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ORIGINAL  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ORIGINAL

In the Matter of:  
TEXAS UTILITIES GENERATING COMPANY  
(Comanche Peak Steam Electric  
Station, Units 1 & 2)

Location: Bethesda, Maryland Pages: 13,679-13,810

Date: Monday, July 2, 1984

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

In the matter of:

TEXAS UTILITIES GENERATING  
COMPANY, et al.

(Comanche Peak Steam Electric  
Station, Units 1 and 2)

Docket Nos. 50-445  
50-446

Conference Call  
4350 East West Highway  
Bethesda, Maryland

Monday, July 2, 1984

Hearing in the above-entitled matter reconvened  
at 3:00 p.m., pursuant to adjournment.

BEFORE:

JUDGE PETER BLOCH, ESQ.  
Chairman, Atomic Safety & Licensing Board  
U.S. Regulatory Commission  
Washington, D.C.

APPEARANCES:

On behalf of the Applicants:

BRUCE DOWNEY, ESQUIRE  
LEONARD BELTER, ESQUIRE

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On behalf of CASE:  
ANTHONY ROISMAN, ESQUIRE  
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Suite 611  
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STUART TREBY, ESQUIRE  
GEARY S. MIZUNO, ESQUIRE  
IPPOLITO, THOMAS, Project Director of NRC

On behalf of the State of Texas:  
RENEA HICKS

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P R O C E E D I N G S

1  
2 JUDGE BLOCH: Good morning, I'm Peter Bloch  
3 Chairman of the licensing board for Comanche Peak  
4 Operating License case 50-445-2 and 50-446-2, the case  
5 dealing with intimidation issues. This morning's con-  
6 ference is a procedural conference held in that case.  
7 Also, briefly in this conference will be a discussion  
8 of scheduling related to the written filings motions that  
9 were filed in the other companion case.

10 The first matter for discussion this morning  
11 is the OI comments on whether or not the GAP affidavit  
12 ought to be made available through discovery. The re-  
13 sponse of OI on Friday was dissappointing to the Board.  
14 The response was that OI did not know which affidavits  
15 were being referred to. We think that the office of  
16 investigation could have been sufficiently diligent to  
17 have telephoned and found out which affidavits that it  
18 referred to.

19 This morning they now have the information,  
20 which affidavits are being referred to and they ask to  
21 have until noon on Thursday, which the Chairman exceeded.  
22 Will this cause any serious problems in scheduling of the  
23 case? I understand there are four affidavits in question.

24 MR. DOWNEY: Your honor, this is Bruce Downey.  
25 That will indeed cause serious problems. We have been

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1 trying to ascertain the substance of the allegations of  
2 these four witnesses now for some considerable period  
3 of time. I know, from looking at the DOL complaint of  
4 one of these witnesses that she makes 14 specific alle-  
5 gations, seven of which we have been able to flush out  
6 to investigate. That process alone, required two people  
7 one week. There are seven remaining allegations which  
8 we have no substinate knowledge other than the bare bones  
9 of the DOL compalint. Anticipating the same amount of  
10 time to get to the bottom of those allegations, we are  
11 facing the need to spend, two people the bulk of the week  
12 to ascertain what she's trying to say. At the same time,  
13 Mr. Roisman anticipates deposing our witnesses with is-  
14 sues relating to these four complaining witnesses on this  
15 thing on Monday the 9th. If they file on Thursday, and  
16 we have some time in one day to respond, the court would  
17 be ruling on that motion. It would be left to ascertain  
18 on the very day that those depositions are scheduled to  
19 start.

20 JUDGE BLOCH: Any objections to moving up that  
21 time to close of business tomorrow, Tuesday? There being  
22 not objections, Mr. Treby would you please communicate  
23 that change to OI. Tell them that it is necessary for  
24 the efficient progress of this case.

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1 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman.

2 JUDGE BLOCH: Yes, Mr. Roisman.

3 MR. ROISMAN: I understood your question to be  
4 to Mr. Downey as whether he had any objections to moving  
5 it up.

6 JUDGE BLOCH: That was just general.

7 MR. ROISMAN: Alright. I would rather you  
8 would move it up to close of business today. I think  
9 Mr. Downey's point is well taken. I don't agree with him  
10 about how long he needs to take to get his answers, but  
11 it seems to be unreasonable that OI needs to spend any  
12 more than the rest of the day to figure out its position.

13 MS. GUARDE: This is Billie Guarde. I think it  
14 would be appropriate if you would bring the Judge up to  
15 date about the debate in the Department of Labor proceed-  
16 ings in the same matters.

17 MR. DOWNEY: I think it might be feasible to do  
18 that, because I think it sheds some light on what is hap-  
19 pening in this proceeding.

20 MS. GUARDE: The results supplemented.

21 MR. DOWNEY: Your honor, for your information,  
22 in the DOL proceeding conditions and actions initiated by  
23 three of these four witnesses.

24 JUDGE BLOCH: Hold it a second please.

25 (Off the record discussion.)

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1 MR. DOWNEY: The ground root that responded in  
2 those DOL courses, and in the course of preparing for  
3 trial ground root noticed the depositions of all three  
4 compalining witnesses. At the deposition of Ms. Hatley,  
5 the only one that progressed sufficiently to address this  
6 issue. She declined to answer any question about the  
7 seven allegations that are subject to the OI investiga-  
8 tion, on instruction from counsel. The basis for her  
9 refusal was the preference of OI that that information  
10 not be disclosed. As I understand it, she did not assert  
11 a privilege objection. She had no privelege to assert,  
12 simply that she felt that she should exceed to the re-  
13 quest of OI. Judge Halpren in that case ordered all the  
14 parties to file written motion to compel. He gave OI and  
15 the Department of Justice an opportunity to comment after  
16 some delay, they decided not to comment.

17 So far as I know, there has been no ruling on  
18 the motion to compel.

19 JUDGE BLOCH: Basically, the issue that is  
20 involved, really, whether or not they want to keep pri-  
21 vate testimony confidential has in one way already been  
22 raised by them, and they declined to comment. Is that  
23 a fair?

24 MS. GUARDE: Let me supplement that a little  
25 bit sir. This is Billie Guarde. There was a conference

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1 call, which you probably don't know about, on Saturday  
2 morning between the parties in the DOL proceeding. Judge  
3 Bloch, I think that it is important for you to know that  
4 the three witnesses that we are talking about, that you  
5 stated, are the same witnesses that we are talking about  
6 in this proceeding. The same documents have been under  
7 state with..

8 JUDGE BLOCH: Does OI ever give any reasons?

9 MR. DOWNEY: Not to me your honor.

10 MS. GUARDE: First, they said that they in-  
11 structed the witness not to disclose that the last round  
12 of conference calls on the DOL proceeding, they chose  
13 to use the term express preference as what they are say-  
14 ing why the document shouldn't be given up. They are  
15 going to, as of Saturday, they are going to file papers.

16 MR. DOWNEY: I stand corrected.

17 MS. GUARDE: Right. That was a Saturday change.

18 JUDGE BLOCH: What date are they going to file  
19 those papers by?

20 MS. GUARDE: Well, they were originally due  
21 today. But, by agreement of the parties it is going to  
22 be later on this week, I think Wednesday. But, OI has  
23 office of general counsel involved. They hav the Depart-  
24 ment of Justic involved, and what the latest version on  
25 that floor is that they are going to ask the Department

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1 of Labor Judge, unless this has changed since Saturday  
2 morning, for a three-week freeze on the matter. That  
3 would give them time to complete the sensitive areas of  
4 their investigation that they think releases will com-  
5 promise. Three weeks, of course, for us will be that  
6 they are over.

7 JUDGE BLOCH: Yes. It is quite clear that we  
8 need detail showing a cause by OI. Any bland statement  
9 by them that these are investigatory matters is just not  
10 going to be enough. We need specifics of why this pro-  
11 ceeding should be held up and the witnesses that are  
12 needed in this proceeding should not be heard.

13 MR. TREBY: This is Mr. Treby. I want if I  
14 might interrupt at this point. I guess I feel real un-  
15 comfortable that with talking this much about OI, without  
16 OI being here. I guess, I have indicated earlier at a  
17 conference call, I am not able to represent their posi-  
18 tion. I don't represent OI, but if we are going to get  
19 much further into matters concerning OI, I think that it  
20 would be appropriate to either get OI on the phone it-  
21 self, or perhaps get someone from the Office of General  
22 Counsel.

23 JUDGE BLOCH: What I would like to do is to  
24 order that they file by close of business today subject  
25 to good cause for late filing. I think the parties will

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1 not object if they were to call the chairman and I make  
2 a judgement as to whether they have good cause. Am I  
3 incorrect in that belief?

4 MR. ROISMAN: This is Mr. Roisman. You are not  
5 incorrect from our perspective, Mr. Chairman.

6 JUDGE BLOCH: Mr. Downey?

7 MR. DOWNEY: Nor from ours, your honor, but I  
8 must emphasize that we, whenever this information becomes  
9 available to us, we must insist on having adequate time  
10 to prepare our witnesses with respect to these allega-  
11 tions.

12 JUDGE BLOCH: I got that point. That is why  
13 I want them answered by today, and I don't intend a  
14 lengthy delay. In fact, I would like to take at this  
15 point a three minute recess so that I may call them im-  
16 mediately and let them know of the change in schedule.

17 (Brief Recess.)

18 JUDGE BLOCH: I just spoke with Ben Ward at OI,  
19 and explained the urgency of a prompt answer in this case  
20 and explained that OI will have until this evening, and  
21 if there are solid reasons why they must have longer,  
22 they must call by this evening to inform me what the  
23 problem is. Lets continue into the next matter, which I  
24 understand from Mr. Downey, who requested this call is  
25 the item of who shall pay for the transcripts for the

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1 depositions.

2 MR. DOWNEY: Yes your honor. This is Bruce  
3 Downey. I think all of the agenda items that I suggested  
4 for this call interrelate to some substantial extent.  
5 But first.

6 JUDGE BLOCH: Maybe you would like to address  
7 them all together then, and that may save us time on the  
8 argument.

9 MR. DOWNEY: I would. For the remainder of  
10 the parties on the call the items that I have asked to  
11 address are as follows.

12 JUDGE BLOCH: The other parties know, from con-  
13 versations with me. But, you may state them for the  
14 record.

15 MR. DOWNEY: Record. The first itme is how  
16 will transcripts of the depositions be taken, to be pre-  
17 pared, by whom will they be prepared, and who will pay  
18 for them. The second item is our view that the responses  
19 to our data request asking for identification of witnes-  
20 ses and issues to be covered in these depositions is  
21 inadequate. Item three is what would need to be inade-  
22 quate staffing that CASE has proposed for the week of  
23 July 30th which we will present our rebuttal evidence.  
24 The fourth item which is not true in our thinking, be-  
25 cause we do not have a final proposed schedule of

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1 witnesses, but the order in which certain depositions are  
2 to be taken. The way that I see that these issues inter-  
3 relate is this. We, at the request of Mr. Roisman, have  
4 embarked upon in the order of court, embarked upon for  
5 addressing this issue that requires extraordinary effort  
6 by all concerned in a very short period of time. We are  
7 taken with the assumption that all of the parties will be  
8 able to respond to the challenges of that schedule, and  
9 the parties will be able to complete in total the pre-  
10 sentation of this case, or at least substantially com-  
11 plete the presentation of this issue through the deposi-  
12 tion contest, and the limited amount of steering time  
13 will be required to put this issue to bed.

14 JUDGE BLOCH: Mr. Downey, under the circumstan-  
15 ces, would you think it reasonable for the board to con-  
16 sider this to be depositions in lieu of hearing, and to  
17 therefore consider that the board might legitimately pick  
18 up the expenses?

19 MR. DOWNEY: Tentatively, I don't your honor.  
20 I will address that point. I think that, in fact, what  
21 we have here is in essence, one-hundred forty discovery  
22 depositions. I think that the inability of CASE to  
23 identify with specificity the issues to which these wit-  
24 nesses will testify indicates that they don't know their  
25 case. They intend to find out about their case in this

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1 extraordinary number of depositions taken in very short  
2 period of time, and from that 20,000 pages of record  
3 that will be created, they hope to call a half a dozen  
4 or ten instances which they will hang their hat on. In  
5 fact, these depositions are discovery, with the collater-  
6 ral consequence that some part of them will be received  
7 in evidence and will become relevant in the issues before  
8 the board. Let me address the payment of the transcript  
9 and bring the court up to date with discussion to the  
10 parties. I would urge Mr. Roisman and Mr. Treby to  
11 correct me if I mistake data from our negotiations on po-  
12 sition. After the general parameters of the deposition  
13 process were worked out, I contacted the supporting firm  
14 of which I have had some dealings in, in Fort Worth, ar-  
15 ranged for that firm to make available in Dallas, rooms  
16 at which depositions could be taken, arrange for a suf-  
17 ficient number of court reporters to be present, suffi-  
18 cient amount of computer time to be devoted to this pro-  
19 cess, so that daily transcripts could be prepared. I  
20 negotiated a deal on the cost which is basically, \$9.25  
21 a page for all the copies we want to make.

22 The normal rate of the firm for daily trans-  
23 cript, \$8.00 for the original, \$1.25 for copy, assuming  
24 that each of the three parties claimed a copy, that was  
25 \$3.75 plus the \$9.00 would be \$12.75. They have agreed

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1 to do this work for \$9.25 and permit the parties to make  
2 as many copies as they desire. I propose that the par-  
3 ties share equally the cost of these depositions which  
4 would amount to some \$3.10, or \$3.08 a page. As I under-  
5 stand it, the Government has agreed, the staff has agreed  
6 to pay their share of this cost. This was our proposal,  
7 quite obviously, we agreed to pay out. Mr. Roisman  
8 responded on Friday, or perhaps Thursday afternoon, we  
9 have had a number of conversations. I can't pinpoint  
10 which one that was in reference to the issue, has inform-  
11 ed us that he simply doesn't have the financial resources  
12 to make this agreement. I would urge that it is his  
13 obligation to make this payment, and that he be ordered  
14 to do so.

15 I say that with confidence in the belief that  
16 in fact, it is his obligation to pay the full \$9.25.  
17 That is, he is the one who proposed the schedule who has  
18 notice to these depositions, and in the course of any  
19 litigation, the person to undertake that kind of task  
20 are obliged to come forth for the transcript. I would  
21 point out that in my judgement, daily transcripts are  
22 essential. They are essential for at least two purposes.  
23 One for briefing this case.

24 JUDGE BLOCH: I understand that. Mr. Downey,  
25 could I ask you a different question. If Mr. Roisman

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1 chose not to conduct any depositions, but to notice the  
2 same people for hearings, he just asked them to come to  
3 hearings, and he took his chance what he has got at the  
4 hearing, wouldn't he be in about the same spot as he is  
5 here in conducting what we have now called evidentiary  
6 depositions?

7 MR. DOWNEY: I think now, your honor. I'll say  
8 why. I don't believe Mr. Roisman will pay the grip of  
9 bringing forward the very large number of witnesses.  
10 Only a few of those have something relevant to say. On  
11 the contrary, I believe that they would then prepare  
12 their case with only those few witnesses who may have  
13 something to say.

14 JUDGE BLOCH: They are risking that. They will  
15 be on the record as an evidentiary deposition and you're  
16 going to be able to put them all in if the witnesses  
17 meant nothing.

18 MR. DOWNEY: But, your honor. What Mr. Roisman  
19 is asking, Court to Order, but to sanction the discovery  
20 evidence financed by us, in the hope that he can find a  
21 limited number of people who can come forth with something  
22 relevant to say. I don't believe the board would, I  
23 believe the board would shortly terminate testimony of  
24 witnesses who have nothing to say. Rather, in this  
25 process we are going to have depositions conducted by

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1 twenty some odd lawyers, all of whom by necessity aren't  
2 familiar with the issues of the case, and the ability to  
3 cut this off and to limit the transcript, limit the  
4 testimony to those matters that are relevant, it is going  
5 to be impossible. Now, I firmly believe, and my client  
6 has a very strong position that it should not be called  
7 to finance this effort.

8 JUDGE BLOCH: Yes. But, that wasn't the ques-  
9 tion that I asked you. I asked why the board shouldn't  
10 consider this to be part of our hearing.

11 MR. DOWNEY: The answer to that is, I believe  
12 that these are in fact, discovery depositions and if I  
13 can exceed to the next point, I believe I can demonstrate  
14 that to be true. The next point being the interrogatory,  
15 forgive me, I keep using that word.

16 JUDGE BLOCH: Can't hear you. Can you talk  
17 louder.

18 MR. DOWNEY: Interrogatory rather than data  
19 request is the term that I am accustomed to using. The  
20 responses to our data request about CASE's evidence on  
21 this issue, we received as your honor will recall, for  
22 the hearing with this issue with the Draft and at which  
23 the order CASE to produce witness list and identify by  
24 witness specific instances of alleged harrassment and  
25 intimidation, persons involved, and the date in which they

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1 occurred. Rudimentary elements of the evidence in which  
2 CASE will present.

3 JUDGE BLOCH: Hold it, Mr. Downey.

4 (Off the record discussion.)

5 MR. DOWNEY: The first hearing on this issue  
6 of the responses to the data request was some now, weeks  
7 ago. At that hearing your honor ordered CASE to identify  
8 in their witness list each witness, the specific instan-  
9 ces of harrassment and alleged harrassment about which  
10 they would testify, the dates on which these incidents  
11 occurred, and the persons involved. Those in our view,  
12 are the very bare bones of any kind of discovery incident.  
13 The order was to provide this information last Wednesday.  
14 Last Thursday we received a list of witnesses and issues  
15 from CASE. In our judgement, that list was inadequate.  
16 It failed to report with the order of the board. And, we  
17 still, on Friday we discover that indeed that list didn't  
18 contain all the witnesses. There were another 12 or 14  
19 to be added. We received the new prove list on late  
20 Friday afternoon just as we started the conference call.  
21 So, another addition to that list, which arrived in our  
22 office, which I have not had an opportunity to review.  
23 But, this has created for us, substantial problems in  
24 two different categories. First, the basic problem of the  
25 additions to the list means that the staffing arrangement

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1 that we had in final form as of Friday evening are now  
2 inadequate to meet the new revised list for the 12 or  
3 14 more people. Now, I must go back to the firm and get  
4 additional lawyers to prepare to meet the challenge, as-  
5 suming they are permitted to supplement the original  
6 list. Even more importantly, the list that we had, even  
7 through its third revision, does not address the basic  
8 elements of this court order about the information that  
9 we were to receive. If you have that new improved list,  
10 your honor, I would like to direct your attention to  
11 some of.

12 JUDGE BLOCH: I'm not so sure I do. Could you  
13 hold for a second.

14 MR. DOWNEY: It's dated June 27, and it is a  
15 full package of all the witnesses.

16 JUDGE BLOCH: One moment. There is only one  
17 place it might be. I don't have it right here.

18 (Brief recess.)

