

ORIGINAL
UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

METROPOLITAN EDISON COMPANY

(THREE MILE ISLAND NUCLEAR
STATION, UNIT No. 1)

DOCKET NO:

50-289-SP

LOCATION: HARRISBURG, PA

PAGES: 29,056 - 29,224

DATE: WEDNESDAY, NOVEMBER 21, 1984

TR. 01
Orig to E. Pleasant - 1121-H St.
1 add. Cg to ASLBP - EW/W - 439

ACE-FEDERAL REPORTERS, INC.

Official Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

2411280192 241121
PDR ADOCK 050000 2287
T PDR

NATIONWIDE COVERAGE

9/1

Sim 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

----- X
:
In the Matter of: :
:
METROPOLITAN EDISON COMPANY : Docket No. 50-289 SP
:
: (Restart Remand on
: Management)
:
:
----- X

The Library
Richard's Hall
University Center
2986 North Second Street
Harrisburg, Pennsylvania 17110
Wednesday, November 21, 1984

The hearing in the above-entitled matter
reconvened, pursuant to recess, at

BEFORE:

IVAN W. SMITH, Chairman
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

SHELDON J. WOLFE, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

GUSTAVE A. LINENBERGER, JR., Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

SueTraylor

APPEARANCES:

2

On behalf of the Licensee:

3

ERNEST BLAKE, Esquire

DAVID R. LEWIS, Esquire

4

Shaw, Pittman, Potts & Trowbridge

1800 "M" Street, N. W.

5

Washington, D. C. 20036

6

On behalf of Three Mile Island Alert:

7

LYNNE BERNABEI, Esquire

Government Accountability Project

8

1555 Connecticut Avenue, N. W.

Washington, D. C. 20036

9

10

JOANNE DOROSHOW, Esquire

The Christic Institute

1324 North Capitol Street

11

Washington, D. C. 20036

12

On behalf of the NRC Staff:

13

JACK R. GOLDBERG, Esquire

LOIS R. FINKELSTEIN, Esquire

14

Office of the Executive Legal Director

U. S. Nuclear Regulatory Commission

15

Washington, D. C. 20555

16

On behalf of the Commonwealth of Pennsylvania:

17

THOMAS Y. AU, Esquire

Assistant Counsel

18

Department of Environmental Resources

101 South Second Street

19

503 Executive House

Harrisburg, Pennsylvania 17120

20

21

Representing the Witness, Chwastyk:

MICHAEL F. MC BRIDE, Esquire

LeBoeuf, Lamb, Leiby & MacRae

22

1333 New Hampshire Avenue, N. W.

Washington, D. C. 20036

23

24

eral Reporters, Inc.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>BOA</u>
Joseph J. Chwastyk					
By Ms. Bernabei		29,108			
By Mr. Goldberg		29,171			

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

<u>EXHIBIT NO.</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Licensee Mailgram Exhibit No. 1.		29,115

Sim 1-1

P R O C E E D I N G S

1 JUDGE SMITH: Are we ready to proceed?

2 MS. BERNABEI: Yes. I have two preliminary matters
3 that I would like to bring to the Board's attention.
4

5 JUDGE SMITH: Okay. I have one of my own, too.

6 After we adjourned last night I became concerned
7 that I may have been unfair to Mr. Gamble in my characteriza-
8 tion of his testimony. I have reviewed the transcript and
9 I believe that in fact I have been unfair.

10 I disparaged in general terms his testimony calling
11 it rather naive and simply. I don't think that is a fair
12 comment. One, the testimony appears to me to be directed
13 as an overall criticism of the investigation and, as such,
14 it is not as I characterized it.

15 My concern is the application of his view of it
16 to this particular adjudication is not instructive to us
17 because of the expressly limited nature of the issue.

18 So I think it is unfortunate because Mr. Gamble
19 has gone to some trouble to come forward and express his
20 views, and that should not be discouraged by disparagement by
21 any means. He should be encouraged to express his views when
22 he feel that they are important, as he does. So for that
23 we are appreciative.

24 Moreover, I should not really put labels on
25 the testimony as such. We have discussed the weaknesses

Sim 1-2

1 and strengths of it. That should be the characterization
2 of the testimony on the actual substance of it and I am not
3 pleased with the lable.

4 And, furthermore, I said he had a mechanical
5 approach to how the Board views this, and I don't know if he
6 has any approach as to how we view this evidence. I don't
7 know what he knows about the issues.

8 Therefore, I am going to strike my remarks as
9 being inappropriate appearing on transcript 29,034, beginning
10 with line 23, the statement "Mr. Gamble's testimony is rather
11 naive and simple" is stricken. Remaining, however, is "it
12 is not instructive to us." That remains.

13 The next line beginning on line 25 is "He has a
14 mechanical approach to how the Boards weigh evidence I
15 believe." That statement continuing over to 29,035 will be
16 stricken. Remaining will be "So with that you have not made
17 a case for Mr. Gamble's testimony."

18 MS. BERNABEI: Judge Smith ---

19 JUDGE SMITH: I hope you will communicate that
20 to Mr. Gamble.

21 MS. BERNABEI: Yes, I will. I would like to state
22 our position on the recored. We are opposed to striking
23 of any portion of the record. We appreciate your comments
24 today ---

25 JUDGE SMITH: It is there for -- I mean my point

Sim 1-3

1 is that it is not a conclusion of this Board. However, it
2 will physically remain obviously in the transcript.

3 MS. BERNABEI: Okay. I will communicate your
4 comments to Mr. Gamble.

5 JUDGE SMITH: All right. Shall we proceed.

6 MS. BERNABEI: I have two housekeeping matters.
7 One has to do with service of the TMIA's motion for certifica-
8 tion, directed certification. I inquired of my office
9 yesterday evening and I found that Mr. Goldberg had been
10 served, as I understand it, around 5 or 5:30, or his office
11 had been served at 5 or 5:30 on Monday. So I suggest that
12 he check with his office.

13 Secondly, there appears to have arisen a problem
14 with the document room at Shaw Pittman for the materials or
15 documents related to the training issue.

16 We made a request of Mr. Blake, or I think it
17 was Mr. Blake on Monday, asking that since we were in
18 hearings that there be provision made for Ms. Bradford to
19 review documents in the later afternoon into the early
20 evening on the training issue.

21 We were informed by a paralegal that that
22 couldn't be done. I then asked Mr. Blake, and he told me
23 that I would have to contact Ms. Bauser. Ms. Bauser wasn't
24 in the office yesterday, and we are now on Wednesday and
25 at least my minimal understanding of what is going on on

Sim 1-4

1 this issue in terms of the document availability is that the
2 document room may be closed today.

3 So we would request some direction from this
4 Board that the document room either be maintained as open
5 to some later time this evening for Ms. Bradford's review
6 or sometime on Friday.

7 As the Board well knows, our time, as the other
8 parties, has been taken up with this hearing and we haven't
9 had an opportunity to review the training documents. So we
10 would request some direction from the Board that they be
11 available either later this evening or -- and I am talking
12 now in the range of from 4 to 7 p.m., something in that
13 nature -- or on Friday.

14 MR. BLAKE: Yesterday Ms. Bernabei came to me
15 and said would it be all right with me if Ms. Bradford
16 reviewed documents at our training discovery room in our
17 offices in Washington this evening from about 4 to 7. I
18 said I just can't address it. I don't know what the arrange-
19 ments have been on the training front between Ms. Bauser
20 and TMIA. I don't know whether the documents are still
21 in Washington or in the room. You will just have to call
22 Ms. Bauser and find out. I don't know how to do it here
23 or long distance.

24 I did make the observation on Thanksgiving
25 eve that I didn't know whether or not there would be people

Sim 1-5

1 available in our offices, particularly after working hours
2 on Thanksgiving eve. I don't know what to do about it at
3 this juncture. I don't know how to address it.

4 MS. BERNABEI: The documents are available at
5 Shaw Pittman and that doesn't appear to be the problem. The
6 problem is that we have been ---

7 JUDGE WOLFE: Has Ms. Bauser so advised you?
8 Have you contacted Ms. Bauser?

9 MS. BERNABEI: Yes. We didn't contact Ms. Bauser.
10 We contacted a paralegal.

11 JUDGE WOLFE: Ms. Bradford shakes her head.
12 You have not contacted ---

13 MS. BRADFORD: We did not contact Ms. Bauser.
14 Ms. Bauser was not in the office yesterday. We were told
15 by a paralegal that we would have to contact Ms. Bauser. The
16 problem arises, as I understand it, is we have an agreement
17 with Shaw Pittman that we will advise them of any need to
18 use the documents by 3 p.m. the day prior to our using them,
19 especially if we are going to be using them after hours,
20 as would be the case today.

21 JUDGE SMITH: The arrangement that you have with
22 Shaw Pittman was not pursuant to the Board's order. The Board
23 has not ordered that you have access to Shaw Pittman's ---

24 MS. BERNABEI: For the Board's information,
25 the documents have only been produced at the law firm. They

Sim 1-6

1 have not been produced to the parties. The only offer of the
2 documents is pursuant to the document or in discovery
3 responses at Shaw Pittman.

4 JUDGE SMITH: This would be then pursuant to the
5 general discovery authorization and request for documents.
6 Well, hasn't discovery closed on that issue since testimony
7 is overdue?

8 MS. BERNABEI: Well, the documents I understand
9 are available for review. These are not additional documents.
10 These are documents that were produced during the discovery
11 period or that were due to be produced.

12 What we are asking is that Ms. Bradford, as I
13 understand the other parties, be permitted a time where she
14 can actually review.

15 MR. BLAKE: Why don't you just go and try to
16 reach Ms. Bauser this morning, somebody, and let's deal with
17 it at the bread or come back. I don't think the Board needs
18 to be involved here.

19

20

21

22

23

24

25

#2-1-SueT 1

2 MS. BERNABEI: Well, I requested the Board
3 be involved because obviously we are not getting coopera-
4 tion from you. I mean, that's --

5 JUDGE WOLFE: Mr. Blake has made his position
6 known, Ms. Bernabei. It would seem if you have trouble
7 after you have contacted Ms. Bauser and there is no attempt
8 at cooperation, then come back to us.

9 MS. BERNABEI: Fine. We will attempt -- if she
10 is available we will contact her. If she is not, we
11 will report to the Board.

12 JUDGE SMITH: Yes. I also understand -- on
13 Friday afternoon I briefly looked at a letter from Ms.
14 Weiss complaining also about availability of documents.
15 But, do you have a separate position on the training issue
16 that you are pursuing other than UCS?

17 MS. BERNABEI: No. We have -- if you remember,
18 Judge Smith, we divided in some respects lead responsi-
19 bility on some of the issues.

20 JUDGE SMITH: On training, yes, I remember.

21 MS. BERNABEI: On training. Because of TMIA's
22 involvement in this portion of the hearing, some of
23 those issues may be transferred to UCS. We haven't really
24 formally talked about that or decided about that.

25 But, in any case, as I understand it we have
26 been working under the same rules with Shaw, Pittman in

#2-2-SueT

1 terms of the documents; that is, all the responsive docu-
2 ments and interrogatory responses are produced in mass,
3 in one place. And we have access to both of them.

4 JUDGE SMITH: Anything else?

5 MR. GOLDBERG: Yes. I have two matters.

6 With respect to TMIA's motion to the Appeal Board for
7 directed certification, I talked to my office last night
8 and we do have now in our office in Bethesda a copy of
9 the motion. And we believe that we can respond to that
10 motion without it affecting the hearing schedule here at
11 all.

12 The second matter is that yesterday -- at the
13 beginning of this proceeding yesterday, we identified
14 those people who were sitting at counsel table. And I
15 wanted to state for the record that yesterday I was
16 joined for some time during the afternoon by Mr. Terry
17 Harpster who was one of the investigators and authors of
18 NUREG 0760. And he will probably be joining us again
19 next week.

20 JUDGE SMITH: Any other preliminary business?

21 MR. BLAKE: Yes. I have reviewed the transcript
22 and I believe Mr. Bernabei has as well, and she is in
23 agreement that she mis -- I will leave the characteriza-
24 tion to her -- in a question to Mr. Dieckamp.

25 MS. BERNABEI: In my question to Mr. Dieckamp,

42-3-SueT

1 I suggested or had a premise statement that in fact Mr.
2 Crietz had contacted the Lieutenant Governor at a previous
3 time. In fact, he did call the Lieutenant Governor but
4 it's not correct in the impression that he had previously
5 communicated. And that was not the intent of my question.
6 Let me state the question and answer, and I would agree
7 with Mr. Blake that it should be stricken.

8 I would also move that those portions of Mr.
9 Crietz's deposition that were addressed or formed the
10 foundation for my questions be admitted into the record.

11 It appears on 28,960, Line 8: "Question: And
12 doesn't he state that upon learning of those offsite
13 releases he then contacted the Lieutenant Governor because
14 previous information he had given the Lieutenant Governor
15 indicated there were no offsite releases?"

16 "Answer: Yes. And the record suggests that
17 this is at 11:30 or something like that."

18 The question is correct except to the point
19 that Mr. Crietz had given previous information to the
20 Lieutenant Governor, which was incorrect. That is not the
21 case and that's not what he suggests. That was simply
22 a mistake on my part.

23 The rest of the question is correct. I would
24 agree to strike that. And what I would also do --

25 JUDGE SMITH: Let's have the precise words which

#2-4-SueT

1 are stricken.

2 MS. BERNABEI: What I would propose -- well, I
3 don't know if we can do this without asking Mr. Dieckamp
4 an additional question.

5 What I would propose is Lines 10 through 12
6 as the incorrect portion of the question. I think in this
7 case Mr. Dieckamp probably understood, as I did, that the
8 sense of the question was contacting the Lieutenant
9 Governor to inform him of offsite releases.

10 MR. BLAKE: Agreed.

11 MS. BERNABEI: You have no problem with that?

12 MR. BLAKE: No.

13 MS. BERNABEI: Okay. Fine.

14 MR. BLAKE: We would delete on Lines 10 through
15 12 the words "because previous information he had given
16 the Lieutenant Governor indicated there were no offsite
17 releases."

18 And the answer would still, I believe, be
19 applicable. I will inform the Board if Mr. Dieckamp has
20 a different view. I don't think there is a need to recall
21 Mr. Dieckamp on this.

22 MS. BERNABEI: I would also -- and Mr. Blake
23 may need some time to consider this, but I would also
24 like to move in as TMIA exhibits for admission into the
25 record portions of the Crietz and Lentz depositions on which

#2-5-SueT

1 we questioned Mr. Dieckamp, or the premise of which formed
2 certain questions to Mr. Dieckamp. Specifically, the
3 portions I suggest in the Crietz deposition of October 29,
4 1984, Page 20, Line 15 to Page 30, Line 5.

5 In addition, in the Lentz deposition, Page 105,
6 Line 7 to Page 109, Line 1. I am trying to find the date
7 right now of that deposition.

8 MR. BLAKE: Give me the last page and line on
9 Lentz, please. And can I have the Lentz deposition back?

10 MS. BERNABEI: Yes, that's what we are trying
11 to find. Page 105, Line 7 to Page 109, Line 1.

12 MR. BLAKE: I will have to review the Crietz
13 deposition. I think right at this point I could address
14 the Lentz deposition if I could just get my copy.

15 (Ms. Bernabei is looking through documents.)

16 JUDGE SMITH: Can't this be done at a break?

17 MS. BERNABEI: I think so if Mr. Blake would
18 defer.

19 MR. BLAKE: Sure.

20 JUDGE SMITH: All right.

21 MR. BLAKE: I have a couple of items, Judge
22 Smith.

23 JUDGE SMITH: You have no other items?

24 MR. BLAKE: I say, I have a couple of items.

25 JUDGE SMITH: Oh, you have. All right.

#2-6-SueT

1 MR. BLAKE: One, yesterday Mr. Bernabei asked
2 about arrivals at TMI. There was a reference to one of
3 the identified exhibits. I said I would check on whether
4 or not those particular pages were our best understanding
5 or best information on arrivals at TMI. I couldn't do
6 that last night. We need at least a working day to check
7 with people.

8 And I will be back to the Board and the parties
9 on that hopefully by Tuesday.

10 Earlier, Judge Smith, and it may have been at
11 the prehearing conference -- my memory is not up to it --
12 you indicated I believe that Judge Linenberger would like
13 to have some representation that we could refer to of
14 the control room to get an idea of positions or panels,
15 how the control room was set up. I have distributed this
16 morning to the parties and to the Board several documents.

17 One is a drawn figure overview of the control
18 room. The remaining pages are photographs of the control
19 room. It may be that that just provides a sort of re-
20 ference. It may be at some point that you will want it
21 marked as an exhibit.

22 I just leave it for your review and for the
23 parties' review at the moment. And we can determine
24 whether or not there is a need.

25 Now, in addition, on the overlay, on the drawing

13-7-SueT

1 of the control room, we have pointed out where the reactor
2 building pressure recorders and the reactor building
3 pressure visual alarm and audio alarm appear in the
4 control room. If you will look at your photographs for
5 a minute, I will also orient you on those. I have not
6 put a mark on the photographs, but just so that people
7 are oriented.

8 If you take the photograph which is labeled
9 TMI-2 Control Room A and look on the right-hand side of
10 the photograph, the panel which is in the foreground of
11 the picture, large panel, has a vertical surface, looks
12 like maybe a couple of doors and then a sloping surface
13 and then a more vertical sloping surface.

14 end #2
15 Joe flws

1 There are two recorders which appear almost
2 cut off on that page, on the more vertical sloping surface.
3 Those are the two reactor building pressure recorders.

4 Now, I will hold up mine so that the parties
5 can orient themselves.

6 (Mr. Blake holds up document to parties)

7 Now, in looking at that same photograph, on
8 the panel in the background of the picture, again looking
9 at the right hand portion of the photograph, you will note
10 that there are three boxes of indicators or three rectangular
11 panels of indicators. Of those three --

12 JUDGE SMITH: Is that under the clock?

13 MR. BLAKE: To the right of the clock in the
14 photograph. Of those three, the center one and the one
15 on the left in each instance, the furthest upper left hand
16 corner alarm is, in that case, the reactor building pressure
17 visual alarm, and again, I will hold it up to try to orient
18 people if my descriptor is not sufficient.

19 (Mr. Blake holds up document to parties)

20 Having oriented you to where they appear, you will
21 note that the same two figures appear in the photograph
22 labeled TMI-2 Control Room B, and I will hold that up again
23 to make sure everybody sees this.

24 (Mr. Blake holds up document to parties)

25 They do not appear in C, which is the right hand

1 portion of the panels, and on the photograph D of the
2 control room, they will show up again on the panel, and I
3 won't try to describe where, but you will be able to see
4 them hopefully now that you are oriented.

5 I would point out only one thing on Control Room D
6 photograph, and that is that these photographs were taken
7 in the TMI-2 control room after the accident, and to the
8 extent any other use is to be made of these, I point out
9 that the large board which appears basically in the center
10 of Photograph D, which is a matrix of the core, is a board
11 that was placed in there after the accident to provide, I
12 believe, in core temperature readings or orientation for
13 the operators in the control room, and this was not a panel
14 that was in place or existence prior to the accident.

15 So, I will leave the parties to review it and
16 determine whether or not you want to make it an exhibit to
17 refer to.

18 JUDGE SMITH: I see differences beyond the
19 difference you describe in Control Room Photo A, compared
20 to Control Room Photo B. I don't know if it is just my
21 perspective or what, but it doesn't even seem to be the same
22 room, with the exception of the display panels you have
23 identified.

24 MR. BLAKE: My understanding is it is the same
25 control room. A is a picture looking -- well, may I start

1 you Judge Smith by looking at the overview of the control
2 room if you would, for a second.

3 If you put these --

4 JUDGE SMITH: Never mind, I have it. Judge
5 Linenberger has explained it to me. Thank you.

6 JUDGE LINENBERGER: I appreciate this very much,
7 Mr. Blake. I would ask you one question about your comments
8 of this added display board in the center that is shown in
9 the middle of Photograph B.

10 You indicated that is a recent addition. Does it
11 -- from the photograph, it looks as though it might just be
12 a plywood panel or something stuck up there, and I am
13 wondering to what extent it covers something that is of
14 interest to operations, but --

15 MR. BLAKE: You have exceeded my knowledge. I
16 don't know the answer.

17 JUDGE LINENBERGER: Fair enough. Let's not waste
18 time on that.

19 MR. BLAKE: Mr. Chwastyk does, who is here, and
20 probably for your information could answer it, but I just
21 don't know the answer.

22 JUDGE SMITH: All right. Anything else of a
23 preliminary nature?

24 MR. BLAKE: You also asked, Judge Smith, and it
25 might have been at the same time, that we provide someone

1 to discuss the incores.

2 Again, I believe it was from Judge Linenberger.
3 Mr. Broughton, when he appears as a witness, will be prepared
4 to discuss the incores.

5 JUDGE SMITH: Okay.

6 MR. McBRIDE: Judge Smith?

7 JUDGE SMITH: Just a moment, Mr. McBride. Is
8 there any additional preliminary business?

9 MR. BLAKE: Yes, sir.

10 JUDGE SMITH: Okay.

11 MR. BLAKE: In reviewing the transcript and the
12 questions that were raised regarding my reference to
13 additional Faust and McGovern statements that I intended
14 to cite in my findings, I see there is some question
15 regarding the purpose.

16 I am prepared to state my purpose, which is
17 that I want before the Board a balanced indication of what
18 these individuals said, and my intention in referring the
19 Board to those pages of statements by Mr. McGovern and Mr.
20 Faust are, indeed, to provide a different view of these
21 individuals statements or knowledge of events on March 28th
22 than the selected portions which were referred to by Ms.
23 Bernabei in her questioning of Mr. Dieckamp.

24 That is the purpose, and I did not carry Mr.
25 Dieckamp through them, or have him read those portions and

1 take up the hearing time to do that.

2 Finally --

3 MS. BERNABEI: Are you moving on to another matter?

4 MR. BLAKE: Yes, I am.

5 MS. BERNABEI: Okay. Perhaps I missed something,
6 but I didn't refer to portions of those depositions at all,
7 or interviews at all in my questioning.

8 JUDGE SMITH: You didn't say that, I don't believe.

9 MS. BERNABEI: No. I referred specifically to a
10 chronology taken down by Mr. Marshall from Mr. McGovern,
11 and secondly an interview of Mr. Faust.

12 The purpose for which I cross examined Mr. Dieckamp
13 is that those were both interviews or chronologies available
14 to the Company prior to sending the mailgram on May 9th.
15 Our position is that we understood the Board's ruling, and
16 I guess my understanding is confirmed after yesterday's
17 discussion about the NUREG 0760 interviews, that there was
18 -- that because of the vast number of interviews and
19 depositions before you in the joint mailgram exhibit, that
20 you would want the parties to point you to specific portions
21 in their examination of witnesses in order for you, the
22 Board, to base any findings on them.

