

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

METROPOLITAN EDISON COMPANY

(Three Mile Island Nuclear Station,  
Unit No. 1)

DOCKET NO: 50-289SP

(Restart Remand on  
Management)

LOCATION: HARRISBURG, PENNSYLVANIA

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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: :  
 :Docket No. 50-289SP  
 METROPOLITAN EDISON COMPANY :  
 : (Restart Remand on  
 (Three Mile Island Nuclear Station, :Management)  
 Unit No. 1) :  
 :  
 -----X

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Tuesday, November 20, 1984

The hearing in the above-entitled matter was convened,  
pursuant to notice, at 9:11 a.m.

BEFORE:

JUDGE IVAN W. SMITH  
Chairman, Atomic Safety and Licensing Board

JUDGE SHELDON J. WOLFE  
Member, Atomic Safety and Licensing Board

JUDGE GUSTAVE A. LINENBERGER, JR.,  
Member, Atomic Safety and Licensing Board



## 1 APPEARANCES:

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C-O-N-T-E-N-T-S

2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	BOARD
3	Herman M. Dieckamp					
	- resumed -					
4	By Ms. Bernabei		28,816			
5	By Judge Linenberger					28,840
6	By Mr. Dornsife		28,898			
7	By Mr. Au		28,907			
8	(Luncheon Recess)	28,912				
9	By Mr. Goldberg		28,925			
10	By Judge Wolfe					28,935
11	By Mr. Blake			28,937		
12	By Judge Linenberger					28,958
13	By Ms. Bernabei				28,959	
14	By Mr. Dorsife				28,968	

E-X-H-I-B-I-T-S

17	<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
17	TMIA Exhibit 15	28,879	
18	TMIA Exhibit 3		28,973
19	TMIA Exhibit 4		28,974
20	TMIA Exhibit 9		28,981
21	TMIA Exhibit 10		28,983
22	TMIA Exhibit 12		28,990
23	TMIA Exhibit 13		28,994
24	TMIA Exhibit 14		28,995
25	TMIA Exhibit 15		28,997

Luncheon recess - 28,912

#1-1-SueT 1

P R O C E E D I N G S

2

JUDGE SMITH: Are you ready?

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MS. BERNABEI: Yes.

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JUDGE SMITH: Is there any preliminary business?

5

MR. BLAKE: Just a couple of items, Judge

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Smith. One, I have distributed this morning two documents and one of them is a stipulation by Licensee which stems from the number of items we have discussed at the November 13th prehearing conference regarding individual witnesses and if called what they would say.

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The second is a second expression of Licensee's willingness to stipulate, and it is responsive to TMIA's letter of November 13th regarding the questionnaires. I committed to do this during the prehearing conference on the 13th, and I've distributed them today. I'm not sure that any of the parties would be prepared to discuss those today but I've handed them out for people to review.

Second, I've provided to Ms. Bernabei copies of the signed receipts for the Joint Mailgram stipulation, indicating that one of her co-counsel signed for four boxes of documents. I've also indicated to her that we will provide another set of them. And today I've brought to the hearing room two additional sets of that Joint Mailgram exhibit so that people will have enough during examination to refer to. And I've indicated to her that one of those

#1-2-SueT 1

can be hers.

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We will just have to adjust the cost of the copying charges. That's all I have.

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MS. BERNABEI: For the Board's information, we still still have not received the document. However, we have agreed to disagree outside the aegis of the Board, because we don't think you need to deal with this. We will fight about the money later.

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What I also proposed to Mr. Blake is that because we will be busy with the hearing for the next couple of days is that we deal with the stipulation over the week-end. At least, I think that's when we would have time to consider it.

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JUDGE SMITH: All right. Anything further?

(No response.)

17

Whereupon,

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19

HERMAN M. DIECKAMP resumed the witness stand as a witness called by and on behalf of the Licensee, Metropolitan Edison Company, and having previously been duly sworn, was further examined and testified as follows:

INDEXXXX 20

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CROSS EXAMINATION

24

BY MS. BERNABEI: (Continuing)

25

Q Mr. Dieckamp, I would like to go back for a

#1-3-SueT 1

2 moment to the Illjes interview. We spoke yesterday about  
3 the May 23rd, 1979 interview of Mr. Illjes.

4 Were you familiar at the time of drafting your  
5 testimony of the September 24, 1980 NRC interview of Mr.  
6 Illjes?

7 A I think I testified earlier that I did not  
8 study the Illjes --

9 Q Excuse me.

10 A Yes.

11 Q Okay. I asked you were you aware of the  
12 September 24, 1980 interview of Mr. Illjes?

13 A I knew that such an interview existed.

14 Q Had you read it prior to drafting this testimony?

15 A I cannot be certain about that.

16 Q Do you have any information today as to whether  
17 or not that interview indicates Mr. Illjes' memory of a  
18 discussion of noncondensable gas or hydrogen on March 28th?

19 A I don't know whether it includes that or not.

20 Q Okay. I would like to refer you to Page 9 of  
21 the September 24, 1980 interview. It's Item 127 of the  
22 Joint Mailgram Exhibit 2-C.

23 (Ms. Bernabei is showing the document to the  
24 witness.)

25 JUDGE SMITH: What page?

MS. BERNABEI: Page 9.

#1-4-SueT

BY MS. BERNABEI: (Continuing)

Q Mr. Dieckamp, referring first to Page 9, on Page 9 does Mr. Illjes not say that he remembers a discussion about hydrogen or noncondensable gas on March 28th?

I would like to refer you specifically to Line 16.

A You mean, nodding in the affirmative?

Q That's correct. Isn't that an answer by Mr. Illjes that he remembers a discussion of hydrogen or noncondensable gas on March 28th?

A It seems to be that, yes.

Q Okay. Referring you later on the page, does not it indicate he reaffirms that answer later on that page; that is, that the conversation took place on March 28th? Lines 20 through 22.

A Yes, he reaffirms that.

Q And does he not reaffirm a second time on Lines 24 to 25 that the hydrogen discussion occurred on the 28th?

A (The witness is looking at the document.)

I guess so. I would like to add in that regard that as I read the NSAC report I don't see evidence of a bubble in the pressurizer. It looks to me like the pressurizer is full. I guess I'm confused as to what he means by a hard bubble.

#1-5-SueT

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Q It's clear that he remembers the conversation about hydrogen on the 28th, according to the testimony I have pointed out to you; is that not correct, sir?

A In that portion of that testimony, he does say that. Yes.

Q Now, does he connect anywhere in this testimony at all -- and I will give you a chance to review it -- the discussion of hydrogen to the xeroxing of the pressure spike as you have connected them in your testimony?

A Ask that question again.

Q Yes. Does he anywhere in his testimony of September 24, 1980 connect the timing of the discussion on hydrogen to the xeroxing of the pressure spike chart?

A I don't know whether he does or not. I'm not sure that he does.

Q You are sure that he does?

A I say, I'm not sure that he does or does not. And I don't think my testimony suggests that.

Q We have your testimony to read.

A Oh, okay.

end #1

e flws

1 Q I understood your -- as I understood your  
2 testimony from yesterday, it was that you did not read  
3 Mr. Chwastyk's prior testimony, including his deposition  
4 testimony in this proceeding, to indicate that as a  
5 result of the pressure spike, he obtained and received  
6 permission from Gary Miller to repressurize. Is that  
7 your testimony?

8 A Yes, that is.

9 JUDGE SMITH: Are you completed with the  
10 Iljes portion of the cross examination?

11 MS. BERNABEI: That is correct.

12 WITNESS: I thought the last question related  
13 to Chwastyk?

14 JUDGE SMITH: It did. That is what generated  
15 my question. It was suggested yesterday that you  
16 omitted a reference to a citation to your reference to  
17 Iljes' testimony, which is uncharacteristic of your  
18 general testimony, because when you alluded to the other  
19 operators, you did provide a reference and how we have  
20 leaving dangling, so to speak, unresolved a matter that  
21 should be resolved now, I believe, or it would be better  
22 for us if it were resolved at this time.

23 Looking at -- I beg your pardon?

24 MS. BERNABEI: I think Mr. Dieckamp did speak  
25 to that at the end of this testimony yesterday.



1 JUDGE SMITH: Well, would you remind me?  
2 I thought he was going to check over night.

3 MS. BERNABEI: I could be wrong. I think he  
4 did refer to the portion of Mr. Illjes' May 23rd testimony.

5 JUDGE SMITH: Did we find that? I am sorry,  
6 I just don't remember it.

7 MS. BERNABEI: I don't know if he found it. I  
8 think he did refer to it.

9 WITNESS: I suggest we just pull it out and  
10 look.

11 JUDGE SMITH: Let's nail it down right now, and  
12 get it out of the way. What would that be.

13 WITNESS: I might add it also occurs in the  
14 Frampton-Rogovin memorandum to Chairman Hern, dated  
15 March 4, 1980 -- excuse me, 1981, I think.

16 JUDGE SMITH: I am wrong. I think it was  
17 adequately covered.

18 BY MS. BERNABEI: (Continuing)

19 Q Mr. Dieckamp, I would like to refer you now --  
20 we are going back to Mr. Chwastyk for a moment -- I am  
21 sorry, I didn't mean to interfere.

22 Mr. Dieckamp, now moving to Mr. Chwastyk's  
23 testimony, again I am talking about your testimony  
24 yesterday that you did not understand Mr. Chwastyk's  
25 testimony to indicate he requested and obtained permission

1 to repressurize in response to the pressure spike which  
2 occurred on March 28th, is that correct?

3 A That is correct. I do not recall that. I do  
4 recall that when he is directed to repressurize, he  
5 argues against that, and that comes up several times in  
6 his testimony over the several years.

7 Q Isn't it a fact that when he resists what you  
8 call repressurization, that was really resisting increasing  
9 HPI, not repressurization per se? Isn't that a fair  
10 interpretation of Mr. Chwastyk's testimony?

11 A Well, I thought we had discussion yesterday --

12 Q Mr. Dieckamp, please --

13 A -- you can't pressurize without --

14 Q Mr. Dieckamp, can you answer the question  
15 yes or no?

16 A Okay. What was the question?

17 Q The question had to do with whether or not a  
18 fair interpretation of Mr. Chwastyk's prior testimony  
19 is he resisted going to full HPI in the late afternoon,  
20 but did not resist repressurization?

21 A I cannot draw that distinction between those  
22 two.

23 Q I would like to refer you to the October 11,  
24 1979 testimony of Mr. Chwastyk, specifically page 16.

25 JUDGE SMITH: Each of these times, give us a

1 citation, would you please, to the index? Eighty-eight?

2 MS. BERNABEI: Eighty-eight. You found it  
3 faster than I.

4 BY MS. BERNABEI: (Continuing)

5 Q Now --

6 JUDGE SMITH: Would you object if Mr. Dieckamp had  
7 at the table some help in getting these documents?

8 MS. BERNABEI: I don't mind.

9 JUDGE SMITH: I don't mean for the purpose  
10 of counseling him, but just a matter of efficiency.

11 MS. BERNABEI: I am willing to give him our set,  
12 I have no problem with that.

13 JUDGE SMITH: Yeah, but we do. I mean, there  
14 is a large lag of time by the time you get out a document  
15 and then you give it to him, and everything else, and --

16 MS. BERNABEI: I assumed his counsel would be  
17 assisting him, but since he is not, we are trying to do  
18 it as expeditiously as we can.

19 JUDGE SMITH: My question is, normally you do  
20 not like to have counsel sitting at the table with a  
21 witness, but I am suggesting in this instance to have  
22 someone sitting at the table with Mr. Dieckamp to help him  
23 get the documents promptly, and not to counsel him, would  
24 be appropriate.

25 MS. BERNABEI: Well, would --

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JUDGE SMITH: Just move along.

BY MS. BERNABEI: (Continuing)

Q Mr. Dieckamp, are you on page 16?

A Yes.

Q Beginning on Line 19, ---

A Yes.

Q Doesn't Mr. Chwastyk indicate in his -- excuse me -- beginning on Line 19, there is a question about strategies employed at TMI during the afternoon of the accident, is that correct?

A I don't think it is a question about strategies employed. It is a question about a possible range of strategies, or alternatives.

Q Well, let me ask you. The question is, is it not, to Mr. Chwastyk from the investigator: Did you think at that time that you might have a better chance with this method of cooling if you followed some different strategy than the one you were following.

Is that correct?

A Yes, that is the question.

Q And the reference is to the afternoon of March 28th?

A I think that is right.

JUDGE SMITH: Give us the page citation.

MS. BERNABEI: Page 16.

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WITNESS: Going down to Line 19.

BY MS. BERNABEI: (Continuing)

Q Now, his answer on page 17 is, is it not, that he believed that he obtained permission from Gary Miller after the hydrogen explosion to let the reactor coolant system fill.

A That is what his answer is. I am intrigued that the facts don't show that he did that.

Q My question now is about Mr. Chwastyk's testimony. Isn't that what he says?

A That is what he says, but he doesn't do it.

Q And isn't that a way of repressurizing, Mr. Dieckamp? Isn't that what he is talking about, repressurizing the system?

A Ms. Bernabei, the answer does not include the word, 'repressurize.'

Q Isn't that what he is talking about?

A I don't know what he is talking about. If he meant repressurize, I assume he would have said so.

Q Your understanding of those words to let the reactor coolant system fill is not to repressurize the system?

A I could agree with you that in order to refill the system under the conditions that existed, the system would inherently become repressurized.

1           The point is, despite his answer, he doesn't  
2 take action to do that as is evident from the fact he  
3 doesn't let the makeup pumps run.

4           Court Reporter: Excuse me. I cannot get both  
5 of you at the same time.

6           JUDGE SMITH: Exactly. You are consistently  
7 cutting him off in his answers, and I don't know what  
8 kind of a record you are getting.

9           MS. BERNABEI: He is not being responsive to the  
10 question.

11          JUDGE SMITH: Well, yes, he is. He is being  
12 responsive. But in the event he is not responsive, you  
13 still are not without relief. The cross talk is damaging  
14 your cross examination.

15          MS. BERNABEI: It appears that Mr. Dieckamp goes  
16 way beyond on every answer.

17          JUDGE SMITH: He will not accept your simplistic  
18 characteristic, that is all. He doesn't have to.

19          MS. BERNABEI: That is not -- the response he  
20 was giving me is what actually happened. I am talking about  
21 Mr. Chwastyk's testimony. I was not talking about what  
22 happened. Not a simplistic explanation.

23 End 2.  
24 MS fols.

Sim 3-1

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JUDGE SMITH: Ask your question.

BY MS. BERNABEI:

Q Mr. Dieckamp, let's go on to the next question. On line 15 the question is, is it not, "What is it that you wanted to do then?" Is that the question?

A That is the question.

Q And Mr. Chwastyk says, does he not, "I wanted to fill the system going to a higher flow rate than we were going. Whether it was 80 gallons a minute or not, I don't remember. But close up the pressurizer, continue with the letdown and increase makeup flow, which we did do eventually," is that correct.

A That is what it says.

MR. BLAKE: I will stipulate that that is what he says.

BY MS. BERNABEI:

Q And isn't it a fact that that is repressurization of the system?

A My prior answer ---

Q Mr. Dieckamp ---

JUDGE SMITH: Let him answer. You are trying to force a simplistic answer on him. The Board is sitting here and we don't agree with your characterization and we are not going to require the witness to do it.

THE WITNESS: I would have to agree that in



Sim 3-2

1 order to fill the system, the system would inherently become  
2 repressurized. I continue to be troubled by the difference  
3 between his words and the objective evidence as to what he  
4 did.

5 BY MS. BERNABEI:

6 Q Do not the objective words on this page indicate  
7 repressurization, and let me read them to you. "Close up  
8 the pressurizer, continue with ---

9 JUDGE SMITH: Now wait a minute. Stop that.

10 Close up the repressurizer, is that consistent  
11 with repressurization?

12 THE WITNESS: Yes, it would be.

13 JUDGE SMITH: Continue with the letdown, is  
14 that?

15 THE WITNESS: Not, that is not consistent.

16 BY MS. BERNABEI:

17 Q Increase the makeup flow?

18 A That is.

19 Q Is it fair to say that repressurization would  
20 include necessarily closing up the pressurizer and increasing  
21 the makeup flow?

22 A Yes, and he says ". . . which we did eventually."

23 Q Those two steps are consistent with repressuriza-  
24 tion; is that correct?

25 A Those steps, if done, would be consistent with



Sim 3-3

1 repressurization.

2 Q Referring you to page 19 of that testimony,  
3 the question on line 11 is, is it not, to Mr. Chwastyk  
4 "Then what did you say?" That is when you went to Gary  
5 Miller after the pressure spike and what did you say?"; is  
6 that correct?

7 A I fine that question at line 11, yes.

8 Q And answer, "I related that to Gary that I  
9 thought that what we had seen out there was an explosion  
10 of some kind in the building."

11 And skipping down to the last line 17, "And I  
12 requested again permission to inject and get a bubble in  
13 the pressurizer." Is that correct?

14 A That is what it says.

15 Q Now is it fair to say that injection and getting  
16 a bubble in the pressurizer are two necessary steps to  
17 repressurization; is that correct?

18 A It is not necessary to get a bubble in the  
19 pressurizer.

20 Q To close the block valve and inject, those  
21 are two necessary steps; is that correct?

22 A That is, and again it is interesting that after  
23 talking to Gary he leaves the block valve open for the next  
24 hour and almost 20 minutes.

25 Q Let's stick to the words on the page, Mr. Dieckamp.

Sim 3-4

1 On page 19, getting permission to inject and get a bubble  
2 in the pressurizer, those two things are necessary to  
3 repressurization, are they not?

4 A Injecting is. Getting a bubble is not.

5 Q Closing the block valve, which is a part of  
6 drawing a bubble in the pressurizer, that is a necessary  
7 part of repressurization?

8 A I think it is.

9 JUDGE SMITH: I am confused now. Where did you  
10 close the block valve there?

11 MS. BERNABEI: Well, let me ask it.

12 BY MS. BERNABEI:

13 Q Mr. Dieckamp, to draw a bubble in the pressurizer  
14 one closes the block valve and turns on the heaters to  
15 generate steam in the pressurizer; is that correct?

16 A I think in a normal situation that would be  
17 correct.

18 Q And it is correct that a necessary part of  
19 drawing a bubble in the pressurizer is to close the block  
20 valve; is that correct?

21 A I would think it would be, and that is where  
22 it is interesting that Chwastyk leaves the block valve  
23 open for the next hour and 18 minutes I guess it is.

24 Q So it is fair to say that getting permission  
25 to inject and closing the block valve are necessary steps

Sim 3-5

1 to pressurization?

2 A Would you repeat that again, please?

3 Q Yes. Getting permission to inject and closing  
4 the block valve are necessary steps to repressurize?

5 A Well, they are I think included in the necessary  
6 steps.

7 (Pause.)

8 Q I would like to refer you now to the September  
9 1980 interview of Mr. Chwastyk, specifically on page 26.

10 (Pause.)

11 JUDGE SMITH: We need a citation.

12 MS. BERNABEI: Excuse me?

13 JUDGE SMITH: We need an index citation.

14 MS. BERNABEI: 117.

15 THE WITNESS: Ms. Bernabei, I assume you meant  
16 September 4?

17 MS. BERNABEI: Well, there is some disagreement  
18 because the cover sheet of this interview says September 3.  
19 I think we have decided among counsel that it is September  
20 4, but there are two dates on the interview. My particular  
21 copy says September 3.

22 BY MS. BERNABEI:

23 Q Referring you to page 26 ---

24 JUDGE SMITH: You will have to wait until  
25 the Board catches up.

Sim 3-6

1 (Pause.)

2 BY MS. BERNABEI:

3 Q Referring you to the question on page 25,  
4 starting on line 17, the question by Mr. Craig: "When  
5 you discussed your recommendation not to cycle the block  
6 valve in your discussion about core damage and hydrogen,  
7 what reaction did people have to it, specifically Gary  
8 Miller?"

9 And then I think we go on to page 26 after  
10 some cross talk, line 8, Mr. Chwastyk's answer, is it not,  
11 "The reason that I say I think Gary took it seriously is  
12 because very soon after I related to him what happened,  
13 and he gave me the okay to go and draw the bubble and find  
14 out where the hell we were as far as water. This was of  
15 course a major change in the way we had been doing it before."  
16 Is that correct?

17 A That is what he states there, yes.

18 Q Now doesn't that indicate that this is a major  
19 change in strategy, that is, to a repressurization strategy  
20 at that point? Isn't that what Mr. Chwastyk means?

21 A Well, if I take Chwastyk at face value, I think  
22 I would be willing to say it is a change in strategy to  
23 attempt to draw a bubble, and again, that is what I find  
24 him talking about.

25 Q Isn't that in fact a change to a repressurization

Sim 3-7

1 strategy in his mind according to this interview?

2 A No, I don't reach that conclusion.

3 Q Now I think, you have stated you have read the  
4 deposition of Mr. Chwastyk taken in this course of this  
5 proceeding; is that correct?

6 A Yes, I have.

7 Q I would like to refer you now to page 30 of  
8 that deposition.

9 JUDGE SMITH: Is that a stipulated exhibit?

10 MS. BERNABEI: That is correct.

11 JUDGE SMITH: What is the index number to that?

12 MS. BERNABEI: Not it is not. It is a deposition  
13 that was taken in the course of this proceeding and it is  
14 not stipulated.

15 (Pause.)

16 MS. BERNABEI: Since we only have one copy, we  
17 will read the relevant portions of the record for the  
18 Board. I apologize that we don't have more copies at  
19 this time.

20 MR. GOLDBERG: Would the Board like to borrow  
21 the staff's copy?

22 JUDGE SMITH: Well, she says she will read it.

23 BY MS. BERNABEI:

24 Q Mr. Dieckamp, starting out now on page 28,  
25 specifically the question and answer which appears near the

Sim 3-8

1 end of the page. I would like to read the question and  
2 answer and then ask you whether or not this indicates that  
3 Mr. Chwastyk said as a result of the pressure spike he sought  
4 permission to begin repressurization.

5 "Question: Did you, not making too much of a  
6 decision, did you say there was an explosion even though  
7 you may not have said it was a hydrogen explosion?"

8 "Answer: I can't really answer that because I  
9 don't know. I don't know if I talked in terms of explosions  
10 or hydrogen burns or pressure spikes, or my prime concern  
11 was to impress upon Gary Miller that I felt there was in  
12 fact a pressure spike, and actually I used it as a means of  
13 trying to give Gary the information to flood the core."

14 My question is isn't that an indication from  
15 Mr. Chwastyk in response to the pressure spike he sought  
16 and obtained permission from Gary Miller to begin a  
17 repressurization strategy in his mind as expressed in his  
18 deposition?

19 A I don't interpret it that way.

20 end Sim  
21 Sue fols

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25

#4-1-SueT

1 MR. BLAKE: Would counsel be willing to read  
2 as well on the bottom of Page 30 Mr. Chwastyk's testimony  
3 which reads: "Well, when I said flooding the core that  
4 was basically what I meant, getting the bubble back into  
5 the pressurizer so we could get the plant back into a  
6 situation which everyone understood rather than sitting  
7 there in the conditions we were."

8 We are at a disadvantage here with the Board  
9 not having this deposition in front of them, Ms. Bernabei.

10 MS. BERNABEI: This is not --

11 MR. BLAKE: And I think you ought to fairly  
12 represent what the testimony is.

13 MS. BERNABEI: We will stipulate this whole  
14 deposition into the testimony. I have no problem. I do  
15 have a problem with Mr. Blake testifying.

16 JUDGE SMITH: Well, that's --

17 MS. BERNABEI: He can do this on redirect.

18 JUDGE SMITH: Well, no. We don't prefer it to  
19 be done on redirect. We prefer to have a point established  
20 as it goes along. It helps our comprehension of it. And  
21 I think it makes a better record for review.

22 So, we will allow you, as we have, a broad  
23 latitude on cross-examination. But we are mindful of  
24 yesterday's experience, how when the entire portion of the  
25 relevant deposition was read not only did it not support

#4-2-SueT 1

2 your position but it was absolutely contrary to your  
3 position. And those things happen inadvertently.

4 And so to avoid such inadvertent mistakes, we  
5 would like to have a full opportunity as the points are  
6 made to have the point covered thoroughly.

7 JUDGE SMITH: Judge Smith, I would not agree  
8 with your characterization. I believe that --

9 JUDGE SMITH: It's not necessary for you to  
10 agree.

11 MS. BERNABEI: I understand. But I do not think --  
12 our position is that those interviews do not support Mr.  
13 Dieckamp, and his characterization is incorrect.

14 The Board can determine what it wishes.

15 JUDGE SMITH: Yes. Now, I would like, if you  
16 are done with that part, either for you to complete the  
17 point or allow us to hear from Mr. Blake why he believes  
18 the point is not complete.

19 MS. BERNABEI: I have other portions of the  
20 deposition which I would like to have Mr. Dieckamp answer.  
21 If Mr. Blake at that point wants to do redirect, I have  
22 no problem. I do have a problem with Mr. Blake testifying  
23 from this deposition. He is not a witness. He is an  
24 attorney in this proceeding.

25 JUDGE SMITH: We understand. He was not  
testifying. You are mischaracterizing it.



#4-3-SueT

1 Ms. Bernabei, I'm going to ask for more  
2 cooperation from you.

3 MS. BERNABEI: May I proceed with this deposi-  
4 tion?

5 JUDGE SMITH: Yes. But I want to caution you  
6 that we want the point covered completely, and we want  
7 you to cover it.

8 MS. BERNABEI: I believe we are doing so.

9 BY MS. BERNABEI: (Continuing)

10 Q I would like to refer you to Page 30. Starting  
11 on Page 30 on the bottom, there is a question, is there  
12 not, and I will read the question and answer?

13 "Now at any time during this discussion, did  
14 you talk about drawing the bubble in the pressurizer?

15 "Answer: When I said flooding the core, that  
16 was basically what I meant, getting the bubble back in  
17 the pressurizer so we could get the plant back in the  
18 situation which everyone understood rather than sitting  
19 there in the conditions we were."

20 Doesn't that indicate a change in strategy to  
21 a repressurization strategy, a deliberate and intentional  
22 one?

23 A I do not interpret it that way.

24 Q Turn to Page 40. Starting off on Page 39, I  
25 will read the questions and the answers.

#4-4-SueT 1 In the earlier part of the page, we are talking  
2 with Mr. Chwastyk, is it fair to say, about closing of  
3 the block valve at 3:08 p.m.; is that correct?

4 A Where are you starting now?

5 Q Here.

6 (Ms. Bernabei is pointing on the document.)

7 JUDGE LINENBERGER: While there is a pause here,  
8 may I inquire of you, Mr. Blake, only because I don't  
9 want to interrupt Ms. Bernabei, what is the date of this  
10 deposition we are currently discussing?

11 MR. BLAKE: September 25 of this year, taken  
12 during the course of discovery.

13 JUDGE LINENBERGER: Thank you.

14 BY MS. BERNABEI: (Continuing)

15 Q There is a question on the bottom of that  
16 page concerning this direction to close the block valve.  
17 And the question is, is it not, "And your memory is that  
18 you probably gave the direction to close it..." meaning  
19 the block valve "... or if it were closed it was probably  
20 you who directed it?

21 "Answer: That' right."

22 Is that correct?

23 A Yes.

24 Q The question on Page 40: "Do you know what  
25 your thinking was, assuming you did direct it? Do you

#4-5-SueT

1 know what your thinking was as to why you closed it at  
2 that time?"

3 Mr. Chwastyk's answer is, is it not, "I think  
4 it's the only thing I can think of is, without looking  
5 at the records a second, is that I also increased the flow  
6 rate to the high pressure injection pumps and the idea  
7 there was to establish a prior level of inventory in the  
8 core."

9 That's correct, is that not?

10 A That's what the words say. I again have trouble  
11 with how that squares with the objective evidence.

12 Q "Question: Were there discussions in the  
13 afternoon at any time after 2 p.m. or so about repressuriz-  
14 ing this reactor? This may overlap some of my prior  
15 questions?

16 "Answer: Well, I think repressurizing the  
17 reactor coolant system and establishing a bubble filling  
18 it is all basically the same thing. Slightly different  
19 technical variations, but I think the objective was all  
20 the same thing, to get yourself back in a position which  
21 you could understand."

22 Now, isn't it fair to say that that testimony  
23 indicates that Mr. Chwastyk believed, and he requested  
24 permission from Gary Miller after the pressure spike to  
25 repressurize?

#4-6-SueT

1           A       Separate and apart from the words, the actions  
2 don't support that.

3           Q       That's what the words support, isn't it? Is  
4 that fair to say?

5           A       I would assume we are talking about what people  
6 did rather than what people think they did.

7           Q       Is it fair to say that that's what the words  
8 in this deposition say, Mr. Dieckamp?

9           A       He finally says repressurization is the same  
10 as establishing a bubble, after lo these many years he  
11 says that.

12                   (Pause.)

13           JUDGE LINENBERGER: Mr. Dieckamp, again taking  
14 advantage of a lull here I should like to express my  
15 curiosity about something and see if you can help me.

16                   BOARD EXAMINATION

INDEXXXXX

17                   BY JUDGE LINENBERGER:

18           Q       In the two or three instances in this September  
19 25, 1984 deposition of Mr. Chwastyk, there were words,  
20 I believe his words, that indicated his interest in  
21 trying to bring the system back into a configuration or  
22 set of circumstances with which he would feel comfortable  
23 in his understanding of what was going on.

24                   Do -- is that consistent with your -- is my  
25 statement there consistent with what you understood from

#4-7-SueT

1 reading that deposition?

2 A Yes. I read him to say that. And --

3 Q Now, the problem I am having is that some of  
4 these actions that were discussed were expressed to you  
5 in questions that involved changing -- a change of the  
6 facility recovery strategy.

7 Now, I guess what my confusion centers on is  
8 the difference between a strategy that to me implies a  
9 sort of section out of a response manual that says if  
10 thing look this way, the strategy is that; if things look  
11 that way, the strategy is this, versus what sounds to me  
12 like an operator just trying to get the system into some  
13 kind of condition that is familiar to him and with which  
14 he is comfortable in dealing.

15 Now, I've made a distinction there which may not  
16 at all agree with your view of this. So, I ask this  
17 question to see if you can help me. Am I seeing a dif-  
18 ference there, or is it a meaningless difference?

19 A No. I think there is a very important distinction  
20 there, Judge Linenberger. I think the question before the  
21 Board is whether or not the operators recognized the mean-  
22 ing of the pressure spike in a way that caused them to  
23 begin to take specific actions as a result of their under-  
24 standing of that pressure spike and its meaning, as  
25 contrasted where they simply are modifying their ad hoc

#4-8-SueT

1 approach in order to establish conditions that were more  
2 familiar to them. I personally sign up for the latter  
3 interpretation.

4 I do not see explicit actions as direct re-  
5 sponses to their understanding of the hydrogen.

6 Q All right, sir. Thank you very much.

7 A Could I just expand on that one minute, please?

8 Q Yes.

9 A One very direct indicator to me is that as you  
10 read a number of the depositions there seems to be a lot  
11 of talk about a correlation between the pressure spike and  
12 the operation of a valve or some kind of an electrical  
13 spark that may have triggered off explosion or the spike  
14 or what have you. If people indeed understood that it  
15 was hydrogen that had burned or had exploded, and that  
16 it was coming from the reactor, it seems to me they would  
17 not have left the block valve open for another hour in  
18 order to permit more hydrogen to issue forth in order to  
19 explode again.

20 That kind of thing I find hard to square with  
21 in understanding what happened and in turn how to respond  
22 to it.

23 JUDGE LINENBERGER: Thank you, sir.

24 BY MS. BERNABEI: (Continuing)

25 Q Do you have any memory, Mr. Dieckamp -- well,

#4-9-SueT

1 you mentioned before that Mr. Chwastyk did not close the  
2 block valve, and I think you have mentioned now until  
3 3:08 p.m., and there is a general understanding that the  
4 pressurizer heaters were turned on prior to that time;  
5 is that correct?

6 A I think that's correct.

7 Q And it's fair to say that you do not see that  
8 as an effective way either to draw a bubble in the pres-  
9 surizer or to repressurize; that is, leaving the block  
10 valve open; is that correct?

11 A No, I would not expect leaving the block valve  
12 open to be an approach.

13 Q Do you remember from Mr. Chwastyk's testimony  
14 any explanation as to why the heaters in the pressurizer  
15 were first turned on prior to closing the block valve?

16 A No, I don't have that specific recollection.

17 Q Okay. Do you remember any specific statement  
18 by Mr. Chwastyk that they needed to be initiated early  
19 because they had not previously been running; that is,  
20 in order to heat them up sufficiently to generate sufficient  
21 steam?

22 A Well, certainly it takes a time to heat up the  
23 volume of water. But I don't know why that would relate  
24 to leaving the block valve open. That --

25 Q Do you --



#4-10-SueT

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A -- somehow does not make sense to me as I sit here.

Q Do you remember any explanation like that in Mr. Chwastyk's testimony?

A It may be there. As I sit here, I don't relate to it.

