

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

TEXAS UTILITIES ELECTRIC
COMPANY, et al

Docket No. 50-445
50-446

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

Deposition of: Robert Messerly

Location: Glen Rose, Texas

Pages: 50,000-50,087

Date: Wednesday, July 12, 1984¹¹

TR 01/01

*Original to Eugenia Pleasant
H-1149*

One copy to Eric Johnson, Region IV

TAYLOR ASSOCIATES

Court Reporters
1625 I Street, N.W. Suite 1004
Washington, D.C. 20006
(202) 293-1950

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY & LICENSING BOARD
4

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6 In the matter of: :
7 TEXAS UTILITIES ELECTRIC :
8 COMPANY, et al. : Docket Nos. 50-445
9 (Comanche Peak Steam Electric : 50-446
: Station, Units 1 and 2) :
10 -----x

11 Glen Rose Motor Inn
12 Glen Rose, Texas

13 July 12, 1984

14 Deposition of: ROBERT MESSERLY,
15 called by examination by counsel for Intervenor,
16 taken before Suzanne Young, Court Reporter,
17 beginning at 1:05 p.m., pursuant to agreement.
18

19
20 APPEARANCES:

21 On behalf of the Applicant:

22 MARK L. DAVIDSON, ESQ.
23 Bishop, Liberman, Cook, Purcell & Reynolds
24 1200 Seventeenth Street, N.W.
25 Washington, D.C. 20036

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APPEARANCES (Continued):

On behalf of Intervenor, CASE:

ANTHONY Z. ROISMAN, Esq.
Executive Director
Trial Lawyers for Public Justice
Washington, D.C. 20036

On behalf of NRC Staff:

ORESTE RUSS PIRFO, ESQ.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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I N D E X

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
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ROBERT MESSERLY

Mr. Roisman 50,005

Mr. Davidson 50,019

Mr. Roisman 50,086

E X H I B I T S

<u>EXHIBIT NO.</u>	<u>PAGE</u>
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Messerly-1 50,082

Messerly-2 50,083

Messerly-3 50,083

Messerly-4 50,084

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P R O C E E D I N G S

1
2 Whereupon,

3 ROBERT MESSERLY

4 a witness, called for examination and, having been first
5 duly sworn, was examined and testified as follows:

6 MR. ROISMAN: On the record. For the record I am
7 Anthony Roisman, attorney for the Intervenor CASE. Mr.
8 Messerly has been sworn as the witness, and with us is Mr.
9 Robbie Robinson, an observer.

10 Would the rest of you gentlemen like to introduce
11 yourself?

12 MR. DAVIDSON: My name is Mark L. Davidson, and
13 I'm a member of t e firm of Bishop, Liberman, Cook, Purcell
14 & Reynolds, counsel for Texas Utilities Electric Company,
15 and I appear here today at the deposition of Mr. Robert
16 Messerly. And I have a short and brief statement that I
17 would like to make.

18 I would like to summarize what I understand to be
19 the guidelines established by the Board for this proceeding
20 and the taking of this deposition. Under the order issued
21 by the Board on March 15th as modified by a series of
22 subsequent telephone conference rulings, the scope of this
23 deposition is limited to the taking of evidence and the
24 making of discovery on harassment or intimidation or
25 threatening quality assurance, quality control personnel

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1 with one exception. Allegations regarding any claimed
2 harassment or intimidation of craft personnel have been
3 specifically ruled by the Board to be beyond the scope of
4 this examination in these proceedings.

5 In reference to the transcript of June 14th at
6 a hearing held before the Board, we will demonstrate that
7 Mr. Roisman agreed to that characterization. The Board has
8 also ruled that the only evidence based on personal knowledge
9 may be adduced and that hearsay, rumor, innuendo and the
10 like are not proper subjects of the evidentiary portion of
11 this deposition.

12 Finally, the Board has instructed the parties
13 to separate the evidentiary and discovery portions of their
14 examination of the witness. That concludes my summary of
15 the relevant guidelines for this proceeding at this time.

16 MR. ROISMAN: Do you wish to introduce your
17 colleague?

18 MR. DAVIDSON: I am accompanied here by Mr.
19 William A. Horin, an associate of the firm of Bishop,
20 Liberman, Cook, Purcell & Reynolds.

21 MR. PIRFO: Russ Pirfo for the Staff.

22 MR. ROISMAN: With respect to Mr. Davidson's
23 statement, I just want to be clear on the record that that
24 represents Mr. Davidson's view of the law relevant to this
25 particular proceeding. The rulings of the Board speak for

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1 themselves.

2

EXAMINATION

3

BY MR. ROISMAN:

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5

6

Q Mr. Messerly, would you please tell me when you first began to be employed at the Comanche Peak Nuclear Power Station?

7

A February of '78.

8

Q Under what capacity were you employed?

9

A As a welder.

10

11

Q And in what capacities did you work at the plant site?

12

13

14

15

16

A I started out as a welder, and then I worked in the fab shop for a little while as a welder. And then I went into the field as a welder and fitter. And then I made first class supervisor, which is foreman over cable tray supports.

17

18

19

Q And did you have any special certifications or qualifications that you obtained in order to do that work that you did at the site?

20

A I had to pass the welding test.

21

Q And did you pass it?

22

A I did.

23

24

25

Q And can you tell me, during the time that you were employed at the site, did you observe or see any action which, in your judgment, represented an attempt to prevent

sylvb4

1 a member of the quality control staff inspectors from doing
2 their job?

3 A I did.

4 Q And can you tell me roughly what the time was
5 when you saw that? What year?

6 A I would say in '79.

7 Q And what position were you then holding at that
8 time? What was your responsibility at that time?

9 A At that particular time I was supervisor in
10 cable trays and also over what is known as the rebar group.

11 Q Can you tell me, as a supervisor in cable trays,
12 what did that mean? You were supervising what about cable
13 trays?

14 A The installation of cable trays and supports.

15 Q And would you please tell me what was it that you
16 observed that represented, in your judgment, some attempt to
17 discourage a QC inspector from doing his or her job?

18 A I observed the general foreman --

19 Q If you have no problem with it, give me the names
20 of each of the people so we will be able to refer to them
21 as we talk about them.

22 A Well, I observed Mike Robinson, he was a general
23 foreman of cable tray supports at that time, my immediate
24 supervisor who was having problems at 810 auxiliary building.

25 Q 810 representing what?

sylvb5

1 A The hallway, the elevation. And he was having
2 problems with a particular QC man, I don't remember his name
3 offhand. And it turned into a cuss fight in which Mr.
4 Robinson at that time literally cussed and doubled up his
5 fist and threatened this man, and later on wound up to grab
6 this man and actually shaking him and putting his fist in
7 the man's face, and threatening him as to start passing his
8 hangers and quit red-tagging them.

9 Q Let me just stop you. What is red-tagging mean?

10 A A red-tag is a hold tag that QC puts on hangers
11 because they are not right.

12 Q Okay, go ahead.

13 A And this lasted for a period of oh, I would say,
14 as much as ten to 15 minutes.

15 Q And how did you happen to be there to observe
16 all of this?

17 A I was working with my crew in that particular
18 area when I heard the cussing and shouting going on and the
19 crowd drawing, and went down to observe what was going on,
20 because it concerned my general foreman.

21 Q And how long did you say this lasted?

22 A I would say ten to 15 minutes.

23 Q Can you remember what the words were, or the tone
24 of the words that were used?

25 A The tone was very loud, obscene words were used

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1 very frequently. And the man was literally at time in tears
2 the QC man, and at other times he was just pale white, like
3 he was scared to death. He couldn't hardly utter a word.

4 MR. DAVIDSON: I object to that testimony as being
5 the opinion of the witness for which he has established
6 no qualification. He is trying to interpret the state of
7 mind of another individual.

8 MR. ROISMAN: I believe he's describing his
9 physical appearance, but your objection is noted.

10 MR. DAVIDSON: I move to strike that last response.

11 THE WITNESS: Okay, I forgot what it was.

12 BY MR. ROISMAN:

13 Q You were just telling me what you observed of the
14 appearance of the QC inspector during this time.

15 A Well, like I say, there was obscene language. The
16 man was being cussed, and it later led to physical shaking
17 of the man by the shoulders and putting his fist in his
18 face and steadily cussed very loud. You could have heard
19 him -- well, you could hear him 100 yards down the hallway.

20 Q What were the comparative sizes of the two people?

21 A The QC person was short and stocky. I would say
22 5'5", 5'6", 5'7", somewhere in there. And Mike Robinson I
23 would say is at least 6'1" or 6'2", 230 or 240.

24 Q What happened at the conclusion of the shaking
25 and the yelling?

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1 A Finally the QC man walked away and said he was
2 going to his superiors, and that broke up the crowd and
3 everybody went back to work because Mike hollered for everyone
4 to get back to work.

5 Q Do you have any basis for an opinion as to
6 whether or not as to the particular hanger support that the
7 dispute was about there was -- who was right and who was wrong?

8 MR. DAVIDSON: I object to the form of that
9 question. I think it is somewhat unintelligible.

10 MR. ROISMAN: Well, maybe the witness understood.

11 MR. DAVIDSON: I don't know what you're stating.
12 I'm sorry, you asked for the basis of his opinion. He
13 hasn't stated any opinion.

14 MR. ROISMAN: I said, do you have a basis for an
15 opinion. Mr. Davidson, if we're going to play these games,
16 you and I are going to spend the rest of today, tomorrow
17 and Sunday in this one basically 20-minute deposition. Now
18 if you want to play word games with me, we will play word
19 games. If you want to get the facts out of this witness,
20 I would suggest that you keep your mouth shut and let me ask
21 the witness the questions.

22 Now which way do you want to do it?

23 MR. PIRFO: I have the same objection to the
24 question. It is an objectionable question.

25 MR. ROISMAN: Wait a second. It's only objectionable

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1 if the witness doesn't understand it.

2 MR. DAVIDSON: Mr. Roisman, may I respond to that?

3 MR. ROISMAN: No, you will always have the fear
4 of interruption, Mr. Davidson. If it's in you now it will
5 remain in you, and I cannot take it away.

6 MR. DAVIDSON: Mr. Roisman, I think you're being
7 unnecessarily discourteous, and I think that etiquette is
8 something that we can at least maintain towards each other,
9 even if we don't have the same view of the facts.

10 MR. ROISMAN: Well, if you let me get the
11 information out of my witness, that courtesy will be responded
12 to with courtesy from me.

13 MR. DAVIDSON: Fine. I've always heard that you
14 were very professional and I expect to see the same treatment
15 here. Now, if I may say, I believe the question is
16 objectionable, and I have the right to make such an
17 objection, Mr. Roisman. And I don't appreciate you're asking
18 me to keep my mouth shut. I don't think that's a proper
19 statement by counsel in any proceeding.

20 MR. ROISMAN: Mr. Davidson, your objection is
21 noted.

22 BY MR. ROISMAN:

23 Q Mr. Messerly, I assume it would help you if I
24 again stated the question, so I will state it again. And in
25 order to deal with Mr. Davidson's concern, let's do it by

sylpb9

1 the numbers.

2 Number one, do you know what the inspector and
3 the general foreman were having their dispute about?

4 A I do.

5 Q What were they having a dispute about?

6 A The inspector was red-tagging too many cable
7 tray supports and was not allowing my general foreman to
8 make his production and was slowing him down.

9 Q At the particular moment when the incident you
10 testified to occurred, were they having a dispute about a
11 particular cable tray support?

12 A They were.

13 Q And do you have a basis for an opinion?

14 A I do.

15 Q As to whether the foreman or the QC inspector was
16 correct?

17 A I do.

18 Q What is your basis for that opinion?

19 A I had gone in to reinstall the hanger correctly
20 and correct the mistakes that were on the hanger.

21 Q So that, in your judgment, the hanger was
22 defective?

23 A It was.

24 Q And that the QC inspector was right?

25 A He was.

end 1.

1 Q Subsequent to this event, did you have
2 occasion to see that QC inspector again in this same
3 area where you were doing this work?

4 A I did not.

5 Q Subsequent to the time of this event, did
6 you notice any change in the nature of the inspections
7 that were taking place in that particular area that
8 you were working in?

9 A I did.

10 Q And what did you notice that was different?

11 A After the inspector left, production went
12 a lot longer or more production was made and a lot
13 less red tags were put on which allowed production
14 to go on.

15 Q What does that means in terms of the role
16 of the QC inspectors, a lot less red tags were showing
17 up?

18 MR. DAVIDSON: Objection. I don't think
19 there's been any foundation laid for that question.
20 He has merely stated his observation as to a condi-
21 tion, and that's fine. His interpretation of it is
22 pure hearsay and speculation.

23 MR. ROISMAN: I believe he already
24 testified that what the QC inspector had done was
25 put red tags on the items. I am asking him if he
has any knowledge about why those red tags were not

1 on the items subsequently. I believe he has formed
2 a basis --

3 MR. DAVIDSON: I don't think that was
4 your question. Perhaps if we have it reread, we
5 could hear it.

6 (The reporter read the question as
7 requested.)

8 MR. DAVIDSON: I believe I will repeat
9 my objection.

10 MR. ROISMAN: Your objection is noted.

11 MR. PIRFO: I have to object to that
12 question, too. I object to the form of it.

13 MR. ROISMAN: Your objection is noted.
14 Go ahead, Mr. Messerly. You can answer the question.

15 THE WITNESS: Well, what I meant by
16 production going on was that just the QC had been
17 warned, or whatever, which I guess is an assumption
18 on my part --

19 MR. DAVIDSON: I move to strike that
20 response on the grounds that it is not responsive
21 to the question, and moreover, it is pure specula=
22 tion. And by the admittance of the witness, he has
23 no knowledge whatsoever as to the facts.

24 MR. ROISMAN: Mr. Davidson, I'm going
25 to have to remind you again, if you take a look

1 at the rules of practice in the Nuclear Regulatory
2 Commission and particularly those in 10CFR Part 2,
3 you will note that the rules to strike, and striking
4 can be done at any time. It need not be made at
5 the time of the deposition.

6 There's nobody here to rule on your
7 motion to strike, so by making it, all you are
8 doing is prolonging it. You do not waive your right
9 if you move to strike later, should we offer that
10 particular portion into evidence. And it is at
11 that time, and not now, that it is necessary.

12 I will reiterate my concern that if you
13 make those objections now, all we are doing is
14 lengthening this deposition and making it harder
15 for us to get a complete transcript in a reasonable
16 period of time.

17 Obviously, you have a right guaranteed
18 by the First Amendment of the Constitution to make
19 those statements, but I just want you to know, if
20 you're not aware, that your failure to make them
21 does not waive them. We are also conducting these
22 depositions under the rules that no objections need
23 be made now in order to preserve them, and failure
24 to make them does not in any way waive them.

25 Having said that, if you want to continue

1 to move to strike, that is fine. But I want you to
2 understand that you don't have to do it to protect
3 what you perceive to be your client's interest.

4 MR. DAVIDSON: Mr. Roisman, I very much
5 appreciate your statement. I had not been informed
6 about the fact that all objections, regardless of
7 type or manner, had been preserved until later.
8 However, it is, generally speaking, my practice,
9 so that we can be aware and know of where those
10 objections are and make the at the proper time.

11 MR. ROISMAN: That's your privilege.

12 MR. PIRFO: The NRC Staff is going to
13 continue to move to strike at any appropriate time
14 or object to any objectionable questions simply
15 because I may not be the Staff attorney later
16 handling this. So for that purpose, I will continue
17 to exercise my right to move to strike to an
18 objectionable question now.

19 MR. ROISMAN: Mr. Messerly, let's go
20 back to the question and I will restate it for you.

21 BY MR. ROISMAN:

22 Q Do you have a basis for or do you have
23 an opinion about what is the reason or whether
24 the implications of the absence of more red tags
25 than the increase of production with respect to

1 the conduct of QC inspectors?

2 MR. DAVIDSON: I will object to that
3 question, Mr. Roisman, on the grounds already
4 stated. I think this is pure speculation to ask
5 the witness what are the implications as to ask
6 him to advance an argument which you may make based
7 on facts he testifies to.

8 That is not a fact. He has no basis
9 for it, or at least no basis has been established
10 here. Merely what you are asking for is rank
11 speculation on his part as to what is implied by
12 the presence or absence of a red tag.

13 BY MR. ROISMAN:

14 Q Go ahead, Mr. Messerly.

15 A Go to the next question or something.
16 You lost me.

17 Q Okay. All right. I'm sorry we keep
18 getting back to that.

19 Mr. Messerly, were there more or less
20 red tags after this event occurred?

21 A A lot less.

22 Q Who puts red tags on the equipment?

23 A QC.

24 Q If there are less red tags on there
25 then there were before, what does that mean, in

1 your opinion, in your judgment, that QC inspectors
2 are doing? Are they finding more defects or less
3 defects than they were finding before?

4 A They were not looking as hard as they were
5 before.

6 MR. DAVIDSON: I object to that response.
7 It is not responsive to the question. What you asked
8 him, sir, is whether, since there are less red tags,
9 it means that they are finding lesss defects or more
10 defects? The proper response would have been one or
11 the other, not his volunteered assertion.

12 BY MR. ROISMAN:

13 Q Go ahead, Mr. Messerly. If you want, you
14 can answer it as Mr. Davidson would like you to answer
15 it. Did it mean there are more defects found or less
16 defects found? Are more defects reported or less
17 defects reported?

18 A I would say less defects reported.

19 Q After this event occurred, did you, in any
20 way, change the manner in which you or your crew did
21 the installation of these cable tray supports?

22 A No.

23 MR. PIRFO: Pardon me. Could I get a
24 clarification? Does that mean the fist fight or the
25 occurrence of less red tags?

1 BY MR. ROISMAN:

2 Q The event I meant was -- Counsel has
3 characterized as a fist fight --

4 MR. DAVIDSON: Thank you, Mr. Roisman.

5 BY MR. ROISMAN:

6 Q -- but the event we were talking about
7 that involved Mr. Robinson, the QC inspector. My
8 question to you is, subsequent to that event, did
9 you understand that, Mr. Messerly?

10 A Evidently I didn't. You lost me again.

11 Q Okay. The question is, subsequent to the
12 time that the QC inspector and Mr. Robinson had
13 their dispute, did you and your crew in any way
14 change the manner in which you were installing the
15 cable tray supports from the way in which you had
16 been installing them before that occurred?

17 A No, we did not.

18 MR. ROISMAN: Okay. It's your witness.

19 MR. PIRFO: I have no questions.

20 Oh, I'm sorry.

21 MR. ROISMAN: Whichever of you wants.

22 MR. DAVIDSON: Mr. Pirfo, if you have
23 questions, I wish you would ask them now.

24 MR. PIRFO: I would probably like to
25 follow up on yours if I understand. I understood

1 the order was that we would go last. If they were
2 Applicant witnesses, we would go second. I'm just
3 going by what I was told.

4 MR. DAVIDSON: I don't know if the record
5 reflects this but it isn't like the case that Mr.
6 Messerly is a witness called and introduced by CASE.
7 He's not an applicant witness.

8 MR. PIRFO: I understand.

9 EXAMINATION

10 BY MR. DAVIDSON:

11 Q Mr. Messerly, you have in your testimony
12 here this afternoon described an incident that you
13 say you witnessed with respect to Mr. Robinson, was
14 it?

15 A Yes.

16 Q And a QC inspector?

17 A Yes.

18 Q Could you tell me -- I think you stated it
19 occurred in 1979, is that correct?

20 A It was.

21 Q Could you give me a more precise date?

22 A No.

23 Q You couldn't give me a month?

24 MR. ROISMAN: I believe the witness already
25 told you he could not give a more precise date than

1 that, Mr. Davidson.

2 BY MR. DAVIDSON:

3 Q Can you recollect the name of the QC
4 inspector whom you believe was involved in this
5 incident?

6 A No.

7 Q Have you made any attempt to determine
8 who it might have been?

9 A Nope.

10 Q Do you recollect where this incident
11 occurred?

12 A I did.

13 Q Where was that, sir?

14 A 810 hallway auxiliary building.

15 Q Do you remember the period when you were
16 working in that area?

17 MR. ROISMAN: I don't think the witness
18 understands what you mean by period.

19 BY MR. DAVIDSON:

20 Q All right. During your employment at
21 Comanche Peak, you worked in more than one area,
22 did you not?

23 A I did.

24 Q And during the time you were employed
25 there, at some point in time you worked at 810

1 auxiliary hallway, auxiliary building?