23 In accordance with that ruling, we have attempted
24 through cross examination to draw out our case through the
25 witnesses, and refer to those specific portions of the

1 depositions.

2 I have no problem with Mr. Blake's suggestion
3 if all parties are permitted to point out those portions
4 of relevant depositions and interviews which they believe
5 support their case.

6 However, I don't think there should be a collective
7 -- a selective pointing out to the Board a selected selection
8 of those depositions or interviews.

9 End 3.
10 MS fols.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Sim 4-1

1 To give the Board an example, Mr. Chwastyk will
2 be testifying today. By my count I think he has given four,
3 at least four interviews to the NRC. There may be relevant
4 portions of those interviews that we don't need to bring up
5 during Mr. Chwastyk's cross-examination. However, it may
6 be useful to cite to them in our findings.

7 It is those kinds of things I think that could
8 be accommodated in Mr. Blake's suggestions, but I would say
9 that it should be done on a basis where the parties have
10 some ability to stipulate or agree among themselves as to
11 what is necessary.

12 I think it would accommodate the Board because I
13 think we will be here for a long time if every portion we
14 want to site to, any of the parties, we are required to
15 bring up on examination.

16 MR. BLAKE: Let me say that Ms. Bernabei has
17 misrepresented what I said this very morning. I did not refer,
18 I don't believe, to the deposition. I referred to portions
19 of interviews of Faust and McGovern and that is what I told
20 the Board I would like to cite to.

21 It is those portions of the interviews to which
22 Ms. Bernabei referred in her cross-examination of
23 Mr. Dieckamp which I believe do not fairly represent those
24 two individuals' views, and it is the other portions that
25 I cited, and I will put it in a notice to the Board and the

Sim 4-2

1 partis in written form precisely what I am referring to.

2 With regard to the depositions, all I did yesterday
3 was request that Ms. Bernabei give me her position on whether
4 or not in addition we could put in portions of two depositions.

5 JUDGE SMITH: Okay. I don't see what is before
6 the Board to resolve.

7 Any other preliminary business?

8 MR. BLAKE: Yes, sir.

9 JUDGE SMITH: Okay.

10 MR. BLAKE: Judge Smith, yesterday in the examina-
11 tion of Mr. Dieckamp Ms. Bernabei referred Mr. Dieckamp to
12 a copy of a mailgram, a copy of the mailgram to Commissioner
13 Kennedy.

14 Mr. Dieckamp's prepared written testimony refers
15 to the mailgram to Congressman Udall and a copy to Commissioner
16 Gilinsky.

17 In preparing for this case counsel was not aware
18 that copies had been sent to the other Commissioners, even
19 though as the very copy that Ms. Bernabei referred us to
20 is an exhibit in a Congressional hearing, and that is in the
21 joint stipulation. I think it points out the Board's wisdom
22 in having the parties refer explicitly in the course of
23 the proceeding to documents from all those volumes to which
24 we will refer in our findings.

25 Mr. Dieckamp in preparing for this case I will

Sim 4-3

1 represent had no recollection of copies being sent to the
2 other Commissioners as well, and I wanted the Board and the
3 other parties to know that.

4 I have a question of Ms. Bernabei.

5 MR. BLAKE: First of all, in comment to Mr. Blake,
6 we used that document in cross-examination of Mr. Dieckamp.
7 Mr. Dieckamp's answers and the documentary evidence before
8 the Board is the only evidence before the Board and not
9 Mr. Blake's comments.

10 I think it is somewhat unusual for counsel to
11 comment on the testimony after the fact.

12 MR. BLAKE: It may be unusual, but I wanted to
13 let the Board know that and the parties as well.

14 My question of you, Ms. Bernabei, is at transcript
15 page 28,754 and 28,755 when you questioned Mr. Dieckamp ---

16 MS. BERNABEI: I am afraid I don't have that
17 Mr. Blake.

18 MR. BLAKE: I will show it to you.

19 (Pause.)

20 When you questioned Mr. Dieckamp and stated
21 "What I am asking you was the fact that you sent Dr. Gilinsky
22 a copy of the mailgram while not sending it to the other
23 Commissioners indicate your concern or his concern about
24 GPU's failure to report information during the accident?"

25 And I ask you whether or not you were aware

Sim 4-3

1 that Mr. Dieckamp sent copies to other Commissioners at
2 the time you asked that question?

3 MS. BERNABEI: No, I was not. That was brought
4 to my attention by my co-counsel, Ms. Doroshow, and that
5 was specifically in response to a question from Mr. Goldberg
6 about whether or not there was ever an intent -- and I think
7 it was following up on my question of whether there was an
8 intention to send it at any time to all NRC Commissioners.

9 At that point I think Mr. Dieckamp said, no, it
10 wasn't in the nature of that kind of a document. Ms. Doroshow
11 then brought to my attention that in fact it was included
12 in the Congressional hearings, which was the first time I
13 had noticed that.

14 MR. BLAKE: So co-counsel was, but you were not.
15 I appreciate that clarification.

16 MS. BERNABEI: That is correct. In fact, I had
17 previously read that entry without noticing that the mailgram
18 was explicitly sent to Commissioner Kennedy. I think in
19 response to one of the staff's interrogatories to Mr. Gamble
20 and TMIA I responded that I believed that supported the fact
21 that it could be construed as a material false statement.

22 However, at the time I did not notice that the
23 mailgram itself was addressed to Commissioner Kennedy.

24 MR. BLAKE: That is all I have.

25 JUDGE SMITH: I would also note along that line

Sim 4-5

1 that it seems to have been long ---

2 MR. BLAKE: It is in 0760, a reference to ---

3 JUDGE SMITH: Yes, it is a long common wisdom
4 that a copy was sent to Commissioner Gilinsky and no
5 reference to other Commissioners. I think the record is
6 probably clear now, or clear enough.

7 Any other preliminary business?

8 MS. BERNABEI: I have one motion I would like
9 to make. It perhaps is a little tardy, but I think this is
10 probably the appropriate time in the case to do this.

11 We would move to sequester the witnesses. We
12 are about to have a number of witnesses, operating personnel
13 that were in the control room at TMI-2 during the accident.

14 I think given that we are going to be having
15 recollections and testimony about a fairly narrow range
16 of events that it would be appropriate to sequester the
17 witnesses and ask that they not be permitted to speak to each
18 other about their testimony or the testimony of other
19 witnesses that have appeared before this Board.

20 I think that would also include Mr. Dieckamp,
21 to the extent that Mr. Dieckamp intended, and I don't know
22 his intent, to remain at the hearing.

23 In the case of Mr. Dieckamp, I think there is
24 an additional concern that as the President of GPU his
25 presence may have some chilling effect on the other witnesses

Sim 4-6

1 unintentional, but I think it may have that kind of effect.

2 JUDGE SMITH: First, let's take up Mr. Dieckamp,
3 and I don't have to hear any arguments on that.

4 I wouldn't believe that I would expect to hear
5 in a tribunal of justice a motion to exclude the accused
6 from the very hearing to determine whether he told the
7 truth or not, and I will just preemptorily deny that. It
8 would be patently unfair, in violation of due process and
9 requires no analysis beyond that.

10 Now with respect to the other witnesses ---

11 MS. BERNABEI: May I just make one note?

12 JUDGE SMITH: You are advised to make all your
13 arguments at the time you make them and not step them after
14 you are dissatisfied with the Board's ruling and which tends
15 to be arguing.

16 MS. BERNABEI: No, I am not arguing with the ruling.
17 I am just stating our position. This is not a criminal
18 trial. Mr. Dieckamp is not on trial. It is the company whose
19 integrity the Board is examining.

20 JUDGE SMITH: Well, we have ruled.

21 Now with respect to the fact witnesses, we
22 will hear arguments on that.

23 What is your position, Mr. Blake? I think that
24 there is probably some merit that some witnesses should
25 be sequestered.

Sim 4-7

1 MR. BLAKE: I guess I would like an opportunity
2 to consider this before I respond, and I would like to know
3 in more detail what in particular the bases are for it, and
4 I would like to know whether it is intended to address all
5 future witnesses. This is not easy and there are always
6 following instances of this inferences or implications of
7 whether or not it was administered or implemented in accordance
8 with whatever guidance comes out.

9 And I want to be sure that we know precisely what
10 the grounds are, what the reach is and who is involved if
11 we are going to be sequestering people.

12 I must say that at the outset my observation is
13 that after five years and the number of times that these
14 people have been questioned and whatever discussions in
15 addition have gone on between them, that I think it is going
16 to wind up being a fair amount of mechanical problem without
17 much meaning.

18 I would like an opportunity to think about it a
19 bit.

20 JUDGE SMITH: I would propose that some serious
21 thought be given to sequestration with respect to Mr. Chwastyk,
22 Mehler and Illjes. But beyond that I would have to see some
23 justification for it.

24 JUDGE WOLFE: I would also for the parties to
25 render some guidance by referring us to the Federal Rules

Sim 4-8

1 of Civil Procedure to the extent that they speak out on
2 the sequestration of witnesses.

3 MS. BERNABEI: I can't cite the rule, but it
4 is the so-called rule on witnesses and it is quite common,
5 at least in my experience, in both civil and criminal trials.

6 JUDGE WOLFE: I would like to be shown that
7 rule or some discussion of it.

8 MS. BERNABEI: Sure. In response to Mr. Blake's
9 request for the bases for our request for a rule on witnesses,
10 and, again, I am speaking now from my experience in this
11 case which started in about June of this year, we took a
12 number of depositions of many of the witnesses who the Board
13 has indicated it will hear from.

14 At least two of the witnesses that I can
15 recall stated that they were familiar with the depositions
16 that had preceded them.

17 Mr. Arnold stated he was familiar with the
18 document that was introduced in Mr. Moore's deposition.
19 Either Mr. Herbein or Mr. Miller indicated he was familiar
20 with the deposition of the prior individual and some of the
21 questioning. And I believe Mr. Broughton in his deposition,
22 GPU Service Corporation Manger, indicated he was somewhat
23 familiar with Mr. Moore's testimony.

24 It appeared during depositions generally that
25 the witnesses had spoken to each other and were quite

Sim 4-9

1 conversant with what had gone on in the deposition at a
2 prior time.

3 The usual rule for witnesses and the reason we
4 request it in this instance is because the best way to
5 get the witnesses' actual memory or knowledge, at least at
6 the present time, is to have it be untainted by communication
7 or an attempt to somehow make his story or his recollection
8 coincide with another's.

9 It is true it is five and a half years after
10 the fact, but this kind of effort we found to some extent
11 was existing in the depositions, and obviously we had no
12 right at that time to request a rule on witnesses, but we
13 would request it at this time and we think it is appropriate.

14 Again, given your at least preliminary thoughts,
15 Judge Smith, I would say that the three witnesses you have
16 mentioned, that is Mr. Chwastyk, Mr. Mehler and Mr. Illjes,
17 is probaby where it is least required because to some degree
18 their stories are very much down on paper and at least we
19 feel they have been fairly consistent.

20 We think where there is less information and
21 the testimony may be fresher or questioning in areas that
22 have not previously been questioned are higher level management,
23 including Mr. Miller and some of the GPU Service Corporation
24 people.

25 So my sense would be that is where it is most

Sim 4-10

1 needed. That is my representation to Mr. Blake as to
2 why we requested it.

3 JUDGE WOLFE: And would you repeat once again,
4 you say that you didn't bring this up at an earlier time
5 for what reason?

6 MS. BERNABEI: I didn't think the witnesses
7 were in the nature of fact witnesses where there might be
8 a danger of this sort.

9 JUDGE SMITH: So do I understand you are not
10 asking for sequestration with respect to Chwastyk, Meher
11 and Illjes?

12 MS. BERNABEI: No, we are, with all witnesses.
13 I think it is appropriate for all witnesses.

14 JUDGE SMITH: All right. The other witnesses --
15 what should we do? What should be our step? Can we proceed
16 under a temporary sequestration this morning so we can
17 get moving, and then address the broader sequestration after
18 there is an opportunity to consider and for you to specifi-
19 cally name the people that you wish to be included?

20 MS. BERNABEI: My request is for all witnesses
21 from here on out.

22 JUDGE SMITH: But we are not granting the request
23 until we have a further opportunity for you to support
24 by responding to Judge Wolfe's citation and for you to
25 specify why all witnesses, without differentiation, should

Sim 4-11

1 be included, because I don't think we can just grant
2 sequestration automatically simply upon request. I think
3 there has to be a demonstrated need, and I don't think just
4 by saying all witnesses you meet that burden.

5 JUDGE WOLFE: In any event, who is present
6 now in the hearing room other than I take it, Mr. Chwastyk?

7 MS. BERNABEI: I don't know. None of our
8 witnesses.

9 JUDGE SMITH: No witnesses. All right.

10 JUDGE SMITH: Do we have a potential witness in
11 Mr. Craig? Is there a potential for him to testify?

12 MR. GOLDBERG: No, I don't think so.

13 JUDGE SMITH: Under no event.

14 MR. GOLDBERG: I don't believe it will be
15 necessary.

16 JUDGE SMITH: How about Mr. Harpster?

17 MR. GOLDBERG: I don't believe so.

18 JUDGE SMITH: All right.

19 Is there anybody in the room that has the
20 expectation to testify?

21 (No response.)

22 JUDGE SMITH: All right. Well, let's proceed ---

23 MR. McBRIDE: Excuse me, could I be heard
24 on this?

25 JUDGE SMITH: Oh, yes, certainly.

Sim 4-12

1 MR. McBRIDE: Because we do represent
2 Mr. Chwastyk, Mr. Mehler, Mr. Illjes and Mr. Kunder, and
3 this is a different matter entirely I think than what
4 occurred during the cheating proceeding, because there you
5 did not have any prior testimony of the witnesses. You
6 had some investigators' statements, but it was a rather
7 sketchy record.

8 When Judge Milhollon imposed the sequestration
9 order, we understood the basis for it and we didn't object
10 to it. But here the witnesses have given a very large number
11 of statements on prior occasions, in some cases as many
12 as nine on this one matter. 'It doesn't happen to be my
13 client, but as I understand it, Mr. Miller has given that
14 many statements.

15 But as Mr. Berabei said, Mr. Chwastyk has given
16 four statements to the NRC on this matter alone and he
17 subjected himself to a deposition by her in September of
18 this year.

19 I think the chance that Mr. Chwastyk might
20 change his testimony as a result of an encounter with
21 people who remain his friends and with whom he socializes
22 from time to time is essentially nonexistent. He is going
23 to testify under oath and he is going to testify to the best
24 of his ability, and I really don't think that there is any
25 need it in this context.

Sim 4-13

1 These people, many of them still work together.
2 They have to work side by side. I think given the body of
3 the testimony that has already built up on this subject,
4 that it is really unnecessary and very, very hard to police.

5 You know, if you order it, we will make it
6 clear to them and we will try to make it work, but I really
7 feel strongly that it isn't necessary.

8 MS. BERNABEI: If I can just respond in very
9 short order. This Board as, Judge Smith, you have said it
10 very often, is charged with making a de novo review and
11 an examination of the witnesses. Hopefully, and I expect
12 that you will not be relying in large part on the interviews,
13 but you will be relying from the witnesses that appear before
14 you.

15 The whole purpose, as I understand of this hearing,
16 and the Appeal Board's concern, was that this issue be
17 examined de novo and not relying on prior interviews. That
18 is why I think it important that the witnesses' memories
19 be as fresh as they are.

20 Secondly, I think Mr. McBride's point that the
21 people work side by side is precisely the concern we have.
22 There are pressures on people because they still work for
23 the company. Mr. Chwastyk does not, but most of the witnesses
24 still do. There are pressures on them, and I think in
25 some cases it would aid the witnesses themselves to not

Sim 4-14

1 be subjected to any pressures from their peers.

2 So I think to that extent that is a factor which
3 would work to support a rule on witnesses.

4 MR. McBRIDE: Judge Smith, can I make a repre-
5 sentation to you that I do not know of a single client
6 who I represent, whether they work at Three Mile Island or
7 no longer do who feels under the slightest pressure to
8 testify in any way other than truthfully in this proceeding.

9 Mr. Chwastyk has had no contact whatsoever, to
10 my knowledge, with GPU about his testimony today. He is here
11 to testify under oath, will do so, testify truthfully and
12 he just informed me off the record that he has no objection
13 to Mr. Dieckamp being here today.

14 He doesn't feel under this sort of pressure,
15 and I think we are making this up.

16 JUDGE SMITH: Okay. The question of sequestration
17 at NRC hearings is not a simple matter. There is some law
18 on it. Boards have been found to have erred by imposing
19 sequestration orders without sufficient basis. There was
20 a sequestration order in the cheating phase of the hearing
21 which apparently the parties agreed to. I don't know.

22 Apparently everyone believed it had benefits,
23 and it may very have had benefits, but it also had a down-
24 side to it, and that is persons were accused of misconduct
25 based upon an evidentiary record that they were not even

Sim 4-15

1 aware of and those accusations have in some instances
2 continued to attach to them and it is to me simply an affront
3 to any concept of justice that persons can be accused of
4 misdeeds and have findings made to that extent and never even
5 know who is accusing them.

6 This is one of the downsides of sequestration.
7 I recognize the benefits and the disadvantages and there has
8 to be a balancing. There has to be, No. 1, a very, very
9 strong demonstration of need. But in this very proceeding
10 persons have been accused and have been punished in secret
11 proceedings, much to my personal dismay.

12 end Sim
13 Sue fols

14
15
16
17
18
19
20
21
22
23
24
25

#5-1-SueT

1 And to the extent that it can be avoided, it will
2 be avoided. For example, I understand that after the
3 hearing that one of the operators named G or H was re-
4 moved from his career as a licensed operator, although
5 that was not the Board's intention. But it was a product
6 of this hearing and was something agreed upon by the
7 Commonwealth and the Licensee.

8 I think that's an absolute violation of that
9 man's due process, and I won't be a party to that type
10 of activity unless it is absolutely necessary for a broader
11 ruling on the public safety.

12 So, we will hear arguments at the appropriate
13 time. In the meantime to preserve the position, we will
14 have a temporary sequestration at least through this
15 morning. And that is that Mr. Chwastyk nor anyone else
16 in this room may discuss with any other witness the nature
17 of Mr. Chwastyk's testimony this morning until we have
18 a permanent Order.

19 MR. MC BRIDE: Did you say may and you intended
20 to say may not discuss --

21 JUDGE SMITH: May not. Oh, absolutely, may not.

22 MR. MC BRIDE: I have a problem. And I'm not
23 trying to quarrel with your ruling but I'm trying to
24 understand it. Do I need to leave the room and go make
25 a call to the plant? These people, some of them may be

#5-2-SueT

1 out there. For all I know, they may be side by side in an
2 office.

3 JUDGE SMITH: Wait a minute. I'm not saying --
4 I'm saying we want to get on with Mr. Chwastyk's testimony.
5 We are going to give the parties an opportunity to address
6 the issue.

7 In the meantime until we can address it with
8 full knowledge of the law and facts, I want a temporary
9 Order that Mr. Chwastyk's testimony this morning not be
10 communicated outside the hearing room by Mr. Chwastyk,
11 himself, you or by transcript reading to the other wit-
12 nesses until we can resolve it.

13 MR. MC BRIDE: I've got two more problems. And
14 I'm an officer of the Board, and I want to abide by your
15 ruling. And that's my problem.

16 We have got a television camera staring me in
17 the face.

18 JUDGE SMITH: Exactly. Right.

19 MR. MC BRIDE: What can we -- how can we not
20 communicate --

21 JUDGE SMITH: You are right, exactly right. I
22 don't know what to do about that. I simply don't know.

23 MR. MC BRIDE: That's my problem. As an
24 officer of the Board, I have to abide by your ruling, but
25 I am also an attorney for some of these other people --

#5-3-SueT

2 JUDGE SMITH: I understand that. That may be
3 a difficulty you have and will have to work out. I don't
4 know. I am saying that the law does recognize in some
5 instances sequestration.

6 And we are unable to make the necessary weigh-
7 ings, and so perhaps the difficulty is that we -- I don't
8 know. I mean, I am presented with a multifaceted problem.
9 It certainly is not a run-of-the-mill, textbook problem.

10 Here you are representing several witnesses;
11 here is the public interest; here is the Staff; there are
12 many parties, there is the Commonwealth waiting to use
13 this information. I don't know how to afford perfect
14 justice to everybody. It's beyond me, to tell you the
15 truth.

16 MR. MC BRIDE: I can solve the problem for you
17 I think.

18 (Laughter.)

19 JUDGE SMITH: Go ahead.

20 MR. MC BRIDE: Because I --

21 JUDGE SMITH: Really, that's great.

22 MR. MC BRIDE: I'm trying to abide by your
23 ruling. I will not convey the substance of Mr. Chwastyk's
24 testimony to any other client while your temporary ruling
25 is in effect. If you put a permanent ruling in effect,
we will abide by that.

#5-4-SueT

1 But I think that we are between a rock and a
2 hard place. I think we either have to dissolve the ruling
3 immediately or we have to tell the television --

4 JUDGE SMITH: That's right.

5 MR. MC BRIDE: -- cameras to leave.

6 JUDGE SMITH: You are exactly right. You have
7 pointed out a problem that it seems to me goes one way or
8 the other.

9 MS. BERNABEI: It seems to me what has been
10 done in some other proceedings --

11 JUDGE SMITH: I beg your pardon?

12 MS. BERNABEI: It seems to me that what is done
13 in other proceedings is that there is guidance from the
14 attorney and, you know, who knows how effective this is.
15 I don't know that this is very effective. But there is
16 guidance from the attorney to the individuals that they
17 should attempt to avoid press contact.

18 Let me just say, in terms of what we are talking
19 about, I don't think there is really a serious problem,
20 given the fact that the depth of detail that we are talking
21 about is not going to be conveyed in a television program.
22 It's unlikely to be conveyed in great depth in a newspaper
23 article. I think the kinds of details we are talking about
24 and we are worried about, that's not going to be a problem.

25 MR. MC BRIDE: I disagree strongly, and I want

#5-5-SueT

1 to tell you why. Yesterday when I spoke to Mr. Chwastyk
2 to inform him about the change in the schedule from 9:30 to
3 9 this morning and told him to be here, he told me that when
4 he got in his car yesterday he turned on the radio. The
5 very first thing he heard was the testimony of Mr. Dieckamp
6 and his own name. It was coming over the radio live.

7 So, I'm not creating the problem. I'm bringing
8 it to your attention.

9 JUDGE SMITH: All right. Now, the only party --
10 right. The only party requesting sequestration is TMIA.
11 All right. To the extent that TMIA does not care if the
12 purpose of sequestration is defeated because of the pre-
13 sence of an open public hearing, that's fine. So, that
14 problem is solved. They do not ask for that type of
15 protection. So, we don't have to worry about that. If
16 the other witnesses learn about the testimony through the
17 media, that is satisfactory and that is of no moment.