Q Now, for the moment, characterizing if I can your testimony on Pages 14 through 17, essentially you state that in none of the interviews does Chwastyk, to your mind, indicate an understanding of the pressure spike in terms of core damage; is that correct?

A That's my conclusion, yes.

Q You have no quarrel, do you, with the point that Chwastyk certainly in his interviews indicated he believed the pressure spike indicated a real pressure increase to about 28 psi?

A I have no quarrel with that.

Q And that Chwastyk, in fact, understood the logic of the containment sprays; that is, so as to corroborate an understanding that the pressure spike is a real pressure increase or explosion?

A Again, I have no reason to not accept his testimony on that.

Q Okay. And you have no reason to disbelieve that he, in fact, did make certain checks, or order certain



#4-11-SueT

1 checks to be made to corroborate that the pressure increase  
2 was a real pressure increase or explosion?

3 A I have no reason to disbelieve. I find the  
4 testimony a little bit more mixed on that subject. But,  
5 again I don't draw any conclusion from that.

6 Q Is it fair to say that your problem is that  
7 you do not believe from his testimony he indicates an  
8 understanding of the cause for the pressure spike?

9 A Exactly. I find it very difficult to under-  
10 stand how a man could have recognized the pressure spike,  
11 take an action in response to it, go through an interview  
12 on May the 21st of 1979, and not once use the word  
13 "hydrogen." I find that incredible.

14 Q Okay. That would not be incredible if it was  
15 commonly understood; that is, it was general knowledge on  
16 the day and thereafter that that was the cause? That would  
17 not be so astounding, would it, Mr. Dieckamp?

18 A I don't think that would change my view of it.  
19 I would rather have the view that if this was such a  
20 prominent thing in this man's mind that once given the  
21 opportunity to talk about it he would have seized upon  
22 the opportunity to elaborate what it meant and how he  
23 concluded and what he did.

24 He does not do that on --

25 Q Okay.

#4-12-SueT 1

A -- May 21, the May 21 interview.

2

Q Okay. Starting out with the May 21 interview,

3

he does say the spike was a result of some kind of

4

explosion; is that correct?

5

A I will take your characterization. I --

6

Q Is that your memory of it, some kind of

7

explosion?

8

A Yes. I think he does say that.

9

Q You have no reason to doubt that that was his

10

understanding at the time, that the spike was caused by

11

some kind of an explosion?

12

A I'm willing to believe that operators might

13

have said that kind of thing.

14

Q Referring now to his October 11, 1979 testimony

15

before the Special Inquiry Group, doesn't Mr. Chwastyk

16

specifically refer to the cause of the spike as caused

17

by a hydrogen explosion?

18

A It's true that by the time you get to that

19

interview, he uses the word "hydrogen" which he does not

20

use in May.

21

Q And doesn't he also explain the basis for

22

that conclusion that he says he drew on March 28th in

23

that interview?

24

A I don't know which interview it is but I --

25

again, that's a very specific subject that I do not find

#4-13-SueT 1 that he has a credible basis for his conclusion. He,  
2 somewhere along the line, simply says: I couldn't think  
3 of anything else, therefore it had to be hydrogen.

4 That's how I would characterize his testimony  
5 on that subject.

6 Q Okay. So your understanding is that he does  
7 not state a basis in that interview of October 11, 1979  
8 for his belief at the time that the explosion or pressure  
9 spike was caused by hydrogen?

10 Is that correct.

11 A My memory, as I sit here, is he does not state  
12 a basis that makes sense to me.

13 Q I would like to refer you now to the October 11,  
14 1979 Chwastyk interview, which is Item Number 88.

15 Do you have that before you, Mr. Dieckamp?

16 A No, I do not.

17 Q It's Joint Mailgram Exhibit 88.

18 (Ms. Bernabei is providing the witness a copy  
19 of the document.)

20 A The page?

21 Q On Page 19, doesn't Mr. Chwastyk state as one  
22 basis for his conclusion that the spike was caused by  
23 hydrogen, is that he correlated the explosion with the  
24 simultaneous operation of electromagnetic release valve?

25 A Yes. There is a lot of discussion by operators  
about that correlation but that does not define hydrogen.

1 Q That is not my question. My question is  
2 as to this interview. Can you look at page 19, Mr.  
3 Dieckamp, of that interview.

4 Doesn't he indicate on lines 4 through 8 that  
5 one basis of his conclusion that there was a hydrogen  
6 explosion is that he put together the pressure spike and  
7 the cycling of the EMOV --

8 A And came up with the conclusion of explosion.  
9 No mention of hydrogen.

10 Q Let's go back to the prior answer on that page.  
11 He says it was after the detonation, apparently that  
12 he realized there was a hydrogen detonation.

13 Now I --

14 A No. He says I didn't realize that immediately.

15 Q Mr. Dieckamp, let me ask the question, please.  
16 Now, I didn't realize it was a hydrogen detonation  
17 immediately. Isn't he indicating it was some time after  
18 the detonation that he realized it was hydrogen. Isn't  
19 that the meaning of that answer?

20 A I guess, but I don't know how long after.

21 Q Doesn't he tell you how long after -- the next  
22 line, line 3,

23 "Question: What did you say to Gary?

24 Answer: At this time the pressure spike. At  
25 that time I didn't know what it was, but it was some time

1 later when someone mentioned an explosion that I had  
2 heard -- that I put two and two together on the pressure  
3 spike and the noise, that we had actually had some kind of  
4 explosion in the building."

5 Doesn't that indicate a basis for his belief  
6 that it was a hydrogen explosion?

7 A It doesn't to me.

8 Q Isn't the premise to the question: When did  
9 you realize that there was a hydrogen detonation?

10 A I am not able to make that connection.

11 Q And if you look further down the page on line  
12 14, he still says there was an explosion of some kind.  
13 He himself is not yet explicit.

14 Q Isn't it true that the question is very explicit  
15 about a hydrogen detonation?

16 JUDGE SMITH: What question?

17 MS. BERNABEI: The answer, excuse me. The  
18 answer appears on lines 1 and 2. Now, I didn't realize  
19 it was a hydrogen detonation immediately.

20 "Question: What did you say to Gary?

21 Answer: At the time of the pressure spike,  
22 at that time I didn't know what it was, but it was some time  
23 later when someone mentioned an explosion that they had  
24 heard that I put two and two together on the pressure  
25 spike.

1           A     And line 8 said: We actually had some kind  
2 of explosion.

3           Q     And your understanding is that is not in reference  
4 to a hydrogen explosion?

5           A     It does not reflect to me some kind of a clear  
6 concise awareness of what it was.

7           JUDGE SMITH: You are suggesting the answer  
8 beginning on line 4, builds on the answer in lines 1 and  
9 2, is that your suggestion?

10          MS. BERNABEI: That is correct.

11          JUDGE SMITH: But how do you account for the  
12 intervening question, which changes the subject?  
13 Intervening question being: What did you say to Gary?

14          MS. BERNABEI: I think what the answer that  
15 he is giving is what he said to Mr. Miller about the  
16 cause for the pressure spike. He says explicitly it  
17 was some time later when someone mentioned an explosion  
18 that I put two and two together on the pressure spike.  
19 He is answering the question, as I see it, about when  
20 he realized it was a hydrogen --

21          JUDGE SMITH: We will all have to draw our own  
22 conclusions, I guess.

23          MS. BERNABEI: We will have Mr. Chwastyk here.  
24 I think Mr. Chwastyk can answer these questions.

25          BY MS. BERNABEI: (Continuing)

1 Q I would like to refer you now to the October 30,  
2 1979 special inquiry group of Mr. Chwastyk.

3 JUDGE SMITH: Index number?

4 MS. BERNABEI: Ninety-nine.

5 BY MS. BERNABEI: (Continuing)

6 Q I am referring you now to pages 14 and 15 of  
7 that interview? Mr. Dieckamp, doesn't Mr. Chwastyk indicate  
8 in this portion of his interview, on page 14, that in his  
9 mind he associated the cycling of the EMOV with the  
10 explosion, so as to draw the conclusion that it was a  
11 hydrogen explosion?

12 A Well, Ms. Bernabei, at the top of the page, again  
13 it says some sort of explosion.

14 Q But doesn't he go on to explain, in answer to  
15 a question which appears on lines 10 and 11, in your own  
16 mind was there anything that could have caused that  
17 explosion other than hydrogen? Answer: No.

18 Isn't that what he says?

19 A That is what he says.

20 Q So in his mind, it is fair to say that one basis  
21 for his conclusion it was a hydrogen explosion was the  
22 simultaneous valve operation, and the explosion, or  
23 pressure spike, is that correct?

24 A He says what he says. I am not quite sure I  
25 can understand his logic.



1 Q Isn't that what he says? In his own mind he  
2 derives it was a hydrogen explosion because of the  
3 simultaneous operation of the valve and the pressure  
4 spike, or explosion?

5 A I don't find that direct connection that you  
6 make, even though he here says he can't think of anything  
7 other than hydrogen.

8 Q Let's go to the question on Line 13.

9 "Question: Did you yourself believe it had  
10 been hydrogen? Was that in your mind at the time?

11 Answer: After I put the things together, yes,  
12 I think it was."

13 Now, based on that answer, is it not his  
14 testimony that he put together the pressure spike and the  
15 simultaneous operation of the valve, in his mind he  
16 concluded it was due to a hydrogen explosion.

17 A I would like to read all of that answer. It  
18 says: Afer I put the things together, yes, I think it  
19 was. Based on what we have been seeing as far as  
20 radiation levels, et cetera, I assumed it was hydrogen.

21 JUDGE KELLEY: Go ahead with the next question  
22 and answer, too.

23 WITNESS: Did you discuss that possibility or  
24 assumption with anybody, with Gary or with Brian Mehler,  
25 or with anyone else on the 28th?



1           Answer: I remember discussing the spike, but  
2 it wasn't until some time later, and it just flashed through  
3 my mind, that the picture of Fred Chaiman changing the  
4 valve position of the spike simultaneously occurring. It  
5 was after these discussions with whomever it may have been,  
6 because I am sure we discussed it quite a bit. It was  
7 after the discussions that I put together the operation  
8 of the valve and the spike, and I think it was after  
9 someone related to me also the noise that they heard that  
10 I assumed then it was some sort of a hydrogen explosion  
11 inside the containment.

12           Q     Now, Mr. Dieckamp, doesn't Mr. Chwastyk explain  
13 in this interview his reasoning that the simultaneous  
14 operation of the EMOV and the explosion of pressure spike  
15 led him to the conclusion there was a hydrogen explosion  
16 in the containment on March 28th?

17           JUDGE SMITH: Whether or not it appears to be  
18 logical to you, isn't that what he says?

19           WITNESS: That is what he says, yes. I can't  
20 argue with what he said.

21           BY MS. BERNABEI: (Continuing)

22           Q     Now, Mr. Dieckamp --

23           JUDGE SMITH: Does Mr. Chwastyk ever explain how  
24 he correlates the two, and infers hydrogen?

25           MS. BERNABEI: Yes.

1 JUDGE SMITH: He does?

2 MS. BERNABEI: Well, my understanding from the  
3 interviews is that -- and these are in evidence before  
4 the Board, and I urge the Board to read them through, is  
5 that there was a spark created by the cycling of the EMOV  
6 so as to ignite the hydrogen.

7 JUDGE SMITH: Right, but how does he infer  
8 hydrogen from the simultaneous operation of the valve  
9 and the explosion. How does he infer hydrogen as compared  
10 to any other combustable gas?

11 MS. BERNABEI: I think he states in other  
12 interviews his basis for thinking that a zirconium water  
13 reaction had taken place, including his knowledge of hot  
14 leg temperatures --

15 JUDGE SMITH: No, that is not my question.  
16 You just asked and you got Mr. Dieckamp to agree that  
17 Mr. Chwastyk infers hydrogen from two facts; one fact, really,  
18 the correlation of the spike and the actuation of the valve.

19 Never mind about zirconium or anything else.  
20 From those two facts, or that one fact, if you look at the  
21 correlation as being a single fact, does he ever explain  
22 how he infers hydrogen?

23 MS. BERNABEI: Yes. And let me explain, because  
24 it takes a minute. He explains that he believes a  
25 zirconium water reaction had taken place, and hydrogen

1 had been produced.

2 JUDGE SMITH: No. The answer is, apparently  
3 no, he does not.

4 MS. BERNABEI: Well, I think he does, if you  
5 will allow me to finish my answer.

6 JUDGE SMITH: Already you have injected facts  
7 which are not in the premise that you got Mr. Dieckamp  
8 to allude to.

9 There is nothing in that question and answer  
10 that talks about zirconium and his other deductions.

11 MS. BERNABEI: The rest of the interview does  
12 talk about that, and other of Mr. Chwastyk's understanding  
13 when he came to the plant, which was the background to  
14 his understanding what occurred at 1:50.

15 JUDGE SMITH: We just went through a labored  
16 exchange between you and Mr. Dieckamp, in which you  
17 got him to agree, against his apparent concept of logic,  
18 that Mr. Chwastyk put together the operation of the valve  
19 and the spike, and voila, defers hydrogen. You just  
20 got him to agree that that is what Chwastyk said.

21 Now, I want to know, having done that, does  
22 Mr. Chwastyk ever explain further how that simple  
23 correlation implies hydrogen? You are going to tell me  
24 about zirconium, aren't you?

25 MS. BERNABEI: No, I am going to tell you that

1 he did not make that without a background of understanding,  
2 one about how the plant operated; and two, what he knew  
3 about the reactor on that date from the time he came to  
4 work in the late morning.

5 He understood that only in the background of the  
6 other conditions which he knew about on that day.

7 And those other conditions include, according to  
8 his assessment, hot leg temperatures and radiation.--

9 JUDGE SMITH: But that isn't the question and  
10 answer you were extracting from Mr. Dieckamp. You were  
11 extracting from Mr. Dieckamp a very simple answer that  
12 Chwastyk correlates spike and valve, and gets hydrogen.  
13 That is just exactly what you went through with him over  
14 all this time, and the scientific member of this Board  
15 has advised me that under circumstances like this, it  
16 could have been any other combustible gas that would  
17 support such a correlation.

18 MS. BERNABEI: Perhaps we should address what  
19 I was questioning Mr. Dieckamp about, we are here to talk  
20 about his Mailgram --

21 JUDGE SMITH: I am fully aware of the issue,  
22 having participated in the formulation of it.

23 MS. BERNABEI: I understand. What I am saying  
24 is, we are attempting to show there is evidence. Whether  
25 or not Mr. Dieckamp wants to accept it, there is evidence

1 by Mr. Chwastyk that he understood the cause -- okay.

2 JUDGE SMITH: I am aware of that. I am only  
3 trying to find out what the purpose, or what the thread  
4 of your cross examination is.

5 MS. BERNABEI: That there is some evidence  
6 in Mr. Chwastyk's interviews to indicate he interpreted  
7 the pressure spike in terms of core damage.

8 JUDGE SMITH: Okay.

9 BY MS. BERNABEI: (Continuing)

10 Q Mr. Dieckamp, on page 15 of your testimony, you  
11 state that a September 4, 1980 interview of Chwastyk does  
12 not indicate, in your mind, an understanding on Mr.  
13 Chwastyk's part of the zirconium water reaction and core  
14 damage, is that correct?

15 A Well, in that interview he is asked explicitly  
16 to provide his basis of a conclusion.

17 Q Do you believe any of the interviews of Mr.  
18 Chwastyk indicate a basis for -- basis or understanding  
19 on his part of the zirconium water reaction and the core  
20 damage implication?

21 A I am unable to derive that from his interviews.

22 JUDGE LINENBERGER: Mrs. Bernabei, refresh  
23 my memory. Have we established anywhere in the record  
24 of this hearing that indeed hydrogen is the only  
25 compustable gas that might have been present, so that if

1 there had been a flaming or an explosion, it had to be  
2 hydrogen, and could not have been anything else.

3 Has that ever been established, do you know,  
4 do you recall?

5 MS. BERNABEI: I don't -- I believe there may  
6 be other what are commonly referred to, at least in my  
7 experience, as noncombustable, -- noncondensable gases,  
8 which I know you have a problem with, Judge Linenberger.  
9 I think in the context of this case, there is not any  
10 meaningful discussion of other gases other than hydrogen,  
11 and at least in terms of the raging debate in this area,  
12 it has always been done in terms of hydrogen, and hydrogen  
13 alone.

14 JUDGE LINENBERGER: So, it has not been  
15 established, I gather, to date, on the record, it has not  
16 been established that hydrogen is the only thing present  
17 that could have burned or exploded, is that correct?

18 MS. BERNABEI: I assume that is correct,  
19 although -- as far as I know, there is nothing on this  
20 record, and I am talking now about the NRC investigations,  
21 that would indicate there was a concern about any such  
22 gas.

23 JUDGE LINENBERGER: Thank you.

24 BY MS. BERNABEI: (Continuing)

25 Q Isn't it true that Mr. Chwastyk in the special

1 inquiry group interview on October 11, 1979, indicates  
2 a basis for his understanding that a zirconium water reaction  
3 was represented by the pressure spike, specifically that  
4 hot leg temperatures were greater than 700 degrees.

5 Isn't that in his mind one basis for believing  
6 such a reaction had taken place prior to the pressure  
7 spike?

8 A It is my belief that he never uses the term,  
9 'zirconium water reaction' in any testimony, deposition,  
10 or interview prior to September 4th.

11 Q That is not my question, the exact terms.  
12 Can it not be interpreted from his interview of October  
13 11, 1979, that he understood the generation of hydrogen  
14 as a result of the zirconium steam reaction because, in  
15 part, he knew hot leg temperatures were greater than  
16 700 degrees?

17 A I cannot reach that conclusion. In fact, I  
18 read his testimony to say that he didn't pay a whole lot  
19 of attention to the temperatures; that he didn't pay a  
20 whole lot of attention to whether or not the core was  
21 covered.

22 I find a sense that he didn't focus on those  
23 possible indicators.

24 Q On page 9 of the special inquiry group testimony,  
25 does he not indicate that he had an understanding that the

1 hot leg temperatures, the TH reading was greater than  
2 700 degrees, or at 700 degrees, which is the maximum  
3 read out?

4 A Which one is this again?

5 Q Page 9 and 10, October 11, 1979. Exhibit 88.

6 End 5.  
7 MS fols.

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Sim 6-1

1 THE WITNESS: I am sorry. I do not have that  
2 one in front of me.

3 BY MS. BERNABEI:

4 Q Turning now to the question which appears on  
5 lines 9 through 12, Mr. Chwastyk is asked, is he not ---

6 A Which lines again?

7 Q The question on lines 9 through 12. He is  
8 asked, is he not, as to whether or not he believed that  
9 he was not able to get the pressure down, that is in the  
10 depressurization mode, because it was hung up due to steam  
11 generation in the core; is that correct?

12 Is that the question, Mr. Dieckamp?

13 A That is the question, but let's look at his  
14 answer, ". . . not necessarily in the core."

15 Q And he says, does he not, "The steam generation  
16 was not necessarily in the core," suggesting steam generation  
17 but not necessarily in the core; is that correct?

18 A That is what his answer says.

19 Q Then he goes on to continue his answer, does  
20 he not, line 15, "And, remember, I also had the high TH  
21 hot leg indications, and at that time of course, I didn't  
22 know how much water was in the system because I assumed,  
23 because of the high TH indications, that I was flashing  
24 in the hot lines."

25 That does indicate that he focused sometime

Sim 6-2

1 in the late morning of March 28th on high hot leg temperatures,  
2 does it not?

3 A Well, he mentions it, but the more important  
4 part of that exchange is his lack of recognition that the  
5 core is dry.

6 Q Now on line 22 he indicates again and reaffirms  
7 prior testimony to the NRC that his understanding was that  
8 TH or hot leg temperatures were pegged high, 700 degrees,  
9 does he not?

10 A Yes. He identifies that as the max.

11 Q Now isn't it true that he also had an awareness  
12 on March 28 that in core temperatures were reading high?

13 A I would have to see the reference again. My  
14 impression is in general that he sort of feels that he is  
15 not sure about that and he doesn't remember much.

16 Q I am asking you, regardless of whether he remembers  
17 a particular reading, he did know they were reading high,  
18 does he not?

19 A Well, do you have a reference, please?

20 Q Yes, I do. Page 16.

21 A Of which interview, please?

22 Q The same one.

23 A October 11?

24 Q That is correct.

25 Line 8, "Question: Were you aware of the core

Sim 8-3

1 thermocouple readings during this time?

2 A I was aware they were high, but I did not put  
3 maybe the attention on them that I should have simply  
4 because again I go back to the T hot. That was enough  
5 indication to me to indicate that we had a problem."

6 Is that correct?

7 A ". . . and that we were steaming in the hot  
8 leg." Yes, I see that answer.

9 Q So that indicates he had an awareness that the  
10 in cores were hot; is that correct?

11 A He uses the words, but it doesn't indicate  
12 much awareness to me.

13 Q Now isn't it true that an awareness of the high,  
14 that is up to 700 degree temperatures in the hot legs and  
15 hot or high in core temperatures were two indicators of  
16 a potential zirconium steam reaction?

17 A Oh, I would agree that awareness of the indicated  
18 in core temperatures are an ingredient for diagnosing the  
19 zirconium water reaction. Yes, I would agree with that.

20 Q And it is fair to say an awareness of high  
21 hot leg temperatures, that is up to 700 degrees, would also  
22 be an indicator of a potential zirconium steam reaction?

23 A Well, that is stretching now. I can't go quite  
24 that far.

25 Q So your answer is no?

Sim 4-4

1 A I have got to have more than 700 degrees  
2 Fahrenheit.

3 Q I am not saying 700 degrees alone. I am saying  
4 that is one indicator, is it not, of a potential zirconium  
5 water reaction?

6 A I don't think that is enough for me.

7 Q So your answer is no?

8 A My answer is no.

9 Q A prior part of Mr. Chwastyk's testimony we  
10 reviewed indicated he was aware of high radiation levels,  
11 is that correct, apparently in the dome of the reactor  
12 building? You just read that testimony today, Mr. Dieckamp.

13 A I don't recall any reference to the dome.

14 Q He said high radiation levels.

15 A Oh, earlier when he was talking about how he  
16 figured out it was hydrogen?

17 Q Correct.

18 A Yes, I remember that reference.

19 Q Would that not also be an indicator of a  
20 potential zirconium steam reaction, that is, that those  
21 levels had reached that were quite high?

22 A Well, I think that sort of comes under necessary  
23 but not sufficient. You can have the radiation levels without  
24 the zirconium water reaction. Conversely, if you had the  
25 zirconium water reaction, you would have high radiation

Sim 6-5

1 levels.

2 Q It is one indicator?

3 A It is an indicator that would be consistent  
4 with a zirconium water reaction, yes. But it is not an  
5 indicator of itself that there had been a zirconium water  
6 reaction.

7 JUDGE LINENBERGER: A point of clarification,  
8 Ms. Bernabei. You in stating your question used the word  
9 "dome" and the words "reactor building." Now correct me  
10 if I am wrong, but as I mentally review the description of  
11 these things as we are talking, I associate the word "dome"  
12 with the top of the containment building and I associate the  
13 words "reactor building" as they have been discussed in  
14 this hearing with the pressure vessel, the reactor vessel  
15 itself.

16 Now were you making a distinction there? Were  
17 you talking about high radiation levels at the top of the  
18 reactor vessel or were you talking about high radiation  
19 levels at the top of the containment building?

20 MS. BERNABEI: I was talking about the containment  
21 building. This references to me a prior discussion I had  
22 between Mr. Craig and Mr. Dornsife. I understand that  
23 at TMI the containment building is called the reactor  
24 building. That is a special term at this reactor such that  
25 I think either is correct.

Sim b-6

1 JUDGE LINENBERGER: That may well be, but it is  
2 also true in the record of this hearing that there are places  
3 where the term "reactor building" has been stated by the  
4 person on the witness stand to mean the reactor vessel and  
5 not the containment building.

6 So I just would like to see a consistency in  
7 these discussions so that the record on review wherever it  
8 is reviewed doesn't lead reviewers astray.

9 MS. BERNABEI: I think I should state, and  
10 Mr. Dornsife can corroborate this, at TMI-2 reactor  
11 bulding and containment building are used to used to  
12 indicate exactly the same thing.

13 JUDGE LINENBERGER: You repeat yourself, and  
14 I will not repeat my counter to that.

15 MS. BERNABEI: I am not arguing with you,  
16 Judge Linengerger. That is the usage at TMI.

17 BY MS. BERNABEI:

18 Q Mr. Dieckamp, on page 14 of your testimony you  
19 state in the first full sentence on that page that the  
20 physical evidence demonstrates that the chart was not  
21 removed until March 29, 1979. What is the basis for  
22 your statement?

23 A The basis for that statement is contained in  
24 Frampton Rogovin March 4, '81 memorandum to Chairman Ahearn  
25 of the NRC, and if my memory serves me right, the basis for

Sim 8-7

1 that was some kind of a special interview with Illjes wherein  
2 he was confronted with the strip chart from the pressure  
3 recorder and asked if we could explain how the chart could  
4 be continuous on the night of the 28th and still have been  
5 removed for the purpose of copying.

6 Q Now have you ever seen the original of the  
7 pressure chart that we are discussing here?

8 A I personally have not seen it. I have accepted  
9 the findings of the Special Inquiry Group.

10 Q Do you know that the pressure spike chart is  
11 cut at 10 p.m.? Are you aware of that fact?

12 A I have become aware of that in preparation for  
13 this hearing and I also understand that experts have  
14 examined that and find no difficulty with it.

15 Q And what experts are you referring to?

16 A I think it is the NRC people who have looked  
17 at that, but I could not tell you exactly who or what  
18 occasion, but I think the record will show that.

19 Q Do you know of your own knowledge whether or not  
20 the portion of the pressure recorder could be taken off  
21 the actual recording device or machine and not disrupt  
22 a recording of pressure?

23 A I personally am familiar with that kind of  
24 recorder and cannot conceive of anyone's ability to remove  
25 the strip chart without in some way jiggling or smearing

Sim 8-8

1 or introducing a discontinuity in the recording trace.

2 Q Are you familiar with any testimony in his  
3 deposition of Mr. Richard Lenz? First of all, do you know  
4 who Mr. Lenz is?

5 A I could not tell you who he is, and I am not  
6 familiar with his testimony.

7 Q If I could represent to you that he was  
8 formerly a GPU Service Corporation engineering and one of the  
9 five sent to the site on the first day of the accident,  
10 does that refresh your recollection?

11 A I will accept your statement. He is just not  
12 a person that somehow I came to know and I couldn't testify  
13 directly that I know who the guy is.

14 Q If I can represent to you that Mr. Lenz explained  
15 in his deposition which was taken on October 15, 1984 that  
16 he believed a portion of the pressure recorder could be  
17 removed without disrupting the recording of pressure at that  
18 time, would you have any reason to disagree with his  
19 interpretation?

20 A My experience just would not permit me to  
21 accept that as credible.

22 Q Okay. And that is from your knowledge of the  
23 pressure recording?

24 A That is from my knowledge of strip chart ink  
25 pen recorders.



Sim 8-9

1 Q Is it fair to say that the chart or the strip  
2 chart of the pressure recording ended at -- that is the  
3 total recording or strip chart ended at about -- the paper  
4 ran out at about 12 Noon on March 29th?

5 A I think that is correct.

6 Q In the normal course of affairs, if you know,  
7 the normal course of affairs would be to allow the paper  
8 to run out prior to removing any portion of the strip chart;  
9 is that correct?

10 A I don't know that. My practice would not be  
11 to let the paper run out, but I don't know what was done  
12 at the plant.

13 Q Okay. You are not familiar with the practice  
14 at the plant at that time?

15 A No. I could not testify to it at all.

16 Q And if I represent to you that Mr. Lenz, who  
17 had worked at TMI-2, said that was the practice of the  
18 plant, and represent also that the strip chart is cut  
19 at 10 p.m., it is cut entirely from the prior portion,  
20 would that indicate to you that some actions had been  
21 taken to remove the strip chart prior to completion of the  
22 paper running through the pressure recorder?

23 A My answer is no.

24 Q Okay. And why is that, sir?

25 A Simply because I don't find that credible.

Sim 8-10

1 Q Okay. Is that based in any part on your  
2 understanding of how the pressure recording device works  
3 at TMI?

4 A It is based on my general understanding of  
5 strip chart recorders, the mechanism, their mechanical  
6 configuration and the trouble one has of ever fooling with  
7 one of those things without creating some jiggle or smears  
8 or discontinuities.

9 Q Do you know of any reason today for cutting  
10 the strip chart after it was taken off of the machine at  
11 10 p.m. at any time after the accident or at any time after  
12 March 29th up to the present time?

13 A I think we agreed earlier it was taken off  
14 of the machine at Noon.

15 Q No, that is when the paper ran out. We don't  
16 agree of when it was taken off, Mr. Dieckamp.

17 A Well, I haven't agreed that it was taken -- that  
18 anything was taken off at 10 p.m.

19 Q There was a cut in the pressure chart at 10 p.m.

20 MR. BLAKE: Ms. Bernabei, we don't even agree  
21 that in fact the paper ran out at Noon.

22 MS. BERNABEI: Well, I think that is what the  
23 Franpton memo on which Mr. Dieckamp is relying states, which  
24 is before the Board.

25 BY MS. BERNABEI:

Sim 8-11 1

Q Mr. Dieckamp, I thought it was your testimony that you have no problem and you do understand that the pressure chart was cut at 10 p.m. in the current state.

4 A I have come to be aware of that, that is right.

5 Q Okay.

6 A Excuse me, that is 10 p.m. on March the 28th?

7 Q That is correct.

8 Now assuming for the moment my representation  
9 is correct that the paper ran out at about 12 p.m. in the  
10 normal course of affairs, the strip chart would not be  
11 removed from the recorder until the paper ran out, and  
12 assuming it is cut at 10 p.m., do you today have any  
13 explanation of why it would be cut? I am asking you to  
14 accept those premises.

15 A I know of no factual basis for its having  
16 been cut. I can imagine reasons, but I have no facts that  
17 I am aware of.

18 Q You make reference on page 17 of your testimony  
19 to the Udall report, is that correct, on the last para-  
20 graph on that page?

21 A Yes, I do.

22 Q It is your testimony that it makes no explicit  
23 finding in the Dieckamp mailgram; is that correct?

24 A My reading of that report does not reveal to  
25 me any direct finding about the mailgram.

Sim 8-12

1 Q It does, does it not, make an explicit finding,  
2 however, that the licensee intentionally withheld information,  
3 including information about knowledge of the pressure spike  
4 and hydrogen burn?

5 A I would think if there was a finding about  
6 the mailgram it would have said so.

7 Q No, you didn't listen to my question,  
8 Mr. Dieckamp. My question was there was a finding, was there  
9 not, which indicated an intentional withholding of informa-  
10 tion on the part of the licensee about the pressure spike  
11 and hydrogen burn?

12 A Ms. Bernabei, it absolutely does not say that.

13 Q Okay. Let's look on page ---

14 THE WITNESS: Would you repeat that question,  
15 by the way, please.

16 MS. BERNABEI: I think you understand the  
17 question.

18 THE WITNESS: Could we have it then from the  
19 reporter?

20 JUDGE SMITH: Read it back. Read the last  
21 two questions.

22 (The record was read by the reporter as  
23 requested.)

24 THE WITNESS: Judge Smith, I would like to  
25 have that finding read to me out of the report.

Sim 8-13

1 MS. BERNABEI: Well, I intend to question you  
2 on it. We will ask you some more questions on it,  
3 Mr. Dieckamp.

4 BY MS. BERNABEI:

5 Q I would like to refer you to what is Joint  
6 Mailgram Exhibit 143, specifically page 121.

7 (Pause.)

8 Now the conclusion is, is it not, that TMI  
9 managers did not communicate information in their possession  
10 that they understood to be related to the severity of the  
11 situation; is that correct?

12 A That is one of the conclusions of the majority  
13 staff report, yes.

14 Q And it is fair to say that that conclusion  
15 includes information about the pressure spike and hydrogen  
16 burn, does it not?

17 A Ms. Bernabei, I don't know what it includes,  
18 and I am sitting here fuming about your imputing words to  
19 it that it does not contain.

20 JUDGE SMITH: Well, Mr. Dieckamp, I wanted to  
21 assure you that we don't make findings based upon questions  
22 of counsel. We make findings based upon answers and the  
23 exhibits.

24 BY MS. BERNABEI:

25 Q Is it fair to say that a large portion of this

Sim 6-14

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report, specifically pages 54 through 88, are an examination of licensee and site personnel's knowledge of the pressure spike and hydrogen burn on March 28th? Is that fair to say?

A Yes. There is an examination of that which uses its own devices to reach its own end point.

end 8

Sue fols

#7-1-SueT

1 Q Okay. And that's a large portion of this  
2 report, Pages 54 through 88, examination of the hydrogen  
3 burn and pressure spike?

4 A It sounds to me like it's roughly one-quarter.

5 Q I won't argue about the numbers. In any case,  
6 is it fair to say that the conclusion reached on Page 121  
7 refers to -- a fair interpretation is that it refers to  
8 a failure by TMI managers to communicate information in  
9 their possession about the hydrogen burn and pressure  
10 spike that they understood to be related to the severity  
11 of the situation?