19 JUDGE BLOCH: We have ascertained that the  
20 discovery documents that we have are the documents dated  
21 on the 27th. During off the record conversation, CASE  
22 has explained that the source of the omission of names  
23 was an accidental omission from the document as a result  
24 of word processor malfunctioning. Mr. Downey, would you  
25 like to continue?

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1 MR. DOWNEY: Yes I would, your honor. As I was  
2 saying, the omission has caused a substantial problem  
3 in staffing. We now have, assuming the board permits  
4 this supplementation, irrespective of the cause for it,  
5 we now have an additional 12 to 14 witnesses who we must  
6 interview and prepare for depositions in the next seven  
7 days, some of whom aren't even located at Comanche Peak.  
8 In fact, one is in San Diego. Others may be in other  
9 places around the country.

10 JUDGE BLOCH: Ok. What remedy do you want for  
11 the omission?

12 MR. DOWNEY: Your honor, I think the remedy,  
13 the alternative remedy for all of these deficiencies, if  
14 I may, I'd like to state at the end, one alternative is  
15 simply to exclude those witnesses. To remedy this spe-  
16 cific problem.

17 JUDGE BLOCH: Wouldn't that conflict with our  
18 need to have an adequate record?

19 MR. DOWNEY: Your honor, the, the,

20 JUDGE BLOCH: Sounds like an extreme remedy in  
21 terms of actually trying to take a risk but not trying  
22 to get a full truth out onto the record.

23 MR. DOWNEY: Your honor, I have a proposal for  
24 a remedy that will address that in the context of our  
25 other objection. Maybe I should let the court know where

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1 I'm headed in this series of objections that follow. We  
2 are convinced that, in fact, what is going to happen over  
3 the next two weeks is a large discovery effort which CASE  
4 wishes to finance by having the applicants and the staff  
5 pay for these transcripts. In lieu of that, we suggest  
6 that we go back to the traditional way of judicating is-  
7 sues before the board to use the month of July for  
8 discovery, and that we convene the hearing earlier in  
9 August now scheduled, and have a hearing on these issues.  
10 We think that that, in fact, will shorten not extend  
11 the time to judicate this issue. It will reduce, rather  
12 than enhance the amount of resources required by the  
13 parties and the board to judicate these issues. I believe  
14 the deficiency in the problems that we are pointing out  
15 today in the way this proceeding is developing, indicates  
16 that that is an essential step to protect the interest,  
17 a substantial interest that are at issue here.

18 JUDGE BLOCH: Ok. The two deficiencies so far  
19 are difficulty in obtaining payment, and the accidental  
20 ommission of about 20 names. How many names are there?

21 MR. DOWNEY: As of now, I don't have the final  
22 count.

23 JUDGE BLOCH: Ok. Lets go on to point three  
24 on your list.

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1 MR. DOWNEY: Point three, your honor, has to  
2 do with the inadequacies of answers that were provided.  
3 I would direct the board's attention.

4 JUDGE BLOCH: The board agrees with you at the  
5 last conference that the answers were inadequate. They  
6 were supposed to be remedied through further discus-  
7 sions. Were they?

8 MR. DOWNEY: We have not received the infor-  
9 mation further clarifying the issues. Let me point now  
10 to some of the specifics, and I have not your honor, had  
11 the opportunity to go over line by line all 100 or so  
12 witnesses to identify every single deficiency in this  
13 list. Lets take for example, Stan Miles, which is short-  
14 ly into their list. Its the one some lines open now, its  
15 not paginated, its difficult to identify a specific  
16 place. Maybe a third of the way back through the docu-  
17 ment.

18 JUDGE BLOCH: Ok.

19 MR. DOWNEY: Now, with respect to Mr. Miles,  
20 writeup, the first sentence says, "Dan Miles testified  
21 that he was aware of instances of employee intimidations  
22 with respect to termination by foreman and superinten-  
23 dent." In the first place, I believe that Mr. Miles is  
24 a draft (ph.) witness, but I don't know that for certain.  
25 Second, there is not indication of who these employees

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1 are, the foremen and superintendents are, and what kind  
2 of threats were being made.

3 JUDGE BLOCH: Yes. Stan Miles, has however,  
4 filed affidavit to this proceeding. Were those referred  
5 to in the answer.

6 MR. DOWNEY: There was an affidavit, I believe  
7 that referenced, and it is not at all clear to me what  
8 the reference is. I think the 111833 references the  
9 case pleading. But, I am not certain of that.

10 JUDGE BLOCH: Yes. Attached to it is an affi-  
11 davit from Mr. Miles.

12 MR. DOWNEY: And, I have before me, we have  
13 Mr. Miles from assembling the materials.

14 JUDGE BLOCH: Mr. Miles affidavit was the  
15 subject of an investigation that was done by the staff  
16 including both the regional staff and OI?

17 MR. DOWNEY: What I have on Mr. Miles, your  
18 honor.

19 MS. GUARDE: This is Billie Guarde, can you wait  
20 a minute while I get my file of Mr. Mile's deposing.

21 MR. DOWNEY: This is Bruce Downey again, your  
22 honor. What I have before me is a statement given by  
23 Stanley Miles dated August 29, 1983.

24 MS. GUARDE: Alright, I'm back.

25 MR. DOWNEY: A statement in 1983, and there was

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1 also an investigation report, an OI report related to it.

2 MR. DOWNEY: There is no reference to that in  
3 this proceeding.

4 JUDGE BLOCH: I see, your institutional memory  
5 didn't allow you to know about those things?

6 MR. DOWNEY: I'm not, because of the extra-  
7 ordinary nature of this proceeding, your honor, I was  
8 asked to assume responsibility for this issue, and I  
9 don't have institutional memory with respect to this  
10 proceeding.

11 JUDGE BLOCH: Ok.

12 MR. DOWNEY: Nor does Mr. Belter.

13 JUDGE BLOCH: Ok. Perhaps should have refer-  
14 ence to those relevent materials. Billie Guarde, does  
15 the packet in front of you have those materials in it?

16 MS. GUARDE: Yes. Let me tell you what my  
17 packet has in it. It has the OI interview of Mr. Miles.

18 MR. DOWNEY: What is the date on that?

19 MS. GUARDE: It is page 23 of the OI report?

20 MR. DOWNEY: Which OI report?

21 MS. GUARDE: On harrassment and intimidation.  
22 I don't know the date off the top of my head. The one  
23 where they interviewed all the CASE witnesses. Judge  
24 Bloch, you might help me with the date, I don't recall.

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1 JUDGE BLOCH: I don't recall that date. I  
2 remember another OI report that was part of the inspec-  
3 tion report on Miles allegation.

4 MS. GUARDE: Right. That's in there. This is  
5 the OI report on harrassment and intimidation, which I  
6 believe came out on the last week of March of 1984, maybe  
7 February 1984. The affidavit of Stan Miles, referred to  
8 on the list that was attached to the CASE pleading.

9 JUDGE BLOCH: Ok. What I understand as the  
10 problem here is that, in fact, the applicants needed a  
11 more detailed reference to the existing materials. If  
12 they had had that, I suspect in this instance there isn't  
13 enough detail to know what the allegations are about.

14 MR. DOWNEY: Your honor. I am not quite cer-  
15 tain that that's quite correct. What I have on Mr.,  
16 Ms. Guarde has just referenced an affidavit of Mr. Miles,  
17 let me ask.

18 MS. GUARDE: Wait. I did not complete going  
19 through the materials which are in the file that are in  
20 the public record.

21 JUDGE BLOCH: I was trying to short circuit  
22 that.

23 MS. GUARDE: Ok. Well, everything I have in  
24 this file is in the public record. Everything that I  
25 have in this file is either from an NRC investigation

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1 or from a pleading in this proceeding.

2 JUDGE BLOCH: Ok. The problem is that they  
3 are not clearly enough identified so that Mr. Downey,  
4 who has not been a regular part of the team in this case  
5 can find the relevant fact in it. Is that a good state-  
6 ment of what the problem appears to be, Mr. Downey?

7 MR. DOWNEY: Your honor, that's the threshold  
8 problem. That's not the higher dimensions of the prob-  
9 lem with respect.

10 JUDGE BLOCH: What are the higher dimensions?

11 MR. DOWNEY: The higher dimensions are that  
12 these docuemnts in reference, you go to them and read  
13 them, they don't provide the kind of detail, and its not  
14 detail your honor, its the basic information that you  
15 ordered disclosed to us in the hearing a few weeks ago.  
16 In many instances, the reference materials even were  
17 all selected, and even when there read carefully, and  
18 notes are taken and you go back, you can't answer the  
19 basic questlon, what is this witness going to testify  
20 about that is relevant to this hearing.

21 JUDGE BLOCH: Is that true in this case, Ms.  
22 Guarde, that a specific incident and names of people ap-  
23 pear in the material that you are referring to?

24 MS. GUARDE: Well, I would like to respond to  
25 Mr. Downey in detail, and his somewhat blanket statement

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1 that there is not enough detail in these.

2 JUDGE BLOCH: Lets just talk about it in this  
3 one instance.

4 MS. GUARDE: I think there is enough material  
5 of specific detail that responds to your request.

6 JUDGE BLOCH: It tells names and dates of in-  
7 cidents?

8 MS. GUARDE: Yes. If you could give me a  
9 minute, I would refer to these things.

10 JUDGE BLOCH. That's ok. Mr. Downey can't know  
11 that its not enough detail because he hasn't seen the  
12 documents. Is that correct Mr. Downey?

13 MR. DOWNEY: That's correct, your honor. I  
14 do have one document about Mr. Miles that I have from  
15 the record. It is not the one that is dated 11/18/83  
16 because I can't find such a document.

17 JUDGE BLOCH: Ok. I just would like to know  
18 from CASE how we could efficiently let Mr. Downey have  
19 complete citation that you now have so that he can do  
20 the work that he needs to do for his client. What is a  
21 good method for doing that. Get complete citations, and  
22 we will know all the record materials that you are refer-  
23 ring to.

24 MS. GUARDE: I think that, as I indicated dur-  
25 ing the conference call last week, I have tried to keep

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1 in very close contact with Mr. Downey. I was being  
2 responsive to his concerns. I feel a little like I am  
3 becoming his law clerk instead of Tony's law clerk, if  
4 I've got to be identifying every piece of docuemnt, every  
5 peice of paper on the public record. I think it would  
6 be most efficient that if for those witnesses that he  
7 does not feel that I have responded adequately, that we  
8 talk about it on the phone. I can refer to every piece  
9 of people in my file, either on the phone, if he's in  
10 Texas, or I'm going to Texas on Thursday, or I'll sit  
11 with him today.

12 JUDGE BLOCH: Let me ask Mr. Downey whether the  
13 firm has an index to the public record that it has com-  
14 piled as it went along, or does it not have an index?

15 MR. DOWNEY: We have an index, your honor, and  
16 I have directed all the material, and I have that ma-  
17 terial.

18 JUDGE BLOCH: In fact, do you now have the  
19 material for Mr. Miles that Ms. Guarde is talking to us  
20 about?

21 MR. DOWNEY: I do not have anything about OI  
22 with respect to Mr. Miles. However, that material was  
23 indexed. It didn't pick up Mr. Miles. What I do have  
24 is an applicable statement made by him. This is the only  
25 docuemnt that I have, a statement by Mr. Miles dated

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1 August 29, 1983.

2 JUDGE BLOCH: Ms. Guarde, to save time on this  
3 stuff, do you have files on each of these individuals?

4 MS. GUARDE: I do.

5 JUDGE BLOCH: They contain public docuemnts?

6 MS. GUARDE: Yes.

7 JUDGE BLOCH: Why don't we just allow, why  
8 don't we allow Mr. Downey to come to your files?

9 MS. GUARDE: Well. That's fine.

10 JUDGE BLOCH: They are not marked with private  
11 comments that are going to give away litigation strategy,  
12 right?

13 MS. GUARDE: I may have some pieces of paper  
14 in each of the files with that kind of material on them.  
15 It is not a big problem. I have indicated it on the  
16 attorney-client side.

17 JUDGE BLOCH: Why don't we try that and see if  
18 that remedies the gap in these docuemnts for you.

19 MR. DOWNEY: Your honor, I'd be willing to try,  
20 but let me complete the point that I have to make on this  
21 issue. There are now six working days after today for  
22 the depositions to come in. They are now five days  
23 beyond the late date of which this information was to be  
24 provided to us. We have already lost six preparation  
25 days. We have yet to interview the first witness about

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1 these issues, because we don't know what is at stake.  
2 Now to go back to what you are suggesting your honor is  
3 that we now go to CASE's office, file lawyers of public  
4 justice.

5 MR. BELTER: I believe they are at Ms. Guarde's  
6 home.

7 MR. DOWNEY; Well, somewhere, sit down and then  
8 try and call some documents that they have had symbolized  
9 apparently for some time, information that we were sup-  
10 posed to have a week ago, and then make a decision as  
11 to whether it provides us with that information. To do  
12 that with all of these witnesses, our preparation time is  
13 going to be gone. It is unfair, blatantly unfair to re-  
14 quire us to extend 50 depositions, to cross examine  
15 another 50 witnesses without having known in advance  
16 through some discovery process the very basis for the  
17 contentions that are being made with respect to the  
18 witness.

19 JUDGE BLOCH: You know, if you would have asked  
20 five days ago to see Ms. Guarde's file, I would have  
21 allowed you to do it.

22 MR. DOWNEY: Your honor, five days ago, they  
23 were obligated, there was not need, they were obligated  
24 to give us the answers to our interrogatories which were  
25 filed two months ago.

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1 JUDGE BLOCH: I understand, but if you wanted  
2 to get things done so that we could go to trial on time,  
3 instead of have a deferral, you could have done it if  
4 you would have asked me to see those documents.

5 MR. DOWNEY: Your honor, I think we were en-  
6 titled to rely on the board's order.

7 JUDGE BLOCH: I understand. You're right.  
8 You're very right. But, the problem is that, in being  
9 right we may have a deferral.

10 MR. DOWNEY: I don't believe I am suggesting a  
11 deferral, your honor. Mr. Miles, by the way, his write-  
12 up is really one of the minor, very minor problems with  
13 this proceeding.

14 JUDGE BLOCH: Lets talk about some of the major  
15 ones.

16 MR. DOWNEY: Some of the major ones. Turn a  
17 couple of pages to Mr. Metzlerly. Again, a very general  
18 statement that he was, numerous instances of employee  
19 intimidation.

20 JUDGE BLOCH: That stuff has been thoroughly  
21 discussed in our record. There is a very thorough inves-  
22 tigation on it, OI and staff. There is a report, he had  
23 a diary of places in the plant where things were cut, and  
24 those were all checked by OI. Do you not know that from  
25 the index of the record that the applicants have?

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1 MR. DOWNEY: I do not.

2 JUDGE BLOCH: Part of the problem is communi-  
3 cation within your own firm. This is an important part  
4 of our record that has been discussed many times.

5 MR. BELTER: Your honor, this is Mr. Belter.  
6 I'm somewhat confused when we look at Mr. Metzlerly and  
7 Mr. Miles to understand here are the board's ruling. At  
8 least, as I understood the board's ruling on the issue  
9 before the -2 board whether or not the allegations that  
10 were set in the previous record on Metzlerly and Miles fit  
11 within the context of the issue that we are trying here.  
12 Technical concerns through other investigations, I under-  
13 stood were not part of this. Miles and

14 JUDGE BLOCH: What I understand about the Met-  
15 zlerly allegation there are no allegations of intimidat-  
16 ion of QC inspectors at all.

17 MR. BELTER: That was my impression. I have  
18 the same impression with respect to Mr. Miles and the  
19 other witnesses which are on this list.

20 JUDGE BLOCH: Is CASE willing, prepared to an-  
21 swer where those two people fall within this particular  
22 proceeding?

23 MS. GUARDE: I can respond on Mr. Miles. I'd  
24 have to get Mr. Metzlerly's folder in front of me.

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1 JUDGE BLOCH: Ok. On Mr. Miles, what is there  
2 that relates to the intimidation of QC inspectors?

3 MS. GUARDE: Ok. Could you give me a moment  
4 please?

5 JUDGE BLOCH: Sure.

6 MS. GUARDE: Ok. It would take me a few more  
7 minutes to, but let me brief you on our response. On  
8 Mr. Miles, although Mr. Miles is a craft witness, I be-  
9 lieve that his affidavit submitted and attached to the  
10 case pleading in November goes into the details, if you  
11 will look at page.

12 MR. DOWNEY: What is the date of the affidavit  
13 of discovery?

14 MS. GUARDE: I have the one pulled from Ms.  
15 Ellis's file which is the one in my file in front of me  
16 is not signed. I have a note on it that says signed  
17 11/18/84. I have those in a separate file. I'm sorry  
18 I have an unsigned one that was attached to Juanita Horn's  
19 book of 11/18/83.

20 MR. BELTER: I don't believe we have that, this  
21 is Mr. Belter.

22 JUDGE BLOCH: You don't have the orange book  
23 pleading?

24 MR. BELTER: I don't believe we have that.

25 JUDGE BLOCH: There was a whole bunch of

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1 statements that were filed at one time early on, that was  
2 a basis for the original complaints that were made about  
3 intimidation.

4 MR. BELTER: There was a pleading dated Novem-  
5 ber 28, 1983. If I referenced to that document at the  
6 same time. The major reference was a letter dated Aug-  
7 ust 3, 1983 to the board which also had some documents  
8 attached. But, I have nothing.

9 MS. GUARDE: Do you have the 11/23/83 answer  
10 to the board's memorandum. Procedure concerning quality  
11 assurance. It is an orange book I think containing 13  
12 or 14 affidavits in it?

13 MR. BELTER: No. We don't have such an orange  
14 book. We have a proceeding with that date which ref-  
15 erences some documents which we don't have.

16 MS. GUARDE: I don't understand why you don't  
17 have them.

18 JUDGE BLOCH: I don't either. It was filed.

19 MS. GUARDE: Some of the affidavits in this  
20 plea were not signed in the binder as it was submitted.  
21 They were submitted separately. It is the affidavit  
22 from that binder that I have in this file.

23 MR. BELTER: Hand written.

24 MS. GUARDE: No. Its typed.

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1 JUDGE BLOCH: I suspect now, that we have got-  
2 ten to the root of one of the difficulties you are having  
3 that that one docuemnt was assumed by CASE to be in  
4 applicants' possession, and applicants don't appear to  
5 have it at this point.

6 MR. BELTER: I know, Judge Bloch, we have  
7 searched all our files here. I have never seen such a  
8 docuemnt. I've seen the November 28 proceeding.

9 MS. GUARDE: Judge Bloch, I'm a little frus-  
10 trated because I spent a great deal of time doing what  
11 I would have assumed the applicnats would also have at  
12 their fingertips, which is everything on these people  
13 that I have had to scout out through the docuemtns room,  
14 going through OI reports, going through IE reports, going  
15 through the transcripts of the record.

