

ORIGINAL
UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

METROPOLITAN EDISON COMPANY

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

DOCKET NO: 50-289-SP
(Restart Remand on
Management)

LOCATION: HARRISBURG, PENNSYLVANIA

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

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In the Matter of: :
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METROPOLITAN EDISON COMPANY : Docket No. 50-289-SP
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 : (Restart Remand on
 : Management)
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The hearing in the above-entitled matter resumed,
pursuant to notice, at 9:05 a.m.

BEFORE:

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

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

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

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APPEARANCES:

2

On Behalf of the Licensee:

3

ERNEST BLAKE, ESQ.

DAVID R. LEWIS, ESQ.

4

Shaw, Pittman, Potts & Trowbridge
1800 M Street, N. W.

5

Washington, D. C. 20036

6

On Behalf of Three Mile Island Alert:

7

LYNNE BERNABEI, ESQ.

Government Accountability Project

8

1555 Connecticut Avenue, N. W.

9

Washington, D. C. 20036

10

JOANNE DOROSHOW, ESQ.

The Christic Institute

11

1324 North Capitol Street

Washington, D. C. 20036

12

On Behalf of the NRC Staff:

13

JACK R. GOLDBERG, ESQ.

LOIS R. FINKELSTEIN, ESQ.

14

Office of the Executive Legal Director

15

U. S. Nuclear Regulatory Commission

Washington, D. C. 20555

16

On Behalf of the Commonwealth of Pennsylvania:

17

THOMAS Y. AU, ESQ.

Department of Environmental Resources

18

101 South Second Street

19

503 Executive House

Harrisburg, Pennsylvania 17120

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22

23

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>BOARD</u>
David H. Gamble (Resumed)					
By Mr. Goldberg	30,594				
By Judge Smith					30,642
By Mr. Au	30,658				
By Ms. Bernabei			30,682		
By Judge Wolfe					30,744
By Mr. Goldberg				30,755	
By Mr. Blake	30,790				
(Rebuttal)					
By Ms. Bernabei	30,796				
By Mr. Goldberg	30,808				

Luncheon Recess, Page 30,680

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Commonwealth Mailgram Exhibit 1	30,675	(Rejected at Page 30,788)
TMIA Exhibit 22	30,709	
TMIA Exhibit 23	30,712	
TMIA Exhibit 24	30,713	30,811
Staff Mailgram Exhibit 3	30,810	30,811

L A Y - I N

Notification by Licensee of Intended
Joint Mailgram Exhibit 1 References Following Page 30,823

(9:05 a.m.)

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25P R O C E E D I N G S

JUDGE SMITH: You may proceed, Mr. Goldberg.

MR. GOLDBERG: Two brief preliminary matters.

The Board inquired yesterday about the Office of Inspector and Auditor Report entitled, IE Inspectors Alleged Failure to Report Information, Re: March 28, 1979 Hydrogen Explosion at TMI-2, dated January 7, 1981, and referred to by Mr. Gamble in his testimony at pages 2 to 3.

I obtained one copy of that last night, and I have communicated to my office we are having additional copies made and we are going to attempt to deliver to the offices of each of the Board members today a copy of that report. If we are not able to do that today, we will get it to you as soon on Monday as possible.

I plan to ask Mr. Gamble several questions about that investigation.

Also, in looking over my remaining cross examination of Mr. Gamble last night, I realize that the estimate I provided yesterday evening of twenty minutes is probably incorrect, and my estimate now is that it may be forty-five minutes.

MS. BERNABEI: Judge Smith, yesterday afternoon and evening, I did go over with both Mr. Blake and Mr. Goldberg those questions and answers insofar I knew them

1 I intended to ask Mr. Gamble on rebuttal, and I would hope
2 for the witnesses convenience we will be able to get to those
3 as well.

4 JUDGE SMITH: I hope so also.

5 MS. BERNABEI: Okay.

6 JUDGE LINENBERGER: Question. I am using a copy
7 of an index of Joint Mailgram Exhibit 1, that lists some
8 144 items, and several times I have heard items cited from
9 that index with the citation preceded by a letter section
10 number, A, B, C, or something.

11 MR. BLAKE: C. C is what you probably heard,
12 Mr. Linenberger, and it is really when this Joint Mailgram
13 Exhibit first came up, we agreed that since it was comprised
14 of three sections, really, the proposed stipulation itself,
15 a document, a pleading, and the index and the volumes of
16 documents, we decided that the volumes of documents were
17 really the C portion in each of the numbers, and it would
18 be referred to as C item number.

19 JUDGE LINENBERGER: Thank you.

20 MR. BLAKE: I don't think there have been any
21 references to A and B.

22 JUDGE SMITH: Anything further preliminarily?

23 MR. BLAKE: I handed out today some notifications
24 of references to the Joint Mailgram exhibit. I have handed
25 out also a proposed stipulation that we propose with regard

1 to Mr. Arnold.

2 That may be one of the subjects we will discuss
3 later on today. It was dated yesterday. I served it on the
4 rest of the world yesterday, and carried it here in my brief
5 case and carried it home.

6 JUDGE SMITH: Mr. Blake, I am still concerned we
7 do not have a reliable method of reporting the notifications.

8 MR. BLAKE: Mr. Lewis is keeping track of which
9 ones get bound in and which ones don't, and we are going to
10 remind him to the extent we or others have provided
11 notifications, have not seen them bound in at the end of the
12 days transcript.

13 JUDGE SMITH: Well, how about yesterday's batch.
14 They are still unbound?

15 MR. BLAKE: That is right. They are. But we
16 are going to keep track of it.

17 JUDGE SMITH: It is a heavy responsibility.

18 MR. BLAKE: Yes, sir. That is why I gave it to
19 Mr. Lewis.

20 JUDGE SMITH: Okay. Mr. Goldberg?

21 Whereupon,

22 DAVID H. GAMBLE,

23 a witness having previously been sworn, resumes the stand
24 and further testifies as follows:

25 CROSS EXAMINATION

BY MR. GOLDBERG: (Continuing)

XXX INDEX

1 Q Mr. Gamble, on page 2, carrying over to page 3
2 of your prepared testimony, you identify an investigation
3 in which you participated entitled, IE Inspectors Alleged
4 Failure to Report Information, Re; March 28, 1979 Hydrogen
5 Explosion at TMI-2, dated January 7, 1981.

6 Did you play a major role in that investigation?

7 A Yes, sir, I did.

8 Q Were there any other investigators who played
9 a role in that investigation?

10 A There would be two investigators who played a
11 role, if you want to say that.

12 Q And who were they?

13 A Roger Fortuna, who at that time was Assistant
14 Director for Investigations, of the Office of Inspector and
15 Auditor, and James Cummings, who was Director of Office of
16 Inspector and Auditor.

17 Q Who authored the report as identified in the
18 testimony?

19 A It would have been a joint effort of Mr. Fortuna
20 and myself.

21 Q Did Mr. Cummings conduct any interviews?

22 A No, sir, I don't believe he did.

23 Q Did you and Mr. Fortuna conduct interviews
24 jointly?

25 A I believe every interview in this investigation

1 were joint. Mr. Fortuna and myself.

2 Q What was the objective of that invdstigation?

3 A The investigation was initiated after a concern
4 was raised -- after allegations were raised by Joseph
5 Chwastyk during the interview in the 0760 investigation,
6 in which he identified, I believe September 1980, or whatever
7 the date was of that interview, he identified for the first
8 time the inspector that he had for some time indicated was
9 present in the control room and was aware of the containment
10 pressure spike on the day of the accident.

11 After Mr. Chwastyk identified Mr. Neeley as
12 being the NRC inspector, Victor Stello, Director, Office of
13 Inspection and Enforcement, indicated a great deal of concern
14 over whether Mr. Neeley's conduct was proper conduct for an
15 NRC employee, if he had information of this magnitude he
16 should have reported it to his superiors.

17 Based upon discussions, when I raised this issue
18 after a meeting at I&E with my supervisors, OIA took the
19 position that since it involves conduct of NRC employees, it
20 would be a proper aspect of the 0760 investigation, if I
21 can call it that, it would be a proper aspect for OIA to
22 inquire into separately.

23 Though I suppose the overall thrust of it
24 certainly is of significance to the findings in 0760. It was
25 a sub-issue by OIA.

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I might add that we were not looking at this strictly from criminal enforcement angle, as had been my earlier participation in the 0760 investigation. This also had the aspect of potential misconduct of NRC employees, which is also part of the dual charter of the Office of Inspector and Auditor.

End 1.
MS fols.

Sim 2-1

1 Q Was your role in this less concerned with
2 criminality than was your role in the 0760 investigation?

3 A I wouldn't say less, but I would say I had
4 additional responsibilities in this investigation and that
5 I had criminality and conduct of employees responsibilities
6 compared to the 0760 investigation where I had purely
7 criminality responsibilities.

8 Q But in the 0760 investigation the other members
9 of the team did have a responsibility with respect to NRC
10 enforcement actions; is that correct?

11 A Yes, sir.

12 Q In conducting interviews for the investigation
13 into the allegations concerning NRC inspectors, did you
14 advise any interviewees of their rights against self
15 incrimination?

16 A I believe we did.

17 Q Did you advise interviewees in the 0760 investiga-
18 tion of their rights against self incrimination?

19 A No, sir. Although, I might add, that was
20 discussed.

21 Q Now with respect to this investigation into the
22 allegations concerning NRC inspectors, as I understand one
23 of your prior answers, actually it was the Office of Inspection
24 and Enforcement that requested OIA to do the investigation;
25 is that correct?

1 A It actually went back and forth. There was
2 an exchange of verbal discussions as well as correspondence
3 before it actually jelled into a formal request from I&E.
4 Virtually it was a formal request by I&E.

5 Q So this was a case where the Office of Inspection
6 and Enforcement was concerned about the conduct of some of
7 its own employees and requested that that conduct be
8 investigated?

9 A That is correct.

10 Q Do you believe this was a significant investigation?

11 A From the standpoint of manpower or the subject
12 matter covered or what?

13 Q Well, as you used that phrase in your testimony,
14 was this a significant investigation?

15 A As I used the phrase significant investigation
16 in my testimony, I am not referring to entire investigations.
17 I am referring to significant investigative activities,
18 such as interviews and that type of investigative activities.

19 Q Okay. Did this investigation involve significant
20 investigative activities?

21 A Yes, sir.

22 Q How did you proceed to investigate this matter
23 once the request was made and the request was accepted by
24 OIA?

25 A My answer would be somewhat disjointed if I

Sim 2-3

1 didn't go back to the earlier discussions between OIA and
2 I&E that led up to the formal request by I&E. Could I
3 include those in my answer as well?

4 Q Yes. What I am interested in is once it was
5 decided that you were going to conduct an investigation,
6 and you and Mr. Fortuna were the primary investigators, can
7 you describe the steps you took to begin the investigation
8 and proceed through the investigation? Just briefly what
9 steps you took to conduct this investigation.

10 A The first step was gathering background
11 information to learn what had been said by the inspectors
12 concerned, and then we prepared an investigative plan to
13 attempt to resolve the issues and then we began our
14 investigative activity, which included interviews, review
15 of records in the possession of the interviewees and there
16 were some attempts at some other investigative activities
17 which we never did complete.

18 Q In your review of background information, did that
19 include -- I think you indicated it included prior interview
20 transcripts of people you wished to interview?

21 A That is correct.

22 Q And based on that, among other things, you
23 developed a plan for the investigation?

24 A That is correct.

25 Q Did that plan include some concept of questions

Sim 2-4

1 that you wanted to ask interviewees?

2 A It included areas that had to be covered. It
3 was not questions to be asked.

4 Q Now do you recall who you actually interviewed?

5 A I couldn't today recall who are the interviewees
6 were. Obviously, a few of the significant ones I recall,
7 but not all of them.

8 Q Now I believe you said it was Mr. Chwastyk who
9 identified an NRC inspector by the name of Mr. Neeley.

10 A Yes, sir.

11 Q Was there any other TMI-2 operator who believed
12 that an NRC inspector was informed on March 28th about a
13 hydrogen explosion?

14 A I believe there were. If we just say I&E
15 inspector without attaching a name to it, yes, I believe there
16 were.

17 Q Who, other than Mr. Chwastyk, made such a claim?

18 MS. BERNABEI: I am going to object if this is
19 intended to test Mr. Gamble's memory. There is a formal
20 report and perhaps it might be more appropriate to allow him
21 to review that. I don't see the purpose of testing his
22 memory at this point about these events.

23 MR. GOLDBERG: Well, if he doesn't know, he can
24 review the report.

25 MS. BERNABEI: I don't think it is relevant. That

Sim 2-5

1 is my objection.

2 JUDGE SMITH: Wait a minute.

3 MS. BERNABEI: It is an objection.

4 JUDGE SMITH: You don't believe the question is
5 relevant?

6 MS. BERNABEI: If it is an attempt to test his
7 memory, I don't think it is relevant. I assume that the line
8 Mr. Goldberg is following has to do with Mr. Gamble's
9 performance or conduct of that investigation, but testing
10 his memory about what he remembers today about it I don't
11 think is relevant.

12 JUDGE SMITH: Relevant to his memory?

13 MS. BERNABEI: Relevant to the issue before the
14 Board with his testimony. His testimony is about the conduct
15 of the NUREG 0760 investigation in gross form.

16 JUDGE SMITH: Oh, is it your point that it has
17 gone beyond the scope of his direct testimony?

18 MS. BERNABEI: Yes.

19 JUDGE SMITH: That is your argument?

20 MS. BERNABEI: It is not relevant.

21 JUDGE SMITH: Oh, it is relevant. It is obviously
22 relevant whether somebody say a pressure spike and hydrogen
23 explosion.

24 MS. BERNABEI: It is not relevant to his
25 testimony. I am sorry. Yes, it goes beyond his direct

Sim 2-6

1 testimony.

2 MR. GOLDBERG: Well, Mr. Gamble cites this as
3 an investigation in which he participated. The subject
4 matter of the investigation itself is one that is relevant
5 in the sense that it deals with the pressure spike and
6 hydrogen explosion on the day of the accident and who had
7 knowledge of such occurrences on the day of the accident.

8 JUDGE SMITH: Overruled.

9 BY MR. GOLDBERG:

10 Q Do you recall, Mr. Gamble, who, other than
11 Mr. Chwastyk, made a claim that there was an NRC inspector
12 who was aware of a hydrogen explosion on March 28th, 1979?

13 A The only one I seem to have a recollection of
14 on that score is I believe Brian Mehler may have also been
15 one. I couldn't say if there were others. Four years later
16 I can't say right now if there were others, but obviously
17 that would be in my report if there were.

18 Q So as I understand it then, you were asked to
19 investigate whether the claims by Mr. Chwastyk and Mr. Mehler
20 that there was an NRC inspector either present in the control
21 room or informed on the day of the accident that there was
22 a pressure spike and that was possibly caused by a hydrogen
23 explosion? Is that a general statement of what you were
24 asked to investigate?

25 A No, I think that is a little bit off.

Sim 2-7

1 Q Okay, could you straighten it out, please.

2 A You said whether an NRC inspector was in the
3 control room or was aware of the pressure spike. It was
4 not "or." We didn't care who was in the control room. It
5 was only whether NRC inspectors were aware of the pressure
6 spike, and I don't believe our charge was limited to those
7 that knew of the pressure spike and attributed to a hydrogen
8 explosion.

9 I think it would have been sufficient, as I
10 recall our charge, it would have been sufficient for us to
11 identify NRC inspectors who in fact were aware of the
12 containment pressure spike and thus failed to report to NRC
13 channels their awareness of this pressure spike so that
14 perhaps another more technically trained or competent person
15 could evaluate it and conceivably reach the conclusion that
16 there had been a hydrogen explosion. It was necessary for
17 us to prove knowledge of the cause of the pressure spike.
18 That is what I am saying.

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1 Q Now, you indicated that you only recall
2 the significant interviews that you did to conduct this
3 investigation. Who were the people who you interviewed
4 as you remember were the significant interviews?

5 A Well, I'm not even certain I can recall all
6 the significant interviews. But the ones I recall sit-
7 ting here today are interviews of NRC Inspector Donald
8 Neeley, NRC Inspector James Higgins, NRC Inspector Carl
9 Plumlee, NRC Inspector Charles Gallina, James Seelinger,
10 a telephonic interview. He was in Florida at the time.

11 Q After you were requested to conduct this
12 investigation, did you interview Mr. Chwastyk?

13 A No, sir, we didn't.

14 Q Did you interview Mr. Mehler?

15 A No, sir, we didn't.

16 Q Were you satisfied that this was a competent
17 investigation?

18 A No, sir.

19 Q You don't believe this was a competent in-
20 vestigation?

21 A No, sir.

22 Q Why not?

23 A Because we were foreclosed from pursuing all
24 logical investigative leads.

25 Q And who foreclosed you?

#3-2-SueT 1

2 A The Director of the Office of Inspector and
Audit.

3 Q Why was that?

4 A I can't answer that. I don't know why.

5 Q Did he prevent you from interviewing Mr.
6 Chwastyk?

7 A Yes, sir.

8 Q He prevented you from interviewing Mr. Mehler?

9 A Yes, sir.

10 Q Do you know why?

11 A No, sir.

12 Q Do you recall the conclusions you reached
13 during this investigation?

14 A No, I can't say I do.

15 Q Did you --

16 A I'm not even certain conclusions are termed
17 as such in that investigation.

18 JUDGE WOLFE: Mr. Gamble, would you put one
19 of the mikes a little bit closer? When you are talking
20 to counsel, I don't hear you here.

21 WITNESS GAMBLE: I'm sorry.

22 JUDGE WOLFE: And speak a little louder,
23 please.

24 WITNESS GAMBLE: Okay.

25 BY MR. GOLDBERG: (Continuing)

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Q Prior to your conducting this investigation, had been Mr. Chwastyk and Mr. Mehler been interviewed on the question of the existence of a pressure spike on the day of the accident and the cause of the pressure spike and persons to whom they communicated their knowledge of the pressure spike on the day of the accident?

A There were interviews that touched on those areas, but I don't believe they were complete.

Q Did you participate in any of those interviews?

A Yes. I believe I participated in the 0760 interviews of Mr. Chwastyk and Mr. Mehler.

Q And you testified yesterday that you were not foreclosed from asking any questions you wished to ask; is that correct?

A That's correct.

Q Now, you indicated yesterday that you thought that interviewing an individual with five questioners present was not consistent with your idea of the way an interview should be conducted; is that fair?

A In an investigation, I would say that's correct. That's fair.

Q Do you think that there is anything wrong with two interviewers asking questions?

A I think two interviewers is far more manageable

#3-4-SueT 1 than five. There is an important reason for having a
2 second interviewer as opposed to a single interviewer,
3 of course.

4 Q What is that?

5 A For corroboration, should there ever be an
6 issue as to what was said to the interviewer if there is
7 no verbatim transcript of the interview.

8 Q Even if there is a verbatim transcript,
9 would the presence of a second questionnaire possibly
10 contribute to the completeness of an interview?

11 A Certainly. Additional interviewers would
12 be likely to pick up on additional facts or additional
13 lines of questioning that a single interviewer could
14 miss.

15 Q Are you aware that Mr. Dieckamp was inter-
16 viewed as part of the 0760 investigation?

17 A Yes, I was.

18 Q Do you know how many questioners there were
19 of Mr. Dieckamp at that interview?

20 A No, sir. I wasn't present.

21 Q If I told you that there were two NRC investiga-
22 tors questioning Mr. Dieckamp, would that interview then
23 insofar as the number of questioners being present and
24 asking questions, would that be more consistent with
25 your idea of the way an interview ought to be conducted?

#3-5-SueT

1 A Yes. But I knew that there were not two NRC
2 investigators at that interview.

3 Q And how do you know that?

4 A Because I know that the only NRC investigators
5 that participated in the 0760 investigation were Mr.
6 Peter Baci and myself. And I know Mr. Baci did not
7 participate in that interview, and I certainly didn't.

8 Q Were there not other members of the investiga-
9 tive team other than people whose job title was investiga-
10 tor?

11 A That's correct.

12 Q Mr. Craig, Mr. Harpster, Mr. Fisher?

13 A That's correct.

14 Q Mr. Moseley?

15 A Right. They were all non-investigators
16 assigned to this team.

17 Q And is it your position that only someone
18 whose job title includes the word "investigator" is
19 competent to ask questions on subject matters such as
20 the ones involving the pressure spike, hydrogen explosion,
21 cause of the pressure spike?

22 A I don't think their job title has anything to
23 do with it. It's training and background and ability.

24 Q And you don't have any technical training,
25 do you?

#3-6-SueT

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A No. When I speak about training and background and ability, I'm talking about investigative training and background.

Q Do you believe you have a background capable of understanding the significance of technical information which is provided in the course of an interview concerning severe accidents at nuclear power plants?

A I would not undertake such an investigation without the assistance of somebody who is properly trained in that area. It is a joint -- NRC investigations into those areas have always been joint endeavors and rarely is a nontechnical investigator assigned to such investigation without adequate technical support.

However, there is a difference when investigators are conducting the investigation with technical support and when technical personnel are attempting to conduct the investigation on their own.

Q Mr. Gamble, you attended many of the 0760 investigative interviews; is that correct?

A That's true.

Q How were you notified of an upcoming interview?

A Normally by telephone.

Q There was no formal written notification of the upcoming interviews?

#3-7-SueT 1

A Not that I can recall. Not to me anyway.

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Q Do you have any records, or did you have any

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records indicating your notification of upcoming inter-

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views?

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A Documentation of telephone calls?

6

Q Yes.

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A No, sir.

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1 Q Did you attend the interview of Mr. Dieckamp?

2 A No, sir, I don't believe I did.

3 Q Were you prohibited from attending that interview?

4 A I don't think I know the answer to that.

5 JUDGE SMITH: You don't know the answer?

6 WITNESS: No, sir, I don't.

7 BY MR. GOLDBERG: (Continuing)

8 Q Well, did anyone ever tell you you couldn't
9 attend?

10 A No, sir, I am just not told the interview was
11 occurring. I don't know if anyone was attempting to
12 prevent me from attending, or whether I just was not
13 notified.

14 Q Other than your belief that you were not
15 notified about that interview, do you have any evidence
16 to suggest that you were prohibited from attending that
17 interview?

18 A The only evidence that would suggest that
19 would be early discussions I had with -- well, two items
20 where the evidence would suggest that. One would be
21 early discussions with Mr. Moseley when we were beginning
22 interviews in this investigation, at which he felt it was
23 not necessary for investigators, and by that I am referring
24 to people with the job title investigator, to participate
25 in the interviews. He felt that the interviews could be

1 accomplished by the technical staff of the task group, and
2 we had a discussion on that point, and I thought at least at
3 the time of the discussion I had impressed upon Moseley my
4 insistence that I be at interviews.

5 I suggest that as evidence, very circumstantially
6 of course, in that there was some indication of a reluctance
7 to have an investigator present, at least initially, during
8 this task group.

9 Q That was early on in the investigation?

10 A That is right.

11 Q And in fact, subsequent to that, you attended
12 many, many interviews, is that not the case?

13 A That is true. The other suggestion that might
14 be the case was the very first set of interviews that I
15 believe was conducted in this investigation, which was a
16 simultaneous set of interviews conducted of Babcock & Wilcox
17 employees, simultaneously in Detroit, Michigan and Lynchburg,
18 Virginia.

19 They were groups of B&W employees to be
20 interviewed, interviewed individually, of course, but there
21 was a series of interviews at each location. A technical
22 member of the NUREG 0760 team was assigned to each of those
23 interviews, and an investigator was assigned. Two people
24 doing each of these interviews.

25 Mr. Peter Bocci was assigned with Terry Harpster

1 to conduct the interviews in Lynchburg, Virginia, and I
2 was assigned to conduct the interviews in Detroit with Mr.
3 William Fisher from NRC Region III, Chicago.

4 These interviews -- shortly after these interviews
5 -- Mr. Bocci was the only IE investigator, as I recall,
6 assigned to this investigation, any aspect of this investigation,
7 throughout the entire time.

