

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-445-OL2
50-446-OL2

TEXAS UTILITIES GENERATING COMPANY,
et al.

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

LOCATION: BETHESDA, MARYLAND

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

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In the Matter of: :
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TEXAS UTILITIES GENERATING COMPANY, : Docket Nos. 50-445-OL2
et al. : 50-446-OL2
:
(Comanche Peak Steam Electric :
Station, Units 1 and 2) :
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Nuclear Regulatory Commission
4350 East/West Highway
Fifth Floor Hearing Room
Bethesda, Maryland

Monday, November 19, 1984

The hearing in the above-entitled matter was reconvened,
pursuant to adjournment, at 1:00 p.m.

BEFORE:

JUDGE PETER BLOCH, Chairman
Atomic Safety and Licensing Board

JUDGE HERBERT GROSSMAN, Member
Atomic Safety and Licensing Board

JUDGE WALTER JORDAN, Member
Atomic Safety and Licensing Board

1 APPEARANCES:

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On behalf of Oliver B. Cannon & Sons,
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C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>VOIR DIRE</u>
Joseph J. Lipinsky					
by Mr. Gallo					19611
by Mr. Roisman					19635
by Mr. Gallo					19652
by Mr. Roisman					19654
by Mr. Gallo	19687				
by Mr. Roisman			19722		
by Mr. Gallo	19725				
by Mr. Roisman			19764		

<u>RECESSES:</u>
19609
19657
19797

LAY-IN - EXHIBITS JJJ-1 AND JJJ-2, pages 19621 - 19625
LAY-IN - TESTIMONY OF JOSEPH J. LIPINSKY, pages 19691 - 19721
LAY-IN - AFFIDAVIT OF JOSEPH J. LIPINSKY, pages 19746 - 19763
LAY-IN - EXHIBIT JJJ-3, pages 19768 - 19771
LAY-IN - LIPINSKY MEMO-TO-FILE OF 5/14/84, pages 19823, 19824

E X H I B I T S

<u>NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Exhibit JJJ-3	19767	

P R O C E E D I N G S

1
2 CHAIRMAN BLOCH: Good afternoon. I'm Peter
3 Bloch, chairman of the licensing board for the case
4 involving an operating license for the Comanche Peak steam
5 generating station.

6 Or my left, Judge Herbert Grossman and on my right, Dr.
7 Walter Jordan. We constitute the licensing board for the
8 intimidation and harassment portion of this docket which
9 is designated with a "-2" after the basic docket numbers.
10 Would the parties please identify themselves for the
11 record, starting at my left.

12 MR. TREBY: For the Nuclear Regulatory
13 Commission Staff, Stuart A. Treby, assistant chief hearing
14 counsel. Also Gregory A. Berry, counsel to the Staff.

15 MR. ROISMAN: For CASE, Anthony S. Roisman, and
16 with me is Ms. Billie Garde.

17 MR. GALLO: Thank you, Judge Bloch. My name is
18 Joseph Gallo with the law firm of Isham, Lincoln & Beale.
19 With me to my right is Mr. Peter Thornton of the same law
20 firm. Seated in the audience right here in the first
21 chair is Mr. Victor Copeland of the same law firm.
22 Together we represent Oliver B. Cannon & Sons, Mr. Joseph
23 Lipinsky, and Mr. John J. Norris.

24 MR. WATKINS: For the applicants, McNeill
25 Watkins of the law firm of Bishop, Liberman, Cook, Purcell

1 & Reynolds. With me today is Mark L. Davidson.

2 CHAIRMAN BLOCH: There are two procedural
3 matters which I would like to state for the record.

4 First, prior to commencing today, Mr. Joseph Gallo
5 handed to me four tapes which are represented to be the
6 original tapes in the possession of O.B. Cannon, with
7 respect to the November 10 and 11, 1983 meeting held at
8 the Comanche Peak nuclear plant between O.B. Cannon
9 representatives and representatives of Texas Utilities
10 Electric Company.

11 Mr. Gallo, have I stated that correctly?

12 MR. GALLO: You have, your Honor.

13 CHAIRMAN BLOCH: The other matter is that there
14 were some few words -- six words contained in diary notes
15 that were filed with the board and parties this morning,
16 which it has been agreed among the parties should be
17 deleted from the public record because they are
18 potentially libelous and there is an agreement among all
19 the parties that those six words may be deleted.

20 Do the parties understand?

21 There being no objection, that may be done.

22 It should be understood that those words will be
23 available to the parties under protective order which
24 means they are to use them only for this litigation
25 subject to the terms of the protective order already

1 entered into in this portion of the proceeding.

2 I understand there may be motions before the board. Is
3 that correct?

4 There being none --

5 MR. GALLO: I was waiting to see, your Honor, if
6 somebody else was going to jump in.

7 I do have a motion that bears on the voir dire
8 requirement. It might be preferable to hear it at that
9 time.

10 MR. WATKINS: We have a couple of procedural
11 matters, your Honor.

12 For the record, Mr. Gallo has informed applicants that
13 evidently we failed to serve one one-page document on
14 Saturday in connection with trial preparation materials.
15 I have given copies to the parties. It is a one-page copy
16 of notes by Joseph J. Lipinsky, relating to his review of
17 a draft affidavit. The final copy of that affidavit was
18 filed in the other docket on September 27.

19 I have also given copies to the board.

20 There are some matters regarding scheduling later in
21 the week. We can discuss them now, Mr. Chairman, or later.

22 CHAIRMAN BLOCH: Mr. Watkins, please?

23 MR. WATKINS: I believe the Staff and
24 Intervenors have consented to have Mr. Chaney
25 cross-examined first next week, starting next Monday; is

1 that correct?

2 MR. TREBY: That's correct from the Staff.

3 MR. ROISMAN: Yes. Correct.

4 CHAIRMAN BLOCH: We'll approve that as an order
5 of proceeding.

6 MR. WATKINS: Do Intervenors or the board want
7 to cross-examine Mr. Chaney?

8 MR. ROISMAN: Intervenors do.

9 MR. WATKINS: Mr. Chaney will then appear at the
10 beginning of Monday's session.

11 Some weeks ago it was agreed that Intervenors would
12 file additional allegations and that applicants would have
13 one week to respond. The Intervenors requested one
14 additional day and those allegations were filed last
15 Thursday. I just want to confirm my understanding that,
16 because this Thursday is Thanksgiving, we have until
17 Friday to file them?

18 CHAIRMAN BLOCH: I agree. No problem.

19 MR. WATKINS: Is the Commission open on Friday?

20 MR. TREBY: Yes.

21 MR. WATKINS: They will be filed on Friday, then.
22 That's all we have, your Honor.

23 CHAIRMAN BLOCH: It should be clear the filing
24 requirement is delivery, so the parties should have it on
25 Friday.

1 MR. WATKINS: Understood.

2 MR. TREBY: Staff counsel will be here on Friday.

3 MR. WATKINS: Mr. Watkins will not.

4 CHAIRMAN BLOCH: Mr. Gallo, are the witnesses
5 present in the courtroom, the four witnesses whom you
6 intend to call?

7 MR. GALLO: They are present in the courtroom,
8 Judge Bloch.

9 CHAIRMAN BLOCH: Perhaps they could just stand
10 and you could identify them for the board or they could
11 identify themselves for the record?

12 MR. GALLO: Well, I'll do it.

13 The gentlemen on the far left with the gray suit is
14 Mr. Ralph Trallo. Next to him is Mr. Lipinsky. Next to
15 Mr. Lipinsky is Mr. John J. Norris. The gentleman in the
16 back is Mr. Roth.

17 CHAIRMAN BLOCH: You may be seated.

18 Because of the importance of the matters we are about
19 to hear, and because personal interests may sometimes
20 create incentives that would prevent or discourage
21 witnesses from telling the complete and full truth, the
22 board will give instruction about truth.

23 What I'm about to say is obvious to people who have
24 thought about it, but it's also obvious that the truth is
25 difficult to come by at times. Truth is what exists in

1 the factual world. It is what actually happens. It has
2 nothing to do with our beliefs or our hopes or our
3 attitudes. It has nothing to do with our personal
4 financial interests.

5 When you are asked to tell the truth and the whole
6 truth before this Hearing board, the object is to say what
7 the facts were that occurred in the world, without
8 coloring them by what you would like the board to conclude
9 about those facts.

10 The obligation to tell the truth is not an easy one.
11 Sometimes it can involve financial sacrifice. Sometimes
12 it can be uncomfortable or difficult. It is a duty before
13 this board. It is a duty before your government. The
14 integrity of this hearing process depends on the
15 willingness of citizens to tell us the complete and
16 unvarnished truth.

17 We can find the truth only if we are told the truth.
18 We have an obligation to be able to listen to all the
19 facts and to set aside our beliefs and our prejudgments
20 and to incorporate all the facts into our conclusions. To
21 make our conclusions be worthwhile, the parties have to
22 fulfill their obligation to tell us the truth. That's an
23 obligation out of personal integrity, out of patriotism,
24 out of respect for the integrity of government. And the
25 integrity of government depends on witnesses telling the

1 full truth before this board.

2 If the witnesses will stand, except for Mr. Norris who
3 has been previously sworn and advised of his rights, I
4 would like to advise the witnesses of their obligations.

5 This is a hearing before the United States Nuclear
6 Regulatory Commission, which is an agency of the United
7 States Government. The matters involved may be important
8 to the public health and safety and to the economic
9 affairs of the region involved.

10 You have an obligation to tell the truth, the whole
11 truth, and nothing but the truth. That obligation is
12 supported by possible penalty for perjury.

13 Do the witnesses who are standing understand the
14 obligation which we have just described?

15 WITNESS LIPINSKY: Yes.

16 WITNESS TRALLO: Yes.

17 WITNESS ROTH: Yes.

18 CHAIRMAN BLOCH: All the witnesses have
19 indicated that they understand. You may be seated.

20 Whereupon,

21 JOSEPH LIPINSKY

22 RALPH TRALLO

23 ROBERT B. ROTH

24 were called as witnesses and, having been first duly
25 sworn, were examined and testified as follows:

1 CHAIRMAN BLOCH: There was a matter raised in a
2 conference before the board concerning whether or not
3 Mr. Lipinsky is properly represented at this time. If
4 Mr. Lipinsky could step forward, I think we would like to
5 take that matter up now. Welcome. You maybe seated.

6 Mr. Lipinsky, I know from counsel's call to me
7 yesterday you read the order of the board issued Friday;
8 is that correct?

9 WITNESS LIPINSKY: Yes, it is.

10 CHAIRMAN BLOCH: In answering these questions at
11 this time, the principal concern of the board is to assure
12 that you are right now fully and properly represented by
13 counsel in the sense that you would be able to tell
14 counsel anything concerning the facts of this case without
15 fear that anything would be improperly relayed to some
16 other client of counsel, or that this would have adverse
17 implications for your career.

18 Do you feel that you are fully represented by counsel,
19 and convey with him any facts relevant to this case?

20 WITNESS LIPINSKY: Yes, I do.

21 CHAIRMAN BLOCH: Mr. Roisman, do you have voir
22 dire for this witness?

23 MR. ROISMAN: I do, Mr. Chairman.

24 MR. GALLO: I would like to object at this point.

25 CHAIRMAN BLOCH: Your objection, sir?

1 MR. GALLO: The purpose of my motion at this
2 point is to, first of all, object to the process of voir
3 dire for the record. I won't reargue that point. It was
4 argued already.

5 I would like to ask reconsideration with respect to
6 whether or not Mr. Roisman or any other party should be
7 permitted to conduct voir dire.

8 It is my view that I should be permitted to ask
9 questions of the witness to elicit matters concerning the
10 issue at hand, and that secondly, and in any event, the
11 voir dire should be limited to the board.

12 The reason I say that is for this reason. The purpose
13 of the voir dire, as I understand it, is to determine
14 whether or not Mr. Lipinsky is adequately represented and
15 whether or not there's a conflict of interest in that
16 representation, and it's really his interest we are
17 concerned about here.

18 Mr. Roisman, I would submit, is in a conflict situation
19 with respect to that interest. And, by permitting him to
20 ask voir dire, indeed this witness is being put at
21 jeopardy in terms of his interest. And let me explain
22 that.

23 Mr. Roisman's client is interested in establishing if
24 it can, that Mr. Lipinsky was intimidated and coerced into
25 changing his position from his earlier trip report dated

1 August 8, 1983. That is the objective of Mr. Roisman's
2 client's interest in this limited part of the case.

3 In doing that, in pursuing that question, he's
4 interested, really, in determining whether or not
5 Mr. Lipinsky was in fact coerced or was not coerced.

6 Now that interest, I submit, is inconsistent with the
7 objective of trying to determine whether or not
8 Mr. Lipinsky was adequately represented.

9 I submit that Mr. Roisman -- that it is not possible
10 for Mr. Roisman to keep separate, during his voir dire,
11 his interest on behalf of his client and his interest as
12 an officer of the court to pursue the conflicts question
13 with respect to Mr. Lipinsky's representation.

14 CHAIRMAN BLOCH: Isn't that because they are the
15 same issue? That is, if Mr. Roth in particular, or
16 Mr. Norris, participated in any course of conduct which
17 had the effect of coercion, that that would both at the
18 same time establish the principal premise that Mr. Roisman
19 may be arguing and also establish that the representation
20 is improper?

21 MR. GALLO: That characterization of the issue
22 is exactly my problem.

23 Mr. Roisman, by this voir dire, is going to be given
24 two passes at that question; once under the guise of voir
25 dire and once under cross-examination, assuming that the

1 conflict is not found to exist. And I would submit that
2 the cross-examination is going to be directed towards the
3 objective of seeking a conflict, not for Mr. Lipinsky's
4 sake, but for his client's sake, and therein lies the
5 conflict. I think these witnesses, and particularly the
6 board witness -- and if there's a question here regarding
7 that representation, the board should champion that
8 objective and cause and not leave it up to one of the
9 advocates before the board to pursue it and it's on that
10 basis that I would object.

11 CHAIRMAN BLOCH: If we were to segregate the
12 issues and say, all right, right now we will have the full
13 hearing with respect to Mr. Lipinsky's testimony on
14 coercion, by Mr. Norris and by Mr. Roth, would that take
15 care of at least part of your problem that there would be
16 not two shots at it?

17 MR. GALLO: Well, if that would mean necessarily
18 that the conflict issue would either be waived or deferred,
19 at a minimum, and that we would go forward on the basis of
20 the evidence presented here as if no such question was
21 raised with respect to my representation of Mr. Lipinsky --

22 CHAIRMAN BLOCH: No, I'm suggesting we can take
23 that up as the first substantive matter and after we are
24 done with it we can consider if there is a substantive
25 problem.

1 MR. GALLO: If I may ask a question. Assuming
2 the board found there was no conflict question, would that
3 end the cross-examination of Mr. Lipinsky?

4 CHAIRMAN BLOCH: Only with respect to coercion
5 by Mr. Roth and Mr. Norris. We'd just be resolving the
6 issues concerning possible coercion by Mr. Roth and
7 Mr. Norris.

8 MR. GALLO: What would be left, as the board
9 sees it, as issues to inquire about after that was
10 accomplished?

11 CHAIRMAN BLOCH: Well, I'm sure that you
12 understand what's left. We haven't made a secret of the
13 board's view. We issued an order about problems that we
14 see. Mr. Lipinsky has testimony about the substance of
15 his change of views and how that occurred. That has
16 nothing to do with whether he has been coerced by
17 Mr. Norris or Mr. Roth.

18 MR. GALLO: I understand the point the chairman
19 is making, but it is my view that while that might
20 accommodate my objection to two bites at the apple,
21 so-called, double opportunity for cross-examination, I
22 still believe it's improper for Mr. Roisman, as an
23 advocate of an interest contrary to the interests of
24 Mr. Lipinsky, to be conducting this voir dire assertedly
25 in Mr. Lipinsky's interest. That is patently in conflict

1 there and I think unfair to Mr. Lipinsky's interest. If
2 anything, the board should conduct it. I reassert that
3 view.

4 JUDGE GROSSMAN: Excuse me, Mr. Gallo. Is it
5 your opinion that there are certain matters that can only
6 be asked on voir dire and others that can be inquired into
7 on cross-examination? Or is it possible that the
8 attorneys can voir dire on certain matters at their
9 discretion or reserve it for cross-examination, if they
10 care to, giving themselves two bites at the apple?

11 MR. GALLO: Judge Grossman, it's the nature of
12 the voir dire that I object to. The board has chosen to
13 use that term. I do not consider it voir dire.

14 Voir dire in the normal sense deals with the question
15 of the witness' competence to testify; it deals with the
16 witness' expertise to testify, and those kind of measures.
17 We are not dealing with that here. We are dealing with
18 the nature of the representation and the attorney/client
19 relationship between Mr. Lipinsky and myself. That is a
20 highly unusual subject and in my opinion an improper
21 subject for voir dire. And it's on that basis that I'm
22 objecting to the cross-examination by Mr. Roisman, and for
23 that matter any other member of the parties here.

24 JUDGE GROSSMAN: I think the point I'm trying to
25 make, Mr. Gallo, is that you usually ask on voir dire

1 matters that you think should be asked up front, even
2 though they can generally be inquired into on
3 cross-examination later on. And it is not a question of
4 two bites at the apple. It's a question of taking things
5 when they more appropriately ought to be heard.

6 In this case we are talking about representation by
7 counsel and I think it is only appropriate that we hear
8 these matters right up front.

9 But I don't believe that hearing them on voir dire ever
10 requires a waiver of going into similar matters later on
11 in cross-examination, if in fact the substance of what's
12 being heard is going to be affected by that kind of
13 examination.

14 MR. GALLO: Well, Judge Grossman, I believe that
15 we have two different opinions on the purpose of voir dire.

16 It is my understanding of the law on voir dire that, if
17 the witness' competence and expertise, for example, are
18 not questioned at the time of voir dire, that a general
19 objection to the admissibility of the testimony is thereafter
20 waived.

21 If, during the course of cross-examination, it is
22 possible to uncover some weakness in the witness'
23 competence, perhaps a motion to strike would be
24 appropriate. But in the normal course of things, voir
25 dire is supposed to deal with the matters I have mentioned.

1 And an attorney preparing for cross-examination can't
2 choose and pick when he's going to do it. He essentially
3 has to conduct his voir dire at the opening shot or he
4 waives it.

5 Judge Grossman, if I may, just one final thought. I
6 think the essential difference here is that the purpose of
7 the voir dire is to inquire of the representation and the
8 nature of the representation and the existence or
9 nonexistence of a conflict of interest. If we go to
10 cross-examination, the purpose is to establish pressure or
11 coercion or what have you, for purposes of showing that
12 this witness' testimony is not accurate, complete, and
13 indeed perhaps not truthful. Those are two far different
14 purposes. And that's the purpose; the latter purpose is
15 to advance Mr. Roisman's client's interest. That's not
16 what we are about for purposes of voir dire. And to
17 commingle those two interests is prejudicial to my client
18 and I object to it.

19 CHAIRMAN BLOCH: Mr. Watkins, if you would add
20 anything without being repetitious?

21 MR. WATKINS: If I may, Mr. Chairman,
22 Mr. Davidson, I would speak to that issue.

23 MR. DAVIDSON: We would limit our remarks, your
24 Honor, to support Mr. Gallo's objection. We believe that
25 there is serious question as to whether this particular

1 issue is a fit subject for voir dire rather than the
2 competence or admissibility of the evidence that a witness
3 proposes.

4 In any event, it would be our view, and we believe the
5 law supports this, that in the context of voir dire the
6 party putting forward the witness bears the obligation to
7 conduct the voir dire to dispel the objections to the
8 testimony and therefore it would be Mr. Gallo's burden and
9 not the burden of Mr. Roisman to conduct such voir dire.

10 CHAIRMAN BLOCH: Mr. Roisman?

11 MR. ROISMAN: On Mr. Davidson's last point, if
12 that had been the rule we would have saved some seven
13 hours of voir dire by Mr. Davidson of Witness F. while we
14 were in Glen Rose, so I assume that's not the rule. As to
15 the more generic question, whether we call it voir dire or
16 whether it's treated as a preliminary hearing, it does
17 seem to me that it must go first. The issue is whether or
18 not, when Mr. Lipinsky is ready to testify under oath with
19 regard to the substance of the issues that are the subject
20 of this hearing, he is adequately represented by counsel.
21 And we have raised the issue that there seems to be, to us,
22 based upon the notes of Mr. Lipinsky, an inherent conflict,
23 not a possible conflict but an inherent conflict.

24 As I understand the board's ruling of last Friday, it
25 was that that was not so obviously in error that the board

1 was willing to adopt Mr. Gallo's counterproposal which was
2 "dismissed out of hand," nor was it so obviously correct
3 that the board was willing to adopt our position, which
4 was that Mr. Gallo could not represent Mr. Lipinsky.

5 It still remains a preliminary matter. However it is
6 looked at, whether we call it voir dire or simply are
7 convening a preliminary hearing on that issue, the fact is
8 that there's a question here to be asked as between
9 Mr. Gallo and myself asking the question; if there's some
10 internal conflict I'm not advising Mr. Lipinsky, so the
11 conflict doesn't seem -- if it's there, it doesn't seem to
12 be a problem.

13 But for Mr. Gallo to ask the questions, that's a
14 conflict. Because Mr. Gallo is then asking of the witness
15 the question: Do you think that I can represent you
16 without in any way infringing upon what you perceive to be
17 your overall rights? And it's partly because I'm
18 concerned that those questions have not been faced by
19 Mr. Lipinsky that there should be voir dire.

20 Now, if the board wants to ask those questions, I don't
21 have any objection to it. It seems to me that the person
22 who can't ask them is Mr. Gallo, because Mr. Gallo is,
23 himself, the subject of the questions. So, his conflicts
24 make it impossible.

25 I wasn't sure I understood what Mr. Gallo's description

1 of the conflict was between the interest of CASE, but it's
2 exactly the same concern that caused me to rise when Mr.
3 Norris was on the stand and suggest that I was concerned
4 that we had a witness before us who was not represented by
5 counsel. And I still raise that concern here.

6 It's not an ethical question, it's an effort to
7 postpone the occurrence of the event that happened with
8 Mr. Norris all over again.

9 If it seems clear, as it does to me at this point, that
10 there are points at which Mr. Lipinsky, Mr. Roth, and
11 Mr. Norris have conflicting interests but all have to talk
12 about the same subject, to have had the same lawyer put
13 them in an intolerable position. They couldn't all have
14 been adequately advised of their rights.

15 CHAIRMAN BLOCH: How do you distinguish between
16 conflicting interests and conflicting views of the facts?

17 MR. ROISMAN: Well, I guess it has to do with,
18 one, the question of how the witness is prepared for
19 coming to the hearing to answer the questions.

20 One of the concerns is the question of an advocacy
21 position; that is, that the counsel has an advocacy
22 position; that the witness is a witness who expects to be
23 advocated on behalf of, where we have individuals, and
24 where advocating for all those different positions is not
25 always together, then you have the conflict.

1 And you also have the second question of confidences;
2 whether or not the witnesses are able to fully share their
3 confidences.

4 If each believes that their secrets will not be told to
5 the other, then either the attorney must violate the
6 obligation to tell the other every relevant fact that he
7 knows, or must violate the confidence.

8 Now, that's a conflict. That's an intolerable conflict.
9 I think that exists here as well.

10 We have interests of Mr. Lipinsky that should be
11 advocated that are not the same as those of O.B. Cannon.

12 CHAIRMAN BLOCH: How do we know they are not?

13 MR. ROISMAN: Well, that's the reason I think
14 you said I should do the voir dire instead of -- I made my
15 points on those in the conference call on Friday. And I
16 think that they were not dispositive, in the board's mind,
17 and so we are moving to this.

18 CHAIRMAN BLOCH: Thank you. Have you completed
19 your argument, Mr. Roisman?

20 MR. ROISMAN: Yes, with just this one last point.
21 Mr. Lipinsky is now at what, for lack of a better term,
22 we should call the point of no return. This is the moment
23 when Mr. Lipinsky must reconcile what at least in theory
24 is potential conflicts between the interests of O.B.
25 Cannon, the interest of Comanche Peak's owners, for whom

1 Mr. Lipinsky is technically an employee through the
2 consulting contract, and Mr. Lipinsky's own personal
3 interests in his own integrity and his own professional
4 stature, et cetera, et cetera. And it is extremely
5 important that he not enter that point without, available
6 to him, the most unconstrained legal advice that he can
7 get. And my concern is he doesn't have that at this point.

8 CHAIRMAN BLOCH: Thank you. Mr. Treby?

9 MR. TREBY: In the Staff's view the question
10 here is not one of advancing interests or whose interests
11 are going to be advanced. The question now is protecting
12 the right of Mr. Lipinsky. Does Mr. Lipinsky have an
13 attorney with which he is comfortable and whom he wishes
14 to have represent him. The board has asked Mr. Lipinsky
15 that question and he's answered in the affirmative.

16 If there are some further relatively narrow questions
17 to develop that point, I'm not sure it makes any
18 difference who asks them. But it seems to me that should
19 be the extent of the questions here, and not going on to
20 discover the differences in views that might have existed
21 among corporate officials or anything. It's a narrow
22 question and that is: Does Mr. Lipinsky feel comfortable
23 with the attorney representing him and with his
24 representation?

25 CHAIRMAN BLOCH: I think there are no matters

1 for rebuttal. There will be a brief recess in place.

2 (Recess.)

3 CHAIRMAN BLOCH: The hearing will come to order.
4 The board has decided for purposes of voir dire, based on
5 Mr. Lipinsky's answers to the board, it is appropriate for
6 Mr. Gallo to go first.

7 We do not approve of the objection that parties may not
8 participate because the board has called this witness. We
9 have uniformly followed the principle that we seek the
10 support of the parties on seeking the truth in this
11 proceeding. We would like to ask the exclusion of the
12 witnesses before voir dire goes forward.

13 I would like to explain to the witnesses the purpose of
14 this procedure. The other three witnesses on this matter
15 are going to be asked at this time to leave the room.
16 There's a room in the back that they can enter. The
17 purpose of this is to prohibit witnesses from hearing the
18 direct testimony of the other witnesses so that they will
19 testify freshly, and of their own direct recollection,
20 what the facts in the case are.

21 I would like to say one more direction about memory.
22 Memory is the one portion of a witness' testimony that
23 most depends on his integrity. When you are asking
24 whether you remember something, you are being asked not
25 whether you told your counsel at an earlier time whether

1 you remember it; it's whether you remember it now. And if
2 you don't remember something, you are supposed to say that
3 you don't remember.

4 If you say that you don't, we count on you for the
5 integrity of your answer that you don't remember, and it's
6 not that it's an adverse fact that you are worried about.
7 It's that you actually don't remember at the time that you
8 are asked.

9 When the witnesses leave we are going to ask that no
10 one will communicate with those witnesses concerning any
11 of the matters being testified in this proceeding. None
12 of the counsel or the parties will talk with those
13 witnesses, and none of the witnesses who have testified
14 will talk to any of the witnesses who have not testified.

15 Do any of the witnesses have questions on the
16 obligations during sequestration? Mr. Lipinsky?

17 WITNESS LIPINSKY: I assume that extends to the
18 transcript also?

19 CHAIRMAN BLOCH: That's correct. The transcript
20 should not be showed to the witnesses either.

21 Thank you very much, gentlemen. You may be excused.

22 (Witnesses Norris, Trallo and Roth leave the
23 room.)

24 CHAIRMAN BLOCH: Mr. Gallo, there's a problem
25 about the convenience of the witnesses. Do you know anyone

1 who is not associated with the case that can see that they
2 can have water brought to them and things of that sort?

3 MR. WATKINS: Do we understand they are being
4 taken down the hall and ushered into a room?

5 CHAIRMAN BLOCH: Yes. There is a room just
6 outside this room to my left.

7 Mr. Gallo, you may proceed.

8 VOIR DIRE EXAMINATION

9 BY MR. GALLO:

10 Q Mr. Lipinsky, when did you and I meet for the
11 first time to discuss my representation of --

12 CHAIRMAN BLOCH: Mr. Gallo, I think that the
13 microphone is at long distance.

14 BY MR. GALLO:

15 Q I'll repeat the question.

16 Mr. Lipinsky, when did you and I meet for the first
17 time to discuss my representation of you as an individual?

18 A Around mid-October of this year.

19 CHAIRMAN BLOCH: Mr. Gallo, now I think your
20 mike is off.

21 MR. GALLO: The wonders of electronics.

22 CHAIRMAN BLOCH: The answer was around June of
23 this year?

24 THE WITNESS: No, sir. Around October of this
25 year. Mid-October.

1 CHAIRMAN BLOCH: Sorry.

2 BY MR. GALLO:

3 Q And what was the nature of that meeting; can you
4 explain it?

5 A Essentially it was the first time we had met
6 shortly after Cannon -- and it was an interview-type
7 situation.

8 Q Was there anybody there besides you and me,
9 Mr. Lipinsky?

10 A No.

11 Q What kind of conflict did we talk about during
12 that meeting?

13 A We discussed if, in the event a conflict did
14 arise between my interests or Cannon, or my interest or
15 Mr. Norris -- and for that matter between Mr. Norris and
16 myself, the reverse of that, you would identify that
17 conflict to me or to Mr. Norris or to Cannon, whoever had
18 the conflict, and at that point you may or may not have
19 been able to represent me.

20 Q Were we talking about a potential conflict of
21 interest, Mr. Lipinsky?

22 A Yes.

23 Q As opposed to an actual conflict of interest?

24 A That's correct; yes.

25 Q Did you have an understanding as to what the

1 conflict was that I was referring to, and, if so, would
2 you tell me what it was?

3 A Yes. There was a possibility that my testimony
4 would contain something that would be contradictory or
5 detrimental to the testimony of Mr. Norris, or Cannon --
6 I'm not picking on Jack in particular.

7 And, in the event that arose, you would have to
8 disqualify yourself or point out to me that you would not
9 be able to represent both positions.

10 Q Do you recall if we discussed this matter again
11 after the mid-October meeting?

12 A Yes, we did. When there was another interview
13 when yourself and Mr. Thornton interviewed me, the first
14 time I came down to your office. It was identified also
15 at that point and we discussed it again in some detail as
16 of, I believe it was Friday. More -- reaffirmed what you
17 had previously told me.

18 Q Was it -- to your memory, was the last
19 discussion before or after the telephone conference call I
20 mentioned to you was going to occur?

21 A I believe it was before.

22 Q So, if I understand your testimony, we discussed
23 this potential conflict of interest on at least three
24 occasions; is that correct?

25 A Yes, that is.

1 Q Now, what was your reaction, Mr. Lipinsky, to my
2 statement that if the conflict were to arise, that I would
3 advise you of the conflict and we would have to determine
4 the representation at that point because I couldn't
5 represent both interests? What was your reaction to that
6 advice?

7 A Well, I didn't have a real problem with it as
8 long as you represented me both as an individual and as a
9 company. And you would identify that conflict to me, then
10 I wouldn't have a real problem with that at all.

11 Q Did that mean you would have to trust me to
12 identify this conflict to you?

13 A Yes. I don't have any problem with that, having
14 dealt with you in the last week or so -- more than that,
15 even; I'm very comfortable with your representation.

16 Q Since mid-October?

17 A Since mid-October; that's correct.

18 Q Now, Mr. Lipinsky, let's talk about whether or
19 not as has been suggested that an actual conflict exists.

20 It has been pointed out that, with respect to your
21 August 8, 1983 trip report, that Mr. Norris believes that
22 your criticisms of Texas Utilities were not based on
23 adequate information. Is that your understanding of
24 Mr. Norris' position?

25 A Yes, it is.

1 Q Is that your position?

2 A No.

3 Q What is your position?

4 A My position is at the time of my trip I had
5 addressed some concerns or problems, if you will, that I
6 felt should be addressed or were important enough to be
7 put in my trip report.

8 Q So you believe that the concerns indicated in
9 your trip report at the time you wrote your trip report
10 were appropriately written; is that correct?

11 A Yes.

12 Q Well, it would appear that there is a conflict
13 between Mr. Norris and yourself on this matter. Does this
14 bother you in any way, in terms of my representation?

15 A No. I don't believe there's a conflict. There
16 is a difference of opinion or views with regards to
17 whether or not my position and the state of my trip report
18 had a factual basis or had merit. And at that point Jack --
19 Mr. Norris and I disagreed. However, my understanding is
20 that this is an intimidation proceeding and Jack and I
21 don't have any conflict with regards to intimidation.

22 Q Let's clarify the last point. Do you believe as
23 you state in your testimony that you were not intimidated
24 into changing your position, in your affidavit, for
25 example, that's reflected and dated September 28, 1984?

1 A That's correct.

2 Q Is that your understanding of Mr. Norris'
3 position as well?

4 A Yes, it is.

5 Q Is it your understanding -- strike that.

6 Do you know whether or not for this particular
7 proceeding that you are a witness in, that -- whether or
8 not the board will decide whether you are right or Mr.
9 Norris is right on the question of whether or not your
10 comments had an adequate basis, back -- as written by you
11 on August 8, 1983?

12 A To my understanding that's not the scope of this
13 hearing.

14 Q Let's refer now to the question of revising the
15 trip report --

16 CHAIRMAN BLOCH: Mr. Gallo, the point that was
17 just made escapes me a little bit. Was the suggestion to
18 the witness that that would not be a fact that we might
19 have to find and that might be relevant to this portion of
20 the proceeding?

21 MR. GALLO: The point is, is that that
22 particular point, who is right or who is wrong on that
23 point, is not at issue in this case. You might have to
24 find as a subsidiary factual matter, but certainly not at
25 issue is whether or not one or the other is right.

1 CHAIRMAN BLOCH: That's not the principal
2 problem. We could have to decide which of the two
3 witnesses is more credible on that issue. We might have
4 to decide whether or not you were justified in your
5 initial trip report and whether that has implications in
6 this case.

7 Does that change your opinion as to whether there might
8 be a conflict?

9 THE WITNESS: No. That would be a decision that
10 you would render. Mr. Gallo would not have to represent
11 myself or Jack for you to reach that decision.

12 CHAIRMAN BLOCH: Mr. Gallo, please continue.

13 MR. WATKINS: Your Honor, we don't want to let
14 that be said without interposing an objection. It sounds
15 a lot like, to me, what you just said -- and I think this
16 is clear also from Friday's order -- we are going to be
17 trying the merits of the paint issues identified by
18 Mr. Lipinsky in this hearing. And that's inappropriate.