12 Is that fair to say?

13 A No.

14 Q You do not -- your belief is that conclusion  
15 does not relate to withholding, or failure to report  
16 information on the hydrogen burn and pressure spike?

17 A I'm unable to interpret what Dr. Meyers had  
18 in mind.

19 MS. BERNABEI: Moving on to another subject,  
20 there is an October 14, 1981 Commission meeting to which  
21 Mr. Dieckamp refers in his testimony. I would request that  
22 that be introduced into evidence.

23 The Board has stated in a prehearing conference  
24 that that is the best evidence of what occurred at that  
25 meeting. I think if Mr. Dieckamp is permitted to offer

#7-2-SueT

1 testimony as to what occurred and what he said at the  
2 meeting, the relevant portions of the transcript should  
3 be admitted, since Commissioners Bradford and Gilinsky  
4 may not testify.

5 JUDGE SMITH: All right. There is a problem,  
6 however, and that is there is a Commission rule that says  
7 no aspect of the Commission meetings or statements made  
8 there may be used in adjudications. And I don't know --  
9 it just now occurred to me that that rule is in existence.

10 MS. BERNABEI: My understanding, since I have  
11 discussed this with Mr. Blake, is that the concern is  
12 that the Commissioners' statements not be taken as any  
13 adjudicatory position of the Commission. And I think what  
14 we are talking about is different.

15 JUDGE SMITH: I don't know if we are or not.  
16 It's -- I'm aware of the section, but for the life of me  
17 it didn't pop into my mind as having relevance to this  
18 problem until this moment. And I'm not sure that you and  
19 Mr. Blake have captured the entire purpose of the regula-  
20 tion.

21 I think the regulation is also intended to  
22 encourage complete, open, candid, unrestrained statements  
23 to the Commission without fear that a candid, unconsidered  
24 remark might not be held against somebody later in  
25 adjudication. I'm just -- it's more than one reason for



#7-3-SueT 1

2 it. Nevertheless, I don't know quite what to do about it.  
3 I think there is a problem. I don't think that any party  
4 has standing to waive the Commission's prerogative not  
5 to have their Commission meetings used in adjudications.

6 I think, if you can, go on to something else  
7 and let the Board and the parties present have time to  
8 address the issue and then we will come back to that.  
9 It may very well be that we will have to strike that  
10 aspect of Mr. Dieckamp's testimony. I don't know.

11 I just didn't think about it in terms of Mr.  
12 Bradford's testimony either. That's Part 9 I believe.  
13 We will find the regulation. And I don't have it with me.

14 Let's take a morning break.

15 (Whereupon, the hearing is recessed at 10:51 a.m.,  
16 to reconvene at 11:07 a.m., this same day.)

17 JUDGE SMITH: Are you ready to proceed?

18 MS. BERNABEI: Yes.

19 BY MS. BERNABEI: (Continuing)

20 Q Mr. Dieckamp, are you aware of any internal  
21 GPU or GPU Service Corporation study or investigation  
22 completed to determine Licensee's knowledge of core damage  
23 on March 28th?

24 A I don't -- that doesn't tell me enough to know  
25 whether -- I'm just not sure, and let me just go ahead and  
say --

#7-4-SueT

1 Q Do you --

2 A -- it's your statement about knowledge of  
3 core damage that causes me to hesitate.4 Q Okay. Do you know of any inquiry ordered by  
5 Mr. Arnold in the approximate time period of December of  
6 1979 into Licensee's knowledge of core damage during the  
7 accident, including March 28th?8 A Well, again I don't know the title. I have  
9 become aware, in the process of preparing for this proceed-  
10 ing, of a draft that was given to Mr. Arnold -- and I  
11 don't know what initiated it, perhaps he did -- to review  
12 I thought it was the more generalized business of the  
13 transfer of information. But I may be wrong on that, too.14 Q Assuming for the moment that it is to determine  
15 the extent of Licensee's knowledge or awareness of core  
16 damage following the accident, to your knowledge did this  
17 internal inquiry determine any awareness of Mr. Chwastyk  
18 or Mehler of core damage due to the hydrogen explosion?19 A The document that I think you are referring to  
20 is a draft of some effort by two or three people to review  
21 testimony. To my knowledge, that effort never proceeded  
22 beyond that draft. That effort did not achieve any level  
23 of management approval or support.24 Q Okay. I would like to refer you to a document  
25 I believe you have before you which I will mark for

#7-5-SueT

1 identification as TMIA Exhibit 15.

2

(A package of documents, with

3

the cover page being handwritten,

4

is marked as TMIA Exhibit Number

INDEXXXXX 5

15 for Identification.)

6

BY MS. BERNABEI: (Continuing)

7

Q It is a cover page with handwritten notes, the

8

second page in the attachment are a September 17, 1980

9

memorandum to Mr. Arnold from Mr. Wallace, Licensing

10

Manager, Subject: Internal Work Related to GPU's Knowledge

11

of Core Damage Following the TMI-2 Accident.

12

A Yes.

13

Q Referring you to the second page of that

14

exhibit, Mr. Wallace represents to Mr. Arnold, does he

15

not, through this submission that he is forwarding to

16

Mr. Arnold all information that he is aware of related

17

to Licensee's understanding of core damage following the

18

TMI-2 accident?

19

A (The witness is looking at the document.)

20

Is there someplace where I can find that?

21

Q The first sentence.

22

A That, "I have attached for your information

23

three papers which are the only items that I am aware

24

of related to our understanding of the core damage following

25

the TMI-2 accident?"

#7-6-SueT

1 Q Yes. Doesn't that indicate --

2 A It goes on to say the TDR was never approved  
3 or completed. Is that --

4 Q Mr. Dieckamp, we will get on to that.

5 A Oh, fine.

6 Q Doesn't this indicate Mr. Wallace is forwarding  
7 to Mr. Arnold all items that he is aware of related to  
8 Licensee's understanding of core damage following the  
9 TMI-2 accident; is that correct?

10 A I think it says that. I think you can -- yes.

11 Q Now, one of the attachments to this memorandum  
12 is, is it not, so-called untitled piece, completed at  
13 Mr. Arnold's request by Bill Behrle, Scott Gilbord and  
14 Don Reppert?

15 A (The witness is looking at the document.)

16 Again, what is the question?

17 Q Is there not an attachment to this memorandum  
18 which is labeled by Mr. Wallace as an untitled piece  
19 completed by Mr. Behrle, Mr. Guilbord and Mr. Reppert  
20 pursuant to a request by Mr. Arnold made in December of  
21 1979?

22 A Well --

23 Q Let me read you --

24 A -- I'm confused about first the handwritten  
25 notes and then the typed piece --

#7-7-SueT

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Q Okay. I'm just asking you now about the cover memorandum. Let me read you --

A All right.

Q -- the sentence and see if we understand each other.

Mr. Wallace: "The untitled piece reflects the complete efforts of Bill Behrle, Scott Guilbord and Don Reppert that was undertaken at your request of about December of last year."

Is that correct?

A Yes. It says that.

Q Now, the -- do you know who Mr. Behrle is, or was on September 17, 1980?

A I know who Mr. Behrle is. I don't know what he was doing at the time of this memorandum.

Q What was his position at that time?

A That's the one that I do not know.

Q What is his position currently?

A I don't know that either.

Q Okay, Scott Guilbord, do you know what his position was at the time, September 17, 1980 or currently?

A No, I don't know what it was at that time.

Q Do you know what his position is currently?

A I was going to say, I know Scott Guilbord going back to the period before the accident. I knew -- I got

#7-8-SueT

1 to know Bill Behrle immediately after the accident because  
2 he was very much involved in scheduling and making arrange-  
3 ments for operator interviews and things of that sort.

4 Q Now, Mr. Reppert has certain responsibilities  
5 in that area as well, did he not?

6 A I'm not sure what Don Reppert's role was. I  
7 somehow think of him in terms of -- I'm not sure. I  
8 thought he had a health psychics background. He may have  
9 been participating early on after the accident in some  
10 of these interview -- I think he did participate in some  
11 of the interviews.

12 But I don't know what he was doing in September  
13 of 1980, but I will accept what this document says.

14 JUDGE SMITH: Do you have the spelling of those  
15 names?

16 COURT REPORTER: Yes.

17 JUDGE SMITH: Okay.

18 JUDGE WOLFE: Off the record for a moment,  
19 please.

20 (An off-the-record discussion ensues.)

21 JUDGE WOLFE: All right. Go ahead.

22 BY MS. BERNABEI: (Continuing)

23 Q Mr. Dieckamp, referring you now to -- well,  
24 let me ask you one more thing. Apparently Mr. Behrle,  
25 Mr. Scott Guilbord and Mr. Reppert were directed by Mr.

#7-9-SueT

1 Arnold to provide him with this untitled piece, apparently  
2 some indication of Licensee's understanding of core  
3 damage?

4 It says this was undertaken at your request of  
5 about December of last year; is that correct?

6 A Yes.

7 Q At Mr. Arnold's request; is that correct?

8 A I would guess that's right.

9 Q Now, I would like to refer you to the attach-  
10 ment which is referred in this cover memorandum. It ap-  
11 pears, does it not, as the second attachment which is  
12 labeled: File 2359.4?

13 A Is this the one that starts out "Core Damage/  
14 Fuel Uncovering?"

15 Q That's correct.

16 A Yes.

17 Q It also indicates, does it not, at the top left-  
18 hand corner it was prepared by Mr. Behrle, Mr. Guilbord  
19 and Mr. Reppert; is that correct?

20 The initials that appear in the left-hand  
21 corner?

22 A I don't see that on my copy.

23 Q The upper left-hand corner, you do not have  
24 the words "Prepared by WHB, SLG, DHR/JFW?"

25 A I don't think my copy says that. But I'm not --



#7-10-SueT 1

Q Okay.

2

(Ms. Bernabei is showing the document to the witness.)

3

4

Mr. Dieckamp, that is what it says, is it not, at the top of that page? I'm showing you my copy for the moment.

5

6

7

A Yes.

8

9

Q That would indicate Mr. Behrle, Mr. Guilbord and Mr. Reppert?

10

A It says they prepared this apparently.

11

12

Q It also has the initials JFW, and that would indicate Mr. Wilson, an attorney for the Company; is that correct?

13

14

A Mr. Wilson's -- I think his -- well, I guess I don't know Mr. Wilson's middle initial. But if that's it, fine.

15

16

17

Q Now, this untitled piece or draft report indicates, does it not, that Mr. Chwastyk, in these gentlemen's opinion, may have -- knew there was core damage from the explosion in the containment?

18

19

20

21

A I think, if I'm reading the word, it says "assumed there was some core damage."

22

23

Q I would like to refer you now to the first sentence which appears under Item A on the first page, and I will read it to you and ask you the question, doesn't it

24

25



#7-11-SueT 1

2 indicate that Mr. Chwastyk, in these gentlemen's opinion,  
3 knew there was core damage from the explosion in the build-  
4 ing?

5 A Well, it's --

6 Q Wait. Let me read it into the record, and I --

7 A It's a weird sentence in --

8 Q -- will ask you the question, Mr. --

9 A Yes.

10 Q -- Dieckamp. "On Wednesday, Chwastyk, Shift  
11 Supervisor, was aware of high incore thermocouple readings,  
12 assumed there was some core damage, realized the magnitude  
13 of problem when it took 50,000 gallons of HPI to fill the  
14 88,000 gallon RCS, and knew there was core damage from the  
15 explosion in the building."

16 Does not that indicate that in these gentlemen's  
17 opinion Mr. Chwastyk knew on Wednesday there was core  
18 damage from the explosion in the containment?

19 A I think you have correctly read the sentence  
20 which apparently reflects the summary prepared by these  
21 individuals.

22 Q I would like to refer you now to Section 2  
23 of this untitled piece.

24 A On what page do I find that?

25 Q It would be the fifth page of the piece which  
appears four pages after --

#7-12-SueT 1

A Oh, I see, Roman Numeral --

2

Q Roman Numeral II, Pressure Spike/Hydrogen.

3

A Yes.

4

Q I'm referring you now then to the second paragraph. Does not this untitled piece or report indicate that two Licensee employees, Mr. Chwastyk and Mr. Mehler, may have believed on Wednesday that the pressure spike was due to a hydrogen explosion?

8

9

A I think it says "may have believed." Yes.

end #7  
Joe flws

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1 Q Did you --

2 A It also goes on to say if they did then believe  
3 this, it does not appear that they communicated their  
4 belief to anyone.

5 Q Mr. Dieckamp, did you have available to you at  
6 any time prior to this hearing this inquiry and study by  
7 Mr. Behrle, Mr. Guilbard, or Mr. Reppert?

8 A No, I did not.

9 Q Assuming for the moment that it was communicated  
10 to Mr. Arnold and to GPU's attorney, a Mr. Blake, as the  
11 cover memorandum indicates, would this have been the type  
12 of information you would have liked to have to determine  
13 whether your mailgram was accurate?

14 A Well, it is hard for me to say that it is not  
15 information that I would like to have seen. On the  
16 other hand, I don't know that in that time period I had  
17 great anxiety about the accuracy of the mailgram.

18 Q Is it fair to say that this internal report or  
19 inquiry contradicts, or cast doubts on statements in  
20 your mailgram, that no one interpreted the pressure spike  
21 in terms of core damage?

22 A It may to some. My analysis of the information  
23 doesn't, however.

24 Q Is it fair to say that even this internal  
25 inquiry report, requested and prepared for Mr. Arnold,

1 would not change your opinion as to the accuracy of your  
2 statement in your mailgram?

3 A As of today?

4 Q As of today.

5 A Oh, the answer is that it does not.

6 Q I would like to refer you to page 7 of your  
7 testimony, specifically items 7 and 8 on March 28th.

8 JUDGE SMITH: Ms. Bernabei, at the mid-morning  
9 recess, you had begun a line of questioning predicated  
10 upon his reference to his testimony before the Commissioners.  
11 And we said, let's take a break and we will address it.

12 Have you abandoned that line?

13 MS. BERNABEI: No, my request -- what I was  
14 moving is that the Board admit the transcript as the  
15 testimony in lieu of my cross examination.

16 JUDGE SMITH: That is correct. And we said  
17 we will return to this subject after the break, and you  
18 didn't, and I am wondering if you have abandoned the  
19 line of questioning.

20 MS. BERNABEI: No. What I would move to do --  
21 I didn't know you wanted it in this order.

22 JUDGE SMITH: It is up to you. I am not telling  
23 you to do anything.

24 MS. BERNABEI: I understand. Let me state our  
25 position. We were not allowed to present testimony by

1 former Commissioner Bradford as to this meeting. And at  
2 least one basis was the best evidence of that meeting was  
3 the October 14, 1981 meeting.

4 Given there is some concern at this point it  
5 cannot be introduced into evidence, and the Board cannot  
6 take notice of it for adjudicatory purposes, I would  
7 request that Mr. Dieckamp's testimony in this regard  
8 be stricken.

9 JUDGE SMITH: Mr. Blake, what is your view?

10 MR. BLAKE: Judge Smith, I have looked at the  
11 regulation in question which is 9.103 of the Commissions  
12 Rules of Practice, and I read that regulation as limiting  
13 the use to be made of observations by Commissioners or  
14 NRC employees, and sub-statements are not to be cited.

15 Also, at the beginning of the transcript of that  
16 proceeding, a copy of which I have looked at over the  
17 break, there is the typical disclaimer which the  
18 Commission conventionally attaches at the beginning of  
19 transcripts of its meeting, which says it is an unofficial  
20 transcript, and that citations are not to be made of it --  
21 made to it.

22 I frankly am willing to go either way on this,  
23 to strike that one sentence in Mr. Dieckamps testimony, or  
24 -- and I don't think it is inappropriate in view of my  
25 reading of the regulation, to include that simple, factual

1 statement by Mr. Dieckamp, that that is what he told  
2 the Commissioners that day.

3 JUDGE SMITH: Mr. Goldberg, do you have a  
4 position on it?

5 MR. BLAKE: Page 19 is the page reference.

6 MR. GOLDBERG: I don't have a problem with  
7 either alternative. I don't think that this statement  
8 in here is essential to Mr. Dieckamp's testimony. I  
9 don't think the thrust of his testimony is changed by  
10 striking that sentence, and that would eliminate the  
11 problem entirely, then, I believe.

12 I don't see a significant problem, on the other  
13 hand, with Mr. Dieckamp making a statement as to what he  
14 said. I think probably the cleaner approach would be to  
15 strike the sentence.

16 JUDGE SMITH: Now, the regulation is limited to  
17 Commissioners or NRC employees at open meetings, and this  
18 says since the statement by Mr. Dieckamp was at a  
19 Commission meeting, and it was in response to questions  
20 by Commissioners Gilinsky and Bradford, I don't think you  
21 can separate questions by Commissioners from the answers  
22 by non-commission employees attending meetings, I believe  
23 the dialogue between Commissioners and others is covered  
24 by the scope of the -- or at least the intent of the  
25 provision.

1           The testimony is not particularly material,  
2           and we will order it deleted from the written testimony.  
3           And that is the first paragraph on page 19.

4           Unfortunately, the deletion will not appear  
5           in the transcript where the testimony is, but that  
6           paragraph is not available to the parties for proposed  
7           findings, and it is not available to the Board to make  
8           a decision on.

9           MR. GOLDBERG: Why are we taking the whole  
10          paragraph out.

11          MR. BLAKE: Yes, my question as well.

12          JUDGE SMITH: Oh, excuse me.

13          MR. GOLDBERG: First two sentences, I think.

14          JUDGE SMITH: You are right, exactly right.

15          In the first full paragraph on page 19, there are two  
16          sentences, and I will read them that are struck from the  
17          testimony, and the sentences are: In a public meeting  
18          before the NRC Commissioners on October 14, 1981, I was  
19          questioned by Commissioners Gilinsky and Bradford about  
20          the mailgram. I said then, quote, I believe that the  
21          mailgram was correct on May 9. I believe that it is  
22          correct as of today. End of quote.

23          Those two sentences are struck.

24          BY MS. BERNABEI: (Continuing)

25          Q       Mr. Dieckamp, referring you now to page 7 of

1 your testimony, specifically Items 7 and 8 on page 7,  
2 it is fair to say you do not indicate any of your actions  
3 between about 2:30 p.m., when you encountered Mr. Herbein,  
4 Miller and Mr. Kunder on the steps to the Pennsylvania  
5 State Capitol, and your return home to New Jersey in the  
6 early evening, is that correct?

7 A That is correct.

8 Q Do you remember any of your actions from 2:30 p.m.  
9 until your return home to New Jersey?

10 A I do not remember. I am aware today that there  
11 is other testimony that indicates that I spoke with Arnold  
12 and perhaps some others, and I am not sure just who. But  
13 I personally have no direct recollection of anything.

14 Q Is it fair to say there is a time gap in your  
15 memory for this period from approximately 2:30 until the  
16 evening when you returned to New Jersey?

17 A That is true, except for the period that I  
18 have spoken to about hearing the radio commentary from  
19 Lt. Gov. Scranton about 4:00 to 4:30 in the afternoon.

20 Q Is it fair to characterize it as a time gap?

21 A I certainly -- there is a period of time where  
22 my memory is vacant, and I think maybe even I said the  
23 word, 'time gap' in our deposition.

24 Q Have you, at any time, expressed a concern  
25 about how Mr. Herbein and Mr. Miller, handled operations



1 at TMI on March 28th?

2 A I really don't know what you mean by the question.

3 Q Yes. Have you ever expressed reservation or  
4 concern to the NRC about how Mr. Miller and Mr. Herbein  
5 handled operations and communication at TMI on the first  
6 day of the accident?

7 MR. BLAKE: Objection. Unless I see a link where  
8 Ms. Bernabei can describe how this is going to be tied  
9 to the subject matter of this proceeding; the question is  
10 seeking material which is outside the scope of this  
11 proceeding.

12 MS. BERNABEI: The statement in the mailgram was  
13 there was no withholding of information presumably about  
14 the pressure spike hydrogen generation, or core damage.

15 It seems to me if there is an expressed concern  
16 to the NRC in sworn testimony by Mr. Dieckamp about Mr.  
17 Miller's and Mr. Herbein's performance, we should be  
18 entitled to explore whether that was related to reporting  
19 that information.

20 JUDGE SMITH: That might have been a good point  
21 to explore on discovery, but not in the hearing room, unless  
22 you have reason to believe it is relevant to our issues.

23 MS. BERNABEI: It seems to me we can ask the  
24 question.

25 JUDGE SMITH: As you sit there now, do you have

1 any reason to believe that he had expressed -- you have --

2 MS. BERNABEI: Yes.

3 JUDGE SMITH: So you are representing then to the  
4 Board that your question is relating -- is relevant to the  
5 issue before us.

6 MS. BERNABEI: That is correct.

7 JUDGE SMITH: Well, that wasn't the way you  
8 stated it. You said, well, we can find out. Now, I want  
9 you to represent that you know in advance that you are  
10 exploring a point that is relevant to the issue before  
11 us, and that is the accuracy of the mailgram.

12 MS. BERNABEI: I believe it may be related to  
13 whether or not Mr. Dieckamp believes there was withholding  
14 of information.

15 JUDGE SMITH: You are using soft language, which  
16 arouses my interest.

17 MS. BERNABEI: I think I have a good faith  
18 basis to ask the question. That is all that is required  
19 of counsel.

20 JUDGE SMITH: I think we are going to ask  
21 something more than that. Do you want to come to the Board  
22 and tell us what it is, or show it to us. I don't want  
23 to destroy your cross examination, but you are being  
24 vague throughout this whole discussion. Vague and  
25 inconsistent.

1 MS. BERNABEI: There was sworn testimony by  
2 Mr. Dieckamp to the NRC that he had a concern about the  
3 way Miller and Herbein handled the accident.

4 I think we have a right to inquire as to whether  
5 that is related to their communication or reporting  
6 information on the day of the accident.

7 JUDGE SMITH: You are repeating yourself. As  
8 you sit there right now, do you have reason to believe  
9 that the sworn statement to which you refer has direct  
10 relevance to the issue before us. You are being evasive,  
11 and we won't allow you to be evasive.

12 MS. BERNABEI: I have explained it the best I  
13 can. Let me proffer on the record -- well, I will let  
14 you rule.

15 JUDGE SMITH: Well, go ahead and proffer. Maybe  
16 your proffer might show your relevance.

17 MS. BERNABEI: I am going to wait until you  
18 rule whether I can ask the question, and then I will  
19 proffer what I was going to --

20 JUDGE SMITH: Do you have any more information  
21 to give the Board about the relevance of your question,  
22 and the sworn statement, than you have given?

23 MS. BERNABEI: Not without destroying the  
24 question itself.

25 JUDGE SMITH: Okay. In that event, what you

1 may do is write down, at this time, any statement, give  
2 it to the Board, let us see the relevance, and then that  
3 statement will be made available to the parties after  
4 you have explored the line of questioning.

5 This would have been taken care of if we had  
6 insisted upon cross examination plans. This would have  
7 been a part of it. You may do that, you may have that  
8 option to you, and then we will decide.

9 Do you want to do that, return to that after  
10 lunch?

11 MS. BERNABEI: This is my last question. I  
12 have no others.

13 JUDGE SMITH: All right. Why don't you write  
14 out the question, and your statement of the relevance,  
15 and then we will look at it and rule, and then if you  
16 -- and then you can proffer.

17 In fact, why don't we break early for lunch  
18 and let you do that. If you have nothing further except  
19 this question -- unless you think it will take just a  
20 moment.

21 MS. BERNABEI: I don't know. I don't think it  
22 should take that long.

23 JUDGE SMITH: All right. Well, go ahead and  
24 write it out.

25 (Pause.)

1 JUDGE SMITH: And you realize, don't you, that  
2 after we rule, ultimately the statement will be made  
3 available publicly?

4 MS. BERNABEI: Oh, sure.

5 JUDGE SMITH: Will you be ready with your  
6 examination then, Mr. Au, because we will be calling  
7 upon you in case we foreclose the question. You should  
8 be ready to proceed.

9 MR. AU: Yes, sir.

10 JUDGE SMITH: Apparently Ms. Bernabei is  
11 taking longer than we expected. Would it interfere with  
12 your scheme of cross examination if we deferred the  
13 matter until after lunch, and then we return to it, and  
14 then I will allow Mr. Au to proceed now with his cross  
15 examination.

16 MS. BERNABEI: No, I have no problem with  
17 that.

18 JUDGE SMITH: All right. That is what we will  
19 do. We will return to your question after lunch.

20 End 8.  
21 MS fols.

Sim 9-1

1 MR. AU: May I have Mr. Dornsife ask a few  
2 technical questions concerning the discussion of Mr. Chwastyk's  
3 testimony and then I want to reserve one line of questioning  
4 on something else.

5 JUDGE SMITH: Fine.

6 Mr. Dornsife.

7 CROSS-EXAMINATION

8 BY MR. DORNSIFE:

9 Q Mr. Dieckamp, in your mailgram you associate  
10 the recognition with severe core damage, the pressure spike  
11 you associate with what you call severe core damage and  
12 I believe you defined it.

13 If the mailgram would have said the pressure  
14 spike was associated with any increased awareness of the  
15 severity of the accident, would you still agree with that  
16 statement?

17 A I am just not sure. The mailgram and the  
18 sentence was constructed really as a direct response to  
19 the article in the New York Times. Again, when I reviewed  
20 the testimony and the like, I think I more nearly derive  
21 the generalized impression that the pressure spike was  
22 just another unexplained thing that did not really penetrate  
23 people's minds.

24 So, you know, I haven't really thought about  
25 that the way you pose it, but my first reaction is that,

Sim 9-2

1 as I said, that the spike was another unexplained event  
2 during the day and did not really make a major impression  
3 upon people. You know, that is separate and apart from  
4 what it really did and what it really meant.

5 Q So even based on what you know today, you would  
6 not say that there is a general -- you would not state  
7 that there was a general awareness of a more severe accident  
8 because of the pressure spike?

9 A I don't think so, and let me go on to say why  
10 I don't think so. I think this because I don't see in the  
11 interviews an indication that people took significant steps  
12 to make sure that others were informed. This matter was  
13 not widely communicated and it did not become a matter  
14 that everyone somehow said that had come to my attention  
15 and I resonded to it.

16 Again, I had a feeling that it was kind of  
17 one of those additional unexplained events of the day.

18 Q As far as you are aware, are licensed control  
19 room operators and senior reactor operators, licensed  
20 senior reactor operators authorized and in fact required  
21 to take action if they recognize a situation where public  
22 health and safety are concerned?

23 A Yes, I think so.

24 Q So would not have Mr. Chwastyk and all the  
25 other licensed operators if they would have recognized

Sim 9-3

1 the significance of the pressure spike have been required  
2 and obligated by their license to take action regardless  
3 of what Miller or Herbein might have said?

4 A Well, I think it is true that they are obligated  
5 to take action to protect the health and safety of the  
6 public. I guess I don't think that quite in the simple  
7 form doesn't recognize the question of whether they under-  
8 stood what was going on and therefore had a basis for a  
9 conviction and a knowledge of what to do.

10 And I think, in fact, when we look back at the  
11 accident, one of the problems was probably a perception on  
12 the part of almost everyone that the pre-arranged procedures  
13 were adequate for everything that could ever be conceived  
14 and thus the training did not provide enough concentration  
15 on diagnostic capability and thus the ability to determine  
16 when the procedures were inappropriate or what action would  
17 be necessary.

18 Just on the general principle, are operators  
19 required, I think the answer to that is yes.

20 JUDGE SMITH: You are referring I believe to  
21 the NRC regulations which require that operators be  
22 supervised by only licensed senior reactor operators? Is  
23 that your allusion?

24 MR. DORNIFE: My allusion was that all operators,  
25 regardless of whether they are senior or licensed, can



Sim 9-4

1 take action if they see something involving public health  
2 and safety. They are obligated by virtue of that license  
3 status to do something.

4 JUDGE SMITH: And no unlicensed person can  
5 countermand their actions?

6 MR. DORNIFE: Yes.

7 BY MR. DORNIFE:

8 Q So that the licensed operators could have, if  
9 they would have strongly believed there was a situation  
10 that required action, have taken action without authority  
11 of their supervisors, the unlicensed supervisors?

12 A Again, I think that is correct that the licensed  
13 operators do have the obligation and the authority to  
14 take action to protect the health and safety of the public.

15 Q In your opinion, what would you have expected  
16 the operator, a licensed operator to do if they would have  
17 recognized that indeed the pressure spike had been indication  
18 of the core being uncovered and core damage occurring?

19 A I think the simplest, more direct thing that they  
20 should have done earlier in the day was a thing that was  
21 ultimately directed around 5:30 in the afternoon, namely,  
22 to just turn on the high pressure injection pumps and  
23 leave them on.

24 Q Do you believe their training at that time  
25 would have indicated that to them?

Sim 9-5

1           A       Well, I am not sure I am sufficiently conversant  
2 with details of their training to know that. I guess I think  
3 their training should have told them to maintain adequate  
4 primary coolant inventory. I think we also know after the  
5 accident some of the kinds of things that inhibited their  
6 action, namely, their concern about going solid and their  
7 misplaced belief in the pressurizer level as an indicator  
8 of inventory.

9           Q       Are you aware of any procedures that were in  
10 place to cover a situation that talked about severe core  
11 damage?

12          A       I don't think there was a procedure in place  
13 that somehow was directed towards for a given degree of  
14 core damage that this is what you do. I don't think there  
15 was such a procedure.

16                I think the problem that the operators had was  
17 in determining which procedure to use.

18          Q       You stated in cross-examination earlier that  
19 closing the block valve and turning on heaters are  
20 prerequisites for drawing a bubble in the pressurizer.  
21 Are you aware of any other actions that are usually associated  
22 with that evolution?

23          A       I don't want to pose as a real expert on that.  
24 I guess though that my sort of basic awareness would  
25 indicate that as one does those actions and as water is

Sim 9-6

1 then driven out of the pressurizer into the loop or the  
2 reactor vessel, one then has to add water in order to  
3 keep a proper level in the pressurizer. And, again, within  
4 my awareness of the details, that is how I would visualize  
5 the drawing of the bubble to proceed.

6 Q If someone is not really totally aware of how  
7 much inventory is in the system, would not under normal  
8 conditions drawing a bubble also be associated with taking  
9 reactor coolant inventory out of the system?

10 A I don't really follow that. Again, I think in  
11 terms, and again recognizing that my knowledge of the  
12 detailed operations is very limited, I think in terms of  
13 the drawing of the bubble in a generalized sense as redistri-  
14 buting the available inventory in the system to move it from  
15 the pressurizer into the primary loops and the vessel and  
16 then to the extent that additional water is required  
17 because the pressurizer level is getting down below the  
18 heaters or something of that sort, then it is necessary to  
19 add water to the system.

20 Again, I think of it as a strategy to redistri-  
21 bute the available inventory into its proper place and to  
22 add sufficient inventory to get to the right operating  
23 unit conditions.

24 Q Are you aware of any records around that time  
25 when the bubble was drawn shortly after the pressure spike,

Sim 9-7

1 of any records of what the let-down flow might have been?

2 A I personally am not aware in detail. I have  
3 a kind of generalized understanding that after the  
4 significant damage had occurred earlier in the morning of  
5 the 28th, the filters in the let-down coolers and things  
6 like that became plugged and the operators took action to  
7 bypass those filters. But I don't know just what the  
8 level of let-down flow was.

9 Q When you prepared the mailgram were you aware  
10 of this decision to draw a bubble, and what significance  
11 did you place on it?

12 A I think the answer to that is no. That kind  
13 of a detailed characterization of the activities in the  
14 afternoon after the spike was not something that I was  
15 aware of.

16 Q Mr. Dieckamp, would you present during my  
17 questioning of Dr. Zebroski on TMIA Exhibit 2, the Seelinger  
18 notes?

19 A I think I was.

20 Q And we talked about the possibility, or even  
21 more strongly the probability that the discussion at I  
22 believe it was 2130 concerning hydrogen in the reactor  
23 building was probably related to the venting of the waste  
24 gas decay tanks or the propose to vent the waste gas decay  
25 tanks into the reactor building.

Sim 9-8

1 MS. BERNABEI: I am going to object. I am  
2 sure that that was the testimony. Dr. Zebroski did talk  
3 about a possibility that that was the case, but I didn't think  
4 he characterized it as a probability.

5 MR. DORNSIFE: Okay. We will keep it a  
6 possibility.

7 THE WITNESS: 2130 clock time on the 28th?

8 MR. DORNSIFE: On the 29th.

9 THE WITNESS: I am just not sure about that. I  
10 have a sense of awareness that there was concern about what  
11 was happening as the waste gas decay tanks were venting  
12 or being vented back to containment. There was concern  
13 about what was happening to the normal hydrogen there, but  
14 as I sit here I can't relate that to a specific time or  
15 set of events.

16 BY MR. DORNSIFE:

17 Q You mention on page 13 of your testimony that  
18 at 9 p.m. on March 29th there was a sparking potential.

19 A Yes.

20 Q If, indeed, the concern with hydrogen was  
21 from this waste gas venting, could that have been the  
22 reason for this concern about sparking?