16 MR. BELTER: Judge Bloch, may I respond to  
17 that?

18 JUDGE BLOCH: I don't think so. It seems to  
19 me that the problem arises because there was a filing  
20 made on November 28, 1983 which I'm confident the ap-  
21 plicants received.

22 MR. BELTER: We have it.

23 JUDGE BLOCH: What?

24 MR. BELTER: We have the proceedings, but I  
25 don't have any orange book that came along with it.

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1 JUDGE BLOCH: Well, I don't understand that.  
2 It seems to me if you talk to Mr. Horin and Mr. Reynolds,  
3 they will recall having received the orange book. Mrs.  
4 Ellis doesn't omit details like that. And, these docu-  
5 ments have been referred to.

6 MR. DOWNEY: Your honor, if I may, Mr. Forren  
7 helped us to symbol these materials, and I am confident  
8 when I say he has as good as command of the record in  
9 this case as any one. And, he has some materials with  
10 respect to Mr. Miles. Indeed, we have a statement that  
11 we have uncovered that appears not to be any part of  
12 their files.

13 JUDGE BLOCH: Ok. This document which is at  
14 the root of your problem right now is about an inch  
15 thick and is what is filed in the case. I have it in  
16 front of me now. My law clerk had read it very thorough-  
17 ly at this point. I have read it. I don't know why you  
18 don't have it, but you can arrange to pick it up from us  
19 if you need us to have it copied?

20 MR. BELTER: I think we will have to do that  
21 Judge Bloch, this is Mr. Belter again. I still don't  
22 think it answers the questions with respect to Miles and  
23 Metzlerly.

24 JUDGE BLOCH: You don't know though, cause you  
25 haven't seen the documents.

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1 MR. BELTER: Well, she added something that  
2 wasn't in the previous statements.

3 JUDGE BLOCH: Ok. Now, lets have Ms. Guarde  
4 tell us what there was about Mr. Miles. I still don't  
5 understand what Mr. Miles has to say about intimidation  
6 of QC inspectors.

7 MS. GUARDE: Mr. Miles stated specifically on  
8 pages 2, half-way down the document where he talks about  
9 instances where welders abandoned reliable practices in  
10 overheated welds in supporting irons because of the  
11 hopelessness of the situation. So, he is talking about  
12 attempting to do his work and supervisors tell indivi-  
13 duals that if they do not perform such work, workers  
14 would be fired. Again on page.

15 JUDGE BLOCH: There are no incidents there. He  
16 is talking in generality right?

17 MR. BELTER: Pardon me, Judge Bloch. He's  
18 talking about foremen talking to craft personnel.

19 JUDGE BLOCH: He's talking about forement talk-  
20 ing to craft personnel.

21 MR. BELTER: It also lacks specificity.

22 MS. GUARDE: If I could continue, please.

23 JUDGE BLOCH: Ok. Please.

24 MS. GUARDE: Also, in page 4 of this docuemnt,  
25 where he makes the general statement a little over half

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1 way down the page where he says that even though he  
2 could not prove the reason he was fired, nobody seemed  
3 interested at the time in intimidation stories at that  
4 time at Comanche Peak except the intervener. He then  
5 goes on to talk about morale problems on page 5.

6 JUDGE BLOCH: That last one also wasn't spe-  
7 cific is it?

8 MS. GUARDE: No. These are not specific in-  
9 cidents. He is a craft employee. His experience is  
10 craft, but I think you look through his statements, if  
11 you look through the OI statement, when he gives a spe-  
12 cific incidence of termination and then you referred to  
13 the interview attached to his testimony which was sub-  
14 mitted also in the record, he talks about the problems  
15 he observed in writing up, having QC writeup problems.  
16 That is in my notes, and that is what I would have to  
17 spend more time in looking through my file. My specific  
18 notes which went to the typing of in inclusion of Mr.  
19 Miles our witness was that Mr. Miles had observations as  
20 a craftperson about QC inspectors.

21 Ok. I found it. On page 48, I'm looking at the  
22 testimony of Stanley D. Miles, witness for intervener  
23 case 7/16/82.

24 JUDGE BLOCH: Alright. Do you have that docu-  
25 ment, Mr. Downey.

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1 MR. DOWNEY: I assume that we have that entire  
2 transcript, your honor. I don't have it assembled for  
3 these materials, because there was not reference to  
4 it in the, in any of the materials that we have gotten  
5 from CASE. I could have someone bring it to me if.

6 JUDGE BLOCH: What part of that transcript is  
7 relevant?

8 MS. GUARDE: Page 48.

9 JUDGE BLOCH: What does it say?

10 MS. GUARDE: At the bottom of the page where  
11 the question is asked about QC inspectors in the quality  
12 of the work.

13 MR. DOWNEY: What is the question please?

14 JUDGE BLOCH: What is the question, what is the  
15 answer?

16 MS. GUARDE: The question is what about the  
17 QC inspector. How is the quality of their work? The  
18 answer then goes on for about the next four pages, about  
19 Mr. Miles interaction with both Chuck Atkinson as well  
20 as other QC inspectors. Their morale, comments that they  
21 made to him in terms of attempting interaction between  
22 QC and craft.

23 JUDGE BLOCH: Are there any specific incidents  
24 that, we want you to get to the level of what incidents  
25 that are going to be asked about.

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1 MS. GUARDE: Well, I could read into the record  
2 pages 48, 49, and 50. But, I also would feel that I am  
3 not prepared to answer that question in detail because I  
4 have to sit down and look at the stuff and give you exact  
5 page references. That is a level of detail that I  
6 haven't even gotten to yet. I have read this material  
7 several times, enough to pull out crafts from QC, that I  
8 thought had relevant information about the operation of  
9 the quality control program, that I thought had obser-  
10 vations of quality control of work being, the implemen-  
11 tation of quality control program and interaction between  
12 quality control and craft that would be relevant and  
13 helpful to the record of the quality control program. I  
14 dropped those craft witnesses that I thought who had no  
15 information about QC and QA. And, also those applicant  
16 witnesses that only would have commented on the craft  
17 people we had originally named, that we took out. I did  
18 leave in, I am going to guess, half a dozen crafts who  
19 had observation on the quality control program.

20 MR. BELTER: Am I to understand from Ms. Guarde  
21 that preparation to date does not include going back and  
22 reinterviewing Mr. Miles for additional information other  
23 than what you have gotten written documents.

24 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman  
25 I think that goes beyond the scope.

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1 MR. BELTER: I'm trying to point out the point  
2 that Mr. Downey was making earlier, that you are going  
3 to use these depositions for discovery here.

4 MR. ROISMAN: Mr. Chairman, I believe that what  
5 we have discussed and what we have consistently agreed  
6 to do that was that we would provide the applicants with  
7 what we knew, and the people that we knew it about, we  
8 have done that. We obviously made one error or an as-  
9 sumption. I don't think that it is an error that falls  
10 to us. It is an error in how the applicant was preparing  
11 its case, which was, that they would become as familiar  
12 with the existing record in the case as we were becoming.  
13 And that, as you said, Chuck Atchison, you didn't have to  
14 also have to go back and say every place where Chuck  
15 Atchison has said something about being harrassed or  
16 intimidated in this record since the applicant can do  
17 that. Or, we thought that they knew that. With respect  
18 to the question of whether the depositions are the equi-  
19 valent of discovery, I think the alternative, which is  
20 Mr. Downey and Mr. Belter seem to be arguing for, is that  
21 the depositions are exclusively evidentiary with no na-  
22 ture of discovery at all. If that were true, they cer-  
23 tainly wouldn't have started now, and we certainly would  
24 have demanded significantly more from the applicnats than  
25 what they have given us in the way of information. These

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1 would be their own people, and their own people's, for  
2 instance their own affirmative case with regard to how  
3 they deal with incidents of harrassment and intimidation.

4 JUDGE BLOCH: Mr. Roisman, I think I understand  
5 the problem that you have and Ms. Guarde has in giving  
6 the specific incidents and names of people as the board  
7 thought that you are going to be able to do. Do you also  
8 understand that this does cause some problem for the  
9 applicants in terms of going through the entire record  
10 to try and figure out what your case is?

11 MR. ROISMAN: Well, I think what you proposed  
12 earlier, which we are more than happy to do at this point  
13 is not a problem from our perspective. We are happy to  
14 have the applicants, except to the extent that you have  
15 properly pointed out, that we have no attorney work pro-  
16 ducts or strategies in those files, to have them look  
17 at those same files that Ms. Guarde has just pulled from  
18 the files that we have with regard to these people. I  
19 must say, that I don't think that we wouldn't have been  
20 expected to do that even if we were ready to go to dis-  
21 covery, much less if we were getting ready to go to  
22 trial, that is search the record and to tell the appli-  
23 cant what is in the record about all these people.

24 The record is there for them to look at. But,  
25 I don't mind doing that for them.

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1 JUDGE BLOCH: The problem goes a little fur-  
2 ther. It really is not just a question of fair notice.  
3 It is a question whether the records have been examined  
4 by CASE in enough detail to know whether there are spe-  
5 cific incidents that each of these people have seen which  
6 they can testify about as direct knowledge. If those  
7 incidents were known by CASE, then they could be respond-  
8 ed to. It is not clear to me, after the long discussion  
9 with Ms. Guarde, that there is an incident that Mr. Miles  
10 saw. He had discussions that may have given him some  
11 hearsay information, but I still haven't even heard a  
12 single incident where Mr. Miles saw the results of im-  
13 proper QC action.

14 MS. GUARDE: Judge Bloch, about Mr. Miles.....  
15 in detail. I have over the past week and a half consumed  
16 voluminous amounts of material. If you want me to take  
17 a five to ten minute recess to sit down with Mr. Miles  
18 file, I don't have a piece of paper on top of his file  
19 that says boom, boom, boom, boom, boom. I have notes, I  
20 have what you would call attorneyfied work products in  
21 which I have made notes to myself when I have gone  
22 through his deposition. I feel that I could adequately  
23 respond to that question if given enough time to do so.  
24 I'm talking about a 10 to 15 minute recess.

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1 JUDGE BLOCH: Are you saying that in each case  
2 where is a name is on CASE's list, that CASE knows, and  
3 has met this criterion, and that there are specific in-  
4 cidents and people that are involved in which competent  
5 testimony can be made, or is it the case that you have  
6 just listed people, and the applicants are going to  
7 have to prepare with respect to their testimony without  
8 CASE even knowing that there is competent testimony?

9 MS. GUARDE: No.

10 MR. ROISMAN: This is Mr. Roisman. We may have  
11 some disagreement or misunderstanding about what is  
12 "compentent testimony". The nature of the issue of har-  
13 rassment and intimidation, the so-called pervasive test  
14 that has been laid down does not in my judgement narrow  
15 the testimony which is admissable to nearly specific  
16 incidence as such. There is also legitimate testimony  
17 regarding the existnece of an atmosphere of harrassment  
18 and intimidation which was felt by many people, or ob-  
19 served by many people. We are not representing that  
20 every single one of the witnesses that we have to present  
21 will be able to either remember the particular date of an  
22 incident, but we will remember an incident and will have  
23 some details about an incident. In other cases, there  
24 may be witnesses who will have even less of a concrete  
25 memory, but they will not be. We have made careful

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1 effort at this point. We believe that they will not be.  
2 It is always possible that they will turn out that way.  
3 But, we believe that none of these people will simply  
4 get up and say, well I worked at the plant, and gee, I  
5 just thought that there was a lot of harrassment and in-  
6 timidation around, and I can't tell you any incident and  
7 I can't tell you anybody that I observed getting that or  
8 anything like that. It will be more detailed than that,  
9 but it will not be that every single person who we pos-  
10 sess will be able to say on November 12, 1982 at 11:00  
11 in the morning, I saw A, B, and C do something and iden-  
12 tify that something to Mr. X, who was a QC inspector.

13 JUDGE BLOCH: Wouldn't you think that is there  
14 was a defective QC program at the plant, that craft  
15 people would at least say, we did defective work on sev-  
16 eral occassions and the nature of the work was such and  
17 such, and it wasn't caught.

18 MR. ROISMAN: Well. I don't know that that is  
19 necessarily so. The craft people may believe that what  
20 they did was not defective. That is a question of mo-  
21 tive. Some of, one of the problems at the plant, as best  
22 as we can tell from looking at this record is that the  
23 plant was changing the rules, that people were being  
24 told this is now going to be ok. This elimination of  
25 noncompliance was repalced by a less-formalized process.

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1 When the craft people are now told that a certain thing  
2 is now ok, and that QC inspector isn't saying to them that  
3 something isn't wrong, to the craft it probably considers  
4 a lot of these NRC requirements Mickey Mouse, and doesn't  
5 like them, they don't feel that they have done something  
6 wrong. They feel like they are getting the plant built.  
7 So, I don't think that the answer is necessarily that a  
8 lot of QC people were running around saying, boy, I blew  
9 that weld the other day and nobody picked it up.

10 MS. GUARDE: Although, I think, Tony, to sup-  
11 plement your answer a little bit, there are incidents  
12 such as that. Although, I couldn't tell you without  
13 going back to my notes, which of the craftpeople do have  
14 that to say on that kind of example and that kind of in-  
15 cident is included already in the record of the case be-  
16 fore the board.

17 MR. DOWNEY: Your honor, this is Bruce Downey.  
18 If I may interject. I think we are really getting to the  
19 heart of our problem. Our problem, in Mr. Miles, believe  
20 me is only the very tip of this iceberg. He happens to  
21 be what I turned to in this file when we started this  
22 discussion. It is true of everyone as far as I can tell.  
23 Ms. Guarde tells us that she has in her file some notes  
24 reviewed from material, she has some notes presumably  
25 from conversation. She has put together quotes with Mr.

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1 Miles, Mrs. Ellis, and others. She thinks that, but is  
2 not certain, with respect to Mr. Miles, there are spe-  
3 cific incidences. What we are not certain, with respect  
4 where she brewed that information. Now, our problem is  
5 the burden of going forth with evidence here rests on  
6 the intervener. Until they tell us what they think is  
7 wrong, we can't even prepare rebuttal, and to a substan-  
8 tial report, we can't prepare an affirmative case. We  
9 ask you for this information in discovery request, as I  
10 recall filed back in April. We ask in those several re-  
11 quests, in those discovery requests, for substantially  
12 more details than the board ordered at the hearing.

13 But, here we are, now six days after today we  
14 are to sit down with depositions, which our witnesses  
15 are to be asked about Stan Miles, and the whole litany  
16 of witnesses, and we don't know what it is, what is the  
17 subject matter of those depositions.

18 JUDGE BLOCH: Mr. Roisman's answer was that  
19 they'd answer your discovery request to the best of their  
20 ability and current knowledge.

21 MR. DOWNEY: Your honor, I think that demon-  
22 strates the point that this is discovery, not trial.

23 MR. ROISMAN: Mr. Chairman, this is Mr. Roisman.

24 JUDGE BLOCH: Yes sir.

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1 MR. ROISMAN: Sort of back to the beginning of  
2 this. We have acted and continued to act on the premise  
3 that it was in everybody's interest to move these hear-  
4 ings along as quickly as possible. My staff, Ms. Guarde,  
5 another law firm that I now basically have drafted into  
6 it, Mr. Worshoskey, and myself.

7 JUDGE BLOCH: Mr. Roisman, I want to make a  
8 suggestion for both parties, and that is at this point  
9 we not try to justify what has happened in the past.  
10 Lets try to solve this problem together.

11 MR. ROISMAN: Alright. Well, what I wanted to  
12 say, Mr. Chairman, and I want to solve the problem also,  
13 is that we have been willing, where the applicant ap-  
14 parently is not to move ahead despite the absence of  
15 substantial docuementation that we too requested long  
16 before April from the applicants. I want to list them  
17 for the record because I don't want there to be any con-  
18 fusion on this point. We have gone ahead, even though  
19 this material has not been there, because we were com-  
20 mitted to moving the process along. We're not trying to  
21 come up with excuses. Number one, we have asked and not  
22 yet received the exit interviews on people who left the  
23 site. Number two, we have asked for all the incident  
24 reports, that is, reports made to the applicant about in-  
25 cidents made to the applicant about alleged actions of

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1 harrassment and intimidation. We have not yet received  
2 all of those incident reports. Number three, we have  
3 asked to have all of their files on our witnesses, in  
4 other words, what material do they have in their possess-  
5 ion that relate to the people whose names we have iden-  
6 tified to them some time ago. We have not received all  
7 of that information. It appears that they have not  
8 searched their files in order to find that, as best as  
9 we can tell. Number four, we did not receive any infor-  
10 mation involving harrassment and intimidation incidents  
11 in their position that relate to contractors other than  
12 Brown and Root. We have one witnesses name we have not  
13 identified but have offered to do so, if the applicant  
14 and staff will sign the appropriate protective order who  
15 happens to have made complaints to a particular other  
16 contractor other than Brown and Root. So, we know for  
17 a fact, that such information exists. We don't know  
18 what else is in the file. We don't know what that  
19 contract said, we don't know what investigations they  
20 launched.

21 Number five, the material that we had asked  
22 for, which they said they would produce, all of these  
23 by the 15th of June, there is still, probably at least  
24 an entire box the size of a xerox paper box that has not  
25 yet been copied, although we have requested that it be

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1 copied, down in Texas, that we have not received. Most  
2 of that stuff, which I think either three or four of  
3 those xerox boxes, were not "discovered" by the appli-  
4 cants until subsequent to the June 15th date. We didn't  
5 get knowledge of it till the June 15th date. Included  
6 within there is all that documentation in the applicants'  
7 possession, relevant to Mr. Dunham, Atchison, and an  
8 entire series of interviews taken of all the QC inspec-  
9 tors in 1979, in which one of the questions they were  
10 asked, and in which in their own handwriting they answer-  
11 ed, was how did they feel about, in effect, about harras-  
12 sment and intimidation on the job site.

13 Now, it is incomprehensible to me that a re-  
14 quest that was made some three months ago would not have  
15 been interpreted by the applicants to have included  
16 as I think it obviously does, the existence of that inter-  
17 view system and the results of the interview system.  
18 Applicants by the way have not yet told us the names  
19 of the people who filled out the interview forms. They  
20 are simply an A, B, C, and D at this point. Now, we feel  
21 that this process has been far more responded to by us,  
22 than it has been by the applicant. Their direct testimony  
23 on the issue of harrasment and intimidation, that is,  
24 what are the mechanisms, procedures that the company put  
25 in place, and when did they put them in place, and all of

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1 that. We have seen nothing on that. We do not know what  
2 the company's position is with regard to that. So that  
3 the idea that somehow or another the CASE has been the  
4 party that is dragging their feet in manipulating the  
5 process and so forth is simply not true. There is no-  
6 thing even remotely is the case.