8 He was an IE investigator whose duty it was to
9 conduct investigations to support civil enforcement and
10 regulatory actions which was, of course, the principal purpose
11 of this investigation. My role, as I said earlier, was
12 limited to the criminal aspects.

13 The reason I suggest this as a possible indication
14 that an investigator may not have been desired was that
15 shortly after these interviews, Mr. Bocci was not asked to
16 participate in any further investigative activities of this
17 group. This was the sole involvement, and his participation
18 was kept extremely limited during those interviews.

19 And there was also some -- that would be an
20 opinion, so --

21 Q I guess it is fair to say from what you said, that
22 you and Mr. Moseley had a disagreement about who was
23 appropriate to conduct these interviews. You believed that
24 it was very important that a so-called investigator be
25 present to ask questions. Mr. Moseley didn't think that

1 was so necessary. He felt it was important to have technical
2 members of the team ask questions. Is that a fair statement?

3 A Almost. First of all, I don't like being called
4 a so-called investigator. The second is that Mr. Moseley
5 didn't necessarily feel it was important to have the technical
6 members ask the questions. The discussion we had was more
7 along the lines of he felt there was no added benefit to having
8 professional investigator present during this process.

9 Q Other than -- I will withdraw that.

10 JUDGE WOLFE: Excuse me. Might I have the
11 last answer read, please?

12 (Reporter reads last answer back)

13 BY MR. GOLDBERG: (Continuing)

14 Q Mr. Gamble, I would like to refer you to what
15 has been marked as Joint Mailgram Exhibit Item No. 115, which
16 is the September 3, 1980 interview of Brian Mehler,
17 which you cite in your testimony at page 4.

18 Can counsel for TMIA provide Mr. Gamble with a
19 copy of that?

20 MS. BERNABEI: September 3, 1980?

21 MR. GOLDBERG: Yes.

22 BY MR. GOLDBERG: (Continuing)

23 Q You say in your testimony that this interview is
24 an example of where you are the only questioner who asked
25 questions beyond the scope of the pre-approved agenda, and

1 you explained that that wasn't quite what you meant yesterday,
2 but with the understanding of what you explained yesterday
3 about this portion of your testimony, this is an example
4 you give of where you asked follow up questions about persons
5 to whom information about the pressure spike was communicated,
6 is that correct?

7 A That is correct.

8 Q Could you identify for us the follow up question
9 that you asked concerning persons to whom information
10 about the pressure spike was communicated?

11 A I would have to leaf through the transcript
12 first.

13 Q Let me perhaps try to save some time. Let me
14 ask you to look at page 14, lines 4 to 10, and ask you if
15 that is an example of one of your follow up questions that
16 you are referring to in the testimony?

17 MS. BERNABEI: I am sorry, I didn't hear the
18 pages, Mr. Goldberg.

19 MR. GOLDBERG: Page 14, lines 4 to 10.

20 WITNESS: Yes, I consider that to be an example.

21 BY MR. GOLDBERG: (Continuing)

22 Q Now, if you look at page 3 of this interview,
23 I think you will agree that Mr. Craig was the lead interviewer
24 during this portion of the interview?

25 A Right. I believe I said that yesterday.

1 Q Okay. And up until the point that -- well, going
2 back to -- going to page 12, Mr. Craig continues his
3 questioning there, and up until page 13, line 20, Mr.
4 Craig is conducting the questioning, is that correct?

5 A No, sir.

6 Q No, sir?

7 A No, sir.

8 Q Beginning on page 12, line 19, going over to
9 page 13, line 20, Mr. Craig is not conducting the questioning?

10 A Oh, I am sorry. I thought you said up until
11 page 12.

12 MS. BERNABEI: I believe that is what counsel
13 said.

14 BY MR. GOLDBERG: (Continuing)

15 Q Beginning on page 12, line 19, up until page 13,
16 line 19, Mr. Craig is conducting the questioning, is that
17 right?

18 A Okay. That is a different question. Let me
19 check. Page 12 until page 19?

20 Q Page 12, line 19. Page 13, line 19. That is Mr.
21 Craig continuing as a lead interrogator during this portion
22 of the interview?

23 JUDGE SMITH: I don't think he is looking at
24 what you are. What you are saying is so obvious, and he is
25 having so much trouble. Do you have numbered pages, numbered

1 lines?

2 WITNESS: Yes, sir. I was just checking over
3 the lines.

4 JUDGE SMITH: I can't see why you are counting.

5 WITNESS: I wasn't counting. I was bringing my
6 finger down the page. Yes, Mr. Craig is asking the
7 questions in that portion.

8 BY MR. GOLDBERG: (Continuing)

9 Q And then on page 13, line 20, Mr. Moseley asks
10 some follow up questions?

11 A That is correct.

12 Q And then on page 14, line 4, is where you ask
13 the follow up question which is the one that is an example
14 in your testimony of the kind of follow up questions you
15 ask?

16 A As an example of a type of follow up question,
17 yes.

18 Q And then immediately after your follow up question
19 on page 14, Mr. Craig resumes with the questioning on page 14,
20 line 11 and 12, is that correct?

21 A That is correct.

22 Q And then on that same page, Mr. Moseley asks a
23 follow up question on lines 19 and 20, is that correct?

24 A That is correct.

25 Q And then Mr. Craig resumes the questioning on

1 line 25 of page 14, is that correct?

2 A Right.

3 Q And those are questions and follow up questions
4 concerning persons to whom information about the pressure
5 spike was communicated?

6 A No, I don't believe they all are.

7 Q They are generally not questions about persons
8 to whom information about the pressure spike was communicated?

9 A No, I don't believe they are.

10 JUDGE SMITH: What do you think they are about?

11 WITNESS: Well, specifically I am looking at Mr.
12 Craig's question on page 14, lines 24 and 25. Where he is
13 asking whether other people monitored specific parameters.

14 I don't consider that to be a question about
15 to whom did you communicate information about the containment
16 pressure spike.

17 BY MR. GOLDBERG: (Continuing)

18 Q That is where Mr. Craig resumes his questioning
19 as a lead interrogator in this part of the interview, and we
20 go back to page 12, through pages 13 and 14, where I just
21 pointed out to you follow up questions by Mr. Moseley, and
22 a follow up question by yourself. And do not those questions
23 generally concern to whom information was communicated about
24 the pressure spike?

25 MS. BERNABEI: Excuse me. Where are we now?

1 12 through 14?

2 MR. GOLDBERG: Start on page 13, line 9.

3 MS. BERNABEI: Through 14?

4 MR. GOLDBERG: Through 14, line 24.

5 BY MR. GOLDBERG: (Continuing)

6 Q Those questions and answers concern pressure
7 spike, knowledge of the pressure spike, to whom information
8 about the pressure spike was communicated?

9 A Thirteen, line 9, through fourteen, line what?

10 Q Yes.

11 A I was asking what line on page 14?

12 Q 24.

13 A Yes, sir, they concern communication -- information
14 about the pressure spike.

15 End 4.
16 MS fols.

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Sim 5-1

1 Q Could you explain then how this supports your
2 testimony yesterday that at times you were the only one in
3 a particular area of an interview that you asked questions
4 or follow-up questions concerning information to whom the
5 pressure spike was communicated?

6 A The questions you see here by Mr. Moseley and
7 Mr. Craig are not -- well, I am getting this backwards here --
8 my question is slightly more expansive and covers a different
9 aspect than what Mr. Moseley and Mr. Craig are asking, and
10 specifically what I am referring to here is that I did not
11 believe at the time I asked this question that Mr. Moseley's
12 and Mr. Craig's questions were broad enough to cover whether
13 Mr. Mehler was aware that Mr. Chwastyk had communicated this
14 information further.

15 Rather, their questions were more narrowly drawn
16 so that Mr. Mehler could merely respond negatively if he
17 personally did not communicate this information to anyone
18 other than to Mr. Chwastyk.

19 What I was trying to draw out by my question,
20 and I recall that it was the opinion at the time at least
21 that I was the only one at that time pursuing that course of
22 inquiry and asking for that additional information.

23 Therefore, in that sense it was a follow-up
24 question which only I asked.

25 Q Well, if you asked a particular follow-up

Sim 5-2

1 question, would there be any reason for anyone else to ask
2 the identical question?

3 A No, sir, there would not.

4 Q I would like to direct your attention to Joint
5 Mailgram Item 117, the September 4th, 1980 interview of
6 Mr. Chwastyk which you cite in your testimony. You say in
7 your testimony that you asked a follow-up question about
8 communication of information about the pressure spike to
9 Gary Miller. Can you identify that follow-up question or
10 would you like me to assist you in finding it?

11 A I would have to at this point page through the
12 transcript to find it, unless you know where it is.

13 Q Let me ask you to look at page 11, lines 3 to 10.

14 (Pause.)

15 A Yes, sir, I have reviewed it.

16 Q Is that the question you are referring to in your
17 testimony?

18 A Yes, that is the question I am referring to
19 about communication of information to Mr. Miller.

20 Q And your question was basically was Mr. Miller
21 already aware of the pressure spike; is that correct?

22 A That is true.

23 Q That was your idea of an important question to
24 ask at that time?

25 A Yes, I felt it was a worthwhile question to ask.

Sim 5-3

1 Q Was that same question asked of Mr. Mehler
2 during the interview?

3 A I couldn't today answer that. I don't know.

4 Q Would you look at page 10, please, lines 11 to 12.
5 And if after you do that, you go back to page 8 I think that
6 you will find that Mr. Craig is the one who is asking questions
7 at that point.

8 A That is correct.

9 Q And what is Mr. Craig's question to Mr. Mehler?

10 A I don't think this is a question to Mr. Mehler.

11 Q I am sorry. What was Mr. Craig's question to
12 Mr. Chwastyk?

13 A Page 10, line 11, do you want me to read it?

14 Q Yes.

15 A "When you talked to Mr. Mehler, was he already
16 aware of the pressure spike?" That is not the same as the
17 question you asked me, Mr. Goldberg. You asked me if the
18 same question was posed to Mr. Mehler.

19 Q To Mr. Mehler?

20 A That is right.

21 Q The same question about whether he was already
22 aware of the pressure spike was posed to Mr. Mehler as you
23 asked concerning Mr. Miller on the next page?

24 A Right, and what we are talking about here are
25 not questions posed to Mr. Mehler. These are questions

Sim 5-4

1 posed to Mr. Chwastyk ---

2 Q I am sorry. Posed to Mr. Chwastyk about whether
3 Mr. Mehler and Mr. Miller were already aware of the pressure
4 spike at the time they were informed of it by Mr. Chwastyk.

5 A There was an earlier question about whether
6 Mr. Mehler was informed.

7 Q And on page 11 after you asked your question
8 to Mr. Chwastyk about whether Mr. Miller was already
9 aware of the pressure spike, do you see Mr. Moseley's
10 follow-up question?

11 A Yes, sir. He picked up on my question and
12 followed up on it.

13 Q So you were not the only one in this area of
14 the interview pursuing that subject?

15 A No. Mr. Moseley followed up on my question, yes.

16 Q Now you testified yesterday concerning drafts
17 of portions of NUREG 0760, and you say in your testimony
18 on page 3 that you are aware of the drafts because you were
19 provided copies. When were you provided copies of the
20 drafts that are Exhibits 4, 5 and 6 of your testimony?

21 A These drafts were distributed by IE headquarters
22 personnel, I believe by Mr. Craig here, just after they
23 had been sent in by the IE personnel who drafted them. The
24 exact date I could only estimate from reference to
25 Mr. Moseley's deadline date of April for getting those drafts

Sim 5-5

1 in.

2 Q But you testified yesterday that you have no
3 evidence that in fact these drafts were written in April of
4 1980; is that right?

5 A Only the indication that that was the due date
6 for them.

7 Q For these particular drafts? Do you know that
8 these are the particular drafts that Mr. Moseley was
9 referring to in his April 18th memorandum?

10 A You are saying these? What do you mean by these?

11 Q Exhibits 4, 5 and 6.

12 A These documents are -- they look like the ones
13 I was provided back then. I have not been in physical
14 possession of these drafts since that time. So I can't
15 testify to the chain of custody, but these are the same types
16 of drafts. They appear to be the same as what I recall
17 seeing when I was given them back at the time. I would not
18 want to be held accountable for every word in here in case
19 these are different drafts.

20 Q And did there exist at that time, April 1980,
21 a draft of the pressure spike portion of NUREG 0760?

22 A I believe I testified yesterday that I was not
23 provided with such a draft.

24 Q Do you know whether such a draft existed in
25 April of 1980?

1 MS. BERNABEI: Objection. This has been asked
2 and answered yesterday. I think it is the same ground we
3 went over yesterday.

4 JUDGE SMITH: I thought you had covered it,
5 Mr. Goldberg. If there is doubt about it, explore it, but
6 it seems to me that you covered it.

7 MR. GOLDBERG: I just have a couple more
8 questions.

9 Could you answer the question, please?

10 JUDGE SMITH: Well, did you cover it or not? I
11 mean is it a different question?

12 MR. GOLDBERG: Okay. I will withdraw that
13 question and ask a different one.

14 BY MR. GOLDBERG:

15 Q Do you have any information to suggest that
16 a draft of the pressure spike portion of NUREG 0760 was
17 written before interviews were conducted as a part of the
18 0760 investigation?

19 MS. BERNABEI: I have the same objection. I
20 think it is the same question.

21 JUDGE SMITH: No. Overruled.

22 THE WITNESS: Any information which would
23 indicate that? Yes, circumstantially there is indication
24 that that was written.

25 BY MR. GOLDBERG:

Sim 5-7

1 Q That a draft of the pressure spike portion of
2 NUREG 0760 was written before interviews were conducted?

3 A I didn't say that it was written. I said yes,
4 there are indications that it may have been written.

5 Q There are indications that it may have been
6 written prior to the conducting of interviews?

7 A Wasn't that your question?

8 Q Well, is that what your testimony is?

9 A That is what my testimony is.

10 Q What are those indications?

11 A The indications are the April 18, 1980 memorandum
12 from Mr. Moseley to the task group members directing that
13 that section be written and the drafts which I can testify
14 to were written on the other two of the three sections of the
15 report. That to me are indications that the individual
16 assigned to write the third section of the report complied
17 with the instructions.

18 Q And that is the only indication you have?

19 A That is the only indication I have.

20 MR. GOLDBERG: At this time I would like to
21 renew my motion to strike Exhibits 5 and 6 of Mr. Gamble's
22 testimony. I don't believe that the record establishes that
23 these drafts indicate that conclusions were reached as they
24 appear in NUREG 0760 prior to the conducting of interviews.

25 It was established yesterday that with respect

Sim 5-8

1 to Exhibit 5 the witness had no knowledge as to whether
2 the conclusion as it is stated in that draft is the conclusion
3 that was reached in NUREG 0760.

4 There is no evidence to suggest that that
5 conclusion in NUREG 0760 concerning reportability at a
6 predicted offsite exposure rate in Goldsboro was in any
7 way prejudged based on the existence of Exhibits 5 and 6.

8 This witness does not know when these drafts
9 were written and has nothing other than Mr. Moseley's memo
10 asking for drafts in 1980, that a draft concerning the
11 pressure spike, which is the subject of the hearing, was
12 ever written in that time frame or was ever written before
13 any interviews were conducted, that any of the conclusions
14 reached with respect to the pressure spike were predetermined
15 because of the existence of any draft of NUREG 0760.

16 Furthermore, the subject matter of Exhibits 5
17 and 6 are immaterial to the issues before the Board and I
18 don't think that there has been established in this record
19 a foundation for the admission of these exhibits for the
20 purpose for which they were offered, namely, to establish
21 a pattern or practice of drafting portions of NUREG 0760 in
22 such a way as to indicate that conclusions that were ultimately
23 reached in NUREG 0760 were predetermined.

24 MS. BERNABEI: Can I address that?

25 JUDGE SMITH: Yes.

Sim 5-9 1 MS. BERNABEI: First of all, I don't think
2 this is an appropriate time to renew the motion. We
3 obviously have not had a chance to do any redirect, but I
4 could say, first of all, Mr. Goldberg has made several
5 misstatements.

6 First of all, the purpose, as is stated clearly
7 in the testimony is not to establish a pattern of practice
8 throughout the investigation of predetermining conclusions
9 through writing of drafts. That is simply not the case.
10 The testimony will stand on its own. There is no use of the
11 word pattern or practice.

12 Secondly, the purpose is, as I stated before,
13 to support Mr. Gamble's conclusion that there were predeter-
14 minations and that there was a tendency to predetermine
15 the conclusions by assigning and writing drafts prior to
16 doing any significant investigative activity, which he
17 has defined.

18 First of all, there is more than just Mr. Moseley's
19 memo or direction to the team to support this. Mr. Gamble
20 says he remembers these particular drafts, seeing these
21 particular drafts before interviews were conducted. That
22 is his testimony. I think that is significant additional
23 information and evidence to support his testimony.

24 And I guess my last point would be that I
25 don't think this is an appropriate time, given that all the

Sim 5-10

1 parties have not questioned Mr. Gamble and there has not been
2 any redirect.

3 Most of the points that Mr. Goldberg is making
4 I think may go to the weight of the evidence, but it
5 certainly doesn't go to its admissibility.

6 I would also draw the Board's attention that in
7 NUREG 0760, on page 31, the first paragraph under the
8 Goldsboro radiation dose rate projection, that portion of
9 the report is in fact, from my reading, very similar, if
10 not identical, to the draft which was submitted, or the two
11 drafts that were submitted with Mr. Gamble's testimony.

12 I would also note that those drafts, and I am
13 now talking expansively of Exhibits 4, 5 and 6, at least to
14 my reading, do not indicate any reference to interviews
15 conducted in the course of the NUREG 0760 investigation.
16 Those are legal arguments which I think we will make.

17 But in any case, I think that is additional
18 evidence to support the fact that Mr. Gamble is correct in
19 his memory and in the supporting documentary evidence that
20 the drafts were completed prior to the interviews being
21 conducted.

22 JUDGE SMITH: Mr. Blake, do you wish to be
23 heard?

24 MR. BLAKE: Only that I support the staff's
25 motion and would add Exhibit 4 as well for the reasons I

Sim 5-11

1 stated yesterday, and feel reinforced by Ms. Bernabei's
2 recognition that these are not submitted for the purpose of
3 showing any pattern. That pattern, in my view, strengthens
4 the reason why they should be omitted here.

5 JUDGE SMITH: I guess I missed a point there. I
6 thought clearly yesterday you were arguing that Exhibits 4,
7 4 and 6, or at least 5 and 6 were being offered not for the
8 proof of them, but for the existence of the practice.

9 Now what are you saying today?

10 MS. BERNABEI: I think there is a problem.
11 Judge Smith, you have used the word pattern or practice,
12 which Mr. Goldberg has apparently adopted. That implies to
13 me something which is not stated in the testimony.

14 That implies to me it was done at different
15 points consistently throughout the investigation at different
16 times. That is not what Mr. Gamble's testimony says, and
17 I don't there has been any testimony to that effect.

18 What he has said in his testimony is at the
19 initial stage, less than three weeks after the task group
20 a direction to begin an investigation or to reopen an
21 investigation, they were directed to write drafts of the
22 report. This tended to predetermine the conclusions the
23 report would find, in Mr. Gamble's opinion.

24 That is what we have stated. We didn't say
25 there was more than one direction. The testimony doesn't

Sim 5-12 1 say that that was done throughout the report and it doesn't
2 say there was a pattern of practice by Mr. Moseley or the
3 team to do this throughout the investigation.

4 Doing it at the beginning tended to predetermine
5 the conclusions. I think the exhibits and the testimony
6 that Mr. Gamble has given support that conclusion.

7 Again, the purpose for which it is being intro-
8 duced is to say the task group tended to predetermine and
9 did predetermine conclusions before they undertook any
10 investigative activity defined by Mr. Gamble as interviews.

11 JUDGE SMITH: You told me too much, but you are
12 not telling me specifically enough. Why do we care if they
13 predetermined the calculated exposure rate of 40 rem per hour
14 in Goldsboro in advance erroneously? Why do we care if it
15 is irrelevant to our case?

16 MS. BERNABEI: Because there was a similar
17 direction to ---

18 JUDGE SMITH: Right. It is because you are
19 trying to establish that if they did it with the Goldsboro
20 reading and the high core thermocouple, they did it with
21 the pressure spike. That is the only relevance.

22 MS. BERNABEI: Right.

23 JUDGE SMITH: So you are trying to establish
24 that a practice existed.

25 MS. BERNABEI: If you use practice in that term,

Sim 5-13

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that is correct. It had been used in other ways which is why I said that is not our -- if you use it the way you did, Judge Smith, that is correct.

JUDGE SMITH: All right.

Let's consult.

(Board conferring.)

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Sue fols

#6-1-SueT 1 JUDGE SMITH: I think you are correct, that it
2 would be premature to grant the motion. But it's not
3 premature to deny the motion, which we are about to do
4 after some additional clarification if the clarification
5 is consistent with what we believe to be the case.

6 I think it is clear from, if nothing else,
7 the dates of the interviews. That's two that I've looked
8 at at least, that Mr. Moseley had required drafts prior
9 to the interviews. And the witness testified that Exhibits
10 5 and 6, by his memory, were provided somewhere in the
11 time frame of the due date. And as you point out, we
12 accept your representation, that there is no reference to
13 interviews in them.

14 So I think that you have established the rele-
15 vance of 5 and 6. I'm not quite so sure about 4, though;
16 since he has no memory about that one, no information
17 about it, it doesn't seem to fit into his testimony very
18 well.

19 I guess the argument you make is that 4 neces-
20 sarily must have been drafted before interviews because
21 the final version contained references to interviews and
22 this one does not. Is that your argument?

23 MS. BERNABEI: It contains references to
24 NUREG 0600 interviews, but not NUREG 0760. In other
25 words, to prior investigations and not the current one.

#6-2-SueT 1 JUDGE SMITH: Right. So you say from that we
2 can infer that that also was drafted before the inter-
3 views.

4 MS. BERNABEI: Yes.

5 JUDGE SMITH: And that seems to be a logical
6 inference.

7 MS. BERNABEI: Let me just say, Judge Smith,
8 I'm reading the transcript here. I'm just not sure if
9 Mr. Gamble's answers were restricted to the two drafts
10 on the Goldsboro doses. They may have also included
11 thermocouples. I am not clear from the transcript por-
12 tions I am reading.

13 I think --

14 JUDGE SMITH: That what?

15 MS. BERNABEI: Mr. Gamble's testimony on his
16 memory when those drafts were prepared was restricted
17 only to the two, 5 and 6. I think they may have included
18 all three. I'm just unable to, at this time --

19 JUDGE SMITH: You just made an objection based
20 upon the fact that he had testified yesterday about 4,
21 Exhibit 4.

22 In any event, isn't your testimony that you
23 don't have any knowledge of when your Exhibit 4 was
24 drafted?

25 WITNESS GAMBLE: My knowledge of Exhibit 4

#6-3-SueT

1 would be identical to 5 and 6. And there is another fact
2 which might help you --

3 JUDGE SMITH: It's identical? I guess I have
4 missed part of your testimony.

5 WITNESS GAMBLE: Most of the questions, sir,
6 were specifically directed to 5 and 6. So, although I
7 might have responded regarding 5 and 6, my responses on
8 4 would be identical.

9 JUDGE SMITH: I thought you testified that
10 you had not received a draft of 4?

11 WITNESS GAMBLE: No, sir, I don't believe I
12 did. If I did that was --

13 JUDGE SMITH: When did you receive a draft
14 of 4?

15 WITNESS GAMBLE: At the same time I received
16 the rest -- the other drafts.

17 JUDGE SMITH: Okay. I missed that.

18 WITNESS GAMBLE: Another indication that might
19 help you, sir, is that at the top of Exhibit 4 it says:
20 Haynes Draft. Haynes refers to Mr. Ronald Haynes who
21 was a member of the investigative team for 0760, removed
22 very early on in the investigation, which would give you
23 an indication of the time frame.

24 JUDGE SMITH: Okay. Now, what is your last
25 point? I think you are prevailing. What was your last

#6-4-SueT

1 point?