2 A I did.

3 Q What I'm asking is, do you remember when
4 it was that you were at that particular location?

5 A The same answer, 1979.

6 Q Well, I guess what I'm trying to say is,
7 were you there the entire period of 1979, the entire
8 year?

9 A Off and on.

10 Q But you were in other places as well?

11 A Yes.

12 MR. ROISMAN: Excuse me, Mr. Davidson.

13 Are you attempting to find out enough from the witness
14 so that you might go back and see if somebody else
15 knows about the event? If so, let me ask him one
16 question and it might help you a lot, if that's all
17 right with you.

18 MR. DAVIDSON: I would prefer if you're
19 going to do redirect, to do it at the appropriate
20 time. But I have no objection to your doing such
21 redirect.

22 MR. ROISMAN: All right. I just thought
23 it might save you trouble because he could give you
24 one piece of information that you might not ask him
25 about that may help you tremendously in finding other

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people who could talk about this event.

MR. DAVIDSON: Well, I think we ought to
just take it in order, if you don't mind.

CONFIDENTIAL
E-Z BASE
MILITARY SYSTEM

mgc 3-1

1 BY MR. DAVIDSON:

2 Q Mr. Messerly, you have a quite vivid
3 recollection of this incident, don't you?

4 A I do.

5 Q Did I understand you to be quoting directly
6 from what occurred, your statements here today? Were
7 you quoting language that was used in that dispute that
8 you have described?

9 A Not exactly.

10 Q But you remember precisely -- and I think
11 I quote here -- that you said your general foreman,
12 Mr. Robinson, said, "Quit redtagging these items"? Didn't
13 you quote him when you said that? Wasn't that a quote?

14 A Yes.

15 Q So you remember the exact words he used?

16 A Not all of them.

17 Q But you do remember those?

18 A Yes.

19 Q This incident made quite an impact on you?

20 A It did.

21 Q And even though it occurred -- what is it? --
22 five years ago, you remember it clearly today?

23 A I do.

24 Q Mr. Messerly, have you provided any
25 affidavits or testimony in these proceedings prior to

mgc 3-2

1 today?

2 A I have.

3 Q Can you tell me when you did that?

4 MR. ROISMAN: Excuse me. Mr. Davidson,
5 could you make a proffer as to what the relevance of this
6 line of questioning is?

7 MR. DAVIDSON: I am prepared to demonstrate
8 that. I think if you will let me go a little further,
9 the connection will be obvious. If not, I can make a
10 proffer.

11 MR. ROISMAN: All right. Okay.

12 BY MR. DAVIDSON:

13 Q Have you given any affidavits or testimony
14 in these proceedings previous to today?

15 A I have.

16 Q Can you recollect what those occasions were?

17 A It was in '82.

18 Q When and what?

19 A Do what?

20 Q When in '82, and what was the testimony you
21 offered?

22 A I don't remember the exact dates.

23 Q Do you know whethr you submitted an
24 affidavit in this proceeding?

25 MR. ROISMAN: Mr. Davidson, I don't believe

mgc 3-3

1 that this witness is a party to the proceeding, so he would
2 not have submitted anything.

3 Perhaps what you want to find out is whether
4 he know whether anybody else submitted an affidavit.

5 MR. DAVIDSON: How about if I change it
6 to this?

7 BY MR. DAVIDSON:

8 Q Did you execute an affidavit that was
9 prepared for submission in these proceedings?

10 A If you mean a statement, I did.

11 Q Do you recollect when you might have done
12 that?

13 A In '82.

14 Q Is that the only affidavit that you
15 executed in connection with these proceedings?

16 A That's the only one under a court order or
17 a court recording, the NRC did.

18 Q That's not my question.

19 A I don't know what you're talking about.

20 Q All right. You don't have any recollection?

21 A No.

22 Q Was an affidavit ever prepared for your
23 execution by Ms. Juanita Ellis?

24 A Yes.

25 Q Do you recollect the date when that affidavit

mgc 3-4

1 was prepared?

2 A Not the exact date, no.

3 Q Do you recollect the date when you executed
4 it?

5 A No.

6 Q Do you recollect the circumstances under
7 which that affidavit was prepared?

8 A I do.

9 Q Could you describe them to us?

10 A It was about like this.

11 Q Mr. Messerly, did you perhaps execute an
12 affidavit on February 3, 1983 for submission in these
13 proceedings?

14 MR. ROISMAN: Mr. Davidson, if you have an
15 affidavit that has Mr. Messerly's signature on it and it
16 has a date to it, why don't you show it to him, instead
17 of asking him again and again to recollect what he has
18 told you that he doesn't recollect? Maybe it will refresh
19 his memory.

20 I think he has told you about four times,
21 he doesn't recollect the date.

22 MR. DAVIDSON: Mr. Roisman, you are absolutely
23 correct. Mr. Messerly's memory has shown to be quite
24 defective in this regard. But in view of the fact that
25 he is testifying about his recollection --

mgc 3-5

1 MR. ROISMAN: Mr. Davidson, I am not only
2 not going to let you characterize his testimony, I am not
3 going to let you characterize my statements. That is
4 not my statement. And I think you are going to have to
5 control yourself here, or we're really going to have
6 serious trouble, and we will start, if necessary, with a
7 call to the Board to get some control over your conduct.

8 I am not going to have you sitting here
9 characterizing what I'm saying in a highly inflammatory
10 way that suggests that I, in any way, have implicated that
11 my witness has got some sort of defective memory.

12 I stated what I stated and nothing more than
13 that.

14 MR. DAVIDSON: You are quite right,
15 Mr. Roisman, but I don't think there is any demonstration
16 of lack of control here. In any event, --

17 MR. ROISMAN: I am giving the witness a
18 copy of an affidavit dated 2/3/83 --

19 (Document handed to witness.)

20 MR. DAVIDSON: Excuse me, Mr. Messerly,
21 could you put that down for a moment?

22 MR. ROISMAN: I'm entitled to give the
23 witness anything I wish.

24 MR. DAVIDSON: Mr. Roisman, I appreciate it
25 if you are going to instruct me as to the rules of this

mgc 3-6

1 proceeding, but my understanding is that this is my
2 examination.

3 Now I will, of course, show the document to
4 refresh his recollection, once I have established what his
5 recollection is. That is the way examination is conducted.

6 MR. ROISMAN: We'll go off the record.

7 (Discussion off the record.)

8 MR. ROISMAN: Let the record show that we
9 were off about two minutes and not ten.

10 MR. DAVIDSON: Mr. Roisman, may I continue
11 my examination?

12 MR. ROISMAN: You may.

13 BY MR. DAVIDSON:

14 Q Mr. Messerly, Mr. Roisman gave you a document
15 just before we had this break. Could I take a look at the
16 one he gave you?

17 MR. PIRFO: Mr. Davidson, I'm having trouble
18 hearing you.

19 MR. DAVIDSON: I'm sorry. I will speak up,
20 Mr. Pirfo.

21 What I said was, I stated to the witness,
22 I said, "Mr. Messerly, I believe Mr. Roisman gave you a
23 document before the break, and I was wondering whether
24 I might see it." And Mr. Messerly was kind enough to give
25 it to me. And I am now holding it in my hand.

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mgc 3-8

1 of that?

2 MR. DAVIDSON: Of course, if you want him
3 to keep it. I'm sorry. I didn't mean to take it from
4 you.

5 BY MR. DAVIDSON:

6 Q Having seen that document and having had
7 your recollection refresh, do you now also remember the
8 circumstances under which it was prepared?

9 A I think so.

10 Q Could you describe them?

11 MR. ROISMAN: Excuse me. Mr. Davidson, I
12 don't believe that this affidavit -- let me just
13 doublecheck to be certain --

14 (Pause.)

15 End 3
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1 MR. JORDAN: Do you want to go off the record
2 to examine it?

3 MR. ROISMAN: No. I just wanted to be sure
4 that my recollection of it was correct also. I don't
5 believe there's anything in there about harassment and
6 intimidation. So I'm curious to know now -- if you would
7 tell me -- what is the purpose of examining Mr. Messerly
8 about that affidavit.

9 MR. PIRFO: I would join in that request.

10 MR. DAVIDSON: What I am trying to determine
11 is what is in this affidavit and what are the purposes
12 and circumstances under which it was prepared.

13 MR. ROISMAN: But what does that have to do
14 with whether Mr. Messerly observed an incident of
15 harassment and intimidation of a QC inspector? I believe
16 you yourself have already stated your view of what the
17 rules are, so I'm trying to find that out.

18 MR. DAVIDSON: Mr. Roisman, you have accurately
19 stated my position. And I might also add that I appreciate
20 very much in your direct examination your having adhered
21 to it.

22 I think that that is going to make these
23 proceedings very short. The reason -- and I will make
24 my proffer on this -- is that this was an earlier
25 prepared statement by Mr. Messerly of his observations

1 and his best recollection of what occurred at Comanche
2 Peak.

3 There isn't the slightest reference to any QC/QA
4 intimidation, at a time when his memory, if anything,
5 would have been better than it appears to be today.

6 MR. ROISMAN: Unless you have any problem, I
7 will stipulate that that affidavit does not contain any
8 statement in it that relates to the matters that Mr.
9 Messerly just testified about no more than a few minutes
10 ago. You can begin your questioning of him from that
11 point if you'd like.

12 MR. DAVIDSON: Well, if I'd known you were
13 going to stipulate to that fact, Mr. Roisman, I would have
14 gone at it by the numbers.

15 MR. ROISMAN: All right. If you had asked me,
16 I would have been happy to do that. I never fail to
17 stipulate to things that are obvious.

18 MR. DAVIDSON: No, I think the record will
19 reflect that at all times you have conducted yourself
20 in a highly professional manner; and you have conducted
21 yourself in these depositions with -- I think, I hope --
22 the shared mutual goal that we complete the record in
23 as expeditious a manner and as complete a manner as
24 required and necessary. And I appreciate your help on
25 that.

1 MR. ROISMAN: You are more than welcome.

2 BY MR. DAVIDSON:

3 Q Now, Mr. Messerly, my question still remains:
4 Do you recollect the circumstances under which this was
5 prepared?

6 A I do.

7 Q Could you tell us what those circumstances
8 were?

9 A This is a statement I made to Juanita Ellis.

10 Q Now, when you made this statement, Mr. Messerly,
11 did you make it in person or did you make it over the
12 telephone? How did you make it?

13 A In person.

14 Q Did you go to visit her, or did she come to see
15 you?

16 A I went to her.

17 Q And when you made this statement, did she tape
18 record your statement?

19 A Yes.

20 Q With a tape recorder?

21 A Yes.

22 Q Did she also make any other statements?

23 A Yes.

24 Q Do you know whether that tape recording still
25 exists?

4-4

1 A I do not.

2 Q Did she ask you the questions that are indicated
3 in this affidavit?

4 A She did.

5 Q In those exact words?

6 A As far as I know.

7 MR. PIRFO: Mr. Davidson, could we have a
8 proffer? This document has been signed as if by Mr.
9 Messerly, and I cannot see the materiality of whether
10 it was tape recorded first or not. He has averred to the
11 facts stated on the affidavit as is. So anything prior
12 to the recording and his executing of the affidavit is
13 immaterial.

14 I see no value in inquiring into that.

15 MR. DAVIDSON: I guess my point, Mr. Pirfo --
16 and I think you're quite correct to ask me to establish
17 some reason for my line of questioning -- was to determine,
18 quite honestly, Ms. Ellis had properly interpreted his
19 remarks and recorded them as given, or whether she had
20 omitted something, or whether she had added something.

21 MR. PIRFO: Well, that's fair enough. I
22 think the questions are being directed to the generation
23 of this affidavit with what Mr. Messerly has averred
24 to, and he has averred to what is in the affidavit.

25 If you want to ask him if there is something

1 missing from what he had said, then -- Well, I don't
2 want to tell you how to do it.

3 MR. ROISMAN: Let me just say -- to be clear --
4 I think it is at least arguably okay to find out whether
5 there is anything else he told her that you have not
6 put in there.

7 I don't think it could have any possible
8 bearing, given our stipulation, whether she put in there
9 something more than what he said.

10 MR. DAVIDSON: It might go to show whether or
11 not testimony that has been prepared and submitted in this
12 proceeding has been appropriately procured, and whether
13 submissions made are, in fact, proper representations of
14 matters which these individuals have been asked to swear
15 to.

16 MR. ROISMAN: That doesn't have anything to do
17 with what he told Ms. Ellis. That may have to do with
18 whether after he read what she had written down there, he
19 was willing to swear to. It is a different question.

20 MR. DAVIDSON: I think you're right. I will
21 accept Mr. Roisman's characterization, and I will continue.

22 BY MR. DAVIDSON:

23 Q Mr. Messerly, to the best of your recollection,
24 did you execute or have prepared for your execution any
25 other affidavits that you understood were going to be

1 submitted in these proceedings; that is, other than the
2 one that you now have before you?

3 A I don't remember. Let me clarify something
4 here. I did not know the difference between an affidavit
5 and a statement that I made to the NRC. That's why I was
6 hesitant on the questions a while ago.

7 My house burned down in December, and I lost
8 everything I ever had. I had copies of these, and as far
9 as the statement in the affidavit, it didn't ring a
10 bell which one you were even talking about a while ago.

11 Q Mr. Messerly, let me first of all say that I'm
12 very sorry to hear about your house; and I'm sorry also
13 if I confused you with that question. And at any time,
14 Mr. Messerly, that you don't understand what I'm saying
15 or you're not certain of what I'm saying, don't try to
16 answer.

17 I'm sure Mr. Roisman would agree. Don't try
18 to answer a question you don't understand. Just ask me
19 what it is I mean or ask me to explain the question, and
20 I will, because I don't want to ask you anything you
21 don't understand; and I'm sorry.

22 A Okay.

23 Q What I mean by an affidavit, generally speaking,
24 will be a document that's prepared for your signature
25 that reflects your sworn testimony. A statement -- what

1 I meant there -- or testimony -- is often given under
2 oath, with a court reporter like this. And it is not a
3 document that someone else prepares for your submission.
4 It is often done, as this is done, with your attorney
5 who in this case would be Mr. Roisman, with another
6 attorney who would be asking questions and that would
7 be me.

8 Now, are you saying that you remember another
9 incident of not an affidavit but a statement that you gave
10 to the NRC Staff?

11 A I think there is another statement made -- not
12 a statement or an affidavit or something that I signed.

13 Q One or the other or both?

14 A Well, I did make a statement to the NRC.

15 Q You did?

16 A I did.

17 Q Do you recollect the date you made that
18 statement?

19 A I'm not very good on numbers or dates.

20 Q All right. I understand.

21 MR. DAVIDSON: Mr. Roisman, do you want to
22 refresh his recollection?

23 MR. ROISMAN: If it's all right with you, I
24 will simply give him a copy of a document entitled
25 "In the Matter of Sworn Statement of Matt Robert Messerly,"

1 indicating it's a sworn oral statement.

2 Mr. Messerly, you might want to take a look at
3 just the front page of it, so that if that statement --
4 You might want to look at the back and see if it has
5 your signature on it. If that's your statement, then you
6 can tell Mr. Davidson what the date of it was.

7 (Counsel hands document to witness.)

8 BY MR. DAVIDSON:

9 Q Mr. Messerly, now that you've had a chance to
10 review the document which Mr. Roisman gave you, is your
11 recollection refreshed?

12 A Yes, a little bit.

13 Q And do you recollect whether you gave the
14 statement to the NRC Staff?

15 A I did.

16 Q And do you recollect the date?

17 A I do.

18 Q And what is that date, sir?

19 A June 18, '83.

20 Q Mr. Messerly -- Mr. Roisman, you may want to
21 help him here.

22 I think that if you look at the document, it
23 indicates that you did sign it on June 18, 1983. Is that
24 what you are referring to?

25 A Yes.

1 Q Are you testifying as to your recollection, or
2 are you testifying as to what's recorded on this document?
3 In other words, do you remember actually giving this
4 testimony on June 18?

5 A No, I don't remember the exact date, but I do
6 remember giving this testimony.

7 Q So, in other words, the document really did not
8 refresh your recollection as to the date? All you're
9 doing is reading us a date you saw on the back page.

10 A Right.

11 Q Okay. Well, when I asked whether your
12 recollection was refreshed, what I meant was, when you
13 see the document, does it jog a memory that you are
14 giving us, rather than can you read the date? If you're
15 just reading the date, that really isn't your memory and
16 recollection --

17 A I don't remember when I made the statement.

18 Q Okay. Fair enough.

19 Now, I would point out to you that the first
20 page of the document does state that it was taken -- that
21 is, the statement was taken in April 1983. Does that
22 suggest to you that maybe it occurred in April of '83?

23 A I imagine it was.

24 Q But you swore to it later; is that your
25 testimony?

1 I'm sorry. That's a leading question, I
2 realize.

3 MR. ROISMAN: You are entitled in this cross-
4 examination.

5 MR. DAVIDSON: But I prefer not to.

6 MR. ROISMAN: That's all right.

7 BY MR. DAVIDSON:

8 Q Do you understand my question?

9 A Yes.

10 Q We are talking about when the statement was
11 given as opposed to when you swore to it.

12 A Okay.

13 Q Is your recollection refreshed? I'm sorry to
14 be going over this -- I know it all seems very silly,
15 but it's the way lawyers do these things.

16 A That's right. I see.

17 Q And I want to do things by the numbers.

18 A All right. It's refreshed.

19 Q Thank you. And you now remember giving this
20 statement?

21 A I do.

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1 Q Do you remember swearing to the accuracy of the
2 statement?

3 A I do.

4 Q Was the statement taken down by a court reporter
5 -- that is, a stenographer?

6 A It was.

7 Q Did you review the statement at the time you swore
8 to it?

9 A I did later.

10 Q Did you read through it?

11 A I did.

12 Q Did you think the reporter had accurately recorded
13 your words?

14 A He did.

15 Q Do you recollect whether, in any part of that
16 testimony, you made any statements with respect to the
17 alleged harassment, intimidation, or threatening of QC
18 personnel?

19 A I did not.

20 Q Do you recollect you did not or you did not?

21 A I did not.

22 Q Mr. Messerly, other than the two documents that
23 we have reviewed here this afternoon, do you recollect any
24 other statements, testimony, or affidavits that you either
25 executed, signed, or prepared or gave in connection with

1 these proceedings?

2 A I do not.

3 Q Did you perhaps, Mr. Messerly, have a telephone
4 conversation with a Mr. H. Brooks Griffin, an NRC
5 investigator?

6 A I did.

7 Q G-r-i-f-f-i-n.

8 Do you recollect this conversation, sir?

9 A I remember talking to him. He called me three or
10 four times.

11 Q Did you have more than one conversation with him?
12 Or did he just try to reach you?

13 A I did.

14 MR. ROISMAN: Wait a second.

15 He answered the question in the middle of an
16 either/or question. And now the record is not going to show
17 what he said.

18 Mr. Davidson, if you wouldn't mind, just ask him
19 the question. And wait till he finishes -- with either one.

20 MR. DAVIDSON: I appreciate that. That would be
21 helpful, Mr. Messerly.

22 THE WITNESS: All right.

23 BY MR. DAVIDSON:

24 Q You say you had more than one conversation with
25 Mr. Brooks Griffin?

1 A I did.

2 Q Did you have a telephone interview with Mr. Brooks
3 Griffin on or about August 17, 1983?

4 A I don't know. I'm not familiar with dates. I
5 can't remember them.

6 Q You can't remember any dates?

7 A No.

8 Q Do you remember his interviewing you?

9 A I do.

10 Q Did you ever receive a write-up or a summary of
11 that telephone interview?

12 A Nope.

13 Q You were never shown such an interview?

14 A No.

15 Q In that interview, sir, to the best of your
16 recollection, did you make any statements with respect to
17 alleged harassment, intimidation, or threatening of QC
18 personnel?

19 A I don't remember.

20 Q Do you remember what it was you did say to him?

21 A Not really.

22 Q I have a document here I would like to show you.
23 Perhaps it will refresh your recollection.

24 It is a document entitled "Telephonic Interview
25 of Robert Messerly." And it states that there was a

1 conversation on August 17, 1983.

