 Even though they designed, prepared,
20 drawings and permitted the installation of this
21 instrument tubing, to the best of my knowledge, and
22 viewing the results of the installation, I feel it
23 very hard to believe that they did not go and review
24 the adequacy of the separation criteria for the

1 instrument tubing.

2 Q You do not have any information one way or
3 the other whether they, in fact, recognized that they
4 did not meet this separation criteria, is that
5 correct?

6 THE WITNESS: Can you read his question.

7 (WHEREUPON, the record was read
8 by the reporter as requested.)

9 BY MR. FARNELL:

10 Q Recognized prior to the time you learned
11 of the problem.

12 MR. PATON: I object to that question. It is
13 very difficult to answer that way. It would be a
14 lot simpler if you first established whether or not
15 they were aware of that criteria.

16 He can answer the question, but I think
17 it is unnecessarily complicated.

18 MR. FARNELL: That was what my question was,
19 was whether they were aware, to the best of his
20 knowledge, prior to the time he made his inspection,
21 that they did not meet this separation criteria.

22 MR. PATON: Well, okay.

23 Off of the record.

24

1 (WHEREUPON, discussion was had
2 off the record.)

3 BY THE WITNESS:

4 A I do not believe that they were aware of
5 this, because if they had, and -- they had identified
6 it, they would have dismantled it before my
7 inspection.

8 BY MR. FARNELL:

9 Q Could you tell me how, then, this is an
10 example of how Bechtel is still more interested in
11 protecting Bechtel than informing CTCO of problem
12 areas?

13 A In my opinion, when drawings are submitted,
14 reviewed, and approved by a whole long list of
15 individuals cognizant of the requirements and
16 processed for installation, there should have been
17 a mechanism where people recognized whether it meets
18 acceptance criteria or not.

19 Whether they were informed -- whether they
20 informed Consumers or not to protect themselves, I'm
21 not -- I cannot answer that question.

22 Q Based on your answer there, I do not see
23 how this is an example that Bechtel is more
24 interested in protecting Bechtel than informing

1 Consumers Power --

2 MR. PATON: Still more informed.

3 BY MR. FARNELL:

4 Q (Continuing) -- still more interested in
5 protecting Bechtel than in informing Consumers Power
6 of problem areas.

7 It seems to me that your concern is that
8 Bechtel did not internally pick up these problems
9 prior to your having initiated their discovery.

10 A I would like to answer that question in
11 this way, that you have to first look at what you
12 are doing to see whether you have a problem or not,
13 and by not looking at it, you lead one to believe
14 that you do not have a problem. That is not my
15 understanding of what quality control and other
16 overview programs are intended for.

17 Q But that seems to be a different area than
18 the concern you expressed in Item 2, that Bechtel
19 is more -- still more interested in protecting
20 Bechtel than informing Consumers of problem areas.

21 If Bechtel was not aware of the problem,
22 it could not have been more interested in protecting
23 itself than in informing Consumers.

24 MR. PATON: Purely speculative. He just said

1 the opposite.

2 MR. FARNELL: No, I do not believe he said the
3 opposite.

4 BY MR. FARNELL:

5 Q Do you have any response to that question?

6 A I don't have any response to that question.
7 It is confusing to me to play with semantics.

8 It's very difficult to answer your
9 question.

10 MR. FARNELL: Off of the record.

11 (WHEREUPON, discussion was had
12 off the record.)

13 BY MR. FARNELL:

14 Q Did you ever talk to anyone about Bechtel --
15 anyone in Bechtel concerning this violation?

16 A It's not normal practice to talk to people
17 in Bechtel.

18 Q So the answer is no?

19 A No.

20 Q The fifth example you cite is the one set
21 forth at Page 2 of Exhibit -- Fiorelli Deposition
22 Exhibit 11, and that is the Part 21 report on
23 DeLaval engines.

24 Could you give me a brief synopsis of that.

1 A The manufacturer of DeLaval turbines
2 notified the station, and in this case Bechtel,
3 because Bechtel was the procurer of the equipment,
4 that there was a significant reportable deficiency
5 on the DeLaval turbine manufactured by them.

6 It is normal practice to inform the
7 licensee, in this case Consumers Power, who would,
8 in turn, notify the NRC, that there is a significant
9 problem with that particular machine.

10 In this particular case, we found that a
11 Bechtel employee had this information, but had --
12 was very reluctant to inform Consumers that this is
13 a significant problem.

14 To the best of my recollection, the
15 resident inspector was aware that this notification
16 was in Bechtel's possession, but had withheld this
17 information from Consumers Power.

18 Q Who was the Bechtel employee who had this
19 information?

20 A I do not know his name.

21 Q Was he the Bechtel resident inspector?

22 A I do not know.

23 Q You said that the Bechtel employee was
24 very reluctant to release this information to

1 Consumers Power.

2 A So was I informed.

3 Q Who were you informed by?

4 A By the resident inspector.

5 Q Mr. Ron Cook?

6 A That's right.

7 Q Do you know Mr. Cook's basis for that
8 statement?

9 A Because he informed me that he had talked
10 to the individual who had this information.

11 Q Yes.

12 A And he said that he had not -- he did not
13 want to notify Consumers Power.

14 Q Was Consumers Power subsequently notified?

15 A Yes.

16 Q Do you know what the time frame was between
17 the time that Bechtel had the information and the
18 time Consumers had the information?

19 A Not exactly, but I know that it was about
20 the period during which they should have informed
21 the NRC.

22 MR. FARNELL: Would you read that last part
23 back, please.

24

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY MR. FARNELL:

4 Q Was the NRC informed within the proper
5 period of this problem?

6 A No, no.

7 It was -- in fact, the resident inspector
8 made this an item of noncompliance, licensee's
9 failure to inform the NRC during the reporting
10 period, and that is how I was able to get this
11 information, additionally.

12 Q When did this incident take place?

13 A I believe in 1980.

14 (WHEREUPON, discussion was had
15 off the record.)

16 BY MR. FARNELL:

17 Q To your knowledge, has this DeLaval
18 problem been resolved?

19 A I do not know.

20 Q Do you have any knowledge as to why the
21 Bechtel employee did not inform Consumers?

22 A No.

23 Q But, in your view, he did this to protect
24 Bechtel's interest?

1 A Yes, in my view.

2 Q But you have never talked to this man?

3 A No.

4 Q You do not have any first-hand knowledge
5 as to why he did it?

6 A No.

7 Q So this is just --

8 A In my view.

9 Q -- a guess, I would say?

10 A Yes, probably.

11 (WHEREUPON, there was a short
12 interruption.)

13 BY MR. FARNELL:

14 Q Okay. The sixth and last example on my
15 list of examples that you gave me was the diesel
16 generator -- diesel generators which were dropped
17 or damaged during transit.

18 A Yes.

19 Q Could you tell me -- give me a brief
20 synopsis about that incident.

21 A The diesel generators were being moved
22 from their storage position to their place of
23 permanent installation. Adequate measures were
24 not established and the rigging not

1 covered by QC, and the first unit was dropped,
2 accidentally. And measures were not taken to prevent
3 recurrence. And, subsequently, the -- Unit 2 and
4 the third one, also, were damaged during
5 transportation.

6 Q When did the incident of the first diesel
7 generator unit being dropped occur?

8 A During the latter part of 1980.

9 Q How did you come to find out about this?

10 A To the best of my recollection, it came
11 in two ways. I do not remember which one preceded
12 the other one.

13 While I was looking at the diesel generators
14 themselves, I found a nonconformance tag which --
15 and closer scrutiny indicated that the insulation
16 was damaged on one of them, and I came to learn that
17 the equipment was damaged during transit.

18 Subsequently or simultaneously, the
19 resident inspector informed me that the equipment had
20 fallen off the rig due to inadequate controls and
21 that he was aware of the fact.

22 Which preceded the other, I'm not sure at
23 this time, which was several months later.

24 Q To the best of your knowledge, was

1 Consumers aware that these units had been dropped?

2 A After the damage occurred, I think that
3 they were informed.

4 Q Were they informed in a timely manner, to
5 the best of your knowledge?

6 A I do not know.

7 (WHEREUPON, discussion was had
8 off the record.)

9 BY MR. FARNELL:

10 Q Could you explain to me how this example
11 is an example of how Bechtel is still more interested
12 in protecting Bechtel than informing CPCo of problem
13 areas?

14 A In my opinion, Bechtel should have informed
15 Consumers Power that they were moving a safety-
16 related -- very safety-related equipment, and they
17 should have given Consumers Power the opportunity to
18 lend coverage to the transportation to ensure that
19 Consumers Power took adequate controls that would
20 have -- that may have prevented the accident or
21 accidents.

22 Q Do you have any information that shows
23 that Bechtel did not inform Consumers Power that it
24 was moving the safety-related equipment?

1 A Yes. I asked Consumers Power subsequently,
2 and they informed me that they were not aware of the
3 fact that they were being moved at that particular
4 time.

5 Q Was this concerning the first -- the first
6 generator which was dropped, or was it the later
7 generators that you were talking about?

8 A The first.

9 Q The first.

10 So nothing had been damaged prior to that
11 time?

12 A Prior to the first, nothing had been
13 damaged.

14 Q Okay. Who did you talk to?

15 A Mr. Shaffer.

16 Q Did Mr. Shaffer tell you -- strike that.

17 Did Mr. Shaffer tell you why Bechtel had
18 not informed Consumers Power about this?

19 A No.

20 Q What did Mr. Shaffer tell you?

21 A I do not recall.

22 Q You recall at least that he told you that
23 Consumers had not been informed prior to the --
24 prior to them being moved?

1 A Right.

2 Q Or prior to the diesel generator being
3 moved.

4 Was the fact that Bechtel had not informed
5 Consumers about the movement of the first diesel
6 generator an example where Bechtel was protecting
7 its own interest rather than informing Consumers?

8 THE WITNESS: Can you repeat that question.

9 (WHEREUPON, the record was read
10 by the reporter as requested.)

11 BY THE WITNESS:

12 A I guess so.

13 MR. PATON: No. You either know or you do not
14 know.

15 BY THE WITNESS:

16 A No.

17 THE WITNESS: Excuse me.

18 (WHEREUPON, discussion was had
19 off the record.)

20 BY THE WITNESS:

21 A That is my conclusion.

22 BY MR. FARNELL:

23 Q But you have never talked to anyone from
24 Bechtel regarding this incident?

1 A No, no.

2 Q You do not know why they did not inform
3 Consumers?

4 A No.

5 Q Would it have been normal practice in your
6 view for Bechtel to have informed Consumers prior to
7 the time they moved the first diesel generator?

8 A The efficient operation of QA, quality
9 assurance, would be to timely inform them of the
10 activities, so that they could provide adequate
11 coverage for the activities.

12 As such, I would expect Bechtel to inform
13 the Quality Assurance Department.

14 Q Concerning the damage to the other diesel
15 generators during transportation, do you have
16 knowledge as to whether Consumers Power was --

17 A I do not recall any first-hand information
18 which I can tell you.

19 Q You do not know whether Consumers was
20 informed prior to their shipment or anything like
21 that?

22 A I do not recall.

23 Q Now, these six examples we just went over --
24 these are the only examples you can recall right at

1 at present where, in your opinion, it is demonstrated
2 that Bechtel is still more interested in protecting
3 Bechtel than informing CPCo of problem areas?

4 A Yes.

5 Q Okay. Turning to the third page of
6 Fiorelli Deposition Exhibit No. 11, Item 3, this page
7 is in your handwriting, is that correct?

8 A Yes.

9 Q The first sentence reads, "Dick, as a
10 belated thought, I am giving you a version of the
11 same substance. Try it for a size," and then there
12 appears to be a mark of some kind.

13 Is that your mark?

14 A Yes.

15 Q Does that stand for anything?

16 A Just my initial with colors in it to make
17 it look like a man's face.

18 Q Is the man's face smiling or frowning?

19 A I can't tell you.

20 Must have been crying.

21 Q Can you tell me why you were giving Mr.
22 Knop a version of the same substance?

23 A I tried my best to give some statement
24 which would be very meaningful for them to discuss

1 to enhance the efficiency of Consumers Power's
2 operation at Midland.

3 At the time I wrote this, which I believe
4 was on a weekend prior to my departure for another
5 inspection at some other site, I felt that I could
6 contribute the substance for a meaningful discussion.

7 Q My question is why you gave him a version
8 of the same substance.

9 You had given him something earlier, is
10 that right?

11 A Yes.

12 Q And later you modified it or did something
13 to it.

14 A Yes.

15 Q And the reason is -- my question is why?

16 A Why, because he say that it was -- he could
17 not relate it or he could not translate it. He
18 thought that there should be a better way of informing
19 the licensee to improve his program, and as you --
20 I do not know whether you recall among all this
21 words which we used for SALP or -- the main intent
22 was for the NRC to tell the licensee or try to
23 bring to the licensee's attention the various
24 possibilities for him to improve the program.

1 As you -- from the number of 50.55(e)'s
2 and the deficiencies we were getting from Midland
3 and -- we thought that -- that we should be able
4 to give them reasonable indications.

5 (WHEREUPON, discussion was had
6 off the record.)

7 (WHEREUPON, the record was read
8 by the reporter as requested.)

9 BY MR. FARNELL:

10 Q Did Mr. Knop say anything about the first
11 version that you submitted to him?

12 A Yes.

13 Q What did he tell you?

14 A He said he couldn't understand it.

15 Q Okay. This third item that we are talking
16 about relates to Item 3 of these six categories,
17 adequacy of committee and supervisory reviews and
18 audits, is that correct?

19 A Yes.

20 Q Okay. I am going to read to you the first
21 sentence under Item 3, which states, "It is obvious
22 that CPCo did not thoroughly, adequately, efficiently,
23 and independently --" underlined "-- verify that
24 Bechtel (QA or other departments) completed the

1 corrective action [narrated in their VP's letter
2 to the NRC] prior to informing the NRC inspectors;
3 as such, it was belatedly determined, found, that
4 corrective action was incomplete or not taken."

5 Have we discussed that instance prior to
6 that?

7 A Yes.

8 Q Refresh my recollection.

9 What --

10 A (Indicating.)

11 MR. FARNELL: Off of the record.

12 (WHEREUPON, discussion was had
13 off the record.)

14 (WHEREUPON, the record was read
15 by the reporter as requested.)

16 BY MR. FARNELL:

17 Q You have pointed to the bottom part of
18 Fiorelli Deposition Exhibit No. 11, Page 3. And I
19 was incorrect. There are two instances that are
20 cited that we have talked about, which relate to
21 this matter in the first sentence, is that correct?

22 A Yes.

23 Q And just for the record, these two
24 instances are, one, Unit 2 containment personnel hatch,

1 and Item 2 is lower cable spreading room support
2 welds.

3 The last sentence on this page states,
4 "Since Bechtel QA is integrated demonstrate that --"
5 and you have two items, "such instances would not be
6 repeated," or, "you have established means to
7 control these," and then the last part of the
8 sentence reads, "instances in a timely manner."

9 A Yes.

10 Q Okay. Was it your suggestion that
11 Consumers demonstrate that such instances would not
12 be repeated?

13 I do not -- I guess I have trouble
14 following that.

15 What are you trying to get at with that
16 sentence?

17 A My opinion at that time was, since
18 Consumers Power, before the integration, utilized
19 Bechtel QA to perform these overview inspections to
20 verify that the corrective action taken was
21 completed, which we subsequently found was not done
22 in an efficient manner, that after an integration,
23 which included the same Bechtel QA personnel, whether
24 those instances would be repeated -- in other words --

1 Q Do you --

2 A We are not talking about separate
3 individuals. We are talking about the same
4 individuals who acted as the first line communications
5 to Consumers Power becoming a part of their own
6 organizations in the integrated QA program, what
7 was their assurance that the same instances would
8 not recur --

9 Q Do you have a --

10 A -- what were the controls that were placed
11 to preclude repetition of such instances.

12 That was the intent of my comments on that
13 exhibit.

14 Q Do you have an opinion as to what --
15 "such instances would not be repeated" -- the "instances"
16 referred to?

17 A I have a question mark, and it is yet to
18 be demonstrated whether such things would occur or
19 not.

20 Q So right now you do not have any opinion
21 one way or the other, whether they would occur or not?

22 A No. But I have not seen any controls which
23 were put in place to preclude or detect such
24 recurrences.

1 Q Would you be, in the course of business,
2 made aware of these controls?

3 A Yes.

4 Q You have not worked on Midland since the
5 first of the year?

6 A That's right.

7 Q So they could have been installed?

8 A I cannot tell you -- I am belatedly
9 discussing opinion which was handed down several
10 months ago.

11 Q Okay. Up until January 1st, 1981, you had
12 not -- you were not aware of any controls that were
13 established to prevent reoccurrence of these problems?

14 (WHEREUPON, discussion was had
15 off the record.)

16 BY THE WITNESS:

17 A I have not been to the Midland site since
18 November -- since October, 1980.

19 Q Have you been involved in any QA discus-
20 sions with any personnel from Consumers or Bechtel
21 since October of 1980?

22 A I was a participant in a meeting between
23 Mr. Cook and Mr. Fiorelli, Mr. Knop, Mr. Gallagher,
24 and Dr. Landesman.

1 MR. FARNELL: Could you read that back.

2 (WHEREUPON, the record was read
3 by the reporter as requested.)

4 BY MR. FARNELL:

5 Q What did that conversation deal with?

6 A To the best of my knowledge, it had to
7 do with the ways and means of improving the QA
8 program at the Midland site.

9 Q Did you have any discussions with Mr.
10 Fiorelli, Mr. Landesman, or Mr. Gallagher after that
11 meeting concerning what happened at the meeting?

12 A No.

13 Q Have you reviewed any --

14 A I said no.

15 I wanted to add, after we left, Mr.
16 Landesman -- Dr. Landesman, Mr. Gallagher, and
17 myself left, and Mr. Fiorelli and Mr. Knop had
18 discussions with Mr. Cook. Therefore, I do not know
19 what transpired.

20 Q I was interested in discussions between
21 personnel of Region 3 without talking to Mr. Cook.

22 In other words, discussions among
23 yourselves.

24 A No.

1 Q Have you reviewed any of Consumers Power's
2 responses to 50.54(f) Questions 1 or 237

3 A No.

4 Q Did anyone ask you to review Consumers
5 Power's answers to those questions?

6 A I don't believe so.

7 Q Were you involved in formulating 50.54(f)
8 Questions 1 or 237

9 MR. PATON: Off of the record.

10 (WHEREUPON, discussion was had
11 off the record.)

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 BY THE WITNESS:

15 A No.

16 BY MR. FARNELL:

17 Q Have you participated in any meetings
18 with Consumers Power whers the new quality assurance
19 organization was discussed?

20 A I don't recall.

21 Q The next page of Fiorelli Deposition
22 Exhibit No. 11, Page 4, is in your handwriting?

23 A Yes.

24 Q Was this a part of Page 3, or how --

R5

1 A Let me read it.

2 Q Why don't you.

3 (WHEREUPON, there was a short
4 interruption.)

5 BY THE WITNESS:

6 A Yes. I don't know where that goes.

7 MR. PATON: Five-minute break?

8 MR. FARNELL: Take a break.

9 (WHEREUPON, a recess was had.)

10 BY MR. FARNELL:

11 Q I am going to read into the record my
12 reading of this document.

13 Why don't you --

14 A Go ahead. I remember what I wrote.

15 Q Okay. I just want you to tell me if I
16 read it right.

17 "One has to conclude that Bechtel QA
18 waits for NRC to find unacceptable things --"

19 A Yes.

20 Q Then there is a semicolon.

21 A Yes.

22 Q "-- then the chain starts --" slash
23 "-- NCR's --" slash "-- corrective action --" slash
24 "-- indoctrination and trend analysis."

1 Is that correct?

2 A Yes.

3 Q "The CPCo site personnel are all aware of this
4 attitude, but they are unable to convince their super-
5 visor, who operates from Jackson and thinks everything
6 is fine." Okay. And my first question is: Is
7 that second sentence correct?

8 A Yes.

9 Q Who are the CPCo site personnel who are
10 aware of this attitude?

11 A Dennis Keating, Mike Shaffer.

12 Two is good enough.

13 Q Are there any more?

14 A I don't recall.

15 Q Okay. What is your basis for the statement
16 that Mr. Keating is aware of this attitude?

17 A Because every time I find some problems,
18 he admits that that could have been found prior to my
19 finding the same problems.

20 Q Do you have any specific instances where he
21 admitted that?

22 A I don't recall where. I could say he did
23 not admit it.

24 Q I am asking for instances where he did.

A In all instances.

1 Q In all instances.

2 MR. PATON: Did you say "all" or "a lot"? Did
3 you say "all"?

4 THE WITNESS: Lot, lot.

5 BY MR. FARNELL:

6 Q Okay. "Lot" is not the most specific of
7 words.

8 Can you give us a specific instance like
9 the cable tray instance, the design instance, the
10 DeLaval 21 incident, or something like that?

11 A Welding deficiencies -- I have to tax my
12 memory -- cable separation, would be two which I
13 remember distinctly. And instrument tubing
14 installation.

15 Q Are these all instances that we have
16 discussed previously today?

17 A Yes.

18 Q How about from Mr. Shaffer, do you have
19 any specific instances?

20 A Shaffer -- oh, Mr. Shaffer is involved in
21 the electrical -- the cable separation of redundant
22 cables would be in his area.

23 Q Have we discussed the separation of
24 redundant electrical cables yet?

1 A I don't think so.

2 Q Why don't you give me a little background
3 on that one.

4 MR. PATON: Off of the record.

5 (WHEREUPON, discussion was had
6 off the record.)

7 BY THE WITNESS:

8 A Redundant cables have to be separated by
9 a minimum separation distance, and we found that in
10 the service water building, that two redundant cables
11 which were otherwise separated were bundled together
12 prior to terminating in the individual motor control
13 centers.

14 BY MR. FARNELL:

15 Q And Mr. Shaffer told you that he could have
16 found this deficiency prior to you having found it?

17 A Mr. Shaffer does not find these things.
18 His authorized QA or QC people during the normal
19 inspection activities should have found these things,
20 if properly implemented.

21 Q Now, is Mr. Keating, to your knowledge,
22 of the opinion that Bechtel QA waits for NRC to find
23 unacceptable things?

24

1 (WHEREUPON, there was a short
2 interruption.)

3 THE WITNESS: What was the question?

4 (WHEREUPON, the record was read
5 by the reporter as requested.)

6 BY MR. FARNELL:

7 Q That is the first part of the first
8 sentence that is in your handwriting.

9 A That's a very difficult question to answer.
10 To the best of my recollection, I think
11 so.

12 Q What do you base that on?

13 A It is my conclusion as indicated on the top
14 of it --

15 Q Right.

16 A -- "one has to conclude."

17 Q Okay. What are the facts upon which your
18 conclusion is based, if there are such facts?

19 A After my identification, I have no
20 problem with them readily agreeing that that is a
21 problem, and since in their own QC -- conduct regular
22 inspections, I don't -- it is very hard for me to
23 believe that they cannot find the same things which
24 I subsequently find.

1 Q Doesn't Bechtel QA pick up a lot of
2 unacceptable things prior to you finding them?

3 A If that were to be the case, why don't I
4 find this, too.

5 Q That was not my question.

6 MR. FARNELL: Would you repeat my question,
7 please.

8 (WHEREUPON, the record was read
9 by the reporter as requested.)

10 BY THE WITNESS:

11 A Perhaps. I cannot specifically answer
12 your question.

13 BY MR. FARNELL:

14 Q Wouldn't unacceptable things, to use your
15 words, be set forth in nonconformance reports or
16 other reports that you would review?

17 A Yes.

18 Q So you should know whether they picked up
19 a lot of unacceptable things prior to you finding
20 them, shouldn't you?

21 A I cannot relate the word, a lot of things
22 found by them, because every time I have been to the
23 site, I have found problems.

24 Q Every time --

1 A Therefore, I find it very difficult to
2 answer your question adequately.

3 Q How about if I use the words "a great --"
4 strike that.

5 How about if I use the word "some."
6 Haven't they found some?

7 A Yes, I could accept "some."

8 Q How about the word "many"?
9 Can you accept the word "many"?

10 A Probably not.

11 If they found many problems, then we would
12 not have so many problems.

13 Q Is it your opinion, then, that there are
14 not many NCR's at the Midland site?

15 A I'm not able to -- I would not be able to
16 answer your question.

17 Q Why is that?

18 A Because I never made an evaluation of how
19 many NCR's are generated, the extent of the problem
20 identification.

21 Q But you looked at NCR's in the area that
22 you were inspecting, didn't you?

23 A Yes, limited number.

24 Q Okay. And they picked up some problems

1 prior to you going in and reviewing that area, isn't
2 that correct?

3 A I do not recall.

4 Q You do not recall?

5 A Specifically.

6 Q You do not recall specifically whether there
7 were any NCR's in the areas that you inspected prior
8 to you inspecting them?

9 A No, not in those particular areas, yes.

10 Q Prior to -- at the time you wrote that
11 sentence, "One has to conclude that Bechtel QA waits
12 for the NRC to find unacceptable things," was it your
13 opinion that the Bechtel quality assurance organiza-
14 tion was ineffective?

15 A Yes.

16 Q And what did you base that on?

17 A By the number of problems being identified
18 by the NRC inspectors, including me.

19 Q Did you make that view known to Region 3
20 personnel, specifically Mr. Fiorelli or Mr. Keppler,
21 Mr. Knop?

22 A There is no normal mechanism where you
23 could walk into Mr. Keppler's office or Mr.
24 Fiorelli's office and give him my opinions on what

1 I find.

2 Normally, this come out in the matter of
3 inspection reports which Mr. Fiorelli has an
4 opportunity to review and sign.

5 It is not a routine matter to go and
6 discuss with Mr. Keppler all our findings, unless we
7 are asked specifically to do so.

8 Q If you thought the Bechtel quality
9 assurance organization was ineffective, wasn't your
10 duty -- wasn't it your duty to tell someone in the
11 NRC, "These guys are ineffective, and we can't let
12 this go on"?

13 A No. There is no way you can make an
14 immediate judgment that the entire QA program is
15 inadequate.

16 Q You just told me that you thought the
17 Bechtel quality assurance program was ineffective.

18 A Ineffective, yes. Ineffective is
19 different from inadequate.

20 Q Okay. Isn't it your duty or wasn't it
21 your duty to tell someone within the NRC that the
22 Bechtel quality assurance organization was
23 ineffective?

24 A Only in the areas of my inspection. There

1 are other areas in which the QA program has to
2 function, and it is left to the supervision to make
3 that judgment and assessment collectively.

4 And I believe that they have the mechanism
5 to do this, because they are privileged to management
6 meetings with the licensee.

7 Q Apparently, your view was not shared by
8 Mr. Fiorelli or Mr. Keppler, because they did not
9 shut down the work in your area.

10 A It is quite possible --

11 MR. PATON: Wait for a question.

12 So far, it does not sound like a question.
13 If he makes a comment, you do not respond. Wait for
14 a question.

15 MR. FARNELL: Read it back, what I was --

16 MR. PATON: It sounded to me like an observation.

17 MR. FARNELL: -- what I was stating prior to
18 being interrupted.

19 (WHEREUPON, the record was read
20 by the reporter as requested.)

