

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

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

TEXAS UTILITIES GENERATING COMPANY,  
et al.

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

LOCATION: BETHESDA, MARYLAND

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DATE: TUESDAY, NOVEMBER 20, 1984

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 In the Matter of: :  
 :  
 TEXAS UTILITIES GENERATING COMPANY, :  
 et al. :  
 :  
 (Comanche Peak Steam Electric :  
 Station, Units 1 and 2) :  
 :  
 -----X

Docket Nos. 50-445-OL2  
50-446-OL2

Nuclear Regulatory Commission  
4350 East/West Highway  
Fifth Floor Hearing Room  
Bethesda, Maryland

Tuesday, November 20, 1984

The hearing in the above-entitled matter was reconvened,  
pursuant to adjournment, at 8:30 a.m.

BEFORE:

JUDGE PETER BLOCH, Chairman  
Atomic Safety and Licensing Board

JUDGE HERBERT GROSSMAN, Member  
Atomic Safety and Licensing Board

JUDGE WALTER JORDAN, Member  
Atomic Safety and Licensing Board



## 1 APPEARANCES:

2  
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19 On behalf of Citizens Association for  
20 Sound Energy:21 ANTHONY Z. ROISMAN, ESQ.  
22 BILLIE GARDE, ESQ.  
23 Trial Lawyers for Public Justice  
24 2000 P Street, N.W.  
25 Suite 611  
Washington, D. C. 20036On behalf of Oliver B. Cannon & Sons,  
Joseph Lipinsky, and John J. Norris:JOSEPH GALLO, ESQ.  
PETER THORNTON, ESQ.  
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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Joseph Lipinsky(Resumed)				
by Ms. Garde		19851		
by Mr. Roisman(Resumed)		19859		
Robert B. Roth				
by Mr. Gallo	20092			
by Mr. Roisman			20106	

LAY-IN - TESTIMONY OF ROBERT B. ROTH, PAGES 20094 through 20105.

LAY-IN - HANDWRITTEN NOTE FROM ROBERT B. ROTH, PAGE 20151.

## RECESSES:

A.M. - 19893  
 A.M. - 19926  
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P R O C E E D I N G S

Whereupon,

JOSEPH LIPINSKY

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

JUDGE BLOCH: The hearing will come to order.

Good morning, Mr. Lipinsky, welcome back to the stand.

THE WITNESS: Thank you.

MR. WATKINS: Your Honor, we have one housekeeping matter, if we could?

JUDGE BLOCH: Surely.

MR. WATKINS: I forgot to mention yesterday applicants filed prefiled testimony on behalf of Cecil Manning who, I understand, if he's going to be cross-examined, will be put on the stand next week. Can we get a feeling from the board and the parties as to whether anybody wants to cross-examine Mr. Manning?

MS. GARDE: Intervenors do.

MR. WATKINS: You do?

JUDGE BLOCH: Ms. Garde, please proceed.

MS. GARDE: One preliminary matter from Intervenors. I believe yesterday Intervenors were served yesterday with a motion for reconsideration regarding Mr. Cole's information. Did the board receive that?

JUDGE BLOCH: I have not read it.

1 MS. GARDE: We would like to respond to that,  
2 but I did not read it either until this morning on the way  
3 to the hearing, so I'm not prepared to respond to that at  
4 this time, but we would like to respond.

5 JUDGE BLOCH: Please proceed.

6 CROSS-EXAMINATION

7 BY MS. GARDE:

8 Q Mr. Lipinsky --

9 JUDGE BLOCH: May I ask, was that filing within  
10 10 days of the order?

11 MR. WATKINS: It was on the 10th day following  
12 the order.

13 MS. GARDE: My name is Billie Garde and I'm a  
14 law clerk with Trial Lawyers for Public Justice that  
15 represents CASE in this matter.

16 JUDGE BLOCH: I'm sorry, your microphone is off.

17 MS. GARDE: Is that better?

18 JUDGE BLOCH: Yes.

19 MS. GARDE: Did you hear me?

20 THE WITNESS: Yes, ma'am.

21 BY MS. GARDE:

22 Q My name is Billie Garde and I'm a law clerk with  
23 Trial Lawyers for Public Justice which represents  
24 intervenor CASE in this matter. With me in this matter is  
25 Dani Warshawsky, another law clerk with Trial Lawyers.

1 I apologize to you, first of all, for having to switch  
2 counsel in the middle of your cross-examination.

3 Mr. Roisman ought to be joining us in a few minutes and  
4 I have a few questions to get us started this morning.

5 Do you have in front of you, Mr. Lipinsky, the draft of  
6 your affidavit that was being discussed at the end of the  
7 day yesterday?

8 MR. TREBY: Mr. Chairman, may I inquire as to  
9 why we are having different counsel asking questions for  
10 the intervenor?

11 JUDGE BLOCH: Because Mr. Roisman couldn't make  
12 it quite this early in the morning. He's going to be here  
13 in a few minutes. His car pool couldn't get him here.

14 MR. TREBY: All right.

15 JUDGE GROSSMAN: Was there any objection to the  
16 procedure? We thought it would save time that way. If  
17 you prefer we can hold up and wait until Mr. Roisman comes.  
18 Mr. Treby, do you have an objection?

19 MR. TREBY: I guess I was not aware of that  
20 information that the board just stated. I thought that  
21 Mr. Roisman was just not coming and we were going to have  
22 different counsel. Now that it has been explained, I  
23 guess I have no objection.

24 BY MS. GARDE:

25 Q Mr. Lipinsky, do you have the draft of your

1 affidavit in front of you?

2 A Are you referring to the affidavit --

3 JUDGE BLOCH: Off the record.

4 (Discussion off the record.)

5 JUDGE BLOCH: While we were off the record, the  
6 board ascertained how to identify the draft that Ms. Garde  
7 is talking about, and Ms. Garde is going to show to  
8 Mr. Lipinsky her copy of the draft.

9 THE WITNESS: What I don't understand what  
10 differences there are between this document --

11 JUDGE BLOCH: Mr. Lipinsky, into the mike, if  
12 you would? Is it on?

13 THE WITNESS: I believe so; yes, sir.

14 JUDGE BLOCH: Okay.

15 MR. GALLO: Wait for a question. Just  
16 familiarize yourself with the document.

17 BY MS. GARDE:

18 Q Mr. Lipinsky, I have handed you a copy of,  
19 evidently a draft of the affidavit that was provided to  
20 intervenors from applicant in discovery several days ago.  
21 I would like you to direct your attention to page 14 of  
22 the draft of your affidavit, please.

23 MR. GALLO: Objection. I would like to have the  
24 witness establish that it is indeed a draft.

25 JUDGE BLOCH: Objection sustained. Ms. Garde,

1 lay the foundation, please.

2 BY MS. GARDE:

3 Q Mr. Lipinsky, are you familiar with the draft of  
4 your affidavit? Could you look this over, please, and see  
5 if this is, in fact, the draft of the affidavit?

6 A I would not be able to do that without making a  
7 line-by-line evaluation.

8 Q Can you please take the time to do that, sir.

9 A Okay.

10 MR. GALLO: Objection. It seems to me we ought  
11 to have some offer from counsel as to what the purpose of  
12 this line of questioning is before we take the board's  
13 time to go through a line-by-line comparison of 18 pages  
14 of affidavit.

15 JUDGE BLOCH: Well, maybe it would be easier to  
16 point out the changes and see if the witness recollects  
17 that that was a change from the draft to the final. That  
18 way we won't have to verify the whole thing is the draft  
19 to the final -- maybe he can look and see if that was a  
20 change from the draft to the final --

21 MS. GARDE: That's fine. I only have questions  
22 about one page.

23 BY MS. GARDE:

24 Q Could you please take a look at page 14 of both  
25 the final affidavit and the draft affidavit that I

1 provided you with?

2 JUDGE BLOCH: The board has to have the wrong  
3 draft because my draft page 14 is identical to the final.

4 MS. GARDE: It appears that Mr. Lipinsky is  
5 looking at two copies that have the same language on them  
6 also. However, the problem is that then there is another  
7 affidavit which does not have the same page 14.

8 JUDGE BLOCH: Show that to him and see if he can  
9 clarify it.

10 MR. GALLO: Look at the whole document.

11 JUDGE BLOCH: Counsel advised his client that he  
12 could look at the whole document to see if he can figure  
13 out what's going on here.

14 BY MS. GARDE:

15 Q Mr. Lipinsky, have you finished reviewing those  
16 pages?

17 A I have looked at page 14 at the point in  
18 question here, the sentence beginning -- based upon -- the  
19 one I would note -- the one you are saying is a draft is  
20 an executed page 18, which is not the case with the draft.  
21 Yes, I have looked at them.

22 Q Mr. Lipinsky, could you identify the change on  
23 page 14 of the copy of your affidavit that I handed you,  
24 that is the one that has the stamp of Mr. Eckman and the  
25 telecopy phrase? Could you identify what the change is,



1 please, from this page 14 to the page 14 in your copy, for  
2 the record?

3 A At the top of the page, the draft starts with a  
4 sentence, "and ongoing Nuclear Regulatory Commission  
5 review of the coding program, I agree with Mr. Tolson that  
6 an additional audit at this point would be redundant,  
7 unnecessary."

8 My affidavit of September 28th states, "of sufficient  
9 scope and depth, and in rue of the ongoing Nuclear  
10 Regulatory Commission review of the coating program, I  
11 agree with Mr. Tolson that an additional audit at this  
12 point would be redundant and unnecessary."

13 Q Are there any other changes on that page, sir?

14 A Yes, there are.

15 Q Could you identify those, please, for the record?

16 A I'm working on it.

17 My draft of the affidavit has two sentences on the  
18 bottom of page 14 which read, "my current belief is that  
19 no rework activities are necessary as to the Comanche Peak  
20 coatings program. My concerns have proven to be unfounded  
21 and I am satisfied, based on my current understanding of  
22 the program, that the quality of the coatings at Comanche  
23 Peak fully satisfies had the requirements of ANSI and  
24 appendix B."

25 The executed copy of my affidavit does not contain

1 those two sentences.

2 Q Do you have any knowledge of why the final  
3 executed copy does not have those two sentences in it?

4 A I disagreed with those two sentences to the  
5 extent that the information provided, I would not be able  
6 to make that kind of statement in those two sentences.

7 Q And when did you disagree with those two  
8 sentences?

9 A On Saturday, whatever date it was, the 29th I  
10 believe.

11 Q And who did you voice the disagreement to?

12 A To Mr. Watkins.

13 Q Were those two statements your original language  
14 that came out of the discussions that you testified to  
15 yesterday, starting in December, between applicant's  
16 counsel and yourself?

17 MR. GALLO: Objection. The question calls for  
18 an answer that's irrelevant to the issues before this case,  
19 which is whether or not Mr. Lipinsky was coerced in some  
20 fashion to change his position.

21 What I see here is that Mr. Lipinsky reviewed his  
22 affidavit and draft, and appropriately made some changes  
23 that he thought were necessary. I don't see how that  
24 bears on the issue, the question as to why the change was  
25 made, I don't see how that bears on the issue before this --

1 excuse me. I misstated myself.

2 The question as to the derivation of those words  
3 doesn't bear on the issue before this board.

4 JUDGE BLOCH: Not on those particular words, but  
5 the way the testimony was derived is relevant so we'll  
6 allow the question.

7 THE WITNESS: Could you repeat the question,  
8 please?

9 BY MR. GARDE:

10 Q Did the origin of those two sentences which you  
11 directed Mr. Watkins to remove from your final affidavit  
12 come from the meetings that you had had with applicant's  
13 counsel since December 1983, which, as you testified  
14 yesterday, was the origin of the affidavit that ultimately  
15 was filed?

16 A Actually it started in November of '83. However,  
17 based on that, yes, this was an ongoing development, as I  
18 described yesterday in my testimony, which resulted  
19 ultimately in this finalized version of my affidavit.

20 Q My question to you, Mr. Lipinsky, is what was  
21 the origin of those two sentences?

22 JUDGE BLOCH: The language.

23 THE WITNESS: Again, this was an affidavit that  
24 was provided by Mr. Watkins that I described yesterday,  
25 going from a question and answer-type format.

1       You know, if you are asking if these are my words, you  
2 know, that's not -- they are not my words.

3       Q       Were they your thoughts, sir?

4       A       No. They weren't, or I wouldn't have deleted  
5 them.

6               MS. GARDE: I don't have anything further on  
7 this point. Can I have my draft? And I believe you have  
8 my copy of the final.

9               THE WITNESS: Oh, I'm sorry.

10               CROSS-EXAMINATION (Resumed)

11               BY MR. ROISMAN:

12       Q       Mr. Lipinsky, at the time that you were --

13               MR. GALLO: Point of procedure. Do I now  
14 understand that Ms. Garde is finished?

15               MR. ROISMAN: Ms. Garde is never finished but at  
16 this point I'll do the cross-examination.

17               MR. GALLO: I'll object to this flipflopping  
18 back and forth --

19               MR. ROISMAN: You can object if you like but it  
20 seems to me it has been explained.

21               JUDGE BLOCH: Mr. Roisman seeks to resume cross.

22               BY MR. ROISMAN:

23       Q       Mr. Lipinsky, in your notes for October 14, 1983,  
24 which is a long, three-page -- not in your diary, but a  
25 separate set of notes of a telephone conversation with

1 Mr. Driskill. Do you have that?

2 JUDGE BLOCH: What's the date?

3 MR. ROISMAN: October 14, 1983. The first entry  
4 is approximately 15:40 hours.

5 JUDGE BLOCH: Off the record.

6 (Discussion off the record.)

7 JUDGE BLOCH: Let's go back on the record.

8 MR. ROISMAN: Are we ready to go? Mr. Treby,  
9 can we start? Okay.

10 BY MR. ROISMAN:

11 Q Now, during the course of this conversation with  
12 Mr. Driskill, according to your notes, Mr. Lipinsky, you  
13 made some fairly substantial efforts to see to it that the  
14 conversation was not overheard by anyone. And later the  
15 notes indicate a desire, when Mr. Driskill raised the  
16 point that you would like to have the conversation treated  
17 as confidential.

18 Can you remember why it was that you had that concern?

19 A With regards to treating the conversation  
20 confidentially?

21 Q Confidential, and you were concerned about --  
22 you'll notice under the 1600 hours notation there's  
23 reference to the squawk box, and that he close the door to  
24 his office, et cetera.

25 You seem to express some concern over whether your

1 conversation with him was being overheard. And later you  
2 requested that it be treated as confidential.

3 I'm asking can you remember why you wanted this  
4 confidential and you did not want the conversation  
5 overheard?

6 A Yes, I can.

7 Q Okay.

8 A I'll address first -- the reason why I asked  
9 about the squawk box was because when you talk on a  
10 telephone you hear an echo if you are on the squawk box,  
11 and I was curious if there was anyone there other than  
12 Mr. Driskill that they did not -- you know, that he did  
13 not identify. I was just curious who I was talking to.

14 As far as the matter of confidentiality, during the  
15 course of the conversation Mr. Driskill said: If I wanted  
16 I could treat this conversation as a confidential matter.  
17 So I said: Okay.

18 Q Why did you want to?

19 A He offered it and so I figured: What the heck?  
20 It was an offer and I accepted it.

21 Q Well, I mean he offered you to not treat it as  
22 confidential also, didn't he? I mean in the sense that if  
23 you said "no," then it would be not confidential. So you  
24 had both options. I'm trying to figure out if you had any  
25 reasons for selecting one over the other?

1           A           I think he said that, and from my recollection,  
2 to the effect that the confidentiality thing could only be  
3 offered once. If you refuse it then it's refused. You  
4 can't go retroactive on the thing. And since it was --  
5 there was no burden with me for accepting confidentiality,  
6 I just accepted it.

7           Q           Mr. Lipinsky, on December 5, 1983, in your diary,  
8 you discuss in that diary notation the -- I think -- yes,  
9 I think that actually the part I want you to look at is on  
10 the page for December 7th; but the notation tells us on  
11 December 5th that those first two entries on December 7th  
12 are for December the 5th.

13           You indicated in the first entry on the top of the page  
14 for December 7th that you and Mr. Roth had some discussion  
15 regarding the TMI article. Do you see that notation there?

16           A           Yes, sir.

17           Q           And that Roth later told you to give  
18 Mr. Reynolds the TMI article?

19           A           Yes, sir.

20           Q           And then back on the December 5th page, there is  
21 a discussion of Mr. Mouser, testifying at the Dunham  
22 hearing. Do you see all of that?

23           A           Yes.

24           Q           Tell me what was the relevance? How did Mr.  
25 Dunham, and TMI happen to come up in the context of this

1 Comanche Peak discussion?

2 A There were two separate conversations, like you  
3 said. On the entry on the page marked December 7.  
4 Mr. Roth wanted me to give to Mr. Reynolds an article  
5 regarding the performance of the coatings at the accident  
6 at TMI. The coatings, in fact, did perform. That type  
7 thing. Just for information. That was the extent of that.

8 With regards to myself in conversation with Mr. Mouser,  
9 also on the 5th, was to the effect that Mr. Mouser was  
10 subpoenaed or somehow involved in Mr. Dunham's, what I  
11 understand to be a labor hearing. And that's the extent  
12 of that.

13 Q Well, were you at that point acting in some way  
14 as a consultant to the utility on the question of  
15 Mr. Dunham's DOL proceeding?

16 A Oh, no.

17 Q This was just something that you all were just  
18 kind of volunteering some information?

19 A I didn't provide that information to anyone with  
20 the utility, that I know of.

21 Q I thought the notation indicated that you were  
22 to give the article to Mr. Reynolds. He was with the  
23 utility in the sense that he was their attorney; wasn't he?

24 A Yes. He's their attorney. And my understanding  
25 is he's their attorney. Again, these were two separate



1 acts.

2 The TMI article was just a piece of information  
3 Mr. Roth asked me to provide to Mr. Reynolds, and --

4 Q As far as you know, it had no connection to your  
5 involvement at the Comanche Peak site or your trip report  
6 or the analysis of the paint coatings work that was being  
7 done by O.B. Cannon at the Comanche Peak site?

8 MR. GALLO: Objection to the form of the  
9 question. The question is otherwise satisfactory except  
10 it uses the phrase, or the subject "it." I'm not sure  
11 that Mr. Lipinsky can understand whether "it" refers to  
12 the squib on December 5 or the note on December 7, which  
13 he has testified are two separate events.

14 JUDGE BLOCH: Did you have any reason to believe  
15 that the article you turned over or these other materials  
16 had anything to do with the trip report, the subject for  
17 which you were consulting with your lawyer?

18 THE WITNESS: No. I don't think they were  
19 related. I don't recall they were. I can't see how they  
20 were. One dealt with the performance of the coating  
21 material, the applied film; the other was a conversation  
22 with Mr. Mouser.

23 BY MR. ROISMAN:

24 Q All right. Let me direct your attention to the --

25 JUDGE BLOCH: Are you going to leave that,

1 Mr. Roisman? I am interested in whether at that point you  
2 had shared with your lawyer the fact that you had talked  
3 with Mr. Mouser from time to time about your trip report.

4 THE WITNESS: We weren't talking about my trip  
5 report at this point. I mean the contents of the trip  
6 report.

7 JUDGE BLOCH: Was there any time prior to this  
8 discussion in which you had talked with your lawyer about  
9 the fact that you had talked to Mr. Mouser as one of the  
10 people who had provided some information about the site?

11 THE WITNESS: Yes. Yes, I did, your Honor.

12 Also, I notified Mr. Chaplin on the 28th, when I  
13 identified the people I talked to on-site, Mr. Mouser's  
14 name was indicated then also.

15 JUDGE BLOCH: So, to the extent that information  
16 was in your lawyer's possession there was possible  
17 relevance to the trip report to the fact that Mr. Mouser  
18 was going to testify in the Dunham proceeding; is that  
19 right?

20 THE WITNESS: I don't know, your Honor.

21 MR. GALLO: Objection. It's asking -- not only  
22 do you ask the witness to speculate but to draw a legal  
23 conclusion on relevancy.

24 JUDGE BLOCH: If Mr. Mouser had testified at the  
25 Dunham proceeding and had talked about conversations he

1 had with you, that would have been relevant, wouldn't it?

2 MR. GALLO: Same objection.

3 JUDGE BLOCH: What's the objection to that?

4 MR. GALLO: You are asking him for a legal  
5 conclusion on relevance to the Dunham proceeding. I don't  
6 see how that's relevant since he's a lay witness.

7 JUDGE BLOCH: No, I'm not asking relevance to  
8 the Dunham proceeding. I'm asking if Mouser had testified  
9 at the Dunham proceeding about what he had told  
10 Mr. Lipinsky, wouldn't that have been relevant?

11 MR. WATKINS: Your Honor, the Dunham record is  
12 in this case. Mr. Dunham did testify. He didn't testify  
13 as to his contacts with Mr. Lipinsky, so your question is  
14 speculative.

15 JUDGE BLOCH: But on the date of this discussion  
16 with Mr. Reynolds it wasn't known what Mr. Mouser was  
17 going to say, was it?

18 MR. WATKINS: Your question was if Mr. Mouser  
19 had testified in the Dunham proceeding regarding his  
20 contacts with Mr. Lipinsky, would something else have  
21 happened? The fact is, he did not, so the question  
22 requires speculation on the part of the quit.

23 JUDGE BLOCH: The question was was there  
24 possible relevance of the mention of Mr. Mouser? It seems  
25 to me that there was but if you would like to comment on

1 that you may.

2 THE WITNESS: Yes, I would. Your Honor, at this  
3 point I did not -- I had one conversation with  
4 Mr. Reynolds on the 5th, and it was with regards to  
5 meeting him for my interview with Mr. Hawkins. The  
6 conversation that Mr. Roisman is referring to was with  
7 Mr. Mouser himself; the fact that I had a conversation  
8 with Mr. Mouser, Mr. Mouser indicated to me that he would  
9 be involved in the Dunham case.

10 JUDGE BLOCH: Okay. But had you also had  
11 earlier discussions with Mr. Mouser about your trip report?

12 THE WITNESS: In the part -- when I was on the  
13 site; yes, sir. I mean --

14 JUDGE BLOCH: And subsequently by telephone? I  
15 think your notes may have shown that you may have talked  
16 to him by telephone subsequently. You might want to  
17 refresh your memory.

18 THE WITNESS: I did talk to him subsequently  
19 With regards to him influencing my trip report after the  
20 fact, that's not the case, sir.

21 JUDGE BLOCH: I see. The only calls to him  
22 after the site were to ascertain how the report had leaked?  
23 Not whether the facts were accurate?

24 THE WITNESS: That was not the case. We talked  
25 about other items. One of them was how the report got out;

1 yes.

2 JUDGE BLOCH: Did you also talk about the facts  
3 that were contained in the trip report, either directly or  
4 indirectly?

5 THE WITNESS: I don't recall, your Honor. It's  
6 possible. Mr. Mouser and I have a friendship that has  
7 developed over the course of several years and so it's  
8 possible that I did; yes.

9 JUDGE GROSSMAN: Excuse me, I have one or two  
10 questions on this. Did you indicate those items were  
11 unconnected to the whole area of the trip report?

12 THE WITNESS: Which items, sir?

13 JUDGE GROSSMAN: On December 5th, that  
14 Mr. Roisman asked you about.

15 THE WITNESS: I don't see how they are involved  
16 with the trip report. Yes, sir.

17 JUDGE GROSSMAN: Well, it was my  
18 understanding -- and perhaps I'm wrong on that and I wish  
19 you'd tell me if I am -- that all these diary entries were  
20 directly related to the trip report and the matters that  
21 evolved out of that; and that there's nothing else in here  
22 other than matters pertaining to Comanche Peak problem.  
23 Am I wrong on that, Mr. Lipinsky?

24 THE WITNESS: With regards to the trip report;  
25 yes, sir. Once the trip report was finalized, from my

1 point of view on August 8, that was it. I'm not -- I  
2 didn't make any modifications to the trip report. Any  
3 entries that I made subsequent to, starting on November 9,  
4 in my diary, pretty much I recorded anything that came up  
5 with regards to Comanche Peak.

6 Mr. Mouser was an employee there, had been an employee  
7 there; so I entered it.

8 In that respect it pertained to Comanche Peak.

9 JUDGE GROSSMAN: So your answer to Mr. Roisman  
10 was, really, in the context of your believing that trip  
11 report meant the actual trip report, but not the matters  
12 that evolved out of the trip report; is that correct? The  
13 whole controversy regarding the trip report?

14 THE WITNESS: I don't --

15 MR. GALLO: Objection. Objection. The  
16 testimony is quite clear that what Mr. Roisman asked in  
17 his question was a comparison between the diary entry on  
18 December 5, with the diary entry on December 7; and asked  
19 if there was a relationship between those two entries.  
20 One entry being the subject of the Dunham trial and the  
21 conversation with Mouser; and the other entry being the  
22 reference to the TMI article.

23 You have, Judge Grossman, with all due respect, turned  
24 it around to make it a comparison with respect to the trip  
25 report. That wasn't the question.

1           JUDGE GROSSMAN: Well, I'm sorry, Mr. Gallo,  
2 maybe the record does need some clarification.

3           My understanding was that Mr. Roisman asked what the  
4 relevance of these entries were to the Comanche Peak  
5 controversy evolving out of the trip report. Now, that  
6 was my understanding when the question was asked.

7           JUDGE BLOCH: When it was restated by me, that  
8 was what the question became.

9           MR. GALLO: That's right. That's why I objected  
10 to it.

11           JUDGE GROSSMAN: It appears to me now from the  
12 witness' further elaboration, that he indicated -- that he  
13 intended to indicate that those two items had no direct  
14 relevance to the trip report itself; but not that it had  
15 no relevance to the Comanche Peak controversy evolving out  
16 of the trip report.

17           Now, am I incorrect about that, Mr. Lipinsky?

18           THE WITNESS: No, that's correct. Pretty much  
19 everything that was vaguely related to Comanche Peak I  
20 recorded, you know, in my diary.

21           JUDGE GROSSMAN: Okay. You may proceed,  
22 Mr. Roisman.

23           BY MR. ROISMAN:

24           Q       Mr. Lipinsky, I would like you to take a look at  
25 your entries for the 14th and 15th of November. Looking

1 first at the entries on the 15th -- first of all you'll  
2 have to help me here because it is unclear from the notes  
3 which days the note actually relates to. Apparently  
4 there's a notation at the top of the 15th that says, "start  
5 diary log, go back to 11/9." And I can't tell whether you  
6 are now putting down with regard to events that started as  
7 early as the 9th of November.

8 That's only crucial if you think the date is a critical  
9 date; that is, that it was on the 9th or it was on the  
10 12th or it was on the 15th, that you clarify for me the  
11 statements I'm going to ask you about, as to which day  
12 they actually occurred on. All right?

13 A That first entry refers to the fact that I  
14 started this diary on November 15. However, I went back  
15 to November 9th, and entered entries from the 9th, 10th,  
16 11th, that type thing --

17 Q For those days, not on this page that related  
18 back to those days?

19 A That's correct.

20 Q All right. I see. That's helpful.

21 In the middle of the page there's a reference to a  
22 telephone conversation with J. Ellis. And you  
23 particularly make a point of indicating in that, that you  
24 had talked not only to T. Miller, but apparently to others,  
25 and that you didn't talk to Miller any more than you had



1 to others.

2 Why was that an important distinction?

3 A Would I be able to look at -- I have a note here  
4 saying, "see summary." Would I be able to look and see  
5 the summary of that call?

6 Q Oh, sure. Absolutely.

7 MR. WATKINS: Mr. Lipinsky, could you identify  
8 the summary to which you are referring?

9 THE WITNESS: I'm working on it.

10 MR. WATKINS: So I can refer to it too.

11 THE WITNESS: It is item 37 in our submittal.

12 BY MR. ROISMAN:

13 Q I'm sorry, do you have the summary in front of  
14 you now, Mr. Lipinsky?

15 A Yes.

16 Q All right. Would you tell me which summary of  
17 the telephone conversation with Ms. Ellis you have?

18 A There are two. One is 37 and one is -- item 37  
19 and item 38.

20 Q You are the only one, I think, that has that  
21 numbering system. At least I don't have them that way.

22 Tell me what's at the top left-hand side of the page?

23 A One appears as O.B. Cannon, Inc.

24 Q O.B. or Oliver B.?

25 A Oliver B. I'm sorry.

1 Q And the other?

2 A Has "telephone conversation -- Ms. Ellis --  
3 11/14/83 -- to J JL," which was handwritten in. I don't  
4 know who handwrote that note.

5 Q Okay. First can you tell me why are there two  
6 summaries?

7 A I believe they are identical, with the exception  
8 that there was a typographical error on the month on the  
9 first one. The first one that has "Oliver B. Cannon and  
10 son" indicates 10/14/83. Where the "10" is crossed out  
11 with the letters "N-o-v," written above the "10."

12 Q Why -- I'm sorry, go ahead.

13 A The second one is a correction of the  
14 typographical error.

15 Q Why were there two prepared if they are  
16 identical?

17 A One had to cc tain the typographical error. I  
18 mean, it's just a correction of a typo.

19 Q You mean the reason that the one that starts  
20 "telephone conversation, Ms. Ellis --" the reason that  
21 that one was typed was because the first one had the  
22 typographical error of "10" instead of "November" or "11"  
23 on it?

24 A Which one are we talking about sir? Show me --

25 Q You have one that's on stationery or letterhead

1 that says "Oliver B. Cannon" on it?

2 A Right.

3 Q That one has apparently a typographical error  
4 and the "10" in the date has been replaced with "N-o-v"?

5 A That's correct.

6 Q Is it your testimony that the reason that the  
7 second one exists, that begins at the top of the page with  
8 the words "telephone conversation" is in order to correct  
9 that typo?

10 A That's correct. The second one was put on a  
11 word processor and the typographical error was corrected.

12 Q It wasn't for some special purpose within the  
13 corporation? It was strictly to have the thing retyped to  
14 correct that one typographical error?

15 A Yes. As far as I know they are identical; yes,  
16 sir.

17 Q Okay. With reference, then, to -- then I assume  
18 if the substance is identical then we can refer to either  
19 one; correct?

20 A Yes.

21 Q With reference to the discussion that took place  
22 between you and Ms. Ellis, what would you describe, based  
23 upon looking at these notes and your own recollection, was  
24 your feeling towards Ms. Ellis as a result of that  
25 telephone conversation?

1           A           I don't know that I formed an opinion with  
2 regards to my feeling to Ms. Ellis.

3           Q           Well, did you feel comfortable in talking with  
4 her?

5           A           I didn't have a problem in talking with her. It  
6 seemed that I didn't do too much of the talking.

7           Q           Were you at least amenable to seeing -- to  
8 appearing as a witness, either on behalf of CASE or this  
9 board on the issue of paint coatings that --

10                   MR. GALLO: Objection. If the witness answered  
11 I move to strike while I pose my objection. I don't see  
12 how this issue is relevant before the board. Whether he  
13 was inquired to appear as an Ellis witness or not is not  
14 relevant to that issue. I object on that ground.

15                   JUDGE BLOCH: Is it relevant?

16                   MR. ROISMAN: Yes, Mr. Lipinsky is here because  
17 of the question whether he was pressured. As you know  
18 there's a subsequent conversation about Ms. Ellis, rather  
19 than with Ms. Ellis, at which time he was given a markedly  
20 different perception of Ms. Ellis and it seems that he was  
21 being pressured not to be a witness for CASE. Perhaps  
22 also not to be a witness for this board. I'm trying to  
23 lay a predicate to indicate that, at one time, he seemed  
24 to consider that a very acceptable course of action and to  
25 try to find out how it happened and why it changed. We

1 don't often have witnesses who are going to be or  
2 considered to be witnesses for the intervenor who end up  
3 being witnesses for the utility. I'm trying to find out  
4 how that happened. Whether it was an action of  
5 Mr. Lipinsky's free will.

6 MR. GALLO: May I reply?

7 JUDGE BLOCH: Very briefly, yes.

8 MR. GALLO: The issue in this case is not  
9 whether or not Mr. Lipinsky was pressured to testify or  
10 not testify for Ms. Ellis but whether or not he was  
11 pressured to change his opinion with respect to the August  
12 8 trip report. It's irrelevant.

13 JUDGE BLOCH: That objection is overruled.

14 BY MR. ROISMAN:

15 Q Okay. So the question was at the time on the  
16 14th of November, when you had the conversation with  
17 Ms. Ellis, were you prepared to appear as a witness on  
18 behalf of CASE, subject to your company making the final  
19 decision on that?

20 A Subject to the company making the decision; yes.  
21 I didn't have a problem appearing for CASE.

22 One thing I would point out is that Ms. Ellis, I  
23 believe, only talked to me on two occasions. Maybe three.  
24 There wasn't much in the way of follow-up, as far as  
25 appearing as a witness for her.

1 Q You mean that she never followed up on the  
2 possibility of your becoming a witness?

3 A Yes. That's correct.

4 Q I understand. Now, at the end of the notes for  
5 the 14th, the telephone conversation notes, you have after  
6 the notation "J.J.L." Near the bottom of the page, "you  
7 were the only one supplying me with information. If  
8 anything comes up, please send me copies."

9 What did you mean by that?

10 A I believe she sent copies of a motion that CASE  
11 had filed, and I don't recall the exact contents.  
12 Something about limiting communications in-house, or  
13 something along those lines. I don't recall exactly what  
14 it was. She had provided me that information, my  
15 understanding is, with the board's approval. And so we  
16 talked about some newspaper articles or something like  
17 that.

18 Essentially I wasn't receiving copies of that  
19 information from any other source and so I asked her if  
20 she would continue providing me with that information.

21 JUDGE BLOCH: Do you remember what you mean by  
22 "limiting communications in-house"?

23 THE WITNESS: I believe there was a motion --

24 JUDGE BLOCH: Believe what?

25 THE WITNESS: I believe there was a motion to

1 the effect that case had filed limiting my communication  
2 with Mr. Roth, or Mr. Roth with me, with regards to the  
3 trip report.

4 JUDGE BLOCH: They may have prepared it. I'm  
5 almost certain they didn't file it.

6 MR. WATKINS: The motion with regard to the trip  
7 report?

8 JUDGE BLOCH: Motion that he was not allowed to  
9 talk with Mr. Norris?

10 MR. WATKINS: There was a protective order filed  
11 with the motion. I'm not sure whether it covered  
12 Mr. Lipinsky or not. You have a copy here, if the board  
13 is interested.

14 JUDGE BLOCH: Oh, I understand the  
15 interpretation that the witness had. It was that the  
16 information that Mr. Lipinsky -- that had been filed about  
17 Mr. Lipinsky would not be shared with anyone outside the  
18 proceeding; is that the idea?

19 MR. WATKINS: I would just as soon see the  
20 pleading, your Honor. You might ask the intervenor. It's  
21 their pleading.

22 JUDGE BLOCH: If it's relevant. If it's not,  
23 let's just go on.

24 MR. ROISMAN: It's a pleading that predates our  
25 involvement on behalf of the intervenor so if Mr. Watkins

1 has it --

2 JUDGE BLOCH: If it was a filing with the  
3 protective order, I can understand that. The way it was  
4 phrased seemed weird.

5 MR. ROISMAN: Ms. Garde says she thinks we have  
6 a copy.

7 MR. GALLO: Judge Bloch, you'll explain to the  
8 witness that you don't take umbrage to the fact that his  
9 explanation was weird because he's not a lawyer and  
10 doesn't know how to characterize it?

11 JUDGE BLOCH: No, I was just trying to  
12 understand what was going on. I think it probably isn't  
13 relevant, Mr. Roisman, unless you think it is.

14 MR. ROISMAN: I'll let Ms. Garde look at it,  
15 we'll go on, and if I think it is we'll come back to it.

16 MR. WATKINS: I misspoke. We do not have a copy  
17 with us.

18 MR. ROISMAN: Ms. Garde has given me a copy of  
19 the 11/9/83 filing by CASE, which indicates on page 9 that  
20 there was a motion to call Mr. Lipinsky to testify under  
21 protective order.

22 JUDGE BLOCH: Okay. That clarifies what the  
23 witness was meaning so we can continue.

24 MR. ROISMAN: Okay.

25 BY MR. ROISMAN:



1 Q Now, Mr. Lipinsky, when you say that she was the  
2 only one supplying you with information, had you made some  
3 effort to get information from other people and you were  
4 not getting it?

5 A No, I had not.

6 Q Was there some reason why you didn't just ask  
7 the utility or someone to give you all the information  
8 that you would have liked to have seen?

9 A I didn't know what information there was at the  
10 time, but, no, there was no reason why I would ask the  
11 utility.

12 Q You also wrote away to get copies of the  
13 newspaper articles that involved coverage of the public  
14 release of your trip report; isn't that true?

15 A Yes, that's correct.

16 Q Again, I want to try to understand why you were  
17 doing all of this on your own instead of simply going to  
18 either Mr. Roth or to the utility with whom you were in  
19 fairly constant contact and say: Hey, I want to know  
20 everything that's happening that regards me. Make sure  
21 I'm on the distribution list. Why didn't you do that?

22 A At the time I didn't see any point in it. The  
23 reason why I wrote to the newspapers -- and there's a list  
24 of letters I wrote --

25 Q Yes.

1           A           -- but to the effect that reporters had been  
2 calling in and, essentially I was not giving a statement.  
3 I was assured that I would receive a copy of the article  
4 if an article was published. And I was just writing to  
5 the newspapers when no articles came in to determine  
6 whether or not an article was published. Mr. Roth isn't  
7 in the habit of writing to the newspapers -- if I would  
8 have asked him to.

9           Q           Well, isn't it really the case that you were  
10 sort of, still at this point, you were a little isolated,  
11 weren't you? I mean you weren't really sure within your  
12 own company or with reference to the people from the plant,  
13 who you could confide in? Isn't that the reason that you  
14 were asking Ms. Ellis to send you information and writing  
15 to the newspapers?

16          A           No; I think it was just -- I wouldn't  
17 characterize it that way; no.

18          Q           Didn't you continue your contacts with  
19 Mr. Mouser, subsequent to your plant -- your meeting at  
20 the plant site on the 10th and 11th of November?

21          A           Yes, I had.

22          Q           And even to calling him in Midland, Michigan,  
23 where he had subsequently moved, and talked to him about  
24 things that were going on?

25          A           Yes, I had.

1 Q And isn't it true that at that time you still  
2 felt most comfortable in dealing with the people, both  
3 those who you had known before from O.B. Cannon, who were  
4 at the Comanche Peak site, and those who you had known  
5 before who were no longer at the Comanche Peak site but  
6 also were not with O.B. Cannon? Isn't that where you felt  
7 most comfortable, in terms of talking about these matters?

8 A Yes. I characterized it that way. I think it's  
9 obvious that you would be more comfortable with people you  
10 have known for years as opposed to someone you haven't  
11 known for a long period of time.

12 Q You mean like Mr. Roth?

13 A I have known Mr. Roth for years also.

14 Q Well, but you were -- you seemed to be reaching  
15 out to other places for your sources of information and to  
16 share your confidences. Not with Mr. Roth at that time;  
17 isn't that true?

18 A My understanding is -- that's true. But my  
19 understanding is that Mr. Roth, I don't believe, had any  
20 more information than I had at the time.

21 Q But at that time you were still worried that you  
22 might be in danger of losing your job overall of this;  
23 weren't you?

24 A Yes.

25 JUDGE BLOCH: Did you know that Mr. Roth had no

1 more information than you had?

2 THE WITNESS: To my understanding that's the  
3 case, your Honor.

4 JUDGE BLOCH: From him?

5 THE WITNESS: Yes, sir.

6 BY MR. ROISMAN:

7 Q When did you become aware that Mr. Roth was  
8 sharing with the utility the information that you had been  
9 sharing with him regarding your conversations with the  
10 Nuclear Regulatory Commission?

11 MR. GALLO: I object to the question on the lack  
12 of foundation that, indeed, Mr. Roth was, in fact, sharing.

13 JUDGE BLOCH: Overruled. The question was when  
14 did you -- let's read it back.

15 (The reporter read the record as requested.)

16 THE WITNESS: I don't know if Mr. Roth was  
17 sharing information, such as the October 14th memo with  
18 regards to my conversation with Mr. Driskill. I know that  
19 he provided to Mr. -- I believe Mr. Reynolds, possibly  
20 Mr. Merritt, a portion of a weekly summary and some other  
21 kind of a note or something to the effect, you know,  
22 here's a copy of Joe's summary through this timeframe.

23 I don't recall what that summary contained. I became  
24 aware of that when I first visited Mr. Reynolds' office in  
25 November.

1 JUDGE BLOCH: Mr. Roth told you that that was  
2 sent to Mr. Merritt?

3 THE WITNESS: I don't recall, your Honor.

4 JUDGE BLOCH: Well, you just mentioned  
5 Mr. Merritt. How did you know it was sent to Mr. Merritt?

6 THE WITNESS: I could have picked that up later  
7 when I actually had seen the information that was sent.

8 MR. ROISMAN: I'm going to show you a piece of  
9 paper produced in discovery which consists of, apparently,  
10 a reduced copy of a note, "John" on the stationery of R.B.  
11 Roth dated 10/18/83 and then signed "regards, Bob Roth"  
12 and then another part of the paper appears to be a copy of  
13 notes from your diary, the date of which is not clear from  
14 the copy that's here. And then appears to be the front of  
15 an envelope showing Oliver B. Cannon as the return  
16 addressee, and addressed to Mr. J.T. Merritt. You appear  
17 to have that in front of you; yes?

18 A If that's our item 24; yes.

19 Q Again, I don't know, but just looking over there,  
20 there aren't two of these, I don't think?

21 A No. That's it.

22 Q Okay. Now, with respect to this, was it at that  
23 time troubling to you that this information would be sent  
24 to Mr. Merritt?

25 A Mr. Roth -- no. No, and yes, I guess. There's

1 not a real clearcut answer on that. I had some concerns  
2 that this information was being sent down to Mr. Merritt  
3 and then forwarded to Mr. Reynolds. I didn't understand,  
4 you know, why we were sending the information. But,  
5 pretty much Mr. Roth is free to do what he wants with  
6 regards to my summaries.

7 Q Well, did you feel as though it had, somehow or  
8 another, breached the confidentiality that you thought you  
9 had negotiated with the Nuclear Regulatory Commission?

10 A I didn't become aware of the conditions of  
11 confidentiality until November 10th.

12 Q No, that's a different question now. That's the  
13 question of whether or not by doing it you lost your right  
14 to continued confidentiality. My question is: Was your  
15 understanding of what confidentiality meant, that at least  
16 the utility wouldn't know what you had been saying to the  
17 Nuclear Regulatory Commission?

18 A Yes, that was my understanding.

19 Q So Mr. Roth's actions breached that  
20 precept, as you understood what confidentiality meant;  
21 correct? When he sent it on to Mr. Merritt?

22 A Yes, that's correct.

23 Q Were you upset when you learned of that? Did it  
24 bother you?

25 A I don't recall. I don't recall that I was

1 particularly upset; no.

2 Q How about when you learned that it had also gone  
3 to Mr. Reynolds?

4 A I may have been upset at that point -- "upset"  
5 may be a poor choice of words -- to the effect that  
6 apparently it was getting a wide circulation.

7 Q Was there anything about the fact that  
8 Mr. Reynolds was a lawyer that made it of more concern to  
9 you than that Mr. Merritt had seen it?

10 A No.

11 Q When did you learn that Mr. Roth had sent this  
12 information to the -- to Mr. Merritt?

13 A I may have become aware of it the first time I  
14 went to Mr. Reynolds' office in November, late November.

15 Q So, sometime after your meeting at the plant  
16 site in early November, the transcribed meeting on the  
17 10th and the 11th?

18 A Yes. I don't believe I was aware of it at that  
19 time.

20 Q All right, taking us back now to Ms. Ellis, for  
21 a moment, and back to the 15th of November -- and again I  
22 guess the notations that are there are -- we really should  
23 go back to the 14th, and to the -- to this telephone  
24 conversation.

25 Again here you reference Tom Miller, or T. Miller -- I

1     assume that's Tom Miller; isn't it?

2           A        Yes, it is.

3           Q        All right.  What was your reaction to the  
4     information from Ms. Ellis about T. Miller is under a lot  
5     of pressure and has been moved to Unit 2 to keep him from  
6     talking?

7           Did you have any reaction to that?  Did you take any  
8     action based on that information?

9           MR. GALLO:  Excuse me, Mr. Roisman.  Judge Bloch,  
10    where is Mr. Roisman?

11          MR. ROISMAN:  We are looking at the 11/14/83  
12    telephone conversation, the third paragraph.

13          Do you have that?

14          MR. GALLO:  Third paragraph starts out "draft  
15    waiver"?

16          MR. ROISMAN:  No.  "Are you aware."

17          I'm talking about the telephone conversation note.  Not  
18    on the diary itself but the note.

19          MR. GALLO:  Oh.  Oh.

20          MR. WATKINS:  Your Honor, for the record we'll  
21    object to the use of this statement to prove the truth of  
22    Ms. Ellis' allegation.

23          MR. ROISMAN:  I'm not attempting to do that.

24          JUDGE BLOCH:  He's not doing that.

25          BY MR. ROISMAN:



1 Q Mr. Lipinsky, the question is, did you have any  
2 reaction to that when Ms. Ellis told you that?

3 A I don't think I had time to register any  
4 reaction. Ms. Ellis went on into the next --

5 Q I didn't mean a reaction with reference to her,  
6 whether you said something to her. But just: Did it have  
7 an impact on you? That piece of information?