2 MS. BERNABEI: I had the same understanding as
3 Mr. Gamble, that the three were handled together.

4 JUDGE SMITH: All right.

5 MS. BERNABEI: And I can refer, Judge Smith,
6 if you would like to to transcript --

7 JUDGE SMITH: Does anybody dispute that?
8 I guess I had a faulty memory on it.

9 MR. GOLDBERG: Does anybody dispute what?

10 JUDGE SMITH: That his testimony as to having
11 received drafts at about the time, the due date set out
12 in Moseley's memorandum, encompassed Number 4?

13 MR. GOLDBERG: Yes. Yes, I dispute that. I
14 think his testimony is that he doesn't know when he
15 received these particular drafts.

16 JUDGE SMITH: But his testimony was it was
17 somewhere in that time frame, wasn't it?

18 MR. GOLDBERG: He doesn't know when he received
19 these particular drafts. He believes they looked some-
20 thing like drafts he received in April.

21 JUDGE SMITH: Okay.

22 MR. BLAKE: Judge Smith --

23 JUDGE SMITH: Mr. Goldberg, you have Mr.
24 Moseley's instructions to submit drafts before April 25th.
25 You have drafts that do not elude to interviews which

#6-5-SueT 1 were conducted after April 25th. The point has been made
2 that the -- I don't understand what you would have us
3 decide along this line.

4 Do you wish us to abandon this point of view
5 because he cannot identify that draft as the exact draft
6 that he had in his hands on or about April 25th?

7 MR. GOLDBERG: I dispute any suggestion that
8 these drafts were written in April of 1980. I do not
9 dispute the fact that they were written before inter-
10 views were conducted.

11 We established yesterday that there was a
12 period of months when the team could not interview people
13 because --

14 JUDGE SMITH: I'm not talking about the merits
15 of it right now.

16 MR. GOLDBERG: I dispute --

17 JUDGE SMITH: We will get to the merits in
18 a moment.

19 MR. GOLDBERG: I dispute that these drafts --
20 well, if I'm not going to talk about the merits, I don't
21 think it is established that these drafts were written
22 in the April time frame, have anything to do with the
23 April memorandum from Mr. Moseley.

24 I don't dispute the fact that these were
25 written before interviews were conducted. I --

#6-6-SueT

1 JUDGE SMITH: All right.

2 MR. GOLDBERG: But I don't think it establishes
3 that the conclusions were prejudged.

4 MR. BLAKE: Judge Smith --

5 JUDGE SMITH: Okay. Well, that's another
6 matter. But I'm trying to take it one point at a time.7 MS. BERNABEI: The point of the testimony from
8 Mr. Goldberg is that they were written before interviews
9 were conducted, not that they were definitely written in
10 April.

11 JUDGE SMITH: Yes.

12 MS. BERNABEI: And I think that's the
13 testimony.14 JUDGE SMITH: That's the essence of it. Mr.
15 Blake?16 MR. BLAKE: And I don't dispute that. My
17 argument is not linked to whether they were written in
18 April or whether or not these are the identical ones.19 Mine is simply that we have these couple which --
20 but we have none on the issue, pressure spike, and no
21 evidence that that practice occurred with regard to the
22 pressure spike. That is simply my argument.

23 MS. BERNABEI: That's not true. There is --

24 MR. BLAKE: That's the one that he -- pardon?
25 Well, okay. We have some evidence. I guess no evidence

#6-7-SueT

1 has become a tough phrase to use here. But we have an
2 indication that Moseley said --

3 JUDGE SMITH: Well --

4 MR. BLAKE: But we don't even know that it
5 occurred.

6 JUDGE SMITH: We have -- where is Moseley's
7 letter again?

8 MR. BLAKE: You mean the memorandum?

9 MS. BERNABEI: Exhibit 2 I believe. Exhibit 3.

10 JUDGE SMITH: Exhibit 3, Mr. Moseley tells his
11 Task Group that the initial draft reports for the three
12 areas, including the containment pressure spike, are due
13 by April 25, 1980. All right.

14 April 25, 1980 is before interviews. We have
15 three exhibits that demonstrate that the Task Force
16 drafted reports before interviews.

17 The argument is being made that the Task Force
18 was obedient to Mr. Moseley's April 18, 1980 direction
19 with respect also to the containment pressure spike,
20 even though we don't have that report. I think it is a
21 fair argument.

22 MR. BLAKE: I agree it's a fair argument.

23 JUDGE SMITH: It's a fair argument. And I
24 think that they have made their point. And I think that
25 the three exhibits, 4, 5 and 6, support the point, as

#6-8-SueT

1 does Mr. Moseley's memorandum. So, in that respect they
2 have prevailed.

3 MR. BLAKE: If the evidence is that, in fact,
4 a draft was not done with regard to the pressure spike
5 prior to the interviews, as apparently was done with
6 regard to the other two sections, I will renew my motion
7 with respect to these exhibits.

8 MS. BERNABEI: I --

9 JUDGE SMITH: If --

10 MR. BLAKE: If the evidence is that that
11 practice which appears to have been made --

12 JUDGE SMITH: Right.

13 MR. BLAKE: -- with regard to 4, 5 and 6 did
14 not occur on the pressure spike portion, the issue here,
15 I will renew the motion.

16 JUDGE SMITH: All right.

17 MS. BERNABEI: I would --

18 JUDGE SMITH: It may very well be. It's a
19 question of the preponderance of the evidence.

20 MR. BLAKE: Yes.

21 JUDGE SMITH: And that's where I think Ms.
22 Bernabei is entirely correct, that we should not allow
23 this discussion to fall into evaluating the evidence at
24 this point, but whether she is entitled to have evidence
25 received that supports her point. And I think the

#6-9-SueT 1 evidence that she has produced is reliable, that Mr.
2 Moseley did direct and some portions of the Task Force
3 did comply with a directive to draft before interviews.

4 Now, the problem that I have with that --
5 and it is a prejudgment but prejudgments are not always
6 unfair or improper -- and I think it is particularly
7 appropriate for me to tell you that I think that the
8 very evidence that you are offering itself refutes Mr.
9 Gamble's own statement, "This was before they completed
10 any significant investigation."

11 I think that it is true that it is done before
12 they had completed any significant interview, but I
13 don't think that the way the evidence stands right now
14 that that is an accurate statement, based upon his own
15 testimony, his own documents and everything else.

16 MR. BERNABEI: We intend to ask some redirect
17 questions on this point.

18 JUDGE SMITH: I beg your pardon?

19 MS. BERNABEI: We intend to ask some redirect
20 questions on that.

21 JUDGE SMITH: That however just is the view
22 of my view. And I'm telling you this timely that that's
23 what it looks like to me.

24 Now, with respect to whether that conclusion
25 can be drawn that he arrives at at the bottom, we are not

#6-10-SueT 1 ruling on that, Mr. Goldberg. We are only ruling on,
2 are they allowed to get these items of evidence in.

3 JUDGE WOLFE: I would merely add that during
4 the course of this discussion that Ms. Bernabei apparently
5 had had a transcript citation, and Ms. Bradford during
6 the discussion came forward to me and showed me Transcript
7 Page 30,548, which I have read.

8 JUDGE SMITH: Mr. Gamble, there is a collateral
9 matter that came up that I think the Board has a re-
10 sponsibility to pursue.

11 BOARD EXAMINATION

12 BY JUDGE SMITH:

13 Q You stated that you were ordered by the Director
14 of the Office of Investigation not to interview Mr.
15 Chwastyk or Mr. Mehler.

16 A The decision was made by the Director not to
17 pursue that line.

18 Q Who transmitted that order to you?

19 A That was in discussions that would have been
20 attended by my immediate supervisor, Roger Fortuna, and
21 I in discussions with Mr. Cummings.

22 Q All right. Now, just because these are
23 questions from the Board does not mean that you are
24 being required to depart from the ground rules of your
25 testimony, that you do not reveal confidential information.

EXXX

#6-11-SueT 1

MR. GOLDBERG: Judge Smith, excuse me. I believe you misspoke, and I don't believe the witness picked it up. You said were directed by the Director of the Office of Investigations, and I think his testimony was the Office of Inspector and Auditor.

6 JUDGE SMITH: Yes, thank you.

7 WITNESS GAMBLE: Yes. Thank you.

8 BY JUDGE SMITH: (Continuing)

9 Q This came up, you say, in a meeting with who?
10 Who was attending?

11 A I'm just puzzling, sir, in light of what you
12 just said about the departure from the ground rules.
13 I'm just trying to reflect on this and see if this is the
14 kind of information that -- it certainly has not been
15 publicly disclosed, but I would just review in my mind
16 whether it is the kind of thing that should not be.

17 Q All right. If you are in doubt, don't answer
18 the question.

19 A There was a -- there is at least one related
20 document to this which Mr. Goldberg provided to Ms.
21 Bernabei on discovery, and I'm just trying to think if
22 that covered the whole issue or whether we are going
23 beyond that. Perhaps if I could refer to that document,
24 it would help me understand whether it has been publicly
25 disclosed, and I could answer.

#6-12-SueT 1

JUDGE SMITH: If it has been provided to Ms. Bernabei, I assume it has been publicly --

MS. BERNABEI: He just wanted to refer to it.

JUDGE SMITH: Right. Well, please do.

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

BY JUDGE SMITH: (Continuing)

Q All right. Should we --

A I am prepared.

Q Okay. Now, what is your answer, then? The question was, who told you not to interview Mr. Chwastyk and Mehler?

A It was the Director of the Office of Inspector and Auditor, James Cummings.

Q And you -- he gave you that in writing?

A Yes. I've got a document that demonstrates that.

Q All right. May we review it during the break?

A Certainly.

MR. GOLDBERG: May I have a copy of it?

MS. BERNABEI: We intended to distribute it on redirect but we could mark it as our exhibit provided.

JUDGE SMITH: Let's do that after the break.

#6-13-SueT

1

MS. BERNABEI: Oh, did you wish to review it

2

now?

3

JUDGE SMITH: Yes. I will take it with us

4

during the break.

5

MS. BERNABEI: Okay.

6

JUDGE SMITH: We will take our break now.

7

(Whereupon, the hearing is recessed at

8

10:38 a.m., to reconvene at 11:02 a.m., this same

9

day.)

END #6

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1 JUDGE SMITH: My concern is the suggestion that
2 an NRC inspector observed the pressure spike, and that a
3 high ranking official of the NRC prohibited a full inquiry
4 into that is a matter which warrants the Board's own thorough
5 inquiry.

6 I think that is pretty obvious. During the
7 break I asked Ms. Bernabei to provide me a copy of the
8 written instructions alluded to by Mr. Gamble, which
9 prohibited him from conducting a full inquiry, and I -- those
10 instructions may be in there, I don't know. I didn't have
11 time to sit down and read it through, but a very rapid reading,
12 I simply can't find it. It is going to have to be an
13 inference. I wish you could point it out to me, or you,
14 Mr. Gamble.

15 I have here a document -- do you intend to offer
16 this as an exhibit?

17 MS. BERNABEI: Yes. In an unrelated matter. What
18 I understand about that document is that that is the basis
19 for Mr. Gamble to indicate the information is public; that
20 is, it has been made publicly available, not that the
21 order appears in there. I could be misconstruing --

22 JUDGE SMITH: I certainly did, right. Okay.
23 I thought you had pointed out to me -- all right, that
24 certainly was -- well, can you refer me to the written
25 instructions you received? Have those been produced in

1 this hearing?

2 WITNESS: They were not written instructions,
3 sir. As Ms. Bernabei just said, this is indication to me
4 that this matter has been disclosed by the NRC Staff outside
5 of NRC.

6 The instructions directly were an oral
7 discussion. I believe the page we have here referring to
8 corroborates that and demonstrates what I am talking about.
9 It is not written instructions, per se.

10 JUDGE SMITH: That is just what I am trying to
11 find out. Where?

12 WITNESS: The memorandum from Roger Fortuna to
13 James Cummings dated November 6, 1980, discusses the
14 interview that we conducted of Inspector Donald Neeley
15 in response to Vic Stello's request discusses the results
16 based upon that initial interview, and it indicates our
17 concern that there be further inquiry into the matter
18 in order to resolve it.

19 We proposed a draft of areas that should be
20 pursued.

21 JUDGE SMITH: A draft of areas?

22 WITNESS: This is a proposed scope of investigation
23 at this point in time. Of course, it would be subject to
24 change as the investigation would unfold, and discover other
25 areas to pursue or ways of addressing this issue, but this

1 was how we saw the investigation should proceed, as we look
2 at the available evidence on November 6, 1980.

3 JUDGE SMITH: All right.

4 WITNESS: And in that document, which is Inclosure
5 2 to Fortuna's memorandum, entitled, Open Lines of Inquiry,
6 there are various investigative steps which we proposed.

7 One of the steps, Step No. 2, says: Review
8 prior interviews of Med Ed personnel who recall an NRC
9 inspector in the control room.

10 Underneath it are some sub-steps, one of them,
11 of course, is reinterview regarding any inconsistencies.
12 I would suspect that would include in itself reinterview
13 of Mr. Chwastyk as well as others concerning any inconsistencies.

14 JUDGE SMITH: No. 5 says cross interview
15 Chwastyk. Is that what you were talking about?

16 WITNESS: That is even more direct. I was
17 referring to Item 2, but also No. 5 is even more direct, in
18 that it mentions Mr. Chwastyk by name. Plus interview Mr.
19 Chwastyk regarding the circumstances of his viewing of
20 Neeley; who he was with, when, and who was the NRC person
21 he subsequently informed.

22 This we felt had not been covered adequately
23 at that point.

24 JUDGE SMITH: All right. So then what happened?

25 WITNESS: As someone indicated --

1 JUDGE SMITH: Again, you are not to give us any
2 information which reveals confidential information. No
3 testimony that reveals confidential information.

4 WITNESS: Yes, sir. As indicated on the --

5 JUDGE SMITH: And that would include investigative
6 techniques. That would be included in Exemption 7, I believe.

7 WITNESS: As indicated on the document entitled,
8 Open Lines of Inquiry, there was a line drawn diagonally
9 through the entire first page of that enclosure, with the
10 annotation, 'No,' with the initials on there which I know
11 to be the initials of Mr. Cummings.

12 JUDGE SMITH: So he cancelled -- he didn't draw
13 a line through the second page, but you don't believe that
14 that is significant, right?

15 WITNESS: No, sir.

16 JUDGE SMITH: So, he cancelled everything.

17 WITNESS: Yes, sir.

18 JUDGE SMITH: And do you know -- were you ever
19 given an explanation as to why?

20 WITNESS: There were -- on this particular
21 action, no; but there were subsequent discussions which
22 provided an indication.

23 JUDGE SMITH: Were you ever given an expressed
24 indication why the open lines of inquiry, or the further
25 investigation was cancelled?

1 WITNESS: There eventually was an investigation
2 conducted. Mr. Cummings initially felt there should be no
3 further investigation. This matter -- the interview and what
4 we have as of November 6th was referred to Mr. Stello as an
5 attempt to answer his October 23rd request.

6 Mr. Stello then returned to OIA, came back to
7 Mr. Cummings, and asked for a full investigation of the
8 matter. That investigation was initiated, and resulted in
9 the report I refer to in my testimony, the January 1981
10 report.

11 JUDGE SMITH: Was Mr. Chwastyk interviewed then?

12 WITNESS: No, sir; he was not.

13 JUDGE SMITH: Why?

14 WITNESS: (Pause) There were discussions on
15 this point. I am having concerns about those discussions.
16 Whether they are public.

17 JUDGE SMITH: If you are in doubt, don't tell us.
18 Was Mr. Mehler interviewed?

19 WITNESS: No, sir, he was not.

20 JUDGE SMITH: Well, we haven't seen the report
21 of that investigation. What was its conclusion with respect
22 to who is Mr. Neeley?

23 WITNESS: As I indicated to Mr. Goldberg earlier,
24 I am not sure we actually denominated any of our findings
25 and conclusions, but in the summary I think it would be fair

1 to say that the investigation found that Mr. Neeley -- there
2 probably was an NRC inspector in the control room, but
3 certainly if there was -- excuse me.

4 There probably was an NRC inspector in the control
5 room. Let me start again.

6 There were NRC inspectors in the control room.
7 There probably was one there and apprised of the containment
8 pressure spike. However, the best indication was that it
9 was not Mr. Neelcy.

10 I think that is a fair approximation of my
11 recollection of four years ago.

12 JUDGE SMITH: Was that inspector ever identified?

13 WITNESS: Not conclusively, no, sir.

14 JUDGE SMITH: It is incredible that this is
15 coming to the attention of the Board in this almost accidental,
16 haphazard fashion.

17 MS. BERNABEI: Let me just say we did consider --
18 in fact there are some of the interviews in the course of this
19 investigation which are included in the Joint Mailgram
20 stipulation, largely because we requested they be placed
21 there.

22 Our assessment of the investigation is that
23 it was not, in fact, complete, and it was inconclusive, and
24 I don't think it would aid the Board other than some of the
25 interviews themselves which were conducted. That is our

1 thinking of why we didn't introduce it, and present the
2 full report.

3 MR. GOLDBERG: Judge Smith, perhaps for the
4 record I should read the two paragraphs from the synopsis
5 of the report, which state the findings or conclusions of
6 the report so that it is accurately in the record, and as
7 I indicated this report is being provided to the Board.

8 The report says, quote, "Most of the information
9 develops supports that only two inspectors were in the
10 Unit 2 CR at 1:50 p.m., Neeley and James Higgins. Neither
11 inspector recalled knowing about the pressure spike or
12 other indicators of the explosion, nor did they recall
13 any discussions on the subject.

14 No information, other than the statements of
15 Chwastyk, was developed to contradict the
16 inspection. Furthermore, no information was
17 developed that Neeley's work that day would have
18 brought him in contact with Chwastyk, Mehler, or the
19 containmen or recorder.

20 Higgins, on the other hand, did have such
21 contact. Neeley described the frequent contact he has
22 had on the job at TMI subsequent to the accident which he
23 felt made Chwastyk's inability to identify him before
24 September 1980 suspicious.

25 Neeley also explained that he has been back

1 at TMI in more of an adversarial role. Higgins said he
2 has not returned to TMI after May 2, 1979.

3 Inspector Carl Plumlee recalled hearing on the
4 day of the accident results of containment atmospheric
5 samples indicating hydrogen. Plumlee thought he had heard
6 this in the morning from the branch chief, George Smith,
7 and later that day from James Seelinger of Med Ed.

8 Plumlee said he related the information to
9 Charles Galina of NRC. Smith, Seelinger, and Galina all
10 failed to recall either any knowledge of the hydrogen
11 content of, or samples from the containment or any similar
12 conversation with Plumlee.

13 No other information was developed to support
14 that the hydrogen level was known on the day of the accident."

15 JUDGE SMITH: Who was the author of that? Was
16 that you?

17 WITNESS: Yes, sir.

18 MR. GOLDBERG: I would also point out to the
19 Board that I believe there is a discussion of this generally
20 in NUREG 0760.

21 JUDGE SMITH: The Plumlee part?

22 MR. GOLDBERG: I --

23 MS. BERNABEI: On page 29 there is --

24 MR. GOLDBERG: Yes. That is the significant thing
25 he felt was omitted from the report, and I directed him to a

1 couple of pages where that is discussed at length in the
2 report.

3 Also, on page 24 and 25 of NUREG 0760, there is
4 a discussion about whether Mr. Neely was aware of the pressure
5 spike, and whether he discussed it with Mr. Chwastyk and
6 Mr. Mehler. Further on 25, a discussion about whether Mr.
7 Higgins was aware of the pressure spike on the day of the
8 accident.

9 So, this is generally treated in NUREG 0760,
10 and the detailed report of investigation is the one we are
11 providing to the Board.

12 JUDGE SMITH: This morning, as you were being
13 examined by Mr. Goldberg on your report of the interview
14 of September 4, 1980 of Mr. Chwastyk, I noticed that the
15 -- Mr. Chwastyk's identification of Mr. Neely came up during
16 that interview?

17 WITNESS: Yes, sir.

18 JUDGE SMITH: And, the significance of that
19 identification was pretty well known during that interview,
20 wasn't it?

21 WITNESS: I believe it was appreciated. It was
22 a surprise, I believe, at that interview.

23 JUDGE SMITH: I am looking at page 110 of the
24 interview, which is Item 117, -- it is page 111. and we have
25 this exchange. Mr. Fiddell, who is an attorney, said: Now,

1 I would like to address a question to the gentleman from the
2 Nuclear Regulatory Commission. Have you interviewed Mr.
3 Neely, or if not, do you plan to?

4 Mr. Moseley replied: This group has not interviewed
5 Mr. Neely; obviously, after this testimony we will.

6 So, I inferred from that that Mr. Moseley at least
7 knew at that time that this was an important matter.
8 Do you agree?

9 WITNESS: Yes, sir. I would have the same opinion.

10 JUDGE SMITH: And you regard it as an important
11 matter, too?

12 WITNESS: Yes, sir.

13 JUDGE SMITH: Well, did you explore all of your
14 concerns about that with Mr. Chwastyk at that time?

15 WITNESS: No, sir, I didn't.

16 JUDGE SMITH: Well, why didn't you?

17 WITNESS: My assignment at the time of that
18 interview, September 3, 1980, was to assist the task group
19 working on NUREG 0760 in the sense to protect the interest
20 of the Department of Justice in criminal matters.

21 At that time, I had absolutely no charter or
22 responsibility, and indeed, I would be exceeding my
23 responsibility from the Chairman if I were to inquire into
24 this matter to the extent that would prove or disprove
25 conduct that was proffered by an NRC employee.

1 I received that responsibility only subsequent
2 to the late October request of Mr. Stello that OIA look
3 into this matter. The Director of OIA then assigned me
4 responsibility to investigate the conduct of these NRC
5 employees.

6 JUDGE SMITH: Can we infer from that that you
7 did not regard it as a matter of criminal significance?

8 WITNESS: At the time of this interview, it
9 didn't strike me as being that type of matter, no.

10 JUDGE SMITH: So, your appraisal of the significance
11 at that time, because of the scope of your assignment, was
12 different than your appraisal later on when you were assigned
13 the job as an investigator of employee conduct?

14 WITNESS: That is correct, sir. Judge Smith, I
15 indicated there were a couple of documents that I felt had
16 to do with whether this issue -- or at least some aspects
17 of this issue -- the OIA investigation and how it was
18 not complete -- was conducted -- one of the other documents
19 which Ms. Bernabei gave me, and I believe everybody else, is
20 a December 1, 1980 letter from Mr. Fortuna to the Director
21 of Naval Investigative Service, requesting investigative
22 support. This is another indication of investigative steps
23 that were proposed, but not taken by OIA to further this
24 investigation.

25 MS. BERNABEI: Ms. Bradford is distributing

1 copies of that letter.

2 WITNESS: Again, I did not consider this to be
3 official information that had been made public until it was
4 provided in discovery by the NRC Staff, so I assume, at least,
5 this narrow aspect of it is public now.

6 JUDGE LINENBERGER: Sir, who in this December 1,
7 1980 correspondence -- do you know who marked the line through
8 the first page and wrote the notation, "No!" at the top of
9 the letter?

10 WITNESS: Yes, sir. That was Mr. Cummings.

11 MS. BERNABEI: Judge Smith, just a housekeeping
12 matter. We might want to mark these as exhibits, or
13 otherwise identify the two documents we distributed to the
14 Board and the parties.

15 JUDGE SMITH: Why don't you do it in the course
16 of your redirect examination. Mr. Au, do you have questions?

17 MR. AU: Yes, sir.

18 End 7
19 MS fols.

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Sim 8-1

1

Have you concluded, Mr. Goldberg?

2

MR. GOLDBERG: I am just about finished.

3

JUDGE SMITH: I am sorry. I thought you had

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completed your examination.