19 CHAIRMAN BLOCH: They could be relevant only to
20 the extent of determining whether or not Mr. Lipinsky, in
21 good faith, had honestly changed his views or whether he
22 was doing that because of pressure placed on him.

23 MR. WATKINS: That is the issue. But what you
24 have just said was. Were the concerns expressed by
25 Mr. Lipinsky to begin with legitimate concerns or

1 illegitimate concerns? And that, it seems to me, involves
2 a judgment on the merits. It does involve a judgment on
3 the merits.

4 CHAIRMAN BLOCH: Thank you for the clarification.

5 BY MR. GALLO:

6 Q Mr. Lipinsky, turning now to the controversy
7 over signing the revised version of the trip report, and
8 I'm referring to the controversy between you and Mr. Roth.

9 MR. GALLO: Judge Bloch, to facilitate
10 understanding on this conversion I thought it might be
11 useful if both versions of the trip report were available
12 to the board apparent as an aid. I do not intend to
13 introduce them in evidence, but it seems to me it would
14 facilitate understanding if they were available for
15 reference as the witnesses are asked questions.

16 CHAIRMAN BLOCH: I think it would be helpful for
17 the appeal record if they are bound in as exhibits. Just
18 the last page which is the one in which the page was made?

19 MR. GALLO: I have no objection to that.

20 CHAIRMAN BLOCH: If we could have the last page
21 of that bound into the record, I think that would be
22 helpful.

23 MR. TREBY: Mr. Chairman, this is a new reporter.
24 Perhaps we ought to clarify for this reporter that, by "bound
25 into the record," you mean at this very point in the

1 record, and not at the end of the transcript.

2 CHAIRMAN BLOCH: Thank you, Mr. Treby.

3 CHAIRMAN BLOCH: And I think probably we need
4 something to help us to clearly identify which version we
5 are talking about. Would you like to call one "A" and one
6 "B" just at this point in the record?

7 MR. GALLO: I'll do that, Judge Bloch.

8 I would like to identify as OB -- I guess it would be
9 more appropriate to call it J.P. Lipinsky Exhibit Number 1,
10 as page 4 of the August 8, 1983 trip report; and Exhibit 1
11 is the -- page 4 of Exhibit 1 is the page with
12 Mr. Lipinsky's signature on it.

13 I would like to have marked for identification as J.P.
14 Lipinsky --

15 JUDGE GROSSMAN: Excuse me. That's J.J. Lipinsky.

16 MR. GALLO: Thank you, Judge Grossman. J.J.
17 Lipinsky Exhibit 2, page 4 of the August 8, 1983 trip
18 report. This page has no signature on it and there's a
19 variance between the summary paragraph 2 on this page, as
20 compared to what I have marked for identification as J.J.
21 Lipinsky Exhibit Number 1.

22 CHAIRMAN BLOCH: For ease of reference, why
23 don't we bind in the whole Exhibit 1 and just the last
24 page of Exhibit 2.

25 MR. GALLO: All right. I'll modify the offer,

1 or the identification on that basis.

2 CHAIRMAN BLOCH: That may be done at this point.

3 (JL-1 and JL-2 identified.)

4 MR. GALLO: I take it, Judge Bloch, they will be
5 bound into the transcript at this point as exhibits as
6 identified?

7 CHAIRMAN BLOCH: Correct.

8 (The documents follow:)

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DEPARTMENTAL CORRESPONDENCE

JJL-1
19 NSJ 84/7

QAD-83-0096
August 8, 1983

19621

TO: R. B. Roth cc: J. J. Norris
FROM: J. J. Lipinsky

SUBJECT: Trip Report OBC Job No. H8301 (Comanche Peak Unit 1-Glen Rose, TX)

The writer was on the subject site July 26, 27, and 28, 1983.

The following individuals were met while on site:

M. R. McBay (TUSI) Engineering Manager
C. T. Brandt (EBASCO) Project Non-ASME QC Supervisor
Gene Crane (TUSI) Construction Resident Manager
Jerry Hoops (EBASCO) Personnel
John Merritt (TUGCO) Manager of Start-Up
T. L. Miller (EBASCO) Paint Inspector
R. Tolson (TUGCO) QA Manager
Mark Wells (Gibbs & Hill) Engineer
Harry Williams (Gibbs & Hill) QC Paint Supervisor

The following activities were performed while on site:

- July 26, 1983 - Meet C. T. Brandt (Ebasco)
- Walk site with Harry Williams (Gibbs & Hill)
- Meet R. Posgay (OBC) - discuss painter qualifications and site conditions/problems in general
- Meet Mark Wells (Gibbs and Hill)
- Get Badged
- July 27, 1983 - Walk around site - observe work on polar crane and dome
- Brief meeting with R. Tolson (TUGCO) and C. T. Brandt (Ebasco) - preliminary assessment by J.J.L. that Comanche Peak has problems in areas of material storage, workmanship (quality of work and painter qualification & indoctrination), not satisfying ANSI requirements and possibly coating integrity. All of above could affect NRC licensing to which R. Tolson replied "That's not my job or concern".

Also discussed former OBC employees with emphasis on T. L. Miller (Ebasco). R. Tolson (TUGCO) asked JJL if JJL would rehire T. L. Miller (Ebasco). JJL replied "Depending on circumstances, yes". C. T. Brandt (Ebasco) volunteered to have T. L. Miller (Ebasco) at the airport by three o'clock.

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- July 27, 1983 - Go through project specifications
- Meet with swing shift inspection personnel
- Observe swing shift work on polar crane and dome
- July 28, 1983 - Meet JJN and give run down on observations and potential problem areas
- Meet with Mark Wells (Gibbs and Hill) and go over specification 2323AS31 and FSAR commitments to ANSI Standards. ANSI N5.12, 101.2, 101.4 (which ties into N45.2) and Regulatory Guide 1.54 are referenced in either the specification or FSAR.

-Advise JJN on specification/FSAR commitments
-Meeting with J. Merritt (TUGCO), G. Crane (TUSI)
R. Tolson (TUGCO), M. McBay (TUSI), JJN, JJL

- A) JJN gave introduction which included the fact that the Comanche Peak site is committed to ANSI requirements and JJN then attempted to turn over discussion to JJJ.
- B) JJJ started by stating that based on observations and specification/ANSI commitments that there are areas for people to be concerned about at Comanche Peak.

JJJ briefly reviewed for the individuals present that OBC has had extensive experience on nuclear projects, and that OBC is familiar with various means/methods of satisfying ANSI requirements.

R. Tolson (TUGCO) asked for examples of specific problem areas or items.

JJJ replied that specifics cannot be given without a thorough review/audit. However, described problems with material storage, painter qualification/indoctrination, possible documentation deficiencies, and morale problems.

- C) JJJ indicated that by Brown and Root estimates, only 34 out of 452 individuals are of any value as painters. JJJ also stated that if quality work is put in place then they would be a long way to resolving site problems. Further JJJ stated that there is currently a "No Win" situation on site between the craft and QC Inspectors, and even though this sounds corny, Brown and Root needs to develop a "Win-Win" situation.

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Conversation at this point took off on the areas of assuring that individuals putting work in place are doing an adequate job or get disciplined, and changing morale.

- D) Discussion then centered on what if any changes OBC would recommend for the specification. Essentially Brown & Root is happy with the level of enforcement/inspection currently in force for the specification/procedure requirements. Also a change in the specification this late in the game would only confuse matters on site. JJN to come up with a DCA for touch-up.
- E) Problems with the quality of the air supply (takes up to half of the shift to have the oil problem corrected) were discussed and how to correct same.
- F) Availability and qualification of inspection personnel was discussed. JJN suggested that J. Coogan (BEI) may have some people available. J. Merritt (TUGCO) suggested J. Coogan contact Jerry Hoops (Ebasco).

-Meeting with J. Church (TUGCO-VP) J. Merritt (TUGCO)
JJN, JJJ

- A) J. Merritt (TUGCO) reviewed/summarized discussion of earlier meeting.
- B) J. Merritt (TUGCO) directed JJN/OBC to do no more (other than recommend alternative air supply) until notified by TUGCO.

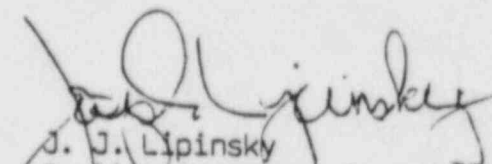
The following are the writers observations/opinions as a result of this site visit:

- A) To some extent a parallel can be drawn with Comanche Peak and Zimmer. Comanche Peak is doing inspections to the degree that they (Comanche Peak) are comfortable with or will tolerate. However in the real world there are requirements that have to be satisfied, and in at least the areas of material storage, painter qualification/indoctrination, documentation and traceability indications are that Comanche Peak falls short in adequately satisfying these requirements. The writer's opinion is that management at Comanche Peak has deluded itself into thinking everything is alright or it will all come out in the wash. The fact that management attempts to squash any efforts to point out quality problems (No NCR's, QC reporting to production, etc.) to some extent confirms the above, and has led to a morale problem with the inspection staff.

- B) Almost everyone in the inspection staff is looking to get out of Comanche Peak. The inspection staff works 60-70 hours a week. You can't work people on an extended basis even with high salaries (apparently only a few stay a whole year). In addition to the long hours the inspectors contacted by the writer (other disciplines included) all have a low opinion of the quality of the work put in place, and in effect are keeping quiet until they can find another job.
- C) The writer did not feel comfortable with the way JJN presented the ANSI requirements. This has been discussed with JJN, and to a certain extent the writer feels that at the least the manner of presentation was counter productive to Cannon's efforts. The writer would like to state for the record that OBC does satisfy all applicable ANSI requirements and has done so on numerous nuclear projects.
- D) JJN and JJJ discussed the possibility of OBC performing an in-depth audit. The writer cannot recommend an audit at this time because B&R is hostile to the idea and no action would be taken by B&R on problems/concerns detected during the audit.
- E) High DFT of CZ#11 is power ground to acceptable DFT. This would burnish or polish the zinc, and possibly result in poor adhesion of the top coat.
- F) Old Phenoline 305 (between 1-2 years old) is being topcoated with new Phenoline 305 with little or no surface preparation (solvent wipe).

SUMMARY:

- 1) This trip was not as productive as the writer had hoped. Often the writer felt that B&R wanted to buy the "right" answer. This is substantiated to some extent by the fact that they did not try to utilize the expertise and/or experience of the writer with regard to Quality Assurance/Quality Control, and the attitude of the B&R management (especially Quality Assurance).
- 2) If OBC tries to obtain a contract on this site, the writer would suggest that it be a rework contract because it will be impossible (by all indications) to salvage what work is currently in place.


J. J. Lipinsky
Quality Assurance Director

JJL-2
19 AUGUST 83

19625

- B) Almost everyone in the inspection staff is looking to get out of Comanche Peak. The inspection staff works 60-70 hours a week. You can't work people on an extended basis even with high salaries (apparently only a few stay a whole year). In addition to the long hours the inspectors contacted by the writer (other disciplines included) all have a low opinion of the quality of the work put in place, and in effect are keeping quiet until they can find another job.
- C) The writer did not feel comfortable with the way JJN presented the ANSI requirements. This has been discussed with JJN, and to a certain extent the writer feels that at the least the manner of presentation was counter productive to Cannon's efforts. The writer would like to state for the record that OBC does satisfy all applicable ANSI requirements and has done so on numerous nuclear projects.
- D) JJN and JJJ discussed the possibility of OBC performing an in-depth audit. The writer cannot recommend an audit at this time because B&R is hostile to the idea and no action would be taken by B&R on problems/concerns detected during the audit.
- E) High DFT of CZ#11 is power ground to acceptable DFT. This would burnish or polish the zinc, and possibly result in poor adhesion of the top coat.
- F) Old Phenoline 305 (between 1-2 years old) is being topcoated with new Phenoline 305 with little or no surface preparation (solvent wipe).

SUMMARY:

- 1) This trip was not as productive as the writer had hoped. Often the writer felt that B&R wanted to buy the "right" answer. This is substantiated to some extent by the fact that they did not try to utilize the expertise and/or experience of the writer with regard to Quality Assurance/Quality Control, and the attitude of the B&R management (especially Quality Assurance).
- 2) Should OBC be invited to perform any site work, the writer would suggest it be a rework contract, as opposed to a continuing of the present operations, since it appears improbable that the work currently in place is salvagable to any meaningful extent.

1 BY MR. GALLO:

2 Q Mr. Lipinsky, do you have Exhibit 1 before you?
3 This is the one where page 4 contains your signature?

4 A Yes, I do.

5 CHAIRMAN BLOCH: When you say "his signature" --
6 oh, I marked it in the wrong order. So the one that's
7 marked Exhibit 1 has the QAD-83-0096 on top; is that
8 correct?

9 MR. GALLO: That's correct, your Honor.

10 BY MR. GALLO:

11 Q Mr. Lipinsky, is Exhibit 1 your trip report as
12 written by you on August 8, 1983?

13 A Yes, it is.

14 Q And can you explain to the board what Exhibit 2
15 is?

16 A Exhibit 2 is the trip report as modified by
17 Mr. Roth during our telephone conversation with
18 Mr. Merritt, I believe on October 12 of '83.

19 Q What is the nature of the revision that you are
20 referring to?

21 CHAIRMAN BLOCH: I'm sorry, before we go to that,
22 what is the source of your information that it was a
23 conversation with Mr. Merritt?

24 THE WITNESS: My weekly summary activities, sir.

25 CHAIRMAN BLOCH: You didn't learn it from your

1 own summary that he had spoken to Mr. Merritt?

2 THE WITNESS: I was in the room at the same time.

3 CHAIRMAN BLOCH: He was on the telephone with
4 Mr. Merritt?

5 THE WITNESS: I believe it's in my testimony.

6 CHAIRMAN BLOCH: And you know it was only
7 Mr. Merritt that was on the other end of the line?

8 THE WITNESS: I don't know for sure. We were on
9 a squawk box in Mr. Roth's office. Mr. Roth and I were
10 the only ones on our end and Mr. Merritt was the only one
11 speaking on the other end.

12 CHAIRMAN BLOCH: Thank you.

13 BY MR. GALLO:

14 Q Looking at Exhibit 2, can you identify for me
15 the change that you referred to?

16 A It's the very last item, item number 2 under
17 "summary." Mr. Roth modified the wording in Exhibit 2, I
18 believe it is -- the one without my signature -- to read
19 how it is now versus how I had originally written item 2
20 under "summary."

21 Q Now, at the time of the discussion with Mr. Roth
22 about changing the trip report, what was your feeling or
23 reaction to the change that Mr. Roth had made?

24 A The change --

25 Q Yes. Go ahead.

1 A I'm sorry. The change by itself wasn't that big
2 of a deal as far as I'm concerned. I mean, it's an item
3 that Mr. Roth really has responsibility, from the
4 corporate standpoint, as far as wording. It didn't change
5 the content of my report. He didn't address any quality
6 items, that is, or any of the concerns I initially raised.
7 What he did was, he modified the wording from appearing
8 that -- the way I had worded it. Mr. Roth, I assume, was
9 concerned that it would appear an attempt by Cannon to
10 obtain more work, where that wasn't the case. And Mr.
11 Roth modified the wording to reflect that.

12 CHAIRMAN BLOCH: That's not all he changed
13 though, was that, about the work?

14 THE WITNESS: No. He added a phrase in the
15 center as to where -- in the text, sentence. But still
16 and all, that's not a real large change, or a change of
17 any meaning or intent of the text of the report.

18 BY MR. GALLO:

19 Q Let's be clear on this point, Mr. Lipinsky. Did
20 you deem this change as an important matter, as to your
21 responsibility as a QA manager?

22 A No, I did not.

23 Q Can you explain why not?

24 A Because with regards to contracts, attaining
25 contracts, that's not really in my line of work.

1 Essentially it's a decision for Mr. Roth, Jack Norris --
2 somebody in the production end of our company would be
3 concerned with.

4 Q If I look at your original version of the
5 paragraph in question, it indicates that you are making
6 the recommendation that there be a reworked contract
7 because it will be impossible by all indications to
8 salvage what work is in place.

9 Isn't that a Quality Assurance statement, Mr. Lipinsky?

10 A What I was concerned about there was if, in fact,
11 you had to perform a rework on a patchwork-type basis, it
12 would be easier from a documentation standpoint, of an
13 actual working standpoint, to rework the entire surface
14 rather than try to save small portions of a surface and
15 try to document what small portion was saved.

16 Q Doesn't that concern have QA implications,
17 Mr. Lipinsky?

18 A To the extent that you have to be concerned
19 whether or not you document a piece or an item that was
20 saved; yes. But it can be documented.

21 Q So in your judgment, this was primarily a
22 concern on a commercial aspect? Is that my understanding
23 of your testimony?

24 A Yes, that's correct.

25 Q Why did you object to signing the revision, then,

1 as proposed by Mr. Roth?

2 A I was concerned that the date on the Exhibit 2
3 had not been modified or, as thought of later, that the
4 revision was not indicated. And I was concerned that a
5 third party, looking at this, would construe that two
6 documents bearing the same date, if I had signed both of
7 them, that there might have been a problem with that.

8 Additionally, I was aware that this document, Exhibit 1,
9 you know, was apparently already out.

10 Q What do you mean by "out," Mr. Lipinsky?

11 A That the Nuclear Regulatory Commission,
12 particularly Mr. Driskill and Mr. Griffin of the Nuclear
13 Regulatory Commission, were aware of it.

14 Q Did you ultimately sign Exhibit 2, Mr. Lipinsky?

15 A No, I did not.

16 Q Is it fair to say that Mr. Roth and you had a
17 conflict over whether or not Exhibit 2 should be signed by
18 yourself?

19 A Yes, we did.

20 Q Well, does this conflict that you just
21 acknowledged in any way reflect adversely on your
22 confidence in my ability to represent you with respect to
23 th's matter?

24 A No, it does not. Mr. Roth wanted me to sign the
25 modified version of my trip report. Ultimately we reached

1 an impasse. I did not sign it. There's no conflict there
2 between Mr. Roth and myself. Mr. Roth acknowledges he
3 wanted me to sign the modified version of the trip report
4 and I did not sign it. So I don't know how there could be
5 a conflict.

6 Q Are you free, based on my advice, to explain
7 your position with respect to this matter in an open and
8 free manner?

9 A Yes. In fact, we have on more than one occasion,
10 with the matters at Cannon --

11 CHAIRMAN BLOCH: With what?

12 THE WITNESS: Between Mr. Roth, myself, Ralph
13 Trallo, Jack Norris, and there has been a give and take.
14 I haven't told Mr. Gallo something they are not aware of.

15 BY MR. GALLO:

16 Q Are you free to, based on my advice, to answer
17 any questions this board might allow with respect to this
18 matter?

19 A Yes, I am.

20 Q Do you feel, to use Mr. Treby's term, "comfortable"
21 with respect to my representation with respect to your
22 personal interest as compared to and as opposed to the
23 interest of Mr. Roth and O.B. Cannon with respect to this
24 trip report matter that we have been discussing here?

25 A Yes. I don't have any reservations at all with

1 your representation of me.

2 Q Can you explain why not?

3 A Because essentially I feel that you are a
4 qualified attorney and it would be up to you to identify
5 any conflicts that might arise, or became apparent, for
6 your own integrity. But I don't have any problem with
7 your ability to do that.

8 Q How about a conflict that exists now? Don't you
9 believe a conflict exists now?

10 A No, I do not.

11 Q Can you explain why not?

12 A Essentially because, with regards to the matter
13 of intimidation and harassment, there's no disagreement
14 with any of the parties in Cannon. My interests aren't
15 different from those of Cannon. There's no difference of
16 opinion on the matter at all.

17 Q How do you know that I won't take advantage of
18 your personal position to the benefit of O.B. Cannon or
19 Mr. Roth on this matter?

20 A I have your assurances that that's the case.

21 Q So you are trusting me again; is that correct?

22 A Yes.

23 Q Do you accept that trust of your own free will
24 on this point?

25 A Yes, I do.

1 Q As well as with Mr. Norris?

2 A Yes.

3 Q This is an important question now. You ought to
4 think of it again before you answer it. Consider the
5 question repeated.

6 A Yes. I don't have any problem at all.

7 Q Have you conveyed to me during the course of
8 our -- my representation of your personal interest, any
9 confidences that you did not want disclosed to either O.B.
10 Cannon, Mr. Roth, or Mr. Norris?

11 A There was one item. I don't know if it was a
12 confidence.

13 We had discussed a remark I had made with regards to
14 professional etiquette, or activities of Jack, with
15 relation to myself --

16 Q Jack -- you mean Mr. Norris?

17 A Yes, Mr. Norris. I'm sorry. And, as a result
18 of the board's motion, what I had done is I went and I
19 discussed it with Jack. It wasn't a conflict, in my
20 opinion. But in order to, you know, prevent there being
21 any shadows cast on representation, I discussed it with
22 Jack. And, you know, there's nothing -- no conflict --
23 there's no information I have withheld or provided to
24 Mr. Gallo in confidence that the other members of the
25 Cannon organization are not aware of.

1 CHAIRMAN BLOCH: When you said "the board's
2 motion," you were referring to the order we issued last
3 Friday; is that correct?

4 THE WITNESS: Yes.

5 BY MR. GALLO:

6 Q On the basis of the questions I have asked and
7 your answers to those questions -- strike that. Let me
8 ask one other line of questions.

9 Mr. Lipinsky -- may I have a moment, your Honor?

10 (Discussion off the record.)

11 BY MR. GALLO:

12 Q Mr. Lipinsky, based on the questions I have
13 asked and your answers and the further questions of the
14 licensing board, I would want you to reconsider the board's
15 first question to you at the outset. And that is whether
16 or not you are satisfied that my representation of your
17 personal interest is adequate and satisfactory from your
18 standpoint and that I, indeed, will represent your
19 personal interest. I want you to answer that question
20 again, please.

21 A Yes. I don't have any problems with your
22 performance. I'm comfortable with the way you have
23 handled yourself and the way we've developed our
24 relationship, as far as working together to get to this
25 point today. And, so, I don't have any problems with your

1 representing me; no.

2 Q Do you wish me to continue to represent you,
3 Mr. Lipinsky?

4 A Yes, I do. I feel very strongly about that.

5 If you were not representing me, I'd have a real
6 problem with it, the fact that you weren't representing me.

7 MR. GALLO: That's all the questions I have,
8 your Honor.

9 CHAIRMAN BLOCH: Thank you, Mr. Gallo.
10 Mr. Watkins or Mr. Davidson?

11 MR. DAVIDSON: We have no questions on this
12 issue. Had we had any, we would think they would have
13 been dispelled by Mr. Gallo's examination.

14 CHAIRMAN BLOCH: Mr. Roisman?

15 EXAMINATION

16 BY MR. ROISMAN:

17 Q Mr. Lipinsky, what is your personal interest in
18 this matter? You referred to your personal interest being
19 represented by Mr. Gallo. I want you to tell me what it
20 is, please.

21 A As far as the Comanche Peak receiving a license
22 to operate or something?

23 Q No. In this hearing, what is your personal
24 interest in -- what is Mr. Gallo representing you with
25 respect to?

1 A As a matter of fact, he's not representing me
2 for anything. Maybe "personal interest" was the wrong
3 choice of words on my part. I have no interest as far as --

4 Q Are you saying you don't have counsel?

5 A No. No. I have counsel.

6 Q Well, that means that someone represents you.
7 The question is: What is he representing you for? What
8 do you understand you are being represented for?

9 CHAIRMAN BLOCH: A simpler question: Why do you
10 need a lawyer here? Same thing.

11 THE WITNESS: The reason being from what I
12 gathered from Jack, Jack was ill -- Mr. Norris, with
13 regards to his testimony, as a result of not having
14 refreshed his memory, and for whatever reason, Jack seemed
15 to have encountered some problems without representation.
16 I'm attempting to avoid that -- the same situation Jack
17 got himself into. If you will also understand, it's my
18 right to have an attorney.

19 BY MR. ROISMAN:

20 Q I'm not questioning it. I was just trying to
21 understand what it was that you were being represented
22 with respect to. And do I understand, your answer is: In
23 order to help you be sure that you are properly prepared
24 to answer the questions that will be put to you while you
25 are here in the hearing?

1 A I don't think there's any preparation, really.
2 I'm going to answer whatever questions are posed.

3 Q Well, I'm still having a little trouble, then.

4 MR. GALLO: I don't believe the witness really
5 understands the question. It's the word "interest" that
6 puzzles him. Perhaps the board can --

7 CHAIRMAN BLOCH: The reason you want a lawyer
8 here, as I understand your statement -- tell me if I'm
9 wrong -- is that you want to be sure that you are properly
10 prepared and you tell your story fully and accurately? Is
11 that why you want a lawyer or is there some other reason
12 also?

13 THE WITNESS: No. That's the reason.

14 CHAIRMAN BLOCH: That's the whole reason?

15 THE WITNESS: Yes.

16 BY MR. ROISMAN:

17 Q Do you believe that there are any interests
18 which you have that relate to this matter that don't
19 relate to this hearing?

20 A I'm not sure I follow you with regards to
21 "interest," sir.

22 Q Well, for instance, at one time you expressed
23 some concern -- according to your diary notes -- that you
24 might lose your job as a result of this whole matter
25 coming up, the memo getting out in the public and all the

1 controversy. And according to your notes, you contacted
2 or spoke to someone at the Nuclear Regulatory Commission
3 and they advised you to keep copious notes, which you have
4 certainly done, and to note everything down.

5 Do you remember that?

6 A Yes -- I don't believe I contacted them; but,
7 yes.

8 Q Well, during the course of their contact with
9 you, you raised that question with them; isn't that true?

10 A That is correct.

11 Q So that was another interest, an interest in
12 keeping your job; correct?

13 A The reason for the notes was on the advice of
14 Mr. Driskill, with the Nuclear Regulatory Commission;
15 suggested that if I was -- if he was in my position, he
16 would in fact keep notes, which I did. The secondary
17 reason for keeping the notes was to accurately document
18 what transpired with regards to the Comanche Peak
19 situation.

20 Q I understand. I'm just trying to flesh out here.
21 You asked me that you didn't understand the question.
22 That's another interest of yours, isn't it? Maintaining
23 your job?

24 A I don't know that right now I'm -- I mean in
25 retrospect -- that my job ever was threatened. We get

1 into that --

2 Q I'm not asking you that either. I'm not asking
3 whether you think it is currently threatened but whether --
4 you have an interest in keeping it, don't you?

5 A I would like to be gainfully employed; yes.

6 Q And as far as you are concerned you would like
7 to be gainfully employed at O.B. Cannon, I assume?

8 A Yes.

9 Q And, so, do you feel that you have any
10 representation by counsel with regard to that interest in
11 this proceeding? Are you represented in order to protect
12 that interest?

13 MR. GALLO: Objection. It assumes that that's
14 part of the representation. The question assumes that
15 that's a part of the representation.

16 Mr. Roisman has not established that --

17 CHAIRMAN BLOCH: He's asking the witness whether
18 that's part of the reason he's being represented. He's
19 not assuming anything.

20 MR. GALLO: With that understanding, I'll
21 withdraw the objection.

22 THE WITNESS: I'm sorry, could you repeat that,
23 please?

24 MR. ROISMAN: Yes.

25

1 BY MR. ROISMAN:

2 Q The question is, to phrase it so that it
3 certainly encompasses Mr. Gallo's objection: Do you feel
4 that you are currently represented by counsel with regard
5 to protecting your interest in retaining your job,
6 vis-a-vis your conduct in the course of these hearings?

7 A Yes, to the extent that Mr. Gallo would identify
8 any conflicts. Although I can't imagine any -- I would
9 say "yes."

10 Q Well, to the extent that he'd identify conflict --
11 again, what and what?

12 A I can't really hypothesize anything of that
13 nature. I can't envision anything like that coming up.

14 Q So, then you don't really -- I mean it hasn't
15 even been an issue of concern; is that correct?

16 A My job status was not an issue of concern;
17 that's correct.

18 Q So you've not even sought, much less obtained,
19 legal advice with respect to whether or not your
20 appearance here might affect your position in O.B. Cannon;
21 isn't that correct?

22 A Yes. I did not obtain any legal counsel in that
23 regard.

24 Q Are you aware that things that you do and say
25 here may in fact affect your position with O.B. Cannon?

1 MR. GALLO: Objection.

2 CHAIRMAN BLOCH: Overruled.

3 THE WITNESS: Could you run that by me again?

4 BY MR. ROISMAN:

5 Q Yes. Are you aware that in fact the things that
6 you do here and say here in the course of this hearing may
7 affect your job with O.B. Cannon?

8 A I personally don't know how that could -- how it
9 would affect my job with O.B. Cannon. That's something
10 you may want to discuss with Mr. Roth.

11 Q Well, let me give you a hypothetical. At one
12 time you were concerned that, as a result of the release
13 of the trip report that you had done, that your job might
14 be in jeopardy. Is that a fair statement?

15 A Yes.

16 Q And is it fair that one of the concerns you had
17 was that it appeared, at least at that moment, that
18 because of something you did, either in writing the trip
19 report or in allowing it to get out, or maybe even in
20 giving it away to somebody, that you had caused all this
21 trouble for a client of O.B. Cannon and that O.B. Cannon,
22 as a corporation -- not necessarily anyone individual --
23 would be very upset about that and at the earliest
24 opportunity might want to discharge you, even though you
25 felt you had done absolutely nothing wrong. Isn't that

1 what bothered you at that time?

2 A Yes. But I would take exception to the fact
3 that I think you are implying that I gave away the trip
4 report or I somehow released it.

5 Q I'm sorry. I didn't mean to at all. Only that
6 there seemed to be people raising those concerns. I
7 understand your position on that issue very clearly and I
8 did not mean to have you endorse one way or the other.

9 All right. So that you had some concern that the whole
10 flap might come back to cause you problems at O.S. Cannon,
11 in effect; isn't that correct?

12 A Yes. I think that was at the time -- looking
13 back on it, I feel that perhaps I was overcautious,
14 overconcerned. In retrospect, my fears were probably
15 ungrounded.

16 Q Are you aware --

17 MR. GALLO: Excuse me. I'm sorry to interrupt,
18 your Honor, but I don't know what this unique procedure is
19 going to be. Am I going to get some redirect on this?

20 CHAIRMAN BLOCH: Yes.

21 MR. GALLO: Then I'll be silent.

22 CHAIRMAN BLOCH: I was thinking of cautioning
23 the witness, it would be better to just answer the
24 question because your counsel knows what your position is
25 and you -- if your counsel feels there's a change in

1 something or something that ought to be brought out, he's
2 competent to do that. He's capable.

3 MR. ROISMAN: I'm not trying to get to the
4 bottom of those issues. I'm still dealing with only one
5 line of questions, which is: Does the witness understand
6 whether there are interests of his that are not
7 represented in this proceeding but might be affected by
8 his conduct in this proceeding? That's what I'm
9 attempting to get at.

10 CHAIRMAN BLOCH: Please continue.

11 BY MR. ROISMAN:

12 Q Mr. Lipinsky, have you given any thought to the
13 possibility that, in the future, you might be discharged
14 because of things that you did or said in the course of
15 this hearing?

16 A No.

17 Q And have you considered whether, if that
18 happened, there are ways in which you could present
19 yourself in this hearing, still completely truthful, that
20 would protect your rights in the event of such discharge
21 to enable you to fully receive whatever you were entitled
22 to under law if such discharge should occur?

23 A No, I did not.

24 Q Have you sought or obtained any legal advice
25 regarding what your rights are under the so-called Federal

1 Whistle-Blowers Act?

2 A No. I did not seek any legal advice. However,
3 Mr. Driskill had mentioned that a while back -- a year ago.

4 Q Beyond that?

5 A Beyond that, no, I did not.

6 CHAIRMAN BLOCH: Did counsel ever tell you about
7 your rights as a potential whistle-blower?

8 THE WITNESS: No.

9 BY MR. ROISMAN:

10 Q At this point in time, does it appear to you to
11 be highly improbable that, should your testimony here
12 result in a finding that you were pressured -- not
13 harassed or intimidated, but pressured into recasting your
14 opinions in a way that would be less favorable to the
15 Comanche Peak plant, and that as a result of that
16 pressuring the Comanche Peak company would suffer in some
17 way; that if that were the result of your testimony, that
18 there might be some retaliatory action taken against you
19 by your employer; does that seem to be a totally
20 improbable course of events?

21 CHAIRMAN BLOCH: Counsel, I'm not sure, but I
22 think you got your words reversed.

23 MR. ROISMAN: Let me try it again.

24 BY MR. ROISMAN:

25 Q Does it seem to you to be highly improper that

1 if your testimony here resulted in a finding that you in
2 fact were pressured into reformulating your opinions about
3 Comanche Peak and that that finding also led to some
4 adverse consequence to the owners of the Comanche Peak
5 plant, that you would suffer in some way in your job?

6 A I'm trying to follow you. I'll say "no," I
7 don't believe that's the case. You may have lost me.

8 Q I'm just asking whether it seems to you that
9 it's highly improbable that anything would happen to you
10 even if your testimony here hurt the TUGCO Company?

11 A It seems highly improbable to me that anything
12 would happen with regard to my job status.

13 CHAIRMAN BLOCH: Highly improbable; is that what
14 you said?

15 THE WITNESS: Improbable; yes.

16 BY MR. ROISMAN:

17 Q In what capacity are you appearing here today?
18 Are you appearing here as Joseph Lipinsky, private citizen?
19 Or as Joseph Lipinsky, employee of the O.B. Cannon Company?
20 Or as Joseph Lipinsky, witness for the Comanche Peak
21 nuclear power plant?

22 A I would like to think I'm here as Joseph
23 Lipinsky, private citizen, employee of O.B. Cannon, and at
24 the request of the board.

25 CHAIRMAN BLOCH: When you said "employee of O.B.

1 Cannon," did that affect how you testified?

2 THE WITNESS: No. But in fact, I am an employee
3 of O.B. Cannon.

4 BY MR. ROISMAN:

5 Q I think the Chairman's question was whether or
6 not, as an employee of O.B. Cannon, you might testify from
7 a different perspective? Not different truth, but a
8 different -- to use the parlance of the past elections --
9 with a different "spin" on what you might say than if you
10 appeared here as Joseph Lipinsky, private citizen. Do you
11 think there's any difference in those two?