23 A Yes, it could have been. That is one explanation,  
24 one possible explanation for that kind of general direction  
25 to the operators.

Sim 9-9

1 Q Do you believe that it is justifiable that the  
2 senior plant managers, and I am talking now about Herbein  
3 and Miller, would have left the plant had they been conveyed  
4 or had they realized, or someone had made them realize the  
5 significance of the pressure spike?

6 A My knowledge at the time and today is that in  
7 my judgment Gary Miller and Jack Herbein are very responsible  
8 people who took their responsibility seriously. I believe  
9 that had they understood the situation they would not have  
10 both left the plant at the same time to go to brief the  
11 Lt. Governor.

12 And as you know, my own reaction upon seeing  
13 them on the Capitol steps was more or less I think in my  
14 words, my God, who is minding the store. They in response  
15 to that assured me that things were stable. So I think that  
16 had to be, or at least I infer that that was their generalized  
17 awareness of the state of affairs. Of coures, we know today  
18 that that was grossly in error.

19 Q Who do you believe then after they left was --  
20 and I want to characterize it as left in charge -- who was  
21 the senior person on site then to make decisions after they  
22 left?

23 A Well, I think, and this is an area where the  
24 Chwastyk testimony is a little hard to reconcile, the senior  
25 man on site in terms of position and title in the

Sim 9-10

1 organization I think was Joe Logan. I think, or I have  
2 the impression that upon leaving Gary Miller indicated that  
3 Mike Ross would be the man in charge of the plant or the  
4 operations. Chwastyk's interviews and testimony somehow  
5 doesn't reveal that he had a sense of that chain of command  
6 and I am at a loss to understand that or explain it.

7 Q Did the fact that plant managers didn't sense  
8 the significance play a major role in formulating your  
9 mailgram?

10 A Oh, I don't think I could say a major role.  
11 Certainly the fact Gary Miller did not reflect a keen  
12 awareness or an awareness of the spike and its meaning I  
13 guess had to be part of the composite information that  
14 together gave me a willingness to make the statement I did  
15 make on May the 9th.

16 MR. DORNSIFE: Thank you, Mr. Dieckamp.

17 I have nothing further.

18 CROSS-EXAMINATION

19 BY MR. AU:

20 Q Mr. Dieckamp, I would like for you to turn  
21 your attention to page 6 of your prepared testimony under  
22 paragraph number one on March 28th.

23 In the second sentence you state that "My  
24 notes indicate a feed pump trip at 4 a.m., reactor trip,  
25 primary pressure relief drain tank disrupture, 30,000 gallons

INDEXX



Sim 9-11

1 of water relieved to the containment building and one  
2 pound pressure in the containment building."

3 The next sentence says "Creitz also mentioned  
4 failed fuel."

5 Now the sentence which begins "My notes,"  
6 does that refer to TMIA Exhibit No. 3?

7 A I don't happen to know the exhibit numbers.  
8 If that is the one that has written down at the bottom  
9 of the page "First notice, North Office Building, about  
10 8:45, 3/28/79, phone booth."

11 Q That is correct.

12 A Okay. Then that is it. I might, since the  
13 testimony itself may not be self-evident, what I have  
14 done there is I have picked up the words from those notes  
15 and then in parentheses added what I thought would be  
16 enough words to turn those notes into something somewhat  
17 intelligible.

18 Q Okay. So the sentence which begins "My notes  
19 indicate" reflects the handwritten notes in TMIA Exhibit  
20 No. 3?

21 A Yes.

22 Q This following sentence states that Creitz  
23 mentioned failed fuel. Now the term "failed fuel" is  
24 not evident in TMIA Exhibit No. 3; is that correct?

25 A That is true.



Sim 9-12

1 Q Were there other written materials from which  
2 you derived your recollection of Creitz mentioning failed  
3 fuel?

4 A In the preparation of this testimony certainly  
5 I referred to my Kemeny and Special Inquiry Group depositions.

6 Q You testified earlier that you specifically  
7 recalled the use of that term on the 28th; is that correct?

8 A The term "failed fuel"?

9 Q Yes.

10 A Yes, I do.

11 Q I would like to turn your attention to TMIA  
12 Exhibit No. 4, which includes transcripts of your comments  
13 to the Pennsylvania Public Utility Commission on March 28th.

14 There were presentations, one at 9 a.m. and one  
15 at 11:30 a.m. Did you use the term failed fuel in those  
16 presentations?

17 A No, I did not.

18 Q You had mentioned in earlier testimony that  
19 you had a discussion with Mr. Arnold on the morning of  
20 March 29th concerning core damage; is that correct?

21 A Did I say that or did Mr. Arnold say that in  
22 one of his interviews?

23 Q I think you are correct that Mr. Arnold  
24 stated that.

25 A Yes.

Sim 9-13

1 Q Do you recall the term "failed fuel" coming  
2 up in that discussion?

3 A From my own memory I cannot bring that back.  
4 However, I have no reason to quarrel with Mr. Arnold's  
5 recollection of that conversation which we went through  
6 I guess at some length, and I am trying to think whether  
7 it was yesterday.

8 Q When do you recall the term "core damage" first  
9 being used in connection with the accident?

10 A I can only infer now from my subsequent statements.  
11 I don't think I have a direct indication, but if you look  
12 at again either the Kemeny or the Special Inquiry Group,  
13 and right now I am not sure which, I think you will find  
14 that I comment about a sense of damaged core or core  
15 damage starting sometime on Friday I think, which would be  
16 the 30th.

17 Again, I think I would want to say that as  
18 that day progressed from the early morning indications  
19 of the offsite release that led to the order to evacuate  
20 women and children, and going through my awareness of the  
21 pressure spike and postulated zirconium water reaction,  
22 that my own awareness or my mental picture of what core  
23 damage meant changed dramatically as that day progressed  
24 and on into Saturday.

25 I think when you get to Saturday when I addressed

Sim 9-14

1 the initial part of the Industry Advisory Group I spoke in  
2 terms of the problems of cooling the damaged core or an  
3 effort necessary to attempt to reduce the degree of disarray  
4 of the core.

5 So, again, there is a very rapid progression of  
6 my own mental picture that occurred starting I think Friday  
7 morning and proceeding from then on.

END Sim 7  
Sue fols

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#10-1-SueT

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Q Friday morning being the 30th?

A Yes.

MR. AU: I have no other questions.

JUDGE SMITH: Ms. Bernabei, if you have your cross-examination proposal make it available to the Board now and we will consider it over the noon break and then return at five minutes after one.

(Whereupon, the hearing is recessed at 12:05 p.m. to reconvene at 1:11 p.m., this same day.)

#10-2-SueT1

A F T E R N O O N S E S S I O N2  
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(1:11 p.m.)

JUDGE SMITH: Are we ready to proceed?

The Board has read your cross-examination proposal of Mr. Dieckamp and we have several observations to make about it. One is, as we discussed before the break, it is a matter that probably should have been pursued on discovery. I guess you do not know the answer to the question; is that correct, Ms. Bernabei?

MS. BERNABEI: That's correct.

JUDGE SMITH: However, it is a question that the Board itself thinks, in view of the representation of what Ms. Bernabei has made about his testimony, should be asked. So, for that reason we will permit the inquiry. Now, the next is -- or, we will permit an inquiry.

The next point is, we could not identify any reason whatever for keeping this proposal confidential. I mean, we don't understand at all how it would destroy your cross-examination advantage. But even that is not particularly important because you have already asked one of the questions.

MS. BERNABEI: Okay.

JUDGE SMITH: The second question, we think you should eliminate. And the third -- and go straight to the third question and the moment you ask the third

#10-3-SueT

1 question there is your cross-examination. Wham, you know.  
2 So the reason I am raising it is there is going to have  
3 to be an opportunity for Mr. Dieckamp and the parties to  
4 look at the -- your reference and make sure that they agree  
5 with your characterization of it.

6 So it would be our preference, unless you have  
7 a strong reason, just simply to read the questions you  
8 propose to ask. I don't understand why they have to be  
9 confidential.

10 MS. BERNABEI: I think the transcript to which  
11 I refer has been provided, I assume, as in the normal course  
12 to Mr. Dieckamp for his review and correction and to his  
13 attorney, Mr. Blake.

14 In any case, I continue to believe that giving  
15 opposing counsel and the witness a full set of my questions  
16 prior to asking them does allow the witness and opposing  
17 counsel to determine what their answers are going to be  
18 prior to the hearing.

19 JUDGE SMITH: Yes.

20 MS. BERNABEI: And I don't think -- I think that  
21 does eliminate whatever degree of surprise or freshness  
22 a witness could offer on a question that he is not prepared  
23 for. And I think that's the purpose of cross-examination.

24 JUDGE SMITH: Well, I don't believe that you  
25 have it here. But, as I pointed out, it really won't

#10-4-SueT 1

2 matter because as soon as you ask the question he is going  
3 to need all the time he requires to give a careful considera-  
4 tion and accurate response and look at the data and every-  
5 thing else. So, there is no possibility of surprise of  
6 this witness on this issue. It doesn't matter.

7 MS. BERNABEI: I agree, Judge Smith. I think  
8 this is a matter probably he is quite familiar with. I  
9 don't think there is that degree of surprise. I --

10 JUDGE SMITH: Well, in that event, let's just  
11 put the questions out on the table and -- we still -- and  
12 I'm going to listen again, why do you have to have it  
13 secret?

14 MS. BERNABEI: Because I think the only way to  
15 adequately cross-examine a witness is to maintain a  
16 line of questioning and not allow the witness to prepare  
17 his answers with or without the assistance of his counsel  
18 prior to answering.

19 JUDGE SMITH: Oh, I see. With or without the  
20 assistance of counsel.

21 But in this event we will want a prepared answer,  
22 because we will want a careful answer. Now, if you don't  
23 want the assistance of counsel I understand that.

24 But we will want an answer which is based upon  
25 full, complete, studied attention to the facts. In any  
event, that's the basis for it. So, I'm going to return



#10-5-SueT 1

your proposal to you and have you proceed with your questions. Go -- I would -- just go to your questions.

3

Now, we are not going to permit you to go to the second one. You have already asked the first one. Go to the third one.

6

(Ms. Bernabei is at the Bench to obtain a paperwriting from Judge Smith.)

7

8

MS. BERNABEI: I don't think he answered it.

9

JUDGE SMITH: The first one. Right. Well, ask it again. But, then insert -- put this in here.

10

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(Judge Smith is pointing out on the paperwriting to Ms. Bernabei certain portions.)

12

13

MS. BERNABEI: All right.

14

JUDGE SMITH: No matter how she approaches it, Mr. Dieckamp will have a full opportunity to go to his data in answering it.

16

17

Whereupon,

18

HERMAN M. DIECKAMP

19

resumed the witness stand as a witness previously called by and on behalf of the Licensee, Metropolitan Edison Company, and having previously been duly sworn, was further examined and testified as follows:

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23

CROSS EXAMINATION

24

BY MS. BERNABEI: (Continuing)

25

Q Mr. Dieckamp, I will repeat the question I had

#10-6-SueT1

1 for you. Have you expressed to the NRC any concern that  
2 Mr. Herbein or Mr. Miller did not perform adequately during  
3 the accident?

4 MR. BLAKE: Objection.

5 JUDGE SMITH: Overruled. Publicly. We are  
6 talking publicly.

7 WITNESS DIECKAMP: Judge Smith, I don't think  
8 the question said anything about talking. It just said  
9 performed.

10 JUDGE SMITH: I'm talking about making public  
11 statements to the NRC about Mr. Herbein and Mr. Miller's  
12 performance during the accident.

13 MS. BERNABEI: Well, public as defined in the  
14 course of investigation.

15 BY MS. BERNABEI: (Continuing)

16 Q In the course of your responsibilities, have  
17 you told the NRC or NRC investigators?

18 A Could I have the question again, then, please?

19 Q Yes. Have you ever expressed to the NRC,  
20 including any NRC investigators, a concern that Mr. Herbein  
21 and Mr. Miller did not perform adequately during the ac-  
22 cident?

23 A (Pause.)

24 I thought the question related to communications.  
25 But as I hear it, it does not.

#10-7-SueT

JUDGE SMITH: Well, that's my concern, too.

MR. BLAKE: That's the reason for my objection.

JUDGE SMITH: That's why I do think that you either have to accept our proposal, or we will take it over for you.

MS. BERNABEI: I'm sorry, I don't understand. First of all, I don't understand a procedure --

JUDGE SMITH: Well, the question --

MS. BERNABEI: -- in which the witness is allowed to object. I have never seen a procedure in which a witness is allowed to refuse to answer a question. If Mr. Blake has an objection, I will answer it.

I don't--

JUDGE SMITH: His --

MS. BERNABEI: -- think I should be forced to argue with the witness.

JUDGE SMITH: It's a very, very broad question. Performed during the accident is a very broad question.

You -- look, get --

MS. BERNABEI: I will --

JUDGE SMITH: -- to the relevance. I didn't really focus on the unfocused nature of the first question. It is your third question that we are allowing you to inquire on. Now, get to it.

MS. BERNABEI: Judge Smith, you said I could ask

#10-8-SueT

1 the first and the third question.

2 JUDGE SMITH: Get to the third question or  
3 allow the Board to do it.

4 BY MS. BERNABEI: (Continuing)

5 Q Have you ever testified under oath to NRC  
6 investigators that you were concerned that Mr. Herbein and  
7 Mr. Miller had not communicated information --

8 MS. BERNABEI: Well, I'm not going to ask the  
9 question. What I will do is proffer my questions. If  
10 the Board wishes to inquire --

11 JUDGE SMITH: All right. Whichever you wish.

12 MS. BERNABEI: Okay. Let me proffer the basis.  
13 I'm not going to do it this way because it won't be  
14 effective.

15 JUDGE SMITH: All right.

16 MS. BERNABEI: If the Board wishes to inquire  
17 they are free to do so.

18 JUDGE SMITH: Okay.

19 MS. BERNABEI: I proffer my questions to Mr.  
20 Dieckamp would be: Have you expressed to NRC investigators  
21 or the NRC a concern that Mr. Herbein and Mr. Miller did  
22 not perform adequately to the accident?

23 JUDGE SMITH: All right. To that question,  
24 there would be an objection and we would sustain it.

25 MS. BERNABEI: The good faith basis for my asking

#10-9-SueT

1 that question was Mr. Dieckamp's interview to the NRC,  
2 Office of Investigations, testimony under oath, on --  
3 of the Licensee's Internal Investigation of the Accident  
4 or Keaten Report, December 15, 1983 interview, on Page 171,  
5 starting on Line 5, and I will read in the relevant question  
6 and answer.

7 Line 5, "Question: What major decisions have  
8 you made subsequent to the accident that if given an  
9 opportunity today to change would you change?

10 "Answer: What decisions have I made subsequent  
11 to the accident that as of today I think are wrong? Uh-huh.  
12 I have got to believe there is something, because I don't  
13 believe I am perfect.

14 "Question: Would you like a short recess?

15 "Answer: No, not really. I am not so arrogant  
16 as to think that I'm infallible and that there is nothing  
17 that I have done which upon reflection that I wouldn't do  
18 differently. I am not sure I know exactly what comes to  
19 mind. I think there could have been some responses to  
20 the cheating. We could have been harsher. I think we  
21 probably should have come to grips more early with the  
22 realization that Herbein and Miller could not be effectively  
23 used in the nuclear operation. I think we probably..."

24 And at that point, Mr. Dieckamp is interrupted.

25 Now, I proffer that the information which I think is relevant

#10-10-SueT 1

2 to the Board was intended to illicit whether or not the  
3 criticism had to do with Mr. Herbein or Mr. Miller's  
4 reporting of information to GPU management or the NRC  
5 during the accident, including any possible reporting  
6 failures having to do with the pressure spike, hydrogen  
burn or indicated core damage.

7 JUDGE SMITH: Okay. Our ruling was -- I need  
8 your paper back to do it. I guess our ruling was that  
9 you could get into your third question.

10 And would you read your third question?

11 MS. BERNABEI: The third question: Is a part  
12 of your concern that Herbein and Miller did not communicate  
13 information they possessed about the pressure spike,  
14 hydrogen burn or core damage to GPU management or the  
15 NRC?

16 JUDGE SMITH: Yes, that is the question that  
17 we would have permitted, and that's the question that the  
18 Board itself would pose to Mr. Dieckamp. And we do.

19 This concern that you are expressing in the  
20 cited interview, does your concern --

21 WITNESS DIECKAMP: No, it does not relate to  
22 communications. What I was saying there, if I understand  
23 the citation from the OI investigation, was that as time  
24 went on and we continued to encounter all of the barriers  
25 to approval of restart, we became -- the management became

#10-11-SueT

1 increasingly aware that to maintain Jack Herbein and Gary  
2 Miller in the nuclear organization was most likely a  
3 burden that was not helping us to achieve the approval that  
4 we were seeking.

5 And I don't think in that -- if I recall that OI  
6 investigation -- I have no -- you know, I would like to see  
7 exact context, but I don't have the recollection that that  
8 statement was made in relationship to communications on the  
9 day of the accident.

10 MR. BLAKE: Okay. Judge Smith, I have one  
11 other observation, and that is the representation that  
12 these are available and have been -- I don't recall a  
13 single reference to this deposition which apparently was  
14 done of Mr. Dieckamp in a different context than this case,  
15 and I don't believe in any of TMIA's responses that they  
16 have made reference to this transcript that Mr. Dieckamp  
17 is being questioned with regard to a different matter;  
18 that is, the Keaten report.

19 MS. BERNABEI: Let me state very clearly, we  
20 have always represented -- and I do not understand any  
21 ruling of the Board that we had to tell GPU every cross-  
22 examination document we would use. And it's my under-  
23 standing the Order of the Board was to reference or define  
24 every document that we would use in our direct case. This  
25 is traditional cross-examination. And I think as such



#10-12-SueT 1

we do not have to identify those documents to Mr. Blake.

2

We also have no responsibility to reveal during a deposition, our deposition, of Mr. Dieckamp what documents we will use on his cross-examination in this hearing.

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MR. BLAKE: I have no quarrel with anything Ms. Bernabei has just said. It was to her prior representation that these documents are familiar and have been exchanged and discussed by the parties. Not this one.

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MS. BERNABEI: That is not my representation. My representation was Mr. Dieckamp, I assume, given this was his sworn testimony under oath in December of 1983 had an opportunity to review it. I also assume that his counsel, or chief counsel for the corporation, similarly had that opportunity.

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JUDGE SMITH: Okay. Do you have cross-examination, Mr. Goldberg?

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MR. GOLDBERG: Yes.

18

JUDGE WOLFE: One moment, Mr. Goldberg.

19

(The Board members are conferring.)

20

JUDGE SMITH: Parties, would you please distribute among the parties the proposal, cross-examination proposal, so they can see the communication that you had with the Board, please?

21

22

23

24

MS. BERNABEI: Yes.

25

MR. BLAKE: We will undertake to have a copy made

#10-13-SueT 1

overnight and distribute it tomorrow.

2

WITNESS DIECKAMP: Judge Smith, I am a little

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nervous in the sense that I responded to that question

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based upon my memory. I would hope the record would

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reflect that.

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And I'm wondering whether it would be worth-

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while to take a look at that, the context of that discussion

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in the OI investigation.

9

JUDGE SMITH: If you feel that that is desirable,

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Mr. Dieckamp, you certainly have every opportunity. And we

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want a full record on the point.

12

WITNESS DIECKAMP: Yes.

13

JUDGE SMITH: So, if you would like to --

14

WITNESS DIECKAMP: If it's available, I would

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prefer to spend just a minute looking at it.

16

JUDGE SMITH: Yes.

17

(The witness is provided with a copy of the

18

document by Ms. Bernabei.)

19

WITNESS DIECKAMP: What page?

20

MS. BERNABEI: Page 171.

21

JUDGE SMITH: What did you say, you don't know?

22

MS. BERNABEI: 171. No, I said on Page 171.

23

JUDGE SMITH: Okay.

24

MS. BERNABEI: I don't have my notes here so --

25

(The witness is looking at the document.)

1 A I am comfortable with my prior answer.

2 JUDGE SMITH: Mr. Goldberg?

3 CROSS EXAMINATION

4 BY MR. GOLDBERG:

5 Q Mr. Dieckamp, are you aware of any offsite  
6 radiation releases on the morning of March 28, 1979 which  
7 exceeded the tech spec limits for TMI-2?

8 A I personally, as I sit here, am not aware of  
9 any. I don't know if I am competent to speak to the  
10 entire record, but I am not aware of any as I sit here.  
11 And as I said, I think earlier made reference to the  
12 findings of the special inquiry group that in general on  
13 the morning of the 28th the radiation levels did not  
14 exceed background offsite.

15 Q Can offsite radiation releases exceed background,  
16 and yet be within tech specs for TMI-2?

17 A Mr. Goldberg, I am not sufficiently familiar  
18 with the details of the regulation to be able to answer  
19 that question. I would suspect -- well, I will stop  
20 there.

21 Q Going back to your testimony on Thursday,  
22 November 15th, TMIA asked you a question about whether you  
23 would expect the Commonwealth of Pennsylvania to have  
24 better information than the Company concerning offsite  
25 radiation releases, and I believe you answered that you

XXX INDEX

1 didn't believe they would.

2 Based on the testimony that you gave that there  
3 was a direct open phone line between the Commonwealth and  
4 the Bureau of Radiation Protection, do you believe it is  
5 possible that the Commonwealth of Pennsylvania had better  
6 information on radiation releases than did Mr. Creitz?

7 A I don't recall exactly how that exchange went.  
8 My memory suggests to me that it did include some passing  
9 reference to the open line to Ms. Riley at BRP. And  
10 I think it is difficult to be absolute about that.

11 I think my general belief or attitude would have  
12 been that the Company should have had the best information.  
13 At the same time, it is true that there was a continuous  
14 open line to the BRP, and I don't think Walter Creitz  
15 had the benefit of the same kind of direct and continuous  
16 communication.

17 Q Referring you to TMIA Exhibit 6, which is  
18 the RAC handwritten notes or minutes, March 29th and 30th,  
19 1979.

20 A I don't think I still have that one handy here.

21 Q On the last page of that exhibit is a phrase,  
22 about three or four lines up from the bottom which says:  
23 Significant core damage apparent.

24 Did you make an assessment on March 28th, 1979,  
25 that there was significant core damage apparent?

1           A     We have had this trouble throughout, in terms of  
2 just what do those words mean, and I think the best thing  
3 I can say is that whatever I did, I would not characterize  
4 as an assessment in the sense of even a back of the envelope  
5 calculation or anything that could begin to quantify some  
6 degree of core damage or some configurational modification  
7 or anything of the sort.

8                     I think my feeling is, and my testimony would  
9 be, that as we moved past Thursday night and into Friday,  
10 first with the awareness of the radiation release Friday  
11 morning, I think somewhere in the seven o'clock or so  
12 time period, seven a.m., time period, there was certainly  
13 brought to my attention -- and I think I learned of that  
14 somewhere in the nine to ten o'clock time period,  
15 certainly an increased awareness that there had been  
16 sufficient fuel damage to cause considerable amount of  
17 release of radioactive gases or radioactive materials.

18                     I just have no sense, though, in terms of  
19 an assessment in terms of what that meant, and beyond  
20 that, no sense of an assessment in -- and yet in terms  
21 of whether or not that damage was of a nature that would  
22 make the accident more of an on-going event in terms of  
23 having modified the ability to cool the core with  
24 assurance.

25                     So, certainly on Friday there was a rapidly

1 accelerating sense of awareness that we had more than just  
2 a few cracks or pin holes in fuel pins. But I am not  
3 in a position to say how I might have -- what mental  
4 picture I might have had.

5 I know that by the time Saturday came around, or  
6 when I spoke with the industry advisory group on Saturday,  
7 I then said that one of the four major questions was  
8 what was the degree of disarray of the core, and I think  
9 that kind of word to me reflects that at that time I was  
10 thinking of far more mechanical -- I can't break that  
11 down into specific levels of awareness as a function of  
12 time.

13 MS. BERNABEI: I would like to move to strike  
14 the majority of Mr. Dieckamp's answer. The question that  
15 I wrote down Mr. Goldberg asked was did you make an  
16 assessment of March 28th of significant core damage  
17 apparent.

18 Mr. Dieckamp then proceeded to talk about other  
19 days other than March 28th. It was not responsive to the  
20 question.

21 MR. GOLDBERG: It was my question. I was  
22 going to ask him about March 29th also I think he  
23 explained his answer, and it was the information that  
24 I was seeking. I don't want it stricken from the record.

25 JUDGE SMITH: So, in that event we won't.

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BY MR. GOLDBERG: (Continuing)

Q Mr. Dieckamp, when some of the operators who were at TMI-2 on March 28, 1979 state that they believe on March 28, 1979 that the pressure spike was real, what does that mean to you when they say they recognize the pressure spike as real on March 28th?

A I think what that means is that whereas some operators jump to the conclusion that it was a spurious electrical signal, others based upon their knowledge that the spray, the core spray is actuated, and that required a two -- I think a two out of three pressure indicators reaching the 28 or 30 pound level, psi level, tended on that basis to feel that the spike was real, I guess what that means is that they felt that the -- an electrical disturbance could not have caused the coincidence requirement for spray actuation,

That is my understanding of what they mean by real.

Q Does recognition of a real pressure spike necessarily indicate that there has been core damage?

A It does not, in my judgment. I, in fact -- I think when I go back to the mailgram statement, it says no one interpreted in terms of core damage. It seems to me that one has to first recognize the spike, one has to decide that it is a real pressure change, and one has



1 to then identify mechanism for that pressure change,  
2 one has to then identify that it was a hydrogen burn,  
3 hydrogen explosion. One has to then say the source of  
4 that hydrogen, the zirconium water reaction, one has  
5 to then make some sort of an estimate of how much zirconium  
6 reacted in order to begin to quantify what that might mean  
7 in terms of core damage.

8 To me, that is the chain of logic required to  
9 comment the spike with core damage, and to simply decide  
10 that the spike was real has not yet told me anything.

11 Q You were asked a number of questions about  
12 repressurization. If the pressure in the primary system  
13 is decreasing, and Chwastyk had received an order to  
14 maintain plant status, could shutting the block valve be  
15 a necessary step to prevent continuing pressure decrease?

16 A I think it would have been an action in the right  
17 direction.

18 Q Does it necessarily indicate an intent to  
19 repressurize the system?

20 A I think of itself I would not be able to reach  
21 a conclusion about repressurization. I think it sort of  
22 falls, in my mind, necessary but not sufficient.

23 Q I would like to refer you to TMIA mailgram  
24 Exhibit 14, which is the note from your secretary to you  
25 attaching the draft of the mailgram.

1 A Yes.

2 Q You testified that you don't recall writing down  
3 on your draft CC: NRC Commissioners.

4 I want to ask you whether your secretary has  
5 ever added things on the typed version that she does for  
6 you of handwritten drafts that you give her.

7 A The person that typed this was not my secretary.  
8 I would not want to attribute to Ms. Hull that she  
9 arbitrarily added anything.

10 I am not able to provide any insight into that.  
11 As far as I am concerned, the mailgram itself went to  
12 Gilinsky. He was on the tour, he was mentioned in the  
13 New York Times article. I would conclude that I did  
14 not see this as something more general import to the  
15 balance of the Commission.

16 Q Do you have any reason to believe that  
17 Commissioner Gilinsky upon receipt of the mailgram would  
18 not share it with the other Commissioners?

19 A No, I have no information to that effect. I  
20 guess my general awareness of Commission practices is that  
21 I would assume that he would make it available, but I  
22 don't know.

23 Q Did you have any intent that that information  
24 not be provided to the other Commissioners?

25 A Certainly no intent that it be somehow excluded

1 from them.

2 Q Do you know on what day or days consideration  
3 was given to hooking up the hydrogen recombiners?

4 A My impression of that is, again, one that  
5 says that decision to hook-up the recombiners may have  
6 occurred on the 29th. I am not even sure about the  
7 28th. Beyond that, it is my understanding that they  
8 actually did not get hooked up until about Sunday or  
9 Monday following the 28th.

10 And I am not sure what prompted the move to  
11 hook up the recombiners, and it is my impression that  
12 it may have been prompted by concern about the off gas  
13 from the waste gas decay tanks.

14 Q And in connection with consideration for  
15 hooking up the hydrogen recombiner, do you know whether  
16 or not there was a concern for ignition?

17 MS. BERNABEI: Objection. I believe this has  
18 been asked and answered, specifically Mr. Dornsife asked  
19 a number of questions along this line, and I think Mr.  
20 Dieckamp has exhausted his knowledge of that.

21 The question was asked by Mr. Dornsife, I  
22 believe.

23 MR. GOLDBERG: I don't recall. If it has, I  
24 will withdraw the question. I don't recall that  
25 specific question, whether there was a concern about

1 an ignition from hooking up the hydrogen recombiner.

2 JUDGE SMITH: I have no memory.

3 MS. BERNABEI: Oh, I didn't understand that  
4 to be the question. I thought the prior question had to  
5 do with the waste gas decay tank, and I assumed Mr.  
6 Goldberg's question was whether there was a concern  
7 and that was back with igniting the hydrogen. That was  
8 the previous question.

9 MR. GOLDBERG: That was not my question. That  
10 question was asked, and I asked a different question.  
11 I will ask it again.

12 JUDGE SMITH: This was with respect to hydrogen  
13 recombiners.

14 MS. BERNABEI: I am sorry. I misheard the  
15 question.

16 BY MR. GOLDBERG: (Continuing)

17 Q Mr. Dieckamp?

18 A I have no direct knowledge of that.

19 Q Based on your review of Mr. Chwastyk's various  
20 interviews, do you know when he -- in which interview  
21 he first mentioned hydrogen?

22 A What I know is he did not mention it in his  
23 May 21 interview. I think what that means is that he  
24 must have first mentioned it, I think, in his October 11,  
25 his second interview -- what I am trying to say, Mr.

1 Goldberg is that my memory relates to the specific  
2 non-mention in his first interview, and therefore, I  
3 think he did mention it in his second interview,  
4 what ever the date of it is.

5 Q Okay. Do you know when he first mentioned the  
6 check on containment?

7 A No, I do not.

8 Q If Mr. Chwastyk believed that the pressure spike  
9 was an indicator of core damage, would you expect that  
10 he would ask that a check on containment be done at that  
11 time?

12 A Well, my feeling is that a check on containment  
13 would be a rational response to recognition of an explosion  
14 within containment, whether or not it involved core  
15 damage.

16 Q Do you know what time Mr. Chwastyk arrived at  
17 the TMI-2 site on March 28th?

18 A I am going to be fuzzy about this. I think it  
19 was around -- let me just say roughly noon. I think he  
20 might have been scheduled for the three to eleven, or  
21 something like that shift, and I think he came in two or  
22 three hours early.

23 End 11  
24 MS fols.

Sim 12-1

1 Q You were asked a number of questions about drawing  
2 a bubble in the pressurizer. Do you have any knowledge that  
3 in fact a decision was made at about 2 p.m. on March 28th  
4 to draw a bubble in the pressurizer?

5 A The only knowledge that I have is that what  
6 I derived from the interviews and depositions of Joe  
7 Chwastyk. I am of the impression that others do not  
8 necessarily support that, and I also do not see much  
9 support for that in the NSAC record of the major events  
10 or actions during the day.

11 Let me just add to that. It may well be that  
12 Mr. Chwastyk in his own way was trying to draw the bubble  
13 and I can sort of -- I have no trouble with that one way  
14 or the other, you know, what his belief was as to what he  
15 was doing. I am just not sure that I see in the objective  
16 data evidence that that was indeed being done.

17 Q If there had actually been a change in strategy  
18 in early or mid-afternoon on March 28th, would you have  
19 expected that the other operators would have been aware of  
20 this change in strategy?

21 A Yes, I would.

22 MR. GOLDBERG: I don't have any further  
23 questions.

24 BOARD-EXAMINATION

25 BY JUDGE WOLFE:

Sim 12-2

1 Q Mr. Dieckamp, I don't know whether I can put  
2 the question in proper context, but it is my recollection  
3 that in response to a question with regard to Mr. Chwastyk  
4 you stated your response and then you added something to  
5 the effect that well, while Mr. Chwastyk said that he, and  
6 I believe your wording was recognized that repressurization  
7 was necessary, nevertheless it took one hour and eight minutes  
8 more before he took any action with regard to repressurization.

9 Do you recall that question and answer to that  
10 effect?

11 A I recall something along that line. As I recall,  
12 Mr. Chwastyk in his testimony relates to having gotten  
13 approval from Mr. Miller to draw the bubble and Mr. Miller  
14 left the site around 2 p.m. because he arrived at the  
15 Lt. Governor's office around 2:30. So I find it troubling  
16 that he could have gotten approval to draw the bubble right  
17 around 2 o'clock and waited until eight minutes after three  
18 to close the block valve.

19 As I say, I just find it hard to square that  
20 action or inaction, whichever way you want to look at it.

21 Q And what would you have the Board conclude  
22 from this hour and eight-minute inaction period, if anything,  
23 or do we just say that to evidence your concern?