7 JUDGE BLOCH: Mr. Roisman, if I understand your  
8 argument correctly, the nature of the deficiency in  
9 CASE's notice to the applicants at this point is that  
10 your docuemnts, your case consists of docuemnts that are  
11 already in the record, for the most part, you haven't  
12 identified specific incidents in those that you are  
13 relying on. Is that generally the case? To what extent  
14 do you really have more information than you could close?

15 MR. ROISMAN: I don't think, except for what  
16 we are now getting in discovery from the applicnats, I  
17 don't think we have more information than we disclosed  
18 with exception of the OI affidavit issue.

19 JUDGE BLOCH: Those four affidavits?

20 MR. ROISMAN: That's correct.

21 MR. BELTER: Mr. Chairman, Mr. Belter here.  
22 I don't have all the points that Mr. Roisman made, but I  
23 would like to respond briefly to that.

24 JUDGE BLOCH: Please.

25 MR. BELTER: The first one I recall, is the

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1 incident that they have in their possession, a report  
2 that they have of a single employee among 30,000 who made  
3 a report. I advised Mrs. Ellis back in early April that  
4 data request had been submitted to us, that we could not  
5 undertake a blanket search of 30,000 files to find out if  
6 there was something in it that is responsive. I would  
7 be perfectly willing to admit that there might be, but  
8 unless you identify the person part, there is no way  
9 we could find it. I don't recall all of the other points  
10 that..

11 JUDGE BLOCH: Ok. Lets talk about that one a  
12 second. You wanted all exit interviews?

13 MR. BELTER: Exit interview files. I advised  
14 Ms. Guarde and Mr. Roisman when they were in our offices  
15 a week and a half ago. It is downstairs in my office  
16 for their review. I specifically recall telling them  
17 that it would only take twenty minutes for them to look  
18 through. It is here. It has been here. It is available  
19 to you. I said it was available to you a week and a  
20 half ago.

21 MS. GUARDE: Judge Bloch, my recollection of  
22 that was it that small that it be copied?

23 MR. BELTER: She did not ask it to be copied.  
24 I would have walked out right then and had it copied.  
25 It is about an inch and a half thick. I would be happy

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1 to send it over to you today.

2 MR. ROISMAN: I would like you to consider  
3 that offer accepted.

4 MR. BELTER: Thank you. The 1979 questionnaire,  
5 I don't have the specific question in front of me on that  
6 survey. But, there is nothing in those documents them-  
7 selves that a person looking through in our judgement,  
8 would call definitely responsive to your request. I  
9 found that series when I continued to ask questions of  
10 people down there, of executives, to find out if there  
11 were any files that we had not looked at that might  
12 conceivably contain something responsive. We discovered  
13 this set of documents, it may not be a complete set, but  
14 all that possibly exists, about a questionnaire that we  
15 had taken of all the QA/QC department back in 1979. We  
16 have the names of all the people that have interviewed.  
17 They were all the people in the department at the time.  
18 They were interviewed under a promise of confidentiality  
19 in order to encourage that they express their views. We  
20 have not gone back to contact all of those people until  
21 we find out from you, and I think we probably are going  
22 to bring it to the board, whether it is desired that we  
23 mention names with interview forms. Of the 191 people who  
24 were interviewed, it is my understanding, from my point  
25 of view, of the people that were involved at the time,

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1 that their was one single incident of intimidation. One  
2 incident.

3 JUDGE BLOCH: Ok. Now, in terms of those docu-  
4 ments, what is this data with respect to the discovery  
5 request, Mr. Belter?

6 MR. BELTER: What was the question?

7 JUDGE BLOCH: What is the status of those docu-  
8 ments with respect to CASE's discovery request.

9 MR. BELTER: It is my understanding, and I  
10 understand that they want in writing, that they want me  
11 to assure them that we have responded to everything as  
12 asked for. I am prepared to do that.

13 JUDGE BLOCH: I don't understand. Are those  
14 documents responsive or not responsive?

15 MR. BELTER: In my judgement, a lot of them are  
16 not responsive. Let me put it to you this way, your  
17 honor, my philosophy is if there is any conceivable way  
18 that I provide CASE with some information that they might  
19 strike down again through iterative process they might  
20 find something relevant. I put it out there. There is  
21 nothing relevant in 95% of these documents.

22 JUDGE BLOCH: mr. Roisman. Are those documents  
23 relevant?

24 MR. ROISMAN: Ms. Guarde has them with her.  
25 Billie, can you, will you answer that?

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1 JUDGE BLOCH: Ms. Guarde has them?

2 MR. ROISMAN: We have some of those interview  
3 forms. We don't know whether all of them have been  
4 copied. All of them they have in Fort Worth, and we just  
5 haven't got everything that was copied, so we don't know  
6 if we have all of them.

7 JUDGE BLOCH: So, there is no item.

8 MR. ROISMAN: Ms. Guarde has got the form there,  
9 it is not here in my office, it is in our satelite of-  
10 fice, Billie.

11 MS. GUARDE: Yes.

12 MR. ROISMAN: Have you got one of those there  
13 in front of you that you can.

14 JUDGE BLOCH: I'm not sure. If you've got them  
15 already, they are not an open discovery problem.

16 MR. ROISMAN: Oh no. Mr. Chairman, I'm sorry.  
17 We don't know if all of them have yet been copied. We  
18 went down after.

19 JUDGE BLOCH: You want all of them?

20 MR. ROISMAN: We want everything that we iden-  
21 tified when we went down and reviewed the files that the  
22 applicant made available for us to review in Fort Worth,  
23 sometime at or after the 15th of June.

24 JUDGE BLOCH: And you don't have them?

25 MR. ROISMAN: Everything that we identified

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1 that we wanted copied, we have not yet received.

2 MR. BELTER: My understanding that as of  
3 Friday, everything had been copied.

4 MS. GUARDE: Ok. If it has all been copied,  
5 we don't have it all. Of the ones that we have, I think  
6 that the question is that are they, or are they not rele-  
7 vant to this issue.

8 MR. BELTER: I don't think we need to get into  
9 this point right now, Judge Bloch.

10 JUDGE BLOCH: Is there a problem with respect  
11 to these documents between the parties or not.

12 MR. ROISMAN: We don't know. Belter makes a  
13 representation that we have it all, and Juanita Ellis  
14 te'lls me that the amount of material that remained down  
15 there when I spoke to her on Friday, now not at the end  
16 of the day. We have learned about a case full, that is  
17 a Xerox box full. I received in the mail this morning  
18 about four inches of materials from Miss Spence on the  
19 plant site. She is the one sending this to us. And,  
20 that looked like substantially less than what Ms. Ellis  
21 told me was still left to be copied and sent to us.

22 MR. BELTER: That may well have been what was  
23 copied Thursday. I didn't mean to indicate that you had  
24 received it all, I mentioned that you had reviewed them  
25 all or that we had made them available to you.

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1 JUDGE BLOCH: Was there an understanding that  
2 CASE was to receive them all?

3 MR. ROISMAN: Yes.

4 JUDGE BLOCH: Mr. Roisman says yes. Mr. Belter  
5 do you know?

6 MR. BELTER: I have no knowledge of any such  
7 understanding, your honor.

8 JUDGE BLOCH: Could you find out and clarify  
9 it.

10 MR. BELTER: I will find out. I think that I  
11 can check with one phone call whether all of them have  
12 been put in the mail at this time.

13 JUDGE BLOCH: Ok.

14 MR. DOWNEY: Your honor, this is Bruce Downey,  
15 I would like to add that as we have identified these  
16 materials, and we have gone through expanding circles  
17 search. Now, I feel that we have done everything other  
18 than review 30,000 personnel files, as we have done that  
19 we have made available these materials to the intervener.  
20 We have copied them, of those things that they asked for.  
21 We have sent them to them. It is not as if we were  
22 holding back anything.

23 JUDGE BLOCH: Ok. Mr. Downey, with respect to  
24 the materials that you haven't received, is it fair to  
25 characterize them as summary for the most part of

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1 material that is already in the record. Do you think  
2 that CASE is withholding stuff from you that isn't al-  
3 ready in the reocrd of the case.

4 MR. DOWNEY: Your honor, to be perfectly candid  
5 what I think the situation is, is that they don't know  
6 what the case is.

7 JUDGE BLOCH: That is, to some extent they have  
8 statements from people. Those people may be asked ques-  
9 tions that will go beyond the statements they have now.  
10 Is that your fear?

11 MR. DOWNEY: I have several fears, your honor.  
12 First is, that we won't have identified for us those  
13 issues that these witnesses are going to address.

14 JUDGE BLOCH: Ok. Now, if they don't know  
15 everything the witness has to say about specific inci-  
16 dents, then under discovery they wouldn't tell you about  
17 that. Is that right?

18 MR. DOWNEY: Well, your honor, there are two  
19 ways to look at this. If we were in discovery, which is  
20 what I think we are really in, it would be incumbent upon  
21 us as applicants to go out and depose people and find out  
22 what they say.

23 JUDGE BLOCH: Or just interview them. Find out  
24 what they have got to tell you.

25 MR. DOWNEY: That's right. We could depose

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1 people, and we could make discovery in addition to these  
2 written requests.

3 JUDGE BLOCH: So, your real problem that given  
4 the status of this case, you are really not prepared to  
5 go to trial at this point?

6 MR. DOWNEY: Your honor, we don't know what  
7 the issues are.

8 JUDGE BLOCH: You are prepared to go to trial  
9 by starting with these evidentiary depositions on next  
10 Monday or are you not. Are you or aren't you?

11 MR. DOWNEY: Not on the basis of what we have  
12 your honor.

13 JUDGE BLOCH: The problem really is not a fail-  
14 ure to provide full discovery answers. The real problem  
15 is that you wish that CASE knew more about what the  
16 witnesses were going to say, and tell you all about that.

17 MR. DOWNEY: No. Your honor, I think the  
18 policies mentioned to the problem are broader than that.

19 JUDGE BLOCH: How much broader?

20 MR. DOWNEY: They are broader in the sense that  
21 CASE has before them in Ms. Guarde's file, the Mr. Miles  
22 situation. She thinks, but has been unable to articulate  
23 that there is some specific incidence in which this craft  
24 worker has something relevant to say about the intima-  
25 tion of QC.

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1 JUDGE BLOCH: Ok. But now, we are talking  
2 about their ability to comprehend and document what is  
3 already in the record of the case. I'll tell you what  
4 documents that have withheld from you is ones they  
5 haven't carefully indexed for your use.

6 MR. DOWNEY: Your honor, we filed discovery  
7 request when you ordered that they provide us with  
8 very specific information, which by the way, its their  
9 bone. We aren't talking about a write up of what Mr.  
10 Miles is going to say.

11 JUDGE BLOCH: I understand. I am just trying  
12 to clarify whehther, in fact, the summary that you are  
13 seeking, and that we ordered isn't really a careful  
14 digest of material that is already in the record of the  
15 tape. It seems to me that is what we are talking about.

16 MR. DOWNEY: i think that it is beyond that.  
17 Because, I believe that there is a representation that  
18 they had contact with these witnesses in order to get  
19 their committment to testify. I would assume that some  
20 of the information that Ms. Guarde has about the subject  
21 of Mr. Miles, and others would represent results on her  
22 conversations, and development of other people's conver-  
23 sations with these witnesses.

24 JUDGE BLOCH: Ms. Guarde, is that true?

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1 MS. GUARDE: As to Mr. Miles, certainly we have  
2 employed Ms. Ellis's assistance in contacting people that  
3 she knows on a personal basis that we don't. We have  
4 contacted, I believe, almost all of the witnesses to  
5 confirm their willingness or unwillingness to testify.  
6 Frankly, in response to Mr. Downey's comments, at this  
7 point, all we have attempted to do is narrow the informa-  
8 tion on the record excluding examples of hardware and  
9 things that are not relevant to this issue, and narrow  
10 people's testimony to the harrassment and intimidation  
11 relevancy of this question.

12 JUDGE BLOCH: Is it specifically in those con-  
13 versations with the witnesses Mr. Downey suspects that  
14 you learn more about specific incidences the witnesses  
15 can talk to the board about. Is that true or not true?

16 MS. GUARDE: Not tru to the. Not true on the  
17 majority of these witnesses. I can't think of any one  
18 of them, off the top of my head, who have provided us  
19 more information. For instance, I have a detailed three-  
20 page summary of more information other than what's al-  
21 ready on the record. That has not been the nature of  
22 the context.

23 JUDGE BLOCH: To the extent that any of them  
24 did, you understand that it would be CASE's obligation  
25 to summarize what you have learned.

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1 MS. GUARDE: Yes. It would. Your honor, if  
2 you recall, one of the reasons that we have requested  
3 our witnesses to go second, is so we could prepare our  
4 witnesses in the evening of the first week. Our meeting  
5 with the witnesses to go over in more detail, their tes-  
6 timony and prepare them for the deposition and the cross  
7 examination or the evidentiary part of this deposition is  
8 going to be done during the first week during the even-  
9 ing.

10 MR. TREBY: This is Mr. Treby.

11 JUDGE BLOCH: Yes sir.

12 MR. TREBY: I believe, at least from the staff-  
13 point of view the problem is not so much that we were  
14 looking for a synopsis or a summary of the various docu-  
15 ments which are in the public record with regard to these  
16 people, what we had anticipated we were going to get were  
17 two things. First, a brief statement, much like were  
18 what we got on June 27. Such that this brief statement  
19 would identify an incident, the date of that incident,  
20 and provide the names of the applicants' person who was  
21 involved in that incident, and that the second thing that  
22 would be provided was some statement that GAP people had  
23 gotten that might provide more details of other incidents.  
24 With regard to the second item, the affidavits that the  
25 GAP investigators have had, we have had some discussion

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1 earlier on this conference call that there are three or  
2 four that OI seems to have advised GAP not to provide.  
3 I take it them, since we are only talking about three or  
4 four that there aren't any other statements.

5 JUDGE BLOCH: Are there any others Ms. Guarde?

6 MS. GUARDE: The only other statements that GAP  
7 has provided to the NRC do not have any information on  
8 harrassment and intimidation or the people were not will-  
9 ing to testify on. We deemed their information indepen-  
10 dently verifiable. The rest of it is hardware material  
11 which has been submitted on. It does not include any-  
12 thing on harrassment and intimidation.

13 JUDGE BLOCH: Ok. Mr. Treby, please continue.

14 MR. TREBY: So, that goes back to the first  
15 thing, which incidents, dates, and names of other appli-  
16 cants' people who might have been involved in that inci-  
17 dent.

18 JUDGE BLOCH: Ok. Now, if I understand correct-  
19 ly, CASE is telling us that the only information that  
20 they have about incidents, dates and names is information  
21 already in the record of the case. They have nothing  
22 beyond that. Is that your understanding Mr. Treby?

23 MR. TREBY: That is what I have been hearing.  
24 Now, I have looked at the various documents with regard  
25 to Mr. Miles that have been mentioned earlier here today.

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1 There is nothing in them that goes with any specific  
2 incident. They are general statements and they go to  
3 more of this matter that Mr. Roisman has been discussing  
4 which is the fact that the interveners are going to be  
5 putting on testimony that there was the atmosphere of  
6 intimidation or a general feeling of low morale, etc.  
7 that he has been thinking. That is not concrete. It is  
8 sort of being or feeling at the plant. It is not inci-  
9 dence. I guess my problem is that this is now going to  
10 somewhat definition of what intimidation might be that  
11 was discussed at the June 14 pre-hearing conference.

12 (Off the record discussion.)

13 JUDGE BLOCH: At that pre-hearing conference  
14 there was a discussion of the standard that was to be  
15 used with regard to intimidation. The thrust of the staff  
16 argument was that it needed to be tied down to concrete  
17 items, such as the written procedures of the QA program  
18 and any incidents showing that those written procedures  
19 were not being followed. After a lunch recess, the board  
20 came back and stated on transfer case 13939, the board  
21 concludes that for the most part the records this morning  
22 will help to straighten out some of the issues concerning  
23 the scope of intimidation. We could add a general stan-  
24 dard which we'll do now. I don't think that it is going  
25 to be all that helpful to the parties, but it is an

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1 effort. This is the standard. The burden for going  
2 forward rests upon CASE. It must show that the manage-  
3 ment was aware of incidents or accidents that might have  
4 been interpreted by workers as a discouragement to the  
5 proper reporting of deficiencies in the QC program. At  
6 that point, the burden shifts and the applicant must show  
7 that it has responded reasonably to the information  
8 available to it in light of the requirements of Appendix  
9 C. Then, the board went on to say, I think this is a  
10 general guideline, and following langley (phonetic) on  
11 that transcript page and following. But it indicates  
12 to the staff that the burden for going forward in the  
13 hearing would be for CASE to show that management was  
14 aware of incidents or actions that might have been inter-  
15 preted by workers as discouragement.

16 JUDGE BLOCH: There were a few incidents that  
17 CASE showed, would they not then also be able to show  
18 through testimony, that there was a feeling of intima-  
19 tion at the plant. It wouldn't be very persuasive to  
20 the board, sure, but is it admissable?

21 MR. TREBY: This, it might be admissable, but  
22 the staff would argue that it has very little weight for  
23 someone to get up there and indicate that they had some  
24 sort of general feeling. I don't know how one tests  
25 that. People can have feelings that they are being

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1 harrassed in these conference calls. It is hard to de-  
2 termine what weight one provides to that sort of thing.  
3 There certainly needs to be some showing of some inci-  
4 dent. I think that that is the heart of the problem  
5 here.

6 JUDGE BLOCH: That doesn't mean for each wit-  
7 ness there would have to be an incident?

8 MR. TREBY: Well. I'm not sure that I had  
9 identified any incidents in review.

10 JUDGE BLOCH: Lets stop. Mr. Downey has been  
11 cut off the call.

12 (Off the record discussion.)

13 JUDGE BLOCH: In the off the record discussion  
14 we attempted to summarize the portion of the call that  
15 Mr. Downey was not present at. Then, Mr. Belter pre-  
16 sented an argument that harrassment of craft personnel  
17 would not be admissable. The board agrees with that,  
18 that was the ruling that the board made. At this phase  
19 of the hearing, the harrassment of craft personnel would  
20 not be admissable. That does not mean that the craft  
21 personnel might not have some knowledge of harrassment of  
22 QC.

23 MR. DOWNEY: Your honor, I agree with that. I  
24 guess the other aspect of the point that I was trying to  
25 make was if there is some admissable testimony which may

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1 carry little weight of a general nature with respect to  
2 the atmosphere. Again, the atmosphere among personnel  
3 is not relevant as yet. We are among QC inspectors. The  
4 testimony would have to be directed to them if it is at  
5 all.

6 JUDGE BLOCH: Mr. Treby, would you continue?

7 MR. TREBY: I guess my point is that we, the  
8 question seems to be is are we ready to go to hearing or  
9 are we ready to go to discovery. At this point, we seem  
10 to be at the point where the question is, there is still,  
11 we don't have clear information from the interveners as  
12 to just what the incidents are. I guess what we are  
13 ready to go to is discovery, and not necessarily ready  
14 to go to a hearing at this point.