18 And she agrees.

19 MS. BERNABEI: That's right.

20 JUDGE SMITH: So, that seemed to be an unsolvable
21 problem and that has been solved.

22 Now, the other problem remains about your
23 position. I --

24 MR. MC BRIDE: I don't have any problem with
25 that.

#5-6-SueT

1 JUDGE SMITH: So, it seems to me then we can
2 proceed temporarily until we can grapple with the issue
3 temporarily with a sequestration Order; and that is that
4 no one in this room communicate to the other witnesses,
5 including you, Mr. Chwastyk, the substance of Mr. Chwastyk's
6 testimony this morning.

7 MR. MC BRIDE: Can I just help you with the
8 pronunciation? It's Chwastyk.

9 JUDGE SMITH: Chwastyk. All right. Thank you.
10 Now, with that may we get to the testimony of Mr. Chwastyk?

11 MR. GOLDBERG: Unfortunately not, because I
12 have two other brief matters.

13 I was given this morning two copies of yesterday
14 transcript. One of them is correctly marked "Tuesday,
15 November 20th, 1984" with what I believe is the correct
16 pagination. Another copy is incorrectly marked "Monday,
17 November 19th" with what I think is the correct pagination.
18 So there is at least one copy of yesterday's transcript
19 which is incorrectly identified on the cover as being the
20 transcript from Monday, November 19th.

21 It probably is sufficient if everyone checks
22 and makes sure their transcripts are correctly identified
23 on the cover.

24 The second item, I know we all want to get on
25 with Mr. Chwastyk's testimony but yesterday toward the end

5-7-SueT

1 of the day the Board asked Mr. Bernabei to make a showing
2 as to which portions of Mr. Gamble's testimony she be-
3 lieved should be accepted by the Board, consistent with
4 the Board's ruling on Mr. Gamble's testimony vis-a-vis
5 the scope of the issue in this proceeding.

6 Ms. Bernabei requested that she be given over-
7 night to do that. My question is, will she be making that
8 showing today, as I understood she would be doing, or is
9 that going to be deferred to some later time in the hearing?

10 MS. BERNABEI: I expected fully to go forward.
11 We have addressed the Board's question. I also have a
12 proposal, assuming that the Board -- if the Board allows
13 any portion of Mr. Gamble's testimony, we would propose
14 that he appear after Mr. Moseley because in that case all
15 of his testimony, the rebuttal and direct, could come in
16 and there wouldn't really be as many problems for the
17 Board to determine once it determined the scope of Mr.
18 Moseley's testimony. He is on for today.

19 So that would be my suggestion, but we are ready
20 to go forward in answer to your question if you would
21 like.

22 JUDGE SMITH: Well, I think that probably it
23 should be your option because it would be your burden and
24 Mr. Gamble's burden if he were to come here and not be
25 permitted to testify. Yet I see much merit, too, in waiting

#5-8-SueT 1 until Mr. Moseley appears or it is determined that he doesn't
2 appear. What is your choice?

3 MS. BERNABEI: Well, what I would suggest --

4 JUDGE SMITH: But since you made a recommenda-
5 tion, I guess your choice is to defer the entire matter
6 until Mr. Moseley testifies.

7 MS. BERNABEI: No. I didn't make myself clear.
8 What I would propose is to bring before the Board our
9 proposal in terms of what portions of the testimony we
10 think fits within the Board's ruling, reserving of course
11 our objection to the ruling. But within that ruling, we
12 made a good faith effort to take out the portion of the
13 testimony that we believe would conform to that ruling.

14 I think at that point the Board can decide
15 whether or not it will allow any portion in --

16 JUDGE SMITH: There will be some. I think we
17 can decide at this point it will be some testimony.

18 MR. GOLDBERG: Judge Smith, does that mean there
19 will be some testimony even if Mr. Moseley doesn't testify?

20 Have we resolved the question of whether Mr.
21 Gamble's testimony is purely rebuttal testimony?

22 JUDGE SMITH: No, that was left open. We left
23 it open for them to look at it overnight and come back
24 with selected portions which might be relevant, factual
25 testimony. And we suggested that certain -- by our own

#5-9-SueT

1 observations -- portions might very well be. So, that is
2 correct.

3 However, I just don't think it's right for
4 Mr. --

5 MS. BERNABEI: I agree.

6 JUDGE SMITH: -- Chwastyk to be sitting here
7 all this time while we have gone over so many housekeeping
8 matters.

9 MS. BERNABEI: I agree.

10 JUDGE SMITH: Is there any possibility that Mr.
11 Chwastyk's examination could be completed this morning?

12 MS. BERNABEI: Well, I have no problem with
13 completing mine. I think, in terms of all the parties,
14 there will be a problem. Mr. Blake indicated to me that
15 he had extensive cross-examination.

16 JUDGE SMITH: Since -- all right, let us at
17 least for now defer your arguments on Mr. Gamble's testi-
18 mony. We will probably find some voids in the hearing
19 where we can do that without loss of efficiency. So, let's
20 defer it until a more convenient time.

21 MS. BERNABEI: Could we propose Tuesday whenever
22 we resume?

23 JUDGE SMITH: Yes, that's fine. But how about
24 my idea that we may find voids in our schedule and then
25 that would be a good thing to plug into a void so that we

#5-10-SueT

1 can have more efficiency? Sometimes we run out of wit-
2 nesses and everyone is sitting around, and we could bring
3 this up and use that time, since there is no urgency on
4 it.

5 MS. BERNABEI: I guess I would just like to
6 get the Board's initial ruling, at least as to what we
7 consider direct -- or as I understand has been interpreted
8 as direct -- portions and I guess --

9 JUDGE SMITH: You think it would be helpful
10 for your long term planning to have an early ruling?

11 MS. BERNABEI: Well, I don't know early. I
12 think it would be useful to everyone. It may influence
13 the Staff. I don't know. It may influence the Staff as
14 to whether or not they want to call Mr. Moseley. I don't
15 know. I think it could be useful for all the parties.

16 JUDGE SMITH: All right. Then, let's leave
17 it that we will take it up at the earliest appropriate
18 opportunity.

19 MR. GOLDBERG: One question about the temporary
20 sequestration Order. Do I understand that it applies to
21 TMIA also, and that TMIA is not permitted to discuss with
22 any future witnesses the testimony of Mr. Chwastyk?

23 JUDGE SMITH: Does anybody move that TMIA --
24 I don't recognize any quid pro quo. You know, this is not
25 an exchange or a bargaining situation. If anybody is asking

#5-11-Sue†

that, we will entertain that motion.

2 MS. BERNABEI: My motion covered basically
3 operational personnel and management. I didn't anticipate
4 it would cover Moseley or Gamble. I guess what Mr. Goldberg
5 is suggesting is that it --

6 MR. BLAKE: That's obvious. Judge Smith, the
7 problem with this sequestration business comes because at
8 9:30 in the morning on November 21st, it pops out with a
9 request for sequestration. Doggone it, we ought to get
10 a written request with the bases spelled out and an
11 identification of the people to whom it is to apply from
12 TMIA, and we ought to have it on Monday so that the
13 parties will be in a position to address this, and the
14 Board with some degree of precision next Tuesday when we
15 come back for hearing.

16 It now is a mush. For example, I just heard
17 earlier today the Board to say: Look, everybody in the
18 room, doggone it, abide and don't talk about Chwastyk's
19 testimony, whatever he says today. That's TMIA in the
20 room, the Licensee. I mean, for gosh sakes, that's --
21 that was my common understanding.

22 But my suggestion is that we get a written
23 proposal that we know what to deal with.

24 JUDGE SMITH: As we have discussed this back
25 and forth, you have pointed out a problem that I overlooked,

#5-12-SueT

1 and you have pointed out a problem I have overlooked, and
2 I think we are rushing into the matter with undue haste.
3 Yet, it seems to me that there should be some simple way
4 to accommodate having this man testify, get on with it,
5 and preserve the issue.

6 MS. BERNABEI: We have no problem -- let me
7 just answer Mr. Goldberg. We have no problem. We fully
8 understand. Our motion was with regard to operating and
9 management personnel. We have no problem if Mr. Goldberg
10 wants to extend the Order to Gamble and Moseley. I have
11 no problem with that.

12 It wasn't my initial thinking, because I con-
13 sidered them a part of NRC Staff, or former NRC Staff.
14 But I have no problem extending it and agreeing that we
15 will not speak to them about testimony, none whatsoever.

16 JUDGE SMITH: Now, is there anything wrong
17 with us proceeding with Mr. Chwastyk this morning on the
18 basis that no one in this room communicate to any witness
19 the substance of his testimony until we can further rule
20 on it? It may very well be that we will rule that the
21 temporary Order is lifted; otherwise, the only alternative
22 I can see is to adjourn for the day and hear the arguments.
23 And I don't want to do that.

24 MR. GOLDBERG: Judge Smith, I was going to
25 propose just that. I think we can all get on with this if

#5-13-SueT 1 we simply instruct everyone in this room, including Mr.
2 Chwastyk, not to discuss his testimony with anyone else
3 until you have had a chance to consider the matter further.

4 JUDGE SMITH: Right. That is the ruling as
5 it stands right now. But you have a motion I believe, Mr.
6 Goldberg, that -- and I forget what it is. Does this
7 apply to what?

8 MR. GOLDBERG: It was a question. I want to
9 understand the extent of the temporary Order, and it
10 occurred to me that Mr. Gamble may be appearing. He
11 mentions Mr. Chwastyk's name in his testimony and I was
12 curious as to whether TMIA believes it feels it is free
13 to discuss Mr. Chwastyk's testimony while no one else is.

14 That's simply an inquiry.

15 JUDGE SMITH: Right. And I observed that I don't
16 believe it is a quid pro quo situation. It is not a bargain-
17 ing item. However, it would also seem to me that the very
18 arguments that TMIA makes for sequestration with respect
19 to certain witnesses could be turned right around in that
20 direction. So, I don't know. But --

21 MR. GOLDBERG: Yes, and I don't think we need
22 to discuss it anymore, and as I understand the temporary
23 ruling no one here will discuss Mr. Chwastyk's testimony
24 with any prospective witnesses.

25 JUDGE SMITH: Until further ordered. Yes. And,

#5-14-SueT

1 then you have to bear in mind that Mr. Gamble will be called
2 in part at least as a rebuttal witness. So, I don't know
3 how you can enforce sequestration with respect to a rebut-
4 tal witness.

5 MR. GOLDBERG: Well, he is not going to be
6 rebutting Mr. Chwastyk's testimony.

7 JUDGE SMITH: Right. Okay. That's enough.
8 The sequestration Order is in effect temporarily with
9 respect to Mr. Chwastyk.

10 MR. MC BRIDE: Judge Smith --

11 JUDGE SMITH: Yes.

12 MR. MC BRIDE: -- I've been trying to take up
13 a preliminary matter with respect to Mr. Chwastyk's testi-
14 mony. Are we at that point where I can do that?

15 JUDGE SMITH: Yes.

16 MR. MC BRIDE: We have a number of corrections
17 to the transcript of the deposition that he gave in this
18 proceeding under subpoena from TMIA on September 25th,
19 1984. We have been rushing along. I have them in hand-
20 written form. A copy of the handwritten changes are being
21 typed in a law office downtown. I am hoping that they are
22 going to be here this morning so that I can distribute
23 them to the parties to have them.

24 But I just wanted to alert you so that if a
25 question is asked from the deposition there may be a

#5-15-SueT 1 transcript correction. And I might have to jump in or the
2 witness might have to jump in to so correct the transcript
3 on the spot.

4 JUDGE SMITH: Okay. Very good. Will there be
5 sufficient copies of the typed corrections?

6 MR. MC BRIDE: I asked that a dozen be brought
7 down.

8 JUDGE SMITH: All right. With that, may we
9 proceed with Mr. Chwastyk.

10 Mr. Chwastyk, would you stand and accept the
11 oath, please?

12 (Mr. Chwastyk is sworn by Judge Smith.)

13 MR. MC BRIDE: May the record reflect that my
14 name is Michael F. McBride. My appearance has heretofore
15 been noted in this proceeding, and that I am counsel for
16 the witness.

17 Whereupon,

18 JOSEPH J. CHWASTYK

19 was called as a witness at the instance of the Intervenor,
20 Three Mile Island Alert, and having first been duly sworn,
21 was examined and testified as follows:

22 JUDGE SMITH: Mr. Chwastyk, you were called at
23 the instance of the Intervenor, Three Mile Island Alert.

24 Would you state your name, please?

25 WITNESS CHWASTYK: My name is Joseph J. Chwastyk.

DEXXX

#5-16-SueT 1

JUDGE SMITH: You may inquire.

2

CROSS EXAMINATION

3

BY MS. BERNABEI:

INDEXXX 4

Q Mr. Chwastyk, directing your attention to March 28th, 1979, what was your position at that time?

5

6

A At that time I was Shift Supervisor at Three Mile Island, Unit 1 and 2.

7

8

Q How long had you worked at TMI at that time?

9

A At that time, it was approximately ten years.

10

Q What were your general duties and responsibilities

11

in the position as Shift Supervisor?

12

A Basically the safe and efficient operation of the

13

Three Mile Island Nuclear unit.

14

Q Who, if anyone, did you supervise in that

15

position?

16

A I supervised in each unit a shift of operators

17

which included foremen, a number of CROs -- that's control

18

room operators -- and a number of auxiliary operators.

19

end #5
Joe flws

20

21

22

23

24

25

1 Q And what shift did you work on March 28th, 1979?
2 What shift were you working at that time?

3 A Well, March 27th I worked 3 to 11 shift.

4 Q Okay. And was that your normal shift during
5 this period?

6 A We worked the rotating shift, yes.

7 Q And in that routine shift, who in the normal course
8 of affairs did you supervise, by name?

9 A I am sorry, I didn't hear that question.

10 Q Who were the individuals by name that you supervised
11 in the normal course of affairs during this period, on the
12 3 to 11 shift?

13 A I hesitate, because I don't recall at the time
14 who my shift foreman in Unit 2 was. It was either Carl
15 Guthrie or Bill Conaway. I am not certain of that. I
16 had -- the control room operators I think were Ted Illjes,
17 John Kidwell, Charles Mell, Chuck Mell, I am not certain
18 that I recall the aux operators.

19 Now, these are the Unit 2 personnel only. There
20 was another shift in Unit 1 also.

21 Q And you supervised them as well?

22 A Yes.

23 Q Okay. Now, directing your attention to March
24 28, 1979, how did you first learn of the accident?

25 A I was first made aware that there was a problem

1 from a telephone call from my brother, who was in Philadelphia
2 at the time, or heard some -- or heard from somebody in
3 Philadelphia about a news report of a problem at Three Mile
4 Island.

5 As I stated earlier, I worked the 3 to 11 shift
6 the night before, and this was rather early in the morning,
7 eight, nine o'clock time frame. I really didn't pay too
8 much attention to it, I thought it was maybe a trip or
9 something of that nature, and I went back to bed, quite
10 frankly.

11 Q And some time after that did you report to work?

12 A Some time after that, yes, I did. It was about
13 noon that I reported to Three Mile Island.

14 Q And to whom did you report at that time?

15 A I reported to the Unit 1 control room, and there
16 were a number of people there; to say that I actually reported
17 to them I am not sure is an accurate statement.

18 I reported to the Unit 1 control room, and I
19 remember talking to Greg Hitz², and I believe I talked a
20 little bit with Mr. Jim Seelinger.

21 Q Were you briefed on the situation of the status
22 of the reactor at that time?

23 A I was briefed to the extent that the people in
24 Unit 1 control room understood the status at Unit 2.

25 Q Okay. What were you told?

1 A Specifically, I don't know that I can really
2 recall. You know, it was just a synopsis of where they
3 were in terms of the reactor, things like the reactor was
4 tripped, they had a problem with temperatures.

5 I really can't say specifically all the details
6 that was passed on.

7 Q I understand. When you say they had a problem
8 with temperatures, can you describe as best you can what
9 you were told?

10 A No, I really can't. I just -- when I said there
11 was a problem with temperatures, I make the assumption that
12 was part of what was discussed. I don't recall specifically
13 at all.

14 Q Did you report to Unit 2 some time after that?

15 A Yes, I did.

16 Q And how long a period after that did you report
17 to Unit 2?

18 A I would say it was in the time frame of ten or
19 fifteen minutes after I reported to Unit 1 control room.

20 Q So, about twelve noon; twelve ten?

21 A Somewhere between 12 and 1 o'clock, as far as I
22 recall.

23 Q Okay. Were you briefed at that time on the status
24 of the reactor and the condition?

25 A Yes, I was.

1 Q And what were you told at that time?

2 A Basically, that -- a brief background of what had
3 happened in terms of the reactor tripping and that type thing,
4 and the fact that at the present time we were operating
5 running some amount of water into makeup system, and then
6 cycling the electro-magnetic relief block valve on a periodic
7 basis to cool the core.

8 Q Did you discuss any other reading of temperature
9 pressure, radiation reading, for that time?

10 A I am certain I did; but again, I cannot recall
11 anything specific.

12 Q Do you remember testifying at a prior time that
13 you did learn of radiation readings?

14 A Do I remember testifying to that? No.

15 Q One of many prior times. I would like to refer
16 you to page 5 of your deposition. For the record, this is
17 a deposition taken of Mr. Chwastyk on September 25, 1984.

18 MR. BLAKE: Does the Board have any copies.

19 MS. BERNABEI: Maybe not.

20 JUDGE SMITH: No.

21 MS. BERNABEI: Let me share with Mr. Chwastyk,
22 and I will provide the Board my copy.

23 BY MS. BERNABEI: (Continuing)

24 Q I refer you to the first answer on page 5, which
25 indicates does it not, that you did learn in your briefing

6-5-Wal

1 of radiation level readings?

2 A Yes, it does.

3 Q Now, did you have any discussion in the period about
4 core damage, to your memory?

5 A Again, I don't recall specifically. I have a
6 recollection of discussing core damage to the degree that
7 some people thought there may have been some, or some people
8 didn't think there was any.

9 But again, not anything specific.

10 Q Were there any indicators that you knew of at
11 that time that there was some core damage?

12 A That I knew at that time?

13 Q That you learned about at that time, that is
14 correct.

15 A Based on the information I had at the plant, in
16 terms of the temperatures, the T-hots, the radiation level
17 readings, et cetera, I made the assumption that we did have
18 some kind of radiation release that was pretty significant,
19 and I think the natural conclusion was that there was some
20 sort of core damage.

21 Q And you say you also base this assumption or
22 understanding on the T-hots. Those would be the hot leg
23 temperatures, is that correct?

24 A That is correct.

25 Q And what is your memory or understanding of how

1 the readings on the hot legs -- or the hot leg temperature
2 readings at that time?

3 A When I got to the control room on that afternoon,
4 the T-hot temperature indicators were pegged -- I believe
5 they peg at 720 degrees.

6 Q What did you do in terms of taking over respon-
7 sibility at the time you arrived in Unit 2 control room
8 after being briefed?

9 A Well, after I had been briefed, I noticed that
10 Mr. Zewe, who was in charge of directing the operators
11 in the control room, was quite busy in other matters, and
12 I thought I saw a place in which I could help, and that was
13 to relieve Mr. Zewe in directing the operators at the
14 console, and I recommended that and eventually it occurred.

15 Q If we could refer to the diagram of the control
16 room, which has been provided us by Mr. Blake --

17 MR. McBride: Excuse me. We never got a copy.
18 Is there one for the witness?

19 MS. BERNABEI: We will bring you one in a second.
20 The witness is the important one here. Mr. Blake, do you
21 wish to mark this as your exhibit?

22 MR. BLAKE: I really provided that at the Board's
23 request. I don't have a preference, nor do I have any
24 objection in marking it.

25 MS. BERNABEI: I just want to mark it for the

1 record as someone's exhibit. I would propose TMIA, although
2 Mr. Blake provided it. I think it might be more appropriate
3 as a Licensee exhibit.

4 MR. BLAKE: That is fine. I think this set of
5 five pages has been adequately identified on the record by
6 me this morning. It is five pages, one of which is a
7 drawing overview of the TMI-2 control room, and entitled:
8 Control Room Floor Plan. The other four pages are photographs
9 entitled: TMI-2 Control Room A, B, C, and D.

10 And I request that it be identified as Licensee
11 Mailgram Exhibit 1.

12 I have provided three copies to the court reporter.

13 JUDGE SMITH: There are no objections, apparently,
14 to the offer. Therefore, Licensees Mailgram Exhibit 1 is
15 received into evidence.

16 XXX INDEX

(Above mentioned document is
17 received into evidence as
18 Licensee Mailgram Exhibit No. 1)

19 BY MS. BERNABEI: (Continuing)

20 Q Mr. Chwastyk, referring now to Licensee Exhibit 1,
21 can you indicate the console to which you referred? I am
22 talking now about the first page of that exhibit.

23 A Well, the console, as I referred to it, is basically
24 that area from the shift supervisor's office on to the next
25 wall with all those different numbered consoles indicated

1 there.

2 Q You said there is essentially two tiers of consoles
3 is that correct?

4 A Yes.

5 Q And where were you located or positioned at the
6 time you were assisting Mr. Zewe?

7 A At the time I was assisting Mr. Zewe, I was in the
8 area where it states on Exhibit 1 there operators base line.
9 In that area.

10 Q If you can now estimate for us how long is the
11 tier, or the console which appears on the outer portion
12 nearest the control room -- excuse me -- furthest from the
13 supervisor's office.

14 A I am not sure I know where you mean. Are you
15 talking about consoles 3, 4, and 5, as labeled here on
16 Exhibit No. 1?

17 Q 29, 27, 19, 18, on around.

18 A How far away from where?

19 Q How long is it? Just an estimate.

20 A I would say in the area of twenty feet from 29
21 to the corner where 17 starts.

22 Q And how long would be the first tier? That is,
23 what is marked Console 3, 4, 5, and 6?

24 A I would say that width between the corner of 5 to
25 the corner of 3 would be in the area of twenty to twenty-five

1 feet.

2 Q And how far is the desk, or the operators base line
3 which you pointed out to us, and the two consoles? How far
4 away?

5 A Well, the desks, as I remember them, say, to
6 Console No. 4 was about maybe eight to ten feet.

7 Q Now, during the time you were assisting Mr.
8 Zewe, who else was in the control room?

9 A There were an awful lot of people in the control room
10 at the time. I don't recall everybody that was there. I
11 do know a few people that were there that come to mind,
12 including Mike Ross, Gary Miller was in the Supervisor's
13 Office, I think Hugh McGovern, Bubba Marshall -- these are
14 some of the people I recall being there.

15 Q Was Mr. Mehler there at this time?

16 A Mr. Mehler was in the control room during this
17 time frame. I seem to recall when I initially got to the
18 Unit 2 control room, he was not present.