21 MR. PATON: Do not respond to that, because it
22 is not a question.

23 BY MR. FARNELL:

24 Q My question is: Would that be a correct

1 statement?

2 MR. PATON: That is a question.

3 BY THE WITNESS:

4 A One has to conclude.

5 BY MR. FARNELL:

6 Q What is the difference between an ineffec-
7 tive quality assurance organization and an inadequate
8 quality assurance organization?

9 You pointed out that difference to me, and
10 I realize that I do not quite appreciate that or do
11 not understand it, so if you could help me with it,
12 I would be in your debt.

13 A An ineffective QA program, in my opinion,
14 is a QA program which is not working effectively
15 in identifying problem areas, in precluding occurrence,
16 and developing effective procedures, checks and
17 balances, which would contribute to the smooth
18 function of the construction activities.

19 An inadequate program, in my opinion, is
20 a program which has not been outlined properly,
21 which has not been manned properly, and which has
22 not been adequately supervised.

23 Q Okay. Was your testimony, using those
24 definitions, that the Bechtel QA program was

1 ineffective? Is that right?

2 A Yes.

3 Q Did you consider them to be inadequate, or
4 the program to be inadequate?

5 MR. PATON: May I ask for a clarification.

6 When you say "program," are you excluding
7 from that the implementation of the program?

8 THE WITNESS: That's right.

9 MR. FARNELL: I am taking the sentence -- strike
10 that.

11 I am taking the phrase "Bechtel QA" and
12 asking if that, in his opinion, was inadequate, as
13 he has defined that term.

14 BY THE WITNESS:

15 A Now, you have a question.

16 BY MR. FARNELL:

17 Q Yes.

18 MR. FARNELL: Why don't you repeat it.

19 MR. PATON: You have to think about it a
20 little.

21 THE WITNESS: The question --

22 MR. PATON: Off of the record.

23 (WHEREUPON, discussion was had
24 off the record.)

1 MR. FARNELL: Repeat the question.

2 (WHEREUPON, the record was read
3 by the reporter as requested.)

4 BY THE WITNESS:

5 A I am stating the implementation of the
6 QA program is -- was ineffective.

7 BY MR. FARNELL:

8 Q But the program itself was adequate?

9 A The program as written could be adequate,
10 but we are more concerned about the implementation
11 of a particular QA program. Anybody can paraphrase
12 Paragraph 10, CFR, Part 50, Appendix B, and write
13 a program. It is the implementation of the program
14 that we look for.

15 Q I do not think you have answered my
16 question as to whether Bechtel QA, in your opinion,
17 was inadequate, as you have used that term.

18 It is really a yes-or-no question.

19 MR. PATON: Can I ask you, by "Bechtel QA,"
20 do you mean --

21 MR. FARNELL: As used in his own words --

22 MR. PATON: Could I see them, please.

23 (WHEREUPON, the document was
24 tendered to Mr. Paton.)

1 (WHEREUPON, there was a short
2 interruption.)

3 MR. PATON: You are referring to the expression
4 "that Bechtel QA waits for NRC to find unauthorized
5 things"? Is that what you are referring to?

6 MR. FARNELL: That is a real good guess, and
7 you are correct.

8 MR. PATON: That is a real good guess, and I am
9 correct. I would say it is a very good guess.

10 Are there any other places on the page
11 you are referring to?

12 MR. FARNELL: That is why I said it is a real
13 good guess, and I was wondering why you asked the
14 question.

15 MR. PATON: I read the words, and I assumed it
16 was a pretty good guess.

17 The reason I asked that is that expression
18 is not used in the same way. You are just picking
19 up the words "Bechtel QA" and putting it in a
20 different question. So I do not think it is all
21 that sacrosanct that you are --

22 MR. FARNELL: Well --

23 BY THE WITNESS:

24 A Let me clarify this handwritten note.

1 When I indicated "that Bechtel QA waits,"
2 I meant Bechtel QA personnel and not the program.

3 BY MR. FARNELL:

4 Q Okay. So, then, the question whether
5 Bechtel QA is inadequate or not --

6 A That does not arise.

7 Q Do you have an opinion as to whether the
8 quality assurance program at Midland, if it was
9 implemented properly, would be effective?

10 A I believe so.

11 Q The second sentence, we have referred to,
12 which states, "The CPCo site personnel are aware
13 of this attitude, but they are unable to convince
14 their supervisor who operates from Jackson and
15 thinks everything is fine."

16 Who do you refer to as "their supervisor"?

17 A There were several supervisors prior to
18 the integration and prior to the change of personnel.

19 When I first started inspecting Midland,
20 it was Mr. Marguglio, and subsequently it was Mr.
21 Walter Bird.

22 Q Was it your belief that CPCo site
23 personnel had been unaware -- had been unable to
24 convince Mr. Marguglio of this attitude among Bechtel

1 QA?

2 A From discussions with the site personnel,
3 I logically concluded -- concluded that this was
4 the situation.

5 Q You do not have any first-hand knowledge
6 whether they did try to convince their supervisor
7 that Bechtel QA had this -- had this attitude?

8 A No.

9 You mean like a sworn deposition?

10 Q No. Like anything. You know --

11 MR. PATON: Make sure you understand what
12 "first-hand" means before you answer the question.

13 BY MR. FARNELL:

14 Q Like Mr. Shaffer or Mr. Keating said to
15 you, "I talked to Ben Marguglio, and I tried to
16 convince him that Bechtel had this attitude, but he
17 wouldn't listen to me."

18 A No.

19 Q You do not have any information or
20 anything like that, is that correct?

21 A No.

22 Q How about with regard to Mr. Walter Bird?
23 Do you have any first-hand information that Mr.
24 Keating or Mr. Shaffer tried to convince Walt Bird

1 that Bechtel QA had this attitude?

2 A No.

3 Q This comment that CPCo site personnel are
4 aware of this attitude, but unable to convince the
5 supervisor who operates through Jackson, who thinks
6 everything is fine, that relates to the old QA
7 organization, isn't that correct?

8 A Yes.

9 Can you -- yes.

10 Organization, do you mean, or the
11 personnel?

12 Q Right.

13 A Yes.

14 Q Prior to the reorganization.

15 A Yes.

16 Q Could you tell me your basis for the
17 statement that Mr. Marguglio thought everything was
18 fine at the --

19 A Because no changes were made.

20 Q That is the sole --

21 A That is the sole --

22 Q It is your testimony that no changes were
23 made to the Bechtel quality assurance organization
24 to the time that Mr. Marguglio was supervisor?

1 A Not in the areas which I inspected.

2 Q Which were mechanical, electrical --

3 A Yes.

4 Q -- and some concrete?

5 A Yes.

6 Q How about with regard to Mr. Bird?

7 Do you have any knowledge, first-hand
8 knowledge, that he thought everything was fine
9 concerning the Bechtel quality assurance organization,
10 QA personnel?

11 THE WITNESS: What was the question.

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 (WHEREUPON, discussion was had
15 off the record.)

16 BY THE WITNESS:

17 A To the best of my recollection, Mr. Walter
18 Bird told me that, in due course of time, the people
19 will be more efficient.

20 BY MR. FARNELL:

21 Q When did he tell you that?

22 A During my last encounter with him, which
23 would be in October, 1980.

24 Q But that does not have anything to do with

1 the old organization?

2 A No.

3 Q And that is what this statement was
4 dealing with?

5 A At the time when I wrote that, there was
6 the transition between the new reorganization and
7 the old organization, and some of the individuals
8 from the old organization continued to be a part
9 of the reorganization. There was a large turnover
10 in the Bechtel QA organization, and I do not recall
11 as of today the specifics of it.

12 Q You are not familiar now with the staffing
13 of the Bechtel -- the integrated QA organization?

14 A As of today, no.

15 Q When was the last time that you were
16 familiar with that?

17 A In October, 1980.

18 Q Any changes made since that time?

19 A I'm not aware of.

20 Q You are not aware of.

21 The next sentence on this page states,
22 "Licensee neither appreciates nonconformance nor
23 inspectors who identify them, which is understandable."

24 Did I read that correctly?

1 A Yes, yes.

2 Q What did you mean by the phrase "neither
3 appreciates nonconformances"?

4 A I don't like to give an item of
5 noncompliance -- is that "nonconformance" or
6 "noncompliance"?

7 Q You are right. It is "noncompliance."

8 A I don't take pleasure in giving items of
9 noncompliance to any licensee. If I could help it,
10 I would like him to rectify it and take adequate
11 corrective action so that it does not negate an item
12 of noncompliance.

13 When you give an item of noncompliance,
14 the licensee has to respond, and, therefore, the
15 site QA personnel will have to give adequate
16 explanation why they got a noncompliance, which is
17 very uncomfortable for them, and, therefore, I made
18 that statement.

19 Q But you thought this attitude was
20 understandable?

21 A Yes. I can understand that, why a licensee
22 does not like to have an item of noncompliance.

23 Q Do you think that Consumers Power did not
24 appreciate you?

1 A There is no way I could answer that
2 question.

3 Q You do not have any knowledge one way or
4 the other?

5 A I have no knowledge one way or the other.

6 Q You go on to state, "I feel discouraged
7 that the licensee tried to obscure the relevance of
8 the findings by calling Region 3 Section Chief and
9 pleading, 'Me no understand.'"

10 Did I read that correctly?

11 A Yes. You are absolutely correct.

12 Q Could you give me the background on this?

13 A I can recall one specific instance where
14 I had three items of noncompliance, and Mr.
15 Marguglio was the head of the QA Department, and he
16 called one section chief in this region and talked
17 to him for some time. Then he -- after a period of
18 time, which may be a day or two, he called another
19 branch chief and told him that he could not under-
20 stand an item of noncompliance, whereupon the
21 branch chief called another section chief and asked
22 him to have a telephone conversation with Mr.
23 Marguglio.

24 Then we went item by item, what the

1 noncompliance was, what it led to, and so on, and,
2 then, finally, he was convinced that those three
3 items were items of noncompliance.

4 It is very discouraging for an inspector
5 who finds an item of noncompliance, and where the
6 site personnel agree it's an item of noncompliance,
7 and the supervisory personnel, who sit very remote
8 from the site, try to interpret it and make an issue
9 of it with the supervisory personnel.

10 Q You are finished with your answer?

11 A I think so. I can't go on forever.

12 Q When did this instance take place?

13 A I believe it was in 1977.

14 Q Do you know what the items of noncompliance
15 dealt with?

16 A Not specifically.

17 Q Is it your testimony that Consumers site
18 personnel recognized that these were items of
19 noncompliance?

20 A Right.

21 Q Who were the site personnel?

22 A Dennis Keating.

23 Q And he recognized it?

24 A Yes.

1 Q What did he say to you?

2 A What did he say?

3 I don't recall what he said.

4 Q But the substance must have been, "I
5 recognize this is a noncompliance," isn't that right,
6 or, in other words, what is your basis for saying
7 that he recognized that --

8 A He agreed that it was an item of
9 noncompliance.

10 Q This was in a verbal conversation you had
11 with him?

12 A Yes.

13 Q Okay. Now, is this the only example that
14 you have to support your statement here that, "I feel
15 discouraged that the licensee tried to obscure,"
16 et cetera?

17 A There was another instance -- there were
18 two other instances.

19 One must have been in 1978, when Mr. Walter
20 Bird called one of the -- I believe they talked with
21 the section chief level or the branch chief level
22 to tell them that he didn't understand that I made
23 an item of noncompliance.

24 If you can, visualize what transpires

1 during an exit interview, and you get up and tell it,
2 and there are 15 other questions, and your finding
3 can be obscured in the discussions and aftermath
4 of the finding.

5 The second instance with Walter Bird was
6 after the mid-QA inspection, which was conducted
7 sometime during the -- sometime in 1980, must have
8 been May, 1980, when we journeyed all the way to
9 Region 3 to discuss my inspection findings and to
10 downgrade items of noncompliance.

11 That is when I was discouraged.

12 Q Going back to the first item dealing with
13 Mr. Marguglio.

14 A Yes.

15 Q Did you consider what Mr. Marguglio did
16 to be improper?

17 A I don't understand. What do you mean by
18 "improper"?

19 Q Do you think he acted in bad faith?

20 A I don't know what -- it's very difficult
21 for me to answer that question.

22 Q Apparently --

23 A I do not know what bad faith is.

24 Q Do you think that he recognized these were

1 items of noncompliance and he was just trying to
2 convince the NRC that they were not when he knew
3 they really were?

4 MR. PATON: I instruct the witness not to
5 speculate.

6 If you have any knowledge on that subject,
7 you can state it for the record, but do not guess.

8 BY THE WITNESS:

9 A I have no knowledge what his intentions
10 were.

11 BY MR. FARNELL:

12 Q Did you think he was trying to "obscure
13 the relevance of your findings"?

14 A That was my opinion.

15 Q Okay. What was that based on?

16 A Based on the fact that he called three
17 different individuals and two different individuals
18 in the NRC and asked them to repeat findings which
19 they were not aware of intimately and to discuss the
20 situation further to clarify it.

21 Q You do not think he was doing his job
22 properly when he was doing that. You thought he was
23 just trying to obscure the relevance of the findings?

24 A Doing his job is, I think, different from

R6

1 obscuring my findings, in my opinion, unless you
2 want to explain how doing his job has to do with
3 obscuring my findings.

4 Q I do not understand how calling Region 3
5 personnel and discussing your findings was trying to
6 obscure them.

7 A You can downplay them, certainly.

8 Q How did he try to downplay them?

9 A By asking questions on the same matter,
10 which was very obvious.

11 Q Do you think that he has to accept your
12 findings the way they are written and not ask anyone
13 anything about them?

14 A At that time, it was not written.

15 Q What was it?

16 A It was only a finding. It was a verbal
17 finding.

18 Q It was a verbal finding.

19 Okay. And you thought that by asking
20 Region 3 people about this, that he was trying to
21 downgrade them somehow, these findings that you had
22 made?

23 A You can downgrade both the findings and
24 the inspector by trying to tell his supervisor that

1 he didn't know what he was doing.

2 Q Is that what Mr. Marguglio was doing?

3 A I don't know what he was doing, but the
4 after effects were similar to those.

5 Q What do you mean by "after effects"?

6 A The impression one gets after a licensee
7 who sits very remote to the site calls up and says,
8 "I don't understand what this finding is about."

9 I don't understand what, for instance,
10 stud welding has to do with it. In my opinion, yes.

11 MR. FARNELL: Could you read back my question
12 and his answer, please.

13 (WHEREUPON, the record was read

14 by the reporter as requested.)

15 BY MR. FARNELL:

16 Q Did Mr. Marguglio during the conversations
17 he had with the Region 3 section chiefs try to
18 downgrade you?

19 A Not in my hearing.

20 Q You were not party to these conversations,
21 were you?

22 A I was not a part of all of the conversa-
23 tions, no.

24 Q My question, then, is: During those

1 conversations --

2 A During the conversations where I was
3 included?

4 Q No. During the conversations with Region
5 3 section chiefs, did he try to downgrade you?

6 A I do not know.

7 Q Was it your opinion that he -- do you have
8 this feeling or belief that he tried to?

9 MR. PATON: The witness just said he did not
10 know.

11 MR. FARNELL: Well, I asked him if he knew.
12 Now I am asking him if he has a belief or a feeling.

13 MR. PATON: He says no. All right.

14 BY THE WITNESS:

15 A Do you want me to repeat "no"?

16 MR. PATON: You testified you did not know, and
17 now he asked you, do you have a feeling.

18 MR. FARNELL: Or belief.

19 BY MR. FARNELL:

20 Q In other words, you answered my question
21 before saying that you can try to downgrade the
22 inspector.

23 A Yes.

24 Q And I am asking you, is that what Mr.

1 Marguglio tried to do?

2 MR. PATON: That question he said he did not
3 know.

4 THE WITNESS: Yes.

5 MR. PATON: Then you said, do you have a
6 feeling?

7 BY MR. FARNELL:

8 Q Is it your belief that he tried to do that?
9 Did any one of the section chiefs in
10 Region 3 tell you that Mr. Marguglio tried to
11 downgrade you?

12 A Not specifically, but they told me that
13 the licensee had problems understanding my findings.

14 Q Okay. Now, do you think that by Mr.
15 Marguglio telling Region 3 section chiefs that he
16 has a problem understanding your findings that he is
17 downgrading you?

18 THE WITNESS: Please repeat that question.

19 (WHEREUPON, the record was read
20 by the reporter as requested.)

21 BY THE WITNESS:

22 A Yes.

23 BY MR. FARNELL:

24 Q How was that downgrading you?

1 A Because the section chief concludes --
2 concluded that I cannot communicate with the
3 licensee.

4 Q Who was that section chief?

5 A Mr. Hayes, D. W. Hayes.

6 Q By that he meant that you could not make
7 yourself understood to the licensee?

8 A I don't know what he meant.

9 He said that, "The licensee has a problem,
10 or you have a problem, the licensee has a problem
11 understanding your findings."

12 Q And you thought that because of that you
13 were downgraded?

14 A Yes.

15 Q Do you mean that was an insinuation somehow
16 that you were not doing your job properly?

17 A It's one of the attributes.

18 Q So it would not reflect negatively on your
19 job?

20 A Yes.

21 Q And you did not like that, is that correct?

22 A I don't like it, yes.

23 Q Did you ever tell Mr. Marguglio that you
24 did not like that?

1 A No, no.

2 Q Why didn't you?

3 A I did not have an occasion or the necessity
4 to tell him that.

5 Q You did not consider it a significant
6 concern to call him up?

7 A No.

8 Q Did you feel that by calling Region 3
9 section chiefs, Mr. Marguglio was trying to downgrade
10 the finding, your findings that you made?

11 A Can you -- either one of you repeat that
12 question, please.

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY THE WITNESS:

16 A Yes.

17 BY MR. FARNELL:

18 Q What is your basis for that statement?

19 A Just what I stated to you before.

20 Q Which was?

21 A Now I am really confused, which happens to
22 be the case always.

23 (WHEREUPON, discussion was had
24 off the record.)

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY THE WITNESS:

4 A Yes. If you call the section chief and
5 try to tell him that you do not understand it, then
6 it is the possibility that you downgrade the
7 significance of a finding.

8 However, these findings were not
9 downgraded. They stood as items of noncompliance.

10 Q Did you think that by calling Region 3
11 section chiefs, he was calling, in fact, to downgrade
12 these?

13 A I do not know.

14 Q Could it be that he was -- he just could
15 not understand them and was --

16 A I do not know.

17 Q I asked you before if you considered this
18 improper.

19 I think you said you did not understand
20 what "improper" was.

21 Now, if I tell you that by "improper,"
22 I mean something in the normal course of conduct a
23 QA supervisor would not do --

24 A Every QA -- every licensee has the

1 privilege and prerogative of calling the NRC
2 management.

3 Q So he had the right to do that?

4 A He had the right to do it.

5 Q Going to the second instance where -- in
6 which Mr. Walter Bird in 1978 called Region 3.

7 A Yes.

8 Q Could you tell me what the item of
9 noncompliance was?

10 A I do not recall.

11 Q Could you tell me who Mr. Walter Bird
12 talked to at Region 3?

13 A He talked, I believe, to Mr. Robert F.
14 Heishman, the then Branch Manager of our department,
15 who, in turn, told Mr. R. L. Spessard, who was my
16 section chief, who informed me that the licensee
17 expressed a concern.

18 Q And what was that concern?

19 A That he was not aware that there was an
20 item of noncompliance.

21 Q That he was not aware?

22 What do you mean by that?

23 A That he did not realize that this was an
24 item of noncompliance.

1 Q You mean that he did not understand how
2 what -- your finding could be an item of
3 noncompliance?

4 A I do not know the specifics.

5 (WHEREUPON, discussion was had
6 off the record.)

7 BY MR. FARNELL:

8 Q Do you know the substance of what Mr.
9 Walter Bird said when he talked to Robert Heishman?

10 A No.

11 Q But you cited to me that this is one of
12 the instances where "the licensee --" where "the
13 licensee tried to obscure the relevance of the
14 findings by calling Region 3 section chiefs and
15 pleading, 'We no understand'?"

16 A Yes.

17 Q So, to that extent, you must have some
18 recollection of what he said.

19 MR. PATON: The original question was the
20 substance, the essence, of the conversation.

21 BY THE WITNESS:

22 A There was an item of noncompliance, and
23 it was so stated, and he could not -- whatever he
24 did, he thought it was not an item of noncompliance.

1 I do not recollect what the noncompliance was.

2 BY MR. FARNELL:

3 Q He called Mr. Heishman in and said --

4 A In the NRC, we have various levels of
5 bureaucracy. It goes from the branch chief -- the
6 branch chief says something to the section chief.
7 I don't know what they talk about. The end product
8 is the licensee stated that he did not understand.
9 That's all they get to.

10 I'm sorry. There were other people. And
11 the people who were -- during an inspection, you
12 intimately get involved with the person who is in
13 charge, who will go with you, who will come back,
14 who will see you, and that is why we take them.

15 (WHEREUPON, discussion was had
16 off the record.)

17 BY MR. FARNELL:

18 Q Did Mr. Spessard tell you --

19 (WHEREUPON, there was a short
20 interruption.)

21 (WHEREUPON, discussion was had
22 off the record.)

23 (WHEREUPON, a recess was had.)
24

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY MR. FARNELL:

4 Q Did Mr. Spessard tell you that the licensee
5 did not understand your findings?

6 A Yes.

7 Q Did he tell you that he felt you had
8 difficulty communicating with the licensee?

9 A I don't think he said that.

10 He said that the licensee had a problem
11 with my finding.

12 Q The problem was that they did not understand
13 them, is that correct?

14 A I don't recall specifically what his --

15 Q Did you feel that Mr. Bird was trying to
16 downgrade your findings?

17 A I do not know.

18 Q Did you feel that Mr. Bird was trying to
19 obscure the relevance of your findings?

20 A I have only to conclude. Maybe -- perhaps
21 the way in which you are asking whether that
22 particular finding was obscured I am not very
23 comfortable.

24 Perhaps I should make it very clear. What

1 I meant by "obscure the relevance of the findings"
2 is that significant importance was not being given
3 to the relevance of the finding.

4 In other words, when the -- when a problem
5 is identified, you have to make sure that you find
6 the root cause of a particular problem, and the other
7 circumstances, which will lead to a particular
8 problem.

9 That's what I was trying to communicate
10 when I said the problem is being obscured.

11 MR. FARNELL: Would you read back my question,
12 please.

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY MR. FARNELL:

16 Q The first part of your answer is, "I have
17 only to conclude."

18 What did you mean by that?

19 A I infer or deduce.

20 Q That he was trying to downgrade -- excuse
21 me.

22 He was trying to obscure the relevance of
23 the findings?

24 A Right. Yes.

1 Q Every time a licensee tells a Region 3
2 section chief that he has a problem with your
3 findings, do you consider that to be an attempt to
4 obscure the relevance of the finding?

5 A No.

6 Q How do you differentiate between whether
7 they are trying to obscure the relevance of the
8 finding or not?

9 A By the subsequent actions which take place
10 to preclude recurrence, repetition, of similar items.

11 Q As you have explained the phrase "trying
12 to obscure the relevance of the findings," you mean,
13 then, that attention is being focused away from the
14 root cause of the problem and being placed on the
15 fact that the licensee does not understand the
16 problem?

17 Is that a correct interpretation of what
18 you mean?

19 A Perhaps a better interpretation would be
20 that significant effort is diverted to other aspects
21 of the finding than to the root cause of the finding.

22 Q Don't you think the licensee has to
23 understand the finding prior to the time he tries to
24 deal with the root cause of the finding?

1 A Yes.

2 Q And if he does not understand the finding,
3 shouldn't he ask what the finding means?

4 A Yes, yes.

5 Q In fact, if he did not understand it,
6 wouldn't he be derelict in not trying to understand
7 it?

8 A Probably.

9 Q The third example you cited to me was the
10 mid-QA in May of 1980.

11 A Right.

12 Q And you said Walt Bird journeyed all the
13 way to Region 3 to discuss, and then I think you
14 said to downgrade, items of noncompliance.

15 A Yes.

16 Q Can you tell me the background of that?

17 A I don't recall the specific instance, but
18 one of the items of noncompliance was an example
19 where they had documentation on a valve, and one of
20 the requirements was that the minimum wall thickness
21 measurements had to be made, and in the documentation
22 package, the minimum wall thickness had not been
23 measured and documented.

24 And in another example, there was a valve

1 which was analyzed to be qualified to the seismic
2 Category 1 requirements, and one of the components
3 used in the valve was of a different substance than
4 the one to which it was analyzed, and he came all
5 the way to Glen Ellyn to argue that this should not
6 be made an item of noncompliance.

7 Q Did these two examples you have given me --

8 A There may be others. I only remember these
9 two.

10 Q And you consider this an example of Mr.
11 Bird trying to obscure the relevance of the findings?

12 A I don't know whether that would be exactly
13 the same.

14 Q You have cited that as an example of that?

15 A Yes.

16 Q Do you want to change your testimony, that
17 that is not an example of that?

18 A No. There were two things. Downgrade
19 or obscure and what else?

20 Q It reads, "I feel discouraged that the
21 licensee tried to obscure the relevance of the
22 findings by calling Region 3 section chiefs and
23 pleading, 'Me no understand.'"

24 A Yes. Obscure. Okay.

1 Now, we are talking about obscuring the
2 relevance of the finding, right?

3 Q That is what we have been talking about,
4 yes.

5 A Okay. Now, your question is do I consider
6 that obscuring the relevance of the finding?

7 Q Right.

8 A Yes, yes.

9 How?

10 Q Yes.

11 A In this instance, I felt that the relevance
12 of obscuring -- that you may have documentation in
13 your possession which may not be adequate, complete,
14 was being obscured by diverting efforts to rehash
15 the entire finding.

16 MR. FARNELL: Would you read that back, please.

17 (WHEREUPON, the record was read
18 by the reporter as requested.)

19 BY MR. FARNELL:

20 Q Could you try to put that in other words?

21 I did not quite understand it.

22 A An NRC inspector is supposed to inspect
23 and determine inadequacy of the documentation in
24 this particular case.

1 If we find an example of inadequate
2 documentation, then it is in the best interests of
3 the licensee to verify whether he has other examples
4 of inadequate documentation or any of the problem.

5 In this instance, there is a vendor
6 inspector who inspects the place where this parti-
7 cular component is fabricated, examines the
8 documentation, and certifies that all the specifi-
9 cation requirements were being met.

10 Now, we found an instance where the
11 specification requirements were not completely met.

12 One of the things you would do is to go
13 back and search other companies' documentation
14 packages and see whether they have been adequately
15 filled and whether the specification requirements
16 were met. This can become a very big problem
17 subsequently, and I know instances where the
18 licensee spent several months examining documentation
19 packages which were otherwise determined to be
20 complete.

21 Therefore, I thought that a certain amount
22 of work and effort was being diverted to justifying
23 a finding rather than to envisage matters of
24 determining that other documentation packages do not

1 have similar deficiencies.