8 A I don't believe so; no.

9 Q Did you do anything about that piece of  
10 information at any subsequent time? For instance, did you  
11 call Mr. Miller?

12 A I had talked to Mr. Miller subsequent to this  
13 time, but I don't believe I had any reaction.

14 Q Did you inquire of him whether or not he was in  
15 any way being pressured as a result of his name appearing  
16 in your trip report?

17 A I don't recall.

18 Q Did he say anything to you about being pressured  
19 as a result of having his name, or otherwise related to  
20 your trip report?

21 A No, I don't recall.

22 Q How many of the inspectors --

23 JUDGE BLOCH: One second. Do you recall whether  
24 or not you called Miller after that?

25 THE WITNESS: I had talked to Miller subsequent

1 to the generation of the trip report; yes, sir.

2 JUDGE BLOCH: You have no idea what you talked  
3 about?

4 THE WITNESS: Yes, I do, sir.

5 JUDGE BLOCH: Will you tell us a little bit so  
6 we could figure out whether or not -- maybe you could  
7 refresh your recollection as to whether you went into this  
8 other matter?

9 THE WITNESS: In a nutshell, I was pretty much  
10 offering Mr. Miller a position of employment with Oliver  
11 B. Cannon and another project.

12 JUDGE BLOCH: What was his response to that?  
13 Did he mention anything about what his position at the  
14 plant was?

15 THE WITNESS: I don't recall specifics. I know  
16 he declined so it must have -- he opted to stay at  
17 Comanche Peak.

18 JUDGE BLOCH: He didn't mention at that time  
19 whether he had been transferred to Unit 2? Or you don't  
20 recall whether he did?

21 THE WITNESS: I don't recall, sir.

22 BY MR. ROISMAN:

23 Q In answering the questions that Judge Bloch  
24 asked, you indicated that subsequent to the time of the  
25 trip report you had conversations with Mr. Miller. Do you

1 remember whether those conversations occurred subsequent  
2 to the 14th of November?

3 A I believe they did; yes.

4 Q And it was in one of those subsequent  
5 conversations that you discussed the job possibility? Or  
6 was it in an earlier conversation?

7 A It was subsequent to November 14th, I believe,  
8 yes.

9 Q And did you -- did you initiate the call to  
10 Mr. Miller or did he initiate it to you?

11 A I initiated it to him.

12 Q And did you have occasion, subsequent to the  
13 10th and 11th of November to communicate with others of  
14 the QC inspectors, with whom you had spoken when you were  
15 originally on-site and did the trip report?

16 A Yes, I have.

17 Q Who are those individuals?

18 A Mr. Mouser, Mr. Miller, Ms. Adams, I believe are  
19 the individuals.

20 Q And what was the purpose of those conversations?

21 A Pretty much just to keep in touch.

22 Q Keep in touch about what was going on, vis-a-vis  
23 the trip report and the controversy surrounding it? Or  
24 other matters?

25 A Well, that was part of it. Pretty much these

1 individuals, again, are either personal friends or have  
2 been former employees. We just keep in touch, as to  
3 what's going on with each other.

4 Q Did you have occasion to discuss with them any  
5 of the information which you were being provided by the  
6 company, designed to persuade you that your original  
7 impressions had been incorrect?

8 A No. I did not go in any detail on that.

9 Q So you didn't attempt to get from them, either  
10 further verification of the correctness of your initial  
11 impressions or further substantiation of the correctness  
12 of the information that you were being given by the  
13 utility?

14 A That's correct.

15 Q Why not?

16 A I don't know. I didn't pursue it.

17 JUDGE BLOCH: Had you been keeping in touch with  
18 them in the six months prior to your visit to the Comanche  
19 Peak site?

20 THE WITNESS: Yes, sir.

21 JUDGE BLOCH: And why is it that you took notes  
22 of conversations with other people but you didn't take  
23 notes of these conversations?

24 THE WITNESS: Which conversations, sir, are you --

25 JUDGE BLOCH: With these friends at the site who

1 may have had information relevant to the validity of your  
2 trip report? You took notes with the other people, your  
3 lawyers and Mr. Norris and other important people. Why  
4 didn't you take notes of these conversations with your  
5 friends on the site?

6 THE WITNESS: I believe I did, sir.

7 JUDGE BLOCH: Of the substance of what you  
8 talked about?

9 THE WITNESS: Yes.

10 JUDGE BLOCH: In the diary?

11 THE WITNESS: Yes, sir.

12 JUDGE BLOCH: Sorry about that.

13 MR. ROISMAN: Well, maybe at a break you might  
14 locate a couple of those. I have noticed a couple of  
15 references to Mr. Mouser but I have not found any  
16 references to Mr. Miller.

17 JUDGE BLOCH: My recollection of the references  
18 to Mr. Mouser was that there was a conversation -- that  
19 they had a conversation that was recorded. I don't recall  
20 the content ever being discussed in a note.

21 MR. ROISMAN: I believe that's true.

22 JUDGE BLOCH: Could you show us someplace where  
23 the content of a conversation with Mr. Mouser is discussed  
24 in the notes?

25 MR. WATKINS: May we suggest a recess while he

1 does that?

2 JUDGE BLOCH: Sure. Five-minute recess while  
3 you do that.

4 (Recess.)

5 JUDGE BLOCH: Come to order, please.

6 BY MR. ROISMAN:

7 Q Mr. Lipinsky, the item on which we were talking  
8 when we broke was whether or not you would identify for us  
9 in your diary or other notes, the notes of conversations  
10 that you had with some of the people at the Comanche Peak  
11 site, like Mr. Mouser or Ms. Adams or Mr. Miller. And  
12 have you been able to do that during the recess?

13 A Yes, quickly I went through the notes and I  
14 identified some of them; yes, sir.

15 Q Would you direct our attention to those, please?

16 A Looking at the diary notes on -- there was an  
17 entry on December 5th, for Mr. Mouser, bottom of the page  
18 there.

19 Q Looking at that one for a moment, what is the  
20 reference to "C" notes, and then "notes not clear and as a  
21 result they were destroyed."? What notes were you  
22 talking about?

23 A I tried to keep notes of the conversation as I  
24 was talking with Mr. Mouser and then reviewing them after  
25 I got done with the conversation they didn't make any

1 sense. I couldn't make any sense of them.

2 Q When did you make the entry in the diary that  
3 the notes were not clear and as a result were destroyed?

4 A Later that day, probably.

5 Q Not at the same time as the "reference C" notes?

6 A No.

7 JUDGE BLOCH: When you said "probably" that's  
8 the first time you said anything like that. What did that  
9 mean to you?

10 THE WITNESS: I didn't say "see notes -- notes  
11 destroyed." I said "see notes." Then I went over to try  
12 to formulate the notes in some kind of sequence or order  
13 and couldn't make any sense out of them and went back to  
14 the diary and noted "notes were destroyed."

15 JUDGE BLOCH: When you said probably later that  
16 day could that be a week later, too?

17 THE WITNESS: No. No.

18 BY MR. ROISMAN:

19 Q How did you decide which conversations you would  
20 take notes on; which conversations you would simply make  
21 notations in your diary about?

22 A I don't follow you.

23 Q Well, we have a lot of telephone conversations  
24 that are identified in the diary but only a handful of  
25 those do we actually have notes, such as the notes of the

1 conversation with Ms. Ellis.

2 And my question is, how did you decide whether to take  
3 detailed conversation notes on some apparently separate  
4 sheet of paper, or to simply make the notations on your  
5 diary and not take detailed conversation notes?

6 A If the conversation -- Ms. Ellis, and I think  
7 the other situation is Mr. Driskill --

8 Q Correct.

9 A -- I just kept notes in more detail on that kind  
10 of a situation, with regards to the give and take of  
11 conversation. I don't know that there was any criteria.  
12 I think in some instances, with Mr. Watkins, I kept that  
13 kind of note because I couldn't fit it all in my -- in the  
14 page provided in the diary. I just ran out of space.

15 JUDGE BLOCH: Mr. Lipinsky, on this particular  
16 occasion you took notes of the call and then you reviewed  
17 them in order to find out whether they were intelligible.

18 Do you recall now what the conversation with Mr. Mouser  
19 was about?

20 THE WITNESS: Other than what I have entered;  
21 no, sir.

22 What would happen is I would be jotting -- I wouldn't  
23 be writing in the diary at the same time and I would  
24 summarize conversations and then, in some instances I  
25 developed longer, you know, more detailed notes as



1 Mr. Roisman said.

2 JUDGE BLOCH: No, but like I said at the time  
3 you were conversing with him you were taking down notes  
4 which involves a certain amount of attention. Later you  
5 went back and reviewed the notes and you decided that  
6 there was a confusion about what it was about.

7 Can you remember anything about what that confusion was?

8 THE WITNESS: No, sir. It just didn't make  
9 sense so I didn't even try to hash it out. It was just  
10 another conversation so I just threw it away.

11 JUDGE BLOCH: The general topic?

12 THE WITNESS: Beside the couple of items I  
13 mentioned, I don't recall, sir.

14 BY MR. ROISMAN:

15 Q Isn't it true that you only made notes outside  
16 of the diary on conversations that you considered to be of  
17 greater importance?

18 A No. I wouldn't say of greater importance. A  
19 lot of times, like I said, I just didn't have the room in  
20 the diary to report everything that went on.

21 Q Is that what was the case with Mr. Mouser? It  
22 was such a long phone call that you had to do your notes  
23 outside the diary?

24 A I don't know if it was a long telephone call.  
25 What I did is keep track of them as I was going on, on a

1 pad, tablet or something along those lines.

2 Q Well, you were particularly concerned to keep  
3 track of information that you might get from Mr. Mouser  
4 regarding what he might know about the trip report and how  
5 it might have gotten out; weren't you?

6 A Yes, I was.

7 Q So that was probably the reason you were taking  
8 notes at that time; wasn't it?

9 A I was pretty much keeping track of anything that  
10 happened after November 9th, for the two reasons I stated  
11 earlier.

12 Q Were you concerned at this time that Mr. Mouser  
13 might have some information that would point a finger at  
14 you as being the cause of the trip report getting out?

15 A No.

16 Q When you talked to him, did he -- was he able to  
17 give you an explanation as to how it could be that the  
18 trip report got out?

19 A No, he was not.

20 Q Was he able, on the 5th of December, to clarify  
21 for you whether he, in fact, had been given a copy of the  
22 trip report which he then returned to you?

23 A He did have a copy of the trip report that I  
24 allowed him to read; yes.

25 Q I believe at an earlier time in your notes you

1 indicated some ambiguity as to whether he had actually  
2 seen the trip report or not. Isn't that true?

3 A I don't believe so. I may be mistaken.

4 Q Is the trip report is that you gave to  
5 Mr. Mouser to look at -- are you convinced that that trip  
6 report was given back by Mr. Mouser to you?

7 A Yes. Yes.

8 Q When did you learn that?

9 A On as early, I believe, as October 12th.

10 Q What were you still talking about with  
11 Mr. Mouser on the trip report on December the 5th, in  
12 which your notes say, "E.M. couldn't recall if JJL gave  
13 copy of trip report to J.M." What are you talking about  
14 there?

15 A I asked him if I gave him a copy of my trip  
16 report.

17 Q You just told me that you knew, as early as  
18 October, that he had seen it and had given it back to you.  
19 What was still in your mind on December the 5th that you  
20 had to ask him about some more?

21 A I don't recall. It came up in the conversation,  
22 I guess.

23 Q You have no recollection who raised it in the  
24 conversation?

25 A No, sir.

1 Q Were you still getting some questioning about it  
2 by either the utility officials or lawyers or by Mr. Roth,  
3 as to how did this trip report get out? Was that still a  
4 hot item in discussions?

5 A I don't know if it was a hot item. It was  
6 probably still an item of discussion; yes.

7 Q Was it still a matter of concern to you that it  
8 might ultimately come back and affect your employment at  
9 O.B. Cannon, if they felt that you were in some way  
10 culpable?

11 MR. GALLO: Objection. There's no foundation  
12 for the notion that Mr. Lipinsky was concerned. Was he  
13 still concerned that he might be fired or his job  
14 jeopardized because he was culpable in any way in showing  
15 the memorandum to Mr. Mouser? There's no foundation for  
16 that.

17 JUDGE BLOCH: Overruled.

18 THE WITNESS: No.

19 BY MR. ROISMAN:

20 Q So, by this time you felt --

21 MR. GALLO: Objection. Now, Judge Bloch, in  
22 fairness to the witness, what we have here is a question  
23 asked that assumes a premise not in evidence. The answer  
24 is "no." And by inference admits that he was worried  
25 about his job being jeopardized as a result of disclosure

1 of the report. That is improper evidentiary inference and  
2 is unfair and prejudicial to the witness. I ask the  
3 question and answer be stricken.

4 JUDGE BLOCH: Were you worried about your job as  
5 a result of the report?

6 THE WITNESS: No, sir.

7 BY MR. ROISMAN:

8 Q At no time?

9 A No. I was worried at one time or I wouldn't  
10 have started keeping this diary.

11 MR. ROISMAN: That's what I thought. I don't  
12 know where Mr. Gallo's objections are coming from or what  
13 he perceives to be the record here, Mr. Chairman, but this  
14 is about the third time he's objected to a question which  
15 is base on material produced in discovery. We can go  
16 through, this thing can last, Mr. Gallo can make this a  
17 life career if he wants. But it seems to me that where he  
18 and I and you and everybody else knows that the foundation  
19 is in the discovered material that we'll move a lot more  
20 efficiently if I don't have to go through this and go  
21 through the ropes of doing that.

22 Now, he knew that that was in there. Just as the  
23 witness just testified, and that the witness had expressed  
24 concern about losing his job about this at one time. And  
25 that foundation we all knew about.

1                   MR. GALLO: My recollection is that the job  
2 jeopardy was due to the release of the report; not due to  
3 showing it to Mr. Mouser. There's a big distinction  
4 between the two. It has never been established, as I know  
5 on this record, or to the satisfaction of Oliver B. Cannon,  
6 that the leak of the report was through Mr. Mouser.  
7 That's the assumption to which -- the basis for the  
8 objection.

9                   JUDGE BLOCH: Mr. Lipinsky, if your employer  
10 knew that you had intentionally given your report to  
11 someone on the site, whoever it was, would you have  
12 worried about your job being in jeopardy?

13                   THE WITNESS: I don't know that that's the case,  
14 your Honor. I don't know at the time --

15                   JUDGE BLOCH: You mean you wouldn't have worried  
16 about your job being in jeopardy if you had purposely  
17 released this memorandum to someone at the site?

18                   THE WITNESS: Well, you are making the  
19 assumption that I had purposely leaked this to someone on  
20 the site.

21                   JUDGE BLOCH: No, if they learned that you had,  
22 if that had come out, wouldn't your job be in jeopardy?

23                   THE WITNESS: In answering that question don't I  
24 agree to the premise?

25                   JUDGE BLOCH: No. It's a hypothetical question.

1 It doesn't mean you agree that the premise ever occurred.  
2 When a question is stated: If; then, you are not agreeing  
3 to the premise clause at all. If it had come out that had  
4 you delivered it to someone on the site, wouldn't your job  
5 have been in jeopardy?

6 MR. WATKINS: We'll object to the question. The  
7 witness testified he had not given it to anyone on the  
8 site. At that point you are asking for speculation pure  
9 and simple.

10 MR. ROISMAN: Wait a second. He did give it to  
11 somebody on the site and then got it back. But he did  
12 give it to somebody on the site.

13 MR. WATKINS: I was drawing a distinction  
14 between showing it to and actually giving a copy.  
15 Mr. Roisman is correct. I assumed your Honor meant "give"  
16 in the sense here this is yours, keep it.

17 JUDGE BLOCH: That's what I meant.

18 MR. WATKINS: That's not the witness' testimony.

19 JUDGE BLOCH: But it's a hypothetical question  
20 relating to a possible motivation in talking to Mr. Mouser.

21 MR. WATKINS: So long as everyone understands  
22 that all you are going to elicit is speculation on the  
23 witness' part and not relevant speculation to boot.

24 MR. ROISMAN: Mr. Chairman, let me speak to that.

25 JUDGE GROSSMAN: Mr. Watkins --

1                   MR. ROISMAN: It seems to me it's quite relevant  
2 because we are concerned about what Mr. Lipinsky's state  
3 of mind was. If Mr. Lipinsky believed that it was  
4 possible, even wrongly, that someone would assume that he  
5 was the reason that this document got out because he had  
6 given it to somebody, in the sense of given it and not  
7 taken it back, if he believed that was so, then his state  
8 of mind as to what he thought would happen to him if that  
9 were true would be very important. And at this point in  
10 time he doesn't know what the other side is going to  
11 conclude.

12                   JUDGE BLOCH: I think, based on his affidavit  
13 that he would never have written this report if he thought  
14 it would get out, we can take notice that if his employer  
15 knew that he had purposely given it to someone for release  
16 that there would have been problems on his job. So let's  
17 just go forward.

18                   MR. GALLO: Well I would like to note for the  
19 record that I object to the board taking notice of that  
20 fact.

21                   JUDGE BLOCH: We certainly would conclude that  
22 from facts already in evidence. I certainly would. I  
23 don't know about my co-judges.

24                   BY MR. ROISMAN:

25           Q        Mr. Lipinsky, are you still keeping your



1 contacts with Mr. Mouser and Miller and Ms. Adams?

2 A On an off-and-on basis; yes.

3 Q Do you still discuss with them the ongoing  
4 Lipinsky trip report issues, as they evolved in this  
5 proceeding?

6 A I try to avoid that; so, no.

7 Q You have not been in touch with them in order to  
8 either try to jog your memory about matters that you might  
9 be called upon to testify to here, or to make sure that  
10 your -- that you are remembering things correctly?

11 A I don't believe so; no.

12 Q When was the last time you spoke with Mr. Mouser,  
13 for instance? If you can remember?

14 A I don't recall.

15 Q Within the last month?

16 A No.

17 Q Last three months?

18 A Yes.

19 Q What?

20 A Yes.

21 Q After he left the Midland site?

22 MR. WATKINS: It hasn't been established that he  
23 left.

24 THE WITNESS: Last time I talked to him he was  
25 still in Midland, Michigan.

1 BY MR. ROISMAN:

2 Q He was still in Midland.

3 JUDGE BLOCH: Mr. Lipinsky, do you recall ever  
4 having a conversation with Mr. Mouser about what he might  
5 say if he were a witness in this case?

6 THE WITNESS: No, sir. I expressed concern that,  
7 you know, he hadn't been called -- not necessarily --  
8 surprised.

9 BY MR. ROISMAN:

10 Q Why were you surprised he hadn't been called?

11 A I just thought he was one of the key players.

12 Q On what issue?

13 A Apparently he was called on the Dunham issue.

14 Also on this issue.

15 Q What do you mean on this issue? What issue do  
16 you think he would be a key player in?

17 A With regard to the concerns raised in my trip  
18 report. I may have mistaken -- that's not within the  
19 scope of my understanding of this hearing.

20 Q Whether there was or was not a problem with  
21 paint coatings at the site?

22 A Yes.

23 Q What about on the issue of whether there was or  
24 was not pressure put on you after the trip report was made  
25 public? Would he be a witness with regard to that?

1 A No.

2 Q He wouldn't know anything about that?

3 A Not in my opinion.

4 Q Would he know how you were reacting to whatever  
5 events were transpiring?

6 MR. GALLO: Objection, asked and answered. He  
7 doesn't know. Not in his opinion. It's a dry hole. We  
8 should move onto something else.

9 JUDGE BLOCH: Sustained.

10 BY MR. ROISMAN:

11 Q Mr. Lipinsky, on the 7th of December, Ms. Ellis  
12 once again appears in your notes. It's actually on the  
13 page of the 8th, but it appears to be a continuation from  
14 the 7th under number 3, where Reynolds asks if you had  
15 heard from Ms. Ellis?

16 MR. GALLO: I'm sorry to interrupt, Judge Bloch.  
17 Point of clarification?

18 JUDGE BLOCH: Okay. I would also like to advise  
19 the parties please not to refer to the words that have  
20 been deleted from this section if they can avoid it. Yes,  
21 Mr. Gallo?

22 MR. GALLO: That was my purpose. I want to make  
23 sure I have it clear in my mind and the witness does as  
24 well, which words have been deleted, because we have not  
25 bothered to make that change in our document.

1 Tony, can you tell me what the words are? Can we go  
2 off the record?

3 (Discussion off the record.)

4 BY MR. ROISMAN:

5 Q Mr. Lipinsky, again we are still looking at the  
6 page of the diary that's marked the 8th, which is a  
7 continued note of your conversation with Mr. Reynolds.

8 When Mr. Reynolds indicated that Ms. Ellis might act  
9 improperly in order to stop the Comanche Peak plant, did  
10 you have any reaction to that, based upon what your own  
11 observations or your own judgments were of Ms. Ellis, from  
12 your contact with her? Did you think Mr. Reynolds had  
13 fairly characterized Ms. Ellis?

14 MR. GALLO: Objection. Irrelevant. That's not  
15 at issue here.

16 MR. WATKINS: We join in that objection.

17 MR. GALLO: Whether or not it's a fair  
18 characterization doesn't advance the ball at all on the  
19 issue before this board. Irrelevant.

20 MR. ROISMAN: It does if the purpose was to  
21 discourage Mr. Lipinsky from being a witness for Ms. Ellis.

22 MR. GALLO: We'll never know that from this  
23 witness. You'll have to call Mr. Reynolds. He's the one  
24 that apparently had the purpose in mind.

25 MR. ROISMAN: That's all right with me.

1 MR. WATKINS: It's not all right with us.

2 MR. ROISMAN: I can understand that.

3 JUDGE BLOCH: I'm not sure what we are going to  
4 get out of an answer to this question in terms of  
5 relevance.

6 MR. ROISMAN: Well, if you look through the  
7 things you'll see, first all, that the characterization  
8 that's made of Ms. Ellis is then subsequently made by  
9 Mr. Lipinsky in a question as to whether it might apply to  
10 Comanche Peak. And, secondly, the remainder of the  
11 sentence regarding Ms. Ellis refers to JJL will end up in  
12 trouble if JJL talked to Ms. Ellis.

13 JUDGE BLOCH: Why don't we just get the diary  
14 entry into evidence?

15 MR. ROISMAN: I'm going to offer all the diary  
16 entries into evidence.

17 JUDGE BLOCH: Once we do that I'm not sure what  
18 the question is going to do.

19 MR. ROISMAN: I want to understand what he meant  
20 by these words. He is writing down something that he  
21 heard so I want to find out what he understood he was told.

22 JUDGE BLOCH: I overrule the objection. Let's  
23 continue with the question.

24 MR. ROISMAN: All right.

25 BY MR. ROISMAN:

1 Q What was your reaction to that characterization  
2 of Ms. Ellis by Mr. Reynolds? Did you think he had given  
3 you a fair representation of her, based upon your contact  
4 with her?

5 A I don't think I had an opinion as to whether or  
6 not that representation was fair. That's why I noted the  
7 other side of the coin, as it were.

8 Q You mean that at that point you didn't know  
9 whether the characterization might not just as easily  
10 apply to the Comanche Peak company?

11 A It was just an observation on my part. I didn't  
12 really have an opinion for them one way or the other, with  
13 regards to Ms. Ellis.

14 Q How about with regard to Comanche Peak? You say  
15 JYL wondered if utility would -- deleted language -- to  
16 build CP, but didn't mention to NSR.

17 Did you think that was at least a possibility?

18 A Speculation on my part.

19 Q Did anything happen subsequent to December 8 to  
20 dispel that speculation?

21 A Yes.

22 Q What was that?

23 A The information provided by Mr. Brandt in his  
24 affidavit.

25 Q But -- looking at the substance of those words,

1 but not using them here, but we who have them in front of  
2 us can do that -- the substance of those words suggests  
3 that the written, or even spoken word, might not  
4 necessarily have been accurate; don't they? Your  
5 speculation was that in fact it might actually be that you  
6 couldn't rely on the written or spoken word; isn't that  
7 true?

8 A At that time?

9 JUDGE BLOCH: Do you understand the question?

10 MR. ROISMAN: I'm sorry it has to be so  
11 circumlocutious, but I have to do it.

12 JUDGE BLOCH: I'm not sure I understood the  
13 question because it got so circumlocutious.

14 MR. ROISMAN: The three words in question seem  
15 to be on their face to be contradicting -- that those  
16 three words could properly be applied to the Comanche Peak  
17 plant.

18 JUDGE BLOCH: Was it Mr. Brandt's affidavit that  
19 made you think this affidavit of the Intervenors was  
20 correct?

21 MR. ROISMAN: I'm focusing on the  
22 characterization of the company now. Where the same  
23 characterization was made by Mr. Reynolds of Ms. Ellis,  
24 now Mr. Lipinsky is wondering -- I wonder if that same  
25 characterization might apply to the company.

1           JUDGE BLOCH: Did Mr. Brandt's affidavit assure  
2 you that the company should not be adversely characterized  
3 with respect to its character?

4           THE WITNESS: Yes, sir. That and the  
5 attachments to the affidavit. Yes, sir.

6           BY MR. ROISMAN:

7           Q        In the same entry you have a reference to  
8 Mr. Reynolds indicating that JYL will end up in trouble if  
9 JYL talked to Ms. Ellis. What did you understand was  
10 meant by "end up in trouble"?

11          A        Apparently -- my understanding at the time was  
12 that Ms. Ellis contacted the press immediately after my  
13 initial conversation with her -- whichever date that was,  
14 we talked about it -- without advising me she was doing so.

15          I believe Mr. Reynolds, I took it to mean that he was  
16 giving me some advice with regard to -- that I might be  
17 misquoted in the media.

18          Q        Did he say that, as you remember? Did he say:  
19 What I mean by "you might end up in trouble" --

20          A        Words to that effect; yes.

21          Q        Did he indicate that you might end up in trouble  
22 with O.B. Cannon or with the Comanche Peak company?

23          A        Oh, no. That was not it.

24          Q        You felt were you perfectly free to talk to  
25 Ms. Ellis, vis-a-vis your job?



1       A       Yes. Just that I took the risk of being  
2 misquoted or being taken out of context.

3       Q       And that's all that was meant by "end up in  
4 trouble"?

5       A       Yes.

6       Q       How did you think you would be "in trouble" if  
7 you were misquoted?

8       A       I think it's obvious. If you are misquoted or  
9 taken out of context, that could be detrimental to one's  
10 professional integrity or professional status.

11      Q       You mean in your job? For instance, if you were  
12 quoted improperly in the press as a result of something  
13 that Ms. Ellis told them you had said, that that would  
14 affect your job?

15      A       Not with regards to employment status, but with  
16 regards to credibility as a professional in the coatings  
17 industry.

18             JUDGE BLOCH: That could happen from testifying  
19 here today, too.

20             THE WITNESS: If taken out of context, yes, sir.

21             JUDGE BLOCH: Anywhere. Reporters trying to do  
22 an honest job, they can always quote you wrong. Would  
23 that really hurt you in your job?

24             THE WITNESS: Credibility, sir. Not status.

25             MR. GALLO: Judge Bloch, you are arguing with

1 the witness. I thought the witness gave a perfectly  
2 straightforward and frank answer to that rather difficult  
3 question, especially the way it was phrased. Now you are  
4 pursuing it further to deprecate the weight to be given to  
5 his answer.

6 JUDGE BLOCH: I want to know if he really  
7 believes what he said. I want to know what his answer is.

8 MR. GALLO: He's under oath. I think he  
9 believes what he says.

10 JUDGE BLOCH: I can further question to find  
11 that out. I don't find that that was an impermissible  
12 question.

13 BY MR. ROISMAN:

14 Q Looking, still, at the notes on December 8, what  
15 did you understand Mr. Reynolds was telling you regarding  
16 the statement, "You should definitely be at lunch if  
17 Ms. Sinderson calls"?

18 MR. WATKINS: Objection. Not relevant to this  
19 proceeding.

20 JUDGE BLOCH: I guess it's relevant to the  
21 relationship between him and his counsel at this time. He  
22 was supposed to be represented by Mr. Reynolds as his  
23 personal counsel. It looks like he's going into another  
24 matter at this point. I'll allow the question.

25 BY MR. ROISMAN:

1 Q What did you understand it to mean?

2 A I understood it to mean that I should not take  
3 Ms. Sinderson's call.

4 Q Because?

5 A It says Mr. Reynolds recommended I don't.

6 Q In your best interests? His best interests?  
7 The company's best interests?

8 A I don't believe we discussed that.

9 Q And you just -- did you decide you would take  
10 that advice?

11 A It never came up so there was no need to  
12 exercise that advice.

13 Q Did you think were you free to ignore any of  
14 this advice that you were getting from Mr. Reynolds? For  
15 instance, the advice about staying away from Ms. Ellis and  
16 the advice about staying away from Ms. Sinderson? Did you  
17 feel comfortable that that was just his opinion and you  
18 could ignore it or follow it or whatever you want to do  
19 with it?

20 A I think you are implying that I was being led  
21 around by Mr. Reynolds and I had to do exactly what he  
22 said, and that's not the case. I mean -- unless I  
23 misunderstood your question.

24 Q Well, I wasn't attempting to imply anything. I  
25 was just trying to get the answer to the question. You

1 gave me somewhat different -- did you feel completely free  
2 to ignore what Mr. Reynolds gave you as advice?

3 A Yes.

4 Q At that time, was Mr. Reynolds, in your judgment,  
5 also a lawyer working for O.B. Cannon?

6 MR. GALLO: Objection. I should have objected  
7 previously to the board's finding.

8 As I understand the board's order with respect to  
9 Mr. Lipinsky's privileges, there's no attorney/client  
10 relationship between the Reynolds law firm and  
11 Mr. Lipinsky as a personal or individual basis.  
12 Consequently, any inquiry into that relationship at this  
13 point in time has to be a non sequitur, because none  
14 existed.

15 MR. ROISMAN: I believe the question inquired  
16 into the relationship with O.B. Cannon, and what I'm  
17 trying to find out is whether or not he felt -- well, let  
18 me get the answer to the first question, which was did he  
19 think that Mr. Reynolds was O.B. Cannon's attorney at the  
20 time.

21 JUDGE BLOCH: His opinion as to who he thought  
22 Mr. Reynolds was representing might be important, even if  
23 the board feels there was no formal relationship.

24 THE WITNESS: My opinion at the time was that  
25 Mr. Reynolds represented the Utility; in certain matters

1 he represented both myself and Cannon.

2 BY MR. ROISMAN:

3 Q So that when he would give you advice it was the  
4 equivalent of getting advice from O.B. Cannon; isn't that  
5 true?

6 A I think he said he represented Cannon. He  
7 didn't speak for Cannon.

8 Q So that if he told you you should do or not do  
9 something, you wouldn't have obeyed that. But if Mr. Roth  
10 told you that you should or should not do it, you would?

11 MR. GALLO: Objection.

12 THE WITNESS: Again --

13 MR. GALLO: Objection. The form of the question.  
14 I don't know what "it" is.

15 I don't know how this witness can decide whether he  
16 would or would not do what Mr. Roth told him unless "it"  
17 is defined.

18 JUDGE BLOCH: Too vague.

19 BY MR. ROISMAN:

20 Q If you were told by Mr. Roth that were you not  
21 to talk to Ms. Ellis or Ms. Sinderson, would you consider  
22 that you would therefore have the freedom to disregard  
23 that, if you wanted to keep your job?

24 A Mr. Roth, I'd say yes, I could disregard that.  
25 Mr. Roth encourages freedom of expression, pretty much,

1 within our company. The fact that Mr. Roth directed me to  
2 sign a trip report that I refused to sign sort of  
3 substantiates the fact that, you know, I don't follow  
4 blindly what Mr. Roth tells me to do.

5 Q But on that trip report you felt compelled to  
6 tell him that you were going to sign it; didn't you? At  
7 some point in conversation you told him "yes," didn't you?

8 A At the last instance I did acknowledge; yes, sir.  
9 However, I point out that I did not sign it.

10 Q That's right. But you felt you had to tell him  
11 yes; didn't you?

12 A In order to avoid a confrontation, as I  
13 identified yesterday. Yes, I told him, yes, sir.

14 Q Well, whether you call it avoiding a  
15 confrontation or knuckling under, the fact is Mr. Roth was  
16 directing you to do something and you thought that you had  
17 to tell him "yes," even if you didn't do it?

18 MR. GALLO: Objection.

19 MR. WATKINS: Objection. Counsel is arguing  
20 with the witness.

21 JUDGE BLOCH: Sustained. Sustained.

22 BY MR. ROISMAN:

23 Q Mr. Lipinsky, let's go to the period of November  
24 4 through 11, that week. Now, if I remember correctly --

25 MR. GALLO: Can the witness refer to his

1 testimony, your Honor?

2 JUDGE BLOCH: Yes.

3 BY MR. ROISMAN:

4 Q If I remember correctly, on November the 4th,  
5 you and -- is it Mr. Michels? Is that what the "MKM" is?

6 A Yes.

7 Q That you and he believed you were going to the  
8 Comanche Peak site on the 8th, to begin the audit which is  
9 described in Exhibit JJL-3; is that correct?

10 MR. GALLO: Excuse me, your Honor. Page 22.

11 Witnesses can't pay attention to Mr. Roisman's question  
12 and also page through to where he talks about November 4.

13 JUDGE BLOCH: Thank you. That's an interesting  
14 dissertation.

15 BY MR. ROISMAN:

16 Q Is that correct?

17 A Yes. I've testified to that.

18 Q And what happened -- well, strike that.

19 At that point in time, how did you view your  
20 relationship with regard to the matter of the trip report?  
21 Did you feel like you were still being required to defend  
22 the trip report, or that the trip report was sort of  
23 behind you and you were about to go out and do the in-depth  
24 audit you wanted to do all along? What were your feelings?

25 A At this point we were to perform an audit to

1 either confirm -- confirm in our opinion, one way or the  
2 other, whether the concerns I voiced in my trip report  
3 were in fact legitimate concerns.

4 Q So at that point, basically what you had  
5 recommended should happen was happening?

6 A My understanding was that was to happen; yes.

7 Q Right. That's what I mean. You understood that  
8 that was happening. And so I assume you felt somewhat  
9 vindicated at this point, that you had weathered the storm?

10 A I don't follow you about "vindicated."

11 Q Well, you were vindicated in that no one was now  
12 rejecting out of hand the trip report and they were  
13 treating it as a serious document that raised serious  
14 questions that required a serious inquiry to come up with  
15 definitive answers; all of which was what you believed;  
16 right?

17 A Yes. I believe that the only way to really at  
18 this point in time confirm one way or the other the  
19 concerns raised in my trip report was to perform some type  
20 of in-depth review, or audit.

21 Q And when you got to the site, I believe it was  
22 on the -- was it on the 9th, was the first day you got to  
23 the site?

24 A Yes. That's correct.

25 Q Were you surprised by Mr. Merritt's reaction



1 when you first showed him the four-page document that's  
2 been marked as J JL Exhibit 3? Maybe you should look at  
3 the bottom of page 23. It appears that it was on the  
4 evening of November 8th that Mr. Merritt -- that you met  
5 with Mr. Merritt, unless I'm misreading your testimony.

6 A That's incorrect. We did not meet with  
7 Mr. Merritt the evening of November 8. We met with  
8 Mr. Merritt the morning of November 9.

9 Q I see. Go ahead. So you gave him the four-page  
10 list. What was your reaction to his reaction?

11 A I would characterize it as I was surprised in  
12 that I thought this had been previously discussed and  
13 agreed upon prior to my arrival on the site.

14 Q How did Mr. Merritt seem to you? Did he seem  
15 calm and puzzled, or excited, or what? How would you  
16 describe it?

17 MR. GALLO: Objection, asked and answered. The  
18 top of page 24, Mr. Merritt seemed "surprised and  
19 displeased" by our list.

20 JUDGE BLOCH: We use that for repetitive and  
21 redundant questions. If he's got one question in his  
22 cross that is repeated, he may be allowed.

23 THE WITNESS: He seemed surprised and displeased  
24 by the extent of our list.

25 BY MR. ROISMAN:

1 Q I asked you for other characterizations. Your  
2 testimony does not ask for all he seemed. Was he angry?  
3 Did you call him angry?

4 A No.

5 Q Did he speak loudly to you?

6 A No.

7 Q Did he tell you why he wanted to have Mr. Norris  
8 there?

9 A No.

10 Q Were you surprised that he wanted to have  
11 Mr. Norris there?

12 A Can we go back on that first answer, to the  
13 previous question, where I said "no"?

14 JUDGE BLOCH: Yes. Yes.

15 THE WITNESS: Mr. Merritt may have indicated  
16 that he wanted Jack to be present -- Mr. Norris -- to be  
17 present during any review that we performed and any  
18 activities that we performed on-site.

19 BY MR. ROISMAN:

20 Q Did that bother you when he told you that? Was  
21 that disturbing to you?

22 A Not particularly.

23 Q You knew that Mr. Norris and you had disagreed  
24 about whether there was a problem at the site to begin  
25 with; right?

1           A           Yes.

2           Q           Did you feel like Mr. Merritt wanted to have  
3 what he perceived to have an ally within O.B. Cannon there,  
4 when you were doing this review?

5           A           I don't believe that was my perception at the  
6 time. I subsequently found out, I believe, that was  
7 Mr. Merritt's preference. However, again I would indicate  
8 that whether Jack, Mr. Norris, was with us during the  
9 review of the audit or whether he was not, wouldn't have  
10 influenced what our -- the course of our review.

11          Q           Did you start to feel nervous at this point?

12          A           No.

13          Q           No anxiety at this point?

14          A           Anxiety to the point that we had developed a  
15 four-page guideline to follow for a review and apparently  
16 that review was not going to take place.

17          Q           At the bottom of page 24 of your testimony you  
18 say that when you returned to the hotel you talked to  
19 Trallo; and that there would be a meeting held on the  
20 following day, which I assume means the 10th, to question  
21 you on the trip report. And you said, "I told Ralph I  
22 didn't want to discuss the report, but he pointed out that  
23 I couldn't really refuse the client's request."

24                 Why didn't you want to discuss the report?

25          A           I felt there was no sense in rehashing over what

1 I had already described to Mr. Chapman on the 28th in  
2 response to his written questions.

3 Q You didn't see any benefit that might be gained  
4 in going from the written word to the spoken word?  
5 Perhaps get further clarification?

6 A That's correct.

7 Q Were you at all concerned that as a result of  
8 the meeting you might be put in an uncomfortable position  
9 if your trip report were the subject of the meeting?

10 A I think it's obvious that it was an  
11 uncomfortable position. I think I testified to that  
12 effect.

13 Q You testified to that at the time you sat down  
14 and started the meeting, you did. My question was back  
15 the night before. Were you already getting nervous?

16 A I would say so. I don't recall specifically.

17 Q Why were you nervous? What was bothering you?  
18 You just told me it seemed redundant, in effect, to  
19 discuss the trip report after you had written it up, by  
20 Chapman. That shouldn't have made you nervous; should it?

21 A I'm sorry, I lost you.

22 Q I'm trying to decide what it was that made you  
23 nervous. I asked you why you didn't want to discuss the  
24 trip report. You said: Well, because I had already said  
25 everything I had to say in respond to go Mr. Chapman's

1 questions back in the beginning of October.

2 A Yes.

3 Q That would make you bored, waste time, but it  
4 shouldn't make you nervous; should it?

5 A With regards to rehashing over the issue?

6 Q Yes.

7 A "Nervous" may have been a poor choice of words.

8 Q But it's your choice of words in sworn testimony.  
9 We are having a lot of trouble with that.

10 I don't understand. You say, and I quote, "I was  
11 extremely nervous and agitated to the point that my hands  
12 were shaking."

13 A That's correct.

14 Q Were you nervous and agitated and had your hands  
15 shaking because you were about to do something that was  
16 redundant?

17 A It was because of the situation in the meeting.

18 Q Well, what was the situation?

19 A The fact that there was -- the meeting was being  
20 transcribed and recorded. Normally in the discussion --

21 JUDGE BLOCH: Was there anything else about that  
22 meeting that was making you nervous and agitated?

23 THE WITNESS: No.

24 JUDGE BLOCH: Was there an effort to find out in  
25 detail the basis for your findings, at that meeting?

1 THE WITNESS: I don't believe there was a  
2 searching out of facts. There was more of a discussion by  
3 the utility to start enumerating how they satisfied what  
4 my concerns -- how they satisfied my concerns on-site.

5 JUDGE BLOCH: They didn't even ask you at that  
6 meeting for a detailed discussion of your findings; did  
7 they?

8 THE WITNESS: No --

9 MR. GALLO: Judge Bloch, could we approach the  
10 bench?

11 JUDGE BLOCH: Surely. Do you want this with the  
12 reporter or not?

13 MR. GALLO: No, I don't want it on the record.  
14 Well, maybe it's best on the record:

15 (Discussion at the bench as follows:)

16 MR. GALLO: I'm concerned the witness may be  
17 nervous at this point. His testimony is clear that the  
18 reason he was nervous is he thought the purpose of the  
19 meeting was to railroad him into changing his position.  
20 Everybody has been asking him questions, Mr. Roisman --  
21 why not just put it directly to him in fairness to the  
22 witness rather than continuing this --

23 JUDGE BLOCH: Okay. But we do want to explore  
24 somewhat more what there was about the meeting that --

25 MR. GALLO: The question has been why were you

1 nervous --

2 JUDGE BLOCH: Do you want to ask him that? Is  
3 there any problem asking him?

4 JUDGE GROSSMAN: Maybe you need a recess to tell  
5 the witness he's getting too adversarial with Mr. Roisman.  
6 That's probably the explanation here. Every time  
7 Mr. Roisman suggests something, he apparently gives the  
8 opposite.

9 JUDGE BLOCH: You can do it on redirect also.

10 JUDGE GROSSMAN: Do you object to a five-minute  
11 recess while Mr. Gallo talks to his client?

12 MR. ROISMAN: I don't object to the recess but I  
13 would like to pursue the questioning along the line that  
14 I'm doing.

15 MR. GALLO: All right.

16 JUDGE BLOCH: Take a five-minute recess.

17 (Recess.)

18 JUDGE BLOCH: The hearing will come to order.  
19 Mr. Lipinsky, I understand it is your testimony that you  
20 actually felt during the course of this meeting that you  
21 were being railroaded; is that correct?

22 THE WITNESS: Yes. I was convinced that was the  
23 purpose of the meeting. Yes, sir.

24 JUDGE BLOCH: Could you tell us what about the  
25 meeting led you to that conclusion, other than what you

1 already said, which is that it was being tape recorded?

2 THE WITNESS: It was being transcribed and  
3 recorded, and I don't have the list of attendance but  
4 there were quite a few individuals in the room. There was  
5 Mr. Merritt, Mr. Tolson, Mr. Firtel, Mr. Kelly and a  
6 couple of others, one or two other individuals for the  
7 Utility.

8 JUDGE BLOCH: Did you have the feeling that part  
9 of the problem was that they really didn't want the  
10 details of why you believed what you believed?

11 THE WITNESS: Yes.

12 JUDGE BLOCH: Mr. Roisman?

13 BY MR. ROISMAN:

14 Q When you used the phrase that "the purpose of  
15 the meeting was to railroad me into changing my opinion,"  
16 how did you think that that was going to happen?

17 A A situation where I was swamped with details or  
18 whatever, and then forced into a situation where I would  
19 have to say that, yes, what you are doing is fine and I  
20 didn't have any problems.

21 Q Did you yourself express these feelings to any  
22 of the people within the O.B. Cannon group before you went  
23 into the first -- into the meeting on the 9th -- excuse me,  
24 on the 10th?

25 A Yes. To Ralph Trallo, as I testified. Before



1 this general meeting started, Mr. Trallo informed me that  
2 the meeting would be stopped if it turned into a witch  
3 hunt or kangaroo court or something along those lines.

4 Q Did that take care of your anxiety?

5 A No, I was still nervous and anxious about the  
6 whole thing. It reassured me to some extent that Ralph  
7 would stop the meeting if it proceeded to get out of hand.

8 Q But you still remained nervous?

9 A Yes.

10 Q Did you remain about as nervous throughout the  
11 course of the meeting?

12 A Yes.

13 Q Did you feel that they were attempting to  
14 railroad you into changing your position?

15 A No. As the meeting went on it turned out that  
16 that appeared not to be the case.

17 Q Why were you still nervous?

18 A My disposition, perhaps.

19 Q You mean just your natural nervous disposition?  
20 Is that what you meant?

21 A Yes.

22 Q You mean you are naturally a little bit nervous?

23 A No. That's not what I meant.

24 Q I'm sorry, then, I'm not sure I understand. Why  
25 did you remain nervous throughout the meeting?

1           A           I just was nervous throughout the meeting.

2                    JUDGE BLOCH: Did anyone at the meeting notice  
3 that your hands were shaking and offer to give you any  
4 support? Say they wondered why that was happening?

5                    THE WITNESS: No, sir.

6                    JUDGE BLOCH: Were the hands visibly shaking so  
7 someone could have noticed it?

8                    THE WITNESS: I believe Keith remarked about it  
9 afterwards.

10                   JUDGE GROSSMAN: Did then the meeting go along  
11 with how it had been represented to you the meeting would  
12 go along?

13                   THE WITNESS: Yes, sir.

14                   JUDGE BLOCH: Mr. Roisman?

15                   BY MR. ROISMAN:

16           Q           When you were finished with the meeting, did you  
17 still remain nervous?

18           A           No, sir.

19           Q           Perfectly calm?

20           A           I would say, characterizing that earlier answer,  
21 towards the end of the meeting things -- you know, I was  
22 relaxing; yes.