19 Q Now, to whom did you report on March 28th?

20 A To whom?

21 Q From whom did you take directions, supervision on
22 that date?

23 A You are referring after I --

24 Q After you got to Unit 2.

25 A After I got to Unit 2, and relieved Bill Zewe, I

1 reported directly to Mr. Miller, I assume.

2 It is very difficult to say, because it wasn't a
3 direct reporting line. Mr. Miller was in charge.

4 Q Now, I am referring specifically to March 28th.

5 A Yes.

6 Q On that date you remember taking directions from
7 Gary Miller? I am trying to establish primarily whom you
8 took directions from on that day.

9 A Yes. Basically, when I took over directing the
10 operations, it was with the directive that we not make any
11 changes without Mr. Miller's approval.

12 Q And how long during the day on March 28th did that
13 direction or instruction remain in effect, that you not make
14 any changes without Mr. Miller's permission?

15 A Well, I think that directive was in effect until
16 -- until the time we decided to initiate high pressure
17 injection and reflood the reactor coolant system.

18 Q Can you describe for us generally how decisions were
19 made in the Unit 2 control room on March 28th, from your
20 perspective?

21 A I don't know that I can answer that without knowing
22 what type of decision you are talking about.

23 Q The decisions about what strategy to employ, what
24 flow rate -- general operating decisions on that day.

25 A In terms of direction in which we would take to

1 recover the plant, those decisions were being made by Mr.
2 Miller, but in concert with a group of people that he had
3 advising him in the shift supervisor's office.

4 Q That was the so-called, 'think tank?' Is that
5 correct. What has been come to known after the fact as the
6 'think tank?'

7 A I would assume so. I am not sure of that, because
8 I think there also was a think tank offsite somewhere that
9 was referred to as a think tank.

10 Q Now, at this time did you understand -- what did
11 you understand about whether you were operating the reactor
12 in accordance with operating or emergency procedures?

13 MR. BLAKE: Judge Smith, I wonder if at this
14 juncture I might just inquire, because I don't know whether
15 or not to object.

16 There have been a number of rulings about the
17 scope of the proceeding, and I think we all agreed on what
18 the issue is, and there have been a number of instances
19 throughout discovery where requests were made to inquire
20 of the Company and Company personnel beyond the specific
21 subject matters of the Dieckamp mailgram pressure spike,
22 hydrogen -- hydrogen combustion ignition instructions regarding
23 use of electrical equipment.

24 The questions certainly of Mr. Dieckamp have ranged
25 across the gambit of whatever he knew and whatever was on

1 his mind.

2 I raise the point now because as Mr. Chwastyk
3 comes -- Mr. Chwastyk is a key figure in this proceeding
4 as well, and to the extent there are questions such as the
5 one earlier today of Mr. Chwastyk regarding hot leg temper-
6 atures which was asked and answered to which I didn't object,
7 that was one of the plant conditions or parameters which in
8 earlier discovery was not inquired into, not allowed to have
9 been inquired into by the Board when it was sought to be
10 inquired into in interrogatories by TMIA except to the extent
11 it was a condition to which Mr. Dieckamp may have had
12 knowledge or people had communications with Mr. Dieckamp
13 about it, or he was privy to communications.

14
15
16
17
18
19
20
21
22
23
24
25
End 6.
MS Fols.

Sim 7-1

1 I don't know whether the same ground rule is
2 going to be used here with Mr. Chwastyk, and in any event,
3 I would be concerned if the testimony of Mr. Chwastyk is
4 fairly broad today and if it is reviewed or later argued
5 as a precedent for inquiry of other witnesses.

6 So at the moment I make the observation and I
7 do not object, but we do have a fair amount of history now
8 on what would be the appropriate lines of inquiry on the
9 issue which we are addressing in this phase of the hearing.

10 MS. BERNABEI: If I may respond to Mr. Blake.
11 The purpose of the questioning is to establish Mr. Chwastyk's
12 understanding of the conditions of the reactor, because I
13 think it is important as to his understanding of whether he
14 interpreted the spike to indicate core damage. I think that
15 is an essential part of the case.

16 It has always been our position that operators
17 and site personnel did not operate in a vacuum. They took
18 into consideration other parameters. We basically lost
19 that point before the Board on other than the incore
20 thermocouple temperatures.

21 In any case, I think what we have heard from
22 licensee witnesses, Mr. Lowe, Dr. Zebrowski and Mr. Dieckamp,
23 is how they interpret or how they understand core damage
24 and what are the indicators to them. I have heard them
25 mention radiation releases, reactor coolant samples, incore

Sim 7-2

1 temperatures, to name a few.

2 I think that their testimony has been based, and
3 we didn't really understand the degree of core damage because
4 of these indicators.

5 If they are allowed to state the basis of their
6 understanding and, furthermore, to speculate about -- to
7 state opinions and what I think is speculation about what
8 operators understood, we should listen to the people that
9 were controlling and operating that plant on March 28th and
10 understand the basis for their conclusions, which we say
11 are different than what Mr. Dieckamp, Mr. Lowe and
12 Dr. Zebrowski say.

13 It seems to me that after we have heard extensive
14 testimony, and I am remember in one instance it was elicited
15 by a question, which I thought was a very good question from
16 Dr. Linenberger, about if radiation releases would indicate
17 core damage.

18 I think that the people who were at the plant
19 and what they used to reach whatever conclusions they
20 reached is central to the Board. I think Mr. Lowe,
21 Dr. Zebroski and Mr. Dieckamp's testimony has indicated
22 the unworkability of the prior ruling.

23 In any case, I don't think with a central
24 figure of Mr. Chwastyk that we foreclose inquiry into the
25 bases for his conclusions.

Sim 7-3

1 JUDGE SMITH: Do you want to respond, Mr. Blake?
2 Do you have any response to those comments?

3 MR. BLAKE: Well, to the extent that Dr. Zebroski
4 or Mr. Van Witbeck or Mr. Dieckamp in particular have been
5 questioned about what was on their mind, they were put
6 on as individuals who communicated with Mr. Dieckamp or
7 were around Mr. Dieckamp and were aware of Mr. Dieckamp's
8 involvement and, in my view, described collectively the
9 environment in which Mr. Dieckamp existed immediately after
10 the accident.

11 I am unaware of Mr. Chwastyk having communicated
12 in any way shape or form with Mr. Dieckamp about this. And,
13 as I say, it may be that in Mr. Chwastyk's case it does
14 make more sense, but I want us all to recognize that if that
15 is the case, that we are making an exception and as we get
16 into other witnesses we have expanded, overruled or ignored
17 without knowing so prior Board rulings in this case.

18 I didn't have a motion. It was really just
19 an observation.

20 MS. BERNABEI: Okay. Fine. I will just
21 proceed.

22 BY MS. BERNABEI:

23 Q Were you, and I mean you collectively the
24 operational staff, were you operating the reactor at that
25 time within emergency or normal operating procedures?

Sim 7-4

1 A I would say that we were operating the plant,
2 based on our knowledge of the plant, because we had no
3 procedures to govern the status we were in.

4 Q So it is fair to say that the status at that
5 time was outside normal operating or emergency procedures;
6 is that correct?

7 A That is correct.

8 Q How did you become aware of the pressure spike
9 which occurred at 1:50 p.m.?

10 A I was alerted to a problem. I don't recall what
11 alerted me to it, but I would assume it was the alarms going
12 off at the time. I happened to be standing right near the
13 console and I saw the actual pressure indicator, pressure
14 recorder moving up.

15 Q Now if you could refer to Exhibit 1 before you,
16 Licensee Exhibit 1. Can you point out where in that exhibit
17 you were standing and the pressure recorder?

18 A I was standing in the area on Exhibit 1 where
19 it says "Reactor Pressure Recorder," where the words are
20 typed. I was in that general area.

21 Q And what did you see?

22 A I saw the recorder going straight up.

23 Q And what was your reaction to that, your
24 immediate reaction?

25 A My immediate reaction? I am not sure I could

Sim 7-5

1 state that on the record.

2 (Laughter.)

3 It was basically -- I really didn't know what
4 was happening, you know. I tried to make a determination
5 to find out what was going on and what was happening.

6 Q What was your understanding as to how long it
7 took the spike to rise and then fall?

8 A It was a very short period of time. I don't know
9 how to characterize it, but I think in periods of time, of
10 real time, it was very short, but it seemed like a long time
11 when I was standing watching it.

12 Q You characterized it in a prior interview as
13 a couple of heart beats; is that correct?

14 A Yes.

15 Q Okay. What, if any, other alarms or signals
16 did you become aware of at this time?

17 A There were a number of alarms that went off. I
18 am not sure that I could state any specific alarms. I have
19 been away from the industry now for a while, and I just don't
20 recollect specifically what the alarms were.

21 Q Do you remember whether there was an engineering
22 safeguard signal received at that time?

23 A I don't recall it, but I assume there was.

24 Q And what, if anything else, happened in the
25 control room at the time of the spike?

Sim 7-6

1 A One of the things that happened was the reactor
2 building spray pumps energized and came on. In fact, the
3 valves opened and we were spraying water into the reactor
4 building.

5 Q Who else at the time of the spike was aware of
6 it, to your knowledge?

7 A Again, there were an awful lot of people in the
8 control room. I made the assumption that everybody that
9 was in the control room was aware of the spike simply because
10 it was a major variance from what had been occurring previous
11 to that, and by that I mean everything was fairly quiet and
12 we were not doing much of anything. When the pressure
13 spiked the alarms sounded and there were operator actions
14 taking place, et cetera.

15 Q Now when you say you assume everyone in the control
16 was aware of it, who would that include?

17 A Specifically again I don't know that I could
18 name -- I know I can't name all of them. I can recall a
19 few people. Again, it is pretty much the same list -- maybe
20 not list, but the same people though that I mentioned earlier.
21 I do recall Brian Mehler. There was an NRC inspector there.
22 There was I think Bubba Marshall again. We must have
23 a record somewhere of who was in the control room at the time.

24 Q Right. What, if any, actions did you take in
25 response to the spike?

Sim 7-71

1 A Okay. In response to the spike I tried to make
2 a determination of what had occurred so that I could take
3 some logical actions. And it boiled down to that basically
4 the pressure came back to where it had been previous and it
5 looked like it was staying there. So I ordered the shutting
6 down of the equipment and operating specifically the spray
7 pumps and that type of thing.

8 Q Okay. Did you order that any checks be made?

9 A Yes, I did. I ordered a external check of the
10 reactor building to determine if we could find some kind
11 of a problem to explain the sudden drop in pressure. I also
12 ordered the control room operators to verify containment
13 integrity and probably some other things.

14 Q Okay. When you say verify containment integrity,
15 what do you do to do that?

16 A That is basically to verify that certain valves
17 that are required to maintain containment integrity are in
18 their proper positions and that type of thing.

19 Q Did you order any kind of a radiation monitoring
20 or radiation check, to your knowledge?

21 A Not that I can specifically recall, although
22 at that time any time we had any of our operators leave the
23 control room to go in the plant, they were accompanied by
24 radiological control technicians to monitor radiation.

25 Q So there may have been some kind of check made

Sim 7-8

1 as a result of the other checks you ordered into the integrity
2 of the containment, is that what you are saying, that is
3 the accompanying radiation monitoring personnel that went
4 in with them?

5 A Yes.

6 Q Do you remember testify at a prior time about
7 checking the steam generator pressure and the reactor coolant
8 pressure at that time?

9 A Again, not specifically, but I would assume
10 that those were checked.

11 Q Now assuming that a spike had occurred on the
12 reactor building pressure recorder, what would the steam
13 generator pressure and reactor coolant pressure chart show
14 if the spike were a real increase in pressure?

15 A The steam generator pressures and the reactor
16 coolant system pressure?

17 Q That is correct.

18 A What would they show?

19 Q That is right. Assuming that the spike did
20 indicate a real increase in pressure, would that be reflected
21 on the steam generator pressure chart or the reactor coolant
22 pressure chart?

23 A I don't know that I can answer that unless we
24 want to go into, you know, a theory of reactor operation. I
25 mean pressure in the reactor building would go up and the

Sim 7-9

1 pressure in the reactor coolant system would go down if
2 you had a loss of coolant accident, or conversely, if
3 you had a steam accident, the pressure in the reactor
4 building could go up and the pressure in the steam generators
5 could go down.

6 Q Okay. I am asking you a little simpler question.
7 What would you expect to find if you saw a reactor building
8 pressure spike? If it were in fact a real increase in
9 pressure, would that be reflected, that real increase in
10 the reactor building, would that be reflected in the reactor
11 coolant system pressure chart in any way?

12 A Not unless the increase in pressure was due to
13 some fault in the reactor coolant system.

14 Q Okay. And how about the steam generator pressures,
15 would they show any kind of coincident pressure increase
16 or decrease?

17 A Again, you know, not unless it was due to some
18 fault in the steam generators.

19 Q Do you remember if the results of these checks
20 were reported back to you?

21 A I recall it taking quite a while for me to get
22 the report back on the checks and I kept inquiring on
23 the status. I don't specifically recall if there was ever
24 a final report back. There probably was, but I just don't
25 recall.

Sim 7-10

1 Q Okay. What was your assessment or conclusion
2 as to whether the pressure spike indicated a real increase
3 in pressure?

4 A Well, I eventually came to the conclusion that
5 it did in fact indicate a real increase in pressure and
6 that was based on the fact that our spray system, which
7 operates out of a two out of three network, which means
8 you have to have two separate initiating events or -- I am
9 sorry -- an event must be sensed at two different locations
10 for the pumps to start and the valves to open. And based
11 on that I made a judgment that we in fact had seen a real
12 pressure increase.

13 Q Was there any other basis or foundation to that
14 assessment?

15 A There may have been, but that is the one that
16 I recall as being the most outstanding.

17 Q Okay. When you say "eventually," how long
18 after the occurrence of the spike did you come to this
19 conclusion or assessment?

20 A It is very difficult to say. I really don't
21 believe it was that long again in terms of real time. As a
22 matter of fact, I do recall discussing it with Brian
23 Mehler and, as a result of that discussion, coming up with
24 that conclusion. I don't know that I can give you an estimate
25 of time in that sense.

Sim 7-11

1 Q Now to you knowledge, was Gary Miller aware or
2 did he become aware of the pressure spike?

3 A Give that question again, please?

4 Q Do you know whether Gary Miller became aware
5 of the pressure spike at the time of its occurrence?

6 A Yes, I do.

7 Q Okay. And how did he become aware?

8 A Well, during the time frame in which we had the
9 pressure spike and I was at the console trying to determine
10 what had caused it, I has asked someone to go back and
11 inform Gary that we had some sort of a problem.

12 Q When you say some sort of problem, that the
13 spike had occurred?

14 A Yes. And then afterwards, after Mr. Mehler and
15 I had discussed the cause I personally went back and discussed
16 the pressure spike with Mr. Miller.

17 A And what was the substance of your discussion
18 with Mr. Miller, as best you can remember?

19 A As best as I can recall, I impressed upon Gary
20 that I thought that what we had had out there was in fact
21 a real pressure increase and gave him the information on
22 which I came to that conclusion, primarily the spray pumps.

23 Q Did you discuss with him at that time any noise
24 or thud that was heard simultaneously with the spike?

25 A No, I did not.

Sim 7-12

1 Q You did not?

2 A I did not. But I do recall someone talking
3 about a noise and a thud. Now I did not hear that thud.

4 Q Did you discuss that with Mr. Miller?

5 A Did I discuss it?

6 Q Yes, the fact that you had been informed of that?

7 A I don't really recall. That may have been some
8 of the information that we discussed as part of supporting
9 my conclusion.

10 Q Okay. Did you talk to him about the cycling
11 by Mr. Scheiman, Fred Scheiman of the electromatic valves
12 simultaneously with the pressure spike?

13 A Again, I answer that I believe so, but I am not
14 really certain. I think that was part of, you know, the
15 things that we discussed to support my conclusion.

16 Q Okay. Let me refer you to some prior testimony
17 to determine if that refreshes your recollection, specifically
18 the October 30, 1979 testimony to the Special Inquiry Group.

19 (Pause.)

20 We will get it for you in a moment, Mr. Chwastyk.
21 I believe it is pages 8, 10, 14 and 15.

22 (Pause.)

23 MS. BERNABEI: For the Board's assistance, this
24 is -- I believe this is Item 99 in the Joint Mailgram Exhibits
25 1-C.

Ace-Federal Reporters, Inc.

end Sim
Sue fols

#8-1-SueT

1 MS. BERNABEI: Mr. Blake suggested that perhaps
2 we take a short recess.

3 JUDGE SMITH: Okay. Let's take a ten minute
4 break.

5 (Where on, the hearing is recessed at 10:58 a.m.,
6 to reconvene at 11:15 a.m., this same day.)

7 JUDGE SMITH: Are you ready to proceed? The
8 Board has decided that we are going to rule now on the
9 motion for sequestration. And we will deny the motion but
10 keep into effect the temporary Order, as I will explain.

11 As we view the requirements, you have to --
12 the mover for the motion, the Order, has to demonstrate
13 some basis for a concern. In this instance, it is unlike
14 the cheating session. There is no foundation or grounds
15 to suggest that a conspiracy or concerted action exists
16 among the potential witnesses, or that there is any parti-
17 cular danger.

18 I recognize that not all sequestration Orders
19 have to depend upon such a showing, but that is one of
20 the traditional reasons for imposing one. And it's not
21 present here.

22 But we have not seen any foundation for a
23 sequestration Order other than the tendency for people
24 to talk about testimony and the effect that it might
25 influence your testimony. In this instance, however, there

#8-2-SueT

1 are many reasons not to accept that as a basis because, one,
2 as pointed out by counsel, a sequestration Order would not
3 be effective in view of the many interviews and depositions
4 and reports that have attended the events upon which we
5 focus in these hearings. And, moreover the media coverage
6 would reduce the effectiveness of any sequestration Order.

7 And certainly we have no intention of excluding
8 the media, nor is it being requested.

9 Third, we are concerned that a sequestration
10 Order could not be easily enforced, and we would not wish
11 to lend our authority to an Order that could not be easily
12 enforced. As pointed out, many of these men still work
13 together. They live in a relatively small community, and
14 there is regular contact.

15 We are concerned that the motion was not timely
16 made, that it could not be considered with deliberation
17 with full consideration of the law and the facts. We
18 recognize that the movant is not totally without remedies.
19 For example, witnesses can be questioned as to whether
20 their testimony has been -- whether they have discussed
21 the testimony with other witnesses, and there could be
22 some voir dire as to the extent that any such discussion
23 may have influenced their testimony.

24 We recognize also that in NRC cases we have
25 somewhat of an unusual procedure; and, that is, the case

#8-3-SueT

1 in chief and rebuttal cases tend to proceed at pace or
2 parallel, at the same time. And there is some affirmative
3 benefit to communication with witnesses about what other
4 witnesses have said. We stated that we recognize that
5 there are advantages to sequestration and there are also
6 benefits. And that is witnesses should be informed when
7 there has been an apparent error and an opportunity to
8 provide the Board with accurate and complete testimony
9 which opportunity might be frustrated in the event of
10 sequestration.

11 All of those reasons have been carefully balanced
12 and considered by the Board, and for that reason we are
13 not going to order sequestration. However, we also recog-
14 nize that having -- once we proceed without sequestration,
15 if indeed there is error in our ruling it is virtually --
16 it is not correctable. It is not correctable.

17 Therefore, it is our intention to continue the
18 temporary sequestration Order until Tuesday morning and
19 to give you an opportunity should you choose to seek an
20 emergency appeal from the Appeal Board. Now, if you
21 indicate to me that that is your intention, I will soon
22 call Judge Eddels and just alert him to the fact that such
23 an appeal might come up, or give you opportunity to do it,
24 because I'm a little bit concerned about availability.

25 MS. BERNABEI: What I would propose is that we

#8-4-SueT

1 make the showing that I understood you requested, and Mr.
2 Blake requested, on Monday to the Board.

3 JUDGE SMITH: Well, we decided to proceed now,
4 because the difficulty is we are proceeding with this case
5 in a deliberate, undelayed fashion. And were the matter
6 to be first addressed beginning Tuesday, then without
7 your opportunity to appeal then we would have the potential
8 for additional delay.

9 You are not injured by us ruling today, because
10 you have had all the opportunity to make your point. It
11 would have been the parties opposing your motion who
12 would have been injured.

13 MS. BERNABEI: I understand the Board's ruling.
14 Just so I understand it, we should not make any further
15 argument to you? That is what you are suggesting?

16 JUDGE SMITH: Well, that is -- it was your
17 motion. You had your opportunity to give the point. Now,
18 you can seek whatever you wish.

19 There is only one point that still remains,
20 and that is do you want me to inform the Appeal Board of --
21 do you have -- is there any way we can serve you in
22 facilitating an emergency or urgent appeal?

23 MS. BERNABEI: I have no idea at this point,
24 having received the Board's ruling about two minutes ago.

25 JUDGE SMITH: Right.

#8-5-SueT 1 MS. BERNABEI: And I would have to have time
2 to consider it.

3 JUDGE SMITH: That's fine. Just let me hold out
4 to you that our services are available towards that end.

5 MR. MC BRIDE: Judge Smith, I have now the typed
6 corrections to Mr. Chwastyk's September 25th deposition,
7 and with your permission I will pass them around to the
8 parties and the Board.

9 JUDGE SMITH: All right. Do you understand now
10 the ruling that we have made?

11 The temporary sequestration Order will remain
12 in effect until Tuesday morning. That is, Mr. Chwastyk,
13 you will not, until further Order of this Board, communi-
14 cate the substance of your testimony.

15 WITNESS CHWASTYK: I understand that.

16 JUDGE SMITH: Nor anyone else.

17 MR. MC BRIDE: Is it anyone else, or to other
18 potential witnesses? The reason I ask, because these are
19 the Thanksgiving holidays. He may be with family and this
20 sort of thing. And I just am looking for a slight clarifi-
21 cation.

22 JUDGE SMITH: I don't know, but is there no
23 end to the refinement that this issue can take?

24 MR. MC BRIDE: I don't mean to be difficult,
25 but --

#8-6-SueT¹

JUDGE SMITH: I don't think that we can simply enforce his conversations with his family, nor do we have any desire to. It would be very hard. What did you do, Dad? And I don't know how he could --

(Laughter.)

MR. MC BRIDE: I'm --

JUDGE SMITH: -- do it. But I'm asking you as a matter of good faith, Mr. Chwastyk, to use prudence and try to keep the substance of your testimony from the attention of other witnesses.

MR. MC BRIDE: That was the only clarification I needed, because it is going to be on television this evening and that was my point.