15 JUDGE BLOCH: Let me ask whether there really  
16 isn't a middle ground. Isn't it possible that we are  
17 ready to take evidentiary depositions with the understand-  
18 ing that there is surprise that we will have to fashion  
19 specific remedies?

20 MR. TREBY: I would think that we would be  
21 able to take depositions, evidentiary deposition of  
22 those people who are talking about specific incidents.  
23 And, I guess I would like to modify one statement that  
24 I made a little earlier in which I indicated I wasn't  
25 sure that there were any indications of that. I have

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1 reviewed my notes from the June 27 filing, and there are  
2 instances of specific instance, because there is the  
3 listing of 30 people with regard to the T-shirt matter.  
4 That, I guess is a specific incident. There is, Mr.  
5 Donham. That was a specific incident. What I have great  
6 difficulty, our people, like this Stan Miles who has just  
7 made some general statements with regard to low morale.

8 JUDGE BLOCH: Suppose that the hearing was  
9 going to be starting next Monday and that is all you had.  
10 Would there be grounds for calling off the hearing?

11 MR. BELTER: Your honor, this is

12 JUDGE BLOCH: No. This is Mr. Treby. You'll  
13 get a chance, Mr. Belter.

14 MR. TREBY: Well, we would have to look at the  
15 pre-file testimony. I would assume that if we were  
16 going to a hearing there would be something resembling  
17 pre-trial testimony. It is possible that motions might  
18 have been made that there would be various motions to  
19 strike substantial portions of that pre-trial testimony  
20 which might lead to a determination not to go to hearing  
21 at that point.

22 JUDGE BLOCH: Mr. Belter or Mr. Downey.

23 MR. DOWNEY: Yes your honor, this is Mr. Downey.  
24 I think I've got an even stronger position than Mr. Treby.  
25 If we, we would not be prepared to go to hearing on

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1 Monday, because there has been no opportunity to discover  
2 fully what it is that is going to be presented when the  
3 interveners go forward with evidence. We would have  
4 anticipation of the hearing we would have deposed their  
5 witnesses, and presumably they would have deposed ours.  
6 We would have known what the issues were, we would have  
7 as Mr. Treby correctly indicates, pre-filed testimony.  
8 If the pre-filed testimony would have come from the  
9 kind of the information that we have in this response to  
10 the information request, there would indeed have been a  
11 motion for summary disposition of virtually every alle-  
12 gation that is being made.

13 JUDGE BLOCH: Are you proposing to a system  
14 of going to depositions and having a real trial. It  
15 sounds to me that that is what you were saying. I would  
16 guess that that would assure a two-month delay in the  
17 opening of the plant.

18 MR. DOWNEY: I don't believe that is true,  
19 your honor. I believe we can follow a hearing schedule  
20 that will not change any substantial way the schedule  
21 that the board has set forward. Let me suggest how I  
22 see that happening. I see using the next 2, 3, and per-  
23 haps 4 weeks to take discovery depositions. In the inter-  
24 im, in the smae time period, we would be preparing as  
25 we learned about what these allegations were, we would be

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1 preparing testimony. We would pre-file it and we would  
2 go to hearing in early to mid-August on these issues. I  
3 don't believe that you are going to see 100 such witness-  
4 ses at any such hearing. It is going to be called down  
5 to those who do have something relevant to testify about  
6 and that a decision could be rendered shortly after con-  
7 clusion of such a hearing. Let me address, again, we  
8 have focused quite promptly, I think on a very important  
9 problem that has been developed in the procedure that  
10 we have all tried to work for. That is, the inadequacy  
11 of the response.

12 We are putting aside now, the results of the  
13 earlier problem that I have staffed this case based on  
14 one witness at Friday at 5:00 I learned that it was an  
15 incomplete list and that indeed substantially larger  
16 than I have been led to believe. I have to read staff  
17 the new contingency assuming the board permits this to  
18 go forward.

19 JUDGE BLOCH: Contingency being the case has  
20 interviewed its witnesses much less thoroughly than you  
21 had assumed?

22 MR. DOWNEY: Quite so, your honor. And that,  
23 there would have been an ability on CASE's part to respond  
24 to the board's directive to give us specific instances  
25 which would become the issues in this hearing. Now,

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1 as I see the situation, and I can understand from Mr.  
2 Roisman's dilemma, and CASE's dilemma, as I see the situ-  
3 ation, there has been from CASE's point of view an  
4 extraordinary amount of resources submitted to taking the  
5 100 depositions that they want to take to find out what  
6 their case is about. There has not been a comensurate  
7 allocation of resources to responding to our discovery  
8 requests in the board's order to give us the specifics  
9 of their case. There is, down the road, an equally in-  
10 equitable allocation of resources from their point of  
11 view, from my point of view to our rebutal case, which is  
12 now going to start July 30. If indeed, we go forward  
13 with this procedure, put on 100 witnesses by deposition  
14 at which we learn for the first time 25 or 40 or 2 in-  
15 stances of harrassment, we are going to have to come  
16 forward with our case, with rebuttal evidence on those  
17 points. I am informed by Mr. Roisman that unlike the  
18 seven people he can muster to put on his case, he can  
19 only muster two to respond to ours. If that is the case  
20 and he puts on 50 witnesses, to talk about specific prob-  
21 lems they had, and each witness iterates only one rebut-  
22 tal witness from our side, that's 50 witnesses.

23 We, need agin to go through seven simultaneous  
24 depositions, or five or six or some substantial number  
25 to complete our rebuttal evidence in one week. We were

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1 talking about this last week. Your honor, I said we  
2 could do it in the week of July 30th. That was, assum-  
3 ing that we got to put on our case under the same con-  
4 ditions that they want to put on theirs.

5 JUDGE BLOCH: Ok. If they were able to have  
6 more resources for that July 30th week, would that take  
7 care of a lot of your problems?

8 MR. DOWNEY: No. That would only take care of  
9 one problem, and that is that it would guarantee that  
10 one of these many assumptions form a basis for this  
11 proceeding might be met. That is, that they would hav  
12 equal resources for us to respond. But, it is a whole  
13 host of problems, your honor, that have arisen as we  
14 started down this path that causes us to have to come to  
15 the board today and say, we have very substantial doubts  
16 that this procedure is going to work.

17 JUDGE BLOCH: This has two problems. One is  
18 that it is possible that what they are giving you is  
19 really all they are going to be able to testify to. It  
20 is also a possiblity that as the witnesses are deposed,  
21 they will come up with some specific additional incidents.  
22 I am not sure which of those is going to come about. If  
23 it is a limited number of additional specific incidents,  
24 you are not really going to be hand cuffed are you?

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1 MR. DOWNEY: Your honor, we will all be put  
2 to the problem of going 100 unnecessary problems because  
3 of depositions because if this is all they have, we would  
4 move for summary disposition of 95% of what they have  
5 submitted. Under the format that Mr. Roisman contem-  
6 plates, this discovery, and indeed I come back to that  
7 because I think it is precisely what is going to happen  
8 in the next two weeks. This discovery is something that  
9 they are going to require the staff and the applicants  
10 to finance. And, that is simply not fair. They have  
11 an obligation to prepare their case. And, the case as  
12 of now, is not prepared. The board's directorate has  
13 not been followed, and now six days before we are sup-  
14 posed to start this process we remain in the dark about  
15 what the specifics of what the contentions are.

16 JUDGE BLOCH: Well, you may. You may actually  
17 have everything. Mr. Roisman, which of the two is more  
18 likely to be the case, that what you have disclosed is  
19 really all, most of what is going to be found out, or  
20 do you think that when you get witnesses on the stand  
21 there are going to be a lot of specifics that are not  
22 anticipated?

23 MR. ROISMAN: Well. I don't think that those  
24 are the two options. I think there will be more speci-  
25 fics, and that they will or reasonably or could have been

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1 by reasonably intelligent people anticipated. I think  
2 these people have, first of all, most of them, they are  
3 not unknown. They are people known to the applicants.  
4 I don't mean to Mr. Downey or Mr. Belter, obviously  
5 are relatively new to this case as I am, but are known  
6 to their own people on the plant site and they are fam-  
7 ilar with a lot of these allegations that these people  
8 have in either DOL hearings or in the course of this  
9 hearing or what have you. So, I think that there will  
10 be more specifics. I mean, we never pretended that we  
11 were going to produce in advance of these hearings, the  
12 equivalent of direct testimony for all of these people.  
13 I am a little puzzled, if I may go on, Mr. Chairman, may  
14 I?

15 JUDGE BLOCH: Briefly, please.

16 MR. ROISMAN: With Mr. Downey's point of about  
17 this sort of hops choice. The people whose depositions  
18 he seems to be most concerned about dealing with their  
19 discovery type depositions, are the depositions of our  
20 people. If we didn't go through this process, we would  
21 not call for the depositions of our own people. I assume  
22 that you would call for depositions of our own people.  
23 In the couse of those depositions, he would learn what-  
24 ever it is he wants to learn, and that's fine. And, when  
25 that was done, at some future time there would be a

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1 hearing and we would do the usual thing that you do in  
2 hearings that we would do direct testimony. And, up  
3 until that point we would not have paid for any of those  
4 depositions, nor would we pay for the intransitive de-  
5 positions. Arguably, the only people who, if this were  
6 just normal discovery, and not in lieu of an evidentiary  
7 hearing, the only people who we would be paying for the  
8 depositions of are the applicants and staff witnesses  
9 and only that portion of the applicants' witnesses that  
10 was other than their "direct or affirmative case" at the  
11 end of the second week. So, I don't want to leave un-  
12 rebutted this premise that somehow or another that all  
13 of these would have been covered by us under the normal  
14 course of things.

15 By the normal course of things, we would have  
16 not taken the depositions of any of these, because we  
17 could not have afforded to.

18 JUDGE BLOCH: Mr. Treby, you're still talking.

19 MR. TREBY: I'm back. I guess we are at the  
20 point as to whether there has been adequate identifica-  
21 tion of witnesses or not. That was one of the first  
22 subjects that we took up. I guess I, at the time was  
23 somewhat confused about discussion there with regard  
24 to these various docuemnts. Because, the documents that  
25 I have dealing with the list of applicants people, does

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1 list the strike order, and then has five names below  
2 that, as well as Joyce Grier and Dee Chapman on the next  
3 page. So, I am really confused as to whether or not we  
4 have all of the witnesses. I have not gotten any other  
5 papers since that date, so at this point I guess I have  
6 the list of the applicant witnesses that are going to be  
7 called, although I am confused.

8 JUDGE BLOCH: Maybe you can straighten that out  
9 with Ms. Guarde after the call?

10 MR. TREBY: That's true. Now, with regard to  
11 preparing for these cross examinations, preparing, not  
12 for cross examinations but preparing for these depositions  
13 the point that I would make is that it really was not  
14 until June 27th that we got the list of the various  
15 CASE people that were going to be called, and while we  
16 might have anticipated some of them, the full list was  
17 not received until the 27th. While we have been going  
18 through our files and searching out any staff pleadings  
19 that we may have which is November 28 pleadings, that  
20 process has really only started this last week, Thursday  
21 when we got the documents. It is difficult to say that  
22 we have been put on notice as to all of the matters of  
23 the interveners are going to be raising based on the  
24 brief statements that they gave us. We have found, and  
25 I guess have the ability to find other references they

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1 supplied them, however, there are some references which  
2 apparently have not been supplied such as the organs  
3 filing that was referred to earlier.

4 JUDGE BLOCH: What would you do. Assume that  
5 you had these problems. What do you want us to do?

6 MR. TREBY: I guess I would move that the, we  
7 don't believe that feeling of intimidation or testimony  
8 as to atmosphere is of much value. I guess what the  
9 staff would like to do is to strike the names of any of  
10 the people who do not meet any specific incident that we  
11 can look to. With regard to whether we should be going  
12 forward Monday or not, I think that we need to weight  
13 two consideration.

14 JUDGE BLOCH: Before we go ahead, you want us  
15 to strike those names, even though it is possible that  
16 they have knowledge of specific incidence. The problem  
17 is that noone has deposed them or interviewed them at  
18 this point to discover or not whether they have names or  
19 specific incidents. Why would we strike the names under  
20 that circumstance?

21 MR. DOWNEY: Your honor, this is.

22 JUDGE BLOCH: No. No. I'm talking to Mr.  
23 Treby.

24 MR. TREBY: I would strike them on the theory  
25 that we are now going to hearing, and so instead of using

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1 the analogy in effect, that the information that we have  
2 is sort of a summary of their direct testimony, or their  
3 pre-filed testimony, I would find that it is not relevant  
4 or not of sufficient value for the hearing process, and  
5 would have been struck on that basis. The purpose of  
6 what we are going to commence with on July 9th is a  
7 principally a discovery procedure. I guess that raises  
8 some other questions in my mind as to whether or not it  
9 can be truly looked to as evidentiary deposition.

10 JUDGE BLOCH: Wouldn't one possible procedure  
11 be to go ahead on the basis of it being evidentiary and  
12 rule afterwards whether in fact it was of that nature, or  
13 whether there was so much surprise and so much unexpect-  
14 ed material that that is not fair to treat it that way.

15 MR. TREBY: Well there is a practical problem  
16 to that, that is at that point you may well have accumu-  
17 lated 20,000 transcript pages that some person, party,  
18 or organization is going to need to pay for. You will  
19 have consumed the expense of the teams of each of the  
20 parties taking all of this stuff, and whatever  
21 things are included in that. This is not an inconsequen-  
22 tial sum. In fact, in my understanding, it may very  
23 well be a very substantial sum. And so, for those prac-  
24 tical reasons I guess I would not say lets go ahead and  
25 see what we get, then perhaps rule it all out after the

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1 fact.

2 JUDGE BLOCH: Too expensive?

3 MR. TREBY: Yes.

4 MR. DOWNEY: Your honor may I add to Mr.  
5 Treby's presentation on this?

6 JUDGE BLOCH: I think it might be better to let  
7 Mr. Treby finish and then let you talk again and let Mr.  
8 Roisman wind it up, so that we can try to complete our  
9 business. Mr. Treby, try to complete your.

10 MR. TREBY: I have two other points that I will  
11 discuss. I guess one question is the result of who will  
12 pay for it. I have attempted to do some research into  
13 the matter. One of my starting points was that I was  
14 aware that there was legislation at one time which was  
15 the agency's fiscal appropriation of 1982 which spoke  
16 against providing for interveners. I have been unable  
17 to verify whether that still exists or not. So, it seems  
18 to me that it is important that operating under the  
19 assumption that it still may exist, I think it is im-  
20 portant how one characterizes how what these activities  
21 are that's gone on July 9th. If they are considered  
22 evidentiary depositions, and are being done in lieu of  
23 hearing time, it seems to me that the agency would have  
24 done in any event. It is not providing assistance to  
25 any one class of people, such as the interveners. That

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1 is something that the board can go forward with. That is  
2 something that is going to occur July 9th is characteri-  
3 zed as discovery. Then, I think there is a concern  
4 that it may run afoul of this principle of the NRC not  
5 being able to fund interveners, in which case there  
6 would be a problem in authorizing it. I guess there is  
7 a middle ground, and that is that somehow segregate what  
8 is discovery, and what is hearing. I think that raises  
9 some partial filings and will result in lots more argu-  
10 ments amongst the parties because there is possible that  
11 something is in the gray area, and can be characterized  
12 as either. For instance, they ask whether, did you dis-  
13 cuss this with anyone else, that could be looked on as a  
14 discovery question. It also could be looked on as a  
15 question which is going to test the credibility of the  
16 witness, because that someone else is going to be pre-  
17 sented, and he is going to present evidence that he didn't  
18 discuss this matter with him.

19 It seems to me that there are problems with  
20 that approach, but they may not be insurmountable. I  
21 think I would like to point out two other matters in  
22 that regard. There may be a tactical problem that the  
23 board might consider. It is my understanding that we have  
24 with our reporters that they are going to be taking the  
25 various hearing transcripts, and that is usually something

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1 that is arranged by the board, and I'm not sure what the  
2 resources are of the reporting services, if they would  
3 be able to do something like we are discussing, the kind  
4 of notice that they would have to be given at this point.

5 We would have to take that up with them if we  
6 decided to go ahead. That's right. The last point that  
7 I would like to make is, should we go ahead and do this,  
8 I think it is very unique circumstances that are in this  
9 case in the fact that there appears to be a desire on the  
10 part of everyone to move the case forward and the need  
11 to save hearing time, and other factors which may be  
12 unique to this case. My concern is that the, that this  
13 process of something being characterized as evidentiary  
14 depositions, at which the NRC then pays for something  
15 which, in fact, subsequently proves to be more discovery  
16 than hearing related, could present difficulty for the  
17 agency in the future.

18 In this regard, I would like to note for the  
19 board's information that I am aware of at least one other  
20 instance in another proceeding where this proposed pro-  
21 cedure that we are talking about here has been cited as  
22 a precedent for evidentiary depositions to be taken in  
23 that case.

24 JUDGE BLOCH: I'm sorry, I didn't understand  
25 that argument.

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1 MR. TREBY: Excuse me?

2 JUDGE BLOCH: What were you saying? I couldn't  
3 understand that argument?

4 MR. TREBY: I guess the basis that the argument  
5 is that we do not want to be setting a precedent that  
6 should we go forward in this case with evidentiary  
7 depositions that these depositions appear to be.

8 JUDGE BLOCH: I understood that part, but were  
9 you suggesting that there was some other case in which  
10 this had been done?

11 MR. TREBY: No. I was suggesting that there  
12 was another case in which our proposal here in Comanche  
13 Peak was being cited as a basis for this other case,  
14 going forward in doing the same thing.

15 JUDGE BLOCH: Ok. I suggest that we do what is  
16 right. If other people want to learn from it, that's  
17 up to them.

18 MR. SISCOL: This is Joe Sicol. I think that  
19 what we are saying is, I hope you will be careful to be  
20 Comanche Peak specific. Because, other people are using  
21 what you are doing at Comanche Peak as generic deter-  
22 minations, and we think we have a unique situation in  
23 this case.

24 JUDGE BLOCH: Ok. I understand. I can't see  
anything that I can do other than what is right. If

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1 people want to sight it as precedent, I can't order them  
2 not to.

3 MR. SISCOL: Correct, Mr. Chairman, but we are  
4 doing it right because, in fact, in Comanche Peak we have  
5 a fairly unique test..

6 JUDGE BLOCH: Ok. That's your argument in some  
7 other case, not in this one.

8 MR. SISCO: This is the case that the staff has  
9 raised all kinds of difficulties at the first time a  
10 mention was made about letting people know names in a  
11 piece of apper at which caused a great deal of procedu-  
12 ral difficulties in this case, which we are now at a  
13 fairly late date trying to rectify. So, I think that it  
14 is a unique case.