2 MR. FARNELL: Could you read back just the last
3 sentence.

4 (WHEREUPON, the record was read
5 by the reporter as requested.)

6 BY MR. FARNELL:

7 Q Did Mr. Bird say at this Region 3 meeting
8 that he did not understand your finding?

9 A I do not recall what he exactly said.

10 He contacts the branch chief or section
11 chief. And I am last at the totem pole. He comes
12 and says what he has to say, and I say what he has --
13 what I have to say, and, as far as I'm concerned,
14 the matter ends, and somebody else makes the
15 decision whether it stays or does not stay.

16 Q Did it come to your attention that he had
17 stated that Consumers did not understand your
18 findings?

19 A It does not -- not directly.

20 Q Did it come indirectly?

21 A Perhaps.

22 Q You do not recall?

23 A I don't know. I get it through the section
24 chief.

1 Q What did he say to you?

2 A "Consumers Power, Mr. Walter Bird, is here
3 to discuss your finding."

4 Q Right.

5 A "What is there to discuss?"

6 "I do not know. He is here to discuss
7 your finding."

8 Q Okay.

9 A So he comes here and he tells me all about
10 it. And I say, "This is what I have to say."

11 Q You are telling this to your section
12 chief?

13 A To Mr. Walter Bird.

14 Q So you and Mr. Bird had a discussion, is
15 that right?

16 A Yes.

17 Q Okay. What did he tell you?

18 A I don't remember.

19 Q Did he tell you that he did not understand
20 your findings?

21 A No, he did not say he did not understand
22 my findings. He wanted to review what information
23 he had.

24

1 (WHEREUPON, discussion was had
2 off the record.)

3 (WHEREUPON, the record was read
4 by the reporter as requested.)

5 BY MR. FARNELL:

6 Q I was incorrect. The question was
7 improperly phrased.

8 Did Mr. Bird indicate to you that he did
9 understand your findings?

10 A Prior to his departure.

11 Q When he came into the meeting.

12 In other words, did he come into the
13 meeting and tell you, "I don't understand your
14 findings," or did he come in and say, "I understand
15 your findings, but I disagree with your findings"?

16 MR. PATON: Or did he say something else.

17 BY MR. FARNELL:

18 Q Or did he say, "It's a lovely day"?

19 A I do not recall.

20 Q Why I am asking you this question is you
21 have got this instance as an example where Mr. Bird
22 called Region 3 section chiefs and pleaded, "Me no
23 understand."

24 Do you have any recollection as to whether

1 he did that?

2 A I do not know, because he never told me
3 what he did not understand.

4 Q Okay. Then my question, obviously, is:
5 How do you know this is an example where he pleaded,
6 "Me no understand"?

7 A Because if you understand it, you didn't
8 come to Glen Ellyn to explain something.

9 Q In other words, if you understand it,
10 you accept your findings, is that correct?

11 (WHEREUPON, discussion was had
12 off the record.)

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY THE WITNESS:

16 A Yes.

17 BY MR. FARNELL:

18 Q Can you tell me whether these findings
19 that you have made in the noncompliance that you
20 believe are set forth herein have been resolved?

21 A Now?

22 Q Yes.

23 A Yes, I believe so.

24 Q Can you tell me when they were resolved?

1 A No.

2 Q They were resolved sometime between May,
3 1980, and the present, or --

4 A 1970.

5 Q Well, you told me that these noncompliances
6 came out in May, 1980.

7 A May, 1979. Maybe that is a mistake.

8 Q So it should be May, 1979?

9 A Yes.

10 Q Okay. I believe I asked you about what I
11 call the SALP period, which is the period of time
12 during which the SALP process is supposed to cover,
13 and it is my understanding it is from July 31st,
14 1979, to June 1, 1980.

15 A Yes.

16 Q And you consider something that happened
17 in May, 1980, to fall within that period?

18 A Do you want to say May, 1979?

19 Q May, 1979. Excuse me.

20 A Yes. In my opinion, though, that covers
21 a specific area between '79 and '80. There are
22 always related things which happen, and it is
23 whatever the good intention of the SALP period and
24 SALP appraisal is. It is to bring to the attention

1 of the licensee for the betterment and for a smooth
2 operation.

3 Therefore, I gave him this comment, even
4 though it preceded the SALP period.

5 MR. FARNELL: Off of the record.

6 (WHEREUPON, discussion was had
7 off the record.)

8 BY MR. FARNELL:

9 Q The fifth page of Fiorelli Deposition
10 Exhibit No. 11 states, "A number of the inspectors
11 feel that many of the QA staff are more interested
12 in getting resolution of NCR's than they are at
13 determining the root cause of the NCR's and estab-
14 lishing corrective action at that level."

15 Do you agree with that statement?

16 A I have no comment.

17 Q You do not --

18 MR. PATON: You have no comment?

19 BY THE WITNESS:

20 A The moment I say yes -- I can't pull them
21 out of my memory.

22 BY MR. FARNELL:

23 Q So you do not have any basis to say yes
24 or no to this, one way or the other, is that what

1 you are saying?

2 A Excuse me. I have to tax my memory.

3 You are asking a particular period, and I
4 go back and forth, and to answer your question, I
5 have to think a little bit more.

6 Yes, I have a basis to agree with that,
7 but I cannot give you examples, specific examples,
8 during the SALP period, which you mentioned.

9 Q There were not any such examples, is that
10 what you are saying?

11 A During this particular period.

12 Q There were not any examples?

13 A Yes..

14 Q No. 5 on this same page states, "Several
15 of the inspectors feel that some of the supervisory
16 personnel in the organization do not understand the
17 CPCo QA program and requirements."

18 Do you agree with that statement?

19 A Yes, I agree with that statement.

20 Q Okay. Who are those people?

21 A One is Mr. Leonard.

22 Q What is his position?

23 A He is a supervisor.

24 Q When did you come to the conclusion that

1 Mr. Leonard does not understand this program?

2 MR. PATON: Well, I object to that. I do not
3 think he said that.

4 MR. FARNELL: I am sure that is what he said.

5 MR. PATON: No. He said there were some things
6 he did not understand. You extrapolated that into
7 he does not understand this program.

8 MR. FARNELL: Could you read back my initial
9 question on this.

10 (WHEREUPON, the record was read
11 by the reporter as requested.)

12 BY MR. FARNELL:

13 Q Let me repeat the question.

14 When did you come to the conclusion that
15 Mr. Leonard did not understand this program?

16 A Could I see the entire program there?

17 (WHEREUPON, the document was
18 tendered to the witness.)

19 (WHEREUPON, there was a short
20 interruption.)

21 BY THE WITNESS:

22 A That's what it says. I didn't write it.

23 BY MR. FARNELL:

24 Q No, but I asked you if anyone did not

1 understand the program, the requirements, and you
2 said yes, Mr. Leonard didn't.

3 A Yes.

4 Q And now my question is: When did you first
5 come to the realization that he did not understand
6 it?

7 A During my -- during the conclusion of one
8 of my inspections, I tried to relate the significant
9 findings, and there -- and the criteria being
10 violated, and he seemed -- did not seem to follow
11 the findings and their implications.

12 Q When was this inspection?

13 A Sometime during the latter part of 1980.

14 Q What was the finding that he did not
15 understand?

16 A I do not recall.

17 Q Upon what do you base your statement that
18 he did not seem to follow the findings in there --

19 A Because it is very specific. It violates
20 either one of the criteria which is mentioned, and
21 the CPCo QA program covers the particular criteria,
22 and it's only a matter of relation between those two.

23 If you do not know the requirements, then
24 you cannot follow any finding.

1 Q Did he disagree with your finding?

2 A No.

3 Q How didn't he understand it, then? How
4 didn't he follow it?

5 That is the term.

6 A He could not relate a finding and its
7 significance to the QA program requirements.

8 Q What did he say that led you to that
9 conclusion?

10 A He didn't know that it was relevant to
11 his criteria.

12 Q He did not know that the particular item
13 that you found violated one of the criteria --

14 A Yes.

15 Q -- that Consumers Power had pledged to
16 follow?

17 A Yes. Committed.

18 Q "Committed" is better.

19 You believe that is a lack of understanding
20 of the Consumers Power quality assurance program?

21 A One can be very familiar with engineering
22 disciplines yet not familiar with his own program
23 requirements.

24 The intent was that they should -- that

1 Consumers Power should indoctrinate their supervisors
2 into the requirements of the QA program.

3 Q Just based on this one finding?

4 A There were several occasions during that
5 meeting which led to the conclusion that it would
6 have been more appropriate for them to have been
7 more cognizant of their own QA program requirements.

8 Q So there were a couple of findings that
9 Mr. Leonard did not appreciate or follow?

10 A I did not say that he did not appreciate.
11 He could not relate to his program requirements.

12 Q There was more than one?

13 A Yes.

14 Q And you cannot recall any instances?

15 A No.

16 Q Was this at an exit meeting?

17 A Yes.

18 Q Who was present at the exit meeting?

19 A Who was present?

20 There were many people. I don't remember
21 everybody who was present there.

22 Q How about a few.

23 A Mr. Don Miller was there. Mr. Keating
24 was there. I don't know. Mr. Sutphin was there.

1 Q Were there any other supervisory
2 personnel that you believe did not understand the
3 CPCo QA requirements?

4 A At that time, there was only one individual
5 who was on board for a length of time, and my
6 dealings was in his -- related to his group, and I
7 can only direct my comments to this particular
8 instance.

9 Q So the bottom line is that he was the
10 only inspector that did not -- only supervisory
11 personnel that did not understand the organization
12 as far as you could tell?

13 A I believe that you wanted to say that he
14 was the only supervisor, not the inspector.

15 Q Right, the only supervisory personnel that
16 did not understand the organization, as far as you
17 could tell?

18 A Yes.

19 Q Okay. After this instance, did you find
20 any other instances where any of the supervisory
21 personnel did not understand the CPCo QA organization
22 and requirements?

23 A I have not been there since.

24 Q Did you feel that there was a general lack

1 of direction in Mr. Leonard's group?

2 A I do not know why you asked me that
3 question.

4 Q I have to say it, but your job is only to
5 answer the questions.

6 THE WITNESS: What did he say?

7 MR. PATON: He said you have to answer the
8 questions.

9 THE WITNESS: Oh, okay.

10 BY THE WITNESS:

11 A I don't know.

12 BY MR. FARNELL:

13 Q Does that mean that you did not observe
14 any, or you do not recall, or you have no basis upon
15 which to judge? All of the above, none of the above?

16 A None of the above.

17 MR. PATON: Do you remember the original
18 question?

19 THE WITNESS: The question was whether -- whether
20 Hank Leonard has given any direction to his people.

21 MR. PATON: General lack of direction.

22 MR. FARNELL: General lack of direction.

23 THE WITNESS: Why would anybody ask me that?

24 MR. PATON: Because he wants to know the answer.

1 THE WITNESS: I'm sorry. But when you ask me
2 a question, you have to ask me if I said something,
3 then you can ask me the question. But when you
4 throw a question out of the air and ask me to answer
5 the question, I wanted to know what -- on what basis
6 you asked me the question.

7 MR. PATON: You can ask him, but he does not
8 have to tell you.

9 THE WITNESS: Yes. Okay. Fine.

10 MR. FARNELL: Could you repeat the question,
11 please.

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 BY THE WITNESS:

15 A I have no feeling whatsoever.

16 THE WITNESS: Is that an answer?

17 MR. PATON: Yes, if you understood the question.

18 BY MR. FARNELL:

19 Q By that you mean you did not notice this
20 lack of direction in his group?

21 A I have no comment.

22 Q What does that mean?

23 A I can't say one way or the other.

24 MR. PATON: Do you understand what he means by

1 "general lack of direction"?

2 THE WITNESS: That he's not directing his folks.

3 MR. PATON: That is right.

4 BY MR. FARNELL:

5 Q By that you mean you have no opinion one
6 way or the other?

7 A I have no opinion one way or the other.

8 Q Is that the only QA group that you dealt
9 with under the new QA organization?

10 A I don't specifically remember.

11 Q But can you recall any QA groups that
12 suffered from a general lack of direction?

13 (WHEREUPON, discussion was had
14 off the record.)

15 (WHEREUPON, the record was read
16 by the reporter as requested.)

17 BY THE WITNESS:

18 A I cannot recall at this instance.

19 BY MR. FARNELL:

20 Q You will be happy to know that we are
21 turning to the last page of Fiorelli Deposition
22 Exhibit No. 11.

23 Are you aware of any vacancies in the
24 new quality assurance organization at the Midland

1 site?

2 A Not specifically.

3 Q How about generally?

4 A If there is a big organization chart with
5 a lot of blanks, yes, I know that there are a lot
6 of blanks.

7 Now, I don't particularly -- my work was
8 not hindered because those blanks were not filled.

9 Specifically, I don't know who -- whose
10 job was not filled, but there are a lot of vacancies
11 shown on the organization chart.

12 Q When did you see --

13 A Including when they showed the organization
14 chart, during my visit to the site.

15 Q Which was in October of 1980?

16 A 1980.

17 Q And you do not know if they have been
18 filled since?

19 A No.

20 (WHEREUPON, there was a short
21 interruption.)

22 BY MR. FARNELL:

23 Q Concerning the staffing of the new
24 quality assurance organization, do you consider the

1 staff to be "aggressive and effective"?

2 A I had very little involvement since the
3 reorganization that I cannot conclude whether it's
4 aggressive or not.

5 Q How about effective?

6 A It's too early to give a conclusion.

7 Q You have no opinion one way or the other
8 on that?

9 A I have no opinion one way or the other on
10 that.

11 Q Mr. Fiorelli, at his deposition, said that
12 one individual who he could not recall was perceived
13 by you and Mr. Cook and Mr. Sutphin as not having
14 the degree of experience that was necessary to handle
15 the job that he had.

16 Could you tell me based on that --

17 A I don't know --

18 MR. PATON: Could you take a time frame on that?

19 MR. FARNELL: This deals with the staffing of
20 the new quality assurance organization, so it must
21 be sometime --

22 MR. PATON: That is fine.

23 BY THE WITNESS:

24 A I do not recall.

1 BY MR. FARNELL:

2 Q Was there such an individual, do you know?

3 A I do not recall.

4 (WHEREUPON, there was a short
5 interruption.)

6 BY MR. FARNELL:

7 Q Do you consider that Consumers took
8 Sutphin's word for many things without independent
9 verification of facts?

10 A Yes, I believe so. And, during earlier
11 testimony, I think I confirmed -- I gave you a couple
12 of examples.

13 Q And those are the only examples that you
14 can recall that support that belief, right?

15 A Yes, yes.

16 Q Did you and Mr. Sutphin make an audit in
17 May of 1980 -- strike the word "make."

18 A Perform.

19 Q Perform. That is a better one.

20 A It is possible.

21 Q One of the headings on Fiorelli Deposition
22 Exhibit No. 10 was "Timeliness of providing
23 documentation to NRC, QA did not have a complete
24 package of audit performed, May, 1980, was not able

1 to provide within several days of the site."

2 A I think we went through that before.

3 Q Was that the mid-QA review?

4 A No.

5 Q That is right. We moved that back to '79.

6 Why don't you just refresh my recollection
7 briefly as to what this May, 1980, was.

8 A Sure. This is M-01-55-0, which we
9 extensively discussed.

10 Q That takes care of that.

11 Do you consider Mr. Walt Bird to be a
12 competent QA Manager?

13 A We went through that before.

14 Q Why don't you refresh my recollection by
15 telling me what you stated before.

16 A Do you still want me to answer the
17 question?

18 Q Please, please.

19 MR. PATON: If you feel that you have already
20 answered the question, state that.

21 BY THE WITNESS:

22 A I believe I have already answered the
23 question.

24

1 BY MR. FARNELL:

2 Q You have nothing more to add?

3 A I have nothing more to add.

4 Q Okay. You did not attend the SALP board
5 meeting, is that correct?

6 A I did not attend SALP -- I don't know what
7 the SALP board meeting is.

8 Excuse me. I do not know what the SALP
9 board meeting is or where it was conducted.

10 Q I mean, the meeting convened by Mr.
11 Fiorelli of all of the inspectors involved with the
12 Midland site to discuss their input, their SALP
13 input, and to reach a consensus view.

14 A I do not recall that Mr. Fiorelli conducted
15 such a meeting.

16 Q Did you ever attend the meeting at Region
17 3 headquarters in which the inspectors involved with
18 the Midland site set forth their input regarding the
19 SALP appraisal?

20 MR. PATON: Could we go off of the record?

21 MR. FARNELL: Yes.

22 (WHEREUPON, discussion was had
23 off the record.)

24

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY THE WITNESS:

4 A I do not recall attending such a meeting.

5 BY MR. FARNELL:

6 Q How many conversations did you have with
7 Mr. Knop or Sutphin regarding your SALP input
8 appraisal?

9 A I remember to have had one verbal
10 discussion with Mr. Knop.

11 Q What was the substance of that discussion?
12 Is that what --

13 A That is contained -- the substance of what
14 is contained in the written exhibit you have from
15 Fiorelli.

16 Q Fiorelli Deposition Exhibit 11?

17 A Yes.

18 Q I am going to read from Page 700 of the
19 prehearing conference, and ask you the question the
20 board has allowed us to ask you, and that is -- that
21 is whether you have the opinion "whether the QA
22 program has been adequately modified and will be
23 adequately implemented to prevent QA deficiencies
24 of the type that have heretofore occurred."

1 MR. PATON: Just a minute.

2 I would like a clarification on the matter
3 that "the board has allowed us to ask this question."

4 Just a minute. May I see that here.

5 (WHEREUPON, the document was
6 tendered to Mr. Paton.)

7 (WHEREUPON, there was a short
8 interruption.)

9 MR. PATON: Would you like to read this
10 question?

11 (WHEREUPON, the document was
12 tendered to the witness.)

13 (WHEREUPON, discussion was had
14 off the record.)

15 BY THE WITNESS:

16 A I cannot answer the question.

17 MR. PATON: The fact that he is allowed to ask
18 you the question does not mean you have to answer.

19 BY MR. FARNELL:

20 Q You cannot answer the question?

21 A I cannot answer the question.

22 Q And that is because --

23 A Because I have not studied the QA program,
24 the modified QA program in its entirety, and I have

1 not had any chance to review the implementation of
2 the QA program to determine whether it can prevent
3 the deficiencies of the type which have occurred.

4 And relative to Item B, I have no involvement
5 in the soils settlement program to give you an
6 answer one way or the other.

7 MR. FARNELL: Off the record.

8 (WHEREUPON, discussion was had
9 off the record.)

10 BY MR. FARNELL:

11 Q Referring to Fiorelli Deposition Exhibit
12 No. 9, Page 2955-4, the second full paragraph states,
13 "The region's action plan for the licensee will be
14 attached to the evaluation that is transmitted to
15 the SALP review group, which I believe is in
16 Bethesda."

17 Have you ever seen a Region 3 action plan
18 for --

19 A No, I have not.

20 MR. FARNELL: I would like to request from Mr.
21 Paton that we be provided with a copy of that
22 document, which I assume must be in existence,
23 because it is set forth in a -- in the NRC's manual,
24 and, since you always follow your rules, I would

1 anticipate that you have one.

2 MR. PATON: Yes, I will attempt to cooperate.
3 I would like -- I would like you to be as specific
4 as you possibly can as to when this document came
5 into existence, where it might be at the present time,
6 et cetera.

7 Let me have all of the description that
8 you could possibly give me, and I will attempt to
9 comply with your request.

10 MR. FARNELL: Referring to Item -- Page 2955-3,
11 entitled at the bottom, "Corrective Action Plan
12 Appendix C" --

13 MR. PATON: Just a second.

14 All right. You have already identified
15 the exhibit.

16 MR. FARNELL: "After the regional board has
17 completed the performance evaluation, the Regional
18 Manager will determine the appropriate action to be
19 taken and document this action on the special form
20 provided for this information," et cetera, and then
21 it says, "This action plan will be attached to the
22 evaluation that is transmitted to the SALP review
23 group."

24 MR. PATON: Do you have reason to believe that

1 the document will be in Washington, D.C., as opposed
2 to here?

3 THE WITNESS: I don't know why he believes that.

4 MR. PATON: I am not sure, either.

5 MR. FARNELL: I also note on Page 2955-3, it
6 states, "The evaluation results will be forwarded
7 to I&E headquarters for evaluation by the SALP
8 review group," "SALP review group" being in all caps,
9 and at Page 2955-4, "Region action plans will be
10 attached to the evaluation that was transmitted to
11 the SALP review group," in caps, which leads me to
12 believe that there is a SALP review group at I&E
13 headquarters that is evaluating our beloved Midland
14 project.

15 MR. PATON: I would attempt to obtain that
16 document for you, sir.

17 MR. FARNELL: Thank you.

18 I have no further questions.

19 (WHEREUPON, discussion was had
20 off the record.)

21 MR. PATON: Signature is not waived.

22 FURTHER DEPONENT SAITH NOT.
23
24

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:) Docket Nos. 50-329-OL
) 50-330-OL
CONSUMERS POWER COMPANY) 50-329-OM
(Midland Plant, Units 1 & 2)) 50-330-OM

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, consisting of Pages 1 to 171, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.

Kamalakar Rao Naidu

SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D., 1981.

Notary Public

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DUPAGE)

4 I, LINDA M. SNODGRASS, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of said
7 state, do hereby certify:

8 That previous to the commencement of the
9 examination of the witness, KAMALAKAR RAO NAIDU, he
10 was first duly sworn to testify the whole truth
11 concerning the matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction,
15 and constitutes a true record of the testimony given
16 and the proceedings had;

17 That the said deposition was taken before
18 me at the time and place specified;

19 That the reading and signing by the witness
20 of the deposition transcript was not waived;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto; nor interested directly or indirectly in the
outcome of this action.

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 IN THE MATTER OF:) Docket Nos. 50-329-OL
4) 50-330-OL
5 CONSUMERS POWER) 50-329-OM
6 COMPANY) 50-330-OM
7 (Midland Plant,)
8 Units 1 & 2))

8 The deposition of JAMES GEORGE KEPPLER,
9 called by the Consumers Power Company for
10 examination, taken pursuant to the Federal Rules
11 of Civil Procedure of the United States District
12 Courts pertaining to the taking of depositions
13 and the Rules and Regulations of the Nuclear
14 Regulatory Commission, taken before CORINNE T.
15 GENNA, a Notary Public within and for the County
16 of DuPage, State of Illinois, and a Certified
17 Shorthand Reporter of said state, taken at
18 Nuclear Regulatory Commission Region No. 3,
19 799 Roosevelt Road, Glen Ellyn, Illinois, on
20 the 6th day of January, A.D. 1981, at 9:40 a.m.

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PRESENT:

MESSRS. ISHAM, LINCOLN & BEALE,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. RONALD G. ZAMARIN,

appeared on behalf of the
Consumers Power Company;

MR. WILLIAM D. PATON,
(United States Nuclear Regulatory Commission,
Washington, D.C. 20555),

appeared on behalf of the
Nuclear Regulatory Commission.

ALSO PRESENT:

MR. GILBERT S. KEELEY,
MR. BENJAMIN W. MARGUGLIO,
Consumers Power Company;

MR. EUGENE J. GALLAGHER,
MR. R. C. KNOP,
Nuclear Regulatory Commission.

REPORTED BY: CORINNE T. GENNA, C.S.R.

I N D E X

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WITNESS

DX

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RDX

RCX

JAMES GEORGE KEPPLER

By Mr. Zamarin

4

67

E X H I B I T S

NUMBER

MARKED FOR ID

CPCo Deposition Exhibit

No. 1

69

No. 2

76

No. 3

122

No. 4

131

Nos. 5 and 6

132

No. 7

141

1 MR. ZAMARIN: Let the record show that this
 2 is the deposition of James Keppler, taken
 3 pursuant to Notice and agreement of the parties
 4 and per the direction of the Licensing Board.

5 It is taken in accordance with the
 6 Federal Rules of Civil Procedure and the Rules
 7 of the Nuclear Regulatory Commission.

8 Would you swear the witness, please.

9 (WHEREUPON, the witness was duly
 10 sworn.)

11 JAMES GEORGE KEPPLER,
 12 called as a witness herein, having been first
 13 duly sworn, was examined and testified as
 14 follows:

15 DIRECT EXAMINATION

16 BY MR. ZAMARIN:

17 Q Would you state your full name.

18 A James George Keppler.

19 Q Where do you live?

20 A I live in Glen Ellyn, Illinois.

21 Q Do you have a resume?

22 A Yes. She is typing one, and she will
 23 give it to you. We had to change the numbers of
 24 facilities and the regions since the last one was

1 done.

2 Q What is your current position with the
3 NRC?

4 A I am the Director of the NRC's Region 3
5 office.

6 Q What are your responsibilities as
7 Director of the Region 3 office?

8 A As Director of the Region 3 office, my
9 responsibilities are to carry out the regulatory
10 program in eight states in the Midwest, primarily
11 related to inspection and enforcement activities,
12 but it also involves some other activities that
13 have been decentralized or have been assigned
14 to the regional office.

15 Q What are those other activities to which
16 you referred?

17 A Materials licensing work, public affairs
18 work, state liaison activities and very shortly
19 operator licensing examinations.

20 Q What is it that you do on a day-to-day
21 basis in carrying out regulatory programs in
22 the eight states in the Midwest?

23 A My job as Director of the office is
24 to assure that the resources and needs of the

1 office are obtained, to assure that the NRC
2 inspection program gets carried out in accordance
3 with policies established by Washington, by our
4 headquarters office in Washington, and to evaluate
5 and take actions, as necessary, to assure that the
6 public health and safety is protected and that
7 licensed activities are conducted in accordance
8 with the rules and regulations of the NRC.

9 Q Would you describe the organization
10 of the Region 3 office?

11 A We are organized into five main branches,
12 one of which conducts the inspection program for
13 reactors under construction and for reviews of
14 in-service inspections and major modifications
15 at operating facilities.

16 A second branch carries out the
17 reactor operations inspection activities at
18 operating nuclear power plants and plants in the
19 pre-operational testing stages.

20 A third branch conducts the safeguard
21 inspections, which includes material control and
22 accountability and physical security at fixed
23 facilities and is involved in the transportation
24 of special nuclear material.

1 And the fourth branch conducts the
2 health physics, environmental and emergency planning-
3 type inspections at all facilities licensed by the
4 NRC.

5 A fifth branch is involved with the
6 administration of the office.

7 Now, in addition to these five branches
8 which are primarily oriented toward the inspection/
9 enforcement activities of the office, we have a
10 component that handles the investigative activities
11 of the office.

12 We have a materials licensing component,
13 which does certain licensing work for by-product
14 materials licensees. We have a public affairs
15 officer -- two public affairs officers and a
16 state liaison officer.

17 I think that adequately describes the
18 composition of the office.

19 Q Who reports directly to you within the
20 inspection program for reactors under construction?

21 A The Branch Chief, Mr. Fiorelli.

22 Q How does the branch or area or group
23 that is responsible for investigative activities
24 differ from the inspection program group?

1 A It's my policy to have all allegations
2 that are made either by workers or members of the
3 public investigated by a group of people
4 independent from those that have the day-to-day
5 responsibility for overseeing the inspection
6 program.