12 A No. I do not.

13 Q When Mr. Gallo explained --

14 CHAIRMAN BLOCH: I would like to congratulate
15 you on understanding my discussion of what the truth is.

16 BY MR. ROISMAN:

17 Q When Mr. Gallo advised you about the question of
18 what would happen if a conflict arose, did you have a
19 clear understanding as to whether you would be the one who
20 would be left with the attorney or whether you would be
21 the one who would be left without the attorney?

22 A I don't believe there was any decision made on
23 that. I guess your answer is "no," or the answer to your
24 question is "no," in that it is very possible Mr. Gallo
25 would represent Cannon or myself or Mr. Norris. And I

1 didn't express those in any order. There's no weight to
2 the order of my indicating. It could be very well that he
3 would represent me or Jack or O.B. Cannon.

4 Q If the conflict had arisen or did arise, had you
5 thought through or had your counsel helped you think
6 through whether anything that you had said previously to
7 him in confidence might be relevant to the conflict issue
8 that ultimately came up?

9 MR. GALLO: Objection.

10 CHAIRMAN BLOCH: What's the nature of the
11 objection?

12 MR. GALLO: The witness has already testified
13 there are no confidences. The question is predicated on
14 the basis of anything he said that would be in confidence.

15 CHAIRMAN BLOCH: I think that's correct. He
16 said he's sharing everything with everybody.

17 MR. ROISMAN: I'm sorry?

18 CHAIRMAN BLOCH: Everything he's told counsel he
19 says he has told to all of the other Cannon witnesses.

20 MR. ROISMAN: I think the question was whether
21 or not he believed that there were any confidences that he
22 had told that would be shared if a conflict arose.

23 CHAIRMAN BLOCH: He's already shared them, so
24 there's a null set.

25

1 BY MR. ROISMAN:

2 Q Did you understand that if other persons
3 represented by Mr. Gallo in this proceeding, namely
4 Mr. Norris or O.B. Cannon, shared confidences with him
5 regarding matters that would be relevant to you, that
6 Mr. Gallo would or would not share that information with
7 you?

8 A Will you run -- I want to stick with an answer
9 and --

10 Q All right. Let me put it in a hypothetical
11 context. If Mr. Norris told Mr. Gallo something which he
12 intended to testify about here, that you did not
13 previously know about, and that if he testified about it
14 it would be contrary to your interests -- not necessarily
15 a "conflict," but it would be something that if you had
16 known about it in advance and you had known that Norris
17 was going to say it, you might have addressed it or
18 addressed the issue differently; did you think that if
19 that had happened, that Mr. Gallo was going to tell you
20 that if Mr. Norris told Mr. Gallo that in confidence?

21 A We talked about -- no, I don't believe he would
22 tell me that, I guess, to answer your question. We did
23 talk about the matter of confidences with regard to
24 between myself and Mr. Gallo or between myself and -- or
25 between Mr. Norris and Mr. Gallo. The fact is, that would

1 become a conflict that Mr. Gallo would have to identify
2 then, if he couldn't -- at least that's my understanding.
3 And Mr. Gallo did not raise any conflicts between myself
4 and Mr. Norris or myself and O.B. Cannon or Mr. Norris and
5 O.B. Cannon.

6 CHAIRMAN BLOCH: But if there was that conflict,
7 what would happen to the information that Mr. Norris gave
8 to Mr. Gallo that created the conflict? Would you get it
9 or would you not get it; do you know?

10 THE WITNESS: I don't believe I would get it --
11 the information, that is.

12 BY MR. ROISMAN:

13 Q And then at that point, some decision would be
14 made about where the continuing representation would go,
15 either to Mr. Norris or to you or to O.B. Cannon or
16 whatever; is that your understanding of the conflict
17 arrangement?

18 A Yes.

19 Q Several times during Mr. Gallo's questioning to
20 you, you expressed your opinion as to what you perceived
21 to be the scope of this hearing. And particularly when
22 the questions got around to the disagreements between you
23 and Mr. Norris regarding what was the adequate basis or
24 nonadequate basis for your August '83 trip report; do you
25 remember that?

1 A Yes, I do.

2 Q In understanding what is the scope of the
3 hearing, if the scope of the hearing were changed to
4 include looking at the issue of whether or not there was
5 any attempt to get you to change your views as expressed
6 in the trip report, and if part of that question included
7 whether or not the original trip report had a solid basis,
8 a sort of intermediate basis, or very little basis; if
9 that were the scope of this hearing, do you think that you
10 and Mr. Norris would have a conflict?

11 A It's possible we would, if Mr. Gallo was asked --
12 and this is my understanding of the situation -- if it was
13 asked that Mr. Gallo would have to champion Mr. Norris'
14 cause, essentially my report -- and I'm -- if Jack felt
15 that I had a bad day and there was no sound basis for my
16 report; or if Mr. Gallo had to champion my cause and say:
17 Yes, I felt he had some pretty strong reasons for writing
18 the trip report at that time -- I don't believe Mr. Gallo
19 would be able to represent both of those positions. That
20 would be a conflict.

21 I think, if the board is going to make the
22 determination that Mr. Gallo does not have to champion
23 either cause, then I don't see a conflict.

24 Q And, in your judgment, as you understand what
25 you are here to testify about, you don't feel that you are

1 called upon to defend the adequacy of your 1983 trip
2 report? That is, that you had an adequate basis at the
3 time for it?

4 A Yes. I think it's possible I will have to
5 defend that. However, you know, I recognize Jack doesn't
6 share that view. He recognizes that I don't necessarily
7 agree with his.

8 Q But to the extent that you feel that you do have
9 to defend it, I thought you just said that you didn't feel
10 that you could ask Mr. Gallo to help you advocate that
11 point of view? That would then put you and Mr. Norris in
12 conflict?

13 A I don't think I need Mr. Gallo to answer
14 questions with regards to the adequacy of my report or the
15 reason why I wrote it. Maybe I'm not following you --

16 Q Well, at various times starting with the time
17 that you spoke, first to the Nuclear Regulatory Commission
18 investigators, even when you weren't under oath, and then
19 later when you were under oath, and then in the course of
20 submitting your affidavit in September of 1984, and then
21 in the course of submitting your testimony here -- your
22 prefiled testimony, and now in the course of testifying
23 orally, one of the inherent issues is your veracity. Were
24 you telling the truth?

25 And, some of the measure of whether you are telling the

1 truth has to do with how did you get from there to here?
2 How did the opinion that you expressed in 1983, in August
3 of 1983, how can you reconcile it with opinions that you
4 hold today? And whether, along the way, you encountered
5 certain events that were discouraging you from holding onto
6 your 1983 trip report views and encouraging you to adopt
7 new views? And that whole channel has in it a whole
8 series of potential blazes where you must defend what you
9 said in a way in which you do not commit perjury. Now you
10 are very comfortable in not having any representation in
11 maneuvering through that rocky water?

12 MR. GALLO: Objection. It is not clear to me
13 that the question has a foundation. It is based on a
14 number of premises that I don't think are accurate.

15 The Lipinsky testimony --

16 CHAIRMAN BLOCH: Would you like to ask direct
17 questions to clarify that on just this one point rather
18 than testifying about it yourself? Non leading direct
19 questions?

20 MR. GALLO: I'll try.

21 EXAMINATION

22 BY MR. GALLO:

23 Q Mr. Lipinsky, does your prefiled direct
24 testimony address --

25 CHAIRMAN BLOCH: No, wait a second. I don't

1 want you to remind him what he said in the prefiled direct
2 testimony. I want you to ask him about his feelings about
3 representation now. I don't want you to remind him of a
4 document that he's worked on before.

5 BY MR. GALLO:

6 Q Do you feel that your interest, and the interest
7 we are talking about at this point is your professional --
8 protection of your professional integrity with respect to
9 the formulation of your trip report and with respect to
10 your actions taken after the formulation of that trip
11 report -- are fairly and accurately represented in your
12 testimony?

13 A Yes, I do.

14 Q Do you feel that your interests have been
15 adequately represented by counsel with respect to that
16 testimony?

17 A Yes. I had indicated earlier I felt fairly
18 strongly that it has.

19 Q Is what Mr. Roisman is -- I don't think I can
20 properly say that -- I think I'll give it back to
21 Mr. Roisman and let him develop that line again.

22 CHAIRMAN BLOCH: Mr. Roisman, did you want to
23 continue, please?

24 MR. ROISMAN: I didn't get an answer to my
25 question, Mr. Chairman, please.

1 CHAIRMAN BLOCH: Okay. Could you restate it so
2 we'll get an answer?

3 MR. ROISMAN: He's not my witness, is he,
4 Mr. Chairman?

5 CHAIRMAN BLOCH: No. You may lead.

6 MR. ROISMAN: I may lead him.

7 CHAIRMAN BLOCH: I would like to explain to the
8 witness that on cross-examination, they may try to put
9 words into your mouth. You are not to answer unless you
10 fully understand and you may contradict the premises of
11 the question. You don't have to accept everything counsel
12 says about the state of the world.

13 VOIR DIRE EXAMINATION (Resumed)

14 BY MR. ROISMAN:

15 Q Mr. Lipinsky, at one time as late as October 31,
16 '83, when you wrote your defense of your August of '83
17 trip report for purposes of sending through to Mr. Chapman,
18 and then again apparently during the meetings on November
19 10 and 11, as Mr. Trallo interpreted it in his November 28,
20 1983 memoranda, you and several other O.B. Cannon people
21 seemed to state rather strongly that the only way to
22 confirm or deny the validity of the concerns raised by you
23 in the August '83 trip report was by doing a certain kind
24 of audit of the Comanche Peak plant paint coatings program;
25 do you remember that?

1 A Yes, I do.

2 Q And, in fact, isn't it the case that as a result
3 of a meeting on November 3, 1983, between yourself and
4 other O.B. Cannon people, and Mr. Merritt, it appeared to
5 have evolved that such an audit was going to take place
6 and you and a person identified, I think, as M.K.W.,
7 actually prepared a sort of 10-day site visit outline for
8 what you were going to do; and that you presented that, I
9 believe, on the 8th of November to Mr. Merritt when you
10 first came on-site in anticipation that that was what you
11 were going to be doing over the next several days; isn't
12 that true?

13 A No. I think this is one of the situations where
14 I don't agree with the premises stated.

15 CHAIRMAN BLOCH: First of all, if you don't
16 understand the whole question, state that. And if you do
17 understand it, state anything you disagree with at the
18 question.

19 BY MR. ROISMAN:

20 Q Was it you were not at the November 3 meeting?

21 A Yes.

22 Q Take that out. There was a November 3 meeting.
23 I couldn't remember whether you were there or not. But
24 there was, as you understood it, it appeared to be a plan
25 to go and do the "audit" that you had thought ought to be

1 done in order to confirm or deny the events that were, and
2 problems that you detailed in the trip report; correct?

3 A Yes.

4 Q And that audit never took place, did it?

5 A That's correct.

6 Q But still under oath, on several occasions you
7 have indicated that you now are satisfied that the problem,
8 as you identified it originally, is not really a problem
9 at the site; isn't that correct?

10 A In my -- yes. In my, I believe September 28
11 affidavit.

12 Q That's what I mean by "rocks"; sometime in the
13 course of this hearing you are going to need to explain
14 how you were able to have that level of confidence without
15 conducting the audit that you, on so many previous
16 occasions seemed to say was an absolute essential before
17 you could have that opinion. Now, my question to you is
18 not to get into the merits of that. You'll have your
19 chance. My question to you is: Do you feel that you have
20 counsel to represent you when you maneuver around the "rocks"
21 of that kind of question, which is not addressed in your
22 testimony as such? When we start dragging out what you
23 said in your notes on such and such a date when you talked
24 about the audit and what's in the Trallo memo and what was
25 in your October 31st -- do you feel that you are

1 represented by counsel as to that?

2 A Yes.

3 Q And that you do not need any independent counsel
4 beyond what you already have with regard to that?

5 A That's correct.

6 Q And that you do not feel that there's any
7 conflict that can arise from what you have to say to that
8 with respect to, say, Mr. Norris or Mr. Roth, with regard
9 to that?

10 A No.

11 CHAIRMAN BLOCH: We'll take a five-minute recess.
12 There should be no talking to the witness during the break.

13 (Recess.)

14 CHAIRMAN BLOCH: The hearing will come to order.
15 Mr. Roisman?

16 EXAMINATION (Resumed)

17 BY MR. ROISMAN:

18 Q Mr. Lipinsky, you testified about what have been
19 marked as J.J.L. Exhibits 1 and 2; two versions of the
20 August 8, 1983 trip report, and focused on the last
21 paragraph on both of those exhibits, and indicated your
22 sense that the problem that you had that caused you to
23 write or express concern about perjury in your notes
24 related to the question of signing a document sometime
25 after August the 8th which still had on it the date August

1 8th; is that correct? Have I summarized what your concern
2 had been?

3 A Yes.

4 Q And I take it you raised that with Mr. Roth and
5 explained to him that that was your concern?

6 A Yes, I have.

7 Q So that in your judgment, his continued effort
8 to get you to sign it subsequent to your explaining that
9 to him represented an effort on his part to get you to
10 commit what you thought was perjury; is that right?

11 A When I had first raised issue -- no, that's not
12 right. When I had first raised the issue with Mr. Roth
13 was probably when -- at the termination of him trying to
14 get me to sign the modified version of the trip report, I
15 believe was the last time I discussed it with him. I may
16 not be accurate on that, but that's my recollection on
17 this.

18 CHAIRMAN BLOCH: Do you think there was only one
19 occasion in which you discussed the matter of signing the
20 report with Mr. Roth?

21 THE WITNESS: No, sir. As far as revising the
22 date, I don't believe I mentioned that more than once or
23 twice as an option, rather than me signing it dated the
24 8th. I think I pointed out to Mr. Roth if we changed the
25 date to whatever that day's date was, I will sign it.

1 CHAIRMAN BLOCH: You said "more than once or
2 twice." Do you have a recollection of which it was, once
3 or twice?

4 THE WITNESS: No. I do not. I know I mentioned
5 it but I don't know the frequency.

6 CHAIRMAN BLOCH: If it was twice, was it at one
7 time where you were in his office and you did it then
8 twice? Is that what you are thinking of?

9 THE WITNESS: No.

10 CHAIRMAN BLOCH: Or two separate occasions?

11 THE WITNESS: Separate occasions, sir.

12 CHAIRMAN BLOCH: So it may have been two
13 separate occasions or one?

14 THE WITNESS: It may have been four. I know I
15 mentioned it. I don't have a recollection on the
16 frequency.

17 CHAIRMAN BLOCH: Having reviewed your
18 memoranda -- which you have done, I take it, right?

19 THE WITNESS: Yes. I don't believe it's
20 specifically identified in there.

21 CHAIRMAN BLOCH: That doesn't help -- I'm not
22 asking that. Does it help you to remember whether it was
23 more than once?

24 THE WITNESS: As I recall, it was more than once,
25 sir. But I couldn't give you a number. I couldn't put a

1 number on it. It wasn't a dozen times but it wasn't more
2 than once or twice.

3 BY MR. ROISMAN:

4 Q When you were preparing or you noted in your
5 notes that you were considering preparing a memorandum
6 from Mr. Roth to sign -- that would direct you to sign it,
7 was that before or after you had told him that signing it
8 with the date of August 8 when it was now after August 8
9 was what concerned you?

10 A That was after. I believe that was on November
11 18, or somewhere around there. I'm not -- I don't have
12 those -- if that's the date, it was after.

13 Q I thought you just said that once you raised
14 with him the question of the possibility of your
15 perception of what was perjury, namely signing it some
16 date after the actual date, that once that had happened
17 that he didn't press you any further with regard to
18 signing it?

19 A That's correct. I believe November 18 was the
20 last time he mentioned it. I'd have to check my notes. I
21 might be off on that date, but from my memory I believe it
22 was November 18th.

23 Q Well, why were you thinking of having the memo
24 done, then?

25 A Because at that point, Mr. Roth had instructed

1 me to sign the report and I said I would and left the room,
2 knowing full well that I was not. In any event, if he had
3 forced the issue, I was going to have this memo prepared
4 essentially writing the memo, from Mr. Roth to me,
5 directing me to sign the report. The issue never came up
6 again. I never used the memo.

7 Q Did it trouble you that he didn't accept the
8 proposition that if there was to be a changed trip report
9 there should be a changed date?

10 MR. GALLO: Objection. It seems to me that goes
11 not to the voir dire question on representation but that
12 goes to the merits of the man's testimony. We are in the
13 wrong side of the proceeding for that.

14 MR. ROISMAN: It goes to the issue of whether --
15 CHAIRMAN BLOCH: Overruled.

16 THE WITNESS: Could you repeat that, please?

17 BY MR. ROISMAN:

18 Q Did it bother you that Mr. Roth wanted you to
19 sign the document, even -- and even thought that you were
20 going to sign it, even though you had indicated to him
21 that in your judgment, to do so would be committing
22 perjury?

23 A Yes. It did. I would characterize Mr. Roth's
24 request -- repeated request for me to sign it, though, as
25 an employer/employee-type thing. Pretty much: If I

1 instruct a subordinate to perform some activity, I would
2 expect that subordinate to perform that activity.

3 Q Even perjury?

4 A No. Not to the extent of perjury. I don't know
5 if what we were talking about is perjury. I may not have
6 used the right language, as far as the situation.

7 Q But at the time you thought it was; didn't you?

8 A Yes.

9 Q Have you ever heard the expression "suborning
10 perjury"?

11 A No, I have not.

12 Q Are you aware that it is a crime to encourage a
13 person to commit perjury?

14 A I'm not aware -- I would assume it would be, but
15 I'm not.

16 CHAIRMAN BLOCH: Mr. Lipinsky, when you left
17 Mr. Norris' office --

18 THE WITNESS: Mr. Roth's.

19 CHAIRMAN BLOCH: Sorry. Thank you. -- Mr. Roth's
20 office, you didn't tell him that you didn't intend to sign
21 the document. Why didn't you tell him?

22 THE WITNESS: I was try^{ing} to avoid
23 confrontation, I assume.

24 CHAIRMAN BLOCH: You thought this was a very
25 important matter for him, that you sign that document?

1 THE WITNESS: It was one of those things that
2 had been going on for awhile and I just didn't do it. And
3 I guess it was annoying to him that I hadn't followed
4 through on his instructions.

5 CHAIRMAN BLOCH: How long had it been going on?

6 THE WITNESS: Again, without refreshing my
7 memory, I would assume from October 12, the time he
8 initiated the change, through to November 18.

9 CHAIRMAN BLOCH: And how many times during that
10 period was it going on?

11 THE WITNESS: I documented that -- I'd have to
12 look. It was maybe six times, tops. Something like that --
13 maybe not even that often.

14 BY MR. ROISMAN:

15 Q More than four?

16 MR. GALLO: Objection. If this is important,
17 let the witness find out what the facts are by showing him
18 his diary.

19 CHAIRMAN BLOCH: You may show him his diary.

20 MR. GALLO: He has it.

21 CHAIRMAN BLOCH: You may always refer to that
22 diary.

23 THE WITNESS: It actually may be in the weekly
24 summary. I don't know -- whether it is in the diary, I
25 don't know.

1 CHAIRMAN BLOCH: For the record, Mr. Lipinsky is
2 referring to copies of diary notes that he prepared
3 concerning the events of this time period.

4 THE WITNESS: Shall I continue? I went as far
5 as November 21st. I don't recall any occurrence after the
6 21st, but I would have to look. I don't know whether you
7 want me to spend the time to do that or not.

8 CHAIRMAN BLOCH: I think the question related up
9 to the 21st, yes. How many times were you asked to sign
10 the document with the same date? Exhibit 2, to be
11 specific.

12 THE WITNESS: I have indicated in my diary,
13 which started on November 9, three times. It may have
14 occurred once prior to that. But no more than three times
15 between November 9 and November 21st. On my entries.

16 CHAIRMAN BLOCH: Mr. Roisman?

17 BY MR. ROISMAN:

18 Q I'm just trying to understand how, in your head
19 it seems clear to you that you and Mr. Roth don't have a
20 conflict here. That's why I'm asking you these questions.

21 You have on the first occasion, you mentioned to
22 Mr. Roth that you think signing this would involve perjury.
23 And I assume you explained to him at that time what it was
24 about it that would make it perjury; didn't you?

25 A Yes.

1 Q And it was the date; right?

2 A The date and the fact -- I pointed out to
3 Mr. Roth that my original trip report was in the
4 possession of the Nuclear Regulatory Commission and how
5 would you substantiate two versions, as it were.

6 Q And that --

7 CHAIRMAN BLOCH: That's a question of how you
8 would prove that it was perjury. Weren't you bothered
9 that it was perjury, whether or not it could be proved?

10 THE WITNESS: I don't know if perjury is the
11 correct term, sir.

12 CHAIRMAN BLOCH: If you were going to swear to
13 that in this hearing later, that would then be perjury if
14 you said that was actually a document created on that date;
15 wouldn't it be?

16 THE WITNESS: Yes.

17 CHAIRMAN BLOCH: Whether or not you could prove --

18 THE WITNESS: Yes. Yes. I don't know if I can
19 say anything or not at this point.

20 CHAIRMAN BLOCH: If you want to explain, clarify;
21 sure.

22 THE WITNESS: I was only concerned that you
23 thought that -- in other words, if I could get one by and
24 I could sign it, I knew no one was going to catch it, I
25 would sign that report -- or maybe I misunderstood you?

1 CHAIRMAN BLOCH: That was an implication of what
2 you said. I want you to be able to clarify that. You
3 said you were concerned because the Nuclear Regulatory
4 Commission had the other copy and it wouldn't be
5 sustainable it was on the same day.

6 THE WITNESS: Well, that was my -- part of my
7 justification for Mr. Roth. I did not mean to imply that
8 if the Nuclear Regulatory Commission did not have a copy
9 that I would sign it and pass it off as the original.

10 BY MR. ROISMAN:

11 Q In other words, what you are saying is that you
12 were in effect presenting your arguments to Mr. Roth. You
13 were saying: If you don't want to accept my standard that
14 it shouldn't be done anyway, the second standard I got for
15 you to accept is that we are going to get caught; right?

16 A I didn't use those words.

17 Q No, but essentially that's what you were -- you
18 were presenting your arguments to Mr. Roth and he didn't
19 accept them that first time; did he?

20 A That's correct. I was giving Mr. Roth a
21 justification in my mind why I should not sign the report.

22 Q So at that time it appeared to you that Mr. Roth,
23 based upon what you believed to be perjury, was trying to
24 get you to commit perjury and he did it at least on two
25 subsequent occasions; isn't that correct?

1 A Yes.

2 Q And on the last one, he did it and even thought
3 he had succeeded? That is, you did not say: No, I'm not
4 going to. You let it lie, that he thought you were going
5 to sign the report; right?

6 MR. GALLO: Objection. Could I have a moment,
7 please? I would like to confer with my cocounsel.

8 CHAIRMAN BLOCH: For what purpose?

9 MR. GALLO: Confer with cocounsel.

10 CHAIRMAN BLOCH: Concur with cocounsel?

11 MR. GALLO: Yes.

12 CHAIRMAN BLOCH: It's necessary to interrupt
13 cross to confer with your cocounsel now?

14 MR. GALLO: If I could.

15 CHAIRMAN BLOCH: Okay. Briefly.

16 (Discussion off the record.)

17 MR. GALLO: Thank you, your Honor.

18 CHAIRMAN BLOCH: Wasn't it true that you left
19 the room with the impression -- Mr. Roth with the
20 impression that you were going to sign that document?

21 THE WITNESS: Yes. I may have. I don't believe
22 I ever, you know, looked Mr. Roth right in the eye and
23 said no, I wasn't going to sign this report. I may have,
24 in order to avoid any kind of confrontation, not made --
25 not pushed the issue to a point of confrontation.

1 BY MR. ROISMAN:

2 Q Well, Mr. Lipinsky, in reference to your last
3 answer, on your diary notes on the page dated November
4 18th, according to the notation at the top, it says: "11/17/83
5 entry continued from previous page," your words about
6 seven lines down from the top: "J.J.L. said 'yes, sir,'
7 but did not sign the trip report." It sounds like you did
8 look him in the eye and say "yes."

9 A Yes, in that case I did. I was in error.

10 Q At that moment --

11 CHAIRMAN BLOCH: I would like to assure you that
12 when you make a mistake like that, that can be perfectly
13 honest, as long as you answered the first time. You
14 shouldn't be worried that there may be a note that would
15 contradict it. That may happen. It's a complicated
16 question.

17 THE WITNESS: If I may say that, your Honor. I
18 did say "yes," sir. I didn't have these notes. My
19 recollection when I answered the previous question --

20 CHAIRMAN BLOCH: I just want to say to you, I
21 don't find it particularly blameworthy that you didn't
22 remember in all these notes that there was a notation like
23 that. I just want you to do your best.

24 THE WITNESS: Okay.

25

1 BY MR. ROISMAN:

2 Q At that point in time you left the room thinking
3 that Mr. Roth was trying to pressure you to commit what
4 you believed was perjury; correct?

5 A Yes.

6 Q And at this point in time, it doesn't bother you
7 that both he and you are using the very same lawyer and
8 that we are going to be discussing, among other things,
9 the question of what happened on those days and whether
10 you were or were not being pressured?

11 A No, it does not.

12 Q Now, in Exhibits 1 and 2, bottom paragraph --
13 that's been the subject of this discussion -- there's been
14 one change which I didn't hear you discuss with regard to
15 the questions from Mr. Gallo, and that was the change of
16 the words in the last phrase of the paragraph. In your
17 original version you said, "It will be impossible (by all
18 indications) to salvage what work is currently in place."

19 In the Exhibit 2 version, which was Mr. Roth's version,
20 it has been changed from "it will" to "it appears,";
21 "impossible" has been changed to "improbable" and that the
22 work currently in place is salvageable to any meaningful
23 extent replaces "what work is currently in place."

24 Now, that change -- the change in the last phrase --
25 doesn't that deal with matters that are within your

1 expertise as opposed to corporate matters?

2 A Not really. I would like to elaborate if I
3 could on this.

4 Q Sure.

5 A Essentially, you can document small portions of
6 work that for some reason or another are acceptable. I'm
7 not saying that's the case for Comanche Peak, but if there
8 was a small portion of the work that would for some reason
9 be acceptable and you do not want to remove it for
10 whatever reason, it can be documented as such.

11 The effort and expense required to do that sometimes
12 doesn't justify -- just removing that small portion and
13 reapplying it when you are performing work adjacent to
14 that small area.

15 Essentially, if you wanted to spend the money, you
16 could save small portions of a large section. I just
17 didn't think it was cost-effective.

18 Q Well, are you saying that the word was neither
19 "impossible" nor "improbable" but should have been
20 "impracticable"?

21 A In retrospect, that would have been a word I
22 could have used; yes.

23 Q Well, it sounds like the words either
24 "impossible" or "improbable" don't fit at all what you
25 described to me was the reason that you were talking about

1 the salvageability or nonsalvageability of the work. It
2 was neither "impossible" nor "improbable"; it was just
3 cost-effective; isn't that what you were saying?

4 A Yes, it was. Had I been aware that I would be
5 sitting here today, I probably would have phrased it with
6 the word "impractical" in there.

7 Q But you and Mr. Roth -- this was a paragraph
8 that attracted a great deal of conversation and attention
9 between the two of you at a time when you thought that it
10 was going to be at least public, if not in this hearing
11 today.

12 A Mr. Roth and I didn't discuss the change he made
13 to the last paragraph.

14 Q You didn't discuss it at all?

15 A That's correct.

16 MR. GALLO: I'm prepared to stipulate that they
17 did not negotiate language.

18 CHAIRMAN BLOCH: Mr. Lipinsky, do you recall how
19 many drafts you made of the memorandum before you finished
20 it?

21 THE WITNESS: Just one, your Honor. It was
22 dated August 2nd, I believe, and it had an earlier letter
23 number which was subsequently not used. And then this --
24 the August 8th -- I guess it's my Exhibit 1 -- with my
25 letter number on it and my signature.

1 CHAIRMAN BLOCH: Do you remember what the nature
2 of the editing was that you did from draft to draft?

3 THE WITNESS: I believe we submitted copies. I
4 would have to look.

5 One of the -- the thing that stands out is, I listed on
6 page 1 of my exhibit the names of the people and their
7 titles. Some of them were incorrect. But that was not on
8 my August 2nd draft. I think there were some
9 typographical errors. Nothing really of any substance was
10 changed.

11 CHAIRMAN BLOCH: Did you read for substance in
12 between the two drafts?

13 THE WITNESS: Excuse me, sir?

14 CHAIRMAN BLOCH: Did you read for substance
15 between the two drafts or just for typos?

16 THE WITNESS: You mean as far as if any changes
17 were made between the two?

18 CHAIRMAN BLOCH: Were you reading it carefully
19 to see that it was accurate from beginning to end?

20 THE WITNESS: Oh, yes, sir. Yes. The revision
21 process between the August 2nd and the August 8th one, I
22 did that. I had my secretary do it under my direction.

23 CHAIRMAN BLOCH: Did you in fact speak to anyone
24 on the site to make sure that it was factually accurate
25 between the 2nd and the 8th?

1 THE WITNESS: No, sir. As far as I know, no one
2 on the site was aware I was drafting a trip report.

3 CHAIRMAN BLOCH: But you could have talked to
4 someone on-site to check on facts that you observed?

5 THE WITNESS: No, sir, I did not.

6 CHAIRMAN BLOCH: None of the discussions between
7 the 2nd -- you had no discussions between the second and
8 the 8th with anyone on the site about any of the facts in
9 the trip report?

10 THE WITNESS: To my knowledge; no, sir, I did
11 not.

12 CHAIRMAN BLOCH: Not with Mr. Mouser?

13 THE WITNESS: It's possible I did with
14 Mr. Mauser. Excuse me, when you were talking about people
15 on the site, I thought you were speaking of Mr. Tolson,
16 Mr. Brandt, Mr. Merritt, perhaps.

17 CHAIRMAN BLOCH: Mr. Mouser was on-site, wasn't
18 he?

19 THE WITNESS: Yes. That's true. It's possible
20 I did. I would have to look. I don't believe I did.

21 CHAIRMAN BLOCH: Will you look at the diary
22 notes to see?

23 THE WITNESS: I believe at that point it's my
24 weekly summaries, sir.

25 MR. GALLO: Judge Bloch, while the witness is

1 checking the diary notes, may I inquire as to how much
2 longer the voir dire is going to continue?

3 CHAIRMAN BLOCH: Mr. Roisman, I'm done with this
4 interruption -- could you estimate the time?

5 MR. ROISMAN: Couple of minutes.

6 CHAIRMAN BLOCH: I may have one additional
7 matter before we pass this.

8 CHAIRMAN BLOCH: Mr. Lipinsky?

9 THE WITNESS: My summaries for that time
10 indicate I did not record any activities at all. It's
11 possible I had telephone conversations, but I do not
12 recall it.

13 CHAIRMAN BLOCH: How about, do you remember
14 whether there was any conversation between the time you
15 left the site and the time you wrote the report, with any
16 of the workers, or supervisors on-site?

17 THE WITNESS: Can I look at the --

18 CHAIRMAN BLOCH: Sure.

19 THE WITNESS: Again, sir, there's no notations.
20 I think I may have talked with Jack once or twice with
21 regards to names of the individuals, or perhaps titles --
22 something along those lines.

23 CHAIRMAN BLOCH: Jack Mouser?

24 THE WITNESS: Excuse me, sir. Jack Norris.

25 CHAIRMAN BLOCH: I don't know Mouser's first

1 name.

2 THE WITNESS: E. -- E. Mouser -- Everett.

3 CHAIRMAN BLOCH: Mr. Roisman?

4 BY MR. ROISMAN:

5 Q Mr. Lipinsky, in evaluating your position here
6 today, in figuring out whether you do or do not have a
7 conflict, have you in your own mind gone over such
8 questions as you and Mr. Roth disagreeing as to whether or
9 not signing the changed trip report was or was not an
10 improper act, even if it was not perjury? And how you can
11 make sure that your position is properly represented,
12 knowing that the same attorney is also going to make sure
13 that Mr. Roth's position is properly represented?

14 A Yes, I have gone over that. In fact, there has
15 been open discussion internally with regards to this.
16 There is no attempt by Mr. Roth to deny it ever happened
17 and there's no attempt on my part to say that it didn't
18 happen, either.

19 Q Well, I mean we'll find out in the course of the
20 testimony. But I take it that Mr. Roth is probably not
21 going to say that he believes that he was trying to get
22 you to commit perjury. And you have already said that at
23 the time, you thought that he was attempting to get you to
24 commit perjury. So you don't mean to say that you have
25 reconciled your differences, do you?

1 A No, we did not reconcile our differences. Again,
2 I want to emphasize that perhaps my use of the word "perjury"
3 is inaccurate or incorrect in this situation. Mr. Roth
4 did emphatically say that I should not commit perjury.

5 Q You thought it was improper to sign a report
6 that had a date that was earlier than the date on which
7 you were making the signature; isn't that right?

8 A Yes. I thought that was improper.

9 Q You still think it's improper, don't you?

10 A Yes, I do.

11 Q And you wouldn't do it, even if your boss told
12 you you had to; would you?

13 A No. In fact I did not do it, even though my
14 boss told me to do it.

15 Q Do you remember why Mr. Roth said that it
16 wouldn't be all right just to change the date? I take it
17 you would have no problem, from your earlier testimony, if
18 the date had been November 15th, if that was the -- or
19 18th -- 17th, I guess was the date.

20 A Whatever.

21 Q Yes. Right. You would have had no problem
22 signing it?

23 A That's correct.

24 Q Can you remember why that wasn't just done?

25 A I don't recall that there was much discussion at

1 the time with regards to changing it. Mr. Roth opted not
2 to change it and it was not changed.

3 Q When you think about the potential for conflict
4 here, you feel fully comfortable with the proposition that
5 you may be called upon to say in very strong terms that
6 you believe that Mr. Roth's conduct in attempting to get
7 you to sign a trip report with an earlier date than the
8 date on which you were actually signing it was improper
9 conduct on his part? He is your boss; it doesn't bother
10 you? You are not concerned we're saying it here?

11 A No, I am not concerned about that.

12 Q Or about any repercussions that might come to
13 you if this board should find that Mr. Roth at this very
14 moment in time was in fact pressuring you to change your
15 views, and that it was improper for him to do so, and that
16 that pressure was part of what the board feels was
17 improper conduct and reflects on the Comanche Peak plant?