24 A Again, I think the issue or a portion of the  
25 issue before the Board is whether or not operator action



Sim 12-3

1 reveals an understanding of the pressure spike, and for my  
2 own self when I try to reach a conclusion as to whether I  
3 believe operator action reveals understanding of the pressure  
4 spike, I look at things like that which I consider  
5 inconsistent with such understanding.

6 (Board conferring.)

7 JUDGE SMITH: Mr. Blake, do you have redirect?

8 MR. BLAKE: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BLAKE:

INDEXXXXXX

11 Q Mr. Dieckamp, are you aware that Mr. Creitz  
12 was deposed by TMIA during the discovery in this proceeding?

13 A Yes, I am.

14 Q Have you reviewed Mr. Creitz' deposition?

15 A Yes, I did have the opportunity to read through  
16 it.

17 Q Are you aware or do you recall that Mr. Creitz  
18 in response to Ms. Bernabei's questions during that deposition  
19 testified that during his 9 o'clock telephone conversation  
20 with you he explicitly told you that there were no measured  
21 offsite readings of radiation?

22 A Yes, I recall that.

23 MS. BERNABEI: I am sorry, Mr. Blake, I didn't  
24 hear the time frame for the question?

25 MR. BLAKE: Nine o'clock.

Sim 12-4

BY MR. BLACK:

1  
2 Q After talking with Mr. Creitz, was it then  
3 that you made your first statement to the PUC, which is  
4 reported in TMIA Exhibit 4?

5 A Yes, it was.

6 Q After you made that statement to the PUC in  
7 about the 9 o'clock time frame did you remain at the PUC  
8 meeting for some period of time?

9 A Yes, for some period until I departed to look  
10 in on the Lt. Governor's press conference, and I think  
11 that was about 11 o'clock.

12 Q And you attended the Lt. Governor's press  
13 briefing which commenced somewhere around 11 o'clock?

14 A Yes, I did.

15 Q And do you have a recollection as to how long  
16 that press briefing by the Lt. Governor took?

17 A Well, I have an impression that it lasted for  
18 a fair length of time, and I am not sure that I have got  
19 a hard basis for this, but maybe as much as a half an  
20 hour.

21 Q And did you come away from that press briefing  
22 with a sense about radiation in the environs of TMI?

23 A Yes, I did.

24 Q And what was that sense?

25 A Well, I think the Lt. Governor's statement

Sim 12-5

1 said that there was no release to the environment or some-  
2 thing essentially to that effect.

3 I have got it handy. It says "No increase in  
4 normal radiation levels have been detected."

5 I also recall Mr. Dornsife making mention of  
6 some detection of iodine in the enviroment, but I also recall  
7 Mr. Dornsife relating the levels to the kinds of levels that  
8 previously have been observed as the result of Chinese  
9 nuclear bomb tests, which in turn gave me a sense that that  
10 was a very small amount and probably something just barely  
11 detectable.

12 Q Did you then return to the PUC?

13 A My various and sundry interviews and depositions  
14 indicate that I spoke with either Bob Arnold or Walter  
15 Creitz, I am not sure which, sometime before making the  
16 second statement to the PUC.

17 Q And are you aware from reviewing Mr. Creitz'  
18 deposition that he has testified that during a second  
19 conversation with you he informed you of readings above  
20 background?

21 A I am aware of that in his deposition, and I  
22 also recall that he puts a time frame on there of sometime  
23 between 11 and 12 o'clock and he speaks also of having  
24 been informed of what the Lt. Governor had said in his  
25 press conference and that he in turn spoke with the

Sim 12-6

1 Lt. Governor about radiation levels.

2 Q It is your understanding from Mr. Creitz'  
3 deposition that what prompted him to call the Lt. Governor  
4 was what he understood to have been the Lt. Governor's  
5 assessment that there was no offsite radiation during the  
6 course of his press conference?

7 A Yes. I gained that impression from reading the  
8 deposition.

9 Q And is what you said to the PUC during your  
10 second statement to them regarding TMI on that day, to the  
11 best of your knowledge, accurately reflected in TMIA  
12 Exhibit 4?

13 A Yes, it is, and when I consider it in relation  
14 to the Creitz deposition, I have difficulty reconciling  
15 the times involved. And it certainly raises the question  
16 in my mind as to whether or not I did talk with Creitz  
17 or whether he did tell me about radiation levels and  
18 background.

19 I feel strongly that had I been aware that there  
20 were offsite releases above background that I would have  
21 communicated that.

22 Q You say you feel strongly. Is there any  
23 reason that you could provide us today that if Mr. Creitz  
24 had told you prior to your statement to the PUC that there  
25 were observed offsite radiation levels above background

Sim 12-7

1 that you would not have so told the PUC?

2 A Mr. Blake, I may have gotten mixed up in the  
3 negatives there.

4 Q I will repeat the question. Is there any  
5 reason that you can provide us today that if Mr. Creitz  
6 had told you about radiation levels in the environs above  
7 background that you would not have said that to the PUC?

8 MS. BERNABEI: I am going to object. That is  
9 a leading question and this is redirect.

10 JUDGE SMITH: Overruled.

11 THE WITNESS: I can't think of any reason why  
12 I would not have told them. I would rather relate to the  
13 reasons why I would have told them, and it is simply that  
14 my background and my knowledge and awareness of reactor  
15 safety and radiation and the like would have suggested to  
16 me that that is the kind of thing that I would have to say.  
17 There is no way that something like that could have been  
18 submerged. This is not the kind of thing that somehow  
19 would go away. That is a hard thing that one would have  
20 to deal with.

21 BY MR. BLAKE:

22 Q Mr. Goldberg asked you whether today you were  
23 aware of any offsite radiation levels above background and  
24 you referred to the SIG Report. Do you know what portion  
25 of the SIG report you meant?

Sim 12-8

1 A Yes. It is Volume II, Part 3, page 868, and  
2 the sentence says "Measured offsite radiation levels on  
3 March 28th generally remained below background levels, except  
4 for reading of 50 MR per hour at 3:48 p.m. on the road  
5 east of the Unit 2 near the observation center."

6 And I have to believe that the Special Inquiry  
7 Group studied the available data very carefully.

8 Q Mr. Dieckamp, do you know Mr. Culler?

9 A Yes, I know Dr. Culler who is today the head  
10 of the Electric Power Research Institute.

11 Q Over the past years have you come to know  
12 Dr. Culler very well?

13 A Yes, I have. I knew him at the time of the  
14 accident and since that time I have gotten to know him even  
15 better.

16 Q There have been a number of questions asked  
17 of you regarding your contacts with Mr. Culler on March the  
18 30th that Mr. Culler in turn reported to the RAC Committee  
19 meeting that he was attending. Do you know about what  
20 time of day on March 30th, 1979 you would have spoken to  
21 Mr. Culler?

22 A Out of my own memory, I am not sure about what  
23 time. It has been brought to my attention that there are  
24 some telephone records that indicate a phone call to  
25 the EPRI offices from our offices in Parsippany sometime

Aim 12-9

1 just before 11 o'clock in the morning and then a subsequent  
2 call to Scottsdale, Arizona I think where Dr. Culler was  
3 attending a meeting of the Research Advisory Council.

4 Q If that call was made to Dr. Culler and you  
5 spoke with him late morning on March 30, and at that  
6 time you had been aware of the pressure spike and the  
7 interpretation of the pressure spike as representing a zirk  
8 water reaction, do you believe you would have said that  
9 to Dr. Culler?

10 A I have not been able to pinpoint exactly when  
11 I heard of the pressure spike. However, my notes from  
12 Friday, the 30th start with a phone call from Bob Arnold  
13 at 12:30 p.m., and those notes contain no mention of hydrogen.

14 The first mention of hydrogen occurs in a  
15 call from Bob Arnold at around 2 o'clock in the afternoon,  
16 and from that I have to infer that it was probably some-  
17 time afternoon that I heard about the pressure spike, and  
18 that in turn suggests that I did not know about the pressure  
19 spike at the time of my first, or the 11 o'clock conversation  
20 with Dr. Culler.

21 My own awareness of Dr. Culler, and by the way,  
22 he was previously the Director of the Oak Ridge National  
23 Laboratory for a number of years before assuming the job  
24 as the head of the Electric Power Research Institute. He  
25 is a man who is very much interested in and comfortable with

Sim 12-10 1  
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end Sim 6

technical detail, and I would certainly have to assume that  
if I had mentioned zirconium water reaction or something  
of that nature as a result of the pressure spike, that that  
is the kind of thing that I would be very comfortable in  
assuming that Dr. Culler would speak about to that Research  
Advisory Committee.

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#13-1-SueT 1

Q And if you had known about it at the time  
2 would it have been the type of information which you would  
3 have passed on to Dr. Culler?

4 A Yes, it would, because it clearly was an impor-  
5 tant development in terms of the kinds of information  
6 available that could be used to indicate degrees of damage  
7 to the core.

8 Q You have been questioned about the RAC meeting  
9 notes which include a reference to Dr. Culler's report  
10 to reflect the words "significant core damage."

11 Is that language which you could have used with  
12 Dr. Culler during a conversation with him on March 30th?

13 A Yes, I think so. On that day, there were  
14 really two events that changed my perception of the degree  
15 of core damage, the first being the radiation release early  
16 in the morning on the 30th certainly indicated that we  
17 had more than just a little bit of stray radiation or  
18 leaking fuel elements.

19 And then the second indicator being the, what  
20 on the 30th was still postulated as zirconium water  
21 reaction, was the next major indicator of the degree of  
22 core damage.

23 But, again recognizing the inprecision in  
24 what those two words mean "core damage" I think I could  
25 have used them Friday morning.

#13-2-SueT

1 Q So, as of Friday morning, March 30th, 1979,  
2 you could have used the terms "core damage" or "significant  
3 core damage?"

4 MS. BERNABEI: Objection. Asked and answered.  
5 It's also a leading question merely to emphasize what I  
6 believe already is the witness' testimony.

7 JUDGE SMITH: It seems to me that it has been.

8 MR. BLAKE: I hadn't finished my question, but  
9 I will start again.

10 JUDGE SMITH: I didn't notice that. I thought --

11 MS. BERNABEI: There was a pause.

12 BY MR. BLAKE: (Continuing)

13 Q Mr. Dieckamp, as of March 30th, 1979, you could  
14 have used the terms "core damage" or "significant core  
15 damage" without yet having been apprised of the pressure  
16 spike or what that spike represented?

17 MS. BERNABEI: Objection. Leading question.  
18 I think that's an egregious example of that.

19 JUDGE SMITH: Yes. It is the -- the whole line  
20 has been leading, and I'm wrestling with what should be  
21 done about it. It's information that Mr. Dieckamp is  
22 entitled to have developed. I don't know how else it  
23 could be developed other than having Mr. Dieckamp sit  
24 there and narratively state these things. Yet, that's  
25 not desirable because that would not give an opportunity

#13-3-SueT

1 for objections based upon asked and answered and relevance.

2 I think that the answer is, we will simply have  
3 to tolerate leading questions. And I don't know what else  
4 to do about it. The man is entitled to get these points  
5 out.

6 But I agree with you, they are leading; they  
7 are very leading, some of them. But they do not suggest  
8 the ultimate answer. And because of the nature of the  
9 witness here, it is unlikely that he needs leading questions  
10 to tell his story.

11 MS. BERNABEI: I -- my objection is that it's  
12 leading, and it appears Mr. Blake is testifying. I think  
13 there are other ways to ask questions that would illicit  
14 this information. In a legal proceeding, that's how it's  
15 done.

16 That's my objection.

17 JUDGE SMITH: Well, we will just say, do your  
18 best, Mr. Blake. They are very, very leading. Yet, the  
19 information is appropriate and relevant and should be  
20 developed.

21 The objection is overruled.

22 (Pause.)

23 That means you may answer.

24 MR. BLAKE: I don't think I'm leading him very  
25 effectively.

#13-4-SueT 1

(Laughter.)

2

WITNESS DIECKAMP: I lost track of the question and I'm not sure we've got time for it again. But, I'm sorry.

4

5

BY MR. BLAKE: (Continuing)

6

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Q On March 30th, 1979 and prior to learning about the pressure spike or the interpretation of it, could you have used terms "core damage" to have described your understanding of the problems at TMI-2?

10

A Yes.

11

12

MR. BLAKE: That's not the exact question, but that's the sense of the question.

13

MS. BERNABEI: I would --

14

JUDGE SMITH: Without being aware?

15

MR. BLAKE: Yes, sir.

16

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MS. BERNABEI: I am going to have an additional objection which is, could you have. I think that's calling for speculation. It is apparently based on the fact that he has already testified he did not do so. I think asking him what he could have done is speculative.

21

MR. BLAKE: Would you?

22

23

24

JUDGE SMITH: Now, the question is not yet complete. Without being aware of the pressure spike and the containment spray actuation, I believe was --

25

MR. BLAKE: Okay. I thought I had included that

#13-5-SueT

1 in the question. I certainly intended to.

2 WITNESS DIECKAMP: My answer is yes, and within  
3 the range of definitions of core damage I could well have  
4 used that term prior to being aware of the hydrogen spike  
5 and its interpretation.

6 BY MR. BLAKE: (Continuing)

7 Q What was the meaning of the use of the term  
8 "core damage" when you used it in your May 9 mailgram?

9 A By that time, my frame of reference was  
10 The New York Times article which suggested that knowledge  
11 of the meaning of the pressure spike in terms of core  
12 damage could have influenced the decisions to evacuate  
13 the populace from around Three Mile Island. And in my  
14 mind, in order to be able to influence that decision, or  
15 to be meaningful relative to that decision, the degree of  
16 core damage would in some way have to be sufficient to  
17 have cast doubt upon the ability to cool the core with  
18 confidence.

19 So, when I'm speaking in the mailgram of in-  
20 terpreting the pressure spike in terms of core damage  
21 I mean that the pressure spike was not interpreted in a  
22 way that gave the operators an ability to judge that the  
23 core was potentially uncoolable. I think to me it involves  
24 a far more definitive degree of modification of the core  
25 geometry and thus the ability to cool it.

#13-6-SueT

1 Q Mr. Dieckamp, do you recall questions regarding  
2 the transcript of an April 12 session involving Dr. Long?

3 A Yes, I do.

4 MS. BERNABEI: It might be appropriate to refer  
5 to the exhibit number, Mr. Blake. It is marked as an  
6 exhibit.

7 MR. BLAKE: Fine. What's the number?

8 MS. BERNABEI: It is --

9 WITNESS DIECKAMP: Yes, I have it.

10 MS. BERNABEI: TMIA Exhibit 12.

11 BY MR. BLAKE: (Continuing)

12 Q Referring you to TMIA Exhibit 12, Mr. Dieckamp,  
13 would you describe the circumstances to which Dr. Long  
14 refers in there, when he talks about a meeting with you  
15 and others, and uses the term "contain?"

16 MS. BERNABEI: I'm going to object that there  
17 has been no foundation laid with this witness to establish  
18 he has any knowledge about that. And I think that was  
19 Mr. Blake's responsibility to lay that foundation.

20 My understanding of Mr. Dieckamp's prior testi-  
21 mony is based on the transcript. I think he needs to lay  
22 the foundation if he is going to ask some questions in-  
23 dependent of the transcript.

24 JUDGE SMITH: This is the same Ms. Bernabei that  
25 was cross-examining Mr. Dieckamp extensively as to what he

#13-7-SueT

1 believed the meaning of that was?

2 MS. BERNABEI: That was based on the transcript.  
3 Mr. Blake apparently is asking questions, if I understand,  
4 which go beyond the transcript itself.

5 JUDGE SMITH: About the meaning of the word  
6 "contained?"

7 MS. BERNABEI: That's right. If he is just  
8 going to be talking about the transcript, I have no  
9 problem. If he goes beyond that, then I think a foundation  
10 for Mr. Dieckamp's knowledge has to be established.

11 JUDGE SMITH: Well, I don't fully understand  
12 your point I guess. I don't really understand your point,  
13 Ms. Bernabei.

14 Do you want to try again?

15 MS. BERNABEI: Yes. My cross-examination was  
16 based on the document itself, TMIA Exhibit 12. If I  
17 understand Mr. Dieckamp's testimony, he testified as to  
18 how he understood the document; that is, the document itself.

19 I think if Mr. Blake is going to elicit  
20 testimony based on other knowledge or information, he has  
21 to establish a foundation. And apparently his question  
22 was phrased that way.

23 JUDGE WOLFE: Wasn't your question directed to  
24 a certain page and a question and answer?

25 MR. BLAKE: My question started by referring



#13-8-SueT

1 to TMIA Exhibit X.

2 JUDGE SMITH: Overruled.

3 WITNESS DIECKAMP: As I recall the question  
4 related to the circumstances surrounding this exhibit, or  
5 the contents of this exhibit. My reading of this exhibit  
6 tells me that it was an attempt on the part of our people  
7 to develop the facts relative to the early periods of the  
8 accident and with a lot of attention I think towards --  
9 to the notifications of the NRC, the State, the local  
10 counties, the local authorities, and the like.

11 And in that time period, there was a lot of  
12 concern about the timeliness of notifications. It was a  
13 time period of intense media interest and a lot of charges  
14 and countercharges, as I recall, and I think that the Company  
15 and I, myself, were very concerned that we make sure that as  
16 we developed the facts as we best knew them that we not  
17 expose ourself to the probabilities that our facts were in-  
18 accurate.

19 And so there was a great concern about making  
20 sure that we could document what we needed to say. It  
21 was also a great sense of need to set this matter to rest  
22 as quickly as possible. And so I think that's reflected  
23 in Mr. Long's comments towards the middle of the third  
24 page of this document where he reflects the fact that we  
25 are going to get it on the street as soon as they have said



#13-9-SueT 1       okay. And I think the next sentence that speaks of  
2       containment is simply one saying, let's not let some  
3       premature, incomplete, inaccurate information out before  
4       the management has had a chance to check it. I think  
5       that's what I derive from this exhibit.

6                   BY MR. BLAKE: (Continuing)

7                   Q       Mr. Dieckamp, did management make attempts to  
8       contain or restrict information regarding the accident  
9       which was made available to investigators?

10                   MS. BERNABEI: I'm sorry, I didn't hear the  
11       first part of the question.

12                   MR. BLAKE: Did management.

13                   MS. BERNABEI: I object on the grounds that it  
14       is a leading question.

15                   JUDGE SMITH: Well, not on that basis.

16                   (Pause.)

17                   You may answer, Mr. Dieckamp.

18                   WITNESS DIECKAMP: The answer is no.

19                   BY MR. BLAKE: (Continuing)

20                   Q       Was management concerned that information  
21       put out in a Company document be accurate?

22                   MS. BERNABEI: Objection. Leading.

23                   JUDGE SMITH: Overruled.

24                   WITNESS DIECKAMP: We were very concerned about  
25       its accuracy and we were also concerned about its timeliness.

#13-10-SueT 1

BY MR. BLAKE: (Continuing)

2 Q Mr. Dieckamp, during the course of her questioning,  
3 Ms. Bernabei referred you to an interview by Mr. Faust. She  
4 used the word "explosion." And she referred you to notes  
5 taken by Walter, nicknamed Bubba, Marshall of Mr. McGovern  
6 regarding the pressure spike.

7 Do either of these statements referred to you  
8 by Ms. Bernabei convince you that Mr. Faust or Mr. McGovern  
9 interpreted the pressure spike in terms of core damage at  
10 the time of the spike?

11 A No, they do not. They really contain nothing  
12 that would allow me to conclude that they understood the  
13 source of the pressure spike and therefore its meaning  
14 or its ramifications in terms of core damage.

15 MR. BLAKE: Judge Smith, I have no more ques-  
16 tions of Mr. Dieckamp. I do want to alert the Board, as  
17 you earlier asked, that for purposes of findings or sub-  
18 sequently in addition to the documents which we have dis-  
19 cussed, I would anticipate referring for Mr. McGovern, who  
20 is not scheduled to appear as a witness, to Joint Mailgram  
21 Exhibit 1-C, Item 1, Page 2, the 1400, which is a time,  
22 1400, 2 o'clock in the afternoon, entry. In Item 1-C,  
23 21, Page 8, first paragraph on that page, with respect to  
24 Mr. Faust from the same Joint Mailgram Exhibit, Item Number  
25 28, Page 145, and also for Mr. Faust, Item Number 133,

#13-11-SueT1

Page 6. I will subsequently alert the Board with respect to Messrs. Illjes, Mehler, and Chwastyk if in the course of their examination not all items which I would expect to refer to come up.

MS. BERNABEI: May I ask --

MR. BLAKE: I also --

MS. BERNABEI: I'm sorry.

MR. BLAKE: -- want to ask Ms. Bernabei whether or not she plans to admit TMIA Exhibit Number 4 on which Mr. Dieckamp has been questioned. My records do not reflect that has ever been moved into evidence.

MS. BERNABEI: Let me address the two points. First of all, I understand --

MR. BLAKE: Can I finish?

MS. BERNABEI: Oh, I'm sorry. I thought you were done.

MR. BLAKE: And I would like to ask that the other parties consider stipulating in McGovern's deposition by TMIA, Page 32, Lines 8 through 23, and Faust TMIA deposition, Page 23, Line 14 through Page 24, Line 9, which also addressed the subjects upon which Mr. Dieckamp has been questioned regarding these individuals.

MS. BERNABEI: Okay. First of all, I understood the Board's ruling at the beginning of this hearing to state that you would not consider or rely in your Opinion

#13-12-SueT1

1 on interviews which had not been somehow brought to your  
2 attention during the examination of witnesses. We have  
3 made an attempt to bring the Board's attention to those  
4 interviews and portions of interviews which we would choose  
5 to rely on.

6 I don't think it's appropriate for Mr. Blake  
7 to request special privileges; that is, that he be merely  
8 entitled to call to the Board's attention those portions  
9 of interviews which he wishes to rely on. It is my under-  
10 standing that it was clear from the first day of this  
11 hearing that if counsel expected the Board to rely on any  
12 portion of the Joint Mailgram exhibits they were to use  
13 them somehow during the examination.

14 If not, then we would request permission,  
15 perhaps some time next week, to draw the Board's attention  
16 to portions of many, many interviews that we think you  
17 should take notice of in this matter.

18 end #13  
19 Joe flws

1 JUDGE SMITH: I would expect that normally  
2 -- usually exhibits be alluded to by witnesses, but I  
3 didn't expect that to be the only way that an exhibit  
4 could be considered by the Board.

5 Some exhibits simply are not amenable to being  
6 logically included in a witness' testimony.

7 MS. BERNABEI: In that case, we would similarly  
8 be -- expect that we would be granted the right to call  
9 attention to the Board of those interviews which we believe  
10 relate to the witnesses testimony, regardless of whether  
11 they were mentioned.

12 JUDGE SMITH: Yes. All of this should be done  
13 at a time when the parties have had a full opportunity to  
14 recognize and meet the exhibit -- meet the exhibit, I mean  
15 meet the import of the exhibit.

16 I am going to have to establish when that should  
17 be done. However, you are quite correct, Ms. Bernabei, you  
18 certainly have the same right.

19 MS. BERNABEI: The second point was, I believe,  
20 stipulation about Mr. McGovern's deposition. We, at this  
21 point, are given that we believe requested -- well, in any  
22 case we started out requesting that a number of depositions  
23 ought to be stipulated, or portions of those depositions be  
24 stipulated, and licensee refused to stipulate any portion.

25 After the prehearing conference, and a little

1 strong arming by the Board, I think there is somewhat more  
2 open -- at least certain portions of the deposition, there  
3 is a certain openness to that, but I don't think we can  
4 represent that we are willing to stipulate any portions of  
5 depositions, given the licensee's outright refusal to  
6 stipulate any portion of any deposition.

7 JUDGE SMITH: As a quick pro quo, we hope that  
8 the litigation does not boil down to that, but rather that  
9 the litigation boils down to what is necessary for  
10 reliable and complete evidentiary record.

11 MS. BERNABEI: And that was our offer in the  
12 first place. Any portions we believed were necessary,  
13 as well as any portions they believe were necessary.

14 But I can say that I think that any stipulation  
15 would have to consider some of our original stipulations  
16 regarding the depositions as well.

17 JUDGE SMITH: There is nothing for the Board  
18 to rule on, or even consider, because we don't even under-  
19 stand -- know about the depositions.

20 MR. BLAKE: Actually the second item was TMIA,  
21 Exhibit 4, which our records show has not been admitted,  
22 and my question was whether or not Ms. Bernabei planned  
23 to admit it; ask that it be admitted.

24 JUDGE SMITH: That is the minutes of the Public  
25 Utilities Commission Meeting?

1 MS. BERNABEI: What I propose is to move all  
2 our exhibits into evidence at the time of ending the  
3 questioning of Mr. Dieckamp. I can do that right now.

4 BOARD EXAMINATION

5 BY JUDGE LINENBERGER:

6 Q Mr. Dieckamp, just one question to help me  
7 focus on the context of some things that have been  
8 discussed. There have been discussions of your conversation  
9 with Dr. Culler, and with EPRI's involvement in certain  
10 investigatory matters.

11 The question is simply just this: Prior to  
12 March 28th, 1979, had there been, and was there an on-  
13 going relationship between licensee and EPRI that involved  
14 any contractual or funding arrangements?

15 I don't ask what they are, just were there?

16 A Well, maybe I should start out by saying the  
17 Electric Power Research Institute is an organization that  
18 was established, I think, probably some time in 1973,  
19 approximately, to which most all public and investor-  
20 owned utilities in this country contribute.

21 And that research institute carries on a  
22 spectrum of research tasks related to the interest of  
23 the electric industry.

24 We had no contractual relationship with them  
25 other than being one of the industry's contributor to their

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1 annual budgets.

2 JUDGE LINENBERGER: Thank you. That answers  
3 my question.

4 JUDGE SMITH: Are there further questions of  
5 Mr. Dieckamp?

6 MS. BERNABEI: I have a few questions. I  
7 will follow on Mr. Goldberg's and Mr. Blake's.

8 JUDGE SMITH: Does anybody else have questions  
9 of Mr. Dieckamp?

10 JUDGE SMITH: All right. It is your turn,  
11 right now.

XXX INDEX

12 RE-CROSS EXAMINATION

13 BY MS. BERNABEI:

14 Q Did you in your reading of review of Mr.  
15 Creitz's deposition understand that he testified he  
16 told you about offsite above background reading in the  
17 period prior to noon on March 28th?

18 A I have read the testimony, and I think it is  
19 my recollection that he does say that, and he refers to  
20 that as some time in the time period of 11 to 12 o'clock.

21 I am a bit troubled, though, because the record  
22 that was part of the exhibits to his testimony doesn't  
23 really get around to identifying significant radiation  
24 level -- well, it says 11 o'clock measured radiation  
25 above background, and then I think at about three o'clock



1 or three something, it says three millirems per hour.

2 Q Now, Mr. Dieckamp, doesn't Mr. Creitz also  
3 state that he obtained information about the offsite  
4 radiation releases above background directly from the  
5 site?

6 I am talking about his deposition now.

7 A I think that is true.

8 Q And doesn't he state that upon learning of  
9 those offsite releases, he then contacted the lieutenant  
10 governor, because previous information he had given the  
11 lieutenant governor indicated there were no offsite  
12 releases?

13 A Yes, and the record suggests that is at 11:30  
14 or something like that.

15 Q And doesn't he also state that after speaking  
16 to the lieutenant governor he speaks to you to tell you  
17 that there were, in fact, offsite releases?

18 A That is right, and as I say, I am a little  
19 troubled by the timing there.

20 Q Doesn't he also in response to a question about  
21 the level of background releases -- excuse me, the level  
22 of offsite releases which he communicated to you said  
23 it was in the range of three millirems per hour?

24 A That is right. I recall that as part of the  
25 deposition, and as I say, though I am further troubled by

1 when you get to the objective evidence and the communication  
2 record, that level of three mr per hour doesn't occur  
3 until some time much later in the afternoon, and let  
4 me just see here --

5 Q Do you know today whether offsite radiation  
6 releases of three millirem were reported in the morning  
7 of March 28th?

8 A I don't know that. Again, I rely on the --  
9 today to kind of check my own accuracy I rely on the  
10 efforts of the special inquiry group.

11 Q I would like to refer you now to an NRC  
12 preliminary notification, 79-67, which appears on page  
13 135 of the Udall Report, which is Joint Mailgram Exhibit  
14 143.

15 A When was that preliminary notification sent  
16 to the NRC?

17 Q I would like to give you a chance to review it,  
18 Mr. Dieckamp. Referring specifically to the last paragraph  
19 of that preliminary notification.

20 A Yes.

21 Q Does not that preliminary notification state  
22 in the last sentence: By 10:45 a.m., radiation levels  
23 of three millirem per hour had been detected five hundred  
24 yards offsite?

25 A That is what it says.

1 I don't know that that was communicated to me  
2 prior to 11:30, however.

3 Q Isn't it true in addition that the Rogovin  
4 Report, Volume 2, Part 3, page 868, indicates that  
5 teams began to observe dose rates up to three millirems  
6 per hour in the TMI North Parking Lot at 10:30 a.m.,  
7 on March 28th?

8 A That is right. I don't think that is offsite.

9 Q Isn't -- that is not on the Island, is it, the  
10 North Parking Lot? It is by the observation center, across  
11 from the Island?

12 A No, ma'am. The North Parking Lot is on the  
13 site. It is within the site boundary. It is inside the  
14 fence. It is on the Island.

15 Q Did you send a copy of your mailgram to any  
16 of the other commissioners other than Commissioner  
17 Gilinsky?

18 A The only thing that I know today is what the  
19 mailgram itself says. I know of no action on my part  
20 to distribute it separate and apart from what is indicated  
21 on the mailgram itself.

22 Q I would like to refer you to Joint Mailgram  
23 Exhibit 1-C-29. Pages 190 to 191.

24 JUDGE SMITH: What is that document?

25 MS. BARNABEI: Oversight hearings before the

1 Subcommittee on Energy and the Environment, hearings held  
2 on May 21st and May 24th, 1979.

3 JUDGE SMITH: Senate.

4 MS. BERNABEI: House. It is the Udall  
5 Committee.

6 BY MS. BERNABEI: (Continuing)

7 Q Don't pages 190 and 191 indicate that you  
8 expressly sent Commissioner Richard Kennedy a copy of  
9 your Mailgram?

10 A What are you referring to?

11 Q Specifically Mr. Kennedy's answer to one of the  
12 Committee's questions, which appears on page 190, and a  
13 copy of your mailgram sent to Commissioner Kennedy, which  
14 appears on page 191.

15 A The entry on page 190, I fail to see where it  
16 says I sent a copy to Commissioner Kennedy. I will now  
17 look at 191.

18 Q It does say, does it not, that he basis an answer  
19 to a congressional committee on your mailgram, of which he  
20 became aware, is that correct? Referring now to the  
21 statement which says: I am also aware of pertinent pieces  
22 of correspondence, including a mailgram from H. Dieckamp,  
23 President of General Public Utility?

24 A That is what it says there.

25 Q On page 191, I would like to refer you to what

1 appears to be your mailgram, is that correct?

2 A Yes, it does.

3 Q And it is addressed to Commissioner Kennedy,  
4 is that correct?

5 A Yes, it is.

6 Q And you state in preface to the mailgram that  
7 you were sending him a copy of the mailgram you sent to  
8 Chairman Udall, is that correct?

9 A The first sentence says: This is a copy of  
10 mailgram sent to the Honorable Morris K. Udall.

11 Q The date on that mailgram is May 9, 1979, is  
12 it not?

13 JUDGE SMITH: Give me that reference, please.

14 WITNESS: Yes, it is.

15 MS. BERNABEI: Joint Mailgram, Exhibit 29.

16 JUDGE SMITH: What page?

17 MS. BERNABEI: 190 and 191.

18 BY MS. BERNABEI: (Continuing)

19 Q Mr. Dieckamp, do you know today any cause other  
20 than the combustion of hydrogen or another combustible  
21 gas which would cause a pressure spike to 28 psi, actuation  
22 of the containment sprays and the accompanying alarm in  
23 the conditions which existed at TMI-2 on the day of the  
24 accident?

25

MR. BLAKE: Objection. Is that a follow-up

1 to Mr. Goldberg's or my questions which you represented?

2 MR. BERNABEI: Yes.

3 MR. BLAKE: What question is that a follow-up  
4 to?

5 MR. BERNABEI: I think it is apparent that  
6 you asked that simply because -- either you or Mr.  
7 Goldberg asked whether or not if one were aware of the  
8 pressure spike and containment sprays, would one necessarily  
9 know that there had to be -- that was caused by hydrogen.

10 JUDGE SMITH: I think Judge Linenberger asked  
11 questions along that line.

12 MR. BLAKE: I withdraw it, then.

13 WITNESS: What was the question again?

14 BY MS. BERNABEI: (Continuing)

15 Q Yes. Other than a hydrogen burn or a burn of  
16 other combustible gases, what could have been the source  
17 of a pressure spike to 28 psi, accompanied by actuation of  
18 the containment sprays, and a general engineering safeguard  
19 signal?

20 JUDGE SMITH: Other than hydrogen burn or the  
21 combustion of other combustible gases?

22 MS. BERNABEI: That is correct.

23 WITNESS: I just have not given that enough  
24 thought to be able to be confident of an answer to that  
25 as to whether or not there is any other plausible

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mechanism, and I guess I am reluctant to just speculate  
as I sit here.