7 Now, let me just elaborate on that a
8 little bit further so I do not mislead you.

9 The primarily responsibility for an
10 investigation rests with an investigator assigned
11 from this investigative unit. The investigators
12 normally are not people who have a technical
13 background, but are people who are skilled in
14 investigative techniques as a background.

15 Sometimes because of the technical
16 nature of the investigation, it is necessary to
17 have technical people assist the investigator.
18 So, in a technical investigation, the investigative
19 team may be led by an investigator with some
20 assistance from some of the technical people.

21 The investigation group also is
22 assigned responsibility for certain cases that
23 involve incidents or where particular need exists
24 to establish precise sequence of events or perhaps

1 where there is a question as to the accuracy of
2 information being provided to the NRC.

3 But it's largely a judgmental decision
4 on my part as to when an investigation is conducted
5 in those cases.

6 The investigative group reports directly
7 to me through the Assistant to the Director.

8 Q Who is the Assistant to the Director?

9 A Mr. Norelius.

10 Q Could you spell that, please?

11 A N-o-r-e-l-i-u-s.

12 Q Is there just one Assistant to the
13 Director?

14 A Yes.

15 Q When you say the Director, we are
16 referring to you?

17 A To me.

18 Q With regard to the soils issues at
19 Midland, I recall that a March 22 investigative
20 report -- I believe that was Report 78-20 -- was
21 styled an investigative report.

22 Do I take it, then, at least part of
23 that effort was conducted by this investigative
24 group?

1 A That's correct. I believe Mr. Phillip
2 was the investigator on that case.

3 Q What was the reason for your having
4 that group participate in the investigation or
5 inspection with regard to the settlement?

6 A I'd have to go back and look at the
7 report, but I think it should state right in the
8 report what the reason for the investigation was.

9 (WHEREUPON, a certain document
10 was tendered to the witness.)

11 BY THE WITNESS:

12 A The investigation was initiated for
13 two purposes. One, to obtain information as to
14 whether a serious breakdown in the quality assurance
15 program had occurred and whether the matter had
16 been reported properly to the NRC; and, secondly,
17 to determine whether or not information provided
18 to the NRC through the safety analysis report
19 were, in fact, correct.

20 BY MR. ZAMARIN:

21 Q What was it about those two areas of
22 inquiry that prompted you to have the investigative
23 group as opposed to the inspection and enforcement
24 group handle this matter?

1 A I'm not sure I recall. If I talked
2 to some people, I might refresh my memory, if I
3 talked to Gerry Phillip.

4 Q But as you sit here now, you cannot
5 recall why?

6 A I don't. I guess -- let me give you
7 a reaction.

8 I know at that time I was very
9 sensitive to past problems in quality assurance,
10 and I recall that I felt a strong need to
11 determine why this problem occurred the way
12 it did and why it wasn't found out for a long
13 period of time.

14 I recall being concerned about the
15 timeliness of reporting it and whether or not
16 there was evidence -- since it occurred over a
17 fairly long period of time, whether or not there
18 was evidence that would suggest the problem should
19 be reported sooner to the NRC.

20 Whether or not I was aware at that time
21 that there appeared to be conflicting statements
22 with the FSAR and what, in fact, we knew about
23 the placement of soils, I'm not sure at this
24 moment. I don't recall whether that was a

1 consideration at that particular time.

2 Q Did you ever find any evidence which
3 suggested that the problem should have been
4 reported sooner?

5 A To the best of my knowledge, I don't
6 believe that I ever deduced that there was a
7 basis that suggested to me that the company did
8 not report that in a timely manner. If there had
9 been, we would have taken stronger action about
10 it. So, that would have been a regulatory issue.

11 I think we were aware that there had
12 been a problem with the administrative building,
13 and our feeling was that perhaps the company
14 should have taken a clue from that, so to speak.
15 But I -- we did not come to any conclusion that
16 the company did not inform us when they learned
17 of the problem.

18 Q Did you ever learn whether the company
19 had conducted any investigation regarding the
20 administration building grade being a failure
21 that would have either provided a clue as to whether
22 there was this problem or there was not this
23 problem?

24 A I don't recall any of the details of

1 the company's investigation, but let me say that
2 we satisfied ourselves through our investigative
3 effort that there was not a misreporting problem
4 to the NRC, because I recall that was one of the
5 things I specifically asked to be reviewed.

6 Q Who besides Mr. Fiorelli reports directly
7 to you with regard to Midland?

8 A In the nature of any aspects of the
9 pre-operational testing program, Mr. Heishman
10 reports to me.

11 Q Would you spell Heishman, please?

12 A H-e-i-s-h-m-a-n.

13 However, we really have barely touched on
14 that area as far as Midland goes.

15 Mr. Davis, up until yesterday, reported
16 to me through his role as Branch Chief of the
17 Fuel Facilities and Materials Safety Branch, and
18 his organization would have been responsible for
19 environmental inspections at the facility.

20 I don't believe we have touched in
21 any other areas there other than environmental,
22 and I don't believe that Mr. Hind in Safeguards
23 has had any involvement at Midland.

24 Q H-i-n-d?

1 A H-i-n-d.

2 But if there had been any matters that
3 related to safeguards, and we really do not get
4 involved in that until fuel gets on the site --
5 there is no fuel on the site at Midland that I am
6 aware of. But unless there was a security-related
7 problem --

8 I believe maybe his people did get
9 involved slightly in a vandalism problem up at
10 the site, now that I think about it. There was
11 a vandalism problem in the control room where
12 some wires were cut and/or some dials were
13 damaged that came to our attention. And Mr. Hind's
14 people investigated there or conducted an
15 investigation of that particular matter.

16 With respect to investigations that
17 have been done there, Mr. Norelius would have
18 reported to me on those matters. And there have
19 been investigations ocher than the soil matter.

20 Could I take a look at this report
21 just for a minute?

22 Q This is the March 22, 1979 cover letter
23 transmitting what I believe has been identified
24 previously as Investigative Report 78-20.

(WHEREUPON, the document was
tendered to the witness.)

1
2
3 BY MR. ZAMARIN:

4 Q Actually, I have some specific questions
5 that I will ask you about later, if you want to
6 wait.

7 A That is fine. I just want to check one
8 point here.

9 Q Okay.

10 A Okay. I didn't see what I was looking
11 for.

12 Q Can you tell me what Mr. Fiorelli's
13 title is again?

14 A He is the Chief of the Reactor Construction
15 and Engineering Support Branch.

16 Q Where does that fit in with what you
17 described earlier as the inspection program group
18 for reactors under construction and the safeguards
19 inspections group? I mean, how does he fit?
20 Is he over all of those five areas?

21 A He just is over the construction.

22 Q He is just --

23 A But his staff also reviews in-service
24 inspection and major modifications or engineering

1 problems at operating plants.

2 Q Then would the Assistant Director,
3 Mr. Norelius, be Mr. Fiorelli's superior?

4 A No. They both report directly to me.
5 He would be in charge of reactors under construction.

6 Q Does Mr. Norelius have more to do with
7 that investigative group than any of the other
8 groups you described?

9 A The investigative group reports to
10 Mr. Norelius, yes. Mr. Norelius also serves as
11 the Regional Enforcement Coordinator and becomes
12 involved in all escalated enforcement actions.

13 Q You say that he serves as Regional
14 Enforcement Coordinator and becomes involved in
15 all escalated enforcement actions.

16 A By that I mean those actions that are
17 handled out of Washington.

18 Q In what way does he become involved in
19 those?

20 A He becomes involved in the review of
21 those to assure that they meet the criteria
22 for escalated enforcement action, and he prepares
23 the regional recommendations to headquarters,
24 including a draft of the enforcement action.

1 Q Did he do that with regard to the Midland
2 soils matter?

3 A Which particular action are you referring
4 to?

5 Q With regard to his action for the
6 Midland soils matter action?

7 A Yes.

8 Q What I am talking about is whether he
9 has acted as Regional Enforcement Coordinator
10 with regard to any facet of the Midland soils
11 issue.

12 A The answer is yes, but my hesitation
13 is associated with the fact that the proposed
14 regional action was not adopted by headquarters as
15 initially proposed; and there resulted some
16 meetings between the regional people and the
17 headquarters people in which many of the management
18 people became involved. And the decision as
19 to the course of action was reached jointly from
20 those meetings.

21 And I am a little bit at a loss as
22 to then whether we came back and then redrafted
23 the proposed action or whether it was done out
24 of Washington.

1 I don't recall specifically. I could
2 check that point, if that is important.

3 Q As we go along today, I might have some
4 stuff that might refresh your recollection on
5 that.

6 When the Regional Enforcement Coordinator
7 prepares a recommendation or a regional
8 recommendation with regard to enforcement, do
9 you then have the final say as to whether that
10 shall be the regional recommendation or not?

11 A Absolutely.

12 Q What was the proposed regional action
13 by Region 3 that was not adopted by headquarters
14 with regard to the Midland soils?

15 A We had proposed issuance of a civil
16 penalty for what appeared to us to be a material
17 false statement.

18 Q When you say "what appeared to us to
19 be a material false statement," is that what had
20 been alleged as a material false statement in
21 the December 6 order?

22 A That's correct.

23 Q Do you recall that proposed civil
24 penalty being \$5,000?

1 A Yes.

2 Q Do you have any understanding or
3 any knowledge of why headquarters did not adopt
4 that proposal?

5 MR. PATON: Let me instruct the witness to
6 answer that question as best you can based on
7 any information that he has heard or any information
8 that he has seen, but not to speculate on what may
9 have gone on in someone's mind.

10 THE WITNESS: I am not sure I know what you
11 are telling me.

12 MR. PATON: Can we have a minute?

13 MR. ZAMARIN: Go ahead.

14 (WHEREUPON, a recess was had.)

15 MR. ZAMARIN: Could you read the last question
16 back?

17 (WHEREUPON, the record was read
18 by the reporter as requested.)

19 BY MR. ZAMARIN:

20 Q Do you recall what the proposal was?

21 A Yes. At the time the civil penalty
22 proposal was made and was being considered by
23 Washington, the entire soils problem and issues
24 related to it became the subject of a meeting in

1 Washington involving regional people, IE
2 headquarters people, NRR people and OELD people.

3 There were really two major aspects under
4 discussion. One involved the adequacy of the work
5 involving the diesel generator building, the
6 technical adequacy of it. And the other aspect
7 involved whether the quality assurance problems
8 related to this particular area of work were
9 indicative of a broader background of quality
10 assurance for the project.

11 And I think it's fair to say that there
12 were differing views relative to this latter
13 issue as discussed back then.

14 Now, when we were talking about what
15 enforcement action would be taken against the
16 company, it became apparent from the meetings
17 that the management felt that we were not focusing
18 on the bigger problem, namely, the technical
19 adequacy of the problem in the repair program,
20 by just issuing a civil penalty.

21 The NRR people were not in a position
22 at that time to state that they could confer in
23 Consumers Power's actions. And the question
24 focused as to what action would be better to take

1 in view of this. That led to the decision to
2 issue the order in question.

3 Q Do you know why the order was issued
4 on December 6, 1979, when 50.54(f) questions had
5 been provided to Consumers on November 19, 1979,
6 which had not been answered by December 6?

7 A I can't give you the reason for that.

8 Q Do you know who could give me the
9 reason for that?

10 THE WITNESS: You?

11 MR. PATON: No.

12 BY THE WITNESS:

13 A I don't.

14 I don't know whether it's appropriate,
15 but I think we might as well put some things on
16 the table here. I would like to give you my
17 perspective as to how these things tied together
18 and why they did.

19 I mentioned that there were differing
20 views of at least considerations associated with
21 quality assurance and the implication of this
22 particular problem on the total quality assurance
23 program.

24 When you go back to the hearing that was

1 held in 197- -- was it '4 or '5?

2 Q I think it is '4.

3 MR. PATON: The decision was '4.

4 BY THE WITNESS:

5 A (Continuing) -- there were two
6 considerations that were involved in that hearing.
7 The first consideration was whether or not the
8 licensee had taken sufficient action to achieve
9 compliance with respect to specific problems that
10 had been identified by the NRC.

11 And the second issue, which was a much
12 broader issue, was whether there was reasonable
13 assurance that the quality assurance program would
14 be effective in the future to assure compliance
15 with applicable requirements.

16 At that hearing the staff concluded
17 positive answers to both cases, but I left a
18 message to the Hearing Board that if I felt the
19 quality assurance program was inadequate in the
20 future, I would not hesitate to shut down the
21 project.

22 Now, subsequent to that hearing there
23 were a number of problems associated with the
24 Midland project that had, to varying degrees,

1 identified weaknesses in the quality assurance/
2 quality control program. In each of these
3 instances, the NRC drew the conclusion, and when
4 I say the NRC, I mean Region 3 drew the conclusion,
5 that the problems were isolated in nature and
6 did not represent a breakdown in the overall
7 quality assurance program.

8 As problems occurred in various areas,
9 different phases of the work going on, it
10 represented a challenge to that conclusion; and
11 the soils problem was one additional area that
12 challenged that decision.

13 It was my conclusion at the time, based
14 on discussions with my staff and our overall
15 assessment of the project, that the soils
16 problem, again, was viewed as an isolated type
17 of problem, an isolated area in the quality
18 assurance program and that it did not have
19 broader implications.

20 I think some of the people in the
21 NRC felt that this problem, in concert with
22 others, was suggestive that the total program was
23 not good.

24 Now, during the period, I guess it was

1 in early 1978, we concluded that there were enough
2 problems at Midland that I felt that we should
3 get additional input as to the adequacy of our
4 assessment with respect to the Midland quality
5 assurance program in general.

6 That led to that February memo that --
7 February, I believe, 15 memo, which I believe you
8 have a copy of, and documented our assessment of
9 the Midland quality assurance program as of that
10 date.

11 When the soils problem was identified
12 and some -- I believe there were other problems
13 too, but I can't recall others at this particular
14 moment -- we reconsidered the overall Midland
15 quality assurance program back in the late fall
16 or -- I guess late fall of '79 and again adopted
17 the position that we felt the overall quality assur-
18 ance program was still effective.

19 I did at that particular time conclude
20 that had we known about the quality assurance
21 problems on the soil thing as they were going on,
22 that I would have taken steps to stop the soils
23 work at the site. But I did not relate the soils
24 problem to draw the inference that the total

1 project quality assurance program was unacceptable.

2 If I could come back to the action that
3 then was taken, the order was intended by the NRC
4 to deal with the technical adequacy of the work,
5 as well as the quality assurance problem that
6 related to the soils foundation and the material
7 false statement.

8 Q You indicated that had you known about
9 QA problems with regard to the soils as they were
10 occurring, that you would have been inclined to
11 stop the work.

12 A I would have stopped the work.

13 Q You would have stopped the work. What
14 QA problems, specifically with regard to soils,
15 do you refer to?

16 A The ones that are identified in the
17 investigation report.

18 Q Are you talking about NCRs? Can you
19 take a look at the report and tell me just what
20 you are talking about?

21 (WHEREUPON, the document was
22 tendered to the witness.)

23 BY THE WITNESS:

24 A I am referring to the conclusions that

1 are contained in the summary of the report, which
2 states as follows:

3 "Information obtained during this
4 investigation indicates: (1) A lack of
5 control and supervision of plant fill
6 activities contributed to the
7 inadequate compaction of foundation
8 material; (2) Corrective action regarding
9 nonconformances related to plant fill
10 was insufficient or inadequate as
11 evidenced by the repeated deviations
12 from specification requirements;
13 (3) Certain design bases and construction
14 specifications related to foundation type,
15 material properties, and compaction
16 requirements were not followed; (4) There
17 was a lack of clear direction and support
18 between the contractors engineering office
19 and construction site, as well as within
20 the contractors engineering office."

21 Those points, which to me represent that
22 there was not a well implemented quality assurance
23 program for that activity.

24 Q I believe you were reading from the bottom

1 of Page 2, what is numbered Page 2, "Summary of
2 Facts," from the March 22, 1979 Investigative
3 Report 73-20; is that right?

4 A Yes.

5 Q What information did you have that
6 corrective action regarding nonconformances
7 related to plant fill was insufficient or
8 inadequate?

9 A Well, I'd have to go back now into
10 the specifics of it, but, basically, when we
11 conducted our investigation of these matters, we
12 had a meeting with the utility and its contractors
13 in which we discussed openly the findings from the
14 investigation. And all of these points were
15 discussed with the utility at that time.

16 Now, I don't have the specifics at my
17 hand at this moment. I'd have to go back into
18 the details of the report, but I was involved
19 in the meeting with the company, and I was involved
20 in the assessment that the quality assurance
21 program was ineffective.

22 Q This statement is that it "was insufficient
23 or inadequate as evidenced by the repeated
24 deviations from specification requirements."

1 Is that to say, then, that this is a
2 hindsight conclusion? It is based on an end
3 result, saying that if there were these repeated
4 deviations, it had to be insufficient and
5 inadequate?

6 A I think, by definition, it's a hindsight
7 conclusion, because I would have taken action
8 had I known about the problems ahead of time.

9 Q Was there any way you could have known
10 about the problems ahead of time?

11 A Yes, I think there are.

12 Q How?

13 A I think that some of the records that
14 were reviewed after the fact showed that there was
15 a problem. So that had we looked at those particular
16 records, they could have provided an indication of
17 the problem.

18 Q What records are those?

19 A Nonconformance Reports or whatever the
20 records were that are discussed in the report.

21 Q Had any type of inspection been conducted
22 by Region 3 prior to this investigation which
23 dealt with this area?

24 A In the area of soils?

1 Q Yes.

2 A I'm not sure of -- I am not aware of
3 any.

4 Q I had asked a question earlier, and you
5 answered my question with regard to the hindsight.
6 Let me take that out of the question and ask you,
7 on the summary statement that "corrective action
8 regarding nonconformances related to plant fill
9 was insufficient or inadequate as evidenced by
10 repeated deviations from specification requirements,"
11 to your knowledge, is that based simply upon the
12 fact that there were repeated deviations as opposed
13 to any facts other than those repeated deviations
14 which were uncovered during the investigation?

15 A As I recall, I think the statement is
16 based as well upon some conversations with some
17 of the people -- the interviews with some of the
18 people involved as to what they knew about the
19 problem and as to what they did about the problem,
20 but I don't have the details.

21 The investigation was more than just a
22 review of records. It also involved interviews
23 and discussions with a lot of people.

24 Q You do not have any recollection as to

1 what, if any, of that information went into this
2 conclusion?

3 A No, I don't.

4 Q Do you have any knowledge of corrective
5 action with regard to which particular nonconformances
6 was insufficient or inadequate?

7 A At the time we met with the company, we
8 went into great detail on these things; but I
9 don't recall them at this time. The meeting was
10 very specific, and all information that was found
11 during the investigation was discussed in detail
12 with the utility.

13 Q I take it you were in attendance at
14 that meeting?

15 A Yes, I was.

16 Q Other than that meeting and the
17 investigation by Mr. Phillip and Mr. Gallagher,
18 did you have any other information upon which
19 you relied?

20 A For what?

21 Q For your conclusions stated in Investigative
22 Report 78-20? I think that Mr. Maxwell was also
23 involved.

24 A Yes. The Investigation Report is

1 prepared by the people who did the investigation.
2 I neither review that report, nor do I approve
3 that report. I write -- the letter to the company
4 is sent out under my signature. But in terms of
5 the specific report which is attached that we
6 are talking from, that is prepared by the
7 investigators and inspectors.

8 Q So, you then have no input into the
9 Investigative Report itself?

10 A No, that's their investigation. I did
11 not participate in the investigation.

12 Q Did you discuss this report with either
13 Mr. Gallagher or Mr. Phillip or Mr. Maxwell sometime
14 in March of 1979?

15 A You are asking about the report itself?

16 Q Yes.

17 A I don't recall that I did. I recall
18 reading the report before it went out and, as I
19 recall, the issues were basically the ones that
20 were discussed with the licensee at the meeting
21 here. I don't recall anything being different or
22 that flagged my attention on any part.

23 Q Do you recall when that meeting was
24 held?

1 A I don't know off the top of my head,
2 but I'm sure we have got a record of the meeting
3 or a date of the meeting. It may even be discussed
4 in the report, for all I know.

5 Q I notice on Page 2 of the report,
6 Report 78-20, under "Scope," it indicates:

7 "An investigation was performed to
8 obtain information relating to design
9 and construction activities affecting
10 the diesel generator building
11 foundations and the activities
12 involved in the identification and
13 reporting of unusual settlement of
14 the building."

15 Is it your understanding that the
16 investigation was limited in scope to just the
17 diesel generator building?

18 A No. The investigation was related to
19 areas other than the diesel generator building
20 over which -- which were built on questionable
21 soil.

22 Q So, the statement of scope here is a
23 little narrower than what the investigation actually
24 was at that time, to your understanding?

1 A I think that's a fair statement, yes.

2 Q Can you tell me what you mean when you
3 use the expression "breakdown in quality
4 assurance program"?

5 A The way I view the word "breakdown in
6 quality assurance" is that I mean there were
7 multiple examples where the quality assurance
8 program/quality control program should have either
9 precluded a problem from occurring or should have
10 caught a problem from occurring at a timely -- in
11 a timely manner and that the efforts in connection
12 with this were not effective.

13 Q Is that determination, then, totally
14 result oriented as opposed to programmatic, for
15 example, as far as your evaluation and determination
16 goes?

17 A I think it is. I think that's the way
18 I would characterize it. And when you talk about
19 "result oriented," I mean the result can be either
20 positive or negative, but it is result oriented.
21 It's based upon an after-the-fact determination.

22 Q Was the reason that it took from March 22,
23 1979, the date of Investigative Report 78-20, to
24 December 6, 1979, for the initiation of enforcement

1 action the resolution of these differing opinions
2 between Region 3 and headquarters and persons within
3 NRC?

4 A No. I would say the differing opinions
5 with respect to quality assurance really had
6 minimal impact on the time. I think some of the
7 things involved were determinations as to material
8 false statements, as to whether these constituted
9 material false statements. As I recall, we
10 initially thought that there were maybe several,
11 rather than just one.

12 Q Five, I think.

13 A And I guess -- let me look at the date
14 of this thing.

15 The statement on the top of the letter
16 on Page 2 which says that "The results of this
17 investigation continue to be under review by the
18 NRC staff and upon completion of this review,"
19 that was intended to deal primarily with the
20 material false statement concerns.

21 Again, when we were back -- the decision
22 to issue the order was based primarily on a
23 refocus of the technical aspect of the problem
24 rather than the narrow look at the material false

1 statement part of it.

2 MR. ZAMARIN: Could you read that answer back,
3 please?

4 (WHEREUPON, the record was read
5 by the reporter as requested.)

6 BY MR. ZAMARIN:

7 Q Where does the quality assurance
8 evaluation fit into that decision to issue the
9 order?

10 A It was a collective decision to include
11 that into it, since we were going to focus on the
12 adequacy of it, the technical adequacy of it.

13 Then the question came up as to, assuming
14 the staff makes a favorable decision or whatever
15 decision it makes, then the concern is what steps
16 have been taken to assure that the quality assurance
17 problems that were identified in connection with
18 the soils work have been corrected and that there
19 is assurance that they will be adequate in the
20 future. It was a collective decision.

21 Q To your knowledge, is there any
22 periodic submission by Consumers or Bechtel -- and
23 when I refer to Consumers, I also mean their
24 contractors -- to the NRC or Region 3 of documents

1 with regard to their QA operation or NCRs or something
2 of that nature?

3 A I think there are documents that are
4 provided to the NRC as a result of the order of
5 the Hearing Board.

6 Q That was ALAB-106?

7 A I believe that's correct.

8 Q Is it your recollection that at least
9 quarterly submissions of NCRs are provided to the
10 NRC by Consumers?

11 A I don't know what the frequency of
12 submission is.

13 Q Do you know if anyone during the period
14 following the ALAB-106 decision has reviewed those
15 NCRs that are submitted by Consumers as they are
16 submitted by Consumers?

17 A I believe that our program -- our
18 inspection program requires reviews of Nonconformance
19 Reports and other types of licensee reports. As
20 to the details of what was done with the particular
21 reports you are talking about, I can't tell you.
22 The inspection people could tell you that. I doubt
23 very much if we reviewed all of them. That's for
24 sure.

1 Q The reason that I ask that was you had
2 made a comment a little earlier that you believed
3 perhaps that if the information or documents with
4 regard to the soils had been reviewed by Region 3,
5 that the problem would have become known sooner.

6 A The problem may have become known sooner.

7 Q And you would have stopped the work on
8 the basis of what you might have or could have
9 found. I note that in Investigative Report 78-20,
10 starting on Page 17 of the specific findings there
11 is a listing of Nonconformance Reports that were
12 reviewed and which form the basis for the conclusion
13 that corrective action was insufficient or
14 inadequate, and that these reports had been
15 submitted to the NRC in accordance with the
16 direction of the ALAB-106 Board.

17 I also recall in that 106 order the
18 statement that they expected that the staff would
19 review and follow these NCRs. I am just wondering
20 whether refreshing your recollection to the
21 fact that these had been submitted, and I would
22 assume reviewed, if they still would, in your
23 opinion, have likely demonstrated this problem
24 earlier.

1 If you want to hear it back --

2 MR. PATON: I think he understands it. Did
3 you make a reference to some specific place in
4 here?

5 MR. ZAMARIN: Page 17.

6 MR. PATON: Do you see it?

7 THE WITNESS: Yes.

8 MR. PATON: Okay.

9 MR. ZAMARIN: For the record, 17, 18 and 19
10 are the pages.

11 MR. PATON: Off the record.

12 (WHEREUPON, discussion was had
13 off the record.)

14 BY THE WITNESS:

15 A I don't know that I can give you a
16 meaningful answer to your question. Let me say
17 that the amount of review of what the NRC does
18 in terms of its inspection program is a small
19 fraction of what the quality assurance activities
20 that the licensee and its contractors do.

21 The NRC does not do 100 percent
22 inspection of the work. I think to do so would
23 require enormous resources.

24 What the NRC does is to find a sampling

1 inspection program that gives some degree of
2 confidence that the licensee's program is being
3 carried out effectively.

4 Now, in terms of when you get specific
5 and talk about were these particular Nonconformance
6 Reports reviewed, I can't say that. Would we
7 have reviewed them all? I doubt it. I don't think
8 we can -- we have the kind of resources to do
9 that.

10 Were any of them reviewed? I think you'd
11 have to go back and ask the inspectors. I'm sure
12 we do some sampling of Nonconformance Reports,
13 and I guess really that is about the way I would
14 describe it to you.

15 BY MR. ZAMARIN:

16 Q An inspector from which of these
17 sections or groups?

18 A From the reactor construction and
19 engineering support branch would have been the
20 reviewer of those, if they were reviewed.

21 Q As of today with regard to Midland,
22 who would those inspectors be, for example?

23 A Certainly Mr. Cook would have been
24 involved, Ron Cook, the Resident Inspector.

1 He might have reviewed some. Depending upon the
2 area involved, some of our engineering specialists
3 here may have conducted some reviews.

4 Q You mentioned the inspectors. For
5 example, would Mr. Gallagher have been one of
6 the inspectors to which you referred that might
7 likely have reviewed the NCRs?