18 MR. GALLO: Objection. I thought the pressure
19 that has been established through the lines of questions
20 was to sign a trip report; not to change his views as
21 suggested by Mr. Roisman's question. It's based on a
22 premise that has not been established in this record at
23 all.

24 CHAIRMAN BLOCH: I think you are referring to
25 just the change in the last paragraph, which is the

1 change in conclusions?

2 MR. ROISMAN: Yes.

3 CHAIRMAN BLOCH: It's allowed, providing it's
4 understood that way.

5 THE WITNESS: I'm sorry, could you please repeat
6 it?

7 BY MR. ROISMAN:

8 Q The question has to do with whether you feel
9 very comfortable with the fact that you may be called upon
10 to say that your boss was pressuring you to sign something
11 that you did not think was right to sign, and -- including
12 both its date and a final paragraph that was different
13 than the original version, and that this board might find
14 that in fact it was improper for him to do that, and they
15 might render some fairly harsh opinion regarding either
16 his conduct or O.B. Cannon's conduct or the conduct of the
17 utility, if it had anything to do with why Mr. Roth was
18 doing that. Does that bother you, in terms of evaluating
19 the possibilities of conflicts?

20 A No.

21 MR. ROISMAN: Well, Mr. Chairman, I think the
22 witness has testified to numerous conflicts. And I think
23 that he's also testified that he's perfectly willing --

24 CHAIRMAN BLOCH: Why don't we wait until the end
25 of the argument before we begin argument.

1 MR. ROISMAN: I was going to withdraw my motion.

2 CHAIRMAN BLOCH: Before you withdraw it, I want
3 to ask two questions, Mr. Lipinsky.

4 Did you confer with Mr. Norris or Mr. Roth before you
5 decided to destroy the notes you took on the site for the
6 trip report?

7 THE WITNESS: No. Normally, as a practice, when
8 I go and make a site visit, not necessary -- not a nuclear
9 facility, any facility -- my practice is I'll take notes
10 while in the field. On the basis of those notes I develop
11 a trip report.

12 CHAIRMAN BLOCH: I only asked him whether he
13 consulted with him. That's all I'm concerned about right
14 now.

15 THE WITNESS: Okay.

16 CHAIRMAN BLOCH: On December 7, in your diary, I
17 see an entry that says that Mr. Roth called you into his
18 office and he basically reviewed your testimony with you
19 and suggested some emphasis you might give in your
20 testimony. Do you see that?

21 THE WITNESS: No, sir, I don't -- oh. Yes.

22 MR. GALLO: I don't see it, your Honor. Where
23 is it?

24 CHAIRMAN BLOCH: "J.J.L. and commented on info
25 sent to O.B.C. by N.S.R." -- Mr. Reynolds. "Also, R.B.R.,

1 Mr. Roth --" went over info for J.J.L. to emphasize when --
2 with NRC -- to emphasize when with Nuclear Regulatory
3 Commission." The suggestion was what you ought to
4 emphasize when you talked to the Nuclear Regulatory
5 Commission; is that right?

6 THE WITNESS: Yes, sir.

7 CHAIRMAN BLOCH: Could you recall whether what
8 he suggested you emphasize was entirely consistent with
9 your own view of the matter?

10 THE WITNESS: Yes, sir. I don't believe there
11 was anything of substance there with regards to emphasis.
12 I think it was more in line with pretty much voicing what
13 everyone had come to the conclusions as a result of the
14 so-called task force that was developed or put together by
15 Cannon. Other than that, I really don't recall, you know,
16 the extent of Mr. Roth's conversation.

17 CHAIRMAN BLOCH: Why would he have to tell you
18 that you ought to testify as to what the task force had
19 already concluded? Was he nervous about that?

20 THE WITNESS: I don't believe so; no, sir.

21 CHAIRMAN BLOCH: Why wasn't it enough for him
22 just to be satisfied that you would testify as to your
23 views as accurately as you could?

24 MR. GALLO: Judge Bloch, that may be a question
25 to ask Mr. Roth.

1 CHAIRMAN BLOCH: I want to know the witness'
2 reaction, because I want to know whether he felt he was at
3 all pressured at that time? I just want to know why you
4 felt your boss was asking you to emphasize certain things?
5 Why wasn't he just satisfied that you would tell the truth?

6 THE WITNESS: I'm sure he was. I guess he just
7 wanted to make certain that the record fully reflected all
8 the information that was available at that time. And
9 that's speculating on my part.

10 CHAIRMAN BLOCH: Was he also trying to see what
11 you would say would be congruent with the interests of O.B.
12 Cannon? Did he see something that he really wanted to
13 make sure you didn't hurt --

14 THE WITNESS: No, sir.

15 CHAIRMAN BLOCH: Mr. Roisman?

16 MR. ROISMAN: What I was going to say,
17 Mr. Chairman, is that the witness has indicated that his
18 personal rights are potentially at risk here but that he
19 doesn't care; that he might very well say something that
20 might -- although he thinks it is highly improbable --
21 endanger his job, but he hasn't sought any counsel about
22 that; that he's going to find himself in a position in
23 which he criticizes the conduct of his fellow workers and
24 maybe also his boss, but that he doesn't see any problem
25 with that; that he's going to have to defend his position

1 with regard to the original trip report and its evolution
2 through to the final testimony, but that he feels
3 comfortable that he's got all the answers and doesn't
4 really need counsel with respect to that; and that in the
5 fullest sense of the word, he is proceeding with his eyes
6 open.

7 I personally don't believe that he is. I do not
8 believe that he has been adequately woodshedded or
9 counseled, but he does. And I don't know any more that I
10 can do.

11 I think he's aware of the risks he's taking and is
12 choosing to take them, and I'll say he'll just have to
13 proceed ahead.

14 CHAIRMAN BLOCH: Are there any objections to
15 withdrawal of the motion?

16 MR. GALLO: I would like to note for the record
17 that I don't agree with Mr. Roisman's characterization of
18 the results of his voir dire, but I don't request to argue
19 about it since the motion has been withdrawn.

20 MR. TREBY: Staff has no objection to withdrawal
21 of the motion.

22 CHAIRMAN BLOCH: The motion is withdrawn.

23 I would like the suggestions of the party as to the
24 order in which we proceed at this point.

25 Mr. Roisman?

1 MR. ROISMAN: I had assumed that the board would
2 proceed as it had with Mr. Norris, and I have no objection
3 to that. I think that that seems to make the most sense
4 in the context of what we are doing here.

5 CHAIRMAN BLOCH: You would like to proceed with
6 Mr. Norris now?

7 MR. ROISMAN: No. I meant in terms of who would
8 proceed with questioning.

9 CHAIRMAN BLOCH: No. What is the order in which
10 you would like to talk to the witnesses?

11 MR. ROISMAN: In which order should they speak?

12 MR. GALLO: It's my understanding, Judge Bloch,
13 that Mr. Lipinsky was now going to go forward on the
14 merits the board ordered on the telephone conference call.

15 CHAIRMAN BLOCH: To the contrary. We stated we
16 would have the voir dire on Mr. Lipinsky and would at that
17 time decide how we would go forward.

18 MR. GALLO: Well, that's not my recollection of
19 the railroad.

20 JUDGE GROSSMAN: It's my recollection, because
21 we discussed this before we made the ruling on it, and
22 that's how we decided that.

23 CHAIRMAN BLOCH: It's the board's intention
24 anyhow.

25 How would you like to proceed?

1 MR. ROISMAN: In the order of the witnesses, I
2 believe we should be given Mr. Roth.

3 CHAIRMAN BLOCH: Does Mr. Gallo have a
4 preference?

5 MR. GALLO: Well, I would like to take a recess
6 and check that transcript. It is my clear recollection
7 that we were going to take Mr. Lipinsky through the merits.
8 And then my clear recollection of the transcript -- of the
9 telephone conference -- was that the selection thereafter
10 was open.

11 CHAIRMAN BLOCH: What's your preference?

12 MR. GALLO: I prepared Mr. Lipinsky on the basis
13 of Mr. Lipinsky going forward. And I prefer to go that
14 route.

15 CHAIRMAN BLOCH: Mr. Watkins?

16 MR. WATKINS: Your Honor, we shared Mr. Gallo's
17 view that once Mr. Lipinsky's voir dire was finished,
18 assuming there were no problems, that he would go.

19 CHAIRMAN BLOCH: Does anyone have the transcript
20 available?

21 MR. GALLO: Staff?

22 MR. TREBY: Staff has not received its
23 transcript yet.

24 MR. GALLO: I have an unofficial version.

25 MR. ROISMAN: What's an unofficial version of

1 the transcript?

2 MR. TREBY: The Staff's preference is that
3 Mr. Lipinsky go forward. I might add that my recollection
4 is that the board indicated that we were going to begin
5 with the voir dire of Mr. Lipinsky. I don't recall any
6 further words. Maybe I was incorrect in just assuming
7 that meant that if we were going to begin with the voir
8 dire, that meant we were going to go further. But that's
9 my recollection.

10 MR. GALLO: I can't shed any more light than I
11 have already suggested.

12 CHAIRMAN BLOCH: Mr. Roisman, the board did call
13 Mr. Lipinsky first. Could you explain why it is that you
14 think it might be important to speak to Mr. Roth first?

15 MR. ROISMAN: That would overstate it. I think
16 you asked for a preference and I indicated a preference.
17 I think the advantage -- and I don't want to overstate it --
18 is that Mr. Roth is the context man. That is, he put O.B.
19 Cannon -- their work, the contract, the whole thing --
20 into context: What were they doing, what was their role,
21 et cetera, et cetera.

22 I believe Mr. Lipinsky has already testified he's
23 essentially here in his capacity as an employee of that
24 company. But I don't want to overstate it. It's not like
25 the most important thing and the whole case falls apart if

1 we do it in some other order, but that would be my
2 preference.

3 (Discussion off the record.)

4 CHAIRMAN BLOCH: I think it's a little easier to
5 continue now. If there had been an important reason we
6 might have changed the order.

7 MR. ROISMAN: I wonder if we could take a short
8 break regardless.

9 CHAIRMAN BLOCH: We are going to continue with
10 Mr. Lipinsky. You want a five-minute recess?

11 MR. ROISMAN: It doesn't even have to be that
12 long. Just a short break.

13 CHAIRMAN BLOCH: I think it would be better to
14 take five minutes and we'll avoid a recess later.
15 Precisely 35 minutes, please.

16 (Recess.)

17 CHAIRMAN BLOCH: The hearing will come to order.
18 Will someone please attempt to obtain Mr. Gallo's
19 presence?

20 MR. GALLO: I apologize.

21 CHAIRMAN BLOCH: I'm not sure I understand. Why
22 are you two minutes late?

23 MR. GALLO: I was in front of a television
24 camera at the entreaty of some reporter from Dallas.

25 CHAIRMAN BLOCH: That won't be adequate next

1 time.

2 MR. GALLO: I stand warned, Judge Bloch.

3 CHAIRMAN BLOCH: Mr. Roisman?

4 MR. GALLO: I do believe I have to introduce the
5 testimony into evidence?

6 CHAIRMAN BLOCH: Okay. If you would like, sure.
7 Let's proceed that way.

8 MR. GALLO: I suppose it's anti-climatic but --

9 DIRECT EXAMINATION

10 BY MR. GALLO:

11 Q Would you state your full name and business
12 address for the record?

13 A Joseph J. Lipinsky. My business address is 5600
14 Woodland Avenue, Philadelphia, PA.

15 Q And your home address?

16 A 611 Wagner Road, Lafayette Hill, Pennsylvania.

17 Q Mr. Lipinsky, did you have occasion to draft
18 testimony for this proceeding?

19 A Yes, I did.

20 Q You have a copy of a document in front of you
21 entitled "Testimony of Joseph J. Lipinsky"?

22 A Yes, I do.

23 Q It consists of 31 pages?

24 A Yes, it does.

25 Q I ask if this is I the testimony you prepared

1 for this proceeding?

2 A Yes, it is.

3 Q Are there any additions or corrections to your
4 testimony?

5 A Yes, there are.

6 Q Would you take it slowly, so that the board and
7 the parties will be able to note them?

8 A On page 20 of my testimony, there are two
9 question number 22 and -- or two answers number 22. The
10 second set of questions and answers on that page, I would
11 like to indicate is 22-A.

12 CHAIRMAN BLOCH: Accepted.

13 THE WITNESS: Additionally --

14 BY MR. GALLO:

15 Q Go right ahead.

16 A Additionally, my response to what is now
17 question 22 -- that's the first question on that page --
18 my answer, the last sentence, I would like to delete the
19 words "in retrospect."

20 Q Why are you making that change, Mr. Lipinsky?

21 A Essentially what had happened was, as I had
22 testified early, I had mentioned to Mr. Roth about the
23 changed date during the course of when Mr. Roth wanted me
24 to sign the changed or modified version of the trip report,
25 right when we were reaching that impasse there. And

1 somewhere down the road it had either come to my attention
2 or someone brought it to my attention that had the
3 revisions been marked, that: "Would you have signed the
4 trip report then?" And I would have. That wouldn't have
5 been a big deal.

6 What should have been two sentences were somehow, I
7 guess, during the course of preparing the testimony,
8 combined into one.

9 The words "in retrospect" indicate that the changed
10 date I thought of about the same time as marking the
11 revision, if you know what I mean, if you follow me?

12 CHAIRMAN BLOCH: No, I really don't. Do you
13 mean that at the time that this event took place --

14 MR. GALLO: Let me do it.

15 CHAIRMAN BLOCH: Well, I'm not sure because he's
16 changing the testimony. I'm not sure I want him led at
17 this point. Can you do it without leading him?

18 MR. GALLO: Yes, I'll try to do that.

19 BY MR. GALLO:

20 Q Let's focus, Mr. Lipinsky, on that part of the
21 sentence that refers to the date having been changed.

22 Now, what is there about the words "in retrospect" in
23 their relation to "the date been changed" that caused you
24 to make this revision that you have indicated?

25 A Well, it was not in retrospect that I had

1 thought of. Had the date been changed, I would have
2 signed the trip report. That was something that happened
3 at the time.

4 CHAIRMAN BLOCH: Good.

5 BY MR. GALLO:

6 Q Therefore, the statement was in error as it had
7 appeared in your testimony; is that correct?

8 A That's correct.

9 Q And you are correcting it at this time?

10 A That's correct.

11 Q Are there any other corrections, Mr. Lipinsky?

12 A Not that I know of, no.

13 Q Is this testimony accurate and complete as
14 corrected to the best of your knowledge and belief?

15 A Yes.

16 MR. GALLO: Your Honor, at this time I would
17 like to introduce into evidence the testimony of Joseph J.
18 Lipinsky and have it bound into the transcript as if read.
19 I'll furnish a copy to the reporter for that purpose.

20 CHAIRMAN BLOCH: There being no objections, it
21 may be done.

22 MR. GALLO: The witness is available for
23 cross-examination.

24 (The document follows:)

25

in biology in November 1977. I have attended 19692
continuing education courses or seminars offered
by Carboline Co., Columbia Basin Community College,
STAT-A-MATRIX, and National Association of
Corrosion Engineers. I am a member of the ASTM
Committee D33 on "Protective Coatings."
Additionally, I am a member of the American Nuclear
Society, National Association of Corrosion Engineers,
and the American Society of Quality Control.

I joined O.B. Cannon & Son, Inc. in March of 1978
as a quality control inspector trainee. I have
worked for Cannon to the present in levels of
increasing responsibility in the areas of quality
assurance and quality control. I have worked on or
been assigned to the following nuclear projects:
Grand Gulf 1 and 2, Hope Creek Nuclear Station,
Oyster Creek, WPPSS No. 2, WPPSS Nos. 1 and 4,
Pilgrim Station, Zimmer Nuclear Station, Perry
Nuclear Power Plant Unit 1 and 2, and Three Mile
Island Unit 1 and 2.

Q.4. When did you first learn that you might be perform-
ing work at Comanche Peak?

A.4. I first became aware of the fact that I might be

working on the Comanche Peak project during a telephone conversation with John J. Norris on July 15, 1983. My workload was such that no commitment could be made at that time as to when I might be available. Norris was to get back with me on July 18, 1983 to set up plans for me to go to the Comanche Peak site for one or two days at the end of July. I was subsequently advised by Ralph Trallo that I should plan on visiting the Comanche Peak site on July 26 and 27 and, if needed, the 28th. I did visit the site on those dates.

Q.5. Did you work on the Comanche Peak assignment prior to your trip to the site?

A.5. Yes. As a result of several conversations with John Norris, I developed a list of questions and topics that could be used as a guide to conduct his overview of the coatings program. I sent this list to Norris on July 18. I also contacted Mr. Evert Mouser, a quality control inspector, who was working at Comanche Peak, and Mr. W. S. Avery, who had worked at Comanche Peak as a quality control inspector.

Q.6. Why did you contact Avery and Mouser?

A.6. I was interested in obtaining background information concerning the Comanche Peak coatings program prior to my trip to the site in order to minimize the time I would have to spend on such matters. Avery had worked for me at Cannon as a quality control inspector and I thought it would be helpful to discuss matters with him. I became acquainted with Mouser when we worked together at the WPPSS site. I was part of the Cannon work force at WPPSS and Mr. Mouser was working at the site at that time for Bechtel in a quality control capacity. We became friends and for that reason I called him to obtain some insight into the coatings program at Comanche Peak.

Q.7. What did they tell you?

A.7. I don't remember much of my conversation with Bill Avery except that he did mention the retrofit program being conducted at Comanche Peak. Even Mouser, in response to my questions, provided information concerning the manner in which coating materials were stored and mixed. We also talked about what

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type or degree of surface preparation was required, and how that surface preparation was accomplished. Along these same lines we talked about the coating systems being applied at Comanche Peak, and the method of coating application. I seem to recall that we may have also talked about the type of work procedures in use at Comanche Peak.

As a result of these conversations, I was able to get some insight into how Comanche Peak went about performing these activities. Additionally, I was able to initially focus my review on the areas I discussed with Mr. Mouser. Because of the time lag between my site visit and this testimony, it is difficult to separate when I discussed some items with E. Mouser. I know that after my arrival on site, we discussed painter qualifications, the writing of non-conformance reports by inspection personnel, workmanship or the appearance of the applied coating material, repair procedures, inspectors' attitudes, as well as other items regarding the site situation.

Q. 8. Please describe your activities during the first day of your visit to the Comanche Peak site.

A.8. I arrived on the morning of July 26, 1983. I encountered Mr. Mouser almost as soon as I arrived, and after some additional discussion about the coatings program, he introduced me to Mr. Brandt, the quality control supervisor. I outlined to Mr. Brandt what I was going to do on site, and asked who I should contact for information that I might need. Brandt introduced me to H. Williams, the paint quality control supervisor, who gave me a tour of the site. I also asked Williams to provide me with applicable portions of the Comanche Peak FSAR.

When I returned from the tour, I met Ray Posgay, a consultant retained by Mr. Morris. I discussed with him the conditions and problems on site that I was aware of as a result of my earlier conversation with Mr. Mouser. These topics were methods for surface preparation and coatings application, painter qualification, and procedures addressing these subjects. I also discussed painter qualifications with Mr. Posgay. Thereafter, Posgay and I ran into Gene Crane, Texas Utilities' construction resident manager, in the hallway. Mr. Posgay informed him of the problems that I had mentioned earlier.

I then met and had an introductory discussion with Mark Wells. It is my understanding that Mr. Wells is a Brown & Root engineer responsible for the coatings specification. I also told Wells that I wanted to look at the FSAR. I then met Mouser again and we discussed in more detail some of his concerns identified earlier in this answer. I also questioned Mouser as to why the paint cans had no status tags. He indicated he didn't know the answer to my question, but he believed the lack of tags indicated a problem.

During that day I also began my review of the Comanche Peak coatings specification.

Q.9. Did you continue your review of the Comanche Peak coatings program on July 27?

A.9. Yes. I arrived on site in the morning and conducted a walk-down. I observed work on the polar crane and the dome. It appeared to me that there was too much sanding being performed on the existing zinc primer prior to application of the top coat. I either met Mr. Mouser or ran into him near Brandt's office, and we talked about this situation. Also, I asked about what type of surface preparation was performed prior to the application of the new topcoat material over

old topcoat material. It was my understanding that the only surface preparation between coats of topcoat material was a solvent wipe. I felt that because of the age of the first coat, as well as the accumulation of fumes and contaminants, a solvent wipe was not adequate.

About 10:00 a.m. I met with Ron Tolson, the Texas Utilities' quality assurance supervisor, and Mr. Brandt. The meeting lasted only ten or fifteen minutes. I advised them that my preliminary assessment was that Comanche Peak had problems in the areas of material storage, painter qualification, satisfaction of ANSI requirements and, possibly, coating integrity. I said all of these items could affect licensing, to which Mr. Tolson replied, "That's not my job or concern." I interpreted this to mean that he was less concerned about quality assurance matters than I thought he should be. This judgment reinforced my growing concern that quality problems existed in the Comanche Peak coatings program. I explained that I would be unable to provide a more accurate assessment without the benefit of a detailed review or audit. I went on to tell him that quite a few former Cannon personnel were employed on site and that my views were based in part on the concerns

they had expressed about the coatings program. At this point all of the various views had been explained to me by Mr. Mouser. I later talked to the inspectors directly to confirm their views.

During the course of the day I again toured the site with Mr. Mouser, as well as going out to the paint yard or shop where I met H. Gunn, a quality control inspector in the coatings program. We discussed the operation of the paint shop. I also looked at the paint warehouse and mixing areas where I again noticed the lack of status tags on paint cans.

While walking to the containment building, Mr. Mouser and I passed a pallet on which sat a container of mixed coating material destined for the containment building. I commented that letting mixed material sit out in the heat would likely shorten its pot life. Mouser looked for some type of form that he expected to be with the container, but there was no form or other type of documentation.

I spoke with Mr. Wells about the project specifications, painter qualifications, procedures, and FSAR commitments. Mr. Wells indicated that painter qualifications were handled by production personnel.

He also said something to the effect that only 34 out of 452 individuals on site listed as painters were of any use as painters.

I spoke with L. Adams and C. Owen, two paint quality control inspectors who had formerly worked for Cannon. We discussed the site conditions and problems and their jobs in general. They confirmed in general terms what I had discussed with Mr. Mouser. I also met and talked with D. Ambrose and T. L. Miller, two other paint inspectors who were former Cannon employees. I shared with them some of my observations and things I had been told by others, and they confirmed these concerns. We also talked about documentation, and I looked at what I was told were daily inspection reports. They asked about Cannon's need of inspection personnel. I told them that if we had a need, I would keep them in mind.

On the way out of containment, I passed a shed where painting of small items had taken place. At this point I met and talked with M. Lucke, another paint inspector who was a former Cannon employee. Basically, she confirmed what I had been told, and we also talked about things of a general nature.

Q.10. Did your site visits on July 26 and 27 complete your preliminary review of the Comanche Peak coatings program?

A.10. No. I completed my preliminary assessment on July 28, 1983. I arrived on site that day and met with Jack Norris.

I gave him a rundown of my observations and potential problem areas. At this time I pointed out that if Comanche Peak was committed to the regulatory standards in its FSAR, then Comanche Peak must satisfy all regulatory requirements. However, if there were no commitments in the FSAR, then either the specification requirements could be relaxed or there was no problem with regard to satisfying regulatory requirements. As a result, John Norris wanted me to accurately determine FSAR commitments prior to the meeting that we were to have with Mr. Merritt. I went to Mr. Wells' office and quickly went over with him the commitments to the applicable ANSI Standards contained in the FSAR and the coating specification. I determined that the Comanche Peak coatings program was committed to the significant ANSI Standards and Regulatory guide 1.54.

I advised Norris to this effect.

Q.11. What happened next?

A.11. Later that morning, John Norris and I attended a meeting with Messrs. Merritt, Crane and Tolson, and Mr. McBay, the manager of engineering.

Mr. Norris gave an introduction and then turned over the meeting to me. I started by stating that based on my observations and in light of commitments to the coatings specification and ANSI requirements, there were areas for people to be concerned about at Comanche Peak. I went on to say that O. B. Cannon had extensive experience on nuclear projects and was familiar with various methods of satisfying ANSI requirements. At this point Ron Tolson asked me to identify specific problem areas or items. I described what I thought to be problems with material storage, painter qualification and indoctrination, possible documentation deficiencies, and morale problems. I went on to say that by their own estimate only 34 out of 452 individuals were of any value as painters. I also stated that more specifics could not be given without a thorough review or audit. Tolson indicated

that he did not want an audit.

I also stated that if quality work is put in place, then they would be a long way to resolving site problems. That is, no amount of inspection can inspect quality into the work. Further, I said that currently a "no win" situation exists on site between the craft and quality control, and even though this sounded corny, Brown & Root needed to develop a "win-win" situation. At this point Mr. Merritt was outspoken and agreed wholeheartedly.

The conversation then took off on the areas of assuring that individuals putting work in place are doing an adequate job or getting disciplined, and of improving morale. At one point, Ron Tolson was discussing what was being done to increase morale among production and quality control employees (a party or something along those lines). In response to a statement that the party had not been well attended by the quality control inspectors, I remarked that they sounded like a bunch of losers or words to that effect. I was referring to the fact that quality control personnel did not join the attempt to draw production and quality control employees together.

The meeting then centered on what, if any, changes C. B. Cannon would recommend for the coatings specifications. We recommended no changes at this time because a change this late in the game for Unit 1 would only confuse matters. It was agreed that Mr. Norris would recommend revisions to the specification with respect to the topic of painting touch-up. Problems with the quality of the compressed air supply used by the painters were discussed. It was agreed that John Norris would specify the proper equipment to correct the problem. After some additional conversation, the meeting ended.

Mr. Norris and I stayed in the same room and Mr. Merritt brought in Mr. George, the Texas Utilities vice-president in charge of engineering/construction. Mr. Merritt briefly summarized the first meeting, including mentioning that I had some concerns. After further discussion, Mr. Merritt directed us not to do any more work, other than recommend air equipment, until notified by Texas Utilities. He thanked us for our help and ended the meeting.

Q.12. Did you draft a report after returning from your trip to Comanche Peak?

A.12. Yes. On August 2, 1983, after returning to Philadelphia, I drafted a report, relying on notes I had made at the site, which I disposed of after writing the report. These notes contained details of my observations and the conversations I had with people at the site. I based the concerns enumerated in my trip report in large part on what I had been told by Mr. Mouser and quality control inspectors at the site. I had a certain level of confidence in their opinions and I had attempted to cross-check what I learned during my discussions with the various inspectors. In addition, I had attempted to confirm or disprove these statements by what personal observations I could make in the days I was on site. I based several general conclusions about the overall management of the quality assurance program on my impression of the attitude of Messrs. Tolson and Brandt as reflected in their conversations with me. This attitude seemed to me to lend credence to what I had been told by the inspectors.

Q.13. What did you do with the draft report?

A.13. I provided Ralph Trallo with a copy, which he marked with some comments and questions. After discussing

these with Ralph, I forwarded the marked copy of my draft to Robert Roth.

On August 8, Mr. Roth approved my draft for internal Cannon distribution. I made some minor changes to incorporate his and Mr. Trallo's comments. I gave the trip report a letter number and dated it to reflect its final form. I provided Mr. Roth a copy.

Q.14. Did you later return to the Comanche Peak site?

A.14. Yes. John Norris informed me there would be a meeting at the site on August 9. He said that he and Mr. Roth would attend and requested that I attend as well. We were to provide advice and assistance that might be useful to improve matters under the coatings program.

Mr. Roth and Mr. Kelly of EBASCO were asked to obtain information on the acceptance range for dry film thickness of Carbo-Zinc 11. I was asked to develop a procedure for the application of inorganic zinc paint with a topcoat of Phenoline 305 paint. Messrs. Roth and Norris agreed that I should stay over to get information from Mark Wells in order to

develop this procedure.

I arrived on site on August 10, 1983, and discussed with Mr. Wells the appropriate format and content for a work procedure. During that morning I allowed Mr. Mouser to read my August 8 trip report. I did not provide Mr. Mouser with a copy of the report.

Q.15. When did you hear about your trip report?

A.15. On October 3, 1983, Mr. Mouser told me that copies of the report were "popping up" around the site. He said that he would try to track down the source. A week later he still had no information on this subject. In response to my questions, he confirmed that I had not given him a copy and stated that he had not taken one from me.

Q.16. Did you tell anyone about Mr. Mouser's call?

A.16. No. I was busy on the Zimmer, Grand Gulf and Hope Creek projects, and the information conveyed by Mr. Mouser didn't seem important to me at the time.

Q.17. Do you know when other Cannon representatives learned that the trip report had come to the attention of personnel at the Comanche Peak site?

A.17. On October 10, John Norris called and told me that Mr. Merritt had asked him what my reasons were for believing that rework was necessary because the work in place was not salvageable. I had stated in the trip report that if Cannon should try to obtain a contract at the Comanche Peak site, this contract should be a rework contract as opposed to a continuation of the current work activities. What I was trying to explain was that the effort needed to save a portion of the work was a lot more than the effort needed to perform a complete rework from both a practical and paper work standpoint.

Norris asked me if the Comanche Peak retrofit program would lead me to change my opinion. I stated that the retrofit program may resolve my concern, but I have not reviewed any of the results and, therefore, I could not comment on the acceptability of the retrofit program.

Q.18. Did you become involved in these discussions?

A.18. Yes. On October 12, 1983, I was called into Mr. Roth's office. He was on the squawk box with Mr. Merritt. Merritt asked about my trip report, and Roth acknowledged that it existed, but emphasized that it did not represent the Company's position. During the conversation, Merritt asked him to read the portion of the trip report relating to the ability to accomplish any rework. Mr. Roth did so, but slightly modified the wording as described in Answers 12 and 13 of his testimony.

Q.19. Did Mr. Roth ask you to sign the revised report?

A.19. Yes.

Q.20. Why did he want you to sign the revised report?

A.20. I don't know for certain, but I think he may have felt that my signature was required to authenticate the report.

Q.21. Did you sign the revised report?

A.21. No.

Q.22. Why not?

A.22. Based on advice I received from relatives and Ralph Trallo, I decided that I would not sign the changed report. Although the changes were not important in my view, I felt that if I had signed the changed report, the existence of two versions of the same report might be interpreted by a third party as perjury or fraud. ~~In retrospect,~~ had the date been changed or the changes somehow marked, I would have signed the changed report.

Q.22.A. What was Mr. Roth's reaction to your refusal to sign the revised report?

A.22.A. At first Robert Roth just let the matter pass and didn't press the issue. However, in mid to late November 1983, he became more insistent on my signing the changed report. When I suggested that I would not commit perjury to explain the existence of two reports, Mr. Roth told me not to commit perjury. Thereafter, Mr. Roth asked me several times to sign the report. I refused each, time, and the matter was dropped.

Q.23. I notice that you detailed these events very carefully in your calendar diary. Why did you

maintain this diary?

A.24. I did so primarily on the advice of Messrs. Driskill and Griffin of the NRC. They had received a copy of my trip report and spoken with me about it several times. In mid-November 1983, I spoke with them again, and in the course of the conversation I believe I asked about what would happen if I was fired as a result of my trip report. I think the subject came up in the context of talking about Mr. Dunham's job security after he had spoken to NRC. Mr. Driskill said that they could not give me advice regarding my job status, but remarked that if he was in my position he would keep a detailed diary.

Q.25. Was your job or employment status threatened in any way by your refusal to sign the revised report?

A.25. No.

Q.26. Was your job or employment status threatened in any way by the fact that you had written the trip report and that it had leaked to the public?

A.26. No, but I think I perceived that this was the case at the time. In retrospect, I believe I was simply agitated and under a great deal of stress. This was primarily because of the November 9-11 events at the Comanche Peak site, in which attention was focused on me and my trip report. No one at Cannon said anything about my job being in danger, and in fact in December, when Cannon employees receive salary reviews, I received an annual increase and distribution of an incentive compensation plan in line with what I had received in prior years.

Q.27. Did you perform any further work in connection with the Comanche Peak project?

A.27. Yes. Mr. Roth spoke with me on November 4, 1983 about a meeting with Texas Utilities personnel which he had attended in Dallas on the previous day. He indicated that O. B. Cannon would perform a further review on site to satisfy the concerns raised in my trip report. Keith Michels and myself began to prepare a list of things to review in order to

resolve these concerns. We estimated that the review would take at least ten days. Mr. Roth instructed me that Mr. Michels and I would meet Mr. Norris on site on November 9 to begin performing a review or audit. Mr. Roth wrote a memorandum the same day establishing a Task Force, headed by Ralph Trallo, to carry on these further review activities. The memorandum listed areas to be reviewed, including some areas not addressed in my trip report.

Q.28. Did you return to the site to conduct this further review?

A.28. Yes. Mr. Michels and I traveled to the site area on the evening of November 8, 1983. We were to meet Mr. Norris for breakfast the following day and proceed to the site with him. I found out later he would be delayed.

When Mr. Michels and I arrived on site, I found that the badge I had been issued on my previous visit was no longer valid, and we had to wait at the gate. Mr. Merritt's secretary picked us up there and drove us to his office. We met with Mr. Merritt and gave

him the four-page list of items to review that we had prepared. Mr. Merritt seemed surprised and displeased by the extent of our list. He asked if Mr. Norris knew about the document and we replied that he did. Mr. Merritt wanted to know why Norris was not on site and he called Mr. Trallo to find out.

Mr. Merritt then escorted us to an empty office and told us to wait there. After about 30 minutes he escorted us back to his office. He told us to return to our hotel and await the arrival of Mr. Norris. He explained that there was some misunderstanding about the scope of work that O. B. Cannon was to perform and told us not to proceed until it was ironed out.

When I returned to the hotel I called Ralph Trallo and he instructed me not to return to the site before he arrived that evening. Norris arrived on site and called me, asking whether I wanted to begin reviewing documents. I told him of Trallo's instructions. I spoke with Trallo again, and he informed me that a meeting would be held on the following day to question me on my trip report. I told Ralph that I didn't want to discuss the report, but he pointed out that I couldn't really refuse the client's request.

Q.29. Did you attend this meeting?

A.29. Yes. When we arrived on site, Messrs. Trallo and Norris met briefly with Messrs. Merritt and Tolson. Then we all went into a conference room. Before the general meeting started, Mr. Trallo informed me that he had stated that I was not out to do Mr. Tolson in and said that he had only agreed to the meeting on the condition that it did not turn into a kangaroo court or a witch hunt. Mr. Merritt presided at the meeting and a stenographer was present with a tape recorder. I was extremely nervous and agitated, to the point that my hands were shaking. I had decided in advance to say very little because I was convinced that the purpose of the meeting was to railroad me into changing my opinion.