5

MR. GOLDBERG: In fact, I have completed my

6

questioning, but before I conclude I wanted to provide

7

notice to the Board and the parties that the staff will

8

rely on Joint Mailgram Exhibit Items 109 to 138, 140 and

9

141 to establish that, contrary to Mr. Gamble's testimony,

10

it wasn't the case that interviewers had to only ask questions

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one at a time, that they had to wait until the end of

12

interviews before they could ask questions, that there was

13

any screening of questions by Mr. Moseley, that there was

14

a lack of follow-up questions by any of the members of the

15

team and that often Mr. Gamble was the only questioner to

16

ask follow-up questions concerning the pressure spike issue.

17

With that, I have nothing further at this time.

18

JUDGE SMITH: Mr. Au.

19

CROSS-EXAMINATION

20

BY MR. AU:

INDEXXXXXX 21

Q Mr. Gamble, do you recall seeing drafts similar

22

to Exhibits 4, 5 and 6 on or about April 25th, 1980?

23

A I have no independent recollection of the date,

24

although the only frame of reference I have is that it

25

occurred prior to interviews being conducted in this

Sim 8-2

1 investigation. I could not conclusively pin it prior to
2 April 25th.

3 Q What date would you place on the date that the
4 interviews were begun?

5 A I believe the first set of interviews were
6 conducted by Mr. Baci and myself of Babcock and Wilcox
7 employees and my feeling was that was approximately in June,
8 although obviously the date could be established from
9 reference to those interviews.

10 Q Do you recall seeing drafts of documents similar
11 to Exhibits 4, 5 and 6 prior to June 1980?

12 A Yes, sir, definitely it was prior to June, prior
13 to those interviews.

14 Q Did you review those documents?

15 A I reviewed them -- I would have reviewed them,
16 as did the other members of the task group, in preparation
17 for a meeting at which they were discussed.

18 Q And what was the date of that meeting?

19 A I don't know the date that it in fact occurred,
20 but it was scheduled for late April, according to Mr. Moseley's
21 memorandum. Again, I can't say for a fact that it occurred
22 on that date.

23 Q Do you recall the discussion at this meeting?

24 A I can't specifically recall the discussion at
25 this meeting.

Sim 8-3

1 Q Did you ask Mr. Moseley why he required drafts
2 prior to this meeting?

3 A No, I don't believe I did.

4 Q In your review of the drafts, did you consider
5 the drafts to contain more than summaries of existing
6 evidence?

7 A Yes, sir, I did.

8 Q Did you consider the drafts to contain proposed
9 conclusions?

10 A I am not certain that my opinion at the time
11 was quite that formulated that I considered to be proposed
12 conclusions, but I was of the opinion, as a result of
13 reviewing those drafts that it indicated a direction that
14 the writers of those drafts intended to take in preparing
15 the report. I can't recall right now if they had discrete
16 conclusions of them.

17 Q Do you specifically recall seeing a draft of
18 the pressure spike portion of the report prior to the
19 conducting of interviews in June?

20 A No, sir, I did not see such a draft.

21 Q Were there discussions about such a draft?

22 A None that I am aware of.

23 Q In Mr. Stello's memorandum to Mr. Moseley,
24 which I believe is attached as Exxhibit 2 to your testimony,
25 it states that the date due for the completion of the

Sim 8-4

1 investigation was June 6th, 1980. Do you know why that date
2 was extended?

3 A It wasn't party to the exact decision to extend
4 that date, but I know that there were, in addition to the
5 initial meetings of the task group, which is reflected in
6 Mr. Moseley's April 18, 1980 memorandum, there were other
7 discussions concerning the scope of this investigation which
8 appeared to add to what the task group felt they should
9 cover in this investigation and my opinion at the time was
10 that those meetings and additional tasks were the reason
11 that this date was extended.

12 I am speaking here of meetings such as the one
13 I attended with a representative of the staff of the
14 Committee on Interior and Insular Affairs of the House of
15 Representatives in which Mr. Stello personally accompanied
16 the task group to this meeting and discussed with this staff
17 member what items should be covered in this investigation.

18 Q And did Mr. Stello give additional directions
19 concerning expanding the scope of the investigation?

20 A Although I couldn't recall the exact directions,
21 I recall conversations from Mr. Stello in which he
22 admonished the task group to ensure that this investigation
23 was comprehensive and that this be an investigation to
24 cover all aspects and not leave open areas of question.
25 Mr. Stello clearly wanted this investigation to be

Sim 8-5

1 comprehensive and to include all these areas of concern.

2 Q All these areas of concern meaning the items
3 that were identified in his memorandum which is Exhibit 2
4 to your testimony, or were there other areas?

5 Q I believe I interpreted his statements to include
6 the areas of concern of the Congressional staff member as
7 well.

8 Q Well, what additional areas of concern did this
9 Congressional staff member express?

10 A I couldn't recall them all, but the one that
11 specifically stands out in my mind and obviously is a concern
12 to this Board is the Dieckamp mailgram issue which was a
13 particular concern to that staff member and that was
14 discussed at some length.

15 Q Were there any subject areas which were
16 declared off limits from the investigatory staff?

17 MR. GOLDBERG: Objection. Was that question
18 whether any other areas were declared off limits?

19 MR. AU: Yes.

20 JUDGE SMITH: Mr. Au, what is the purpose of
21 your question?

22 MR. AU: I am trying to establish were there
23 any other restrictions on the scope of the investigation.

24 JUDGE SMITH: For what purpose? The reason
25 I am asking is throughout these entire proceedings we have

Sim 8-6

1 allowed the Commonwealth of Pennsylvania to inquire into
2 matters of their own particular concern even though it may
3 not be within the exact scope of a particular issue. But
4 with respect to this remanded issue, we won't permit that.

5 So if you have questions that you are asking
6 for the private use of the Commonwealth, we won't permit
7 that. Only questions that are within the remanded issue,
8 because we have no authority to allow you to do it.

9 MR. AU: I understand Mr. Goldberg's concern.
10 I am trying to establish here whether there were limits to
11 the type of questions that he may have asked with regard
12 to interviews or other items such that would diminish the
13 weight of NUREG 0760.

14 MR. GOLDBERG: Well, if that is the line, then
15 I suggest that it be done with proper questions. I don't
16 think there is any foundation for the particular question
17 that he asked because I don't think there has been any
18 testimony that there were certain areas identified that
19 were off limits.

20 MR. AU: There is testimony that Mr. Moseley
21 prescreened questions. If that means that he decided that
22 some questions were proper and some were improper, I think
23 I am entitled to ask that.

24 MR. GOLDBERG: The line of questioning, as I
25 understood it, was about this meeting with the member of the

Sim 8-7

1 House Committee staff and what areas he suggested be pursued
2 by the investigation. And then we get the next question.
3 of whether there were any other areas that were declared
4 off limits, and it sounded to me like that related to this
5 meeting with the Congressional staff member.

6 MR. AU: No. I think it is related to the general
7 instructions from Mr. Stello concerning the scope of the
8 investigation.

9 MR. BLAKE: Mr. Au, I have a simple question
10 about the way you phrased your question. What did you
11 mean by "other," any other? What is other? Other than what?

12 MR. AU: Other than the three -- other than the
13 identified areas that I guess Mr. Stello and others had
14 discussed.

15 MR. GOLDBERG: I object to the question.

16 JUDGE SMITH: I think you had better try again,
17 Mr. Au. Sustained.

18 BY MR. AU:

19 Q You previously testified that Mr. Moseley had
20 asked for formats or questions to be submitted to him in
21 advance; is that correct?

22 MR. GOLDBERG: Objection. That was not his
23 testimony. He did not testify that Mr. Moseley asked that
24 questions be submitted to him in advance.

25 MR. AU: Well, the witness can say whether I am

Sim 8-8

1 properly characterizing his testimony.

2 JUDGE SMITH: Ask him if he did that.

3 Did you testify to that?

4 THE WITNESS: I believe I testified that the
5 questions should be submitted in advance of being permitted
6 to ask the questions, if that is what is being asked of me.
7 If it means in advance of the interview, no, but if it means
8 in advance of asking the question, I believe that was my
9 testimony.

10 JUDGE SMITH: Was that in reference to follow-
11 on questions?

12 THE WITNESS: That is correct.

13 BY MR. AU:

14 Q Did Mr. Moseley in any of the interviews which
15 you attended prohibit any questions from being asked which
16 were submitted that you know of?

17 A I don't recall that occurring actually within
18 the context of any interviews.

19 Q That you attended?

20 A That is correct.

21 Q Okay. During the course of your investigation
22 did you draw any conclusions concerning the Dieckamp mailgram?

23 A I don't believe I did.

24 Q Did you encounter any evidence that Mr. Dieckamp
25 had an intention to misrepresent information in the course

Sim 8-9 1 of preparing the mailgram?

2 A I don't believe I encountered any such information,
3 no.

4 Q Did you make an evaluation of the reliability
5 of the interviews that were conducted closer to the time
6 of the accident as contrasted to the interviews that you and
7 the staff conducted after June of 1980?

8 A Yes, in two respects. One evaluation of that
9 aspect was included in my January 26th, 1981 memorandum to
10 Mr. Moseley which referred to the fact that generally speaking
11 interviews closer to the occurrence of any event are normally
12 considered to be reliable interviews which should be drawn
13 upon.

14 The other conclusion I had was an opinion that
15 I merely held during this time concerning the adequacy of
16 the earlier Office of Inspection and Enforcement interviews
17 conducted close to the time of the accident, specifically
18 the inadequacies of those interviews as I came across
19 significant pieces of information that had been uncovered in
20 those interviews and never followed up or that had never
21 been properly developed by those interviews.

22 Q Are you saying that on balance the sum of the
23 interviews were more reliable, but some of the other
24 interviews were incomplete?

25 A I would say that generally speaking particular

Sim 8-10

1 facts that somebody recalled in the earlier interviews, they
2 would have a fresher untainted recollection of individual
3 facts. I don't think I reached any opinion that said that
4 whole interviews conducted earlier were better, but merely
5 that specific factual recollections in those interviews were
6 probably more accurate, and the other half of what you said,
7 that many of those earlier interviews were inadequate in that
8 they were just were not conducted properly.

9 Q Did you notice any pattern develop on interviews
10 which were conducted on exactly the same subject?

11 A Generally there was a pattern that most of the
12 witnesses seemed to recall consistently in different inter-
13 views. There were obviously some inconsistencies which I
14 think much of NUREG 0760 focused on those inconsistencies,
15 but I think most of the witnesses seemed to be consistent
16 in their various interviews, as I recall my general impression
17 of the interviews.

18 Q Did you notice that any person changed an opinion
19 over time, or maybe not opinion, but their recollection of
20 events?

21 A I recall that there were individuals who did
22 change opinions over time. I recall coming to that conclusion
23 at the time I was participating in this investigation. I
24 would have difficulty recalling right now because of elapsed
25 time, and much of my recollection at the time occurred from

Sim 8-11

1 listening to the IE task group members in our discussions in
2 preparation for interviews and, indeed, in listening to the
3 very questions that the IE task group members would ask
4 during the interviews which obviously were focused on
5 inconsistencies and changed recollections of individual
6 witnesses. As to which particular ones today, I would
7 have a great deal of difficulty identifying them.

8 Q Did you view that as diminishing the reliability
9 of the information that they testified to?

10 A Certainly.

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Q Was there any particular format which was used in conducting interviews as to a format for questions or style?

A Yes, sir, there was. The -- perhaps not so much style, but format, I would say yes. The questions were normally prepared in advance, reduced to writing, discussed among the Task Group members, additions to and changes to the questions until it met the satisfaction of the Task Group members.

The interviews were I believe invariably preceded by the administration of the oath and the -- well, let me back off on that. Excuse me.

All of the interviews that we have transcribed verbatim were taken under oath, and the basic questioning was from this list of questions. There were, I understand, some interviews that were not done under oath or transcribed verbatim, or transcribed in any form so far as I know.

Q Which individuals were questioned by that manner?

A The only one that I have a particular recollection of was Mr. Elton Brunner who is employed by Region I of the Office of Inspection and Enforcement. If there were any others, it didn't come to my attention.

Q Okay. And the ones which were under oath and

#9-2-SueT 1

transcribed, did you participate in the discussions of
the questions to be asked?

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A In most -- in the preparation for most, if
not all, of the interviews I did participate in the
discussions, yes.

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Q Okay. Do you know if all the questions which
were listed to be asked actually were asked?

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A Probably all the ones that made it to the
final list were asked. But there were, of course, initial
discussions and give and take at which some questions
fell on the floor and were not, in fact, asked in the
final interview, in the interview itself.

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During the discussion, objections were raised
to some questions. And for various reasons, those
questions were struck and were not asked.

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Q Could you describe the type of reasons?

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A There would be ones that would be eliminated
because based upon review of earlier interviews one or
more of the Task Group members would point out that this
issue had been already covered and there was no reason
to cover it again.

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Of more concern to me in retrospect after see-
ing the final report was the exclusion of the interviews --
or, exclusion of questions on the interviews of Common-
wealth of Pennsylvania officials which would provide those

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#9-3-SueT 1 officials with the forum to express their dissatisfaction
2 with the quantity or quality of the information they may
3 have or may not have received from the Licensee on or
4 after the day of the accident.

5 Q Were there any questions which were dropped
6 which were of interest to you as a criminal investigator?

7 A None that I recall at the time that I had to
8 object to for that reason.

9 JUDGE SMITH: Was that responsive? Repeat
10 your question, Mr. Au.

11 MR. AU: Were there any questions which were
12 dropped which were of interest to you as a criminal
13 investigator.

14 JUDGE SMITH: Right. You didn't respond, I
15 don't believe.

16 WITNESS GAMBLE: Okay. My answer would be,
17 I never reached an opinion while I was an NRC employee
18 as to whether any of those questions that were dropped
19 in fact should have been asked to benefit the criminal
20 investigation concerns. However, at the time I participat-
21 ed in these discussions, there were none that I was con-
22 cerned enough about to object to at the time.

23 In retrospect, there may have been some
24 questions but I can't point to them.

25 JUDGE SMITH: I just want to clarify one

#9-4-SueT 1 point. Some questions were objected to and dropped,
2 as you used the word; some questions were objected to
3 and as a consequence of the objection, they were dropped.
4 But you seem to be using the term "objected to" in the
5 sense that you did not feel motivated to object to the
6 dropping of any questions.

7 WITNESS GAMBLE: That's correct.

8 JUDGE SMITH: Is there any confusion with the
9 distinction I made?

10 (No reply.)

11 BY MR. AU: (Continuing)

12 Q Who made the decision as to whether a particu-
13 lar question should be dropped or left in the final
14 list?

15 A Mr. Moseley was in charge of that aspect.
16 There was a collegial process, but in the final analysis
17 Mr. Moseley's decision carried.

18 Q You had stated some of your concerns in a
19 final to a draft of NUREG 0760 in January of 1981; is
20 that correct?

21 A Yes, sir.

22 Q Did others state concerns concerning the
23 preparation of the final draft?

24 A I understand there was a fairly lively debate
25 over the conclusions and specifically the proposed

#9-5-SueT

1 enforcement actions to be taken in connection with that
2 investigation.

3 Q And who were the participants to this lively
4 debate?

5 Do you recall?

6 A Any information I would have on this would be
7 merely secondhand information from hearing descriptions
8 of these discussions from the I&E Task Group members.

9 But the participants were, in fact, the I&E
10 Task Group members, Mr. Stello, and the Commissioners
11 themselves.

12 Q Do you know if the Office for Analysis and
13 Evaluation of Operational Data was involved in this
14 debate?

15 A I believe that Office's involvement in the
16 debate, especially concerning the changes to proposed
17 enforcement actions, that Office's involvement came
18 after the final of NUREG 0760 was issued. Indeed, I
19 believe it was after the notice of violation was issued
20 as a result of that report.

21 It's very close in time. I would estimate
22 February of 1981, the report being issued late January
23 I believe.

24 Q Did that Office raise any concerns about the
25 reporting of this pressure spike?

#9-6-SueT 1

A (Pause.)

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I can't recall the details of what they focused on, other than that there was some concern expressed by Staff members and the Director of that Office over the change in the enforcement action proposed by I&E. And sitting here today, I cannot exactly recall whether that directly related to the pressure spike or was another issue.

Q I'm going to show you a document entitled "Memorandum For: Chairman Ahearne, Commissioner Gilinsky, Commissioner Hendrie, Commissioner Bradford, From: William J. Dircks, Executive Director for Operations, Subject: Further Information - AEOD Background Paper on TMI Investigation Report" and ask if you are familiar with that?

(Mr. Au shows the witness the document.)

MR. AU: I believe the parties have a copy, since this was provided to me by Mr. Goldberg yesterday. But the Board does not have a copy. We will try to work without it.

Mr. Goldberg, do you have extra copies?

WITNESS GAMBLE: I recall --

(Pause.)

MR. GOLDBERG: Excuse me. Would the Board like copies? I have extra copies.

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MR. AU: We would mark it as an exhibit, then.

JUDGE SMITH: We don't want to be overly demanding.

(Laughter.)

JUDGE WOLFE: It would be nice.

(Mr. Goldberg provides the Board members with a copy of the document.)

MR. AU: Could we mark that as Commonwealth Mailgram Exhibit 1?

(The document previously referred to by Mr. Au is marked as Commonwealth Mailgram Exhibit Number 1 for Identification.)

BY MR. AU: (Continuing)

Q Now, Mr. Gamble, are you familiar with this document?

A I have -- I was aware of the discussions surrounding this document. I was aware of its existence. And at some time later, to its authorship. I believe I even saw a copy of it, of the enclosure to the document.

I am not certain I have ever seen this transmittal memorandum from Mr. Dircks to the Commission. I seem to have a recollection that when I saw it, it might have had a cover memorandum of some sort from Carlyle Michaelson, the Director of that Office. But I'm not sure.

EXXX

#9-8-SueT 1 I might have just seen the enclosure by itself.

2 Q Okay. You are not familiar with the trans-
3 mittal document but you are familiar with the other parts
4 of the document, beginning with the report on investigations
5 into information flow concerning the TMI accident?

6 A I'm not intimately familiar with the contents.
7 I'm aware that this Office had concerns generally and at
8 some point I saw the document.

9 But I'm not very familiar with the detail
10 content.

11 Q You don't recall whether the Office for Analysis
12 and Evaluation of Operational Data criticized the investi-
13 gation which led to NUREG 0760?

14 A I recall that was the thrust of their report
15 here.

16 Q At that time, what did you recall their con-
17 cerns to be?

18 MR. GOLDBERG: I want to make an objection at
19 this point. Questions are being asked as if this repre-
20 sents the views of AEOD. The document, on its face,
21 indicates that it is only the author's views and not the
22 views of the AEOD or the NRC.

23 So, I would appreciate it if Mr. Au could
24 state the proper foundation in his questions about this
25 document.

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MS. BERNABEI: If I could just represent the situation as I understand it, Mr. Gamble's testimony was that he saw this document under cover of a letter from Mr. Michaelson, who I think then was the Director of that Office. So, I think to that extent it does represent the -- well, I don't know, but I think the witness could be asked if it represented the position of the Office as he understood it.

I think it's clear it's not the position of the entire NRC, but I don't think that makes it any less relevant.

But my understanding is that Mr. Gamble's testimony addressed the point that Mr. Michaelson transmitted this memo, and that is the form in which he has seen it.

MR. GOLDBERG: If his testimony is that Mr. Michaelson transmitted this memorandum, then we will have to see some further evidence on that. But at this point we have a document which, on its face, says, "This document contains the author's views which are not necessarily those of AEOD or the NRC."

And to the extent there is going to be questioning of this witness on this document, let's lay the proper foundations for the questions. That's my objection.

MR. AU: Okay. My question was not as to this

#9-10-SueT 1

2 author's views but as to Mr. Gamble's recollection at the
3 time, what he recalls the views of the Office were, not
4 with regard to this particular author.

5 JUDGE SMITH: So, for that purpose the objection
6 is overruled.

7 MR. BLAKE: Could I hear the question again,
8 or would you repeat it, Mr. Au, please?

9 BY MR. AU: (Continuing)

10 Q Could you explain what you recall the concerns
11 of the Office for Analysis and Evaluation of Operational
12 Data?

13 A I cannot recall details of the concerns that
14 were familiar to me around the time it was written in
15 February beyond the fact that I recall that it was
16 critical of NUREG 0760; and I recall that because I
17 took some heart in that, because it seemed to be the
18 only other criticism other than my January 26th, 1981
19 memorandum for which I came under a great deal of fire.

20 I don't believe I actually saw the document
21 until much later in that year. I would just note that
22 the carbon copies indicated on Mr. Dircks' memorandum
23 do not reflect a copy to the Office of Inspector and
24 Auditor where I was employed. And my recollection is
25 that we did not get a copy, at least until much later.

Q Are you aware that the Office for Analysis

#9-11-SueT 1

and Evaluation of Operation Data did take a position?

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A Yes, sir.

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MR. AU: I have no other questions.

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JUDGE WOLFE: What about this document as an exhibit, Mr. Au?

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MR. AU: I believe Mr. Bernabei may have other questions to identify the document. I won't offer it as an exhibit at this time until we get some more identification.

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JUDGE WOLFE: All right.

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MS. BERNABEI: If I could just represent to the Board, we didn't receive this particular copy of the document until a few days ago. And we would probably support a motion by Mr. Au to admit it at such time as we are able to produce the cover memorandum from Mr. Michaelson, because I think that would explain it better.

18

JUDGE SMITH: Okay.

19

(The Board members are conferring.)

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I think it's clear that we are not going to conclude today's activities unless we put in virtually a full day. So, I propose that we break for lunch.

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We are off the record now.

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(An off-the-record discussion ensues.)

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JUDGE SMITH: We will return at 10 to one.

#9-12-SueT 1

(Whereupon, the hearing is recessed at

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12:03 p.m. to reconvene at 1:00 p.m., this same

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day.)

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AFTERNOON SESSION

(1:00 p.m.)

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3 JUDGE SMITH: Mr. Blake, you say you have no
4 cross examination?

5 MR. BLAKE: No, I have no cross examination of
6 Mr. Gamble, but I would like to express my concern. There
7 has been a number of questions, and there has been identified
8 now an exhibit which when offered into admission I anticipate
9 opposing.

10 I am concerned, Judge Smith, that we are straying
11 beyond the issue in which we came here to decide, the
12 Dieckamp mailgram, and Mr. Dieckamp.

13 The questions about potentially post-enforcement
14 action considerations, or what considerations were given
15 in meeting with congressional staff -- I don't see it as
16 -- well, not relevance -- but at least material or probative
17 in terms of facts which will assist the Board in making its
18 decision about the Dieckamp mailgram.

19 So, at this juncture I merely register than
20 concern and I suspect that will be manifested in objections
21 to questions which I think are examples of that.

22 JUDGE SMITH: Your very last sentence, I didn't
23 hear. Your voice trailed off. Your very last sentence.

24 MR. BLAKE: At the moment, I am registering my
25 concern and I expect that will be manifested in objections to

1 questions which I think are an example of that.

2 MS. BERNABEI: I think the name that was
3 referenced had to do specifically with how the Dieckamp
4 mailgram issue because a part of the NRC Staff's investigation.
5 In fact, I think it is quite important -- well, I think it
6 is quite important for the Board to know how that became an
7 issue at all, and I think that is not beyond the Board's
8 concern, and I think it also was one of our concerns when
9 Mr. Goldberg initially introduced Staff Exhibit 1, and moved
10 to introduce it, that that was not really the charging memo
11 for the Dieckamp mailgram issue. It was part, but it was not
12 the whole story. And I think this is relevant.

13 JUDGE SMITH: You may inquire.

14 REDIRECT EXAMINATION

15 BY MS. BERNABEI:

16 Q Mr. Gamble, in response to one of Judge Smith's
17 questions, you explained your role as a representative of
18 the Office of Inspector and Auditor in the investigation.
19 I would like to read to you Mr. Moseley's definition of
20 your role, and ask you if you agree with that.

21 On page 29,828 of the transcript, Mr. Moseley's
22 answer, beginning on Line 23: If I understand your question,
23 no. This was not a criminal investigation. Our Charter if
24 we go back to Mr. Stello's directive to me, was really
25 a directive toward completing consideration of an enforcement

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1 matter, and the reason for the inclusion -- or the reference
2 to possible criminality was that it was the reason for Mr.
3 Gamble being a part of it, to identify those situations where
4 there may be encroachment into criminal matters, and keep us
5 from pursuing them.