2 Could you look that up?

3 MR. ROISMAN: Just a moment.

4 Where is the document?

5 MR. DAVIDSON: I just described it. I am not
6 marking it for identification. I just want to see if he can
7 refresh his recollection.

8 MR. ROISMAN: I want to know what it is he's being
9 shown.

10 I know what the page says. Is this your notes of
11 a telephone conference?

12 MR. DAVIDSON: Oh, no, it's not mine.

13 MR. ROISMAN: Whose is it?

14 MR. DAVIDSON: I believe maybe the witness can
15 help us with that.

16 MR. ROISMAN: Why? He just told you he's never
17 seen it. How can he tell you whose note it is?

18 MR. DAVIDSON: Maybe it will refresh his
19 recollection.

20 MR. ROISMAN: I'm not going to let him be shown
21 something and start to ask questions under oath until I get
22 some clarification on the record where did these notes come
23 from.

24 Can you tell me -- are they an official document
25 of somebody's?

1 MR. DAVIDSON: Mr. Roisman, I think your point is
2 well taken, that I should identify this -- I am not sure your
3 point is well taken, excuse me -- I misspoke -- that I have to
4 identify the source of the document. However, I am prepared
5 to do so.

6 This is, in fact, the NRC report of that
7 telephonic interview.

8 MR. ROISMAN: The entire page is the entire
9 report?

10 MR. DAVIDSON: So far as I know.

11 To clarify, this is a part of the larger report,
12 but this is the full substance and text of the telephonic
13 interview with Mr. Robert Messerly.

14 MR. ROISMAN: Can we identify what the report is,
15 just so that everybody knows what report we are talking
16 about? The date of the report or something.

17 Maybe Staff counsel knows?

18 MR. DAVIDSON: Mr. Pirfo, can you shed any light
19 on this?

20 MR. PIRFO: I can tell you it is page 22 of that
21 report. That's about it.

22 The number 22 appears at the top of the page, but
23 that's all I can help you with.

24 MR. ROISMAN: I don't want to be overly technical,
25 but I also have a copy of the same page, but I have no way

1 of telling where this page came from.

2 MR. PIRFO: We're all laboring under the same --

3 MR. DAVIDSON: We are not in any way objecting to
4 your request. We are about to respond.

5 MR. ROISMAN: Thank you.

6 MR. DAVIDSON: Mr. Roisman, again, I want to
7 reiterate I am not seeking to make this an exhibit or,
8 indeed, to mark it for identification, but to respond to
9 your request for clarification, which I think is a legitimate
10 one.

11 This is the document from which that page was
12 extracted.

13 (Counsel handing document to counsel.)

14 If you turn to the second page, you will see it's
15 a report of the Office of Investigations, and it's a report
16 that was prepared by H. Brooks Griffin.

17 And if you turn to page 22, you will find that it
18 is his record of his conversation with Robert Messerly.

19 MR. ROISEMAN: Okay. Fine.

20 Thank you.

21 BY MR. DAVIDSON:

22 Q I'm sorry, Mr. Messerly. I know this is kind of
23 boring. There's more going on between the lawyers than there
24 is between you and me.

25 I am not going to show you that document that we

1 mentioned and ask you to take a look at it.

2 (Counsel handing document to witness.)

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3 (Witness reviewing document.)

4 BY MR. DAVIDSON:

5 Q Is your recollection refreshed as to whether you
6 had a conference with H. Brooks Griffin on or about August 17,
7 1983?

8 A I did.

9 MR. ROISMAN: Just a second.

10 I believe the testimony indicates that he had no
11 problem remembering he had had a conversation. The only
12 thing he had trouble remembering was what the date of it
13 might have been.

14 MR. DAVIDSON: Yes.

15 Now I'm trying to refresh his recollection to see
16 if now he can place the date.

17 BY MR. DAVIDSON:

18 Q I'm sorry, Mr. Messerly. What did you say?

19 A Would you ask the question again?

20 Q I'd be glad to.

21 I'm asking you whether, having looked at this
22 document, it refreshes your recollection and that perhaps now
23 you remember that the date on which you had the conversation
24 with Mr. Griffin was on August 17, 1983?

25 A Okay. I remember talking to him.

1 Q On that date?

2 A I guess on that date. You have it wrote down
3 there, but I had it.

4 Q I'm not sure that's responsive to my question,
5 but I think that's about as far as I'm going to go with it.

6 Can I ask you to take a look at that and ask you
7 whether that is an accurate summary of your conversation with
8 him?

9 (Pause.)

10 A It is pretty close, as far as I can remember.

11 Q Well, I don't think that was my question,
12 Mr. Messerly. I didn't ask whether it was pretty close. I
13 guess I asked you whether it was accurate.

14 A Well, I have no way of remembering back that
15 far, if that is complete and accurate, word for wore. I
16 don't remember.

17 Q I didn't ask whether it was word for word. I
18 asked you whether it was an accurage summary.

19 A All right, yes.

20 Q It is.

21 A Yes.

22 MR. DAVIDSON: Mr. Roisman, are you prepared to
23 stipulate with me that this summary does not reflect any
24 statements having been made by Mr. Messerly with respect to
25 alleged harassment, intimidation, or threatening of QC

1 personnel?

2 MR. ROISMAN: I'm just taking a look at it again.

3 MR. DAVIDSON: Please do.

4 (Pause.)

5 MR. ROISMAN: Yes, I am willing to stipulate to
6 that.

7 MR. DAVIDSON: Thank you.

8 BY MR. DAVIDSON:

9 Q Mr. Messerly, do you know -- strike that. I am
10 sorry.

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1 Mr. Messerly, do you know whether your affidavit
2 of February 3, 1983 was submitted to the Licensing Board
3 in these proceedings?

4 A I do not.

5 Q Were you, at any time, told that it would be?

6 A Yes.

7 Q Who told you that?

8 A Juanita Ellis, I think.

9 Q Do you know, Mr. Messerly, whether your sworn
10 statement -- and that's the one we discussed earlier here --
11 taken by the NRC Staff and the document stated to have been
12 taken in April of 1983 and which you state you swore to in
13 June, 1983. Do you know whether that was submitted in
14 these proceedings?

15 A I do not.

16 Q Did Ms. Ellis tell you she would submit it?

17 A I don't remember.

18 Q Did Ms. Ellis ever tell you that she had submitted
19 these documents?

20 A I don't remember offhand if she did or didn't.

21 Q If I showed you a letter from Ms. Ellis, addressed
22 to the Board, in which she makes certain representations
23 that she is submitting that affidavit and that sworn
24 statement, would that refresh your recollection? A letter
25 dated August 1983?

sy61b2

1 A I don't know if it would or not.

2 MR. PIRFO: I believe the witness testified he
3 had no recollection and no knowledge as to whether it was
4 done.

5 MR. ROISMAN: I think that is right, Mr. Davidson.

6 MR. DAVIDSON: Well, let me ask you this.

7 BY MR. DAVIDSON:

8 Q I am not trying to drill a dry hole here. Do
9 you recollect every having seen any such a letter as I
10 suggested was written?

11 A No.

12 Q It was never shown to you?

13 A To my knowledge, no.

14 Q Mr. Messerly, I'm going to show you this letter
15 in just a second, but first I'm going to pass it to Mr.
16 Roisman, so he could look at it first. And then, Mr. Roisman,
17 if you would show him after you have looked at it.

18 MR. ROISMAN: Let me understand, why are you
19 showing him the letter.

20 MR. DAVIDSON: I want to see if it refreshes his
21 recollection about the submission of those earlier documents.

22 MR. ROISMAN: I thought the point that was already
23 made by Staff counsel, which I concurred in, was that the
24 witness testified that he doesn't have any recollection of it.
25 So there's nothing here to refresh.

1 MR. DAVIDSON: You mean no recollection whatsoever?

2 MR. ROISMAN: That's my understanding of what his
3 testimony was. In effect, that he does not know anything
4 about what CASE submitted.

5 MR. DAVIDSON: I think this one final chance of
6 refreshing it might do it. But then again, it might not.

7 MR. ROISMAN: All right. I will allow you. I
8 don't need to look at it.

9 MR. DAVIDSON: Have you seen it, Mr. Roisman?

10 MR. ROISMAN: I'm sure, at one time I saw it --

11 MR. PIRFO: Since it was my objection, I will let
12 you show it to him. It's up to Mr. Roisman to pass on it.

13 MR. ROISMAN: That's all right. I apologize to
14 Staff counsel. You are right. It is your objection. It is
15 your ball game.

16 MR. DAVIDSON: I appreciate your indulgence on this,
17 Mr. Pirfo.

18 MR. PIRFO: I have a lot of indulgence.

19 (Laughter.)

20 (Witness reviewing document.)

21 BY MR. DAVIDSON:

22 Q Did you ever see that letter before?

23 A I don't think so.

24 Q Mr. Messerly, I would like to direct your
25 attention to page 4 of that document, and it has -- the

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1 title of that page, or at least that section of the
2 document, is Robert L. Messerly. And it purports to
3 describe and submit the affidavit or sworn statement that
4 you're talking about. I would like you to read through it
5 and then I want to ask you one question about it, and that's
6 it.

7 MR. ROISMAN: Before you read it, could you just
8 tell me -- are you going to ask him whether the statement
9 contains anything in it on this issue of harassment and
10 intimidation, that he testified to today?

11 MR. DAVIDSON: I'm going to ask that, and I'm
12 also going to -- I take it you want to stipulate to that?

13 MR. ROISMAN: Yes, the statement, on its face,
14 shows that what is being done is they are attaching and
15 summarizing to other documents about which he has already
16 testified what they contain. So I don't know what we're
17 doing with this, but what is your second question?

18 MR. DAVIDSON: My first question is, are you
19 prepared to stipulate that this summary -- assuming that
20 it's accurate, and I guess Mr. Messerly can testify to that
21 -- that it, too, does not mention any alleged incidents
22 of harassment, intimidation, or threatening of QC personnel
23 in describing these submissions?

24 MR. ROISMAN: Yes, that's correct. I would
25 stipulate to that.

1 MR. DAVIDSON: My second --

2 MR. PIRFO: I will, as well, I guess.

3 MR. DAVIDSON: Do you wish to, Mr. Pirfo?

4 MR. PIRFO: I just think if we're going to have
5 a stipulation, it should be unanimous.

6 MR. DAVIDSON: Okay, fine. Thank you. The second
7 thing is, I was going to ask him a question about a
8 representation made in that summary about what he has
9 testified to and whether that is accurate.

10 MR. ROISMAN: What is the reason for asking him?

11 MR. DAVIDSON: Because the alleged summary, which
12 was made here, does not appear to be accurate to me. It
13 appears that there are allegations summarized or stated there
14 that are not contained in those submissions.

15 MR. ROISMAN: The statement that is made here was
16 not made by Mr. Messerly, it is somebody else, essentially
17 hearsay of what Mr. Messerly said. Maybe it's right.
18 Maybe it's wrong. It doesn't have anything to do with
19 Mr. Messerly's testimony. It is not his statement.
20 And asking him to tell you whether somebody else's statement
21 is correct or not has got no relevance.

22 This statement has not been offered into evidence.
23 This little summary is a filing by CASE's Ms. Ellis in a
24 letter which she signed, which you saw. So I don't see --

25 MR. DAVIDSON: I'll be quite candid with you.
I want to see whether Ms. Ellis has properly described
Mr. Messerly's testimony.

MR. ROISMAN: Well, that's super, but that has

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1 nothing to do with the QA/QC intimidation hearing.

2 MR. PIRFO: It has --

3 MR. DAVIDSON: Oh, but it has a great deal to
4 do with voracity.

5 MR. ROISMAN: Of Ms. Ellis?

6 MR. DAVIDSON: Perhaps.

7 MR. ROISMAN: But that's not an issue. Ms. Ellis
8 hasn't been called as a witness here.

9 MR. DAVIDSON: I will make a proffer to demonstrate
10 it.

11 BY MR. DAVIDSON:

12 Q Ms. Ellis has described, in her submission, that
13 Mr. Messerly made statements about threats to him by
14 Doug Frankum. They nowhere appear in any of Mr. Messerly's
15 testimony, not only on the statements and submissions --
16 off the record.

17 (Discussion off the record.)

18 MR. DAVIDSON: We are back on the record.

19 Would you favor me by going back just a moment
20 to what we said?

21 (The reporter read the record as requested.)

22 MR. DAVIDSON: To continue with what I was
23 saying, no where in Mr. Messerly's sworn testimony -- either
24 in the submissions to which reference is made in the document
25 that we have discussed which would be the affidavit of

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1 February 3, 1983, and the sworn statement of April 1983, is
2 any such incident related. Nonetheless, it is summarized
3 as having been made by Mr. Messerly by Ms. Ellis.

4 Moreover, it is the statement that it is indicated
5 -- Ms. Ellis states that Mr. Messerly did make that statement
6 to CASE and I want to determine whether or not he did.

7 MR. ROISMAN: This just isn't the hearing to do
8 that in. Ms. Ellis is not a witness in this proceeding and
9 that statement, on its surface, has nothing to do with
10 intimidation of QA/QC personnel, whether it's true or false.
11 And Mr. Messerly hasn't testified to it today.

12 MR. DAVIDSON: Perhaps Ms. Ellis will become a
13 witness in these proceedings.

14 MR. ROISMAN: We have already submitted our witness
15 list and I can assure that if she becomes a witness in this
16 hearing, it will not be for the purpose of testifying about
17 what Mr. Messerly may have said about Mr. Frankum, number one.

18 And number two, I can assure you that if that should
19 happen you won't have any problem getting all the witnesses
20 you want. But at this point, there is no basis for asking
21 questions about anything that Ms. Juanita Ellis had to say,
22 as to whether it is true or not, particularly something
23 having to do -- without having to do with harassing or
24 intimidating QA/QC personnel.

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1 BY MR. DAVIDSON:

2 Q Mr. Messerly, did you make that statement to
3 Ms. Ellis at any time?

4 MR. ROISMAN: I will, at this point, request that
5 we get a ruling from the Board.

6 MR. DAVIDSON: Are you instructing the witness
7 not to answer?

8 MR. ROISMAN: I am instructing him not to answer
9 and I am requesting that if you insist on asking the
10 question, that we get a ruling from the Board.

11 BY MR. DAVIDSON:

12 Q Mr. Messerly, do you recollect making any other
13 submissions or affidavits in these proceedings?

14 A No.

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1 Q Do you recollect executing an affidavit in November
2 of 1983 perhaps?

3 A I don't remember if I did or not.

4 Q Mr. Messerly, I would like to show you a document
5 which is titled, "Affidavit of Robert Messerly," and I will
6 show it first to Mr. Roisman and then I would ask him to hand
7 it to you and I would like to ask you some questions.

8 (Counsel hands document to counsel.)

9 BY MR. DAVIDSON:

10 Q My question is, do you recollect having given this
11 affidavit?

12 MR. ROISMAN: And I have asked that the witness
13 read it through before he answers any questions about it, now
14 that I have verified that what you have is what we have.

15 (Pause.)

16 MR. PIRFO: Could we go off the record?

17 (Discussion off the record.)

18 MR. DAVIDSON: Back on the record.

19 BY MR. DAVIDSON:

20 Q Mr. Messerly, have you had a chance now to read
21 through that document, study it?

22 A I have.

23 Q Do you recollect now, sir, whether you gave such an
24 affidavit?

25 A I did.

1 Q Do you recollect the circumstances under which it
2 was given and prepared?

3 A Not really.

4 Q When you say not really, what do you mean?

5 A I don't remember the circumstances that it was
6 taken under.

7 Q Do you know to whom you gave the affidavit?

8 A Probably Juanita Ellis.

9 Q Did you give it to her in person or over the
10 telephone?

11 A No, in person.

12 Q Did she take notes?

13 A She did.

14 Q Were those notes in longhand or shorthand?

15 A She typed it.

16 Q In other words, you spoke and she typed from your
17 dictation?

18 A Yes.

19 Q And to the best of your knowledge and having reviewed
20 the affidavit, does this accurately reflect what you said to
21 her?

22 A It does.

23 MR. DAVIDSON: Mr. Roisman, would you wish to
24 stipulate that there is no statement in this document in
25 which an allegation is made that Mr. Messerly was threatened

1 by Mr. Frankum?

2 MR. ROISMAN: No, because that is not an issue in
3 this proceeding.

4 Look, if you guys want to deal with the Frankum
5 allegations, we'll have the Board hold a hearing on the
6 Frankum allegations and you will have your chance. This is
7 not that hearing.

8 MR. DAVIDSON: I just want to see whether
9 Mr. Messerly's testimony has been properly recorded at all
10 times.

11 MR. ROISMAN: Well, that is an interesting
12 intellectual exercise but we are here for a very specific and
13 narrow purpose, which you even very carefully articulated at
14 the beginning and that is not one of the purposes, to find
15 out whether his statements are properly recorded all the time
16 and related to matters other than what we are talking about
17 here.

18 There are statements in this affidavit about
19 intimidation of QC inspectors, and if you want to ask him
20 some questions about the accuracy of that, obviously, you can.

21 MR. DAVIDSON: I appreciate that, but I also think
22 I have the right to review and get a determination as to the
23 accuracy of the recorded testimony to determine whether there
24 are conflicts which I perceive that reflects or impeaches the
25 credibility of this witness.

1 MR. ROISMAN: The witness told you that this
2 statement that he made here was accurate.

3 MR. DAVIDSON: Fair enough.

4 MR. ROISMAN: Now if you have something that you
5 want to try to show that shows that it was inaccurate, go
6 ahead. I am not going to stipulate about what is in it or not
7 in it about a matter that has nothing to do with this hearing.

8 MR. DAVIDSON: I understand, Mr. Roisman.

9 BY MR. DAVIDSON:

10 Q Mr. Messerly, in reviewing this document, did you
11 see on page 3 a reference to an alleged allegation with respect
12 to harassment, intimidation or threatening of QC
13 inspectors?

14 A Yes.

15 Q Now I see you say -- do you see that statement on
16 page 3 to which I am referring?

17 A I do.

18 Q Is that statement -- excuse me. Let me rephrase
19 that.

20 Is the incident which you testified to earlier today
21 at the beginning of your testimony under questioning by
22 Mr. Roisman the one to which you refer in this affidavit?

23 A It is.

24 Q Did you have any other incident in mind in making
25 this statement in the affidavit?

1 A No.

2 Q So there was only one incident?

3 A Yes.

4 Q Mr. Messerly, if I can direct your attention to
5 page 3, it says -- and I believe I quote, "Also, I have seen
6 supervision --"

7 MR. ROISMAN: That is not what it says. Please
8 read it correctly if you are going to read it.

9 MR. DAVIDSON: You want me to read the punctuation?

10 MR. ROISMAN: No. I want you to read the word
11 "actual."

12 MR. DAVIDSON: I am sorry. I didn't think I got
13 that far. In any event, why don't you read it to yourself
14 It is one sentence.

15 Q Have you read it?

16 A Yes.

17 Q You see, you make a reference in the plural. That
18 is to QC inspectors.

19 A Yes, I did.

20 Q The incident that you described here this morning
21 or this afternoon only involved one inspector.

22 A It was.

23 Q Is that an inaccuracy, then, in this affidavit?

24 A Inaccuracy or misuse of words.

25 Q I see. Did you review this affidavit before you

1 signed it?

2 A I did.

3 Q Did you swear to it?

4 A I did.

5 Q Did it not occur to you that since this was a
6 misstatement, as you have now testified, that you were swearing
7 to something that was not in fact accurate?

8 A No.

9 Q It didn't occur to you or you didn't care?

10 A It didn't occur to me.

11 Q Had it occurred to you, would you have made a change?

12 A I would have.

13 Q Mr. Messerly, could I direct your attention again
14 to the affidavit of -- I don't remember that we established
15 a date? Do you recollect a date that we established on that
16 affidavit?

17 A No.

18 Q If you look at that document, would it refresh
19 your recollection?

20 A Probably.

21 Q Would you look at it, sir?

22 A Yes.

23 Q Is your recollection refreshed?

24 A Yes.

25 Q What do you remember the date of that deposition

1 to be?

2 A November 26th, 1983.

3 Q Are you reading me the date or are you remembering
4 it?

5 A I am reading but I don't remember the exact date;
6 if that was the exact date, I couldn't argue one way or the
7 the other.