Q.30. What happened at the meeting?

A.30. The meeting consisted largely of Mr. Tolson describing how Comanche Peak satisfies the specification and regulatory requirements that led to the concerns raised in my trip report. I concluded that if these activities were being implemented properly, my concerns would no longer be valid. He also stressed the number of quality control audits that had been, and were being,

performed on site. He indicated that findings, if any, resulting from these audits were minor. If these audits were of sufficient scope and depth, my confidence in the adequacy of the coatings program would increase considerably. I, of course, could not tell whether the activities described by Tolson were actually taking place.

Following this meeting, the O. B. Cannon Task Force met alone and discussed what had occurred and what course of action we should take. We continued our discussions later that day, and everyone on the Task Force agreed that if the site management were doing all they said they were doing, we would have no concerns. We decided to accept the information and assurances given by Mr. Tolson and Co. at face value. We also agreed that without doing a thorough audit, we could not confirm what we had been told.

Q.31. Were you "railroaded" into changing your views?

A.31. No. Despite the stressful atmosphere at the meeting, what Tolson described was a reasonable approach to implement a quality program in the coatings area. If the people at Comanche Peak were doing what was described, then my concerns would be satisfied. Moreover, during conversations with members of the

Cannon Task Force after the meeting on the 10th, we discussed these matters in more relaxed surroundings. These discussions confirmed my own opinion of the views expressed by the Texas Utilities people.

Q.32. Did you meet with anyone else on November 10?

A.32. Yes. That afternoon I met with Mr. Griffin of the NRC at my motel, as we had previously agreed. He showed me a copy of a memo by Mr. Driskill of the NRC which indicated that my trip report had been provided to NRC personnel by an individual who had obtained it in a surreptitious manner. I assumed the use of the word "surreptitious" meant the trip report had been stolen.

Mr. Griffin asked about the meeting on site earlier that day. I described the format to him, and he asked if I just pretended to agree with whatever I was told in order to get out of the meeting. I explained that I had been extremely nervous and uncomfortable during the meeting, but that I honestly believed if Texas Utilities was doing everything they said they were, then I wouldn't have a problem with their quality assurance program. I noted, however, that I could not give an

opinion one way or the other as to whether they were in fact doing what they had told me.

Q.33. Did the Cannon representative meet with Texas Utilities again?

A.33. The following morning, November 11, we met briefly and Ralph Trallo delivered the consensus opinion of the Cannon Task Force.

Q.34. Did you prepare and sign an affidavit on September 28, 1984 addressing the concerns set forth in your August 8, 1983 trip report?

A.34. Yes.

Q.35. Have you recently reviewed that affidavit and the accompanying affidavit of C. Thomas Brandt?

A.35. Yes, at your request I have reviewed both affidavits to confirm whether or not I still hold the views indicated in my September 28 affidavit.

Q.36. What was the result of that review?

A.36. Sufficient technical information is provided in the Brandt affidavit so that I can reconcile in my mind the comments I made in the trip report. Consequently, with the exceptions noted below, I reaffirm the statements I made on September 28.

Q.37. What are the exceptions?

A.37. On page 8 of the affidavit I stated that with respect to the qualification of painters, I was satisfied that the concern indicated in my trip report was without basis, given the Brandt affidavit. Since the effective date of the pertinent forms attached to that affidavit are dated after my July 26-28, 1983 site visit, I cannot be certain they were in place at the time of my visit. Therefore, I am revising the statement on page 8 to the effect that I am presently satisfied that my concern on painter qualifications is without basis.

In the second paragraph on page 8 of my affidavit, I stated that based on the Brandt affidavit, QC inspectors conducted visual examinations of test panels. However, I am unable to confirm my statement on the

basis of the attachments to the Brandt affidavit. I should have asked for objective evidence on this point because rather than accepting assurances as I did during the meetings on November 10 and 11, I was interested in reviewing confirming documents at the time my September 28, 1984 affidavit was written. I assume that the documentation does exist on the practice of QC inspectors examining test panels.

I also note with respect to coatings integrity, the letters I refer to on page 10 of my affidavit were issued in 1976. In retrospect, it would be better if the coating manufacturer that issued the letters would confirm that their 1976 recommendations are still valid.

Finally, I am deleting the last sentence of the affidavit since by the time I wrote the trip report the QA overview requested of Cannon was completed.

Q.38. Can you explain why these matters were not clarified by you before you signed the affidavit?

A.38. I was simply careless in the case of the last sentence of the affidavit, the effective date of the inspector qualification forms, and in not requesting objective evidence of test panel examination by quality control inspectors. With respect to the need for confirming the 1976 letters, I evaluated the information presented by Mr. Brandt in terms of the applicable ANSI standards and other requirements, and since such confirmation is not required, I did not mention it. However, in response to my counsel's insistence that I cover every eventuality, I thought it would be appropriate to mention it at this time.

Q.39. Does the September 28, 1984 affidavit represent your voluntary viewpoint?

A.39. Yes. With the minor corrections noted, that affidavit represented my views then and represents them now with respect to my position on the concerns identified in my August 8, 1983 trip report.

1 CROSS-EXAMINATION

2 BY MR. ROISMAN:

3 Q Mr. Lipinsky, would you look at what has been
4 marked as Exhibit J JL-1, which is the signed copy of your
5 August 8, 1983 trip report.

6 A Yes.

7 Q Mr. Lipinsky, are the statements that are made
8 in there, as of the time they are made, true and correct
9 to the best of your personal knowledge?

10 A Yes.

11 Q We discussed earlier, Mr. Lipinsky, the question
12 of whether or not an audit was required before you would
13 be able to confirm or deny the concerns that you had
14 raised in the August 8, 1983 trip report. You testified
15 that no such audit has occurred; is that correct?

16 A Yes. That's correct.

17 Q And yet in the testimony which you -- excuse me --
18 in the affidavit which you have filed in support of the
19 applicant's motion for a summary judgment on the paint
20 coatings issue, with modifications as noted in your
21 prefiled testimony in this part of the proceeding, you
22 have satisfied yourself that those problems are not
23 present; is that correct?

24 A Yes. That's correct.

25 Q Okay. I now would like you to please explain as

1 fully as you wish to on the record, how you got from there
2 to here without the audit?

3 CHAIRMAN BLOCH: May I ask, Mr. Roisman, before
4 we do that, would it be helpful to have the testimony that
5 was filed in the other part of the proceeding in the
6 record here for reference?

7 MR. ROISMAN: That seems like a good idea,
8 Mr. Chairman.

9 CHAIRMAN BLOCH: Why don't you ask Mr. Lipinsky
10 if he accepts this as modified by his present testimony?

11 MR. ROISMAN: Okay. I'm just looking for my
12 copy of it.

13 BY MR. ROISMAN:

14 Q Mr. Lipinsky, do you have in front of you the
15 affidavit of Joseph J. Lipinsky, which has a signature on
16 the 18th page, and a "subscribed and sworn to before me
17 this 28th day of September, 1984"?

18 CHAIRMAN BLOCH: With an attached resume.

19 MR. WATKINS: Point of inquiry: Is that the
20 copy which we produced on Saturday or was that part of the
21 September 27th filing? Because they were both executed,
22 as I recall. Changes were made to the one we produced on
23 Saturday --

24 MR. ROISMAN: The one that I have is the one I
25 believe was filed with the motion for summary disposition

1 which includes a stamp, "Daniel F." -- stamp underneath
2 the signature of the notary, and a typed line below all
3 the signatures that says: "This is a telecopy facsimile.
4 The original will be sent under separate cover." I
5 believe it was served on the parties by hand during the
6 course of the meetings in Fort Worth, the hearings in Fort
7 Worth.

8 MR. WATKINS: I just wanted to make sure you
9 didn't have the draft.

10 MR. GALLO: Excuse me, I'm not sure that
11 Mr. Lipinsky has the version Mr. Watkins referred to.

12 CHAIRMAN BLOCH: Let's go off the record.
13 (Discussion off the record.)

14 CHAIRMAN BLOCH: Let's go back on the record.

15 BY MR. ROISMAN:

16 Q Mr. Lipinsky, you have in front of you the
17 affidavit of Joseph J. Lipinsky, which on the last page
18 has on it all the markings that I indicated previously; is
19 that correct?

20 A Yes, I do.

21 Q With the corrections which are contained in your
22 prefiled testimony which was just received in evidence a
23 moment ago, to the testimony in the affidavit, do you
24 accept the statements contained in the affidavit as true
25 and correct to the best of your personal knowledge?

1 MR. GALLO: Your Honor?

2 CHAIRMAN BLOCH: Mr. Gallo?

3 MR. GALLO: I'm not sure that all of the so-called
4 exceptions that are recorded in his prefiled testimony are
5 reducible to clear amendments to the affidavit. It may be
6 necessary to sort that out. And I'm thinking in
7 particular --

8 CHAIRMAN BLOCH: Why don't we allow you to go
9 through this and clarify with the witness whether he
10 subscribes to this, without leading questions?

11 MR. ROISMAN: Do that now?

12 CHAIRMAN BLOCH: I think that would be best. We
13 can interrupt the order and let Mr. Gallo do it.

14 MR. ROISMAN: Okay. That's fine.

15 DIRECT EXAMINATION (Resumed)

16 BY MR. GALLO:

17 Q Mr. Lipinsky, you have been asked whether or not
18 the September 28 affidavit, as modified by your prefiled
19 testimony, is accurate and true as of this point.

20 CHAIRMAN BLOCH: Mr. Gallo, why don't we go
21 through it a page at a time and let him make each of the
22 corrections so we understand what the differences are
23 between what he filed and what he now believes.

24 MR. GALLO: Fair enough.

25

1 BY MR. GALLO:

2 Q Mr. Lipinsky, turn to your prefiled testimony,
3 page 29.

4 CHAIRMAN BLOCH: Can't you just go through the
5 affidavit rather than the prefiled testimony?

6 MR. GALLO: The prefiled testimony tells me
7 where the revisions are. Without that I wouldn't be able
8 to proceed.

9 CHAIRMAN BLOCH: Okay.

10 BY MR. GALLO:

11 Q In answer 37, you enumerate a number of changes
12 that you are making with respect to the affidavit.

13 Would you start with the first one and explain it and
14 then move to the second and explain it for the benefit of
15 the board and the parties?

16 A Using my testimony that was filed today?

17 Q Yes. Answer 37?

18 A Okay. On page 8 of my affidavit, I had stated,
19 you know, with respect to the painter qualifications, that
20 I wanted to see -- that I was satisfied with the concerns
21 that I had raised as a result of information provided by
22 Mr. Brandt. Subsequent to this affidavit, what I have
23 done is, I have reviewed that information provided by Mr.
24 Brandt and in the course of that review I found that the
25 information provided by Mr. Brandt was dated after my site

1 visit. That's in one of the appendices of Mr. Brandt's
2 affidavit.

3 As a result of that, you know, I'm not certain that
4 what he told me was in fact in place when I was on-site.
5 What he provided me was adequate, but because of the dates
6 on the material, I don't know whether or not --

7 Q All right, Mr. Lipinsky. Look at page 8 of the
8 affidavit.

9 A Yes.

10 Q Is the sentence in question the last sentence of
11 the first paragraph?

12 A I'm satisfied, based on what Mr. Brandt told me,
13 accepting what Mr. Brandt told me at face value. The
14 ground rule is I can't prove whether or not Mr. Brandt
15 was --

16 Q Right now, tell me how you would -- given your
17 comment in your prefiled testimony on page 29, tell me how
18 you would revise the sentence in the affidavit in the
19 manner consistent with what you say in your prefiled
20 testimony.

21 A I would revise it to the effect that: I'm
22 currently satisfied with apparently what Comanche Peak is
23 doing with regard to painters qualifications. However, I
24 don't know whether that information or that procedure, if
25 you will, was in effect at the time of my site visit,

1 based on the dates given, on that information provided by
2 Mr. Brandt.

3 CHAIRMAN BLOCH: He probably would have told you
4 if it was in effect on that date; do you believe that?

5 THE WITNESS: My premise with regards to
6 Mr. Brandt's affidavit is I have no reason -- the fact
7 that I'm to take what he says at face value.

8 CHAIRMAN BLOCH: In other words, it went into
9 effect after the date that you were there?

10 THE WITNESS: He didn't make that statement, no,
11 sir, that it was in effect after he was there. I just
12 noted on the forms that the dates were subsequent to my
13 July visit.

14 MR. GALLO: I don't know how we can proceed very
15 effectively, your Honor.

16 CHAIRMAN BLOCH: Just continue.

17 MR. GALLO: It's clear to me that these, the
18 last sentence in the first paragraph, needs changing.

19 CHAIRMAN BLOCH: Okay. He said that. You don't
20 have to bother about how it is to be changed. He
21 explained what his problem was. You don't have to explain
22 each word.

23 MR. GALLO: All right. On that basis we'll go
24 forward.

25

1 BY MR. GALLO:

2 Q Go to the next item?

3 A Again on page 8 of my affidavit, I went ahead
4 and based on the information provided by Mr. Brandt to the
5 effect that the QC inspectors do in fact perform a visual
6 examination of the test panels -- however, with regard to
7 the same information that was provided by Mr. Brandt,
8 there is no place or any objective evidence indicating
9 that the QC inspector or inspectors had in fact performed
10 some type of visual examination. There's no objective
11 evidence to support that the QC people looked at the
12 panels in question.

13 CHAIRMAN BLOCH: Does the testimony of Brandt
14 indicate when procedures for having the craft people paint
15 test panels first went into effect?

16 THE WITNESS: I don't believe so; no, sir.

17 CHAIRMAN BLOCH: So is it clear to you whether
18 or not it was in effect when you were there the first time?

19 THE WITNESS: I might go back on that, on the
20 previous answer. In fact, Mr. Brandt may have said that
21 the procedures were in effect at the time of my site visit.
22 I seem to recall something like that in his affidavit, in
23 the introductory section of it.

24 However, the information he provided on painter
25 qualifications was all dated -- and I'm guessing on the

1 dates, I mean don't hold me to that -- I think they were
2 January of '84, something like that. Maybe not that far
3 along.

4 CHAIRMAN BLOCH: Do we have Mr. Brandt's
5 affidavit so the witness can refresh his recollection and
6 tell us whether he thinks the painting of panels was in
7 effect at that first time? I would like to reiterate
8 counsel's suggestion: Don't answer until you are sure you
9 know what the right answer is.

10 Are you ready to answer?

11 THE WITNESS: Yes, sir. The dates on the
12 certification forms provided one -- there were three forms
13 provided. The first date was October 23rd of '83, and the
14 second two were 5/18/84. All three were subsequent to my
15 initial site visit.

16 CHAIRMAN BLOCH: So as far as you know, the
17 painting -- the crafts people were not, at least as far as
18 Mr. Brandt's affidavit helps you, you don't know now that
19 the test panels were painted at the time that you were at
20 the site the first time? That there was a practice of
21 having crafts people paint test panels at all at the time
22 you were at the first site -- the first time?

23 THE WITNESS: The documentation he provided
24 doesn't substantiate that; that's correct, sir.

25 CHAIRMAN BLOCH: And you have no other

1 information to substantiate that, do you?

2 THE WITNESS: Actually I have Mr. Brandt's
3 affidavit to substantiate that the painters were in fact
4 qualified.

5 CHAIRMAN BLOCH: But which section says that the
6 painters were qualified at the time you were there the
7 first time --

8 MR. GALLO: Judge Bloch, you have to let the
9 witness finish his answer. He's under enough pressure --

10 CHAIRMAN BLOCH: I agree. And I want you
11 especially to interrupt me. Really. Because you should
12 not take any special concern for the fact that I'm the
13 judge. It's very important that if you think I'm pushing
14 you too much, that you object. I will not mind it at all.

15 MR. WATKINS: To further complicate things,
16 could I ask the witness what appendix he was just
17 referring to?

18 THE WITNESS: I'm sorry. Appendix J.

19 MR. WATKINS: And the dates were?

20 THE WITNESS: 10/23 -- yes -- 10/23 -- 83. And
21 the other two were both 5/14 -- excuse me, I'm sorry. One
22 was 5/14/84. And the third one was 5/18/84.

23 MR. WATKINS: Thank you.

24 CHAIRMAN BLOCH: The question is where in Brandt's
25 testimony -- were you saying something else that I

1 interrupted?

2 THE WITNESS: What I was trying to get across
3 there was essentially I -- one of the ground rules with
4 this testimony was that I accept Mr. Brandt's
5 representations at face value. I mean, he's --

6 CHAIRMAN BLOCH: Which representation?

7 THE WITNESS: My understanding was that these
8 were in effect at the time of my site visit.

9 CHAIRMAN BLOCH: Where does it say that in his
10 statement?

11 THE WITNESS: I don't know that it does, sir. I
12 know it does with regard to procedures. With regard to
13 painter qualifications, I don't know that he makes a
14 definite statement to that effect.

15 CHAIRMAN BLOCH: Does he or doesn't he? I want
16 to know.

17 THE WITNESS: I don't know, sir.

18 CHAIRMAN BLOCH: So at this point, you don't
19 know whether the painting procedures were in effect at the
20 time you were on the site? The painting of the test
21 panels?

22 THE WITNESS: That's correct; yes, sir.

23 CHAIRMAN BLOCH: Either from the affidavit or
24 from the accompanying materials?

25 THE WITNESS: That's correct; yes, sir.

1 MR. GALLO: Well, objection.

2 CHAIRMAN BLOCH: Please, just ask another
3 redirect question, if you want.

4 MR. GALLO: The best evidence, whether he knows
5 or not, he should be allowed to refresh his memory by
6 referring to the Brandt affidavit.

7 CHAIRMAN BLOCH: I did. He may look at it as
8 long as he wants.

9 You may look at it.

10 And, in fact, Mr. Gallo, if there's a portion you would
11 like to call to his attention you may do that.

12 MR. GALLO: All right. Thank you, your Honor.

13 MR. TREBY: May Staff call his attention to
14 footnote 1 on page 2?

15 CHAIRMAN BLOCH: Surely.

16 THE WITNESS: All right.

17 MR. WATKINS: Footnote 1 of page 2 of what?

18 MR. TREBY: Brandt's affidavit.

19 CHAIRMAN BLOCH: You might read it for me if you
20 decide it's the applicable statement.

21 THE WITNESS: Yes. It's definitely the
22 applicable statement.

23 CHAIRMAN BLOCH: What does it say?

24 THE WITNESS: "All quality procedures and
25 construction procedures referred to, discussed in, and

1 attached to this affidavit were in effect in late July,
2 1983, at the time of Mr. Lipinsky's visit to the site.'

3 CHAIRMAN BLOCH: The attached later version?

4 MR. WATKINS: Your Honor, I suggest for the
5 board, to speculate without having this document in front
6 of them is error. The three documents --

7 CHAIRMAN BLOCH: I just want to know whether
8 Mr. Lipinsky is satisfied. That's my concern right now.

9 MR. WATKINS: So the record is clear, the
10 documents to which he referred were forms for
11 certification of painters. They weren't procedures. And
12 what it meant was the painters underwent the certification
13 on that date. Isn't that correct?

14 THE WITNESS: Yes.

15 CHAIRMAN BLOCH: Did you mean once again the
16 applicant submitted testimony about procedures instead of
17 procedures? We have been trying to get you to actually --

18 MR. WATKINS: The issue to which Mr. Lipinsky
19 and Mr. Brandt testified was: Did the painter
20 certification form -- the form meet ANC requirements? And
21 we compared it in Appendices J and K, I believe. We
22 compared the actual forms used at Comanche Peak with the
23 sample forms entitled "ANSI."

24 CHAIRMAN BLOCH: But the forms were at the time
25 Mr. Lipinsky was at site?

1 MR. WATKINS: I don't believe that is true. The
2 painters were certified at a time later than when
3 Mr. Lipinsky was on-site. Excuse me.

4 We'll offer to try to get a copy of this xeroxed so you
5 can have it in front of you. I think it would make a
6 difference.

7 JUDGE GROSSMAN: Mr. Lipinsky, I just want to
8 refresh my recollection on what you just said, what your
9 understanding was with regard to the premise for your
10 affidavit. Was it your understanding that you should
11 accept in toto whatever Mr. Brandt indicated without
12 question, even if in your own mind there might be some
13 question? Is that basically -- are those basically the
14 ground rules under which you were operating?

15 THE WITNESS: Yes. Essentially I was to -- if
16 Mr. Brandt provided me with a procedure that identified
17 the concerns I had raised and said that this is our
18 procedure for handling storage materials, for example, and
19 that procedure addressed my concerns, then that is the
20 limit of it. I don't know whether they are implementing
21 that procedure or not, just that that procedure identifies
22 my concerns and resolves those concerns.

23 CHAIRMAN BLOCH: Mr. Gallo, you can continue.

24 BY MR. GALLO:

25 Q Now, Mr. Lipinsky, I believe the next item in

1 your prefiled testimony is referred to in the second full
2 paragraph on page 30?

3 A Yes.

4 Q Can you explain what that was related to?

5 A This paragraph dealt with the coating integrity
6 items I had raised with regards to the surface preparation
7 on epoxy coatings and on the sanding of zinc-rich primers.

8 The letter -- the utility has letters from the
9 manufacturer which addresses both of these situations.
10 The manufacturer doesn't have a problem with the situation
11 or the procedures in use at Comanche Peak with regards to
12 the surface preparation or the sanding on zinc-rich
13 primers. However, the one thing I noted was that the
14 letters are dated 1976, and though there is no requirement
15 to do so, I would be a little more comfortable if the
16 manufacturer was contacted in 1984 and repair procedures
17 or the sanding or whatever it is was addressed to the
18 manufacturer in today's environment.

19 CHAIRMAN BLOCH: Is that because you have a
20 technical opinion as to whether or not this is actually a
21 correct position?

22 THE WITNESS: My own work experience with these
23 products, similar products: Yes, I'd say.

24 CHAIRMAN BLOCH: Please continue, Mr. Gallo.

25

1 BY MR. GALLO:

2 Q Mr. Lipinsky, with respect to the matter that
3 you just discussed, does the fact that these letters were
4 dated in 1976 cause you to change the affidavit in any
5 respect?

6 A No. There is no requirement to get the letters
7 or manufacturers instructions updated that I'm aware of.

8 Q When you say "there's no requirement," what do
9 you mean?

10 A With regard to ANSINC standards, there's no
11 requirement to get a regular review, that I am aware of,
12 by the manufacturer with regards to application
13 instructions.

14 CHAIRMAN BLOCH: Was there a change that came
15 about as a result of Three Mile Island and that the
16 Nuclear Regulatory Commission required about coatings
17 after 1974? Excuse me after 1976?

18 MR. WATKINS: That's a broad question. your
19 Honor. We'll object unless you can relate it to this
20 specific surface preparation issue that Mr. Lipinsky was
21 discussing.

22 CHAIRMAN BLOCH: With respect to this particular
23 type of surface preparation issue; could it have affected
24 the validity of the letter?

25 THE WITNESS: Not that I am aware of, sir.

1 CHAIRMAN BLOCH: So that were the same
2 requirements for LOCA after '76 as before?

3 THE WITNESS: I'm not familiar with that.

4 CHAIRMAN BLOCH: But you are familiar with the
5 Nuclear Regulatory Commission regulations on coatings,
6 aren't you?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN BLOCH: You just don't know whether
9 they changed the regulations on environmental regulation
10 coatings?

11 THE WITNESS: Normally our organization doesn't
12 get involved in the dba testing aspect. That's more the
13 responsibility of the coating manufacturer or an
14 architect/engineering-type firm.

15 BY MR. GALLO:

16 Q Mr. Lipinsky, you mentioned the ANSI standards.
17 Is that the same as the Nuclear Regulatory Commission
18 standards referred to by Mr. -- by Judge Bloch?

19 A I don't know. I'm not sure. Maybe Judge Bloch
20 can clarify exactly what standards he's referring to.

21 Q So you don't know what standards Judge Bloch was
22 referring to when he posed his question?

23 A Yes. That's true.

24 CHAIRMAN BLOCH: I was referring to the witness'
25 knowledge as to whether there were changes. I don't know

1 for sure there were changes but you are an expert in this
2 area. I wanted to know if you knew there were changes.

3 THE WITNESS: Not that I know of; no, sir.

4 Although I'm not -- if there are specific documents, I'm
5 not sure what we are quoting I guess is --

6 MR. GALLO: I think Mr. Watkin's point is well
7 taken. We are embarking on some general inquiry that none
8 of us know about. We have to be more specific.

9 CHAIRMAN BLOCH: Continue, then.

10 BY MR. GALLO:

11 Q Mr. Lipinsky, with respect to the previous
12 matter you testified to, that is the matter identified at
13 the top of your testimony on page 30 about seeking
14 objective evidence -- do you see that?

15 A Yes, sir.

16 Q Does the fact that you do not have objective
17 evidence cause you to change your affidavit?

18 A No. No, it does not. The reason being, it's
19 possible that the quality control inspection, or the
20 objective evidence of quality control inspectors observing
21 or visually examining the test panels of the applicators
22 could be on another type form or it could be handled in
23 another manner that was not identified in Mr. Brandt's
24 affidavit.

25 Q As I understand the last paragraph in your

1 answer 37, you are deleting the last sentence of the
2 affidavit; is that correct?

3 A Yes.

4 Q By my count, you made two changes to the
5 language in the affidavit. One is deleting the last
6 sentence of the affidavit, and the other is deleting or
7 revising, in some form yet to be determined, the last
8 sentence in the first paragraph on page 8. Now, is that
9 correct?

10 A Yes.

11 Q I want you to take your time before you answer
12 this question. Are there any other changes to the
13 affidavit that you believe necessary at this time?

14 CHAIRMAN BLOCH: Before he does that, you
15 haven't asked him to explain why he was dropping that last
16 sentence. I'm kind of curious about that.

17 MR. GALLO: I believe it's addressed in answer
18 38 of his testimony, but I have no objection, of course,
19 to the witness telling the Court the answer to that
20 question.

21 BY MR. GALLO:

22 Q Why did you delete the last sentence of your
23 affidavit?

24 A Okay. Again, we do explain it in answer 38.
25 The main basis for that, with regard to the last sentence

1 on page 18, was in fact as of July 28, '83, there was no --
2 Mr. Merritt indicated that was the end of our services.
3 He didn't require any more work from O.B. Cannon at that
4 time.

5 CHAIRMAN BLOCH: That's not quite what he said,
6 is it? He didn't quite say that, according to your trip
7 report. Do you want to look at your trip report?

8 THE WITNESS: On page 3, sir, are you referring?

9 CHAIRMAN BLOCH: Yes. It's in sub-B in the
10 middle of the page.

11 THE WITNESS: Yes, sir.

12 CHAIRMAN BLOCH: Didn't say you were going to do
13 any more work.

14 THE WITNESS: That may have been a poor choice
15 of words. He directed us to do no more other than the
16 recommended alternative air supply until we were notified.

17 CHAIRMAN BLOCH: Was it possible that you
18 thought that there was more work to be done at that time?

19 THE WITNESS: No, sir.

20 CHAIRMAN BLOCH: Despite the fact that he would
21 have to notify you?

22 THE WITNESS: That's possible, yes, sir, in that
23 context. Yes.

24 CHAIRMAN BLOCH: Particularly because there was
25 still money to be spent on the direct costs of the

1 contract?

2 MR. WATKINS: Objection, that has not been
3 established in this case.

4 CHAIRMAN BLOCH: That's okay. It's a
5 cross-examination question. If you don't think it's right,
6 you may correct it.

7 THE WITNESS: What was the --

8 MR. GALLO: It has not been established that
9 this witness was aware that there was money left in the
10 contract.

11 CHAIRMAN BLOCH: He can tell me that.

12 THE WITNESS: That in fact is the --

13 CHAIRMAN BLOCH: Were you aware that there was
14 in fact money left to be expended on direct expenses in
15 the contract as of the time that you were notified that
16 Mr. Merritt had to give specific notification?

17 THE WITNESS: No, sir.

18 CHAIRMAN BLOCH: You were not aware there was
19 money left?

20 THE WITNESS: No.

21 CHAIRMAN BLOCH: There was no reason for you to
22 believe at the time you wrote your trip report that there
23 would be more work under the contract?

24 THE WITNESS: I thought we were done, yes.

25 CHAIRMAN BLOCH: Did you write this sentence or

1 did counsel suggest this sentence to you, on page 18?

2 THE WITNESS: With regards --

3 MR. GALLO: What sentence are we talking about,
4 your Honor?

5 CHAIRMAN BLOCH: The sentence we are dropping
6 from the affidavit.

7 THE WITNESS: What counsel are we referring to,
8 sir?

9 CHAIRMAN BLOCH: Counsel for Applicants, who you
10 may have thought was acting for you at that time or may
11 not have.

12 At this time, he didn't think he was. It's just
13 Applicant's counsel.

14 THE WITNESS: I'm not sure I follow your
15 question, sir; I'm sorry.

16 CHAIRMAN BLOCH: Whose language was it that's
17 being dropped? Was it originally your language or their
18 language?

19 THE WITNESS: This affidavit is pretty much an
20 end product of a series of -- I'm trying to attempt to
21 answer your question -- was an end product of a series of
22 drafts of affidavits that started pretty much as an
23 interview situation with Mr. Reynolds, I believe, on
24 November 22. That's pretty much when this initiated as a
25 result of that interview.

1 CHAIRMAN BLOCH: You can't remember where this
2 language comes from? It's this particular language I'm
3 concerned with, not the history. You'll get to that in a
4 second with Mr. Roisman. If you can't remember where it
5 comes from, say you can't remember. If you can remember,
6 say. Did it come originally from you or from counsel or
7 you don't remember?

8 THE WITNESS: It wasn't my language; no, sir.
9 However, I did, you know, comment to them, this affidavit.
10 So, in that respect it is.

11 CHAIRMAN BLOCH: So the language was not yours?

12 THE WITNESS: No, sir.

13 CHAIRMAN BLOCH: Okay. Mr. Gallo, please
14 continue.

15 BY MR. GALLO:

16 Q The question, Mr. Lipinsky, that I asked that
17 you didn't answer was that by my count there are -- and by
18 your testimony -- there are two actual changes to the
19 affidavit that you are intending to make. One is deleting
20 the last sentence of the affidavit. The other is revising,
21 in some form not yet determined, the last sentence in the
22 first paragraph of page 8.

23 My question is, are there any other changes that you
24 would like to make at this time?

25 A Not that I know of; no.

1 MR. GALLO: I believe now after this process,
2 Judge Bloch, we've clarified the changes that would now
3 fit into Mr. Roisman's question, which was that, as
4 amended by his testimony. I have nothing further.

5 CHAIRMAN BLOCH: So, as amended, does this
6 affidavit now fully reflect the truth and the whole truth?

7 THE WITNESS: To my knowledge; yes, sir.

8 CHAIRMAN BLOCH: Then it may be bound into the
9 transcript at this point as if read.

10 (The document follows:)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
TEXAS UTILITIES ELECTRIC)	Dockets Nos. 50-445 and
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)

AFFIDAVIT OF JOSEPH J. LIPINSKY

My name is Joseph J. Lipinsky. I am employed by O.B. Cannon & Son, Inc., 5600 Woodland Avenue, Philadelphia, PA 19143. A statement of my educational and professional qualifications is attached to this affidavit.

On July 26, 27 and 28, 1983, I visited Comanche Peak Steam Electric Station to evaluate certain aspects of the Applicants' coatings program. After that short site visit, I prepared a Trip Report. I understand that a copy of the Trip Report has been submitted to the Board in this proceeding. Because the observations and conclusions in the Trip Report no longer represent my views or the views of O.B. Cannon & Son, this affidavit will discuss in some detail each of the areas mentioned in the Trip Report.

CIRCUMSTANCES OF MY VISIT
TO COMANCHE PEAK

I understand that Applicants retained O.B. Cannon during the summer of 1983 to evaluate certain aspects of the Comanche Peak coatings program, including observation and analysis of production, work procedures, scheduling, training and painter qualification, quality assurance, management, and specifications. In early July, the president of O.B. Cannon, Mr. Roth, instructed me to become involved in Cannon's efforts and to visit the site to provide additional input.

My initial visit to Comanche Peak was July 26 through July 28, 1983. On July 26, I met Mr. C.T. Brandt and several other individuals involved with the coatings program. We briefly discussed the purpose of my visit and I described how we would proceed. I then proceeded to tour the site and observe various activities related to the coatings program. I talked with several individuals to familiarize myself with the activities. We discussed the job status, project conditions and work activities. The majority of my time on July 26 was spent in the containment building for Unit 1.

On July 27, I returned to the site and continued with my review of the containment building for Unit 1. I observed work on the polar crane and dome. I then had about a 10-minute meeting with Messrs. Tolson and Brandt.

On July 28, I met with Mr. John Norris, who is an O.B. Cannon Vice-President in Houston, to discuss my observations. I then reviewed the FSAR commitments and other documentation. Finally, I participated in an exit interview. I expressed a few concerns regarding material storage, painter qualification, compliance with ANSI requirements and possible coatings integrity. Mr. Tolson asked me to provide specifics on these points, and I told him that I was unable to do so without conducting an in-depth review. The meeting was then concluded, and Mr. Norris, Mr. Merritt and I met with Mr. Joe George, the TJSI Vice President in charge of construction. (I mistakenly identified Mr. George as Mr. Church in my August 8 memorandum.) Mr. Merritt summarized the exit interview for Mr. George.

-

THE TRIP REPORT

On July 28, I returned to my office in Philadelphia and drafted Trip Report OBC Job No. H8301 (Comanche Peak Unit 1--Glen Rose, TX). After the report was finalized on August 8, I provided copies of it to Mr. Roth and Mr. Norris. This document was intended for use strictly in-house, by O.B. Cannon. To my knowledge, Applicants did not become aware of the existence of my Trip Report until mid-

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October, when Mr. Merritt called Mr. Roth and asked for a copy. Mr. Roth sent Mr. Merritt a copy of the Trip Report on October 12.

When I prepared the Trip Report, I was not aware that the Report would be distributed publicly or that it would be submitted as evidence in hearings before the NRC. Had I been aware of the pendency of this case and the ramifications of my Trip Report, I would have more carefully and aggressively pursued the concerns I expressed in that report before memorializing those concerns in writing. I also would have been more assertive in my dealings with site management so that my concerns were known and addressed to my satisfaction at that time. Finally, had I known that the Trip Report might be considered to be my final views on the adequacy of the Comanche Peak coatings program, I would not have prepared the Report because I did not have sufficient information to make final judgments. In fact, at the time I received my assignment to visit the site in late July, I believed that three days was insufficient time for me to evaluate adequately the coatings program.