23           Q           And when you left the meeting, what did you feel  
24 was the -- was the next thing that was going to happen  
25 with regard to the trip report and the whole issue?

1 JUDGE BLOCH: Are you talking about when he left  
2 November 10th or when he left November 11th?

3 BY MR. ROISMAN:

4 Q I'm sorry. When you left November 11th, when  
5 the meetings at the site were ended, what did you think  
6 was going to happen next?

7 A Cannon developed a report which was based on  
8 consensus of everybody who attended the meeting, and as a  
9 result of that, that was the end of it. Cannon issued a  
10 report. Ralph Trallo issued a report to Mr. Roth.  
11 I believe Mr. Roth turned around and issued it to  
12 Mr. Merritt. And that was the end of the matter as far as  
13 I was concerned.

14 Q The report we are talking about is the report  
15 dated November 28, 1983, from Mr. Trallo to Mr. Roth, that  
16 was attached to the November 30, 1983 letter to  
17 Mr. Merritt from Mr. Roth?

18 A May I see that cover letter, please?

19 Q Yes.

20 A I have the cover letter. Yes.

21 Q At least in the copy produced to us, attached to  
22 the cover letter as it purports to be, was this November  
23 28th departmental correspondence from Trallo to Roth  
24 entitled, "H-L 301-coatings overview task group report."

25 A Yes, I have that.

1 Q Okay. I just want to make sure that is the  
2 final report that you were just testifying about; correct?

3 A Yes.

4 Q And with that, everything was okay, you thought?

5 A I thought that Cannon expressed the position put  
6 forth by the task force. And, in view of our consulting  
7 relationship with the Utility, yes.

8 Q Now, that was the 11th of November, correct,  
9 that the meeting ended?,

10 A Yes, sir.

11 Q Now, looking at your diary notes starting at the --  
12 on the date 12-13/13 November, which I believe is actually  
13 notes of something that happened on the 14th of November  
14 but that you continued your notes on the 14th back to that  
15 blank page --

16 A This is November?

17 Q Yes. November. And at the bottom of the  
18 November 14th notes there's a notation, "continued on  
19 preceding page under" -- or something I can't read there --  
20 November 12-13.

21 Now, looking at the last entry on the 12-13 date, you  
22 indicate that you had a telephone conversation with JJN,  
23 you update him on the current status, voice concerns on RBR  
24 actions on trip report. Ask status on tape and transcript.

25 Now, at that point were you still a little nervous?

1 A No.

2 Q You were real calm at that point?

3 A Relatively speaking, yes.

4 Q What about this "voiced concerns on RBR actions  
5 on trip report"?

6 A That item refers to the fact that Mr. Roth  
7 modified my August 8th trip. It doesn't deal with the  
8 trip report generated by the task force.

9 Q So, even though the meeting had been concluded  
10 at the plant site, you had felt that it had gone well,  
11 Mr. Roth was still trying to get you to alter the original  
12 trip report; is that right? Is that what you are talking  
13 about, your concerns on RBR actions on trip report?

14 A At this point the trip report of August 8th had  
15 already been modified by Mr. Roth. What I was pointing  
16 out to Mr. Norris was that, essentially, two trip reports  
17 were in existence: One that I had executed and one that  
18 Mr. Roth had modified.

19 Q And the concerns that you were expressing were  
20 that there were now two trip reports out that purported to  
21 be the same report but were actually different in terms of  
22 the changes that Mr. Roth had made?

23 A Yes.

24 Q And what was the concern that you expressed?

25 A I think you just summarized it in that there

1 were -- there was my original trip report and a trip  
2 report that was slightly modified by Mr. Roth.

3 Q And didn't have your signature on it?

4 A That's correct.

5 Q And it also didn't have the QAD notation on it;  
6 did it or didn't it?

7 A It did not have a letter number on it; no.

8 Q And so it was nothing, really, but a draft by O.B.  
9 Cannon's procedures; correct? It wasn't -- within O.B.  
10 Cannon, to be a true trip report it would have required  
11 both the QAD number on it and the signature of the author;  
12 isn't that correct?

13 A The QAD numbers are something I developed to  
14 keep track of the letters I generate. Other individuals  
15 in the company generate trip reports that do not have a QAD  
16 number.

17 Q But for it to have been an official report from  
18 you, it would have needed to have that number and your  
19 signature on it; right?

20 A At a minimum, my signature; yes. That's correct.

21 Q So the concern then wasn't a concern that  
22 someone would say that you had written that report,  
23 because you could establish conclusively that you had not.  
24 What was the concern?

25 A As you identified, that there were essentially

1 two versions of the trip report. At that time I did not  
2 differentiate that I could establish conclusively that I  
3 did not generate the modified version.

4 Q So you were concerned that it might appear that  
5 you had produced two versions of the trip report?

6 A I think I was just identifying it to Jack as the  
7 responsible manager of the company, that there were in  
8 fact two versions of my trip report.

9 Q On the 15th of November, you indicate, oh, about  
10 a third of the way down the page under the general heading,  
11 "RBR called JJN in RBR office; told J. Merritt that the  
12 wrong report " -- and then there's something in  
13 parentheses which I'm not sure I can read that. Can you  
14 read what is in the paren there?

15 A In the parentheses it's "RBR did not mention  
16 that RBR wanted JBL to sign the changed report."

17 Q I'm sorry. In the next line there's a  
18 parentheses, "told J. Merritt that the wrong report" --  
19 and then there's something in the parentheses.

20 A "Version."

21 Q -- "was taken." What did that mean?

22 A Mr. Roth viewed my draft dated August 2nd from  
23 my trip report as the first draft. Mr. Roth also views  
24 that trip report that I executed with the letter number on  
25 it as the second draft. And the modified version is the

1 third draft.

2 In fact I think if you look at what's been submitted,  
3 you'll see in the upper corner, either right- or left-hand  
4 corner, the notation first draft, second draft, and third  
5 draft. Those notations were added by Mr. Roth.

6 Q Okay. When you say "told J. Merritt that the  
7 wrong report was taken," was taken by whom?

8 A At that point in time, Mr. Roth did not know  
9 that the report was taken by a specific individual.

10 Q No, no. But is this the report that we are  
11 talking about that was made public when it was not  
12 supposed to have been made public? The one that  
13 ultimately ended up at the NRC?

14 A I think we are referring to different drafts of  
15 my trip report here.

16 Q That's what I'm trying to understand. Was  
17 Mr. Merritt told that the copy that the NRC obtained was  
18 not the right trip report?

19 A That's correct.

20 Q And which report was it that the NRC got? Was  
21 it the one that had the QAD designation and your signature  
22 on it, or was it one of the earlier drafts?

23 A There was only one earlier draft.

24 Q Okay.

25 A However, my understanding is that the NRC



1 received both my August 8th trip report with my letter  
2 number and signature, and the modified version, modified  
3 by Mr. Roth.

4 Q Okay. But not anything -- they didn't receive  
5 one that predated the 8th?

6 A That's correct.

7 Q Or one of them that you were working on on the  
8 day of the 8th but had not yet put the QAD number on?

9 A That's correct.

10 Q Okay. Now, when Merritt -- what did you  
11 understand was meant when he said Merritt was told that  
12 the wrong report was taken. Which report was the "wrong  
13 report"?

14 A Mr. Roth was referring to my trip report, the  
15 August 8th trip report with my letter number and signature.

16 Q So he -- your understanding is that he had told  
17 Merritt that your report, the one that had the QAD number  
18 on it, and your signature, was the wrong report?

19 A That's my understanding from Mr. Roth; yes.

20 Q And that the right report was the one that was  
21 subsequently done by Mr. Roth but that you never signed?

22 A Yes. Based on this conversation.

23 Q Now, do I understand that it was your  
24 understanding that the NRC had both of these trip reports?  
25 That is both the one that you had your QAD number on and

1 the subsequently developed one by Mr. Roth; is that  
2 correct?

3 A Yes.

4 MR. WATKINS: May we establish the time? When  
5 did they have them?

6 MR. ROISMAN: Yes. I'm going to do that.

7 BY MR. ROISMAN:

8 Q Do you know when they got the Roth report, or  
9 how they got that one? I'll call it the Roth report.  
10 What I mean is it's the Roth version of your report.

11 A All right. You are asking two questions there,  
12 then?

13 Q Okay. Do you know when? And how? That's two  
14 questions.

15 A Yes.

16 Q Okay. What was the -- what's the answer to "when"?

17 A It was subsequent to the conversation between  
18 Mr. Roth and Mr. Merritt on October 12, when Mr. Roth  
19 modified my trip report.

20 Q And do you know how they got that modified trip  
21 report? "They," the NRC?

22 A My understanding is that Mr. Merritt provided  
23 them, the NRC, with a copy of the modified version of the  
24 trip report.

25 Q Do you know who he gave it to?

1           A           No, I do not.

2           Q           Do you know whether, or were you ever informed  
3 of whether, when it was given to the NRC, it was  
4 represented to be the "right version of your report"?

5           A           No, I do not.

6           Q           Now, at this point in time -- I've tried to sort  
7 out various emotions that you were feeling.

8           The nervousness and anxiety that you were feeling about  
9 the possibility that you would be railroaded into changing  
10 your position which had existed prior to and during at  
11 least some portion of the meetings on the 10th and 11th,  
12 by now, on the 15th, were gone; is that correct?

13          A           Yes.

14          Q           Was there a new anxiety which you began to  
15 experience at this point over this issue of perjury,  
16 regarding the existence of the two trip reports?

17          A           I suppose there was. However, the fact that I  
18 didn't execute the second copy, as you pointed out, I  
19 would not have a problem explaining the existence --

20                    JUDGE BLOCH: I understand you to be saying you  
21 don't really remember, is that correct when you say "I  
22 suppose there was"?

23                    THE WITNESS: Yes. I don't have any firm  
24 recollection of any nervousness, no, because of the fact  
25 that I would be able to explain the existence of the

1 modified version.

2 BY MR. ROISMAN:

3 Q I guess I'm trying to see, just in looking at  
4 the notes, some indication of when you were writing a lot,  
5 you kept referring back to a certain matter, whether that  
6 reflected some anxiety on your part as opposed to things  
7 that you made relatively little notes about or no notes at  
8 all. Am I incorrect in assuming that if you were writing  
9 a lot in your notebook that it reflected some anxiety on  
10 your part and some need to fully record events that were  
11 taking place?

12 A No. That's not correct. I pretty much recorded  
13 events that took place, whether they had any -- anything  
14 that I felt had interest with the Comanche Peak site, I  
15 took note of. Some days were busier than others.

16 Q Let's continue on down on the 15th of November.  
17 There's a reference, a little past the middle of the page,  
18 "TECON with P." -- it looks like McAbee.

19 A M-c-A-b-e-e.

20 Q And then, is that "RE" and then a colon?

21 A Yes. "With regard to."

22 Q Who is P. McAbee?

23 A Mr. McAbee was a former supervisor of mine, and  
24 friend.

25 Q Not an O.B. Cannon employee?

1           A           That's correct.

2           Q           It says P.M. suggested that JJL call NRC and  
3 tell about RBR and changed trip report." I assume that  
4 that must have been preceded by your confiding in Mr.  
5 McAbee about the existence of the two reports; is that  
6 correct?

7           A           I think you have that backwards; don't you?

8           Q           How did Mr. McAbee know that there were two trip  
9 reports?

10          A           During the course of this conversation I  
11 discussed it with him and asked his advice.

12          Q           Oh. Okay. That's what I was saying.

13                 You had to advise him about that. He didn't know about  
14 that independently. He wasn't in the O.B. Cannon loop or  
15 anything like that; right?

16          A           That's correct.

17          Q           And why did he suggest that you call the NRC?

18          A           That was his opinion, his advice to me.

19          Q           But you must have asked him why?

20          A           He explained that in order that there be --  
21 prevent any confusion, that that's what he would do.

22          Q           Confusion with the NRC?

23          A           Yes. With regards to the existence of two  
24 versions of my trip report.

25          Q           Did he suggest to you that without the

1 explanation the NRC might incorrectly jump to the  
2 conclusion that you had produced two trip reports that  
3 were not the same?

4 A I don't recall.

5 Q You can't recall whether you might have --  
6 whether this might have come up as a suggestion as a way  
7 of protecting you from possible charges of impropriety?

8 A I don't believe words to that effect were used,  
9 but I'm sure that's the basis for it; yes.

10 Q And was it therefore the inevitable conclusion  
11 that if it was a possible impropriety and it wasn't yours,  
12 then it must have been Mr. Roth's impropriety?

13 MR. GALLO: Objection. The question is, first  
14 of all, vague. I don't know what the inevitable  
15 conclusion is --

16 JUDGE BLOCH: Sustained. Let's just ask the  
17 question again.

18 BY MR. ROISMAN:

19 Q Mr. Lipinsky, was it either -- if there was an  
20 impropriety, was it either an impropriety of yours to have  
21 the NRC have two trip reports that were not the same but  
22 purported to be for the very same trip; or, conversely, if  
23 it wasn't an impropriety of yours and it was an  
24 impropriety at all, then it had to be Mr. Roth's  
25 impropriety? Were those the options?

1           A           I don't believe so. I felt first of all  
2 Mr. Roth felt within his rights to modify the trip report.  
3 And I testified earlier that I don't have a big deal with  
4 the modification. However, I don't know that it was  
5 reported to the NRC that the two versions were in fact the  
6 same. I don't know what was said to the NRC.

7           Q           I take it at the time of the conversation that  
8 Mr. McAbee felt that there needed to be some clarification  
9 given to the NRC; isn't that true?

10          A           That was his advice, yes.

11          Q           And I assume that he based that advice upon your  
12 explaining to him the facts as you understood them at that  
13 time; right?

14          A           Yes. That's correct.

15          Q           Did you agree with him that there might be some  
16 ambiguity that the NRC would perhaps not understand the  
17 whole story?

18          A           Yes.

19          Q           Did you go to the NRC and tell them that?

20          A           No, I did not.

21          Q           Why not?

22          A           Because advice, I could take it or not. The  
23 fact of the matter is that I can explain the modified  
24 version -- didn't present -- it could be explained, that I  
25 did not generate the modified version of the trip report.

1 Q Why did you go to Mr. McAbee for advice at all?

2 A I valued his opinion.

3 Q But why did you think you needed any advice?

4 A I wanted another set of eyes to look at the  
5 situation.

6 Q Well, after he told you what he thought you  
7 should do, you decided not to do it. Had you reconfirmed  
8 from something that he said your own judgment about what  
9 to do?

10 A I believed Mr. McAbee, I testified, would handle  
11 the matter in a manner contrary to the way I handled it.

12 Q You told me you went to him because you wanted  
13 another person's opinion and you got his opinion and  
14 decide not to follow it and the only explanation you have  
15 given me why you didn't follow it was an explanation that  
16 you had even before you called him; namely that you could  
17 always explain that the other version of the trip report  
18 wasn't yours. So I'm trying to understand, either what it  
19 was that motivated you to seek the advice that could also  
20 explain why, when you got it, you didn't choose to follow  
21 it. Do you have any other explanation to give me other  
22 than what you have already given me?

23 A No.

24 JUDGE BLOCH: Mr. Lipinsky, were you somewhat  
25 concerned if you did go to the NRC there could be a



1 problem for Mr. Norris?

2 THE WITNESS: Mr. Roth, you mean?

3 JUDGE BLOCH: I'm sorry. Mr. Roth.

4 THE WITNESS: No. I mean, he'd be able to  
5 present his explanation at the time.

6 BY MR. ROISMAN:

7 Q Has anybody, either at that time or subsequently,  
8 drawn your attention to 18 United States code 1001? Does  
9 that ring a bell?

10 A No, that does not.

11 Q Or any federal felony statute regarding the  
12 giving of false information to a federal agency?

13 A No, it does not -- or, no, they did not.

14 Q On the bottom of the November 15th notes there's  
15 a reference to a telephone conversation with RAT. And in  
16 that you said that you gave your personal opinion that OBC  
17 is spending too much time defending the trip report. "Should  
18 give factual account and let the chips fall where they may."

19 What did you mean by that?

20 A I felt rather than justifying the basis for the  
21 trip report, you should, or we, Cannon, should identify  
22 the concerns I raised in that trip report; at this point  
23 identify the response received by the people on-site, the  
24 Utility people on-site; and that's it.

25 Q Well, you say you gave your personal opinion.

1 Was there some other opinion that was around that was  
2 taking a different view than that one, that you were aware  
3 of?

4 A Well, our position as a company was to proceed  
5 with going through explaining and trying to resolve the  
6 concerns in the report.

7 Q I'm sorry. I thought at that point -- this is  
8 now the 15th -- you had completed the meetings on the 10th  
9 and 11th, and the only thing that was left was to write  
10 the final report.

11 A That's correct.

12 Q Now, are you saying that it was your opinion  
13 that the final report should not have been written?

14 A No. I'm saying that we should have presented  
15 essentially both sides of the story and if people wanted  
16 to draw conclusions, then they could draw conclusions. I  
17 felt that Cannon really should not take one side or the  
18 other in the matter.

19 Q You mean in the matter of whether the paint  
20 coatings program was or was not okay?

21 A That's correct.

22 Q And why did you feel that you should not take  
23 sides? What motivated that opinion?

24 A Trying to stay independent of influences from  
25 either end.

1 Q I take it that that effort to stay independent  
2 has now been lost; is that correct?

3 A I don't follow you.

4 Q Well, you have now submitted an affidavit on the  
5 part of the utilities that takes sides; doesn't it?

6 A Yes, but I have no more information than was  
7 available to us on the 15th.

8 Q Well, even when you had met with the NRC on the  
9 4th, you had already started to take sides. You gave the  
10 NRC your view of the resolution of some of the matters  
11 that you had raised in your trip report; hadn't you?

12 A Yes, I had. I think I also identified that  
13 without benefit of an audit or review of some type I  
14 couldn't prove one way or the other what was factual.

15 Q But my thought is you had gone beyond this:  
16 Look, here's what I say and here's what they say and  
17 anybody can draw their conclusions from it. You had  
18 actually drawn some tentative conclusions from those two  
19 things and then put a caveat on it, isn't that true, in  
20 your January 4th --

21 A Yes, but I had more information at that point  
22 than the members of the task force.

23 Q You had more information at which point than the  
24 members of the task force?

25 A At the point of my deposition to the NRC.

1 Q And that information came from where?

2 A Through the development of testimony, of  
3 Mr. Watkins and Mr. Reynolds -- Mr. Reynolds, actually.

4 Q So, through the lawyers, actually, you were  
5 getting more information?

6 A Yes, sir.

7 Q You mean technical information?

8 A Not at that point; no, sir.

9 Q What kind of information were you getting from  
10 them, that was more?

11 A Information to the effect that in fact there  
12 were procedures, there were -- there was justification to  
13 satisfy the concerns I raised in my trip report.

14 Q You mean they assured you they could provide it  
15 or they in fact did provide it?

16 A They assured me that they could provide it.

17 Q And so you decided that that would warrant your  
18 no longer remaining as independent as you wished to be on  
19 the 15th?

20 A I think I was still independent at that point in  
21 time.

22 Q At which point in time?

23 A At the time of my deposition to the NRC.

24 Q I thought you said that not taking sides was one  
25 way of assuring your independence?

1           A           At the time of the 15th, yes, sir.

2           Q           At the time of the 4th you could still be  
3 independent, but now you could start to take a little bit  
4 of a side; is that right?

5           A           I guess I object to the thing of taking sides.  
6 I qualified pretty much my testimony to the NRC at the  
7 time of my testimony.

8           Q           Did you think at the time of the testimony on  
9 the 4th that you were saying more -- that you were being  
10 more definitive about whether the problems that you had  
11 originally identified did or did not still exist than you  
12 had been in your -- in the trip report that the whole team  
13 put together and was dated November 28th?

14          A           I think my testimony reflected pretty much the  
15 position of the task force.

16          Q           So that it was not any more definitive than, in  
17 your judgment, what you had already concluded on the 28th?

18          A           The 4th, sir.

19          Q           Of November. I'm sorry.

20                 In other words, on November 28th there was a trip  
21 report that was prepared by the whole task group. And I  
22 believe you've previously testified that all of you  
23 together -- it was a consensus view?

24          A           I would like to explain at this point I think  
25 you have a problem with the 28th. My portion of the trip

1 report was generated very shortly after my trip. The day  
2 of the 28th was when Ralph was able to get it all pulled  
3 together from the members.

4 Q And my question to you is: Do you feel that you  
5 were being any more definitive in your statements  
6 regarding whether certain matters were or were not  
7 resolved --

8 A I don't believe so; no.

9 Q Let me finish the question so that the record is  
10 clear.

11 A I'm sorry.

12 Q -- on the 4th of January than you had been on  
13 the 28th of November?

14 A No. I don't believe so.

15 Q But I thought you just testified a few moments  
16 ago that as you had "more information than the task group  
17 did," because of your conversations with the lawyers for  
18 the utilities -- isn't that what you said?

19 A Yes. That's correct.

20 Q And that that helped you form a more definitive  
21 basis for your positions that you took on January 4th,  
22 than they would have been able to have had without the  
23 benefit of that knowledge that you have?

24 A At that point -- I want to clarify -- I was  
25 probably leaning towards the task force more than towards

1 an independent resolution. However, I didn't make any  
2 firm commitments or statements to the effect, until my  
3 affidavit of the 28th.

4 Q Wait. What do you mean you were leaning more  
5 towards the task group than towards independence?

6 A Well, the --

7 MR. GALLO: Objection. This whole line is not  
8 going anyplace. I don't know what probative value what  
9 his leaning is, how much information he's had on the 15th  
10 of November versus January 4. We have been through it  
11 three or four times. I think we ought to move on to  
12 another subject matter.

13 JUDGE BLOCH: I think the form of the  
14 questioning is getting unproductive.

15 Mr. Lipinsky, when you spoke to the NRC, was it in your  
16 mind that as an independent person you were going to  
17 inform the NRC of all the information that you had  
18 concerning coatings problems at Comanche Peak?

19 THE WITNESS: Yes, sir.

20 JUDGE BLOCH: It was your view you were going to  
21 give them whatever information you had that was relevant  
22 to a coatings problem at Comanche Peak?

23 THE WITNESS: Yes, sir.

24 JUDGE BLOCH: Could you explain your memorandum  
25 of January 9, 1984, to files? Could it be shown to the

1 witness? In which you said: "The writer's responses were  
2 in line with the draft testimony prepared by Mr. Reynolds  
3 and the writer for the ASLB hearings. The writer did not  
4 speculate on other areas than in the report. Also the  
5 writer did not speculate or expand on other areas covered  
6 in the report."

7 What is it that you didn't do in your conversation with  
8 the NRC?

9 THE WITNESS: Can I get that document, sir?

10 MR. GALLO: Can the witness have the question  
11 again?

12 JUDGE BLOCH: The question very simply is what  
13 is it you didn't tell to the NRC?

14 THE WITNESS: I told them --

15 MR. GALLO: I have to object.

16 JUDGE BLOCH: Is there anything you didn't tell  
17 the NRC that is relevant to the quality of the coatings  
18 integrity program at NRC?

19 THE WITNESS: No, sir. The summary here, rather  
20 than try to go through the whole explanation that turned  
21 out, I don't know, 70-some pages of transcript -- it was  
22 just a summary to Mr. Roth and Jack and Ralph who had  
23 already seen a draft of the affidavit, pretty much in line  
24 with what I talked about.

25 JUDGE BLOCH: So all you meant to say is you



1 told them everything you know?

2 THE WITNESS: Yes, sir.

3 JUDGE BLOCH: At that time did you have any  
4 recollections of specific discussions that you had had on  
5 the site with specific individuals?

6 THE WITNESS: Yes, sir.

7 JUDGE BLOCH: Were there questions asked about  
8 those specific discussions by the NRC?

9 THE WITNESS: I believe so.

10 JUDGE BLOCH: And you believe the NRC basically  
11 got the full information you had to give them at that time?

12 THE WITNESS: Yes, sir. I answered all their  
13 questions fully and truthfully.

14 JUDGE BLOCH: That wasn't the question. I want  
15 to know whether they got the full information you had to  
16 give them. They may have asked limited questions. Do you  
17 think they got all of the information you had then about  
18 the coatings program and the coatings quality?

19 THE WITNESS: Yes, sir.

20 JUDGE GROSSMAN: Excuse me. The NRC didn't ask  
21 you to expand on areas covered in the report?

22 THE WITNESS: They did, but it was speculative  
23 in nature and I didn't want to speculate without basis of  
24 fact. And I pointed it out at the time when they were  
25 asking that type of question and they didn't pursue it.

1 BY MR. ROISMAN:

2 Q Mr. Lipinsky, on the 30th of November in your  
3 diary notes you write about a telephone conversation with  
4 F. Hawkins, of the NRC. And in that you say: "JLJ again  
5 stated that JLJ has no interest in CP." I assume that's  
6 in Comanche Peak; right?

7 A Yes.

8 Q "-- and would prefer not to give opinions, but JLJ  
9 would cooperate."

10 Would prefer not to give opinions about what?

11 A Opinions on matters that I don't have any  
12 factual basis to give them on.

13 Q And then what is the "but JLJ would cooperate"  
14 mean?

15 A Well, tell them everything I know.

16 Q All right. Then the next thing you said was, "JLJ  
17 suggested that it would be to FH benefit, if FH talked  
18 with inspectors firsthand."

19 What did you have in mind there?

20 A I felt that Mr. Hawkins should talk to  
21 inspectors on a personal basis rather than try to get it  
22 through me with secondhand information.

23 Q Why did you think he should do that? This was  
24 after you had spoken with Mr. Tolson; wasn't it?

25 A Yes.

1           Q           So why did you think that he should talk to the  
2 inspectors firsthand?

3                   MR. GALLO:  Objection.  He answered that  
4 question.  If they wanted to know what the inspectors  
5 thought, you ought to ask them.  That's a simple answer.  
6 It doesn't need further probing on that point.  Asked and  
7 answered.

8                   JUDGE BLOCH:  Mr. Lipinsky, you are an expert in  
9 coatings.  It seems to me a faster way of learning about  
10 coatings at Comanche Peak, if you had spoken to people  
11 directly, would be to ask you, because you could integrate  
12 that stuff and say what it means, not just say what the  
13 individual inspectors were concerned about.  Did you  
14 really think it would be more accurate to talk to the  
15 individual inspectors rather than talk to you?

16                   THE WITNESS:  My trip -- as I pointed out on  
17 numerous occasions, this was a three-day trip.  I  
18 identified one paint can sitting out without a traveler  
19 system.

20                   You asked me, you know, if that's the norm or the  
21 exception.  I only saw one instance of it.  Inspectors who  
22 have been dealing with the situation on a daily basis  
23 would know if that's the norm or the exception.  They  
24 could -- I figured if he went and talked to them directly  
25 they'd be able to tell him what was going on in more

1       specifics than I would be able to.

2                   JUDGE BLOCH:  You talked to them and never asked  
3 whether it was a norm or an exception?

4                   THE WITNESS:  That's correct; yes, sir.

5                   BY MR. ROISMAN:

6       Q            You also asked if they received a transcript  
7 copy of the meeting of the 10th and 11th.  Why were you  
8 interested in that?

9       A            I felt a lot of the concerns I had raised,  
10 Mr. Tolson provided some unofficial information which,  
11 taken at face value, would satisfy those concerns.  And I  
12 felt if Mr. Hawkins had reviewed this transcript prior to  
13 interviewing me, that some of the questions would have  
14 been resolved.

15                   JUDGE GROSSMAN:  Excuse me.

16       Mr. Lipinsky, were you also thinking, at the time that  
17 you said this to Mr. Hawkins, that you would be more  
18 comfortable if derogatory information about the site came  
19 from the inspectors rather than from you?

20                   THE WITNESS:  No.  Again, the inspectors would  
21 have firsthand, you know, information.  Mr. Hawkins, I  
22 believe, was asking, you know, or would be asking, my  
23 assumption was, for specifics.  And I felt the inspectors  
24 would be able to provide more detail than I would be able  
25 to.

1 BY MR. ROISMAN:

2 Q Who were the people at the Nuclear Regulatory  
3 Commission, other than Mr. Hawkins and Mr. Johnson and  
4 Driskill, with whom you spoke?

5 A Mr. Griffin.

6 Q Yes.

7 A I think that's it. Oh, no, excuse me. I'm  
8 sorry, what time period are we talking about?

9 Q Between the time that your trip report was  
10 written, in August of 1983, and say the spring, March 1 of  
11 1984?

12 A As far as I know, it was just Griffin, Hawkins,  
13 Driskill, and Johnson.

14 Q Did you ever seek out any NRC person to talk to?  
15 Or did they always seek you out?

16 A I believe on a couple of occasions I had  
17 committed to return phone calls and in fact did make those  
18 return phone calls.

19 Q But they were calls which essentially initiated  
20 with them?

21 A That's true; yes.

22 Q You yourself did not initiate any contact with  
23 the Nuclear Regulatory Commission?

24 A I don't believe so; no.

25 Q Or any employee?

1 A I don't believe so; no.

2 Q On your notes on the 21st of November --

3 MR. TREBY: Excuse me, before we leave this  
4 point, could I have that timeframe again about talking to  
5 NRC people?

6 MR. ROISMAN: Yes. It was from the date of the  
7 August 8 report until the 1st of March.

8 MR. TREBY: 1st of March of this year?

9 MR. ROISMAN: Yes.

10 MR. TREBY: I'm sorry. The reason for my  
11 interruption was I know Mr. Lipinsky was spoken to by the  
12 TRT members but that was after the March date.

13 MR. GALLO: Judge Bloch, I note Mr. Roisman is  
14 about to start a new line. I also note it's almost 12:30 --

15 JUDGE BLOCH: No, no. It is almost 11:30.

16 JUDGE GROSSMAN: It only seems like 12:30.

17 MR. GALLO: I withdraw my suggestion.

18 BY MR. ROISMAN:

19 Q On November 21st at the top of the page you  
20 indicate that you spoke with Mr. Trallo and indicated that  
21 he and you and Mr. Roth should go over the advantages and  
22 disadvantages of testifying as a CASE, or board witness.  
23 Did that meeting ever take place?

24 A I believe we did talk about it. I don't know  
25 that there was a formal meeting, though.

1 Q What did you discuss as the formal advantages of  
2 appearing as a CASE or board witness?

3 A I don't recall offhand.

4 Q What did you discuss were the disadvantages of  
5 appearing as a CASE or board witness?

6 A Again, I don't recall.

7 Q Now, on the 21st, further down the page -- just  
8 past the middle, there was a reference to conversation  
9 with Trallo and then the first thing was "Trallo would not  
10 sign the changed trip report without more info."

11 Do you see that?

12 A Yes, I do.

13 MR. GALLO: I'm sorry, I was writing.

14 MR. ROISMAN: I'm sorry, you were too.

15 MR. GALLO: Whatever, could I be pointed to the  
16 location again?

17 MR. ROISMAN: Just past the middle of the page.

18 MR. GALLO: All right. Thank you.

19 BY MR. ROISMAN:

20 Q Now, is the changed trip report that's being  
21 discussed there the one that Mr. Roth had done? Is that  
22 what is referred to as the "changed trip report"?

23 A That's correct; yes.

24 Q And what was the additional information that  
25 Mr. Trallo indicated he would want before he would sign

1 the changed trip report?

2 A I don't recall. At this point I don't know if  
3 Ralph was aware of the actual changes to the trip report.

4 Q You mean you think he may have just been  
5 discussing it in the abstract?

6 A At this point I'm sure -- at this point,  
7 November 21st, he's probably seen it. I don't know, if he  
8 wanted to find out the basis for Mr. Roth's modification  
9 or what -- I'm speculating.

10 Q What does the next line mean: "JJL feels that JJN  
11 activities may be counterproductive." What activities?

12 A I'm not sure. I don't know. Whatever they were,  
13 Mr. Trallo agreed.

14 Q Now let's look at the bottom of page 21, the  
15 last phrase: "doesn't believe E. Mouser provided with  
16 copy." Is that right with that part?

17 Did you mean that you don't believe that Mouser got a  
18 copy to keep? Or that you don't believe he ever was shown  
19 a copy?

20 A Mr. Mouser was shown a copy. And he did not get  
21 a copy to keep.

22 Q So, when you say "doesn't believe E. Mouser  
23 provided with copy," you mean "doesn't mean he was  
24 provided with a copy to keep"?

25 A That's correct.



1 Q And at that point you didn't know for sure one  
2 way or the other; is that correct?

3 A That's correct.

4 Q And then there's the statement, "RBR instructed  
5 JJJ to say 'no.'"

6 Who were you to say "no" to?

7 A Rather than -- I believe this was for the  
8 meeting the next day with Mr. Reynolds.

9 Q That you were to say "no" to which question?

10 A With regards to Mr. Mouser being provided a copy  
11 of the report.

12 Q And what did it mean: "And don't elaborate or  
13 explain about E. Mouser"?

14 A Elaborate or explain that to the best of my  
15 recollection I did not provide Mr. Mouser with a copy of  
16 the report. Rather, just say "no."

17 Q Did you feel that you were being instructed  
18 there to, in effect, say less than you knew?

19 A I don't believe so. The fact of the matter is I  
20 ended up doing an explanation anyway.

21 Q But I'm trying to understand what you thought  
22 your instructions were: "Don't elaborate or explain about  
23 E. Mouser." Wasn't that an instruction to tell less than  
24 what you knew?

25 A I thought rather than try to get into an

1 explanation, Mr. Roth felt that "no" would have sufficed.  
2 I didn't feel that --

3 Q But you didn't know whether "no" was the correct  
4 answer. You just thought. You had done it but you didn't  
5 know for sure; is that correct?

6 A Correct.

7 Q Did Mr. Roth explain to you why you shouldn't  
8 give the full explanation as you were giving it to him to  
9 the attorneys for the Utility?

10 A Just because a long explanation, Mr. Roth didn't  
11 feel it would accomplish anything or be worthwhile.

12 Q Did he indicate to you he thought it might be  
13 damaging to O.B. Cannon?

14 A No.

15 Q Did he give you instructions about other things  
16 that might not be worthwhile to say or do in the meeting  
17 with Mr. Reynolds?

18 A Not that I recall now.

19 Q This was the only one?

20 A As far as I know, yes.

21 Q Did you get the sense from him that this was a  
22 very sensitive matter as to how the trip report got out?

23 A No. Just a matter, rather than try to explain  
24 it, just say "no."

25 Q Did you believe that O.B. Cannon was in any way

1 embarrassed by the fact that the trip report had gotten  
2 out vis-a-vis its relationship either with this Utility or  
3 other utilities?

4 A With this Utility, yes. It was an embarrassment.

5 Q Did it look like it was an embarrassment that  
6 could affect future business relationships of O.B. Cannon  
7 with the Utility?

8 A I don't know. That would be something you'd  
9 have to ask Mr. Roth.

10 Q So it's not something on which you have an  
11 opinion?

12 A No. I wouldn't have any opinion at all on  
13 something like that.

14 Q Now, on the 23rd, after you had had your meeting  
15 with the attorneys -- and Mr. Roth and Mr. Trallo had a  
16 meeting, it looks like about a three-hour meeting. And  
17 you made notes of that meeting, independent from your  
18 diary. Have you got those notes in front of you? I'm  
19 assuming these are your notes. You'll have to tell me  
20 whether I'm mistaken in that assumption. But the notes  
21 that I'm talking about were part of a group of notes that  
22 appear to start on the preceding day, on the 22nd. At  
23 least it indicates 0930 hours, Nick Reynolds and Rick  
24 Walker, Chapman, and Bill Horn -- here it's spelled  
25 H-o-r-n, although it's not actually how his name is

1 spelled.

2 MR. ROISMAN: This is off the record.

3 (Discussion off the record.)

4 BY MR. ROISMAN:

5 Q I'm interested in the third and fourth page of  
6 that which has a date at the corner, 11/4/83.

7 A I only have page 3 of that; I do not have page 4.

8 JUDGE BLOCH: Can Mr. Lipinsky's problem be  
9 resolved by counsel?

10 MR. GALLO: Not this counsel.

11 MR. ROISMAN: By his counsel or by me? I don't  
12 think I can resolve his problem.

13 JUDGE BLOCH: About page 4.

14 MR. ROISMAN: Actually I have three more pages  
15 on this. There are five pages altogether in the packet of  
16 notes.

17 JUDGE BLOCH: Do we have a clean copy we can  
18 loan to the witness?

19 MR. TREBY: I believe what Mr. Roisman is doing  
20 is saying it's the third page of that set of documents.  
21 It's not a page that has the number 3 on top of it.

22 MR. ROISMAN: That is correct.

23 MR. TREBY: It has the number 1 on top of it.

24 JUDGE BLOCH: Let's go off the record.

25 (Discussion off the record.)

1 JUDGE BLOCH: Back on the record.

2 BY MR. ROISMAN:

3 Q Now, first of all, this meeting -- what was the  
4 purpose of this meeting on the 23rd of November?

5 A It was to review what had been discussed when  
6 Mr. Norris and I were down at Mr. Reynolds' office in  
7 Washington the prior day.

8 Q Was that the first time that four of you had sat  
9 down to discuss this broad range of subjects as they are  
10 discussed here?

11 A I believe so; yes.

12 Q And what was -- what did you believe was the  
13 agenda? Was there a purpose to the meeting other than the  
14 gathering of information? Were you going to make some  
15 decisions that day?

16 A I don't believe so. Some decisions were made, I  
17 believe, as a basis for what we discussed but I don't  
18 recall that there was a set agenda prior to the start of  
19 this meeting.

20 Q Now, this meeting -- first of all, are these  
21 your notes?

22 A Yes, they are.

23 Q All right. The first note with the number 1 by  
24 it: "2 out of 2, not what JJJ told. What's going on?"

25 A What that referred to was the meeting of

1 November 10th and 11th, on-site, and the meeting of  
2 November 22nd in Mr. Reynolds' office were not what I was  
3 originally led his opinions were to be.

4 Q And what was the response of the other people in  
5 the room to your raising that concern?

6 A I don't recall. It wasn't that big a response.  
7 It was one of those things that -- miscommunication or  
8 whatever. I don't recall the specifics.

9 Q Were you upset about that? The fact it had  
10 happened?

11 A I was concerned to the effect that I had gone  
12 and prepared for one meeting and essentially for the  
13 second meeting and it turned out that my preparation was a  
14 waste of time.

15 Q And what is the second reference? The number 2:  
16 "attorneys in possession of --" and then there's a list of  
17 things --

18 JUDGE GROSSMAN: Excuse me, Mr. Roisman. I hate  
19 to interrupt now but Mr. Lipinsky, didn't you just tell me  
20 about a half an hour ago that that November 10th meeting  
21 went the way they had purported it would go?

22 THE WITNESS: I'm referring to when I went down  
23 to the site on the 9th, sir. I was going down on the 10th  
24 to do an audit. The meeting then subsequently went the  
25 way Mr. Merritt said it was going to go. But when I went

1 down there I was prepared to do a review or an audit, not  
2 to sit in a room with the meeting being transcribed and  
3 recorded.

4 JUDGE GROSSMAN: I'm not sure what you are  
5 testifying now. With regard to the note, didn't you  
6 indicate that the two meetings that you had, that is the  
7 note you have before you, did not go as had been purported  
8 to you they would go?

9 THE WITNESS: Which two meetings are you  
10 referring to, sir? The ones on-site?

11 JUDGE GROSSMAN: The November 10 meeting, being  
12 the first of the two.

13 THE WITNESS: That meeting, originally when I  
14 went down there on-site, meaning the 9th, my intent was to  
15 perform a review or audit. From that respect, the meeting  
16 did not go as it was supposed to or as I was led to  
17 believe that it would.

18 JUDGE GROSSMAN: That was supposed to be a site  
19 visit; not a meeting. When you were told that there would  
20 be a meeting, you were then assured that certain things  
21 would take place at the meeting. Isn't that correct?

22 THE WITNESS: In that respect -- yes. In that  
23 respect the meeting did go on. What I took to be a site  
24 visit turned out to be a meeting. And that's what I  
25 identified -- the actual meeting, once it began, did go

1 the way it was supposed to go. It did not turn into a  
2 witch hunt or a kangaroo court as I described.

3 JUDGE GROSSMAN: Mr. Roisman, continue.

4 BY MR. ROISMAN:

5 Q Mr. Lipinsky, the note number 2 now, you note  
6 that the attorneys were in possession of certain documents  
7 and then you ask the question "how?" And then the note:  
8 "not in OBC best interest to VOL info," -- which I assume  
9 means volunteer information -- "(Don't mean to blind side  
10 Utility but attorney works for Utility, not us.)".

11 What was it bothered you about the information being in  
12 the possession of the attorneys?

13 A As I discussed earlier, this was that one-page  
14 document you showed me with part of the weekly summary and  
15 the front of an envelope --

16 Q Right.

17 A -- and a handwritten note.

18 Q Okay.

19 A It bothered me that this note that was sent down  
20 to Mr. Merritt was getting circulated -- getting a  
21 widespread circulation.

22 Q And your note says, "not in O.B. Cannon's best  
23 interest to volunteer information."

24 What did you then understand was O.B. Cannon's best  
25 interest?



1           A           I don't know if I can -- my opinion of O.B.  
2 Cannon's best interest at that time was to, pretty much  
3 again, try to stay independent, as independent as possible.

4           Q           Well, why was it in any way an interference with  
5 your independence if you volunteered all of the  
6 information that you had and gave it to the Utility?

7           A           I don't recall the specifics, why it was.

8           Q           So you don't recall why it was in the best  
9 interests not to volunteer information? You can't  
10 remember why?

11          A           That's correct; yes.

12          Q           Now, over on the next page of this set of notes,  
13 at item 5, you indicate that you had discussed with  
14 Mr. Reynolds the possibility of O.B. Cannon -- I think you  
15 said "pointed out OBC position as board witness."

16                 Now, what was the OBC position as board witness?

17          A           That, if asked, we'd go as a board witness.

18          Q           And did you decide, all of you together at that  
19 meeting, whether you would mind going as a TUGCO witness?  
20 The question which Mr. Reynolds had put to you the  
21 preceding day. Was that decided at this meeting?

22          A           I don't know if it was. The 22nd, it was asked  
23 by Mr. Reynolds if we would mind going as a TUGCO witness.  
24 I had replied, you know: you'd have to get Mr. Roth's  
25 position on that. And Mr. Norris had said he wouldn't

1 mind going as a TUGCO witness.

2 I don't know if the determination was made on the 23rd  
3 or not.

4 Q Did you all discuss that on the 23rd? Was there  
5 a discussion among the four of you as to whether you  
6 should go as a TUGCO witness or as a board witness or what?

7 A There probably was, but I don't recall.

8 Q You don't remember it?

9 A Well, that I noted it, there is a discussion.  
10 But I don't recall.

11 Q You don't remember the substance of the  
12 discussion?

13 A That's right.

14 Q Was the final decision, whenever it was made,  
15 one that would have been made by Mr. Roth and not by you  
16 in conjunction with Mr. Roth?

17 A Mr. Roth would determine whether or not or how  
18 Cannon went, whether as a board or as TUGCO or as CASE  
19 witness. I would like to think he would take my opinion  
20 when making his evaluation.

21 JUDGE BLOCH: Just to get the chronology right,  
22 is it correct that at this point Mr. Reynolds was not your  
23 lawyer? He was only a lawyer for TUGCO?

24 THE WITNESS: That was my opinion; yes, sir.

25 JUDGE BLOCH: Or for Texas Utilities?

1 mind going as a TUGCO witness.

2 I don't know if the determination was made on the 23rd  
3 or not.

4 Q Did you all discuss that on the 23rd? Was there  
5 a discussion among the four of you as to whether you  
6 should go as a TUGCO witness or as a board witness or what?

7 A There probably was, but I don't recall.

8 Q You don't remember it?

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10 But I don't recall.

11 Q You don't remember the substance of the  
12 discussion?

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14 Q Was the final decision, whenever it was made,  
15 one that would have been made by Mr. Roth and not by you  
16 in conjunction with Mr. Roth?

17 A Mr. Roth would determine whether or not or how  
18 Cannon went, whether as a board or as TUGCO or as CASE  
19 witness. I would like to think he would take my opinion  
20 when making his evaluation.

21 JUDGE BLOCH: Just to get the chronology right,  
22 is it correct that at this point Mr. Reynolds was not your  
23 lawyer? He was only a lawyer for TUGCO?

24 THE WITNESS: That was my opinion; yes, sir.

25 JUDGE BLOCH: Or for Texas Utilities?

1 THE WITNESS: Yes, sir.

2 JUDGE BLOCH: And subsequent to that he became  
3 your lawyer after he had already asked you to become a  
4 witness for his company?

5 THE WITNESS: Yes, sir.

6 BY MR. ROISMAN:

7 Q On the third page, the notation that's numbered  
8 8 says: "may be leaning towards OBC audit." Who is that  
9 referring to?

10 A This is the last page of that?

11 Q Yes. The one with the number 3 in the corner.

12 A I'm sorry, this was during the course of the  
13 meeting with Mr. Reynolds. Mr. Reynolds and Mr. Chapman,  
14 who was also at the meeting on the 22nd, had discussed  
15 about the possibility of just having Cannon go and perform  
16 the review that was originally scheduled on November 10th,  
17 and put the issues to bed one way or the other.

18 Q So the "may be leaning" was referring to Chapman  
19 and Reynolds may be leaning toward?

20 A That's my reference; yes, sir.

21 Q What's the reference to JJL talking on tape?

22 A As I mentioned, I was very nervous at that  
23 meeting and I said as little as possible during the course  
24 of the transcript. There's not many entries where I  
25 talked.