8 MR. PIRFO: Just so it is clear, I believe you said
9 deposition, Mr. Davidson, didn't you?

10 MR. DAVIDSON: I must have misspoke. I meant to
11 say "affidavit."

12 BY MR. DAVIDSON:

13 Q Mr. Messerly, if I can direct your attention to
14 page 3 of that document again, it states there that "I made
15 a complaint to the top people with QA/QC."

16 Is that correct?

17 A Yes.

18 Q What complaint was that, sir?

19 MR. ROISMAN: Just a moment.

20 Can you please tell me what that has to do with
21 the harassment of QA/QC personnel? I believe it is clear from
22 the context of every one of the documents that we are talking
23 about here that this statement relates to Mr. Messerly's own
24 views regarding his own harassment and intimidation and he
25 has already attested to the fact that he is a craft person.

1 MR. DAVIDSON: Perhaps I misunderstood, but I see
2 only an unreferenced statement with respect to "I made a
3 complaint to top people with QA/QC." It does not tell what
4 that complaint was.

5 Now if you are right, if it was merely a complaint
6 about matters that are beyond the scope of this proceeding,
7 then there is certainly a question as to the relevance of
8 the examination on that topic.

9 But he has not explained it.

10 MR. ROISMAN: I am sorry.

11 MR. DAVIDSON: You are one question ahead of me.

12 MR. ROISMAN: All right. You may ask him that and
13 he will clarify it. I apologize.

14 MR. DAVIDSON: Thank you, Mr. Roisman.

15 BY MR. DAVIDSON:

16 Q Do you understand what we were talking about?

17 A I think so.

18 Q What I am asking is, it says you have made a
19 complaint, and I just asked you what that complaint was if
20 you remember.

21 A Well, I did not make a complaint so much as Tony Vega
22 asked me what was going on in the field.

23 Q So you didn't go to see Mr. Vega?

24 A No, he called me by telephone.

25 Q You didn't call him?

1 A I did not call Tony Vega.

2 Q He came to you?

3 A He did.

4 Q And you didn't make a complaint to him?

5 A In a way, yes. I complained about what was going
6 on in the field after he asked me the questions.

7 Q Yes, but you didn't make a complaint to him -- he
8 came to elicit some information from you?

9 MR. ROISMAN: Excuse me. Mr. Davidson, I don't
10 know whether you are badgering the witness or splitting hairs.
11 He is just trying to tell you that he did not initiate the
12 conversation.

13 Now I don't know what this difference is between
14 "made a complaint" or "made a complaint."

15 MR. DAVIDSON: I'm sorry. I didn't wish to leave
16 any hairs split or otherwise seem to be asking a question
17 inappropriate to the witness or otherwise badger him.

18 BY MR. DAVIDSON:

19 Q You didn't understand me to be badgering you, did
20 you?

21 A No.

22 Q Okay, thank you.

23 So this refers to a call that Mr. Vega made to you?

24 A Yes.

25 Q Now, Mr. Messerly, is that the call and conversation

1 to which you referred in your affidavit of February 3, 1983?

2 A I don't know.

3 Q --

4 MR. ROISMAN: Could you direct the witness's attention
5 to the page that you want and I will show him the affidavit?

6 MR. DAVIDSON: Thank you, Mr. Roisman. I am sorry,
7 Mr. Messerly. I thought your recollection had been freshed.

8 Would you show him -- I think you have it, Mr.
9 Roisman, would you show him that February 3, 1983, document?

10 MR. ROISMAN: What page are you asking him about,
11 please?

12 MR. DAVIDSON: I think that there is a reference
13 to a conversation or to a contact -- reference to the fact
14 that he was contacted by Tony Vega on the very first page
15 of that affidavit that carries over, I think, to page 2.

(End 7)

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1 MR. ROISMAN: I might let you go along a lot
2 longer if you don't get around to asking the question whether
3 this has anything to do with the harassment of QA/QC. I
4 believe the questions relate to this line --

5 (Indicating.)

6 Are we looking at line, about 11, on page 1 and
7 carry'ng over to page -- to line 6 on page 2? Is that
8 what you would like him to look at?

9 MR. DAVIDSON: The way this was done, frankly,
10 I cannot see what lines they are. But I suspect that
11 if you have looked at the document, you probably have it
12 right. You probably have determined the section I want,
13 because it's a description of a conversation he had with
14 Mr. Vega.

15 MR. ROISMAN: Okay.

16 THE WITNESS: Okay, what is the question?

17 BY MR. DAVIDSON:

18 Q I'm sorry, Mr. Messerly. I'm sure this all seems
19 rather foolish and silly to you. It is really what is
20 necessitated by the proceedings here. We just have to
21 establish what is accurate and what is not and what actually
22 happened, and that's the only reason for this.

23 Now in this affidavit, that is the one on February
24 3, 1983, it describes that conversation as having been
25 initiated by Mr. Vega. And it says -- and correct me if I

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1 am wrong -- that the conversation was about the wasted
2 materials and the ordering of equipment for drilling through
3 rebar and concrete, and gifts received by me and others for
4 ordering all the equipment for drilling through the rebar
5 and concrete. And it goes on?

6 A Yes.

7 Q Is that an accurate statement of what that
8 conversation is about?

9 A That is not the complete conversation, but that
10 is just a part of it.

11 Q What else was there, in the conversation?

12 MR. ROISMAN: All right, Mr. Davidson. Now what
13 do you want to know? I don't think that you can just
14 wander around in this conversation. Do you want to know
15 if he said anything to him about harassment of QA/QC
16 personnel? Ask him that question.

17 But we are spending a lot of time talking about
18 a conversation. We have not suggested that the conversation
19 had anything to do with that. None of these documents I
20 have in front of me have suggested that they have anything
21 to do with it. Ask him the question that relates to this
22 proceeding, so we don't end up having a proceeding about
23 his allegations that relate to matters unrelated to what
24 this is about.

25 And I have no doubt that if the shoe were on the

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1 other foot, you would quite properly -- and every one of
2 your co-counsel -- object to my probing into this. And
3 I won't note that for the record, but -- so let's get on
4 with it. Let's ask the question that you really want
5 to get at and find out whether the conversation had
6 anything to do with this matter.

7 MR. DAVIDSON: I'm only one question away, so if
8 we could repeat this one, and have the reporter read it back,
9 I will ask one follow up question. And I think the point
10 will be established and its relevance be shinningly apparent.

11 (The reporter read the record as requested.)

12 BY MR. DAVIDSON:

13 Q I asked you what else?

14 A I don't remember, at this point.

15 Q You don't know?

16 A No.

17 Q Mr. Messerly, in this affidavit, you discussed
18 and swore to the fact that you received a number of gifts
19 from --

20 MR. ROISMAN: Objection. Mr. Davidson, I'm not
21 going to let it go on. I'm going to get the hearing board
22 chairman here and get this over with because if this is open
23 to you, I'm going to call all the witnesses back and we're
24 going to have a hearing on every single allegation made by
25 every former employee.

1 MR. DAVIDSON: This will go to his credibility and
2 I think impeaching the credibility of your witness is
3 certainly within the bounds --

4 MR. ROISMAN: You promised me you were only going
5 to give one more question, after the last one, that was
6 going to tie together all the questions. Is this the
7 question? On the record you told me I'd have one more
8 question and it's going to become -- I forget your word,
9 something clear, and it was a very positive word.

10 Is this the question that you were going to ask
11 that was going to tell me what the last ten minutes of
12 questioning had to do with this case?

13 MR. DAVIDSON: Mr. Roisman, are you instructing
14 the witness not to answer?

15 MR. ROISMAN: No, I'm asking you a question, so
16 that I will understand --

17 MR. DAVIDSON: Mr. Roisman, I'm not going to
18 engage in colliquoy with you. If you want to instruct the
19 witness, you may.

20 MR. PIRFO: I don't think there was a question
21 pending.

22 MR. DAVIDSON: Then I will make one.

23 BY MR. DAVIDSON:

24 Q Mr. Messerly, did you discuss with Mr. Vega
25 your receipt of certain gratuities and other payments

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1 in exchange for ordering Drilco equipment?

2 A I did.

3 Q Now, Mr. Messerly, did you state to him that
4 you received a trip to Miami, Florida from Drilco?

5 MR. PIRFO: I'll object to that question and
6 remind you that Mr. Messerly is not represented by personal
7 counsel and does not have to answer these questions. He may,
8 but it is solely your choice, Mr. Messerly. I'm not directing
9 to you, and nor is Mr. Roisman. You certainly do not
10 have to do it, if you do not wish.

11 THE WITNESS: I do not wish.

12 BY MR. DAVIDSON:

13 Q Do you have a reason for your reluctance to
14 answer this question, sir?

15 MR. ROISMAN: I don't think he's required to tell
16 you if he does.

17 MR. DAVIDSON: I think he has to tell me why he's
18 refusing to answer.

19 MR. PIRFO: You have a right to counsel to answer
20 any questions like this, Mr. Messerly. No one in this room
21 can question that right.

22 BY MR. DAVIDSON:

23 Q Mr. Messerly, will you tell my why you refuse to
24 answer my question?

25 A I have a right to counsel, I guess.

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1 Q Mr. Messerly, did you receive a sum of money in
2 conjunction with a trip to Miami, Florida, that you state --

3 MR. PIRFO: I renew my objection.

4 MR. DAVIDSON: Mr. Pirfo, you have every right
5 to make an objection. However, I would appreciate it if
6 you wouldn't interrupt me while I'm in the process of making
7 the question to which you object.

8 MR. PIRFO: I apologize, I thought you had
9 finished.

10 MR. ROISMAN: Let me just, for the record.
11 Mr. Messerly, if after the question is asked, wait a moment
12 so that if Staff counsel or I wish to make an objection we
13 can. And it won't be negated by your having already given
14 the answer, okay?

15 THE WITNESS: All right.

16 BY MR. DAVIDSON:

17 Q I believe there is a question pending, or at least
18 a partial one. Could I have the reporter read it back?

19 (The reporter read the record as requested.)

20 BY MR. DAVIDSON:

21 Q Mr. Messerly, in your sworn statement of
22 February 3, 1983, you state that you received money from
23 Drilco in conjunction with a trip that they paid for, to
24 Miami, Florida. How much money did you receive?

25 MR. PIRFO: Objection. I object to this entire

1 line of questioning and will state the Staff's position that
2 the witness has the right to personal counsel here to
3 represent him with any questions with regard to how much
4 he received, where he went, allegedly when and what anything
5 to do with this whole line of questioning.

6 MR. ROISMAN: I will join the Staff counsel's
7 objection.

8 BY MR. DAVIDSON:

9 Q Mr. Messerly, would you like to be represented
10 by counsel?

11 A I would.

12 Q Can you obtain --

13 MR. PIRFO: I object. That's up to Mr. Messerly
14 to decide. Mr. Davidson -- I'm not going to allow you to
15 sit here and inquire as to what his -- whether he wishes to
16 retain counsel this afternoon or not.

17 MR. DAVIDSON: Mr. Pirfo, you have --

18 MR. PIRFO: Excuse me for interrupting, he has
19 already stated his desire to have an attorney here. I
20 don't think you have to brow beat him into whether he really
21 wants an attorney here. He has been asked whether he wants
22 an attorney present. He has stated such a desire.

23 It is my understanding of the American jurisprudence
24 that once that statement is said that you back off. He has
25 said he wants an attorney here. If you did not hear him the

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1 first time, I have no problem with you asking him that
2 question again.

3 MR. DAVIDSON: Mr. Pirfo, I think you've been
4 so eager to get this objection out of your system, that
5 you didn't hear the question that I asked him, which was
6 can you obtain counsel for today's proceedings. That is
7 quite different.

8 MR. PIRFO: That is none of your business, sir,
9 whether he can or cannot obtain counsel and I will instruct
10 him not to answer the question on that grounds.

11 MR. DAVIDSON: I also want to say, Mr. Pirfo, that
12 I don't -- at any time -- want to suggest that you should
13 not make any objection you feel appropriate. However, I
14 do think that it was not appropriate, nor was it an accurate
15 characterization to suggest that I was in any way brow
16 beating the witness by asking three different questions.

17 MR. PIRFO: I didn't say you had brow beat him.
18 I said that I would not allow you to. I didn't suggest that
19 you had, up to that point. And --

20 BY MR. DAVIDSON:

21 Q Mr. Messerly, did you take your wife on that trip
22 to Miami, Florida?

23 MR. ROISMAN: I would like to get the Board's
24 advice on this, Mr. Davidson. I wish the questioning
25 stopped.

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1 MR. DAVIDSON: Mr. Roisman, I will certainly
2 give you your opportunity to ask the Board, but I have a
3 series of questions related to this and let's not take
4 it to them piecemeal. Let me do the whole line of
5 questioning, and then you can take all of them to the
6 Board.

7 MR. ROISMAN: If you want to read your questions
8 into the record, go ahead.

9 MR. DAVIDSON: Off the record.

10 (Discussion off the record.)

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1 MR. PIRFO: Let me make a brief statement.

2 In my zealousness to protect the rights of
3 Mr. Messerly, I may have trampled a bit on the rights of
4 Mr. Davidson, and I apologize for that. But I wish any
5 reader of the transcript to recognize my vital concerns in
6 this area.

7 MR. DAVIDSON: Mr. Pirfo, thank you very much. I
8 frankly don't feel that an apology was necessary but I
9 appreciate receiving one nonetheless.

10 During the break, Mr. Roisman and I were able to
11 discuss the pending matter that had been raised in the
12 questioning of Mr. Messerly and I think we have reached
13 agreement that this is the line of questioning that at this
14 time we do not wish to pursue, and I do feel I owe an
15 explanation to Mr. Roisman on the record as well as to
16 Mr. Messerly what it was we were doing.

17 And that proffer would be this: we were trying to
18 establish not only the fact of the receipt of these
19 gratuities but that they had not in fact been reported on
20 income tax returns as taxable income.

21 Another area that we were undertaking to proceed to
22 do was to review with the witness the W-4 forms that he had
23 filed. A W-4 form, as you know, is an allowance certificate
24 for an employee's withholding and it determines what kind of
25 withholding will occur in the employee's paycheck.

1 Mr. Messerly, according to the Brown & Root
2 personnel files, had filled out several of these forms in
3 which he stated that he was exempt from withholding because
4 he had neither owed federal income tax in the prior year or
5 had at least a right to a full refund of any tax withheld in
6 that year and that in the forthcoming year, for which the
7 W-4 was filed, that he did not expect to owe any federal
8 income tax and expected to have a right to a full refund of
9 all income tax.

10 Since such certificates are made under oath and
11 under pain of perjury, penalty of perjury, we were going to
12 have him identify those returns and raise questions as to
13 whether they accurately reflected his income tax status and
14 likewise raise questions as to whether they showed a due and
15 proper regard for an oath, since there are a number of
16 documents that he submitted under oath as well as his sworn
17 testimony today.

18 However, in view and in light of the objections
19 made here, which I think are properly interposed, and
20 Mr. Messerly's request that he ask to respond to these
21 questions and have a right to counsel, we will not pursue this
22 line of questioning, we will not pursue it further.

23 I would like to say, Mr. Messerly, that I intended
24 no disrespect to you and I hope you do not feel that I was
25 doing anything other than my job in raising these questions

1 with you.

2 THE WITNESS: Thank you.

3 MR. DAVIDSON: And I really did not intend to make
4 you feel uncomfortable, if I did, or otherwise to make you
5 feel that I was stepping out of the bounds of the role merely
6 as an advocate in this case.

7 THE WITNESS: Okay.

8 MR. ROISMAN: I just want to make sure that it is
9 clear on the record that Mr. Davidson's statement regarding
10 a proper representation was Mr. Davidson's own summary of what
11 evidence he was going to talk about would have said rather
12 than that it represented in any way the evidence, it was
13 merely Mr. Davidson's description of it.

14 MR. DAVIDSON: That is correct. I dor't think that
15 anyone reading the transcript will state -- that my sentiments
16 were those of the witness.

17 MR. ROISMAN: Okay.

18 BY MR. DAVIDSON:

19 Q Mr. Messerly, I believe that concludes all the
20 questions I have for you today and I want to thank you for
21 your cooperation and thank you for your attempts at being
22 responsive.

23 THE WITNESS: Thank you.

24 MR. PIRFO: Mr. Witness, I just have a couple of
25 questions.

xxx

1 BY MR. PIRFO:

2 Q I will start by showing you some handwritten notes
3 and just ask you if it is your handwriting?

4 (Counsel hands document to witness.)

5 Feel free to look at the pages.

6 A No, that is not my handwriting.

7 Q That is what I thought, sir. I just wanted to be
8 sure.

9 I wanted to get a confirmation.

10 MR. DAVIDSON: Excuse me. Might I take a look at
11 the document?

12 MR. PIRFO: I am sorry. We all have them.

13 MR. DAVIDSON: Does Mr. Roisman get a chance to see
14 it?

15 MR. ROISMAN: I think I have seen them also.

16 MR. DAVIDSON: Mr. Roisman, would you like to take
17 a look at this?

18 MR. ROISMAN: Okay.

19 Just for the record, would you just identify where
20 they appear if they appear other than just loose like that?

21 MR. PIRFO: They are, well, I am not going to
22 examine him on them.

23 MR. ROISMAN: No, I just thought that if someone
24 ever wants to know, no one would ever know where they have to
25 look to see what it was he said that wasn't his writing.

1 MR. PIRFO: It is described in the front of my
2 folder, if I could use the term, as part of the 2/3/83
3 affidavit of Mr. Messerly with attachments.

4 The reason -- I am not sure what they are. That is
5 the reason I asked him the question. Beyond that, I have no
6 other way of describing them.

7 MR. ROISMAN: Okay. All right, that's fine. I
8 showed them the same one.

9 MR. DAVIDSON: I do also, Mr. Pirfo.

10 BY MR. PIRFO:

11 Q Off the record, please, operator.

12 (Discussion off the record)

13 MR. PIRFO: Back on the record.

14 BY MR. PIRFO:

15 Q Mr. Messerly, with regard to the altercation or
16 dispute that you described in your direct testimony with
17 regard to the QC inspector and Mr. Robinson, I believe it was,
18 you stated you had no recollection of the QC inspector's name,
19 isn't that correct?

20 A That's right.

21 Q Would you know it if you heard it?

22 A I really don't know. That's been a long time ago.

23 Q Can I ask you two or three names and see if they
24 ring a bell or refresh your recollection?

25 A Yes, it will be all right.

1 Q Charlie Bell?

2 A No.

3 Q Ed Dean?

4 A No.

5 Q Do you know who either of those two persons are?

6 A I know both of them.

7 Q Who are they, sir?

8 A Ed Dean was my general foreman in the reactor.

9 Q So they are craftspeople like QC inspectors?

10 A Charlie was a craftperson too.

11 Q Jerry Sorbel?

12 A Jerry Sorrel, a craftperson.

13 Q And Danny Brown?

14 A Craftperson.

15 MR. PIRFO: Thank you, sir. That is all I have.

16 MR. ROISMAN: I have a couple moments of redirect.

17 I think what I would like to do preliminarily is

18 I would like to get marked, so that we can refer to them in

19 the future, the documents that Mr. Davidson referred to or

20 at least some of them. So I am going to hand the reporter

21 and ask her to mark as Exhibit Messerly-1 the affidavit of

22 Robert Messerly dated November 26, 1983, which is including

23 its signature page a six-page document.

24 (The document referred to

25 was marked Messerly-1

for identification.)

1 MR. ROISMAN: And Messerly-2, the one-page, page 22,
2 summary of telephonic interview of Robert Messerly, which is
3 part of the report of the OI field office Region IV dated
4 March 7, 1984, which was filed with the Board in this
5 proceeding by letter from Stuart Treby dated April 3rd, 1984,
6 and mark that.

xxx

7 (The document referred to
8 was marked Messerly-2.
9 for identification.)

10 MR. ROISMAN: And third, the sworn oral statement
11 taken from Mr. Messerly dated 14th day of April, 1983, which
12 consists of 62 pages plus a signature page that shows that
13 Mr. Messerly has signed the sworn statement as of 6/18/83,
14 and mark this as Messerly-3.

xxx

15 (The document referred to
16 was marked Messerly-3
17 for identification.)

18 MR. ROISMAN: And Messerly-4 is the affidavit of
19 Robert L. Messerly dated 2/3/83, consists of one -- consists
20 of eight pages including the signature page and is signed
21 by Mr. Messerly on 2/3/83.