JUDGE SMITH: Well, that is a risk that the movant was willing to take in any event. You just use your judgment. You know what the risks are, you know who the people are, you know what the relationship is. And we would depend upon you, sir, to use good judgment to prevent, at least from you, people hearing from you directly or indirectly other witnesses in this proceeding hearing the substance of your testimony.

WITNESS CHWASTYK: Yes, sir. I understand.

JUDGE WOLFE: Once again, Mr. McBride, these are corrections to Mr. Chwastyk's deposition of what date, please?

#8-7-SueT

1 MR. MC BRIDE: September 25, 1984. It's the
2 deposition of TMIA in this proceeding.

3 JUDGE WOLFE: Thank you.

4 BY MS. BERNABEI: (Continuing)

5 Q Mr. Chwastyk, before the break I asked you if
6 you would review certain portions of your October 30th,
7 1979 testimony.

8 Have you had an opportunity to do that?

9 A Yes, I have.

10 Q Now, does that refresh your recollection as to
11 whether in your conversation with Gary Miller about the
12 pressure spike you mentioned any other factors which led
13 you to believe it was a real pressure spike?

14 A Well, the deposition that you gave me to read
15 indicates that I did talk about some other things. I
16 don't recall them.

17 Q Okay.

18 JUDGE SMITH: At a convenient place, there is
19 one thing I forgot to mention with respect to the se-
20 questration Order. And I wanted to bring it up as soon as
21 possible at a convenient place.

22 MS. BERNABEI: All right.

23 JUDGE SMITH: If it were to aid the parties, I
24 would consult with the reporting service to have the part
25 of our ruling typed it. Off the record.

#8-8-SueT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(An off-the-record discussion ensued.)

JUDGE SMITH: All right. Would you like that?
Would that be helpful?

MS. BERNABEI: I have no present intention or
whether we are going to seek certification or not.

JUDGE SMITH: All right. Okay. I made that
offer.

MS. BERNABEI: Okay. Thank you.

BY MS. BERNABEI: (Continuing)

Q I understand your testimony to be that your
memory is not refreshed by reading the deposition; that is,
you still have no current memory of whether you spoke about
those things to Mr. Miller?

A Not at this time, no.

Q Okay. Can you recount for us what your inter-
views indicate you did testify at a prior time about other
discussion with Gary Miller about the spike?

A Are you asking me to read the --

Q Not to read it, but just to summarize for us
what you did recount to Gary Miller according to those
depositions and testimony?

A Well, according to this I related to him the
fact that I put together the report of the loud noise, the
valve operation simultaneous with the pressure spike, and
put those things together to come to the conclusion that

#8-9-SueT

1 there was some kind of an explosion in the building.

2 Q Okay. Did you express to Gary Miller your
3 understanding that that was a hydrogen explosion?

4 A I don't recall, you know, whether or not we
5 discussed hydrogen at that time.

6 Q Now, what was your understanding of the cause
7 of the spike or the explosion at that time?

8 A My understanding at the time was it was, in
9 fact, due to a hydrogen buildup.

10 Q Can you explain for the Board how you came to
11 that conclusion? That is, how would that hydrogen have
12 been generated?

13 A How the hydrogen -- well, we knew we had core
14 damage at the time. And, of course, part of core damage
15 is reserve water reaction in which you free hydrogen. And
16 all my indications of the pressure spike seem to have led
17 to a real spike but a spike which indicated an explosion.

18 And I knew of no other means of having an
19 explosion in the reactor building.

20 Q So your testimony is that other than a hydrogen
21 burn, you could determine no other cause for an explosion
22 or spike; is that correct?

23 A That's right.

24 Q Now, did you make any requests or seek any
25 authorization from Mr. Miller in this discussion with him?

#8-10-SueT

1 A Again, I don't recall, you know, specifically.
2 Testimony in this says I did, though.

3 Q Okay. Do you remember testifying at your
4 deposition that you sought permission from Gary Miller to
5 draw a bubble in the pressurizer?

6 A Well, I understand that that was my conclusions
7 on what had to be done in terms of getting the plant back
8 into a situation we could all understand throughout the
9 whole afternoon. So, I had asked permission on a number of
10 occasions throughout the afternoon to be allowed to do that.

11 Q Did you also ask permission in this conversa-
12 tion?

13 A I don't recall.

14 Q Okay. Do you remember testifying at a prior
15 time that you did, in fact, ask permission to draw a
16 bubble in the pressurizer during this conversation about
17 the pressure spike with Mr. Miller?

18 A I don't recall testifying to that. But reading
19 the testimony, I did.

20 Q Do you remember testimony in your deposition
21 of September 25, 1984 requesting permission from Gary
22 Miller to flood the core in response to your interpretation
23 or understanding of the pressure spike?

24 A What was the question again?

25 Q Yes. Do you remember stating in your deposition

#8-11-SueT

1 that you sought permission from Gary Miller to flood the
2 core in response to your understanding of the pressure
3 spike?

4 A I really don't remember giving that deposition.
5 I don't know if that answers the question.

6 Q Okay. So you certainly don't remember it. Let
7 me point you out to a point.

8 A Fine.

9 Q Okay. Referring you to Page 28, the answer
10 which appears near the bottom of the page beginning "Again."
11 It's 28 of your deposition.

12 A Oh, of the TMIA --

13 Q That's correct, September 25, 1984.

14 MS. BERNABEI: Judge Smith, it won't be in
15 that, the Joint Mailgram exhibit. It is TMIA's deposition.
16 I believe I handed the Board a copy.

17 JUDGE SMITH: All right. Some confusion has
18 been generated in the Board's mind. And that is, as he
19 sits there and says while he sees in his deposition that
20 he said that, what deposition is he talking about?

21 MS. BERNABEI: I believe it was the October
22 30th which appears as Exhibit 88.

23 JUDGE SMITH: All right. The October 30th,
24 1979 deposition.

25 See, we were confused whether you were talking

#8-12-SueT 1

about your very recent deposition.

2

WITNESS CHWASTYK: As a matter of fact, I was confused also. I didn't realize the last question was in relation to the 1984 deposition.

3

4

5

MS. BERNABEI: That's correct. Okay. Let me state the question again, then.

6

7

BY MS. BERNABEI: (Continuing)

8

Q My last question was with regard again to the deposition you have given in this proceeding pursuant to TMIA's request, did you state that in this discussion with Gary Miller you sought -- you used -- well, in talking to him about the pressure spike you used it as a means of attempting to get Gary Miller to flood the core?

9

10

11

12

13

14

15

16

17

18

19

20

MR. MC BRIDE: Could you just allow me to point out that there is a transcript correction in the answer that you are referring to? And, unfortunately this transcript doesn't have numbered lines. But in the last answer on the page, in the second last line of that answer, between the words "to" t-o and "flood" the words "allow me" should be inserted.

21

JUDGE WOLFE: Now, your question once again.

22

BY MS. BERNABEI: (Continuing)

23

24

25

Q Yes. Mr. Chwastyk, in this deposition to which we are referring, September 25, 1984, did you state that you sought permission from Gary Miller in response to your

#8-13-SueT

1 evaluation of the pressure spike to allow you to flood the
2 core?

3 A Yes, I did.

4 Q And in your words, what did that mean, flood
5 the core?

6 A Well, flood the core was basic -- and I'm using
7 that term now. I'm not sure that was the term I used at
8 the time, but it was basically to get the reactor coolant
9 system into a status in which we had some more firm idea
10 of what was occurring with the reactor itself and the
11 reactor coolant system.

12 Q Now, at this time what operating mode or
13 strategy was being employed to bring the reactor to a
14 stable condition, at the time of the pressure spike?

15 A At the time of the pressure spike, we were
16 operating in the mode of pumping in some amount of water --
17 and I'm not sure, I always say between 15 and 20 gallon a
18 minute, but I'm not sure of that number at all, and
19 periodically opening the electromagnetic block valve and
20 letting a flow through the pressurizer.

21 end #8
22 e flws

1 Q Could you characterize that as depressurization
2 mode? That is, were you depressurizing the reactor?

3 A I don't know if I can characterize that as
4 either pressurization or depressurization. Of course, if
5 you had the block valve closed, and you were pumping water
6 in, you were pressurizing; when you open the block valve,
7 it is depressurizing.

8 Q Okay, so it is fair to say that because you were
9 cycling the valve at that point you were, in fact,
10 depressurizing in the sense that you had it opened and not
11 closed?

12 A I just don't want to mislead anybody here. It
13 was not a mode. Opening a valve was not a depressurization
14 mode by any means, at least I didn't look at it at that
15 time, and I don't think I look at it that way now.

16 One of the effects of opening the valve would be
17 you would decrease your pressure, but I can't say it was
18 a mode of operation.

19 Q When you spoke to Mr. Miller, was he aware of
20 the pressure spike prior to your conversation with him?

21 A I assume he was, but I don't really know. I
22 do recall asking someone to go back and inform Mr. Miller
23 that we had a problem in the control room at the time of
24 the pressure spike.

Now, whether or not that was, in fact, done I

1 don't know.

2 Q Do you have any memory of whether or not Mr. Miller
3 actually saw the strip chart on which the high pressure were
4 recorded?

5 A I have a recollection of Mr. Miller looking at the
6 strip chart in the control room after the pressure spike.

7 Q In your presence?

8 A Yes.

9 Q It is your testimony then that Mr. Miller did give
10 you permission to draw the bubble in the pressurizer, is
11 that correct?

12 A I don't recall that, but my testimony here on
13 October 30, 1979 indicates that, yes.

14 Q And in your mind, what was involved in drawing the
15 bubble in the pressurizer?

16 A Drawing the bubble in the pressurizer, basically
17 we were trying to get the pressurizer heat hotter than the
18 reactor core, developing a steam bubble in the pressurizer,
19 and therefore a level in the pressurizer itself which would
20 give us an indication of level in the reactor coolant
21 system.

22 Q Is it fair to say in your mind at that time you
23 -- this was equivalent to repressurizing the system; was
24 a portion of repressurizing the system?

25 A I -- again, I don't know how to answer that,

1 because, you know, we could draw a bubble in a pressurizer
2 and fill it, and not pressurize it, other than the amount
3 of pressure that would be required to fill the reactor
4 coolant system.

5 Q Did you ever testify that in your mind repressurizing
6 the reactor coolant system and establishing the bubble to you
7 was basically the same thing? I am talking about your
8 testimony --

9 A Yes, basically.

10 Q What did you do after receiving permission from Mr.
11 Miller to draw a bubble in the pressurizer?

12 A I will make an assumption that we did just that,
13 we started high pressure injection, and shut the block valve,
14 and turned on the pressurizer heaters, which is all parts
15 of the evolution for drawing a bubble.

16 Q Now, if you know, were the heaters, the pressurizer
17 heaters turned on earlier that day?

18 A Again I don't recall it, but reading the testimony
19 here from October 30th, 1979, they apparently were.

20 Q They were?

21 A Yes.

22 Q Now, is there any particular order in which one
23 draws the bubble in the pressurizer? That is, in terms of
24 starting the heaters, shutting the block valve, or starting
25 HPI?

1 A Well, yes there is under normal conditions.
2 I will just briefly go through that, but in normal conditions
3 you normally have some kind of a level indication so you know
4 what the level is in the reactor coolant system. You fill
5 it up to the point where you go one of two ways, you go solid
6 and draw the bubble, or else you turn on the pressurizer
7 heaters, and develop a steam blanket in the pressurizer, and
8 then fill the loops that way.

9 Q And it was the second alternative that was being
10 considered, is that not correct? Turning on the heaters and
11 closing the block valve.

12 A Yes, that would be one way, yes.

13 Q Now, is there any particular reason the heaters
14 would be turned on prior to closing the block valve? In other
15 words, can you use those two steps in either order? Turning
16 on the heaters and then closing the block valve, or do you
17 necessarily have to do those two steps in a particular order?

18 A Well, you can do them in any order, but depending
19 on what you are trying to accomplish, leaving the block valve
20 open and turning on the heaters probably will not help you
21 too much, because you would have a constant flow through the
22 pressurizer, and any heat you are adding to the pressurizer
23 would be being lost through the open block valve.

24 So, it wouldn't behoove you to close the block valve
25 and then turn on the heaters.

1 Q Now, either from your present memory, or the
2 interviews you have reviewed, your prior depositions and
3 interviews, do you know when Mr. Miller gave you permission
4 to draw the bubble in the pressurizer?

5 A My present memory, I do not. But again, reading
6 October 30th, it would indicate it was soon after the pressure
7 spike.

8 Q Do you know, in fact, that if you and other
9 operations personnel established a bubble in the pressurizer
10 at this time, shortly after the pressure spike?

11 A No, we did not establish a bubble in the pressurizer
12 until later in the evening when we went to a higher injection
13 flow rate.

14 Q And why was that so? In other words, if you were
15 trying to establish a bubble and did not succeed, how did
16 that occur?

17 A (Pause) I really don't know how to answer that.
18 Are you asking for an opinion of why we didn't get the
19 bubble?

20 Q That is right.

21 A My opinion is the fact that we just didn't have
22 enough water in the reactor cooling system so that when we did
23 get the temperature in the pressurizer to the point of creating
24 steam, and the steam then forced the water out of the
25 pressurizer into the reactor coolant system, the volume vaca

1 in the reactor coolant system was too great for the volume that
2 we had in the pressurizer.

3 I am not sure that, you know -- you know, what
4 I basically say here is that we didn't have enough volume
5 in the pressurizer to fill the reactor coolant system loops.

6 Q Now, it is true that you were partially successful,
7 is it not? That you did collapse some bubbles in the A-loop?

8 A That was after we had gone to the high pressure
9 -- increase in high pressure injection flow rate, yes.

10 Q And when was that, if you remember?

11 A That was in the area of five -- after five in the
12 evening.

13 Q About 5:20, 5:30?

14 A Yeah. That sounds good. I am not sure I can
15 state specifically when.

16 Q Is it fair to say that in your mind drawing the
17 bubble, including closing of the block valve and turning
18 on the heaters in the pressurizer as well as increasing
19 HPI in this period of 5:20-5:30 p.m., that that was all
20 part of repressurizing the system?

21 A Yes. That is a repressurization evolution.

22 Q Is there any other part of repressurization evolution
23 other than those steps or elements?

24 A No, not in terms of repressurization.

25 Q In view of your memory from a review of your

1 interviews is that Gary Miller gave you permission to draw
2 the bubble, is that correct?

3 A That is correct, because I just read it here in
4 the deposition.

5 Q Now, was there any instruction which you were
6 aware on March 28th not to activate equipment in the
7 reactor building?

8 A To the best of my recollection yes, there was
9 such an order given.

10 Q What was the order?

11 A It was basically not to operate any equipment
12 in the reactor building, and this is where I really get
13 vague on this, because -- not operating equipment, I remember
14 three aspects of it. One was, to the best of my recollection,
15 right after the pressure spike. The second one was later
16 that evening when we were at the cooling pumps, and the
17 third one was a couple of days later.

18 I think right now it was on a Friday the 30th, when
19 I came in on Shift, there was an order out not to run
20 equipment in the reactor building.

21 Q And starting out with the first one, the one that
22 occurred right after the pressure spike, who gave that order?

23 A As best as I can recall, it was -- I gave the
24 order after some discussion with Mr. Miller.

25 Q So, it is fair to say you drew whatever authority

1 you had from Mr. Miller? Mr. Miller authorized you to give
2 such direction, to the extent it was formalized. You were
3 acting in accordance with his permission, or authorization?

4 A To the best of my recollection yes, that is true.

5 Q And to whom did you give this order?

6 A I gave this order to the operators on the console.

7 Q In your discussions with Mr. Miller, what was the
8 basis for the order?

9 A To the best of my recollection, it was in
10 relation to the pressure spike, and the simultaneous opening
11 of the electro-magnetic block valve.

12 Q Maybe I didn't explain my question very well. What
13 was the reason for the order. What was the necessity for
14 it?

15 A Because I thought at the time the pressure spike
16 was due to some kind of explosion in the reactor building,
17 and it was related to the operation of the electro-magnetic
18 relief block valve, which caused a spark of some sort to
19 ignite the hydrogen.

20 Q And at the time you discussed this with Mr. Miller,
21 did he understand the basis for the instruction order?

22 A To the extent that it was some kind of -- it was
23 related to the operation of the block valve. I don't -- I
24 can't say now whether or not we talked about explosion.

25 Q I guess my question is a different one. Did he

1 understand the reason you gave the order. That is, what
2 your concern was that required --

3 A We discussed it. You asked me if I can answer
4 whether he understood it, I don't know whether I can answer
5 whether or not he understood it.

6 Q But from what you told me, your concern as expressed
7 to him was that there could be possible sparking and another
8 explosion?

9 A Yes.

10 Q Okay. And in the terms that you were talking
11 to Mr. Miller, did you either mention hydrogen, or was that
12 understood between you?

13 A I don't recall mentioning hydrogen. I think -- it
14 is very possible that may have been an assumption on my part.

15 Q Do you think it was an assumption on Gary Miller's
16 part, at least in the context of your discussion with him.

17 A In light of what has transpired, I would say, no.

18 Q No, I mean at the time. At that time as you were
19 talking, as he was talking, about a concern about hydrogen
20 in the reactor building.

21 A I made the assumption that we both understood it
22 was due to hydrogen. That is the best of my recollection.

23 Q Okay. Now, you talk about a second instruction
24 some time before the starting of the reactor coolant pump,
25 is that correct?

1 A Yes.

2 Q Who gave that instruction?

3 A Again, I don't really recall specifically, but
4 I do remember an incident where when we were getting prepared
5 to start the reactor coolant pump, someone brought up that
6 -- the fact that we had an order not to run equipment in the
7 reactor building, and someone volunteered the information
8 that, well, don't worry about it, we have been running
9 pumps in preparation for starting --

10 Q Those would be the oil and lift pumps, is that
11 correct.

12 A (Nods affirmatively)

13 Q And was it Mr. Mehler who commented --

14 A To the best of my recollection it was.

15 Q This would be shortly -- in the 6:30, 7:00 time
16 frame?

17 A Yes.

18 Q Okay. If you remember, what was Mr. Mehler's
19 comment about running the pump?

20 A To the best of my recollection it was well, don't
21 worry about it because I have been running those pumps in
22 there and nothing happened.

23 Q And why did that indicate there wasn't a concern
24 any longer?

25 A Well, I think that is when I came to the conclusion

9-11-Wal

1 that is probably right, everything in there is gone,
2 because we burned it up previously, and it would take some
3 time to build up.

4 Q What was your understanding as to the extent of
5 core damage after the pressure spike, after understanding
6 that it was, in fact, a real increase in pressure and your
7 understanding that it was caused by hydrogen?

8 A I don't know that I can recall making any further
9 assumptions in relation to core damage after the pressure
10 spike.

11 Understand, that had I not been there that
12 morning, and there had been some talk about core damage, and
13 I really didn't know to what degree the assumption was made
14 that we had core damage.

15 I think one of the things that bothered me most
16 after the pressure spike was the fact that we were still
17 operating in a mode in which I really did not know if we
18 were, in fact, perpetuating continual core damage.

19 Q It is fair to say the time you came in, whatever
20 sense of core damage you had, you believed it was being
21 mitigated, or at least was not being increased, is that
22 fair to say?

23 A Yes.

24 Q And I believe it has been your prior testimony
25 that after the pressure spike, you no longer believed that

1 was true.

2 You had a concern about greater core damage than
3 you originally believed.

4 A Well, --

5 Q Let me ask you the question directly: Did you
6 -- have you testified at a prior time in a deposition in
7 this proceeding on September 25th that after the pressure
8 spike you had reason to believe the core damage was greater
9 than you had believed in the earlier time when you were
10 briefed?

11 A I may have. I don't recall that.

12 Q Okay. Let me refer you to page 16 of your
13 deposition on September 25th, 1984. The question -- next
14 to the last question on that page, which begins: On
15 asking?

16 A Yes, I see that.

17 Q And then if you would review question and answer
18 through the first two thirds of the following page, page 17.

19 End 9.
20 MS fols.

21

22

23

24

25

Sim 10-1

1 A Okay, I have read those.

2 Q Did you indicate at your deposition on September
3 25th of this year that you believed after the pressure spike
4 the core damage was greater than you had originally believed
5 at the time you arrived?

6 A I said that in this deposition, yes.

7 Q And from your review of your deposition, do you
8 remember or know how you reached that conclusion? I am
9 asking if your recollection is refreshed from a review of
10 the deposition?

11 A No.

12 Q You talk about two factors, do you not? One
13 being the unexpected nature of the pressure spike, it was
14 certainly something you didn't expect in normal operations?

15 A That is right.

16 Q Okay. And the second factor being your attri-
17 bution of it to hydrogen, the production of hydrogen?

18 A Well, yes, I agree that this was totally unexpected
19 and I did relate it to hydrogen generation. I guess where
20 I am hung up is I am not certain that the amount of core
21 damage was the uppermost thing in my mind at that time.

22 Q No, I understand. I am just trying to get your
23 understanding at the time, understanding that your primary
24 responsibility was trying to get the reactor in a stable
25 condition.

Sim 10-2

1 With that in mind, it is fair to say that your
2 deposition indicates that you understood a greater degree
3 of core damage from the pressure spike than you previously
4 understood?

5 A Yes, that is what the deposition indicates.

6 Q When you first spoke to Gary Miller about the
7 pressure spike, how did he respond?

8 A I don't know how to answer that. He listened.
9 You know, he was very busy at the time. So I am not sure
10 that I can say that he didn't have other things on his mind
11 and therefore was, you know ---

12 Q Did he say something to you like, let's not get
13 excited?

14 A Yes. Yes, he did.

15 Q Did he say anything else in terms such as that
16 indicating his concern about the pressure spike?

17 A I think, and I got the impression he did say
18 let's not get everybody all excited about it, and that I
19 got the impression that he wanted some time to be able to,
20 you know, investigate it and make a determination on what
21 in fact had transpired.

22 Q Do you know if Mr. Miller made any such investiga-
23 tion and inquiry?

24 A Unfortunately, Mr. Miller was required to leave
25 the island shortly thereafter to talk to the Lt. Governor.

Sim 10-3

1 Q So as far as you know, he personally did not
2 make any investigation at that time?

3 A Not that I am aware of, no.

4 Q Did he direct anyone else to make an investigation,
5 other than the orders he gave to you that you have
6 described?

7 A Not that I am aware of.

8 Q Now if we define repressurization in somewhat
9 the manner we have been talking about it, that is closing
10 the block valve, drawing the bubble in the pressurizer and
11 starting or increasing HPI at about the 5:20 or 5:30 time
12 frame, did Mr. Herbein participate in any directions or
13 orders that were given in that time frame?

14 A Yes, he did.

15 Q Okay. And can you describe those discussions or
16 orders that he gave?

17 A The only specific one I can describe is after
18 we had started increasing the high-pressure injection and
19 had indications that the "A" loop was in fact filling with
20 water by our temperature indicators, we continued at that
21 flow rate, whatever it was, but we had not seen any changes
22 in the "B" loop. After some period of time Mr. Herbein over
23 the radio gave me direct orders to start another high-
24 pressure injection pump and increase that flow rate so
25 we could get the "B" loop filled also.