6 Question: So it is fair to say that that is the
7 way you perceived his role? That he was to stop you from
8 inquiring into any potentially criminal matters?

9 Answer: That is correct.

10 Was that your view or your understanding of your
11 role in this investigation?

12 A No, it was not.

13 Q And how does it differ from Mr. Moseley's view,
14 as expressed in his testimony?

15 A In the testimony you just read, Mr. Moseley
16 indicated that I was there in a limiting function, and to
17 stop I&E from inquiring into criminal matters, and my role
18 was quite the contrary.

19 My role was to encourage that matters be
20 pursued without regard to whether they are criminal or not.
21 And merely to ensure that in those areas where the result
22 of the investigation may have value for criminal purposes
23 as well, to ensure that that aspect of the investigation is
24 conducted in the best manner, so the results of the
25 investigation can be utilized in a criminal prosecution.

1 Q You were --

2 JUDGE SMITH: Before you leave that point, will
3 you give me a chance to pursue it a little bit, too?

4 MS. BERNABEI: Certainly.

5 JUDGE SMITH: Are you done with?

6 MS. BERNABEI: Yes.

7 JUDGE SMITH: Well, the reason for my concern and
8 questions about it is assuming you were there as a represen-
9 tive -- I mean representing the interest of the Department
10 of Justice.

11 Now, did you inform the people that you were
12 questioning that you were a Department of Justice represen-
13 tive?

14 WITNESS: I was not a Department of Justice
15 representative, so I didn't --

16 JUDGE SMITH: Well, you were maybe not employed
17 by them, but was there an understanding between your office
18 and the Justice Department that there would be such a person
19 as you?

20 WITNESS: I don't believe there was any
21 consultation with the Justice Department in this investigation.

22 JUDGE SMITH: You mean we just volunteered
23 to say: Hey, we are going to help the Justice Department?

24 WITNESS: This language came from the letter from
25 the Chairman, I believe addressed to Congressman Udall, which

1 was attached to the -- I believe it was April 1 charging
2 memorandum, as everyone is calling it here.

3 And I don't know how that language actually came
4 to be in that letter, of course, but my understanding is that
5 it was entirely voluntary. The Commission offered that, and
6 I think I explained the context a little bit yesterday,
7 in that this was coming on the heels of a very serious
8 situation where the Justice Department had seriously criticized
9 the Office of Inspection and Enforcement for mishandling an
10 earlier investigation that had criminal potential.

11 JUDGE SMITH: So, you don't know if the Department
12 of Justice asked for -- that their interest be represented?

13 WITNESS: I don't know that, but I believe I
14 would have had they asked for that. I would have known that
15 had they asked it.

16 JUDGE SMITH: As a professional investigator, and
17 as a lawyer at the time, did you make any analysis of what
18 might happen if you began to develop evidence against a
19 witness being interviewed, which evidence is to be used in
20 a criminal prosecution without informing them of that?

21 WITNESS: Yes, sir. We had a great deal of
22 discussions on this general subject matter between the Office
23 of Inspector and Auditor, and Department of Justice. And
24 the philosophy under which we operated at the time was that
25 the civil investigation, such as NUREG 0760, should proceed

1 in parallel, and would continue even if the criminal potential
2 was there.

3 JUDGE SMITH: You explained that to me yesterday.
4 But I am talking about what happens when you, as a criminal
5 investigator, develops -- would have developed information
6 used to criminally prosecute a person. You are there for
7 that purpose, as a United States official, you are there
8 for that purpose, notwithstanding the fact that there is
9 a civil investigation preceding the pace, and you have not
10 informed that person that you are conducting a criminal
11 investigation.

12 Now, what happens if you develop that evidence.
13 How can you use it?

14 WITNESS: For one, there is no problem -- we didn't
15 feel there was any problem in using it, in that we were not
16 conducting a criminal investigation. We were there merely
17 to ensure that the regulatory investigation did not destroy
18 any potential criminal case that may exist.

19 We had not made any determination that there was
20 anything requiring criminal investigation even at this point.
21 It was -- I was there as a precautionary measure. It was
22 an extra measure of precaution, because of what the Office
23 of Inspection and Enforcement had done in the earlier case.

24 JUDGE SMITH: I am sure you are familiar with
25 Miranda v. Arizona?

1 WITNESS: Yes, sir.

2 JUDGE SMITH: And had that consideration ever
3 been discussed between you and the other people in the
4 task force?

5 WITNESS: Yes, sir. It was not among the people
6 in the task force, but within OIA and I believe that
7 received substantial attention in the motions to quash the
8 subpoenas, which were appealed up through the Court of
9 Appeals, and I even think there was an attempt to reach the
10 Supreme Court Justice, and that was a very lively argument
11 in that motion as well, because some of the same people that
12 we had subpoenaed under NRC subpoena to appear before this
13 task group, were also being subpoenaed to appear before a
14 grand jury at that time.

15 JUDGE SMITH: I am still not quite sure of
16 what the answer was. Were the people who were being
17 investigated informed that there could be a criminal investi-
18 gation into these matters?

19 WITNESS: No, sir.

20 JUDGE SMITH: Do you have any ethical misgivings
21 about what you did?

22 WITNESS: No, sir.

23 JUDGE SMITH: Don't laugh.

24 MS. BERNABEI: I am not laughing. I think you
25 are crossing. I think there was -- I think the two of you

1 are crossing. I wasn't laughing, but I think the two of you
2 are talking about different things.

3 JUDGE WOLFE: You mean from a time -- a chronological
4 point of view?

5 MS. BERNABEI: No. I think there is a distinction
6 being made between the IE enforcement investigation, or the
7 IE investigation, which is a civil enforcement investigation,
8 and a criminal investigation.

9 I think the guarantee that you are talking about
10 Judge Smith, do not adhere in law to the prior.

11 JUDGE SMITH: No, I am not suggesting they do.
12 I -- this man informed us that he was there to protect the
13 interest of the Department of Justice, and I assume it was
14 the Department of Justice, not the civil division or the
15 tax division, or any other division other than the
16 Department of Justice that prosecutes people for crimes
17 against the United States.

18 And I am wondering if he has any ethical mis-
19 givings of inquiring into people for that purpose, and not
20 telling them about it.

21 WITNESS: We were not inquiring into people for
22 that purpose. The purpose of the investigation in every
23 interview was purely for civil enforcement purposes.

24 That is why in several points in my testimony I
25 have alluded to the fact that the primary responsibility for

1 questioning, deciding who to interview or how to proceed in
2 this investigation laid with the IE members of the task force,
3 task group.

4 I did not, for the very reasons you are referring
5 to, I did not interpose myself actively in an attempt to
6 steer the investigation to make it a criminal investigation.

7 Rather, we were merely going to make use of any
8 information that might have been viable for a criminal
9 prosecution.

10 JUDGE SMITH: The reason the subject came us is
11 that an inference could reasonably be drawn that the purpose
12 of a person such as you in the investigation is to prevent
13 an inquiry which would frustrate a Department of Justice
14 investigation because of Miranda v. Arizona considerations,
15 and fairness considerations, or due process considerations.

16 That is how it came up. I think I have digressed,
17 but I do see it as a rather disturbing matter.

18 WITNESS: As I recall, on your point about did
19 anyone raise any concerns, the only party that seemed to even
20 notice my presence, or notice any distinction of me or ask
21 any questions was Mr. Ernie Blake.

22 JUDGE SMITH: All the worse. That is all the
23 worse. These people were apparently being questioned with
24 input from a criminal investigator to develop evidence for
25 Department of Justice, and were never informed. Proceed.

1 BY MS. BERNABEI: (Continuing)

2 Q Along that line, Mr. Gamble, can you describe
3 the substance of the conversations, the discussions you had
4 either with NOIA or OIA and the Department of Justice
5 concerning this matter, and why you do not feel you transgressed
6 any ethical boundary by not so informing the interviewees
7 during the NUREG 0760 interviews?

8 A Quite simply, the opinion of the Department of
9 Justice, on which we relied, was that if the investigation
10 is being conducted for civil enforcement purposes, and the
11 investigation served that purpose, and the investigation is
12 not being steered in order to develop a criminal case, then
13 there was no need to interject the additional element of
14 warnings, and rights, and advisements that adhere to a
15 custodial interview in criminal investigation.

16 MR. BLAKE: Ms. Bernabei -- I am sorry, I didn't
17 mean to interrupt.

18 WITNESS: Indeed there were substantial discussions
19 within NRC, particularly between the Office of Inspector and
20 Auditor, and the Office of Inspection and Enforcement to the
21 effect that I&E felt very strongly, particularly Mr. Stello
22 I am speaking about here, Director of I&E, felt very strongly
23 about his mission to conduct investigations in support of
24 civil enforcement action in a vigorous manner, and not to be
25 restricted from investigating the matter fully, and if he were

1 prevented from pursuing a matter because of potential for
2 criminal prosecution, he viewed that as an infringement
3 on his duty as the civil enforcement officer for NRC
4 and this matter was discussed at length between the two
5 offices, and with the Department of Justice. The three
6 groups discussed it, and the Justice Department advised
7 us that we could proceed in this manner.

8 JUDGE SMITH: Right. But did they advise you
9 that you could proceed as a criminal investigator protecting
10 the interest of the Department of Justice?

11 WITNESS: Not in this particular case. In other
12 cases, yes.

13 MR. BLAKE: Before we leave this area, --

14 MS. BERNABEI: I have some more questions to
15 ask.

16 MR. BLAKE: All right. I would like to refer.--

17 MS. BERNABEI: I would like to continue my
18 questioning.

19 MR. BLAKE: Okay. I will wait until you are
20 done.

21 BY MS. BERNABEI: (Continuing)

22 Q Mr. Gamble, do you know if this matter, whether
23 interviewees should be informed of their rights in civil
24 enforcement investigations has ever been raised subsequent
25 to the time of the NUREG 0760 interview?

1 JUDGE SMITH: I have never suggested that in a
2 civil enforcement investigation an interviewee should be
3 advised of their rights. That is a digression. If that
4 is a follow up to my question, it is not related to my
5 question.

6 MS. BERNABEI: I think the suggestion was that
7 perhaps Mr. Gamble, in his participation in E&E investigation,
8 should provide that kind of --

9 JUDGE SMITH: That wasn't the suggestion. The
10 suggestion is that Mr. Gamble regarded himself as a
11 criminal investigator there to develop evidence of crimes
12 as defending -- representing the interest of the Department
13 of Justice for criminal purposes. Gone beyond the scope
14 of a civil enforcement investigation, and should have
15 advised them of their criminal liability.

16 That was my suggestion, which is entirely
17 different from what you are saying.

18 MS. BERNABEI: He meant -- let me ask a question
19 in a precise way.

20 BY MS. BERNABEI: (Continuing)

21 Q Do you know of any discussion within the NRC
22 or public discussion about whether in civil enforcement
23 investigations, where there is participation by OIA represen-
24 tative in the role you were in, that is protecting the
25 interests of the Department of Justice for potential criminal

1 enforcement activities, if there has been any discussion about
2 whether interviewees should be advised of their rights?

3 A There have been substantial discussion, certainly
4 after this time, and also before the time of these interviews,
5 and I believe this is the subject matter of at least one
6 formal written opinion of the Department of Justice.

7 Q Subsequent to 1980-1981, do you know -- can you
8 describe the discussions that ensued? Specifically, on
9 the concern Judge Smith has expressed? That is, whether
10 interviewees in this type of situation should be apprised
11 of their rights?

12 A Well, again I would like to reiterate that I
13 was under clear guidance not to extend this investigation
14 beyond what I&E wanted to do, or what I&E should do, excuse
15 me. What I&E should do for civil enforcement purposes.

16 And in no way did we cause I&E to do an
17 investigation that was for criminal purposes, and not for
18 civil enforcement purposes. But the discussions that we
19 had with the Department of Justice and between OIA and IE
20 after that time, concerned this very type of situation
21 in other investigations where IE and OIA investigators would
22 jointly interview people. One subsequent case that comes to
23 mind right now, we had a active criminal investigation under
24 the direction of the United States Attorney underway at the
25 very same time that I&E was performing a civil enforcement

1 investigation, and headquarters of the Department of Justice
2 issued a formal legal opinion stating that this was
3 permissible, and the rights or advisements were not necessary.

4 Q Do you know of any advisory committees to the
5 Commission that have considered this matter? That is, advise-
6 ment of interviewees of their rights?

7 A I do, I do, and -- that occurred after I left
8 the NRC, so I don't think I should testify as to that.

9 End 10.
10 MS fols.

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Sim 11-1

1 MS. BERNABEI: Well, I am going to ask that the
2 Board direct -- it is the Board's concern and I think the
3 Board should request that Mr. Gamble answer.

4 JUDGE SMITH: No. I addressed the concern, and
5 you are going off on a tangent. So is Mr. Gamble. He
6 testified earlier that he was not there. As a matter of
7 fact, he objected to the language that he was a working
8 member of the group and he wanted to make clear that no, he
9 was not a working member of the group for an I&E enforcement
10 action. He was there as a criminal investigator for the
11 Department of Justice, and that was his only purpose there
12 and that is all he did. And now somehow it is retreated,
13 that he was there not to expand it beyond enforcement
14 purposes, not to do anything inconsistent with that, and
15 yet the two ideas are mutually inconsistent. And I just
16 think we ought to proceed because it is a digression from
17 the issues of this case and it is just a matter I find
18 troubling to hear in a hearing room over which I am a part
19 of the presiding officer.

20 I am troubled by it and I think I have digressed
21 and cluttered up the issues here.

22 MS. BERNABEI: Judge Smith, I think Mr. Gamble
23 should be given a full opportunity, and that is what I was
24 attempting through the questions, to explain his role and
25 how that has been fully, not only accepted in 1980 and '81

Sim 11-2

1 but ratified in subsequent actions of the Commission. If
2 you don't want to hear about it, I will proffer what I
3 believe ---

4 JUDGE SMITH: All right, proffer it.

5 MS. BERNABEI: There has been what has been
6 called a Silver Commission that carefully studied upon the
7 utility attorney's request whether or not there should be
8 such advisement to interviewees in situations such as this.

9 The Commission rejected that advisor committee's
10 advice and has maintained the procedures that adhered during
11 this period of time, that is that the individuals -- it
12 primarily involved having corporate counsel present, but there
13 were other things being considered.

14 It is not a matter that either the NRC, OIA or
15 the Office of Investigations has taken lightly, and it has
16 been well considered by the Commission and the Commission
17 has ratified the practice that existed at that time.

18 I think to suggest that Mr. Gamble perhaps did
19 something improper and exceeded his authority I think is
20 untoward and he should be allowed to defend himself against
21 that kind of suggestion.

22 JUDGE SMITH: Okay. Proceed.

23 MR. BLAKE: Do you have more questions in this
24 area, Ms. Bernabei?

25 MS. BERNABEI: No, but I have other questions.

Sim 11-3

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JUDGE SMITH: I might point out that my being troubled is not with Mr. Gamble particularly. I am troubled by the entire arrangement, and it is something beyond our jurisdiction and something beyond our authority and it is a digression which I am not sure was entirely appropriate.

But it does go to the nature of Mr. Gamble's questions, what he had in mind and it places into context his criticisms.

MS. BERNABEI: Well, I think you asked specifically the question about if he had any ethical problem with his role in that investigation. I think that is a very serious concern you have raised and he should be allowed to defend himself against it.

JUDGE SMITH: Right. That is right. I agree.

THE WITNESS: Do you want me to answer that, to defend it?

JUDGE SMITH: I thought you had, but if you are not satisfied with your explanation, yes, I agree.

THE WITNESS: Well, I am not satisfied with your characterization that I retreated because I don't think I retreated from my earlier position.

I clearly was assigned to this investigation as a criminal investigator, and because of my abilities or whatever at a criminal investigator. I was not there to conduct a criminal investigation, but rather to prevent the

Sim 11-4

1 Office of Inspection and Enforcement from destroying the
2 possibility for a criminal prosecution and to ensure that
3 when they get into areas where the interviews in questioning
4 and other investigative activity would also be supportive
5 of a criminal investigation to ensure that they were
6 done properly and in a manner that they would serve the
7 purpose of a criminal investigation, and not just be
8 conducted in the manner in which the task group saw fit
9 at the time.

10 In no way was I conducting a criminal investiga-
11 tion. However, I was attempting to ensure that the integrity
12 of this investigation was up to par for the standard
13 required to be used in criminal courts, which is of course
14 very stringent.

15 JUDGE SMITH: I have nothing to say. I just
16 remain unconvinced and I am even more troubled. So let's
17 just continue.

18 BY MS. BERNABEI:

19 Q Mr. Gamble, you were asked a series of questions
20 by Mr. Goldberg about whether or not the IE investigation
21 into information flow as a continuation or a completion of
22 a prior investigation, and your attention was drawn to
23 Exhibit 2 to your testimony, that is the direction from
24 Mr. Stello to Mr. Moseley concerning that investigation.

25 May I ask you, how did it come about -- what is

Sim 11-5

1 your understanding of how this IE investigation into
2 information flow was either initiated or continued at this
3 time in April of 1980?

4 A The first IE investigation into the accident,
5 NUREG 0600, as it is called, I believe the investigative
6 activity was completed in the summer of 1979.

7 The Commission, based upon that report, took
8 certain civil enforcement actions. However, they deferred
9 action on certain items. All the reasons for that deferral
10 I am not privy to, but timing-wise I understood that a lot
11 of it had to do with the pendency at that time of the Rogovin
12 Special Inquiry, which I believe was completed in January
13 1980.

14 After completion of the Rogovin Special Inquiry
15 I recall that there were exchanges of correspondence between
16 the Commission and a Congressional committee that inquired
17 into this very area, into information flow, and I am not
18 sure those words were used then, but reporting something
19 akin to that.

20 As a result of some of those concerns expressed,
21 there was a supplemental investigation, perhaps that would
22 be the best way to refer to it, or supplemental review I
23 guess I would rather say, conducted by Mr. George Franpton,
24 who was the Deputy Director of the Special Inquiry Group, in
25 which Mr. Frampton rather than doing any additional

Sim 11-6

1 investigation, he analyzed the available information from
2 his the Special Inquiry Group investigation and prepared
3 a summary that the Commission requested to try to address
4 this area.

5 I recall there being additional correspondence
6 or discussions between the Commission and this Congressional
7 committee which I recall as being the predicate for the
8 Chairman of the NRC ordering this investigation that became
9 NUREG 0760.

10 Q Okay. And what was the reason for reopening
11 or initiating a specific investigation into information
12 flow at this time, given that there had been a number of
13 other investigations that had at least touched on the
14 subject?

15 A The concern, as I recall the concern at that
16 time, it was that the earlier investigations did not
17 adequately address this area and therefore this additional
18 work was needed.

19 Q Referring you to what has been admitted as
20 Staff Exhibit 1 of March 21, 1980, a memorandum to Mr. Dircks
21 from Chairman Ahearne, I would like to ask you if this is,
22 as you understand it, the memorandum which assigned or
23 directed IE to commence an investigation?

24 (Pause.)

25 A There is an attachment of course to this, but

Sim 11-7

1 this is the cover memo of the letter that directed this.

2 Q What is the attachment to that exhibit?

3 MR. BLAKE: What are we talking about? What
4 is this piece of paper?

5 MS. BERNABEI: Staff Exhibit 1.

6 MR. BLAKE: Thank you.

7 THE WITNESS: In the form in which I saw this,
8 it also had a cover sheet, a half sheet, carbon interleaved
9 sheet prepared by the Executive Director's Office which
10 repeated the words that are penned in on this copy of the
11 memorandum. It ways this ticket -- yes, ticket, that is
12 it.

13 This ticket directs resumption of the
14 investigation, and I guess the ticket is reference to the
15 carbon piece of paper on top of it. But, more importantly,
16 was the attachment I was referring to, the memorandum that
17 here alludes to the attachment and of course forwarded
18 that to all the recipients, and I of course saw the copy
19 that was directed to Mr. Cummings, the Director of OIA.

20 The attachment was a letter, as I recall, from
21 the Chairman of the NRC to Morris Udall, who was Chairman
22 of the House Interior and Insular Affairs Committee, the
23 letter on this issue.

24 BY MS. BERNABEI:

25 Q And what did that letter or attachment, which

Sim 11-8

1 we do not have, what is your memory of what that says?

2 A I recall it being a discussion of this issue. I
3 seem to recall that it discussed the exchange of correspondence
4 and conversations which I referred to earlier between the
5 Congressional Committee and the NRC on whether this issue
6 had been adequately investigated in the past.

7 One particular line that I recall from the
8 Chairman's letter was the line that later got repeated in
9 NUREG 0760 which has been referred to extensively this
10 morning, that the Director of OIA should assign an investigator
11 to protect the interests of the Department of Justice in any
12 criminal matters that would arise. That language came from
13 the attachment that I am speaking of here.

14 MS. BERNABEI: I want to make a request that
15 Mr. Goldberg provide the attachment to this memorandum.
16 We were not provided it in discovery and basically we have
17 had to reconstruct it. I think it is not appropriate that
18 the Staff Exhibit 1 remain without the attachment since on
19 its face it does state there is an attachment. So I
20 would make that request or otherwise move to strike the
21 exhibit.

22 JUDGE SMITH: Do you wish to be heard,
23 Mr. Goldberg?

24 MR. GOLDBERG: No.

25 JUDGE SMITH: Then it is directed that you

Sim 11-9

1 provide it.

2 MR. GOLDBERG: Fine. I don't have any objection
3 to providing it if we have it. I haven't seen it.

4 BY MS. BERNABEI:

5 Q Now if I understand your testimony, Mr. Gamble,
6 this memorandum did not include a delineation of the
7 Dieckamp mailgram issue as one area of inquiry; is that
8 correct?

9 A I don't believe it did.

10 Q And it is your understanding that somehow
11 through subsequent discussions between the House Committee
12 staffer and NRC personnel, including Mr. Stello, that that
13 issue became delineated as one the IE task group was to
14 address?

15 A Right. My sense of that is it kind of evolved
16 as an issue through the discussions. There were numerous
17 discussions with this House staff member and this issue
18 kind of grew out of those discussions.

19 Q Okay. And who is the House staff member to
20 whom you refer?

21 A Dr. Henry Meyers.

22 Q You were asked by Mr. Goldberg about whether or
23 not certain investigative techniques, I think was the word,
24 had been used or employed in the IE investigation, and you
25 address that, yes, some investigative techniques or procedures

Sim 11-10,

had been used in this investigation.

Were there any other either techniques or strategies which you believe should have been used in this investigation and in fact were not?

A I will have to limit my answer to that to opinions I reached on that subject while I was an NRC employee.

MS. BERNABEI: Well, I would ask the Board that you direct Mr. Gamble to answer fully the question regardless of any restrictions the agency has put on it.

MR. GOLDBERG: Judge Smith, I want to object to Ms. Bernabei's characterization of the letter from the Office of General Counsel as restrictions which the agency has placed on Mr. Gamble's appearance.

Mr. Gamble requested an opinion from the Office of the General Counsel and they provided it pursuant to his request. It is their legal opinion.

Mr. Gamble is not bound by that. He is free to make his own judgments. It is just simply not a restriction. It was OGE's legal opinion as to the application of the Ethics in Government Act. It was done pursuant to his request.

MS. BERNABEI: Well, let's be straightforward about this. He requested it only after he had been communicated the idea that perhaps he should because

Sim 11-11 1

2 otherwise he may be subject to criminal provisions of the
3 law. I don't think there is any way to interpret that as
4 voluntary.

5 JUDGE SMITH: In any event, the Board will
6 not direct him to testify in an area where he views that he
7 is in jeopardy. Since we do not have any authority to
8 remove him from jeopardy, we will not direct him to testify
9 in those areas.