8 A He may have or may not have. It depends
9 really on the supervisor's decisions as to who is
10 going to carry out that nodule of the inspection
11 program. I think a lot of it would relate to
12 availability of people and the type of effort we
13 were trying to focus on.

14 Q Would that supervisor be Mr. Knop?

15 A Certainly, in part, he would have a
16 say in it.

17 Q Who would have the other part of the
18 say in it?

19 A Probably Mr. Fiorelli, to some degree,
20 and maybe some of the other supervisors in the
21 engineering area, like Mr. Hayes or Mr. Danielson.

22 Q In following up the ALAB-106 direction
23 that the staff should review the NCRs that were
24 submitted quarterly by Consumers, who within

1 Region 3, if anyone, to your understanding, would
2 have that responsibility?

3 A I think the basic responsibility or the
4 decisions as to how much work would be done
5 relative to that would rest with Mr. Fiorelli.

6 Q Has Mr. Fiorelli ever discussed that
7 matter with you, to your recollection?

8 A Discussed what matter?

9 Q The matter of who and to what extent the
10 NCRs that were submitted quarterly by Consumers
11 with the ALAB-106 order should be done.

12 A I don't recall any discussions in the
13 area. I guess I am not appreciative of the
14 question.

15 Q I do not understand that.

16 A I don't know what you are really asking
17 me.

18 Q You had indicated that Mr. Fiorelli would
19 have been the one to decide what resources would
20 be allocated toward review of these quarterly
21 submittals that Consumers was directed to make.
22 My question simply is: Do you ever recall having
23 discussed with Mr. Fiorelli that matter, and that
24 matter being whether or how much resource should be

1 directed toward reviewing the NCRs?

2 A No, I would leave a decision like that
3 to him.

4 MR. ZAMARIN: I do not intend to mark as
5 an exhibit something that has been so clearly
6 identified as this.

7 MR. PATON: I agree. I think that is right.

8 MR. ZAMARIN: Even though we referred to it
9 and he was reading from it, I do not intend to
10 mark like 78-20.

11 MR. PATON: I think it is in some previous
12 deposition. I do not recall.

13 MR. ZAMARIN: I do not have a copy. So, I
14 cannot even reference it with that. I am satisfied
15 with the description as the March 22, 1979 report.

16 MR. PATON: I agree, sure.

17 BY MR. ZAMARIN:

18 Q Within the NRC or within Region 3,
19 in particular -- you can answer it any way,
20 depending on which, if either, is appropriate --
21 is there any program for review of NCRs with
22 regard to some type of trending analysis?

23 A No. The NRC does not require
24 Noncomformance Reports as a general statement to

1 be reported to the NRC.

2 However, our inspection program, I
3 feel sure, calls out that we should do some
4 periodic reviews of Nonconformance Reports to
5 assure that the licensee has a meaningful program
6 for reviewing them and so forth.

7 Q Would that include some kind of analysis
8 with regard to repetitiveness of NCRs to see if
9 there was some kind of a programmatic or generic --

10 A I would think so.

11 Q When you say you would think so, is
12 that because that would be a good program, to
13 your recollection of whatever the inspection program
14 is?

15 A Sure. I think one of the indicators
16 of an effective quality assurance program is how
17 well -- how frequency repetitive problems occur.

18 Q To your knowledge, has there been any
19 change, and by change I mean either improvement
20 or deterioration, of the quality assurance program
21 at the Midland project, say, from January of 1979
22 to January of 1981?

23 MR. PATON: Did you say with soils, or was
24 that a general question?

1 MR. ZAMARIN: General.

2 BY THE WITNESS:

3 A I am going to answer it this way:

4 As problems have occurred throughout the Midland
5 project, I have been very sensitive personally
6 toward whether or not they suggest a weakening
7 or a deterioration in the overall quality assurance
8 program. As each new problem comes up or becomes
9 identified, it challenges my thinking on this
10 overall, largely from the standpoint that when a
11 number of problems occur in isolated areas, it's
12 very hard to define in one's mind when that
13 represents a conclusion that the overall program
14 is ineffective.

15 What I am saying is that each new
16 problem does not help that thinking.

17 Now, when you look at the period you
18 talked about, we became aware of the soils problem,
19 which largely had its roots earlier in time, but
20 which carried on up through the time of the
21 discovery.

22 We became aware of the problem with
23 the reactor vessel bolts, which also had a history
24 to it in terms of its occurrence.

1 We became aware of the Zack problems,
2 which to me were handled very ineffectively by
3 Consumers Power Company, and throughout this
4 period I guess I have still supported my basic
5 conclusion that the overall quality assurance
6 program is still adequate. But I certainly would
7 not derive from that observations of a significant
8 change or improvement in the program.

9 Now, let me just add that the company
10 has taken some steps with its contractors and
11 made attempts to improve the quality assurance
12 program, and these steps are steps that are in
13 the right direction, in my view. However, the
14 time frame is such that I can't draw any inference
15 at this point in time.

16 Q Your reference to the time frame being
17 such that is that these changes are so recent that
18 you do not have any results upon which to base
19 these conclusions?

20 A I like to draw conclusions over a longer
21 period of time.

22 Q Do you have an opinion as to whether the
23 present QA program is better than the QA program
24 that was being implemented in 1976?

1 A That's an interesting question. I just
2 hadn't put it in that type of context before. I
3 don't know that I'd say I see a discernible
4 difference. There may be. But when I judge it
5 on the basis of the numbers and types of problems,
6 I'm not sure I could defend a difference.

7 I think, conceptually, the new program
8 or the revised program can represent an improvement.
9 But I don't know that I can make a meaningful
10 statement at this time just because of the time
11 frame.

12 Q Would the same be true, then, for
13 comparing the present QA program with the QA program
14 that was implemented in any other year, say,
15 between 1976 and 1981?

16 A Well, let me -- I guess maybe to help
17 put this in perspective, one of the things that
18 has led me to conclude that the overall QA program
19 is effective or is adequate, whatever word you want
20 to use, is that the problems themselves, when they
21 surface, have largely been identified by Consumers
22 Power Company.

23 So that in my assessment of things, it
24 isn't that the NRC is coming in and finding these

1 problems that were unknown to Consumers Power
2 Company.

3 On the other hand, the time frame that
4 Consumers is finding these problems and the time
5 frame that Consumers is resolving these problems,
6 that's been the area of concern to the NRC.

7 An example of that is the Zack case,
8 I think. We became aware of the Zack problems
9 largely through an allegation that was made by
10 an outsider. When we looked into it, we found
11 that Consumers Power Company did know about the
12 problems. Consumers Power Company was involved
13 working with the contractors to resolve the
14 problems. However, our assessment of that effort
15 was that it was pretty poor and not effective
16 enough to preclude the kinds of things from
17 happening and really was continuing to allow poor
18 work to go on.

19 So, when you talk about comparisons in
20 time, I think that the way I come out personally
21 is that I have felt that the overall effort for
22 the project has been adequate. However, I think
23 it could be a lot better and should have been a
24 lot better. I have given it a passing grade, but

1 the kinds of things that happen make it very hard
2 to defend the issues in today's climate.

3 Does that help you?

4 Q Maybe, maybe not. I will ask you a few
5 questions, and we will see.

6 With regard to --

7 A I guess I meant does it help you in the
8 comparison of time frame statistics?

9 Q Yes. My response was directed toward
10 that. Yes, obviously it does.

11 With regard to problems with the QA
12 program in certain areas in the past, is it within
13 the ability of Region 3 to determine what changes
14 or what efforts in the QA program or implementation
15 ought to be exercised in order to correct or
16 eliminate a repetition of that same type of
17 problem with the program?

18 A We try to focus, to the extent we can,
19 on what causes the problem, what is the source of
20 the breakdown or the source of the deficiency. And
21 when it becomes more than an isolated case or it
22 becomes a matter of some concern, when we meet
23 with the company to discuss these concerns, yes,
24 we are quick to voice our view as to where we think

1 the problem is.

2 Q Then having knowledge of what has been
3 identified as sources of the problem in the past
4 and the changes that have been made in the QA
5 program, do you have an opinion as the Director
6 of Region 3 as to whether the types of changes
7 have been made which would, if properly implemented,
8 eliminate or reduce the possibility of repetition
9 of those kind of problems?

10 A One of the basic concerns that I have
11 with the Midland project overall has been that
12 Consumers Power has been subservient to Bechtel
13 in the construction of the project. I have felt
14 over the years that Consumers has not played a
15 dominant role in dealing with problems, many of
16 which have been -- had their source with Bechtel
17 or some of its contractors.

18 The recent organization change that
19 occurred last summer, I believe, was intended to
20 deal with that concern. And so, in response to
21 your question, if properly implemented, that
22 organizational change should work to the benefit
23 of the project.

24 Now, there have been in the past, as

1 some of these issues have been brought up and
2 some of the problems have occurred, I guess I
3 have found that Consumers has had to back stop
4 Bechtel in terms of quality assurance activities
5 to assure that things are done properly.

6 As an example, in the civil work, there
7 were numerous situations where reinforcement steel
8 or embedment plates, tendon sheathing or whatever,
9 was either not installed as it should have been
10 or was not done in conformance with the specifica-
11 tions or drawings.

12 The ultimate resolution of that problem
13 to our satisfaction was basically that Consumers
14 did 100 percent overview of the work by Bechtel,
15 including the area of quality assurance/quality
16 control.

17 That was the resolution which led us
18 to the conclusion that that work could continue,
19 was done satisfactorily.

20 Q Is it your opinion that the present
21 QA organization and program is sufficient to do
22 a proper job of QA at the Midland site?

23 A Obviously, the answer to that question
24 is yes, or I'd stop the work. That doesn't mean

1 that we are still not trying to have it better.

2 MR. ZAMARIN: Let's take about three minutes.

3 (WHEREUPON, a recess was had.)

4 MR. PATON: Mr. Keppler remembered something
5 at the break that he would like to add to the
6 record.

7 BY MR. ZAMARIN:

8 Q Go ahead.

9 A At the time you were focusing on the
10 time frame between the issuance of the Investigation
11 Report and the subsequent action taken by the NRC,
12 Mr. Knop called to my attention during the break
13 that we had sent a letter or a memo to Washington
14 dated March 12, 1979, in which we summarized the
15 findings from our investigation and in which we
16 forwarded a compilation of some technical questions
17 that we felt should be addressed in the technical
18 resolution of the problem.

19 We urged that the NRR get heavily involved
20 in this issue at that time. And in that letter,
21 in that memorandum, we made a statement that I
22 should put in the record here. It says:

23 "As an alternate approach to the issue,
24 consideration should be given to an

1 NRC directive or show cause order which
2 could expedite the licensee's confirmation
3 to the NRC that continued construction will
4 not compromise the design function of the
5 involved structures for the lifetime of
6 the plant. It may also expedite the
7 licensee's investigation into the basic
8 cause of the diesel generator settlement
9 and its relationship (or absence) to
10 other Class I structures."

11 In their consideration of this, I am
12 pretty sure that this is what they at least focused
13 on the issuance of the 50.54 notice to the
14 licensee. So, you may have that. If you don't,
15 we will get you a copy.

16 Q This we do not have a copy of. It is
17 one of my things to request today.

18 MR. PATON: Let me see it for just a second.

19 MR. ZAMARIN: Sure. Go ahead.

20 BY THE WITNESS:

21 A So, I bring that up at this time because
22 I think I said to you that all of the consideration
23 that is focused or, at least, a majority of the
24 consideration was focused on the material false

1 statement aspects of it.

2 BY MR. ZAMARIN:

3 Q You had indicated before we broke that
4 you felt that Consumers was subservient to
5 Bechtel, I believe was the word you used. Can
6 you tell me what you mean by that?

7 A I think that the best way I would
8 describe it would be to say that I don't think --
9 I think Consumers is afraid to challenge Bechtel
10 on issues.

11 Q What type of issues, you mean in
12 QA?

13 A Any issues. When Bechtel says that this
14 is the way something should be done or it's okay
15 to do it this way, I think that Consumers has
16 accepted Bechtel's position too easily.

17 Q And by your saying that you think that
18 they have accepted Bechtel's position too easily,
19 do you mean that on, for example, IE type of issues,
20 that Consumers ought to be doing their own
21 independent work?

22 A I think that Consumers has not done a
23 good job of getting after Bechtel when there have
24 been problems, assuring that Bechtel takes more

1 timely or positive corrective actions. And I think
2 that there has been a reluctance on the part of
3 the company to challenge fixes or corrective
4 measures taken by Bechtel.

5 Q When you refer to fixes, you are
6 referring to fixes with regard to the soil
7 settlement and the foundation problems?

8 A I am speaking across the board.

9 Q Can you give me an example of a case of
10 reluctance to challenge a fix?

11 A Yes. I think a good example would be
12 all the problems that occurred with the missing
13 re-bar and embedment problems.

14 Q Can you be more specific about the
15 reluctance to challenge Bechtel's --

16 A Bechtel's quality control was ineffective
17 to pick up the problems. Yet it took considerable
18 time for Consumers to get that situation changed.
19 And I will go as far as to say that rather than
20 get the problem solved through Bechtel, they got
21 the problem solved by doing 100 percent overview
22 of Bechtel's work, which, in my opinion, is
23 tantamount to admitting that Bechtel couldn't do
24 the job.

1 I think a more recent example is the
2 Zack problem.

3 Q Where in the Zack problem is the
4 reluctance to challenge Bechtel?

5 A I think Consumers had identified the --
6 had become aware of the problems and wasn't forceful
7 enough in getting Bechtel and Zack to resolve the
8 problems more timely. They were, in effect --
9 knowing the problems existed, work was allowed to
10 continue in that area.

11 Q In your opinion, if properly implemented,
12 would the reorganization of the Midland project
13 QA that was effective last summer eliminate or
14 reduce what you perceive as this problem of
15 Consumers being too subservient to Bechtel?

16 A Yes. I said that before.

17 Q How long have you been Director of
18 Region 3?

19 A I came to Region 3 in September, 1973,
20 as the Director.

21 Q What had you been doing prior to
22 September of '73?

23 A I was in the Inspection and Enforcement
24 office in Washington as Chief of the Reactor Testing

1 and Operations Branch.

2 Q What had been your experience in
3 QA matters prior to September of '73?

4 Before you answer that, would it help
5 if we waited until you got your resume?

6 A No, I think not. It wouldn't address
7 this particular thing.

8 My involvement in QA matters prior to
9 1973 was in terms of my experience as an inspector
10 and in terms of my involvement in the review of
11 cases that were brought to the attention of the
12 headquarters staff while I was in Washington and,
13 basically, in the reviews that the IE people did
14 back in Washington in terms of assuring that
15 licensees were ready to get an operating license.

16 Q Would you describe your experience as
17 an inspector as it relates to your experience with
18 QA?

19 A Only in the sense that at the time I
20 was an inspector, which was 1965 through 1967, I
21 became involved in terms of the steps taken
22 that licensees implement to assure compliance
23 with the regulatory requirements.

24 So, when you talk about quality assurance,

1 I talk about that in the broad sense there.

2 Q Have you had any formal training or
3 education in the area of quality assurance/quality
4 control?

5 A No.

6 Q How does the quality assurance branch of
7 the NRR interface, if it does at all, with
8 Region 3?

9 A The quality assurance people in NRR are
10 responsible for assuring that the basic quality
11 assurance plan, as defined in the application,
12 satisfies the regulatory intent of the 10 CFR 50
13 Appendix B criteria.

14 The relationship between the regional
15 offices and the licensing group is best described
16 perhaps by saying that NRR looks at the plan and
17 the I & E people look at the implementing
18 procedures and the implementation of the program.

19 Q Is the NRR look at the plan a continuous
20 effort over the life of construction of the plant,
21 for example?

22 A I would -- I guess I would answer that
23 this way: That the NRR people review and approve
24 a basic plan. As information is learned or as

1 problems develop, there is nothing to preclude
2 them from reassessing that or augmenting that
3 effort.

4 Q Does Region 3 prepare and submit any
5 types of reports periodically to anyone else within
6 the NRC with regard to a particular project?

7 A There are several types of correspondence
8 that can be generated. I think I would describe
9 them as there are inspection reports, which are
10 issues dealing with inspections. There are also
11 internal correspondence that can be generated
12 between the regional staffs and the headquarters
13 staff, much like the one I showed you in a
14 memorandum to Mr. Thornburg, in which requests for
15 assistance is sought or in which referral of a
16 technical problem to Washington is done or in
17 which we identify a problem that we might think
18 has broader implications and might be generic to
19 other plants, that kind of communication, feedback
20 type of communication that is useful in the program.

21 Q Is there ever any review or audit or
22 state of the region report done?

23 A I'm sorry.

24 MR. ZAMARIN: Could you read that back, please?

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY THE WITNESS

4 A I don't know what you are asking for.

5 Q I do not either. That is what I am
6 trying to find out.

7 MR. PATON: Like a State of the Union Address
8 or something.

9 MR. ZAMARIN: Right.

10 BY MR. ZAMARIN:

11 Q Is there any kind of a report that
12 results from an evaluation from the work that
13 Region 3 is doing and how well they are doing it?

14 A There are internal audits conducted by
15 the Washington staff, both internal to the I & E
16 organization, and there are audits done on occasion
17 by the office of Inspector and Auditor. That's one
18 type of formal audit that might be done.

19 I guess another indication of how well
20 regions are performing their jobs would be through
21 the annual appraisal system and through the
22 inspections done by the Performance Appraisal
23 Branch, which is a group of people that report
24 directly to the I & E office Director. Those

1 are presently limited to operating reactors right
2 now, however.

3 Q All of the things you just mentioned --

4 A All of the Performance Appraisal Branch
5 inspections.

6 Q What kind of things are looked at in
7 this internal audit by the Washington staff, for
8 example, the one that is internal to I & E?

9 A It depends on whatever they may want
10 to come out and pick. They may come out and
11 decide to audit the inspection program at a given
12 facility for a period of time. They may come out
13 and look at a very narrow area of work.

14 Q Have they ever audited, to your knowledge,
15 the inspection program for Midland?

16 A No, they have not.

17 Q How does that differ from the annual
18 appraisal system?

19 A The annual appraisal system is appraisals
20 by my boss of my performance.

21 Q Of your performance?

22 A My personal performance. And I appraise
23 my staff's performance.

24 Q Is this more of a personnel type of a --

1 A Yes.

2 Q I see. Would that appraisal be project
3 specific in any way?

4 A It obviously reflects on happenings during
5 the course of the period of time. So, I guess it's
6 a mixture of both.

7 (WHEREUPON, Mr. Alan S. Farnell
8 entered the deposition proceedings.)

9 BY MR. ZAMARIN:

10 Q Who is Mr. Shewmaker?

11 A Mr. Shewmaker is a staff engineer on
12 the I & E staff in Washington.

13 MR. PATON: S-h-e-w.

14 BY MR. ZAMARNI:

15 Q What does, to your knowledge, Mr. Shewmaker
16 have to do with any of the matters contained within
17 this hearing?

18 A Mr. Shewmaker was involved from the
19 staff of the construction people back there in
20 terms of the assesement that were -- in terms of
21 the technical aspects of the soils problem. He
22 was involved in the meetings back in Washington
23 where we discussed the technical problems. I
24 would say he was primarily from the technical
standpoint, not the enforcement standpoint.

1 Q How would his involvement differ from
2 that of the technical reviewers in NRR?

3 A They are both involved, but I guess in
4 terms of -- let me say it this way: That the I & E
5 staff in Washington probably contains a staff of
6 about somewhere between 100 and 150 people, of which
7 there is management people and there are engineers.
8 They are involved in reviewing the significant
9 problem cases that come up back there.

10 There is a lot of staff effort associated
11 with preparing paperwork and doing reviews to
12 assure consistencies between the regional offices
13 on matters.

14 And there is probably, in the area of
15 construction, there is probably three, four, five
16 people back there who provide technical input into
17 the management in terms of problems that are
18 being followed by the headquarters staff in
19 conjunction with the region. And Mr. Shewmaker
20 was involved in the soils problem.

21 Q I still do not have any kind of grasp
22 for what he did. For example, would he, from
23 an engineering standpoint, review a proposed
24 fix?

1 A He was involved in the consideration of
2 the repair efforts. In the Government you get
3 many people involved in reviews of problems. And
4 in the course of a problem like this, you have
5 technical input being provided by the regional
6 offices, in this case, Region 3. You have
7 technical reviews being done by the I & E people
8 in headquarters and NRR gets involved, too. And
9 collectively, a decision evolves.

10 Q The reason I am pursuing this is we
11 have been advised that he is an intended staff
12 witness at this point. Everybody else, we have
13 seen their names all over documents, and they have
14 been generating reams of paper. I have only seen
15 him copied on two documents in the whole thing.
16 I am really just trying to find out what he does.

17 A I think it's fair to say that in the NRC
18 considerations of the soils problem at Midland,
19 there was direct involvement by the NRR people.
20 There was direct involvement on the part of
21 Mr. Shewmaker representing the IE headquarters
22 group, and there was direct involvement with the
23 regional office.

24 Q Do you know if Mr. Shewmaker provided

1 any input with regard to mechanical engineering
2 aspects of the soils problem, underground piping
3 and things like that?

4 A I'm sure he did. But what, I couldn't
5 tell you.

6 Q Would it also be your understanding that
7 he provided input with regard to the structural
8 aspects of the soil, for example, with regard to
9 underpinning or caissons?

10 A I don't recall.

11 Q Do you know whether he provided any
12 input with regard to geotechnical or soil
13 foundation interaction matters?

14 A I can't answer.

15 The only way I could describe it is to
16 say that he was involved in the problem overall.
17 Whether or not he was relied upon for a specific
18 area of consideration, I don't know.

19 MR. PATON: Could we go off the record?

20 (WHEREUPON, discussion was had
21 off the record.)

22 (WHEREUPON, the deposition was
23 recessed until 1:00 p.m., this
24 date, January 6, 1981.)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:) Docket Nos. 50-329-OL
) 50-330-OL
CONSUMERS POWER) 50-329-OM
COMPANY) 50-330-OM
(Midland Plant,)
Units 1 & 2))

January 6, 1981,

1:10 p.m.

The deposition of JAMES GEORGE KEPPLER,
resumed pursuant to recess, at the Nuclear
Regulatory Commission Region No. 3, 799 Roosevelt
Road, Glen Ellyn, Illinois.

PRESENT:

MESSRS. ISHAM, LINCOLN & BEALE,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. RONALD G. ZAMARIN,

appeared on behalf of the
Consumers Power Company;

MR. WILLIAM D. PATON,
(United States Nuclear Regulatory Commission,
Washington, D.C. 20555),

appeared on behalf of the
Nuclear Regulatory Commission.

ALSO PRESENT:

MR. GILBERT S. KEELEY,
MR. BENJAMIN W. MARGUGLIO,
Consumers Power Company;

1 ALSO PRESENT: (Continued)

2 MR. EUGENE J. GALLAGHER,
3 MR. R. C. KNOP,
4 Nuclear Regulatory Commission.

5 REPORTED BY: CORINNE T. GENNA, C.S.R.
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JAMES GEORGE KEPPLER,

called as a witness herein, having been previously
duly sworn and having testified, was examined
and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. ZAMARIN:

Q Do you know what the extent of
Mr. Gilray's involvement has been with regard to
the Midland soils issue?

A I believe Mr. Gilray's involvement has
been focused on the quality assurance program,
rather than the technical aspects of the soils
problem.

Q Have you had any communication with
Mr. Gilray with respect to any conclusions that
he might have with regard to Consumers' QA program?

A Mr. Gilray has been present in discussions
that we have had regarding quality assurance
problems at Midland. I don't recall off the top
of my head that he voiced any opinion to me with
respect to how he felt. If he did, it didn't
impact on me one way or the other.

MR. PATON: I will make you the same offer
on Gilray.

1 MR. ZAMARIN: Thank you.

2 BY THE WITNESS:

3 A Many of the things that we have discussed
4 this morning and involving meetings and different
5 quality assurance problems, Mr. Gilray's been
6 involved in some of these meetings on and off. He
7 is well aware how I feel.

8 BY MR. ZAMARIN:

9 Q Is the extent of your knowledge with
10 regard to Midland QA based solely upon the reports
11 to you of your inspectors and meetings which you
12 have attended with the licensee?

13 A It includes that and it includes other
14 mechanisms by which information is brought to
15 my attention. If you are asking me whether I have
16 gone out and done any inspections into the areas
17 of quality assurance, the answer is no.

18 In addition to the mechanisms that you
19 talk about, we receive reports from the licensees,
20 as part of the regulatory process, 50.55(e)
21 reports. There are inspection findings. There
22 are Part 21 reports.

23 Q I have here what has been marked as
24 Exhibit No. 1 as of today's date, and ask you to

1 take a look at this. You referred to this document
2 earlier. Could you look at it and, once again,
3 describe for the record what that document is.
4 It is dated March 12, 1979.

5 (WHEREUPON, said document, having
6 previously been marked CPCo
7 Deposition Exhibit No. 1, for
8 identification, as of 1/6/81,
9 was tendered to the witness.)

10 BY THE WITNESS:

11 A This is a memorandum that was sent to
12 Mr. Thornburg, T-h-o-r-n-b-u-r-g, who at that
13 time was the Director of the Division of Reactor
14 Construction Inspection in IE headquarters.

15 The memo was to summarize our position
16 with respect to the investigations -- the
17 investigation. I am sorry -- that was conducted
18 as a result of the diesel generator building
19 settlement problem to list the technical concerns
20 that we had with respect to the problem and to
21 discuss courses of action.

22 BY MR. ZAMARIN:

23 Q In this March 12 memorandum, Exhibit No. 1,
24 there is the statement that "Consumers responded

1 that continuing scheduled construction work would
2 not compromise the committed evaluations or
3 remedial actions nor make irrevocable any conditions
4 which do not fully satisfy FSAR licensing
5 requirements."

6 Do you see that on the top of Page 2?

7 A Yes.

8 Q Do you have any basis for disagreement
9 with that statement?

10 A I'm sorry. Which statement?

11 Q The statement that I read, which starts --

12 A About their response?

13 Q Yes.

14 A Personally, yes. I have a problem with
15 the statement, and I guess I would stress that as --
16 emphasize that is a personal view. My concern
17 runs something like this: That the further the
18 project goes without determining first that the
19 corrective program is adequate, I feel that people
20 are more influenced to accept an engineering
21 disposition of the problem than they might otherwise
22 be. That's a personal viewpoint.

23 Q That is, some kind of a balancing that
24 might go on is tipped because of some kind of

1 construction?

2 A Sure or investment and so on. Some of
3 my management takes the strong view that I am
4 wrong on that, and I think there has been evidence
5 to show that the Commission is not afraid to act
6 on a problem area late in the game.

7 It just seems to me personally that it
8 would have been better off to have stopped this
9 work and require a determination that the proposed
10 fix is adequate than to continue to let the project
11 go on. And I think that was evidenced by the
12 memorandum that I wrote urging that the hearing on
13 this thing take place quicker.

14 Q This is related to your personal view
15 that the more construction that is completed, the
16 more likely it is that engineering response would
17 dominate a decision; is that right?