End 14.  
fols.



Sim 15-1 1

2 Q So your answer is you know none as you sit  
here today?

3 A Yes.

4 Q I believe it is also your testimony in response  
5 I believe to a question from Mr. Goldberg that you do not  
6 know today whether or not a bubble was redrawn or a bubble  
7 was formed in the pressurizer subsequent to the pressurizer  
8 spike; is that correct? That is, if that was successfully  
9 done on March 28 subsequent to the pressure spike.

10 A What was the question again?

11 Q I believe it is your testimony that you do not  
12 know today whether or not a bubble was in fact drawn in the  
13 pressurizer subsequent to the pressure spike on March 28th  
14 at 1:50 p.m.

15 A Well, what I know is what I see on the NSAC  
16 summary, and I think I said this morning that I did not  
17 know that there was a bubble after the repressurization,  
18 and I think the NSAC charts indicate that the pressurizer  
19 was full after the repressurization.

20 Q Let me ask you the question. Do you know today  
21 whether or not a bubble was in fact drawn in the pressurizer  
22 subsequent to the pressure spike at 1:50 p.m.?

23 A During the afternoon there are transient  
24 occasions when the pressurizer is less than full. I don't  
25 know that I would characterize that as having established

Sim 15-2

1 a bubble in the pressurizer.

2 Q I would like to refer you to TMIA Exhibit 13,  
3 apparently a lesson plan on the TMI-2 accident and occurrences  
4 during the accident, specifically page 4.

5 A Yes, I have it.

6 Q Now assuming for the moment that this appears  
7 to be a description of the -- or sequence of events which  
8 actually occurred during the accident, referring you to page  
9 4, does it not indicate that at approximately ten hours and  
10 28 minutes into the event, that is 2:28 in the afternoon,  
11 a bubble was reformed in the pressurizer?

12 A This document says that, that is correct. By  
13 the way, I cannot confirm that with the NSAC document.

14 Q And this document is intended, according to the  
15 objectives listed on the page, to review with operators  
16 in their training the events which occurred during the TMI-2  
17 accident; is that correct?

18 A I guess that is right, but I don't know that  
19 that purports to be an absolute description of the events.

20 MS. BERNABEI: No more questions.

21 JUDGE SMITH: Anything further of Mr. Dieckamp?

22 Mr. Au. Yes. We have a couple of follow-up  
23 questions.

24 RE-CROSS-EXAMINATION

BY MR. DORNSIFE:

Sim 15-2

1 Q Mr. Dieckamp, this concerns questions from  
2 Mr. Blake concerning your understanding of radiation levels  
3 based on the Lt. Governor's press briefing.

4 Isn't it true that iodine is not normally  
5 detected at all in the environment under normal conditions?

6 A Yes, that is true because it is not a naturally  
7 occurring isotope, and so any time it is detected, it has  
8 to come from some nuclear source.

9 Q So wouldn't it also be true then that levels  
10 comparable with the Chinese fallout episode would be considered  
11 above background and not trivial releases?

12 A Well, in the sense of being greater than zero,  
13 that is true, but as I recall, when we did have the occasion  
14 of the Chinese bomb detection -- I shouldn't use the word  
15 "trivial." They certainly were not levels that resulted  
16 in any kind of actions in terms of restrictions on milk  
17 or animals or things of that sort.

18 Q But in terms of your statement to the PUC,  
19 there is no evidence of any radiation that is detectable  
20 above background levels based on your knowledge of those  
21 iodine releases or -- the public statements concerning  
22 isodine releases, that is not consistent with that under-  
23 standing at that point?

24 A At the absolute level, you are right. I guess  
25 I am troubled that whenever one speaks for a half a minute

Sim 15-3

1 to a minute, you do have to make some judgments.

2 JUDGE SMITH: I am confused about any conceivable  
3 relevancy of this area, Mr. Dornsife.

4 MR. DORNSIFE: If it just something that was  
5 not clear on the record. I just was trying to clarify the  
6 record. I didn't bring it up as an issue.

7 JUDGE SMITH: Okay. His testimony was that  
8 nothing inconsistent with fallout from Chinese nuclear  
9 testing was observed and now you are following up on that,  
10 as I understand it. I don't know where you are going, or  
11 are you done?

12 MR. DORNSIFE: I am finished. It was clarified  
13 in the record that there was radiation levels above background  
14 detectable. There was information that there were those  
15 levels of background.

16 THE WITNESS: Above background for iodine.

17 MR. AU: And we are talking about a time period  
18 of 11:30 in the morning.

19 JUDGE SMITH: Is that all?

20 MR. DORNSIFE: Yes.

21 JUDGE SMITH: All right. You may step down  
22 then, Mr. Dieckamp.

23 MR. BLAKE: Judge Smith.

24 JUDGE SMITH: Yes, Mr. Blake.

25 MR. BLAKE: A question was asked by Ms. Bernabei

Sim 15-4

1 which represented to Mr. Dieckamp that Mr. Creitz was  
2 trying to reach the Lt. Governor in order to clear up  
3 information which Mr. Creitz previously had given to the  
4 Lt. Governor on March 28th. And Mr. Dieckamp then responded.

5 That representation was made on the basis  
6 presumably of Ms. Bernabei's reading of the Creitz  
7 depositions. I cannot find that to be accurate in my reading  
8 through of that deposition at this point, and I will move  
9 to strike that question and answer as improper and not  
10 based on an accurate representation unless Ms. Bernabei  
11 can show me that or make a reference to it. I don't want  
12 to take the time on the record.

13 MS. BERNABEI: I will just state very clearly  
14 that not is it in the deposition, but Mr. Dieckamp himself  
15 recognized it was and answered yes.

16 JUDGE SMITH: Well, I will tell you what we  
17 will do. We are going to have Mr. Gamble and Mr. Dieckamp  
18 will be around for a while. During the recess you talk  
19 to each other, and if you can't resolve it, come back to  
20 the Board and we will afford the appropriate relief.

21 MS. BERNABEI: Let me just say that if there  
22 is some problem, it should be done on the record with  
23 the witness.

24 JUDGE SMITH: You comply with the Board's  
25 order and you work with Mr. Blake and try to show it him.

Sim 15-<sup>6</sup><sub>9</sub>

1 If you can't do it, then you come back to the Board.

2 MR. BLAKE: Agreed.

3 JUDGE SMITH: We will take a 10-minute recess.

4 (Whereupon, a recess was taken from 3:00 p.m.  
5 to 3:13 p.m.)

INDEXXXXX

6 JUDGE SMITH: Mr. Blake, have you resolved your  
7 concern?

8 MR. BLAKE: We resolved it to the extent that  
9 we would prefer to look at the transcript tomorrow morning  
10 and report back to the Board at that point.

11 MS. BERNABEI: Well, I can represent my under-  
12 standing. My question was intended to state, the question  
13 that is in dispute, did Mr. Creitz in his deposition indicate  
14 that he reported back to the Lt. Governor or he reported  
15 to the Lt. Governor about information about above background  
16 levels. That is what I intended to say.

17 I understand that I may have said did he  
18 report back to him to correct information he had previously  
19 given him.

20 In fact, the deposition does not state, and I  
21 did not understand it to state that Mr. Creitz had previously  
22 reported information to the Lt. Governor. In fact,  
23 Mr. Creitz in his deposition indicates he is correcting  
24 or supplementing information he understood the Lt. Governor  
25 to have from his briefing that morning at 10 or 10:30 a.m.

Sim 15-6

1 JUDGE SMITH: Well, in any event, you are going  
2 to look at the transcript to see if it needs correcting?

3 MS. BERNABEI: That is correct.

4 JUDGE SMITH: Are you ready for your next  
5 witness, your witness, Mr. Gamble?

6 MS. BERNABEI: We do have some exhibits. Would  
7 it be more appropriate to ---

8 JUDGE SMITH: Oh, that is right. Excuse me.

9 MS. BERNABEI: We could handle this at another  
10 time since Mr. Gamble is here.

11 JUDGE SMITH: No. I think you should take  
12 the exhibits while we are still familiar with their  
13 background.

14 MS. BERNABEI: I think we start out with TMIA  
15 Exhibit 3, Mr. Dieckamp's notes from March 28th, and move  
16 that those be admitted at this time.

17 JUDGE SMITH: Objections?

18 MR. BLAKE: None.

19 JUDGE SMITH: The exhibit is received.

20 (TMIA Exhibit No. 3, previously  
21 marked for identification,  
22 was received in evidence.)

23 MS. BERNABEI: We next move in TMIA Exhibit 4,  
24 Mr. Dieckamp's transcribed comments to the Pennsylvania  
25 Public Utilities Commission on the morning of March 28th,

INDEX



Sim 15-8

1 1979.

2 JUDGE SMITH: Are there any objections to Exhibit  
3 4?

4 (No response from the parties.)

5 JUDGE SMITH: It is received.

6 (TMIA Exhibit No. 4, previously  
7 marked for identification, was  
8 received in evidence.)

INDEXXXXXX

9 MS. BERNABEI: TMIA Exhibit 5, the memorandum  
10 to Mr. Dieckamp from Mr. Cherry dated March 29, 1979.

11 JUDGE SMITH: Objections?

12 MR. BLAKE: Judge Smith, this document I would  
13 not object to if it is regarded by the Board as falling  
14 within that class of documents which we have previously  
15 described I think applied only to notes where the limitation  
16 to be put on the document was what specifically witnesses  
17 were asked about the document from here on out in terms  
18 of the use to be made of the document from a findings  
19 standpoint.

20 I do not regard this document as a business  
21 record, and I believe the record will reflect that  
22 Mr. Dieckamp had a limited ability to speak to what  
23 Mr. Cherry had on his mind when he wrote this memorandum.

24 So with that viewed in that way, I would not  
25 object to it. Beyond that limitation, I do object.

Sim 15-8

1 MS. BERNABEI: First of all, this contravenes  
2 what I had understood had been the agreement between  
3 Mr. Blake and myself that record which come from the corpora-  
4 tion's files which apparently are business records, that there  
5 would not be an objection on that basis to their admissibility.  
6 There may be objections on the grounds of relevancy, but  
7 not on the grounds that they are not reliable documents.

8 Secondly, I believe this is a business record.  
9 It is on GPU Service Company letterhead and it is obviously  
10 a confidential memornadum between high-level executives in  
11 GPU.

12 Finally, I think that this document should be  
13 considered as similar to all other documents in a legal  
14 proceeding and be admitted for the totality of the document.

15 There is no such ruling to which Mr. Blake  
16 refers that notes or documents of this sort are to be  
17 treated any differently than any other document in this  
18 proceeding.

19 And if Mr. Blake is now prepared to request  
20 that the Board consider portions of depositions, Joint  
21 Mailgram Exhibits, which are not specifically referred to  
22 in examination, similarly I think any document in this  
23 proceeding which is admitted into evidence should be admitted  
24 in its entirety.

25 JUDGE SMITH: I am sorry. I didn't understand

Sim 15-9 1 your last sentence.

2 MS. BERNABEI: Mr. Blake has now proposed  
3 to the Board, and I understand the Board to have accepted  
4 the suggestion that the parties may refer the Board to  
5 specific portions of the Joint Mailgram Exhibits, the  
6 interviews without referring or cross-examining witnesses  
7 using those documents.

8 If that is the practice, I think similarly any  
9 other document we may draw your attention to similarly.  
10 There is no Rule of Evidence that provide that only those  
11 portions of a document on which one questions the witness  
12 may be admitted into evidence.

13 MR. BLAKE: Judge Smith, I don't know where to  
14 begin to respond to that ---

15 JUDGE SMITH: I don't know where you would begin  
16 either. You are making such a mechanical interpretation  
17 of the Board's ruling.

18 The Board's ruling, first, let's review the  
19 purpose of it, and that is when a document comes in for  
20 looking at a certain portion of it that all the parties  
21 are concentrating on and we know what it means and the  
22 witness has explained it and suddenly it does not appear  
23 in the proposed findings for some entirely different purpose.

24 For example, in the exhibit at issue, the  
25 second paragrah, and I just picked one at random, first,

Sim 15-11

1 he says, "Of the Service Corporation officers, only  
2 Graham and I were here initially." That wasn't discussed  
3 and we don't care about that. But we don't want somebody  
4 proposing that as a finding. We don't know if that is true  
5 or not or what the relevancy is.

6 MS. BERNABEI: I doubt we would propose that  
7 as a finding.

8 JUDGE SMITH: Well, that is what Mr. Blake's  
9 point is. He wants to make sure you don't. So his observation  
10 is correct. Only the portions of this document particularly  
11 described would be available for proposed findings.

12 Now you say well, how about him, he listed a  
13 bunch of documents. Well, he is not going to get away with  
14 that. After you have a chance to look at those documents  
15 and you argue that there are portions of those documents  
16 that should not be considered, too.

17 See, don't forget, independent of the parties  
18 the Board itself has a responsibility of assuring that, No. 1,  
19 we understand the evidence that comes in and that the  
20 evidence that we receive is reliable.

21 Now I am going to ask also in the next time  
22 we take a break that you read Rule 803, Hearsay Exceptions,  
23 Subrule 6, Records of Regularly Conducted Activity so that  
24 you will be prepared to represent to the Board that you  
25 understand that rule because there is no use having the

Sim 15-12

1 same argument come up again about business records. Read  
2 the rule.

3 MS. BERNABEI: I have read the rule, Judge  
4 Smith and ---

5 JUDGE SMITH: Then how can you in good conscience  
6 represent to us that a memorandum made by somebody in the  
7 course of an accident falls within that hearsay exception?

8 MS. BERNABEI: If it is the Board's ruling ---

9 JUDGE SMITH: I want to know -- you are making  
10 a representation to us, counselor, and I want to know if  
11 it is a sincere representation and what is the basis for it.

12 MS. BERNABEI: Okay. I will make that  
13 representation next time.

14 JUDGE SMITH: I don't want you to be bouncing  
15 off of the Poard any arguments you think we just might buy.  
16 I want arguments that you believe in.

17 MS. BERNABEI: This is an argument I believe in.  
18 The argument has to do with the business record exception  
19 to the hearsay rule. The business record exception provides  
20 the admission of a document in contravention that is hearsay  
21 evidence may be admitted if it was in fact a result or  
22 composed in the context of a business responsibility and  
23 it is the regular course of business of that individual to  
24 compose documents of that sort.

25 That is a rough ---

Sim 15-13 1

JUDGE SMITH: It is better than I thought you knew, but nevertheless, I will ask you to read it overnight and then when it comes up again we will have a better explanation.

MS. BERNABEI: Judge Smith, you asked for my representation and I would like to complete my representation. My representation is furthermore that this document was composed by Mr. Cherry in the course of his business responsibilities at GPU Service Corporation as an officer of that corporation. I think that is explicit on the face of it.

Secondly, on March 28th it was in fact his responsibility to deal in his position as an officer of the company with the then ongoing accident at TMI-2.

Simply because the TMI-2 accident was not an expected event did not mean that it was not part of the business of GPU Service Corporation on that date.

Therefore, this document fits within the business record exception.

JUDGE SMITH: All right. Overruled.

Mr. Blake's motion is correct. The portions of it -- we will consider in our decision the portions of it which were referred to in the testimony.

MS. BERNABEI: May I ask if this Board ruling will apply only to TMIA exhibits?

24

25

Sim 15-15 1

JUDGE SMITH: No. I am not going to make a general ruling. I have done my best to advise you as to the theory of our acceptance of documents, and I don't know how to do it any better. We will have to take it up a document at a time.

MS. BERNABEI: Then I assume that this ruling will not apply to the joint exhibits?

JUDGE SMITH: I don't know. Take it up a document at a time. I have explained the logic of our ruling.

MS. BERNABEI: I understand.

MS. BERNABEI: Do I understand then that those portions of the document which we did question Mr. Dieckamp on are admitted into the record?

JUDGE SMITH: Yes. The document as admitted into the record, the portions of it that the parties discussed and the witness discussed are the only portions available for proposed findings.

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Sue fols

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#16-1-SueT

1 MS. BERNABEI: I would move TMIA Exhibit 9,  
2 which has been identified as Mr. Creitz's chronology of  
3 events on March 28th, 1979.

4 I would also propose that if there is some  
5 problem with the exhibit that we would call Mr. Creitz as  
6 a rebuttal witness.

7 MR. BLAKE: With the same limitation, I have  
8 no objection.

9 JUDGE SMITH: All right. With the same limita-  
10 tion, we will accept it.

11 (The document previously marked  
12 TMIA Exhibit Number 9 for  
13 Identification is received into  
14 evidence.)

15 MS. BERNABEI: I have the same objection I  
16 did to your prior ruling. I will --

17 JUDGE SMITH: All right. Just make it a  
18 continuing objection.

19 MS. BERNABEI: That's correct.

20 JUDGE SMITH: You don't really have to do that,  
21 but if you wish that's all right.

22 MS. BERNABEI: I would move TMIA Exhibit 10,  
23 which is a log of Mr. Keaten's notes from the period of  
24 the accident, starting on February 15, 1979 through  
25 January 24, 1980.

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#16-2-SueT 1

2 And we would move that the original of these  
notes be put into evidence.

3 JUDGE SMITH: So, you are asking -- well, what  
4 do you say, Mr. Blake?

5 MR. BLAKE: I think this document serves as a  
6 good example of the need for the limitation. We have  
7 here -- and I haven't counted the pages -- about twenty  
8 or thirty pages of documentation, very few of which have  
9 been the subject of any examination to date. I think  
10 literally just a couple of entries in these notes have.

11 So, with the same limitation I don't have an  
12 objection. I think it might be better to await Mr.  
13 Keaten's arrival to find out whether or not these notes,  
14 in a more broad fashion, ought to be admitted. The problem  
15 is that if we make a ruling now and there is some later  
16 reference to it, I guess that broadens what they were  
17 admitted for.

18 I mean, maybe it isn't as awkward as what I  
19 am envisioning. But certainly with the limitation -- and  
20 I would insist on the limitation with respect to this  
21 document.

22 JUDGE SMITH: He has suggested you withhold  
23 your offer until Mr. Keaten comes and then we see what  
24 he says about it, and I think that makes sense. But  
25 it's your option.

#16-3-SueT

1 MS. BERNABEI: I would request that those --  
2 I understand there is no objection to those portions which  
3 Mr. Dieckamp was questioned on, and I would move that they  
4 be admitted.

5 JUDGE SMITH: Okay. They are received --

6 MS. BERNABEI: And the original.

7 JUDGE SMITH: -- with the continuing limitation.

8 (The document previously marked  
9 TMIA Exhibit Number 10 for  
10 Identification is received into  
11 evidence.)

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12 MS. BERNABEI: I would move that the original --

13 JUDGE SMITH: Now, I don't --

14 MR. BLAKE: I don't know what to do about the  
15 original at this juncture.

16 MS. BERNABEI: It is obviously some question  
17 about the date of these notes. We have represented to  
18 the Board that these dates which appear -- the 3/29 date  
19 appears in the same as the notes and the 3/30 appears in  
20 red. I believe that goes to the interpretation of those,  
21 and it should be before the Board for its consideration.

22 MR. BLAKE: I don't think there is any doubt  
23 but when Mr. Keaten comes and is questioned, in view of  
24 the importance of these dates, that he ought to bring the  
25 originals with him. And they ought to be available when

#16-4-SueT

1 he is questioned. But I don't know how to now accomplish  
2 this.

3 JUDGE SMITH: Well, we are not going to receive  
4 the originals into evidence now. But I think it would be  
5 a good idea if Mr. Keaten could bring the originals with  
6 him and then counsel can seek whatever relief she needs  
7 at that time.

8 MS. BERNABEI: So that I understand, the entries  
9 that were discussed in Mr. Dieckamp's examination will be  
10 admitted; is that correct?

11 JUDGE SMITH: The entire document becomes an  
12 exhibit. Only the portions which were discussed in the  
13 testimony are available for proposed findings, and we won't  
14 make any findings in this case on other portions.

15 I might say as a general matter, even if the  
16 Board and the parties fail to make this ruling, make this  
17 limitation and by chance a large document gets into  
18 evidence and portions of it are cited which were never  
19 referred to in the hearing, and cited for the first time  
20 in proposed findings, it is very, very likely that the  
21 Board will be skeptical about what the parties had in  
22 mind by bringing it to our attention at the last minute.  
23 And we would naturally look at the reliability of the docu-  
24 ment which was never exposed to confrontation and explora-  
25 tion and explanation.

#16-5-SueT

2                   So, really I don't see the need, except to make  
3                   sure the parties understand it for the record, to have  
4                   this discussion every time. It is your intransigence on  
5                   this subject, Ms. Bernabei, that makes me concerned that  
6                   you understand our need to have reliable evidence.

7                   MS. BERNABEI: I think I understand that. And  
8                   I would agree that certainly any part of the document that  
9                   was not discussed or even referred to would not be terribly  
10                  relevant evidence.

11                 JUDGE SMITH: Yes.

12                 MS. BERNABEI: What I object to is the procedure  
13                 that I find unusual in a legal proceeding; that is, limited  
14                 admission of documents. I am not familiar with that, and  
15                 I --

16                 JUDGE SMITH: It's not limited admission. Again,  
17                 I tell you that the document in its entirety is an exhibit  
18                 in the case.

19                 MS. BERNABEI: Okay.

20                 JUDGE SMITH: It's only portions of it that  
21                 will form the predicate of our decisions.

22                 MS. BERNABEI: I would like to move into evidence  
23                 TMIA Exhibit 11.

24                 In this exhibit, Mr. Dieckamp did identify it  
25                 I believe as coming from his files. I would request that  
                  it be admitted and Pages 2 through 4 be available for

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1 findings, since they are relevant and material to the  
2 Board's consideration in this matter. We did question,  
3 as I understand it, Mr. Dieckamp -- I'm not sure if it  
4 was on Pages 2 and 3 or all three. In any case, I think  
5 given that it is what appears to be a business record  
6 that Pages 2 through 4 at a minimum should be available  
7 to the parties.

8 JUDGE SMITH: You want it in, as I recall, for  
9 the notation that Mr. Keaten arrived on March 31st;  
10 is that --

11 MS. BERNABEI: That's correct, although Mr.  
12 Dieckamp did examine other portions, I believe starting  
13 on the 28th did examine other portions to reach that  
14 conclusion.

15 JUDGE SMITH: All right. Mr. Blake?

16 MR. BLAKE: Again, that strikes me as consistent  
17 with the others. Mr. Dieckamp was asked whether or not  
18 Keaten's name appears on the third page of this document;  
19 he said no. I don't remember the other one, but it's  
20 certainly logical that his name does appear on the follow-  
21 ing page.

22 And I have no objection for that purpose.

23 JUDGE SMITH: No objections? Okay. Received  
24 on that basis, then.

25 MS. BERNABEI: Okay. Only Page 4 is available

#16-7-SueT 1 for findings; is that correct?

2 JUDGE SMITH: I don't know. I wouldn't say  
3 that all of Page 4 is. In fact, I'm not so comfortable in  
4 my memory that the only purpose it was discussed was the  
5 arrival date of Mr. Keaten. Whatever it was, it was.

6 MS. BERNABEI: Okay. What I would like to do  
7 then on -- well, specifically on this document, since I  
8 didn't anticipate this problem, I think it is a business  
9 record, would be to either call Mr. Dieckamp or to have  
10 the author of this document so that we could authenticate  
11 it. It will be useful in later cross-examination.

12 JUDGE SMITH: You aren't confusing authenticity  
13 in the business record dispute, are you?

14 When you talk about the business record rule,  
15 are you confusing that with the authenticity argument?

16 MS. BERNABEI: Are you talking to me? No.

17 JUDGE SMITH: No one challenges the authenticity  
18 of this document.

19 MS. BERNABEI: I understand. What we would like  
20 available for findings and for use with other witnesses,  
21 are specifically the site personnel, the individuals on  
22 site March 28th through March 31. It appears to me that  
23 this is a good compilation and it appears to be a business  
24 record.

25 JUDGE SMITH: All right. So, what you are



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2 trying to do now is while we still have somebody available,  
3 Mr. Dieckamp, you wish to have the reliability of the  
4 document in its entirety established?

5 MS. BERNABEI: The portions I pointed out.

6 JUDGE SMITH: So that -- well, additional  
7 portions, so that for the balance of the case you may use  
8 it. But you would use it with respect to the testimony  
9 of other witnesses?

10 MS. BERNABEI: That's correct.

11 JUDGE SMITH: Can Ms. Bernabei be accommodated  
12 on that?

13 Will you stipulate to the reliability of the  
14 document?

15 MR. BLAKE: Well, I would prefer to be given  
16 at least one day --

17 JUDGE SMITH: Right. Okay.

18 MR. BLAKE: -- to check on this.

19 JUDGE SMITH: All right.

20 MR. BLAKE: But I would be willing to report  
21 back to the Board tomorrow.

22 MS. BERNABEI: And I assume Mr. Dieckamp would  
23 be available if the stipulation is not reached?

24 JUDGE SMITH: Well, I don't know if you need  
25 Mr. Dieckamp.

MS. BERNABEI: I believe Mr. Dieckamp was the



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2 one that may have requested this document be made up,  
3 which is why I think his testimony would be appropriate  
4 on this.

5 And it was found in his files. That's what  
6 the HD-5 indicates on the top of the first page.

7 JUDGE SMITH: Well, Mr. Dieckamp -- let's say  
8 that the best that Mr. Dieckamp can do is say that it  
9 was found in his file, what does that do for you?

10 What you really need is some stipulation that  
11 the document accurately represents what it purports to  
12 represent, and that is when people arrived on site. Is  
13 that what you want?

14 MS. BERNABEI: That's correct.

15 JUDGE SMITH: Okay. So the fact that it was  
16 in Mr. Dieckamp's file doesn't help you much. So his  
17 continued availability is not going to help you much.

18 What you really need is Mr. Blake's stipulation  
19 or his solution to the problem. What you are seeking I  
20 think is appropriate. Let's let Mr. Blake solve the  
21 problem on how you get what you want.

22 MS. BERNABEI: I would move TMIA Exhibit 12  
23 into evidence. Specifically, those portions we discussed  
24 including identifying information on the cover of TMIA  
25 Exhibit 12 that indicates it was obtained from the NRC,  
the first page insofar as it identifies the questioners

#16-10-SueT1

and who is speaking on the transcript.

2

JUDGE SMITH: Mr. Blake?

3

MR. BLAKE: With the same limitation, no objection. Again, I think the only reference here was to a third page, Dr. Long's discussion which uses the word "contained."

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JUDGE SMITH: All right. With the same limitation, if there is no other objection we will receive the Exhibit 12.

8

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(The document previously marked

11

TMIA Exhibit Number 12 for

12

Identification is received into

13

evidence.)

14

MS. BERNABEI: I assume there would be a permissibility to identify who was speaking on the document?

15

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JUDGE WOLFE: What do you say, Mr. Blake?

17

MR. BLAKE: Sure. I have no problem with also referring to the top of the first page where apparently the individuals who are involved are --

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JUDGE SMITH: It's --

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MR. BLAKE: I don't know what that does for us, because as we go through the document I notice Number 1, Number 2, Number 3 who were talking and at the top there is no enumeration of the numbers.

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JUDGE SMITH: I think you might have some

#16-11-SueT1

1 difficulty in the balance of this proceeding, and most  
2 assuredly in your proposed findings, Ms. Bernabei, if  
3 you don't make a stronger effort to capture the spirit  
4 of the Board's rulings on this. You are approaching it  
5 very mechanically, and I predict that if you don't somehow  
6 get greater insight as to what we are trying to accomplish  
7 that you are going to have difficulty in your proposed  
8 findings.

9 MS. BERNABEI: I would move TMIA Exhibit 12  
10 into evidence.

11 JUDGE SMITH: And we would be pleased to help  
12 you. With the same limitation, we will receive it into  
13 evidence.

14 MS. BERNABEI: I would request that the entire  
15 document be received, since I think the context of the  
16 document is important for an understanding.

17 MR. BLAKE: Are we talking about 13 now? You  
18 referred to 12. I think there may be a --

19 MS. BERNABEI: 13. Yes. That's --

20 JUDGE SMITH: Oh, 13. The training document?

21 MS. BERNABEI: That's correct. I think the  
22 context of the document is important. There may be some  
23 need to put whatever statements were drawn from that  
24 document into the context of the document itself.

25 I would request that the other portions of

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the document be available for findings.

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JUDGE SMITH: Mr. Blake?

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MR. BLAKE: I just don't know what that means, but with the same limitation that was placed before; that is, that we have discussed the document --

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JUDGE SMITH: She is asking that no limitation be placed on it, that the document in its entirety be available for citation.

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MR. BLAKE: No.

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MR. GOLDBERG: I'm not sure if there is anything left. In Ms. Bernabei's cross-examination of Mr. Dieckamp on this document, she went down line by line to ask him if the document says what it says. And if she took all the time to do that, with virtually every line on the first page, and a number of lines elsewhere through the document, I would think that we very well should be limited to exactly what she questioned Mr. Dieckamp about.

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MS. BERNABEI: Well, that isn't really true, since what I'm concerned about is the sense of the document, that it appears to be a sequence of events and occurrences and operator actions taken during the accident come through; that is, that the nature of the document is a training document, be able to be referred to.

24

25

My memory of my cross-examination is only events which were listed on Page 4; that is, starting with the

#16-13-Sue†

2 pressure spike were in fact questioned about. I think  
3 Mr. Goldberg is incorrect.

4 My concern -- and perhaps there is some other  
5 way to deal with it, my concern is that the sense of the  
6 document come through; that is, a training document,  
7 sequence of events documenting operator actions during  
8 the accident.

9 MR. GOLDBERG: I don't think we need to argue  
10 too much about it. The record will show that on the  
11 first page you went down item by item of the title,  
12 the lesson objectives, the references, and you pretty  
13 clearly established that it was a training document. And  
14 that is certainly something that was referred to in your  
15 cross-examination.

16 And, as I understand the Board's ruling, would  
17 be available for you to cite in your proposed findings.  
18 I don't see why there is any basis though to treat this  
19 document any differently from the others with respect to  
20 the limitation on its use.

21 JUDGE SMITH: Not only that, it comports to  
22 my memory, you went even beyond that. You went down and  
23 covered all the references.

24 MS. BERNABEI: I'm talking about the sequence  
25 of events. My memory is that the only question on the  
fourth page or on the pressure spike.

#16-14-SueT1

1 JUDGE SMITH: I tell you, I have got a concern  
2 about that myself even if the other parties don't, because  
3 I realize it's a training document which purports to be  
4 predicated upon the actual events. We have anomalies in  
5 here, and we have the other reports that are more reliable.  
6 I don't know what you have in mind.

7 I think you had better state specifically what  
8 you have in mind. You must have something in mind.

9 MS. BERNABEI: Yes. I thought I explained that.  
10 I wish to have other portions of the document available  
11 to demonstrate the nature of the document; that is, that  
12 it is a sequence of events of operator actions during the --

13 JUDGE SMITH: All right, the nature of the  
14 document is clear from the lesson objectives and references  
15 and the general idea, that it purports to be a sequence  
16 of events. You don't need the whole document available  
17 for that.

18 I'm concerned why you want the whole document.  
19 And I have my own feeling about the reliability of the  
20 document. There are anomalies in here that were never  
21 thoroughly explored. So, I think you have what you need.

22 (The document previously marked  
23 as TMIA Exhibit Number 13 for  
24 Identification is received into  
evidence.)

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1 MS. BERNABEI: I would move that TMIA Exhibit  
2 14 be admitted.

3 JUDGE SMITH: Any objections?

4 (No reply.)

5 A typed copy of the mailgram. Any objection?  
6 No objection? Are you going to object, Mr. Blake?

7 (No reply.)

8 No objection. The document is received.

9 (The document previously marked  
10 TMIA Exhibit Number 14 for  
11 Identification is received  
12 into evidence.)

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13 MS. BERNABEI: I would move that TMIA Exhibit  
14 15 be admitted. I have not had a chance to review the  
15 proposed stipulation that Mr. Blake prepared. It may  
16 include some mention of this document. This is more  
17 notes and Arnold memorandum which we discussed at the pre-  
18 hearing conference.

19 MR. BLAKE: It does not address this document.

20 JUDGE SMITH: What's the motion? You had  
21 inquired as to whether it was covered by a stipulation.  
22 You are informed it was not.

23 Your motion to receive it is pending?

24 MS. BERNABEI: That's correct.

25 JUDGE SMITH: And Mr. Blake, what is your view?



#16-16-SueT

MR. BLAKE: The same position as on the others.

2 MS. BERNABEI: Again, I would note, this is a  
3 business record. It's not even during the time of the  
4 accident. September 17, 1980, it was an official memorandum  
5 from Mr. Wallace to Mr. Arnold, Subject: Internal Work  
6 Related to GPU's Knowledge of Core Damage Following the  
7 TMI-2 Accident.

8 In addition, it was produced from Company's  
9 files. It was produced in exactly the form in which it  
10 is before the Board. We did not want to separate or  
11 otherwise destroy the document. This is as it was produced  
12 from Company files.