22 MR. DAVIDSON: Mr. Roisman, if you will permit me,
23 I would point out that you just detached a page from this
24 exhibit that you had marked.

25 MR. ROISMAN: That's right. The page I detached

1 from the exhibit is the transmittal page by Mrs. Juanita Ellis
2 dated February 3rd, 1983, to the docketing and service
3 section. That is not the affidavit and I only wanted -- since
4 we only talked about the affidavit I didn't want to have that
5 marked.

6 MR. DAVIDSON: I merely noted it for the record.

7 MR. ROISMAN: I understand. That's fine.

xxx

8 (The document referred to
9 was marked Messerly-4
10 for identification.)

11 MR. ROISMAN: Miss Reporter, those four may be
12 bound pursuant to what I gather is the Board's preference and
13 if it wasn't clear before, I will state again, I am not
14 offering them into evidence. I am asking to have them marked
15 as exhibits so that if anybody wishes to offer them in
16 evidence in the future, we have got an exhibit number that
17 relates it to this deposition and we know what they are.

18 MR. DAVIDSON: Mr. Roisman, in view of the fact that
19 you have not offered these exhibits that have been marked for
20 identification, would it be more appropriate if we had them
21 held loose for subsequent admission if they are acceptable
22 and if they are so moved, rather than bind them into the
23 deposition?

24 MR. ROISMAN: Well, Mr. Reynolds is sitting here
25 and he has been in this proceeding long before I got involved,

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1 but it is my understanding that the Board has stated a
2 preference that these items be bound with the depositions or
3 transcripts that they referred to, and that is the only reason
4 I am asking the reporter to do that.

5 Mr. Reynolds, am I correct about that?

Erd 9.

6 (Discussion off the record.)
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1 MR. ROISMAN: Back on the record. While we were
2 off the record we discussed with Applicant's counsel and
3 they indicated that it would be acceptable to bind them to
4 the back of the transcript, given that that is the stated
5 preference of the hearing board chairman with regard to how
6 we should treat these.

7 EXAMINATION

8 BY MR. ROISMAN:

9 Q Mr. Messerly, I'm now going to show you the
10 document that you previously looked at and identified, which
11 is now marked Exhibit Messerly-1 and direct your attention
12 to page 3, the second answer that appears on the page. And
13 in particular the second paragraph thereof, and the next to
14 the last word which says inspectors.

15 Now I want to ask you a question about that
16 word, okay?

17 A Yes.

18 Q Do you have a recollection of reading, when you
19 first read the deposition and signed it, that word and
20 noticing whether there was or was not an "s" after it?

21 A No, I did not.

22 Q Thank you.

23 MR. DAVIDSON: Excuse me, Mr. Roisman. Do you
24 mean no you did not read it, or no you did not notice it?

25 THE WITNESS: No, I did not notice it.

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MR. ROISMAN: That is it.

MR. PIRFO: I cannot think of any questions on the scope of that examination.

MR. DAVIDSON: Mr. Messerly, I have no other questions for you.

THE WITNESS: Thank you.

(Whereupon, at 3:20 p.m., the taking of the deposition was concluded.)

ROBERT MESSERLY

CERTIFICATE OF PROCEEDINGS

1
2
3 This is to certify that the attached proceedings before the
4 NRC COMMISSION

5 In the matter of: Texas Utilities Generating Station
6 Deposition of Robert Messerly

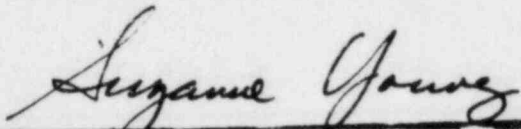
7 Date of Proceeding: Thursday, July 12, 1984

8 Place of Proceeding: Glen Rose, Texas

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

11 Suzanne Young

12 Official Reporter - Typed

13 
14 Official Reporter - Signature

AFFIDAVIT OF ROBERT MESSERLY

Q: Please state your name and address for the record.

A: Robert Messerly, Route 10, Box 6190, Fort Worth, Texas 76135.

Q: Are you aware of any instances of intimidation, harassment, or threatening of employees at Comanche Peak?

A: Yes.

Q: Are you aware of any instances of employees being discouraged from doing work right to begin with at Comanche Peak?

A: Yes.

Q: In your opinion, have such instances of intimidation, harassment, threatening, or discouragement had an effect on morale of employees at the plant?

A: Yes.

Q: In your opinion, have such instances of intimidation, harassment, threatening, or discouragement had a detrimental effect on the quality of work at Comanche Peak?

A: Yes.

Q: If so, what effects have they had?

A: The people get an attitude that they don't care. The morale is very, very low. It's just get the job done, get the boss off their back. The attitude of management is get the job done and they don't care how it's done as long as it looks good on paper, to make what they call production, which is footage or tonnage, etc., whether it's right or wrong.

Q: Are there specific instances you could tell us about?

A: I discussed several in the deposition taken by the NRC Investigators on April 14, 1983.

Q: Was that the deposition which was attached to CASE's 8/3/83 letter to the Licensing Board under subject of: Record Regarding Discouragement from Reporting Nonconforming Conditions at Comanche Peak Nuclear Plant?

A: Yes.

Q: Please refer to that deposition. Are the instances you are referring to those on pages: 4 (line 12) through 25 (line 7), especially pages 6 (line 9) through 8 (line 9), 20 (line 25) through 21 (line 9), and 23 (line 24) through 25 (line 7); regarding illegal use of rebar eaters under orders;

25 (line 8) through 32 (line 18), especially page 32 (lines 2 through 18); regarding use of polar crane to pull piece of 32" main steam line pipe to steam generator into position without engineering present;

34 (line 25) through 55 (line 17), especially pages 46 (line 11) through 48 (line 14) and page 51 (lines 3 through 18); regarding illegal use of cutting torch on hangers, and bolts for Richmond inserts at wrong angle, under orders;

58 (line 15) through 61 (line 11), especially pages 58 (line 15) through 59 (line 1); regarding illegal or improper work or work done out of procedure, under orders?

A: Yes, those are the main instances I was referring to.

Q: Are there other specific instances which are not contained in your deposition?

A: Yes. In my own case, four days after I made a complaint to the top people with QA/QC, I was fired and was out on the street looking for a job. I talked to Antonio Vega and then to Dave Chapman, and four days after a telephone conversation with them I didn't have a job.

Also, I've actually seen supervision grab hold of QC Inspectors and threaten them because QC wouldn't buy something in order to make their precious production. It's common knowledge all over that that's the way it is. For four years I heard nothing but production, production, production. They don't question how it's put up as long as it's bought off by QC. If a gift of gab doesn't buy QC, I've seen them threatened. Sometimes they never even went and looked at the item to be bought off.

Q: Are there specific problems in construction or design at Comanche Peak which you believe currently exist (which have not, as far as you know, been put into the process to be corrected) to which you could take the Licensing Board and show them? And would you be willing to attempt to do so?

A: I do if they still exist, but due to publicity, I doubt it. There are certain things they can't hide, but they're going to have to pull hangers down to look and not just visually look at them on the wall. You'd have to have wrenches, take the hangers down to check the concrete inserts as far as their being off in degrees to the wall. You'd have to pull several hangers to see how many Hilti bolts are welded to the back of the plate to get the torque on them. These would have to be physically pulled. There were in the thousands that were done.



Q: Has the NRC Region IV office issued an inspection report regarding the matters discussed in your deposition?

A: Yes. The report by the NRC was very humorous. If a man sits at his desk all day long and hasn't done this kind of work and hasn't inspected this kind of work on an ongoing basis, what are his qualifications for inspecting this when you can hide so many things behind what he can actually see? If you go and ask the people who have been doing the illegal things if they have been doing illegal things, they aren't going to just haul off and admit that they have been.

Q: You were not satisfied that everything is all right based on your reading of the NRC inspection report?

A: I'm certainly not. It didn't resolve anything as far as I can see.

Q: Can you give us an example of what you mean?

A: Well, for one example, they didn't pay any attention to what I stated in my deposition -- that there wasn't any engineer anywhere around when the main steam pipe was forced into position by the polar crane. The Board needs to put the people involved on the stand and swear them in under penalty of perjury where they'll face 10 years in the pen if they lie, and their jobs will be protected, and they won't have to take the harassment that's every day, 365 days a year out there, and they'll testify and tell the truth.

Q: Why should the Licensing Board be concerned about such intimidation, harassment, threatening or discouragement of employees, or such deficiencies as you may tell them about or show them at Comanche Peak? What's the bottom line as far as the safety of the plant is concerned?

A: The man who has a bad attitude or a bad morale situation is not going to do the best of his ability as far as quality; he's going to satisfy or pacify upper management. He's going to do anything possible to keep management off his back in order to make production, which is management's sole purpose regardless of the outcome. What you've got out there is bad quality, bad work, a lot of cover-up work, and all of this done just for production so that upper management looks good as far as footage or tonnage is concerned.

I have read the foregoing affidavit, which was prepared under my personal direction, and it is true and correct to the best of my knowledge and belief.

Robert L Messerly
(Signed)

Date: Nov-26-1983
Sun.

STATE OF TEXAS
COUNTY OF DALLAS

On this, the 26 day of Nov, 1983, personally appeared ROBERT MESSERLY, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 26 day of November
1983 Nov.

Samuel W Nestor
Notary Public in and for the
State of Texas

SAMUEL W. NESTOR
My Commission Expires
1-31-85

My Commission Expires: _____

Telephonic Interview of Robert MESSERLY

On August 17, 1983, Robert MESSERLY, a former Brown & Root, Inc., employee, was telephonically interviewed by NRC Investigator H. Brooks GRIFFIN. MESSERLY stated he worked at CPSES for about 5 years and had worked for a number of supervisors during that period.

MESSERLY stated he had worked for a "3 striper" by the name of Mike SANDERS, who intimidated him into loaning out "rebar eater" Drillco concrete drills without proper documentation as he had already detailed in a previous deposition to the NRC Office of Investigations Field Office, Region IV case no. (A4-83-005). MESSERLY stated that SANDERS threatened to fire him if he did not follow his instructions. MESSERLY stated he had heard from other B&R employees that SANDERS later found the pressures of the job too great, and that SANDERS voluntarily dropped back to working as a welder.

MESSERLY stated he believed a supervisor named Mike ROBISON tried to fire him on a number of occasions because he (MESSERLY) had become personal friends with Hal GOODSON, a superintendent. MESSERLY said he believed ROBISON was afraid that he (MESSERLY) would "get his (ROBISON'S) job."

MESSERLY stated he had a "personality clash" with one of his supervisors named James STARKEY, who would not provide him with as much work as he (MESSERLY) thought his crew should have been given. MESSERLY stated he was forced to "hide his crew out," since they had not been assigned work. MESSERLY said he had no problems with his former supervisors, Edward DEAN or Gerald LEMKEY.

MESSERLY stated his problems with some of his supervisors were generally the result of the supervisor's lack of intelligence, but said the threat by SANDERS was the only time he was intimidated.

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COPY

IN THE MATTER OF:

SWORN STATEMENT OF ROBERT MESSERLY

PRESENT AT THE TAKING OF STATEMENT:

MR. ROBERT MESSERLY, Witness;

MR. B. BROOKS GRIFFIN;

MR. RICHARD K. HERR, Interrogators;

MS. JUANITA ELLIS

MR. DAVID COGBURN, Court Reporter,

SWORN ORAL STATEMENT IN QUESTION AND ANSWER
FORM of ROBERT MESSERLY, taken before David Cogburn
a Court Reporter in and for the State of Texas at
the United States Federal Courthouse in the City
of Fort Worth, County of Tarrant on the 14th day
of April, 1983 at 2:00 p.m., at which time the
following proceedings were had:

SPECIALLY CONFIDENTIAL

P R O C E E D I N G S

1
2 MS. ELLIS: For the record, we should
3 indicate that we have handed the NRC officials
4 an April 13th letter from CASE addressed to
5 Edward Markey regarding this matter, and also a
6 copy of an affidavit of J.R. Dillingham,
7 D-i-l-l-i-n-g-h-a-m. And I believe Mr.
8 Messerly has a copy of some documentation which
9 he will be providing also to the NRC.

10 MR. GRIFFIN: Anything else, Ms.
11 Ellis?

E X A M I N A T I O N

12
13 BY MR. GRIFFIN:

14 Q Mr. Messerly, this investigation is being
15 taken pursuant to the rules of the Nuclear
16 Regulatory Commission and we are at the U.S. Federal
17 Courthouse, a part of the U.S. Attorney's Office,
18 Room 524 in Fort Worth, Texas. This is Thursday,
19 April the 14th, 1983 and we're commencing this, it
20 looks like, at 2:01 p.m. Present for the NRC is
21 Richard K. Herr, the director of office of
22 investigations and myself, B. Brooks Griffin.

23 I understand, Mr. Messerly, that you are a
24 former employee of Brown & Root and were employed at
25 Comanche Peak Steam Electric Station in Glen Rose,

1 Texas. Is that correct?

2 A Yes I was, uh-huh (affirmative).

3 Q And present with you is Ms. Juanita
4 Ellis.

5 MR. GRIFFIN: Ms. Ellis, if I might
6 ask you, what is your role in relation to Mr.
7 Messerly?

8 MS. ELLIS: All right. Mr. Messerly
9 is one of the individuals which we had planned
10 to call in hearings which have been postponed
11 for the time being, at least, in the Comanche
12 Peak operating license proceedings.

13 MR. GRIFFIN: All right. And you are
14 here in his behalf?

15 MS. ELLIS: Well, yes. He asked that
16 I come and join him so that he would have
17 someone here that he felt comfortable with. He
18 felt that he would feel a little more
19 comfortable with someone else here.

20 MR. GRIFFIN: Do you represent him in
21 any way other other than just an associate or
22 in the manner you have already described?

23 MS. ELLIS: In the hearings -- I'm
24 not an attorney first of all. In the hearings,
25 though I am CASE's primary representative and

1 as such do what an attorney, I should say,
2 would do for CASE. And so to that extent I
3 guess sort of a quasi representative status.

4 Q All right. Our purpose here today is to
5 ask Mr. Messerly questions concerning an earlier
6 statement that I believe he made to you in which he
7 identified a number of issues that are of concern to
8 the NRC, and we would like to find out more specific
9 details about these issues. So my questions will be
10 directed to you, Mr. Messerly.

11 A Okay.

12 Q The first issue I would like to go into
13 is the use of a rebar drill or a drill at Comanche
14 Peak that I believe you have indicated was used,
15 that you used in your job and was also used to drill
16 through cement and rebar; is that correct?

17 A That's correct.

18 Q Would you mind telling me in more detail
19 what this drill is?

20 A Well, it's like it says. They call it a
21 rebar eater, it's made by Drilco manufacturer who is
22 out of Miami, Florida and it's a -- well, they have
23 a diamond tip on them or they have a real hard steel
24 tip on them that cuts through other steel, concrete,
25 anything else that gets in its way. And they are

1 operated by anywhere from a half to a three-quarter
2 horse electric motor.

3 Q Okay. And did you use this machine in
4 your capacity as an employee of Brown & Root?

5 A Well, I was foreman over the crew that
6 used this machine.

7 Q All right. Did the use of this machine
8 require documentation from --

9 A It did.

10 Q -- from engineers?

11 A It did.

12 Q And these were Brown & Root engineers?

13 A Right. Not Brown & Root, they were Gibbs
14 and Hill. They are the ones that first started it
15 when they first come on the job.

16 Q All right.

17 A A guy named Dean Fellingner is the one if
18 you want his name.

19 Q He was the one that issued --

20 A He was the one that started out with me
21 on the rebar drilling, and later it changed into
22 fourteen different people if you want to know the
23 truth about it.

24 Q What was his last name?

25 A Fellingner. He is still with Gibbs and

1 Bill and he is out of the Dallas office now.

2 MS. ELLIS: I believe that's
3 F-e-l-l-i-n-g-e-r. I have seen his name.

4 THE WITNESS: Do you know who I'm
5 talking about?

6 Q During the time that members of your crew
7 used rebar eater, did they make sure they had this
8 documentation?

9 A Most of the time yes, but there are times
10 that I was ordered by my superiors, a guy named Mike
11 Sanders, to order or go out the gate, as I stated in
12 my affidavit before.

13 Q Are you saying he asked you or told you
14 or ordered you to drill holes or use this drill in
15 the manner in which it was to be used without
16 documentation as required by procedure?

17 A I am saying that.

18 Q How many instances did this occur?

19 A I wouldn't -- I mean, just to give you a
20 number, I couldn't do it. Many times.

21 Q Okay --

22 A As far as number, you're going to say
23 more than this or less than this, I can't give you a
24 number. I won't give you a number because I don't
25 have that much -- well, how can I say it, I'm just

Messeely

1 not there. The dri an the
2 drill out at times. i guy a
3 drill bit that he rill
4 motor out of the t e these
5 three, four, five ow many
6 holes were drilled with it there. ing how
7 much rebar was cut.

8 A man comes up and says, I want you to
9 give so and so six drills, he's got a pipe hanger
10 that has to go down or a cable tray that has to go
11 down - a cable tray support - and we have got three
12 holes in it and we need the fourth one bad. And I
13 went to my general foreman at that time who was Pete
14 Mason, and I told Pete, I said Pete, Mike keeps
15 giving me these orders to get this drill out, loan
16 it out to drill holes that are not authorized. I
17 haven't got the paperwork from Dean Fellingner. I
18 said, what can I do? He said, man, he's my boss,
19 what do you want me to do?

20 Q Do you know for sure that the people that
21 you loaned this drill to did not acquire the
22 documentation that they needed to stay within
23 procedure and use this drill?

24 A I'm positive they did not get the
25 procedure, because any time the procedure paperwork

1 came through it came directly to me from Dean
2 Pellingier and I handed it to my men and seen that
3 the job was done. Because there were areas out
4 there that there was -- strictly was illegal at all
5 to drill any kind of rebar or cut any kind of rebar,
6 Reactor One was one of them. No rebar of any kind
7 was allowed to be cut in that building anywhere.

8 Q Is this the containment building?

9 A Containment building, Reactor One.

10 Q What the NRC would like to know in this
11 instance is the specific locations where holes were
12 drilled without proper documentation. Is there any
13 way that this information or these locations can be
14 determined, reconstructed or anyplace we can go,
15 anybody we can go talk to to find out specific
16 locations?

17 A Let's see, Danny Brown borrowed it
18 several times to drill holes. He's still working
19 out there. Other than getting ahold of Mike
20 Sanders, Danny Brown is the only one I can think of.
21 And as far as sitting here and telling you
22 locations, evidently you haven't been out to that
23 plant.

24 Q I have, yes.

25 A Well, I had access to every building on

1 that place. I have been in every building. I have
2 cut rebar in every building but containment one,
3 except the dam. Now, does that tell you anything?
4 Now, to go tell you to go to a certain wall and see
5 if the rebar is cut is impossible.

6 Q You understand what we're trying to do
7 with the information. We're trying to find out
8 specific locations --

9 A Right.

10 Q -- so that we can verify what you're
11 saying. Let me ask you, in your statement that you
12 made to Ms. Ellis, you identified a diary that you
13 have kept and in this diary -- it's my understanding
14 in this diary you logged in instances or times when
15 this rebar eater was used to drill holes when you
16 did not have the proper documentation; is that
17 correct?

18 A No. This is --

19 Q Was this just a work --

20 A This goes from 9-7-78 to 10-17-79. This
21 was the period in which I was in charge of the rebar
22 eater. And this documentation, there's some of them
23 most of them have documentation. It also has the
24 CMC number, and like at the beginning it was a DCDDA
25 or something. I got it wrote on there someplace.

1 DCDDA is what they started drilling rebar with.
2 Then they find out this was not the right
3 documentation. Then they changed it to a CMC, but
4 when they first got it they were doing it on
5 three-part memos.

6 Q But --

7 A And this is every hole that I drilled,
8 legal and illegal, and except for the ones where my
9 equipment -- I was ordered to loan my equipment out.

10 Q All right.

11 MS. ELLIS: Just for the record, we
12 probably should mention that Mr. Messerly is
13 referring to a -- looks like a twenty-four page
14 listing which he had prepared of these
15 different items and he will be giving that to
16 you.