1                   JUDGE BLOCH: Whose comment was that, though?  
2 Lack of your entries on tape? Did someone say that at  
3 this meeting?

4                   THE WITNESS: I believe Mr. Reynolds did; yes.

5                   JUDGE BLOCH: Do you have any idea of why he  
6 said that?

7                   THE WITNESS: No, sir.

8                   JUDGE BLOCH: He didn't clarify for you why that  
9 was a concern?

10                  THE WITNESS: I don't recall specifically.

11                  BY MR. ROISMAN:

12                  Q        The lack of talking on the tape, the inability  
13 of JJL to state positively one way or the other, is that  
14 something that you communicated to Mr. Reynolds? Does  
15 that represent something that you said to him?

16                  A        I believe this was as a result of the meeting on  
17 the 22nd with Mr. Reynolds. These items came up. As to  
18 why, or justification for performing an audit or review,  
19 as originally scheduled.

20                  Q        I see. In other words, each of these represent  
21 a possible reason why you might do an audit. One was that  
22 you hadn't talked very much on the tape. Another was that  
23 you couldn't state positively one way or the other.

24                  A        Yes. I'd be -- you know, I can't read his mind,  
25 but --

1 Q Just what you heard. Not what you surmised but  
2 the words that you heard .

3 A Yes.

4 Q And what about the JJL prefer let NRC report  
5 handle also. What is that referring to? What NRC report?

6 A My understanding is that the NRC is in the  
7 process of evaluating the coatings  
8 indepth evaluation. If, in fact, the NRC is performing  
9 that review it should address the concerns I had raised as  
10 far as material storage, painter qualifications, that sort  
11 of stuff. It should all be -- it should be included in  
12 the review.

13 Q So at this point in time it was still your  
14 preference to not become any further involved in the paint  
15 coatings issue at Comanche Peak than what you had already  
16 been involved in; is that correct?

17 A That's correct; yes.

18 Q And it still was your view that you could either  
19 let the NRC's report deal with the substantive issue or  
20 the second option appears to be also in that third bullet  
21 on 8, that TUGCO could provide testimony and address your  
22 concerns and just leave you out of it; right?

23 A Yes.

24 Q If it were your decision alone, is that still  
25 the view? That is, that if it were up to you you would

1 just as soon not have anything further to do with the  
2 paint coatings issue at Comanche Peak and could have just  
3 stopped with that report back in November 28 of 1983?

4 A Yes. If it was up to me I wouldn't want  
5 anything to do with the painting program at Comanche Peak.

6 Q So the reason that you gone onto become a  
7 witness is not that you chose it but rather than your boss,  
8 Mr. Roth, has indicated that he wishes you to do it?

9 JUDGE BLOCH: That's to become a witness on the  
10 other part of the case?

11 MR. ROISMAN: That's right. A witness in the  
12 other part. The case is divided into two pieces.

13 THE WITNESS: That's right.

14 BY MR. ROISMAN:

15 Q That's happened because Mr. Roth has indicated  
16 to you that he wants to you do that?

17 A I guess I'm having a problem in that Mr. Roth is  
18 directing me to be a witness or something. I'm not clear  
19 on that.

20 Q That's right. You indicated that if it were  
21 your decision alone to make, you would have stopped any  
22 further involvement with the paint coatings issue at  
23 Comanche Peak with the submittal of that November 28  
24 report?

25 A That's correct. However, you know, that's not a

1 decision that -- I don't make the decisions for Cannon and  
2 Associates.

3 Q That's what I was trying to get at. You were  
4 directed by Mr. Roth, as part of your job, to go ahead and  
5 become a witness on the merits of the paint coatings  
6 question. And that's how you have gone ahead and  
7 ultimately submitted the affidavit that was submitted on  
8 the 28th of September; is that correct?

9 A Yes. And in line with our consulting  
10 relationship with the utility; yes.

11 Q Did you argue with Mr. Roth about that, and urge  
12 that you not be a witness when the issue came up?

13 A I don't know about not being a witness. I think  
14 I identified to Mr. Roth, you know, my feelings. And  
15 Mr. Roth made his determination and decision as a result.

16 Q When he made the decision did you express  
17 disagreement with it? Ask for, in words of this hearing,  
18 a motion to reconsider his decision on that?

19 A I was overruled.

20 Q That happens here a lot also. So you did press  
21 it a little bit with him but you were just not successful?

22 A I don't know if I really pressed it. It was a  
23 company decision and I went along with it.

24 Q Why didn't you want to go ahead and resolve the  
25 matter?



1           A           At the time of November 22nd, Cannon was in the  
2 position -- or I was in the position, rather, where I had  
3 my trip report and the concerns I raised as a result of my  
4 trip report. And this was a subsequent meeting on-site,  
5 two days, the 10th and 11th. Mr. Tolson provided us some  
6 basic information that if, in fact, the Utility was  
7 implementing it, that would have resolved my concerns.  
8 And accepting it at face value, it was a push situation,  
9 Perhaps it could be argued that it was at that point. I  
10 felt that if we did a complete audit I would be able to  
11 confirm one way or the other whether my concerns were  
12 justified and, in fact, that Mr. Tolson was implementing  
13 the procedures he had talked about.

14           Additionally, if the Utility would be able to field  
15 people that could justify -- like Mr. Brandt -- justify to  
16 me that, in fact, they are satisfying my concerns, that  
17 there was really no action required on our part.

18           Q           I think you used the phrase, "a push situation."  
19 What did that mean? I didn't understand that.

20           A           Well, I had one set of facts or information that  
21 led to the development of my trip report. As a result of  
22 what Mr. Tolson told us, if we accepted it at face value  
23 then I had another set of data or information that was  
24 contrary to what I was originally led to believe and what  
25 I proceeded to observe.

1 Q And that's called a "push situation"?

2 A That's just a choice -- that was my --

3 Q I just never heard the phrase before.

4 MR. GALLO: If you participated with bookmakers  
5 you would hear that phrase all the time.

6 MR. ROISMAN: Well, I made no such admission on  
7 this record.

8 MR. GALLO: I haven't either.

9 THE WITNESS: May I say something?

10 (Laughter.)

11 JUDGE BLOCH: Who are you representing,

12 Mr. Gallo?

13 MR. GALLO: That was just a bit of worldly  
14 explanation for Mr. Roisman.

15 BY MR. ROISMAN:

16 Q Mr. Lipinsky, would it also be true that at the  
17 time, on the 23rd of November, again if it had been your  
18 preference, if you were going to be further involved, and  
19 particularly if you were going to be a witness with regard  
20 to the paint coatings issue, you would have wanted to  
21 conduct the audit that you were originally going to have  
22 conducted before you further expressed any opinions on  
23 these matters?

24 A Subsequent to November 28, sir?

25 Q Well, I'm talking now of November the 23rd, when

1 you were at this meeting. At that point in time was it  
2 your preference that if you were going to do -- give any  
3 further opinions as the completion of that trip report on  
4 the 28th, that you would give them only after you had done  
5 the audit?

6 A That would have been my preference; yes.

7 Q Is that still your preference? Again, if it  
8 were your decision to make? That, before rendering any  
9 opinion on the paint coatings program at Comanche Peak,  
10 that you would want to complete the audit that you have  
11 been saying you felt had to be completed?

12 A Relative to the November 23rd timeframe; yes.  
13 That would have been my preference.

14 Q What about today?

15 A Today it's not my preference, given the  
16 affidavit filed by Mr. Brandt, the fact that he testified  
17 to me -- or testified -- provided me under oath, his  
18 assurances that they are, in fact, implementing this  
19 program. Additionally, his attachments for the affidavit  
20 provide objective evidence that, in fact, satisfy my  
21 concerns. Now, taking at face value, or as a given, the  
22 fact that I don't know whether or not, in fact, these  
23 procedures are being implemented but with that data --

24 JUDGE BLOCH: Mr. Lipinsky, do you have any  
25 information that would cause you to think that you

1 shouldn't take that data at face value?

2 THE WITNESS: No, sir. But I wouldn't be able  
3 to make any kind of concrete statement that everything was  
4 being implemented on-site unless I verified that to my own  
5 satisfaction.

6 JUDGE BLOCH: I thought were you familiar with  
7 the work being done by Brookhaven; are you?

8 THE WITNESS: I saw the preliminary reports.

9 JUDGE BLOCH: Do you know the work took months?

10 THE WITNESS: Yes, sir.

11 JUDGE BLOCH: Does that lead you to think that  
12 maybe you shouldn't take at face value all the statements  
13 in Mr. Brandt's affidavit?

14 THE WITNESS: Again, sir, the statement given by  
15 Mr. Brandt to me bear more weight than the statements  
16 given by Mr. Tolson because, in fact, they are under oath.  
17 Additionally, he provided documentation that satisfied my  
18 concerns. Now the only thing I'm taking at face value is  
19 whether or not that's being implemented. I'm not looking  
20 at that item in evaluating his affidavit and the  
21 information he provided.

22 JUDGE BLOCH: If the stuff was all being  
23 implemented do you think Brookhaven would have taken that  
24 long? Do you have any information about what they are  
25 doing, Brookhaven is doing?

1 MR. WATKINS: Your Honor, has the board seen the  
2 final Brookhaven report? Have you read it?

3 JUDGE BLOCH: We saw the initial findings, but  
4 Mr. Lipinsky has been in touch with the Brookhaven people  
5 from time to time, as I understand it. Have you been?

6 THE WITNESS: I have not been in touch with the  
7 Brookhaven people, sir. I would like to correct it.  
8 That's not an accurate statement.

9 JUDGE BLOCH: At one point in your diary I  
10 thought there was a note in a said you had called them.  
11 Is that not correct?

12 THE WITNESS: No, sir. As I recall it may be.  
13 I have never called Brookhaven at all.

14 MR. WATKINS: You may be thinking of Corry  
15 Allen, Mr. Chairman.

16 JUDGE BLOCH: You were not in touch with the  
17 Brookhaven people?

18 THE WITNESS: That's correct, sir.

19 JUDGE BLOCH: Did you know that the NRC had  
20 forwarded your information to the Brookhaven people for  
21 investigation?

22 THE WITNESS: No, I was not, sir.

23 JUDGE BLOCH: Did you know that the applicants  
24 had a consultant who did a study that suggested that they  
25 might be able to dequalify 75 percent of the paint at the

1 plant and still meet NRC requirements?

2 THE WITNESS: I knew there was a study being  
3 done on qualifications, but I didn't know the numbers.

4 JUDGE BLOCH: One of your notes shows you made a  
5 note of it.

6 THE WITNESS: The dequalification. I don't know  
7 about the 75 percent, sir.

8 JUDGE BLOCH: Well, let's find the note.

9 MR. WATKINS: For the record the study is to  
10 dequalify 100 percent.

11 JUDGE BLOCH: I think the note says 75 percent  
12 and the note further says --

13 MR. WATKINS: I think if you further examine the  
14 date you'd find it was an opinion of the counsel.

15 JUDGE BLOCH: What was the date?

16 MR. WATKINS: I don't know the date.

17 MR. ROISMAN: There's a Lipinsky memo to the  
18 file dated July 5, 1984, which was produced in discovery on  
19 11/17/84. Ms. Garde has it.

20 At the bottom of the second page of that memo to the  
21 file, which has a number on it: QAD-84-0210, there is a  
22 reference.

23 MR. ROISMAN: November 13 of '83. Oh, no, I'm  
24 sorry. July 5 of '84.

25 MR. WATKINS: On the bottom of page 2, your

1 Honor, appears the hearsay within hearsay within hearsay  
2 statement of counsel as recorded by Mr. Lipinsky.

3 JUDGE BLOCH: I just wanted to know if  
4 Mr. Lipinsky was aware of that. I'm sorry, counsel for  
5 the company saying something about the company is hearsay?  
6 Now that's an admission.

7 MR. WATKINS: The document itself is hearsay.

8 JUDGE BLOCH: I'm asking Mr. Lipinsky, who wrote  
9 the document, about it.  
10 Were you aware, as of July 5, 1984, that the applicants  
11 had done a study in which they attempted to justify the  
12 dequalification of over 75 percent of the coatings in the  
13 plant?

14 THE WITNESS: I was aware -- I'm aware of the  
15 study to dequalify the coatings, sir. The 75 percent is a  
16 number that came up in a discussion between myself and Mr.  
17 Watkins.

18 JUDGE BLOCH: And what did that mean to you at  
19 that time? About applicants' confidence in their ability  
20 to establish the quality of the paint at the plant? Did  
21 it mean anything?

22 MR. WATKINS: Objection. The opinion of  
23 counsel cannot be relied upon as any confidence factor as  
24 far as applicants are concerned, your Honor.

25 JUDGE BLOCH: Does the existence of a study that

1 would dequalify 100 percent at the plant, or 75 percent,  
2 cause you to wonder whether applicants are confident that  
3 they can establish the quality of the paint in these  
4 hearings?

5 THE WITNESS: I wouldn't be able to give you an  
6 opinion on that, sir.

7 JUDGE BLOCH: Why did you think that study had  
8 been done? What went through your mind when you heard  
9 about that study?

10 MR. WATKINS: Your Honor, we'll object. This is  
11 way beyond the scope of this proceeding.

12 JUDGE BLOCH: Overruled.

13 THE WITNESS: Could you, I'm sorry --

14 JUDGE BLOCH: What went through your mind about  
15 the quality of paint at the plant, if anything, when you  
16 saw that they had done this study?

17 THE WITNESS: I don't think the quality of the  
18 paint -- quality of the paint at the plant went through my  
19 mind with the study. The study in and by itself is based,  
20 from what I understand, on engineering evaluations of the  
21 effect of coolant accident on the performance of the  
22 coatings.

23 JUDGE BLOCH: And in particular the drains in  
24 the such?

25 THE WITNESS: The specific gravity of the paint



1 and sump, as I recall, was mentioned.

2 JUDGE BLOCH: But isn't that also the purpose of  
3 the quality program for paint? So that you don't have to  
4 worry about it clogging up the strainer?

5 THE WITNESS: Yes, sir, but from what I  
6 understand of the report -- and this isn't my line of  
7 specialty evaluating the effect of sumps and flow rates on  
8 coatings -- that from an engineering standpoint, if  
9 engineering determines that the coatings would not have an  
10 impact in the event of a failure --

11 JUDGE BLOCH: Aren't you aware that if the  
12 coatings are put on properly, as your company was pleased  
13 occurred at TMIHI, for example, that you wouldn't have to  
14 worry about proving that they wouldn't clog up the sump?

15 MR. WATKINS: Your Honor, I'm not sure the  
16 question is meaningful because to state the converse, if  
17 the study is correct, you can put the paint on any old way.  
18 It doesn't matter.

19 JUDGE BLOCH: I just want to know whether the  
20 witness understands that if the paint is properly applied --

21 THE WITNESS: Oh, yes, sir.

22 JUDGE BLOCH: That it should withstand local  
23 conditions and you don't have to prove anything about it  
24 clog up the sump?

25 THE WITNESS: Yes, sir, I think I would

1 understand it. Yes. Yes.

2 JUDGE BLOCH: Did you wonder about why they  
3 bothered to do a study about all the paint falling off the  
4 walls?

5 THE WITNESS: This study could have been a  
6 cost- saving measure for Unit 2. It's possible that the  
7 utility may have decided that the quality program was not  
8 required and they could, to use Mr. Watkins' words, apply  
9 it any way they want and not have to worry about it.  
10 That's speculation on my part.

11 JUDGE BLOCH: Mr. Roisman?

12 BY MR. ROISMAN:

13 Q Mr. Lipinsky, I think where we were trying to  
14 understand was whether, at this point in time you wanted,  
15 if it were your druthers, you would want to have the audit  
16 if you were going to have to testify, which you have  
17 indicated you would rather not do. And I think you had  
18 said: No, because now you've had the benefit of  
19 Mr. Brandt's affidavit and the attachments thereto.

20 Have I summarized it correctly?

21 A His attachments, his affidavit and attachments  
22 satisfy the concerns I raised in my trip report; yes.

23 Q So is it now your testimony that, had you had  
24 Mr. Brandt's affidavit and the attachments to it on or  
25 shortly after the 8th of August, 1983, that you never

1 would have raised the concerns that you raised?

2 A That's possible; yes, sir.

3 Q And that the audit was -- it was a mistake on  
4 your part to assume that you needed an audit in order to  
5 confirm or refute the concerns that you had expressed in  
6 your August 1983 trip report?

7 A Using what timeframe again, sir?

8 Q That it was always a mistake. Because it could  
9 always have been dealt with by simply using the  
10 alternative route that you are now using, which is to have  
11 Mr. Brandt give you an affidavit and attach the  
12 attachments that he's attached, and that would solve all  
13 your concerns?

14 A Well, again, as I testified earlier, this method  
15 of resolving my concerns was not my option. It was an  
16 option provided to Cannon in the course of our consulting  
17 work to the utility.

18 Q But my question is, isn't it true that you were  
19 mistaken in saying that the only way that you could  
20 resolve your concerns was to have this audit?

21 A Oh, yes. That is true.

22 Q That was in error. So when you told that to  
23 Mr. Griffin on the 4th of January of 1984, that was in  
24 error? There was at least one other way you could resolve  
25 your concerns?

1 A Yes, there was.

2 Q This is that way?

3 A Apparently; yes, sir.

4 MR. TREBY: Excuse me. Just to make the record  
5 accurate, he spoke to Hawkins on the 4th of January.

6 MR. ROISMAN: I'm sorry. Excuse me. Thank you,  
7 Mr. Treby.

8 BY MR. ROISMAN:

9 Q When did the Brandt option first surface?

10 A I believe as early as November 22nd, there was  
11 discussion that expert testimony couldn't be provided that  
12 would substantiate the Utility's position with regards my  
13 concerns.

14 Q But still you held on to view that, despite them  
15 telling you that, that you would need the audit before you  
16 could say that your concerns had been satisfied?

17 A That's correct.

18 Q When did you stop believing that you needed the  
19 audit?

20 A Sometime prior to September 28. I don't know  
21 when.

22 Q Were you being encouraged to drop your demand  
23 that there be an audit and to accept the Brandt approach  
24 as an alternative way of satisfying your concerns?

25 A In our capacity as consultant to the utility,

1 that's the position that the company assumed.

2 Q You mean the position the company urged you to  
3 accept was that you would be satisfied with Brandt, rather  
4 than with a complete audit?

5 A I don't think they urged me to be satisfied with  
6 Brandt in particular. But rather that, in our capacity as  
7 consultants to the utility, that we would follow the  
8 guidelines established by the Utility.

9 Q That's a little different now. I'm still trying  
10 to get a sense of where you get, if it were you making the  
11 decisions. I believe what you've told me is that, if you  
12 have to testify, if it were you making the decisions, you  
13 wouldn't -- but if you have to testify you no longer feel  
14 that you must have the audit in order to testify as a  
15 personal matter? And you are quite satisfied, with no  
16 reservations, with the Brandt affidavit and attachments;  
17 is that correct?

18 A I guess I'm getting confused about personal  
19 preference and company position.

20 Q That's right. I want to know your personal  
21 preference. I'm not asking your company position now.

22 A My own preference would be to go and do the  
23 audit, audit review.

24 Q Is it still true now?

25 A It's not true to the extent that I have already

1 testified that the Brandt affidavit was adequate, given  
2 the guidelines that were established.

3 Q Put a guidelines aside. You have your one wish;  
4 okay? The good fairy shows up and says you've got your  
5 one wish. Your one wish is to be able to wish to how you  
6 would want to be able to form an opinion on the adequacy  
7 of the paint coatings program at the Comanche Peak site.  
8 Your wish.

9 Today, would you wish to do it only after you had  
10 completed an audit or not?

11 MR. GALLO: Objection. His "wish" has no  
12 probative value in terms of answering the question. The  
13 witness has answered it. In addition, he said at the time  
14 he decided to sign the affidavit he opted for one option  
15 versus the other option. I believe the question in the  
16 its "good fairy" and "wish" --

17 JUDGE BLOCH: It's a hypothetical question. I  
18 think he's right, Mr. Roisman.

19 MR. ROISMAN: Mr. Chairman, it seems to me that  
20 the witness, even in the answer he gave me just a couple  
21 of minutes ago, did not understand, although I thought I  
22 had been quite clear, that I wanted to know what his  
23 preference was.

24 The wish, or the preference of the witness, is all  
25 crucial.

1           The issue here is: Is there man doing what he's doing  
2 of his own free will or is he doing it in order to save  
3 his job, save his career, or for some other reason that we  
4 haven't uncovered. I have to find out what he would  
5 really rather not do.

6           Now, I've found out one thing he'd rather not do, he'd  
7 rather not be here and he's testified to that. He's here  
8 because Mr. Roth told him to be here and because he works  
9 for Mr. Roth. Now, the next question is when he says the  
10 things that he says in the September 28 affidavit, is he  
11 saying those because that's how he wishes to be able to  
12 express his opinion on the paint coatings program, or is  
13 he being a company man? And that has a great deal of  
14 relevance. Because my understanding of the oath that he  
15 takes is not an oath in which he can say: As a company  
16 man this is true but as a human being it's not true. He  
17 has to say what's true, irrespective of who he works for.

18           JUDGE BLOCH: Okay. You have stated that it's  
19 your own opinion that the affidavit you filed on the other  
20 side of this case is true. You have stated that, haven't  
21 you?

22           THE WITNESS: Yes, sir. With the exception I  
23 mentioned.

24           JUDGE BLOCH: With the exceptions you mentioned.  
25 So he has done that, Mr. Roisman, as a personal matter.

1 BY MR. ROISMAN:

2 Q Can you ask about the audit that you tried to do?  
3 Did you ever wonder that part of the reason that you  
4 weren't permitted to do the audit was that they weren't  
5 confident about the results that you would achieve?

6 A Yes, sir.

7 Q How do you feel about that now?

8 A Again I would be speculating. I don't really  
9 have an opinion one way or the other unless I went in and  
10 did an audit or review.

11 Q It would have been fairly quick. How many days  
12 were you planning to do it?

13 A We had it compressed down to about 10 days.

14 Q 10 days for audit?

15 A "Audits" is a bad term. It was a review of some  
16 sort.

17 Q Intense review with an outline that you have.  
18 Would that take about 10 days?

19 A Yes.

20 Q If they really were confident that Mr. Brandt's  
21 testimony was true and that would all prove out, wouldn't  
22 you think that would be shown rather quickly in those 10  
23 days?

24 A Yes.

25 MR. GALLO: Objection.



1 JUDGE BLOCH: The witness said "yes." M. Gallo?

2 MR. GALLO: Your Honor, I move to strike; he  
3 answered too quickly to object. You are asking the  
4 witness his state of mind and the state of mind of the  
5 company about things he knows nothing about. There might  
6 have been a half a dozen reasons why they didn't want an  
7 audit including the one they insisted on that they have  
8 been audited to death and they don't want any other audit.

9 JUDGE BLOCH: Let's go into "audited to death."  
10 They hired O.B. Cannon, and after they hired O.B. Cannon  
11 who else did they hire to do an in-depth audit?

12 THE WITNESS: I don't know they hired anyone  
13 else afterwards, sir.

14 JUDGE BLOCH: They didn't, did they?

15 THE WITNESS: From my understanding they were  
16 exposed to internal and external audit.

17 JUDGE BLOCH: After they hired O.B.Cannon, they  
18 thought they need a consultant for something, did they  
19 ever hire anybody for another outside audit?

20 THE WITNESS: Not that I know of.

21 JUDGE BLOCH: The only one was the NRC audits  
22 that don't share the obligation to the plant; isn't that  
23 correct?

24 THE WITNESS: Yes, sir.

25 JUDGE BLOCH: That NRC obligation doesn't mean

1 that they are following up on your concerns, does it?

2 THE WITNESS: No, sir.

3 JUDGE GROSSMAN: Excuse me, could I ask a  
4 question? Forgetting about wishes now, I merely want to  
5 find out with regard to your assuring yourself and the  
6 company as to whether the quality assurance program is  
7 actually satisfactory, would you have accepted the Brandt  
8 affidavit? Or are you merely accepting the Brandt  
9 affidavit as a foundation for expert testimony, saying  
10 that, if such and such were so, then these conclusions are  
11 okay? Do you understand my question?

12 THE WITNESS: I --

13 MR. WATKINS: I don't, your Honor.

14 JUDGE GROSSMAN: Okay. In the context of the  
15 work that you and your company ordinarily perform, in  
16 assuring yourself and the company as to whether the  
17 quality assurance program is satisfactory on a particular  
18 site, would the Brandt affidavit or a similar affidavit to  
19 the Brandt affidavit be satisfactory?

20 MR. WATKINS: Your Honor, I'll object to the  
21 assumptions working in the question. First you assume  
22 Mr. Lipinsky went to the site to begin with to assess the  
23 overall satisfactory nature or lack thereof of the  
24 coatings program. He identified --

25 JUDGE GROSSMAN: What's your specific objection

1 rather than a discourse on it? Can you tell me what your  
2 objection is? Is it irrelevant? Immaterial?

3 MR. WATKINS: You are assuming facts not in  
4 evidence.

5 JUDGE BLOCH: I believe what he's done is to ask  
6 the expert witness of the way expert opinions are given  
7 and therefore the objection is overruled.

8 Do you want to read the question? Do you want it read?

9 THE WITNESS: Yes. Would you please?

10 (The reporter read the record as requested.)

11 THE WITNESS: Within the guidelines as a  
12 consultant for the Utility, that was acceptable. However,  
13 normally that's not the -- we would pursue it with an  
14 audit or something along those lines.

15 JUDGE GROSSMAN: When you say "a consultant,"  
16 you are basically a consultant as an expert witness. Is  
17 that how you understood your consulting to be? Or what  
18 was the nature of your consulting job at that point?

19 THE WITNESS: I don't know if I really know the  
20 contractual relationship with the Utility at that point.  
21 It's not normally within my realm of job function.

22 JUDGE GROSSMAN: Well, what was your  
23 understanding as to what would arise out of the consulting  
24 relationship, other than the preparation of expert  
25 testimony?

1 THE WITNESS: I wouldn't know, sir.

2 JUDGE GROSSMAN: Well, you did understand that  
3 there would be expert testimony as part of that consulting  
4 relationship, did you?

5 THE WITNESS: Yes, sir. That is what we had  
6 been working on; yes.

7 JUDGE GROSSMAN: But you don't know of anything  
8 other than that, do you?

9 THE WITNESS: Not that I know of; no, sir.

10 JUDGE GROSSMAN: And it's certainly -- strike  
11 that.

12 All right. No further questions.

13 BY MR. ROISMAN:

14 Q Mr. Lipinsky, when does you begin to form the  
15 affidavit itself; do you remember?

16 MR. GALLO: What affidavit are we talking about?

17 MR. ROISMAN: The affidavit of September 28,  
18 1984.

19 THE WITNESS: Initially it started, as I  
20 testified yesterday, as a question and answer-type format  
21 on November 22nd and evolved into what ultimately became  
22 my September 28th affidavit.

23 BY MR. ROISMAN:

24 Q Would it be fair to characterize what happened  
25 as you began to provide answers to questions based on the

1 assumption that you would get certain material from  
2 Mr. Brandt that would justify your saying those things?

3 A With regard to where? What timeframe?

4 Q With regard to -- well, all throughout this.

5 You didn't see the final version of what Mr. Brandt had to  
6 say, or his basis for it, until long after you had already  
7 come very close to having all your final views expressed  
8 in an affidavit form; isn't that true?

9 A That's correct to a certain extent. Mr. Brandt's  
10 affidavit was developed concurrently with mine.

11 Q So, in effect, as you developed these opinions,  
12 it was somewhat being developed on faith? That what the  
13 attorneys told you Mr. Brandt would ultimately be able to  
14 say would, in fact, turn out to be the case?

15 A That's correct.

16 Q Did you at any time lay down your own ground  
17 rules and indicate that: I will not be able to give you  
18 the opinions that you want unless you deliver to me  
19 certain information, whatever, or -- whatever it may have  
20 been, to the attorneys?

21 A There was a joint meeting with myself,  
22 Mr. Watkins and Mr. Brandt -- I don't recall the date --  
23 where we started getting in more detail what would be  
24 required, what procedures, what documentation I would need  
25 to see to satisfy my concerns; yes.

1 Q At that point had you already accepted the  
2 premise that you could make these conclusions without  
3 doing the audit?

4 A If substantial -- if documentation or objective  
5 evidence was provided; yes.

6 Q By "objective evidence" you mean like the  
7 documents themselves?

8 A A sample to the effect that Mr. Brandt provided  
9 in his testimony; yes.

10 Q Right. Okay. Can you even give us a timeframe  
11 as to when you had accepted that approach? Was it before  
12 or after the 4th of January of '84?

13 A No. I don't recall when this happened.

14 Q When did you see the final information that  
15 formed the basis for your opinions in the September 28,  
16 1984 affidavit?

17 A May I have a second?

18 I believe it was on September 28th.

19 Q And how much of that material had you seen --  
20 the documents in the Brandt testimony prior to the 28th?  
21 In other words, had you seen most of it before that, or  
22 none of it, or 10 percent of it?

23 A The hard copies of the appendices?

24 Q Yes. Particularly those.

25 A No.

1 Q You had not seen them until the 28th?

2 A That's correct.

3 Q Now, if that -- if those copies had not been  
4 made available to you at all, you would not have been able  
5 to do the 28th affidavit that you did; would you?

6 A That's correct.

7 Q So your review of those materials took place  
8 between the 28th of September when you first saw them, and  
9 what ending date?

10 A It took place on the 28th and 29th.

11 Q And you --

12 A Can I condition that?

13 Q Yes. Sure.

14 A I have subsequently reviewed it again to make  
15 the exceptions that I made on my prefiled testimony -- my  
16 testimony here.

17 Q Was that the normal way in which you would have  
18 wanted to do the review of documents? Over that period of  
19 time? The day or day and a half that you had?

20 A No. That wouldn't have been my preference.

21 Q Mr. Roth had had the documents before you did;  
22 isn't that true?

23 A That's correct.

24 Q And did he convey to you an opinion as to what --  
25 whether he thought the documents were satisfactory for the



1 purpose of the opinions being expressed?

2 A I don't believe so; no.

3 Q Did he tell you that you should just go ahead  
4 and sign the affidavit?

5 A No.

6 Q Why did he look at the documents? Was he going  
7 to be a witness also?

8 A I don't know if he was going to be a witness  
9 also. It's typical for Cannon that when a document  
10 arrived in the office that it is routed through Mr. Roth  
11 for his review.

12 Additionally, I was not in the office the day the  
13 documents arrived. I was at another project.

14 Q And did the documents that you received on the  
15 28th, and that you reviewed -- did you read those  
16 literally cover to cover, word for word?

17 A No. I did not. The fact that I missed two or  
18 three items affirmed that I did not do an in-depth enough  
19 review at the time.

20 Q If you had had no outside constraints, would you  
21 have taken longer to review those before you signed an  
22 affidavit indicating that you were satisfied on the items  
23 that you indicated you were satisfied on?

24 A Yes, I would --

25 MR. GALLO: Objection. The question is vague.



1 I don't know what "outside constraints" means.

2 JUDGE BLOCH: Mr. Lipinsky, how carefully did  
3 you review the documents?

4 THE WITNESS: I briefly went through to see that  
5 the appendices contained what they were supposed to have  
6 contained, and checked throughout the text, you know,  
7 where he says -- where Mr. Brandt, that is, says see  
8 appendix A, I went to see if Appendix A actually does say  
9 that. I didn't do it thoroughly enough, obviously, or I  
10 wouldn't have missed those three items.

11 JUDGE BLOCH: Did you take what he said and  
12 compare in each place to see if it supported what you were  
13 being asked to say?

14 THE WITNESS: Yes, sir.

15 JUDGE GROSSMAN: Excuse me, did you understand  
16 "outside constraints" to mean time constraints?

17 THE WITNESS: My understanding, and it was a  
18 supposition on my part was it was a time constraint, yes,  
19 sir.

20 JUDGE BLOCH: Why did the time constraint bother  
21 you at all if you did what you just said you did,  
22 comparing the attachments to see that they supported the  
23 affidavit and then comparing the affidavit to see that it  
24 supported your testimony?

25 THE WITNESS: The fact that I missed three items,

1 sir, indicated I didn't do it to the detail that I needed  
2 to.

3 JUDGE BLOCH: Were you aware at the time that  
4 you were rushing through?

5 THE WITNESS: Yes, sir.

6 JUDGE BLOCH: Did you mention it to anybody,  
7 that you really didn't have time to do it right?

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

9 JUDGE BLOCH: Did you take time after you had  
10 signed the affidavit, to take more time to see if you had  
11 done it right?

12 THE WITNESS: No, sir. Not until preparation  
13 for this hearing.

14 JUDGE BLOCH: I take it you want to continue  
15 this subject; is that right? We are about lunchtime but  
16 if you want to continue, shall we continue for a few more  
17 minutes?

18 MR. ROISMAN: I don't know whether it will  
19 necessarily be a few more minutes but why don't we try and  
20 then we'll see.

21 (Discussion off the record.)

22 JUDGE BLOCH: Let's take a break until 1:30.

23 (Whereupon, at 12:30 p.m., the hearing was  
24 recessed, to reconvene at 1:30 p.m., this same day.)

25

1                                   AFTERNOON SESSION                                   (1:30 p.m.)

2   Whereupon,

3                                   JOSEPH LIPINSKY

4   was resumed as a witness and, having been previously duly  
5   sworn, was examined and testified further as follows:

6                   JUDGE BLOCH:   Let's stay off the record a moment.

7                   (Discussion off the record.)

8                   JUDGE BLOCH:   Before we began this afternoon's  
9   session, we clarified some procedural matters.

10       First, we have dismissed for this session Mr. Trallo,  
11   and asked Mr. Gallo to inform him of his obligation not to  
12   become informed about the testimony of Mr. Lipinsky or  
13   other witnesses who may have testified prior to the time  
14   that he next testifies, or that he's called to testify in  
15   this case. That will be the general instruction for any  
16   witnesses that we do not get to, or finish at this time.

17       We also clarified that we will continue with the Brandt  
18   testimony and the liner plate matters and the handwriting  
19   expert and related questions next week as planned. And  
20   that we will have to schedule another session for the O.B.  
21   Cannon witnesses whom we do not finish this time.

22       Mr. Roisman, would you resume questioning, please?

23                                   CROSS-EXAMINATION (Resumed)

24                   BY MR. ROISMAN:

25       Q       Mr. Lipinsky, let's go back to your handwritten

1 notes for November 23, '83; not in your diary, but the  
2 separately written ones. On the last page of those notes,  
3 at the bottom of the page.

4 Now, you got the word "position," and then there's an A,  
5 a B, and a C. Does that represent what was the decision  
6 that was made coming out of that meeting among the four of  
7 you?

8 A Yes. Yes, those were those that were resolved  
9 as a result of our meeting; yes.

10 Q And when was this communicated to the Utility?

11 A I don't know.

12 Q But, did you from that point forward accept the  
13 premise that you would be a witness for TUGCO/TUSI, and  
14 that you essentially lost on your effort to have that  
15 happen?

16 A Yes, I'd say that that occurred at this time.

17 Q Okay. Next, the position number B, OBC wants a  
18 "hold harmless" -- and it looks like you have a question  
19 mark. "OBC to cooperate but want two-way street with TUGO  
20 and TUSI." What was that about?

21 A "Hold harmless" is some type of contractual  
22 thing. I don't know exactly the details. That's why I  
23 have a question mark there.

24 Q Do you know what the "want two-way street," what  
25 that meant?

1           A           Essentially a flow of information in both  
2 directions in the event the Utility became aware of  
3 something, that they would forward it to our attention.

4           Q           You mean if there was some problem with their  
5 paint coatings program they would let you know that, just  
6 as you would let them know if he were dissatisfied about  
7 something?

8           A           It could go to that. That wasn't the inofficial  
9 intent. It dealt with filings or motions or something  
10 along those lines with my trip report.

11          Q           I see. Not that you would get from Mr. Brandt a  
12 full presentation of both benefits, advantages and  
13 disadvantages of their program? It wasn't that kind of a  
14 two-way street?

15          A           I would assume it would extend to that but I  
16 don't know that it was ever voiced to anybody other than  
17 the people at the meeting.

18          Q           Had you assumed in the affidavit that Mr. Brandt  
19 filed that to the extent that there were problems that  
20 currently exist with the coatings program, that they would  
21 have been divulged in the context of that affidavit?

22          A           If there were problems, I would assume he would  
23 have identified them to me, but he did not. So, I mean,  
24 I'd be making an assumption.

25          Q           Right. That's what I'm saying. You assumed

1 that you had heard about problems as well as hearing about  
2 the good things that were going on?

3 A Yes.

4 Q And, finally, the item number C: "OBC to offer  
5 audit." What is that?

6 A We were again to reiterate our feeling that we  
7 would perform an audit if required.

8 Q Did that --

9 A "Desired," I should say. I'm sorry.

10 Q Did that represent a preference? In other words,  
11 did the position -- A, B, and C -- was it the preference  
12 that all three be accepted by TUGCO/TUSI?

13 A That would have been my preference. I don't  
14 know if that was Cannon's. This is pretty much what I  
15 gathered out of the meeting.

16 Q Now, do I understand that it was then up to  
17 Mr. Roth, and not any of the rest of you, to talk to TUGCO/TUSI  
18 and communicate the O.B. Cannon position?

19 A That's correct.

20 Q And you have no knowledge as to when and how  
21 much of this position was communicated to them and, if so,  
22 what the reactions were?

23 A That's correct.

24 Q Okay. Now, I would like you to turn to your  
25 diary on the 17th of November of 1983. And, in the first

1 line of that diary entry, which is a phone conversation  
2 with Mr. Trallo, you say that he agreed with you that you  
3 should not allow TUGCO to liable you. You spelled  
4 it l-i-a-b-l-e. Did you mean l-i-b-e-l?

5 A Yes.

6 Q What was it that you thought was a problem there?  
7 What was the libeling or potential libeling about?

8 A I don't recall.

9 Q Has TUGCO libeled you?

10 A I don't believe so; no.

11 Q On the 17th, you indicate, and I'm looking at,  
12 under the -- there's a line that's drawn across the middle  
13 of the page. And then, below that at the fourth bullet:  
14 "JLJ expressed concern that the more JJN, RBR talked to  
15 the Utility or tried to cover up, the deeper OBC gets. OBC  
16 could have serious problems if federal agencies perceive OBC  
17 committing fraud. Trallo agreed."

18 What was it that you were concerned about? What was  
19 taking place that concerned you about a cover up?

20 A This is again the situation with the  
21 modification of the trip report.

22 Q So all of this concern of yours, in terms of the  
23 modification of the trip report, all had to do with the  
24 possibility that a trip report, whose contents you  
25 essentially had no problem with, and had been changed only

1 in a single paragraph, would be released with an earlier  
2 date than the date that it had actually -- was actually  
3 created on and that that would produce the whole cover up  
4 and that it could be perceived that O.B. Cannon was  
5 committing fraud?

6 A That's correct.

7 JUDGE BLOCH: And the only thing that that  
8 relates to was the modification of the trip report? There  
9 was no other conduct that was to go along with that?

10 THE WITNESS: No, sir.

11 JUDGE GROSSMAN: Well, what does the word "talk"  
12 mean in there, then?

13 THE WITNESS: As far as Cannon's -- how this  
14 trip report evolved, essentially; that this is the third  
15 draft and this is, you know, an ongoing development of the  
16 trip report -- that type thing.

17 It was all -- this related to the modification of the  
18 trip report.

19 BY MR. ROISMAN:

20 Q What is it that the modified trip report appears  
21 to cover up?

22 A It's not. It's the explanation put forth by  
23 Mr. Roth as to the development, that the trip report  
24 originally was approved by him for distribution in-house  
25 on the 8th, but in fact it was still in the editing



1 process. That type.

2 Q So it was -- the cover- up related to covering  
3 up whether what had previously been called the trip report  
4 was really a final report or not?

5 A Yes.

6 Q Did Mr. Roth ever share with you what it was  
7 about the changed paragraph that was of such concern to  
8 him?

9 A He disagreed with the wording I had in there.

10 Q I understand that. But did he explain why he  
11 felt so deeply about it?

12 A Other than to change wording; no. I mean I  
13 don't know if that's answering your question.

14 Q Well, I take it that anybody could have read  
15 your trip report and presumably edited it some. Every  
16 word that was used was arguably -- could have been  
17 replaced by some synonym. But Mr. Roth only seemed to be  
18 concerned with that second paragraph, the paragraph  
19 numbered 2 at the bottom of the very last page of the trip  
20 report.

21 And, as I understand it, as far as you are concerned,  
22 the substantive change there involved was quite small;  
23 isn't that true?

24 A That's true; yes.

25 Q And yet, on a number of occasions you used words

1 like "perjury" to him, and to other people you talked  
2 about "fraud" and "cover-up." And it still involved only  
3 what was -- or what appears on the surface to be a very  
4 minor change.

5 So my question to you, did Mr. Roth ever explain why  
6 that change was so important to him, that he was so  
7 insistent of having it occur?

8 A No. Mr. Roth is not in the habit of explaining  
9 a lot of his decisions to me.

10 Q You mentioned earlier that at one point the  
11 reason you mentioned "yes, I'm going to sign it," was  
12 because you want to avoid a confrontation.

13 A Yes.

14 Q Did you find that as a not uncommon experience?  
15 That when one disagreed with Mr. Roth, it could easily  
16 turn into a confrontation?

17 A No. This situation with regard to the trip  
18 report was an ongoing discussion between him and I for  
19 approximately a month. That's what culminated it.

20 Q I just want too be clear. Your testimony is  
21 that he didn't tell you why it was so important, not that  
22 you don't remember why. Is that correct?

23 A It's possible I don't remember why.

24 Q Now, looking at November the 18th, you indicate  
25 at the bottom of the page, conversation that you had with

1 Mr. Michels that you would "quit before going back to do  
2 audit at CP; didn't need all the hassle that JJL exposed  
3 to from trip report." Do you see that entry there?

4 A That's not me quitting. You are reading that  
5 wrong. It's a conversation between myself and Mr. Michels.  
6 Mr. Michels indicated to me that he would quit prior to  
7 returning to the site.

8 Q I see. It's he who was telling you that?

9 A Yes.

10 Q And what was he talking about? Did he tell you  
11 what hassle?

12 A Yes. The fact that I had generated a trip  
13 report; the attention that was paid to it; the fact that I  
14 was brought into a meeting on November 10th which  
15 Mr. Michels participated in which was transcribed and  
16 recorded. He observed the stress that I was under and he  
17 made the determination that if required, he would not go  
18 down to the Comanche Peak site. He just didn't need the  
19 stress.

20 Q Did you find that whole experience up through  
21 the meeting of November -- 10 and 11 of November, to be  
22 intimidating to you?

23 A In what respect?

24 Q Well, did you feel that you were inhibited in  
25 freely saying and doing the things that you would want to

1 say and do because of the atmosphere that was created?

2 A Well, I had indicated in my testimony that I  
3 felt that the whole meeting was an attempt to railroad me  
4 into changing my position.

5 Q But that was a fear as to what you thought the  
6 result was. What I'm asking is, did you feel the entire  
7 atmosphere that was present over this period of time was  
8 discouraging you from freely expressing what your thoughts  
9 were?

10 MR. GALLO: Objection. Period of time undefined.

11 MR. ROISMAN: The period of time between when  
12 the report was issued and the meeting ended on November 11,  
13 1983.

14 THE WITNESS: If I wished to make comments on  
15 the November 10 and 11 meeting, I would have been free to  
16 do so. In fact, as I recall, I did express during the  
17 course of the meeting that when there was a point that  
18 Jack and I disagreed with and the discussion went around  
19 and came back, and said: Joe, don't you agree? I said:  
20 Well, everyone is entitled to their own opinion. And we  
21 went on to the next item.

22 BY MR. ROISMAN:

23 Q That was near the end of the meeting, wasn't it?

24 A I don't recall exactly where in the meeting it  
25 happened.

1           Q           As you started the meeting, taking out the 11th,  
2 but looking now at 9:00 a.m. on the 10th, at that point  
3 did you feel inhibited in being able to freely express  
4 what you thought? Did you think that it was an inhibiting  
5 situation in which you found yourself?

6           MR. GALLO: Objection. We have already been  
7 through that episode. The witness testified that he had  
8 decided beforehand to say very little because he thought  
9 he was going to be railroaded. I offer that as a -- to  
10 refresh the board's memory. We have been through this.  
11 It's cumulative.

12           MR. ROISMAN: Shall we stipulate, then, that he  
13 was feeling intimidated?

14           MR. GALLO: No. We won't stipulate to that.  
15 We'll stipulate to what he said.

16           MR. ROISMAN: Then I would like to ask my  
17 questions.

18           MR. GALLO: Well, the objection stands.

19           JUDGE BLOCH: How much are we going to do on  
20 this? Just this one question?

21           MR. ROISMAN: I want him to answer the question.

22           JUDGE BLOCH: Why don't you answer this one  
23 question. I don't know if the wording was clarified as to --

24           BY MR. ROISMAN:

25           Q           What I'm asking you is, from the period from

1 when your trip report came out, became public, until you  
2 entered the room to begin the meeting on the 10th of  
3 November, did you feel inhibited in your ability to freely  
4 express your feelings about the subject of paint coatings  
5 in the presence of the Comanche Peak people?

6 A No. The fact that I was able to go through an  
7 interview with Mr. Reynolds, you know -- I went through  
8 the items that I had concerns with, specifics; there was a  
9 give and take, in-house, between Mr. Trallo, Roth, Norris,  
10 and myself. And with the exception of when I went into  
11 the meeting, as I testified, I had decided I was going to  
12 say very little.