18 A That's my personal view, yes.

19 Q Does that personal view of yours differ
20 from the Region 3, if there is a Region 3 view on
21 it?

22 A I think there is a mixed view internally.
23 That is a fair way to characterize it. There is
24 some that feel the way I do, and there is some that

1 don't.

2 Q Would that be true throughout the NRC?

3 Really, what I am asking is, is there a
4 predominant --

5 A I don't know that I could -- I think the
6 agency's official view is that the amount of
7 completion of a project does not influence its
8 decision. I don't know what other view you could
9 have.

10 Q Did you put any pressure on or in any way
11 encourage the staff to speed up their review in
12 light of this concern that you had about continued
13 construction affecting an ultimate decision?

14 A When the decision was made to issue
15 the order, it was my view at that time that the
16 order would serve the purpose of focusing on the
17 technical adequacy of the site. The ultimate
18 response of the company to request a hearing
19 probably was, I would say, it was a surprise to
20 me personally. And I guess when I look at the
21 fact that a year has expired since that time, ob-
22 viously my concerns still exist.

23 I have at least, on one occasion, made
24 my view known that I felt that this issue ought to

1 be dealt with as timely as it can be, just because
2 of the concern that I do have.

3 Q Why were you surprised that Consumers
4 asked for a hearing?

5 A Well, I don't know that I can give you
6 a reason why I was surprised. I just was. From
7 my vantage point, I had assumed that the action
8 taken was going to force a decision on a timely
9 manner on the adequacy of the proposed corrective
10 action. And, obviously, it didn't.

11 Q Force an action by whom, by the staff?

12 A By the staff and the utility. I mean
13 collectively. It was going to force a regulatory
14 decision on the project.

15 Q Is it your view that once an item is
16 found wrong at the construction site, that
17 construction should stop until that item is
18 resolved?

19 A If the problem potential surfaces enough,
20 the answer is yes.

21 Q Let's take, for example, welds of some
22 kind. The situation perhaps it's recognized that
23 a certain percentage of the welds are likely to
24 be inadequate, say, 20 percent of welds in a certain

1 area; but that management decision is made to
2 continue with the work because all of the
3 inadequate welds are being found and that it's
4 a more appropriate management decision to simply
5 redo those welds as they are found rather than to
6 stop all of the work. Would you consider that to
7 be improper?

8 A I think you have to get down to
9 specifics. But if the welds in question were not
10 being covered up by anything, were accessible still,
11 if the fundamental problem had been corrected, then
12 I would not have a problem with it.

13 Q Can you briefly describe for me what
14 your understanding is of the Zack problem that
15 you referred to this morning?

16 A There was an allegation made to the
17 NRC back a year or so ago that related to faulty
18 work being done in the heating, ventilating and
19 air-conditioning systems of the plant.

20 The specific problems that were involved,
21 I can't recall by memory here, but they did
22 relate to both the procedural aspects of the
23 job as well as the work itself.

24 We investigated that matter and found

1 that the problem was known to both the Consumers
2 Power Company, the Bechtel Corporation and, in
3 fact, there had been meetings with respect to
4 the problem -- some of the problems that had been
5 identified, in an attempt to correct the problem.

6 Basically, the NRC investigation findings
7 were of appropriate concern to me because work was
8 being continued in this area, including work that
9 was known to be bad, and the company's quality
10 assurance program had not halted it.

11 Q Do you know whether this work that was
12 being done continued that included work known
13 to be bad was of the same nature as that which
14 we described before, for example, like a faulty
15 weld being picked up and being corrected while
16 other work was continuing?

17 A I'd have to go back to the Investigation
18 Report; but, again, the Zack issue was an issue
19 in which we brought the company in for a meeting
20 to discuss it, and I was present for the meeting.
21 So, I was personally involved in the issues at
22 the time.

23 Q But you do not recall --

24 A I don't recall what they were specifically.

1 Q -- whether these were things that were being
2 caught and were being fixed as the work went along?

3 A I can't answer that.

4 Q I have here what has been marked as Exhibit
5 No. 2 as of today's date, and it is a memo dated
6 December 29, 1980, to Samuel Chilk, C-h-i-l-k, from
7 Thomas Gibbon, Legal Assistant to Commissioner
8 Bradford. The subject is "Possible Ex Parte Contact
9 in Midland Proceeding," and it has the docket numbers
10 referenced on it. It shows that you were copied this.
11 Have you received a copy yet and had a chance to
12 review it?

13 (WHEREUPON, said document, having
14 previously been marked CPCo Deposition
15 Exhibit No. 2, for identification,
16 as of 1-6-81, was tendered to the
17 witness.)

18 A Yes, I have received a copy. I have not
19 read it to make sure that this was the earlier copy
20 I had reviewed and commented on, but I think it is.

21 BY MR. ZAMARIN:

22 Q The second page of Exhibit 2 contains
23 what is described in the covering memo as some
24

1 notes of a conversation taken by Thomas Gibbon.
2 They refer to statements attributed to you, and
3 he also notes in the memo that "Mr. Keppler notes
4 that while there are some technical inaccuracies,
5 the substance of the discussion is portrayed
6 correctly."

7 Is that an accurate statement?

8 A Yes, that's what I wrote back to him and
9 told him.

10 Q Can you tell me what the technical
11 inaccuracies are? I do not understand that.

12 A Yes. Would it help to explain the
13 background of this?

14 Q If you wish, sure.

15 A I think it might.

16 Let me start by talking about Mr. Gibbon
17 came out to Region 3 on July 30. He spent the
18 better part of the day in the regional office and
19 then accompanied some of our inspectors on an
20 inspection at a construction site other than
21 Midland.

22 One of the purposes of the visit, in
23 addition to the Commissioner's staff getting out
24 and getting a better feel for what's going on

1 overall, was that there had been considerable
2 increased sensitivity at the management and
3 commission level regarding construction problems
4 at nuclear power plants.

5 Examples would involve the Marble Hill
6 problems, in which construction was shut down for
7 better than a year; major quality assurance
8 problems at the South Texas Project; at the
9 Washington Public Power Organization's project
10 that involved escalated action on the part of
11 the Commission. The concerns are focusing on
12 what can we do to make sure that construction
13 problems are identified in a more timely manner.

14 So, one of the things that Commissioner
15 Bradford's Assistant, Mr. Gibbon, wanted to talk to
16 me about was what my views and my staff's views were
17 relative to what the Commission might do to focus
18 on the more timely identification of these types
19 of problems. And one of the -- so, we were talking
20 in a very general sense.

21 But I told him that I felt very strongly
22 that one of the things that I thought the NRC
23 should do is that when a problem of potential
24 safety significance occurs and the staff cannot draw

1 a positive conclusion that the fix to the problem
2 is going to be adequate, that the staff should not
3 allow or the NRC should not allow construction work
4 to continue until that determination has been made.

5 In addition to my own personal concerns
6 about the project becoming more completed, I
7 thought it tended to focus on getting corrective
8 action resolved and the adequacy of that corrective
9 action dealt with in a very timely way. So, that
10 was the basis of the discussion.

11 We discussed to some length some of the
12 things that happened in terms of the assurance of
13 the order at Midland and where we are at right
14 now, and those are his notes that he recalls of
15 that discussion.

16 Now, when he made the determination that
17 he wasn't sensitive to his own role as a Commissioner's
18 Assistant and that he maybe shouldn't have discussed
19 a specific case and wanted to send the matter to
20 all parties, my reaction to him was do it, and I
21 am not about to touch what he says as a -- I don't
22 keep any notes from the discussions.

23 But when I said that there were some
24 technical inaccuracies, I was referring to things

1 like the statement "where I & E found that the
2 diesel generator building had settled excessively."

3 I & E didn't find that. It was reported
4 to us by Consumers Power Company.

5 The statement that there was no QA
6 program, I would have said the word "no effective
7 QA program." That's what I meant by that kind of
8 thing.

9 Now, I do not know if you want me to go
10 through it word by word and pull out others. Those
11 came to mind when I read the thing when he first
12 sent it to me.

13 But in terms of the message that I was
14 trying to leave with him as to my view on the
15 Commission taking stronger action to determine
16 the significance of a safety problem before
17 allowing construction to go on, that was the
18 intent of my message to him.

19 Q With regard to your statement -- I am
20 sorry -- rather than your statement, with regard
21 to what Mr. Gibbon has indicated is his recollection
22 of your statement that says, "Midland is continuing
23 work today," and, of course, this is reference to
24 a conversation back on July 30, 1950, "which will

1 make resolution of the settlement problem much
2 more difficult," is that, as you sit here now, an
3 accurate recollection of the statement that you
4 made?

5 A Pretty close to it. I can't say whether
6 those were my exact words, but I have no quarrel
7 with them.

8 Q What work were they doing that was
9 continuing in July of 1980 that, in your opinion,
10 would make resolution of the settlement problem
11 much more difficult?

12 A What I was referring to was the fact
13 that construction was being allowed to continue
14 in areas that involved foundations over questionable
15 soil, such as portions of the auxiliary building;
16 and piping installations were going on at that
17 time.

18 So, that if someone has to go back and
19 effect a more permanent fix, there is additional
20 work that has been done to take into consideration
21 as to whether something needs to be done with
22 that.

23 I guess what I am saying is that it,
24 again, goes back to the concern I raised earlier

1 about the further along the project becomes, the
2 more things that have to be factored into a
3 decision.

4 Q One thing I forgot to ask you earlier,
5 you indicated that Mr. Davis, until yesterday, was
6 the Chief of Fuel Facility and Materials Safety.

7 A He is now the Deputy Director of the
8 office. I meant to give it. It escaped me.

9 Q Does he replace someone as Deputy
10 Director?

11 A He replaces Mr. Roy as Deputy Director.

12 Q Is Mr. Roy now outside of Region 3?

13 A No. He is still in Region 3. He is
14 out sick right now, and we have not finalized what
15 role he will play yet in the regional office. But
16 he will report directly to me as some kind of a
17 special assistant.

18 Q What is the responsibility of the
19 Deputy Director?

20 A In the past -- let me answer it this
21 way: The Deputy Director is an alter ego,
22 basically, of the Director, serves in his absence
23 when he is gone and handles many of the problem
24 areas that the Director has to deal with.

1 Mr. Roy was assigned as the Deputy
2 Director to Region 3 back in 1977, I believe, at
3 which time there was a strong desire to complement
4 the background of the Regional Director. And
5 Mr. Roy's background is largely in the by-product
6 materials area.

7 Since that time, there has been
8 increased emphasis based on the reactor workload,
9 the importance of the Regional Director being able
10 to assess reactor problems and respond to
11 incidents and so forth.

12 And Mr. Roy's background not being in
13 that area, he decided to step down from that
14 position, and Mr. Davis is stepping into it.
15 Mr. Davis will play a much stronger role as Deputy
16 Director than Mr. Roy did, just simply because of
17 the background.

18 Q In the meeting in Washington with
19 I & E headquarters and Region 3 and NRR and the
20 OELD in which you indicated there was some
21 differing views with regard to whether the quality
22 assurance programs with regard to the soils area
23 of work were indicative of a broader breakdown
24 of quality assurance for the project, were there

1 just simply two views, one, that it was indicative
2 of a broader breakdown and one being that it was
3 not, or were there some other kind of views?

4 A I don't know that I'd characterize it
5 as an either-or situation. I guess the way I would
6 characterize it would be more along the lines of
7 how acceptable was the program or whether we should
8 be doing something more.

9 I don't know that anybody stated
10 emphatically that they felt the quality assurance
11 program was unacceptable, but I think that there
12 were some -- there certainly were some discussion
13 on how many of these things is it going to take
14 to draw that inference and how good or how not good
15 the program was.

16 I don't think it was a matter of it's
17 either acceptable or unacceptable. It was of
18 varying shades in between.

19 Q How did those different views affect
20 the decision as to whether there should be a
21 \$5,000 civil penalty or not?

22 A None. The \$5,000 civil penalty proposal
23 was based upon the fact that that's what our
24 guidelines called for and what our past experience

1 was for handling that kind of a problem.

2 Q What is your understanding of why that
3 material false statement item was included in the
4 December 6 order?

5 A Why?

6 Q Yes.

7 A Because it had to be dealt with. It
8 couldn't be ignored. The Commission reached a
9 decision that a material false statement existed;
10 and therefore, it was highlighted in the order.

11 As far as why we didn't issue a fine
12 for it of \$5,000 was -- well, I will give you my
13 view as to why, but I am not sure that this is the
14 total reasoning.

15 But I think it was that the order was
16 viewed as a firm escalated action and that a
17 \$5,000 civil penalty more or less detracted from
18 the stature of the order itself.

19 Q You indicated that the material false
20 statement was highlighted in the order, and one of
21 the things that escapes me as I sit here now is
22 really, other than it being highlighted in the
23 order, was why it is there. Is there some action
24 that is being asked to be taken on the basis of that

1 statement?

2 A I'd have to go back and take a look at
3 it, but I would say to you that I am not aware of
4 any regulatory action pending on that material
5 false statement issue.

6 THE WITNESS: I don't know. I am not aware of
7 anything.

8 MR. PATON: Off the record.

9 (WHEREUPON, discussion was had
10 off the record.)

11 MR. ZAMARIN: Let's go back on the record.

12 BY MR. ZAMARIN:

13 Q I think that I may have muddied the
14 record a little bit, then, in the way I asked the
15 question in regard to the answer.

16 In your opinion, would the material false
17 statement in the FSAR, if, in fact, it is such, be
18 the basis for an order modifying, suspending or
19 revoking the construction permit for the Midland
20 project?

21 MR. PATON: Just a moment. I object to that
22 question as calling for a legal conclusion.

23 But you can go ahead and answer it.

24

1 BY THE WITNESS:

2 A Isn't that what the Board is supposed to
3 decide?

4 MR. PATON: I cannot think of a better
5 answer, Mr. Keppler.

6 BY MR. ZAMARIN:

7 Q I think the Board will, but I would like
8 to know what your opinion is.

9 A If you want my opinion, I think I
10 probably would have urged a fine for the material
11 false statement and not used it as a part of a
12 determination about the suspension or the
13 modification of a construction permit.

14 But I did not voice that view at the
15 time, and I was really much more concerned about
16 the, again, technical aspects of the problem than
17 I was about the material false statement aspect.

18 Q Is that to say, then, that your opinion
19 is that the material false statement would not,
20 by itself, provide the basis for modification,
21 suspension or revocation of the construction permit?

22 MR. PATON: I also object to that question as
23 calling for a legal conclusion.

24 But you can go ahead and answer it.

1 BY THE WITNESS:

2 A The way I would view the matter, in terms
3 of the way I conduct my business, is that if a
4 material false statement was made with no
5 consideration of willfullness involved, I would
6 recommend the civil penalty for that matter.

7 If willfullness was involved, I'd
8 recommend that the matter be referred to the
9 Department of Justice.

10 If it happened again or multiple times,
11 then that might lead me to want to take a stronger
12 position than just a civil penalty. But you are
13 asking for how I would deal with it initially as a
14 reaction. That would be the way I would do it.

15 BY MR. ZAMARIN:

16 Q Beyond that as to how you would deal with
17 it initially, are there some restrictions as far as
18 the options that are available to the Commission?
19 For example, can the Commission simply go along with
20 modifying, suspending or revoking the construction
21 permit for any reason or no reason at all?

22 I guess really what I was getting at is
23 whether there are certain things, certain actions
24 that can be taken with respect to certain activities

1 and beyond which action cannot be taken?

2 MR. PATON: I object to that as calling for
3 a legal response.

4 But go ahead and answer it, if you want.

5 If you do not feel that you can answer
6 the question, that is a perfectly legitimate
7 answer.

8 THE WITNESS: I'd be hiding.

9 MR. PATON: Okay. You do not want to hide,
10 as you have indicated, but you also do not want
11 to speculate.

12 BY THE WITNESS:

13 A I have a role as a Director of the office
14 to make recommendations on matters that come up.
15 My experience has been that orders are issued
16 when there is a public health or safety issue
17 involved or for what other reason might be
18 determined to be a good cause. And I will generalize
19 that point with you.

20 If you would ask me to define it, I
21 probably could, looking at our enforcement
22 policy. But I think, basically, those are the
23 considerations involved in an order.

24 And there is various types of orders,

1 suspension, modification of license, revocation.

2 MR. ZAMARIN: Could I have that back, please?

3 (WHEREUPON, the record was read
4 by the reporter as requested.)

5 BY MR. ZAMARIN:

6 Q In your opinion, is there a public
7 health or safety issue involved with the purported
8 material false statement in the Midland FSAR with
9 respect to the soils?

10 A I'd have to go back and look at the
11 Investigation Report to answer that. Where is
12 the one with the material false statement?

13 MR. PATON: Can we have a minute.

14 MR. ZAMARIN: Sure.

15 (WHEREUPON, a recess was had.)

16 BY THE WITNESS:

17 A Let me tell you the problem I have had in
18 answering your question and try to answer it a
19 little more generally, if that is acceptable to
20 you.

21 When a material false statement is
22 made, there are generally two things that have
23 to be involved, as I understand it, to meet that
24 criteria. One is the statement has to be false,

1 and the statement has to have been material to
2 the staff in the determination of its substance.

3 Now, when you asked the question of is
4 a material false statement by itself a type of
5 issue that would be involved in a suspension or
6 other type of order, I think you have to get back
7 to the materiality of the issue involved to the
8 point that if it was material enough to the point
9 that it changes the accident considerations or
10 the design basis analysis, then that may be a
11 basis to take a suspension action.

12 If it doesn't impact that tight, in other
13 words, if there isn't a health and safety type of
14 consideration to relate to, I would think the
15 answer would be no. And that has sort of been
16 my experience with this kind of thing.

17 BY MR. ZAMARIN:

18 Q I take it, then, you are drawing a
19 distinction between the substance of the statement
20 and the mere fact of the statement having appeared?

21 A Yes.

22 Q You had indicated before lunch or before
23 our lunch, at least, this morning that after that
24 Cadwelding hearing that there were a number of

1 problems associated with the Midland project that
2 identified weaknesses in the quality assurance
3 program. And that in each instance, Region 3
4 concluded the problems were isolated and there was
5 no breakdown in the overall program.

6 As you sit here now, can you recall what
7 those specific identified weaknesses in the QA
8 program were or, again, are you referring to the
9 end result type of a determination that, in fact,
10 if a problem occurred, then there was a weakness
11 because the problem should not have occurred?

12 A Primarily to the latter. I believe that
13 in the February 15, 1979 memorandum that we
14 outlined those particular issues that identified
15 quality assurance problems and the ones that gave
16 us the biggest single concern.

17 Q I have the February 15, 1979 memorandum,
18 which is styled "The Midland Summary Report." That
19 had been marked as Consumers Power Company Exhibit
20 No. 3 as of November 18, 1980. And I haven't
21 the faintest idea whose deposition that was.
22 I think it might have been Gene's.

23 This was Exhibit No. 3 of Gene Gallagher's
24 deposition as of November 18, 1980.

1 I note on Page 5 there is a listing of
2 past problems. Is that what you are referring
3 to, Cadweldsplicing, rebar omission?

4 A Yes. Those are the ones we considered
5 to be the more serious.

6 Q I note that on Page 7 of this report,
7 after a listing of the selective major strengths
8 and past problems, the statement:

9 "A special QA program inspection was
10 conducted in early May, 1977. The
11 inspection team was made up of personnel
12 from Region 1, Region 3 and headquarters.
13 Although five items of noncompliance were
14 identified, it was the concensus of the
15 inspectors that the licensee's program
16 was an acceptable program and that the
17 Midland construction activities were
18 comparable to most other construction
19 projects."

20 Did you have any input into that
21 concensus?

22 A I had an input into the inspection. I
23 required it to be done, because I felt that I
24 wanted a thorough review of it in light of some

1 of the earlier problems. And I also was insistent
2 on getting some inspectors who were not a part of
3 Region 3 involved in that inspection effort.

4 I was briefed on the inspection, and that
5 was the findings of the inspection team; and I
6 concurred in it.

7 Q It also indicates on Page 10 of this
8 summary report that:

9 "Although the licensee's quality
10 assurance program has undergone a number
11 of revisions to strengthen its provisions,
12 no current concern exists regarding its
13 adequacy."

14 Did you also concur in that statement?

15 A Yes.

16 Q Under "Summary and Conclusions," which
17 is on the second-to-last page of this Exhibit No. 3
18 as of November 18, 1980, the second full paragraph
19 reads, and I quote:

20 "Following each of these problem periods,
21 excluding the last, which is still under
22 investigation" --

23 A That is the soils one?

24 Q Yes.

1 (Continuing) --

2 "the licensee has been responsive
3 and has taken extensive action to
4 evaluate and correct the problem and
5 to upgrade his QA program and QA/QC
6 staff."

7 Did you also concur in that statement?

8 A I concurred in that whole document. It
9 wouldn't have gone out without my concurrence.

10 Q The parenthetical, "excluding the
11 last, which is still under investigation," and
12 that is presumably referring to the soils problems,
13 does that mean that you were of the opinion that
14 the licensee had not been responsive or that no
15 statement was made with regard to that item because
16 it was still under investigation?

17 A The latter.

18 Q In your opinion, has Consumers been
19 responsive with regard to attempting to evaluate
20 and correct the problems associated with the soils?

21 A I don't have a position on the soils
22 matter yet.

23 Q Are you leaning either way yet?

24 A Let me be specific. The reason why I

1 say that is a lot of the technical issues are with
2 the licensing people right now. As far as the
3 quality assurance activities go, at least the
4 last I had discussions with my staff on it, we
5 had not done any in depth review of the changes
6 made in the quality assurance program as it relates
7 to the soils thing to make a finding. So, we just
8 hadn't done our inspection effort yet in that area.

9 Whether they have or not now, I can't --
10 I don't know. It has not come to my attention.
11 So, that is the basis of my answer.

12 MR. ZAMARIN: Could you read back that last
13 answer, please?

14 (WHEREUPON, the record was read
15 by the reporter as requested.)

16 BY MR. ZAMARIN:

17 Q Well, do you have an opinion as to
18 whether the quality assurance at Midland would be
19 adequate with regard to the proposed remedial
20 fixes, assuming they were accepted technically
21 by the staff?

22 MR. PATON: You say program, is the program
23 adequate. That's what I thought I heard.

24 MR. ZAMARIN: I do not know. Could you read

1 back the question?

2 (WHEREUPON, the record was read
3 by the reporter as requested.)

4 THE WITNESS: Do you have a problem?

5 MR. PATON: No.

6 BY THE WITNESS:

7 A To answer that question, I have to have
8 assurance that the problems that were found
9 initially with the soils work have been fully
10 corrected and steps taken to prevent their
11 recurrence.

12 To the best of my knowledge, we have
13 not done inspections in this area to draw that
14 conclusion yet.

15 BY MR. ZAMARIN:

16 Q When you say the problems have been
17 corrected, are you referring to the problems in the
18 QA organization or QA implementation?

19 A Yes, as it relates to this particular
20 soils problem.

21 Q Why is it that after all this time
22 that inspection or evaluation has not been done?

23 A My guess is that it hasn't been pressing
24 to do that yet. We got enough other problems to

1 deal with right now that have taken a priority.

2 I would think, also, the consideration
3 is the recent organizational changes that have
4 been made, and the people want to give those time
5 to be implemented. I am just giving you my guess.
6 I don't know. I haven't asked that question.

7 Q Do you have any reason to believe, as
8 you sit here now, that based upon the organization
9 for the QA program that it will not be adequate
10 with respect to the remedial fixes for the
11 foundation problems at Midland that are finally
12 accepted or approved by the Licensing Board?

13 A I don't have any basis to draw a
14 conclusion one way or the other.

15 (WHEREUPON, there was a short
16 interruption.)

17 THE WITNESS: He wants to talk to me for a
18 minute.

19 MR. ZAMARIN: You know what my first question
20 is going to be when he comes back.

21 MR. PATON: "What did you say?"

22 MR. ZAMARIN: That's right.

23 MR. PATON: Do you have any problem with that?

24 MR. ZAMARIN: I mean, if he wants to. He might

1 be better off not doing it. I cannot keep him from
2 doing it.

3 But the first question I will ask you
4 when you come back is what did you two talk about.

5 MR. PATON: Twice what he has done is indicated
6 to Mr. Keppler a couple of -- reminded him of a
7 couple of things or gave him a piece of paper to
8 enhance his answer. I realize it is unusual.

9 MR. ZAMARIN: Why don't we go on, and if it
10 is a matter for clarification, he always has a
11 right to clarify.

12 THE WITNESS: I have prefaced things on what
13 I know. If I am stating a falsehood, you better
14 stop me.

15 MR. KNOP: There is no problem.

16 MR. PATON: We will talk at the break and see.

17 BY MR. ZAMARIN:

18 Q Do you know whether a review by Region 3
19 of the response to Question 23 of the 50.54(f)
20 questions have been performed?

21 A I'm sure my staff has been involved in
22 that review. As to the details, I have not been
23 apprised of it.

24 Q In your opinion, would that review provide

1 the basis for determining whether or no'. the quality
2 assurance was such that it would provide adequate
3 assurance to the staff?

4 A It certainly should provide some input.

5 Q Would it provide enough input to make
6 that determination, to your knowledge?

7 A I don't know. Again, an important element
8 is the actual inspection work to go back and verify
9 that the problems that had existed before had been
10 fully corrected.

11 Q What problems is it that you refer to here?

12 A The kinds of problems that are discussed in
13 the Investigation Report in the area of quality
14 assurance, things left on the noncompliances and
15 so forth.

16 Q Are you aware of any changes in the
17 quality assurance program or implementation since
18 the time of the items that are noted in the report
19 that would eliminate or ameliorate those types
20 of situations?

21 A Not specifically. I am aware of the
22 reorganization that the company instituted. But
23 as far as the details of specific corrective
24 actions, I have not been involved in them.

1 Q You are aware that there have been
2 other changes also with other inspections and
3 other programmatic, as well as the reorganization?

4 A Yes, I am, yes, only in a very general
5 way.

6 Q Do you have any opinion as to whether
7 those type of changes would likely eliminate or
8 ameliorate the type of problems that existed as
9 indicated in the Investigation Report?

10 A I'm not that familiar with the specific
11 changes that have been made to draw a conclusion.
12 My staff might be able to tell you the answer to
13 that question if you wanted to get it from them,
14 but I can't.

15 Q When you say your staff, to whom do you
16 refer?

17 A Mr. Fiorelli's group.

18 MR. ZAMARIN: Off the record.

19 (WHEREUPON, discussion was had
20 off the record.)

21 BY MR. ZAMARIN:

22 Q To your knowledge, does Region 3
23 presently have any specific concern with regard
24 to Consumers Power Company's present QA program?

1 A I am aware that some members of my
2 staff have some concerns, yes.

3 Q What are they and who are the members
4 that harbor those concerns?

5 A Mr. Naidu and Mr. Gallagher both have
6 concerns about whether Consumers Power has
7 solved the problem of playing a dominant role in
8 the activity of the site, based upon some of the
9 assignments of people in the organization.