17 Q Is this a complete rendering of this
18 diary --

19 A Uh-huh (affirmative).

20 Q So --

21 A It is in complete form.

22 MR. HERR: Is it marked? You said
23 legal and illegal. Have you got the illegal
24 stuff marked on it?

25 THE WITNESS: No, I really haven't

1 but if it doesn't -- it's going to have to be
2 interpreted by me, which I'll try to explain to
3 you or I can tear off a page and y'all can look
4 at a page --

5 MR. HERR: Perhaps take a blue pen or
6 a red pen and we'll mark the illegal stuff.

7 THE WITNESS: No, I won't do that. I
8 can't do that because I didn't keep that much
9 of it. I mean, you can take a look and flip
10 through it to see what it's talking about. I
11 didn't do that -- as far as that, if I had kept
12 that kind of a record, it would have been a
13 separate record or something like that.

14 Q Would any of these entries in this
15 document lead us to the locations of where holes
16 were drilled without authorization?

17 A It's very possible. It is very possible.

18 MS. ELLIS: If I can call your
19 attention to this third column here, it says
20 "rebar cut" -- it's upside down. But in this
21 column, this is where specific rebar was cut
22 apparently and --

23 THE WITNESS: Yeah, what I did was, I
24 marked down -- this was my own deal and my own
25 idea, because there were certain areas that you

1 were supposed to take out a percentage of the
2 rebar. If you cut a hole in the rebar it
3 should have been reported and thus and so
4 forth.

5 Q In those instances, did you report it?

6 A Yes, I'm legal. So is this thing.

7 Q Okay.

8 A But it gives the direction of the rebar,
9 which way it was running, north, south, east, west.
10 It gives the depth that I cut the rebar and it also
11 gives the percentage of rebar, just me looking at a
12 piece of rebar and saying I cut fifty percent, ten
13 percent or if I just nicked it, just whatever after
14 the hole was drilled.

15 Q But on each of those entries, does it
16 tell the location on the site out there?

17 A It tells you the location, what building,
18 what print number it was taken off of or the hanger
19 number itself. So all you got to do is look up that
20 hanger number and it will give you the area and
21 exact location of this particular hanger.

22 Q All right. So any -- which column shows
23 the authorization?

24 A This one here.

25 Q Okay. So if that column is left blank,

1 then that would be an example?

2 A Not necessarily blank. I don't know how
3 in the hell to put that without sounding silly.

4 Q We are going to need to identify -- we're
5 not interested in the ones that were done properly.
6 We're only -- we want to look at the ones that were
7 done without documentation as required by procedure.

8 MS. ELLIS: We're referring to the
9 fifth column now on the far right.

10 A No, there's really not no way of telling,
11 not without looking up the hanger number and find
12 out what was done on the hanger. You will just have
13 to go over each individual hanger and check the CMC
14 and see what was legal to cut and what was not legal
15 to cut.

16 MS. ELLIS: You might mention, too,
17 in this column the ones on the front page all
18 seem to have items by them, but on several of
19 them throughout the listing there were none.
20 So it's not -- each one of these items, in
21 other words, doesn't have rebar cut
22 necessarily. It's just as indicated on there.

23 Q At this point I was just trying to limit
24 it to holes drilled without proper authorization,
25 regardless of whether rebar was cut or just

1 concrete. If the drill was used improperly, we're
2 trying to identify those instances.

3 Can you think of any way with this
4 document or any other documents you may know exist
5 that would lead NRC inspectors to specific locations
6 where holes were drilled without proper
7 authorization? Do you see what we're trying to get?

8 A I see exactly what you're trying to do.
9 You're trying to make your job real easy and there's
10 no easy way way to do it. I'm serious as hell
11 there's just no easy way to go to it because you
12 have so many things out there that's been like this,
13 and for me to pinpoint and give you an exact area by
14 this or any other means -- I might be able to walk
15 out there and show you things if I walk with you and
16 say, this was done here and this was done here. But
17 you're asking me to remember back three, four years,
18 too, and if you have ever been in that area, if you
19 go in there a week later it's all different.

20 Q I understand what you're saying. Can you
21 think of any way that I can transmit this
22 information to an inspector or to a group of
23 inspectors where we might be able to identify these?
24 You're right, we are trying to make it easier in
25 that we can't reinspect all the holes drilled at

1 Comanche Peak since its beginning, since the
2 foundation was poured.

3 A This rebar didn't come in until this date
4 here.

5 Q In other words, we want to address this
6 potential problem.

7 A I can't think of the guy's name. There's
8 one area down in the tunnel what they call the
9 tunnel area, and he was foreman over it when he
10 borrowed that drill. He cut a bunch of rebar down
11 in there and it would be a damn good place to start.

12 Q If we talked to this man, do you think he
13 would be willing to tell us?

14 A I can't think of his name. Yeah, I do.
15 I really do. I'm trying to think of his name; I
16 can't think of it.

17 Q If you cannot remember his name today
18 would you mind giving us that name when you do
19 remember it?

20 A He's still working out there. He got
21 fired and he was -- he went into the pipe department
22 at Green Hat now. He's a welder.

23 Q Do you think you will remember the name
24 eventually?

25 A If I don't I've got it at home I would

1 call you, but he might testify. And if you could
2 get ahold of a Richard Montjar (phonetic), he was a
3 man --

4 MS. ELLIS: Do you know how to spell
5 that?

6 A M-o-n-t, something like that. It's
7 pronounced Montjar, but he's in Germany now, I'll
8 tell you that much.

9 Q Now?

10 A Yes. Well, he married a girl in the
11 service is the only reason -- well, he was a year
12 ago. He might be back over here, now but he's
13 married to a girl in the service.

14 Q Okay.

15 A But he worked and drilled a lot of holes
16 illegally.

17 Q Now, these illegal holes that you are
18 referring to that he drilled, this was when the
19 rebar was, or the rebar eater was on loan?

20 A No, he worked for me. But he was also
21 around and could be a character witness to what I am
22 stating as to when I was ordered to do this. And if
23 you could pin that Danny Grisso (phonetic) down,
24 Danny Grisso used to work for me, too. And if you
25 put him on a stand and square him in, he will either

1 perjure himself or tell you about holes he drilled
2 when he was working for me and now he is in charge
3 of that operation.

4 If you could pin him down, but that
5 company has got him sewed down tight. He's a
6 puppet.

7 Q First of all, let me tell you, I'm not an
8 engineer. I have an engineering or technical
9 background, but let me see if I can phrase this.

10 In the holes that were drilled by your
11 crew members without proper documentation, can you
12 remember any instances or did you witness any
13 instances where damage was done to containment or
14 any of these other areas where the drill was used
15 that would constitute a safety or health hazard or
16 possible weakening of the structure?

17 A Well --

18 Q I know that's detailed.

19 A I'm not an engineer either. I have been
20 in steel, I have been in supervision, I have been
21 out there working. And when an engineer designs
22 something, he designs it for that particular thing,
23 for that particular strength. All right. If
24 somebody comes in there and cuts part of that out
25 without documentation, there's your answer. But I'm

1 not an engineer.

2 Q So you're saying, if I understand you
3 correctly, you're saying that if it's done, then who
4 knows what the effect will be?

5 A Well, the engineer knows, the engineer
6 that designed it. If he puts in fourteen rebars
7 there and you cut out seven of them, then you have
8 weakened half of them, what he designed it to hold.
9 And I have went down walls in that particular tunnel
10 that I was talking about and we were putting up to
11 hold thirty-two inche lines down there. I wasn't,
12 this guy was if I could think of his name. And we
13 had to cut a bunch of rebar down in there.

14 This was, I'm -- well, quote me if you
15 want to, I think, I'm not sure, but I think this was
16 an area that wasn't supposed to have any rebar cut
17 out of it.

18 Q All right. Let me ask you one more time
19 because you have accused me of looking for the easy
20 way. I would like to be able to walk out of this
21 room today and go find examples or instances of
22 holes drilled down there without proper
23 authorization. I hope there's some way we can
24 figure out how that can be done because we would
25 like to follow up on this.

1 A If I could just think of one exact hole
2 that I could remember. I know of three on the
3 turbine deck, but I'll be damned if I can remember
4 what area. There's another deal where I would have
5 to go out and it's completely changed over now, and
6 it would be a spot check between three or four
7 hangers.

8 Q All right.

9 A In fact, out of the three or four, I
10 think you will find a Hilti-bolt welded on the back
11 side because they couldn't get a hole in the ground.

12 Q What would it take to refresh your memory
13 as to a possible location?

14 A I have no idea. The documents you could
15 get is -- now, this would be Turbine One area which
16 would cut it down quite a bit. It's around them
17 tanks that they covered with the aluminum siding and
18 insulation. I don't know what tanks, what they are
19 called, them big long tanks up on the turbine deck.
20 And it was right alongside one of them tanks there
21 that three holes rebar was cut in without
22 documentation.

23 Q Was there anybody else present that might
24 be able to further identify, help us identify this
25 location?

1 A There was Richard Montjar. I should have
2 brought my time books with me. I'm not really sure
3 if Danny Grisso was there or not.

4 Q Is it your personal belief that Grisso
5 could identify locations?

6 A Yeah, I think he could, but I doubt if
7 you will get him to do it.

8 Q Is he still employed by them?

9 A Yes, he's very much employed.

10 Q All right. Well, I'll tell you, let's
11 move on. We have got several other --

12 MS. ELLIS: Perhaps if you had Mr.
13 Grisso appear under these circumstances, you
14 know, sworn with a stenographer and so forth,
15 maybe it might enable him to say things that he
16 might not feel comfortable saying not under
17 oath.

18 A I seriously think Danny would. I have
19 known Danny for quite a few years. I went through a
20 divorce with him and everything else when he was
21 working for me. But right now that company has got
22 him bought and paid for.

23 Q I can assure you the NRC is not bashful
24 about going and asking, so we will --

25 MR. HERR: I have one question I

1 would like to ask. Did you see any of these
2 people using the drill improperly? I know you
3 said you loaned them the drill out, but did you
4 ever see them use it?

5 THE WITNESS: On, yeah.

6 MR. HERR: And that was during the
7 time frame --

8 THE WITNESS: That was during this
9 time frame that this covers.

10 MR. HERR: Okay. That's the only
11 question I have.

12 Q Will that document that you are providing
13 us, will examination of this document, say, by an
14 engineer, would it lead to any locations where such
15 holes were drilled? Seems this fifth column seems
16 to be filled in.

17 A What I would do if I was you, I would go
18 pull these CMC's and DCDDA all through it with an
19 engineer, bump it against the number of the hanger
20 and see what was authorized to cut and what was not
21 authorized to cut, and then come back and bump it
22 against this, like a hundred percent cut out and if
23 that was really legal in that area to cut out a
24 hundred percent.

25 Q Do you think, then, a random sampling

1 done like that is going to reveal instances of holes
2 cut without authorization?

3 A Oh-huh (affirmative). I really do.

4 MS. ELLIS: It would seem to me on
5 that third column there where it shows the
6 amount that was cut out, that it would be
7 prudent at least to check all the ones where it
8 says a hundred percent or maybe as much as
9 fifty percent have been cut out.

10 A Because the way I understand that, on the
11 first part, all this -- these DCDDA's and all that
12 and the three parts were all illegal.

13 Q You mean where it says DCDDA?

14 A Yes.

15 Q Those are illegal cuts?

16 A At the beginning they were, and then they
17 changed it to a CMC. Now, if they went back and
18 covered their butts on that DCDDA I don't know.

19 Q If we checked all the ones that -- the
20 DCDDA and checked that number it might lead us to
21 locations?

22 A I would try that first and find out if
23 this was a legal document, because according to Dean
24 Fellingner the engineer, that was all wrong until he
25 come up with the CMC -- talk Bob -- CMC idea that

1 had to be wrote by a specific engineer.

2 Q As I flip through here, I only see that
3 DCDDA recorded twice. Are some of these other items
4 also that type of number?

5 A All right. Here's one that was wrote on
6 an RPIC. That was illegal, too. And a DCDDA --

7 MS. ELLIS: Are all of these numbers
8 here, are those all --

9 THE WITNESS: They could be CHC's and
10 they could be DCDDA's. I'm not real sure about
11 which they were. God, that's been, '78?

12 Q Right.

13 A I really need to sit down -- I haven't
14 looked at this other than a couple of days ago since
15 I have been out of it, and I could probably sit down
16 with somebody, and be glad to, to try to more or
17 less interpret exactly how it was wrote and what it
18 is.

19 Q Okay. We would greatly appreciate that.

20 A I would. I will; I'll be glad to do it.

21 MR. GRIPPIN: Do you have any more
22 questions, Dick?

23 MR. HERR: No.

24 Q Tell me now, you say, if I understand
25 correctly that this unauthorized use of this rebar

1 eater, is it true you were threatened with
2 termination if you failed to loan it out --

3 A If I failed to do anything that this man
4 said as far as that rebar eater loan-out or drill
5 bits or the whole operation or failed to drill
6 something myself and my crew, I was told that I
7 would be terminated if I didn't do it.

8 Q Tell me what his name is again.

9 A Mike Sanders. You have to understand out
10 there exactly what the deal was. At that time Hal
11 Goodson was the superintendent. Mike Sanders was, I
12 guess, twenty-six, twenty-seven years old and had
13 never done any kind of work like that in his life
14 and he was right underneath Hal Goodson as a
15 three-stripe general foreman. And Hal Goodson had
16 one thing out of his mouth, and that was production.
17 He didn't come out and say it, but he didn't give a
18 damn how you got it --

19 Q Okay.

20 A -- as long as it showed up on paper. He
21 wanted production, he wanted pipe hangers up, he
22 wanted cable tray supports up and he wanted them on
23 the wall and completed and bought off. He didn't
24 give a damn how they were put up, and this is what
25 Mike Sanders did. And in doing so, if they ran into

1 a problem, you've got to to figure some holes were
2 drilled, a hundred and something holes for one
3 hanger to try and find a decent spot to hang it
4 without hitting rebar. This brings on frustration
5 on the men, they go to their foreman, the foreman
6 goes to Mike Sanders, Mike Sanders says go down and
7 see Messerly and drill the damn thing and put it up.

8 Q I understand. Let's move on. You stated
9 in your affidavit to CASE that you observed or
10 witnessed the use of the polar (phonetic) crane to
11 pull up a piece of thirty-two inch pipe; is that
12 correct?

13 A That is absolutely correct.

14 Q I'm not an engineer; I don't understand
15 the significance of this. Could you explain it to
16 me, please?

17 A All right. What it amounts to is the
18 main steam pipe has a condensation joint like for --
19 expansion joint is what it's called. It's a huge
20 horseshoe type shape, and this thing is coming out
21 of the turbine building. All right. This
22 thirty-two inch main steam pipe, it's coming out --
23 it's anchored in concrete all the way around it,
24 it's a fixed object, you can't move it, right? It
25 comes into this expansion joint, makes huge

1 horseshoe shape and it goes down into each one of
2 the steam generators, which there's four of them, in
3 the containment building.

4 It was attached through the wall and it
5 was also attached to the steam generator in the
6 compartment inside the containment building.
7 Somebody come along after these pipes had been in
8 there, because somebody else was hollering,
9 production, production, production, and found out
10 that the main steam line was six inches off of
11 location on the vertical way and four inches on the
12 horizontal way off of location. There is a guy --

13 THE WITNESS: What was that guy's
14 name? Have I got his name down there?

15 MS. ELLIS: I don't think you have
16 got a name in here.

17 A I'm hell on names today, ain't I? But
18 what this gold hat did was ordered his people to
19 raise it up with the polar crane. I can't remember
20 the exact tonnage that was put on this because they
21 had a big gauge on it that showed tonnage when you
22 pull on it. A big round gauge looks like big clock,
23 and whatever tonnage -- seemed like to me it was
24 eighty-five tons, it was ungodly because everybody
25 scattered when they seen that needle going up as the

1 crane was pulling on it. The reason I know this for
2 a fact is because I was pipe hanger foreman at that
3 time between 860 and 905 elevation in the
4 containment building. I had all of main steam and
5 all of fourteen-inch feedwater lines that run all
6 through that area.

7 Q Supports for them?

8 A I had all the pipe supports. And I had
9 to undo my pipe supports, let him pull this up, Rex
10 Broom, which is a guy about -- I don't know, if you
11 seen him you would think he's eight foot tall, but
12 he's only about seven feet tall and four foot wide,
13 I'm serious. Look him up out there, you will --
14 he's got a head on him that big around.

15 He was on three tons come-alongs pulling
16 the horizontal way. And they put it into position
17 and once they got into position, I had to go back
18 and change my pipe support dimensions and hold that
19 thing in position. When they cut the temporary
20 hookup that they had welded to the steam generator
21 loose, it flopped like fourteen inches and echoed
22 through that whole containment building.

23 Q So you're saying they put this complete
24 pipe under tension in this movement?

25 A (Nods head affirmatively).

1 Q And it was secured into the wall on one
2 end and temporarily unsecured to the steam
3 generators?

4 A It was temporarily secured, welded to the
5 steam generators with temporary pipe. It's a
6 thirty-two inch line that goes into the steam
7 generators.

8 Q So the pipe was attached at both ends and
9 the center portion or some portion in between the
10 two ends --

11 A The expansion chambers is where they
12 moved the pipe at.

13 Q And they were -- this is a complete unit,
14 so it was put under tension; is that what you're
15 saying?

16 A Yeah.

17 Q And then you put in the supports to hold
18 it in that position?

19 A The supports were already there. In
20 fact, several of my supports could not be used no
21 longer, that's how far they moved the pipe because I
22 was allowed so many degrees for my pipe hangers to
23 be off of dead center of that thirty-two inch main
24 steam pipe. And when they moved it with these
25 come-alongs, and the overhead crane -- several of my

1 pipe hangers had to be completely removed and
2 started over again and redesigned to move over to
3 the center of the pipe. They moved it six inches
4 horizontally or six inches -- damn it -- six inches
5 up vertically and four inches horizontally.

6 Q And yet the ends remained in the same
7 place?

8 A (Nods head affirmatively).

9 Q Today would that same -- would it be in
10 the same condition as far as you knew it was when it
11 was -- when your supports were put back in place, or
12 reconnected or --

13 A What do you mean, the same position?

14 Q In other words, is it still under
15 tension?

16 A I would say yeah. Because I know they
17 did -- well, they moved from where it was welded to
18 the steam generator with the temporary pipe. I
19 would imagine now that they have the thirty-two inch
20 pipe going down after they got it on its last
21 location, that they have got permanent pipe in there
22 now, which would still put where it comes through
23 the wall in the same bind that it was originally
24 when they done it.

25 Q When did this occur? Do you remember

1 what year?

2 A Had to be right before I got fired, in
3 that summer I'm pretty sure.

4 Q Summer of what?

5 A '82.

6 Q Summer of '82?

7 A Might have been earlier than that.

8 Q From the way you described it, sounds
9 like everybody knew this was taking place?

10 A Hell, yes, anybody that was in the
11 reactor. My general foreman, Ed Dean told me to get
12 my people and get the hell out of 860 and go
13 someplace and hide until that idiot got done.

14 Q Was there an engineer in charge?

15 A Hell, no, there wasn't no engineer up
16 there. It was just that stupid gold hat that they
17 got up there that they call the pipe fitters. A
18 good friend of mine got fired -- what the hell was
19 his name -- he got fired once because of his --

20 MR. HERR: What's his name, the gold
21 hat?

22 THE WITNESS: Damn, I can't remember
23 his name either. I should brought my paper; I
24 had all that crap wrote down.

25 MR. HERR: Was he the guy in charge

1 of moving this thing, the gold hat?

2 THE WITNESS: Yeah.

3 MR. HERR: Is there any documentation
4 on that?

5 THE WITNESS: To my knowledge, no. I
6 knew the foreman real well. Don't ask me his
7 name. All of a sudden names escape me. I got
8 his name at home, too.

9 Q You may not know the answer to this
10 question, but just for my information, is it
11 possible for all these people to be involved in what
12 sounded like a major operation and management all
13 through the company not know that this event was
14 taking place, including the engineers that would
15 have -- might have an opinion on any kind of
16 movement of such a large piece of material? I'm
17 just asking your opinion.