13 Q The meeting with Mr. Reynolds was after the 10th  
14 and 11th?

15 A I was in error on the dates, I'm sorry.

16 Q So your more relaxed state of mind, as you  
17 previously testified, arose subsequent to the meeting.  
18 What I'm trying to get is your state of mind prior to the  
19 meeting.

20 A Before I went into the meeting, I had set in my  
21 mind I was going to say as little as possible.

22 Q But not only vis-a-vis that meeting, but in  
23 general, how did you feel in your ability to freely  
24 express your views, even before there was such a meeting?

25 A I think, if you look at my responses to

1 Mr. Chapman's questions on the 28th, I gave a free and  
2 detailed discourse on how I came about to raise my  
3 conclusions.

4 Q Looking still at the 18th, of your notes --

5 JUDGE BLOCH: These are the notes of the 18th?

6 MR. ROISMAN: Yes. His diary notes.

7 BY MR. ROISMAN:

8 Q In the middle of the page there's a sentence  
9 that begins: "RBR concerned that if NRC wants rework,  
10 that Utility will go after OBC."

11 What was that in reference to?

12 A I should point out that the questions we are  
13 dealing with here, all these entries were, in fact, on the  
14 17th. They are entered on the 18th because --

15 Q Yes. You are correct. Thank you for correcting  
16 that. When I'm using the number I'm usually trying to get  
17 what page the diary is on.

18 A As long as we are not getting what day --

19 Q So we are talking about notes that were taken on  
20 the 17th?

21 A Mr. Roth was concerned, from a commercial impact,  
22 that in the event subsequent NRC findings required that,  
23 indeed, rework was required, that perhaps the Utility  
24 would have grounds or justification to pursue the cost of  
25 that rework with Cannon. And I pointed out to the effect

1 that, you know, my report didn't cause any inadequate work  
2 if there was any. And that the NRC would either confirm  
3 or not, my concerns.

4 Q Now, looking at the notes that appear on the  
5 page for November 19th and 20th, there is a notation by  
6 you of a conversation with Mr. Trallo: "trip off. RBR to  
7 call Merritt and explain that at this time a meeting is  
8 not appropriate."

9 Do you know what was it that made it not appropriate to  
10 have a meeting at that time?

11 A I'm sorry, it's the very last two lines is what  
12 we are talking about?

13 Q The very last two lines of a bunch of entries  
14 that appear at the top of the page.

15 A That dealt with my trip to Washington on the  
16 22nd.

17 Q Right. And why was a meeting at this time not  
18 appropriate? What was inappropriate about it?

19 A I don't know.

20 Q That wasn't your view that it was inappropriate?

21 A I don't recall. I didn't have a problem one way  
22 or the other.

23 Q Now, I would like you to take a look at the  
24 January 10, 1984 memo from you to the files. It has got  
25 your number QAD-84-0013, and it was produced in discovery



1 on the 17th of November of 1984.

2 A Produced by applicants?

3 Q Yes. I think so. January 10th of '84; two  
4 pages. It looks like this. Do you have it?

5 A Yes.

6 Q All right. At the top of the second page you  
7 indicate that Mr. Schmidt had joined the meeting and the  
8 first item is: "discussed logic behind JJL 'changing'  
9 opinion on concerns and treatment of JJL when on-site on  
10 11/9/83."

11 What was that referring to? What was the discussion?

12 A During the course of the development of my  
13 testimony, which ultimately became my affidavit of  
14 September 28th, Mr. Schmidt identified essentially what  
15 this hearing is all about today, with regards to my  
16 changing from having concerns to not having concerns.

17 Q What did he tell you?

18 A He just talked about it.

19 Q What information did he communicate to you?

20 A I don't recall that he communicated any  
21 information, just that it was an item to be aware of.

22 Q That which was an item to be aware of?

23 A That the changing of my position from August 8th  
24 to what ultimately became September 28th would be a point  
25 of question.

1 Q Now, this all took place on January 10 of '84;  
2 correct?

3 A That's correct.

4 Q What did Mr. Schmidt tell you that indicated  
5 that there was going to be any hearing on why you changed  
6 your position? Or that you had changed your position?

7 A I don't believe he said that there was going to  
8 be a hearing. I indicated that this hearing is an example --  
9 I'm trying to show how my position changed from August 8  
10 to September 28.

11 Q Did Mr. Schmidt come up with the logic that  
12 explained how it changed?

13 A No, he did not.

14 Q Did he say that you had to come up with the  
15 logic?

16 A No, he did not. I don't believe there was any  
17 discussion and justification of the change. Just that  
18 someone might ask about it.

19 JUDGE BLOCH: Did you explain to him how it had  
20 changed?

21 THE WITNESS: He was aware, or I had the  
22 impression, anyway, that he was aware of how my affidavit  
23 was developing; what ultimately became my affidavit.

24 JUDGE BLOCH: But that wasn't the subject of the  
25 meeting, was it? It was how you happened to change your

1 mind. Did you explain that to him at that time?

2 THE WITNESS: The subject of the meeting was in  
3 fact a continuation and development of what ultimately  
4 became my affidavit. Mr. Schmidt was in there as a side  
5 bar, and he identified this during the course of his  
6 discussions.

7 JUDGE GROSSMAN: Excuse me, what was the logic  
8 you discussed now behind the change? Would you discuss  
9 that, please?

10 THE WITNESS: As far as detailed logic, he did  
11 not provide any or we didn't discuss any. It was just to  
12 the effect that he identified that there can be questions  
13 raised to the effect: How, or what's the justification  
14 for Mr. Lipinsky changing his opinion?

15 JUDGE GROSSMAN: It says here you discussed the  
16 logic.

17 THE WITNESS: He may have given the example, and  
18 I wanted to avoid it in this hearing, to the effect that  
19 it could be raised that the Utility took a rubber hose, I  
20 believe is the exact quote, to Mr. Lipinsky to get him to  
21 change his mind. And that wasn't the case.

22 JUDGE GROSSMAN: So, in other words, he didn't  
23 discuss the logic of your change in position?

24 THE WITNESS: No. Well, we did not discuss in  
25 detail how to justify the change in my position; no. He

1 identified it as an area that might be raised by someone  
2 else.

3 JUDGE GROSSMAN: So when you said that he  
4 discussed the logic behind that change in position, you  
5 wrote something that was erroneous there?

6 THE WITNESS: To the extent that he came up with  
7 a solution or any kind of possible explanation; yes. I'm  
8 in error.

9 JUDGE GROSSMAN: I'm not suggesting a solution.  
10 But you said that he discussed the logic in this  
11 particular memo and now it appears that you are saying  
12 that he didn't discuss the logic?

13 THE WITNESS: Where I'm saying "discuss the  
14 logic," I'm changing -- it -- was Mr. Lipinsky coerced  
15 into changing his mind? No, he was not. That kind of  
16 thing.

17 JUDGE GROSSMAN: You didn't discuss it either;  
18 is that right?

19 THE WITNESS: He didn't talk too much in my  
20 direction. It was pretty much Ralph and Mr. Watkins and  
21 Mr. Schmidt that were involved in that conversation.

22 BY MR. ROISMAN:

23 Q At that time, would you say -- and by that time  
24 I mean January 10th '84 -- at that time would you say that  
25 it was fair to say that your opinions on the concerns had

1 changed but you weren't able to articulate how -- you  
2 weren't able to articulate why they had changed in a way  
3 that would deal with the concern that Mr. Schmidt was  
4 raising?

5 A I think the basis for making that change had  
6 been rubbed out with regards to the fact that objective  
7 evidence would be provided to substantiate my concerns.  
8 But that objective evidence was not produced at that time.  
9 That's correct.

10 Q If the answer was as simple as that why you  
11 didn't tell Mr. Schmidt, how are you going to explain  
12 changing your opinion, if the answer was: "Well, it's  
13 easy. I have new information." Why didn't you say that  
14 to him? Why didn't you give the logic?

15 A I don't recall. I don't recall that. I don't  
16 know why we didn't or why I didn't.

17 Q Is it possible that it's because you hadn't yet  
18 accepted the logic? You just accepted the fact that your  
19 opinion was going to have to change?

20 A No. I disagree with that. I think that the  
21 information being provided up to that point in time had  
22 the objective evidence which Mr. Brandt subsequently  
23 provided and when it was made available, then my opinion  
24 would have changed. Yes.

25 Q But it hadn't yet changed? Your concerns had

1 not been satisfied?

2 A I would not have been able to execute the  
3 affidavit I executed September 28th on January 10th;  
4 that's correct.

5 Q Nor would you have been able to swear to the  
6 fact that there was -- that your concerns had been  
7 satisfied, even if it were in a different form than that  
8 particular affidavit?

9 A Yes, that's correct.

10 Q And what transpired between the 10th and the  
11 time when you first had in hand information that would  
12 form a basis for you to say, if you had to, under oath,  
13 that your opinion would change?

14 MR. GALLO: Can I have that question back again,  
15 please?

16 (The reporter read the record as requested.)

17 MR. GALLO: I object to that question as being  
18 not understandable.

19 JUDGE BLOCH: It's a little hard. Mr. Roisman,  
20 you can do better.

21 BY MR. ROISMAN:

22 Q When, after the 10th of January, did you have in  
23 hand the information that would enable you to say, if you  
24 had had to say under oath, that your opinion had changed?

25 A On September 28th.

1 Q And not before that?

2 A That's correct.

3 Q Would you take a look at the memorandum from you  
4 to Mr. Roth dated February 13, 1984? That was also in the  
5 packet of material produced on the 17th by the applicant.

6 Attached to that three-page memo is an affidavit signed  
7 by you and dated the 15th of February, 1984. I would like  
8 to direct your attention to the second page, the seventh  
9 paragraph, the second sentence of the affidavit?

10 A Could you run that by me again?

11 Q The memorandum is dated February 13, 1984. It's  
12 your QAD-84-0067.

13 A Okay.

14 Q It's entitled, "H8301, activities and telephone  
15 conversations on February 12 and 13, 1984." Okay?

16 A Yes.

17 Q Now I'm directing your attention to the --  
18 attached to the memorandum is an affidavit signed by you,  
19 notarized by Mr. Eckman. And I'm directing your attention  
20 to paragraph 7, on page 2, and to the second sentence  
21 thereof.

22 A Okay.

23 Q Read the sentence, please, in the record?

24 A It says, "these in-depth discussions  
25 demonstrated to me that my initial impressions, which were

1 based on limited data, were incorrect."

2 Q And to what were you referring, beyond the  
3 meeting on the 10th and 11th of November, 1983, when you  
4 referred to "these in-depth discussions?"

5 A That's what -- and our ongoing discussions with  
6 Mr. Reynolds and Mr. Watkins.

7 Q I thought that you just told me that until you  
8 saw Mr. Brandt's corroborating data on September 27, 1984,  
9 that you could not have an opinion that your first  
10 impression were incorrect?

11 A I did not --

12 MR. GALLO: Objection.

13 JUDGE BLOCH: If you can't think of it --

14 MR. GALLO: It's the form of the question and  
15 the previous question. This witness is being confused by  
16 the questioning with respect to whether Mr. Roisman is  
17 confining his questions with respect to the September 28  
18 affidavit in the timeframe of the ground rules under which  
19 that affidavit was framed, to the exclusion of considering  
20 what happened on November 10 and 11 --

21 JUDGE GROSSMAN: Mr. Gallo, are you trying to  
22 supply an answer now, or are you making an objection?

23 MR. ROISMAN: If he's going to do that kind of  
24 objection I want the witness out of the room, because I  
25 think he was doing that.



1                   JUDGE BLOCH: It's overruled. I don't even  
2 understand the statement he made, so let's continue. I  
3 don't think the witness is being confused at all.

4                   BY MR. ROISMAN:

5           Q           I want to understand the basis on which you make  
6 the statement, on the 15th of February -- I'm sorry,  
7 whatever the date is --

8                   JUDGE BLOCH: That's correct, 15 of February,  
9 1984.

10                  BY MR. ROISMAN:

11           Q           15th of February, 1984, that "my initial  
12 impressions, which were based on limited data, were  
13 incorrect," in light of your previous testimony that it  
14 was not until September 28, 1984, that you had in hand  
15 sufficient information from Mr. Brandt to have the  
16 opinions that your initial impressions were incorrect?

17                  MR. GALLO: I want to approach the bench.

18                  JUDGE BLOCH: All right. Please.

19                  (Discussion at the bench as follows:)

20                  MR. GALLO: Mr. Roisman is characterizing the  
21 September 28 affidavit. I think it's fair to read back  
22 the question and answer, because I'm not sure that was his  
23 testimony.

24                  JUDGE BLOCH: I think it was his testimony.

25                  MR. GALLO: The question that did the damage was

1 three questions ago where he said: With respect to this  
2 February 15 affidavit, irrespective of the 10th and 11th  
3 meetings, what was the basis for making the statement  
4 about not having concerns.

5 MR. ROISMAN: The question wasn't "irrespective."  
6 It said "in addition to, other than" --

7 JUDGE BLOCH: At any rate, the question was  
8 asked and answered and you'll ask redirect later. You  
9 have an opportunity for redirect.

10 MR. GALLO: What's the sense of having 20 pages  
11 of transcript record that is meaningless.

12 JUDGE BLOCH: We are talking about a question  
13 now, not 20 pages.

14 MR. ROISMAN: I don't think that had anything to  
15 do with the question --

16 JUDGE GROSSMAN: I don't think the problem is to  
17 do with the questioner, Mr. Gallo. You have been given  
18 one opportunity to talk to your client about it. If you  
19 feel he has some problems with candid testimony, maybe you  
20 ought to have another recess.

21 MR. GALLO: I think the quick solution to the  
22 problem is for the questioner to make it clear that in  
23 asking the questions he's talking in the confines of  
24 developing his position, vis-a-vis the September 28th  
25 affidavit to the exclusion of what happened on the 10th or

1 11th or whatever.

2 JUDGE BLOCH: All he's asking for is the basis  
3 of this statement on February 15 of '84. If he has one  
4 he's going to give it.

5 MR. GALLO: If that's the question, I don't have  
6 any problem.

7 JUDGE BLOCH: That is the question. That was  
8 the question.

9 JUDGE GROSSMAN: Then let's go back.

10 (Discussion at the bench concludes.)

11 JUDGE BLOCH: Mr. Lipinsky, what was the basis  
12 for your February 15, 1984 statement, that Mr. Roisman has  
13 pointed to, that one sentence?

14 THE WITNESS: As indicated in my affidavit, sir,  
15 it's primarily the November 10 and 11 meetings. Taken at  
16 face value, if Mr. Tolson explained accurately what was  
17 going on, that satisfied my concerns.

18 JUDGE BLOCH: So the November 10 and 11 meetings  
19 and what Mr. Tolson said there satisfied you that your  
20 trip report was based on limited data and was incorrect?

21 THE WITNESS: With the proviso, sir, that as  
22 stated in our task force group report or whatever you want  
23 to call it, Mr. Trallo's report of the 28th, we couldn't  
24 confirm one way or the other what he said he was doing --  
25 that is Mr. Tolson -- what they are doing on-site, they

1 are in fact doing.

2 JUDGE BLOCH: So where in this affidavit do you  
3 say you couldn't know whether it was incorrect without an  
4 audit or follow-up of some kind?

5 THE WITNESS: Having read it, it doesn't say  
6 that.

7 BY MR. ROISMAN:

8 Q Who wrote the affidavit, Mr. Lipinsky?

9 A It was provided, I believe, by Mr. Watkins.

10 Q What is your method of operation, Mr. Lipinsky,  
11 when you are given something to swear to by an attorney?  
12 Is it your method to question the attorney thoroughly to  
13 make sure that the words spoken are really the words you  
14 would speak?

15 A In this situation, again acting in the capacity  
16 we were, that is a consultant, you know, the strategy was  
17 prepared by Mr. Watkins. I'm not an attorney. I assumed --  
18 I have read it, discussed it with him, and I thought it  
19 was adequate.

20 Q But what does that mean, your role as a  
21 consultant and the -- and given "the strategy"? You  
22 didn't understand that to absolve you of the  
23 responsibility to swear truthfully; did you?

24 A No.

25 Q There's no strategy that could include your not

1 swearing truthfully that you would be willing to accept;  
2 is there?

3 A I'm sorry?

4 Q I said there isn't any strategy which could be  
5 posed by an attorney which you would agree to which  
6 included your swearing falsely; is there?

7 A That's correct. There is not.

8 Q When you signed this affidavit on the 15th of  
9 February of '84, were you also motivated by the concern  
10 expressed on the first page of the memorandum, to which it  
11 is attached, which was Mr. Horn explained that Mr. Watkins  
12 felt that the affidavit was needed to keep J JL out of the  
13 Dunham labor case? Did that motivate you in any way to  
14 sign this affidavit?

15 A In the respect that I was signing something  
16 that's not accurate?

17 Q No. That you wanted to stay out of the Dunham  
18 labor case; did that motivate you to want to sign an  
19 affidavit that would keep you out of the Dunham labor case?

20 A Well, I didn't want to get involved in the  
21 Dunham labor case, no.

22 Q Had you talked to Mr. Mouser, who was going to  
23 be testifying in the Dunham labor case?

24 A I was aware that Mr. Mouser was going to be  
25 testifying. I didn't discuss any details.

1 Q What was it about testifying in the Dunham labor  
2 case that was abhorrent to you?

3 A I'd rather not be testifying in this case. I  
4 would just rather not be involved.

5 Q You mean in testifying at all?

6 A Yes.

7 Q I think you have already said that about this  
8 September 28th testimony as well.

9 When you read the affidavit, did you attempt to raise  
10 any concerns about any phraseology that was in there, with  
11 the attorneys?

12 A I don't believe I did; no. If I did, I don't  
13 believe -- I don't believe -- I don't know.

14 Q Let me see if I can refresh your memory. Take a  
15 look at the fifth bullet on the first page of the  
16 memorandum. And the second sentence says: "JL had a  
17 question on the wording in paragraph number 7 of the  
18 affidavit. B. Horn agreed that the question had merit and  
19 advised JL to try to contact M. Watkins."

20 Does that refresh your memory?

21 A It might very well have to do with what you had  
22 just asked me two or three questions prior to this.

23 Q Do you remember what the resolution was of that  
24 concern? Did you ever have a conversation with  
25 Mr. Watkins about paragraph 7?

1           A           I could refresh my memory by looking through  
2 this. Perhaps I did.

3           Q           Okay. Why don't you take a look at the next  
4 bullet?

5                   MR. GALLO: Objection. Why don't we let the  
6 witness refresh his recollection by looking through this.

7                   JUDGE BLOCH: He may look through it, but I  
8 think Mr. Roisman I trying to be helpful.

9                   MR. GALLO: He may look through the memorandum  
10 and the next bullet.

11                  JUDGE BLOCH: Well said, sir.

12                  BY MR. ROISMAN:

13           Q           Okay. Have you refreshed your memory?

14           A           With regards to this memorandum, yes.

15           Q           Okay. Now can you tell me what -- was there a  
16 resolution with regard to the question you had in  
17 paragraph number 7?

18           A           As indicated, as you pointed out in the last  
19 item there, Mr. Watkins assured me that it was consistent  
20 with my prior testimony. I took that to mean that there  
21 was no problem.

22           Q           So in other words, you accepted his  
23 representation that whatever question you had about  
24 paragraph 7 was not a problem because you had apparently  
25 similarly testified at an earlier time; is that correct?

1           A           Yes. I would have, again -- the item with  
2 regards to the audit -- an in-depth audit to confirm one  
3 way or the other is not apparent in my affidavit. In  
4 retrospect, it should be.

5           Q           Do you think that was the question that you  
6 raised with Mr. Watkins at the time? That is, where's my  
7 qualifier? Or can you just not remember that?

8           A           I don't remember. It's possible.

9           Q           And I take it that the prior testimony is  
10 referring to the testimony at the -- with the NRC on the  
11 4th of January?

12          A           I believe it's more in the testimony that was  
13 being developed, which ultimately became my affidavit on  
14 the 28th.

15          Q           I see. So it was consistent with what you were  
16 going to be saying?

17          A           That's my recollection of it; yes.

18          Q           But at this time you weren't ready to say that  
19 because you hadn't yet seen the information that  
20 Mr. Brandt had to offer; correct?

21          A           That's correct.

22          Q           And so, the qualifier, if there should have been  
23 a qualifier in paragraph 7, was not "I need to do an in-depth  
24 audit"; it was, "I need to see all the material that I  
25 have reason to believe Mr. Brandt is going to give me";



1 isn't that right?

2 A No, it's not. I keep -- if I could run through  
3 it one more time. Essentially I had concerns as a result  
4 of my August 8 trip report. We had a meeting on-site on  
5 November 10.

6 Taking that at face value, my concerns went away.  
7 Again, we couldn't confirm that one way or the other  
8 without an in-depth audit or review of some type.  
9 Subsequently, my affidavit of September 28th was developed  
10 on the basis that Mr. Brandt is telling me under oath that  
11 in fact they satisfy my concerns in such and such manner;  
12 and additionally, objective evidence is attached to his  
13 affidavit.

14 At that point I don't need an audit to verify that my  
15 concerns are resolved. I don't know whether or not -- I  
16 would need an audit, in other words, to verify that  
17 everything that Brandt told me was verified on the site.  
18 But to satisfy my concerns, the attachments to Mr. Brandt's  
19 affidavit and his affidavit resolve those concerns.

20 JUDGE BLOCH: Mr. Lipinsky, could you look at  
21 the previous sentence and tell me if you would like to  
22 qualify the previous sentence in any way?

23 THE WITNESS: Which one is that, sir? The first  
24 sentence in item 7?

25 JUDGE BLOCH: Yes.

1 THE WITNESS: I'm not sure in what way, your  
2 Honor.

3 JUDGE BLOCH: Well, look at it. If you still  
4 think it's true as of February 15th, then don't qualify it  
5 at all.

6 THE WITNESS: I think it's an accurate sentence.  
7 I'm not sure where you are coming from, I guess.

8 JUDGE BLOCH: Is there a site visit in addition  
9 to the extended conferences with management? Did you have  
10 a site visit and extended visits with management?

11 THE WITNESS: Yes, sir; on August 9th and 10th,  
12 I believe.

13 JUDGE BLOCH: Was the site visit on August 9th  
14 and 10th --

15 THE WITNESS: Yes, sir.

16 JUDGE BLOCH: -- an important part of changing  
17 your opinion?

18 THE WITNESS: On August 10th, I believe it was,  
19 I actually observed painters performing qualifications on  
20 the qualification panels.

21 JUDGE BLOCH: Did the applicants know you were  
22 coming back before you came back?

23 THE WITNESS: Yes, sir. There was a meeting  
24 scheduled for the 9th.

25 JUDGE BLOCH: Do you know whether or not they

1 arranged to have those panels made so you could see it?

2 THE WITNESS: Well, no, I don't. No, sir.

3 JUDGE BLOCH: Did you think of the possibility  
4 that it was done for that purpose?

5 MR. GALLO: Objection.

6 MR. WATKINS: We'll object, too. It assumes  
7 anybody at the site knew he had those concerns.

8 MR. GALLO: More than that, it's a highly  
9 prejudicial statement. I'm not TU's lawyer, but to make  
10 that implication based on a judge's question I think is  
11 prejudicial, not only to my client but to the applicant as  
12 well. I think it ought to be withdrawn, your Honor.

13 JUDGE GROSSMAN: How is it prejudicial to your  
14 client, Mr. Gallo?

15 MR. GALLO: I believe it's prejudicial in that  
16 it is suggesting and implanting an idea in his mind which  
17 might induce him to make a statement upon which there's no  
18 basis. It's an objection you would make to any question  
19 of that type.

20 JUDGE BLOCH: It's overruled. The reason that  
21 it is overruled is that you are a quality control person  
22 and you know the difference between announcing you are  
23 coming someplace and looking at something, and doing a  
24 surprise audit.

25 You had told people on-site prior to August 9th and

1 10th, hadn't you, that you had concerns about various  
2 things, including painter qualification; hadn't you?

3 THE WITNESS: Yes, sir. In my exit meeting.

4 JUDGE BLOCH: It wouldn't be so surprising,  
5 would it, if you came back and they knew what your  
6 concerns were, that they do something to persuade you  
7 otherwise?

8 MR. GALLO: Objection.

9 JUDGE BLOCH: Why are you objecting now?

10 MR. GALLO: Tone. If you want to get mad at me,  
11 okay, but don't take it out on the witness.

12 JUDGE BLOCH: I'm sorry about that, Mr. Gallo.  
13 I am not mad at the witness.

14 THE WITNESS: Thank you.

15 MR. ROISMAN: Well, just for the record I didn't  
16 hear a tone that would suggest anger.

17 JUDGE BLOCH: I think I heard the tone Mr. Gallo  
18 is referring to and I'm sorry about that, but I would like  
19 the answer to the question.

20 MR. WATKINS: We'll object to the question, your  
21 Honor, because you assumed he told management --

22 JUDGE BLOCH: No, he said he did.

23 MR. WATKINS: -- and that they knew on August 8  
24 or 9, that his specific problem was with painter  
25 qualification of the test panels.

1           JUDGE BLOCH: He said he had told Mr. Tolson  
2 earlier about that problem.

3           MR. WATKINS: No, he said "about painter  
4 qualifications" and I think there's several aspects to  
5 that issue.

6           JUDGE BLOCH: In what detail had you told Mr.  
7 Tolson about painter qualification problems prior to that?

8           THE WITNESS: I think all I did was express that  
9 I had concerns with their painter qualification -- it was  
10 one of a series of items that I enumerated to Mr. Tolson.

11          JUDGE BLOCH: Let's assume Mr. Tolson knows the  
12 program at the site, do you think he might have deduced  
13 what the problems were?

14          THE WITNESS: If in fact they had problems,  
15 which is contrary to what Mr. Brandt assured me --

16          JUDGE BLOCH: Let's assume for this purpose --  
17 you are going back trying to figure out whether you are  
18 right or wrong and the Applicants know to some extent what  
19 your concerns were the first time.

20          THE WITNESS: Can I interrupt you, sir? I'm  
21 sorry. The reason I went back on August 9th was to attend  
22 a meeting dealing with the coating program in general.  
23 And, subsequent to that I was instructed to write a  
24 procedure. The reason I stayed over on the 10th was to  
25 gather more information for the development of that

1 procedure. I wasn't there in the capacity to go and  
2 verify, you know, whether my concerns were valid or not.

3 JUDGE BLOCH: So there was no advance knowledge  
4 that you were going to look around on the 10th?

5 THE WITNESS: It was very possible I wouldn't  
6 have gone up to the paint shop. The reason I went up  
7 there was, I was looking for one of the paint engineers I  
8 had to talk to.

9 JUDGE BLOCH: It wasn't suggested by the site  
10 management?

11 THE WITNESS: No, sir.

12 JUDGE BLOCH: Thank you.

13 BY MR. ROISMAN:

14 Q Mr. Lipinsky, on February 24, 1984, you sent a  
15 memorandum to Mr. Roth, the subject of which is "copy of JJL  
16 testimony before NRC on 1/4/84," along with comments,  
17 corrections. Do you have that before you? I think it was  
18 produced early on. But I have no notation on it. It's  
19 your QAD-84-0083. It is one page long.

20 MR. WATKINS: What's the date on that?

21 MR. ROISMAN: February 24, 1984.

22 MR. GALLO: The witness has it.

23 BY MR. ROISMAN:

24 Q Okay.

25 A It is our item number 55.

1           Q           You indicate there, on the second paragraph,  
2 that unless directed to the contrary the writer will  
3 forward a copy of comments, corrections, to M. Watkins  
4 during the week of 2/27/84.

5           Was it your practice to have Mr. Roth review your  
6 corrections to your sworn testimony?

7           MR. GALLO:  Objection.

8           JUDGE BLOCH:  What's the objection?  He'll say  
9 yes or no?

10          MR. GALLO:  Well, I'll withdraw it.  I was going  
11 to object to lack of foundation for the existence of a  
12 practice, but I guess the witness will be able to handle  
13 it.

14          THE WITNESS:  What I was requesting was approval  
15 from Mr. Roth to send the comments to Mr. Watkins.  
16 Mr. Roth essentially was the main contact between the  
17 Utility and myself.  All I wanted to know was if it was  
18 already -- if I sent him the comments and corrections.

19          JUDGE BLOCH:  Was it a practice that you did  
20 that?  Generally when you were doing sworn testimony, did  
21 you let Mr. Roth review the changes before you sent them  
22 in or was this a one-time event?

23          THE WITNESS:  It may not have been a one-time  
24 event, but Mr. Roth doesn't generally review all my  
25 comments; no, sir.

1                   JUDGE BLOCH: In this case, would he have  
2 reviewed all of your changes before you sent to the  
3 lawyers?

4                   THE WITNESS: In other words, in case on  
5 September 29th, when I had comments to my affidavit and  
6 changes to my affidavit it was a Saturday morning, there  
7 was nobody in there but me.

8                   JUDGE BLOCH: If he had been in there, would you  
9 have shown it to him?

10                  THE WITNESS: No, probably not.

11                  BY MR. ROISMAN:

12           Q        So, why did you do it here?

13           A        So there wouldn't be a problem if I sent this  
14 stuff down to Mr. Watkins. I didn't want Mr. Roth -- I  
15 didn't want to be going and performing an activity that  
16 Mr. Roth was unaware of with regards to contacting the  
17 attorneys.

18           Q        What was the option if Mr. Roth had said: No,  
19 don't send it to Mr. Watkins. What would then have  
20 happened with the comments and corrections?

21           A        That's a hypothetical. I don't know what to  
22 tell you. It wasn't a problem, so --

23           Q        I mean, had you been asked by Mr. Watkins to  
24 make the corrections? Or had the NRC been communicating  
25 directly with you? Had they sent you the draft testimony



1 and asked for your comments and corrections?

2 A This wasn't a draft testimony. This was the  
3 deposition I gave on January 4.

4 Q Yes. That's what I meant. I'm sorry. It was  
5 the transcript of the deposition sent to you to make sure  
6 that there weren't any mistakes that had been made in  
7 transcription; correct?

8 A That's correct.

9 Q Was it sent to you directly by the Nuclear  
10 Regulatory Commission or was it sent to you by Mr. Watkins?

11 A I believe I received it direct. I'm not certain.  
12 The envelope didn't accompany the transcript.

13 Q So the option, then, if you hadn't sent it -- he  
14 if Mr. Watkins wasn't going to get it, then you would have  
15 been just sending it directly back to the NRC; correct?

16 A That's correct. One of the main reasons I  
17 wanted to send it to Mr. Watkins is I didn't have the  
18 envelope and I didn't have the address with the NRC, where  
19 to send corrections to my transcript. I assumed I just  
20 wouldn't send it down here and say: Make the corrections --  
21 you guys wouldn't know what to do with it.

22 Q I would now like you to look at the transcript  
23 of your testimony to the Nuclear Regulatory Commission  
24 employees on January the 4th. I want you to take a look  
25 at page 8, starting at page -- excuse me -- starting at

1 line 6 through 12; and then I would like you to look at  
2 page 29, starting at line 14 and carrying over to page 30,  
3 line 1; and then I would like you to look at page 64,  
4 starting at line 12 and going through line 20. And, if  
5 you would review that and then let me know when you are  
6 completed looking at it, I have a question to ask you.

7 JUDGE BLOCH: Of course, to the extent necessary  
8 to familiarize yourself, you may look at surrounding  
9 material also.

10 MR. WATKINS: Mr. Chairman, I wonder if we might  
11 take a brief recess while he does that?

12 JUDGE BLOCH: Let's take a five-minute recess --  
13 make it 10.

14 THE WITNESS: You said to the extent -- I  
15 shouldn't read through this whole transcript, I assume?

16 JUDGE BLOCH: I said you may look at other parts  
17 if you need them to figure out what's going on here.

18 (Recess.)

19 JUDGE BLOCH: The hearing will come to order.  
20 The witness has reviewed the sections pointed out by  
21 counsel. Mr. Roisman, your question?

22 BY MR. ROISMAN:

23 Q Mr. Lipinsky, it appears on those pages that you  
24 indicated to the Nuclear Regulatory Commission on the 4th  
25 of January, 1984, that the sole relationship that you and

1 your company had to the Comanche Peak site was the conduct  
2 of the site visit that produced the August 8th trip report;  
3 and that you subsequently returned to the site on the 10th  
4 and the 11th of November, for the purpose of essentially  
5 explaining that trip report and that that was a  
6 transcribed meeting.

7 It does not appear that you at any point disclosed to  
8 them that by this time O.B. Cannon had decided that it was  
9 going to be a witness for the company. Am I correct that  
10 you did not divulge that information to the Nuclear  
11 Regulatory Commission?

12 A I don't know. Again, I didn't -- I reviewed the  
13 applicable portions just prior to, and the line references  
14 you made. In that -- in those three references, no, I did  
15 not.

16 Q For instance, let's just look at page 8 for a  
17 second. After describing your involvement with the trip  
18 report, the question to you was:

19 "Okay, now you just gave me your company relation to  
20 Comanche Peak, or was that the personal one?

21 "Answer: That was about it.

22 "Question: That was the whole thing?

23 "Answer: Yes."

24 Now, is it now your testimony that that statement right  
25 there is false?

1           A           What I was trying to explain on page 8, lines 6  
2 through 12, is that essentially I had no personal  
3 involvement with the Comanche Peak site. That's what I  
4 was trying to convey.

5           Q           Well, look back at page 7, line 17.

6           "Question: What's your relationship to the Comanche  
7 Peak facility?

8           "Answer: Mine personally or the company's?

9           "Question: Well, we can do both. Let's do yours first."

10          Now, did you understand that when the question was  
11 asked to you on page 8, "now you just gave me your company  
12 relationship to Comanche Peak or was that the personal  
13 one?"

14          And you answered: "That was about it.

15          "Question: That was the whole thing?

16          "Answer: Yes."

17          That you were only answering with regard to your  
18 relationship personally?

19          A           I believe what, at the time what I perceived  
20 Mr. Hawkins' question -- I believe it was Mr. Hawkins,  
21 perhaps it was Mr. Johnson -- what his question was, he  
22 was trying to determine what the company's relationship  
23 was and what mine personally was.

24          When I answered his question, I essentially gave the  
25 company's relationship to the Utility. He wanted to know

1 if that was mine; and essentially it was. I have no  
2 personal involvement with Comanche Peak. That's what I  
3 was trying to convey here.

4 Q Now, looking at page 29 and 30 --

5 JUDGE GROSSMAN: Excuse me. Before you go off  
6 that, I'm not sure I understand that answer. Are you  
7 saying that you are only responding with regard to your  
8 personal relationship at that point, not with regard to  
9 the company?

10 THE WITNESS: What I essentially did was give  
11 him the company's position. What he's saying is now you  
12 just gave me your company relation or was that your  
13 personal one? What I was trying to get across to  
14 Mr. Hawkins or Johnson or whoever it was, I had no ties to  
15 the Comanche Peak site. I had no personal involvement.

16 JUDGE GROSSMAN: But if the question had been,  
17 "Does your company have any other relationship?", was that  
18 answer correct that you gave?

19 THE WITNESS: Well, they didn't ask that  
20 question. I wasn't trying to deceive them. I answered  
21 what appeared to be my company's position. And then when  
22 it was presented, well, that was your company's position  
23 or is it your personal position? I said "that's about it."  
24 I don't have -- I have no personal interest in the  
25 Comanche Peak site.

1                   JUDGE GROSSMAN: Well, perhaps we are having a  
2 problem in communication here.

3                   Are you saying that your answer was accurate, that  
4 neither you nor your company had any relationship other  
5 than what you disclosed there?

6                   THE WITNESS: No. I did not mention the fact  
7 that we were going to be witnesses or that we were still  
8 in a consulting-type relationship with the client, with  
9 Texas Utilities.

10                  JUDGE GROSSMAN: And he did ask you in two  
11 separate places there whether you or your company had any  
12 additional relationship; didn't he?

13                  THE WITNESS: That's correct.

14                  BY MR. ROISMAN:

15           Q        Had you discussed with your counsel prior to  
16 going into that meeting -- or with Mr. Watkins, excuse  
17 me -- prior to going into that meeting, whether you should  
18 or should not discuss your anticipated appearing as a  
19 witness on behalf of the Utility with respect to these  
20 issues?

21           A        No, I don't believe so.

22           Q        So you had no advice as to whether you should or  
23 should not divulge that information, if asked?

24           A        No. The fact that it wasn't identified was an  
25 oversight on my part. It was probably because I didn't

1 consider that much of a -- I was focusing more on what led  
2 up to my trip report.

3 JUDGE BLOCH: At that time did Mr. Watkins know  
4 that you had already agreed to be an expert witness for  
5 the company?

6 THE WITNESS: I would assume so. I don't know.

7 JUDGE BLOCH: Do you remember whether you told  
8 him before that?

9 THE WITNESS: I don't recall, your Honor.

10 JUDGE BLOCH: Had you told Mr. Reynolds before  
11 that?

12 THE WITNESS: I don't know that I did, sir. I  
13 assume Mr. Roth did; yes.

14 BY MR. ROISMAN:

15 Q You had actually already been working on  
16 testimony as early as November; right? With, at least  
17 with Mr. Reynolds?

18 A That's correct.

19 Q So that in that sense, the process was already  
20 in place for you to ultimately become a witness?

21 A That's correct.

22 Q Now look at page 29. You were asked the  
23 question, beginning at line 9:

24 "One thing I did forget to ask was you referred to a  
25 meeting in November that went for two days and it was in

1 regard to your concerns that you expressed here in the  
2 trip report.

3 "Answer: That's correct.

4 "Question: That was the only time that you met with  
5 them on the issues that you expressed concerns?"

6 Do you see that?

7 A Yes.

8 Q What did you understand the "them" to mean?

9 A The people on the site.

10 Q "Answer: The only time I met with them, yes.

11 We have had telephone conversations but nothing in great  
12 detail. The meeting in November, I believe it was the  
13 10th and 11th, was fairly detailed.

14 "Question: And then the basis -- would it be fair to  
15 say then the resolution for the basis for your concerns  
16 was this two-day meeting at the site?

17 "Answer: That's correct."

18 Now, two questions. Number one, were you excluding  
19 from that the conversations that you had had with  
20 Mr. Reynolds and other lawyers of the company, and Mr.  
21 Chapman, at Mr. Reynolds' law firm's office at which you  
22 discussed the trip report?

23 A The fact that I've mentioned we've had telephone  
24 conversations, I did not talk with anyone at the site. So  
25 in that respect those conversations had to be with



1 Mr. Reynolds.

2 Q But you didn't mention that you had met with him  
3 personally?

4 A That's correct.

5 Q You also don't appear to have mentioned the  
6 impact of the meetings on the 9th and 10th of August, 1983,  
7 on the resolution of your concern regarding painter  
8 qualifications which you, a little while ago, testified  
9 was part of the basis for your opinion in February of '84  
10 that your concerns had been addressed?

11 A I thought somewhere in here I do.

12 JUDGE BLOCH: Take your time. Take your time  
13 and look for it.

14 If counsel finds it this evening we can correct the  
15 record. I don't think we'll find it --

16 THE WITNESS: It's possible I didn't mention it.  
17 I thought I had.

18 I did. I found it.

19 MR. ROISMAN: I'm sorry, what was the very last  
20 thing you said?

21 THE WITNESS: I found it.

22 MR. GALLO: The board's question was "please  
23 identify where in the transcript there was any reference  
24 to the November 9 meeting." Can you do that?

25 THE WITNESS: Yes, I can.

1 JUDGE BLOCH: Good.

2 THE WITNESS: The bottom of page 50 and the top  
3 of page 51, starting at line 21.

4 JUDGE BLOCH: So you mentioned seeing the panel,  
5 but nothing else. Was that the only thing you relied on  
6 in resolving the concern, seeing the panel painted?

7 THE WITNESS: No, sir. That was an observation.  
8 The fact is I actually saw painters being qualified. It  
9 wasn't that they were just getting a spray gun and sent  
10 out to paint.

11 JUDGE BLOCH: That was the one thing that  
12 happened on the 9th and 10th -- I mean the 10th and 11th?

13 THE WITNESS: 9th and 10th.

14 JUDGE BLOCH: That's the one thing that resolved  
15 your concern?

16 THE WITNESS: That resolved that aspect of my  
17 concern.

18 CHAIRMAN BLOCH: Was there anything on the 9 and  
19 10 that helped you revolve your concern?

20 MR. WATKINS: Are we in November or August, your  
21 Honor?

22 JUDGE BLOCH: August 9 and 10. It's not a quick  
23 question, I'm asking you --

24 THE WITNESS: I'm not saying I saw painters  
25 painting and that resolved all my concerns. That's not

1 the case.

2 JUDGE BLOCH: I wonder if there was anything  
3 other than seeing them --

4 THE WITNESS: Not that I recall; no, sir.

5 JUDGE JORDAN: So it was the November meeting  
6 that resolved your concerns?

7 THE WITNESS: Taken at face value. If they were --  
8 and again with the proviso that you couldn't confirm one  
9 way or the other if Mr. Tolson and company were telling me  
10 everything that was, you know, true or not.

11 JUDGE BLOCH: In fact, immediately after the  
12 meeting your concerns were not resolved; is that right?  
13 After the November 10th and 11th meeting you still wanted  
14 to do an audit; isn't that true?

15 THE WITNESS: That would have been my preference;  
16 yes, sir. However we took -- we, Cannon, assumed, in the  
17 position we were in as consultants, that was told us to by  
18 Mr. Tolson, we took it at face value as being accurate.

19 JUDGE BLOCH: But the meeting did not in fact  
20 resolve your concerns, did it, because you wanted to do  
21 more after the meeting. Your concerns were still there.

22 THE WITNESS: That was in relation to  
23 Mr. Roisman's questions what would be my personal  
24 preference at that point in time. However, I agreed, and  
25 I still do, with the task force that, assuming what Mr.

1 Tolson has told us as factual, my concerns would have  
2 been fine -- they would have been resolved. But we  
3 couldn't confirm one way or the other at that time without  
4 an audit of some type or review, that what Mr. Tolson told  
5 us was accurate.

6 JUDGE BLOCH: So you are saying after the  
7 meeting on the 10th and 11th, you had no concerns, but you  
8 thought it would be a good idea to do an audit?

9 THE WITNESS: No.

10 JUDGE JORDAN: What you learned from the 10th  
11 and 11th is represented from the minutes of the meeting,  
12 and we can look at the minutes of the meeting and see how  
13 your concerns were resolved; is that correct?

14 THE WITNESS: I think we are -- maybe I'm  
15 getting confused.

16 JUDGE BLOCH: There are actually two questions.  
17 Why don't you answer mine first and then Dr. Jordan's  
18 after that.

19 My question was, it appears what you are saying is you  
20 had no concerns after -- no concerns left after the  
21 November 10th and 11th meeting, but you wanted to do an  
22 audit. How can you reconcile that?

23 THE WITNESS: I hate to rehash it, but if you'll  
24 bear with me I will.

25 JUDGE BLOCH: If that's a question that requires

1 rehashing, then rehash it.

2 THE WITNESS: I think it's worthwhile doing it.  
3 Based on a three-day trip I identified in my trip report  
4 several areas of concern. Several days after that on  
5 November 10 and 11 I participated in meetings on-site,  
6 which Judge Jordan has the transcript, I assume, in his  
7 hand -- and, as a result of that meeting, Cannon's  
8 position and mine was essentially that, well, the  
9 information provided -- and it wasn't in detail like  
10 Mr. Brandt's subsequent information -- but the information  
11 provided that if in fact the utilities are performing  
12 these steps then they have a procedure that handles the  
13 control of materials; that this information would satisfy  
14 my concern, but I don't know whether that procedure exists  
15 or not. I don't have any objective evidence, no audit to  
16 confirm one way or the other what Mr. Tolson told me was  
17 in fact factual.

18 JUDGE BLOCH: So it would satisfy your concern  
19 if it were true, but in fact it didn't, because you wanted  
20 to follow up on it?

21 THE WITNESS: I would have personally preferred  
22 to have followed up on it, but in our position that option  
23 wasn't available to Cannon.

24 JUDGE BLOCH: You told the NRC that the meeting  
25 satisfied your concern?

1 THE WITNESS: Where, sir?

2 JUDGE BLOCH: You were the person testifying  
3 before the NRC. You said "the meeting satisfied my  
4 concern."

5 THE WITNESS: If you go through the rest of my  
6 testimony I think you'll find that I identify in there  
7 that -- again I'll have to look at it -- Mr., I believe  
8 Johnson or Hawkins, on page 64, just rehashes, essentially,  
9 what I had been saying throughout; that subsequently, in  
10 November, if you went back and the Utility people went  
11 down with you, you discussed all these concerns in detail,  
12 and if they are doing what they say they are doing, you  
13 don't have any more problems.

14 That's essentially what I have been saying throughout  
15 here. If the Utility was doing in fact what they told us  
16 on November 9 -- excuse me -- on November 10 and 11, that  
17 would have resolved my concerns. However, you know, I  
18 don't have any of the detailed information, I don't have  
19 an audit to confirm what Mr. Tolson told me was accurate.

20 JUDGE JORDAN: Now, then, you are saying,  
21 however, that if I were to read your concerns carefully in  
22 your August 8th trip report, read those concerns and then  
23 read these minutes, that I would be able to see that all  
24 those concerns would be answered, providing what was said  
25 in here was accurate; is that right?