15 JUDGE BLOCH: Ok. Mr. Treby.

16 MR. TREBY: Just to complete the record on this  
17 one area, I am not aware of any other case where this was  
18 done, though it was my understanding that it was proposed  
19 at one time in the Shoreham proceeding, but it never  
20 occurred.

21 JUDGE BLOCH: It also was done in the Big Rock  
22 Point case on Seismic issues in the crane.

23 (End of tape.)  
24  
25

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1 JUDGE BLOCH: Okay, now Mr. Treby.

2 MR. TREBY: The last thing I would discuss is  
3 the staffing for July 30th, assuming that this goes  
4 forward, and I guess we would need to know more about  
5 that.

6 I had understood the Board's letter in the  
7 prehearing conference last week to talk about seven  
8 things for the weeks of July 9th and July 16th and to  
9 do as much as possible, but that the only things that  
10 would go forward on July 30th would need to go back  
11 to seven teams for that week.

12 I'm not sure without looking into it further  
13 whether we can do it. It's somewhat unusual that we  
14 need to come up with seven people to go down with  
15 regard to one proceeding and we've made the necessary  
16 accommodations for the weeks of July 9th and 16th.

17 JUDGE BLOCH: Okay, well, we never  
18 suggested seven teams for the last week. Apparently,  
19 applicants think that two lawyers is not going to be  
20 enough, but we never demanded seven.

21 MR. ROISMAN: We just don't know, Your  
22 Honor.

23 JUDGE BLOCH: Okay.

24 MR. TREBY: I think I touched on the various  
25 points. I guess the final point I would have is that

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1 the applicants who, number one, have the burden of  
2 proof in this case and, number two, are the ones who  
3 are most concerned about the timing, and since the  
4 applicants take the position that they don't want to  
5 go forward on July 9th, the staff would not insist that  
6 we need to go forward with these evidentiary depositions  
7 on July 9th, although we're prepared to do so.

8 JUDGE BLOCH: Mr. Downey, if you could  
9 continue the presentation of your case and try to touch  
10 briefly on the problem with the availability of two  
11 people on the order of applicant's witnesses.

12 MR. DOWNEY: Yes, Your Honor. The point on  
13 the week of July 30th is this: We do not know the  
14 reasons we have covered in this hearing, what specifics  
15 are coming out of CASE's presentation.

16 Until we know that we have no way of knowing  
17 what rebuttal evidence we'll put on. If, in fact, as  
18 Miss Guarde asserted earlier, these witnesses did have  
19 specifics about which they will testify, it's not only  
20 likely, it seems inevitable to me that we will have  
21 rebuttal witnesses to address their allegation.

22 Since we don't know how many specifics  
23 there are, we don't know in any -- to any substantial  
24 extent what kind of rebuttal case we're going to have.  
25 It may turn out to be five witness; it may turn out

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1 to be fifty. We simply do not know, and we're alerting  
2 the Board that here is a potential problem that could  
3 derail the entire process that we're about to embark  
4 upon.

5 And it's that concern that -- that led us to  
6 raise that issue today. And in fact, that's true of  
7 many of the issues we've raised today. And if I could  
8 go back to address some of the points in response to  
9 your questions of Mr. Treby, we think it is appropriate  
10 to strike witnesses, not because anything they have  
11 said or in the record suggests that there's any problem  
12 with the plant; quite the contrary, it's the failure  
13 of the CASE who has the burden of coming forward with  
14 it, while the burden of proof remains with us.

15 It's their burden to come forward with  
16 evidence that suggests that there's a problem, and  
17 that evidence to a very substantial extent is not --  
18 has not come forward, and absent some ability to  
19 identify what Mr. Miles may have to say or what the  
20 PR department representative from Tutco may have to  
21 say and this whole other list of witnesses, absent  
22 some indication that there is a substantial allegation  
23 that would create a problem, we think it is entirely  
24 appropriate to strike witnesses.

25 And, Your Honor, if I may go back and, please,

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we keep hitting the trees in this forest very hard,  
and I'd like to focus back on the forest, if I may.  
We embarked upon this process really in response to  
an overall objection and response to Mr. Roisman's  
request.

We then had substantial doubts about the  
viability of this process. Those doubts have grown  
over the past weeks. They have grown for a large  
number of reasons.

First and foremost, one week prior to the  
commencement of this proceeding, CASE is unable to  
give us the specifics of the allegation. Absent those,  
we can't properly prepare for the next two weeks of  
depositions, commencing the 9th, which leaves in my  
mind a substantial doubt that the entire effort, as  
extraordinary as it is, will leave gaping holes in the  
record and create a record that's basically superfluous,  
and we will have consumed all of these resources and,  
most importantly -- and that's Mr. Treby's point --  
but most importantly, it will also eat up the clock.

It's taking time. We've now devoted three  
or four weeks to preparing for this process, and I  
accept that Mr. Roisman has done so diligently and as  
we have done so diligently, but we have doubts that  
it'll come off.

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1           The second point is a week from commencement  
2 of this process we still have the open issues about the  
3 Hatley affadavit, the Orr affadavit and the Newmeyer  
4 affadavit.

5           Those are three bit parts of this proceeding.  
6 If you'll look through their witness list, you'll see  
7 how substantially they rely upon those three witnesses.

8           We come to this point a week before the  
9 commencement of this process where we have added only  
10 the last working day 12 or 14 new witnesses that we  
11 have to staff -- all three sides have to staff to  
12 accomodate those new witnesses.

13           It's -- there are just simply too many open  
14 questions that would allow us to move forward with  
15 confidence that what's going to happen will produce  
16 the record upon which the Board can make a decision.

17           We think and feel very strongly that the  
18 appropriate way to address this issue is the traditional  
19 way that the Board has addressed other issues in this  
20 case, and that is through discovery, which we think  
21 can be relatively short because of all the effort that  
22 everyone has put into this project to date, a relatively  
23 short time for preparing proposed direct exam and  
24 testimony and I think, by that point, a relatively short  
25 hearing because rather than expand this 90 witnesses,

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1 that process, in my judgment, will inevitably reduce  
2 the number of witnesses by a substantial factor.

3 And indeed, I think part of the process would  
4 include, from my point of view, motions to -- for  
5 summary disposition with respect to testimony of many  
6 of these people.

7 And I think rather than extend -- rather than  
8 shorten the overall process, this procedure indeed is  
9 going to extend it, and there is substantial likelihood  
10 of that and for that reason we urge the Board to re-  
11 consider this procedure.

12 An absolute minimum, we must have the specific  
13 instances of intimidation that they intend to pursue  
14 in this case.

15 JUDGE BLOCH: Now, you were going to  
16 address the question of the order of applicant's  
17 witnesses?

18 MR. DOWNEY: Yes, Your Honor. The -- I got  
19 from Mr. Roisman by telephone on Friday a tentative  
20 proposal of the way witnesses would be heard. The --  
21 I have not had -- I have not seen the document itself,  
22 a formal presentation of proposed order, but the order  
23 that he -- the tentative order that he gave me included  
24 on the very first day I believe every top ranking  
25 manager in the  Program at Comanche Peak.



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My objection to that order was putting all of those people in simultaneous sessions on one day would substantially impair the ability of the QAQC Program to accomplish its objective on that day, unless it would shut it down for that -- for the period of that deposition.

JUDGE BLOCH: So how would you propose accomodating that?

MR. DOWNEY: I would propose that instead of having Mr. Reagan, Mr. Purdy and Mr. Post and Mr. Brandt all in the same day, that we take one each day of that week so that there will be substantial numbers of managers left to address problems that occur in the normal work day.

JUDGE BLOCH: Would you be shut down if it were two, two and one, instead of one, one, one and one?

MR. DOWNEY: No, I believe that two, two and one could be -- we could arrange that. And I'm willing to work with Mr. Roisman. I have other --

JUDGE BLOCH: Mr. Roisman, is this okay with you or is it absolutely essential you get all five the first day? He says there'd be operational problems.

MR. ROISMAN: Well, that's the first time

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1 he's mentioned operational problems. It would be a  
2 problem -- these four people, I want them to pose  
3 simultaneously or I want them sequestered one from  
4 the other.

5 I do not wish to have Mr. Brandt and  
6 Mr. Tolson consult on Mr. Tolson's cross examination  
7 on Monday before Mr. Brandt goes on on Tuesday.

8 JUDGE BLOCH: Well, you can have Brandt  
9 and Tolson on together on Tuesday.

10 MR. ROISMAN: But Vaga and Purdy are in  
11 the same category. We had originally put Chapman on  
12 Monday and moved him to Wednesday at the applicant's  
13 request to keep him in Dallas where he's physically  
14 based.

15 The only people that we have on Monday that  
16 I know of that are in -- that are in that level of  
17 hierarchy are Tolson, Brandt, Vaga and Purdy.

18 JUDGE BLOCH: Mr. Downey, would you  
19 undertake to assure the sequestration of these wit-  
20 nesses from one another?'

21 MR. DOWNEY: Well, I'm not sure what he means  
22 by -- will I undertake to see that Mr. Tolson and  
23 Mr. Brandt --

24 JUDGE BLOCH: They should not learn about  
25 the testimony that's already been given by the other

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1 individuals, directly or indirectly.

2 MR. DOWNEY: Well, that would create some  
3 problem because just in the course of, for example,  
4 preparing Mr. Tolson for his deposition and preparing  
5 Mr. Brandt for his we both -- in both of those cases  
6 we know that Mr. Dunham's complaints are at issue.

7 If Brandt were taken on Monday and Tolson  
8 on Tuesday and Monday night we were interviewing  
9 Mr. Tolson preparing to anticipate questions and jog  
10 his memory the subject of Mr. Dunham would come up.

11 How that would comport with the kind of  
12 order that Mr. Roisman would envision, I don't know.  
13 It seems impossible to prepare them -- to work with  
14 those witnesses without addressing the subject of what  
15 comes up.

16 In fact, maybe the same lawyer would be  
17 doing the preparation of one who did the preparation  
18 of the other.

19 JUDGE BLOCH: If the only problem is  
20 operational, I guess the suggestion would be that you  
21 work with those five witnesses before the week starts  
22 and don't work with them during the week.

23 MR. DOWNEY: I think that's an unfair burden  
24 on us in light of the demand of the schedule, and I  
25 resent in a fundamental way Mr. Roisman's implication

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1 that somehow our witnessens, but not his, will get  
2 together and somehow manufacture testimony in this  
3 proceeding.

4 He insisted on this schedule which, in my  
5 judgment, reverses the way it would normally flow  
6 because he believes that to be true. But he assumes  
7 that the similar problem won't be present with his  
8 witnesses.

9 I don't understand that. It's contrary to  
10 my entire 15 years or 12 years of litigation experience  
11 where by necessity people work with witnesses both  
12 jointly and individually on issues.

13 MR. ROISMAN: Mr. Chairman, this is  
14 Mr. Roisman. I have no problem with the preparation  
15 on the Sunday night that you suggested. I would say  
16 that the findings of the Secretary of Labor in the  
17 Atchison Case suggests that, at least as to Mr. Brandt  
18 and Mr. Purdy, my concerns are not unwarranted.

19 I believe that it is warranted that they be  
20 taken -- I'm willing to accomodate a two-two schedule  
21 of Monday and Tuesday for those four. I'm still un-  
22 clear as to who the fifth man is.

23 UNIDENTIFIED SPEAKER: Chapman.

24 MR. ROISMAN: Well, we've already agreed to  
25 put him on Wednesday. So Monday and Tuesday for those

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1 four and that they be prepared on Sunday night and that  
2 they not be -- not have discussed with the Tuesday  
3 people what happened to the Monday people, the same  
4 way we would sequester a trial.

5 MR. DOWNEY: As Mr. Roisman's fully aware,  
6 sequestration of witnesses in a trial is exclusion from  
7 the hearing room and many, many times sequestration --  
8 witnesses were sequestered or prepared as the trial  
9 goes forward.

10 And I again resent the implication that  
11 somehow our people would be dishonest and I would call  
12 to Mr. Roisman's attention that he can give his fears  
13 separate to the Administrative Law Judge in the  
14 Atchison Case also found that directly that  
15 Mr. Atchison was so incredible and that he had mis-  
16 represented facts to the court so grossly his entire  
17 testimony was exempt.

18 So I believe that there's ample evidence in  
19 the record of the Atchison Case from which one could --  
20 that Mr. Atchison himself should not -- our witnesses  
21 separate from this problem.

22 MR. ROISMAN: Well, I'll be glad to sequester  
23 Mr. Atchison. Who shall I sequester him from.

24 JUDGE BLOCH: I have been a little troubled  
25 by all this discussion about Mr. Atchison. Since it

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was the ruling of the Board that the holding and DOL is going to be effective by collateral estoppel, I'm not sure that there's a vast field for Mr. Atchison's direct testimony under those circumstances.

MR. ROISMAN: That is correct, Mr. Chairman, and our filing with regard to this matter, with regard to Mr. Atchison, concerns that.

MR. DOWNEY: Which filing is that?

MR. ROISMAN: I'm talking about the 27th filing. Mr. Atchison is listed in that. And we've indicated it's on -- I'm sorry, the page number is -- it's about halfway back in the filing.

MR. DOWNEY: I can refer to that. Again, Your Honor, I can only say that from our point of view we simply don't have the information you've ordered be produced, that we need to prepare for a hearing which is what these depositions represent, and there is a substantial likelihood, in my judgement, that going forward will result in delay, not expedition, and at a total cost of resources and, more importantly, that a --

JUDGE BLOCH: Okay, have you completed your argument? Have you completed your argument, Mr. Downey?

MR. DOWNEY: Yes, Your Honor, I have.

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1 JUDGE BLOCH: Mr. Roisman, if you could  
2 respond briefly and then I'll allow Mr. Treby a brief  
3 time and we'll take a recess and decide.

4 MR. ROISMAN: Yes, Mr. Chairman. Hello?  
5 Mr. Chairman?

6 JUDGE BLOCH: Yes?

7 MR. ROISMAN: Oh, I'm sorry, it sounded like  
8 something had happened on the phone. I thought maybe  
9 we'd been cut off. If I understand the position that's  
10 been taken principally by the applicant and somewhat  
11 by the staff, it is that the information which will  
12 be elicited in the depositions to be taken of the  
13 CASE witnesses during the end of the first week and  
14 the beginning of the second week will constitute the  
15 substance of the CASE presentation on detail and that  
16 other people's depositions will be disadvantaged as a  
17 result of that lack of information.

18 Surely, we're not being told that we have  
19 to give more information about Mr. Tolson, Brandt,  
20 Vaga and Purdy than we already have because all we've  
21 got is what we've got.

22 We represent that we do not expect to ask  
23 any questions of any of the applicant's witnesses that  
24 is not based upon the information that is now in our  
25 possession and that we have given to the applicant,

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1 or that is now in our possession and either the  
2 applicant or the staff has given to us in response to  
3 discovery.

4 So that with respect to that group of wit-  
5 nesses, there isn't any "preparation time" necessary.  
6 The applicant may later wish to call back some of the  
7 Monday or Tuesday of the first week witnesses in their  
8 "rebuttal", but they're not being disadvantaged by what  
9 we're going to ask them because we told them what we  
10 know so we can't ask them what we don't know.

11 That seems not to be a problem. Secondly,  
12 then we have the question well what do you do when the  
13 witnesses that CASE puts on get more specific than what  
14 we now know about them, and I believe we refer about  
15 this on the record, that we saw the nature of the  
16 depositions being that we would start by basically  
17 asking the witness will you please tell your story now  
18 on the witness stand at the beginning, and with some  
19 questions to sort of keep the witness on track, that  
20 would happen.

21 And then they'd be cross examined as to what  
22 they had to say. If the applicant and the staff are  
23 "surprised" by that, the Board has already ruled what  
24 the remedy is -- they deserve their right to file  
25 "rebuttal testimony" with regard to that, which I



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1 assume may or may not involved the call-back of some of  
2 the Monday and Tuesday people.

3 JUDGE BLOCH: That's one thing. I think  
4 in addition I guess they could, if they wanted to,  
5 reserve it for trial. I'm not sure we said they must  
6 do it through those rebuttal witnesses because we talked  
7 about surprise being remedied at trial also.

8 MR. ROISMAN: That's right, Mr. Chairman.  
9 I agree with you, and, in fact, it is -- I assume it  
10 is that which will protect CASE with regard to any  
11 "surprise" that we get as the result of that rebuttal  
12 testimony or things that we learn that we didn't get  
13 from discovery that we should have gotten in response  
14 to our requests.

15 So, yes, you're right, it could be either  
16 the third week or it could be during the course of  
17 trial.

18 JUDGE BLOCH: Right.

19 MR. ROISMAN: Now, what is the -- what is  
20 the option if we do not go ahead with this process?  
21 The option is that except for the CASE witnesses,  
22 there will be no depositions taken unless somebody's  
23 going to come forward and take depositions of the  
24 applicant and staff people other than us because in  
25 the normal discovery process if we call the deposition

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1 we wouldn't have to pay. Our understanding was that the  
2 Board, I think, started this conference call three hours  
3 ago, that this was in lieu of the evidentiary hearing  
4 and thus that it was not incumbent upon us to do that,  
5 but if we went back to that process that would happen.

6 Now, there are two possibilities -- the  
7 applicant and the staff will say, "Well, we're not  
8 going to take their depositions and we don't believe  
9 that they should be offered in evidence."

10 I assume the way to do that, then we're  
11 back to the normal procedures, is that we have already  
12 submitted a witness list and identified what our wit-  
13 nesses propose to say.

14 Applicant and staff have their rights under  
15 2.749 to move for summary disposition. They would do  
16 so; we would exercise our rights which would then  
17 enable us to have the time to go out and interview each  
18 of our witnesses and get from them the detailed  
19 affidavits which would, in effect, be their direct  
20 testimony which would show that, in fact, their testi-  
21 mony is relevant to the proceeding and we would counter  
22 that.

23 I imagine that that process, just allowing  
24 for the normal, fairness amount of time, would take  
25 three or four weeks from now. And the Board would then

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1 have in front of it the proposed testimony of our  
2 witnesses and the proposed rebuttal in the way of  
3 lawyer arguments by the applicant and the staff with  
4 regard to their relevance.

5 I can't see how that helps the process one  
6 bit. I don't believe that it moves things along. I  
7 think Mr. Downey's view that somehow or another we're  
8 going to get the depositions all done next week and  
9 then we will be in hearings in a week or two pre-  
10 supposes that we're going to call a lot of people for  
11 depositions that we will not call and cannot afford to  
12 call.

13 JUDGE BLOCH: Mr. Roisman, I have the  
14 feeling that one of the problems that Mr. Downey has  
15 is that he realizes he's about to start evidentiary  
16 depositions and that he's far less well prepared in  
17 terms of earlier discovery than he ordinarily would  
18 be.

19 Now, that seems implicit in the process we  
20 undertook, but he thought he was going to get more  
21 details from you pursuant to what the Board had asked  
22 for. How do you respond to that?