Sim 10-4

1 Q Okay. And do you remember about what time that
2 was?

3 A No, I don't.

4 Q Would that have been at the time HPI was increased
5 in the 5:20 to 5:30 p.m. time frame?

6 A That would be about the time frame, yes.

7 Q And I believe it is your testimony that he gave
8 those orders by radio to the control room?

9 A Yes.

10 Q Now at the time Mr. Herbein gave these orders,
11 did you believe or understand that Mr. Herbein had an
12 understanding of the actions you had taken in the previous
13 time, that is previous to 5:20 to 5:30 p.m.?

14 A Yes. He had been in communications from the time
15 we started increasing the high-pressure injection flow.

16 Q Okay. Now I am talking about previous to his
17 giving orders to increasing flow to collapse the bubble
18 in the "B" loop. Prior to that time it is your understanding
19 that he had been informed about the conditions in the
20 reactor and the operators' actions being taken? Did he
21 show an understanding of what you were doing?

22 A You mean prior to my radio communication, when
23 we established radio communication? I have no idea, but
24 I would assume he did, but I don't know that.

25 Q Okay. At least he showed an understanding of

Sim 10-5

1 what was going on in his communications with you; is that
2 fair to say?

3 A Yes.

4 Q Now at the time Mr. Herbein gave these orders
5 or began communications with the control room, was Gary
6 Miller in the control room?

7 A He was in the area of the control room in the
8 shift supervisor's office.

9 Q So it was sometime after he returned from the
10 Lt. Governor's office; is that correct?

11 A That is correct.

12 Q Was it your understanding at the time you spoke
13 to Mr. Herbein in this afternoon period that he had known
14 your attempts or your successful attempts to collapse the
15 bubble in the "B" loop and draw a bubble in the pressurizer?

16 A Wait. Maybe I misintepreted your question before.
17 Mr. Herbein was in communications with me from the time we
18 increased the high-pressure injection and in fact collapsed
19 the bubble in the "A" loop. Then part of that, you know,
20 entire time frame included the fact that the "B" loop was
21 not filling and he ordered an increase in high-pressure
22 injection again.

23 Q Okay. Now when you are talking about collapsing
24 the bubble in the "A" loop, what time period is that?

25 A That is the, you know, 5 to 6 o'clock, or

Sim 10-6

1 5 to 6:30 or whatever.

2 Q Now it is fair to say that prior to that time
3 you had drawn a bubble in the pressurizer; is that correct,
4 or had attempted to do so?

5 A We attempted to do so, yes.

6 Q Did you discuss in these radio communications
7 with Mr. Herbein the fact of the pressure spike or your
8 understanding that a hydrogen explosion had taken place?

9 A No, not that I can recall.

10 Q Okay. Did you have an understanding that he knew
11 that to have occurred? Was that a working assumption on
12 your part?

13 A I may have made the assumption that he did, but
14 I don't know if he did or not.

15 Q In his communications with you did he attempt
16 to have a good knowledge or understanding of the conditions
17 of the plant and what operator actions were being taken?

18 A You have to understand Mr. Herbein was very
19 knowledgeable in the operation of a reactor plant.

20 Q I understand that. I mean his specific knowledge
21 or knowledge of specific conditions on that day. When he was
22 giving you orders was it your understanding or working
23 assumption that he knew what was going on and actions you
24 had taken previous to the 5 p.m. period?

25 A Yes, that was my assumption. Yes.

Sim 10-7

1 Q Did you receive any direction or have any
2 discussions with Mr. Arnold about repressurization?

3 A No, I did not.

4 Q Did anyone in the control room, to your knowledge?

5 A Not that I am aware of, no.

6 MS. BERNABEI: May I have just a moment?

7 JUDGE SMITH: Yes.

8 (Pause.)

9 BY MS. BERNABEI:

10 Q You placed your radio communications with
11 Mr. Herbein beginning sometime around 5 p.m.; is that
12 correct?

13 A As best I can recollect, yes.

14 Q Is it possible that you started radio communications
15 with him at some earlier time after the pressure spike?

16 A My best recollection is it was sometime in the
17 period of, you know, 5 o'clock, but anything is possible
18 I guess.

19 Q Okay. I would like to refer you to your
20 deposition testimony on page 42, starting with the first
21 question on the page and continuing down through the answer
22 "Yes, I had radio communications with Mr. Herbein. I would
23 like for you to review that for a moment.

24 (Pause.)

25 MR. McBRIDE: For everyone's benefit can I note

Sim 10-8

1 that at page 42, line 11, that the words "pressure of the
2 heaters" should read "pressure riser heater."

3 JUDGE SMITH: Okay.

4 THE WITNESS: I have read it, yes.

5 BY MS. BERNABEI:

6 Q This testimony would indicate, would it not,
7 that you had conversations with Mr. Herbein throughout the
8 afternoon about the particular steps or repressurization?

9 A Well, it could be interpreted that way, but I
10 don't think that is what I had in mind.

11 Q Okay. So what is your best memory or understanding
12 today?

13 A Well, my best memory is that, you know, we
14 established radio communications sometime in the evening
15 with Mr. Herbein.

16 Q Let me just read it. In one of your answers
17 you talked about repressurization and it talked about
18 closing the block valve. The pressurizer heaters were
19 turned on at that time and that high-pressure injection
20 flows increased at that time; is that correct?

21 A Yes.

22 Q Okay. And in response to a question -- I asked
23 "Now in the afternoon, and let's start sometime aftger 2,
24 were there discussions with anyone outside the Unit 2 control
25 room about repressurization?"

Sim 10-7

1 And your answer is "Yes, I had radio communications
2 with Mr. Herbein, and as best I can recall, we were discussing
3 each step as we progressed." Is that correct?

4 A Yes.

5 Q Did you have any discussions about the pressure
6 spike or hydrogen explosion with any other personnel on
7 March 28th?

8 A On March 28th?

9 Q Yes.

10 A Mehler, of course, who I talked to. I talked
11 to the NRC representative that was there. I talked to the
12 shift relief that came in later that evening and explained
13 what, you know, what I thought had happened and what had
14 occurred. I think that is about it.

15 Q Okay. What was the nature of your discussions
16 with Mr. Mehler?

17 A Well, with Mr. Mehler, there was primarily the
18 initiating causes type discussion.

19 Q For example?

20 A For example, the two out of three spray systems
21 started and the fact there was a real pressure spike. There
22 was some talk of some chemical reaction there, I believe,
23 but I don't remember that specifically.

24 Q Did you understand from your conversation -- did
25 you get an understanding from your conversations with

Sim 10-10

1 Mr. Mehler as to whether or not he believed the pressure
2 spike indicated a real increase in pressure or some type
3 of explosion?

4 A Well, I am pretty sure, at least my impression
5 there was he agreed that it was in fact a real pressure
6 spike.

7 Q Did you discuss with him the cause of that, other
8 than the chemical reaction? That is, did you discuss
9 hydrogen?

10 A Not that I can recall.

11 Q Now you spoke about some operators that came on
12 on the later shift; is that correct?

13 A That is correct.

14 Q And who were those operators?

15 A They were Ted Illjes, possibly John Kidwell and
16 Chuck Mill, Bill Conway or Carl Guthrie, I am not sure
17 which.

18 Q What was the nature of your discussions with
19 them?

20 A Well, the nature of the discussion was they
21 were taking over the operation of the panels and I discussed
22 with them my thoughts on the subject just to ensure they
23 had a good feel for where we were in the recovery.

24 Q Did you discuss the fact that you believed
25 the pressure spike indicated a real increase in pressure?

Sim 10-11

1 A Yes, I believe I did.

2 Q Okay. Did you discuss hydrogen with them, that
3 you believed the cause of it to be a hydrogen burn?

4 A Again, I may have, but I don't really recall
5 specifically.

6 Q Now do you remember if either you or any other
7 supervisor gave an instruction to this shift of operators
8 coming on duty not to activate equipment in or near the
9 reactor building?

10 A I don't remember it, no, not specifically.

11 MS. BERNABEI: If you can give me one minute, I
12 think I have no further questions.

13 JUDGE SMITH: Sure.

14 (Pause.)

15 MS. BERNABEI: If you will bear with me just
16 one more question.

17 BY MS. BERNABEI:

18 Q Can you describe to us the circumstances under
19 which you pointed out or Gary Miller became aware of the
20 pressure spike?

21 A Again, and I think I mentioned this before,
22 during the time of the pressure spike I asked someone to go
23 back and inform him that we had a problem, and then soon
24 afterwards I went back and discussed the pressure spike with
25 him.

Sim 10-12

1 Q Do you have any memory that you during your
2 conversation with Mr. Miller walked with him to the console
3 and pointed out to him the strip chart?

4 A I have a recollection of Mr. Miller walking out
5 to the control room, but I don't recall my pointing out the
6 strip chart to him.

7 Q Let me point out a part in your deposition in
8 this proceeding.

9 Give me a moment.

10 (Pause.)

11 Okay. I would like to refer you to page 29
12 of your September 25th, 1984 deposition.

13 MR. BLAKE: What page again, please?

14 MS. BERNABEI: Page 29.

15 BY MS. BERNABEI:

16 Q Starting with an answer that begins in the top
17 third of the page, I believe you state, and we are talking
18 about your discussion with Mr. Miller, and it is the answer
19 which begins "No." It continues through the first answer
20 on page 30.

21 (Pause.)

22 A Okay. I have read it.

23 Q Your deposition indication, does it not, that
24 you walked with Mr. Miller out to the console and apparently
25 he viewed with you the strip chart?

Sim 10-13

1 A No, I don't think it says that. It just says
2 it was a moving conversation, that we walked out and
3 looked at the control room, some indications in the control
4 room.

5 Q Well, does it say you make the assumption that
6 Gary was going to look at some of the indications that we
7 had a pressure spike?

8 A Well, as I said here, I just made that assumption
9 because we, you know, it was a moving conversation and I
10 assumed that part of the things that Gary was looking at
11 was as a result of the pressure spike.

12 Q Okay. Referring you now to the question which
13 starts at the bottom of page 29, "Question: So when you
14 are talking about moving, you are talking about moving from
15 the shift supervisor's office to the console to look at the
16 actual spike and then perhaps back into the shift supervisor's
17 office?" And you answer "Yes." Is that correct?

18 A I answered "Yes," but I answered yes in terms
19 of the moving conversation, and I am not sure that I answered
20 in terms of -- I think I answered previous to that about --
21 I made the assumption that he was going to look at some
22 of the indications there was a pressure spike.

23 end Sim
24 Sue fols

#11-1-SueT 1

MS. BERNABEI: I have no other questions.

2

JUDGE SMITH: Mr. Au?

3

MR. AU: I have no questions.

4

JUDGE SMITH: Mr. Goldberg.

5

MR. GOLDBERG: Yes.

6

CROSS EXAMINATION

7

BY MR. GOLDBERG:

INDEXXXXXXXXX 8

9

Q Mr. Chwastyk, you were referred earlier to Page 5 of your September 25th, 1984 deposition in this proceeding, and you were referred to a general briefing of the status of the plant which included radiation level readings.

10

11

12

13

14

Today, do you have any recollection today that, in fact, the status briefing did include radiation level readings?

15

16

A Radiation level readings as indicated on the radiation monitors in the control room.

17

18

Q Do you recall that was discussed at the briefing?

19

A Yes.

20

Q And exactly what was said about those readings?

21

22

23

24

A Well, if I remember correctly, there were some that were reading very high, some that were out of service, and some that, you know, for some reason have been taken out of service since that time, that type of thing.

25

Q Were the specific readings mentioned?

#11-2-SueT

1 A Not that -- I can't recall any specific readings,
2 but I do recall talking about the radiation levels, for
3 instance in the reactor building as indicated by the
4 radiation monitor. I'm not sure -- there was also, one
5 of them if I remember correctly that we were talking about
6 that was reading high and they thought there was something
7 wrong with it and really couldn't verify it. I'm not
8 sure if that was the reactor building or if another one.

9 It was that type of discussion.

10 Q Was Mr. Ross, Michael Ross, present in the
11 control room when you arrived on March 28th?

12 A Yes, he was.

13 Q And what was his position at that time?

14 A Mike Ross was the Supervisor of Operations at
15 Unit 1 at that time. The Supervisor of Operations for
16 Unit 2 was away on a training program, and I make the
17 assumption that Mr. Ross was filling in for Mr. Floyd
18 who was the Supervisor of Operations for Unit 2.

19 Q Exactly what did Mr. Ross do in the control
20 room with respect to supervising operations there?

21 MS. BERNABEI: I'm sorry, I didn't quite hear
22 that question, Mr. Goldberg.

23 MR. GOLDBERG: I will rephrase the question.

24 BY MR. GOLDBERG: (Continuing)

25 Q Did Mr. Ross exercise any supervisory

#11-3-SueT

1 responsibilities in the control room on March 28th, 1979?

2 A Mr. Ross, not that I can recall.

3 Q Do you have any knowledge as to whether Mr.
4 Miller directed Mr. Ross to supervise operations?

5 A No, I don't.

6 JUDGE SMITH: Mr. who?

7 MR. GOLDBERG: Any recollection as to whether
8 Mr. Miller --

9 JUDGE SMITH: Miller?

10 MR. GOLDBERG: Yes. Mr. Miller directed Mr.
11 Ross to supervise operations.

12 BY MR. GOLDBERG: (Continuing)

13 Q Can you give me an estimate as to the number of
14 people in the control room on the afternoon of March 28th
15 when you arrived?

16 A An estimate?

17 Q Yes.

18 A I would say in the general -- main area of
19 the control room, which is defined in Exhibit 1, the
20 Shift Supervisor's office to the panels in the back, in
21 the neighborhood of maybe ten. Now, there were also
22 different people in back of the panels.

23 Q And about how many people were in back of the
24 panels?

25 A I -- I know there were some operators back there.

#11-4-SueT

1 I'm not sure who else was back there. I don't know that
2 I could, you know, give you a good estimate on the number
3 of people in the back.

4 There were people all throughout the back of
5 the --

6 Q I think you testified before that there were
7 a lot of people in the control room. Do you recall that?

8 A Yes, sir.

9 Q And that's somewhat more than ten but you can't
10 estimate how much more than ten?

11 Could it have been twenty?

12 A Well, if you take the full control room, yeah,
13 it could have been twenty. Yeah.

14 Q Could it have been twenty-five?

15 A That would probably be stretching that room.

16 Q Now, at the time of the pressure spike, can
17 you estimate how many people were in the control room?

18 A I could estimate again how many people were
19 in the major portion. How many people were in the back,
20 I have no idea. I would say there were again eight to ten
21 people, or maybe a little bit more than that in the front
22 area. Not including people in the Shift Supervisor's
23 office and not including the people in the back of the
24 panel.

25 Q You testified that you observed the pressure

#11-5-SueT 1

spike occur on the recorder.

2 A Yes.

3 Q To your knowledge, who else directly observed
4 the spike being recorded on the recorder?

5 A I can't say specifically.

6 Q Do you have any knowledge that anyone else
7 observed the spike being recorded on the recorder?8 A Yes. I think there were at least one or two
9 people that were in that general area that saw the spike.

10 Q Were you watching the spike as it was recorded?

11 A Yes.

12 Q Were you watching other people watch the spike
13 as it was recorded?

14 A No, I wasn't.

15 Q So, you are just assuming that other people saw
16 it?17 A Well, I'm assuming because there were other
18 people right next to me and in front of me.19 Q You have used the term "core damage" in your
20 testimony. Can you give us a definition of what you mean
21 by core damage?22 A Well, what I mean by core damage is the loss
23 of some amount of cladding material. I want it to be the
24 proper term, the fuel pellets, some kind of hole or some-
25 thing in the fuel pellet.

#11-6-SueT

1 Q Are you familiar with the term "leakers?"

2 A Yes.

3 Q What does a leaker mean to you?

4 A A leaker means that there is some type of
5 defect in the cladding material such that allows some
6 release of fuel.

7 Q Do you call that core damage?

8 A No, not specifically core damage.

9 Q So, leaking fuel rods does not constitute core
10 damage according to the way you use that phrase?11 A Leaky fuel rods that are as a result of manu-
12 facturing defects, I would say no.13 Q Do leaking fuel rods as a result of operation of
14 the plant constitute core damage?15 MS. BERNABEI: I'm going to object. The question
16 is unclear and vague.

17 MR. GOLDBERG: I will rephrase the question.

18 BY MR. GOLDBERG: (Continuing)

19 Q If a fuel rod is not defective from the manu-
20 facturer so as to constitute a leaker but during the course
21 of operation of the plant becomes a leaker, would you
22 describe that as core damage?23 A I wouldn't, no. But someone may. It would
24 depend on the degree. If it became a leaker as a result
25 that it loses ten percent of its fuel, then I would say it

#11-7-SueT

1 was due to core damage. There are some limits I think
2 that are placed on it that made those determinations.

3 Q Can you have core damage as you use the phrase
4 without having structural damage to the core?

5 A You are asking a hypothetical question on
6 whether or not --

7 Q No. I'm trying to get your understanding of
8 the phrase "core damage" and I want to know whether it
9 necessarily includes structural damage or whether leaking
10 rods alone constitute core damage as you use that phrase?

11 A Well --

12 MS. BERNABEI: Excuse me. I would like to
13 object unless the definition of structural core damage
14 is defined. There has been many definitions of core
15 damage, and I think it is appropriate he define it.

16 JUDGE SMITH: I think that -- I was thinking
17 the same thing as I was pondering your question, that it
18 could use a better definition.

19 If you mean the structural integrity of the
20 fuel rod to maintain its shape, if that's what you had
21 in mind or something else, I think you should state it.

22 MR. GOLDBERG: I would like to ask the witness.

23 BY MR. GOLDBERG: (Continuing)

24 Q Do you understand the phrase "structural
25 damage?"

#11-8-SueT

1 MS. BERNABEI: I still have my objection.

2 JUDGE SMITH: This is all right.

3 WITNESS CHWASTYK: I understand the phrase
4 "structural damage" but I'm not sure that I understand it
5 in terms of fuel damage. You know, I mean, structural
6 damage is, a typhoon hits this building and it damages
7 the structure. Is that --

8 BY MR. GOLDBERG: (Continuing)

9 Q Okay. In the context of damage to reactor fuel
10 or the reactor core, have you ever used the phrase
11 "structural damage?"

12 MS. BERNABEI: I'm going to object, because I
13 think it is up to Mr. Goldberg to define it. It may be
14 that he and Mr. Chwastyk understand each other; it may be
15 that they don't. But unless we have some kind of definition
16 of structural core damage, no one else is going to under-
17 stand it.

18 JUDGE SMITH: I really believe it is going to be
19 Mr. Chwastyk's definition of core damage and structural
20 damage, and not Mr. Goldberg's, which will be controlling.

21 And he is approaching it appropriately by
22 developing the witness' meaning of it.

23 BY MR. GOLDBERG: (Continuing)

24 Q Okay. Mr. Chwastyk, if in the context of
25 talking about core damage or failed fuel, if someone used

#11-9-SueT 1

2 the phrase "structural damage" how would you interpret
3 that?

4 A I would interpret that to mean that -- and again
5 depending on how it was used, some structural components
6 within the reactor vessel itself had been damaged. If,
7 in fact, you know, you talk about structural core damage,
8 then you are talking about the fuel elements themselves.

9 Q Now, when you testified that you interpreted the
10 pressure spike in terms of core damage, what type of core
11 damage did you have in mind?

12 A Well, again, as I said, there is one part in
13 here where I think I said something about core damage. But,
14 my thoughts at the time were not so much in terms of core
15 damage but in the fact that, you know, if in fact we had
16 been cooling the core and whatever core damage is gone,
17 then there should not have been that situation develop.

18 And I was concerned that we were continuing the
19 core damage.

20 Q At the time that you were concerned that you
21 might be continuing core damage, to whom did you report
22 that concern?

23 A I reported that to Mr. Miller.

24 Q And did you --

25 A In the sense of the pressure spike and that
type thing.

#11-10-SueT 1

Q Did you use the phrase "core damage?"

2

A Not that I can recall specifically.

3

Q So, you had some concern that you might be

4

continuing core damage but you didn't explicitly tell Mr.

5

Miller that you had a concern that there might be core

6

damage and that it might be continuing?

7

A Let's get this thing in perspective. We are

8

five years later. Okay.

9

Now, we are talking about we had a problem. And

10

I hope everybody in this room recognizes that in 1979 we

11

knew we had a problem.

12

Now, that problem was such that the radiation

13

levels were in a general emergency, we had high radiation

14

levels throughout the whole building, we had a foot or

15

two of highly radioactive water in the auxiliary building,

16

and we are going to cut corners here now and five and a

17

half years later on the amount of core damage.

18

I don't know that I, you know, cared about the

19

amount of core damage in 1979.

20

Q Mr. Chwastyk, you, in your previous answer, just

21

identified a number of items of plant status that existed

22

at about the time of the pressure spike. Did I understand

23

that that's what you were saying as to the situation as

24

it was then?

25

A Yes, that's fair.

#11-11-SueT 1

Q At the time of the pressure spike, were you aware that a general emergency had been declared?

A I don't recall specifically any classification, if you will, of the condition we were in.

Q Didn't you testify before that you knew that you weren't in an operating mode which was covered by the procedures?

A Did I testify to that?

Q Yes.

A I may have. I don't recall.

Q Well, let me ask you. At the time of the pressure spike, was the plant in a status which was covered by the operating procedures?

A No, it was not.

Q It wasn't? At the time of the pressure spike, were you aware that hot-leg temperatures were higher than you had ever seen them before?

A Yes, I was.

Q At the time of the pressure spike, were you aware that all reactor coolant pumps were off?

A Yes, I was.

Q At the time of the pressure spike, were you aware that steam in the hot-leg -- that there was steam in the hot-leg piping?

A I made that -- let's put it this way. I knew by

#11-12-SueT1

my T-hot temperatures that I had steam, you know.

2 Q At the time of the pressure spike, were you
3 aware that radiation readings in containment dome monitor
4 were high?

5 A Yes, I was.

6 Q Had you ever known that -- at that point, did
7 you know that they had ever been higher?

8 A As far as I know, they had never higher before
9 or since.

10 Q At the time of the pressure spike, were you
11 aware that the pressurizer was believed to be full?

12 A I was aware that we had trouble with the pres-
13 surizer level indicators and that we were opening and
14 closing the block valve, and I guess the natural assumption
15 there is that it was full.

16 Q Do you believe that the status of the plant at
17 the time of the pressurizer was such that it can be said
18 that everything was running smoothly?