13 I think it's an official business record. I  
14 would also note that there are copies of the document to  
15 Mr. Blake and Mr. Behrle, who obviously had certain business  
16 responsibilities with regard to the document.

17 JUDGE SMITH: Are you making a different kind of  
18 argument or is this the same argument you have been making  
19 all along about business record documents?

20 MS. BERNABEI: This is a business record docu-  
21 ment.

22 JUDGE SMITH: Okay. Well, we will receive it  
23 with the same limitation that we have received other  
24 documents.

25 MS. BERNABEI: Okay.

#16-17-SudT

(The document previously marked as TMIA Exhibit Number 15 for Identification is received into evidence.)

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INDEXXXX

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JUDGE SMITH: That's it?

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MS. BERNABEI: We would also --

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JUDGE SMITH: Excuse me. I have been informed that apparently there has been an issue, an Order issued in this case and it would be a good idea for me to call up and find out what it is. So, it's a Commission number. I don't recognize the person conveying the message, but apparently they feel it is something I ought to know about.

So, I just want to take a break long enough for that purpose.

MS. BERNABEI: May I just -- not now, but before we move on, I would also propose, since there has been discussion on Mr. Creitz's deposition and Mr. Lentz's deposition, that we -- that I would like to move to introduce certain portions of those as well.

I don't have the exact page and line numbers. I could provide those to you in the morning.

JUDGE SMITH: All right. Let's take a break for five minutes or so until I can make a phone call, and then we will go with Mr. Gamble.

(Whereupon, the hearing is recessed at 3:46 p.m., to reconvene at 3:55 p.m., this same da..)

1 JUDGE SMITH: The phone message was with  
2 respect to TMIA's November 19th Motion for direct  
3 certification on the Bradford and Gilinsky testimony  
4 matter.

5 TMIA apparently requested expedited action.  
6 Do the parties have a copy of their Motion?

7 MR. BLAKE: No, my office --

8 JUDGE SMITH: It is not a matter, I guess, of  
9 concern to this Board. The Appeal Board, except that  
10 it necessarily impacts upon our schedule, and I would  
11 have thought a mention of it, perhaps, would have been  
12 appropriate.

13 MS. BERNABEI: I am sorry. It was delivered,  
14 I believe, to all of your offices and the Appeal Board  
15 and to Mr. Goldberg and to Mr. Blake's office, hand  
16 delivered on Monday.

17 We did not have copies. The -- we had trouble  
18 with the xerox machine.

19 JUDGE SMITH: You knew we were all here, not  
20 in our offices. You could have mentioned it, because  
21 there is a scheduling problem. You know you asked  
22 expedited action.

23 Nevertheless, the Appeal Board has ruled that  
24 because TMIA says the Dieckamp issue is scheduled to  
25 conclude on December the 4th, we direct that all answers

1 be in the hands of the Appeal Board no later than close  
2 of business Wednesday, November 28th.

3 Now, I don't know if that is going to have an  
4 impact upon our schedule or not. You can advise us  
5 some time tomorrow, I guess, or whenever.

6 MR. GOLDBERG: If I could inquire, when was  
7 it delivered?

8 MS. BERNABEI: I don't know -- it was yesterday  
9 -- Monday.

10 Let me represent what I  
11 understood happened. We filed yesterday, Monday,  
12 November 19th, a Motion for Direct Certification, which  
13 I instructed to be delivered to Mr. Blake's office, to the  
14 Appeal Board, the Licensing Board, and to Mr. Goldberg's  
15 office.

16 I, at this time, do not know with great  
17 certainty that occurred. I assume it did occur, since  
18 I heard no word from my office that it did not.

19 And it would be my understanding --

20 JUDGE SMITH: Inasmuch as the Appeal Board  
21 received it. My point was, you were aware that the  
22 principal participants in this hearing were not in their  
23 offices on Monday, and you are aware that the Motion had  
24 significant impact upon their schedules, and their  
25 responsibilities, and I don't understand why you could not

1 have told them about it.

2 MS. BERNABEI: Frankly, I believe that when  
3 people spoke to their offices they will learn about that.  
4 Secondly, we had every intention of bringing it up here  
5 and serving it on the people up here.

6 When the xerox machine broke down, we were  
7 unable to do that.

8 MR. GOLDBERG: And one of the reason I inquired,  
9 I talked to my office a couple of times today, and was  
10 not informed of that, and I kind of suspect that I would  
11 be informed if it had been received yesterday.

12 MS. BERNABEI: We will check once more, Mr.  
13 Goldberg.

14 JUDGE SMITH: I doubt if you will be filing  
15 that exact motion again in the future, so I don't know  
16 if a request is going to help, but if you do, and anything  
17 like that comes up again, may I ask that you inform us as  
18 soon as possible?

19 MS. BERNABEI: Certainly, I will. I apologize  
20 for the inconvenience of the parties.

21 JUDGE SMITH: Well, I would say it has, hasn't  
22 it? Here is a hearing that is going on full blast. It  
23 was scheduled to be every day except one between the  
24 moment of your filing through the filing of the answer,  
25 and obviously it has impact upon the people.

1 Now, would you proceed? Would you care to  
2 repeat your comment to the Board?

3 MS. BERNABEI: I said I see our Motion for  
4 direct certification as a motion having to do with  
5 certain rulings made by the Board in the course of this  
6 litigation.

7 We fully intended to answer the parties in house,  
8 but we were unable to do so because we did not have a  
9 xerox -- I do not personally at this time have a copy  
10 of that Motion.

11 JUDGE SMITH: But you were aware that the Motion  
12 was filed. That is the only thing I am saying. That  
13 you were here present, and you could have spoke words  
14 orally to the people.

15 MS. BERNABEI: Yes, I could have.

16 JUDGE SMITH: Would you proceed with your case?

17 MS. BERNABEI: We would call Dave Gamble.

18 MR. GOLDBERG: Excuse me, Judge Smith. Before  
19 we get to Mr. Gamble, this morning I spoke to Norman  
20 Moseley, and have been informed that in view of recent  
21 newspaper articles concerning the Grand Jury investigation  
22 into the conduct of NRC employees, while it is not known  
23 precisely what the Grand Jury is inquiring into, based  
24 on the newspaper articles, and considerable speculation,  
25 Mr. Moseley has decided to re-evaluate his role, if any,

1 in this hearing.

2 He expects to make a decision sometime this  
3 week, and as soon as I am informed of his decision, I  
4 will pass it on to the Board and the parties.

5 JUDGE SMITH: So, the implication is that he  
6 may not appear. It is possible he may not appear as a  
7 witness?

8 MR. GOLDBERG: That is a possibility. That  
9 is what he is considering, and he is consulting with  
10 people he wishes to consult with in order to make his  
11 determination as to whether he wishes to appear and  
12 testify in this proceeding.

13 JUDGE SMITH: We don't want to inconvenience  
14 Mr. Gamble, or put parties to needless expense. Yet,  
15 as we recognized earlier, the sole relevance of Mr.  
16 Gamble's testimony is rebuttal of Mr. Moseley.

17 MS. BERNABEI: May I address that point, Judge  
18 Smith? First of all, TMIA does not believe the sole  
19 purpose of Mr. Gamble's testimony is to rebut Mr. Moseley's  
20 testimony.

21 First of all, NUREG 0760 is a document that  
22 is before the Board. The Board considered it in its  
23 initial decision on this issue, and I think it is in the  
24 nature of affirmative, direct case.

25 His prefiled testimony describes the deficiencies



1 in the investigation of the report.

2 Secondly, there is extensive testimony by Mr.  
3 Moseley about the report, conclusions he drew from the  
4 report, and enforcement actions he thinks is justified  
5 on the basis of that report. That is contained in his  
6 1981 testimony. I think Mr. Gamble can address those  
7 points, unless that testimony is stricken.

8 MR. GOLDBERG: I would like to respond to  
9 that. I recall a representation by Ms. Bernabei at a  
10 prehearing conference, if not her notification to the  
11 parties, that the purpose of it, to rebut Mr. Moseley's  
12 testimony, and that it was occasioned by -- first  
13 occasioned by the Staff's identification of Mr.  
14 Moseley as a witness.

15 That is why Ms. Bernabei said she waited until  
16 so late in the discovery period to identify Mr. Gamble  
17 as a witness.

18 Secondly, with respect to her claim now that  
19 she wants to use it in connection with NUREG 0760 because  
20 that is one of the documents on the joint stipulation  
21 of the parties, I will point out as I have previously,  
22 the legal position that Ms. Bernabei has taken in this  
23 proceeding with respect to inquiring into the adequacy  
24 of investigations and into information flow.

25 In the October 29, 1984 letter to Mr. Blake,

1 Ms. Bernabei said, and I quote: The adequacy of the  
2 various investigations or inquiries into the TMI accident  
3 and information flow during the accident, is not the issue  
4 before the Licensing Board. The issue is whether Mr.  
5 Dieckamp knew, or should have known, of misstatements  
6 which TMIA believe exists in this mailgram at the time  
7 he sent it, and whether he should have corrected these mis-  
8 statements after he sent the mailgram.

9 The various reports and the interviews which  
10 provide support for them are relevant only insofar as  
11 they provide factual support for the argument as to  
12 whether specific Med Ed personnel knew about and under-  
13 stood the pressure spike on March 28th. Therefore, I  
14 do not believe litigation into the adequacy of the House  
15 Report is permitted under the scope of the hearing, end  
16 quote.

17 That was Ms. Bernabei's answer to Mr. Blake's  
18 attempt to inquire into the adequacy of the investigation  
19 which led to the so-called Udall Report.

20 I think that is the correct position based on  
21 the reading of the Appeal Board's remand of the limited  
22 issue on what Mr. Dieckamp knew, or should have known, at  
23 the time he sensed the pressure spike, and I think it is  
24 a position which applies equally to NUREG 0760 and every  
25 other one of the many investigative reports that are on

1 joint stipulation.

2 If we at this point begin to litigate the  
3 adequacy of the various investigations, and the reports  
4 which are under joint stipulation, we will have a hearing  
5 that has no end in sight, and cannot be what the Appeal  
6 Board meant in ALAP 772, when they remanded -- and I  
7 quote from page 1268 of 19 NRC -- the scope of the  
8 Board's inquiry is relatively limited.

9 MS. BERNABEI: May I address Mr. Goldberg's  
10 points? First of all, we clearly stated in any represen-  
11 tation that Mr. Gamble's testimony was intended to rebut  
12 Mr. Moseley's testimony insofar as he claimed the  
13 investigation and report were adequate. In fact, we had  
14 extensive discussion during the prehearing conference as  
15 to how we would draw that opinion.

16 I believe that testimony was given in the main  
17 hearing -- excuse me -- the 1981 hearings, as well as  
18 part of the current testimony is on that basis.

19 Secondly, as I stated in the prehearing  
20 conference, my representations in my letter to Mr. Blake  
21 concerning the Udall Report, because of the special  
22 problems encountered with subpoenaing of testimony of a  
23 house committee staff member, there were considerations  
24 entered into, stipulation of testimony of Dr. Henry  
25 Myers.

1                   We were informed, as I state in the letter which  
2 Mr. Goldberg conveniently omits, that there would be  
3 severe restrictions on the testimony of any House Staff  
4 member in his official capacity.

5                   There would also be restrictions on subpoenaed  
6 House Staff member. That was my understanding of why  
7 Mr. Blake and I entered into a stipulation to which Mr.  
8 Goldberg agreed.

9                   Finally, Mr. Goldberg, in citing the Appeal  
10 Board decision, conveniently leaves out one of the major  
11 concerns of the Appeal Board.

12                   The Appeal Board was concerned that the NUREG  
13 0760 did not adequately analyze and examine the different  
14 witnesses testimony.

15                   In that regard, it seems to me that the Appeal  
16 Board itself has remanded to the Licensing Board  
17 consideration of the adequacy of that analysis. It  
18 stated the Licensing Board cannot rely on that report,  
19 because we don't think it is reliable. In the same vein,  
20 I think it asks you to look into the analysis of that  
21 report to any degree that you rely on it.

22                   It is currently in evidence by stipulation  
23 of parties before you. It is, I think, along with the  
24 Udall Report, the only other report that deals explicitly  
25 with reporting failures of the licensee, and I think we

1 should have a chance to address that.

2 I would also state Mr. Moseley's 1981 testimony  
3 specifically addresses the findings and conclusions of  
4 the Report.

5 His conclusions are still whether or not  
6 they indicate intentional withholding. He conclusions  
7 as to whether enforcement action was warranted on the basis  
8 of the findings. As such, I think his opinions should be  
9 able to be challenged, unless that testimony is struck.  
10 He talks specifically about his opinion as to criminal  
11 prosecution. That is an item Mr. Gamble's testimony  
12 addresses.

13 JUDGE SMITH: Gamble's testimony does?

14 MS. BERNABEI: Yes, it does.

15 JUDGE SMITH: Mr. Blake, or anyone else wish  
16 to be heard?

17 MR. BLAKE: I guess -- I am not sure what the  
18 issue is at the moment on the table. I think it is  
19 whether or not Mr. Gamble is now going to appear because  
20 there is -- that is off because Mr. Moseley might not, in  
21 the end, wind up appearing.

22 I would like to ask Mr. Goldberg whether he  
23 has a sense that we might learn that as early as tomorrow.

24 MR. GOLDBERG: No, I don't believe we will  
25 know tomorrow.

1 JUDGE SMITH: In any event, she points out that  
2 she is now, contrary to my memory, offering Mr. Gamble  
3 as a part of her case-in-chief.

4 I understood that he was to be a rebuttal  
5 witness to Mr. Moseley, but now she is saying it is a  
6 part of the case-in-chief, and I don't have any memory  
7 that she never referred to that, but certainly the sense  
8 of what she was saying and the sense of our understanding  
9 was that it was in rebuttal to Mr. Moseley's testimony.

10 MR. GOLDBERG: As a matter of fact, Chairman  
11 Smith, at one time because he was appearing only as a  
12 rebuttal witness, Ms. Bernabei agreed that it made sense  
13 for Mr. Gamble to testify after Mr. Moseley, and it was  
14 only recently when she asked whether it was all right,  
15 whether he appeared as a part of the normal order of the  
16 Interveners case, and at that point I said I don't have  
17 any problem with that.

18 END 17  
19 MS fols.

Sim 18-1

1 MS. BERNABEI: Let me say it is a rebuttal  
2 witness in terms of the adequacy of the investigation and  
3 the report's conclusions.

4 That is, however, testimony already in the  
5 record before this Board. That is 1981 testimony. And,  
6 frankly, I don't look at it so much different from direct  
7 testimony rebuttal testimony. It has to do with the  
8 adequacy of the investigation in the report.

9 If the Board wishes to strike all of the testimony  
10 of Mr. Mosely given thus far and agrees not to accept any  
11 further testimony, then I would agree that there would be  
12 no basis for TMIA offering a witness.

13 JUDGE SMITH: Let's go to Mr. Moseley's  
14 original testimony. I think that the rule of this case  
15 now is that we erred in relying upon Mr. Moseley's previous  
16 testimony. As the Appeal Board noted, the previous testimony  
17 had been structured around a very narrow approach that  
18 Mr. Moseley had taken and the Appeal Board made some  
19 inferences about what Mr. Moseley knew about Mr. Dieckamp's  
20 state of mind, and they criticized NUREG 0760 because it  
21 was, as they stated, wholly conclusory.

22 I don't believe that you need to bring  
23 Mr. Gamble to rebut Mr. Moseley's testimony of 1981. His  
24 testimony can be disregarded in its entirety and we can  
25 proceed from the evidence we have received here.



Sim 18-2

1 So if that is why you have him here, forget it.  
2 I mean that is not necessary. Now you have him here, then  
3 the only other remaining reason is to rebut Mr. Moseley's  
4 testimony in a reopened hearing; is that right?

5 MS. BERNABEI: The way I saw it there were three  
6 reasons which I essentially saw.

7 JUDGE SMITH: Oh, three reasons.

8 MS. BERNABEI: First was to rebut his proposed  
9 written testimony, the prefiled written testimony, and he  
10 may not appear. I understand that.

11 The second was to rebut his previous testimony  
12 in 1981.

13 And the third was to address the sufficiency  
14 or the adequacy of NUREG 0760 and the investigation which  
15 led to that report.

16 I believe it continues to be somewhat discounted...  
17 or criticized by the Appeal Board decision in an important  
18 piece of evidence before the Board which I think requires  
19 some argument or explanation as to its weight to be given.

20 JUDGE SMITH: All right. Now based upon the  
21 proposed testimony of Mr. Gamble, what motion would you make  
22 with respect to NUREG 0760?

23 MS. BERNABEI: I am sorry?

24 JUDGE SMITH: Well, let's assume that we have  
25 now received into evidence Mr. Gamble's testimony. Now

Sim 18-3

1 what are you going to do with it?

2 MS. BERNABEI: We are going to argue from the  
3 testimony that the report and the conclusions reached in the  
4 report should not be given weight by the Board.

5 JUDGE SMITH: No weight. No part of and no  
6 weight.

7 MS. BERNABEI: That is not what I said. The  
8 findings specifically in the sections that I think would be  
9 relevant to the Board would be the sections on the pressure  
10 spike and hydrogen burn, the findings on incore thermocouple  
11 temperatures insofar as that is corroborating information and,  
12 thirdly, the Dieckamp mailgram portion.

13 JUDGE SMITH: All right. The Dieckamp mailgram  
14 portion we have already been told by the Appeal Board, don't  
15 rely upon that. Go out and do it again. So you have already  
16 prevailed on that.

17 MS. BERNABEI: I understand.

18 JUDGE SMITH: Now would it be your position that  
19 we should strike the portions, the factual portions relating  
20 to the pressure spike, the sequence of events and who said  
21 what and when?

22 MS. BERNABEI: No, I am not making that motion.  
23 I, together with all the other parties in this case,  
24 stipulated that that be received in evidence.

25 JUDGE SMITH: All right.

Sim 18-4

1 MS. BERNABEI: What I would like to have  
2 Mr. Gamble address, and I believe he addresses in his  
3 testimony, is the weight to be given by the Board to that  
4 testimony.

5 JUDGE SMITH: What testimony?

6 MS. BERNABEI: Excuse me, NUREG 0760.

7 JUDGE SMITH: On the one hand, you have  
8 stipulated it into evidence, and, on the other hand, you  
9 are saying don't give it any weight; is that right?

10 MS. BERNABEI: As the Board knows, compromises  
11 are made on all sides. The joint mailgram stipulation was  
12 an accommodation for all the parties.

13 We obviously stipulated in interviews and  
14 reports that we did not personally feel should be given  
15 great weight. However, we did that in order to get in other  
16 interviews and reports we did feel the Board should rely  
17 on. It is in the nature of compromise.

18 JUDGE SMITH: Would it be your position that  
19 once you have prevailed in this sub-issue that no part  
20 of this document would be available -- I mean no parts  
21 that you have mentioned would be available for proposed  
22 findings?

23 MS. BERNABEI: No.

24 JUDGE SMITH: Tell me again. What would be  
25 out? Can you be more specific?

Sim 18-5

1 MS. BERNABEI: What I am proposing is that  
2 Mr. Gamble be allowed to testify.

3 JUDGE SMITH: Let's take an example. I just  
4 happen to have it open to page 19. I just happened to have  
5 it there.

6 MS. BERNABEI: Give us a moment to find our  
7 copy.

8 (Pause.)

9 JUDGE SMITH: I just happen to be looking at the  
10 subject called knowledge of TH superheat incores. I just  
11 happened to look at that. It just opened there. And it  
12 being with what the report says Kunder was aware of. And  
13 then it goes to Seelinger.

14 Do you mean this would not be available for  
15 proposed findings?

16 MS. BERNABEI: No.

17 JUDGE SMITH: You don't mean that?

18 MS. BERNABEI: No.

19 JUDGE SMITH: Okay.

20 MS. BERNABEI: Let me state once again what  
21 our position is. Mr. Gamble, we hope his testimony would  
22 aid the Board in determining what weight to give to the  
23 conclusions and findings in the report.

24 JUDGE SMITH: The conclusions. Now let's go  
25 to the very conclusions that you are referring to.

Sim 18-6

1 MS. BERNABEI: That is No. 1. No. 2, the analysis  
2 of the report. There is analysis which appears throughout  
3 this report which I believe the Appeal Board criticized.  
4 I think that Mr. Gamble has relevant testimony as to what  
5 weight the Board should give to that analysis as well.

6 MR. GOLDBERG: Judge Smith, yesterday after the  
7 close of the record you indicated the Board's preliminary  
8 thoughts on the subject of Mr. Moseley's testimony and  
9 Mr. Gamble's testimony. And I think you correctly stated  
10 that because of the Appeal Board's remand, including the  
11 language that is in there on the Board's reliance on NUREG  
12 0760, that you were not going to give special weight to that  
13 document.

14 You read the remand order as directing the  
15 Licensing Board to have the principal parties who were  
16 involved appear before the Board so that the Board could  
17 draw its own conclusions from their live testimony. And  
18 that is exactly what this proceeding has been all about.

19 I see no basis to distinguish this report from  
20 any of the other reports that are on the joint stipulation,  
21 including the one that I am certain TMIA is going to be  
22 citing extensively, Mr. Udall's report.

23 JUDGE SMITH: Well, there is a difference here,  
24 and the Board was discussing it. There is a difference  
25 here, and that is one of the investigators has come to us

Sim 18-7

1 and said there are problems with the report. And just as  
2 if it had been a report on a piece of safety equipment  
3 and one of the NRC engineers working on that project had  
4 come to us and told us he had concerns, I think we would  
5 hear him or at least look at what he had to say.

6 So from that point of view, yes, it may be just  
7 another report, but it is another report to which there seems  
8 to be a dissenting view.

9 The problem is I can't really grapple with  
10 what the dissenting view is, but I think you have captured  
11 really the problem, which is that the Appeal Board told us  
12 never mind the conclusions of 0760 with respect to this  
13 issue. You go back and you hear from the people and you  
14 make your own conclusions.

15 I think with respect to that, Ms. Bernabei, you  
16 have prevailed. You have prevailed in that to the extent  
17 that NUREG 0760, if it does, and I don't really believe it  
18 does, but to the extent that it tries to tell us how to  
19 decide this issue, I agree with you, and we don't need  
20 Mr. Gamble to tell us that we have to make our decision for  
21 ourselves, that our previous reliance upon Mr. Moseley and  
22 the conclusions of this report were found by the Appeal  
23 Board to be error, and that is the rule of the case, and  
24 I agree with you that we can't do that.

25 Now why do we need Mr. Gamble to tell us that?



Sim 18-8

1 Why do we need Mr. Gamble. I don't see why we need him.

2 I mean the Appeal Board has already told us to arrive at  
3 our own conclusions based upon the facts.

4 MR. AU: May I make an observation? Based on  
5 the directive you gave to the parties concerning Mr. Gamble  
6 yesterday, and that is that you were seeking after facts  
7 which he may have in his personal knowledge, perhaps  
8 Mr. Gamble has some facts relating to the factual information  
9 contained in this report which may differ from what the  
10 reports says.

11 JUDGE SMITH: Let me review what we said off  
12 the record last night.

13 One is that Mr. Goldberg captured the first  
14 part of it, and that is as far as the document itself is  
15 concerned, we do not regard it as a monolithic document,  
16 and I used an expression that I forget what it is now,  
17 but it should not have such tremendous force ---

18 MS. BERNABEI: The Bible.

19 JUDGE SMITH: Yes. It is not such a document  
20 upon which one would base a religion.

21 (Laughter.)

22 And it is not, and by the rule of this case  
23 the Appeal Board tells us that, and it is not our intention  
24 to take its conclusions. So you win on that.

25 Then also you, yourself, would rely upon



Sim 18-9

1 certain factual reports on the document. For example, I  
2 turn to page 18 because you relied upon the high temperatures  
3 there yourself as a justification for discovery.

4 But just in our most recent exchange you conceded  
5 that the listing of who knew what on the knowledge of TH  
6 superheat incores would still be available.

7 So we said last night that the factual, undisputed  
8 aspects of the report as compared to their analysis and  
9 conclusions would probably be available, and I don't think  
10 you disagree with that, do you?

11 MS. BERNABEI: No. What I would suggest in that  
12 light would be that the interviews, all the interviews,  
13 as I understand it, that form the basis for this report  
14 are already stipulated into evidence.

15 JUDGE SMITH: Okay.

16 MS. BERNABEI: And that would be the best source  
17 of the facts, and that would root out any analysis. That  
18 is what I would suggest.

19 JUDGE SMITH: I know, but analysis is one thing,  
20 some of it is convenient summarization and condensation  
21 which I find very convenient. You don't object to that?

22 MS. BERNABEI: No, as long as it is in fact  
23 a statement of the facts and not analysis. No objection.

24 JUDGE SMITH: Right, okay. So then we said  
25 that we don't need, nor do we want Mr. Gamble to tell us

Sim 18-10

1 his views of the conclusions of the report and the analysis  
2 of the report, but that if Mr. Gamble had information  
3 pertaining to the facts set out in the report, and if his  
4 opinions are relevant to this issue, then it would be  
5 another matter.

6 And finally we said that notwithstanding all  
7 of those limitations, where appropriate the report could  
8 be used for cross-examination if it otherwise appropriate  
9 to use it for cross-examination.

10 All right. Now with all of that, can you offer  
11 Mr. Gamble for a factual critique of that aspect of the  
12 report, the factual aspects of the report which pertain  
13 to this issue and is it necessary?

14 MS. BERNABEI: Yes. The factual information that  
15 he would have would be with regard to the interviews which  
16 in fact contain the facts that were gathered during the  
17 investigation.

18 His testimony focuses on how he believes ---

19 JUDGE SMITH: His direct testimony does?

20 MS. BERNABEI: That is correct. --- how he  
21 believes the interviews were curtailed and the scope of the  
22 investigation ---

23 JUDGE SMITH: Of how what, the interviews what?

24 MS. BERNABEI: Were curtailed. That is ---

25 JUDGE SMITH: But that is not going to help. I

Sim 10-11

1 want him to pick up a particular factual point that he  
2 disagrees with and tell us about it.

3 MS. BERNABEI: His information goes to whether  
4 or not the questions were phrased and questions were asked  
5 to elicit complete and accurate information. It seems to  
6 me the Board would want that in order to determine whether  
7 or not the facts and information that were gathered is  
8 reliable.

9 JUDGE SMITH: What facts and what information?

10 MS. BERNABEI: The NUREG 0760 interviews.

11 JUDGE SMITH: Oh, no. I don't understand your  
12 point, and I am not going to try any more. Unless you can  
13 explain it better, I am not going to hear them.

14 MR. GOLDBERG: I find it very interesting that  
15 Ms. Bernabei's cross-examination of Mr. Dieckamp was based  
16 to a large extent on the NRC interviews which were a part  
17 of the 0760 investigation which she is now challenging  
18 with the offer of Mr. Gamble's testimony. And if Mr. Gamble  
19 is going to testify about inadequacies in the interviewing  
20 and the Board wants to hear only factual matters that he  
21 can testify to from personal knowledge, it is going to be a  
22 considerable amount of time to identify precisely what  
23 Mr. Gamble disagrees with and each and every one of the  
24 NRC interviews which are related to the mailgrams.

25 MR. BLAKE: Judge Smith?

Sim 10-11

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19 is going to testify about inadequacies in the interviewing  
20 and the Board wants to hear only factual matters that he  
21 can testify to from personal knowledge, it is going to be a  
22 considerable amount of time to identify precisely what  
23 Mr. Gamble disagrees with and each and every one of the  
24 NRC interviews which are related to the mailgrams.

25 MR. BLAKE: Judge Smith?

Sim 10-12

1 MS. BERNABEI: If I could just ---

2 JUDGE SMITH: Wait a minute.

3 Mr. Elake.

4 MR. BLAKE: I would like an opportunity to  
5 think about what has been said here today and address this  
6 subject tomorrow morning. I say that for a couple of  
7 reasons.

8 One, to go on with Mr. Gamble now at this  
9 hour of the day, I doubt that we would complete him in  
10 any event. So to the extent that he is inconvenienced,  
11 I think he is going to be inconvenienced in any event, even  
12 if we start him today. We are at 4:30 already.

13 But beyond that, I am not sure where we are  
14 at this juncture with respect to this one report and its  
15 utility or conclusions vis-a-vis the other reports, all of  
16 which were included in the joint stipulation, the ability  
17 of the parties to rely on those and the fact that  
18 Mr. Dieckamp as these reports came out, it played a role  
19 in his thinking. I am not sure where I parcel these things  
20 and I guess I would like, and I would like to encourage the  
21 other parties as well, to think a little bit about where  
22 we are headed here and what purpose and use is to be made  
23 of these reports as we go.

24 I am concerned at the moment.

25 JUDGE SMITH: Well, you have every right to

Sim 10-13

1 be concerned, Mr. Blake, because as of yet no one, or at  
2 least the Board does not understand yet the net product  
3 that will be produced by Mr. Gamble's testimony.

4 I am really disparing of ever understanding,  
5 but I do think it is worthwhile to spend the remaining time  
6 we have this evening to try to understand what the point  
7 is, and it may very well be that we will rule that his  
8 testimony cannot be received, or we will rule where we  
9 will give you something to consider overnight.

10 Do you want to try again?

11 MS. BERNABEI: I will try ---

12 JUDGE SMITH: I have read his testimony, and  
13 I have read it over again. I see some relevance in some  
14 of the attachments, to the extent I can read them. I can't  
15 read them very well.

16 MS. BERNABEI: I understand. We are going to  
17 try to get better copies.

18 JUDGE SMITH: But his main testimony doesn't  
19 take you where you said that you wanted to go, and that is  
20 he didn't like the way interviews were conducted. So what  
21 do we do with the interviews that are reported?

22 MS. BERNABEI: Well, let me explain and I will  
23 try to be very clear.

24 The interviews were conducted pursuant to certain  
25 directions and apparently an orientation of Mr. Moseley,

Sim 10-14

1 both in the investigation and the particular interviews.  
2 Mr. Gamble describes how he believes that those interviews,  
3 the way the questioning was set up, the presence of corporate  
4 counsel did not permit full questioning of the witnesses.

5 The Board has before it, and there will be  
6 cross-examination of the witnesses and there will be  
7 general discussion in the findings of many of the interviews  
8 that were conducted in the course of this investigation.

9 We believe that whatever weight the Board is  
10 to give to those interviews that elicits certain facts  
11 should be done with the view as to the overall evaluation  
12 of the investigations and an overall evaluation of how  
13 those interviews were conducted.

14 Now no one can state a certain fact would have  
15 been elicited if a different question were asked. The  
16 only way we could possibly come up with proof like that  
17 is to show you what we have elicited during the depositions  
18 and how much information we have elicited than in many  
19 of the interviews in NUREG 0760, which we would be glad  
20 to provide the Board.

21 But I think Mr. Gamble's testimony as to the  
22 conduct, what he considers a conduct of the interviews  
23 that was not so as to elicit all relevant information ---

24 JUDGE SMITH: All interviews or certain  
25 interviews?



Sim 10-15

1 MS. BERNABEI: His criticisms are generic to  
2 the investigation. His understanding is all interviews.

3 JUDGE SMITH: All interviews. So all interviews  
4 are tainted. Then how do you intend to use this document  
5 in your case?

6 MS. BERNABEI: NUREG 0760? We don't intend  
7 to use the document at all. We would draw some information  
8 from the interviews.

9 MR. GOLDBERG: We are going to have to know  
10 which interviews are reliable enough for your use but  
11 not reliable enough for anybody else's use.

12 JUDGE SMITH: I can tell you, those that favor  
13 her case.

14 MR. GOLDBERG: That is exactly right.

15 MS. BERNABEI: Well, it doesn't seem to me that  
16 any party has to wholeheartedly endorse an investigation  
17 or interview. Obviously we don't have the resources that  
18 the NRC does and we can't go out and do the kind of investiga-  
19 tions they had the opportunity to do in 1980.

20 JUDGE SMITH: I think you have just slipped  
21 off on a very large tangent there at a wide angle.

22 MS. BERNABEI: What I am saying is we are going  
23 to rely on certain interviews and investigations even though  
24 we would have preferred to do it another way ourselves.

25 What I think is that the status to be given those

Sim 16-16

1 interviews and the eye to which the Board should look at  
2 those interviews could be guided by Mr. Gamble's testimony.  
3 I don't know how to state it any better than that.

4 JUDGE SMITH: Is that the best you can do?

5 (Board confers.)

6 JUDGE LINENBERGER: Ms. Bernabei, I would like  
7 to say the least confess some confusion here. But I thought  
8 I heard you just a few moments ago indicate that through  
9 the process of taking some depositions, and I don't know  
10 how many, you were able to derive considerably, I don't know,  
11 more voluminous or more reliable or more something kinds  
12 of information on certain subjects than exists in 0760, and  
13 the reason for that was that in the view of yourself and  
14 perhaps proposed Witness Gamble, the reason for that was  
15 that the Moseley approach was somehow less than adequate.

16 Now that says to me that if, indeed, I have  
17 represented correctly what you said and if, indeed, that  
18 situation does exist, it seems to me for you to do anything  
19 with it is going to require kind of a side-by-side comparison  
20 of information you received in certain depositions with  
21 information from similar people or at least information  
22 on the same subject that appearsd in 0760.