10 Q Assignments of what people are you
11 referring to?

12 A In particular, Mr. Keeley and Mr. Byrd.

13 Q What is it about the assignment of
14 Mr. Byrd that, to your knowlegde, causes concerns
15 about whether Consumers has solved the problem of
16 playing a dominant role in activities at the site?

17 A As a general statement, their concern
18 for Mr. Byrd and Mr. Keeley by the individuals
19 involved relates to their past involvement with
20 areas in which quality assurance problems were
21 identified.

22 Q To your knowledge, have there ever been
23 any specific conduct or onissions by either
24 Mr. Byrd or Mr. Keeley of which Mr. -- did you say

1 Mr. Naidu?

2 A Yes.

3 Q That Mr. Naidu or Mr. Gallagher are
4 aware or related to you that would indicate that
5 Mr. Byrd or Mr. Keeley had some responsibility or
6 failing as related to these past experiences in
7 which QA problems have been identified?

8 THE WITNESS: Could you repeat the question?

9 (WHEREUPON, the record was read
10 by the reporter as requested.)

11 BY THE WITNESS:

12 A If you understand that question, you
13 are better than I am. I don't understand it.

14 BY MR. ZAMARIN:

15 Q You indicated that the concerns about
16 Mr. Byrd and Mr. Keeley relate to their past
17 involvement in areas in which QA problems have
18 been identified, and this statement about
19 Mr. Byrd and Mr. Keeley, I think, is a very serious
20 statement about people's careers. What I want to
21 know is if there are any specific acts or failure
22 to act by Mr. Byrd or Mr. Keeley that either
23 Mr. Naidu, Mr. Gallagher or you are aware of
24 which would indicate any failure or fault on their

1 part with regard to these areas in which QA
2 problems have been identified.

3 A Let me answer the question this way:
4 The concerns, as I understand them, relate to the
5 fact that Mr. Keeley and Mr. Byrd played a role
6 in the quality assurance area involving problem
7 matters in which there were deficiencies in the
8 quality assurance program.

9 In the reorganization of the quality
10 assurance program for the Midland project, Mr. Keeley
11 and Mr. Byrd are shown in prominent positions in
12 that organization. And the concerns raised by our
13 inspectors are whether or not the role that
14 Mr. Keeley and Mr. Byrd can play is enough to
15 offset the talent in comparable roles in the
16 Bechtel organization.

17 The concern raised is not based on
18 experience -- is not based on specific problems
19 which one can talk about. It's a concern about
20 that the organization may not be effective enough.

21 We are not saying it isn't that. They
22 have flagged that as an issue and have urged
23 the company to get together with our people.

24 There have been meetings on the subject,

1 and we have explained the concern up front that
2 we have, because it relates to how well the
3 organization will work in the future. So, we
4 wanted to get the concern on the table right up
5 front.

6 Q What I would like to know is what are
7 the specific items, elements, facts about -- let's
8 take Mr. Byrd -- Mr. Byrd that even suggest that,
9 because of his involvement, that the organization
10 may not be effective enough?

11 A Mr. Byrd certainly was involved in the
12 soils issue.

13 Q How? What did he do with regard to
14 the soils that would cause anyone to suspect that,
15 because of his continued involvement, that the
16 organization may not be effective enough?

17 A You are asking me questions I don't
18 know.

19 Q Well, my understanding is that this
20 statement has been made, and I consider it a very
21 serious question about a man's career.

22 A Absolutely.

23 Q And it ought to be made on something more
24 than air. I am trying to find out the basis for

1 it. So far I have not gotten it. I have not
2 gotten it from the documents. I did not get it
3 from Mr. Gallagher's deposition. It's got to be
4 somewhere.

5 A Well, the statements -- the specific
6 concerns you are going to have to get from
7 Mr. Gallagher and Mr. Naidu. But the issue that
8 we wanted to be up front with was not waiting for
9 the hearing to bring this concern up. It was to
10 let you know that our people have a concern in
11 this area. The validity of that concern may or
12 may not prove real. But in the interest of fairness,
13 we wanted to voice it right up front.

14 Q I take it, then, that as you sit here
15 now, you do not have any position --

16 A One way or the other.

17 Q Did you have any information with regard --

18 A I --

19 Q I am sorry. Go ahead.

20 A I did go to the point of making sure
21 that the company was aware of the concern, and I
22 sat through a meeting involving company people and
23 Bechtel people, in which these concerns were
24 discussed specifically up front to let them know

1 they existed.

2 Q You say the concerns were discussed
3 specifically at that meeting. I take it, though,
4 that no particular facts or items were discussed
5 specifically; is that right?

6 A I think I would characterize it that way,
7 yes.

8 Q I had asked you with regard to Mr. Byrd,
9 and I assume that your responses would be the
10 same with regard to the responses about Mr. Keeley?

11 A Yes.

12 Q Is there any other present concern of
13 Region 3 with regard to Consumers' QA program,
14 other than Mr. Byrd and Mr. Keeley, to your
15 knowledge?

16 MR. PATON: May I ask that question be
17 repeated, please?

18 (WHEREUPON, the record was read
19 by the reporter as requested.)

20 THE WITNESS: Oh, I thought you were --

21 MR. ZAMARIN: He just wanted to hear it again.

22 BY THE WITNESS:

23 A The way I perceive the situation is that
24 the real test of the new quality assurance program

1 or the revised quality assurance program is going
2 to hinge on Consumers Power playing a dominant role
3 in the program. That is the prominent point of
4 the origin of the concern. It focuses, to some
5 degree, on Mr. Keeley and Mr. Byrd, as I perceive
6 it, because certain quality assurance problems
7 occurred in the past where they had a role in the
8 quality assurance organization and in which Consumers
9 Power Company did not take an effective position
10 in solving.

11 I do not know that I would characterize
12 the problem as a Keeley-Byrd problem. I think it's
13 the same problem that we focused on all along as
14 to whether Consumers Power will be effective
15 in assuring that the quality assurance program is
16 implemented.

17 We see, as I am told by my staff, a
18 significant upgrading of the Bechtel organization
19 in this quality assurance program.

20 We are not sure that we see the same
21 upgrading of the Consumers organization. And that
22 is the basis of the speculation, at least the
23 basis -- that is the problem, as I perceive it.

24 Q Is this strictly the QA organization that

1 you are referring to when you say the Bechtel
2 organization and the Consumers organization?

3 A I think it's the combination of the
4 project management and the quality assurance
5 organization.

6 Q And if I understood you correctly, in
7 the past, an identified problem by Region 3 was
8 that the then Consumers organization was not
9 dominant enough and that in situations where there
10 was a problem, in fact, where the problem was
11 resolved in certain instances where the Consumers
12 organization itself stepped in and, in effect, took
13 over the Bechtel QA role.

14 Now, I understand you to be saying there
15 is a concern because you do not see an upgrading
16 of the Consumers organization which is congruent
17 to that of the upgrading of the Bechtel organization.
18 Is that correct?

19 A Yes. I think that you have got to be
20 careful not to focus on the handling of specific
21 problems versus the generic handling of the operation.

22 Q Your concern about the fact that there is
23 an observed significant upgrading of the Bechtel
24 organization but not an observed similar upgrading

1 of the Consumers organization, is that founded in
2 any part upon an identified problem or inadequacy
3 of the Consumers organization, aside from the
4 fact that there have been problems with the project
5 in the past?

6 A I don't think so.

7 Q What, in your opinion, would be necessary
8 in order to upgrade the Consumers organization?

9 A It may prove adequate the way it is.

10 Q Okay. What activity would have been
11 sufficient for you not to have this concern about
12 the fact that there has not been observed this
13 upgrading of the Consumers organization similar
14 to that of the Bechtel?

15 THE WITNESS: Could you repeat it, please?

16 (WHEREUPON, the record was read
17 by the reporter as requested.)

18 BY THE WITNESS:

19 A I guess one way in which the staff
20 would have been more competent is if Consumers
21 had brought in some high-powered talent for the
22 positions in question. That certainly would
23 alleviate the immediate concern.
24

1 BY MR. ZAMARIN:

2 Q You mean replace Mr. Byrd and Mr. Keeley?

3 A Or have not filled them in those positions.

4 Q What positions are you referring to?

5 A Quality Assurance Manager and Project
6 Manager positions.

7 Q Then this is simply based --

8 A I am just giving you a way in which that
9 concern would have gone away. I am not saying it
10 was the only way.

11 Q It would have gone away, and yet this
12 concern is not based on any specific fact about
13 Mr. Keeley's suitability, you know -- let me make
14 sure you understand what I am driving at.

15 Again, you are talking about this concern
16 that you have with regard to their organization,
17 and it really boils down to two individuals, Walt
18 Byrd and Gil Keeley. Yet, I will repeat what I
19 said before. I have been unable through discovery
20 to get one fact, one failing -- that is not true.
21 We did get some information. Apparently, there
22 was some indication in a deposition that Walt
23 Byrd's background in QA might not be strong enough.

24 So, in fairness, I did get that.

1 With regard to Gil Keeley, it has been
2 zero, other than the fact that he was associated
3 with the project when there were problems. And
4 I have heard today that that same thing applies
5 with Walt Byrd, and that is it and nothing more.

6 Yet, what you are talking about is a
7 position on behalf of Region 3 that these two men
8 ought to be taken out of their jobs in order to
9 satisfy Region 3. If that is the case, and if that
10 is what it is going to take, I think there ought
11 to be basis for it.

12 Maybe it is not fair for me to be
13 pressing you, since you indicated it was your staff
14 that had the concern. I am just trying to find
15 out what the basis is for that.

16 A I think you overstated the case. Let
17 me tell you how I perceive the situation to be.

18 We recently conducted an appraisal of
19 the regulatory performance of each licensee in
20 Region 3, as well as licensees in other regions.

21 In the conduct of preparing for this
22 assessment for the Midland project, concerns were
23 raised by Mr. Naidu and Mr. Gallagher about the
24 effectiveness of the revised quality assurance

1 organization. These concerns were raised to the
2 management of the construction -- Reactor Construction
3 and Engineering Support Branch.

4 When the Review Board, which is comprised
5 of the branch management and all the inspectors
6 that conducted inspections at the site and the
7 NRR Project Manager, when the Review Board completed
8 its review, some of the people then sat down and
9 briefed me on it to prepare for the meeting, to
10 get ready for the meeting with the licensee.

11 At that time, I became aware of these
12 concerns.

13 Now, it was recognized that many of these
14 concerns, if not all, focused on a period of time
15 outside of the appraisal period for which we were
16 conducting this thing.

17 When I learned that my staff had
18 additional concerns about the quality assurance
19 program, it was my decision to want to put them
20 on the table so that they could be dealt with,
21 rather than go to the hearing and have you people
22 hear about them for the first time. So, I made
23 that decision.

24 We did not say anywhere throughout the

1 process that Mr. Keeley and Mr. Byrd were not
2 adequate for this. We have raised a concern. We
3 have flagged the issue for you.

4 And I said very early that our facts --
5 our suspicions may prove not to be factual. But I
6 think it's in the best interest to put these things
7 on the table up front than to have them come out
8 as issues at the hearing to be discussed among all
9 parties at that time for the first time.

10 Q When this was first related to you, did
11 you ask for any specifics with regard to Mr. Keeley
12 and Mr. Byrd?

13 A Yes -- well, we talked about the problems,
14 and I came to the conclusion that there were --
15 there were not hard facts that you could show that
16 clearly the organization wasn't working. It was
17 based upon some observations of the personalities
18 in action, seeing interfaces with the Bechtel
19 people on the job. And a lot of it in the form
20 of -- I don't know -- intangibles that are hard
21 to define, but a definite feeling that it wasn't
22 working the way it should without any hard facts.

23 So, I encouraged Consumers to get
24 with our people to try to get the concerns up front

1 and resolve them, to the extent that they can be
2 resolved.

3 Q Has that been done?

4 A We have had meetings, yes.

5 Q Do you know whether at those meetings
6 any hard facts were presented by anyone in Region 3?

7 A All the concerns were laid on the table
8 at those meetings.

9 Q So, if there were any hard facts, they
10 were all --

11 A We are not holding anything up our sleeve.

12 Q I am not suggesting that. I want to
13 know if whatever it was that was related at that
14 meeting, that would be the extent of any hard facts
15 anywhere in Region 3?

16 A I think that is a fair statement.

17 (WHEREUPON, there was a short
18 interruption.)

19 BY MR. ZAMARIN:

20 Q In your opinion is Consumers Power
21 Company's management adequately committed to
22 quality assurance?

23 A Yes.

24 Q Are summary reports still prepared with

1 regard to Midland now that the SALP program is
2 in effect?

3 A What kind of summary reports?

4 Q I have, for example, the February 15,
5 1979 summary report, and I believe there was one
6 perhaps in October of 1979, October 18.

7 A Those two reports that you refer to
8 were special to Midland.

9 Q I see.

10 A So, those are the only summary reports
11 that were prepared. As you are aware, the SALP
12 program is in existence and was -- reviews
13 were carried out at all power plants related
14 by the NRC last year.

15 Q Have there been any summary reports
16 or status reports since the October 18, 1979
17 Midland status report?

18 A I don't believe so.

19 Q With regard to the February 15, 1979
20 Midland summary report, which has been marked
21 as Consumers Exhibit No. 3 for the Gallagher
22 deposition of 11/18/80, was input obtained from
23 all Region 3 inspectors for this report, to
24 your knowledge?

1 A All of the Region 3 inspectors that
2 were involved with the Midland inspection program
3 were consulted with respect to that report, and
4 I believe all were asked to read it in final to
5 make sure that it represented -- it did not
6 represent any dissenting views on the matter.
7 That was done.

8 Q Do you recall whether there were any
9 dissenting views?

10 A Not in substance there weren't.

11 Q Were there dissenting views in something
12 other than substance? I do not know what you mean.

13 A As I recall, there might have been some
14 views as to how certain things were said, but the
15 basic summary and conclusions were supported by
16 the -- were unanimously supported.

17 Q I notice on the cover memorandum to
18 Thornburg from you there is a statement that
19 there was a meeting with representatives from
20 the Division of Reactor Construction Inspection,
21 I & E, NRR and OELD at I & E headquarters on
22 February 6, 1979. Do you recall that meeting?

23 A Yes.

24 Q Do you recall what the purpose of that

1 meeting was?

2 A Yes. It was to -- as I mentioned
3 earlier to you, I was aware that there had been
4 problems in the areas of quality assurance
5 at Midland, and we had assessed these problems
6 in an ongoing manner from Region 3's point of
7 view. But I was concerned that maybe we were too
8 close to the project, and I thought it was
9 important, in view of the commitments I made at
10 the hearing, the earlier hearing, that we prepare
11 that summary piece of paper and to go before the
12 staff people and determine whether there were
13 differing views as to our assessment of the
14 project.

15 So, I requested the meeting for that
16 purpose. I then documented that piece of paper --
17 documented that assessment and sent it to the
18 Washington people, to our headquarters people.

19 Q When you say you documented it, does
20 that summary report contain input also from these
21 other individuals who were at the meeting?

22 A No. That was our position that we
23 went in with.

24 Could I see that just for a second,

1 please?

2 Q Sure.

3 (WHEREUPON, the document was
4 tendered to the witness.)

5 BY THE WITNESS:

6 A I believe the purpose of forwarding it
7 this way, yes, was that I thought the matter
8 should be referred to the Licensing Board.

9 BY MR. ZAMARIN:

10 Q Why was that?

11 A Just to be aware of it.

12 Q Since February of 1979, has the resident
13 site coverage with respect to Midland continued?

14 MR. PATON: Do you mean the resident
15 inspector?

16 MR. ZAMARIN: I do not know. It says,
17 "resident site coverage."

18 BY MR. ZAMARIN:

19 Q I assume resident site coverage would
20 be resident inspector.

21 A We have had a resident inspector since
22 that time. I am not sure of the date, but we can
23 get that information for you. But from the date
24 the resident inspector was put out there, we have

1 had a resident inspector at the Midland site.

2 Q And since February or mid-February, 1979,
3 to your knowledge, has there been a continuing
4 inspection program by regional inspectors on the
5 Midland project?

6 A Yes.

7 Q To your knowledge, since February or
8 mid-February, 1979, has there been a licensee
9 overview program in effect at the Midland project?

10 A The licensee's overview program has
11 been periodically assessed as part of our
12 inspection program, and the degree of that
13 implementation program has been verified to our
14 satisfaction.

15 Q I note on Pages 9 and 12 of this
16 Exhibit No. 3 from the Gallagher deposition, there
17 are some statistics with regard to number of
18 noncompliances per number of inspections per number
19 of inspector hours on site for the years 1976,
20 '77 and '78.

21 To your knowledge, has Region 3 updated
22 any of these statistics with regard to '79 and '80?

23 A We should have this information, yes.

24 Q As you sit here now --

1 A In fact, I believe this information
2 was included in the SALP preview.

3 Q In the records that are downstairs in
4 that little room that Mr. Farnell is wallowing
5 around in right now, does that include any input
6 or memorandum with regard to the SALP approval
7 or that SALP Board meeting that was held here
8 to provide input?

9 A I would think everything that we have
10 on the Midland project is in that room.

11 Q Is there a customary document around
12 here styled something like a daily staff report
13 or something like that? Does that ring a bell
14 at all?

15 A Sure.

16 Q Daily staff note. Are these maintained
17 in the file anywhere, do you know, or are they
18 discarded?

19 A I'm sure they are maintained, but I don't
20 know for what retention period. But the information
21 is retrievable either through Washington or --

22 Q Would those be maintained, if they are
23 maintained at all, in Region 3 there in that
24 little room downstairs?

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A Yes.

Q What is the purpose of these memoranda subject daily staff notes?

A It's to inform the Commission of problems of a certain threshold that have occurred at nuclear plants, to inform them of significant enforcement actions and also to document any key matters which the Commission might wish to be kept informed about from some of the other offices.

The one you have there just has input from I & E, but some of them have input from NRR or standards or research, depending upon the nature of the item. It's a daily notification.

Q I notice on this one dated January 6, 1981, which is marked as Consumers Exhibit 3 as of today's date, it refers to a \$38,000 fine with regard to the Midland Nuclear Power Station. Can you tell me what that is with regard to?

(WHEREUPON, said document, having previously been marked CPCo Deposition Exhibit No. 3, for identification, as of 1/6/81, was tendered to the witness.)

1 BY THE WITNESS:

2 A That fine was issued for the noncompliance
3 problems identified with the Zack work at the site.

4 BY MR. ZAMARIN:

5 Q To me that seems like an unusual number.
6 Do you know how that was arrived at, I mean, 38
7 instead of 40,000 or 30?

8 A Yes. Our enforcement policy, which
9 was in effect at that time, there were certain
10 dollar values that could be applied for various
11 items of noncompliance. And it -- how the actual
12 number is arrived at will be explained in the
13 enforcement letter, but it's so much per item of
14 noncompliance.

15 Q I note on here that it says proposed
16 imposition of civil penalties.

17 A Yes.

18 Q Does that mean that that is not final?

19 A No. It means that when we take
20 enforcement action, we notify the licensee of
21 our intent to issue a civil penalty. They then
22 can either pay the civil penalty or they can
23 respond as to why it shouldn't be assessed. Then
24 the staff will make a judgment, and if, in its

1 judgment it believes that the civil penalty still
2 should be issued, then we will order it so. Then
3 the company has the option of paying it or going
4 to a hearing.

5 Q Is it Region 3 who decides precisely what
6 dollar amount to apply to these items?

7 A Headquarters.

8 Q Was it headquarters that came up with
9 the \$38,000 figure?

10 A Yes. We recommended 50,000.

11 Q Big spenders here in Glen Ellyn.

12 Do you have any idea why it was cut
13 from 50 to 38?

14 A Only generally. It's in lumping some of
15 the items of noncompliance, how it's organized.

16 By the way, probably in the same file
17 that you found that in, you should be able to
18 find the paper we sent to Washington recommending
19 the \$50,000 fine. So, that will be the basis for
20 our position, and the one that is finally issued,
21 you can compare.

22 Q Actually, this was so fresh, it hadn't
23 even found its way into a file yet. Maybe you
24 will come across it.

1 A We were to notify the licensee of that
2 tomorrow.

3 Q Were these records that you referred to
4 that were compiled for the SALP appraisal, did
5 they include total man-hours applied to inspection
6 of the Midland project and correlate that with
7 the degree of completion of the project, or was
8 it simply absolute numbers of noncompliances?

9 A I believe in the SALP appraisal we
10 just included absolute numbers of noncompliances,
11 but we have all of that type of information
12 available.

13 Q That would all be available down in that
14 room downstairs, to the best of your knowledge,
15 or, if not, where?

16 A Well, we have the items of noncompliance
17 available. We also have other records that show
18 how much time was spent -- how much inspection time
19 was spent in connection with each project. That
20 is through our man-hour utilization system data.

21 So, if someone wants a number of
22 noncompliances per inspection hours, it's just a
23 matter of dividing it out.

24 Q Is that a statistic that is ever of

1 interest to anyone in Region 3?

2 A Yes, we keep track of it. I guess the
3 time frame that we were working on, to get all
4 these SALP appraisals done, we just didn't generate
5 that specific statistic out. I believe it may
6 have been discussed at the meeting. I am not sure
7 whether it was or wasn't.

8 But quite often, when I hold meetings
9 with licensees to discuss their performance, one
10 of the statistics we talk about is the trend in
11 the noncompliance per inspection man-hour.

12 Q Are you aware of any trend with respect
13 to noncompliance per inspection man-hour for
14 Midland over the past year or two?

15 A No.

16 Q What is the significance of such a
17 trend to you in your meetings with licensees or
18 in your review of licensees?

19 A I don't know that it has a significance
20 really to me. I think, generally, the more one
21 inspects, the more items of noncompliance one
22 finds. I think there is that type of correlation.

23 So, other than a piece of data which I
24 look at along with a lot of other pieces of data,

1 by itself, I'm not sure it tells me anything.

2 Q But at least --

3 A Noncompliances by themselves carry
4 varying degrees of weight with me. It depends on
5 what else. I don't take noncompliance data by
6 itself and make a judgment on a licensee's performance.

7 Q The more man-hours of inspections, the
8 more noncompliances you would expect to find?

9 A I think so.

10 Q What does RCI stand for? This is in
11 reference to whatever Mr. Thornburg used to be
12 Director of.

13 A Reactor Construction Inspection.

14 Q To your knowledge, have noncompliances
15 been written on other applicants besides Consumers
16 Power Company as a result of discrepancies between
17 an FSAR document and a design document?

18 A Discrepancies between an FSAR and a
19 design specification, I think more properly would
20 be classified as a deviation rather than a
21 noncompliance.

22 Q Are you aware of any such deviations
23 with regard to applicants other than Consumers
24 Power Company?

1 A Sure. That is not a common notification
2 on our part.

3 Q Are you aware of any such deviations
4 which were considered to be of a nature that the
5 information was material?

6 A I don't recall any such cases coming up.

7 Q Is that to say, then, that the ones that
8 you do recall, you recall as being immaterial or
9 that you just simply do not recall either way what
10 they were?

11 A We have issued enforcement letters to
12 licensees where a deviation exists. Is that what
13 you are asking me?

14 MR. PATON: I am not sure.

15 Off the record.

16 (WHEREUPON, discussion was had
17 off the record.)

18 MR. ZAMARIN: Let's go back on the record.

19 BY MR. ZAMARIN:

20 Q I believe you have indicated that you
21 do not recall whether these deviations resulting
22 from discrepancies between design documents and
23 PSAR documents were, quote, "material" or not.

24 Is that because you simply do not recall

1 whether any of those were either material or
2 immaterial? In other words, that you just do not
3 recall one way or the other what the nature of
4 those deviations were?

5 A Yes.

6 Could I go off the record?

7 Q Sure.

8 (WHEREUPON, discussion was had
9 off the record.)

10 BY MR. ZAMARIN:

11 Q Were any of the deviations that you
12 recall with regard to other licensees of a similar
13 nature to the purported material false statement in
14 the Midland FSAR?

15 A One case that comes to mind was in
16 connection with the DC Cook plant in which the
17 licensee informed the staff that certain components
18 had been electrically qualified for the environment
19 of a accident situation. We learned that that
20 information wasn't so. It was a deviation from
21 a commitment contained in the application. We
22 issued a civil penalty for that.

23 Those are the only two material false
24 statement cases that come to my mind at present in

1 Region 3. There had been others elsewhere in the
2 country.

3 Q Do you know anything about those others
4 elsewhere?

5 A One case that comes to mind is still
6 under litigation as the Nine Mile Point case.

7 Q That does not ring any bell.

8 A This is a case where the licensee informed
9 the Commission that certain action had been taken
10 in response to a NRC order. It's a very recent
11 case. An investigation disclosed that the actions
12 that were certified to have been taken had not
13 been taken.

14 Q Are there any others that come to mind?

15 A I know there have been others, but I
16 can't recall specifically which utilities were
17 involved.

18 Q Was the DC Cook civil penalty a \$5,000
19 civil penalty?

20 A Yes, it was.

21 MR. PATON: Off the record.

22 (WHEREUPON, discussion was had
23 off the record.)

24 MR. ZAMARIN: Why don't we go back on the

1 record?

2 BY MR. ZAMARIN:

3 Q As a continuation, I understand,
4 Mr. Keppler, that you have not finished that last
5 answer that you wanted to clarify a bit.

6 A Let me correct the earlier answer by
7 stating that there was two material false statements
8 in connection with the DC Cook matter, both of
9 which were assessed \$5,000 fines for a total fine
10 of \$10,000.

11 Q I have here what has been marked
12 Exhibit No. 4 as of today's date, a letter dated
13 November 20, 1978, on the letterhead of the
14 Law Offices of Myron Cherry, and I would like to
15 show that to you and ask if that is a copy that
16 you received from Mr. Cherry.

17 (WHEREUPON, said document, having
18 previously been marked CPCo
19 Deposition Exhibit No. 4, for
20 identification, as of 1/6/81,
21 was tendered to the witness.)

22 MR. ZAMARIN: I am also going to give you
23 what has been marked as Exhibits 5 and 6, which
24 is a memo that you wrote apparently to Thornburg

1 with regard to that letter, and then a letter
2 that you wrote to Cherry. I think it is only fair
3 that I give you all of these before I ask you
4 questions about any of them. So, I will do that.

5 (WHEREUPON, said documents,
6 having previously been marked
7 CPCo Deposition Exhibit Nos. 5 and 6,
8 for identification, as of 1/6/81,
9 were tendered to the witness.)

10 BY MR. ZAMARIN:

11 Q I have shown you Exhibit No. 4, which
12 is the November 20, 1978 letter from Myron Cherry
13 to you. Do you recall having received that letter?

14 A Yes, I do.

15 Q I showed you a November 24, 1978 memorandum
16 for Mr. Thornburg from you dated November 24, 1978.
17 Do you recall that as being a copy of a memorandum
18 from you to Thornburg?

19 A Yes.

20 Q I have shown you Exhibit No. 6, which is
21 a December 14, 1978 letter from you to Myron Cherry
22 with enclosures and attachments. Do you recall
23 having sent that letter to Mr. Cherry?

24 A Yes.

1 Q Did you discuss with Mr. Thornburg,
2 to your recollection, your response to Mr. Cherry's
3 letter before you sent it to Mr. Cherry?