19 JUDGE SMITH: Wait a minute. I think you may
20 have misspoke.

21 MR. GOLDBERG: I'm sorry.

22 BY MR. GOLDBERG: (Continuing)

23 Q At the time of the pressure spike, given your
24 knowledge of those conditions, do you believe it can be
25 said that everything was running smoothly?

#11-13-SueT 1

A I don't know that I can answer that. Smoothly
in what, in light of what criteria?

2
3

Q In light of the --

end #11 4
JOE flws

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

terst Reporters, Inc.

25

1 MS. BERNABEI: I am going to object to the question
2 as vague.

3 JUDGE SMITH: Well, it is late. He has already
4 answered it, so the answer can remain.

5 BY MR. GOLDBERG: (Continuing)

6 Q I would like your answer in light of the criteria
7 which you had in mind on September 25, 1984, referring you
8 to page 18 of your deposition. And your answer to the second
9 question that appears on that page.

10 A You are taking exception to the running fairly
11 smoothly, is that what your questioning is --

12 Q I am not taking exception to anything. What I
13 would like to know is given knowledge of those plant
14 conditions, you would characterize the plant as running
15 smoothly?

16 A I would characterize it under those conditions
17 in terms of being descriptive of the situation at the time.

18 MS. BERNABEI: I think perhaps the answer should
19 be read in at this point in the transcript, both the
20 question and the answer, because there are other words
21 in the paragraph. I request that --

22 MR. GOLDBERG: Fine. I don't have any objection.

23 BY MR. GOLDBERG: (Continuing)

24 Q Mr. Chwastyk, would you read in that question
25 and answer on page 18 to which we are referring?

1 A "Question: Okay, and you are saying everybody in
2 the area of the control room?

3 Answer: I make that assumption, and I make
4 that assumption simply because it was a happening, if
5 you will, in the control room. Up until that point,
6 everything had been running fairly smoothly, that there
7 was no additional actions taking place and when that
8 happened, of course, there were a whole bunch of automatic
9 things that happened. Of course, alarms went off,
10 et cetera, et cetera. I don't know how anybody in the
11 control room could not be aware that there was something
12 going on."

13 Q Okay. In that answer appears the phrase,
14 'up until that point,' and what point does that refer to?

15 A That point is the pressure spike.

16 Q And prior to the occurrence of the pressure spike,
17 had there been alarms going off in the control room?

18 A Some, but very minimal.

19 Q Minimal number? Approximately how many alarms
20 and enunciators are there in the control room?

21 A Eleven hundred or something like that. I am not
22 certain.

23 Q And when you say a, 'minimal number' were on
24 before the pressure spike --

25 A No, no, I didn't say that. I said minimal number

1 were alarming.

2 Q Were alarming.

3 A In other words, there were a lot of alarms that
4 were alarmed, but they were not, you know, alarming because
5 of change in plant condition.

6 Q At the time of the predsure spike, out of the
7 approximate eleven hundred alarms and enunciators that
8 you say are in the control room, do you have any recollection
9 as to how many of them were alarmed or were alarming at
10 that time.

11 MS. BERNABEI: I am going to object. That was
12 a compound question.

13 MR. GOLDBERG: We will take them one at a time.

14 BY MR. GOLDBERG: (Continuing)

15 Q How many were alarmed at that point?

16 A I have no idea.

17 Q A few?

18 A Quite a few.

19 Q A lot? A majority of them?

20 A Possibly.

21 Q And in addition to the ones that were already alarmed
22 at that point, there were others that were alarming?

23 A There were others that were alarming throughout the
24 day, for other different situations and conditions.

25 Understand the characterization there of running fairly

1 smoothly was in the context of that time and place in history.

2 Q You testified earlier about a check of containment
3 being made after the occurrence of the pressure spike?

4 A Yes, sir.

5 Q Did you direct that any radiation readings be taken
6 on March 28th, after the pressure spike?

7 A I don't recall specifically radiation level readings.
8 I do recall sending operators out to try and determine if they
9 can see any physical damage to the reactor building.

10 Q Did they report back to you?

11 A As I stated earlier, I am not certain, but I think
12 they eventually did after quite a period of time.

13 Q Now, concerning your discussion with Mr. Miller
14 of the occurrence of the pressure spike, was this before
15 or after his visit to the lieutenant governor's office?

16 A It was prior to his leaving the control room.

17 Q Exactly where was Mr. Miller when the pressure
18 spike occurred?

19 A I would make the assumption he was back in the
20 shift supervisor's office.

21 Q Absent an assumption, do you know where he was?

22 A Would you like to put bounds on that? I know
23 he was in the control room area, yes.

24 MR. McBRIDE: Could I just clarify something

25 at this point? I am not trying to disrupt the cross

1 examination, but could I ask you, Mr. Chwastyk, whether at
2 the time the operators generally differentiated between the
3 shift supervisor's office and the control room?

4 A Yes.

5 BY MR. GOLDBERG: (Continuing)

6 Q Do you recall what time Mr. Miller left the site
7 for the lieutenant governor's office?

8 A No, I don't, but I understand it was somewhere in
9 the area of two o'clock.

10 Q And what time was the pressure spike?

11 A If I remember correctly, it was 1:50 on the recorder.

12 Q And it is your testimony that in the ten minutes
13 between the occurrence of the pressure spike and the
14 approximate time Mr. Miller left the site for the lieutenant
15 governor's office, you had your discussion with him about
16 the occurrence of the spike?

17 A Yes.

18 Q In response to a question by Ms. Bernabei earlier,
19 concerning your interpretation of the pressure spike at the
20 time that it occurred, you stated that it was your belief
21 that there had been a hydrogen buildup, and that you had
22 understood that there had been core damage at the time, and
23 you knew of no other cause for the pressure spike other than
24 the hydrogen explosion.

25 Did I fairly characterize what you said before?

1 A Yes, fairly -- I am not sure -- I know there is
2 some problem in here about the pressure spike that we
3 discussed earlier with Ms. Bernabei.

4 Q Now, what I would like to know from you is the
5 extent to which you believed on March 28th that there was
6 core damage prior to the occurrence of the pressure spike?

7 JUDGE SMITH: That question is ambiguous to
8 me. Did he believe prior to the pressure spike, or did
9 he believe at some other time that there was core damage,
10 which core damage existed prior to the pressure spike?

11 BY MR. GOLDBERG: (Continuig)

12 Q You stated in your testimony today as a part of
13 the reasons why you interpreted the pressure spike in terms
14 of the hydrogen explosion, that at the time of the pressure
15 spike you were aware that there had been core damage.

16 A I think I testified to the fact that there had
17 been discussions of the possibilities of core damage, that
18 is true.

19 I don't know that I knew -- I am certain I didn't
20 know for a fact there was core damage.

21 Q Did you believe that there was core damage
22 before the occurrence of the pressure spike?

23 A I believed that there was some core damage, yes.

24 Q Okay, and what was the extent of core damage you
25 believe existed, on March 28, 1979, just prior to the pressure

1 spike, you believe existed?

2 A I tended to agree with the people that said that
3 there was some slight core damage. I don't know that I can
4 qualify. You know, some slight core damage.

5 Q Were the discussions of core damage that you
6 testified took place prior to the pressure spike, in terms
7 of failed fuel?

8 A I will go back -- you know, core damage to me
9 is, in fact, failed fuel. Structural damage could be
10 structurally something wrong, and not necessarily have core
11 damage.

12 Q Before the pressure spike occurred, did you believe
13 that the clad had been breached on the fuel?

14 A Yes, that is part of what I was referring to as
15 core damage.

16 Q So, at the time of the spike you had already
17 believed that the cladding had been breached on the fuel?

18 A I tended to agree with the opinions or theories
19 that were discussed by anybody in the control room at the time
20 in terms of core damage, that there was some core damage.

21 Q Specifically who in the control room was discussing
22 these opinions or theories?

23 A I cannot tell you. It was a general discussion. It
24 was a topic of discussion.

25 JUDGE SMITH: I am somewhat concerned that as the

1 witness testifies, certain aspects of his demeanor are
2 apparent.

3 He -- sometimes he gives an answer which is
4 accompanied by a characteristic -- a shrug of the shoulders
5 which is, to me, is characteristic of uncertainty, and this
6 has happened frequently in connection with his answers.

7 While the transcript may demonstrate a positive
8 no answer, or something of that nature, he is frequently
9 indicating uncertainty by his body gestures.

10 MS. BERNABEI: Judge Smith, I am going to object
11 to characterization by any party or by the Board --

12 JUDGE SMITH: We will note your objection.

13 MS. BERNABEI: I will just say I think that if
14 Mr. Chwastyk -- we did not realize it was open to us to
15 comment on a witness' demeanor or appearance, or we would
16 have done so through Mr. Dieckamp's entire testimony.

17 We think in that case it was most appropriate.

18 I think it is inappropriate for the Board or
19 any party --

20 JUDGE SMITH: You are wrong. Overruled.

21 MS. BERNABEI: Can I just note one further --

22 JUDGE SMITH: No.

23 MS. BERNABEI: I think --

24 JUDGE SMITH: No. You -- I want you to stop

25 making arguments seriatim. I want you to make your arguments

1 completely at the beginning.

2 Now, you have been warned about that several times.

3 MS. BERNABEI: I was attempting to do so when you
4 cut me off.

5 JUDGE SMITH: Did I cut you off?

6 MS. BERNABEI: Yes.

7 JUDGE SMITH: All right. Continue then.

8 MS. BERNABEI: I think that all parties suffer from
9 a paper record, and I think it is unfair for any party or the
10 Board to make comments on the demeanor of the witnesses.

11 You certainly are free to do so in your written
12 opinion, but I don't think it is appropriate when we have
13 a written record to do so.

14 JUDGE SMITH: I have noted your additional
15 arguments, and it continues to be our position that your
16 objection is overruled.

17 BY MR. GOLDBERG: (Continuing)

18 Q Now, Mr. Chwastyk, keeping in mind that just prior
19 to the occurrence of the pressure spike, you had already come
20 to believe that there was core damage in the sense of
21 breaching the cladding of the fuel, I would appreciate your
22 explanation as to what additional core damage you believe
23 existed after observing the occurrence of the pressure spike
24 on the recorder.

25 A I don't know that I, at the time, thought there

1 was any additional core damage. I did not have any indication
2 to me as an operator to tell me that I was not, in fact,
3 causing additional core damage.

4 It was the absence of indication that led to my
5 concern.

6 Q Am I correct that the occurrence of core damage
7 would be considered by an operator such as yourself as
8 a very serious problem with the status of the plant?

9 A That is correct.

10 Q Do you recall being interviewed by the NRC on
11 May 21st 1979?

12 A No. I probably was.

13 Q Do you recall being interviewed by the NRC a number
14 of times since March 28, 1979, in connection with the
15 accident?

16 A I have been interviewed by the NRC, yes, a number
17 of times.

18 Q Do you have any reason to believe that you were
19 not interviewed on May 21st, 1979?

20 A No.

21 Q Could you explain, given your view that the
22 occurrence of core damage is a serious condition of the
23 plant status, that you did not tell the NRC that you believed
24 on March 28, 1979, that the pressure spike was interpreted
25 by you to indicate the existence of core damage?

1 A First of all, I -- you are assuming that I did not
2 use the words, 'core damage.' I did talk to the NRC, and
3 I did explain my views to the NRC inspector on site of what
4 the consequences, what I -- what my estimates of what the
5 pressure spike meant.

6 Now, whether or not I used the words, 'core
7 damage,' I cannot say.

8 Q But you believed that during that interview by
9 the NRC you fully explained what your views were on the
10 status of the plant in connection with the occurrence of
11 the pressure spike?

12 MS. BERNABEI: Objection. I think they are
13 talking about two different things.

14 MR. McBRIDE: I have the same problem. I think
15 we have bounced back and forth from the control room to
16 May 21st.

17 MS. BERNABEI: Right.

18 MR. McBRIDGE: I think there is confusion on the
19 record now.

20 End 12.
21 MS fols.

Sim 13-1

1 MS. BERNABEI: I think Mr. Chwastyk is talking
2 about in the control room on that day and I think
3 Mr. Goldberg is talking about the interviews.

4 JUDGE SMITH: Well, that was the sense of his
5 earlier answers. So in any event, let's clarify what
6 you are talking about.

7 MR. GOLDBERG: Okay.

8 BY MR. GOLDBERG:

9 Q Going back to your interview on May 21st, 1979
10 by the NRC, do you believe that you fully explained what
11 your understanding was of the pressure spike on March 28th,
12 1979?

13 MS. BERNABEI: That is the 21st, is it not?

14 MR. GOLDBERG: May 21st, '79 was the date of
15 the NRC interview.

16 MS. BERNABEI: Right. I think you said May 28th.

17 MR. GOLDBERG: I said March 28th. I asked
18 whether he told the NRC on May 21st, 1979 of his interpretation
19 of the pressure spike which you had on March 28th, 1979.

20 THE WITNESS: I have no idea.

21 BY MR. GOLDBERG:

22 Q You don't recall discussing that with the NRC?

23 A No.

24 (Pause.)

25 Q Mr. Chwastyk, I would like to direct your

Sim 13-3

1 them prior to -- or at least some of them prior to his
2 testimony.

3 JUDGE SMITH: Mr. Goldberg, unless the purpose
4 of your line includes a testing of his memory of the
5 interview, I don't believe that this is as productive as
6 it could be.

7 I think that he has already said that he doesn't
8 recall, and I think that if you want to make your point,
9 I think you had better give him an opportunity to review the
10 document in question, unless, as I say, you are actually
11 trying to test his memory of the interview, which I don't
12 perceive to be the purpose.

13 MR. GOLDBERG: That is correct.

14 JUDGE WOLFE: Or give him a specific citation,
15 a page citation.

16 MR. GOLDBERG: That is what I tried to do with
17 page 9 and 10 where I think is the relevant portions of
18 that ---

19 JUDGE SMITH: You are trying to show the absence
20 of information?

21 MR. GOLDBERG: Yes, that is correct.

22 JUDGE SMITH: And to show the absence of informa-
23 tion you are going to have to give him an opportunity to
24 review where he believes the information might be.

25 MR. GOLDBERG: Yes, I would do that, but I don't

Sim 13-4

1 think we want to take all that time. You are welcome to
2 do that between and when you resume your testimony next
3 week.

4 But do I understand you are not testifying
5 today that you did tell the NRC on May 21st, 1979 that you
6 believed there was core damage at the time of the pressure
7 spike; is that correct?

8 THE WITNESS: No. I told the NRC inspector
9 there what my thoughts were on the pressurizer, and this
10 is my idea now, what the thought were on the pressure
11 spike and what caused it.

12 JUDGE SMITH: Wait a minute. When? You said
13 I told the NRC inspector there, when?

14 THE WITNESS: That is on the day of the accident.

15 MR. GOLDBERG: And I am referring to the May
16 21st, 1979 NRC interview of you.

17 You are not contending that you told the
18 interviewers that you believed core damage existed at the
19 time of the pressure spike?

20 MS. BERNABEI: I am going to object.
21 Mr. Chwastyk is a witness and he is not contending anything.
22 I think the question should be rephrased.

23 JUDGE SMITH: I think he has testified now
24 twice that he simply doesn't know. So he is not contending
25 or maintaining or denying or anything. He doesn't know. I

Sim 13-5

1 think we should just go directly to give him an opportunity
2 to review the document and express his informed decision.

3 MR. McBRIDE: Judge, may I ask a question at
4 this point, because you just referred to the request that
5 he review the entire transcript.

6 Let me say that in discussing this matter with
7 Mr. Chwastyk before he testified today I made the judgment
8 that he should not review his prior statements, except for
9 his deposition in this case, because the problem we have
10 had with many of our witnesses is that they have testified
11 so many times that by the time they testify again they can't
12 remember whether they are remembering their testimony or
13 remembering the events.

14 JUDGE SMITH: Yes, that is a problem.

15 MR. McBRIDE: So unless we are being directed
16 to do so, I do not want my client to read this deposition.

17 JUDGE SMITH: Now are you taking that point of
18 view because of some standing to protect your client's
19 interest or from a point of view of protecting the record
20 of this proceeding?

21 MR. McBRIDE: Well, my impression is that I
22 don't have much, if any, standing to defend the record of
23 this proceeding because I don't represent a party, and I am
24 trying not to intrude.

25 JUDGE SMITH: Yes.

Sim 13-6

1 MR. M. BRIDE: But I am concerned because I feel
2 as though we don't have a friend in the room at the moment,
3 because Mr. Chwast'k has given so many statements on this
4 subject alone, and it spans five and a half years, and I
5 have known these gentlemen for five years and I know the
6 problem.

7 And the problem is if you get them to read for
8 hours and hours all of their prior testimony, then you can't
9 be sure any more what they remember, whether they are
10 remembering the event or remembering the testimony.

11 So I thought it was for your best interests that
12 we simply try to get him to recall the events and not review
13 the testimony. That is why I made the judgment to prepare
14 him that way. And that is the problem we are having.

15 JUDGE SMITH: Attorneys in this proceeding have
16 been the technique of establishing the contents of a document
17 through what the witness sees or does not see in the docu-
18 ment, and that is not a comfortable way to do things.

19 But it has certain advantages in that in the
20 process of doing it it may or may not refresh the memory
21 or the witness. So I have not objected to it, although I
22 think that generally speaking it is not a good way to
23 establish what the document says.

24 Mr. Goldberg now apparently is going to try
25 to establish the document does not make any reference to

Sim 13-7

1 core damage, and I think he wants the witness to agree that
2 that is the case as a foundation for his next series of
3 questions.

4 So it was for that reason why I suggested that
5 he read it.

6 The other point that you are making about the
7 many interviews and things like that, that is a point that the
8 Board has been sensitive about and we will continue to be
9 sensitive.

10 Mr. Goldberg, as I understand it, you want --
11 I infer, and I should perhaps let you say it -- but you want
12 two things. First, you wish to establish that the May 21st,
13 1979 interview of Mr. Chwastyk does not contain a report on
14 core damage. And, two, is it then your purpose to bring
15 about a recognition by him of that fact and to examine him
16 further on his recognition of that fact?

17 MR. GOLDBERG: Generally that is correct. I am
18 trying to get an understanding as to why events which the
19 witness has testified are serious significant events, serious
20 conditions of the plant status, events which he interpreted
21 in terms of core damage and which he says today there were
22 general discussions of concern about core damage, if that
23 is his recollection of what took place on March 28th, 1979,
24 he did not take advantage of the opportunity shortly after
25 those events to tell NRC investigators of his belief that

Sim 13-8

1 they were serious conditions of the plant status and he
2 believed that those conditions existed on March 28th before
3 or at the time of the pressure spike.

4 He testifies here today as to what he believed
5 on March 28th and how he interpreted the pressure spike,
6 and I think that it is an important issue of credibility
7 which will have to be considered by the Board in connection
8 with his present testimony on the significant serious
9 events which were not reported shortly after those events
10 occurred.

11 MS. BERNABEI: May I reply to Mr. Goldberg?

12 JUDGE SMITH: Now wait a minute.

13 MS. BERNABEI: May I respond ---

14 JUDGE SMITH: Wait. I will call upon the
15 next speaker.

16 Let's hear from Ms. Bernabei.

17 MS. BERNABEI: I would just like to say there
18 were a number of misrepresentations made in Mr. Goldberg's
19 speech to the Board.

20 First of all, Mr. Chwastyk did not withhold
21 from the NRC staff during its investigation any events.

22 The only thing which Mr. Goldberg is driving
23 at is not a withholding of information about any event or
24 any condition.

25 The most he can hope to get out of his cross-

Sim 13-9

1 examination is that Mr. Chwastyk in the interview with the
2 NRC did not mention core damage. There is enough in this
3 interview to indicate that he told them enough that they
4 could draw the indication of core damage, No. 1.

5 No. 2, we believe, and this is what Mr. Gamble's
6 testimony was intended to prove, that the NRC has never
7 adequately investigated this accident.

8 We look at this interview, and there is no
9 mention and no question about core damage. The problem is
10 not Mr. Chwastyk. The problem is the NRC and what a poor
11 job they did in NUREG 0600 and NUREG 0760, and that is
12 precisely why we want Mr. Gamble to testify as to the
13 deficiencies in the special investigation specifically on
14 reporting failures.

15 The problem with this interview is not with
16 Mr. Chwastyk. The problem is the NRC staff which didn't
17 ask the right questions.

18 JUDGE SMITH: Okay. Unfortunately, we have
19 allowed counsel to argue the case prematurely.

20 Before you comment, Mr. Chwastyk, let me make
21 an observation that may satisfy your concern.

22 No. 1, at least as we sit here at this moment,
23 there is no aura of accusation against you, at least the
24 Board did not perceive any.

25 You, as far as I can see, have not been a

Sim 13-10

1 voluntary witness here. You are under subpoena, and I
2 have not perceived that you have taken a position one way
3 or the other on this issue.

4 I have perceived you to be a witness who is
5 simply trying to state his memory as well as he can.

6 Therefore, I don't think there is any need
7 at this point for you to be defensive, or for counsel
8 to be defensive.

9 The purpose of Mr. Goldberg's questioning, as
10 I understood it to be, is a legitimate one. He has a right
11 to establish his point. But I did not take it as a pejorative
12 point.

13 When he uses the word "credibility," I did not
14 perceive that word to mean what you may have taken it to
15 mean. You, yourself, have alluded to the time lapse and
16 the various problems and all of the problems of all of the
17 interviews and everything else. So I have not taken anything
18 to be in a pejorative or critical sense.

19 If, indeed, that is what you are suggesting,
20 Mr. Goldberg, I think that you are out of order. But I
21 didn't hear you say that.

22 MR. GOLDBERG: That is correct. I did not
23 say that and I am not suggesting that.

24 JUDGE SMITH: And that is not what you mean?

25 MR. GOLDBERG: That is correct.

Sim 13-11

1 JUDGE SMITH: All right.

2 MR. McBRIDE: Well, Judge Smith, if I may
3 be heard.4 This is the second witness I have represented
5 in this reopened proceedings, and it is the second time
6 that I have heard counsel characterize their credibility.7 You may recall that I brought this up when
8 Dr. Zebrowski was on the stand. When I am in Federal
9 District Court counsel are under a standing order that they
10 may never characterize the credibility of a witness. That
11 is for the fact-finder.12 And I think it is for this Board to decide the
13 credibility of the witnesses that it hears. That is why
14 I am getting so sensitive.

15 JUDGE SMITH: Oh, yes. You should be.

16 MR. McBRIDE: When clients of mine are getting
17 convicted of material false statements and when people
18 start throwing the word "credibility" around, I get worried.19 JUDGE SMITH: Well, he has a right to inquire
20 in an area which would establish credibility, and he used
21 the term in response to my question of him of the purpose
22 of his examination.23 Now my concern is that the word "credibility"
24 was inflammatory without intending to be, and I am trying
25 to quench those flames because it is not appropriate and

Sim 13-12

1 it is not what we want. We don't want accusations in this
2 hearing of that nature.