I do not know how my Trip Report became public. I understand that the NRC has concluded that it was "surreptitiously" taken by someone who provided it to the NRC. I assume that the word "surreptitiously" taken means that it was stolen. If the Report was taken from me it was so taken without my knowledge or consent.

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CURRENT STATUS OF THE
TRIP REPORT

I conducted an additional site visit in early November, at which time, in extended conferences, Applicants provided me with detailed information relating to each of the issues that I had earlier identified in my August 8 Trip Report. Applicants have subsequently provided me with additional information and documentation as to those issues. The specific issues identified in my Trip Report are materials storage, workmanship, coatings integrity, and inspector morale. Had I possessed, at the time, the information that has now been presented to me, I would not have expressed the concerns that I did in the Trip Report. This affidavit discusses each of the issues and statements identified or contained in the Trip Report.

MATERIALS STORAGE

When I first visited the Comanche Peak site I was looking at certain things that, to me, would indicate good materials storage practices. I looked for such things as status indicator tags (accept tags), reject areas and hold areas. Reject areas are locations where coating materials that have been rejected are stored. Hold areas are locations where coating materials of indeterminate quality are stored. I saw no indications of the use of status tags, and

I saw no reject areas or hold areas. Further, regarding the¹⁹⁷⁵¹ control of coating materials in general, I saw no system of tracking for control of mixed materials.

I have reviewed the affidavit of C. Thomas Brandt regarding the Comanche Peak procedures for coatings storage and control. Having reviewed his affidavit and supporting documentation, I am satisfied that the procedures at Comanche Peak used to track and document satisfactory coating materials satisfies the requirements of ANSI 101.4 and Appendix B. Had I been familiar with these procedures at the time of my site visit, I would not have criticized these aspects of materials storage and traceability in my August 8 Trip Report.

Specifically, I now know that the reason that I did not see reject areas or hold areas was because these areas are located at the Receiving Warehouse, which I did not visit while on site. With respect to traceability, I now understand that storage, mixing, and use of coating materials are fully overseen and documented by QC personnel. Again, had I been familiar with these procedures at the time that I wrote my August 8 memorandum, I would have had no basis on which to criticize Applicants' methods of handling mixed coating materials. Based on my current understanding of the Comanche Peak storage and traceability program, I have no criticisms of practices and procedures utilized by Applicants.

WORKMANSHIP

My August 8 Trip Report identified workmanship as a problem at Comanche Peak. The only basis for this criticism was my observation of sags and runs in applied film. What I saw was, however, really was no different from what I have seen at most other job sites involving construction of nuclear power plants. Sags and runs are typically encountered in cured films. They may be acceptable or unacceptable, depending on the requirements of the relevant procedures and specifications.

I have reviewed Mr. Brandt's affidavit regarding the Comanche Peak procedural requirements for dry film thickness (DFT) readings. According to Mr. Brandt, areas that include sags and runs are routinely inspected by QC inspectors for compliance with the relevant requirements. If, therefore, a sag or run would cause rejection of the coatings work in question, Comanche Peak procedures would require either rework or disposition by engineering as acceptable. I am satisfied that Applicants have addressed any problems that sags or runs might present in procedures.

PAINTER QUALIFICATION AND
INDOCTRINATION

During my site visit in July, 1983, I was told by one or more QC inspectors that Applicants did not qualify painters by actually requiring the application of coating material as a test for competence. This information, however, was erroneous. On a subsequent visit to Comanche Peak I observed craft personnel undergoing testing by applying zinc primer to test panels. I have also reviewed Mr. Brandt's affidavit regarding qualification of painters. Based on his discussion, I am satisfied that my original misapprehension was without basis.

I was also concerned, when I prepared my Trip Report, that the QA/QC organization did not monitor qualification processes for craft painters. I now understand from Mr. Brandt's affidavit that QC inspectors conduct visual examination of the test panels coated by the craft during the qualification and indoctrination program. I believe that this overview by QC is appropriate and important because it assures that the craft painters can apply the film in a manner that meets quality requirements.

In sum, I am now satisfied that my original impressions regarding the qualification and indoctrination of craft painters was erroneous.

ADEQUACY OF DOCUMENTATION

My August 8 Trip Report also mentioned documentation deficiencies as a concern. The areas on which I had focused were painter qualification forms and Inspection Reports (IRs). In order to meet ANSI standards the program must assure that pertinent data is recorded regarding both painter qualification and daily inspections. My conversations with a few individuals made me concerned that Applicants' painter qualification forms and IRs did not provide for a recording of all pertinent information. I do not recall whether this concern was triggered by actual review of these documents; my impression is that this observation was based on discussions with QC inspectors.

I have reviewed Mr. Brandt's affidavit with respect to Applicants' painter qualification forms and IRs. I have also reviewed the sample painter qualification forms and IRs attached to his affidavit. I am satisfied that Applicants' use of both forms complies with ANSI standards, and that my impression to the contrary, based on a very short visit to the site without any in-depth review of this documentation, was erroneous.

COATINGS INTEGRITY

My August 8 Trip Report indicated possible concerns with coating integrity. My specific concerns are listed in Paragraphs E and F of Page 4 of the Report, which address Applicants' practice of power grinding CZ-11, and applying new Phenoline 305 over old Phenoline 305 without extensive surface preparation. These observations were not based on a study of the specifications for the coatings systems, and were simply my observations based upon what I saw in the field. I now understand from Mr. Brandt's affidavit that Applicants have raised each of these issues with the coatings manufacturer, and I note that the manufacturer has approved these practices in writing. The manufacturer's approval of these practices satisfies any concerns that I might have had.

MORALE PROBLEMS

The basis for my concern that morale problems existed at Comanche Peak was my discussion with several QC inspectors. Management at the site acknowledged that morale was not high, and stated that they were taking steps to rectify the matter. I have no basis for concluding that morale at

the site was detrimental to quality. I believe that the most important thing is that management is aware of the situation and is taking steps to rectify it.

MANAGEMENT'S COMMITMENT
TO QUALITY

When I prepared my August 8 memorandum, my impression was that Comanche Peak management was disinterested in quality and actually attempted to discourage efforts to report quality problems. I have concluded that my initial impression was based on misinformation and was erroneous.

I had a brief discussion with TUGCO's quality assurance manager, Ronald G. Tolson, on July 27, 1983. I attempted to discuss with him a few concerns regarding quality matters. I learned later that he understood my comments to relate to licensing questions. Mr. Tolson stated that he was not concerned with licensing questions, but my impression was that he was expressing disinterest in quality matters. I was frankly very surprised with his comment (as I then interpreted it) but did not pursue it with him at that time. Subsequent discussions with Mr. Tolson convinced me that my original impression (as reflected in the Trip Report) was incorrect and that he is in fact sincerely concerned about the quality of the project without regard to the licensing proceeding.

My impression that management at Comanche Peak discouraged efforts to report quality programs was principally based on my understanding (from what I was told by QC inspectors) that coatings inspectors were not permitted to use non-conformance reports (NCRs). As noted above, I further believed at the time that the IRs used at Comanche Peak did not adequately document non-conformance conditions. I did not review the Comanche Peak quality procedures to verify the inspectors' claims. I now understand, however, based on Mr. Brandt's affidavit, that inspectors are not precluded from using NCRs in appropriate circumstances, and further that the IRs used at Comanche Peak are fully adequate to document non-conformance conditions. In my judgment, this approach is acceptable from a quality assurance standpoint. Indeed, O.B. Cannon & Son uses a similar program in its work at other nuclear plants.

Based on my discussions with site management subsequent to August 8, I now believe that management is concerned and dedicated to maintaining quality as to the project coating program and that management encourages the reporting of non-conforming conditions or any other quality concerns.

BROWN AND ROOT'S
HOSTILITY TO AUDITS

When I wrote the Trip Report, I perceived that Brown & Root was hostile to the idea of an audit and that no action would be taken by Brown & Root even if problems were detected in an audit. This impression was largely based on comments made by Mr. Tolson in an exit interview on July 28, 1983, during which he repeatedly stated that an audit by O.B. Cannon would be redundant. I took this to mean that he was hostile to an audit.

I should explain, first of all, that I was under the impression at the time that Mr. Tolson was employed by Brown & Root. I now know that he is employed by TUGCO. Thus, references to Brown & Root should have been references to TUGCO, with respect to audits.

I now understand more fully the basis and intent of Mr. Tolson's statements that an audit by me or by O.B. Cannon would not be productive. He has reconfirmed his view to me as recently as November 10, 1983. The basis for his belief, I now know, is the fact that during the period 1981 to 1983, the Comanche Peak QA/QC program has been subjected to repeated internal and external audits. In particular, as discussed in Mr. Brandt's affidavit, Texas Utility's corporate QA department has conducted several audits, and the program has been audited further by external agencies, including the NRC itself. Provided that these audits were

of sufficient scope and depth, and in view of the ongoing NRC review of the coating program, I agree with Mr. Tolson that an additional audit at this point would be redundant and unnecessary.

COMPARISON OF COMANCHE
PEAK TO ZIMMER

My August 8 memorandum stated that "to some extent a parallel can be drawn with Comanche Peak and Zimmer." This unfortunate observation was my feeling at the time, based on my limited familiarity with the program, that Comanche Peak might be developing into a Zimmer-type situation. The poor quality of the coatings at Zimmer would have required a complete rework of that plant's coatings. Based on the information with which I have been provided by site personnel subsequent to my August 8 memorandum, I believe that this conclusion was in error. Based upon my understanding of the program and the procedures in place at Comanche Peak I now believe that there is no parallel between Comanche Peak and Zimmer and I regret having made such a comparison.

MISCELLANEOUS CONCERNS

My Trip Report stated that "if quality work is put in place then they will be a long way to resolving site problems." That statement simply reflected my belief that if craft is careful in its application of coatings then the QC inspectors' job becomes routine and simple. If craft is careless, then the inspectors' job becomes more difficult. Obviously, the more desirable approach is to have the craft apply coatings in a quality-conscious manner. I did not intend for this statement to imply that the practices at Comanche Peak are not compatible with my philosophy, nor did the statement imply that coatings at Comanche Peak have been improperly applied or applied without regard to quality.

My Trip Report also referred to a "no win" situation on site between craft and QC inspectors. My impression was that the craft and inspectors were not functioning as a team but rather each seemed to be doing its job without regard for an integrated approach. My philosophy is that craft and inspectors should work together in a harmonious relationship to accomplish the objective. I questioned whether that objective was being met at Comanche Peak based upon my assessment at the time that the morale of the inspectors was low and that the attitudes of the craft and inspectors were in conflict. As I noted above, I expressed this point to

site management, which acknowledged that morale was not high and stated that they were taking steps to rectify the matter.

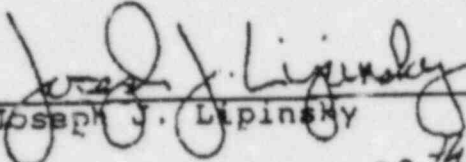
My Trip Report also discussed air supply problems experienced by the craft. The craft was experiencing problems on site with the air supply for spray painting or sand blasting. The air apparently contained water or oil, and the craft was spending a great deal of time correcting the problem, without being able to sandblast or apply coatings. Mr. Norris later provided site management with a description of equipment that would solve the problem, and my understanding is that the equipment was purchased. I have no reason to believe that the air supply problem adversely affected the quality of applied coatings because management was aware of it and took appropriate steps to rectify it.

The summary of my Trip Report includes the statement that Brown and Root wanted to "buy the 'right' answer." That statement relates back to my initial impression that Mr. Tolson was disinterested in quality matters. Again, my reference to "B&R" in the Trip Report was erroneous. Further, I am now convinced that my original impression of Mr. Tolson's attitude was also erroneous.

CONCLUSION

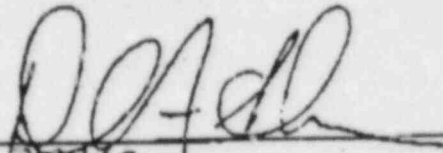
My August 8, 1983 Trip Report reflected my initial impressions conveyed during a very short visit to the site during which I had little opportunity to discuss my concerns with site management. My subsequent in-depth discussions with site management have demonstrated to me that my initial impressions were incorrect. I have not been induced in any way to retract my Trip Report, and I have not been subjected to any harassment, intimidation or threats by my employer, the Applicants or anyone associated with this proceeding. Indeed, I was asked by the intervenor, Mrs. Ellis, to testify on her behalf in this proceeding, and I tentatively agreed. My testimony would have been the same had I testified for Mrs. Ellis. It is unfortunate that a Trip Report innocently prepared by me to advise my superior of my observations and concerns in early August has apparently become the basis for a challenge to the adequacy of the Comanche Peak coatings program. As I have stated earlier, the Trip Report was based on incomplete information. Further, it was not, nor was it intended to be, a final view

of me or my company. It was merely input to the broader deliberations that my company needed to undertake in order to fully evaluate the adequacy of the Comanche Peak coatings program.



Joseph J. Lipinsky

Subscribed and sworn to before me this 28th day of September, 1984.



Notary Public

DANIEL F. ECKMAN, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES APRIL 2, 1987
Member, Pennsylvania Association of Notaries

This is a telecopy facsimile. The original will be sent under separate cover.

1 CHAIRMAN BLOCH: Mr. Lipinsky, when you were
2 testifying just now, did you include the resume as being
3 accurate as well?

4 THE WITNESS: I don't have a copy of that, sir.
5 Mine ends on the signature page.

6 CHAIRMAN BLOCH: You are not including that,
7 Mr. Roisman? All right. Let's continue.

8 MR. ROISMAN: We didn't have it attached to the
9 copy.

10 CHAIRMAN BLOCH: Let's continue. We'll use it
11 without that.

12 MR. ROISMAN: Back to me?

13 CHAIRMAN BLOCH: Yes.

14 EXAMINATION (Resumed)

15 BY MR. ROISMAN:

16 Q Still on the table, and which is still on the
17 table, is for you to explain in as much detail you need to
18 explain, how it is that you were able to reach the
19 conclusions with the amendments now noted in the record
20 that are contained in your affidavit dated September 28,
21 1984, without ever conducting the audit which you had
22 previously indicated had to be conducted in order to
23 address the concerns raised in your August 8, 1983 trip
24 report?

25 A Do you actually want me to go through each of

1 the ones in Mr. Brandt's report and say how these
2 satisfied my concerns?

3 Q No. Tell me how what was not an audit was
4 satisfactory to meet your concerns that you said could be
5 satisfied only with an audit?

6 A I'm having trouble with "audit." I hope we are
7 using it in quotes.

8 Q I am using it as you used it.

9 A I used "review" or "audit" under what the ANSI
10 definition requires.

11 Q What I'm interested in the time from August of '83
12 at least to the end of November '83, it seemed to be your
13 position that something needed to be done to determine the
14 correctness or incorrectness of your preliminary
15 conclusions in your trip report. Is that right?

16 A Yes.

17 Q And that something, at least one acceptable
18 version of that something, was the proposed review that
19 you and MFM designed and was going to begin around the 8th
20 of November at the Comanche Peak site. There's a
21 four-page description of what that was going to be. I
22 believe it has been bound into the transcript of
23 Mr. Norris' testimony; right?

24 A Yes. That's correct.

25 Q And that never got done, did it?

1 A No, it did not.

2 Q Okay. What I want you to explain to me is:
3 How are you now able with such confidence to say that the
4 problems that you thought existed when you did the report
5 in 1983 don't exist, without having done that or a
6 comparable review?

7 A Can I -- I guess my question, or my problem is
8 with your question, I don't know the depth you want me to
9 go to. Do you want me to go to the Brandt affidavit or
10 just the generality?

11 Q Why don't you just start and give me the general
12 answer to the question and give me the answer and then
13 we'll go to the detail if necessary.

14 CHAIRMAN BLOCH: What was the process that you
15 went through to persuade yourself that was all adequate?
16 How did the process work? Then we can get to the details
17 in a few minutes.

18 THE WITNESS: All right. Well, using the first
19 example would be with regard to materials storage. I
20 think the first thing I had is accept/status indicator
21 tags, reject tags, hole tags, I was concerned that there
22 was no apparent control with regard to the status,
23 acceptability of the material on-site.

24 What Mr. Brandt provided was a procedure that went
25 through and explained that all materials prior to being

1 placed in storage on-site in fact had to be acceptable;
2 that this material would not have gotten past the gate, as
3 it were, or past their receiving area, unless in fact all
4 the documentation and everything else had been provided
5 and the material was in fact acceptable. On that basis,
6 if you only have acceptable material on the project site,
7 there's no sense -- there's no requirement, really, to tag
8 the material.

9 MR. ROISMAN: Okay. I would like to have marked
10 as JJL Exhibit 3, so we have it here, the JJL and MKM
11 Comanche Peak trip, four-page document that we previously
12 had bound, I think, into the record during the Norris
13 affidavit. And for those parties that do not have copies,
14 I have extra copies. May it be so marked?

15 CHAIRMAN BLOCH: It may. I would like to have a
16 copy.

17 (Discussion off the record.)

18 MR. ROISMAN: Mr. Lipinsky, I would like you to
19 look at page 2 of what has been marked as JJL-3.

20 (JJL-3 identified.)

21 (The document follows:)

22

23

24

25

JJL-3
LAY IN when
MARKED

JJL & MKM COMANCHE PEAK TRIP

19768

NEED:

Organizational chart with names and titles of individuals and positions filled

Copy of current revision of the QA Program

Complete cooperation with various on site departments, organizations and individuals

List of names of all inspection personnel and level of certification

List of names and positions of production personnel (foremen and above)

List of certified painters and systems for which the painters are qualified

Require liaison or interface person for quality assurance, quality control, production, and other departments in order to expedite and aid in the performance of this review

DAY #1

Review QA Program in general

Review QC Procedures and how those procedures related to the QA Program

Go over QC Procedure numbering sequence

Review site organization and responsibilities (both individual and company)

Review Retrofit program (why implemented, still on-going-why? why not?, what has been accomplished to date)

Tour Site (containment, paint shop, warehouse, calibration lab, etc.)

NOTE: Badge MKM as time allows

DAY #2

Non-Confirming Conditions

Review existing NCR's

Review procedure for unsatisfactory reports to determine adequacy

Review procedure for NCR to determine adequacy

Review logs for NCR and unsatisfactory report

Review status tag procedure and logs

Review NCR and/or unsatisfactory coordinator status

Procedure and Specification Revision Control

Review system and procedure for changes to specification and procedures

Review controls - assure that only most current revisions of specification and procedures are utilized

Examine on site situation to determine sequence of work activities

DAY # 3&4

Material Storage

Review procurement documents

Review receiving procedures and records

Review personnel qualifications for receiving personnel

Review product certification

Examine reject and hold areas (review tagging procedures and logs)

Examine facilities (take representative batches and determine if procedure followed)

Review warehousing records

Examine facilities and check calibration of recording thermographs (examine certificates of compliance for instruments, calibration records for instruments, personnel for individuals performing calibrations)

Determine traceability of material from receiving to in place work from warehousing records and daily reports (also going backwards from in place work)

DAY #5 Personnel Qualifications

Painter Qualifications

Review indoctrination and training program

Observe (if possible) class room session and field qualifications

Review documentation on personnel qualifications

Inspector Qualifications

Review indoctrination and training program

Review personnel qualification with regard to level of certification

Review documentation on personnel qualifications

Auditor Qualifications

Review personnel qualifications for auditors

Review documentation on personnel qualifications

Audits

Review audits of the coating operation

DAY #6 Calibration

Review calibration logs

Review certificates of compliance for test instruments

Review traceability of instruments to NBS

Review training and qualification of calibration personnel

Review documentation of personnel qualifications

DAY #7 & 8 Daily Inspection Reports

Review adequacy of daily inspection reports (compared to information required by ANSI)

Determine traceability of records for representative areas and/or items

DAY #9 & 10 Wrap up and tie together items that were examined earlier.

NOTE: The above schedule is tentative in nature and is not meant to be all inclusive. Areas or questions raised during the review will be pursued until a response is provided.

1 BY MR. ROISMAN:

2 Q You'll note days 3 and 4 are devoted to
3 materials storage?

4 A Yes.

5 Q I take it that's because you felt it was a
6 two-day process to do the things that were listed at the
7 bottom of page 2, in order to do this review of the
8 materials storage matter; is that correct?

9 A Approximately; yes, sir. This wasn't a firm
10 schedule.

11 Q What I don't understand and I would like you to
12 give me some more formal explanation of it, how did you
13 duplicate that review by reading Mr. Brandt's affidavit
14 and the attachments?

15 A Well, the whole point of this four-page exercise
16 we went through with regards to developing, for want of a
17 better word, a checklist for an audit, which I guess is
18 Exhibit 3 now, was for me to be able to go and satisfy
19 myself, to my own satisfaction, that my concerns were no
20 longer -- were no longer valid.

21 In the case of Mr. Brandt's affidavit, one of the
22 operating ground rules was to the effect that what
23 Mr. Brandt tells me under oath in the form of his
24 affidavit is what they are doing. I don't have to verify
25 that that information -- that information he provided --

1 is in fact being implemented. Just to the effect that
2 it's in place and in use.

3 Q But isn't that exactly what you had gotten from
4 Mr. Tolson and others during the meeting on November 10
5 and 11 at the plant site? That is, they told you orally
6 what they had done?

7 A They told us orally what was going on. In more
8 general terms, "We want Mr. Brandt" -- Mr. Brandt provided
9 what I felt, I still feel to be substantiation to his
10 statements. He said, in fact, Mr. Tolson - and this is
11 never meant to be a verbatim type give and take -- but
12 Mr. Tolson would say "we have a procedure for him in
13 material control." He would go on and describe that. And
14 that was it. There was nothing produced in the way of
15 procedure.

16 In fact, Mr. Brandt in his affidavit, in a couple of
17 appendices, attach material for receipt of material. He
18 attaches some of the documentation that's completed, for --
19 I believe it was some thinner, I don't recall exactly --
20 but some documentation to substantiate that -- their
21 receiving procedure.

22 Q Is that the normal way you do an audit?

23 A No, this wasn't an audit.

24 Q Was that the normal way you answer a question
25 about whether there is a paint coatings problem? You go

1 and ask somebody to tell you under oath whether there is
2 or isn't and give you documentation to support it? Or do
3 you go and do what is outlined in J JL-3?

4 A I guess I'm not sure if I can answer the
5 question. There was no requirement on the part of Texas
6 Utilities for Cannon to do anything, as far as Cannon was
7 concerned. Whether or not they resolved or addressed my
8 concerns wasn't really a matter I was worried about.

9 Q Well, but when you raised the matter --
10 CHAIRMAN BLOCH: I'm sorry, did you mean that?
11 What you just said, that you weren't worried about whether
12 they resolved your concerns?

13 THE WITNESS: Well, "worried" is a bad choice --
14 bad choice of words, that is. Essentially I went down
15 there and did a preliminary review. Cannon's position was
16 that we should go and, you know, perform some kind of
17 in-depth audit. We essentially were working for the
18 Utility as a consultant. If the Utility had a certain
19 degree of confidence in the fact that, you know, I
20 identified materials storage or material status indicator
21 tags as a problem, the utility may at their option decide,
22 well, that's not a problem and there's no sense in us
23 having Cannon come and look at it any more.

24 CHAIRMAN BLOCH: So your affidavit was really
25 intended to tell us that you didn't care any more, not

1 that your concerns were satisfied?

2 THE WITNESS: That's not the case at all, sir.
3 I'm concerned to the extent that I had some concerns that
4 were identified. I had some preliminary information that,
5 taken at face value, seemed to allay these concerns. And
6 now Mr. Brandt provided me backup documentation with the
7 proviso, essentially, that I'm taking Mr. Brandt's say so
8 that in fact they are implementing those concerns. I have
9 no means or way to go down there and say, "Now I want to
10 go look at some more stuff." That's not my bailiwick; not
11 my province.

12 CHAIRMAN BLOCH: Did you have any direct
13 knowledge whether they were implementing those concerns --
14 those procedures? Did you see any examples where the
15 procedures were not being followed?

16 THE WITNESS: In one case with regards to the
17 travelers system, I'd have to say "yes," I saw a case
18 where it was not being followed.

19 CHAIRMAN BLOCH: In regard to pot life, wasn't
20 there a pot that was not marked at all?

21 THE WITNESS: In other words, that's the same.
22 That's the can sitting on the pallet -- I don't know what
23 their pot life requirements are. As I recall, I think
24 they are allowed to use the material to the limits of its
25 workable properties.

1 CHAIRMAN BLOCH: Wouldn't you be surprised,
2 having been in QC, if a procedure was implementing 100
3 percent anywhere?

4 THE WITNESS: Yes, sir.

5 CHAIRMAN BLOCH: But that's what you were
6 accepting here from Mr. Brandt, and even though you had
7 said that you had to examine the facilities to find out if
8 the procedures were being implemented?

9 THE WITNESS: Sir, that was under one set of
10 parameters on November 9th. On the date of my affidavit,
11 September 28th, the parameters I took at face value was
12 pretty much Mr. Brandt's say-so that pretty much
13 everything he's telling me they're implementing -- they
14 had in fact been audited numerous times both internally
15 and externally, and I believe I indicated if these audits
16 were of sufficient scope and depth, and resulted in no
17 findings in these areas, which I had been told was the
18 case, then that's fine.

19 CHAIRMAN BLOCH: Mr. Roisman?

20 BY MR. ROISMAN:

21 Q Do you remember a departmental correspondence
22 dated November 28, 1983, to Robert B. Roth from Ralph A.
23 Trallo, that was a summary of the November 10th and 11th
24 meetings which you participated in at the Comanche Peak
25 site?

1 MR. GALLO: Is Mr. Roisman referring to the task
2 force report?

3 MR. ROISMAN: It's called, "Subject H8301,
4 Coatings Overview Task Group report; dated November 28,
5 1983; to Roth from Trallo."

6 MR. GALLO: Mr. Lipinsky, it is attached to
7 Mr. Trallo's testimony.

8 THE WITNESS: It's also item 43 --

9 MR. GALLO: Whatever is easier for you.

10 BY MR. ROISMAN:

11 Q Do you have that in front of you?

12 A Yes, I do.

13 Q Have you had a chance to review it?

14 A I have looked at it. I haven't looked at it
15 recently.

16 Q Do you remember whether you agreed or disagreed
17 with it? Was it an accurate summary, in your judgment, of
18 what transpired?

19 A Yes, it was.

20 Q In particular, I would like you to look at page
21 5, under "conclusion," there are two indented paragraphs.
22 The second sentence -- excuse me, the first sentence reads:
23 "Comanche Peak site management adequately detailed the
24 programs and controls in place which would relieve or
25 allay the concerns raised in the 'Lipinsky memo'." Do you

1 agree with that statement?

2 A Taken in the context of that paragraph which has
3 a few more sentences, yes.

4 Q All right, the next sentence was: "Cannon has
5 no basis to confirm that these programs and controls are
6 in place and are being effectively implemented." Do you
7 agree with that statement?

8 A Yes, I do.

9 Q And the next one: "Confirmation could only be
10 provided by a detailed audit." Do you agree with that
11 statement?

12 A Yes.

13 Q And the next one: "Such an audit could be
14 redundant and certainly time-consuming." Do you agree
15 with that one?

16 A Yes, I do.

17 Q And finally: "Further, TUGO (sic) has neither
18 requested same, nor is it required by the referenced
19 purchase of service agreement." Do you agree with that
20 one?

21 A Yes.

22 Q Didn't you just testify before that you have
23 confirmed that the material storage problem that you
24 perceived was not there, even though you have not yet
25 conducted the detailed audit?

1 A This is November 28, 1983. My affidavit is
2 September 28, 1984.

3 Q But you've never done the detailed audit, have
4 you?

5 A That's correct.

6 Q So how can you, on September 28, 1984, say that
7 your concerns about material storage have been satisfied?

8 A Maybe I'm mistaken. I keep pointing out that
9 the ground rules under which this affidavit was generated
10 was that the information provided by Mr. Brandt -- you
11 know, I'm not questioning that information. Whatever he
12 gives me I take at face value. Whether they are doing it,
13 whether they are not doing it -- there's no way I could
14 verify that.

15 CHAIRMAN BLOCH: What are these ground rules you
16 keep referring to? What do you mean, the "ground rules"?

17 THE WITNESS: This was pretty much a result of a
18 discussion or series of discussions with Mr. Watkins
19 during the course of the development of my testimony.

20 CHAIRMAN BLOCH: What did you think of those
21 ground rules?

22 THE WITNESS: Under the conditions of the ground
23 rules, I didn't have any problem with the affidavit.

24 CHAIRMAN BLOCH: What did you think of the
25 ground rule that you are not supposed to question any of

1 Mr. Brandt's statements?

2 THE WITNESS: I don't know if I have an opinion
3 on that, sir.

4 JUDGE GROSSMAN: Excuse me, does that mean if
5 the attorney said it was appropriate to do it, you were
6 willing to take that at face value? Is that how you were
7 willing to take that position?

8 MR. WATKINS: The attorney or Mr. Brandt?

9 JUDGE GROSSMAN: The attorneys. Did they assure
10 you that would be a legitimate way to operate? That you
11 could use those ground rules and produce your affidavit on
12 that basis?

13 THE WITNESS: Yes. I don't know if words were
14 said to that effect. The notion was conveyed; yes, sir.

15 BY MR. ROISMAN:

16 Q Mr. Lipinsky, what I'm trying to understand is,
17 I guess, for lack of a better term, your use of language.

18 A Yes.

19 Q We have a statement which you agree with, that
20 confirmation could only be provided by a detailed audit.
21 We now have you, in your affidavit -- I'm talking about
22 the September 28, 1984 affidavit, saying on page 6, and I
23 quote -- in the middle of the page: "Had I been familiar
24 with these procedures at the time of my site visit, I
25 would not have criticized these aspects of materials

1 storage and traceability in my August 8 trip report."

2 And then, at the end of the next paragraph at the very
3 bottom of page 6: "Based on my current understanding of
4 the Comanche Peak storage and traceability program, I have
5 no criticisms of practices and procedures utilized by
6 Applicants."

7 Now, that sounds very unqualified to me. It sounds
8 like the kind of statement that one would make only after
9 confirmation. Can you explain to me how it is that you
10 can make that statement without having engaged in the form
11 of confirmation which you've stated is the form that was
12 required before you could make such a statement?

13 A Okay. Again, we are talking two different
14 timeframes here. I would like to point out, getting off
15 the subject here -- same subject, different paragraph,
16 where you said: "Had I been familiar with these
17 procedures at the time of my site visit --"

18 Q Yes.

19 A In fact, had I been familiar with the procedures
20 I would not have expected to find full tags -- accept tags,
21 reject tags -- on containers in the field. Therefore I
22 wouldn't have had that concern that I identified.

23 If, getting back to the last sentence --

24 CHAIRMAN BLOCH: Was that true? The pot you
25 found -- did it have anything at all? Did it have a

1 traveler pot?

2 THE WITNESS: It was a container, sir. A can.
3 A 5-gallon container of paint.

4 CHAIRMAN BLOCH: A 5 gallon container of paint.
5 Did it have anything on it?

6 THE WITNESS: It had the label for the container
7 of the can. The can was properly labeled and all. It
8 didn't -- just didn't have the traveler system attached to
9 it.

10 CHAIRMAN BLOCH: But it should have under the
11 procedures, shouldn't it?

12 THE WITNESS: My current understanding is yes,
13 sir, it shouldn't.

14 CHAIRMAN BLOCH: So even if you knew the
15 procedures, you still would have been worried, wouldn't
16 you?

17 THE WITNESS: I would have identified that -- I
18 think we are mixing up status indicator tags like an
19 accept or reject or hold tag with respect to the traceability
20 of the mix material. I would have had a concern that the
21 traceability of the mix material -- there appears to be a
22 glitch in the program or something; that there was no, you
23 know -- they are not following the traveler system in this
24 instance.

25 CHAIRMAN BLOCH: The traveler system was a

1 substitute for the hold tag system?

2 THE WITNESS: Again, I think there's confusion
3 here on this issue --

4 MR. GALLO: It's the second time he's tried to
5 explain that. There are two separate systems.

6 CHAIRMAN BLOCH: Maybe you can explain it so I
7 understand it. I obviously don't understand it.

8 THE WITNESS: I'll start from the beginning if
9 you don't mind. If it's all right?

10 CHAIRMAN BLOCH: Yes. What are the two separate
11 systems for and what is the replacement for the hold tag
12 system?

13 THE WITNESS: It's not limited to a hold tag.
14 Essentially when paint or other items arrive on-site, it
15 should be inspected to ensure that it's acceptable, or if
16 it's not acceptable, it would be rejected or placed on "hold"
17 status.

18 If the material is acceptable, or somehow subsequently
19 goes from "hold" to an "accept" status, normally this is
20 all accomplished through the tagging.

21 There usually is a 3-by-5 tag or something smaller -- a
22 red tag for "reject," a yellow tag for "hold," and a
23 green tag typically for "accept."

24 If this material, what I saw in the field -- my own
25 observations and as a result of the conversations -- was

1 that there were no tags of any kind on the paint cans. I
2 personally thought that was a problem in that how do you
3 know if this material was acceptable or how do you know if
4 it was rejected -- you know, if it was okay to be on-site.
5 What it turns out, subsequently I found out as a result of
6 Mr. Brandt's affidavit and initially with Mr. Tolson was
7 that no material arrives on-site unless it is acceptable.
8 There's a receiving area or something along those lines
9 where the truck, or whatever -- carrier they use to get
10 this material to the location, stops. That shipment is
11 then examined to make sure that all the certifications are
12 there, that the cans aren't leaking; they are properly
13 labeled and so forth.

14 If everything is okay then the material goes up to the
15 warehouse. Everything on-site is acceptable.

16 If the material is not okay, it is placed on hold or
17 it's shipped back, rejected.

18 CHAIRMAN BLOCH: And if something happened after
19 it's on-site that makes it unacceptable, that can happen
20 too; right?