23 MR. ROISMAN: I feel -- I feel that we have  
24 given him everything that we promised to give him,  
25 which was everything that we had. We never believed,

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1 in fact, as Miss Guarde, I believe, pointed out earlier  
2 in this conference call, we had even mentioned to the  
3 Board in our first proposal which was when we were  
4 going to have just one of the State depositions, or  
5 then two, that we would be using the evenings to pre-  
6 pare our witnesses and that's one of the reasons why  
7 we wanted the applicant's witnesses to go first.

8 And that time period we -- there has simply  
9 not been time. We would never have agreed to try to  
10 start this hearing --, and the second is it was  
11 originally proposed -- if we had believed that what  
12 was necessary was for us to, in effect, take a  
13 deposition of each of our witnesses and get in detail  
14 everything that they had to say.

15 JUDGE BLOCH: Do you recall when we  
16 specified that there should be summaries and they  
17 days -- the names of the people and the dates of  
18 incidents should be specified?

19 MR. ROISMAN: And my understanding of that  
20 was -- was that that was to the extent that we had  
21 them, and we have done that I believe. Now, maybe we  
22 should have also, although I think it would have been  
23 an unfair burden to place on us, read each of those  
24 documents in the record and showed the applicant and  
25 the staff what we believe was specific that was in there.

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1 I find incomprehensible that the applicant  
2 has not sent somebody, a law student or otherwise, back  
3 to the record to look at all of the information that's  
4 in there that relates to harrassment intimidation.

5 But I can assure you we've done that and  
6 have culled that information, and we are still per-  
7 fectly willing to have the applicant come and look at  
8 that at our satellite office in Miss Guardie's home  
9 starting almost immediately if they want to do that,  
10 and the staff as well, of course.

11 But the practical matter is that if we don't  
12 do that, I don't know -- I mean I think the Board kept  
13 asking the question -- I think it's the right one to  
14 ask -- "What'll I do about it?"

15 And I think the options are to go back to  
16 square one. We start at this point. We are willing  
17 to go ahead with the depositions of the CASE witnesses  
18 if the staff and applicant still want to call them  
19 we will do seven sessions.

20 I think it would all be done in the first  
21 week without any problem. And then we can proceed  
22 from there to whatever seems appropriate, the normal  
23 course of things. But I don't think the applicant's  
24 problems are as severe as they state.

25 As I remember, Mr. Downey indicated that --

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1 with regard to rebuttal witnesses -- that the applicant  
2 would be ready to go on the 23rd and it was my pre-  
3 existing commitment that had prevented that.

4 I think the rebuttal witness problem is  
5 very easily dealt with and I would propose the following.  
6 If the parties want to pursue that at a ready dis-  
7 advantage, the Board's already said if you're surprised  
8 you have your second bite.

9 The second bite is now schedule to start on  
10 the week of the 30th. The applicant indicated that  
11 they'd be ready to go as early as the 23rd, but the  
12 applicant's people during the week of the 23rd submit  
13 the direct rebuttal testimony of their people.

14 Then we don't have to take such a long time  
15 in deposition because we don't have to all sit around  
16 and listen to the applicant's witness say it orally.  
17 Give it in writing and then we will do whatever "cross  
18 examination" that is needed on the week of the 30th.

19 Miss Guarde and I are available and we'll  
20 work that week. We have nobody else available and  
21 we cannot get anybody else available for that week  
22 because we cannot afford to fly people back down to  
23 Fort Worth a second time.

24 You're using up more funds than we have as  
25 it is to fly them down there once. But even if it were

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1 50 people that the applicant would submit as rebuttal  
2 witnesses, I don't think that there would be any  
3 problem with us getting through those 50.

4 I assume it would be very focused rebuttal  
5 testimony. Mr. Downey is certainly going to be wanting  
6 to do that, and if we have questions of those people  
7 we'll ask them.

8 And I guess alternatively they can come to  
9 the hearing, although I think that makes the hearing  
10 longer than any of us had desired. So I don't see  
11 that even if -- even if the present situation presents  
12 the applicant and the staff with a "predicament", doesn't  
13 seem to me that it presents them with an irreconcilable  
14 predicament.

15 In fact, they will have, after the depositions  
16 of the CASE witnesser are finished, substantially more  
17 information to prepare for their "rebuttal" than they  
18 would have had if we had given them the "summaries"  
19 that they asked for that -- we've given them to the  
20 extent we had it, but if we'd given it in more detail.

21 In short, on the question of the "lack of  
22 filing of information by CASE," I reiterate, we've  
23 given what we got, and it is a more reduced amount of  
24 information than I would have wanted also, but I felt  
25 that the process that we have proposed demanded that

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1 all of us work with less than ideal resources and we did  
2 so.

3 Secondly, with regard to the question of the  
4 deposition transcripts, I think I have indicated my  
5 position with regard to that. I believe that the  
6 transcripts are appropriately -- could be appropriately  
7 paid for, as the Chairman has suggested, or by the  
8 applicant and the staff, and that as a practical matter,  
9 the Board can issue whatever orders it wishes, but  
10 there isn't any money here.

11 We're just -- you know, we're just squeezing  
12 stone. And finally, on the question of the order of  
13 depositions, I believe that I already said all that I  
14 had to say on that.

15 I just want to add two things lastly. One is  
16 that with respect to the witnesses on the list, we have  
17 already in discussions with Mr. Downey taken off of  
18 our list two of the people we put on, Mr. Mr. Hadley  
19 and Mr. Carpenter from GAP.

20 We are continuing that process and we've  
21 offered to continue it to narrow down the number of  
22 CASE witnesses. For instance, the whole T-shirt  
23 incident which is, I believe, 13 witnesses on the list.

24 We are working towards stipulation on that.  
25 The Dunham transcript, we are trying to make a judgement



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1 on that and meet with Mr. Downey or Mr. Belter on  
2 getting rid of those. And the Atchison matters, I  
3 agree with the Board.

4 I think that 95% of what relates to  
5 Atchison is in this record or is in the DOL record  
6 and there's very little, if any, additional. So that  
7 the proposition that there isn't specific information  
8 which Mr. Treby keeps relating to may relate to  
9 Mr. Treby's knowledge of the record rather than  
10 Mr. Treby's -- rather than to some objective fact.

11 I mean the Steiners who are on this record  
12 are fairly well spread out throughout this record,  
13 Atchison, Dunham, the T-shirt individuals and, you know,  
14 I think it is an unfair, inaccurate characterization  
15 that there's "no detail" in this record as to these  
16 people.

17 And we're prepared to go ahead on the 9th  
18 as we have indicated in the past and will do if the  
19 Board confirms that schedule.

20 JUDGE BLOCH: Mr. Downey, if we were to  
21 go ahead -- I want Mr. Treby to answer last -- I do  
22 want to know what has been decided, if anything,  
23 about what rooms will be available.

24 MR. DOWNEY: Your Honor, I have at -- there  
25 are no facilities -- enough rooms at the site. What I

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1 have done is I have arranged for the rental of eight  
2 townhouses, which are actually owned by a motel there,  
3 in the first floor of which are -- is their living room  
4 and a dining room with a table and I'm going to under-  
5 take to ensure that there are adequate -- that those  
6 townhouses can be used for the depositions.

7 JUDGE BLOCH: These are in Glen Rose?

8 MR. DOWNEY: Those are in Glen Rose, at the  
9 Glen Rose Motor Inn. And Miss Guarde is familiar  
10 with -- actually, she knows what I'm talking about.

11 JUDGE BLOCH: If we did arrange that they  
12 were evidentiary depositions, you would be willing to  
13 make those facilities available for that purpose?

14 MR. DOWNEY: Yes, Your Honor. We -- whether  
15 they're discovery or evidentiary or whether they're --

16 JUDGE BLOCH: Okay, the other parties  
17 have --

18 MR. DOWNEY: We've got the rooms. We'll --

19 JUDGE BLOCH: The other parties have no  
20 objections to the applicant paying for those rooms?

21 MR. ROISMAN: CASE has none and we have  
22 previously talked to Mr. Downey, not about those  
23 particular rooms, but about rooms either there or at  
24 Dallas, and we have no objection and we appreciate their  
25 willingness to do that.

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1 MR. DOWNEY: And in Dallas, Your Honor, we  
2 are trying to work with the court reporting service  
3 with which we've had the most experience. They inform  
4 me that that suite of offices next to them were vacated  
5 in the last month.

6 They have not been renovated for the new  
7 tenant and they're available for rental from the -- on  
8 a short term basis from the building owners. And in  
9 those offices they could set up eight deposition  
10 rooms and, in addition, arrange for work areas for all  
11 three of the parties.

12 So the furnishings and the details haven't  
13 been worked out, but it appears that that's do-able.

14 JUDGE BLOCH: So we could arrange that  
15 they would be done at facilities agreed to by the  
16 parties basically?

17 MR. DOWNEY: Well, assuming all of these  
18 things in Dallas fall in place, I think that's right.  
19 Your Honor, I want to address very briefly two points  
20 that Mr. Roisman made because, one -- at least one,  
21 and I think both, represent a substantial difference  
22 from the reasons for this call.

23 JUDGE BLOCH: Okay, now the only thing you  
24 should do, I think, is if there was strictly new  
25 material that was presented, I might permit limited

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1 rebuttal, but I don't want rehashing of old --

2 MR. DOWNEY: It's not old points. In fact,  
3 it has to do with the characterization that he's given  
4 us all he knows about Tolson, Brandt, Purday and our  
5 witnesses.

6 It's simply the same deficiencies in  
7 Mr. Miles and others show up in our witness, the  
8 witnesses that he wants to depose from us, because  
9 what he references -- and I'm looking now at Trademark  
10 Wells -- he says "ordering employees along with Harry  
11 Wiggins to disregard safety requirement."

12 I assume that he has in mind there some  
13 specifics. They are missing. I can't go to -- I can  
14 go to Mr. Wells and ask him, I suppose, when did you  
15 do that.

16 I feel confident the answer is "I didn't."  
17 What Mr. Roisman believes, I think, is that somehow  
18 he knows about something that Mr. Wells knows about  
19 that he perceives to be ordering people to disregard  
20 safety requirements.

21 And for example, on other witnesses of ours  
22 the reference is they will be asked to testify about  
23 the harrassment of Stan Miles. Well, we don't know  
24 what they think the harrassment was so we can't with  
25 any certainty --

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1 JUDGE BLOCH: Well, first of all, that's  
2 not permissible. It's outside the scope. Harrassment  
3 of Stan Miles is outside the scope of the hearing.

4 MR. DOWNEY: Your Honor, I think that's  
5 probably true of about 75% of these witnesses.

6 JUDGE BLOCH: All right, well, I will be  
7 available for rulings, if that's the case, of course,  
8 and you probably will get concessions from CASE if  
9 that is the type of stuff that they're actually going  
10 to ask.

11 All right, let me ask Mr. Treby to make  
12 closing argument.

13 MR. TREBY: The staff agrees with the Board  
14 that the principal problem here appears to be that the  
15 applicant, and we would add that the staff, are not  
16 quite sure what facts particularly the applicant  
17 witnesses are going to be asked about.

18 We've heard Mr. Roisman say that they've  
19 presented everything they know and they make reference  
20 to various documents that have been previously filed.  
21 That still does not provide information that affords  
22 either the applicant or the staff to know exactly what  
23 the applicant's witnesses, who are going to be the  
24 first ones who are going to be deposed, truly know  
25 about.

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1                   And if we take, for instance, this incident  
2 dealing with the T-shirt, the only information that I'm  
3 aware of with regard to the T-shirt incident is what  
4 is provided here on the June 27th document, and there  
5 are just general statements here such as "These employees  
6 were rounded up and taken to the office of Warren  
7 Tolson where they were questioned by management and  
8 then interviewed by the site --."

9                   There is no details there as to what -- if  
10 that is being asserted about the questioning by Warren  
11 Tolson or who management constitutes. Does it consti-  
12 tute Mr. Tolson or other people?

13                   In sum, there just are little information  
14 provided so that people can prepare for the first week.  
15 The staff is a little less concerned with regard sub-  
16 sequently or after the case goes on because to the  
17 extent that there is any surprise or anything with  
18 regard to what the CASE witnesses state -- and by  
19 "surprise", I'm using the term that the Board used  
20 in its discussions earlier -- there is the opportunity  
21 for rebuttal or at any subsequent hearings that might  
22 be held to take up those matters.

23                   The principal concern appears to be how does  
24 one prepare for this first portion of the deposition  
25 given the amount of information that has been given today.

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1 I think all the other matters have been discussed  
2 earlier in this discussion and I have nothing further  
3 to add.

4 JUDGE BLOCH: Okay, we'll take a brief  
5 decisional recess.

6 (Brief recess.)

7 JUDGE BLOCH: I'm afraid that anytime  
8 that the Government tries to establish a hearing process  
9 there are going to be matters that are less than tidy  
10 and less than dainty.

11 Things are going to seem somewhat less orderly  
12 than everyone would expect. In this instance the Board  
13 had hoped and expected that CASE would be able to  
14 provide the other parties with summaries that would  
15 be much more informative than the summaries that CASE  
16 has been able to provide.

17 In each instance we did expect that specific  
18 incidents that CASE witnesses would testify about  
19 would be identified, including the nature of the  
20 incidents, the time of the incidents and the people  
21 who were present, and that they would assist appli-  
22 cants and staff in preparing witness and refreshing  
23 their memories so that they'd be prepared to testify  
24 fully about what occurred at these specific events.

25 Unfortunately, the world isn't that orderly.

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1 The record in this case is quite complex. It's a  
2 record that's available to all the parties equally.  
3 CASE has attempted to some extent to point out areas  
4 of the record that are relevant to its allegations.

5 It has not gone back and talked to its  
6 witnesses to find out in greater detail the specific  
7 incidents that they may relate at a hearing. The con-  
8 sequence is that the work that CASE has done in  
9 digesting the record to some extent must be done by  
10 the other parties as well.

11 It's a burden that we had not expected the  
12 other parties to have to bear. Similarly, the other  
13 parties, if we go to evidentiary depositions next week,  
14 as is planned, will not be as well informed and will  
15 have a proceeding that's more on the nature of what  
16 would have occurred at the beginning of this century  
17 than under modern full disclosure discovery practices.

18 On the other hand, the alternatives of re-  
19 ordering this case, conducting discovery now and  
20 conducting a more traditional hearing later, also have  
21 difficulties.

22 That process also is subject to delay.  
23 Subject of later discovery of new impediments, the  
24 hearings could prove to be extremely lengthy. We hoped  
25 that the process we had designed earlier would actually



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1 manage in reducing the amount of time spent at hearing  
2 and would save us a great deal of time and effort in  
3 that regard.

4 While we're not satisfied with what CASE has  
5 managed to be able to do, we still think it better to  
6 continue with the procedure we set up. We recognize  
7 that that procedure will now cause greater difficulties  
8 to the staff and applicants than we had anticipated.

9 We are fully aware of that and we are fully  
10 aware that under the circumstances executives and  
11 managers who are in control of work forces of dozens  
12 or hundreds or thousands of people may well not be  
13 fully informed about specific incidents that will be  
14 brought out on this record.

15 To some extent that may require that they  
16 be called back as rebuttal witnesses and that their  
17 story otherwise be fleshed out. To some extent their  
18 lack of knowledge of specific incidents is so under-  
19 standable that it may not even be necessary to call  
20 them back to testify about those specific incidents,  
21 providing that their approach to their job has been  
22 above-board, that they actions that they have taken  
23 have had integrity to them and that the steps that they  
24 have taken are reasonable.

25 It's not at all clear to us that each

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"surprise" will need to be the subject of extensive rebuttal depending on the nature of the case as it is developed.

In any event, there are two ways of dealing with surprise in this hearing. The first is the ability of the applicants to call rebuttal witnesses during the third schedule week of depositions.

We adopt CASE's suggestion that if the applicants wish, they may prefile in writing the rebuttal testimony of these witnesses, which they should do no later than Thursday of the week preceding these rebuttal depositions.

In addition, if the applicants prefer, they may save their rebuttal testimony for the hearing. By doing that they may lengthen the hearing in a way that they would prefer not to do, would give them the short period of time between the first two weeks and the fourth week.

We think it only fair that the applicants have that option available to them. In terms of the specific difficulties the applicants raised about operating their plant in the absence of their QC management personnel, we think that on balance it would be acceptable to have CASE call two of those management personnel the first day of hearing and two

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1 the second and one the third. Every effort should be  
2 made to complete the testimony of those first two wit-  
3 nesses during the first day, even if it's necessary to  
4 go somewhat late with them.

5 CASE shall select which two witnesses they  
6 want to start with. We will place applicants' attorneys  
7 on their own are not to discuss the substance of any of  
8 that testimony with the witnesses that they'll prepare  
9 for the second day.

10 We will permit them to do ordinary preparation  
11 of those witnesses on the understanding that they are  
12 committed not to disclose the substance of that  
13 testimony.

14 We understand that it is CASE's intention to  
15 permit applicants and staff access to their files to  
16 ease the burden of the applicants and staff in reviewing  
17 the evidentiary record in this case, and we expect that  
18 they will live up to that intention.

19 Under the circumstances, we consider that  
20 the principal purpose of the depositions to be taken  
21 is evidentiary in nature. In that regard, these  
22 depositions are a substitute for oral or a portion of  
23 the oral testimony that would be taken at a hearing.

24 As such, the Board orders that they be taken  
25 for the Board. We may decide subsequently upon

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1 argument by the parties that some portion of these  
2 depositions are not appropriate for that purpose. We  
3 will hear those arguments at the time appropriate and  
4 will not prejudge those matters just because we have  
5 ordered these as evidentiary depositions.

6 Because they are evidentiary depositions, we  
7 now have an obligation to work with the NRC to determine  
8 the extent to which the contract resources available to  
9 the NRC are sufficient for the task at hand and to work  
10 out the administrative details as best as possible.

11 We will be in touch with the parties as soon  
12 as possible if any serious obstacles confront us in  
13 that regard. Because these depositions are special  
14 in nature, being evidentiary, we wish to place on the  
15 parties a special obligation to assist the Board in  
16 keeping the record as concise and crisp and relevant  
17 as possible.

18 Each of the attorneys and law clerks is urged  
19 to pare their questions and make them assuited to that  
20 economical public hearing record. In addition, each  
21 of the parties is required to determine whether any  
22 of their questions are strictly of a discovery nature.

23 To the extent that they are strictly of a  
24 discovery nature and would not be admissible at hearing,  
25 but are designed to elicit further information, those

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1 questions should be segregated in good faith by the  
2 lawyers involved.

3 Those portions of the transcript will not be  
4 paid for by the NRC. They will have to be paid for by  
5 the attorneys asking the segregated questions or the  
6 parties that they represent. Are there any necessary  
7 clarifications of the order that we have just issued?