1                   THE WITNESS: Yes, sir. I believe Mr. Tolson  
2 hits all my points. He may not identify -- there was no  
3 accept tag -- well, he does identify there's no accept  
4 tags but in that situation, yes. If you read through  
5 Mr. Tolson's narrative in there, he hits them all, I  
6 believe; yes.

7                   JUDGE JORDAN: I see. And that was the basis,  
8 then?

9                   THE WITNESS: Yes, sir. Again I can't emphasize  
10 that I couldn't confirm what he told me was accurate --  
11 okay?

12                  JUDGE JORDAN: Okay. But I want to know the  
13 basis. I have read this, of course, carefully. And I  
14 guess I'm a little surprised that you were able to say:  
15 "This did it."

16                  THE WITNESS: Or face value, sir.

17                  JUDGE JORDAN: I understand.

18                  THE WITNESS: That's accepting what he tells me  
19 as being accurate.

20                  JUDGE JORDAN: Okay. From November 9, from then  
21 on -- 10th, 11th, after the 11th, you had no more problems.  
22 Your concerns were resolved, presuming what they told you  
23 on the 10th and 11th was correct?

24                  THE WITNESS: In our capacity as consultants;  
25 yes, sir.

1           JUDGE BLOCH: Your concerns. What do you mean  
2 in your capacity -- your concerns as a person?

3           JUDGE JORDAN: Your concerns, assuming this was  
4 correct, in your capacity as a consultant, that means that  
5 you did accept what was said in here?

6           THE WITNESS: Yes.

7           JUDGE JORDAN: Now then, but you were the one  
8 that had to look through those minutes and say: "Yes,  
9 this did it."

10          THE WITNESS: Yes, sir.

11          JUDGE JORDAN: And is that the situation?

12          THE WITNESS: Yes, sir.

13          JUDGE JORDAN: Okay.

14          JUDGE GROSSMAN: But again you are saying that's  
15 in your role, or your new role as a consultant for the  
16 company?

17          MR. GALLO: Objection.

18          JUDGE GROSSMAN: Excuse me. I'll change it to  
19 the changed role as a consultant.

20          MR. GALLO: Objection. That's not his testimony.  
21 Dr. Jordan just very carefully established that he  
22 personally -- it was his person, his individual self that  
23 was making this review of the transcript and as a result  
24 it was his personal view, not some synthetic role as a  
25 consultant.



1                   JUDGE GROSSMAN: Mr. Gallo, I understand what  
2 your position may be, but I don't believe you are  
3 reflecting your client's position here and I think you  
4 ought to let him answer it.

5                   MR. GALLO: Dr. Grossman, if I may, it's getting  
6 late in the day. This witness has been on the stand for  
7 two days now. He's getting tired. It took him three  
8 times to understand the drift of Judge Jordan's question,  
9 as I see it.

10                  JUDGE GROSSMAN: I think he understood the drift  
11 of my question until you got up now and obfuscated the  
12 question again, so let me rephrase it.

13                  When you are saying you were satisfied personally, you  
14 still mean, do you not, that you were satisfied personally  
15 that, in your changed role as a limited consultant in  
16 which you could accept the affidavit, or the  
17 representations of the company, that you were then  
18 satisfied; isn't that correct?

19                  THE WITNESS: I guess I'm having a problem with  
20 this "changed role as consultant." All along we were  
21 consultants. There was no -- I don't know what else to  
22 tell you. We weren't performing physical work on the site.  
23 We were there as a consultant at the beginning.

24                  JUDGE GROSSMAN: So you are saying now that your  
25 consulting role never changed? It was the same at this

1 time as it had been originally when you proposed a  
2 detailed audit on the site?

3 THE WITNESS: I guess I'm having problems with  
4 the term "consultants." We have been consultants all  
5 along down there.

6 You know, if we were actually doing physical work and  
7 had a contract to put work in place, coating work, I  
8 wouldn't consider that a consultant-type contract.

9 JUDGE GROSSMAN: Okay. Well, let me ask you  
10 what you conceived your role to be originally, that is,  
11 your role as far as a QA was concerned with the company.  
12 Under your original consulting agreement, what were you  
13 supposed to be doing?

14 THE WITNESS: I believe I testified -- and if I  
15 could I would like to refresh my memory on that if that's  
16 all right.

17 JUDGE GROSSMAN: Yes. Fine.

18 THE WITNESS: I appreciate that, thank you.

19 My role, per the instructions I received from Jack  
20 Norris, was to go down there and evaluate certain aspects  
21 of the coating program with regard to the quality control,  
22 implementation, that type of thing.

23 JUDGE GROSSMAN: To see if the quality assurance  
24 program and the implementation of it was satisfactory?

25 THE WITNESS: Yes, sir.

1 JUDGE GROSSMAN: For the purpose of testifying  
2 in court?

3 THE WITNESS: No, sir.

4 JUDGE GROSSMAN: Just to see whether it complies  
5 with what is required as far as the NRC regulations go,  
6 and all the other regulations that relate to it?

7 THE WITNESS: Yes, sir.

8 JUDGE GROSSMAN: Would that role have been  
9 satisfied by your going to the site and having one of the  
10 company officials supply an affidavit saying that all the  
11 things that you believe are critical to a satisfactory QA  
12 program have been complied with?

13 THE WITNESS: Within the scope, again referring  
14 to my September 28th affidavit, the fact of the matter is  
15 Mr. Brandt, under oath, identified --

16 JUDGE GROSSMAN: No. No. No. No. Let's not  
17 get into September 28, 1984. I'm talking about your  
18 original role, in which you went to the site in order to  
19 see if they had a satisfactory QA program.

20 Now I'm asking you whether, in the role that you had at  
21 that point, you could have satisfied yourself by having a  
22 company official -- not even going to the site, just have  
23 a company official supply you with an affidavit saying  
24 that everything was okay, as far as the factual matters  
25 that you would have to satisfy yourself on?

1 THE WITNESS: Let me understand. Having never  
2 left my house, someone sends an affidavit over there  
3 saying everything is fine at Comanche Peak?

4 JUDGE GROSSMAN: With specifics, something  
5 Mr. Brandt gave you. I'm talking about your original role  
6 now, could you have satisfied yourself with that?

7 THE WITNESS: Well, it's obvious the answer is  
8 "no."

9 JUDGE GROSSMAN: Well, it's obvious to me. But  
10 later on you did satisfy yourself with that; didn't you?

11 THE WITNESS: Yes, sir.

12 JUDGE GROSSMAN: And that's because you had a  
13 changed role; isn't it?

14 THE WITNESS: Changed --

15 JUDGE GROSSMAN: Well, your role was only to  
16 supply conclusions and opinions for litigation based on  
17 your acceptance of certain facts that were in the  
18 affidavit; isn't that correct?

19 THE WITNESS: That's correct, keeping in mind  
20 that, you know, the guidelines or parameters within which  
21 I worked were preestablished.

22 JUDGE GROSSMAN: That's right. But those  
23 weren't the parameters that you had originally, were they?

24 THE WITNESS: No, sir.

25 JUDGE GROSSMAN: And under the parameters that

1 you had originally, you could not have accepted a Brandt-type  
2 affidavit; could you?

3 THE WITNESS: No, sir.

4 JUDGE GROSSMAN: Now you are not saying right  
5 now, are you, that without those new parameters, that at  
6 this point the Brandt affidavit is sufficient for you to  
7 have performed your role originally; are you?

8 THE WITNESS: No, sir.

9 MR. GALLO: May I approach the bench?

10 JUDGE BLOCH: Sure.

11 MR. GALLO: This witness is getting tired. He's  
12 been under a strain for two days.

13 I would either like him excused or -- to come back  
14 tomorrow morning -- or that we alter the procedure, which  
15 is that Mr. Roisman and Mr. Roisman only ask him questions,  
16 and he not be peppered by questions from four questioners.  
17 I consider that at this juncture to be prejudicial to his  
18 position and really a form of harassment.

19 I think we ought to change that procedure, either that  
20 or excuse him so that when he's fresh he can come back and  
21 deal with the rigors that that imposes.

22 JUDGE GROSSMAN: Mr. Gallo, on this last  
23 excursion here, I believe what confused him was your  
24 objection, the wordy objection just at the point at which  
25 he was able to give a "yes" answer or a "no" answer to a .

1 question. And that we had to go through this whole role  
2 here in order to get the same answer that he could have  
3 given originally. I don't think he was confused.

4 Now, he may well be tired but I think you attribute it  
5 to the wrong reason.

6 MR. GALLO: I don't agree with the  
7 characterization. I think the nature of your question was  
8 confusing and I think some of your follow-up questions  
9 were confusing, that's why you had to ask them more than  
10 twice, in a repetitive form.

11 JUDGE BLOCH: I think what you ought to do is  
12 ask the witness whether he thinks he's tired and can't  
13 continue to tell the truth and if that's true, we will  
14 consider excusing him. But we will not change the  
15 procedure on whether we ask questions or not.

16 MR. ROISMAN: It doesn't appear that the  
17 procedure that Mr. Gallo is talking about is markedly  
18 different than the one that the company has already  
19 subjected the witness to, and had him transcribed on the  
20 10th and 11th, nor the one that the NRC subjected him to  
21 as well. And I think Mr. Gallo is trying to make a  
22 strategic move here and I would resist it.

23 I think if he asks the witness the question, it's a  
24 signal for the witness to answer the question.

25 MR. GALLO: I wanted it out of earshot of the

1           MR. GALLO: I wanted it out of earshot of the  
2 witness.

3           MR. ROISMAN: I don't want him taken off the  
4 stand, but I have more to ask him and I would like to  
5 finish what I have to ask him.

6           MS. GARDE: At the other side of the proceeding  
7 you all had Ms. Darlene Steiner on the stand for numerous  
8 hours.

9           MR. REYNOLDS: But with no questioning from the  
10 board of Ms. Steiner, purely questioning by the applicants.

11          JUDGE BLOCH: It was not as man-hours, either.

12          MR. GALLO: We had Dr. Jordan making his point  
13 very emphatically, so at one point we had two board  
14 questions on the floor -- you regulated that; then we had  
15 Judge Grossman come in -- these are not just  
16 methodologically deliberate questions, but this is a  
17 staccato which is really having an effect on the witness.

18          JUDGE BLOCH: Okay. Let's ask the witness about  
19 his reaction.

20          MR. ROISMAN: Note my objection.

21          MR. GALLO: Does the board want to ask that  
22 question?

23          CHAIRMAN BLOCH: Sure.

24          (Discussion at the bench concludes.)

25          JUDGE BLOCH: Mr. Lipinsky, you have been

1     testifying for a substantial period of time today. Do you  
2     feel that you are sufficiently tired that it is impairing  
3     your ability to testify and tell the truth at this point?

4             THE WITNESS: I don't know about telling the  
5     truth. I may make some inadvertent mistakes. I don't  
6     know how much longer we are going to be rolling with me.

7             JUDGE BLOCH: Do you feel equipped at this point  
8     to continue with questioning of the type that you have had  
9     or is it important to you to assure that you tell the  
10    truth that you be recalled in the morning?

11            THE WITNESS: My preference would be to be  
12    recalled in the morning. I don't want to inconvenience  
13    you guys.

14            JUDGE BLOCH: It's not a question of  
15    inconvenience. It's whether it is necessary for you to  
16    tell the truth in response to questions.

17            THE WITNESS: I would prefer if I could be  
18    recalled in the morning for questions.

19            JUDGE BLOCH: We'll finish with Mr. Roisman at  
20    this point. How many more questions do you have at this  
21    point, Mr. Roisman?

22            MR. ROISMAN: A few more minutes.

23            JUDGE BLOCH: We'll have Mr. Roisman finish and  
24    then we'll recall the witness in the morning.

25            BY MR. ROISMAN:



1           Q           Mr. Lipinsky, when you indicated that your  
2 concerns had been allayed, assuming that the statements  
3 made during the meeting on the 10th and 11th at the plant  
4 site were correct, were you indicating that the concern  
5 that you had regarding what you identified on page 3 of  
6 your trip report near the bottom of the page: "Comanche  
7 Peak is doing inspections to the degree that they,  
8 Comanche Peak, are comfortable with or will tolerate";  
9 that that opinion was allayed on the basis that Mr. Tolson  
10 seemed to, in the meeting on the 10th and 11th, convey an  
11 attitude which, if that was the attitude that prevailed at  
12 the site, that it would not be the case that "Comanche  
13 Peak is doing inspections to the degree that they are  
14 comfortable with or will tolerate"; is that correct?

15          A           Yes. Mr. Tolson throughout the November 10th  
16 meeting makes positive statements to that effect; yes.

17          Q           And, similarly, I take it with regard to the  
18 portion of your trip report on page 4, under "summary,"  
19 paragraph 1: "Often the writer thought that B and R  
20 wanted to buy the 'right' answer."

21                 That, too, was allayed by statements Mr. Tolson made  
22 during the 10th and 11th, to indicate that that's not what  
23 he and the company were up to; is that correct?

24          A           Yes.

25          Q           And I take it that there isn't any document

1 that's attached to Mr. Brandt's testimony which allows you  
2 to independently verify whether that's true or not; is  
3 there?

4 A With regard to buying the right answer?

5 Q Buying the right answer or only doing  
6 inspections to the degree that they, Comanche Peak, are  
7 comfortable with or will tolerate?

8 A With regards to inspections, attachments to  
9 Mr. Brandt's affidavit are in fact inspection procedures.

10 Q But as I understood what you said on page 3 of  
11 your trip report, it's not whether they have procedures to  
12 do them, it's what degree they do them to. It's, again,  
13 this implementation question as opposed to whether on  
14 paper it looked all right?

15 A Again, the implementation I couldn't comment on.

16 Q I want to be very clear that the impressions  
17 that you had as a result of your trip that produced the  
18 August 8th trip report, here, relate to something that is  
19 exclusively a matter of implementation: That is, are they  
20 doing the inspections to the proper degree or to a lesser  
21 degree? And, are they only trying to buy the right answer  
22 rather than to hear the news, whether it's good news or  
23 bad news? Those are both observations which deal with  
24 implementation rather than documentation; aren't they?

25 A Not the second one, I believe, with the buying

1 the right answer. I don't feel that's an implementation.

2 Q What is that?

3 A I wouldn't really know how to characterize it.  
4 I feel that, as it had -- the people at the Utilities  
5 spent a portion of the time, they sent subsequent to the  
6 issuance of my trip report, or when they became aware of  
7 it initially when I was on-site -- it is very possible  
8 that the trip report would have been phrased, or some of  
9 the concerns I addressed wouldn't have been voiced at all.

10 Q Well, let's go to the first one then, just with  
11 regard to doing inspections to the degree that they "are  
12 comfortable with or will tolerate." That's an  
13 implementation question, isn't it?

14 A Yes.

15 Q And to the extent that that concern existed on  
16 August 8, 1983, you don't actually have any new  
17 information, other than the ground rule that you should  
18 accept as true what Mr. Brandt has said that would allow  
19 you to know that that's not true today; isn't that correct?

20 A Yes, it is.

21 Q Now, with regard to the "buy the right answer,"  
22 doesn't your experience here tell you that that company  
23 does in fact want to buy the right answer? Isn't that  
24 what they've done with you and O.B. Cannon, bought the  
25 right answer?

1 MR. GALLO: Objection.

2 JUDGE BLOCH: Overruled.

3 THE WITNESS: I have a real problem. I don't  
4 want to sound smart or anything, but I have a real problem  
5 implying that -- I mean already one of your motions  
6 implied I'm taking bribes, or implied it could be my  
7 salary adjustment could be construed as a bribe. And for  
8 that matter, during Mr. Norris' testimony the board even  
9 asked if I was on drugs. And I have a problem with some  
10 of these -- what appear to me to be, anyway, assaults or  
11 attacks on my personal integrity.

12 JUDGE BLOCH: The question is whether the  
13 company wanted to buy the right answer and whether, in  
14 thinking about your experience, that's true or false.

15 THE WITNESS: I'd say that's false.

16 BY MR. ROISMAN:

17 Q Are you -- have you either been promised some  
18 benefit or promised some detriment, based on how you  
19 perform in these hearings and whether you go ahead and  
20 testify in these hearings by anyone?

21 MR. GALLO: Objection. It's a compound question.

22 THE WITNESS: See --

23 MR. GALLO: How can he possibly answer that one  
24 yes or no?

25 JUDGE BLOCH: Divide it in two, counsel.

1 BY MR. ROISMAN:

2 Q Have you been promised any benefit by any person  
3 for testifying in these proceedings, or how you testify in  
4 these proceedings?

5 THE WITNESS: You see, I have a real problem  
6 here again, your Honor, to the effect that I'm getting  
7 what I perceive to be implications by Mr. Roisman that  
8 some type of benefit, or outcome, or some type of  
9 detriment -- regardless of how I testify -- I'm going to  
10 testify to the truth. Whether I work for Cannon or not, I  
11 mean I would testify to the truth.

12 JUDGE BLOCH: Please read back the question.  
13 Answer the question. It's not that hard a question. Read  
14 back the question.

15 MR. WATKINS: The witness is entitled to  
16 express his opinion about these questions.

17 JUDGE BLOCH: It was not a responsive answer.  
18 If the question is objectionable, the counsel can object.

19 MR. WATKINS: If the witness finds the questions  
20 objectionable, he can respond.

21 JUDGE BLOCH: He's done that but he hasn't  
22 answered the question. Mr. Reporter?

23 (The reporter read the record as requested.)

24 THE WITNESS: No. And rather than go through my  
25 previous explanation, I would just like it noted that I

1 haven't changed my position in that respect.

2 JUDGE BLOCH: Okay. Mr. Roisman, your other  
3 question?

4 BY MR. ROISMAN:

5 Q Has anybody indicated to you that you would  
6 suffer any detriment if you were not to testify in these  
7 proceedings? When I say "these proceedings," I'm talking  
8 about the September 28, 1984 affidavit and that phase of  
9 it. Not here where you are under subpoena.

10 A Again, you know, I express the same "no" with  
11 the same comment that I expressed prior.

12 MR. ROISMAN: I have no further questions for  
13 the witness at this time, with these two caveats.

14 We have asked Mr. Gallo, and he has agreed, that he  
15 would review the weekly activity summary sheets of  
16 Mr. Lipinsky to verify that inadvertently portions that  
17 were deleted in the copies that we received were -- should  
18 have been included. There are some places where it looks  
19 like mid-thought, almost, is deleted. He's offered to  
20 take a look at those and let us know if there has been an  
21 inadvertent over deletion.

22 Depending upon the results of that, we want to reserve  
23 as to the possibility of asking further questions. We  
24 understand --

25 JUDGE BLOCH: The Chairman's understanding was

1 that you were going to introduce exhibits that were  
2 written by this witness?

3 MR. ROISMAN: Yes. That was the second point.

4 What we would like to do is to offer all of the  
5 exhibits which are offered by Mr. Lipinsky into evidence  
6 and then allow the parties to use the portions thereof  
7 with respect to the -- with respect to proposed findings.

8 Alternatively, it seems to me that we will get  
9 ourselves into a very complex procedure, because we will  
10 be ending up with pieces of documents that incidentally  
11 are not at all clear.

12 You may remember that even now we do not know what it  
13 was that the witness had in his possession on the 26th of  
14 September, 1984, or what Mr. Watkins sent, because the  
15 copy that was produced in discovery had a signed page as  
16 number 18, dated the 28th; two days after the date that  
17 the letter was sent.

18 The witness this morning, in going over draft and final  
19 versions of the affidavit, had two that were identical;  
20 that is, the draft and final were the same. Ms. Garde had  
21 a draft that was different -- I'm sorry -- had a final  
22 that was different.

23 So that there is a lot of confusion there.

24 I think, consistent with Mr. Gallo's concern, we could  
25 spend an awful lot of time to get this straightened out.

1 JUDGE BLOCH: Maybe Mr. Gallo on redirect will  
2 attempt to straighten this out. Will you be able to do  
3 that?

4 MR. GALLO: I don't know if we can or not, your  
5 Honor. Right now I don't know what the explanation is for  
6 all these documents myself. We didn't generate them.

7 JUDGE BLOCH: You say all the ones that were  
8 written or authored by Mr. Lipinsky? That consists of his --

9 MR. ROISMAN: His notes and his memoranda, you  
10 know, the diary notes. He also has on some occasions  
11 conversation notes that are separate from the diary.

12 JUDGE BLOCH: His internal --

13 MR. ROISMAN: He has the O.B Cannon meeting  
14 notes.

15 MR. WATKINS: Does that include the January 4  
16 transcript?

17 MR. ROISMAN: I think the January 4 transcript  
18 is in.

19 MR. WATKINS: Does it include the corrections  
20 to the January 4 transcript?

21 MR. ROISMAN: We should have them all. If it's  
22 not, we would want it. We are not objecting to the  
23 inclusion of something else if we didn't know about it  
24 that is authored by Mr. Lipinsky. We certainly would want  
25 his corrections.



1                   JUDGE BLOCH: Before we continue this discussion,  
2 Mr. Lipinsky can be excused from the stand before we do  
3 this. Maybe he can.

4                   Well, I have one question for Mr. Lipinsky. The  
5 question is, on transcript 29, in the meeting with  
6 Mr. Hawkins. Lines 9 to 19. Maybe I missed it. I don't  
7 believe Mr. Roisman asked you about this passage. Tell me  
8 if there's anything you want to correct in this passage,  
9 page 29, lines 9 through 19. Is there anything you want  
10 to correct in that passage?

11                   THE WITNESS: Point of clarification: I did not  
12 have telephone conversations with the people on-site. I  
13 had telephone conversations with Mr. Reynolds. Yes, Mr.  
14 Reynolds. I don't believe I talked to Mr. Watkins at this  
15 time.

16                   JUDGE BLOCH: Did you also have an in-person  
17 meeting?

18                   THE WITNESS: Yes, sir. Oh, yes. They were --  
19 yes. But when he said "them" I took it to mean the people  
20 down at the -- on the Comanche Peak site: Mr. Merritt,  
21 Mr. Tolson -- and where I said "telephone conversations,"  
22 that's inaccurate. Although I did have telephone  
23 conversations with Mr. Reynolds.

24                   JUDGE GROSSMAN: Mr. Lipinsky, is there any  
25 place further in this transcript that's beyond page 29, in

1 which you disclosed your meetings with the attorneys and  
2 your changed role as a consultant for the company, as you  
3 had found a disclosure with regard to your site visit on  
4 August 8th and 9th? Do you follow my question? Can you  
5 look through this deposition and see whether you had  
6 disclosed your meetings with the attorneys and your  
7 changed role, that is the role with new parameters, to the  
8 NRC, the way you did look through your deposition and find  
9 that you had subsequently disclosed your August 8th and  
10 9th site visit which you didn't include in this passage on  
11 page 29? Do you want to do that overnight?

12 THE WITNESS: Yes. I don't know off the top of  
13 my head. Can I ask a question, though? I don't want to --

14 JUDGE BLOCH: Sure.

15 THE WITNESS: The fact I didn't include -- I did  
16 mention this 8 and 9 visit -- excuse me -- 9th and 10th  
17 visit. It's just not on the site --

18 JUDGE GROSSMAN: In the -- on page 29 when they  
19 asked you about everything that had changed your position,  
20 and with regard to your concerns. You subsequently  
21 disclose it on page 50 and 51, I believe, when you were  
22 referring to something else. But when they categorically  
23 asked you about this and you categorically denied anything,  
24 you didn't disclose it.

25 Do you follow my statement? And question? You

1 subsequently disclosed it.

2 THE WITNESS: I follow your statement. I have a  
3 problem -- you are implying, at least I'm getting the  
4 drift that you think I was trying to cover up or hide  
5 something from them.

6 JUDGE GROSSMAN: Well, they asked you a direct  
7 question and you gave a direct answer which apparently was  
8 not correct.

9 MR. WATKINS: Your Honor, you are arguing  
10 conclusions to be drawn from the record. That of course  
11 is the board's prerogative, but it's the parties'  
12 prerogative to propose the findings in the first case.

13 MR. GALLO: I have another objection. At risk  
14 of incurring your ire, it seems to be pursuing these  
15 questions with the witness just before he's being excused  
16 because he's tired is not productive. I would request you  
17 hold the questions until tomorrow.

18 JUDGE GROSSMAN: That's fine with me, Mr. Gallo.  
19 Could you have him look at the transcript overnight,  
20 though, of that NRC deposition, since he does have some  
21 hint as to what the first question will be in the morning  
22 from me?

23 MR. GALLO: Do you have the question?

24 THE WITNESS: You want me to determine whether  
25 or not I have expressed to the NRC in fact that I had a

1 meeting with Mr. Reynolds? Is that correct?

2 JUDGE GROSSMAN: Yes. And your changed role as  
3 a consultant for the company. If you understand the  
4 changed role, it's the new role with the parameters that  
5 were expressed to you by the attorneys for the company.

6 Do you have any trouble with that?

7 THE WITNESS: No. I don't believe so.

8 JUDGE BLOCH: Mr. Roisman's suggestion on  
9 documents. Are there responses from other parties?

10 MR. WATKINS: Applicants would reserve, because  
11 we haven't reviewed them and of course we don't know how  
12 all of the documents are going to be used, possible  
13 hearsay objections.

14 MR. GALLO: Is his offer -- I certainly have an  
15 objection. If I understand the offer, it's all the diary  
16 notes and weekly summary notes and other documents that he  
17 has authored. And the purpose is to offer all those  
18 documents, whatever they are, into evidence for the truth  
19 or falsity of what they say. Is that my understanding of  
20 the offer?

21 MR. ROISMAN: The offer is certainly contingent  
22 upon Mr. Watkins' point which this board has already ruled  
23 on, which is that hearsay will not be accepted. Period.

24 JUDGE BLOCH: Hearsay objections would be  
25 reserved.

1           MR. GALLO: I would object at the outset. Let's  
2 take, for example -- first of all, Mr. Roisman ought to  
3 have the burden and ought to assume the burden of  
4 identifying the documents that he wants to put into  
5 evidence so we don't all have to hunt and peck to figure  
6 out what's in or out. That's number 1. So his offer at  
7 this time is inappropriate for that reason.

8           Secondly, and I'll point out to the board two examples  
9 in the diary notes of what I really think is a definite  
10 problem as to the probative value of these diary notes and  
11 other memoranda.

12          For example, Mr. Roisman asked him yesterday some  
13 questions about a diary entry dated December 8, 1983. In  
14 that diary entry there is a reference or words to this  
15 effect, that Mr. Reynolds advised him that he would get  
16 into trouble.

17          Questions were asked about what that meant. And it  
18 turned out that the trouble that was being referred to by  
19 Mr. Lipinsky, when he wrote that note, was as a result of  
20 being misquoted in the media, that he would view that as  
21 some sort of slur on his professional integrity. Not that  
22 the words "get in trouble" meant get in trouble with his  
23 employer; not that the words meant get in trouble with TU;  
24 that Mr. Reynolds did not have those two thoughts in mind.

25          Now, let's assume that that particular passage had not

1 been the subject of cross-examination and that passage  
2 gets into evidence through Mr. Roisman's offer. It is  
3 sitting there, unexplained for people to draft findings of  
4 fact on with every version that they may choose, and  
5 whatever meaning they may choose to interpret with respect  
6 to those words.

7 The passage in that basis has no probative value  
8 because we don't know what it means.

9 Now, there are passages throughout all of the diary  
10 notes which have not been the subject of cross-examination  
11 and which are subject to those same kinds of shortcomings.

12 I would submit that a broadside offer into evidence of  
13 that information has no probative value and as a matter of  
14 fact is detrimental to a clear, concise, and accurate -- I  
15 emphasize accurate -- record.

16 I would have no objection putting into evidence those  
17 passages of the diary and those passages of the memoranda  
18 that have been the subject of board questions and have  
19 been the subject of cross-examination. It seems to me  
20 that's not inappropriate.

21 But to shift the burden from Mr. Roisman and the  
22 intervenors, to simply put in wholesale what amounts to  
23 about 30 or 40 pages of documents, is to shift the burden  
24 then to Mr. Lipinsky to try to explain each and every  
25 passage in the diary, lest it be misinterpreted by either

1 the board or any other party with respect to the ultimate  
2 outcome of this case, is prejudicial and should not be  
3 allowed.

4 JUDGE GROSSMAN: Mr. Gallo, I have trouble  
5 understanding who you are representing in this case.  
6 Mr. Lipinsky, I should think, is not concerned about the  
7 outcome of the case as he suggested to Mr. Roisman, so I  
8 don't understand what your concerns are.

9 MR. WATKINS: If I could interrupt --

10 JUDGE GROSSMAN: Secondly, if there's something  
11 that's misleading in these documents which you and the  
12 applicants have had in your possession much longer than  
13 Mr. Roisman, I would hope that you came here prepared to  
14 explain what the true facts are. So I don't see that you  
15 have such a great burden.

16 I don't see that we have to limit ourselves to just  
17 what has been testified here today or yesterday, as far as  
18 our factual basis for making our findings here.

19 If you have something that you feel should be further  
20 explained, you are free to do it.

21 MR. GALLO: May I excuse Mr. Lipinsky?

22 JUDGE BLOCH: Yes. Mr. Lipinsky, we'd  
23 appreciate seeing you tomorrow morning at 8:30. Have a  
24 nice evening.

25 (Witness excused.)



1 MR. ROISMAN: Excuse me, Mr. Chairman --

2 JUDGE BLCCH: Yes. And you should not talk with  
3 the other witnesses about the case, obviously.

4 THE WITNESS: I assumed that.

5 MR. GALLO: As I understand Judge Grossman's  
6 points, your Honor, the first one he was wondering whose  
7 interests I'm protecting. Let me assure you it is  
8 Mr. Lipinsky's interest. He is vitally interested in an  
9 accurate and complete record for purposes of assuring that  
10 his personal integrity and professional integrity are  
11 preserved throughout this proceeding.

12 It is not preserved, I would submit, by the wholesale  
13 submission of portions of memoranda and diary notes that  
14 may be introduced in evidence and may be misrepresented,  
15 inadvertently, mind you, by the parties in findings.

16 Secondly, as I understand the rules of evidence, the  
17 fact that I have had the diary notes, for a long time and  
18 Mr. Roisman has had them, the diary notes for a shorter  
19 time, is irrelevant. He's the one that has decided to use  
20 them for this purpose. And to just simply dump into the  
21 record on a wholesale basis without any identification or  
22 any other notion of what use is unprecedented in NRC  
23 proceedings.

24 JUDGE BLOCH: Mr. Watkins, for nonredundant  
25 argument?



1           MR. WATKINS: With respect to -- with all  
2 respect to Mr. Gallo, context is important. And I think  
3 to single out some diary notes and not others poses as  
4 many dangers as admitting all of them. I think the board  
5 is aware of the items about which the witness is  
6 cross-examined. If parties try to construct findings on  
7 the basis of items about which he has not been  
8 cross-examined, I think the board can discount to that  
9 extent.

10           JUDGE BLOCH: Mr. Treby?

11           MR. TREBY: Well, the Staff has a dilemma here.  
12 On the one hand we are not very happy with a dump into  
13 this record of far more than the 30 pages that Mr. Gallo  
14 has mentioned.

15           There are, if I understand the request, if there's any  
16 document that Mr. Lipinsky authored -- I have not counted  
17 up the number of pages but I have a huge stack of paper in  
18 front of me and I'm sure it's far more than 30 pages.

19           JUDGE BLOCH: It will not be bound in.

20           MR. TREBY: I think the problem with that is  
21 that there is all this paper. There's no indication on  
22 the report that a particular matter is important or not  
23 important, and all of a sudden it appears as a proposed  
24 finding and the other parties are not on notice that that  
25 was an important matter and there may not be any response

1 to it unless we start getting into multi-rounds of  
2 pleading on findings. I see that as a concern, maybe one  
3 that can be remedied by multi-rounds of filings, but a  
4 potential concern.

5 On the other hand, I share the concern that Mr. Watkins  
6 set out of, you know, just picking and choosing things,  
7 perhaps out of context, you know, just to admit into  
8 evidence those matters that happen to have been the  
9 subject of cross-examination.

10 Obviously there's a selection process that goes there,  
11 and there may have been other matters that also should  
12 have been put in.

13 Those are the dilemmas that I see and having to make a  
14 choice, I guess my unhappy choice is I would rather see  
15 them all in rather than picked out of context. But I  
16 would hope that we would be able to have this remedy of  
17 responsive filings, if something is raised out of the blue  
18 when we get to the proposed findings stage.

19 JUDGE BLOCH: Mr. Roisman, if I understand the  
20 position of the parties, as opposed to Mr. Gallo, they  
21 have no objection to the admission of all the documents  
22 but they are concerned about notice. I suspect that's one  
23 of Mr. Gallo's principle problems, too.

24 Is there a way to solve the notice problems so that  
25 people will know the portions of the documents that you

1 are going to rely on?

2 MR. ROISMAN: Let me address that by responding,  
3 if I may, primarily to Mr. Gallo.

4 Mr. Gallo is a great user of hyperbole and I'm  
5 disturbed about it.

6 JUDGE BLOCH: Let's just talk about Mr. Gallo,  
7 not his arguments.

8 MR. ROISMAN: When Mr. Gallo talked about what  
9 we are doing, this is neither wholesale nor dumping. The  
10 comparable experience that I surmise has been neglected  
11 here is the introduction into evidence at every licensing  
12 proceeding of the PSAR, the FSAR, the SER, the ER, any one  
13 of which swamps by comparison the documents which we are  
14 now offering, and nobody demands that every single line on  
15 there have its relevance established in some way or  
16 another before it goes in; nor are the applicants or Staff  
17 who offered these documents expected in advance to  
18 identify which portions they are going to principally rely  
19 upon. And having many times been victimized by the use of  
20 a piece of an FSAR, a PSAR, or any of the other documents  
21 in response to a proposed finding that I made, I don't  
22 think it's an appropriate request and I don't think that  
23 we should be required to identify which portions of these  
24 documents -- these documents which were subject to a  
25 rather carefully drawn subpoena by this board and by no

1 means represent a fishing expedition, are almost by the  
2 very nature of the subpoena, presumptively relevant in  
3 their entirety.

4 Number two, the documents themselves are available for  
5 all the parties to read. They can see as much as we can  
6 see.

7 If we had not questioned Mr. Lipinsky about the  
8 questions that we asked him involving the word "trouble,"  
9 it should have been in the mind of any of the lawyers, all  
10 of them are quite competent here, to see that an ambiguity  
11 existed and to make sure that when they had their chances  
12 with Mr. Lipinsky they clarified it, much as I would be  
13 expected to clarify the ambiguities that riddled the  
14 documents that I indicated before are wholesale introduced  
15 into evidence in proceedings in front of this agency.

16 We shouldn't have to do what is in effect a prefilings  
17 of our proposed findings based on these documents.

18 It is enough that they are here; that they are authored  
19 by this witness; and that they are subject to subpoena  
20 issued by this board. And they should be able to be in  
21 evidence on that basis alone. I certainly am willing to  
22 provide an index of what we think were all the documents  
23 authored by Mr. Lipinsky, to make sure that we don't have  
24 some confusion in what we got and are adding a document or  
25 excluding a document that other people thought was the

1 original discovery.

2 MR. WATKINS: Applicants think that's an  
3 excellent suggestion.

4 JUDGE BLOCH: To have the index, you mean?

5 MR. WATKINS: Yes.

6 MR. ROISMAN: Beyond that would be an unfair  
7 imposition on that --

8 JUDGE BLOCH: There's one new argument and the  
9 one new argument is the use of the documents by the NRC  
10 that are always in evidence. I'll allow an answer to that.

11 MR. GALLO: There are two new points: The  
12 argument about context and Mr. Treby's points.

13 On context, we know what passages have been prepared  
14 for us and you can take care of contents by the  
15 examination that these other people and myself are about  
16 to conduct on redirect. That's not a problem.

17 Finely, on the PSAR, FSAR, SER, ER, I find the  
18 reference to be amusing. He says he's victimized in the  
19 past because he's had to accept wholesale admission of  
20 these documents in evidence, now he's getting his revenge.  
21 He's going to do the same, as he sees it, to this  
22 proceeding. I submit that's not a legal basis.

23 JUDGE BLOCH: He's asking for symmetry, which is  
24 a legal argument.

25 MR. GALLO: He's asking for other than that.

1           Secondly the PSAR, FSAR, SER, ER were written for a  
2 specific purpose; that is to support application for a  
3 license before the NRC. These diary notes are written,  
4 not for any specific purpose in mind, but merely to record,  
5 as Mr. Lipinsky has said, the events as they happened  
6 randomly without any order that they might occur in.

7           As has been pointed out a number of times by Judge  
8 Grossman, his choice of words has been inaccurate with  
9 respect to characterizing the events. We have a far  
10 different animal here with respect to these diary notes.  
11 My objection really goes to their probative value in terms  
12 of having no explanation to what some of necessary  
13 uncrossed-upon passages in the diary or other places mean.

14           JUDGE BLOCH: The truth is, if Mr. Roisman were  
15 to offer any page of that diary and say he wants to have  
16 it in, the probative value would not be an objection;  
17 would it be?

18           MR. GALLO: Well, it would be except it would be  
19 more manageable to deal with because with one page one  
20 could look to see what he had and he could work with it.  
21 Here we have no identification of documents. We are going  
22 to get an index after the offer has been accepted and  
23 Mr. Lipinsky has been dismissed as a witness. I'm not  
24 concerned about not knowing what to put down in findings.  
25 I'm concerned that after Mr. Lipinsky is dismissed as a

1 witness, and downstream when the findings are filed, that  
2 I would have lost my opportunity to seek clarification  
3 with respect to an item that I suddenly find to be  
4 important in Mr. Roisman's view, and I've lost the  
5 opportunity to seek clarification, and I find all those  
6 reasons to deny the motion.

7 JUDGE BLOCH: Mr. Watkins, brief nonredundant  
8 rejoinder, only on one point, the PSAR, FSAR, SER and ER?  
9 Would you like a seven-minute decisional break?

10 MR. TREBY: Wait, may the Staff make one quick  
11 comment? I have been seeking to find the section -- as  
12 happens when I want to find it, it has jumped out of my  
13 mind and I can't seem to find it using all my indexes.  
14 But there are regulations that those documents must be  
15 offered. It isn't a dumping by the Staff or other parties,  
16 it is a Commission requirement.

17 JUDGE BLOCH: A dumping by requirement.

18 MR. TREBY: Having these various -- having these  
19 documents received in this is not a requirement of the  
20 rules and regulations but it is a request by one of the  
21 parties. I might also say that I would very much support,  
22 if it should be allowed to have these documents, the  
23 preparation of that index so that we are sure we are aware  
24 of all the documents that we are talking about here.

25 And one last comment which is, there was a comment made



1 earlier that someone thought that the Hawkins interview of  
2 Mr. Lipinsky was in the record. That's not my  
3 recollection. I believe that that document was provided  
4 to the board and perhaps the parties during a prehearing  
5 conference at the board's request, but it was never  
6 offered nor received as an exhibit in this proceeding.

7 MR. ROISMAN: Mr. Chairman, I would like to make  
8 just one point?

9 JUDGE BLOCH: Is there any objection to the  
10 receipt of the Hawkins-conducted deposition of  
11 Mr. Lipinsky?

12 MR. WATKINS: None from applicants.

13 MR. TREBY: None from Staff.

14 MR. GALLO: No objection.

15 JUDGE BLOCH: So that can be received in  
16 whatever else we agree to admit after our recess.

17 MR. WATKINS: We might have a problem with the  
18 copy because we have one apparently with handwritten  
19 comments of Mr. Lipinsky.

20 JUDGE BLOCH: I don't have a clean copy either.

21 MR. TREBY: You should have a clean copy from  
22 what the Staff provided, but we'll provide you with  
23 another set.

24 MR. ROISMAN: The thrust of Mr. Gallo's  
25 suggestion, eventually should the board sustain it, all



1 that will happen is I will very slowly begin to introduce  
2 into evidence, one by one, every single one of these  
3 documents after having the witness verify that it is his.  
4 I don't believe that there is an objection that Mr. Gallo  
5 has raised that will prevent that from happening. And  
6 then he will have his chance to cross-examine as to any  
7 one of them he wishes. So --

8 MR. WATKINS: Mr. Roisman's examination of the  
9 witness should be finished and the board shouldn't be  
10 threatened into accepting exhibits.

11 MR. ROISMAN: I specifically said I reserve with  
12 the exception of marking documents, so Mr. Watkins  
13 wouldn't be able to make that argument.

14 MR. WATKINS: You are right, Mr. Roisman.

15 JUDGE BLOCH: We will reconvene at 4:30 on the  
16 now-almost-correct clock on the wall.

17 (Recess.)

18 JUDGE BLOCH: The hearing will come to order.

19 The board is faced, as much as anything else, with  
20 issue of judicial economy. And the question is: How can  
21 we obtain a good hearing record on which findings of fact  
22 can be made in an efficient manner? And there is no easy  
23 way to do that to suit the parties and the need of the  
24 board. There is going to be some inconvenience somewhere,  
25 and unfortunately, the best way to do that is going to be

1 to avoid spending extensive hearing time going through  
2 documents one at a time. So we accept Mr. Roisman's offer  
3 of all the documents that were written by Mr. Lipinsky.  
4 He will index them and of course there will be findings of  
5 fact, so there will be an opportunity to be on notice as  
6 to what the positions of the parties are.

7 These documents, because they were not prepared as an  
8 application, are inherently more trustworthy than ones  
9 that were prepared for a specific purpose. They may be  
10 harder to understand in places because they weren't  
11 prepared for a specific purpose, but that's just the  
12 nature of the world. These are the facts that we have to  
13 work with and they are the best evidence of what Mr.  
14 Lipinsky's state of mind was, his knowledge was, at  
15 particular points in time. So we accept the entire offer.

16 And what will the time schedule be for production for  
17 the record, Mr. Roisman?

18 MR. ROISMAN: My law clerk anticipated that  
19 question before I did.

20 Assuming that the filing that we get on Friday from --  
21 of Mr. Brandt's, if it is going to be Mr. Brandt's  
22 supplemental testimony, if he has any supplemental  
23 testimony on the liner plates matter -- is of reasonable  
24 proportion and not going to consume a great amount of work,  
25 we would hope that before the adjournment of the hearings

1 next week that we would have a typed copy of an index of  
2 all the documents. It's just a matter of getting them  
3 handwritten probably over the weekend and getting them  
4 typed in our office on Monday or Tuesday of next week.

5 JUDGE BLOCH: Okay. And the documents  
6 themselves will be available when, and three copies?

7 MR. ROISMAN: The documents themselves will be  
8 available -- the only slowdown on that will be the extent  
9 to which any additional markings that are on the documents  
10 have to be removed by us before we run them through the  
11 Xeroxing process. That will slow us down tremendously.  
12 And I haven't even looked.

13 I took some care but it has not been an absolute  
14 prohibition against having markings on the sides of  
15 documents.

16 JUDGE BLOCH: We could handle that by letting  
17 the applicants mark them also -- no, I guess we should try  
18 to remove the markings. It might be easier to add  
19 markings than take them off.

20 Do you object? I guess you want him to remove the  
21 markings that he's added to the documents?

22 MR. WATKINS: Maybe he can provide them to me  
23 for review first.

24 MR. ROISMAN: Incidentally, none of it is that  
25 kind of marking, Mr. Watkins. What they are is just

1 points where I put a margin note or an X or a cross, to  
2 tell me to look at that particular portion.

3 JUDGE BLOCH: It's just like highlighting a  
4 passage. It's not some written statement by us at all,  
5 but it doesn't represent Mr. Lipinsky's highlighting.

6 JUDGE BLOCH: Should we have him remove it or  
7 can we accept it with the marks?

8 MR. WATKINS: I'd prefer clean copies.

9 MR. ROISMAN: How do you want us to handle this?  
10 Since all the parties have a copy of the document beyond  
11 the set of three that is for the record, do we need to  
12 provide all the parties beyond the index with another copy  
13 of the same documents?

14 JUDGE BLOCH: I think the three exhibit copies  
15 should be sufficient. Is there any objection to that?

16 MR. GALLO: I'm sorry?

17 JUDGE BLOCH: I think the three exhibit copies  
18 should be sufficient and then you'll be able to examine  
19 those and see whether there's something missing or  
20 improper.

21 MR. GALLO: I assume, your Honor, that once we  
22 get the index we can accumulate the documents one way or  
23 another. I don't see any reason for him to provide them.

24 MR. ROISMAN: Certainly if some party finds on  
25 the document a document they can't find, or our index

1 reference is inappropriate, a simple phone call to us as  
2 opposed to filing a motion will easily allow us to provide  
3 them with a copy of it. It will be no problem.

4 With the caveat -- and I have no problem with doing  
5 what Mr. Watkins had asked in removing the highlighting,  
6 but I don't think that, then, the copies for the record  
7 will be available, necessarily next week. The index  
8 definitely.

9 JUDGE BLOCH: So when would they be available?

10 MR. ROISMAN: Ms. Garde thinks we can do it by  
11 the end of next week. Certainly by the end of the  
12 following week.

13 Shall we call the next witness?

14 MR. GALLO: I have, Judge Bloch, I guess you'll  
15 call it a motion connected with the board's ruling. I  
16 think timing-wise it would be appropriate to consider it  
17 now if you'll hear me?

18 I would reserve the right to recall Mr. Lipinsky until  
19 after I have had the opportunity to see Mr. Roisman's  
20 index and summary -- not summary, but index, to see just  
21 what the documents are in specific terms and recall him in  
22 order, if I deem it necessary, in order to ask further  
23 questions with respect to those documents.

24 JUDGE BLOCH: So during the time after this,  
25 until he may be recalled, he will not talk to the other

1 witnesses about their testimony.