21 THE WITNESS: Yes, sir.

22 CHAIRMAN BLOCH: Then what happens?

23 THE WITNESS: They have a reject system to
24 handle that.

25 CHAIRMAN BLOCH: They just take it right away?

1 THE WITNESS: I don't want to be quoting from
2 memory, sir. My understanding is yes, they do.

3 CHAIRMAN BLOCH: What's the traceability problem?
4 It's a separate system?

5 THE WITNESS: Well, yes. You want to keep track,
6 if you mix 5 gallons of material, the whole purpose of
7 traceability -- I don't mean to be lecturing --

8 CHAIRMAN BLOCH: I asked you.

9 THE WITNESS: Okay. You want to make sure that
10 where you put that 5 gallons of material on the wall is,
11 you know, the location of it. You know when that
12 material was mixed. You have some control over it in the
13 event that subsequently you find out there's something
14 wrong with that batch of material, you -- rather than
15 having to go throughout the containment building or
16 wherever trying to find this material, you have records
17 that tie you to that batch, to the location. So
18 traceability and tracking are kind of separate items.

19 CHAIRMAN BLOCH: How does it relate to pot life?

20 THE WITNESS: Neither of those relate. Well, to
21 some extent traceability will relate to pot life. I
22 identified that there was a 5-gallon container of mixed
23 materials sitting on a pallet destined ultimately for
24 containment, that it was just sitting out in the sun. The
25 epoxy coatings in use are -- it's a chemical reaction,

1 typically. And heat accelerates chemical reactions and it
2 will shorten the workability or the working properties of
3 the material considerably.

4 CHAIRMAN BLOCH: How should they have kept track
5 of that and what was really the significance of your
6 observation that there was nothing keeping track of that?

7 THE WITNESS: Well, in fact, according to
8 Mr. Brandt, they do have a traceability system. What they
9 do is when the material is mixed in the warehouse there is
10 a form that's filled out that accompanies this can of
11 paint. That form should have been with that can of paint
12 that was sitting on the pallet. That form contains the
13 information -- when the paint was mixed, the temperature
14 at the time of mixing, batch number, that type thing. I
15 don't recall exactly every item that's contained there.

16 Then, when that material ultimately gets into the
17 containment building, there's an inspector there who takes
18 that traveler.

19 CHAIRMAN BLOCH: Okay. But if it's not there,
20 he can't take the traveler, so he doesn't know the pot
21 life; right?

22 THE WITNESS: That's true. He would, from what
23 I understand based on Mr. Tolson's explanation, it is
24 possible that they would have to call the shop. I don't
25 know if a duplicate record is kept there -- the mixing

1 area where they mix the paint centrally -- they might know
2 when the paint was mixed. They might be able to get it --

3 CHAIRMAN BLOCH: They wouldn't know it was
4 standing out in the sun?

5 THE WITNESS: That's true. But at a certain
6 point it doesn't work. I won't come out of the paint gun.

7 CHAIRMAN BLOCH: Some time short of that it
8 works but it doesn't work right; is that right?

9 THE WITNESS: That's possible too, sir.

10 CHAIRMAN BLOCH: So you don't know, you still
11 don't know how the Applicants were allowing it to happen
12 or it wasn't happening as a general practice?

13 THE WITNESS: I know based on Mr. Brandt's
14 affidavit that they did in fact have a traveler system. I
15 would like to clarify that with regard to the material, it
16 is typical that the coating material will not exhibit its
17 spray pots and that type thing if the pot life is near the
18 end. It will adversely affected it, typically.

19 CHAIRMAN BLOCH: Why ever bother to follow pot
20 life? You have a procedure to follow pot life, but why
21 ever bother to follow it?

22 MR. CALLO: That's not the witness' answer.

23 CHAIRMAN BLOCH: The witness can answer.

24 THE WITNESS: You would hate to have a guideline --
25 I don't know whether you would or not -- that material

1 sitting in these hoses and in this pot, inside the spray
2 gun, that you do not want it setting up. Some materials
3 kick over or set up in a relatively short period of time.
4 We have had instances where the material actually freezes
5 up and you have to throw the material away.

6 CHAIRMAN BLOCH: For quality control purposes,
7 you wouldn't want to rely solely on the observation of the
8 spray pattern coming out of the sprayer, would you?

9 THE WITNESS: That's the other reason; yes, sir.

10 CHAIRMAN BLOCH: So there was a quality control
11 problem on that can, was there?

12 THE WITNESS: It's possible there was.

13 CHAIRMAN BLOCH: And the statement that they
14 enforced their procedures doesn't help you to know to what
15 extent the procedures were violated, does it?

16 THE WITNESS: Given the parameters of Mr. Brandt's
17 affidavit, that's true, I don't.

18 CHAIRMAN BLOCH: You spoke to several of the QC
19 inspectors on-site and spoke to Mr. Mouser several times?

20 THE WITNESS: Yes, sir.

21 CHAIRMAN BLOCH: You had an opportunity to ask
22 them about practices on the site?

23 THE WITNESS: That's correct; yes, sir.

24 CHAIRMAN BLOCH: You must have asked them about
25 that pot?

1 THE WITNESS: I discussed -- you keep saying "pot,"
2 sir. It's a can.

3 CHAIRMAN BLOCH: All right. Can. I'll use your
4 term. It's a can that had a pot life.

5 THE WITNESS: Yes, sir. Bingo.

6 Yes, I did discuss it with Mr. Mouser. I asked him
7 about it. In fact, Mr. Mouser, as I testified, you know,
8 was in fact looking for a traveler system when we
9 encountered that item. So, I don't know what to tell you.

10 CHAIRMAN BLOCH: Did he assure you this was a
11 rare exception to the rule, that they usually had the
12 travelers and this was just a rare exception?

13 THE WITNESS: I don't recall any assurances one
14 way or the other, sir.

15 CHAIRMAN BLOCH: You would have put that in your
16 report if he told you that, wouldn't you have?

17 THE WITNESS: I don't recall, sir. So I
18 wouldn't say "yes, I would have."

19 CHAIRMAN BLOCH: Did the other QC inspectors
20 tell you things were going pretty smoothly and this pot
21 you saw, this can, was an exception to the way things go?

22 THE WITNESS: I don't remember, sir,
23 specifically.

24 CHAIRMAN BLOCH: Did they tell you anything
25 relevant to whether this was an exception or a rule?

1 THE WITNESS: I don't know whether I raised this
2 particular item with them. I may have raised it as a
3 passing comment that I saw a mixed can of materials
4 sitting out there without any sort of documentation or
5 anything with it. But I don't recall any specifics.

6 CHAIRMAN BLOCH: Mr. Roisman?

7 BY MR. ROISMAN:

8 Q Mr. Lipinsky, I, too, am interested in the
9 ground rules. If the ground rule were that the statements
10 made to you by the QC inspectors while you were on-site
11 were to be accepted at value and the statements made by
12 management were to be discounted, which document would you
13 be swearing to as your current testimony today? The
14 August 8, 1983 document or the September 28, 1984 document?

15 A Can I try to get a clarification on that?

16 Q Yes.

17 A We are saying, essentially, if Mr. Brandt's
18 affidavit was not with the stipulation that I accept
19 everything at face value?

20 Q Yes, that's right. But that, instead, the
21 ground rule was that you accept at face value everything
22 that you heard from the people who you talked with when
23 you were on-site during the site visits in July of '83.
24 If that were the ground rule, would you be swearing to the
25 August 8, 1983 document today? Or would you be swearing

1 to the September 28, 1984 document?

2 MR. GALLO: Objection.

3 CHAIRMAN BLOCH: What's the objection, sir?

4 MR. GALLO: I think the question is calculated
5 as phrased, and I object to the form of the question. It
6 is prejudicial to the witness.

7 CHAIRMAN BLOCH: How?

8 MR. GALLO: The real issue here is not whether
9 he would testify as -- as to his testimony, but the real
10 question is would that reinstate those concerns? I don't
11 know that this witness would testify to what's in his trip
12 report or not in his testimony.

13 CHAIRMAN BLOCH: It's a legitimate question. Go
14 ahead with the question.

15 MR. ROISMAN: Just to be clear on the record,
16 he's already sworn to the trip report as true and correct
17 to the best of his personal knowledge.

18 THE WITNESS: So what you are saying, and I hate
19 to keep going back for clarification, but essentially for
20 all intents and purposes, Mr. Brandt's affidavit would not
21 exist and I would not be able to take into account
22 anything Mr. Tolson told me on the 10th and the 11th --
23 Tolson and the other members of that meeting?

24 BY MR. ROISMAN:

25 Q Correct.

1 A Well, in that case then, I would be testifying
2 to my trip report of August --

3 CHAIRMAN BLOCH: I think you asked him something
4 more than that.

5 He asked you if you had Mr. Brandt's affidavit also,
6 but you were going to accept what you heard and saw
7 on-site as having greater veracity, where you knew a
8 conflict between the two -- where would you be coming out
9 now?

10 THE WITNESS: Well, my affidavit would not exist.
11 I mean, I hope you understand that. My September 28th
12 affidavit would not have been initiated without those
13 ground rules having been established.

14 BY MR. ROISMAN:

15 Q I think the board Chairman stated it correctly.
16 I'm asking you to, in effect, reverse the ground rules.
17 We don't take the Brandt affidavit out of existence other
18 than you took all those personal meetings you had on the
19 site out of existence when you did your September 28
20 affidavit. All we did is we shift the assumption. We
21 assume the people on the site -- you should take what they
22 told you at face value during your site visit, and that
23 you should give less veracity to, and be less willing to
24 accept the correctness of either the statements that
25 Mr. Tolson made to you on the 10th and 11th of November or

1 the statements contained in the Brandt affidavit.

2 A Well, obviously if you tell me that everything
3 the inspectors told me or whoever I talked to on-site I'm
4 to take at face value, and not Mr. Brandt's supplemental
5 information, then I would be testifying to the August 8th
6 trip report.

7 Q Have you in any way attempted to decide whether
8 the ground rule should have been: I take the people
9 on-site at face value and not Mr. Brandt and Mr. Tolson?
10 Have you made any judgment about which way that
11 presumption should work?

12 A No, I did not.

13 Q You simply were called in, and said, in effect,
14 as an employee, a consultant to this company, Comanche
15 Peak: Treat as given what I'm going to tell you to treat
16 as given and tell me your answers to the following
17 questions once you do that. Is that correct?

18 A In a nut shell; yes.

19 Q And you weren't even asked to weight the
20 opinions of the people that you talked to on-site that
21 were in direct conflict with the opinions that Mr. Brandt
22 was giving you and exercise an independent judgment on
23 that question; were you?

24 A No. However, there was give and take between
25 Mr. Watkins and myself with regards to what, you know,

1 what concerns I had specifically and what was needed to
2 attempt to satisfy those concerns.

3 Q Attempt to satisfy them, again within the ground
4 rules. Not attempt -- in other words, the ground rules
5 don't represent the real world. They represent an
6 artificial world; don't they? An artificial assumption of
7 the truth and correctness of certain statements which you
8 were not independently checking; isn't that true?

9 MR. WATKINS: Objection. Mr. Brandt's testimony
10 is sworn. It's not hypothetical nor is it made up.

11 MR. ROISMAN: Well, it's certainly not
12 hypothetical and we'll reserve on the second.

13 CHAIRMAN BLOCH: It was hypothetical on the
14 assumption that what he made under the ground rules, that
15 everything he said was a procedure was in fact in place in
16 the field.

17 MR. WATKINS: That's right. For all
18 Mr. Lipinsky knows, Mr. Brandt could have typed the
19 procedure up the night before Mr. Lipinsky first saw it.

20 CHAIRMAN BLOCH: In addition to that, it may be
21 that Mr. Brandt would have difficulty having direct
22 knowledge whether procedure was in place in the field in
23 some uniform sense.

24 MR. WATKINS: That is for Mr. Brandt to decide,
25 not Mr. Lipinsky. And Mr. Brandt will be available on

1 that basis.

2 CHAIRMAN BLOCH: Did we obfuscate a question?

3 MR. ROISMAN: It's possible.

4 BY MR. ROISMAN:

5 Q Mr. Lipinsky, the question is that isn't it the
6 case that the ground rule introduces an artificiality into
7 the real world situation? The real world situation is:
8 What is the actual condition of paint coating program at
9 the Comanche Peak site? And there's a real world answer
10 to that; isn't there? One could find the answer to that
11 question, couldn't they?

12 A Yes, they could.

13 Q And in your judgment the only way they could
14 find the answer to the real world question is to do the
15 in-depth audit like the one that you and MKM designed, and
16 it has been marked as Exhibit Number 3 to your testimony
17 today. Isn't that your opinion?

18 A Not having made those assumptions on Mr. Brandt's
19 affidavit; yes, that is.

20 Q Okay. But those assumptions are not assumptions
21 that you attempted to test? You took them, as you said on
22 innumerable occasions here today, at face value; isn't
23 that true?

24 MR. WATKINS: Your Honor, we are going to object.
25 It seems to me this is going to the merits of whether what

1 Mr. Brandt and what Mr. Lipinsky say is correct as to each
2 of the technical issues.

3 CHAIRMAN BLOCH: No, I think it goes to the
4 process by which the affidavit was obtained and what its
5 meaning is. So it's allowed.

6 MR. WATKINS: He's asking the witness to compare
7 what might have been true on the site if certain people on
8 the site were to be taken at face value versus what
9 Mr. Brandt had to say. Not only --

10 JUDGE GROSSMAN: Mr. Chairman --

11 CHAIRMAN BLOCH: I overrule.

12 MR. GALLO: Does the witness have the question?

13 JUDGE GROSSMAN: Excuse me, I believe the
14 witness also may have answered. Did the reporter note an
15 answer by the witness?

16 (The reporter read the record as requested.)

17 JUDGE GROSSMAN: The witness had nodded and
18 started to voice a "yes."

19 BY MR. ROISMAN:

20 Q Did you want to add any more to "yes"? Or was
21 "yes" your whole answer?

22 THE WITNESS: It was "yes" to the effect that I
23 accepted those ground rules and I did not attempt to do
24 any kind of objective verification through an audit, for
25 want of a better word, process.

1 CHAIRMAN BLOCH: Cff the record.

2 (Discussion off the record.)

3 CHAIRMAN BLOCH: We'll take a recess.

4 (Recess.)

5 CHAIRMAN BLOCH: All right.

6 BY MR. ROISMAN:

7 Q Mr. Lipinsky, I would like you to look at your
8 notes for December 8, 1983, but it appears on the page of
9 your calendar that's December 7th. Let me know when you
10 have it, please.

11 A The page indicated is December 8?

12 Q It's on the December 7th sheet at the bottom,
13 but you've written in the date "December 8," so I assume
14 that's the date it occurred?

15 A Yes, that's correct.

16 Q Now, the first entry there, which appears to be
17 a telephone conversation with "NSR" -- is that, by the way,
18 Mr. Reynolds?

19 A Yes.

20 Q Continued, in item number 7 you write down that
21 "JJL" -- well, why don't you read it instead of me reading
22 it?

23 A Okay, the entry says that "JJL said appears that
24 when" -- rather that use initial -- appears that when I --
25 it's grammatically incorrect -- "have an opinion that I

1 have to defend and/or approve that opinion, wouldn't it be
2 reasonable to expect that opinions opposite to mine be
3 proven? Mr. Reynolds agreed." And I used Jack -- some of
4 Jack's views as an example. And I elaborate on what was
5 said there. I don't know if that's a problem with that or
6 not.

7 Q Please do elaborate.

8 A You asked me to read it. I didn't read it
9 verbatim.

10 Q That's okay. And if you have any further
11 elaboration that's not contained in there, that's all
12 right also.

13 Now, I take it that at that time you felt that having a
14 person justify their statements and defend their opinions
15 was an important consideration; is that correct?

16 A Yes. That's correct.

17 Q And was it at that time that you first had the
18 ground rule, or near that time the ground rule laid down
19 regarding the acceptance of the Brandt statements as
20 correct without going behind them to independently verify
21 them?

22 A I don't know if that was the case or not. I
23 don't recall when that first came about.

24 Q Does it seem to you that if you have to defend
25 your statements, that he should have to defend his,

1 vis-a-vis you?

2 A This entry was with regards to an example with
3 Mr. Norris.

4 Q I understand that. But now I'm asking you about
5 Mr. Brandt?

6 A Okay.

7 Q And what I'm trying to understand is, it seems
8 at least at one time that it was important to you that a
9 person -- since you were being called upon to defend what
10 you say, that the people who were involved with the same
11 issue should also have to defend it. And, yet, you have
12 accepted at face value or accepted the ground rule that
13 you accept at face value Mr. Brandt's statements. And my
14 question to you is: Was that a ground rule already by the
15 time December 8th of 1983 came around?

16 A Okay. Well, I don't necessarily agree with what
17 I assume to be an implication by you that I no longer
18 consider, you know, the fact of someone substantiating
19 their opinions -- maybe I misread or misunderstood what
20 was said.

21 CHAIRMAN BLOCH: First, answer the simple
22 question whether you recall whether the ground rule was or
23 was not in effect on December 8.

24 THE WITNESS: I don't recall. My own
25 recollection was it was after January of '84 that it came

1 about.

2 CHAIRMAN BLOCH: After your statement to the
3 Nuclear Regulatory Commission?

4 THE WITNESS: Yes, that's correct.

5 JUDGE GROSSMAN: Excuse me, Mr. Roisman, I'm not
6 sure that you two are not passing each other in the night
7 here. I don't know that the witness has indicated who he
8 had to defend his opinions before, and I think if you
9 clarify that you may not have any problem.

10 MR. POISMAN: Thank you, Judge Grossman.

11 BY MR. ROISMAN:

12 Q Would you respond to that, Mr. Lipinsky? To
13 whom were you being asked to defend your opinions?

14 A Again, this is -- this could be construed as a
15 hypothetical, I guess. What I was trying to get into is
16 with regards to Mr. Chapman's questions of October 28, say.
17 He wanted clarification, or expansion, or proof of my
18 original concerns. Whereas with Mr. Norris, and this was
19 the example I used, to the effect that I said I had a
20 problem with materials storage. There was no status tags.

21 Mr. Norris would say, well, I don't have a problem with
22 material storage.

23 Now, I would have to explain why I had a problem. And
24 my point here was that Jack would say -- and this may not
25 be an accurate example -- but he would say: Well, I don't

1 have a problem with material storage. And that would be
2 fine. Next issue, with Jack. Whereas with me I would
3 have to go on with an elaborate explanation. And all I
4 was asking for was a point of clarification, from
5 Mr. Reynolds: Wouldn't it be reasonable to expect that
6 Mr. Norris would have to explain why he didn't have a
7 problem with the same item?

8 JUDGE GROSSMAN: The point I was getting at, and
9 I believe you had confirmed it, is that you were
10 discussing what had occurred with regard to the inside
11 parties here, not any outside party like the Nuclear
12 Regulatory Commission.

13 THE WITNESS: Oh, yes.

14 JUDGE GROSSMAN: And since the discussions with
15 your -- with the attorneys and the corporate people and
16 the Comanche Peak people, in which you were having to
17 defend your opinions while the others, apparently, could
18 merely state them and not have to defend them; is that it?

19 THE WITNESS: Yes. That's right.

20 BY MR. ROISMAN:

21 Q: So you were feeling somewhat beleaguered in that
22 respect? That is, that you were being singled out to do
23 all the defending and no one else was and you were
24 expressing that frustration here to Mr. Reynolds?

25 A: I think I was identifying what I -- what you

1 described as frustration; yes.

2 Q Now, in your trip report, and I'm talking now
3 about the August 8, '83 trip report, you appear to have
4 addressed the same kind of problem. And I want you to
5 tell me if I'm correct in assuming that they are the same
6 kind of problem.

7 The bottom of page 3 of the trip report, if you have
8 that in front of you?

9 A Yes, sir.

10 Q You say in the next to the last sentence: "The
11 writer's opinion is that management at Comanche Peak has
12 deluded itself into thinking everything is all right, or
13 it will all come out in the wash. The fact that
14 management attempts to squash any efforts to point out
15 quality problems (no NCRs, QC reporting to production, et
16 cetera) to some extent confirms the above and has led to a
17 moral problem with the inspection Staff."

18 Do I take it that what you were experiencing in
19 objecting to or raising concerns about what with Reynolds
20 in your notes on the 8th of December, 1983, was another
21 variation on that? That -- well, all right. Is that
22 another variation on the same problem?

23 A I don't believe it was; no, sir.

24 Q Well, isn't it a situation in which the Company
25 didn't want to hear the bad news from you? It was really

1 sort of -- you were being put to the test to prove the bad
2 news, but when good news came from Mr. Norris that
3 everything was okay, they wanted to hear that so they
4 accepted that at face value?

5 A I don't necessarily agree with that
6 characterization. It's possible that they, the Utility,
7 did not place the emphasis they should have at the time on
8 my concerns I raised in the trip report.

9 Q Didn't you feel at that time a little bit like
10 you were being treated the way some of those QC inspectors
11 the way you talked to at the site complained that they
12 were being treated?

13 MR. WATKINS: Objection, you haven't established --

14 CHAIRMAN BLOCH: Overruled. Overruled.

15 MR. WATKINS: Would you like to wait to hear the
16 objection? The reasons for it?

17 CHAIRMAN BLOCH: No. You are interrupting cross
18 and I overrule the objection.

19 MR. WATKINS: You haven't heard what the
20 objection is.

21 CHAIRMAN BLOCH: I don't care to.

22 MR. WATKINS: The board is ruling on an
23 objection when they haven't even heard what the objection
24 is. I object to that as well.

25 JUDGE GROSSMAN: Mr. Watkins, I believe once the

1 board has ruled, it is discourteous and not appropriate
2 for you to continue. All exceptions are noted. Those are
3 the rules and they have been the rules since 1946.

4 CHAIRMAN BLOCH: And, in addition to that, it's
5 important to be able to protect the cross when a question
6 is being asked in the middle of cross so that there's no
7 disruption of continuity and the Judge has to rule quickly
8 on that question so that there be no disruption,
9 unwarranted disruption of continuity in cross. So when I
10 overrule you, you will not continue.

11 MR. WATKINS: So long as you understand my point.

12 CHAIRMAN BLOCH: I understand. In order to not
13 disrupt continuity of cross, the Judge has to sometimes
14 make a fast answer. You called my attention to a possible
15 problem. I have to decide what the problem is and rule
16 right then.

17 MR. WATKINS: All right. You've stated the
18 basis for denying the objection, that you didn't hear.

19 CHAIRMAN BLOCH: I did not state the basis. I
20 decided that you were interrupting cross and I didn't want
21 to hear the basis.

22 MR. WATKINS: No, the board has explained its
23 basis for denying the objection. That was the point I was
24 making.

25 MR. GALLO: Judge?

1 CHAIRMAN BLOCH: Mr. Gallo, since we are having
2 this interlude, you have an objection?

3 MR. GALLO: Since the continuity of cross has
4 been interrupted, I would like to object. As I understand
5 the question, it leaves for the imagination of
6 Mr. Lipinsky to determine just what was the state of mind
7 of the inspectors and comparing it to his. It has not
8 been determined what that state of mind was.

9 CHAIRMAN BLOCH: Mr. Lipinsky is a knowledgeable
10 person. I have accepted him as being an intelligent
11 person. I have told him if he disagrees with any of the
12 assumptions in the lead questions, he's to challenge them.

13 MR. GALLO: How do we advance the state of the
14 record, your Honor, if he doesn't tell us that?

15 CHAIRMAN BLOCH: That wasn't the question.

16 MR. GALLO: He -- the question was to compare
17 whether his state of mind was the same as those. There
18 was no predicate to the question.

19 CHAIRMAN BLOCH: I'm sure counsel will follow it
20 up and explain what the state of mind of the people were
21 and you are going to be able to ask redirect to be able to
22 clarify it if it wasn't clear.

23 MR. GALLO: One last thought. It seems to me
24 the proper question is to get on the record what the state
25 of mind was so it serves as a predicate to what he asked.

1 CHAIRMAN BLOCH: He's conducting the cross. You
2 may continue the cross, Mr. Roisman -- your question. Not
3 Mr. Roisman.

4 MR. ROISMAN: I would like to hear that question
5 again, so if the board will indulge me, I would like the
6 reporter to read the question back.

7 (The reporter read the record as requested.)

8 CHAIRMAN BLOCH: You may answer.

9 THE WITNESS: Pardon me, sir?

10 CHAIRMAN BLOCH: You may answer.

11 THE WITNESS: No.

12 BY MR. ROISMAN:

13 Q So it didn't bother you that you were being
14 asked to defend your positions but that Mr. Norris was not?

15 A At the point of my August 8 trip report, I
16 wasn't asked to defend my positions.

17 Q I'm talking about on the 8th of December, 1983,
18 at that time it didn't bother you that you were being
19 asked to defend your positions and Mr. Norris was not?

20 A "Bothered"? I don't know if I agree with that.
21 I didn't understand the logic, I guess, in the process at
22 that time. Whereas I had to defend my position and
23 Mr. Norris didn't. I thought I was pointing out a flaw;
24 or I was questioning what was going on.

25 Q And that, to you, didn't look like an attempt by

1 management to squash any of the -- to point out quality
2 problems?

3 A No.

4 Q It just seemed like honest, good-natured inquiry
5 into the basis for your opinions? I'm sorry, I believe
6 Mr. Reynolds is testifying. If he is, he'll have to speak
7 up a little bit.

8 CHAIRMAN BLOCH: The witness will please answer
9 and Mr. Reynolds should not be making comments. He's not
10 representing anyone right now.

11 MR. GALLO: I think we ought to get the question
12 back.

13 CHAIRMAN BLOCH: Why don't you ask it over again.

14 BY MR. ROISMAN:

15 Q Isn't it the case that, at this particular time --
16 now the time I'm talking about is December 8th of 1983 --
17 that you were placed in a situation in which you were
18 being asked to defend yourself, and that that was -- you
19 thought that was a perfectly normal, natural thing? But
20 Mr. Norris was not, and you thought that that was okay,
21 and it was completely benign? It didn't mean anything?

22 A No. That's not the case. If I had to
23 characterize it, I would say at times it was frustrating
24 in that I would have to explain where I was coming from
25 with regards to my concerns. Whereas other individuals --

1 in this particular instance, Mr. Norris -- did not have to
2 explain where he was coming from when he came out with a
3 not -- an opposing opinion.

4 Q And what was your opinion as to why that was
5 happening at that time? Why did you think that was
6 happening?

7 A I don't think I had an opinion. I think that's
8 why I brought it up with Mr. Reynolds. I didn't
9 understand why I was going through all these exercises
10 with regards to explaining where I was coming from,
11 whereas other individuals -- again, in this case, Jack
12 Norris, or John Norris -- excuse me -- did not.

13 Q And what did Mr. Reynolds tell you?

14 A Mr. Reynolds agreed, as I have indicated here,
15 that it's very likely that Mr. Norris would have to
16 explain in detail where he was coming from when, using my
17 example again, that he said materials storage was okay.

18 Q Did that ever happen, to your knowledge?

19 A I don't believe so. Not to the extent, anyway,
20 that it went on with myself.

21 Q So it has still been the case, at least between
22 you and Mr. Norris, that you have had to defend much more
23 your position than he's had to defend his, to the extent
24 there was a contrary position, his contrary position?

25 A I mean if you can characterize that or put an

1 amount on it, I would say "yes." But there's no way to
2 qualify that, I don't think.

3 Q But it was -- you could quantify it enough so
4 that you felt the difference in December of '83; right?

5 A Yes. That's correct.

6 Q And you can still feel that difference today;
7 right?

8 A To a certain extent; yes.

9 CHAIRMAN BLOCH: Were there people on the site
10 that gave you similar stories, that when they said things
11 against the quality of the plant they had to defend it an
12 awful lot? If they said things for the quality of the
13 plant, they didn't bother them at all?

14 THE WITNESS: I don't recall, sir.

15 BY MR. ROISMAN:

16 Q Well, what was the basis -- what were the
17 statements or events that you witnessed when you were on
18 the site that formed the basis for those two sentences at
19 the bottom of page 3 of your trip report?

20 A That was based on conversations within specs
21 personnel with regards to the generation of
22 nonconformances.

23 Q That's not the only example you give in the
24 parenthetical.

25 A The other one was with regard to painter

1 qualifications. It may not have been an appropriate place
2 to put it in.

3 Q I was looking at "QC reporting to production,"
4 and then the "et cetera"?

5 A Well, that "QC reporting to production" dealt
6 with the fact that production personnel in my opinion at
7 that time were qualifying the applicators. It may have
8 been an inappropriate place to put that, like I said.

9 Q And what about the "et cetera." What did that
10 refer to?

11 A I don't recall.

12 CHAIRMAN BLOCH: I didn't understand that answer.
13 If you thought QC were reporting to craft because of what?

14 THE WITNESS: This gets back with that painter
15 qualification. The fact that at the time I felt that the
16 production people were administering the qualification
17 program in that they qualified the painters without any
18 kind of a QC.

19 CHAIRMAN BLOCH: What's that got to do with QC
20 reporting to craft?

21 THE WITNESS: I said that was an inappropriate
22 place to put that.

23 CHAIRMAN BLOCH: Inappropriate?

24 THE WITNESS: Inappropriate. Questions. I'm
25 sorry I didn't make that clear.

1 CHAIRMAN BLOCH: And that was the only place?
2 No one else told you that? It just had to do with this
3 painter qualification business?

4 THE WITNESS: Yes.

5 CHAIRMAN BLOCH: That was certainly a serious
6 statement to be making, even internally, for that problem;
7 isn't it?

8 THE WITNESS: It was the wrong place in this
9 narrative to put that; yes, sir.

10 CHAIRMAN BLOCH: Well, it's just wrong, period,
11 regardless of where you put it?

12 THE WITNESS: Well, yes, just in that by itself;
13 yes, sir.

14 CHAIRMAN BLOCH: But to that extent you don't
15 agree with the finding in the report?

16 THE WITNESS: Yes, sir. With regards to this QC
17 reporting to production? Yes. That should not be in
18 there.

19 CHAIRMAN BLOCH: That was just wrong; right?

20 THE WITNESS: Yes, sir.

21 BY MR. ROISMAN:

22 Q Now, there is a document dated May 14, 1984,
23 written by you to H8301 QA file with a cc to Mr. Roth,
24 Mr. Trallo, and Mr. Norris, and the subject is H8301 trip
25 report.

1 CHAIRMAN BLOCH: Off the record.

2 (Discussion off the record.)

3 CHAIRMAN BLOCH: Let's continue.

4 BY MR. ROISMAN:

5 Q Do you have it now, Mr. Lipinsky?

6 A It's 0164?

7 Q Yes. QAD-84-0164. That's correct.

8 Now, as I understand it, this summarizes the meetings
9 which you had with Mr. Watkins, Mr. Brandt -- briefly I
10 believe Mr. Reynolds came in -- in which the format for
11 the September 28, 1984 affidavit was agreed to. Is that
12 correct? Is this where you began to pull together what
13 that was going to look like?

14 A Yes, sir. Began -- this was an ongoing process.

15 Q Okay. And at this point, did you already have
16 in hand what became Mr. Brandt's affidavit and his
17 attachments or not?

18 A No, sir, I did not.

19 Q Had you begun to review -- had you begun to
20 review the attachments at this point?

21 A No, sir, I had not.

22 Q Had you, by this time, agreed that you would
23 testify based upon what Mr. Brandt provided you?

24 A Yes.

25 Q But you didn't know what it was going to be?

1 A Mr. Brandt discussed -- no, I may not have known
2 the specifics what it was going to be.

3 Q Right.

4 A However, Mr. Brandt went over what would be
5 included that would have to satisfy my concerns; what
6 forms, what procedures, that type thing.

7 Q And at this time did you feel that you were
8 going beyond the statements that you had made to the
9 Nuclear Regulatory Commission in your January 4, 1984
10 statement, in what was going to become your affidavit,
11 that you would be going beyond those to say things more
12 positive about the Comanche Peak program than you had said
13 at the time of the January 4th meeting?

14 A Yes, I did. I did feel that way. Also I would
15 like to point out on the second page, the top sentence
16 kind of points out those ground rules that we had talked
17 about.

18 Q Why don't you just read those, if you would, and
19 then we'll have them.

20 A It says, "M. Watkins pointed out that JNL need
21 not be concerned about the facts or details behind the
22 statements made by CT Brandt."

23 Q And was that the first time that that had been
24 laid down as the ground rule?

25 A It's possible; yes. It's the first time. I

1 guess, I documented it; yes, sir.

2 Q Now, just in the normal course of doing the job
3 that you regularly do for O.B. Cannon, how do you deal
4 with the presentation of information to you with that kind
5 of a ground rule? I mean, do you normally do your reports
6 with -- accepting the statements that are made, without --
7 in the words here, without being concerned about the facts
8 or details behind statements?

9 A No. Typically we are not in this type of
10 position. Our position is one where we would have some
11 flexibility, as far as being able to follow up or pursue
12 an item or concern. In this situation we were a
13 consultant and we had no authority or justification for
14 following up without further direction from the Utility.

15 Q Was it your choice to do it this way?

16 A My own personal preference, I voiced this
17 throughout, would have been for us to go and do an audit
18 based on the four-page -- again, for want of a better word --
19 checklist that myself and Mr. Michaels developed.

20 Q What's been marked as Exhibit 3?

21 A That's correct; yes.

22 Q And why would that have been your preference?

23 A Because I would have been able to satisfy myself,
24 in a hands on-type situation, to the extent I felt I would
25 need to feel comfortable.

1 Q So the only reason that you are "satisfied" with
2 regard to the concerns raised in your August 8, 1983
3 memorandum today, is because you have chosen to deviate
4 from your normal practice and accept as a given Mr. Brandt's
5 representations to you?

6 A I'm accepting his representations. But I would
7 want to point out that what he provided is adequate;
8 provided -- and again I cannot prove that they are
9 implementing it, I'm taking it as a given, using your
10 words.

11 Q But implementation was one of the issues that
12 was raised when you first went to the site; wasn't it?
13 That was one of the things that you were concerned with
14 based upon your conversations with inspectors, was whether
15 they were implementing the proper procedures. Isn't that
16 correct?

17 A I don't know if that was identified as a
18 specific concern or not.

19 Q Well, irrespective of the report, and based upon
20 your memory of the events, was that one of the things that
21 the QC inspectors were raising with you?

22 MR. GALLO: Objection. I thought the report was
23 all important. Irrespective of the report and based on
24 his memory is not only immaterial, it's prejudicial to the
25 witness. The witness ought to be able to refresh his

1 memory based on looking at the report.