23 Without that side-by-side comparison I don't  
24 understand how it is that you are planning to improve the  
25 situation.

Sim 16-17

1 MS. BERNABEI: Okay. Let me explain, because  
2 obviously what I said was not clear. First of all, that  
3 is not Mr. Gamble's position. That is my position alone.  
4 I was attempting to answer specifically a question of  
5 Judge Smith as to how would you have us use evidence that  
6 the interviews were less than adequate and how would you  
7 expect us to weigh or otherwise regard the interviews if  
8 we had that information.

9 And my answer to him was well, obviously we can't  
10 prove the negative. We can't prove that if the interviews  
11 were done in a way so as to elicit information or better  
12 information, we can't prove that, you know, Gary Miller  
13 would have admitted he knew about incore thermocouples. We  
14 can't prove the negative.

15 And I was suggesting that we know that that is  
16 true from our own discovery that in fact we have elicited  
17 information five and a half years after the fact that was  
18 not elicited and does not appear in NUREG 0760. I was  
19 not attributing that information to Mr. Gamble.

20 But my point was that we cannot demonstrate  
21 to the Board what I believe was being suggested by Judge  
22 Smith. We can't prove that the investigation didn't turn  
23 up "X" fact because it was not done properly. What we can  
24 do is guide the Board as to how much weight it is to give  
25 specific interviews in its whole consideration of the case.

Sim 18-18

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You will have before you the interviews from

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four investigations as well as certain documents uncovered

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in the discovery portion of this proceeding, and I think

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that the Board should have some idea of what weight to give

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interviews that came from a particular investigation.

end Sim

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#19-1-SueT 1

2 JUDGE LINENBERGER: But isn't that guidance  
3 going to come from making some sort of a side by side  
4 comparison of information derived from your interviews,  
5 called depositions I guess in this case, versus informa-  
6 tion compiled here?

7 In order to give us the guidance you are trying  
8 to offer, aren't some kinds of side by side comparisons  
9 going to be necessary?

10 MS. BERNABEI: I think that's one way to do  
11 it. I guess what --

12 JUDGE LINENBERGER: You are not going to do  
13 it that way?

14 MS. BERNABEI: That's one way we do intend to  
15 do it, and we will with the various witnesses. However,  
16 that was not the purpose of Mr. Gamble's testimony.

17 MR. GOLDBERG: If Ms. Bernabei claims that she  
18 has done such a superior job during depositions that elicit  
19 much more, or much more reliable information, than was  
20 elicited by the investigation and information flow conducted  
21 by the NRC, then she has the information that she needs to  
22 rely on to present to this Board firsthand for the Board  
23 to draw its conclusions from.

24 And she is free to argue that her information  
25 as she is presenting it here is reliable and the information  
that the Board ought to use in reaching its decision. And

#19-2-SueT 1

2 she is free to argue that the Board shouldn't rely on,  
3 as the Board has said, the conclusions in 0760 which I  
4 think the Board has made very clear it's not going to do.  
5 She has her opportunity here to present firsthand the  
6 witnesses and the documents which she wants the Board to  
7 use in resolving the issue.

8 So, I don't see what the point is of saying  
9 the NRC didn't get out all the information that it could  
10 have elicited had it done the job that she thinks she can  
11 do.

12 MR. AU: May I make a point? I think Ms.  
13 Bernabei's argument is that without Mr. Gamble's testimony  
14 how is the Board to consider her depositions eliciting  
15 information which were more reliable than NUREG 0760, if  
16 I understand her point.

17 MS. BERNABEI: Well, I guess what -- I'm not  
18 addressing and I'm not trying to boost our own discovery.  
19 I'm just saying that outside of a side by side comparison  
20 I think there are other ways to guide the Board in terms  
21 of what weight to give those interviews.

22 JUDGE SMITH: Ms. Bernabei, to the extent that  
23 there are live witnesses that come before us, except for  
24 the time, an interview conducted closer to the event tends  
25 to have an element of greater reliability I would think  
as a general rule. But except for that aspect, if a witness

#19-3-SueT

1 is here telling us about, and subject to cross-examination  
2 and observation and everything, I would think that we would  
3 tend to give more consideration to what that witness is  
4 saying than the summary of that witness' view in a report.  
5 So, for that reason I really don't think you need Mr.  
6 Gamble.

7 But in any event, you are offering Mr. Gamble,  
8 it seems to me, as a general, undifferentiated criticism,  
9 across- the-board, as to the weight to be given all inter-  
10 views. And to that, I just don't believe it is appropriate,  
11 reliable, or helpful.

12 MS. BERNABEI: Okay. That wasn't the only  
13 intent in offering the testimony.

14 JUDGE SMITH: All right. What's the other one?  
15 There may be real snippets of relevancy in there, but  
16 again we have been faced before with rather substantial  
17 presentations by you and we have to search hard for the  
18 real bits of relevancy. And we are --

19 MS. BERNABEI: Let me just -- I will state our  
20 position again, although I understand the debate at this  
21 point is really -- I understand the Board to say that it  
22 will not consider, or it will strike, Mr. Moseley's previous  
23 testimony? It will not consider further testimony?

24 Is that correct?

25 JUDGE SMITH: No. We are saying that with



#19-4-SueT 1

2 respect to his previous testimony -- I don't think we  
3 have authority to strike it, but we will not base this  
4 decision based upon his previous testimony. We start  
5 fresh from that point.

6 To the extent that Mr. Moseley's testimony  
7 relies upon the conclusions of the 0760, then you may  
8 have a point. I don't know. But this argument all went  
9 off in the direction of your offering him also a part of  
10 your affirmative case in chief.

11 And that is where you haven't convinced us.

12 MS. BERNABEI: Do I understand the Board at  
13 this point has stated that it will not rely on Mr.  
14 Moseley's previous testimony in 1981?

15 I'm just trying to understand what the parameters  
16 of this discussion are at this point.

17 JUDGE SMITH: Before I make that blanket ruling,  
18 if Moseley testified that, I'm the Director of the Task  
19 Force, well, okay. He was the Director of the Task Force.

20 But the Appeal Board has told us to go out and  
21 do it for ourselves and never mind Moseley. And that's  
22 what we are going to do. So, to the extent that he --  
23 as far as I'm concerned I never even have to look at that  
24 transcript again of Moseley. I don't think it's necessary.

25 MS. BERNABEI: Okay. And I also understand the  
Board's ruling that it will not rely on the conclusions or

#19-5-SueT

analysis of Mr. Moseley; is that correct? Excuse me, of  
the NUREG 0760?

JUDGE SMITH: To the extent that I know what is  
a conclusion and analysis and what isn't. But with re-  
spect to this issue, we have already not relied upon the  
analysis of 0760. And to the extent that NUREG 0760  
concludes that Mr. Dieckamp did not -- I don't even know  
what it concludes with respect to that. They said he  
didn't file false material statements. To the extent  
that NUREG 0760 concludes that, indeed we will not rely  
upon that conclusion. We will arrive at our own conclusion.

To the extent that NUREG 0760 might conclude  
that a factual circumstance existed considered by us right  
now, I don't know.

MS. BERNABEI: Well, let me --

JUDGE SMITH: That's why I would like to have  
a better identification of what you mean by a conclusion.

In the first place, I'm not aware --

MS. BERNABEI: I will point you --

JUDGE SMITH: -- right now where there is a  
relevant conclusion.

MS. BERNABEI: Okay. Containment pressure  
spike, Section 2, beginning on Page 22. My understanding  
of this report, this is one of the three major sections  
in the report --

#19-6-SueT 1

JUDGE SMITH: Well, here is an example --

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MS. BERNABEI: Well, I --

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JUDGE SMITH: Here is a good example of

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fait res juis (sic), okay. On Page 23, "It was not until

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late the next evening on Thursday, March 29, 1979, that

6

the significance of the containment pressure spike was

7

generally known, and it was not until early in the morning

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of Friday, March 30, 1979, that the Station Manager was

9

aware that the pressure spike had been real."

10

Now, that is a conclusion which is up for grabs

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in this hearing. We will arrive at our own conclusion

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based upon the evidence here.

13

In any event, I don't see how Mr. Gamble can

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help us on that at all. I mean, nothing that I read in

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his testimony would help us in the slightest as to whether

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that is a reliable conclusion or not. And I don't think

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he can help us.

18

I agree with you. I just picked an example.

19

We can probably pick lots of other examples. That is an

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example of where we will have to arrive based upon this

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evidence, whether that statement is correct or not, or

22

what is the correct state of affairs.

23

MS. BERNABEI: I was just trying to clarify.

24

As I understand it now, the Board will not rely on the

25

conclusions or analysis of NUREG 0760, but will feel free

#19-7-SueT 1 to rely on any factual summary or factual recounting?

2 JUDGE SMITH: That's generally it. But my  
3 reservation is, I don't know if I agree with you always  
4 what a factual conclusion is and what one is not. That  
5 is my concern.

6 MS. BERNABEI: Well, I mean that's a matter --

7 JUDGE SMITH: We are doing it again. This is  
8 a new show.

9 MS. BERNABEI: Okay. Then, the argument narrows  
10 to what -- and I assume that I have lost this argument.  
11 But, then our argument is that Mr. Gamble has relevant  
12 testimony in his testimony about how the interviews were  
13 not conducted in a way to elicit the maximum information.

14 Our representation is that we can't prove  
15 what information would have been elicited.

16 JUDGE SMITH: No, and I agreed with you on  
17 that. And you really mischaracterized my --

18 MS. BERNABEI: Well, I didn't --

19 JUDGE SMITH: Yes, you did in your explanation  
20 to --

21 MS. BERNABEI: In any case, our position is  
22 that we believe it would be relevant testimony in terms  
23 of what weight the Board should give to the interviews  
24 which will be before you and will be referred to by all  
25 the parties.

#19-8-SueT 1

JUDGE SMITH: And that is where you have  
2 problems.

3 MS. BERNABEI: I've lost.

4 JUDGE SMITH: No, you haven't lost.

5 MS. BERNABEI: Okay.

6 JUDGE SMITH: But you haven't persuaded us  
7 either, because we still don't know what Mr. Gamble -- what  
8 you would make do with it. You are going to pick and  
9 choose what is reliable. We told you the standards that  
10 we would apply which would be traditional standards.

11 And that is, where we see a witness and we are  
12 convinced that the preponderance of the evidence favors  
13 the witness' point of view, then we would accept it even  
14 though it's inconsistent with a witness summary in this  
15 report. The witness summaries or no factual data in this  
16 report is binding on us when we have better evidence before  
17 us.

18 MS. BERNABEI: Okay. There will be some  
19 witnesses which will not appear before the Board.

20 JUDGE SMITH: All right. That's where you may  
21 have a problem. And we cannot tell you in advance what  
22 weight we give one over another. Mr. Gamble is not helpful.  
23 Mr. Gamble's testimony is rather naive and simple. And  
24 it's not instructive to us.

25 He has a mechanical approach to how Board's

#19-9-SueT 1

weigh evidence I believe. So, with that you have not made  
2 a case for Mr. Gamble's testimony.

3 MS. BERNABEI: We would obviously disagree with  
4 you but we have no choice but to accept the Board's ruling.

5 JUDGE SMITH: Right.

6 MS. BERNABEI: So, you are --

7 JUDGE SMITH: Let me confirm with my colleagues  
8 here that we have all shared this progression of thought.

9 MS. BERNABEI: Okay. And again if you would,  
10 we would appreciate a clarification on the record of  
11 your basis for not permitting the testimony.

12 JUDGE SMITH: I'm not going to do it again  
13 after it has taken about an hour.

14 MR. BLAKE: Could we take a short recess, Judge  
15 Smith?

16 JUDGE SMITH: Let's take about five minutes.

17 (Whereupon, the hearing is recessed at 4:47 p.m.,  
18 to reconvene at 4:54 p.m., this same day.)

19 JUDGE SMITH: We -- can we get back to business,  
20 please?

21 Now, Ms. Bernabei, our discussion about Mr.  
22 Gamble's proposed testimony remains somewhat incomplete.  
23 As we stated, there may be -- I said snippets, it may be  
24 more than snippets, there may be portions of it which are  
25 specifically relevant to our case and our issues, and

#19-10-SueT1

1 which may be perfectly competent testimony. I don't know  
2 if that's the case. It really isn't for us to go  
3 through the report and pick them out.

4 But some things I see there appear to be --  
5 and I'm referring to his criticisms of the report. A  
6 problem I have is that I don't know if those criticisms  
7 were successful or if the report continued with the same  
8 flaws or what. But I notice that he says -- well, here I  
9 pick an example. On Page 9 he says, "The draft report  
10 incorrectly stated that only Chwastyk and Mehler attribute  
11 the pressure spike to other than electrical faults or  
12 instrument malfunctions." That's pretty relevant to our  
13 case here.

14 And if he has evidence along that line, and  
15 if the final report said that, and if that is evidence  
16 that is in dispute in this case -- which I'm not sure  
17 that it is -- well, then we are not talking about that.  
18 I'm talking about his general overall criticism of the  
19 interviewing techniques.

20 The same way with Item Number 4 on Page 9. He  
21 alluded to an NRC inspector in the control room at the  
22 time of this spike. I don't know if that is the case  
23 or not, but I can't say that it's not relevant. And  
24 if you present him as having relevant testimony on that,  
25 we are not foreclosing that.



#19-11-SueT

1 We are foreclosing his general approach that  
2 we should somehow diminish across-the-board the weight  
3 of the interviews based upon his criticism of the investi-  
4 gatory approach.

5 I don't know where we stand with the relevance  
6 of Number 5 on Page 9. It could be relevant or not.

7 So, do you understand that point?

8 MS. BERNABEI: Okay.

9 JUDGE SMITH: All right. So, that is our  
10 ruling.

11 MS. BERNABEI: So, I understand he may take  
12 the stand to testify as to those portions the Board  
13 considers relevant?

14 JUDGE SMITH: I'm pointing out that I saw  
15 examples that I believed could be relevant. I don't know  
16 if they are. I don't know if my examples are complete.  
17 I'm saying that we have not intended to foreclose Mr.  
18 Gamble's factual testimony. We made that ruling last  
19 night off the record. It has been the thread of our  
20 ruling all the way through.

21 If this is appropriate and relevant, correct,  
22 factual testimony, and you wish him to be heard on that,  
23 then we will hear arguments whether he should be. It  
24 seems to me that he should be.

25 MS. BERNABEI: Okay. Well, then I suggest that

#19-12-SueT1

1 he be sworn and then we have the arguments about what  
2 portion should be stricken. I understand that's the  
3 Board's ruling unless the Board --

4 JUDGE SMITH: Well, I think we better go the  
5 other way and have what portions survive, because the  
6 major part of the report is -- his conclusions as to the  
7 impediments of the investigation, the general impediments  
8 of the investigation, and the deficits in it, and you  
9 can point out the parts that you believe are still  
10 relevant factually to the issues, if you wish.

11 It's just a recognition of what is the bigger  
12 burden.

13 MS. BERNABEI: Well, I guess I'm a little con-  
14 fused, Judge Smith. Our position is that this is relevant  
15 to the issue before you. That's why we proffered --

16 JUDGE SMITH: The whole testimony?

17 MS. BERNABEI: Right. That's why we prefiled  
18 written testimony on Mr. Gamble's behalf with this Board.  
19 If the Board wishes to strike portions of it, I think  
20 that that's your responsibility.

21 JUDGE SMITH: Oh, no, ma'am. We are giving  
22 you the opportunity to go through the report, extract  
23 from the portions that we have ruled were not acceptable,  
24 those which fall within the exception. The Board is not  
25 going to clean up your testimony for you.

#19-13-SueT1

MS. BERNABEI: Well, I --

2 JUDGE SMITH: You may take advantage of the  
3 invitation or not. It's up to you.

4 MS. BERNABEI: I'm not asking you to clean it  
5 up. I'm asking you, since I basically don't adhere to  
6 your position and we are accepting it, I'm just asking you  
7 what portions that would strike.

8 If you wish us to go through it and attempt to  
9 conform the testimony to your ruling, we can try to do  
10 that. It will take us some time. We can try to do that.  
11 I don't think -- first of all, I don't think --

12 JUDGE SMITH: I sense that you are not going  
13 to be inspired in that task.

14 MS. BERNABEI: No. We will obviously try to  
15 conform to the Board's ruling. Obviously, we think the  
16 testimony is relevant. We presented prefiled written  
17 testimony and it seems to me that the normal procedure is  
18 for the Board to strike those portions of it it believes  
19 are not relevant.

20 JUDGE SMITH: I will explain it once more, and  
21 I hope I'm not motivated to go into it yet another time.

22 But since we have observed that by far -- Ms.  
23 Bernabei, if I'm taking the trouble to explain to you  
24 I would appreciate if you would interrupt just for a  
25 moment your conversation and listen.

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MS. BERNABEI: I am.

2 JUDGE SMITH: Since we have explained that a  
3 large portion of the report is not relevant to the issue,  
4 then we will not follow what has sometimes been a customary  
5 practice in striking irrelevant portions, because most of  
6 the report is irrelevant.

7 We will instead give you the opportunity, if you  
8 understand our ruling, to go through it and demonstrate  
9 the portions which have direct factual relevance to the  
10 issues in our case. I can't explain it any better.

11 If you want to take advantage of the opportunity  
12 you may.

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1 MS. BERNABEI: We request we be given overnight  
2 to consider what course we will take.

3 JUDGE SMITH: All right. Anything further  
4 this evening?

5 MS. BERNABEI: I would move at this time to  
6 strike a portion of Mr. Dieckamp's testimony, specifically  
7 addresses a conclusion of NUREG 0760. It appears on page  
8 17 -- let me see, the first paragraph on that page, the  
9 first full paragraph on that page.

10 JUDGE SMITH: That includes this quoted  
11 part. They , the investigators conclude...?

12 MS. BERNABEI: Yes, and the preliminary portion  
13 of that sentence as well.

14 MR. GOLDBERG: I will give Mr. Blake the first  
15 opportunity to address Ms. Bernabei's motion, since it  
16 is licensee's testimony, but I would like to be heard  
17 on it after Mr. Blake is finished.

18 MR. BLAKE: What is the basis for the Motion to  
19 Strike?

20 MS. BERNABEI: The basis for the Motion to Strike  
21 is the Board has indicated it will not rely on conclusions  
22 in NUREG 0760. Therefore, I think Mr. Dieckamp's reliance  
23 on that Report is not relevant evidence to the Board.

24 That is, specifically, the only basis for that  
25 paragraph.

1 MR. BLAKE: I understand the Board's rulings at  
2 this point with respect to 0760, if we were to discuss  
3 other reports would be no different.

4 The Board does not feel bound at this juncture  
5 by the conclusions of prior investigators, which have  
6 looked at this issue. It is here to decide the issue  
7 for itself, and is not bound by prior conclusions in  
8 NUREG 0760 or indeed in other investigative reports.

9 However, Mr. Dieckamp, one of the issues is  
10 whether or not Mr. Dieckamp should have corrected his  
11 mailgram, and throughout the years since he sent his  
12 mailgram, there are a number of investigative reports  
13 which have addressed this. Mr. Dieckamp's testimony  
14 is that in addition to the specific individual statements  
15 as he says on page 16, the readings of these individual  
16 statements is impacted by the various investigators  
17 reactions to all the statements before them, and he goes  
18 on to give some specific examples of that.

19 That is important to Mr. Dieckamp's present  
20 position, and the position that he has maintained, and  
21 you may not, at this juncture, wipe out the basis for  
22 Mr. Dieckamp's thinking by the fact that the Board doesn't  
23 feel bound now by the conclusions of prior investigators.

24 I just cannot follow the Motion to Strike.

25 MR. GOLDBERG: I would like to add to what

1 Mr. Blake said, after saying that I agree with him.

2 That you can't change the fact that the  
3 investigators made this conclusion as it is written in  
4 NURGE 0760. The Board may not agree with it. The  
5 Board may choose to conclude otherwise, but the fact that  
6 this is what was stated in 0760, and that Mr. Dieckamp  
7 had this available to him, as is stated in his testimony,  
8 cannot be changed because there is a claim that the  
9 investigation was inadequate, or that the Board may reach  
10 different conclusions after hearing the evidence first  
11 hand in this proceeding.

12 And I don't think there is any basis to strike  
13 Mr. Dieckamp's testimony in this first paragraph on page 17  
14 any more than there is any basis to strike any other portion  
15 of it, which states that there were findings and conclusions  
16 reached by various investigators and reports which he has  
17 viewed since March 28, 1979, up to the present, to form  
18 the basis for his continued belief that the mailgram was  
19 true.

20 MS. BERNABEI: If I could just address -- first  
21 of all, I understood the Board's ruling somewhat differently  
22 than Mr. Blake.

23 I understood that in all circumstances that the  
24 Board was not bound by any conclusion as to any piece of  
25 evidence, any report before it. I understood its explicit



1 ruling to date that you would not consider the conclusions  
2 or analyses that were presented in NUREG 0760.

3 That is what I understand the Board's ruling  
4 to be.

5 JUDGE SMITH: Well, I don't know -- consider or  
6 be bound by it. I don't really care. Because I think all  
7 the issues are going to be presented afresh here. I  
8 did say that positively with respect to the Dieckamp issue,  
9 that we start totally anew with that Dieckamp mailgram  
10 issue, the aspect of NUREG 0760 to deal with that.

11 But in any event, this presents a good example.  
12 Let us say, for example, in comes Mr. Blake's proposed  
13 findings, and he proposes the indented language on page 17.

14 And as a source of that finding, he cites Mr.  
15 Dieckamp's testimony. Well, he won't get away with that,  
16 because events have overtaken him. The Board will have  
17 to decide whether Mr. Chwastyk's recollection of the  
18 cause of the spike is in error.

19 Investigators conclusion will not control. But  
20 the point is well made, and that is for the limited purpose  
21 for which apparently Mr. Dieckamp is citing it, whether his  
22 state of mind should have been changed to the effect that  
23 he should have corrected an allegedly erroneous mailgram,  
24 it is the fact of the conclusion rather than the truth  
25 of the conclusion which is relevant.

1                   The conclusion was made, and that is what he  
2 is pointing to.

3                   So, the fact that they made the conclusion is  
4 not disputed.

5                   MS. BERNABEI: Again, I --

6                   JUDGE SMITH: And I don't believe it is  
7 important. It is simply not important because they are  
8 not going to cite Mr. Dieckamp's testimony for the  
9 proposition that the investigators conclude that  
10 Chwastyk's recollection of the cause of the spike is in  
11 error. They wouldn't do that, and we wouldn't accept  
12 that.

13                   MS. BERNABEI: Let me just state how I  
14 understand NUREG 0760 that has been used by the Company  
15 since its issuance.

16                   The Company states the NRC Staff in this report  
17 comes to the conclusion no intentional withholding, this  
18 particular one, Chwastyk's recollection is in error.

19                   Mr. Dieckamp is saying: I base by continuing  
20 belief my mailgram was not in error because of the NRC  
21 Staff's conclusion, which has a certain substance to it.

22                   We are now foreclosed, as I understand by the  
23 Board's ruling, or by your general treatment of NUREG 0760,  
24 from attacking the basis for his opinion. And it is that  
25 report and conclusion that he relies on, and we don't think

1 it is a good one. We are now foreclosed from challenging  
2 that.

3 JUDGE SMITH: Everybody else seems to understand  
4 it.

5 (Board confers)

6 Judge Wolfe is looking at a different paragraph,  
7 and that is the second paragraph, which you didn't refer  
8 to. The first line in the second paragraph.

9 Before I move on to that, well, everybody  
10 participating in this discussion chose to understand the  
11 basis of the distinction between citing for the truth of  
12 it as compared for citing it for Mr. Dieckamp's state of  
13 mind, and I don't think it is possible to explain it any  
14 better or discuss it any more thoroughly, so we will  
15 stop there and rule.

16 We rule that, for the reasons stated, your  
17 Motion to Strike is overruled.

18 Now, Judge Wolfe is concerned about the  
19 application of that with respect to the first line --  
20 second full paragraph on page 17, which I will read.  
21 "These independent investigations and the conclusions  
22 arrived at after the date of the mailgram, and based  
23 on additional information, provide direct support for the  
24 thrust of the mailgram's statement."

25 He is concerned that that might not be captured

1 by our ruling.

2 I view it in the context of why Mr. Dieckamp  
3 never felt it necessary to amend his mailgram, and that  
4 is the context in which it seems to appear, but you are  
5 invited to comment.

6 MS. BERNABEI: I have the same problem. That  
7 is, I don't think the distinction being made is correct,  
8 legally or factually.

9 Mr. Dieckamp is using these investigations and  
10 conclusion to support the fact that his mailgram is still  
11 accurate in his mind today. I don't think one can use  
12 those conclusions, and yet foreclose the parties for  
13 inquiring into the basis.

14 I understand what you are saying Judge, but  
15 I disagree.

16 JUDGE SMITH: Just one final little thought.  
17 Even if the conclusions are wrong, he believes they support  
18 his state of mind. So it is not for the truth of them.

19 So, we don't have any more to add, so I guess  
20 that concludes that issue.

21 MR. AU: May I ask another point related to  
22 this issue, in light of the Board's ruling on Mr.  
23 Gamble's testimony. I note that Mr. Moseley's prepared  
24 testimony may be somewhat affected by the Board's ruling.  
25 I am wondering whether the NRC Staff will be going back to

1 reform his testimony as well?

2 JUDGE SMITH: I think parts of his testimony,  
3 as I remember it, will require some reformation.

4 MR. GOLDBERG: Well, we will address that matter  
5 if, and when, Mr. Moseley appears.

6 MS. BERNABEI: I understood the Board's ruling  
7 of --

8 JUDGE SMITH: Anything further this evening.

9 MR. BLAKE: Judge Smith, it is important that  
10 I know whether or not I accurately represented the Board's  
11 judgment about this when I said that the Board does not  
12 feel bound by any of the investigative orders, or any  
13 of the prior investigative reports on this subject, but  
14 rather feels it needs to make its decision here.

15 Are we, in fact, distinguishing NUREG 0760 here  
16 and ultimately will we, the parties, be able to make less  
17 use of it than indeed can be made of any of the other  
18 reports?

19 In some ways I am confused here. You know,  
20 --

21 JUDGE SMITH: I do believe that NUREG 0760 in  
22 certain respects stands apart from a typical NRC  
23 investigatory report, in that the law of this case is  
24 that we erred in relying on it, and with respect to  
25 this particular issue, we may not rely upon it with

1 respect to this issue, and that is the mailgram accuracy  
2 issue, according to the Appeal Board in their remand.

3 So, to that extent I do believe that the  
4 document stands on a different footing.

5 MR. GOLDBERG: Judge Smith, the Appeal Board  
6 said that because basically that is all the Licensing  
7 Board relied on to resolve the Dieckamp mailgram issue,  
8 and they said that was the mistake that the Licensing  
9 Board made.

10 It should have inquired further of Mr. Dieckamp  
11 himself, and of the people in the control room as to what  
12 they knew.

13 And so, now that the Licensing Board is doing  
14 precisely that, I see no difference between 0760 and  
15 any other reports. The Licensing Board clearly is not  
16 free to rely solely on 0760.

17 JUDGE SMITH: And the report stands on a  
18 different footing.

19 MR. GOLDBERG: Nor would I think the Appeal  
20 Board allow the Licensing Board to rely solely on any  
21 other investigative report that might be equally  
22 conclusory, but the Licensing Board is hearing direct  
23 evidence from the principal parties concerned here, and  
24 curing the criticism of the Appeal Board, that you  
25 resolved what they viewed as an important issue solely



1 on the basis of the Staff's investigation.

2 JUDGE SMITH: If, in obedience to the Appeal  
3 Board's mandate, we go out and redo the inquiry based  
4 upon live testimony, depositions, depositions which were  
5 in this instance developed under the adversary process  
6 as compared to the other instance where no one was  
7 interested except me, compared to that, why in the world  
8 would we rely upon the conclusions of this report when  
9 we have recreated the whole events right here in this  
10 hearing room?

11 I don't know what advice to give you gentlemen.  
12 But I know this, we are going to make our decision based  
13 upon the law, and that is the preponderance of the  
14 reliable probative and substantial evidence.

15 And if it is created in this hearing room, or  
16 in discovery process in an adverse process, we rely upon  
17 that and not upon NUREG 0760, and I expect that each of  
18 the issues pertaining won't -- will be relitigated here, and  
19 we are talking about who knew about the pressure spike --  
20 you see, the difficulty is, I have not studied NUREG 0760  
21 in light of this ruling, so it is going to be up to the  
22 parties to inform us.

23 But if NUREG 0760 is consistent with what we  
24 find here, fine. If it is inconsistent with what we find  
25 here, then it seems to me that what we find, based upon



1 the witnesses and the evidence developed in the adversary  
2 process is what is going to have to prevail.

3 This is Mr. Goldberg's point. Now, time and time  
4 again in hearings which a matter is not in dispute, we rely  
5 upon investigative reports. Conclusory, summary ones. We  
6 do it frequently when they are developed in the regular  
7 course of business, and they are not in dispute.

8 This happens to be in dispute, so we can't do it.  
9 So, to that extent it is like every other one, but it is  
10 in dispute, and the Appeal Board has told us that in respect  
11 to this issue, it is too conclusory.

12 MR. BLAKE: Can I address our schedule for  
13 tomorrow. Mr. Illjes and parties had envisioned might  
14 have an opportunity to go on today. He has been sitting  
15 here throughout the afternoon.

16 JUDGE SMITH: He is accompanied by counsel,  
17 and Mr. Voigt has been trying to get our attention.

18 MR. VOIGT: I just wanted to raise the same  
19 problem, Mr. Chairman. Mr. Chwastyk has been served with  
20 the subpoena which you signed, and he is going to be here  
21 in accordance with the subpoena tomorrow morning, so the  
22 first thing we would like to do is confirm that it is your  
23 intention to go forward.

24 JUDGE SMITH: There is some information you  
25 are missing. I understood that Mr. Chwastyk was a witness

1 that you were sponsoring, and that we would issue the  
2 subpoenas to two of your witnesses, I believe it was,  
3 for almost any time and date, with the understanding that  
4 the actual time and date would be modified based upon the  
5 schedule worked out in the hearing room, because we could  
6 not predict exactly when the witness would be ready to  
7 testify, and we certainly don't want him sitting around  
8 the hearing room for days while we get to him.

9 So the date in that subpoena was to have been  
10 adjusted by Ms. Bernabei, and apparently you haven't done  
11 that?

12 MS. BERNABEI: Well, we did adjust it until  
13 tomorrow morning.

14 JUDGE SMITH: Oh, I see.

15 MS. BERNABEI: Not myself, but I believe Ms.  
16 Doroshow spoke to Mr. McBride or Mr. Voigt about it.  
17 So, it was readjusted until tomorrow morning.

18 I think what Mr. Voigt is saying is are we  
19 going to get to Mr. Chwastyk tomorrow morning. We fully  
20 anticipated that we would be through with Mr. Gamble today  
21 and proceed.

22 If I can just make a suggestion. Would you  
23 let us confer for a moment with Mr. Gamble, and perhaps  
24 we could have Mr. Chwastyk come tomorrow morning as  
25 planned. I am just not sure of Mr. Gamble's schedule.

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If we are proposing that he appear for a limited portion of his tesimony, I am just not sure he can do that. What I would propose is that we be allowed to confer with him and then come back to Mr. Voigt's question as to whether or not Mr. Chwastyk can come tomorrow morning.

End 20.  
MS fols.

Sim 21-1

(Board conferring.)

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2 MS. BERNABEI: I have just conferred with  
3 Mr. Gamble and it would be his preference to come back next  
4 week. So I think we can go ahead with Mr. Chwastyk, and  
5 we would present Mr. Gamble's testimony whenever Mr. Chwastyk  
6 finished, presumably sometime Tuesday of next week.

7 JUDGE SMITH: I just wonder if the parties have  
8 taken into account their need to brief the matter before  
9 the Appeal Board.

10 Where are we? Now you want to know which of  
11 your clients, or both of your clients, which one has to appear  
12 in the morning, They are both working, or Chwastyk is not.

13 MR. VOIGT: Mr. Chwastyk is, as I think the  
14 Board knows, is no longer employed by the GPU company. He  
15 is a real estate broker. He set aside tomorrow. He won't be  
16 in his office tomorrow. He will be here tomorrow, and I  
17 think that is satisfactory.

18 I have a little concern, if possible, to establish  
19 at least some guidance about who needs to be here next week.  
20 For example, Mr. Illjes, who was here today, is going out  
21 of town and he won't be back until Tuesday night. So he  
22 can't really be here on Tuesday.

23 I am just trying to get a little feeling for  
24 who needs to be here when.

25 JUDGE SMITH: Well, is there any reason this

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has to be on the record?

MR. VOIGT: No, sir.

JUDGE SMITH: All right. We will adjourn for tonight and we will meet tomorrow at 9.

(Whereupon, at 5:22 p.m., the hearing adjourned, to reconvene at 9:00 a.m., Wednesday, November 21, 1984.)

\* \* \* \* \*