2 MR. GALLO: That's fine. Unless I relieve him  
3 of the recall burden, of course.

4 JUDGE BLOCH: Well, there's a possibility of  
5 recall depending on what the other witnesses say anyway.  
6 So I think he should not be relieved of the recall burden.

7 MR. GALLO: I understand, your Honor.

8 JUDGE BLOCH: Next witness, Mr. Gallo?

9 Whereupon,

10 ROBERT B. ROTH  
11 having been previously duly sworn, was examined and  
12 testified further as follows:

13 MR. GALLO: I believe the witness has been sworn?

14 THE WITNESS: Yes, yesterday morning.

15 DIRECT EXAMINATION

16 BY MR. GALLO:

17 Q Mr. Roth, will you state your full name and  
18 business address for the record, please?

19 A Yes, full name is Robert B. Roth. And the  
20 address, my business is 5600 Woodland Avenue in  
21 Philadelphia, Pennsylvania.

22 Q Did you have occasion to prepare testimony for  
23 this proceeding?

24 A Yes, I did.

25 Q Do you have it in front of you?

1           A           Yes, I do.

2           Q           I'm looking at a document consisting of 12 pages  
3 entitled "Testimony of Robert B. Roth," and ask if this is  
4 the testimony you prepared for this proceeding?

5           A           Yes, it is.

6           Q           Are there any additions or corrections?

7           A           None that I can think of.

8           Q           Is your testimony accurate and complete to the  
9 best of your knowledge and belief?

10          A           Yes, it is.

11                   MR. GALLO: Your Honor, at this time I would  
12 like to move into evidence the testimony of Robert B. Roth  
13 and have it bound into the transcript as if read.

14                   JUDGE BLOCH: There being no objection, it may  
15 be bound into the transcript at this point and admitted  
16 into evidence.

17                   (The document follows:)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-445-OL2
TEXAS UTILITIES ELECTRIC	)	50-446-OL2
COMPANY, <u>et al.</u>	)	
	)	(Application for
(Comanche Peak Steam Electric	)	Operating Licenses)
Station, Units 1 and 2)	)	

TESTIMONY OF ROBERT B. ROTH

- Q.1. Please state your name and business address for the record.
- A.1. Robert B. Roth, Oliver B. Cannon & Son, Inc.,  
5600 Woodland Avenue, Philadelphia, PA 19143.
- Q.2. What is your position with Oliver B. Cannon & Son, Inc.?
- A.2. President and Chief Executive Officer.
- Q.3. Please state your educational background and work experience.
- A.3. Graduated from Yale University in 1947, with a Bachelor of Civil Engineering Degree. I was a Lecturer at Drexel University - Corrosion Engineering



1963-66. I was commissioned in 1947 as a Lt. U.S. Marine Corps Reserve. I joined Oliver B. Cannon & Son, Inc. 1948 as an Estimating Engineer. I was called to active duty by the U.S. Marine Corps Reserve in 1950, and I served 18 months service in Korea as a Company Commander. I was wounded in action and returned to the United States in 1952 and released from active duty. I returned to Oliver B. Cannon; and I was promoted to the positions of Chief Estimator in 1960, Executive Vice President in 1965, and President in 1973, and added Chief Executive Officer in 1979.

Q.4. When did you first learn of the proposed consulting arrangement between Texas Utilities and Cannon?

A.4. John Norris, our Divisional Vice President, headquartered in Houston, Texas called me in early July 1983, relative to a consulting contract with Texas Utilities on their Comanche Peak Nuclear Plant at Glen Rose, Texas. Cannon's principal business is in coatings application and consulting contracts are unusual; hence John ran by me his offer of services to Texas Utilities, the fee and cost structure, etc., and I approved John Norris going forward.

Q.5. What was your understanding of the purpose of the consulting arrangement?

A.5. Cannon was to provide our overview to the ongoing Coatings Program at Comanche Peak, and to assess the field production work; the interface of Inspection/Production; review the current Project Coating Specifications and offer suggestions/recommendations as to improving the coatings effort on site.

Q.6. What was the extent of your participation in the work under the consulting arrangement with Texas Utilities?

A.6. Initially my involvement was to authorize our Quality Assurance/Quality Control and Nuclear Services Managers to participate and cooperate with Norris in his consulting effort. I was invited by Texas Utilities, to participate along with Lipinsky and Norris, in a Coatings mini-seminar at the project site on August 9, 1983. We attended, along with representative from Texas Utilities, Gibbs & Hill, EBASCO, and Brown & Root. The objectives of this

session was to review the ongoing coatings program, identify problem areas, look at the retrofit effort thereto, and to extract from those assembled, ideas, criticisms, etc. for the improvement of the coatings work. As a result, tasks were assigned to the various participants. Joe Lipinsky was to draft a work procedure that would detail the application of an epoxy phenolic type of nuclear coating as manufactured by the Carboline Company, over an existing coating system. I was asked to contact the Carboline Company regarding their zinc type coatings. Other tasks or assignments were given to other meeting participants. Joseph Lipinsky and I completed our respective assignments and the information and procedures were forwarded to our client or his designee.

Q.7. When did you first become aware of the August 8, 1983 trip report prepared by Mr. Lipinsky?

A.7. I became aware of Joe's report, in a final and routine review of Inter-Office Memorandum drafts, that have had prior review at the Vice Presidential level, and relate to ongoing contracts where Quality requirements

are part of contractual terms. (Essentially all Nuclear Plant work.) This final routine review would probably have been the date of issuance, August 8th, 1983.

Q.8. What action, if any, did you take at that time with respect to the Lipinsky trip report?

A.8. After reviewing the report draft, it was released for final typing. I took no specific action, as Joe Lipinsky and I were departing the evening of August 8, 1983, for the site coatings conference scheduled for August 9, 1983.

Q.9. What happened next?

A.9. On or about October 10, 1983, John Norris called me, in that John Merritt of Texas Utilities had called him relative to the Lipinsky's trip report having been made "public". John had referred Merritt to me, since the memo was addressed to me. Merritt did call me on or about October 12, 1983, to confirm the existence of such a report and requested that a copy be sent to him.

Q.10. Did you send Merritt a copy of the Lipinsky trip report?

A.10. Yes.

Q.11. Was it the same as the version signed by Mr. Lipinsky in August 1983?

A.11. No.

Q.12. Why not?

A.12. Item 2. under the Summary on page 4 of the version signed by Joe concerned me, since it addressed contractual/commercial matters, which were not within Joe's areas of responsibility. Joe's version read:

If Oliver B. Cannon tries to obtain a contract on this site, the writer would suggest that it be a rework contract because it will be impossible (by all indications) to salvage what work is currently in place.

To a third party, the introductory phrase could be interpreted to appear as though Cannon were seeking a field coating contract from Texas Utilities and that Joe's criticisms were catering to that end. This was not the truth of the matter. I changed the item to read:

Should OBC be invited to perform any site work, the writer would suggest it be a rework contract, as opposed to a continuing of the present operations, since it appears improbable that the work currently in place is salvageable to any meaningful extent.

Q.13. I notice you also changed the language concerning "impossibility." Why did you change this word to "improbable"?

A.13. The word "impossible" conveys the notion of finality beyond which there is no sense even trying. I did not believe that Joe had sufficient basis to make such a definitive judgment. Indeed, my general experience would indicate otherwise and I thought it appropriate to provide a more balanced characterization of rework feasibility.

Q.14. Why didn't you effect these changes when you first saw the trip report in August 1983?

- A.14. The report was an in-house communication only and there was no particular need or desire to change anything about it.
- Q.15. Did Mr. Lipinsky sign the trip report as revised by you?
- A.15. No, he declined to do so.
- A.16. Did you try to persuade him to sign the revised trip report?
- A.16. Yes, since his original memo draft, which was now public, was signed by him and the report represented his work, I thought it appropriate to sign the revised version, since no change in substance or the context of his QA/QC comments had changed. Joe felt if he signed, he could be committing perjury, and I advised if he felt that way don't sign it.
- Q.17. Did you investigate the matter in which the Lipinsky trip report leaked to the NRC and the public?



A.17. Yes. I called Joe to my office to ask how the memo got out of his possession. Joe said he had no idea and that it could have been pilfered, or leaked in some manner. I asked Ralph Trallo what he knew about the August 8, 1983 memo getting out and Ralph replied "only what Joe has reported to me".

Cannon had never had a 'security' problem before and I issued an in-house policy memo, to all hands, as to the protection of corporate documents, locking luggage/briefcases at all times while out of the office, traveling, etc.

Q.16. Did you have any meetings or discussions with Texas Utilities after it became known that the Lipinsky trip report had become public?

A.18. Yes, as per answer in Question 10, I had spoken to and sent a copy of the Lipinsky trip report to John Merritt.

In late October or early November I was contacted by Merritt, who asked if I would attend a meeting in Dallas, along with John Norris, to meet with their management and explore the Lipinsky memo and the concerns expressed therein. I agreed to do so and



the meeting was held on the afternoon of November 3, 1983, in our client's offices. The discussion was led by Joe George, Vice President for Texas Utilities, and attended by Bill Clements, Dave Chapman, Tony Vega and John Merritt, all from Texas Utilities, together with myself and John Norris. Obviously, the memo had given them problems and raised concerns. They felt like their effort on coatings, Quality Assurance/Quality Control had followed industry practice and NRC regulations -- and finally, how could the matters that the Lipinsky memo alleged be best reviewed and objectively confirmed or negated. I recommended that Cannon set up a Task Force, chaired by our Ralph Trallo, who was our senior nuclear coatings officer. His committee would consist of John Norris, Joe Lipinsky and our lead corporate auditor Keith Michels. They would re-visit the project site and look into each issue of concern, as expressed by Joe Lipinsky along with other matters, and report back to me as to their accomplishments.

Q.19. Why did you appoint Mr. Trallo as Chairman of the Task Force?

A.19. Ralph had never seen the Comanche Peak site and I thought a fresh and objective look by a recognized expert in nuclear grade coatings would be useful. Moreover, since Ralph and Joe have an excellent working relationship, I thought this relationship would hold them in good stead on what proved to be a difficult assignment.

Q.20. Was your recommendation accepted by Texas Utilities?

A.20. Yes. Hence on my return to Philadelphia on November 4, 1983, I issued a directive, setting up the Cannon Task Force.

Q.21. Did Mr. Trallo complete his assignment and submit a report to you?

A.21. Yes, he submitted a written report to me on November 28, 1983.

Q.22. What action did you take with respect to the report?

A.22. After providing several comments to Ralph regarding phraseology and semantics, or form, the report was finalized and I sent it to Mr. Merritt on November 30, 1983.

Q.23. What are your views with respect to the Task Force report?

A.23. Ralph's report represents my views as well as those of the Company. I felt Cannon has responded to the action I determined as a result of the November 3, 1983 meeting with Texas Utilities people in Dallas. The client had modified the format or specific instructions as set forth in my November 4 memo to Ralph, but it was their prerogative to do so. Instead of a "hands on" effort, the client chose to explore each of the concerns expressed by Joe Lipinsky in recorded meetings. Ralph's Task Force report described these conferences and our position on the issues.

1           MR. GALLO: The witness is available for  
2 cross-examination, your Honor.

3           JUDGE BLOCH: Mr. Roisman?

4                           CROSS-EXAMINATION

5           BY MR. ROISMAN:

6           Q       Mr. Roth, would you describe the nature of the  
7 present relationship between O.B. Cannon and TUGCO?

8           MR. GALLO: Objection, the question is vague.  
9 Business relationship? Personal relationship? What kind  
10 of relationship?

11          MR. ROISMAN: I don't think there is a personal  
12 relationship between two inanimate objects.

13          JUDGE BLOCH: The question is allowed. Would  
14 you describe the current relationship between O.B. Cannon  
15 and Texas Utilities?

16          THE WITNESS: I don't think there is a  
17 relationship. They are the utility for whom we did  
18 certain consulting work. We remain available should there  
19 be additional requests made of it.

20          There has been a static relationship that I think is of  
21 record and that's as much as I know.

22          JUDGE BLOCH: No current reimbursement for  
23 consulting services?

24          THE WITNESS: Not to my knowledge. They have  
25 hired our attorneys and intend to pay our attorneys.

1 BY MR. ROISMAN:

2 Q What about for the purpose of Mr. Lipinsky  
3 appearing as a witness in these hearings with regard to  
4 the affidavit that he prepared and submitted on September  
5 28, 1984? Do you have any relationship regarding -- if  
6 that should happen and he should eventually have to appear  
7 as a witness with regard to that affidavit, whether you  
8 are to be compensated for that? And is there some  
9 business relationship that covers that?

10 A Mr. Roisman, any of the time, effort, and  
11 expenses that Joe has had in visiting Washington or  
12 wherever he may have gone, in connection with the  
13 September 28 memorandum and the activity since then, have  
14 been borne by Oliver B. Cannon & Son.

15 Q So that you, as a corporation, are not retained  
16 as experts or witnesses for the utility for purposes of  
17 the paint coating issues addressed in the September 28,  
18 1984 affidavit of Mr. Lipinsky?

19 A That's correct. I'm under the impression we are  
20 witnesses for the board. We were subpoenaed by the board.

21 Q No, I'm talking about -- perhaps -- I was afraid  
22 there might be some confusion. I'm not talking about your  
23 appearance here, or Mr. Lipinsky's appearance here.

24 There's another piece of this proceeding which you are  
25 not currently seeing that involves, if you will, the

1 technical merits of various issues, including the adequacy  
2 of paint coatings. And as you are aware, Mr. Lipinsky  
3 prepared an affidavit which has been submitted in  
4 conjunction with a motion for summary disposition that was  
5 filed by TUGCO in the other half of that proceeding. And  
6 that affidavit of Mr. Lipinsky is attached to that and  
7 there's an affidavit of Mr. Brandt. I believe you've seen  
8 all of those documents?

9 A Yes. That's the one under September 28. I'm  
10 aware of that; yes, sir.

11 Q That's correct. And my question is, in  
12 conjunction with any further testimony that Mr. Lipinsky  
13 may be called upon to present with regard to that  
14 affidavit, with respect to the merits of the statements  
15 contained therein, do you have any arrangement with TUGCO?

16 A I have made no such arrangements.

17 Q So that should TUGCO come to you and ask  
18 Mr. Lipinsky to go and appear to support what he has said  
19 in that affidavit, a relationship would have to be formed  
20 in order for that to happen?

21 A I would probably take benefit of counsel to make  
22 that assertion.

23 Q To decide whether you should do that or not?

24 A That is correct.

25 Q When you say you --

1           A           Oliver B. Cannon, counsel, Mr. Gallo.

2                    JUDGE BLOCH: Mr. Roth, just to assure you, you  
3 were right as to why you are here on this side of the  
4 proceeding. That was correct.

5                    THE WITNESS: Thank you. My memory is not too  
6 good --

7                    BY MR. ROISMAN:

8           Q           Since we are talking about counsel, let me be  
9 clear on that. You are not personally represented by  
10 counsel in this proceeding; is that correct?

11          A           Robert B. Roth?

12          Q           Robert B. Roth.

13          A           In this particular proceeding, Mr. Gallo  
14 represents Oliver B. Cannon & Son, and my Staff people.

15          Q           But not you personally?

16          A           Not myself personally; no.

17          Q           That's right. Okay.

18          A           I didn't know that was a requirement.

19                    JUDGE BLOCH: No, it's not.

20                    BY MR. ROISMAN:

21          Q           It was not a requirement that anybody appear  
22 here with representation of counsel. I didn't mean to  
23 imply that it was. I just was trying to be clear on that.

24                    Now, at what time did your contractual relationship  
25 with TUGCO, O.B. Cannon's contractual relationship,



1 terminate? When did it end?

2 A I'm trying to recall the wording of the purchase  
3 order. I believe the purchase order given to Cannon was  
4 in two phases.

5 Phase 1 had a description of certain activities and  
6 phase 2 addressed a continuing in-depth service to TUGO/TUSI.

7 JUDGE BLOCH: I have a feeling the witness could  
8 be aided by seeing the document.

9 THE WITNESS: Thank you. You were right in what  
10 you said so far. It's just the date --

11 The purchase order which I'm looking at, and I'm trying  
12 to recall in more detail, did have two phases. Phase 1,  
13 the scope is self descriptive, and phase 2 addressed an  
14 ongoing service to the utility. The scope was defined as  
15 the comprehensive study of the protective coatings program.

16 So, when phase 1 was essentially along, we have done no  
17 work since then. Phase 2 was never implemented.

18 JUDGE BLOCH: So when did the contractual  
19 relationship end? Incidentally, there also is a  
20 supplement rearrangement, I believe? Is that part of the  
21 relationship?

22 THE WITNESS: Yes, there was a supplement which  
23 covered certain costs and expenses with relation to, not  
24 so much work done at the site but the travel and  
25 promulgation of the memorandum that was prepared by the



1 task force. I believe that was in November.

2 So, under those circumstances the relationship  
3 contractually would have continued through those dates  
4 and/or the expenses which related to that activity.

5 JUDGE BLOCH: Sometime in November is your  
6 answer?

7 THE WITNESS: No. I didn't say that. I said  
8 the activities that occurred in November would have been  
9 part of a change order, one, that was negotiated by Jack  
10 Norris. And there may have been some other expenses  
11 and/or costs that accrued after that date.

12 However, the best way to answer that is to obtain  
13 copies of the invoices that we sent and what the details  
14 were. And they will say what they say.

15 JUDGE BLOCH: Mr. Roisman?

16 BY MR. ROISMAN:

17 Q Okay. Mr. Roth, this is a document dated  
18 November 30, 1983, which is a letter from you to  
19 Mr. Merritt. And attached to it is a copy of the coatings  
20 overview task group report, authored by Mr. Trallo, dated  
21 November 28, 1983.

22 MR. GALLO: It's not in there.

23 THE WITNESS: Okay.

24 I'm aware of that, Mr. Roisman. I don't have a copy in  
25 front of me but I'm aware of it.

1 BY MR. ROISMAN:

2 Q I'll give you a copy if you need one but maybe  
3 you don't need it for my question. All I want to know is,  
4 when you sent this letter to Mr. Merritt, did that  
5 conclude the work for which O.B. Cannon had been  
6 contracted by TUGCO and was that the end of the contract  
7 at that point?

8 A That was the last correspondence with respect to  
9 the services on-site that we have performed, yes.

10 Q And thus any work done subsequent to November 30,  
11 1983, was done, not at TUGCO expense? There was no  
12 billings for time or expenses incurred subsequent to that  
13 date; is that correct?

14 A I don't know that. I would have to refer to the  
15 actual invoices. There could have been questions that  
16 were raised of some of our people and they might have  
17 answered those questions. Whether any costs were  
18 associated with those, I don't know. I don't have the  
19 invoices here. I don't know that that's vastly  
20 significant -- but that's your judgment.

21 JUDGE BLOCH: We do have the invoices though,  
22 don't we, Mr. Gallo?

23 MR. GALLO: We produced a large number of what  
24 appear to be invoices; yes.

25 JUDGE BLOCH: I take it that if there were

1 invoices after November 30, they should be available to  
2 show to the witness?

3 MR. GALLO: Yes.

4 BY MR. ROISMAN:

5 Q I'm going to show the witness six pages -- I'm  
6 sorry, five pages on O.B. Cannon stationery marked "invoice,"  
7 and see -- here is one dated 4/30/84; one dated 4/2/84;  
8 one dated 1/31/84; one dated 8/30/83; and one dated 8/29/83.

9 I wonder if you would take a look at those and tell me:  
10 Do these represent the invoices of O.B. Cannon to TUGCO  
11 for all the work that O.B. Cannon is to be compensated for  
12 with respect to the contracts that it had and no longer  
13 has with TUGCO?

14 A Mr. Roisman, I don't know that. It's very  
15 obvious that these are invoices and they show certain  
16 amounts. It's not my responsibility to prepare these  
17 invoices. And I have not seen these invoices before.

18 That doesn't mean that they are not legitimate and they  
19 haven't been cranked through the channels of our  
20 organization, you understand, but it's an accounting  
21 function.

22 JUDGE BLOCH: Mr. Gallo, how are we to assure  
23 ourselves that these are all the invoices?

24 THE WITNESS: I can check with my administrative  
25 manager.

1                   MR. GALLO: I'm not sure how we can assure  
2 ourselves these are all the invoices. We gathered all the  
3 documents from O.B. Cannon's Philadelphia office and from  
4 O.B. Cannon's Houston office, and we produced them,  
5 including invoices. We have made no attempt to catalog  
6 them. And, so, I do not know if the half a dozen that are  
7 on the table in front of the witness represents all or not.  
8 I frankly don't understand the materiality of whether they  
9 are all or not all.

10                  If the point is when does the work end, I thought the  
11 witness answered that. I don't know why we need to go  
12 further.

13                   JUDGE BLOCH: The materiality in my mind was  
14 that we requested all the invoices that affected -- that  
15 existed between O.B. Cannon and TUGO, Texas Utilities.

16                   MR. GALLO: I repeat, your Honor, we provided a  
17 series of documents that indeed are invoices. I,  
18 myself, have made no attempt to catalog them to see how  
19 many there are, what the dates are -- they appear in the  
20 large document production that was made on October 18.  
21 They are, indeed, in the -- before the witness in the  
22 volume 3 that's on the desk. They are just in the same  
23 order that they were Xeroxed.

24                  The problem I'm having is that we have not analyzed  
25 them to be able to respond effectively to the kinds of

1 questions asked by Mr. Roisman.

2 JUDGE BLOCH: I guess all I was wondering was  
3 the nature of the search that assured you that you had all  
4 the invoices.

5 MR. GALLO: The nature of the search?  
6 Mr. Norris had his secretary send me every document that  
7 relates to Comanche Peak, and at my request he looked  
8 again and sent me some more. That was the second  
9 submission that we made. And we did the same thing in  
10 Philadelphia.

11 JUDGE BLOCH: Okay. So, we should believe we've  
12 got all the invoices?

13 MR. GALLO: Yes.

14 JUDGE BLOCH: Mr. Roisman?

15 MR. ROISMAN: Yes.

16 BY MR. ROISMAN:

17 Q Well, Mr. Roth, let's use as a working  
18 assumption that these are all the invoices.

19 Can you tell me from looking at them whether they cover  
20 any work done subsequent to the 30th of November, 1983?  
21 Is there any way to tell that from the invoice itself?

22 A I'm thinking about, Mr. Roisman, the date here  
23 obviously is well into '84.

24 Q When you say "here"?

25 A The date on top of this invoice, CPF126345; the

1 date of issuance is April 2, 1984. The amount of dollars  
2 is \$604.31.

3 I do not know what that represents.

4 Q Is it Mr. Norris who knows all of this? Is he  
5 the man we should talk to about this? Because I don't  
6 want to bother you with the questions --

7 A That's quite all right.

8 Q -- if he's the guy I need to know the answer  
9 from.

10 A It could very well be Jack. He may have a  
11 better explanation for it because he's more familiar with  
12 the details of the contractual arrangement and the  
13 invoicing. He, in turn, might refer -- if it says CO  
14 ticket number 1 or whatever the ticket description here  
15 might be, he might have to get the actual detail of the  
16 vouchers, okay? So as to show the total of 604.31.

17 Q To see where it came from?

18 A It could be a plane ticket, voucher, something  
19 of that nature, a reimbursement.

20 Q So the nature of your responsibilities at the  
21 company would not include going over and verifying that  
22 every dollar that should have been billed was billed, and  
23 that dollars that shouldn't have been billed aren't billed?  
24 That just doesn't fall into your direct responsibility?

25 A Fortunately, you are correct.

1 Q Okay. Maybe you can tell me this. I notice on  
2 the one you noted for me, dated 4/2/84, there's a penned-in  
3 mark that says, "pay only 50 percent of this invoice per  
4 agreement between C.R. Gray/J.J. Norris, letter 6/5/84."  
5 And it's signed by a person whose name I can't read.

6 A I don't believe that's one of our people.

7 Q I don't think it is either. I was going to ask  
8 you the question: Were you aware of any agreement that  
9 had been made between Mr. Norris and Mr. or Ms. Graves,  
10 regarding the payment of only 50 percent of any or all  
11 invoices from O.B. Cannon?

12 A Yes.

13 Q Can you tell me about that?

14 A As I recall and quite honestly, Jack can better  
15 address it because he did the negotiations, there was a  
16 delay in the processing of invoices by our client for  
17 whatever set of reasons. And Jack was asked to visit  
18 Mr. Graves, who I believe is in the purchasing or  
19 procurement department of our client.

20 As a result of his meeting with Mr. Graves, he made an  
21 agreement for the modification to the invoices. He called  
22 and said I'm meeting with Mr. Graves and this is what I  
23 recommend. And I supported his recommendation.

24 Q Did you know then what the reason was that  
25 warranted reducing -- in effect, reducing the billing by



1 50 percent?

2 A Jack's recommendation was the reduction for  
3 business and client reasons. And those, I supported his  
4 judgment. The dollars were not that great.

5 Q Did you know what the business and client  
6 reasons were?

7 A No, I did not.

8 Q Do you know today what they are?

9 A No.

10 Q Is that normal? Would that be the normal thing  
11 if Mr. Norris came to you about any contract in the  
12 company and say: For good and sufficient reasons I  
13 believe we should cut the billing on this in half; that  
14 you would say: Okay?

15 A I would say okay under these circumstances.  
16 Just as a quick background on the firm, we have set up the  
17 profit centers with a divisional vice-president, and Jack  
18 Norris is a divisional vice-president. He has certain  
19 authorities for processing of claims, preparation of  
20 estimates, and negotiations with the client. And he has  
21 full authority on anything \$10,000 and under. Above that  
22 he will normally run it by us, as a matter of courtesy.  
23 And even some times in lesser amounts he will run it by  
24 myself or run it by our executive vice-president.  
25 Corporate discipline.



1 Q But when you say "run it by," I take it he ran  
2 this by but didn't actually share with you the particular  
3 reason behind the judgment that that -- that the billing  
4 should be reduced; isn't that correct?

5 A I don't recall the specifics, quite frankly.

6 Q Is it that you don't recall them or he didn't  
7 give them to you?

8 A I don't recall them and he may not have given  
9 them to me. I did not question him very closely. It was  
10 his judgment and within the purview of his authority.

11 Q Now, as I understand it, if there was any  
12 billing for work subsequent to the November 30, 1983 time,  
13 is it your testimony that it would have been for  
14 relatively minor follow-up matters?

15 A That's my recollection.

16 Q Were you aware of Mr. Lipinsky's meetings with  
17 lawyers for TUGCO in Washington, regarding the preparation  
18 of testimony by him --

19 A Yes.

20 Q -- for submittal in this proceeding?

21 A That's correct; right.

22 Q When I say "this," I mean this whole case, not  
23 this piece of it.

24 A Okay.

25 Q And did you understand that the time that was

1 being spent by Mr. Lipinsky in preparing that testimony  
2 would or would not be compensated to O.B. Cannon by TUGCO?

3 A I was aware that the expenses would be  
4 compensated. As far as his time or per diems, I don't  
5 recall that was an issue.

6 Q What does that mean? You mean you weren't  
7 asking to be compensated or they weren't raising any doubt  
8 that you would be?

9 A I didn't raise it. I didn't raise the question.

10 Q One way or the other?

11 A No.

12 Q Do you think he is going -- I'm sorry -- that O.B.  
13 Cannon is going to be compensated for his time?

14 A Well, if we have invoiced it to date, then  
15 obviously there was an arrangement consummated by Jack  
16 Norris who is the account manager for that reimbursement;  
17 okay?

18 There have been no invoices for time that I know of.

19 Q Is that unusual? To have one of the O.B. Cannon  
20 employees spend time on a matter for which no billing  
21 would be made?

22 A It depends on the commercial arrangements.

23 Q By "the commercial arrangements," you mean what  
24 the deal was?

25 A What the deal was, either by purchase order or

1 by negotiations with Jack Norris.

2 Q Is it normal that you have a negotiated  
3 agreement in which one of your principle employees spends  
4 many hours, days probably, doing something and that O.B.  
5 Cannon doesn't get compensated for it?

6 A Well, let me back up and say this. We had a  
7 consulting contract for a lump sum of monies. And if the  
8 project manager in this case Jack Norris, were to say:  
9 Okay, certain activities are in support of that  
10 consultancy, others are on per diems for trip visits --  
11 and I believe this is detailed in the purchase order --  
12 that's normal business discourse.

13 Q What does that mean about the time that, say,  
14 Mr. Lipinsky spent in the summer of 1984, working on the  
15 affidavit that eventually was filed on September 28, '84?  
16 Does that mean that it was to be compensated or to be  
17 treated separately? Or that it was to be treated as part  
18 of the original fixed fee that O.B. Cannon received?

19 A It was part of the original arrangement.

20 Q But was it part of the original contemplation in  
21 the original arrangement?

22 A I'm sure it was not.

23 Q Had you performed all of the functions which you,  
24 as a company, had expected to perform in order to earn  
25 that original fixed fee by the end of November 1983?

1 A To the best of my knowledge we had.

2 Q Then the work that was done by Mr. Lipinsky  
3 after November of 1983 is essentially a freebie; isn't it?  
4 That is, you were letting it ride without collecting any  
5 compensation for it?

6 A Well, the time involved; yes. I believe the  
7 expenses -- and again you'd have to go to the individual  
8 invoices -- for travel and whatever were compensated.

9 For instance, flying out to Chicago and back and things  
10 of that nature.

11 Q But the remainder of it, the time of  
12 Mr. Lipinsky, I take it, he's billed at a fairly high rate;  
13 is that not true? I mean it's several hundred dollars a  
14 day, I believe?

15 A Yes.

16 Q That time is not to be compensated?

17 A That's my understanding.

18 Q Do you know why?

19 A That was a business decision.

20 Q Do you know what the basis for the business  
21 decision was?

22 A It was good business.

23 JUDGE GROSSMAN: Excuse me, Mr. Roisman, have we  
24 established that O.B. Cannon was paid in full under the  
25 original agreement?

1 MR. ROISMAN: You mean whether they were paid in  
2 full for the fixed fee or the fixed fee plus the costs?

3 JUDGE BLOCH: For the variable cost part of the  
4 original agreement.

5 MR. ROISMAN: No. I don't think there's any  
6 questions --

7 JUDGE GROSSMAN: I'll let you continue. I just  
8 thought we had lost something through the cracks here.

9 MR. WATKINS: Is that a yes or no?

10 JUDGE BLOCH: He said it has not been  
11 established.

12 MR. ROISMAN: I don't think this witness has  
13 been asked any question to which the answer was expected  
14 to be an answer to that question.

15 BY MR. ROISMAN:

16 Q In terms of the time spent, you say it was a  
17 good business judgment. Was there something special about  
18 this business arrangement in which giving away time was a  
19 good business judgment?

20 A Well, I think -- how would you define "special"?  
21 You have --

22 Q Well, I take it normally it would not be good  
23 business judgment for O.B. Cannon to do a lot of work and  
24 not get paid for it. That would tend to reduce income and  
25 ultimately profits; correct?

1           A           That's correct.

2           Q           So the normal would be that you get paid for  
3 services rendered; correct?

4           A           That is correct. That's the norm. That's why  
5 you are in business.

6           Q           Okay. And Mr. Lipinsky has been rendering a  
7 service in the form of preparing and ultimately submitting  
8 this affidavit that relates to the paint coatings program  
9 at Comanche Peak; correct?

10          A           That's correct.

11          Q           And in the normal course of things, if you  
12 perform that service for the average client, you would  
13 expect to be compensated not only for his out of pocket  
14 expenses but also for his time; correct?

15          A           That's correct.

16          Q           All right.

17          A           But you do not have a normal situation.

18          Q           All right. What is it that's not normal here?

19          A           The -- what is not normal is the fact that a  
20 client has been damaged, and damaged by an in-house  
21 memorandum that was stolen. And therefore Cannon had a  
22 breach of their security which exposed the utility to  
23 criticism.

24          Q           And that is what makes it different?

25          A           That makes a great deal of difference.

1 Q Let's take those one by one.

2 Mr. Lipinsky went to the site pursuant to contract on  
3 the 26th, 27th, and 28th of July, 1983; correct?

4 A That's correct.

5 Q And he viewed events and talked to people and  
6 had exit interviews and prepared a trip report and all of  
7 that was according to what was supposed to happen; correct?

8 A Correct.

9 Q And there was nothing inappropriate about him  
10 having a trip report in which you found things that, in  
11 his belief, were incorrect with the paint coatings program  
12 at the plant; correct?

13 A Correct.

14 Q So, up until that point there isn't anything  
15 that is wrong that has taken place for which O.B. Cannon  
16 needs to be concerned; correct?

17 A I can't think of any.

18 Q Now, the substance of what's contained in the  
19 trip report, the particular concerns, those were discussed  
20 with TUGO on a couple of occasions, both during the first  
21 site visit at the exit interview time, and subsequently on  
22 the 9th and 10th of August when Mr. Lipinsky and  
23 Mr. Morris returned to the site to discuss matters;  
24 correct?

25 A That's not correct.

1 Q What is incorrect?

2 A The incorrect part is the return visit on the  
3 9th was a mini-seminar on coatings, which addressed  
4 certain technical aspects, principally as to the  
5 specification and I attended those meetings.

6 And the meetings that I attended on the 9th, there were  
7 none of the concerns from the memorandum that were  
8 addressed in that meeting. The memorandum was not even an  
9 issue nor was it available to anyone at the meeting except  
10 Joe, in his briefcase.

11 Q Okay. So the only time, at least up through the  
12 middle of August of '83, that the concerns expressed in  
13 the memorandum, in the trip report, were discussed with  
14 TUGCO, was during the exit interview process when  
15 Mr. Lipinsky raised these points to plant personnel; is  
16 that correct?

17 A I had no further discussions with the people at  
18 TUGCO, after the August 9th meeting.

19 Now, there were people on-site with whom -- and I'm  
20 going by, really, having read Joe's testimony. There were  
21 people on-site in the employ of Brown & Root, or TUGO,  
22 with whom Joe might have voiced his concerns. I think  
23 you'll find that's the chronology.

24 MR. ROISMAN: When you saw the --

25 JUDGE BLOCH: I'm sorry, I want to get that



1 clear in my mind. After August 9, there were some  
2 discussions with people on-site about the concerns?  
3 That's Mr. Lipinsky's testimony?

4 THE WITNESS: I'm quoting his testimony. I'd  
5 have to review it in detail.

6 JUDGE BLOCH: Okay. Thank you.

7 THE WITNESS: But the people would have been the  
8 inspectors or some of those who had either worked for him,  
9 or his friends -- I believe he had a friend, Everett  
10 Mouser, whom he had worked with out on the West Coast. I  
11 was not present so really it's hearsay from Joe's  
12 testimony.

13 (Discussion off the record.)

14 BY MR. ROISMAN:

15 Q You indicate in your testimony that probably on  
16 the 8th of August that probably you saw the report that  
17 Mr. Lipinsky prepared, just in the normal course of seeing  
18 documents; correct?

19 A Yes.

20 Q At the time you saw it, did you consider it part  
21 of your contractual responsibility with the TUGCO  
22 personnel to have somebody communicate to them the sum and  
23 substance of what Mr. Lipinsky had said were his  
24 observations?

25 A Well, I read the memorandum, and Joe says what

1 he says. He's a rather honest guy and I thought no more  
2 about it at that time because quite frankly we were  
3 preparing that same afternoon to leave by airplane to go  
4 down to attend the August 9th meeting.

5 Q No, my question was, was it expected, as you  
6 understand it under the contract with TUGCO, that whatever  
7 Joe Lipinsky concluded after his site visit would be  
8 communicated to the company? That they would be told  
9 whatever it was that he had concluded?

10 A I don't know that they would or not. As part of  
11 the consultancy, these documents and services were handled  
12 by Jack Norris.

13 Jack had gained the services of Ray Posgay to review  
14 specifications. Ray had certain, I'm sure, reports that  
15 he gave Jack. Jack had made the communications -- Jack  
16 Norris had made the communications relative to  
17 recommendations for field production; recommendations for  
18 cleansing the air supply to the spray machines;  
19 recommendations on various aspects -- whatever had been  
20 requested of Jack in his visit with his people to the site.

21 So, as far as communicating those concerns, in time  
22 they could have been addressed. In time they could have  
23 come along as part of the questioning or part of the  
24 investigation. I don't know.

25 Q When you would have one of these types of

1 contracts, like the one that you had with TUGCO here, I  
2 take it it wouldn't be of much value to TUGCO to have a  
3 man like Mr. Lipinsky come to the site, do an evaluation,  
4 and never tell them what he found; would it?

5 A Well, backing up a bit, Cannon's principle  
6 business is not that of consulting. This is an unusual  
7 contract and was made by Jack Norris when he made the type  
8 of request that it made of him. I approved of his going  
9 forward.

10 The reports which are generated in-house normally go  
11 through a single individual for his compilation of data.

12 In this case the memorandum would have gone, firstly to  
13 Ralph Trallo who is vice-president of nuclear services. I  
14 would have gotten a copy because I delegated certain  
15 functions of the QA responsibility at Cannon to Ralph, as  
16 far as reporting is concerned, and anything which  
17 addresses quality as a matter of corporate procedure I see.  
18 That's what I do.

19 JUDGE BLOCH: Mr. Roth, I don't think you  
20 answered the question. Could we have the question  
21 repeated?

22 (The reporter read the record as requested.)

23 THE WITNESS: It seems to me he told them what  
24 he found in his exit interview prior to leaving the site.

25 BY MR. ROISMAN:

1           Q           As far as you know, everything that was  
2 contained in the trip report was also communicated to the  
3 company at the time that he left the site, and that the  
4 trip report was merely a summarization of what he had  
5 already told them?

6           A           I'm under that impression. And I believe his  
7 testimony addresses the people whom he discussed his  
8 observations on-site, the visits he had, the questions he  
9 raised with the TUGO people and/or inspection people. I  
10 wasn't there but that's my impression.

11          Q           Okay. Now, Mr. Norris submitted some  
12 recommendations: Here's the things I think you should do.  
13 And Mr. Lipinsky, apparently, does not submit a similar  
14 group of recommendations regarding what should be done  
15 about the things that he had seen other than whatever he  
16 may have said orally at the time that he left the site.

17               Are you the one that can explain to me why one of them  
18 would have had recommendations submitted and the other  
19 would not?

20          A           If it would help, I can only review the way that  
21 Cannon structured, in that Jack Norris is in charge of the  
22 Houston division, which is a profit center. And, as such,  
23 since he had negotiated the original contract, then our  
24 modus operandi is for all communications to the client to  
25 flow through that project manager.

1       The exception of that modus operandi evolved when, at  
2 such time as we attended the August 9th meeting, there  
3 were technical questions; and at the time the technical  
4 questions came up, there were several matters that were  
5 assigned, one to myself and one to Joe Lipinsky to handle.  
6 And part of that direction was from myself in  
7 investigating a certain Carboline-type paint material. I  
8 was to call a chap by the name of Kelly who worked for  
9 EBASCO. With respect to the work procedure that Joe  
10 Lipinsky was to prepare, I believe he was to send that  
11 directly to one of the TUGO people on-site, and copy Jack.

12       As we went further, after it was learned that the memo  
13 was on the street, then there were certain parcels of  
14 correspondence that went out to the client over my  
15 signature.

16       That's not the normal way to do it. Normally with the  
17 client, any communications with the client, any discourse,  
18 any negotiations are handled over the signature of the  
19 account manager. In this particular case, Jack Norris was  
20 the account manager.

21       Q       All right. So that -- I just want to make sure  
22 that I know who the right person is to ask the question.  
23 Then it's really Mr. Norris who would have had direct  
24 control over deciding which recommendation should be sent  
25 to TUGCO, following the site visit?

1           A           Well, whatever communication would have been  
2 generated as a result of that in-house memorandum, after  
3 it had gone through its paces, after it would have been  
4 evaluated, would have gone to the client over Jack Norris'  
5 signature. That's correct.

6           Q           And that memorandum, we are talking about the  
7 trip report?

8           A           Yes.

9           Q           Okay. So actually, then, by the conclusion of  
10 the trip itself, by the end of July of 1983, the concerns  
11 that Mr. Lipinsky had found should have been communicated  
12 to the company and the company should have been aware of  
13 them. And you, O.B. Cannon, had some continuing  
14 relationship with the company which produced a meeting on  
15 the 9th and 10th of August, not directed to the particular  
16 things that Mr. Lipinsky had focused on; but some other  
17 matters?

18          A           The meeting on the 9th was specifically on the  
19 work procedures and the modus operandi at the site, and  
20 the matter of the Lipinsky report, even though it had been  
21 dated and drafted prior to the meeting on the 9th, was not  
22 discussed at this seminar. That is correct. It was not  
23 discussed.

24          Q           Now, on or about the 10th of October, I believe  
25 that Mr. Merritt called -- was it you who he called on the

1 10th some and you became aware for the first time that the  
2 Lipinsky trip report was, as you used the word, "on the  
3 street"?

4 A I think if you review my testimony, the  
5 information is to the extent that Mr. Merritt had called  
6 Jack Norris on October 10th. And then Jack Norris -- 9th  
7 or 10th. Jack Norris had called me on the 10th, relating  
8 the fact that John Merritt had called, somewhat agitated  
9 or upset on the basis that a Lipinsky report was on the  
10 street. And I believe by the same testimony, or Jack's  
11 testimony, Jack had referred John Merritt to me.

12 Q That's correct.

13 A On the 12th, Merritt did call me.

14 JUDGE BLOCH: I'm sorry, where did those words  
15 come from, "somewhat agitated or upset"? Were those  
16 Mr. Norris' words?

17 THE WITNESS: No. These were my words.

18 JUDGE BLOCH: You said he had called Mr. Norris  
19 somewhat agitated or upset. At least that's what I  
20 thought.

21 THE WITNESS: Jack didn't say that. That was  
22 the impression. Jack was not very happy about being  
23 surprised or blind sided that there was a memorandum over  
24 the signature of a Cannon employee that he had not seen.

25 JUDGE BLOCH: I imagine he was pretty upset



1 about that. You inferred that from the way Mr. Norris  
2 told you about the communication to him?

3 THE WITNESS: Yes. It was words to the effect,  
4 Judge Bloch, that John Merritt had called him, upset that  
5 there was a memo or an alleged memo. Jack was not under  
6 the impression that John Merritt had seen a copy of the  
7 memo. But that he quoted certain things that had been  
8 told to him -- "him" meaning John Merritt president, okay? --  
9 and Jack said that his reaction was for Mr. Merritt to  
10 call myself.

11 I believe that's the chronology.

12 BY MR. ROISMAN:

13 Q Do I take it that it was at that time that you  
14 learned of the damage that had been caused by -- by "that  
15 time" I mean the October 10 conversation with Mr. Norris  
16 and the October 12th conversation with Mr. Merritt -- the  
17 damage that had been caused by O.B. Cannon's securities  
18 breach?

19 A Well, I believe an accurate answer is such that  
20 I was not aware of the damage, because I do not believe  
21 the damage had been assessed. I was aware, by Jack's call  
22 to me, that Joe Lipinsky's in-house trip memorandum had  
23 been released to others, not including the client.

24 Q And what was it that you learned, either then or  
25 subsequently, that was the damaging event? What was



1     damaging?

2           A           Well, just the mere fact that the memorandum  
3     which addressed certain concerns was on the street.

4           Q           You mean that people found out that there were  
5     problems, in Mr. Lipinsky's opinion?

6           A           Problems in Mr. opinion -- in Mr. Lipinsky's  
7     opinion; yes. So obviously I went and got the memorandum  
8     out and read it over.

9           Q           In your judgment, was that a damaging thing to  
10    have happen?

11          A           Well, upon reading the memorandum, the in-house  
12    memorandum -- because it was not fresh in my mind at the  
13    time, and going through it, I can see how certain of Joe's  
14    concerns could certainly be construed as being very  
15    worrisome; being damaging. I think it's a logical  
16    reaction.

17          Q           If the company were addressing the concerns it  
18    shouldn't have been very damaging, should it?

19          A           Certainly in the eyes of the beholder; no.

20          Q           What do you mean by that, "in the eyes of the  
21    beholder"?

22          A           Well, if you were to read a memorandum that  
23    addressed certain concerns, and at the same time you were  
24    able to obtain information that those concerns were being  
25    addressed in whatever manner; then, certainly there should

1 be no real concern.

2 But I think when you have that memorandum released,  
3 particularly if it's released in the media, you are going  
4 to have it published verbatim because there's never been  
5 time for any investigation. There's never been time to  
6 find out whether they are an available concern or not.

7 Q Was it your --

8 A I think that's logical. Don't you?

9 Q Fortunately I don't have to answer that -- but --  
10 probably don't. But that's neither here nor there.

11 Did you understand that the damage was that this had  
12 become a media event, in which it would be subject to the  
13 distortion through not having the whole story? Was that  
14 your understanding of what the damage was?

15 A That was my impression; absolutely.

16 Q And that the damage was not that the existence  
17 of a legitimate and honest belief by Mr. Lipinsky about  
18 problems at the site became known and subject to  
19 investigation by federal agency, namely the Nuclear  
20 Regulatory Commission?

21 A Well, I think that's always a concern. That's  
22 part of it.

23 Q Did you agree that it was a very damaging event?

24 A Well, now, how do you mean "damages"? It  
25 certainly caused a great deal -- thinking out loud, if I

1 may -- consternation. Why is a memorandum on the street  
2 that we've never seen? If some of these things have been  
3 discussed with us, as they were from my best understanding  
4 on Joe's visits in late July, then have our people  
5 addressed them?