4 A Yes. We prepared the response from
5 this end, and we sent it to Washington to be
6 reviewed back there to see whether they had any
7 problems with it.

8 Q Did they?

9 A As I recall, the only concern that was
10 raised was in connection with the statement
11 concerning the charge against Mr. Cook.

12 Q And the statement that you are referring
13 to about the charge to Mr. Cook was Mr. Cherry's
14 statement, and I quote: "I also wish to inform
15 you that my lines of communication have reported
16 to me that the resident inspector currently on
17 the Midland site may not be doing his job and
18 may, in fact, have been co-opted by Midland
19 personnel"? Is that it?

20 A Yes. There should be an attachment
21 to this, our draft letter to Mr. Cherry. So that
22 should be in our file. So, you could compare the
23 two, if you wished.

24 Q Presumably we will have that at the end

1 of the day.

2 A As I recall, the only issue that we
3 were asked to rephrase was the response to
4 Mr. Cherry in connection with the charge on
5 Mr. Cook.

6 Q Do you recall what the nature of that
7 rephrasing was?

8 A No. It was some kind of a legal
9 assistance we got.

10 Q Obviously nothing important then.

11 A I don't recall anything else on that.
12 Our draft was sent there, and it should be in the
13 file.

14 Q To your knowledge, was an investigation
15 conducted with regard to this accusation by
16 Mr. Cherry that Ron Cook wasn't doing his job and
17 had been co-opted by Midland personnel?

18 A An investigation was conducted by the
19 Office of Inspection and Audit.

20 Q Do you know what the results of that
21 investigation were?

22 A The charges could not be substantiated.

23 Q Do you know if any basis whatsoever was
24 found for those charges?

1 A I believe there was no basis found.

2 Q Did that surprise you?

3 A No. But anytime any wrongdoing is
4 alleged against my people, it's a standard practice
5 to get an outside audit done of it.

6 Q In your memo to Mr. Thornburg on
7 Exhibit No. 5 you indicate that you had discussed
8 Mr. Cherry's charges with regard to the resident
9 inspector with Morris Howard, who was the Acting
10 Director of the OIA at that time; is that correct?
11 What was he Acting Director of?

12 A Acting Director in support of
13 investigation and enforcement.

14 Q And that with regard to whether more
15 specific information should be requested from
16 Mr. Cherry, that he said you had discussed the
17 letter with OIA and get back to you. Did he
18 ever get back to you with regard to that, do you
19 recall?

20 A Yes, and it was decided that OIA would
21 conduct an investigation.

22 Q So, you do not know whether any more
23 specific information was requested from Mr. Cherry?

24 A I believe that Mr. Cherry was contacted

1 by OIA people for specific information and he, in
2 turn, was referred to, I believe, to Mrs. Sinclair.

3 Q Do you know what Mrs. Sinclair told him,
4 if anything?

5 A I don't think she was able to give any
6 meaningful charges. As I recall, the report
7 prepared by the Office of Inspector and Auditor
8 concerning the matter, no specific charges were
9 identified.

10 Q In the first paragraph of your December 14,
11 1978 letter to Mr. Cherry, which has been marked
12 as Exhibit No. 6, there is the statement that:

13 "While some deficiencies in the
14 implementation of the quality assurance
15 program have been found during construction
16 since the Cadwelding suspension in 1973,
17 in our judgment these deficiencies were
18 isolated rather than generic in nature,
19 were resolved in a responsible manner,
20 and did not represent a serious breakdown
21 in quality assurance."

22 Did that statement represent a
23 concensus of Region 3 as of December 14, 1978?

24 A Yes. The statement is consistent with

1 the information contained in the February 15
2 memorandum.

3 Q In enclosure number one to Exhibit 6
4 you have some discussion in there with regard to
5 public health and safety being not predicated on
6 error-free construction and that relating to
7 the defense in depth theory of construction of
8 nuclear power plants. Is that, in fact, an
9 NRC position?

10 A Absolutely.

11 Q I take it, then, that it is an NRC
12 position that, although extensive efforts may be
13 made to obtain high quality, that perfection can
14 never be achieved and, in fact, it is realized
15 and accepted that deficiencies will occur and
16 that has led the safety design of reactors to
17 be based upon the defense in depth concept?

18 A Yes.

19 Q Did you or did someone else in Region 3
20 prepare your response to Mr. Cherry's letter?

21 A The staff drafted the response, but I
22 had a lot of personal input into that letter.
23 That letter pretty much is my letter the way it's
24 shaped.

1 Q When you say the staff drafted the
2 response, you mean primarily putting together
3 the information in the enclosures?

4 A Yes, and they also took a cut at the
5 letter. This would have been Mr. Norelius. He
6 would have, with input from the construction staff,
7 drafted a response. But there is a lot of personal
8 input into that letter. I felt it was a very
9 significant letter.

10 Q What is the distinction between an
11 isolated problem or deficiency and a generic
12 problem or deficiency?

13 A The terminology used there was to try
14 to distinguish between a problem in one facet
15 of the construction work versus the total
16 construction work.

17 Q The problem with one facet being isolated
18 and the general being a generic problem?

19 A Yes, or at least applicable to many
20 areas.

21 Q What is the distinction between a
22 serious breakdown in quality assurance and a
23 mere breakdown in quality assurance? I am not sure
24 I am using your words there. So, you may want to

your letter again. I do not want
They may be your words. I don't
why don't you take a look.
are you referring to here?
is my problem. I have it in my
do not see it offhand in the letter.
following the statement that "Since
suspension in 1973, the deficiencies
rather than generic in nature and
present a serious breakdown in quality
I think I had in mind you had not used
those. Those were my words.
What is the distinction here between
a breakdown in quality assurance and something
a serious breakdown, which I referred
a breakdown in quality assurance?
I think the distinction I had in mind,
they may have gotten through one or more
of the quality chain, but they were still
caught by the licensee.
If they had not been caught, however, at
any of the layers or chain by the licensee,
could there have been a serious breakdown?

1 A I would have characterized that as more
2 serious, yes.

3 Q As more serious or as serious?

4 A As serious.

5 Q What is a breakdown in a quality control
6 program as opposed to a breakdown in quality
7 assurance? Is there any distinction?

8 A Well, I think sometimes we are not as
9 careful in the nomenclature as we could be. But,
10 basically, quality control is the audit aspects of
11 the program; whereas, I view quality assurance
12 as the total program, including the audit
13 activities.

14 Q Do you know whether there was ever any
15 kind of a formal report with regard to the OIA
16 investigation of the charges with respect to the
17 resident inspector made by Myron Cherry in 1978?

18 A A report was prepared, yes.

19 Q Was that strictly an internal report?

20 A Yes, it was. It was not made public.

21 Q Was a copy of that report ever made
22 available to Mr. Cherry, to your knowledge?

23 A I don't believe it was.

24 Q I have here what has been marked

1 as Exhibit No. 7 for identification as of today's
2 date. It is a Midland construction status report
3 as of 10/1/79. And I would like to ask you, to
4 your knowledge, was this a final report as opposed
5 to a draft? I note on the front page it says,
6 "The attached report was finalized."

7 It goes on to state, however, "If you
8 still feel adjustments are necessary, please
9 contact me," me being Gaston Fiorelli. Do you
10 know whether that, in fact, was changed in any
11 way or whether that is a final report?

12 (WHEREUPON, said document, having
13 previously been marked CPCo
14 Deposition Exhibit No. 7, for
15 identification, as of 1/6/81,
16 was tendered to the witness.)

17 MR. ZAMARIN: Is there a question pending?

18 (WHEREUPON, the record was read
19 by the reporter as requested.)

20 BY THE WITNESS:

21 A I believe what this represents is
22 Mr. Fiorelli's summary of his meeting with his
23 inspection staff on the Midland project, and it
24 was to be used as a basis for another meeting

1 with the Washington people concerning the Midland
2 project and our assessment of it.

3 Whether or not there was a change in
4 this report after he put it out that way, I don't
5 know, but I am not aware of any.

6 BY MR. ZAMARIN:

7 Q Did you have to approve this report?

8 A Not that particular one. I think that
9 was done for the purpose of putting everything into
10 writing and giving his staff an opportunity to
11 disagree with any of it if they were so inclined.
12 Again, I don't believe there were any substantive
13 issues as a result of that.

14 Q By your statement you are not aware of
15 there being any substantive issues, by that you
16 mean you are not aware that the staff agreed in
17 any --

18 A There were any substantive disagreements
19 with that, yes.

20 Q On Page 13 of this Exhibit 7, this
21 October 18, 1979 report as of October 1, 1979,
22 it states under "Summary and Conclusions":

23 "Following each of these problem
24 periods, the licensee has taken action

1 to correct the problems and to upgrade
2 his QA program and QA/QC staff. The
3 most prominent action has been an overview
4 program which has been steadily expanded
5 to cover safety-related activities."

6 Do you concur with that conclusion?

7 A Yes.

8 Q To your knowledge, is the overview
9 program that had been steadily expanded to
10 cover safety-related activities still in effect?

11 A Yes.

12 Q On the last page and still under
13 "Summary and Conclusions" is the statement that
14 "The Region 3 inspectors believe the continuation
15 of certain items will provide adequate assurance
16 that construction will be performed in
17 accordance with requirements and that any
18 significant errors and deficiencies will be
19 identified and corrected."

20 One of those items is ceasing to permit
21 work to continue when quality-related problems
22 are identified with construction activities. Would
23 that item be subject to what we discussed earlier,
24 in that if there were a situation where these

1 items were being caught and where a management
2 decision was such that it was more prudent to
3 simply continue with the work, finding these
4 items and correcting them before they are covered
5 up and go along, would that be tantamount to not
6 satisfying that item of ceasing to permit work
7 to continue? It is number four.

8 A The intent of that statement was to
9 focus on the concern that had been raised that
10 while Consumers had identified the significant
11 problems of concern that had been flagged in here,
12 that the timeliness of the corrective action or
13 permanent corrective action was not as fast as
14 we thought it should be. We continued to let
15 some of the same mistakes recur before finally
16 they got a hold of it and took a permanent
17 corrective action. I think that was the tone
18 in which that was given.

19 Now, the example that you gave, as I
20 explained earlier, our position was it was not
21 meant to preclude the licensee from picking his
22 time when to correct the problem as long as the
23 untimely correction did not preclude accessibility
24 to the work or as long as it did not result in new

1 work being done poorly.

2 This would have been amplified, I would
3 say, had we known about the Zack problem at that
4 time. I would have probably put a much stronger
5 position on this type of item. That is exactly
6 what we felt in the Zack case the Consumers should
7 have stopped that work long before.

8 Q You added something that I did not recall
9 in your earlier response to the question when I
10 gave you the example about the welds, for example,
11 if it was management's position or conclusion
12 that 20 percent, for example, of welds would
13 be defective, but that all of those defective
14 welds would be caught and could be repaired
15 properly and that that was, as far as scheduling and
16 cost without compromising quality, a more
17 appropriate way to provide that. I took you to
18 say that that would be acceptable in your view,
19 so long as, in fact, there was still access to
20 those items and that that could be corrected.

21 Now you have added that poor work
22 would not be repeated. In my example, poor work
23 would be repeated to the tune of 20 percent of
24 the welds that we would know would be defective,

1 but that they would be corrected and that it would,
2 as a management decision, would be chosen to
3 go ahead without stopping the work knowing that
4 you would have to go back and catch these and
5 correct them, knowing that you would catch them
6 and correct them all.

7 A I then misunderstood your earlier
8 statement, because I think if you go back and
9 look at my answer, I said the same thing before.

10 Q You did not add to the end.

11 A I did.

12 Q In a situation where you had welds and
13 management knew that without stopping the work
14 and revising certain procedures that about 20
15 percent of the welds were likely to continue to
16 be bad, that they had an adequate program for
17 catching those and for correcting those and
18 that on the basis of schedule and cost, that it
19 was more prudent to proceed that way rather than
20 stopping the work and that, as the bottom line,
21 there would still be all good welds when they
22 were finished. You would consider that to be an
23 unacceptable method of procedure?

24 A I would be opposed to it, yes.

1 Q Why?

2 A Because I think any time you have to
3 make repairs, you are moving in the direction that
4 is undesirable.

5 Q Why?

6 A I think a repaired weld is not as good
7 as a new weld made for the first time. I think
8 any time you make a repair, I think it's -- you
9 run the risk of further bad welds being made.

10 I guess I am of the school that I think
11 that it's bad to -- it's not in the right direction
12 to knowingly install bad work.

13 Q Would your position change somewhat on
14 that if the corrected welds still had to meet some
15 acceptance criteria?

16 A I am assuming they do have to meet an
17 acceptance criteria.

18 Q So, you will still have on the welds,
19 if you go back and follow what I proposed as
20 perhaps an acceptable course of action, which
21 you disagree with?

22 A We would resolve this and get it
23 resolved at a higher level. My position would be
24 not to let you put bad work in that plant knowingly.

1 Q Even though you could be assured it
2 would be corrected, and it would be good work
3 and meet whatever criteria were committed?

4 A Now you get down to specifics, and I
5 guess that you would have to get down to a
6 specific example and talk it through. I guess I
7 can't say categorically I wouldn't consider the
8 matter, but it just does not sound like good
9 business to go that way from a regulator's
10 point of view. It would have work that is known
11 to be defective put into safety-related systems.
12 I am just opposed to it.

13 What I thought you had asked before
14 was that you found 20 percent of the welds
15 defective of the work done up to a point in time
16 and that you wanted to wait and correct that 20
17 percent somewhere down the road, but still continue
18 on with the project having corrected the problem
19 that got you those faulty welds. That was the
20 understanding I was --

21 Q That was not in my question and I do not
22 think your answer indicated that understanding.
23 That is why I wanted to clarify it now.

24 A I think you will find, if you go back, it

1 does.

2 Q We did not need the clarification,
3 but now it is clear.

4 On Page 12 of Exhibit 7, in item seven
5 on Page 12 it refers to a May 8 through 11, 1979
6 Midland construction QA inspection covering, among
7 other things, site auditing and surveillance
8 activities. What does that refer to, site
9 auditing and surveillance activities? Do you know
10 offhand, as you sit here, without seeing that
11 inspection report?

12 A No. The Midland quality assurance and
13 inspection is an inspection that is called for
14 by our inspection procedures to be done when the
15 project is basically 50 percent along.

16 Q I am curious as to when it says "covering
17 purchase control and inspection of received
18 materials design control and site auditing and
19 surveillance activities." I am wondering whether
20 site auditing and surveillance activities means
21 anything to you without referring to the inspection
22 report?

23 A It doesn't ring any special bell with
24 me.

(WHEREUPON, Mr. Alan S. Farnell
entered the deposition proceedings.)

1
2
3 BY MR. ZAMARIN:

4 Q It indicates in the final line of
5 that, with reference to the May 1979 mid
6 construction that "While some items will require
7 resolution, it was concluded the program was
8 adequate."

9 Did you concur in that conclusion?

10 A I accepted the inspection as confirming.
11 I did not get involved in the details of that
12 inspection. From what I saw I had no basis to
13 question that decision.

14 Q What are special findings as opposed,
15 for example, to inspection findings or an
16 inspection report?

17 A The terminology is used when a
18 special investigation is done.

19 Q I notice in the March 15, 1979, I guess
20 that is a preliminary investigation report, that
21 the cooling pond dike is not listed as a category
22 one structure. In your opinion, was the cooling
23 pond dike in March of 1979 a category one structure?

24 A I don't think I had an opinion at that

1 time.

2 Q Have you got one as you sit here now?

3 A No, not really.

4 Q You say not really. I do not know whether
5 you --

6 A I really -- I am sorry.

7 Q You do not?

8 A I don't have an opinion.

9 Q What is the significance of investigation
10 findings? Are they something that have to be
11 accepted or rejected by anyone? Do they become
12 positions of the region or just really what are
13 they?

14 A They are just the findings from the
15 investigation as reported.

16 Q They are some facts or some evidence
17 upon which you would take action or draw
18 conclusions along with other input?

19 A Yes.

20 Could we go back to that cooling pond
21 issue again?

22 Q Sure.

23 A I didn't give you a very complete answer
24 on that. When you asked me my view today as to

1 what I think of the cooling pond, whether it should
2 be a class one structure or not, it would have
3 been a better answer to state that if the cooling
4 pond serves a safety function in the plant, then
5 I think it should be a class one structure. If
6 it doesn't, then it should not be.

7 Q Do you have an opinion as to whether
8 it serves a safety function or not?

9 A I understand that portions of it, and
10 that is -- I don't really know beyond that.

11 Q That is just based on what you have
12 heard?

13 A That is just on hearsay.

14 Q What do you mean when you say a safety
15 function?

16 A That it performs a function to either
17 prevent or mitigate an accident.

18 THE WITNESS: Could we take a short break
19 so I can check to make sure there are no problems
20 before people go home?

21 MR. ZAMARIN: Sure.

22 (WHEREUPON, a recess was had.)

23 MR. ZAMARIN: I have what has been marked
24 as Exhibit No. 14 as of October 8, 1980, the

1 Hood deposition. This is a June 13, 1979 memorandum
2 for Dudley Thompson from Harold Thornburg.

3 I would like to show that to you and
4 ask you if you recall ever having received a copy
5 of that or having seen that before.

6 (WHEREUPON, the document was
7 tendered to the witness.)

8 BY THE WITNESS:

9 A I remember seeing it.

10 BY MR. ZAMARIN:

11 Q I am sorry. I did not hear your answer.

12 A Yes, I recall seeing that.

13 Q There is an April 3rd, 1979 enforcement
14 package referred to therein, and I would like to
15 show you, in fact, not only do I would like to
16 show you, I am going to show you Consumers Exhibit 19
17 as of October 8, 1980, from the Hood deposition.

18 Can you tell me if that is the April 3,
19 1979 enforcement package on Midland that is
20 referred to in the subject heading of this
21 Exhibit 14 from the Hood deposition?

22 (WHEREUPON, the document was
23 tendered to the witness.)
24

1 BY THE WITNESS:

2 A Yes, yes, it is.

3 BY MR. ZAMARIN:

4 Q On the first page of the attachment to
5 Exhibit 14 of 10/8/80, and that is the June 13,
6 1979 memo, in item number nine it states that
7 "All statements judged to be material false
8 statements must be examined to see in what 'state
9 of mind' or in what circumstances the licensee
10 made the statement. This is relevant to the
11 question of 'civil penalty' versus 'second chance.'"

12 A I didn't write that.

13 Q I know you didn't. Do you know what
14 they are referring to as the question of civil
15 penalty versus second chance?

16 A No.

17 Q Have you ever heard of anything like
18 that before, other than what you may have read
19 here?

20 A I don't know what is being referred to
21 there. Our position has been that if there is
22 clearly a material false statement, then a civil
23 penalty will be issued.

24 Q You do not know anything about the

1 second chance theory that depends on state of
2 mind?

3 A I don't know what he is referring to.

4 Q Do you know if it was Mr. Shewmaker that
5 prepared these comments, one of which was the
6 statement that I just read?

7 A I don't know.

8 Q On the front down here it says, "Contact:"
9 It has R. A. Shewmaker.

10 What is the significance of having him
11 listed here after the word contact?

12 A That he can answer my questions related
13 to it. So, I would expect that he did write it
14 then.

15 Q Do you recall having any discussion
16 with anyone about this question of civil penalty
17 versus second chance?

18 A None that I can recall.

19 Q Do you recall that having been discussed
20 at any of these meetings that were held among
21 Region 3 and headquarters and perhaps NRR?

22 A No. In fact, it was my understanding
23 that the likely path that we would follow would
24 be if matters were concluded to be material false

1 statements, that we would issue a civil penalty
2 for them.

3 Q I note that on Consumers Exhibit No. 11
4 as of October 8, 1980, the Hood deposition, it
5 refers to your April 3 memorandum and a meeting
6 that was held on August 1, 1980, to provide NRR
7 comments. On enclosure one it lists the attendees
8 and it does not look to me as though Region 3 was
9 represented. It was August 1, 1979, that meeting.
10 It is reported here by Darl Hood, however, that
11 OELD defined materiality of FSAR statements.

12 To your knowledge, is there someplace
13 within NRC regulations or guidelines, a definition
14 of materiality to which one could refer without
15 having to seek out counsel?

16 A My understanding of the use of the
17 word "materiality" was tied to whether or not the
18 staff considered that matter in determining or
19 in arriving at a position with respect to the
20 project.

21 I don't know that there is any written
22 definition of material false statement anywhere.

23 Q Do you know if that is the same material
24 false statement definition that was used with

1 regard to the DC Cook plant? And when you say
2 that, let me tell you what Darl Hood reports the
3 OELD's definition was, and I will quote the entire
4 paragraph:

5 "OELD defined materiality of
6 FSAR statements. This definition served
7 as a base for judgments in the meeting."

8 That is referring to the August 1, 1979
9 meeting.

10 "A statement was determined to be
11 material if, notwithstanding the fact
12 that it was detected by the I & E
13 investigation, it would or could have
14 an influence upon a safety conclusion
15 of the NRR staff (i.e., if it could
16 have resulted in an improper finding
17 or less probing analysis by the staff),
18 the technical situation and willfulness
19 of any such false statement is relevant
20 to selection of the specific enforcement
21 action deemed to be appropriate."

22 Do you know if that is the same
23 definition that was used as guidance in
24 DC Cook?

1 A I think it embraces the same principles,
2 yes.

3 Q You do not know if it was precisely the
4 same, though?

5 A I don't recall ever seeing a stated
6 definition. But those are the items that were
7 judged to be important, yes.

8 Q When was the DC Cook civil penalty, do
9 you recall?

10 A No, but I can check it quickly, if
11 you would like.

12 Q Maybe we can find that out when we
13 come back on the 16th.

14 A I would say of the order of a couple
15 of years ago, but I will get a precise year for
16 you.

17 THE WITNESS: Do you want to give him a
18 copy of the package?

19 MR. PATON: Off the record.

20 (WHEREUPON, discussion was
21 had off the record.)

22 BY MR. ZAMARIN:

23 Q I have here what was marked as
24 Exhibit No. 16 as of October 8, 1980, the Hood

1 deposition. And it is an August 21, 1979 memo
2 to file from Darl Hood. The subject, "Internal
3 Meeting on Status of Midland Soils," and
4 enclosure two, which is a list of attendees,
5 which, by the way, does not show that you had
6 attended.

7 I would like you to take a look,
8 however, at this exhibit and tell me if you recall
9 ever having seen that before.

10 (WHEREUPON, the document was
11 tendered to the witness.)

12 BY THE WITNESS:

13 A I don't recall seeing this. I think
14 one way of confirming whether or not I saw it
15 is whether or not it's in our files. We are
16 not shown as a recipient of a copy of this, the
17 region isn't. So, there is a question in my mind
18 whether we even received a copy of it. But if
19 we had, there would be a route stamp on the top
20 of it and it would show, if I had seen it, I
21 would have initialled off on it.

22 BY MR. ZAMARIN:

23 Q On the first page, the beginning of
24 the second full paragraph of this Exhibit 16 from

1 the Hood deposition dated 10/8/80, it says:

2 "Mr. Knight reported that the
3 principal technical solutions proposed
4 by the applicant for the major structures
5 appears to be basically sound, such that
6 properly implemented, they can be
7 expected to provide for adequate structural
8 foundation support. He noted, however,
9 that certain details of the applicant's
10 reply were not sufficient and further
11 information will be required from the
12 applicant."

13 Do you know if there has been any change
14 in NRR from that position as I just read it?

15 A I don't know. I have never talked
16 to Mr. Knight on this matter.

17 Q Have you talked to anybody or read
18 anything that would indicate or suggest to you
19 that the position has changed from what I just
20 read?

21 A No, I wasn't even aware of that
22 statement.

23 Q This document goes on to state in
24 the next paragraph that:

1 "Messrs. Haass and Gilray of
2 QAB noted that some instances of poor
3 performance in QA areas revealed in the
4 I & E Investigation Report indicates that
5 additional QA measures beyond those
6 typically imposed by the NRC may be
7 warranted."

8 Do you have any idea what he is
9 talking about when he refers to "additional QA
10 measures beyond those typically imposed may be
11 warranted"?

12 A I don't specifically, but I am sure
13 they would have been a subject of discussion
14 between my staff and the NRR people.

15 Q What types of QA measures beyond those
16 typically imposed by the NRC are there in broad
17 terms?

18 A You are asking me to speculate, and I
19 don't know what was the basis of that discussion.

20 Q I am really not talking about here.
21 Are there different levels of QA measures?

22 A I think you can talk about additional
23 layers of reviews as one thing that would come
24 to mind. Instead of sampling X percent of the work,

1 you do Y percent of the work or you do it more
2 frequently. Those are just some thoughts.

3 Q This document is dated October 24, 1979,
4 but it's marked as Exhibit 16 as of 10/8/80. It
5 states that:

6 "QAB's review is in its final
7 stages of documentation and should be
8 completed before the end of August."

9 To your knowledge, has NRR QAB completed
10 a review of the Midland QA with regard to soil
11 settlement?

12 MR. PATON: You mean at that time?

13 BY MR. ZAMARIN:

14 Q Have they now? As of today, have they
15 completed a review?

16 A I don't know personally.

17 Q Do you know whether you have received
18 any reports from NRR with regard to QA review of
19 Midland soil settlement?

20 A My staff may have. None has crossed
21 my desk.

22 Q In that little room downstairs where
23 you have all those documents and Xerox machines,
24 would everything that comes into Region 3 with

1 regard to Midland be down there? Is a copy kept
2 there?

3 A There should be.

4 Let me go off the record here for a
5 moment.

6 (WHEREUPON, discussion was had
7 off the record.)

8 BY THE WITNESS:

9 A In the past, our routing practices for
10 mail resulted in the mail going first to the
11 inspectors and last to the files. It is possible
12 that there may be some documents -- docketed
13 documents which could be up with inspectors rather
14 than in the files. And I will have my inspectors
15 check and get back to you if there are any
16 documents that were missing at the time you
17 reviewed the files.

18 MR. ZAMARIN: Thank you.

19 We have had a request to terminate at
20 5:30.

21 MR. PATON: By popular demand.

22 MR. ZAMARIN: Yes, very popular. It is now
23 5:33 and 57 seconds, and we can terminate.

24 What we have is a tentative date of

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)

4 I, CORINNE T. GENNA, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of
7 said state, do hereby certify:

8 That previous to the commencement of
9 the examination of the witness, JAMES GEORGE
10 KEPPLER, he was first duly sworn to testify the
11 whole truth concerning the matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction,
15 and constitutes a true record of the testimony
16 given and the proceedings had;

17 That the said deposition was taken before
18 me at the time and place specified;

19 That the said deposition was adjourned
20 to January 16, 1981;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto, nor interested directly or indirectly
in the outcome of this action.

1 January 16 at 9 a.m. for the resumption of the
2 deposition, and that depends on whether Mr. Bradley
3 Jones can be here or not, I guess.

4 MR. PATON: Right. We will attempt to meet
5 that schedule.

6 (WHEREUPON, the deposition was
7 adjourned until January 16, 1981,
8 at 9:00 a.m.)
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