8 MR. ROISMAN: Mr. Chairman, this is  
9 Mr. Roisman.

10 JUDGE BLOCH: Yes, sir?

11 MR. ROISMAN: On the very last ruling that  
12 the Board made, how are we to deal with that in the  
13 context of different witnesses? For instance, if we  
14 ask the question of a CASE witness that would be called  
15 "discovery", but would not have called a CASE witness  
16 for a discovery deposition, is that then our cost for  
17 asking the question?

18 JUDGE BLOCH: I don't know why you would  
19 bother to ask a CASE witness discovery on the record.  
20 It would seem to me that you could ask CASE witnesses  
21 that in the evening.

22 MR. ROISMAN: Yes, that's true. I -- I'm  
23 merely trying to use that as an example to merely get  
24 at an understanding. In other words, regardless of who  
25 would have been calling that witness --

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JUDGE BLOCH: Whoever asks the segregated question will have to pay for that portion of the transcript.

MR. ROISMAN: Okay. And by -- and by deposition type question, you mean a question which would not have met the evidentiary standard of a question that could have been asked and answered in the hearing?

JUDGE BLOCH: That's correct. And we're relying on the attorneys and the clerks to make good faith determinations of that and to do that segregation in good faith.

I understand there may be a gray area, and where there's a gray area, where something is both evidentiary and discovery in nature, we'll allow it as evidentiary.

MR. ROISMAN: One last question. In terms of this being Board depositions, what can we anticipate will be the -- I'm just not familiar with it because I've not been in this hearing -- what will be the status of putting the public document copies of these depositions into both the local and the D. C. public document?

JUDGE BLOCH: I believe it would be treated the same as any other transcript of a Board hearing.

MR. ROISMAN: So that it would go in at the

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1 same time that it would be available to the parties?

2 Is that --

3 JUDGE BLOCH: I believe there's usually  
4 some delay and it does not get to the document room as  
5 quickly as it gets to the parties, but I'm not certain  
6 of the timing of that. I'll bet Mrs. Ellis would be  
7 an expert on that.

8 MR. ROISMAN: Okay. All right, thank you.

9 MR. DOWNEY: Your Honor?

10 JUDGE BLOCH: Yes, Mr. Downey?

11 MR. DOWNEY: Yes, I have a clarification.

12 I really have two questions. The transcript, in light  
13 of the very, very short time frame in which we are to  
14 take these depositions and brief to the Board our  
15 positions on the issues, I think all of the parties  
16 are agreed that we need daily transcripts.

17 JUDGE BLOCH: Yes, we have always requested  
18 daily transcripts of our hearings and we would intend  
19 to do that for this.

20 MR. DOWNEY: Fine. The second clarification  
21 is really the corollary to Mr. Roisman; that is what  
22 do we do about questions of applicant witnesses that  
23 discovery and that are beyond the scope of the  
24 specific incidents in the witness list?

25 JUDGE BLOCH: You have a choice. You can

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ask them privately as your witnesses, or if you ask them on the record you'll have to pay for that portion of the record.

MR. DOWNEY: No, no. When -- if the CASE attorneys --

JUDGE BLOCH: Whoever asks them. If CASE asks them, they'll have to pay for that portion of the record.

MR. DOWNEY: And that -- I want to be clear that your ruling says when they go beyond the specifics provided in the witness list.

JUDGE BLOCH: No, I said when they go beyond matter that's admissible in evidence --

MR. DOWNEY: All right.

JUDGE BLOCH: -- if this were the hearing.

MR. DOWNEY: All right, fine. I'm sorry.

MR. TREBY: This is Mr. Treby. I have a clarification, also.

JUDGE BLOCH: Please.

MR. TREBY: It sometimes occurs in the course of deposition when they're for discovery purposes that questions are asked which a party objects to as being objectionable, and then the witness is still required to go on and answer the question.

It seems to me that we might have whole lines



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1 of questions in that order, and therefore, all I would  
2 ask is that you be available so that if those incidents  
3 come up --

4 JUDGE BLOCH: I intend to be available.  
5 I have, in fact, offered to Mr. Downey -- I think I  
6 have intended to offer it to everybody -- that, if  
7 necessary, I will attempt to be in Fort Worth if that's  
8 going to expedite things.

9 My plan is not to be there on Monday, but  
10 should it turn out that I'm so in demand on Monday,  
11 I might be there on Tuesday.

12 MR. TREBY: My other point is that besides  
13 you just being there, I would hope that those matters  
14 would not then continue to be spread on the record if  
15 it was ruled by --

16 JUDGE BLOCH: Once we make a ruling, it  
17 will be binding.

18 MR. TREBY: All right.

19 MR. DOWNEY: Your Honor --

20 JUDGE BLOCH: Yes, Mr. Downey?

21 MR. DOWNEY: -- I would -- I would very much  
22 like to accept your invitation to be available to rule  
23 on matters, and I anticipate there will be quite a  
24 number of evidentiary points raised in the course of  
25 these depositions.

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1 JUDGE BLOCH: You think on Monday and  
2 Tuesday? Do you think it would be better to try to be  
3 there at the start?

4 MR. DOWNEY: Your Honor, I believe the answer  
5 is yes, although I would anticipate the largest number  
6 of objections to come when CASE calls witnesses like  
7 Mr. Miles.

8 I take it now he's out. My sense of it is  
9 there are a very large number of witnesses in exactly  
10 the same situation as Mr. Miles, and I would anticipate  
11 moving to strike their testimony, in essence, before  
12 they go on.

13 We will review these materials and, if in our  
14 judgment there's nothing relevant as to the issues as  
15 defined by the Board, we would move to exclude them to  
16 save the time and expense of taking unnecessary  
17 depositions.

18 I'm not prepared to do that now with the  
19 whole list, but I think that there will be no fewer  
20 than a dozen and perhaps as many as 20 will be in that  
21 category.

22 MR. ROISMAN: Mr. Chairman, this is  
23 Mr. Roisman. There is no existing procedure in this  
24 process for doing that, and if the applicants seek  
25 to do that, I believe that we should have time to

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1 prepare the response. We've not indicated that Mr. Miles  
2 may not have more detail.

3 We've indicated that we do not know it. If  
4 they want to strike Mr. Miles or any of these other 20,  
5 then we will take the time to interview each of them  
6 instead of just putting their detailed testimony and  
7 getting it in a deposition.

8 JUDGE BLOCH: No, I have already ruled  
9 that CASE has been unable to provide the full details  
10 of what these witnesses may say and that there may be  
11 surprise.

12 I do not think that the summaries provided  
13 at this time would provide the basis for ruling to  
14 strike. What might provide a basis for ruling to  
15 strike is if it becomes obvious in the course of the  
16 deposition that the witness has nothing useful to say,  
17 and at that point I guess it would be difficult for  
18 the Chairman with seven simultaneous sessions to be  
19 able to go in and have to read into the transcript  
20 each time, but it might be possible.

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JUDGE BLOCH: Okay.

MR. ROISMAN: You may have 15 or 20 minutes of direct examination and the attorney from the other side may ask a few clarifying questions and then in good faith believe that a ruling is appropriate on whether this witness has anything.

But I guess I'm suggesting is we ought to be able, in the event that you're not immediately available, to stop that deposition and not waste two or three hours of cross examination, seek a ruling, which the attorney seeks in good faith, and if the ruling is successful -- that is, the witness's testimony is stricken -- there's no problem.

If it's believed that there is relevant testimony, allow the deposition then to continue, but it would, of course, require a break order from you to be available.

JUDGE BLOCH: It's obvious that if you were to make such a motion, you ought to be very confident that it's justified because we're immediately confronted with the problem of the Chairman not having been there and you're going to have to somehow fill me in so that the parties agree on what the substance of what's been said during those 20 minutes.

MR. ROISMAN: That's correct. If we're able

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1 to agree and accurately describe to you orally what the  
2 witness may have said, I don't think we'll have that much  
3 of a problem.

4 Alternatively, we may have to wait 'til the  
5 next day 'til we see that transcript.

6 JUDGE BLOCH: Now, related to that is the  
7 problem that I discussed with Mr. Treby, which is that  
8 certain information, such as there was an atmosphere  
9 in the plant of intimidation or it was widely said  
10 that QC didn't report everything or something, that's  
11 probably admissible but probably not very persuasive.

12 I had imagined that Mr. Roisman wouldn't go  
13 on very long with such stuff, that it wouldn't -- that  
14 it could be brought out very quickly and that there's  
15 really nothing you'd be cutting off by cutting off  
16 witnesses after 20 minutes of nonsense like that.  
17 Mr. Roisman, do you think this is a real problem?

18 MR. ROISMAN: I'm not sure that it is,  
19 Mr. Chairman. I think where the problem really lies,  
20 frankly, is that the applicant and staff, on the one  
21 hand, and CASE on the other, have dramatically different  
22 views of what's relevant.

23 I don't think, for instance, that we'll have  
24 any problem giving you an agreed upon summary of what  
25 a particular witness may have said. I agree that the

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relevance of any individual witness isolated out, as we have just been discussing, and as to the existence of harrassment intimidation atmosphere is not in and of itself very persuasive.

But I would remind the Board and the parties that so true, too, is the case of the drop of water, but enough of them begin to cause a substantial erosion of even a very large stone.

And be that the testimony that our witnesses will give will both relate to that general question and also we'll have specific incidences, but again, I don't think we'll be arguing about whether we have somebody who's up there talking exclusively about the fact I was a craft person and I was told to weld it this way and there's no mention of any QC inspector and there's no mention of any QC work that was done with regard to it.

We're not offering it and if it turns out that somebody gets up there and, to our surprise, has nothing to say about this, we'll be the first one to say, "Please, go home. We don't need to hear from you at this site."

JUDGE BLOCH: How do you feel about the necessity of the Board being on site? I would point out that one of my concerns is a physical problem with

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1 a pinched nerve in my neck.

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2 MR. ROISMAN: I would say this. I grew up  
3 in Oklahoma City. I would be the last one to urge you  
4 to be anywhere within 150 miles of Forth Worth, much  
5 less 1500 miles of Forth Worth, at the time that we  
6 are all going to be down there.

7 I do not believe you need to be present.  
8 I think these telephone calls have established a  
9 mechanism for the resolution of these kinds of  
10 problems, and I have no problem with Mr. Belter's  
11 suggestion that he genuinely thinks after 20 minutes  
12 and a couple of clarifying questions by his person or  
13 himself that the deposition has nothing to add and  
14 that he's got a lot of cross examination he'd ask and  
15 he wants a ruling, we just stop for a minute, picks  
16 up the phone, they make the telephone call and we find  
17 out what you have to say about it.

18 I would not urge you to be there at all. I  
19 would urge you to be available.

20 JUDGE BLOCH: Mr. Treby, how about your  
21 view on that?

22 MR. TREBY: Well, it is hard for me to make  
23 a passionate plea that you be down there in view of  
24 recognition of your physical problem. On the other  
25 hand, I do think that frequently it is -- that face-

1 to-face conversations and conversations over the telephone.

2 But some of these instances may resolve  
3 around showing people documents, in which case it would  
4 be best to have you there in person rather than trying  
5 to do it by telephone.

6 JUDGE BLOCH: One second. Is Mr. Downey  
7 still on the phone?

8 MR. DOWNEY: Your Honor.

9 JUDGE BLOCH: Okay, I'm getting buzzed.  
10 The last time it was because Mr. Downey was cut off.

11 MR. DOWNEY: Your Honor, if I may, this is  
12 Bruce Downey. I don't -- I think that Mr. Roisman's  
13 point about being available by phone in light of your  
14 difficulty and problem to both your neck would be  
15 more than adequate initially.

16 If it needs more, we'll all work with you  
17 and each other to ensure that the issues you need to  
18 decide gets presented in the most practical way possible.

19 JUDGE BLOCH: If there's any problem on  
20 Monday, I'll definitely try to be down there on  
21 Tuesday.

22 MR. DOWNEY: All right.

23 JUDGE BLOCH: Let's -- are there any  
24 other necessary matters for this call?

25 MR. TREBY: We were going to discuss very

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1 briefly the summary disposition motions that are in the  
2 old --

3 JUDGE BLOCH: Yeah, you were going to say  
4 something about your schedule for those.

5 MR. TREBY: That's right. We have --

6 MR. ROISMAN: Excuse me, this is Mr. Roisman.

7 JUDGE BLOCH: Yes?

8 MR. ROISMAN: Do you need to call and get  
9 Mrs. Ellis on the phone for this?

10 JUDGE BLOCH: Well, why don't we just copy  
11 this portion? He's just going to state what the staff's  
12 schedule is. It's a shorthand way of doing something  
13 he could do in a memo to the Board.

14 MR. ROISMAN: That's fine.

15 MR. DOWNEY: Your Honor, is this something  
16 that Mr. Reynolds should participate in?

17 JUDGE BLOCH: He may want to review the  
18 transcript. As I understand it, it's just going to be  
19 a statement by the staff of its schedule. If Mr. Reynolds  
20 has a problem, he should call the Board and arrange  
21 for further discussion.

22 MR. DOWNEY: All right, let me prepare --  
23 I'll take notes on this.

24 JUDGE BLOCH: Please, Mr. Treby.

25 MR. TREBY: Very briefly, the staff had

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1 anticipated and indicated that it had hoped to fill all  
2 the -- all its answers with regard to these motions for  
3 summary disposition, I believe, on the 29th.

4 One is the -- this was contingent on us  
5 having a meeting with the applicants, at which time  
6 they would give us the information with regard to  
7 unclear matters or open items that existed in their  
8 motions.

9 We had such a meeting for which a transcript  
10 was made, during which items were identified on every  
11 one of the motions for summary disposition that has  
12 been filed.

13 The applicant stated that it was going to  
14 file the information with us, I believe, by today.  
15 I'm not sure whether or not it's come in yet today  
16 because I've been involved in this conference call.

17 But the point is we don't have that  
18 information. We're still awaiting some of that  
19 information which is necessary before we can respond  
20 to the various motions for summary disposition.

21 I guess at this point I can't give you a  
22 definitive schedule.

23 MR. MAZUNO: If I can add something --

24 JUDGE BLOCH: This is Mr. Scinto.

25 MR. MAZUNO: No, this is Mr. Mazuno.

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1 JUDGE BLOCH: Mr. Mazuno, thank you.

2 MR. MAZUNO: Just to clarify the record a  
3 little bit, there were, I believe, one motion where --  
4 does require additional information, but it is true  
5 that essentially all of the motions for summary  
6 disposition required some additional information from  
7 the applicant.

8 Some of them -- or most of the information  
9 I've requested the applicants have agreed to provide  
10 us or have put in the mail by Friday, so that way we'd  
11 receive it today.

12 My check with our mailroom indicates we  
13 have't received that yet and I haven't been able to  
14 talk with Joe Horin as to whether they actually got  
15 it in the mail on Friday or not.

16 The other thing is that we still have some  
17 other information which we requested which the  
18 applicants had stated in advance that they weren't  
19 going to be able to get to us by Friday and some of  
20 that information was on-going and required extensive  
21 work on their part.

22 And it was informally agreed that the staff  
23 would await that information rather than filing a  
24 summary -- an answer to a summary disposition motion  
25 which may disagree with the applicants simply on the

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1 basis that this official information has been submitted  
2 by the applicants.

3           Rather than having an iteration -- an  
4 unnecessary iteration of pleadings and then a further  
5 set of pleadings, the applicants and the staff agreed  
6 that we would wait -- await that further information.

7           JUDGE BLOCH: Okay, now it's also my  
8 understanding that the staff is conferring with CASE,  
9 or will be, so that CASE will know which motion staff  
10 is going to respond to first?

11           MR. MAZUNO: Yes.

12           JUDGE BLOCH: An effort will be made to  
13 accomodate the Board's needs so that CASE will try to  
14 phase its responses also to fit that same schedule.

15           MR. MAZUNO: Yes. I called Mrs. Ellis,  
16 and I can't recall what day it was, but I did call  
17 her and I gave to her an informal idea as to which  
18 motion for summary disposition the staff was very near  
19 to completing.

20           In other words, the -- once you receive  
21 the information and assuming that it proves to be  
22 acceptable to the staff, those are the ones that we  
23 were going to file first.

24           But, of course, there were some others that  
25 required some additional work and the applicants

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1 indicated that they were going to need some additional  
2 time before they submit it to us. So we did give  
3 Mrs. Ellis an informal idea as to which ones we were  
4 going to file first and those are the ones she should  
5 focus her attention on.

6 JUDGE BLOCH: Good. It's the Board's  
7 understanding that there is no further business. Is  
8 that correct?

9 MR. TREBY: Well, let me just make one  
10 further -- this is Mr. Treby -- statement with regard.  
11 I guess we've been discussing the various motions for  
12 summary disposition which we had previously identified  
13 and which have been the subject of an earlier conference  
14 call and for which we've had meetings.

15 Since then, the applicant has filed some  
16 additional motions for summary disposition, is intending  
17 to have some meetings on those and I guess at this point  
18 we're not prepared to give you a schedule on those.

19 JUDGE BLOCH: Have you received the  
20 brown balm envelope? We received a big one this morning.

21 MR. TREBY: We also received that.

22 JUDGE BLOCH: Okay.

23 MR. TREBY: I guess out point is that there  
24 are -- we appreciate there are a number of motions  
25 for summary disposition out there. We are working

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1 diligently on those and holding meetings, but we're  
2 not -- we can -- I guess we're requesting extensions  
3 of time beyond the normal period of time because I'm  
4 sure we're not going to be able to respond to those,  
5 such as the one we received today, which is 20 days,  
6 especially since we will be involved in this deposition  
7 process.

8 JUDGE BLOCH: Okay.

9 MR. MAZUNO: I guess I might point out that  
10 I just briefly reviewed the latest submission which  
11 involved -- U-bolts and there is extensive information  
12 their -- have submitted involving the finite element  
13 analysis of the U-bolt and substantial tests of all the  
14 U-bolts, involving not only static tests, but also  
15 dynamic tests, putting the -- apparently putting the  
16 U-bolts on -- subjecting them to mechanical vibration  
17 over extended periods of time. It was a very complex  
18 submission.

19 JUDGE BLOCH: And the staff hasn't completed  
20 its analysis yet?

21 MR. MAZUNO: He just received it today.  
22 Yes, that's right.

23 JUDGE BLOCH: Okay. I want to thank  
24 everyone for their participation in the conference.  
25 The hearing is adjourned.

CERTIFICATE OF PROCEEDINGS

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2  
3 This is to certify that the attached proceedings before the  
4 ATOMIC SAFETY AND LICENSING BOARD

5 In the matter of: Comanche Peak Conference Call

6 Date of Proceeding: Monday, July 2, 1984

7 Place of Proceeding:

8 were held as herein appears, and that this is the original  
9 transcript for the file of the Board.  
10

11 Kim Schroder  
12 Official Reporter - Typed

13 *Kim Schroder/PTB*  
14 Official Reporter - Signature  
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