6 And any time that you find a client who is in the  
7 throes of trying to construct and keep on an even track  
8 something as large as a nuclear plant, any pause that's  
9 going to cause a delay in their people's time, dilution is  
10 going to be an area of great concern.

11 Damage, again is in the eyes of the beholder. I'm not  
12 too sure I can assess that.

13 Is that fair?

14 Q Well, I understand what you said.

15 JUDGE BLOCH: I think when the witness ends like  
16 that, that's a fine way to end. Let's have it end after  
17 he asks the question. You don't have to answer it. It's  
18 a rhetorical question. We don't have to have answers.

19 THE WITNESS: I didn't mean it to be.

20 BY MR. ROISMAN:

21 Q The question, on the 12th of October when you  
22 talked to Mr. Merritt, at that point there wasn't any  
23 media that knew of this memorandum; was there?

24 A I don't know.

25 Q Well, did Mr. Merritt tell you that there was?

1           A           I'm trying to recall whether he said "media" or  
2 whether he said copies in the hands of the Intervenors, or  
3 CASE, or words to that effect.

4           It was obviously in the hands of those outside of both  
5 Cannon and TUGO/TUSI organizations.

6           Q           Isn't it the case that it was just in the hands  
7 of the Nuclear Regulatory Commission at that time?

8           A           I don't know that. I was under the impression  
9 that it was in the hands also of those outside, such as  
10 the CASE people. That's the name that cropped up to me.

11          Q           That's from your conversation with Mr. Merritt,  
12 I assume?

13          A           Yes.

14          Q           Now, what was your reaction to Mr. Merritt --  
15 let me step back a second.

16          As best as you can, tell me what exactly happened on  
17 the merit call from the moment the phone rang in your  
18 office and you realized it was Mr. Merritt on the phone.  
19 What did he say? What did you say?

20          A           He said: Bob, I had talked to Jack Norris  
21 earlier and Jack asked that I call you. And he said the  
22 reason for my call to Jack and certainly now to you is  
23 there is a memo, referenced as a Lipj sky memo, who I  
24 understand is one of your people. And the memo describes  
25 his observations on his trip down here.

1           He goes on and he said: Bob, I haven't seen it. I  
2           don't have a copy of it. I haven't seen it. But I  
3           understand it goes on to compare the coating situation  
4           here with perhaps the Zimmer plant, which is another  
5           nuclear plant out in Ohio. And it goes on to address  
6           whether the coatings can be salvaged, or words to that  
7           effect.

8           What do you know about it?

9           And I said: Well, Jack did say that you had called and  
10          I had gone back and dug out the copy and I have read it  
11          and I can read any portion to you over the phone. Because  
12          I do recall I read almost all of the -- if not all of the  
13          trip report to John over the phone.

14          While so doing he mentioned, well, about Lipinsky, his  
15          authorities and so forth, I said well, he's our quality  
16          assurance director and Joe is a pretty solid citizen, he's  
17          been with us close to six years and done a relatively fine  
18          job. I'll call him in, and I did so.

19          I had John Merritt on the squawk box in my office and I  
20          continued reading him the memorandum.

21          Q           Did you read him the whole memorandum?

22          A           As I recall I read him -- as I mentioned earlier,  
23          I read him practically all.

24          Q           Did you read him the last recommendation, or the  
25          last paragraph of the summary, that par -- paragraph, that

1 you changed?

2 A The part that I modified? I had it modified  
3 after Jack had called me.

4 As I mentioned earlier I got the memorandum out and I  
5 read it over, as to what Joe's comments were. And again,  
6 Joe is his own man. He says what he says.

7 The last conclusion, however, dealt on matters of a  
8 contractual nature which were really not Joe's area of  
9 responsibility; particularly when he said: "If O.B.  
10 Cannon should seek a contract." This was not our  
11 assignment nor was it our intent. And I modified those  
12 words to the extent that "if O.B. Cannon should be invited."  
13 And Joe went on to say in that final paragraph, "if O.B.  
14 Cannon should seek" -- what we like -- I think most of us  
15 are familiar with it -- "should seek a contract, it would  
16 have to be a reworked contract because the coatings in  
17 place would be impossible to seek or search or be  
18 impossible to salvage or anything like that."

19 Once again, Joe has been in the nuclear coatings  
20 business since 1961. Joe has been in Cannon for six years.  
21 We have seen the situation, I have been involved in most  
22 of our nuclear work since we got into the business back in  
23 the early '60s, and it has been fed back that in view  
24 of the nuclear coatings, contaminant coatings or whatever,  
25 again had to be completely taken off or and removed.

1 These were in such bad condition. There were three plants:  
2 Turkey Point, Pennsylvania; Oyster Creek, Russelville,  
3 Arkansas; whereby the coatings could be salvaged because  
4 you had things technically, like glass profile -- but the  
5 point being impossible -- which has the implication of  
6 being final, and that's the end of it -- I changed the  
7 word to "improbable."

8 Q That change you effected sometime between  
9 October 10th and October 12th?

10 A That's correct. And it was the changed version  
11 I read to John Merritt.

12 Q That's what I was going to ask?

13 A I read that to him and he said: Can you send me  
14 a copy of it? And I said yes, I shall. And he said well,  
15 send it to my house because it will be quicker. And I did  
16 so.

17 Q At the time, did you give any thought to what  
18 Mr. Merritt might conclude if he got a copy of the trip  
19 report as originally prepared by Mr. Lipinsky, and a copy  
20 of the one that you sent down to him and saw the  
21 difference in that last paragraph?

22 A I really didn't think John would be concerned.  
23 If he were concerned, he would have called me at such time  
24 as he got a copy of the report that had been released  
25 on-site, or to CASE or whoever may have had those copies.

1 And the changes, at least in my purview, did not change  
2 any of the technical concerns or content and were  
3 seemingly innocuous.

4 Q So why change them then?

5 A Because I made the decision to change them.

6 Q But why did you do that?

7 A I think I explained that. I made the decision  
8 because, again, if a third party, whoever that might be,  
9 were to read the report, it could, in my opinion,  
10 influence the credibility of the report in that the final  
11 conclusion said: "If O.B. Cannon is to seek a contract --"  
12 well, then, someone might assume that some of the other  
13 concerns were catered to, leveraging Cannon on-site as an  
14 application contractor. And that was absolutely not  
15 either in our thinking or our purpose; nor if we were  
16 offered the contact could we have taken it. So therefore  
17 I modified it.

18 Q So the purpose in the modification was to  
19 increase the credibility of the other criticisms in the  
20 report?

21 A I don't think it would do it any harm, as at  
22 such time they would be considered criticisms, concerns,  
23 by whomever.

24 Q And you did not mention to Mr. Merritt on the  
25 phone that it was a change from the version that he might



1 otherwise be seeing?

2 A I did not.

3 JUDGE BLOCH: Mr. Roth, I take it you are quite  
4 certain that this idea started with you and not with  
5 Mr. Merritt? Mr. Roth?

6 THE WITNESS: What idea, sir?

7 JUDGE BLOCH: The idea of changing the last  
8 paragraph.

9 THE WITNESS: That was my idea. I run the O.B.  
10 Cannon Company and not Mr. Merritt, if you'll be so kind.

11 JUDGE BLOCH: Have you completed the answer to  
12 what went on in the conversation with Mr. Merritt? When  
13 you read this, was that the end of the conversation?

14 THE WITNESS: I think I added further that  
15 Merritt asked if I would send him a copy. And I agreed to  
16 do so. And he said, it would be quicker if you send it to  
17 my house and I also agreed to do so, and I followed  
18 through with that.

19 BY MR. ROISMAN:

20 Q Do you remember whether Mr. Merritt, at the time  
21 that you had the conversation on the 12th, said anything  
22 to do -- strike that.

23 When you had your conversation with Mr. Norris on the  
24 10th, did you and he discuss at all any charge being made  
25 by TUGCO, or any of its officials, that Lipinsky was

1 trying to leverage a site visit into something -- into  
2 some more work for the O.B. Cannon Company?

3 A No. I don't recall that even being talked about.

4 And, if I might add, Joe Lipinsky doesn't -- it's not  
5 his nature to solicit or negotiate contracts. Quite  
6 frankly, he's good at what he does, and he's a technical  
7 man. He does not get in on the sales and marketing.

8 So, Joe, I'm sure -- I mean this sincerely -- by using  
9 that phraseology, it was not his intent, that  
10 interpretation that you mentioned.

11 Q But were you aware on the 10th of October, that  
12 when Mr. Lipinsky suggested during his site visit, that  
13 the only way to really come up with the kind of details  
14 that Mr. Tolson wanted was to conduct an in-depth audit,  
15 that Mr. Tolson interpreted that as an effort on  
16 Mr. Lipinsky's part to try to get a contract for O.B.  
17 Cannon?

18 A Well, most assuredly I cannot speak for  
19 Mr. Tolson. But I don't recall Joe mentioning that to me  
20 at any time.

21 Q And now about Mr. Norris? Did he indicate to  
22 you when he spoke to you on the 10th, that there seemed to  
23 be any -- any static coming from TUGCO that in some way or  
24 another, O.B. Cannon was trying to get a contract; as  
25 unjust as that charge might have been?

1           A           No, I don't recall Jack mentioning that.

2           Q           So that your decision to make the change in the  
3 language that you ultimately made in the trip report was  
4 totally unrelated to any indication to you that there  
5 might be a charge made here that there was an effort to  
6 get a contract out of the Lipinsky trip report?

7           A           When you say "made here," I never expected to be  
8 here.

9           Q           I'm sorry. I didn't mean here in this spot. I  
10 meant --

11          A           To answer your question, I made the changes for  
12 the reasons that I have gone over.

13          Q           Okay. All right. Now, when was the next time  
14 that you had a communication with anyone from TUGCO  
15 regarding the trip report? Either written or oral.

16          A           I don't honestly recall whether -- after I had  
17 talked to Merritt and had sent him the copy down --  
18 whether he called me within the next several days about  
19 that, or not.

20                 It was -- and I'm not saying there were no calls, but I  
21 don't recall any calls from the time that I had talked to  
22 John and sent him the memorandum to the time that the  
23 phone call came from John Merritt requesting that I visit  
24 down to Dallas at their home office to review of the  
25 concerns that were addressed by Joe's memo with John's

1 management people. And I'm giving you the best guess. I  
2 think that was probably maybe early November when that  
3 request came through.

4 Q The 3rd of November that you had the meeting?

5 A That's the meeting but I'm talking about the  
6 call. That came earlier, Mr. Roisman plan, but whether it  
7 was the 1st, 2nd or 3rd, I don't keep a diary or record of  
8 phone calls. But it must have been in that timeframe.  
9 And I don't believe there was any communication to my  
10 office in the interim. Now, this could have been.

11 John could have called and said I got the letter and I  
12 acknowledge it, et cetera, et cetera.

13 Q Mr. Lipinsky, I'm asking you to look at --

14 A Who?

15 Q I'm sorry. Mr. Roth.

16 A He's better looking.

17 Q I'm going to show you a piece of paper that was  
18 produced in discovery in this proceeding which has a  
19 number of items on it. I'm going to ask you to identify  
20 the ones that you can for the other parties. The central  
21 item is a piece from the desk of Robert B. Roth dated 10/12.  
22 Then there are a lot of other notes and I want to know how  
23 much of it you are familiar with.

24 Have you had a chance to take a look at that?

25 A Yes. Sure.

1 Q Okay. Let's take the central piece, in the  
2 center.

3 A This is all my chicken-scratching.

4 Q So all the writing that's on there is your  
5 writing?

6 A Yes. It's obvious that the -- talked to John  
7 Merritt on the 18th.

8 Q And that call was initiated by you?

9 A I'm not certain of that. I'm really not.

10 Q And the information that was communicated,  
11 according to your note?

12 A I communicated to John and I'm sure -- the  
13 brother -- but according to my note I did indicate to him,  
14 that Joseph Lipinsky on the 14th to October had talked to  
15 a NRC investigator.

16 Q Do you remember what Mr. Merritt's response was  
17 to that?

18 A No, I don't.

19 Q Do you remember if he had a response?

20 A Oh, I'm sure he had some comment on it. I don't  
21 recall there was any, you know, big deal to him.

22 Q You don't remember if he --

23 A Or I would have, you know, had it been something  
24 unusual or overt or a sudden exclamation.

25 Q Okay.

1           MR. ROISMAN: I think I would like this marked  
2 as -- Mr. Chairman, how would you like us to handle these  
3 documents now with Mr. Roth? Mark them as exhibits and  
4 bind them into the transcript? Stick them into this  
5 transcript page?

6           JUDGE BLOCH: Let's just bind them in and they  
7 will be page referenced. If you are going to need to  
8 refer to them separately we can also identify them, but if  
9 he's not going to identify them separately now, there's no  
10 need to identify them.

11           BY MR. ROISMAN:

12         Q         I just want to be clear, Mr. Roth. This note in  
13 the center of the page that we have just been looking at  
14 that begins "John as per our telecon" --

15         A         Right.

16         Q         Is that the note per the trip report that you  
17 sent to Mr. Merritt per his request?

18         A         Yes. And the home address is on the same piece  
19 of paper.

20         Q         I take it that the little notes that are on the  
21 left-hand side, which you also wrote, were not included in  
22 what you sent to Mr. Roth --

23           MR. GALLO: Mr. Merritt?

24           BY MR. ROISMAN:

25         Q         I'm sorry. Mr. Merritt. What you call your

1 chicken-scratchings.

2 A Right.

3 Q Is that correct?

4 A Well, I'm reading what I see, sir. Yes, this is  
5 my reading -- this is my writing. It's getting late in  
6 the afternoon.

7 Q But when you sent the note to Mr. Merritt, those  
8 chicken-scratches weren't included on the note you sent to  
9 him, were they?

10 A See, this notes is a 3 by 5 pad.

11 Q What we have here is a composite of several  
12 different notes; right?

13 A Yes.

14 Q Do you happen to know whether the 10/12 and 10/18  
15 were on the same pieces of paper or whether they were on  
16 separate pieces of paper and superimposed on this single  
17 sheet?

18 A I don't recall. This sheet of paper was  
19 prepared for what I term in the office in Philadelphia, a  
20 blue block, which was a block kept right outside my office  
21 by my secretary so that either Joe Lipinsky or Ralph  
22 Trallo or myself or whoever was connected with the matter  
23 would have a single source for whatever documents or  
24 communications. I set up that in-house call.

25 Q What would you normally have written these notes,

1 the 10/18/83 and the 10/12 note -- other than the note to  
2 Mr. Merritt, what would you normally have written those on?  
3 Did you have some normal note keeping process?  
4 A No. It could have been -- I'm fairly well  
5 organized in a lot of things but I don't keep a regular  
6 note process. But to answer your question it could very  
7 well have been on a paper like this size and there could  
8 have been other notes unrelated to this matter so they  
9 would have been clipped off and put on one page and then  
10 the whole thing Xeroxed.

11 MR. ROISMAN: Okay.

12 (The document follows:)

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*Wally Tech*

FROM THE DESK OF  
ROBERT B. ROTH

10/12

John —

As per our tel/con, a copy of our in-house memo is enclosed. As discussed, insofar as our consulting contract w/you is concerned, this memo has no official status.

Please read, bearing in mind or recognizing that Joe Lipinacci is "talking" to me on a candid basis. Other than this copy to you, I'm not aware of any other copies of this memo that are not within our organization.

Regards -  
Bob Roth

OLIVER B. CANNON &  
Industrial Planning Specs.  
2800 WOODLAND AVE. PHILADELPHIA

Mr. J. T. Merritt, Jr.  
838 South Ridgeway  
Cleburne, Texas 76031

10/18/73  
talked to John  
Merritt... re  
call to J. T. Merritt  
10/14/73  
NR

10/12  
-Copy of 8/18/73  
Lipinacci and Ripper  
(3rd Annual Draft)  
Sent to Merritt  
Home; To be  
in Day to type  
transmitting letter  
SEE RBC HAND NOTE

*(Handwritten initials)*

1 MR. WATKINS: Has that been introduced?

2 JUDGE BLOCH: Is there any objection?

3 MR. WATKINS: None.

4 JUDGE BLOCH: There being none it may be  
5 introduced and bound in.

6 Five-minute recess.

7 (Recess.)

8 JUDGE BLOCH: On the record.

9 I would like to state for the record Mr. Norris has  
10 been excused for this session. He's still subject to the  
11 rule on witnesses. Please continue.

12 BY MR. ROISMAN:

13 Q Mr. Roth, during the break I asked you to look  
14 at a 2-page document. The document is dated 10/18/83?

15 A I have done so. That's correct.

16 Q It purports to be from someone named John, to you?

17 A This is John Merritt.

18 Q And I take it that is a copy of the note that  
19 you sent?

20 A That is correct.

21 Q Is the attachment to that the -- what, in fact,  
22 you sent as an attachment to Mr. Merritt?

23 A That's correct. Confirmed what I discussed with  
24 him on the 14th -- 18th.

25 Q On the 18th?

1 A Yes.

2 Q The notation that was --

3 A Same day.

4 Q -- in the --

5 And when you sent him this information, why did you  
6 think -- strike that.

7 Did you think that the information was -- represented  
8 further damage to your client, TUGCO?

9 A No. I didn't consider it damaging. I felt it  
10 was information that John should know about.

11 Q So we are past the damage stage at this point  
12 and you are just sort of keeping him up to date that  
13 somebody from your company --

14 A Yes.

15 Q -- that somebody from your company had been  
16 contacted by the NRC about this trip report?

17 A I felt we had that obligation. After all it was  
18 our memorandum that had been pilfered or surreptitiously  
19 taken. I was criticized because of our breach of security  
20 and Ken was on the spot. I felt it was the least I could  
21 do.

22 Q Who criticized you?

23 A John Merritt.

24 Q What did he say?

25 A He said how did this breach of your company

1 security happen? Well, what could I answer? It had never  
2 happened before.

3 As a result of that, I put out a memorandum to all  
4 divisions and to all personnel, cautioning them against  
5 having luggage, briefcases, et cetera, with company and  
6 corporate papers in them when they were out of the office  
7 unless they had their luggage and brief cases and whatever  
8 locked. It just never happened to us.

9 Q Does it strike you as surprising that there has  
10 been so much interest in Mr. Lipinsky's memorandum?

11 A It most certainly does.

12 Q In retrospect, do you think that, if you had  
13 handled it differently after Mr. Merritt's initial call to  
14 Mr. Norris, that it might have created less interest and  
15 controversy?

16 MR. GALLO: Objection. Vagueness. Handled  
17 differently how?

18 JUDGE BLOCH: Okay. I think the witness now has  
19 advice. Think about whether you would have handled it  
20 differently and answer the question.

21 MR. GALLO: I think he's entitled to hear the  
22 question framed in a manner so that he knows what the  
23 questioner is driving at.

24 JUDGE BLOCH: The question is whether he would  
25 have handled it differently. He may answer.

1                   THE WITNESS:  Handled what part?  You mean as  
2 far as modifying the last part of the memorandum, the  
3 conclusions which were reached by Joe that I had mentioned  
4 earlier?  Is that what you mean?  Handle that part  
5 differently?  Handle what differently?  Even the sending  
6 of the memorandum to Merritt?

7                   BY MR. ROISMAN:

8           Q           No, handled differently in terms of O.B. Cannon's  
9 way in which it dealt with TUGCO on it,

10          A           I don't know --

11          Q           Did you consider what would have happened if O.B.  
12 Cannon had basically followed what Joe Lipinsky said,  
13 which was, right in the November 28 final report, what we  
14 heard from them, what I had to say, put a period on the  
15 end of it, and say that's the end of our involvement.  We  
16 are moving onto other business.  Period.  That's the end  
17 of it.

18           Did you ever consider how the controversy might have  
19 gone differently if you had followed that advice?

20          A           I don't know that I had that advice.  If I  
21 understand what you are saying, I felt that we followed  
22 very logically and I think professionally that which had  
23 been requested by our client.  And, if I may address the  
24 November 3rd meeting in Dallas, there was some fairly high  
25 brass from the TUGO/TUSI people there.  I suggested as a

1 result that we establish a task force, and he appointed  
2 one of my executives as the chairman who had never been to  
3 the site. And we would review the -- the task force would  
4 take up with the TUGO people on-site the concerns which  
5 were in the Lipinsky August 8th memo, which were now known  
6 to the world and beyond; and the task force would make  
7 their report and I -- in my opinion, that was making as  
8 good an effort as we could to address our client's  
9 concerns, which had to be our concerns.

10 Q At that point in time, were you still under the  
11 impression that you were performing work under your  
12 original contract with TUGCO? By "that point in time," I  
13 mean the point in time of November 3rd through November  
14 28th?

15 A Well, we were certainly still serving the client.  
16 We had a moral commitment that is inherent in any contract,  
17 and it's up to myself as the CEO to maintain the integrity  
18 of the organization. So, by continuing with those  
19 activities, I thought we were doing what we should do.

20 Q You talked about integrity and professionalism.  
21 You indicated that, as an organization, O.B. Cannon, and I  
22 take it you as an officer of that organization, have been  
23 involved in the nuclear coatings business for quite a long  
24 time?

25 A That's correct.

1           Q           What did you perceive was your professional  
2 responsibility under the Nuclear Regulatory Commission's  
3 regulations, to report to them findings that you made  
4 during an investigation of the paint coatings program at  
5 Comanche Peak --

6           A           Are you referring --

7           Q           -- if any?

8           A           Are you referring to section 21?

9           Q           Yes.

10          A           In my purview we did not have any. Cannon did  
11 not apply the coatings. Cannon did not do the work.  
12 Cannon had not maintained nor performed any in-depth audit  
13 to confirm any procedures that were used. And we were  
14 fulfilling those requirements set forth in our consultancy  
15 contract, which constituted a contractual obligation. My  
16 best understanding of title 21, and I profess no law  
17 degree, was that we were not, once again, performing the  
18 work, installing the coatings. We did not manufacture the  
19 coatings.

20          Q           And what did you understand was your  
21 responsibility, professional responsibility regarding  
22 disclosing to TUGCO the existence of an NRC investigation  
23 into the matters raised by Mr. Lipinsky, including the  
24 fact that Mr. Lipinsky had had a conversation with an NRC  
25 investigator?

1           A           Well, Joe made me aware that the NRC  
2 representative had called him. I was not aware, quite  
3 frankly, of any in-depth investigation or anything of a  
4 clandestine nature, or anything of that ilk.

5                   JUDGE BLOCH: Are you now? I don't know of any  
6 clandestine operation --

7                   THE WITNESS: I don't either. But it has all of  
8 the earmarks of a dime novel: phone calls, guys are going  
9 to call Joe, don't call me until after hours; if they  
10 threaten to fire you, here's what you are to do. You know,  
11 it gets pretty spooky.

12                   BY MR. ROISMAN:

13           Q           You had no concern that you may have been  
14 tipping off someone who was under investigation by the NRC  
15 to the existence of an investigation or the nature of the  
16 investigation of which they may not have been fully aware?

17           A           No. That never crossed my mind.

18                   JUDGE BLOCH: I take it that it never crossed  
19 your mind that there was anything wrong about that. You  
20 must have realized you could be telling them they were  
21 being investigated.

22                   THE WITNESS: As I recall, I think they were  
23 aware of investigations. They had been -- I was given to  
24 believe, Judge Bloch, that there had been other  
25 investigations on Comanche Peak.



1 JUDGE BLOCH: On paint coatings?

2 THE WITNESS: In my opinion, I was not  
3 disclosing any confidentiality.

4 BY MR. ROISMAN:

5 Q At the time that you made the changes in the  
6 last paragraph of the trip report, did you believe that  
7 you would ultimately want to have Mr. Lipinsky sign that  
8 revised trip report?

9 A Yes. I believe in my prefiled testimony I  
10 address that matter. I thought it would be good form for  
11 him to sign, authenticate.

12 Q I didn't think that it was clear whether you  
13 thought that. But even at the time you were making the  
14 change you thought that; correct?

15 A At the time that I sent the copy to John Merritt.  
16 That was on the 12th.

17 Q Between the 10th and 12th, had you attempted to  
18 reach Mr. Lipinsky to get him to sign the copy that you  
19 were going to be sending?

20 A I didn't have to reach him because the verbiage  
21 that I read over to John Merritt on the phone -- on  
22 October 12th, I called Joe into the office and what I read  
23 to John Merritt over the phone is exactly as it had been  
24 revised by me. So, Joe Lipinsky was aware of the three to  
25 four words that were changed.

1 Q Did you have a discussion --

2 A It was not done behind his back.

3 Q Did you have a discussion with him in which you  
4 asked him: Joe, do you agree with this? Before you  
5 communicated it to Mr. Merritt?

6 A No. I told Joe what I was doing and why I was  
7 doing it, so that he would know.

8 Q And did he indicate to you at that time that he  
9 had any concern with -- either that you were doing it or  
10 why you were doing it?

11 A I don't recall any objection on Joe's part.

12 Q The trip report that you sent to Mr. Merritt  
13 with the change in it, in the original version of the trip  
14 report which is four pages, I believe Mr. Lipinsky's  
15 signature appears at the bottom of the fourth page.

16 A Yes.

17 Q In the revised version, the last paragraph of  
18 the trip report is slightly lengthened.

19 A Yes.

20 Q What happened to the portion of the last page  
21 that had Mr. Lipinsky's signature? Was that off the trip  
22 report when you sent it to Mr. Merritt?

23 A I believe it was because it would have been  
24 printed out on the Wang machine.

25 Q So what you had done was had the last page typed

1 with the change inserted into the last paragraph?

2 A Well, when the Wang -- when the printer goes and  
3 changes the paragraph, they'll print the whole page and  
4 then just make the changes.

5 Q Okay. So in other words what you sent to  
6 Mr. Merritt was a retyped last page of --

7 A Reprinted.

8 Q I'm sorry. Reprinted last page of the trip  
9 report and the signature simply was not there?

10 A That's correct.

11 Q I wasn't clear. I understood your testimony  
12 before regarding that the first part of the paragraph  
13 which you interpreted as implying that O.B. Cannon was  
14 looking for a contract, if O.B. Cannon tries to obtain a  
15 contract -- and your justification for the change was  
16 whether or not O.B. Cannon would attempt to obtain a  
17 contract was certainly within your purview and certainly  
18 not within Mr. Lipinsky's?

19 A Yes.

20 Q What I wasn't plain about was the change in the  
21 second part of the paragraph. I take it the judgment as  
22 to whether or not a rework contract was required and  
23 whether it would be possible or impossible to salvage the  
24 work that is currently in place, that at least involved  
25 judgments that he was competent to make; did it not?

1           A           I'm sorry, I missed the last part of the  
2 question.

3           Q           That Mr. Lipinsky was competent to make  
4 judgments regarding whether or not a -- salvaging the work  
5 currently in place was possible or not? He had competence  
6 to make that judgment, didn't he?

7           A           I don't believe Joe made a review of the  
8 documentation that would have indicated that -- or I don't  
9 think Joe determined that there was a lack of  
10 documentation to the coatings. And if there was a lack of  
11 documentation to the coatings then very oftentimes they  
12 have to be replaced. Not always. But, it had been my  
13 experience that coatings, no matter how bad they may have  
14 appeared during a visual examination, after some  
15 inspection and after some more in-depth investigation, if  
16 you will, after some review with the coating manufacturers,  
17 after looking at the client's PSAR and MSAR, in fact a lot  
18 of those coatings can be salvageable.

19           So the word "impossible" in my best purview at the time  
20 was just inappropriate.

21           Q           But my question was, you told me that you didn't  
22 think that Mr. Lipinsky had a basis for making the  
23 judgment that he made. And I'm asking you whether he was  
24 qualified to make the judgment? In other words, his  
25 expertise was such that, had he looked at the things that

1 you think he should have looked at, that he would have  
2 been competent to have rendered an opinion as to whether  
3 the work was or was not salvageable?

4 A Oh, I'm convinced it was Joe's belief based on  
5 the couple of days that he was on the site. What he said  
6 was what he said -- that's his belief.

7 Q That wasn't my question.

8 A I'm sorry.

9 Q I'm asking you about his competence,  
10 professional qualifications?

11 A I have no question of Joe's competence.

12 Q The question was: Was he competent, if he  
13 looked at the proper documentation, to render an opinion  
14 on the question as to whether it was possible or  
15 impossible to salvage what work is currently in place at  
16 the Comanche Peak site?

17 A Joe has the competence to render that opinion.

18 Q Okay. And your problem with it was that your  
19 experience suggested to you that probably it shouldn't  
20 ever be said that it was impossible; and that, in addition,  
21 you knew that Joe Lipinsky had not actually looked at  
22 enough documentation from which he could have said it was  
23 impossible; is that correct?

24 A That's correct.

25 Q You, also, had not looked at any documentation

1 to indicate whether it was possible or impossible either;  
2 had you?

3 A That is correct.

4 Q And you had not even had the advantage of going  
5 to the site as he had, to do some on-site observation;  
6 correct?

7 A That is correct.

8 JUDGE BLOCH: Just one second. Is Mr. Lipinsky  
9 still in the witness room?

10 MR. GALLO: No.

11 JUDGE BLOCH: Let's continue.

12 BY MR. ROISMAN:

13 Q Why did you feel it was appropriate for you to  
14 substitute your judgment for his judgment, without you  
15 having a full exchange between you to make sure that the  
16 judgments were being -- that you were exercising proper  
17 judgment in this case?

18 A Because mine has been the greater experience in  
19 the field.

20 Q Is that another way of saying because you were  
21 the boss?

22 A No. I think -- whether I was the boss or not,  
23 if I had some 20-odd years in nuclear coatings and had  
24 been on the ANSI committees 101.1, 101.4, and had seen  
25 quite a few problems in the field, then I could exercise

1 my judgment, which I felt, quite frankly, was of greater  
2 duration than Joe's.

3 Q Well, based on that experience and after reading  
4 Mr. Lipinsky's August 8 trip report, did Comanche Peak  
5 look to you like the typical nuclear plant coatings  
6 problems? Or did they seem to have substantially greater  
7 problems than one would normally find?

8 A Well, there were more concerns than I had seen  
9 addressed when Joe had visited other plants. But bear in  
10 mind, most of the other plants that Joe had visited and  
11 was concerned with is where Cannon was involved as the  
12 applicator contractor.

13 Q All right. But I wasn't talking about Joe's  
14 experience. I was talking about your experience.

15 You said you had had a lot of experience in observing  
16 plants where paint coatings were applied?

17 A That's correct.

18 Q My question to you is, after looking at the  
19 August 8, 1983 trip report and taking the statements  
20 contained therein with the exception of the last paragraph  
21 on page 4 at face value, what was it that you -- did you  
22 feel that this company had a typical paint coatings  
23 problem; or one that had more problems than what you would  
24 typically find?

25 A I guess the shortest answer was it appeared to

1 have more problems than those that we were used to seeing,  
2 based on Joe's report.

3 Q That's all -- I take it at that point that's all  
4 you had was Joe's report?

5 A That's correct. My decisions could be no better  
6 than my information.

7 Q I take it that if he were correct that Comanche  
8 Peak is doing inspections to the degree that they,  
9 Comanche Peak, are comfortable with or will tolerate; and  
10 that if he is correct that, B and R wanted to buy the "right"  
11 answer; that that was quite atypical of what your  
12 experience had shown you at nuclear plants; isn't that  
13 true?

14 A Atypical?

15 Q Was not atypical -- was not typical of what you  
16 had seen at nuclear plants.

17 A Well, that didn't follow our current experience,  
18 that's for sure.

19 Q So I want to take you back then to the question:  
20 How are you so confident that your experience with the  
21 more typical situation was applicable to a plant which had  
22 an atypical set of problems in this very area?

23 A Well, much of the problem-solving that had been  
24 our best experience, it would normally take a minimum of  
25 10 days to two weeks to take samples, to bring in a



1 third-party consultant, to take our own people on an in-depth  
2 inspection, to have a failure analysis made. And I know  
3 the time and I know the effort that has to be generated in  
4 that area. And with Joe Lipinsky on-site for just three  
5 days, I just felt that his saying it was impossible may  
6 not have been the truth of the matter. And it may have  
7 been.

8 So I changed the word to "improbable" because I thought  
9 it characterized a better balance of what was actually  
10 there.

11 Q But didn't he address in his second paragraph at  
12 the end of page 4, or the last paragraph at the end of  
13 page 4, didn't he address the very concern that you are  
14 raising? Namely that he didn't have enough time to see  
15 everything by the parenthetical reference, "by all  
16 indications"? Didn't that represent his qualifier that  
17 addresses all the matters you just testified about?

18 A Page 4, what item, Mr. Roisman?

19 Q The last paragraph on the page after the word  
20 "impossible" he has a qualifier, in parentheses, "by all  
21 indications."

22 A Okay?

23 Q Doesn't that really address the concerns that  
24 you have been testifying about, namely that --

25 A It could be. I didn't think it was strong

1 enough.

2 Q When you made the change were you thinking --  
3 when you made that part of the change were you still  
4 thinking about damage to the utility from the release of  
5 the report? Was that the -- a motivator?

6 A I don't think that was any great motivating  
7 force.

8 Q It was just a matter of changing a piece of the  
9 report that you thought wasn't correct?

10 A I thought it should be changed. Once again,  
11 "impossible" just has the connotation of the great  
12 finality of things. And it may have been that bad. But  
13 it was pretty definite.

14 JUDGE BLOCH: Mr. Roth, to match that change did  
15 you consider changing other things also that may have made  
16 it seem less damaging like the reference to Zimmer?

17 THE WITNESS: No.

18 JUDGE BLOCH: It seems if you could change it  
19 there, why not change it in the other place too?

20 THE WITNESS: Well, as I mentioned earlier,  
21 judge, with all due respect, the final paragraph drew the  
22 conclusion which largely catered to the contractual end of  
23 the business. And that was the only item that I had a  
24 problem with.

25 JUDGE BLOCH: It sort of had a piggyback ride on

1 the other problem. As long as you were in the paragraph  
2 you might as well fix the rest of it up.

3 THE WITNESS: Not the rest of it. Just one word.  
4 What Joe's concerns were and observations, were Joe's to  
5 make. There's no way I would change those because I had  
6 not been with him nor had I discussed them with him.

7 BY MR. ROISMAN:

8 Q Who communicated to you the damage to the  
9 utility? In other words, how did you learn what  
10 constituted the elements of damage that the utility was  
11 suffering as a result of the getting on the street of the  
12 Lipinsky memorandum?

13 A Well, I thought I answered that when I mentioned  
14 the call from John Merritt to me on the 12th, and he was  
15 not a very happy individual but -- and still, really,  
16 inquiring. Because I had heard, from what he said, he had  
17 not seen the memo nor did he have a copy. So that started  
18 off the area of concern, now. That was further  
19 exacerbated when we sat with the TUSI management on  
20 November 3rd in their offices in Dallas. Because again,  
21 their hierarchy said we have gone -- been put to a  
22 considerable manner of trouble, in a sense. And this  
23 could be damaging to our program and our effort. And they  
24 felt as though their coatings program, they had tried to  
25 do the best job they knew how.

1           They mentioned the consultants whom they had had in  
2           from Ebasco, and Gibson Hill, and people of that nature.  
3           And that was the gist of our meeting in Dallas on the 3rd  
4           of November.

5           Q           And at that time --

6           A           I thought I covered that.

7           Q           No. The problem that I had was that you told me  
8           that Mr. Merritt had sort of started it. And I said, was  
9           that all the damage? And you said well, more became  
10          apparent. And I wasn't clear that you pinned it down. So  
11          it was at the November 3rd meeting when you met with the  
12          management of the company that you got a broader view of  
13          what they perceived to be the damaging consequences of the  
14          release of the Lipinsky memorandum?

15          A           Yes. Now, between the 12th, when I talked to  
16          John -- I was certainly aware because there were folks,  
17          inspectors that Joe Lipinsky had known and talked to at  
18          the job site, who were calling him to the extent that  
19          memos were popping up around the site and some of the  
20          other details. Some of them were being investigated. So  
21          I knew that there was a lot going on.

22          Q           Okay. And your reaction to the awareness that a  
23          client had suffered damage as a result of what you  
24          perceive to be a mistake or a breach of security on the  
25          part of O.B. Cannon, produced in you a reaction that you

1 wanted to do something to make up for it? Is that fair?

2 A Well, I felt we owed the client cooperation, I  
3 felt we owed them an explanation. At the November 3  
4 meeting I felt that, in order to properly and logically  
5 address Joe's concerns, the creation of the task force.  
6 As a result of that, I drew up a memorandum assigning the  
7 task force. I called up John Merritt, I read it to him  
8 over the phone. And we were trying to make amends of what  
9 had been a breach of security of our in-house memorandum  
10 that had been stolen.

11 Q And your perception was that the task force work  
12 would be work that you would not be independently billing  
13 TUGCO for; correct? It would be, in effect, at O.B.  
14 Cannon expense with the possible exception of out-of-pocket  
15 costs?

16 A Quite frankly, I don't think the matter was  
17 stressed. And there may have been some expenses from that  
18 trip that were, in fact, billed. I don't know that but we  
19 can get the detail of the billing.

20 Q I'm just wondering, not even if someone  
21 addressed it --

22 A Whether it crossed my mind at that time? I  
23 never gave it a thought. Solve the problem first and then --  
24 you know -- fix the problem, fix the blame.

25 Q What did you think was the solution to the

1 problem? Obviously you couldn't get the trip report out  
2 of circulation. If it was out, it was out. What did you  
3 think was the solution to the problem?

4 A Well, it was pretty evident that, as it evolved  
5 at the November 3rd meeting, that the solution I could  
6 best offer was to set up a task force with an independent  
7 manager from accounting who was not familiar with the site  
8 but who has had a lot of expertise and let them meet at  
9 the job site with the concerned client people and address  
10 the concerns one by one. Confirm they are or negate them.

11 Q How would it have helped if you confirmed them?  
12 How would that have helped TUGCO if you had gone on-site  
13 and come back and said: Joe understated the problems here.  
14 How would that have helped TUGCO?

15 A Oh, I think it would have helped them a great  
16 deal. As it had been explained at the meeting on the job  
17 site on August 9th, there had been a retrofit program  
18 introduced and being implemented somewhat early along.  
19 And I think it would have identified or maybe sharpened up  
20 some of the areas that the retrofit program could  
21 indicator to.

22 So, if, in fact, those deficiencies, if they were  
23 deficiencies, were confirmed, I think that would have been  
24 helpful to the client.

25 Q But that's equally true, whether the Lipinsky

1 report had ever been made public, the very expression of  
2 the concerns by Mr. Lipinsky to the company at the end of  
3 his original site visit were sufficient to put them on  
4 notice of all the problems; so, at that point, whatever  
5 benefit would come from a report that said: Yes, Lipinsky  
6 is right, there really are problems; could have come  
7 without ever making the report public. Isn't that true?

8 A I hear what you are saying. I can't speak for  
9 the utility and Joe -- Joe said he had met a number of  
10 officials while he was at the job site in July and had  
11 vocalized on some of his observations. And what they did  
12 or how, you know, whether they took immediate action on  
13 them, I can't ascertain.

14 Q Well, was it your expectation -- I mean you went  
15 into the meeting on the 3rd with this trip report which  
16 was, even by its own terms, a preliminary assessment for  
17 which the writing indicates the need to do an in-depth  
18 audit. And as a prerequisite to either allaying the  
19 concerns or confirming the concerns; correct?

20 A Yes.

21 Q Did you go into that November 3rd meeting  
22 expecting that what you would do is conduct the definitive  
23 review needed to either confirm or deny the trip report  
24 concerns?

25 A No. We were invited down to sit with the TUGO/TUSI

1 management. They all by then had read the memorandum.  
2 They were wondering why, perhaps -- and I can't speak for  
3 them -- Joe had expressed the concerns, how real they  
4 might be. They outlined to Jack Norris and I, who  
5 attended the meeting, that in their best purview they were  
6 making every effort to have a good installations as far as  
7 their nuclear accounting was concerned. What could they  
8 do now that these matters were not only out on the street  
9 but also being talked about at various levels. And that's  
10 when I suggested the task force.

11 Q The task force was suggested to do a complete  
12 review and put to rest the ambiguity in the report? That  
13 is, either confirm or deny it? That was the purpose of  
14 the task force?

15 A The purpose of the task force was to have our  
16 folks meet with the TUGO site people and review -- address  
17 the concerns expressed by the Lipinsky memorandum.

18 Now, as a matter of the record, I wrote a memorandum  
19 addressed to Ralph Trallo and appointed him as the  
20 chairman of the task group. And that memo is a matter of  
21 record.

22 JUDGE BLOCH: Mr. Roth, did you come out of the  
23 November 3rd meeting believing that you had an agreement  
24 to send your people back to the site and do that audit?

25 THE WITNESS: Yes.



1 JUDGE BLOCH: Do you have any idea what happened  
2 after that that broke up that agreement?

3 THE WITNESS: May I say this, if I understand  
4 what you are saying? I don't know that the agreement was  
5 ever abrogated.

6 JUDGE BLOCH: They never did the audit.

7 THE WITNESS: Sir?

8 JUDGE BLOCH: They never did it the audit. You  
9 had an agreement to do the follow-up.

10 THE WITNESS: I never said audit. Our people  
11 had an agreement to go to the job site and follow up with  
12 the TUGO people, and follow up every concern and, although  
13 it was not discussed in detail, if, in fact, that ever  
14 involved to demand or create an audit, we were prepared to  
15 go forward with that. With that in mind, as part of the  
16 task force I assigned Keith Michels, who was our corporate  
17 auditor.

18 JUDGE BLOCH: So you didn't think they were  
19 going to go to the site and talk on a tape-recorded  
20 meeting. You thought they were going to do something in  
21 the plant about these problems?

22 THE WITNESS: That was my impression at the time  
23 and I so stated in the memorandum and I sent a copy of the  
24 memorandum --

25 JUDGE BLOCH: Please continue.

1           MR. GALLO: For sake of clarity of the record  
2 you presented the witness in your question with an  
3 alternative. His answer was "that was my understanding at  
4 the time." I don't think the record is going to be clear  
5 as to which one of the alternatives was his understanding.

6           JUDGE BLOCH: Okay. Would you ask a question to  
7 clarify that?

8           MR. GALLO: Judge Bloch asked you, Mr. Roth,  
9 whether you expected when your people went down to the  
10 site that they would sit around at a meeting and have a  
11 transcribed-type meeting like what occurred or whether  
12 they were going to go down to the plant and look at the  
13 the plant and review matters with respect to Lipinsky  
14 concerns. Which one of those two options did you expect  
15 to happen when your people went down there?

16          THE WITNESS: I fully expected that there would  
17 be more actual site work done.

18          JUDGE BLOCH: We are now just about at breaking  
19 time, but would you tell us why, in your opinion, the  
20 actual site work wasn't done, even though you thought you  
21 had that agreement?

22          THE WITNESS: I think it's rather obvious that  
23 the client elected to pursue the matters of concern in a  
24 different format; that format being one of a review in  
25 their offices or whatever -- taping --

1           JUDGE BLOCH: In your opinion did it have  
2 anything to do with an outline of what your people were  
3 going to have presented to them when they visited the site?  
4 Was the outline perhaps some reason as to why they changed  
5 their mind as to what they were going to do?

6           THE WITNESS: Which outline, my memorandum?

7           JUDGE BLOCH: No, the outline your group took  
8 with them that the task force group developed.

9           THE WITNESS: One faction of our task force was  
10 QA/QC, which was Joe Lipinsky and Keith Michels, and they  
11 developed a checklist.

12          Now, what Jack had on his, or Ralph Trallo, what the  
13 other members of the task force had, I don't know.

14          JUDGE BLOCH: Do you know whether that checklist  
15 had any part to play in the decision that the site work  
16 should not go forward?

17          THE WITNESS: I do not know that. I did not go  
18 with them.

19          JUDGE BLOCH: Mr. Roisman, shall we conclude at  
20 this time?

21          THE WITNESS: I did not go with them.

22          JUDGE BLOCH: I understand that, but I just  
23 wanted to know your knowledge. Did you have information  
24 from them or any source that let you know whether that  
25 checklist had some role in the changed decision on the

1 site work? Were you trying to finish your answer?

2 THE WITNESS: No, sir. When the format -- to  
3 continue, because I think it's important -- when the  
4 format was understood by Ralph Trallo, not to follow the  
5 exact dictates of my memorandum, he wondered whether he  
6 should go forward because the disciplines are such in our  
7 organization that the memorandum was being modified. So  
8 he reached me on vacation. I was in Bermuda at the time.  
9 And he said: This is what they would prefer to do. And I  
10 said: Be their guest.

11 JUDGE BLOCH: So after he went to the site he  
12 checked back to you to see if it was okay to modify what  
13 he thought he was supposed to do when he got there?

14 THE WITNESS: That's correct.

15 JUDGE BLOCH: Let's adjourn until 8:30 in the  
16 morning.

17 MR. GALLO: What shall we do tomorrow, Mr. Roth  
18 or Mr. Lipinsky or --

19 JUDGE BLOCH: I think it would be less  
20 disruptive if we continue with Mr. Roth. How do you feel  
21 about that, Mr. Roisman?

22 MR. ROISMAN: That's fine.

23 JUDGE BLOCH: All right. That's it. Thank you  
24 very much.

25 (Whereupon, at 6:05 p.m., the hearing was

1 adjourned.)  
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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: TEXAWS UTILITIES GENERATING COMPANY  
et al.  
  
(Comanche Peak Steam Electric Station,  
Units 1 and 2)

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

PLACE: BETHESDA, MARYLAND

DATE: TUESDAY, NOVEMBER 20, 1984

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Joel Breitner  
(TYPED)

JOEL BREITNER

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