2 CHAIRMAN BLOCH: He never said he couldn't look
3 at the report.

4 MR. GALLO: The question was "irrespective of
5 the report."

6 CHAIRMAN BLOCH: What's your memory about
7 statements made to you about QC inspectors on-site? Any
8 recollection?

9 THE WITNESS: Not with regards to implementing
10 the program one way or the other.

11 CHAIRMAN BLOCH: So you didn't ask them about
12 that at all? Or you just don't recollect whether you did
13 ask them?

14 THE WITNESS: I don't recollect, sir, one way or
15 the other. It's possible I did. It's possible I didn't.

16 CHAIRMAN BLOCH: Does that include Mr. Mouser?

17 THE WITNESS: When you say "the program," I
18 guess I need to be a little more specific in what we are
19 talking about, if it could be narrowed down.

20 CHAIRMAN BLOCH: Let Mr. Roisman clarify that.

21 BY MR. ROISMAN:

22 Q Yes. Go ahead and be more specific.

23 A In my conversations with these individuals, we
24 did talk about the items I had identified: the fact that
25 there were no tags on containers; the fact that the

1 surface preparation of zinc 11; the fact that sanding was
2 taking place -- along those lines, yes, I did discuss
3 implementation. I didn't ask an inspector whether they
4 thought the program was being adequately implemented.
5 They shouldn't be looking at a program being -- that
6 shouldn't be in there -- they should just be inspecting
7 paint, really. That's not within their scope.

8 CHAIRMAN BLOCH: What you are telling me is like
9 telling me that a police officer who is asked "Are you
10 enforcing the traffic laws?" couldn't legitimately be
11 asked "Do you do that or not?" I don't understand what
12 you are saying.

13 THE WITNESS: Well, using your example, the
14 police officer would say "Yes, I'm enforcing the traffic
15 laws" and make sure I'm arresting speeders or whatever the
16 case is, but he shouldn't be making judgmental
17 determinations on the people he arrests, whether in fact
18 they were speeding or whatever.

19 CHAIRMAN BLOCH: The question is whether it was
20 legitimate to ask a QC inspector whether they were
21 enforcing anything to do with travelers in connection with
22 paint cans?

23 MR. GALLO: Objection. You are
24 mischaracterizing the question. That is not the question.
25 What he's trying to do is explain the difference between QC

1 inspector responsibilities and QA responsibilities.

2 CHAIRMAN BLOCH: You didn't think it was
3 appropriate to ask them about the general practices of QC
4 on-site as opposed to specific things they saw?

5 MR. GALLO: That's what I object to, your Honor.
6 I'm sorry. The use of the word "appropriate." He has not
7 indicated appropriateness one way or the other. My
8 recollection of the testimony is he didn't ask because he
9 didn't expect they would know because of their job
10 function. That's the difference.

11 CHAIRMAN BLOCH: He didn't think he would know
12 what the practices were on QC on the site?

13 MR. GALLO: Or the implementation results.

14 CHAIRMAN BLOCH: You didn't think they would
15 know whether they were implementing the QC program on-site?

16 THE WITNESS: Aspects of it they would know.
17 They would know whether or not they documented an
18 inspection. They would know that. They might not know
19 whether that inspection form they completed satisfied all
20 the regulatory requirements for the information contained
21 on that form.

22 CHAIRMAN BLOCH: And they may not. Sometimes
23 workers know that better than the bosses, don't they?

24 THE WITNESS: That's possible, but I think in
25 response to the question that's not really within their

1 scope. And again, I don't recall whether I asked them if
2 they were implementing the program one way or the other or
3 if the program was adequately implementing.

4 CHAIRMAN BLOCH: Mr. Roisman? I have been
5 looking in the affidavit. Could you tell me -- I'm sorry,
6 before I hand it back -- could you tell me if the
7 affidavit states the ground rules you had on Mr. Brandt's
8 testimony? I haven't found it.

9 THE WITNESS: I don't believe it does; no, sir.

10 CHAIRMAN BLOCH: I was supposed to guess that
11 that was the ground rule?

12 MR. WATKINS: Your Honor, the testimony is plain.
13 He is relying on the testimony of Mr. Brandt.

14 CHAIRMAN BLOCH: I want to know where the
15 affidavit says that. The affidavit has no qualification
16 like that that I can find.

17 MR. WATKINS: It refers repeatedly to the
18 affidavit and appendices of the affidavit of Mr. Brandt,
19 as does our motion.

20 CHAIRMAN BLOCH: The ground rules he states is
21 he wasn't supposed to be concerned about the facts or
22 details behind statements?

23 MR. WATKINS: No, his testimony is he accepted
24 the factual statements and technical statements of
25 Mr. Brandt for the purpose of addressing his concerns.

1 CHAIRMAN BLOCH: This -- executing the affidavit --
2 is it true that you were not concerned about the facts or
3 details behind statements made by C.T. Brandt?

4 THE WITNESS: I executed the affidavit based on --
5 and again, keep picking on material control, but I'll do
6 that -- accept tag, hold tag, reject tag -- if Mr. Brandt
7 said they'd have a procedure saying accept tags are not
8 required as a result of the steps they go through, I
9 accepted that. I did not pursue whether or not in fact
10 they are implementing it.

11 CHAIRMAN BLOCH: Okay. What about this general
12 statement: "Facts or details." What does that mean to
13 you? Was there any other place where you accepted things
14 that were in Brandt's statement without inquiring into
15 facts or details behind the statement?

16 THE WITNESS: That would characterize pretty
17 much the whole. I accepted what Mr. Brandt provided me on
18 his say so, or his word.

19 CHAIRMAN BLOCH: Does that mean if you knew
20 there was something that he said that didn't mesh with
21 your knowledge of the world, that you accepted it anyway?

22 THE WITNESS: No. That's not the case. What he
23 defined, again picking on material control, what he
24 defined for that is acceptable. Now, whether or not in
25 fact the people on-site are doing that -- is fine. Maybe

1 the can I saw -- and this is hypothetical. I can't
2 emphasize this enough. Maybe the can I saw was the only
3 intact can I saw out of the whole. All the cans are
4 leaking like sieves. They are using them. Again that's
5 hypothetical. I can't emphasize that enough.

6 JUDGE GROSSMAN: Excuse me. Just to pin it down.
7 You have that statement that, in your May 14, 1984
8 memorandum, that M. Watkins pointed out that " J.J.L. need
9 not be concerned about the facts or details behind
10 statements made by CT Brandt."

11 Now, did you accept that as a premise?

12 THE WITNESS: Yes, sir.

13 CHAIRMAN BLOCH: I understand your point,
14 Mr. Watkins, is that it appears to be appropriate in the
15 affidavit?

16 MR. WATKINS: I'm sorry, your Honor?

17 CHAIRMAN BLOCH: Your point was that the way the
18 affidavit was executed, that was appropriate?

19 MR. WATKINS: Not only appropriate -- well, I
20 think it's obvious, first of all. We certainly think it's
21 appropriate. And I'm not sure whether the board is
22 criticizing Mr. Lipinsky or Applicants for failing to come
23 right out and say that those were the ground rules. I
24 can't understand any reason why it should be.

25 CHAIRMAN BLOCH: We are just pinning down the

1 facts and I just acknowledged what your point was before.

2 Mr. Roisman?

3 MR. ROISMAN: Yes. I think I would like to mark
4 as Lipinsky, or JJL-4, the two-page document that we had
5 discussed and identified as QAD-84-0164, dated May 14,
6 1984. And have it received in evidence at this time.

7 CHAIRMAN BLOCH: Will you show the copy to the
8 witness and make sure you have the right one for the
9 record?

10 THE WITNESS: 0164?

11 MR. ROISMAN: With the exception of the pencil
12 notation in the right-hand corner of 11-17, which was made
13 in my office.

14 CHAIRMAN BLOCH: It may be received in evidence
15 and bound into the record at this point.

16 (JJL-4 received.)

17 (The document follows:)

18

19

20

21

22

23

24

25

OLIVER B. CANNON & SON, INC.

11/17
JL-4
Copy in

DEPARTMENTAL CORRESPONDENCE

QAD-84-0164 19823

DATE May 14, 1984

SUBJECT H8301 Trip Report
TO H8301 QA File cc: R. B. Roth, R. A. Trallo, J. J. Norris
FROM J. J. Lipinsky

On May 9, 1984, the writer met with McNeil Watkins II (Bishop, Liberman, Cook, Purcell & Reynolds) and C. Thomas Brandt (EBASCO), in M. Watkins Washington, D.C. office (6th floor conference room).

The meeting started at approximately 0930 hours (EST) and ended at approximately 1315 hours (EST) (working through lunch).

C. T. Brandt provided J JL back-up information to satisfy concerns raised by J JL (see QAD-83-0096 dated August 8, 1983). The information provided by C. T. Brandt was along the lines of the information provided to OBC during the November 10/11, 1983, meeting at the H8301 site, and satisfied concerns raised by the writer.

The writer did suggest to C. T. Brandt that Carboline be contacted to get a more up-to-date evaluation of repair procedures to the coatings applied at the H8301 project.

M. Watkins indicated that J JL's comments to the NRC testimony can still be incorporated.

M. Watkins stated that J JL's testimony will be changed from a question and answer format to an affidavit format. Hopefully, OBC will not have to testify in front of the ASLB. If testimony is required, then in all probability only RAT and/or J JL will be needed. A rough draft of the affidavit format will be provided to J JL for review and comment (as well as a copy of testimony of C. T. Brandt).

H8301 Trip Report
H8301 File cc: RBP, RAT, JJN
J. J. Lipinsky

-2-

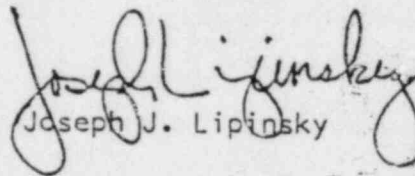
QAD-84-0164
May 14, 1984

19824

M. Watkins pointed out that J.J.L. need not be concerned about the facts or details behind statements made by C. T. Brandt.

N. S. Reynolds came in briefly and talked in general about the status and progress of the meeting. Also, N. S. Reynolds discussed with C. T. Brandt reports (by EBASCO and Gibbs and Hill) that would dequalify all coating in containment. Later J.J.L. discussed this briefly with C. T. Brandt and M. Watkins.

The writer has advised all concerned about the discussion during the course of the meeting, however if there are any questions or need for additional information, do not hesitate to contact the writer.


Joseph J. Lipinsky

JJL:cf

1 MR. ROISMAN: I had asked to mark it as an
2 exhibit?

3 CHAIRMAN BLOCH: I thought you said you wanted
4 it in evidence. It can also be marked, if that makes it
5 easier for you.

6 MR. ROISMAN: It make it easier for us because
7 we don't have the transcript usually, if it is referred to
8 by exhibit numbers.

9 CHAIRMAN BLOCH: What number do you choose?

10 MR. ROISMAN: 4, which is the next one.

11 BY MR. ROISMAN:

12 Q Mr. Lipinsky, I want to talk to you briefly
13 about the process by which the September 24, 1984
14 affidavit was put together.

15 As I understand it from the document that has just been
16 marked as J JL-4, sometime around the middle of May the
17 sort of fundamental ground rule was laid down.

18 Did you then take information that was sent to you by
19 Mr. Brandt and draft in your own words your explanation of
20 how your concerns were addressed, vis-a-vis Mr. Brandt's
21 statements? Was that the process you went through?

22 A No. I thought I described earlier, I may be
23 mistaken -- initially what happened was, I believe, on
24 November 22nd of '83, myself and Jack Norris traveled to
25 Mr. Reynolds' office in Washington. At that time

1 Mr. Reynolds, Mr. Walker, and Mr. Horn, I believe, of his
2 firm, and Mr. Chapman, were present. And we pretty much
3 went through specific areas or items that I had concerns
4 with.

5 As a result of this give and take conversation, a
6 question and answer format was developed by Mr. Reynolds.

7 As time went on, that developed into an affidavit type
8 format which ultimately culminated in the September 28th --

9 Q But on November 28, some six days later,
10 Mr. Trallo's memorandum to Mr. Roth, the portions of which
11 you and I have discussed and gone over here this afternoon,
12 was generated. And in that document you continued -- and
13 you agreed with this part of the document -- Mr. Trallo,
14 apparently accurately representing your views -- indicated
15 that you continued to say that the only way that you could
16 have those concerns satisfied was by the detailed audit;
17 isn't that right?

18 A Yes. I believe I also came across that way with
19 the Nuclear Regulatory Commission, in their interview or
20 deposition on the 4th of January.

21 Q So that all during this period, what you
22 perceived is that, if you testified, that you would be
23 testifying and essentially saying: If all these things
24 are true, then I don't have any concerns. But I can't say
25 whether they are true without doing a detailed audit.

1 That was the premise, sort of the format that you thought
2 you were working toward; wasn't it?

3 A Yes.

4 Q And then sometime in May of '84, that format
5 changed; didn't it?

6 A I don't -- yes. Yes.

7 Q And did it change -- it didn't change at your
8 suggestion, did it? Somebody came up with that idea,
9 didn't they?

10 A I don't recall who put forth the idea.

11 Q But it wasn't you, was it?

12 A I don't believe so, but I could be mistaken.

13 Q Was there some dissatisfaction expressed with
14 the suggestion that you simply state, as you had been
15 stating all along: If everything is as they say it is, it
16 is okay. But I would need a complete audit before I could
17 say conclusively one way or the other?

18 A I don't believe so. It is possible that I
19 identified, you know, that I'm taking this on face value.
20 And as a result of that, what Mr. Watkins may have
21 explained essentially became the ground rule for my
22 affidavit.

23 Q Well, did you feel any need to evolve your
24 testimony beyond the statements that you had made to the
25 Nuclear Regulatory Commission, where the "but I need a

1 detailed audit" qualifier was built in?

2 A I didn't see any need for that; no.

3 Q Then why in your judgment did it evolve that way?
4 Why didn't you just basically reproduce the Hawkins
5 statement and make that your statement?

6 A I don't know. I don't have an answer for that.

7 Q Did you ever actually write down any substantive
8 statements of your own? Or did you only review
9 substantive statements of others, related to these matters,
10 that ultimately became your testimony?

11 A Initially with regards to questions raised by
12 Mr. Reynolds, they may have pencilled portions -- or some
13 responses to those questions.

14 Q Do you know what happened to the notes of that?

15 A No, I don't. I did not retain them. I don't
16 have a copy of it.

17 Q In the process that finally culminated in the
18 September 28, 1984 affidavit, how many iterations did your
19 statements go through, roughly? Starting back in November
20 of '83?

21 A To be perfectly honest, I wouldn't want to
22 venture a guess. There were several.

23 Q But by September of '84, you had had a great
24 deal of input, I take it, into exactly how the words
25 should be framed; right?

1 A I had meetings, three or four meetings. Perhaps
2 I would have to again go through the diary of the times I
3 was in Washington. But essentially it went from a
4 question and answer format to an affidavit format. The
5 final version, which is what was submitted -- what's in
6 evidence, was forwarded to me for comments and those
7 comments, the comments I had, were discussed with
8 Mr. Watkins and subsequently incorporated.

9 Q How did you --

10 A Or resolved. I'm sorry.

11 Q Excuse me. Go ahead.

12 A Or resolved, I should say.

13 Q How did you view what was taking place? Did you
14 feel free to say what you wanted to say? Or did you feel
15 that you had to say as much of what the Applicants'
16 counsel wanted you to say as possible.

17 A I think at all times Mr. Reynolds and
18 Mr. Watkins said, you know, if there's any concerns or
19 something that we are not covering, please tell us.

20 Q Well, in the context of this statement that one
21 normally makes when they go under oath, that you tell the
22 truth, the whole truth, and nothing but the truth, did you
23 feel like you were trying to tell the whole truth; or that
24 you were simply making sure that you were telling the
25 truth and nothing but the truth, but there may have been

1 some more truths that you weren't going to put into your
2 affidavit?

3 A I hate to tell you this -- I sort of got lost
4 there with "the truth, whole truth."

5 Q "The truth" is that you should tell the truth.
6 "The whole truth" is you should tell all the truth you
7 know that's relevant, and "nothing but the truth" is you
8 shouldn't tell anything that's not the truth.

9 A Yes.

10 Q Now, I understand that what you have said in
11 your affidavit, you attest to the fact that it's the truth
12 and that it's nothing but the truth. There aren't any
13 lies in there. You don't say something in there when you
14 know something else is true. Now, the question is, are
15 you telling the whole truth? Does it tell everything you
16 know about the issues? Or is it more narrowly
17 circumscribed than that?

18 MR. GALLO: Objection. I don't know where
19 Mr. Roisman got his new definition of "truth."

20 CHAIRMAN BLOCH: Let's strike the definition of
21 "whole truth." Does it have all the relevant facts that
22 you think are important?

23 THE WITNESS: Yes.

24 BY MR. ROISMAN:

25 Q For instance, you don't think it's important to

1 indicate the ground rule?

2 A I thought again, throughout my affidavit I'm
3 referring to Mr. Brandt. I didn't make a positive
4 statement identifying the ground rule; that's true. In
5 retrospect, perhaps it should have been in there.

6 Q Well, it's true that you in your September 28th
7 testimony -- excuse me -- affidavit -- indicate that --
8 let's just take painter qualification indoctrination, on
9 page 8. At the end of the -- well, first there's an
10 intermediate paragraph. You indicate: "On the subsequent
11 visit to Comanche Peak, I observed craft personnel
12 undergoing testing by applying zinc primer to test panels."
13 Then you indicate you reviewed Mr. Brandt's affidavit.
14 And "Based on his discussion, I am satisfied that my
15 original misapprehension was without basis."

16 Now, isn't it true that when you say "I am satisfied,"
17 it doesn't mean "I'm satisfied" assuming that the program
18 he says has been implemented has been implemented? It
19 doesn't have that in there. You are just saying "I'm,
20 satisfied, that's enough for me."

21 MR. WATKINS: I'll object to his
22 characterization of this testimony, because the affidavit
23 testimony is that on a subsequent visit he, Mr. Lipinsky,
24 saw the painters.

25 CHAIRMAN BLOCH: What page?

1 MR. ROISMAN: Page 8 of the testimony. I'm
2 going to object to Applicants' interjecting A, to
3 witnesses who are not theirs, and B, characterizing
4 testimony for the witness. I read the testimony. They
5 now attempt to be highlighting it for the witness' benefit.

6 CHAIRMAN BLOCH: You should not refer to another
7 portion. I guess, Mr. Watkins, there's some sense to your
8 not having objections here if Mr. Gallo does. Do you
9 think you ought to be able to make objections on this
10 witness, too?

11 MR. WATKINS: I think, your Honor, I have not
12 only the obligation to make objections if appropriate, but
13 the right.

14 CHAIRMAN BLOCH: Okay. I agree with that.

15 MR. ROISMAN: In any event, what he was about to
16 do was to highlight something which I already took care to
17 read to the witness so that the witness would know I was
18 referring to both statements.

19 MR. WATKINS: If the concern of Mr. Roisman
20 and/or the board is that I'm trying to lead the witness
21 somehow to the correct answer, I can say "Objection." We
22 can have Mr. Lipinsky leave the room, and then I can state
23 for the record the objection. That is not my intent.

24 CHAIRMAN BLOCH: I'm afraid, whether the purpose
25 was to break the cross or not, I've lost track of this. I

1 don't know how to rule properly, Mr. Roisman. I apologize.

2 MR. ROISMAN: I will do it again.

3 BY MR. ROISMAN:

4 Q Mr. Lipinaky, still looking at the first
5 paragraph of page 8 of the September 28 affidavit, your
6 affidavit, you indicate, as I pointed out before, that on
7 a subsequent visit to the site, that you had observed
8 craft personnel undergoing testing by applying zinc primer
9 to test panels, and then you indicate "I have also
10 reviewed Mr. Brandt's affidavit regarding qualification of
11 painters," and you say: "Based on his discussion, I am
12 satisfied that my original misapprehension was without
13 basis."

14 Now, my question to you was: Isn't it true that when
15 you say "I am satisfied," there is no implied qualifier,
16 assuming that the programs that he's talking about have
17 been fully implemented?

18 A No. There is not an implied qualifier. However,
19 this sentence we are discussing was one of the sentences
20 modified by my testimony. I don't know if this has any
21 impact or not with regards to your question.

22 Q Well, I guess part of my concern is -- I realize
23 that you have come forward here now in November and
24 indicated that some of the things that you attested to in
25 September were not correct; or needed further

1 clarification. But I'm now talking about how we got to
2 the September 28 document.

3 If you want to shed some light for me on that, I would
4 be very interested to know how you signed the affidavit on
5 September 28th without the change in it, if you now think
6 the change is a fairly important one.

7 MR. GALLO: Objection. The witness has
8 explained that in his direct testimony in answer 38. I'm
9 sorry, answer 37.

10 CHAIRMAN BLOCH: Well, I think a little bit more
11 could be provided about the way that this took place and
12 how it happened that you overlooked it at that time.

13 MR. GALLO: I don't know, your Honor. If you
14 overlook something, you overlook something. I don't know
15 that you can give more of an explanation than that.

16 CHAIRMAN BLOCH: What was the process of review
17 of that affidavit? How did it work? How much time did
18 you have to look at it?

19 THE WITNESS: I don't have a calendar in front
20 of me. The affidavit was forwarded -- I received it --
21 let's start over.

22 The affidavit was in my office on Thursday. And I
23 executed it on Saturday -- or, actually executed it on
24 Friday with minor modifications accomplished on Saturday.

25 CHAIRMAN BLOCH: And you went over it pretty

1 carefully?

2 THE WITNESS: Yes, sir.

3 CHAIRMAN BLOCH: Did the problem that you had in
4 executing this have anything to do with the ground rule?

5 THE WITNESS: No. You lost me on that sir; what
6 problem?

7 CHAIRMAN BLOCH: Well, it's possible that the
8 reason you agreed to the statement on page 8, which you
9 now want to correct, is that you were just not looking in
10 detail at what Mr. Brandt said; is that possible?

11 THE WITNESS: That's a consideration. I don't
12 think that that's what happened, but that's a possible
13 explanation; yes.

14 CHAIRMAN BLOCH: But that was a ground rule and
15 that's what you were supposed to be doing, not looking in
16 detail at what Mr. Brandt said; is that right?

17 THE WITNESS: Where we are talking about looking
18 in detail, we are referring to the actual implementation
19 of what Mr. Brandt told me was going on down there.

20 MR. GALLO: Mr. Chairman, Judge Bloch, I must
21 ask the Chairman to restrain himself. The witness has
22 been very clear that the ground rule was that he was not
23 to look behind the details testified to by Mr. Brandt in
24 terms, as Mr. Roisman has elicited, in doing a detailed
25 audit, making a site visit. There was no ground rule that

1 he wasn't supposed to examine the affidavit itself with
2 care. That was the suggestion you have just made in the
3 last question.

4 CHAIRMAN BLOCH: The memorandum we looked at
5 just a moment ago didn't qualify it that way. It really
6 was more of an unqualified statement.

7 MR. GALLO: Well, I didn't understand -- perhaps
8 we need to get clarification on that from the witness. I
9 understood the question was that he was supposed to just
10 ignore the four corners of the affidavit by Brandt and the
11 attachments to it.

12 CHAIRMAN BLOCH: Let's clarify with the witness,
13 not with the lawyer. Go back to the memorandum which was
14 bound into the record. Do we have that?

15 MR. GALLO: JJL-4?

16 CHAIRMAN BLOCH: Correct. What did that mean to
17 you -- he shouldn't be concerned about the facts or
18 details provided by Mr. Brandt? What did that mean to you?

19 THE WITNESS: Essentially, the information
20 provided by Mr. Brandt would be sufficient to satisfy my
21 concerns. With the painter qualification forms, the data
22 contained in there -- the painter qualification forms in
23 fact satisfied the ANSI requirements.

24 Well, Mr. Brandt provided forms saying that -- provided
25 me examples -- actually, executed, completed copies of

1 forms.

2 Also there was the ANSI sample form was provided. I
3 was able to compare the two. So that satisfied my concern.

4 Now, whether or not there, in fact, the Utility is in
5 fact implementing the use of this form, that's something
6 that, you know, I'm taking as a given at face value.

7 CHAIRMAN BLOCH: So you say the error you made
8 on page 8 of the affidavit had nothing to do with the
9 ground rule?

10 THE WITNESS: That's correct; yes.

11 CHAIRMAN BLOCH: Mr. Roisman?

12 BY MR. ROISMAN:

13 Q I still don't think I understand, Mr. Lipinsky,
14 how it got by you. It's all well and good for your
15 counsel to say that people make mistakes, but you made
16 this mistake under oath. So I want you to tell me: How
17 did it get by you? It looks, as you explain it on pages
18 29 and 30, like pretty obvious. You should have had
19 confirming documentation. You didn't. It doesn't seem
20 real subtle to me. Can you give me an explanation, how
21 you missed it?

22 MR. GALLO: Objection. That's been asked and
23 answered.

24 The fact that he signed the affidavit under oath
25 doesn't make it any less or more difficult to overlook

1 something. He overlooked it. That's the answer. I don't
2 know why we have to go further than that. It has been
3 asked and answered.

4 CHAIRMAN BLOCH: I think we have been over it a
5 few times now. I think one time I won't accept "asked and
6 answered," but we have been over it a few times.

7 BY MR. ROISMAN:

8 Q Okay, Mr. Lipinsky, in your notes on September
9 28, the Friday, you indicate in those notes, and I quote,
10 "TECON with W. Watkins" and then with what looks like a "B"
11 sign, 14:10 hours. The first bullet: "Needed sign JJL
12 affidavit." Your parenthesis "spelli.g" close parenthesis,
13 ASAP.

14 MR. GALLO: Mr. Roisman, I'm sorry to interrupt
15 you, but both the witness and I were at a loss with
16 respect to your reference.

17 MR. ROISMAN: His notes, Friday, September 28,
18 1984.

19 MR. GALLO: We are both looking at the diary.
20 That begins on November 9 -- oh, September '84?

21 MR. ROISMAN: September 28, 1984. The diary
22 that starts with the January 3rd, '84 date.

23 MR. GALLO: Thank you for the clarification.

24 BY MR. ROISMAN:

25 Q Do you have it now, Mr. Lipinsky?

1 A Yes.

2 Q Okay. It says "needed sign JJL affidavit ASAP.

3 Wanted to present to board before JJ end testimony on 10/1/84."

4 Do you see that?

5 A Yes.

6 Q Now, if you look back at the preceding page,

7 September 27, you say, "TECON with M. Watkins called --"

8 and I don't know what that designation is, HC3002 -- site.

9 "Asked if I received package with affidavit. (Brandt/Lipinsky)
10 and motions. JJL explained RBR has package on desk which
11 is SOP for Cannon. JJL to call on Friday."

12 Now, did you get to see the affidavit before Friday?

13 A No, sir. Friday was when I first saw the
14 affidavit.

15 Q All right. What does the "JJL to call on Friday"
16 mean? Who were you to call?

17 A I was to call Mr. Watkins after I had a chance
18 to look at the affidavit.

19 Q And you were under some time pressure from
20 Mr. Watkins on that Friday; weren't you? This is this
21 note, "ASAP, warranted to present to board" et cetera?

22 A Yes. To a certain extent; yes, sir.

23 Q So is it possible that you rushed a little bit?

24 A Well, I did do a very quick review on Friday.
25 However, I did do a little more of a detailed review on

1 Saturday, the 29th.

2 Q But you signed it on Friday, didn't you?

3 A Yes, sir.

4 Q What did you sign?

5 A Essentially I signed the last --

6 MR. GALLO: Wait a minute. Objection. He said
7 "Yes, sir, with" -- and he was interrupted. I would like
8 the witness to complete his answer.

9 CHAIRMAN BLOCH: Okay.

10 THE WITNESS: Hate to ask this. Can we go back?

11 CHAIRMAN BLOCH: Can we reread the question?

12 MR. GALLO: Don't feel guilty about doing that.

13 (The reporter read the record as requested.)

14 MR. GALLO: Were you going to add something,
15 after the question "you signed on Friday"? I don't know
16 whether you can remember or not.

17 THE WITNESS: I guess you asked what I signed on
18 Friday. I recall that was the question?

19 MR. ROISMAN: What did you sign on Friday?

20 THE WITNESS: What I signed essentially was the
21 last page of what became my affidavit. When that was sent
22 down to Mr. Watkins, it was with the understanding that I
23 did a very brief review and I need to do a more detailed
24 review and that would not be utilized until he heard from
25 me one way or the other on Saturday, the 29th.

1 BY MR. ROISMAN:

2 Q Has any counsel explained to you what the
3 significance is of signing something other than what it is
4 that your signature ultimately is attached to?

5 A Mr. Gallo pointed out that that's not the normal
6 course of events; yes, sir. That's not the thing to do.

7 Q It was like the trip report being signed in
8 November with a date of August?

9 A I wouldn't characterize it like that; no, sir.

10 Q More innocent or more guilty?

11 A I would think in my opinion it was more innocent.

12 Q In the document that was sent to you by
13 Mr. Watkins on the 26th of September, 1984, take a look
14 and tell me: Is that the document that he sent to you?

15 A It's actually to actually determine that I would
16 have to do a line-by-line review of the two.

17 Q Look at the last page of your copy and the copy
18 I just gave you. I'm talking about, now, the draft that
19 you got from him sent out the 26th.

20 A 26th of September?

21 Q Yes. I'm not talking about the final one that
22 you ultimately filed here. Just so that you are clear on
23 which one I'm talking about, I'm talking about the one
24 that was attached to his September 26th letter to you.

25 A That's the same page 18 with the exception of

1 note of a telecopy request facsimile.

2 Q Do you have a copy of the September 26th letter
3 that you got, the actual letter that you got from
4 Mr. Watkins?

5 MR. GALLO: We have one here someplace.

6 THE WITNESS: You are referring to the first few
7 pages?

8 BY MR. ROISMAN:

9 Q I'm talking about the original of the letter,
10 and do you have attached to it what was originally
11 attached to it?

12 A What you are asking is do I still have the first
13 17 pages of what I had changes to, essentially?

14 Q No. I'm asking did he send you an 18-page
15 document on that day? And, if so, do you have it there?
16 Is that it, that your left hand is touching?

17 MR. GALLO: That's not it, your Honor. What the
18 witness has before him is the version -- not the version,
19 but the copy furnished by Mr. Watkins, pursuant to the
20 discovery production. So it's not exactly the same
21 document.

22 MR. ROISMAN: Does anybody know where the
23 original is? Mr. Gallo, do you?

24 MR. GALLO: I believe the original is in our
25 papers someplace. I'll be glad to find it overnight.

1 THE WITNESS: I may want to -- it's possible I
2 destroyed my copy of it. I don't know if it's considered
3 the file --

4 MR. GALLO: My recollection is I have a copy of
5 that document but I can't lay my hands on it.

6 MR. ROISMAN: It shouldn't be any secret to
7 anybody who got discovery from Mr. Watkins. We have a
8 letter with an 18-page document attached to it, the back
9 page of which is signed September 28. And I'm trying to
10 find out how Mr. Watkins had in his possession on the 26th
11 a document dated the 28th. And already notarized with
12 Mr. Lipinsky's signature on that.

13 CHAIRMAN BLOCH: Clarify that are for the record.

14 BY MR. ROISMAN:

15 Q All I did was show you what I got from
16 Mr. Watkins and ask you --

17 A I misunderstood you. That did not happen.
18 Essentially Mr. Watkins forwarded up a letter to where the
19 page 18 was blank. There was no signature, there was no
20 notary. In producing documents, rather than send a draft
21 with a blank page 18 -- I'm making a supposition here --
22 that you just provided him with an executed copy and the
23 cover letter that --

24 Q So you are saying you got a copy that wasn't
25 executed at all on the 27th?

1 A That's correct, yes.

2 Q And the one you saw on the the 28th had no
3 signature here on it?

4 A Yes. That's correct. Yes.

5 Q And then you just took that blank page 18 --
6 blank in the sense of signatures, not in terms of writing --
7 and you signed it on the 28th; is that correct?

8 A Correct.

9 Q And did you go down to see Mr. --

10 A Yes, Mr. Eckman is a notary employed by Cannon.

11 Q So you went down and had him do that. This is
12 all he had in front of you, just the 18th page?

13 A That's correct.

14 Q Do you remember whether it had any stamp below
15 it? Below his signature on there, that little reproduced
16 stamp that appears on what has now been admitted into
17 evidence --

18 A What are you talking about, as far as the notary --

19 Q Underneath this word "notary public" where his
20 name is actually printed out. Do you remember whether
21 that was placed on there when you signed it?

22 A He normally does that. Now that you bring it to
23 my attention, I notice it's not there. He has a little
24 stamp that says "My notary expires on" whatever and he
25 puts the seal.

1 Q Did he say anything to you when he signed it to
2 indicate that maybe he wasn't doing that because it wasn't
3 proper for him to sign it then?

4 A He didn't indicate one way or the other. In
5 fact, until you pointed it out here, I would have expected
6 it to have been there.

7 MR. ROYMAN: It looks like it is 6:00.

8 CHAIRMAN BLOCH: Could we have the other
9 witnesses in the courtroom for an instruction before we
10 adjourn?

11 I note for the record that the other three witnesses
12 have returned to the courtroom. I would like to thank
13 them for the difficulty that they are undergoing at the
14 requirement of this board and I would like to urge them
15 that they not talk with Mr. Lipinsky overnight and that
16 they attempt not to be in contact with any news reports or
17 discussions of what may have taken place today.

18 Thank you very much. Mr. Lipinsky, same for you in
19 terms of -- well, you know your testimony. Forget that.

20 Any other comments before we adjourn?

21 MR. GALLO: He wants to confer with me before we
22 adjourn.

23 CHAIRMAN BLOCH: Surely.

24 (Discussion off the record.)

25 CHAIRMAN BLOCH: Okay. We are in adjournment

1 until 8:30 a.m. tomorrow morning.

2 (Whereupon, at 6:00 p.m., the hearing was
3 adjourned, to reconvene at 8:30 a.m., November 20, 1984.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: TEXAS UTILITIES GENERATING COMPANY, et al.
(Comanche Peak Steam Electric Station,
Units 1 and 2)

DOCKET NO.: 50-445-OL2
50-446-012

PLACE: GETHESDA, MARYLAND

DATE: MONDAY, NOVEMBER 19, 1984

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig)

Joel Breitner
(TYPED)

JOEL BREITNER

Official Reporter
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