10 MS. BERNABEI: Well, Judge Smith, I think you
11 do have the right, at least from my understanding of
12 Mr. Rothchild's instructions to Mr. Gamble, you do have the
13 right to direct him to answer questions at such time the
14 restrictions in the letter do not adhere.

15 JUDGE SMITH: Right. If the Board wants the
16 answer to the question, then he would become for that
17 purpose I suppose a Board witness and then testify, and
18 since we are a component of the government, and testify for
19 the government.

20 So give me the question back and let's look
21 at it from that viewpoint.

22 MS. BERNABEI: Okay. This follows on questions
23 by Mr. Goldberg about investigative techniques which were
24 employed in the IE investigation to information flow. And
25 Mr. Gamble acknowledged that there were certain techniques
that were employed and I wanted to ask him if there were

Sim 11-12 1 any invstigative techniques or strategies which he believed
2 should have been employed but were not in fact.

3 JUDGE SMITH: Today?

4 MS. BERNABEI: Today or back then.

5 JUDGE SMITH: Back then he is willing to testify
6 to.

7 MS. BERNABEI: Okay. But the problem is now,
8 up till the present.

9 JUDGE SMITH: Are there any back then that
10 you believe should have been employed that were not
11 employed?

12 THE WITNESS: Yes, sir.

13 JUDGE SMITH: You don't have any trouble answering
14 about that.

15 THE WITNESS: No, sir.

16 JUDGE SMITH: Well, let's answer those first
17 and then worry about those that you may have today.

18 THE WITNESS: Okay. One aspect -- if investiga-
19 tive techniques, and that would include strategy for dealing
20 with witnesses in my mind. I would have avoided the
21 inclusion, if I were conducting that investigation -- it
22 was my opinion that if I were conducting that investigation,
23 I would have avoided the presence of company counsel,
24 counsel for companies for which the interviewee worked in
25 the interviews to the maximum extent possible.

Sim 11-13 1

2 By permitting counsel for a company to be there
3 it generally has, in my opinion at the time, it had an
4 inhibiting effect upon witnesses when the subject of the
5 investigation especially is their employer.

6 The other ill effect that I perceived at the time
7 was that it provided the opportunity for coaching of subse-
8 quent witnesses based upon answers of previous witnesses.
9 Generally in investigations I felt that it is advisable to
10 try to get the independent, unrehearsed recollection of
11 witnesses wherever you could.

12 This particular issue of corporate counsel being
13 present was brought up. I brought it up to Mr. Moseley. We
14 had subsequent discussions. Mr. Cummings accompanied me
15 to discuss this matter with Mr. Moseley and his supervisor,
16 Mr. Stello.

17 We were not, we meaning OIA, were not successful
18 in our persuading I&E to adopt our view. The one concession
19 that we did receive from I&E along this score was I&E's
20 commitment to ensure that interviewees who were accompanied
21 by company counsel stated to us as the government repre-
22 sentatives directly that they had no objection to the
23 company counsel's presence. It was not a perfect solution
24 in my mind, but it was better than nothing.

25 The other related concern that I had at the
time and was very concerned about was the problems that

Sim 11-14 1 could occur where the task group or I&E officials made
2 arrangements with company counsel in advance of interviews
3 to the effect that the interviewees, the company employees,
4 would not have to answer certain questions.

5 These arrangements, I felt in themselves they
6 were somewhat troublesome, but my real concern was that these
7 arrangements were made without the knowledge of the
8 investigators performing the interviews.

9 So the interviewer would have not have been
10 aware that these arrangements to have the company employees
11 restrict their answers had been made in advance of the
12 interview. That was the most disturbing aspect of that
13 technique that I was concerned about.

14 This morning I referred to an OIA investigation
15 which in many respects was really a subissue of the
16 overall issue being investigated by NUREG 0760 in which there
17 were investigative steps and investigative techniques which
18 were recommended by myself and my immediate supervisor which
19 were not conducted which were overruled by the Director of
20 OIA. Specifically these techniques I am talking about are
21 the confrontation of witnesses to -- confrontation on some
22 particular points dealing with IE inspectors' knowledge of
23 the hydrogen combustion and the use of the polygraph in
24 connection with the investigation.

#12-1-SueT

1 Q I would like to refer you to, if you have it
2 before you, to a November 6th, 1980 memorandum from Mr.
3 Fortuna to James Cummings.

4 MS. BERNABEI: I would ask that it be identi-
5 fied as TMIA Exhibit 22.

6 (The document referred to is
7 marked as TMIA Exhibit Number
8 22 for Identification.)

INDEXXXX

9 WITNESS GAMBLE: Okay. I have that.

10 BY MS. BERNABEI: (Continuing)

11 Q Can you identify TMIA Exhibit 22, Mr. Gamble?

12 A You mean, the memorandum?

13 Q Yes. It is the memorandum to which you refer-
14 red earlier.

15 A It's a memorandum from Roger A. Fortuna,
16 Assistant Director for Investigations, Office of Inspector
17 and Auditor, to James J. Cummings, Director, Office of
18 Inspector and Auditor.

19 Q Okay. And is this the investigative -- the
20 memo forwarding the investigative plan to which you refer-
21 red earlier?

22 A Yes, it is.

23 Q Okay. And are any of the techniques you just
24 mentioned referenced in this investigative plan?

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

#12-2-SueT

1 A Techniques and strategies. Techniques is
2 somewhat limiting. Enclosure 2 to the memorandum, which
3 I referred to earlier, is entitled, "Open Lines of
4 Inquiry" suggests areas of possible exploration and
5 methods of exploring those areas.

6 Q I think you have previously drawn our atten-
7 tion to the specific techniques or strategies you have
8 just described, confronting witnesses, as well as poly-
9 graph examinations; is that correct?

10 A I don't believe the issue of polygraph examina-
11 tions are mentioned in this memorandum. The other type
12 of investigative approaches are laid out in this
13 enclosure.

14 Q Okay. Are there any others other than the ones
15 you have mentioned?

16 A There are two others suggested in here, which
17 I recall bringing up at the time. These -- one of these
18 two approaches I am speaking about was performed in the
19 OIA investigation but not in the IE investigation itself.
20 And by that, I'm referring to Number 4 on Page 2 of
21 Enclosure 2, review original notes of all inspectors,
22 say, within range of possibilities, referring to inspectors
23 who may have been in the control room at the time of
24 the hydrogen explosion.

25 During the OI investigation we did, in fact,

#12-3-SueT

1 obtain the notes, the original notes of some, if not all --
2 I can't recall if we got all the inspectors, but we have
3 some of them. And we retrieved them by talking to the
4 inspectors and asking for them and reviewing their
5 original notes for consistency with their statements.

6 The other technique which is in this enclosure
7 is Item 2-C, which is confronting Metropolitan Edison
8 personnel who recall the NRC inspector in the control
9 room with pictures and/or an in-person identification.
10 This is a reference to either an in-person or photo
11 identification lineup by Mr. Chwastyk and Mr. Mehler to
12 see if they could identify which NRC inspectors they are
13 referring to.

14 This was never performed, although we did
15 collect the pictures to do it.

16 Q You did?

17 A Yes.

18 Q Now, I think you were also referred to poly-
19 graph examinations, but I would like you to refer to
20 what has been distributed, or appears to be a letter
21 of December 1, 1980 to the Director of the Naval Investi-
22 gative Service from Mr. Fortuna, apparently it was
23 never sent.

24 MS. BERNABEI: I would like to have this
25 marked TMIA Exhibit 23.

#12-4-SueT 1

(The document referred to is
2 marked as TMIA Exhibit Number
3 23 for Identification.)

INDEXXXX 3

4 BY MS. BERNABEI: (Continuing)

5 Q Now, does this letter indicate any other
6 investigative technique or strategy which you believe
7 should have been employed in the I&E investigation?

8 A First of all, this letter was sent --

9 Q Oh, it was sent?

10 A -- despite the annotation on it. It does
11 indicate another investigative technique. This is the
12 one I feel most comfortable calling a technique, because
13 obviously it involves a very specialized procedure.

14 And it refers specifically to polygraph
15 examination of two NRC inspectors. The NRC does not
16 have capability to administer polygraph examinations,
17 and when the NRC wishes to use them they must avail
18 themselves of other investigative agencies with that
19 capacity, such as the Naval Investigative Service.

20 This was a request for that type of service.

21 Q You spoke in answer to one of Mr. Goldberg's
22 questions about a concern that the Task Group did not
23 adequately review prior investigative materials or
24 interviews concerning Mr. Plumlee and his concerns.

25 Did you have any concern about the treatment of

#12-5-SueT 1

the Plumlee concerns, if we can term them that, in the
draft and final report of NUREG 0760?

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A I had several concerns regarding that which
I brought to the attention of Mr. Moseley by my January
26th, 1981 memorandum to him.

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MS. BERNABEI: I would like to have marked
as TMIA Exhibit 24 a memorandum dated January 26th,
1981 from Mr. Gamble to Mr. Moseley. It has been
previously attached to his prior testimony.

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JUDGE SMITH: Well, if it's already in the
record, why are you --

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MS. BERNABEI: No, this was not attached to
his -- this was attached to his prior testimony.

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JUDGE SMITH: And not the present testimony?

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MS. BERNABEI: Not the present testimony;
that's correct.

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(The document referred to is
marked TMIA Exhibit Number
24 for Identification.)

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BY MS. BERNABEI: (Continuing)

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Q Mr. Gamble, either from your own memory or
from your review of TMIA Exhibit 24, can you recount
for us those concerns you had about the report's
statement about Mr. Plumlee's concerns?

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JUDGE SMITH: This copy isn't -- is this the

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1 best you can do?

2 MS. BERNABEI: We do have one better version
3 which we can make copies of. It's somewhat better, not
4 extremely better. But we will do the best we can.

5 I do apologize for the poor copy.

6 BY MS. BERNABEI: (Continuing)

7 Q Okay.

8 A Okay. Yes, there are several concerns I had
9 regarding the NUREG 0760's treatment of information
10 developed from the OIA investigation and in particular
11 the information developed concerning Carl Plumlee's --
12 developed during interviews of Carl Plumlee.

13 Q And what are those?

14 A Well, one of the chief concerns related to
15 the characterization of Mr. Plumlee's statements. This
16 is addressed in Item Number 21-B of the enclosure to my
17 memo, in which I point out that NUREG 0760 states that
18 Plumlee expressed several concerns. Perhaps this is a
19 fine point, but when you have a discussion in an investi-
20 gative report that relates what interviewees state and
21 then when there is another interviewee that you characterize
22 the results of that interviewee's interview differently,
23 it stands out. And that's what the situation was here.

24 Plumlee was the only person interviewed whose
25 statements and allegations were at that time listed as

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1 expressions of several concerns.

2 Another point which is Item C, in NUREG 0760
3 it talked about the concerns, as they put it, of Inspector
4 Plumlee and it attributed Mr. Plumlee's statements to
5 his interviews by OIA which were conducted the month before,
6 in December of 1980. It failed to point out the fact
7 that Plumlee raised this issue in 1979 when he was
8 interviewed by I&E itself.

9 This concerned me at the time, especially
10 since it was I&E reporting this fact. And for the weight
11 to be assigned to Mr. Plumlee's concerns, as they put
12 it. It undermined the weight to be assigned to his
13 concerns by failing to include his statements made
14 closer to the event in question, the '79 accident.

15 This is a reference, the 1979 interview of
16 Plumlee is a reference to the same interview I discussed
17 earlier that I felt I&E failed to identify during its
18 review of earlier interviews and material.

19 And on Item Number 22 of the enclosure to my
20 memo, NUREG 0760 talks about knowledge of hydrogen by
21 Region I personnel. This obscures the fact that Mr.
22 Plumlee claimed that hydrogen was known by management of
23 NRC in Region I, not just NRC personnel. NRC personnel
24 is certainly an ambiguous term which could be construed
25 to apply to just other inspectors. I felt at the time

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that it was fairly significant.

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If someone made an allegation that management of the Nuclear Regulatory Commission knew an important fact such as hydrogen existing in containment on the day of the accident, and to obscure this fact by characterizing the individual's knowledge as NRC personnel, I thought was being less than objective.

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Number 23 on the enclosure to my memo concerns the discussion in NUREG 0760 about the sources for Plumlee's belief that Regional personnel, as they put it, had knowledge of hydrogen. The first of the basis for his belief, in my opinion, they reported correctly, that Plumlee recalled his Branch Chief stating that. The second one I had a little problem with, because it didn't seem to be, in my opinion at the time, a logical argument to say that Inspector Plumlee would just tumble to this belief from his own analysis. Although it may be logical, it was not a compelling argument, I should say.

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The most important aspect of my criticism here was that there was a third factor that Mr. Plumlee described as the basis for his belief, which NUREG 0760 failed to include at all. That was the fact that Mr. Plumlee believed or stated that Mr. Seelinger who worked with the Licensee at the time reported to him results of

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1 samples taken which indicated there was hydrogen. Regard-
2 less of the fact whether this report eventually dis-
3 counted Inspector Plumlee's recollection of these events,
4 again I do not feel it was an objective presentation of
5 his allegations; and, therefore, by not fairly characteriz-
6 ing it, it was not a proper way to report this.

7 The final point is Number 24, an enclosure
8 to my memorandum, in which NUREG 0760 indicated that
9 Plumlee was also certain when he told Gallina, Inspector
10 Charles Gallina, of this conversation with Seelinger.
11 Gallina told him that there already was general specula-
12 tion that the hydrogen burn had occurred. This did not
13 take into account the fact that during the OIA inter-
14 views, Inspector Plumlee said that the pressure spike --
15 Inspector Plumlee said that it was the pressure spike
16 that was known, not the hydrogen burn.

17 So, it was a question of how to characterize
18 what the allegation was. Obviously, from the inter-
19 views that I&E conducted there appeared to be individuals
20 who were aware that the pressure spike had occurred but
21 had not gone so far as to conclude the hydrogen burn had
22 occurred.

23 And here the I&E report was not quoting from
24 perhaps a more conservative statement by Inspector
25 Plumlee during his OIA interview. And it was my opinion
that they should have included a reference to that.

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1 Q Now, the information that is stated in this
2 portion of your memorandum, Sections 21 through 24 on pages 4
3 and 5 to the enclosure to your memorandum, does any of this
4 information, does any of this appear in the OIA investigative
5 report you completed?

6 A I haven't reviewed the OIA Report, but I believe
7 it all does. Not my criticisms, but my basis for these
8 criticisms.

9 Q Is it fair to say that that portion of NUREG
10 0760 which addresses Plumlee's concerns is, in fact, taken
11 from either the investigative materials or the report which
12 OIA, yourself included, wrote?

13 A Not entirely. There is another source of
14 information regarding Inspector Plumlee. After OIA performed
15 its investigation, in was in early January -- January first
16 of second week, 1981, that the OIA report was issued. OIA
17 was mindful of the fact that this information was of
18 significant value, potentially significant value, to the I&E
19 effort -- NUREG 0760 effort -- indeed we were getting calls
20 from Mr. Stello periodically asking us to complete our work
21 so he could have reference to it.

22 After our investigative report was given to I&E,
23 Mr. Stello indicated a desire to interview Inspector
24 Plumlee himself, which he did, some time in January. I
25 don't have the date.

1 Inspector Plumlee was brought to Bethesda and
2 interviewed on the record. There is a transcript of that
3 interview available, and this interview was attended by the
4 task group members with the addition of Mr. Stello.

5 Q But it is fair to say that other than that one
6 interview the investigative effort or materials used to
7 compile that section of the report, largely comes through
8 OIA's collection of materials and interviews for its
9 efforts?

10 A Yes, clearly I&E relied on the OIA effort here.

11 Q You were asked a question by Mr. Goldberg as to
12 whether you attended discussions about reviews or prior
13 interviews and materials, and I think he said you attended
14 some of those meetings, but not all.

15 Why did you not attend all the discussions
16 concerning review of prior interviews and materials?

17 A I wasn't notified of all of them.

18 Q And why is that?

19 A The Office of Inspection and Enforcement at the
20 time of this investigation was located physically in a
21 different building than Office of Inspector and Auditor.
22 Although when I was initially assigned to this investigation,
23 Mr. Cummings directed that I physically move to IE office
24 space and be present so that I would be there for the daily
25 discussions and involvement and planning of this case. Mr.

#13-3-Wal 1 Mosely indicated there was no place for me to sit over there,
2 and therefore I would have to come over periodically to check
3 in and see what is happening, and of course they would let me
4 know when there would be discussions and interviews which
5 I should attend.

6 Certainly there were a lot of formal type
7 discussions. Actual planning of interviews which I received
8 notice of when I was there, but invariably in an office
9 environment there is spontaneous discussions of matters
10 of concern when one of the test group might come to a new
11 possible theory or approach, or uncover some new evidence.
12 There isn't time to call in all members of the task group
13 and have formal meetings, so there were clearly times when
14 members of the task group met and discussed matters in which
15 I wasn't present.

16 Q Judge Linenberger asked a question yesterday,
17 and I will ask your your correction if I phrase it incorrectly.
18 About whether you knew of any information which was not
19 collected or obtained because of the restrictions you
20 described on questioning. Mr. Moseley's restrictions on
21 questioning.

22 And I think you answered that no, you didn't
23 know of any specific information that was not, in fact, not
24 developed or obtained. Do you know of any information which
25 would not have been obtained or developed under Mr. Moseley's

1 restrictions without your intervention.

2 That is, without actions taken on your part to
3 ensure that information was obtained.

4 A I would suspect that many of the questions that
5 I particularly asked during interviews might not have been
6 thought of by the test members. I wouldn't be so bold as to
7 say that none of them would have been, but I am sure that
8 many of them would not have been obtained otherwise, except
9 for my efforts.

10 Another time that there was some information that
11 I can recall, during the early interviews that I referred to
12 of Babcox and Wilcox employees, I mentioned there were two
13 sets of interviews going on simultaneously. I was assigned
14 to work with Inspector William Fisher doing interviews of
15 B&W employees in Detroit. Performed those interviews in the
16 Detroit airport, and in preparation for the interviews the
17 task group prepared a series of questions, as they did with
18 the other interviews. These questions to be asked by us
19 at this interview.

20 I seem to recall that Inspector Fisher was the
21 primary questioner. I, as I often did, led off the interview
22 by administering the oath to the witness, and briefly
23 explaining the purpose of the interview. In preparation for
24 the interview Mr. Fisher and I met at the -- I believe we
25 rented a room at the hotel there, and we met there and

1 discussed what we were going to cover. Mr. Fisher was in the
2 Chicago Office of the NRC, so we didn't have opportunity to
3 meet in Bethesda, so we came early to discuss this.

4 And when we got there and reviewed the questions,
5 Mr. Fisher said to me that there were at least one obvious
6 question that was not on the list, and he felt it required
7 follow-up action, but he was concerned because it wasn't on
8 the list of questions to ask. And I advised him to go ahead
9 and ask it.

10 Mr. Fisher expressed considerable reservation over
11 whether he would be permitted to ask that question, since it
12 was not on the list, and I advised him that I didn't think
13 any great harm would befall him if he exceeded the questions
14 on the list, and I recommended that he ask it anyway, so
15 in reliance on what I told him he did, as I recall, ask that
16 question.

17 Exactly what the question was, I can't recall now,
18 but I recall the incident of describing his concern being
19 expressed, that he was not permitted to exceed the prescribed
20 list of questions.

21 JUDGE SMITH: We seem to be drifting quite far
22 away from the issue, really.

23 MS. BERNABEI: These are questions that I am
24 following up on that either the Board or Mr. Goldberg asked.

25 JUDGE SMITH: That just was not an earth shaking

1 bit of information, to tell you the truth.

2 MS. BERNABEI: Well, I think there has been a
3 lot of questioning.

4 BY MS. BERNABEI: (Continuing)

5 Q Judge Smith asked a question of you, Mr. Gamble,
6 as to whether you would find it preferable to have five
7 people asking questions whenever they wanted to, rather than
8 operating in a kind of situation where there were restrictions
9 on five people asking questions, restrictions such as Mr.
10 Moseley imposed.

11 And I think you indicated your preference would
12 be for the former. What is the basis for your opinion?

13 A I think I said my preference really is that a
14 smaller number of people conduct interviews. However, if
15 you have to have a number such as 5, 6, or more, then I
16 felt that it was more preferable that whatever confusion
17 might ensue from not having a script and a protocol where
18 one questioner would proceed, I felt that confusion that
19 might occur there would be far outweighed by the benefit
20 of obtaining the information that the interviewer could
21 impart by having all the questioners permitted to ask
22 questions to fully develop the record.

23 So, it is a question of which is the preferable
24 alternative, and in my opinion, it was having all the
25 questioners -- I think a good example of it was in the

1 interviews in which these restrictions were imposed.

2 The very first interview I recall of the entire
3 task group -- this is after the B&W interviews I just
4 talked about, I believe the first full interview that was
5 transcribed was that of Eldon Brunner, who was an employee
6 of NRC's Region I. At this first interview, the interview
7 was conducted with no restrictions. The interviewers were
8 permitted to ask whatever questions they wanted.

9 I asked a number of questions. I recall Mr.
10 Hoefling here, with Executive Legal Director, was present
11 there. He asked a substantial number of very important
12 questions as I recall. I haven't reviewed the transcript,
13 so I am sure Mr. Craig, Harpster, and Moseley also asked a
14 number of questions.

15 But in my mind that was an example of a good
16 interview. It might not have been pretty from the standpoint
17 of a nice flow of information in a nice neat package, but I
18 think all the information that the NRC needed got on the
19 record.

20 By contrast, the next interview at which Mr.
21 Moseley attempted to impose the restrictions on me and did
22 impose the restrictions on the other interviewers, the
23 next interview was also of an NRC employee from Region I
24 named George Smith. At this interview, I think a comparison
25 of the two transcripts would be illustrative of the point

1 I am trying to make.

2 I recall particularly standing out in my mind
3 the substantial decrease in the questioning by Mr. Hoefling
4 who I thought asked a substantial number of very good questions
5 in the first interview, and he asked few, if any, in the next
6 interview, and I think that was clearly in response to the
7 restriction which Mr. Moseley imposed at the beginning of
8 that meeting.

9 What is even more important than the restrictions
10 is that the approach that Mr. Moseley imposed of clearing
11 additional questions at the end of the interview might sound
12 appealing at first blush, but in practice sometimes those
13 questions didn't get asked. In my opinion, they didn't get
14 asked. I would base that opinion on the few additional
15 follow-up questions asked in that second interview compared
16 to the first interview.

17 I don't recall there being a great number, if
18 any, additional questions asked at the end of that interview.

19 Q Other than what you have testified to so far,
20 --- well, let me go back for a moment. Mr. Goldberg asked
21 the question whether or not you had any evidence that Mr.
22 Harpster, Mr. Craig, or Mr. Hoefling were restricted from
23 answering questions in particular interviews. And I think
24 you answered no to the question of evidence.

25 Well, can you tell us if you have any indications,

1 other than what you have already testified to, that in
2 fact, those three individuals were restricted from answering
3 questions?

4 A Well, I think the two interviews I just described.
5 I think that is an indication. The difference between
6 questions asked by those individuals in the Brenner interview,
7 versus the lack of questions appearing in the Smith
8 interview. That is an indication in my mind.

9 Q Now, Mr. Goldberg asked you about certain restrictions
10 that may have been put on, or apparently were put on the
11 interview in terms of scope, because of the subpoenas which
12 restricted the scope of the testimony requested from certain
13 witnesses.

14 To your knowledge, did Mr. Moseley's direction
15 regarding restrictions on questioning have anything to do with
16 the restrictive scope of the subpoenas?

17 A No, I didn't believe that was the reason. Because
18 the restriction on questioning that Mr. Moseley imposed
19 occurred at the interview of an NRC employee. There was
20 no subpoena required to interview an NRC employee, so any
21 question was fair game when you have an NRC employee there.

22 The NRC employee had no standing to object that
23 the question exceeded the three particular areas of inquiry.
24 There were such objections at subsequent interviews, but
25 that didn't occur in this interview where the restrictions

1 were imposed, so I didn't think at the time there was any
2 correlation between subpoenas and Mr. Moseley's restrictions.