18 A I want to give my opinion, but I want to
19 try and explain something to you. It's very
20 possible, because you got no communication out there
21 between the crafts. You have a pipe engineer -- say
22 you're a pipe engineer and I am a cable tray
23 engineer and so forth and so on down, just name any
24 branch in there. We're sitting across from each
25 other in the same office, but we don't tell each

1 other a damn thing. We don't talk to each other
2 about coffee and yes, it was possible because your
3 management out there, your upper management controls
4 the place. If they want to do it, all they have to
5 do is say, do it. Well, we haven't got the correct
6 paper works. I don't give a damn, I said do it.

7 Now, what choice have you got? You're out
8 there trying to make a buck and feed a family. You
9 ain't got no choice and most of your upper
10 supervision out there at that particular time, they
11 were all a clique that came up from North Carolina
12 and all buddy-buddies, and most of the upper
13 supervision -- how in the hell I ever got to be a
14 supervisor out there I don't know because I don't
15 know anybody and I ain't got no kin out there, but
16 that's what all your upper supervision was, and
17 ninety percent of your foremen out there are the
18 same way.

19 Q I noticed that at one place in your
20 affidavit here -- moving on to a different subject
21 now -- you talk about the fact that you reinstalled
22 hangers on the feedwater system?

23 A Uh-huh (affirmative).

24 Q This was, I guess, what, a major rework
25 project?

1 A I would call it a major rework. I wish I
2 had them books. I would like to show you how many
3 times I rebuilt hangers out there.

4 Q The same hangers?

5 A Same hangers over and over and over
6 again.

7 Q I've only got one question on this. You
8 say you worked at that for a long time. Was the
9 work done by your crew done properly as far as you
10 know?

11 A Yes, sir. It was done exactly right,
12 bought off by QC and everybody else and somebody
13 came through there and said, hey, they have been
14 redesigned wrong, let's tear them down and redo
15 them. And as far as I know on December 7th, '82
16 when I left there they were still working on
17 feedwater lines and I had them all completed on the
18 big feedwater that floods that whole containment
19 area.

20 Q A different subject again. I notice in
21 your report that you make reference to notice to
22 employees. This is a notice -- I believe it's
23 called a form three NRC document?

24 A Yes.

25 MS. ELLIS: That's a two-folding

1 deal.

2 Q While you were employed at Comanche Peak,
3 did you see any of these documents posted?

4 A Never. In the four and a half, five
5 years I was out there, never did I see one on any of
6 the bulletin boards, and I had access to that whole
7 plant.

8 Q All right. If there had been one, do you
9 think you would have noticed it?

10 A Yeah, because I was always looking for a
11 deal. I read every pamphlet on all the bulletin
12 boards when I ain't got nothing else to do.

13 Q And what time period -- remind me, what
14 time period were you employed out there?

15 A From February of '77 until December the
16 7th of '82 -- or '78, I think. Well, in February of
17 '83 I would have been out there five years.

18 Q All right.

19 A And a foreman four years and -- little
20 over four years, or right at four years. I got
21 foreman in June, I went to work in February. I made
22 foreman and supervisor in June and I was fired in
23 June, so right at four years I was supervisor out
24 there.

25 Q Okay. I want to ask you about the use of

1 deal.

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3 did you see any of these documents posted?

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5 years I was out there, never did I see one on any of
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21 foreman in June, I went to work in February. I made
22 foreman and supervisor in June and I was fired in
23 June, so right at four years I was supervisor out
24 there.

25 Q Okay. I want to ask you about the use of

1 a cutting torch on hangers. I don't personally
2 know, is it improper to use a cutting torch to tear
3 down or alter a hanger?

4 A Not to tear down and alter, but it's
5 illegal to use it in the containment building where
6 I was the entire supervision, when I was hanging
7 pipe supports. You drill everything and everything
8 has to go on the wall according to the drill size.
9 I took down a hanger -- took down several hangers
10 that was put up by this general foreman out there
11 that I tried to fire.

12 Q Which one is this? --

13 A Oh, boy. ==

14 Q Was it your general foreman?

15 A No, he wasn't my general foreman. He
16 worked for me. I tried to fire him while he was
17 working for me.

18 Q You were a foreman?

19 A Yeah. They call them supervisors out
20 there. You got a supervisor, a general supervisor,
21 a three-stripe general supervisor and then a
22 superintendent.

23 Q I see. Is a foreman higher than a
24 general foreman?

25 A No. The general foreman's got two

1 stripes on his hat.

2 Q So this guy was your boss?

3 A Euh-uh (negative). He later made general
4 foreman because he went out to Raymond Hebert's
5 house and built him a little sun deck and a little
6 porch and patio and all that, and then he became a
7 general foreman overnight over in pipe hangers. I
8 heard he got fired, which I hope he did.

9 He had taken a torch and cut the back side
10 of a tube out because a lot of bolts are put in like
11 this, the holes in the wall. They are supposed to
12 be straight, ninety degrees off the wall. They're
13 anchored in the wall, poured into the concrete.

14 MS. ELLIS: Richman inserts.

15 A Yes. And you go to hang a pipe hanger on
16 that and they give you a threaded piece of steel and
17 you're supposed to stick it in there and it's
18 supposed to come ninety degrees off the wall. Well,
19 they come off this way and come off that way and
20 come off this way and this way --

21 MS. ELLIS: For the record, could you
22 kind of try to describe those angles that you
23 are talking about? That's kind of hard to do
24 sometimes.

25 Q Let me just ask you, maybe it would be

1 more clear at least to me that -- were these, I
2 think these are called anchor bolts or something
3 like that?

4 A You got Richman inserts is what are in
5 the concrete wall, poured in around the concrete.

6 Q And you say these were installed at
7 improper angles --

8 A Yes.

9 Q -- for the supports that they were to be
10 attached to?

11 A Dh-huh (affirmative).

12 MS. ELLIS: Off the record.

13 (Discussion off the record.)

14 (Brief recess.)

15 Q These bolts that you are discussing, do
16 you know where they were located at the site?

17 A Are you talking about the Richman
18 inserts?

19 Q Yes.

20 A Well, narrow it down between 860 and 905.
21 I had that whole elevation and all of your
22 compartment rooms.

23 Q Well, do you know specific ones that were

24 A The only way I could give you a specific
25 would have -- my record of my hangers that I done

1 and be able to say, well, this hanger or that hanger
2 was done that way.

3 Q Would you have recorded the traveler for
4 the hanger if one of these bolts or these inserts --

5 A No.

6 Q -- were improperly installed?

7 A No, because we drilled holes this way, we
8 drilled holes up, we drilled holes down due to the
9 installation of the insert.

10 Q If you found an insert that was
11 improperly installed or not at the correct angle,
12 did you drill these holes to repair it?

13 A No. You don't drills holes in concrete.
14 Not in the insert.

15 MS. ELLIS: I misunderstood, so
16 explain how that works with these deals. How
17 do they get into the wall to start with?

18 THE WITNESS: They tie in the rebar
19 when they pour the concrete, and they got a
20 piece of foam in them to plug the hole, and all
21 you do is dig the foam out and stick your
22 threaded rod in there.

23 MS. ELLIS: So rather than drilling a
24 hole to put them in to begin with, they have
25 some kind of a form or something and they are

1 poured -- initially when they pour the concrete
2 they are in there to start with?

3 THE WITNESS: Originally their plans
4 were to put in so many inserts in a wall area
5 or ceiling or whatever. They just put in a
6 bunch of inserts; ever so many feet they put in
7 an insert. And hopefully what they were hoping
8 was they could come back and put a pipe
9 support, a cable support or electrical support,
10 whatever, a conduit and use these inserts that
11 were put in there -- which turned out they
12 didn't use half of them -- and they had to be
13 grouted over the ones that weren't used or had
14 to have a hole drilled in there by a Hilti
15 drill in which they changed the entire
16 operation on unit two and went to a solid steel
17 wall imbedded in the concrete with studs welded
18 right to the steel wall and the concrete poured
19 around them.

20 Q Are you saying that they put this steel
21 in the wall and started welding to that steel?

22 A Started welding direct in unit two. It
23 takes in safeguard two, auxiliary two, containment
24 two.

25 Q Are you saying that the problem then that

1 we're discussing was in containment one?

2 A Yes.

3 Q Where there was no steel wall --

4 A Well, they started on the -- I think on
5 the 905 pour, when they poured 905 floor and beams
6 in there, they started putting steel in them. But
7 from 905, the bottom of 905 down, there wasn't any
8 steel imbedded in the wall, just a few plates and
9 stuff.

10 Q The use of the steel in the wall took the
11 place of these inserts because you could attach
12 directly to the steel?

13 A Well, it had a sheet of steel there you
14 could put whatever hanger you wanted to.

15 Q Okay. When your crew ran into these
16 inserts that were at the wrong angle, placed at the
17 wrong angle, how did you attach the inserts normally
18 or how did you attach your hanger to these?

19 A I drilled the hole in the tubing at an
20 angle, whatever the angle was, because you don't
21 bend inch and a half threaded rod. Normally you
22 don't.

23 Q You drill a hole?

24 A Drill a hole at an angle, and then I have
25 seen them put in documentation on some of the

1 hangers they put a tapered washer on it to allow for
2 the angle that the threaded rod came out.

3 Q And then you say they grouted over the
4 other hole?

5 A Unused ones had to be grouted. You had a
6 dimension from one hole to another that you could
7 drill. There was a dimension in your nine point six
8 documentation out there how close you could drill to
9 a Richman insert, how close you could drill to
10 another Bilti-bolt or how close you could drill to
11 another attachment or steel plate or whatever.
12 There's all kinds in your nine point six.

13 Q Are you saying that these redrillings or
14 these angled drillings into these inserts
15 constituted a procedural violation on unauthorized
16 drilling?

17 A Well, there again, you can go back to
18 being that neither one of us are engineers. These
19 inserts are tied to rebar with wire, all right? To
20 be at a hundred percent, they have to be surrounded
21 by concrete a hundred percent, and they have to be
22 ninety degrees off the wall. When you stick
23 something in it, it should be ninety degrees off the
24 wall. If you have got this thing in there at, say,
25 at a ten-degree angle, you've not got the same

1 pulling capacity or coming out of the wall as you
2 have if it's straight.

3 Q Let me ask you this, then. How many
4 instances do you know of in which there were --
5 many?

6 A How about ten that were right and the
7 rest wrong.

8 Q Is that right?

9 A Now, that's the percentage.

10 Q What did QC said?

11 A QC never seen them. QC didn't see
12 nothing but the finished product.

13 Q So the finished product they saw was a
14 bolt sticking out that was attached to a hanger and
15 it looked to be proper?

16 A (Nods head affirmatively). QC don't get
17 in behind the hanger. You had a one-inch plate that
18 goes in behind, say -- for instance, we used a
19 six-inch tube vertical on the wall and say we had
20 two of these inserts. All right, we drilled
21 completely through the tube, used a one-inch washer
22 in the back of the tube, a one-inch washer in front
23 of the tube, and this one inch or inch and a half
24 threaded rod went through the washer, the tube, the
25 washer and into the wall.

1 Now, if it was at an angle, QC never sees
2 this because there's a nut on top of that.

3 Q Were the engineers aware of this manner
4 of altering these inserts when they were at an
5 improper angle?

6 A Man, I tell you what, I have been around
7 a lot of places in my life but I have never seen
8 anything out there -- if they call themselves
9 engineers -- I don't know what you'd call me, a
10 nigger aviator, I guess. But I'm telling you, they
11 don't communicate, they don't go out in the field.
12 How in the hell can you solve any problem if you sit
13 in this office and you don't go out into the plant?
14 That was their problem.

15 Q Would you mind telling me the original
16 instance of this manner of correcting these, the
17 angle of these inserts?

18 A Only way to correct it is not use it and
19 drill around it and drill a straight hole. You
20 don't put a Richman anchor in after the concrete is
21 poured.

22 Q Who was directing that they do it,
23 though?

24 A The Richman --

25 Q These redrillings.

1 A Your building department.

2 Q Who specifically? Somebody had to decide
3 that it was going to be done this way. Do you know
4 who?

5 A No. I imagine that comes from your
6 original Gibbs and Hill drawings or something.

7 Q I'm talking about the variation, this
8 changing the angle without -- to make it improper,
9 where the angle is wrong.

10 A I'm losing you someplace. I don't know
11 what you're saying.

12 Q You're saying it's supposed to be at
13 ninety degrees angles to the wall?

14 A Yeah.

15 Q And you-all were changing the angles so
16 it would fit --

17 A We weren't touching the Richman now.
18 Only thing we did was take the threaded rod, and
19 whatever angle it is, we would drill it at that
20 angle so that it would come through the tube and
21 when it come out the other side of the tube, it come
22 out as close to center as we could get it.

23 Q When you talk about tube, are you talking
24 about tube steel?

25 A Uh-huh (affirmative).

1 Q On the hanger?

2 A On the hanger. There was no way of
3 changing the insert.

4 Q So the insert remained the same and the
5 angle on the tube steel was changed?

6 A Wel, the holes through the tube steel was
7 changed.

8 Q Okay. So does that mean that the tube
9 steel had at least two holes in it, one of which was
10 used and the other unused?

11 A No. No. I don't know how to describe
12 that to you. Say that's the insert. All right, you
13 know me and my drawing. You got a piece of tube
14 steel here. We're going to run this one
15 horizontally. All right, looking at it, here is the
16 hole in the front like so. All right, this back
17 hole, we'll say that this angle runs this way to our
18 left. The back hole, if you know anything about a
19 print at all, might be drilled like that.
20 Understand what I'm saying, looking straight through
21 the tube?

22 Q I think so.

23 A Then this one here might be drilled like
24 thus. But when it come out the front it was
25 straight, so that means that this tube, if I was

1 sticking it in the wall here, would be at this angle
2 or -- no, this angle, in order to get out, and this
3 here be at this angle and get out. But when you
4 tighten on an inch-and-a-half screw, whatever gives
5 I don't know, but it's flat on the front. And see,
6 you got a big one-inch washer that goes here, the
7 size of the tube and also on the back side of it to
8 space it away from the wall.

9 Q Okay.

10 A So we don't change the insert.

11 Q And you are saying because it's not at
12 the proper angle that it is less than whatever the
13 load factor of its ability to support whatever
14 weight it is supporting?

15 A Well, again, I'm not an engineer but if
16 something is designed to go in a certain way and
17 it's not there, it's not in that way, then it's not
18 designed right. And it is a weaker point.

19 Q Okay.

20 MR. HERR: Did you bring this to
21 anybody else's attention.

22 THE WITNESS: Yeah. It don't do no
23 good.

24 MR. HERR: Do you know who you
25 brought it to?

1 THE WITNESS: Oh, you could just
2 about mention anybody else's name of my
3 superiors from Hal Goodson to Mike Sanders to
4 Mike Robinson to Ed Dean to Jim Starkey.
5 There's a jewel you ought to hang.

6 MR. HERR: What did they say when you
7 brought it to their attention?

8 THE WITNESS: Do you want a quote?
9 "Hang the damn thing". What do you do? And
10 that is all my upper supervisors. You don't
11 know how glad I am to be away from that place.
12 I ain't got no job, but I'm still glad to be
13 away from it. I've never seen anything in my
14 forty-three years on earth run like that place.

15 Q Can you think of any way that we can
16 identify specifics again of hangers that were, where
17 these holes were improperly --

18 A I tell you what. I just about bet you,
19 Mr. Griffin, I'm telling you what I bet you. Just
20 go out there and pull any damn studied rod out of
21 there, pull three of them and two of them is
22 crooked.

23 Q And these were never addressed by QC from
24 that inspection?

25 A There's no way of checking it. No way of

1 knowing what angle that thing is in there unless you
2 pull the hanger off and screw a straight rod in
3 there and look at it. But I would say, I would just
4 damn near bet you that out of three rods you get two
5 of them that's crooked.

6 MS. ELLIS: Just to be sure I
7 understand, when you look at this straight on
8 like QC would come and look at it, everything
9 looks all right from the front and all of the
10 part that you are talking about that's at an
11 angle is, in effect, hidden?

12 THE WITNESS: It's inside the
13 concrete. Nobody knows it. It's inside of
14 solid concrete.

15 Q Can you think of any way that we can
16 identify particular areas where this was done? Is
17 this all the areas that don't have steel plate
18 against the wall?

19 A No. Most of the places that had the
20 threaded rod would be in the compartments,
21 compartments one, two, three and four, and then you
22 have a lot of your other buildings, safeguard and
23 auxiliary, they all got the threaded rod imbedded
24 inserts.

25 Q Okay.

1 A But in the containment itself, you would
2 probably find them in the compartments would
3 probably be the major part of them.

4 Q All right. Let's go back to this, the
5 use of the cutting torch. Is that --

6 A That's what I'm saying. This hanger in
7 these compartments, if they didn't have enough
8 intelligence to find out what kind of angle it is
9 and how to drill the hole from the back and make it
10 come out center from the front, what this foreman
11 done out there or general foreman on nights, what he
12 done was take a torch and cut about a three-inch
13 hole. And you can see, if I cut -- if I got this
14 angle here and say we have another one here and the
15 back was at another angle, we just cut that sucker
16 out like that so we can move that thing any way we
17 want to to get it started.

18 Q How do they fill in the hole or is it --

19 A They don't fill it in; it's covered with
20 a washer. The only reason I found it out, the
21 hanger that was particularly put up by this guy was
22 designed wrong. I had to go down there and tear it
23 down. And I went to my superior Ed Dean and I said,
24 what are you going to do about this? I mean, I got
25 my butt tore up yesterday because I put something in

1 wrong or because one of my men had forgot to grout
2 behind a plate. I got called up to the front office
3 about a plate I put up three or four years ago. And
4 it wasn't grouted, the holes wasn't grouted behind
5 the plate. And I was called in and told if they
6 found one more hanger like that that I was going out
7 the gate. I said, Raymond, what the hell are you
8 talking about? I can't stand there and watch
9 fifteen men every five minutes put up every plate,
10 and you're going to fire me for something that
11 happened four years ago, fire me.

12 And then I go down there and I report
13 something like this to my general foreman. He
14 reports to Raymond Hebert -- well, this same guy is
15 the one that built the little sun deck or whatever
16 you want to call it at Raymond Hebert's house.

17 MR. HERR: What's his name?

18 THE WITNESS: Raymond Hebert.

19 MR. HERR: No, the guy that did the
20 building.

21 THE WITNESS: That's the name I can't
22 remember,

23 MR. HERR: The night foreman?

24 THE WITNESS: He was the general
25 foreman. I sold him a car. Hell, he used to

1 be a good friend of mine. I don't have nothing
2 against the guy except he don't know nothing.

3 Q Can you think of anybody else that we can
4 go talk to that can identify some hangers where they
5 specifically remember t' t this was done, these cuts
6 were made in the tube steel?

7 A Let me go home and I can give you a call
8 and I can give some names. If they are going to
9 talk I don't know. If they are still out there,
10 ninety-nine out of a hundred of them are in the
11 clique and they ain't going to talk unless they are
12 utterly threatened, because their jobs are on the
13 line. Hell, they are making thirty-five, forty
14 thousand dollars a year for doing nothing and they
15 ain't going to come over here and take a chance on
16 losing their job. Several of them are still there.
17 I think about seventy-five percent of my crew is
18 there. But if they would talk, I don't know.

19 Q Okay.

20 MR. GRIFFIN: Off the record.

21 (Discussion off the record.)

22 Q Now, you say the fellow that was drilling
23 the holes with the drill, is that this guy --

24 A The one I was drilling for. He was
25 foreman in that area. I was drilling holes for him.

1 Q And his name is Nathan?

2 A Nathan Hammers or something like that,
3 Hammers.

4 Q And Hammers might know specific holes
5 drilled --

6 A True.

7 Q -- with the rebar eater?

8 A Yeah. If you could corner him, I think
9 he would go.

10 Q All right. Now, the use of the cutting
11 torch on this tube steel, you say this was at the
12 direction of the general foreman?

13 A No. He wasn't a general foreman at that
14 time.

15 Q He became --

16 A He became general foreman later. He was --
17 boy, I tell you what, if you could get in my print
18 shack out there and get my log that I kept on every
19 damn hanger I got in there, I could tell you who
20 worked on it, the name of the person that worked on
21 it and when he done it. I kept a daily log, but I
22 turned that over to the new foreman. When they
23 busted me back, I give him that so he would have a
24 record of all the hangers put up. In that log is
25 all the feedwater hangers that were reworked and why

1 and who the person that worked on them, because if
2 anything ever fell back I went to each of them men
3 and said, why was it done this way. Because when
4 you got two or three guys here and two or three guys
5 here and two or three guys here and so forth and so
6 on, you can't be at every place at one time.