3 I have seen nothing happen so far. Mr. Chwastyk
4 has to defend himself against anything, and I don't see any-
5 thing to have happened to this moment -- well, I have
6 just repeated myself here. There is nothing that has happened
7 that puts him on the defensive.

8 MR. McBRIDE: Well, can I say this. I think
9 there is a much better and smoother way to proceed, which
10 is going to the line Mr. Goldberg wants to go down and which
11 he has a right to go down.

12 Rather than point the witness to two pages in
13 some statement five years old and say do you see those words
14 anywhere there, let's have two representations.

15 He can represent, because I assume he has reviewed
16 it, that the words "core damage" never appear, and will he
17 also make the representation to me that a question was asked
18 that should have elicited those words.

19 If we have both of those representations, the
20 witness doesn't need to read the transcript. We have got
21 an officer of the Board who will make a representation.

22 JUDGE SMITH: Yes. For that purpose you are
23 exactly right. We can read it and draw from our own
24 conclusions what this says. But don't forget, he has a
25 second purpose, and that he wishes to continue to examine

Sim 13-13

1 the witness with a predicate that the witnesses recognizes
2 that he did not make those statements, and that is what he
3 wishes to do and I think that is also appropriate.

4 MR. McBRIDE: Mr. Goldberg is a man of his honor,
5 and if he tells me that the words "core damage" don't appear
6 in that transcript, I will accept it and we will proceed
7 on that basis.

8 JUDGE SMITH: But you are not a witness.

9 MR. McBRIDE: Well, I will so instruct my client
10 to accept the representation that the words don't appear.

11 MS. BERNABEI: Well, I assume the other stipulation
12 would be that no question was asked about core damage as
13 well.

14 I agree with Mr. McBride, that is a fine stipulation
15 by us.

16 JUDGE SMITH: I don't really care for the idea
17 of lawyers stipulating what witnesses think. Mr. Chwastyk
18 has demonstrated his own ability to think, and I think what
19 we will do is allow him to read it over the weekend and when
20 he comes back Tuesday to allow the questioning to continue,
21 and we will see what happens.

22 Then I think it is also fair to inform him
23 in advance, as we have, what the purpose of your line is
24 and where you are going and go on from there.

25 Now do you have any other documents? Does any

Sim 13-14 1 party have any other documents?

2 MR. BLAKE: I do.

3 JUDGE SMITH: Yes.

4 MR. BLAKE: I am not sure that Mr. McBride is
5 aware of one ground rule that we are operating under here
6 which plays a role.

7 First of all, the issue is whether or not
8 Dieckamp knew "X" on March 29th. Then it is whether or not
9 subsequently he learned. So what people said and what they
10 made known is an issue in this proceeding, and these past
11 statements are issues.

12 But there are a lot of them, and at the moment
13 the Board has indicated to us, and I learned yesterday there
14 is a doggone good reason for it, that we are not just going --
15 we can't just cite from past statements and make our
16 arguments. We have got to talk about them now. So we are
17 in a box, Mr. McBride, where if we could all agree now that
18 each of Mr. Chwastyk's four past statements we are free to
19 cite to and make the points like he didn't discuss it in
20 any of the interviews and he didn't discuss that, we wouldn't
21 have to ask him at all or query did you discuss it, or,
22 you know, test his recollection or take all of this time
23 and agony.

#14-1-SueT

1 But at the moment we are not in that situation.
2 I have one or two things. And I have a number of questions
3 from each of his interviews, not unlike Mr. Goldberg's.
4 I think there are --

5 MS. BERNABEI: I --

6 MR. BLAKE: Excuse me. I think there are one of
7 two ways to approach it. Mr. Chwastyk is I think a
8 particularly important person on this subject, one who
9 certainly has been singled out by the Special Inquiry Group
10 as maybe the one person who understood the pressure spike
11 on that day.

12 I propose that the Board allow the parties to
13 cite from each of the four past Chwastyk interviews which
14 have been conducted by interviewers, one on May 21st, 1979,
15 which is Item Number 35, one on October 11th, 1979, which
16 is Number 88, one on October 30, 1979, which is Number 99,
17 and one on September 4, 1980 which is Number 117.

18 MS. BERNABEI: I would support that. In fact,
19 I would suggest that at least for the three witnesses which
20 the Board has singled out, Chwastyk, Mehler and Illjes,
21 that that be the rule.

22 JUDGE SMITH: I think you can be assured that the
23 Board would read previous interviews ourselves. We read
24 in the entirety all of those interviews. And we want to
25 put the parties on notice, too. We want them pointed out

#14-2-SueT

1 to us to make sure that we have them all. But I think that
2 you are making progress by this.

3 MR. BLAKE: I think it also will reduce the
4 length of time of my cross-examination next Tuesday.

5 JUDGE SMITH: You are going to do this between
6 now and Tuesday? Okay. I --

7 MR. BLAKE: I'm guessing it will reduce as well
8 Mr. Goldberg's continued cross-examination.

9 JUDGE SMITH: There is a problem, however, and
10 that is we may not have -- in the first place, we don't
11 have three copies of all these. And we may not have --
12 I don't know what type of volume we are talking about.
13 You are talking apparently about some ten interviews and
14 depositions?

15 MR. BLAKE: No, no. Four.

16 JUDGE SMITH: Four from this witness alone.

17 MR. BLAKE: Four from this witness alone, that's
18 correct.

19 MS. BERNABEI: And four from Mr. Mehler, I
20 believe.

21 MR. BLAKE: I will have to double check on
22 that.

23 JUDGE SMITH: So, I was right. About ten, and
24 I don't know if we will have the opportunity between now
25 and Tuesday to read them all. I don't know if we can all

#14-3-SueT

1 read even this witness' because we don't have that many
2 copies.

3 MR. GOLDBERG: I don't know that it's necessary
4 for the Board to read them all by Tuesday. The important
5 thing is, that's going to eliminate a lot of cross-examination
6 time, our ability to cite those prior interviews in our
7 proposed findings.

8 JUDGE SMITH: But what I'm saying is that we
9 will, as a part of the evidence in this hearing, regardless
10 of when, we will read them. And I am assuming that there
11 will be no particular injury done to anyone if we should
12 stumble on to some irrelevant data in there.

13 We know what the issues are, so we will read
14 them eventually.

15 MS. BERNABEI: I would also request, at least
16 with regard to Mr. Chwastyk and Mr. Mehler, that the
17 depositions taken in the course of this proceeding be
18 introduced. We have questioned Mr. Chwastyk about portions
19 of that. And it is specifically directed to the question
20 before the Board.

21 We would request that that be done. There was
22 an opportunity for cross-examination by the Staff and by
23 Mr. Blake.

24 JUDGE SMITH: Now, getting back to your point
25 I don't think that we can force your client to read -- he

#14-4-SueT

1 is not a party, you are not a party, he is not here
2 voluntarily. I don't think we can force him to read
3 anything he doesn't want to read. And I don't think we
4 should make any inferences from him reading it or not
5 reading it.

6 But there is an area of -- it is an appropriate
7 area, it would save time if he reads it, and I think that
8 we are going to have a better record. To the extent that
9 he wants to contribute to a full and accurate and final
10 record on here, then I would recommend that he does have
11 general familiarity with his previous interviews.

12 I appreciate your concern about confusion and
13 credibility. I think we will have to be responsible for
14 that.

15 MR. MC BRIDE: I know you do. But let me
16 respectfully say that in preparing this witness, I made
17 the judgment that his testimony would be better for you
18 if he simply tried to recall the events, because it is
19 so confusing. And if we now, in the midst of his testimony,
20 have him start reading his prior testimony he may be more
21 knowledgeable or have different knowledge, or it may
22 appear that he does, on Tuesday.

23 JUDGE SMITH: That may very well be the case.
24 But he has been examined all morning pretty much about
25 his direct memory of the events. And now inevitably we

1-5-SueT 1 have to get into the contrast between -- it has to come
2 around inevitably, and I think the time in the proceeding
3 has arrived that we do that.

4 MS. BERNABEI: Judge Smith, I think maybe the
5 witness appeared to have something to comment, and I think
6 he should be given an opportunity to do so.

7 JUDGE SMITH: Yes. I wanted him to hear the
8 discussion before he commented.

9 WITNESS CHWASTYK: I will pass.

10 (Mr. McBride is conferring with Mr. Chwastyk.)

11 JUDGE SMITH: Wait a minute.

12 WITNESS CHWASTYK: I guess I took exception
13 to the counsel's questions there, and I wanted to get it
14 on the record, you know, TMI Unit-2 suffered core damage
15 in 1979. And, therefore, at least stop these continuing
16 investigations when we get to this date in history.

17 I probably did not discuss core damage in that
18 testimony back in May or whatever it was. I made the
19 assumption that we knew we had core damage. Nobody asked
20 me a question specifically on what I thought the core
21 damage was. But I didn't even think that was strange,
22 because it was -- you know, it was a known by anybody
23 that was involved in nuclear power and anybody that read
24 the newspapers locally knew we had core damage, you know,
25 at the time of this interview.

#14-6-SueT

1 I don't know what to say. I --

2 JUDGE SMITH: That's fine. You are saying
3 exactly what you want to say. I think you said it
4 accurately. I'm not saying that what you say is accurate,
5 but I'm saying you have expressed yourself, and I under-
6 stand what you are saying. I think the Board does.

7 MR. GOLDBERG: And, as the Board knows, in
8 response to something Ms. Bernabei said earlier, one of
9 the key issues in this proceeding is whether anyone
10 interpreted the pressure spike on March 28th, 1979 at the
11 time of the spike in terms of core damage.

12 And, if so, whether that was communicated to
13 Mr. Dieckamp. That's the difficulty that we have. Now,
14 we have to pursue evidence as to whether anyone interpreted
15 the pressure spike on March 28th at the time of the spike
16 in terms of core damage. And we have here one witness who
17 says that essentially he did interpret the pressure spike
18 on March 28th in terms of core damage.

19 And, therefore, it is an important issue which
20 has to be placed with the Board as to whether, in fact,
21 he did interpret it on March 28th in terms of core damage
22 and then, if so, whether that was known to Mr. Dieckamp at
23 the time he sent the mailgram. That's the purpose of
24 my cross-examination of this witness.

25 The one other document which I may ask the

#14-7-SueT

1 witness to refer to in further cross-examination is his
2 September 25th, 1984 deposition in this proceeding by
3 TMIA.

4 MS. BERNABEI: And I have requested that that
5 be entered into evidence before the Board and be considered
6 as a portion of the interviews that are before you.

7 JUDGE SMITH: Are there objections to that?

8 MR. BLAKE: Yes.

9 JUDGE SMITH: Okay.

10 MR. MC BRIDE: Can I just say one thing? My
11 client and I are both of the view that he should not read
12 any of his prior statements between now and Tuesday in his
13 own best interests. And I just want to make it clear that
14 we are not being ordered otherwise.

15 JUDGE SMITH: If you --

16 MR. MC BRIDE: I am concerned that --

17 JUDGE SMITH: -- concede that we have the
18 authority to order him, then I would say that he is being
19 ordered. My concern is, do we have the authority to
20 require him to make preparation for testimony under
21 subpoena?

22 I don't know. But if we do have that authority,
23 he should do it.

24 MR. MC BRIDE: I think you have got authority
25 over him while he is in the room. And I don't mean to be

#14-8-SueT

1 facetious about this.

2 JUDGE SMITH: I think you are exactly right,
3 yes.

4 MR. MC BRIDE: When he is under subpoena today,
5 you have got authority over him. He will be here on
6 Tuesday, because we interpret the subpoena as continuing.
7 He gets paid, he is here. But he is not under everybody's
8 direction and control otherwise.

9 The reason I say this -- and I'm not being
10 facetious -- if Mr. Goldberg brings over testimony and he
11 says read this, I don't think the witness can sit here
12 and say: I won't look at it.

13 JUDGE SMITH: Right.

14 MR. MC BRIDE: I think you can say: Read it.
15 But he doesn't want to spend his week-end reading his
16 prior statements, and I don't want him to for his own
17 best interests.

18 JUDGE SMITH: I hope you won't place the Board
19 and the parties in the position, however, of having him,
20 in response to subpoena, come to this room while we all
21 sit around and he reads it.

22 MR. MC BRIDE: No. But what I'm trying to say
23 is that I think we have a right to decide, my client and I
24 have a right to decide, to protect his own best interests
25 how he will prepare himself for this hearing, because he

#14-9-SueT

1 is not here voluntarily.

2 JUDGE SMITH: But you haven't -- I told you,
3 we are sensitive to his own best interests. But you
4 haven't explained how his interests are prejudiced by
5 reading his prior statements. I mean, if you want to
6 make that point you can. I thought you conceded that
7 your concern was reliability of memory.

8 Now, are you saying that his best interests are
9 better served if he has an untainted memory?

10 MR. MC BRIDE: Yes.

11 JUDGE SMITH: I don't understand --

12 MR. MC BRIDE: Yes, I am. And the reason is
13 that on many prior occasions he was interviewed, other
14 people out there have been interviewed, and it was never
15 made clear what the knowledge of the questioner and the
16 person being questioned was coming into the interview.
17 Everybody just made an assumption, because they may have
18 been working side by side or around one another day after
19 day, and then suddenly: Come down to such and such a
20 trailer and answer some questions.

21 And they were never told: Please give me a
22 statement of how we got from March 28th to May 21st, and
23 when you got the knowledge. Just answer some questions.

24 So they would go down to the trailer and
25 answer some questions and go back to the control room and

#14-10-SueT 1

go back to work.

2

3

4

5

Now, years later, people are saying: Well, gee whiz, you didn't tell me we had core damage. Or, gee whiz, you didn't come forward with this at this time or that at that time.

6

7

8

9

And the concern that I have is it's no longer clear who knew what when. And if I start trying to educate him, his testimony is going to change between now and Tuesday.

10

11

12

13

14

15

JUDGE SMITH: And that is why you should not, and you, sir, should not, object or feel offended when the word "credibility" pops up, because credibility is not the same as candor, you understand. Credibility is the totality of the witness' ability to know the information that he is asked to present.

16

17

18

19

20

21

So, it is not a pejorative term. I have heard all your arguments. I believe that the record of this case will be best served if Mr. Chwastyk is familiar with the four interviews referred to. We are also very sensitive to the point that you are making, and that the effect of tainting a memory by reading documents is there.

22

23

24

25

But that is a factor we will take into account. But as the deciders of the fact here, we believe that we will have a better, more reliable record if Mr. Chwastyk knows what he said before at the time he is being questioned.

#4-11-SueT

1 about what he said before.

2 Now, I don't know what else we can do. I think
3 that --

4 MR. MC BRIDE: You are in a tough spot, and I'm
5 not trying to make it tougher. But, first of all, it's
6 going to take several hours for him. He is not being paid
7 to do it, and I -- though he is supposed to be paid again
8 for Tuesday for when he is here, I think he ought to be
9 paid for the day that it is going to take him to --

10 JUDGE SMITH: Absolutely.

11 MR. MC BRIDE: -- read them.

12 JUDGE SMITH: And if -- to the extent that his
13 appearance here is questioned, if Intervenors had not
14 had him brought to the hearing, we would have brought him
15 to the hearing as a Board witness, and we would have paid --
16 as a matter of fact, if there is any question about it,
17 we will cause him to be paid for the appearance here, the
18 extended appearances here, and we will regard him under
19 subpoena as he reads these documents in preparation.

20 We will regard him under subpoena to read those
21 documents and prepare himself for it as a direction pursuant
22 to the subpoena.

23 MR. MC BRIDE: I just want to make the record
24 clear. TMIA did pay him for his fees today, and I'm not
25 quarreling with that. But we are expecting a payment for

#14-12-SueT 1 Tuesday, and now I am expecting a payment for at least one
2 day over the week-end.

3 JUDGE SMITH: Yes, fine. However, there is
4 only one caveat. And that is, I don't know exactly the
5 strings to pull to get prompt payment. Eventually, you
6 will get paid. Prompt payment, I don't know.

7 MR. MC BRIDE: Well, he is TMIA's witness, he
8 is not the Board's witness. So, you don't have to worry
9 about that. I think it's their responsibility.

10 JUDGE SMITH: No, I'm saying -- wait a minute.

11 MS. BERNABEI: We didn't ask him to read his
12 interviews.

13 JUDGE SMITH: Right. This is for the Board's
14 purpose, and we will adopt TMIA's subpoena for this pur-
15 pose as a Board witness. He is a Board witness, and if
16 you want a new subpoena I will give it to you. And the
17 time he spends in preparing this case will be pursuant
18 to the Board's subpoena power, whether he has a subpoena
19 in hand or not. I will give you one, or whatever you
20 want.

21 MR. MC BRIDE: No, I don't want another subpoena.
22 You are putting it on the record and that's sufficient as
23 far as I'm concerned.

24 JUDGE SMITH: Right.

25 MR. MC BRIDE: But I just want the record to

#14-13-SueT

1 reflect very clearly that we will abide by your Order, but
2 it was not the way in which I felt it was in my client's
3 best interests to prepare for this testimony, and I
4 continue to believe that, for Tuesday.

5 JUDGE SMITH: Okay. And you will want to make
6 this information available to him.

7 MR. MC BRIDE: I don't even have them all in
8 Harrisburg. I didn't want him to read them, I didn't
9 bring them with me, and I didn't have a big enough brief-
10 case.

11 So, I guess now we had better get a book.

12 JUDGE SMITH: Well, if you want him to read
13 them, Mr. Goldberg, you had better --

14 MR. GOLDBERG: They can borrow our books.

15 JUDGE SMITH: And now for the Board to prepare,
16 to the extent possible we would like to read the four
17 interviews which are going to be the subject matter. We
18 may not be able to, but if we are able to we would like to
19 at least gain general familiarity with them.

20 MR. GOLDBERG: What I was going to say is that,
21 as Mr. Blake indicated, one of the reasons why we are
22 pursuing or directing the witness' attention to certain
23 portions of -- maybe in their entirety -- the prior inter-
24 views is so that we can cite them in our proposed findings.

25 With respect to Mr. Chwastyk, that's no longer

#14-14-SueT 1 necessary, as I understand the Board's ruling, because the
2 four interviews will be available to the parties to cite
3 in proposed findings. The Board is going to read them
4 in their entirety.

5 I don't anticipate very many more questions,
6 if any, on what Mr. Chwastyk said in prior interviews.
7 So, the Board need not prepare for further cross-examination
8 by me on those matters.

9 JUDGE SMITH: Thank you. But we would still
10 like to know how to find the interviews in case we want
11 to.

12 MR. GOLDBERG: Right.

13 MS. BERNABEI: Would you -- Mr. Goldberg and
14 I assume Mr. Blake indicated their intention to use the
15 deposition. You now have one copy of that. I don't know
16 if you would like to review that also.

17 JUDGE SMITH: Of the deposition?

18 MS. BERNABEI: That's correct.

19 JUDGE SMITH: No, we will consider that separately.
20 But I want -- without any further argument, I want to know
21 where those interviews are. Just give them to me.

22 e #14
23 Joe flws

1 MR. GOLDBERG: I think Mr. Blake, or someone
2 did that. Items 35, 38, 99 and 117.

3 JUDGE SMITH: All right.

4 MR. McBRIDE: Judge Smith, can I just make an
5 inquiry.

6 JUDGE SMITH: Wait a minute. 35, 38, 99 and 117.

7 MR. BLAKE: 35, I believe the next one is 88,
8 not 38, then 99 and 117.

9 JUDGE SMITH: Okay. Thank you.

10 MR. McBRIDE: The inquiry is this. I am just
11 concerned that if Mr. Goldberg's representation is true,
12 and I have every reason to believe that it is, then if his
13 cross examination is severely truncated, and so is Mr.
14 Blake's, then the witness may be doing a lot of work for
15 nothing. If he is not going to be asked about the prior
16 statements.

17 All I need is a representation from them that
18 they deem it important for their cross examination that he
19 read them.

20 MR. GOLDBERG: I think they speak for themselves,
21 but for the apparent need to refer witnesses to documents
22 on the joint stipulation before they are available to the
23 parties, I would not have pursued that line of cross
24 examination, because I think those interviews stand for
25 themselves, and they say what they say, and they don't say

1 what is not in them.

2 JUDGE SMITH: Your problem is with Mr. Blake.
3 Remember I said name all of them, and Mr. Blake said I want
4 to be heard on that because we have others.

5 But I agree with you, if the documents are not
6 going to be alluded to, there is no use in him wasting his
7 time reading them.

8 MR. McBRIDE: Right. He has family in for the
9 Thanksgiving Holidays, and I am trying to avoid just
10 subjecting himself to something that he doesn't need to be
11 subjected to, but if Mr. Blake tells me, or Mr. Goldberg tells
12 me that they deem it important, then we will have him do it.

13 MR. GOLDBERG: Not on my account.

14 JUDGE SMITH: Okay. Mr. Blake, can you help him
15 out here? I might also point out that he is not going to
16 become enriched by the witness fee on a subpoena, either.

17 Why don't we go off -- do we have to do this
18 on the record? Can you tell him off the record the areas
19 that you feel he should inform himself, areas that he
20 should read off the record?

21 (Off the record discussion ensues)

22 JUDGE SMITH: All right then. If there is
23 nothing further this afternoon, we will adjourn until 10:00
24 a. m. Tuesday morning.

25 (Whereupon, the hearing adjourned at 1:36 p.m.,
to reconvene at 10:00 a.m., Tuesday, November 27, 1984)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: Metropolitan Edison Company
(Three Mile Island Nuclear Plant
Unit 1)

DOCKET NO.: 50-289-SP
PLACE: Harrisburg, Pennsylvania
DATE: Wednesday, November 21, 1984

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(Sigt) Garrett J. Walsh, Jr.
(TYPED) GARRETT J. WALSH, JR.

Official Reporter

Reporter's Affiliation

Ace-Federal Reporters, Inc.

Mary Simons
MARY SIMONS
Official Reporter
Ace-Federal Reporters, Inc.

Myrtle H. Traylor
MYRTLE H. TRAYLOR
Official Reporter
Ace-Federal Reporters, Inc.

NRC TRANSMITTAL RECEIPT

WORK ORDER NO.: NRC LB-85-

ACE-FEDERAL CONTROL NO.:

NAME OF PROCEEDING: Metropolitan Edison Company
(Three Mile Island Nuclear Plant, Unit No. 1)

DOCKET NO.: 50-289-SP

HEARING DATE: Tuesday, November 20, 1984

LOCATION: Harrisburg, Pennsylvania

PAGES: 28,812 TO 29,055

EXHIBITS FORWARDED

TMIA Exhibit Number 15

RECEIVED BY: 
JUDGE IVAN SMITH

DATE:

Wednesday, November 21, 1984