3 JUDGE SMITH: Is that a policy? Or was that a
4 policy of Inspector Auditor to interview NRC employees without
5 regard to the scope, and say that any question is fair game,
6 or -- I just think that would be a very unusual policy.
7 Personnel policy.

8 WITNESS: I was speaking to what was on the face
9 of the subpoenas versus the scope of the questioning.

10 JUDGE SMITH: Okay. If that is your testimony.

11 WITNESS: If it is unclear, I would be happy to
12 clarify it.

13 JUDGE SMITH: You conducted investigations of
14 NRC personnel at the direction of I&E, and your testimony
15 is that in those investigations there is no need to stay
16 within any particular scope, and that any question is fair
17 game, and I just wondered if that was a policy which was in
18 effect at Inspector and Auditor --

19 WITNESS: I think the testimony is slightly
20 different than that, sir. The interview of the NRC employee
21 I am speaking of here is the interview of George Smith, which
22 was conducted by the NUREG 0760 team early in the investigation.
23 Perhaps the summer of 1980, I would estimate. It is in no
24 way related to the OIA investigation.

25 JUDGE SMITH: Apparently then what you are saying

1 it is not an adversarial confrontational type interview?

2 WITNESS: No. Certainly not.

3 BY MS. BERNABEI: (Continuing)

4 Q Mr. Gamble, do you know when -- I think it is
5 your testimony that you believe the issue of the subpoenas
6 to Med Ed employees in management were resolved sometime in
7 the period of September, is that your best memory today?

8 A That was my recollection, but I certainly hope
9 -- that is easily determined from court records.

10 Q Assuming it is somewhere in that period, was Mr.
11 Moseley's direction to restrict questioning before or after
12 September of 1980?

13 A Before September.

14 MR. BLAKE: Ms. Bernabei, did you refer to
15 subpoenas to Management? Med Ed management?

16 MS. BERNABEI: Well, Med Ed employees.

17 MR. BLAKE: So you revise your question to mean
18 that?

19 MS. BERNABEI: Sure.

20 MR. BLAKE: Thank you.

21 BY MS. BERNABEI: (Continuing)

22 Q You were asked the question, Mr. Gamble, if you
23 had any reason to believe Mr. Haynes did not approach the
24 IE investigation on information flow with an open mind. And
25 I think you said not with regard to the kind of things Mr.

1 Goldberg was suggesting, but that his participation in the
2 Rogovin interview -- excuse me -- the Rogovin investigation,
3 you felt did have some effect on his ability to approach
4 the task with an open mind. Can you explain that answer?

5 A The -- in questions of conflict of interest, it
6 is frequently stated that the perception of a conflict is
7 often as significant as whether there is, in fact, a real
8 conflict, and in fact any improper influence.

9 In the case of Mr. Haynes participation in NUREG
10 0760 team, it was my opinion and my advice to I&E and OIA
11 management that, if nothing else, Mr. Haynes participation
12 in this aspect of the NUREG 0760 investigation appeared to
13 be a conflict, based upon his earlier duties with the
14 Rogovin investigation in which he was responsible for
15 investigative activity in some of the same areas.

16 Q Now, after your discussion or suggestions to your
17 management, and to IE management, what if any action was
18 taken on this concern?

19 A Exactly what discussions or meetings, OIA, IE
20 management, I am not familiar with. The only result I am
21 familiar with is -- let me back off the word, 'result.'
22 The only action that resulted after that time was that Mr.
23 Haynes was removed from the task group. Another reason was
24 stated for his removal, that he had other pressing duties,
25 or something of that sort.

Sim 14-1

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JUDGE SMITH: What does that questions follow on?

MS. BERNABEI: Mr. Goldberg asked a question about whether or not Mr. Haynes, a member of the task group, to Mr. Gamble's mind approached the task with an open mind, and Mr. Gamble had answered not with respect to the point you were bringing up, but in another respect I think yes, and I just asked him to explain that.

JUDGE SMITH: That what?

MS. BERNABEI: His opinion that Mr. Haynes did not approach the task with an open mind.

JUDGE SMITH: Okay.

BY MS. BERNABEI:

Q There has been some discussion in questioning, Mr. Gamble, of you as to what you meant by significant investigative activity as used in your testimony. Can you explain that term as you have used it? I believe it appears as any significant investigation, which appears on page 3.

A In the context in which I am referring to significant investigation on page 3 of my testimony, the first full paragraph, there I am talking about investigative activities beyond reviews of existing information. I am talking about interviews, reviews of records, comparison of other evidence out there as contrasted to a review and analysis of earlier investigative groups' efforts. I would

Sim 14-2

1 not refer to that as significant investigation or significant
2 investigative activity. That would be in my mind a review
3 or an analysis or some similar word like that.

4 Q Now you are familiar with Exhibit 2 to your
5 testimony which is an April 1, 1980 memorandum from Mr. Stello
6 to Mr. Moseley which as part of the IE task group's task
7 directs that the task group review previous investigative
8 materials, including interview transcripts and testimony,
9 are you not?

10 A Yes.

11 Q Given these instructions from Mr. Stello, how
12 is it that you do not include a review of prior interviews
13 and investigative materials as significant investigative
14 activity?

15 A Mr. Stello did direct that the task group review
16 the prior IE investigation and he mentioned in there that
17 reliance should be placed on available interview transcripts
18 and testimony.

19 However, I think the difference between a task
20 or review or analysis or some other type of description of
21 activity of that sort, the difference between that type
22 of task and an investigation concerns what activity the
23 investigative team performs themselves.

24 If it were merely desired that earlier investiga-
25 tive materials be reviewed and analyzed, in my mind, there

Sim 14-3 1 would not be an instruction given in terms of please conduct
2 an investigation. When you want an investigation conducted,
3 in my mind, you are looking for things such as interviews
4 and the collection of evidence to be performed.

5 Now to be sure, as I indicated earlier, the very
6 first step you do is to acquire as background whatever avail-
7 able information there is. And Mr. Stello quite properly
8 directed the task group to do just that, to collect the
9 available interviews on these people first.

10 Q You were asked a number of questions about your
11 interviews or your participation in interviews of Mr. Chwastyk
12 and Mr. Mehler and how, if at all, your participation in
13 those interviews may have fulfilled some need to interview
14 those individuals for the later OIA investigation.

15 I think the essence of your answer was that
16 there was a difference in the objectives between the two
17 investigations, that is the IE investigation into information
18 flow and the OIA investigation.

19 Can you explain what you meant by that and why
20 that would lead you to believe that your prior interviews,
21 or participation in prior interviews of Chwastyk and Mehler
22 did not fulfill the need to interview them with regard
23 to the later OIA investigation?

24 A There were two objectives in those two investiga-
25 tions. They were different. The objective of the OIA

Sim 14-4

1 investigation was to assess whether NRC employees acted in
2 a proper manner. Our investigation was far more narrow.
3 Since we had focused on a narrow issue perhaps we could
4 devote more focused resources on that issue.

5 But I think the important point I was trying
6 to make is that my involvement in the two investigations was
7 substantially different. In my very limited role as the
8 criminal investigator assigned to the NUREG 0760 team merely
9 to protect the interests of the Department of Justice, I
10 did not pursue matters in these interviews with the same
11 degree of depth that I did if I had interviewed some of these
12 same people in connection with the OIA investigation I sub-
13 sequently performed.

14 My focus was entirely different in the subsequent
15 OIA investigation by the addition of the responsibility of
16 investigating conduct of employees without regard to
17 criminality.

18 Q Now you were referred by Mr. Goldberg to the
19 NRC interviews of Mr. Chwastyk and Mr. Mehler conducted
20 in the course of the information flow investigations.

21 I am referring you first to Mr. Mehler's interview
22 of September 3rd, 1980. Other than the questions which
23 you asked, which Mr. Goldberg referred you to earlier, were
24 there any other follow-up questions you asked in that
25 interview which are illustrative of the point you make in

Sim 14-5

1 in your testimony?

2 A I believe there are.

3 JUDGE SMITH: Let's go rapidly. If you are
4 going to identify them let's go bing, bing, bing if you can
5 because they are there for us to see.

6 You don't have it.

7 MS. BERNABEI: I am going to show him. I will
8 direct the 'witness' attention to it.

9 JUDGE SMITH: Yes. If you know them, just go
10 bing, bing, bing and show him and we will get it over with.

11 BY MS. BERNABEI:

12 Q Mr. Gamble, I would like for you to refer to
13 what is Item 115 on Joint Mailgram Exhibit 1, and directing
14 your attention to page 16.

15 A Okay

16 Q Do you see on that page any other follow-up
17 questions of the type you described in your testimony?

18 JUDGE SMITH: Point it out to him.

19 THE WITNESS: I see it.

20 JUDGE SMITH: I am interested in saving time.
21 I mean the afternoon is wearing along and we are going
22 through a minimally valuable exercise. So just put your
23 finger there and show it to him if you know where it is.

24 THE WITNESS: I have my finger on it. I am
25 just reading it.

Sim 14-5

1 Yes, that is the type of questions and they are
2 asked by me.

3 MS. BERNABEI: Okay. I don't think you have
4 identified the portion in the transcript, Mr. Gamble.

5 THE WITNESS: It is page 16 of the transcribe
6 beginning at line 5 and continuing through line 23.

7 BY MS. BERNABEI:

8 Q Okay. Referring you now to Item 117 in Joint
9 Mailgram Exhibit 1, I would like to direct your attention
10 to page 13.

11 On page 13 and 14 were there any other examples
12 of the type you described in your testimony?

13 A Yes, there are.

14 Q Okay. Where are they?

15 A Beginning on page 13, line 23 and continuing
16 to page 14, line 6.

17 Q You were asked a question by Mr. Goldberg as to
18 some follow-up questions Mr. Moseley asked in the Mehler
19 and Chwastyk interviews. Were those the kind of follow-up
20 questions which you describe in your testimony that you
21 believed you asked that were useful? That is a bad question,
22 but if you understand it go ahead and answer.

23 A Are you talking about the follow-up questions
24 by Mr. Moseley or by me?

25 Q By Mr. Moseley in those interviews.

Sim 14-6

1 A As I recall from this morning in looking at those,
2 the follow-up questions by Mr. Moseley appear to be the type
3 that were required or appropriate in that situation.

4 JUDGE SMITH: Is that your opinion today,
5 Mr. Gamble?

6 THE WITNESS: That was my opinion at the time.

7 BY MS. BERNABEI:

8 Q You were asked a number of questions about your
9 involvement in civil enforcement actions, or your knowledge
10 of civil enforcement actions considered as a result of this
11 investigation and report.

12 Do you know of any enforcement actions considered,
13 criminal enforcement actions considered as a result of the
14 investigation or the NRC report?

15 MR. BLAKE: Objection. I don't understand how
16 the question can be relevant or material to the question
17 at hand.

18 MS. BERNABEI: There were a number of questions
19 concerning civil enforcement actions.

20 MR. BLAKE: Is there a representation that there
21 was a consideration of a criminal action with regard to the
22 Dieckamp mailgram?

23 MS. BERNABEI: The issue is whether anyone in
24 the control room was knowledgeable about the pressure spike
25 or hydrogen. The Board has already said that they are not

Sim 14-7

1 addressing solely the one narrow part of the report, but
2 at least those two portions, and I think there was considera-
3 tion of potential criminal enforcement with regard to all
4 of the items, including the pressure spike item, and that
5 would be relevant information.

6 JUDGE SMITH: What would it relate to? What
7 will we find from it?

8 MS. BERNABEI: The seriousness with which the
9 NRC took their findings during the investigation. I think
10 if there was a referral to the Department of Justice and
11 consideration of potential criminal enforcement, I think that
12 would indicate something about the seriousness of the findings.

13 JUDGE SMITH: No, I wouldn't think that that would
14 do it. That is a very unfair way to judge people and
15 institutions.

16 MS. BERNABEI: I would also say there has been
17 some examination of Mr. Gamble with regard to civil
18 enforcement, including potential civil enforcement that was
19 not taken. It was recommended and not taken.

20 JUDGE SMITH: I am sorry. I just don't under-
21 stand any fair purpose for that inquiry, unless it leads
22 to some relevant facts, but that doesn't seem to be your
23 purpose.

24 I don't understand the relationship to his
25 avowed reference to civil enforcement to a recommendation

Sim 14-8

1 for criminal enforcement. I just don't understand it. If
2 it is relevant, the relevance escapes me.

3 MS. BERNABEI: Okay. Well, I can state that
4 Mr. Moseley does have prior testimony which this Board
5 has said it may consider, that is 1981 testimony of
6 Mr. Moseley. I think it is related to his direct testimony
7 which he has been cross-examined on. However, I also
8 believe that it relates to a rebuttal of Mr. Moseley's
9 testimony in 1981 that he did not believe the findings of the
10 investigation supported a criminal case, and he said that
11 he did not believe the report of investigative findings
12 justified a referral to the Department of Justice.

13 Given that testimony in 1981, I think it would
14 be important for the Board to know whether there was a
15 referral to the Department of Justice.

16 JUDGE SMITH: Why didn't you confront Mr. Moseley
17 with that when he was here?

18 MS. BERNABEI: It is his prior testimony. It is
19 not his testimony today.

20 MR. GOLDBERG: That is exactly the point I want
21 to make. It is his prior testimony from 1981 that she did
22 not adopt in this proceeding. The only portion of that
23 which she adopted was his previous testimony that he
24 believed the message Mr. Dieckamp was trying to convey was
25 true.

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MS. BERNABEI: That is not true.

MR. GOLDBERG: The staff modified his prefiled testimony in this proceeding to comply with the Board's request that he not specifically rely on NUREG 0760 ---

MS. BERNABEI: That is not true.

JUDGE SMITH: Wait a minute. That is enough. That is enough.

MS. BERNABEI: Well, I have to state that this Board's finding, this Board's conclusion was that it may consider that testimony. I understood that ---

JUDGE SMITH: Don't characterize our conclusions. I don't want to hear about Mr. Moseley's 1981 testimony that his investigation did not support criminal prosecution. What we do want to hear, if such be the case, is that you have information relevant to the issues in this case, and that is the factual issues, the pressure spike, hydrogen burn, et cetera, as to which there was a recommendation to the Department of Justice for criminal prosecution. That is what we want to hear, if that is the case.

MS. BERNABEI: I have stated what -- do you want a proffer as to what Mr. Gamble will testify to?

JUDGE SMITH: No. If you know what he is going to testify to and you represent that the reference to the Department of Justice for possible criminal prosecution related to the issues in this case, make that representation.

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If you are going to do it as evidence itself of the seriousness of something else, no. No concept of American justice that I am aware of could take a reference to the Department of Justice as an indication of the seriousness of the issues that we are supposed to decide.

MS. BERNABEI: I understand the referral was on the basis of this report and the materials contained therein. Now I understand that includes the pressure spike. But I would have to ask the witness. That was the reason I asked the question.

JUDGE SMITH: You don't know?

MS. BERNABEI: I think it does.

JUDGE SMITH: So you are saying there was a referral -- are you representing that there was a referral to the Department of Justice by the NRC for a recommendation or a consideration of criminal prosecution with relation to the pressure spike?

MS. BERNABEI: With reference to the entire investigation which I believe included ---

JUDGE SMITH: Which includes the pressure spike. That is your reasoning?

MS. BERNABEI: Yes. This Board sat here in 1981 and heard testimony from Mr. Moseley that there would be no criminal referral and there was in fact one based on this investigation. I think the Board should hear whether

Sim 14-11

1 or not that was done.

2 JUDGE SMITH: I think that you should have
3 confronted Mr. Moseley with that. If you believe that goes
4 to his credibility, you should have confronted it. He made
5 it clear that we are not depending upon his 1981 testimony,
6 except to the extent that it is reavowed in this hearing room.
7 That was obviously clear, and every one in this hearing room
8 participating in that I am sure understood that, with the
9 possible exception of you.

10 MS. BERNABEI: Well, it is possible because I asked
11 specifically if you would reaffirm a prior order that you
12 would not consider that testimony, and I sat here when you
13 said no, we won't do that. We can consider what we want and
14 you misunderstood my prior ruling.

15 Given that, I understood that the 1981 testimony
16 was in. I can refer to the transcript, but that was my
17 understanding.

18 JUDGE SMITH: I will have to lay to you equal
19 responsibility for whatever confusion there is. I am
20 confident that others understood it differently. Whatever
21 the record says, it says.

22 Nevertheless, you had your opportunity to confront
23 Mr. Moseley. Even so, even taking your viewpoint, you had
24 your opportunity to confront him with it at the time and it
25 could have been straightened up I guess, but now you are trying

1 to do it and your allegation as to the relevance is not
2 specific enough.

3 MS. BERNABEI: I think it is relevant to the
4 issue before the Board, including the pressure spike. You
5 can do what you want. That is my representation to you.

6 JUDGE SMITH: Your representation seems to be
7 very carefully couched to avoid saying that there was a
8 reference to the Department of Justice specifically about
9 the pressure spike and you have not said that, and having not
10 said that, I am not going to allow you to go into it.

11 I am sure that if that were the case you are
12 articulate enough to express it to the Board so that we could
13 understand the relevance.

14 MS. BERNABEI: Okay. Let me proffer then what
15 I believe Mr. Gamble would have testified to if asked.

16 JUDGE SMITH: All right.

17 MS. BERNABEI: I believe there was a referral
18 to the Department of Justice, which included the findings
19 and conclusions of the NUREG 0760 investigation, and I
20 believe the pressure spike is an integral, if not one of
21 the -- and one of the major portions of that investigation.

22 JUDGE SMITH: Of NUREG 7960, but you are not
23 saying it was one of the integral portions of the reference
24 to the Department of Justice?

25 MS. BERNABEI: It is. Well, yes.

Sim 14-13 ,

JUDGE SMITH: Do you understand the distinction

I am making?

MS. BERNABEI: Yes, I do. Let me state once more my understanding of the referral to the Department of Justice for potential criminal prosecution.

In fact the investigative findings, as I understand it, were referred to the Department of Justice for potential criminal prosecution. Those were the findings of the NUREG 0760 investigation. It is my understanding.

JUDGE SMITH: All right. You have had enough opportunity to explain the relevance, and you know what I am seeking and you haven't made it. I just don't think that you have anything. So we will let it rest.

MS. BERNABEI: I have no other questions on redirect. We do have rebuttal questions to Mr. Moseley's testimony.

JUDGE SMITH: All right. What was worked out with the parties with respect to that?

MS. BERNABEI: I identified all questions and all answers to Mr. Goldberg and to Mr. Blake.

JUDGE SMITH: Judge Wolfe just reminded me that we haven't had the Board questions of Mr. Gamble on his direct testimony.

MS. BERNABEI: Or recross.

JUDGE SMITH: Or recross, right.

INDEX 2

BY JUDGE WOLFE:

3 Q Turning to your modified prefiled testimony of
4 December 4, 1984, Mr. Gamble, and more particularly to your
5 Exhibit 4, and turning to pages 8 and 9 of Exhibit 4.

6 On pages 8 and 9, to your recollection, is that
7 that the original pages had on them?

8 A I believe so. As I recall, the intention was
9 to make an insert here.

10 Q And there was never an insert at any time under
11 Appendix A and Appendix B?

12 A I don't recall receiving an insert to this.

13 JUDGE WOLFE: Ms. Bernabei, could you explain
14 that, if you know, or Mr. Goldberg?

15 MS. BERNABEI: This was the document as we
16 received it in discovery. I of course have no other
17 knowledge from the time of its preparation.

18 (Pause.)

19 MR. GOLDBERG: This is a draft, as is obvious,
20 which was typewritten. At the time that this was typewritten,
21 there was a handwritten list of documents reviewed which
22 was to be Appendix A and a handwritten list of technical
23 data reviewed which was to be Appendix B. It was the intent
24 to add documents to those lists as they were reviewed, and
25 I am informed that that was never typed up and never became

Sim 14-15 1

a part of this.

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JUDGE WOLFE: Well, do you have those two handwritten lists for Appendix A and Appendix B that were going to be issued with this Exhibit 4 upon whichever date the initial issuance was?

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MR. GOLDBERG: This was prepared, I am told, in Region V. At the time it was prepared I believe those handwritten lists were in Region V. I have no idea whether they exist today or not.

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But this was a draft and as of the time --

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JUDGE WOLFE: I don't --

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MR. GOLDBERG: -- this was prepared this was

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the complete document.

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JUDGE WOLFE: I don't question that. It

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would seem to me that that would be a fairly important

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portion of this exhibit, would it not, if it would

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indicate that if this document, Exhibit 4, was drafted,

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prepared and issued and relied on, only one document

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reviewed during investigation, that would be one thing.

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If there are a hundred and one documents reviewed during

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investigation and their dates specified, this might

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mean something else again with respect to the point

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raised by Mr. Gamble.

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I don't know.

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MR. GOLDBERG: There are references throughout

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the document to information, tapes, transcripts that

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were relied on to prepare this document. But this is --

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JUDGE WOLFE: But do we know the dates of

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those documents relied upon and whose documents they

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are and who were the interviewees or what depositions

22

and of whom and the dates of the deposition?

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I'm just not certain. Perhaps you can help

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me out.

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MR. GOLDBERG: That can all be determined.

#15-2-SueT

1 The tape numbers are identified, transcript numbers,
2 and --

3 JUDGE WOLFE: Give me an example. What are
4 you looking at?

5 MR. GOLDBERG: On Page 3, middle paragraph.
6 There is a cite to Transcript 01-01017-CH2/20-FFC at
7 1-6.

8 JUDGE WOLFE: And the date of this was?

9 MR. GOLDBERG: The date doesn't appear in
10 this document but it can be determined from this trans-
11 cript, from the transcript that is cited there.

12 And similarly, with respect to the rest of
13 the citations throughout this, it can be determined by
14 going back to those tapes and transcripts and so forth,
15 the date on which the interviews took place, the documents
16 were prepared, the tapes were prepared, information like
17 that.

18 JUDGE WOLFE: Well, I don't plan to make any-
19 body's case for them. What I'm saying is that I noticed
20 that there were these two blank pages, Appendix A and
21 Appendix B, and saying there were a list of documents
22 reviewed during investigation. Appendix B, technical
23 data concerning core outlet temperatures.

24 But if the parties are satisfied --

25 MR. GOLDBERG: Well --

#15-3-SueT

1 JUDGE WOLFE: Wait a moment. If the parties
2 are satisfied that what is contained in the body of the
3 draft, I'm certainly not going to be concerned.

4 MR. GOLDBERG: Well, TMIA has offered this
5 exhibit. I have objected to it. This is --

6 JUDGE WOLFE: You may well have objected to
7 it, but it's my understanding it has now been admitted.
8 And I'm turning to you or to Ms. Bernabei and saying,
9 should there not be appended to this these handwritten
10 pages that you are talking about.

11 I'm not going to make any determination. All
12 that I'm aware of is that these are blank pages and
13 a document is in evidence with blank pages.

14 MR. GOLDBERG: And this is the complete
15 document.

16 JUDGE WOLFE: If you say so.

17 (The Board members are conferring.)

18 MR. GOLDBERG: Judge Wolfe, I'm told that
19 this was Mr. Haynes' working draft during the time that
20 he was a member of the team; he didn't continue as a
21 member of the team. The final report, NUREG 0760, did
22 not rely on this document in any way.

23 This was simply while Mr. Haynes was a
24 member of the team, he prepared this. He left the
25 effort. This was never considered by the team that

#15-4-SueT 1 prepared NUREG 0760. What use of it Mr. Haynes made
2 while he was a member of the team, I don't know. But
3 it just wasn't relied on by the team to prepare NUREG
4 0760.

5 JUDGE WOLFE: All right. All that I'm saying
6 is that I noticed these blank pages. If you don't think
7 that this, or Ms. Bernabei, is important to attach the
8 document that's your problem, or that's your judgment on
9 it.

10 Secondly, just throwing this out again, with
11 respect to Exhibit 5 at Page 16, there is a page there
12 captioned "References" with documents, et cetera listed
13 in the number of twenty-one references. There were --
14 apparently the Exhibit 6, as corrected, does not bear
15 such a reference page.