7 But if you could get ahold of that log
8 that was in my print shack, I can narrow them
9 hangers down real close for you.

10 Q How many would there be?

11 A Every hanger between 860 and 905 that I
12 put up. Every CT line, every main steam line,
13 feedwater line. It should still be in my print
14 shack.

15 MR. HERR: Who did you give the log
16 to?

17 THE WITNESS: Here we go again. I'm
18 not very good on names as you found out. I can
19 give you his name, too, because I got it in my
20 time book. He was my lead man for me for about
21 six months. He was an ex-foreman down there;
22 his foreman lasted about a month before they
23 busted him back.

24 MR. HERR: When did you give it to
25 him?

1 THE WITNESS: When I got fired -- no,
2 no, in June of '82 when they busted me back is
3 when I gave him everything in that print shack
4 except that document you got there, which was
5 none of his business that I took with me.

6 MR. HERR: And you weren't fired
7 until when?

8 THE WITNESS: December 7th.

9 MR. HERR: Of '82?

10 THE WITNESS: '82.

11 MR. HERR: He had it six months?

12 THE WITNESS: He had it six months,
13 and everybody liked the way I kept that log
14 because they could go right to that book and
15 open it up and it would tell what percentage of
16 that hanger was done, who worked on it and the
17 rework and CMC's and so forth on it.

18 MR. HERR: Was it a black or green
19 book?

20 THE WITNESS: No, it was a notebook
21 with paper in it, a regular black notebook.

22 MR. HERR: Three ring?

23 THE WITNESS: Yeah. And in there is
24 everything I have done in four years out there.

25 MR. HERR: Was there any printing on

1 it?

2 THE WITNESS: No. Yeah, it would
3 just have -- let's see, I forget what I had on
4 the front of it. I had this whiteout that you
5 use on typing paper. I had something printed
6 on that, main steam or containment one hangers
7 or something like that. I don't remember what
8 it was. You can't miss my shack.

9 MR. HERR: Where was your shack
10 located?

11 THE WITNESS: It was located on 860
12 but now it's outside of the entrance to
13 containment one. It's a bright red shack out
14 there. I painted it bright red because I got
15 in trouble for putting a Christmas tree on it
16 one year. And it's got my name all over it,
17 Bob Messerly, 8895.

18 MR. GRIFFIN: Do you have any more
19 questions?

20 MR. HERR: Is there anything else
21 outside of your affidavit that you wish to go
22 into or describe to us at this time?

23 THE WITNESS: No. Well, I don't
24 really know. If you are going to get into
25 something besides what I have discussed

1 already, I know it's been brought up before,
2 but if you can get ahold of a guy named Red --
3 I gave you his name the other day. I ain't got
4 it with me. I wish I had his address. He was
5 a weld tech out there and he can tell you about
6 a lot of that welding. That's another name
7 I'll have to get for you. I have got it on one
8 of my affidavits or something. And there's a
9 Joe Gray that was a welding foreman out there
10 that done a lot of welding illegally without
11 documentation, such as lugs on pipes without
12 purge, and --

13 MR. BERR: Did he tell you this?

14 THE WITNESS: I seen him do it.

15 MR. BERR: Can you give me the
16 location?

17 THE WITNESS: It was down on the 832
18 elevation. Roy Estes was foreman at the time,
19 and you might get ahold of a guy named Gary
20 Bill who was foreman down on 808 elevation
21 which had some bad lugs welded on by Joe Gray
22 illegally. Ed Dean was general foreman and
23 they done it on the sly, Raymond Hebert knew
24 about it.

25 MR. BERR: Who gave the order?

1 THE WITNESS: Raymond Hebert.

2 MR. HERR: He gave it to Dean, and
3 Dean passed it --

4 THE WITNESS: Dean then passed it to
5 Joe Gray because he was the foreman. He would
6 go down there and do it and didn't want any of
7 the welders to know about it.

8 MS. ELLIS: Was there anybody else
9 maybe on the crew that you know of --

10 THE WITNESS: Joe Gray's crew or my
11 crew?

12 MS. ELLIS: -- that would have known
13 about this particular thing that you are
14 talking about?

15 THE WITNESS: Other than Joe Gray and
16 there's another name I need to find out. I can
17 give you a bunch of names on stuff that was
18 done wrong down there that was seen by them or
19 stuff like that. The only thing you can do is
20 if they are still working down there -- I heard
21 Joe Gray got fired, too.

22 Q Okay. Why don't we wrap this thing up?

23 We discussed three issues outside of just
24 those notices posted, and we have asked you or you
25 have mentioned names or knowledge of names of

1 people, although you cannot recall the names right
2 at the moment regarding the use of this rebar eater,
3 the polar crane, that incident and the use of these
4 torches to cut hangers. And do you agree that you
5 will call me and let me know --

6 A I do.

7 Q -- fill in these names with these
8 situations as you have described them --

9 A Yes.

10 Q -- so we can put a complete package
11 together?

12 A I can give you every name that was in the
13 rebar crew from the time I had it. I have my time
14 books at home. I kept my own time books.

15 Q We are looking for people that know about
16 these instances of illegal or improper or work done
17 out of procedure.

18 A These are all the people that were doing
19 it. My entire crew was.

20 MR. HERR: They were doing that at
21 your direction --

22 THE WITNESS: At my direction, but
23 several of them were there when Mike Sanders
24 came down and ordered me to do so. And when
25 your superiors tell you to do something and

1 your job is on the line, that's what you did.

2 MR. HERR: These improper weldings by
3 Gray and some of these, did they tell you that
4 they had actually done it improperly?

5 THE WITNESS: I have seen them do it.
6 Any time you weld a stainless steel lug on, you
7 have to purge a line after a certain size. If
8 you don't purge it, it causes a sugar coating
9 on the inside and sucks that pipe into the
10 piece of steel that you are welding. So what
11 you have is you have a void area inside of a
12 slick steel piece of pipe, just a sunk-in area.
13 The stainless -- on stainless it just sucks it
14 right into that lug you're welding. We're
15 talking about a little lug like half an inch
16 long and maybe three-eighths of an inch high.
17 What it is, it's a lug that keeps the pipe from
18 doing this motion. You weld like four lugs on
19 this side, four lugs on this side around a
20 pipe, and you put a clamp in between it and
21 struts back to a fixed object on the wall and
22 it stops that pipe from going in this motion or
23 up and down, whichever way the pipe is located.

24 MS. ELLIS: And the purpose of it is
25 to keep the pipe from moving?

1 THE WITNESS: Right.

2 Q Wouldn't that show up on a radiograph?

3 A It should.

4 Q And aren't such things radiographed
5 before they are finally accepted by QC?

6 A No. On a stainless you get a -- hell,
7 they run that dye test on it.

8 MR. HERR: Penetrant test?

9 THE WITNESS: Yeah, penetrant.

10 That's the only thing, as long as the weld is
11 pretty and all that, it will pass penetrant.
12 But that's all on the inside.

13 MR. HERR: Do you know one way or the
14 other whether these are involving
15 safety-related or nonsafety-related, or do you
16 know offhand --

17 THE WITNESS: No, I'm not a nuclear
18 power plant -- it's all put in there for
19 something. Now, what particular thing this
20 did, I don't know -- I couldn't be honest with
21 you and tell what you it did without
22 remembering the line.

23 MR. HERR: The exact location.

24 THE WITNESS: The exact location and
25 line number. If you had the line number I'd

1 tell you what it did.

2 MS. ELLIS: Was it like in the
3 containment?

4 THE WITNESS: Everything I done was
5 in the containment. Everything I have
6 mentioned here, except for the rebar eater,
7 concerns the containment building in Reactor
8 One, which the reactor is inside containment
9 one. But everything I have mentioned in here
10 has happened in here that I have personally
11 seen done.

12 MR. HERR: Do you have anything else
13 you wish to add? —

14 THE WITNESS: No. I'll give you a
15 list of names.

16 MR. HERR: Thank you very much, Mr.
17 Messerly.

18 (End of statement).
19
20
21
22
23
24
25

1 STATE OF TEXAS
2 COUNTY OF DALLAS
3

4 This is to certify that I, David Cogburn,
5 reported in shorthand the proceedings had at the
6 time and place set forth in the caption hereof, and
7 that the above and foregoing 62 pages contain a
8 full, true and correct transcript of said proceed-
9 ings.

10 Given under my hand and seal of office on this
11 the _____ day of _____, 1983.
12

13 _____
14 David Cogburn, Notary Public
in and for the State of Texas
County of Dallas

15 My Commission Expires on December 30, 1985.
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I have read the foregoing 61 page deposition, taken before David Cogburn, a court reporter in and for the State of Texas at the United States Court-house in the city of Fort Worth, County of Tarrant on the 14th day of April 1983 at 2:00 p.m. It is true and correct to the best of my knowledge and belief.

Robert L Messerly
(SIGNATURE)

6-18-83
(DATE)

On this, the 18th day of June, 1983, personally appeared Robert L. Messerly, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 18th day of June, 1983.

David H. Ash
David H. Ash
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
MY COMMISSION EXPIRES : 7-7-85

*Janita gave me this item during
our meeting (CRF)*

*At
Messerly-4*

2/3/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR
AN OPERATING LICENSE FOR
COMANCHE PEAK STEAM ELECTRIC
STATION UNITS #1 AND #2
(CPSES)

Docket Nos. 50-445
and 50-446

AFFIDAVIT OF ROBERT L. MESSERLY

1 Q: Please state your name and address for the record.

2 A: My name is Robert L. Messerly. My address is Route 10, Box 619C,
3 Fort Worth, Texas 76135.

4 Q: Please tell us a little about your background at Comanche Peak plant.

5 A: I worked for Brown & Root at Comanche Peak for almost five years.

6 It would have been five years in February 1983. I started out in cable tray
7 hangers. I worked for four years as a supervisor in pipe hangers, until June
8 of 1982. I was foreman and supervisor over all of the area between 860 and 905
9 elevation, which includes all the main steam in the Unit 1 containment building.

10 In June of 1982 I was busted back, supposedly for absenteeism but I believe for
allegedly *AL7*

11 *AL7* cooking ribs in a weld rod can. (I wasn't.) About the end of November 1982, I
12 was contacted by Antonio Vega about the waste of materials, and ordering of equip-
13 ment for drilling through rebar and concrete and gifts received by me and others
14 for ordering all the equipment for drilling through the rebar and concrete. I was
15 told by him that I should turn over the documentation which I told him I had
16 on the holes I had drilled in rebar and concrete without having documentation and

AL7

1 authorization to Ron Tolson. I asked Mr. Vega if I was going to have a job
2 Monday morning; he said, oh yeah, yeah, no problem, no problem, nobody's going
3 to know about this. And a week later I was fired, on December 7, 1982. A welder
4 and I were over in the containment building delivering a tool that we had borrowed,
5 and we were fired for leaving our work area two minutes before the first whistle
6 blew.

7 Q: Tell us about the drilling through the rebar you mentioned.

8 A: You know the article that came out in the paper about rebar drilling
9 and all that?

10 Q: The article from the FORT WORTH STAR-TELEGRAM dated 1/7/83 titled
11 "Cover-up at Comanche Peak is charged" which I've shown you as being CASE Attach-
12 ment 9 to CASE's 1/11/83 Written Argument on Issues?

13 A: Yes, that's the article. Well, I'm the one that started the rebar
14 drilling. I'm the one that ordered the material to get it, and I'm the one
15 that broke Danny Grisso (who's mentioned in the article) in. He used to work
16 for me. I went to Hal Goodson, who was my immediate supervisor and told him
17 that I wanted something besides what I had, that I didn't want to go to the
18 next Brown & Root job and say I knew how to drill holes through concrete and
19 rebar. And I got out of it.

20 Q: They were buying these -- what do they call them -- rebar eaters?

21 A: Yes, from Drillco Manufacturing Company at their branch office in
22 Miami, Florida. I told Mr. Vega that I had taken a trip to Miami, Florida,
23 watched the Dallas Cowboys play; that I took about \$300 down there with me
24 and came back with more money than I took; that me and my wife took an all-
25 expense paid trip, were treated to the best meals and everything else by

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1 Drillco Manufacturing Co.; and that I had been sent \$400 from them as a gift
2 or whatever you want to call it through Western Union. All this was because
3 I had ordered those parts from Drillco. I told him I also knew for a fact that
4 another man had received two motorcycles as a gift because he ordered Drillco
5 parts. And a week later I was out on the street.

6 Q: They're not supposed to use rebar eaters onsite?

7 A: Well, they are and they aren't. If they've got documentation and
8 authorization from engineers, it's all right to use them in certain parts of
9 the buildings. If there's no documentation for it, you're just not allowed
10 to use them, period, because it'll cut through anything. It's that type of
11 drill.

12 Q: But if they cut through any of the rebar in the wall, they're supposed
13 to be careful not to damage the rebar any more than they have to and they have
14 to get approval before they do it, is that right?

15 A: Right. You've got to have approval and you've got to have documentation
16 by engineering. And some of it was done without having any kind of documentation
17 or approval.

18 Q: Did you do some of that too?

19 A: Yes, I'm the one that originated it. I'm the one that ordered it from
20 Miami. It was over \$50,000 or so when I ordered the first order of equipment
21 through Hal Goodson.

22 Q: And he was aware of it and approved it?

23 A: He approved the ordering of it and what it did because it was like 90%
24 difference in that and Hilti bolt. What it amounted to is Hilti organization
25 came in there with the same thing, but basically you had to drill more holes

A.L.

1 in the wall and you had to mount Hilti bolt drills to hold this particular appara-
2 tus they had; and Drillco had a vacuum plate where all you had to do was plug
3 it in the wall and hook it on the wall and drill it. In man hours, it saved
4 a lot of time.

5 Q: But were things done that weren't supposed to be done they way they
6 were done?

7 A: Well, that's sort of what it amounted to. I've got documentation for
8 the past 1½ years when I took it over, and later Danny Grisso was made foreman
9 over it.

10 Q: You've got documentation on that?

11 A: I've got about the holes that I've drilled and was ordered to drill
12 because my job was on the line. I've got about a year-and-a-half of documenta-
13 tion. It's like a diary. I kept a daily log on what percent I cut out of the
14 rebar, when it was done, the date, and everything else. And what I was told
15 by general foremen and three stripers (which are next to a gold hat, which is
16 a superior general foreman); I was told to do it or go out the gate. And this
17 is the documentation I was told to turn in to Ron Tolson.

18 Q: Did you turn it over to him?

19 A: No, I did not. I still have all the documentation.

20 Q: You said you know Danny Grisso, who was mentioned in the newspaper
21 article?

22 A: Yes, and I also know J. R. Dillingham, who was also mentioned in
23 the article.

24 Q: So what was said in the article about holes being drilled through the
25 concrete and rebar is true?

1 A: Yes. Also, I was ordered on several occasions to loan out my rebar
2 eater to other people. I can't swear what they did with it, but they could
3 have used it to drill holes in the concrete and rebar without anyone knowing
4 or authorizing it and without documentation.

5 Q: You said you also worked in the Unit 1 containment on the main steam
6 line?

7 A: Yes. The things I've seen done and the things I've done under orders
8 is ridiculous. I watched a gold hat pull a main steam pipe with the polar crane
9 about six inches or so to force it into position because it didn't fit. I
10 saw him put several tons of pressure on it to move the pipe. This was a 32-
11 inch main steam line. I had to remove all my temporary pipe hangers for him
12 to pull it up to six inches, and then I was told to put my pipe hangers back
13 on in order to hold it.

14 Q: Was this the main polar crane, the one that they use to refuel?

15 A: Right. I've been in steel fabrication all my life. I'm 43 years old.
16 I'm no young pup. I'm not an engineer, but I know if that pipe ever gets in
17 a bind and comes loose, it's going to be like a rubber band that's held taut.
18 The hangers aren't going to do a bit of good.

19 I put in about 90% of the feedwater hangers, which is for your main lines
20 for flooding in case of an accident. I put them in and had to take every one
21 of them out because they were underdesigned. And you're talking about a year
22 or two of work. I had a crew of 8 to 14 people, and this was my job. I had
23 basically all of the main steam and all of the feedwater. This was after I
24 got through with the rebar drilling.

25 Q: We've just shown you a copy of NRC Form 3, Notice to Employees.

1 Do you recall ever having seen that posted at Comanche Peak?

2 A: No, I don't. You've got bulletin boards in front of the main tool
3 room, one on the turbine deck, and one in the Administration Building. I had
4 access as a Foreman to all of them, and I don't remember ever seeing it.

5 I don't know what can be done about the waste, the materials, and
6 the back-stabbing that goes on at Comanche Peak. There are \$100 plus per
7 Hilti bolt that are scrapped daily by the skip pan full. There's wood, lumber,
8 steel, and what it's costing the taxpayers, it's ungodly. There's no reason
9 for it. It's ridiculous, it's the misfits, it's the supervision you've got
10 out there. For instance, the general foreman on nights built a gold hat a
11 sun deck or porch on his house. I tried to fire this man three times but I
12 couldn't do it; they wouldn't let me do it because he'd been out there five
13 or six years, and he was a good ole boy. I tried to fire him three times for
14 inadequate work. He could not handle his position. And here they were paying
15 him \$14 or more an hour. Now this man is a general foreman, underneath a gold
16 hat, in charge of pipe hangers on nights. The man is unqualified, incompetent,
17 can't do his work. He's cut holes in hangers where if there were any kind of
18 vibration the hanger would fall off the wall; he used a cutting torch, and
19 you're not allowed to use a cutting torch on any kind of material out there
20 on a pipe hanger unless it is done in the Fab Shop under QA supervision.
21 Well, he cut holes in them so that sometimes he couldn't even figure out his
22 holes, he couldn't figure out the tolerances or anything. And this man is now
23 a general foreman on nights on big bore pipe hangers.

24 I can tell you lots of things. I was a supervisor for four years out
25 there. Let me just give you a general perception of what's going on there.

BCH

1 I've been in steel work all my life -- I've been a fabricator, I've supervised
2 a shop, and the whole bit. You've got people out there who do rebar tying.
3 You've got two pieces of steel to tie together with a piece of wire. This is
4 rebar people, all right? All they've got to do is to go up there and tie
5 the rebar, and pour the concrete around it. It's all a hidden object, right?
6 This entire rebar organization and building department has come into pipe hangers.
7 The entire rebar staff out there is a kind of clique, and they went into the
8 hanger department. They suddenly became hanger geniuses. There's one man
9 out there right now who, three weeks before he was transferred from scaffold
10 and rebar said, "Man, I don't know how in the hell you read these blueprints
11 -- I don't know how in the hell you can make these things (pipe hangers)."
12 And as God is my witness, three weeks later this man was a General Foreman over
13 pipe hangers. He was a general foreman next to a gold hat over pipe hangers.
14 He suddenly knew all about pipe hangers. He suddenly knew all about steel.
15 And here was a man that has done nothing but concrete and rebar all his life.
16 But all of a sudden he is a steel genius because he is in the clique, because
17 he belongs to the building department out there, because he is one of Billy
18 Ward's little boys.

19 There's jokes floating all over that plant where they show a pipe hanger
20 tied together with wire or nailed together with wood because of the carpenters
21 and rebar hands that came over into pipe hangers. They're coming over as foremen,
22 they're coming over as General foremen and they're coming over as gold hats
23 (superintendents). And all of a sudden they know everything about pipe hangers
24 and about steel.

25 I'm just fed up with it, cause I've got to live here. I was here before

114 17

1 they came. I'll testify in the hearings, I'll talk to anyone who can see that
2 something's done about this. I'm not sure that Comanche Peak is safe.

3
4 Robert L. Messerly
5 Robert L. Messerly

6 Date: 2/3/83

7 Juanita Ellis
8 Witness

9 STATE OF TEXAS

10 On this, the 3rd day of February, 1983, personally appeared Robert L. Messerly,
11 known to me to be the person whose name is subscribed to the foregoing instru-
12 ment, and acknowledged to me that he executed the same for the purposes therein
13 expressed.

14 Subscribed and sworn before me on the 3rd day of February, 1983.

15 John H. Aragon
16 Notary Public in and for the State of Texas

17 My commission expires: 2/21/85
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