16 Now, whether that's important or not in our
17 review of these, of the purpose for which these documents
18 were submitted, I don't know. I just noted that that
19 reference page was not attached to the rewritten copy.
20 Beyond that, I just observed that.

21 MS. BERNABEI: Judge Wolfe, I could just say
22 with regard to the prior exhibit, I think the preliminary
23 nature of the draft and the preliminary nature of the
24 investigation at that point I think is borne out by the
25 fact there is not a complete list of references.

#15-5-SueT

1 Secondly, with regard to either of those
2 exhibits we have no current access to any drafts. So
3 we were relying on Mr. Goldberg's efforts to obtain those
4 for us. So at this point we think the exhibits as they
5 stand support Mr. Gamble's testimony. But, even if we
6 were to think something different, there really -- we
7 really have no access to make them more complete.

8 JUDGE WOLFE: I'm leaving that either to you
9 or to Mr. Goldberg. It's your cases. I just made that
10 observation.

11 I've finished, Judge Smith.

12 JUDGE SMITH: All right.

13 (The Board members are conferring.)

14 We just had a discussion as to what the
15 purpose of the documents were. It might require a re-
16 visiting later on.

17 Do you have recross?

18 MR. GOLDBERG: Yes, sir.

19 JUDGE SMITH: How long do you think it is
20 going to take, Mr. Goldberg?

21 MR. GOLDBERG: Half an hour.

22 JUDGE SMITH: Okay. That's going to mean
23 more. Let's take a moment here and go off the record.

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

25 Let's take a recess.

#15-6-SueT

1 (Whereupon, a recess is taken at 3:01 p.m.,
2 to reconvene at 3:11 p.m., this same day.)

3 JUDGE SMITH: All right, back on the record.
4 Before we go with Mr. Goldberg's recross, a discussion
5 led by Judge Wolfe before the break led to a concern
6 by the Board that the limited purpose for which the
7 Attachments 4, 5 and 6 to Mr. Gamble's testimony may
8 not have been shared or understood by everybody.

9 And I understood those to be received into
10 evidence not for the truth of any of those, of the
11 information contained in any of those documents, but
12 those documents demonstrated that drafts were prepared
13 by components of the Task Force before any interviews
14 were conducted for NUREG 0760 purposes. And for no other
15 purpose.

16 And, in fact, I would have preferred to have
17 seen that stipulated because it is difficult sometimes
18 to recall the purpose for which a document is received.
19 But we believe that it might be appropriate to restate
20 that and to make sure that the Board and the parties
21 shared that thought when we did receive them.

22 I think that was clear in your mind, wasn't
23 it, Ms. Bernabei?

24 MS. BERNABEI: Yes. That's the only intention
25 I intend to make use of that document for. However, I

#15-7-SueT

1 don't think Mr. Gamble's testimony and related exhibits
2 should be treated any differently than any other piece
3 of evidence. That is, I think they should be admitted
4 into the record without restriction.

5 However, I can state, and I will stipulate,
6 that I do not intend to use it for the truth of the
7 matters asserted.

8 JUDGE SMITH: Oh, no, no. You are wrong.
9 Those exhibits may not be the basis for citing any
10 information contained in them.

11 MS. BERNABEI: Right.

12 JUDGE SMITH: All right. I didn't understand.
13 What's your point?

14 MS. BERNABEI: I think the Board should not
15 treat Mr. Gamble's testimony and exhibits any differently
16 than the other parties.

17 MR. BLAKE: It's a common practice to accept
18 exhibits for one purpose or another. And the purpose
19 has been fairly stated.

20 MS. BERNABEI: The only caveat or the only
21 problem I might have with that is Judge Wolfe has
22 noted there is not a list of references of --

23 JUDGE WOLFE: Well --

24 MS. BERNABEI: Well, I haven't --

25 JUDGE WOLFE: Yes, all right.

#15-8-SueT 1

2 MS. BERNABEI: We may wish to argue from the
3 substance of the interviews as to when they appeared to
4 have been prepared. That is, my understanding and
5 reading of the drafts is that they contain no citations
6 to interviews conducted in the course of NUREG 0760
7 investigation but only to prior NRC interviews. We
8 may use it to that extent.

9 JUDGE SMITH: That's right.

10 MS. BERNABEI: Yes. We don't intend to rely
11 on the information contained --

12 JUDGE SMITH: Yes, that was the purpose,
13 limited purpose.

14 MR. BLAKE: I understood Judge Wolfe's inquiry
15 to be one even as to the limited purpose precisely. How
16 in the world do we judge the significance of the effort
17 that went on except for these very issues that Mr. Gamble
18 has talked about?

19 We don't have a list of all the things they
20 looked at in order to put it together. It could cut one
21 way or the other. But that's what I understood his
22 inquiry to be.

23 JUDGE WOLFE: Well, since -- I was concerned,
24 and without recalling the limited purpose for which
25 these three attached exhibits were admitted, I was
concerned as I expressed my concern about there being

#15-9-SueT

1 blank pages. Inasmuch as it has been now refreshed, my
2 recollection refreshed, and as agreed to by Ms. Bernabei
3 that these exhibits were admitted for that limited
4 purpose I have no concern now at all that these pages
5 are blank, period. We can go on from there now.

6 JUDGE SMITH: They should not, however, be
7 cited for the purpose that they are based upon a
8 substantial amount of prior information. That was the
9 concern.

10 All right. Any question about that?

11 (No reply.)

12 All right, proceed.

13 MS. BERNABEI: I assume we can draw the
14 opposite, since there is not a complete list there is
15 no indication of how much review has been put into this?

16 JUDGE SMITH: That's right. The only inference
17 that can be drawn from those documents is that they were
18 prepared before the interviews.

19 They are only a time marker and I think they
20 are mischievous for even for that purpose, because it
21 would have been a lot easier to have stipulated it and
22 then we wouldn't have any concern about it. Safer.
23 And maybe next time it comes up, we will probably insist
24 upon something like that.

25 All right, Mr. Goldberg.

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RECROSS EXAMINATION

BY MR. GOLDBERG:

Q Mr. Gamble, today you testified about questions being submitted in advance of their asking to Mr. Moseley, and you indicated that that -- you weren't necessarily saying that that was prior to the interview but rather submitted to Mr. Moseley prior to their being asked during the interview; am I correct?

A I believe that's what I said. Yes.

Q So, it's your testimony that the general practice was that during the course of an interview before members of the team other than the lead interrogator asked questions they first had to be submitted to Mr. Moseley, Mr. Moseley would then either give his approval or withhold his approval, and on the basis of Mr. Moseley's decision then the question would either be asked or not asked?

A Are you asking me whether that was, in fact, the general practice followed throughout the course of this investigation?

Q Yes.

A No, I didn't testify to that.

Q Well, what do you mean by your testimony today that questions had to be submitted to Mr. Moseley in advance?

#15-11-SueT 1

2 JUDGE SMITH: You are leaving something out,
3 Mr. Goldberg. I don't want to interfere with your
4 cross-examination but I think it's just simply a
5 question of mistake.

6 He clarified that to be follow-on questions.
7 The original list of questions, as I understood --

8 MR. GOLDBERG: I said other than the lead
9 interrogator asking questions, anyone else on the team
10 had to submit their questions in advance to Mr. Moseley
11 before they could be asked. And that's what I under-
12 stood his testimony was today.

13 And he said: I don't mean in advance of the
14 interview itself but in advance of their being asked
15 during the interview.

16 And I can ask about follow-up questions.

17 BY MR. GOLDBERG: (Continuing)

18 Q Is it your testimony that the follow-up
19 questions had to be submitted to Mr. Moseley in advance?

20 A As I recall my testimony, it was that the
21 restrictions Moseley attempted to impose on the Task
22 Group was as you are describing it.

23 Q Okay. Without regard to Mr. Moseley's
24 attempt, was the practice in fact that the members of
25 the team other than the lead interrogator who wanted
to ask follow-up questions, in fact, submitted them to

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Mr. Moseley prior to their being asked?

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A As I sit here now, I cannot recall whether the team members actually did submit questions in that manner. My testimony has been what the instructions imposed were, how they were received, understood and carried out by the IE Task Group members. I can't testify too completely.

I think maybe to answer your question, I referred to the comparison between the two interviews of Elton Brunner and George Smith. As I indicated there, the degree to which team members asked follow-up questions other than the lead interrogator, it was markedly reduced in the second interview.

And as I indicated, I do not believe there were many, if any, questions asked at the end within the manner we are discussing here, by getting Mr. Moseley's approval. And I suggested that that may be indicative of the problem with such a protocol as this, because if the questions are not asked at the appropriate time during the interview often they are lost.

Q Who conducted the Brunner interview?

A The IE Task Group.

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1 Q Which members were present?

2 A I believe it was the entire group.

3 Q The entire group?

4 A The only exception to that would be Mr. Fisher
5 who I believe participated telephonically. They put a
6 speaker box in the center of the table, turned it on so
7 he could talk.

8 Q Were you present?

9 A Yes, sir.

10 Q Who was the lead interrogator?

11 A I cannot recall now. That interview I don't
12 believe is referred to by date or exhibit number in NUREG
13 0760. I was seeking to refresh my recollection before
14 testifying here today about that, but I was unable to
15 consult that.

16 MR. GOLDBERG: May I have a moment, Judge Smith?

17 JUDGE SMITH: Yes. Mr. Goldberg, I am concerned
18 about unwarranted amount of time spent on a comparison of
19 two interviews which may or may not have relevance to our
20 issues, and I think -- let's see if we can't place this
21 whole thing into the context of his testimony this morning.

22 Mr. Au's cross examination, didn't you say that
23 Mr. Moseley's list of questions, or the lead interviewer's
24 list of questions, were developed in a give and take session
25 by all the members of the team?

1 WITNESS: That is correct.

2 JUDGE SMITH: Therefore, with respect to those
3 questions, you did not have to have Mr. Moseley's expressed
4 permission. It was a participation in the consideration
5 process?

6 WITNESS: Those questions were considered but
7 ultimately Mr. Moseley had to approve those as well.

8 JUDGE SMITH: That is right. But there was a
9 give and take process. Everybody would sit down and give
10 the reasons why a question should be in or out. For
11 example, duplication from earlier --

12 WITNESS: Yes, sir.

13 JUDGE SMITH: And that you never objected to the
14 dropping of any of your questions?

15 WITNESS: No, sir.

16 JUDGE SMITH: Once that list of questions was
17 developed, in a collegial give and take process, and approved
18 by Mr. Moseley, then that was the questions that the lead
19 interviewer would ask?

20 WITNESS: That is correct.

21 JUDGE SMITH: But you also testified that the
22 lead interviewer was free to follow on on his own, without
23 permission from Moseley.

24 WITNESS: I don't believe I testified to that.

25 JUDGE SMITH: I thought you did. You also

1 testified that others were free to recommend to the lead
2 interviewer that other follow-on questions be added.

3 WITNESS: I said hat that occurred.

4 JUDGE SMITH: Well, it occurred. Was it
5 prohibited?

6 WITNESS: That was not in keeping with the
7 restrictions Mr. Moseley imposed on the test group.

8 JUDGE SMITH: That was contrary to the restriction
9 that Mr. Moseley imposed?

10 WSTNESS: I believe it was, yes, sir.

11 JUDGE SMITH: That wasn't the sense of the
12 testimony I got from you when you mentioned that. You said
13 sure that could be done, and -- but sometimes that wasn't
14 -- you didn't feel that was a convenient way to do it.

15 Okay, then I think you had better cross examine
16 him, because I don't remember his testimony being -- I
17 remember his testimony being quite different.

18 BY MR. GOLDBERG: (Continuing)

19 Q Mr. Gamble, you testified today that it was an
20 interview of Mr. Brunner at which all the team members were
21 present, including yourself, except perhaps for Mr. Fisher,
22 who was -- participated at least by listening on a conference
23 call arrangement, is that correct?

24 A I believe all members were there, yes.

25 Q Now I want you to think carefully about this. Are

1 you absolutely certain that the team -- investigative team,
2 including yourself, interviewed Mr. Brunner?

3 A The -- as I recall, there were two interviews of
4 Mr. Brunner. The one I am speaking of is the one that
5 resulted in a verbatim transcript, an interview conducted of
6 him in Bethesda, Maryland. And my recollection is that all
7 the team members were there. I have not had the opportunity
8 to review that transcript to refresh my recollection.

9 It is possible that one or more of the team members
10 were not there, but it was conducted in the manner in which
11 the other interviews were, and that is by the team as a group.

12 Q And that was the basis for the decision by Mr.
13 Moseley to prepare, or have prepared by the task group, a
14 list of questions which would be followed from then on?

15 A No, sir, I didn't say that.

16 Q What was the significance then of this interview
17 of Mr. Brunner?

18 A The only significance I attributed to it was that
19 by way of comparison, comparing Mr. Brunner's transcribed
20 interview to that of George Smith. Not having the dates
21 or any references, I am a little bit lost for the order,
22 but I am fairly certain that Brunner's was the one that
23 preceded Smith.

24 There is the possibility I have them reversed,
25 but if in fact they are in that order, the second interview

1 which I believe was Mr. Smith, will show a marked decrease
2 in the number of spontaneous follow-up questions asked by
3 members of the task group. And that is because Mr. Moseley's
4 instructions restricting such follow-up questions were imposed
5 at the beginning of that second interview.

6 That is the only purpose I was drawing from
7 that.

8 Q And was your testimony that Mr. Hoefling asked
9 a good number of significant questions during the Brunner
10 interview?

11 A Yes.

12 Q Have you ever seen a transcript of the Brunner
13 interview?

14 A No, sir, I never have that I can recall.

15 Q But you are certain you were at one?

16 A Yes.

17 Q You testified before about an evaluation of the
18 reliability of interviews conducted closer to the accident
19 compared to interviews that were conducted in time further
20 from the accident. Was that testimony you gave based on a
21 general opinion of yours you held at the time that any
22 interview conducted prior -- closer to the time of the event
23 would in all likelihood be more reliable than one conducted
24 further in time from the event?

25 A I believe I stated it slightly different. I didn't

1 say the entire interview was. I said the facts recalled
2 by a witness closer to the time of the event, in my opinion,
3 at that time, as a general matter, those facts were more
4 likely to be more reliable.

5 Q Now, the question that was asked of you in this
6 area used the word, 'evaluation.' Whether you had done any
7 evaluation. Was that just a general opinion you held, or
8 did you do an actual study of the interviews concerning
9 information flow?

10 A I am not sure I understand the question.

11 Q Well, did you do a specific study comparing
12 facts that were elicited during interviews closer to the
13 time of the accident, compared to facts that were elicited
14 at a time further from the date of the accident?

15 A No, sir. As I indicated, it is just a general
16 opinion I had.

17 Q You talked before about a lively debate concerning
18 proposed enforcement action. Did that debate take place
19 before the Commission?

20 A There were aspects of it that occurred before
21 the Commission, and I recall hearing of discussions among
22 the Staff outside the Commission context.

23 Q Was it the Commission that made the final
24 determination as to what enforcement action to take?

25 A I am not sure if I am wording this precisely

1 correctly in the terms of NRC procedure, but my opinion
2 at the time as to how the NRC procedures worked in this
3 particular situation was that the action was actually
4 determination of the Director of Inspection and Enforcement.

5 However, in this particular situation, the
6 Commission did review, consider, and concur in that enforcement
7 action. Perhaps I technically got that wrong, but that was
8 my impression at the time as to how the procedural mechanism
9 handled this enforcement action.

10 Q You testified today that with respect to the 0760
11 investigation, your role there was one such that you were
12 not to extend a civil investigation, is that correct?

13 A Not to extend it into areas that would be useful
14 for criminal purposes, but not for civil enforcement
15 purposes.

16 Q Was it your role to ensure that the investigation,
17 the 0760 investigation, pursue angles if it appeared that
18 criminality might be involved?

19 A Pursue additional angles, other than what the
20 team was attempting to pursue?

21 Q Well, why don't you answer that question?

22 A Which question do you want me to answer?

23 Q The additional angles.

24 A No.

25 Q Any kind of angles?

1 A Yes.

2 Q What kind of angles were you to pursue where
3 criminality might be involved?

4 A My role was to ensure that angles, as you are
5 calling them, which the IE task group wished to pursue for
6 civil enforcement purposes, that any such angles which also
7 would be important for criminal enforcement purposes be
8 pursued in a manner that would properly develop the facts
9 such that the information could also meet the standard
10 required for use in Federal court for criminal prosecution.

11 I contrast that to the new angles question, which
12 I responded to negatively by the fact that not new areas
13 which I attempted to get IE to explore. Only to ensure that
14 they properly explore the areas that they intended to.

15 Q Was it your belief that the information that
16 was actually developed as a part of the 0760 investigation
17 -- was it your belief that would be used in a criminal
18 prosecution of anyone who might be involved in criminality?

19 A Was it my belief -- at what time?

20 Q At the time that 0760 investigations take place?

21 A During the course of the interviews, and the
22 actual conduct of the investigation?

23 Q Yes.

24 A I did not have any reason for knowing at that
25 time that it would, in fact, be used for criminal prosecution.

1 Q You were there to ensure that angles were pursued
2 which might involve criminality, but you are not sure whether
3 the information that was developed would actually be
4 utilized in criminal prosecution?

5 A That is correct. The decision whether to
6 prosecute somebody is within the province of the Department
7 of Justice.

8 Q Was it your understanding that the information
9 developed might be used by the Department of Justice to
10 prosecute someone?

11 A Certainly.

12 Q Did you make your role in ensuring that angles
13 were pursued that might involve criminality known to the
14 other members of the team?

15 A The other members of the team knew of my role
16 by virtue of their receipt of a copy of the charging memo-
17 randum with attachments which we discussed earlier, and
18 specifically I discussed this with Mr. Moseley at some
19 length.

20 MS. BERNABEI: I am going to object to further
21 examination. I was specifically cut off from certain
22 questions I wished to ask to follow up on yours, Judge
23 Smith, and I think you acknowledged that this was an
24 area that, perhaps, was tangential to the Board's concerns.

25 And now Mr. Goldberg is going full force in

1 the same direction.

2 And if there is to be an investigation as to
3 whether -- in this hearing room as to whether Mr. Gamble's
4 role in that investigation was proper, then we want to ask
5 a lot more questions, and we want to bring in some more
6 witnesses. If there is going to be an interrogation of this
7 man simply because he appeared as a witness, which I think
8 is totally inappropriate, I think all parties should be able
9 to ask questions about it, and present witnesses.

10 JUDGE SMITH: There is an overlapping. I am
11 -- I tend to share your concern. The essence of your concern.
12 I also see, however, an overlapping of the two points. I
13 did initially explore it improperly, I believe. I mean with
14 improper purposes, because I was taken up with my concept
15 of the process rather than the issues, but it also is
16 relevant to the context in which Mr. Gamble asked questions
17 -- you know, where he was coming from.

18 I share your concern. And I do sense a tone
19 by Mr. Goldberg of punishment, and I think that is your
20 concern, and I think should not be permitted. Having been
21 the offender myself, I cannot be too critical of Mr. Goldberg
22 on it, but I do share her concern.

23 MR. GOLDBERG: My interest in this line is
24 an attempt to try to understand the consistency of Mr.
25 Gamble's testimony of his participation in the o760 investigation

1 which specifically was to pursue angles that might involve
2 criminality and to protect the interest of the Department
3 of Justice, where interviewees were not advised of their
4 rights against self-incrimination, and to understand that
5 and its consistency or inconsistency with his testimony that
6 his participation in the OIA investigation, which he said was
7 not a criminal investigation, and was on a narrow issue without
8 regard to criminality, and in which he did advise interviewees
9 of their right against self-incrimination.

10 MS. BERNABEI: Can I just say given that proffer,
11 I have no idea, and I don't think Mr. Goldberg has any good
12 faith basis for suggesting in his question that the other
13 members of the task group were not informed of Mr. Gamble's
14 role in this investigation.

15 And I believe that was his specific question,
16 in which I finally objected. Was your role in this investi-
17 gation known to other members of the task group?

18 I think we have been the ones to provide all
19 the tasking memorandum establishing Mr. Gamble's role, and
20 I think the suggestion that somehow he was hiding what he
21 was doing is just preposterous. And that was the question
22 that was asked. That has nothing to do with the proffer
23 that Mr. Goldberg makes.

24 JUDGE SMITH: So you are not objecting to the
25 proffer he makes?

1 MS. BERNABEI: I am. I am objecting also. But
2 I think he is being dishonest in suggesting that was his
3 intention.

4 The question I specifically objected to had
5 nothing to do with what he suggested was his purpose.

6 MR. BLAKE: I think there is even an objection
7 on the table. My recollection is the whole argument was
8 started by: I am going to object to further questions along
9 this line.

10 MS. BERNABEI: Objection to this whole line of
11 questioning. With regard to what he said his purpose was,
12 which is the second thought, is an attempt to understand
13 the consistency in Mr. Gamble's position.

14 I think if he wants to examine Mr. Gamble's
15 understanding of his role in this investigation, and how
16 her proceeded given that understood role, that is
17 appropriate.

18 I think if he wants to examine some kind of
19 comparison between the OIA investigation, then it is not.

20 JUDGE SMITH: Okay. Let's do it this way. I
21 think we drifted off into a side issue. It does not have
22 sufficient relevance to be worth much. I agree with Ms.
23 Bernabei that there is a tone of censure here that goes
24 somewhat beyond weight to be given as evidence, and we
25 shouldn't do that.

1 There has been enough examination, I believe,
2 of Mr. Gamble on this issue to allow us to weigh his
3 testimony on the issue, on that particular sub-issue, I
4 believe. Okay?

End 16.
MS fols.

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Sim 17-1

1 MR. GOLDBERG: I just wanted to clarify that the
2 purpose was to understand his testimony because it is my
3 position that it is internally inconsistent and it doesn't
4 make sense.

5 JUDGE SMITH: But assume that you are correct
6 and it is internally inconsistent on an irrelevant point
7 and what are we doing to do with it? I mean that is my
8 trouble. What do we do with it then?

9 MR. GOLDBERG: Well, I am just disagreeing with
10 any characterization of a tone of punishment. I have
11 absolutely no interest in that at all.

12 JUDGE SMITH: Very good. That is fine. You
13 have said that and that clears the air on that point and
14 so we can go on from there.

15 BY MR. GOLDBERG:

16 Q Based on the knowledge you had when you were
17 an NRC employee, had I&E ever used polygraph tests?

18 A I don't recall any situation where they had.

19 JUDGE SMITH: All right. There is another
20 matter. I am concerned about that exhibit. It hasn't
21 been offered yet, but when it is offered, I hope that we
22 will hear arguments as to its relevancy and why it should
23 be admitted, and I hope that the final ruling is that it
24 should not.

25 And then that being the case, I would hope that

Sim 17-2

1 you don't find it necessary to pursue that line of
2 questioning.

3 MR. GOLDBERG: If I were sure that would be the
4 result, I wouldn't pursue this line of questioning.

5 MR. BLAKE: You can be sure of the objection.

6 (Laughter.)

7 MS. BERNABEI: We will offer it, but without
8 much hope.

9 JUDGE SMITH: Why don't you wait and see if it
10 is necessary. You can reserve your recross.

11 BY MR. GOLDBERG:

12 Q Mr. Gamble, I would like to refer you to Item 117,
13 the Chwastyk interview, page 13, line 23, and line 23 to
14 page 14, line 6. I believe Ms. Bernabei directed your
15 attention to that during her examination and asked you whether
16 that was an example of an additional follow-up question that
17 you asked which elicited information which was not brought
18 out by the other team members; is that correct?

19 MS. BERNABEI: Excuse me, I don't think that
20 was my question.

21 MR. GOLDBERG: Okay, what was your question.

22 MS. BERNABEI: My question was whether that
23 was illustrative of the point in Mr. Gamble's testimony.

24 MR. GOLDBERG: Fine.

25 BY MR. GOLDBERG:

Q With that explanation, do you recall that question

Sim 17-3 1 and your answer?

2 A Yes, sir.

3 Q Now the question that you asked on page 13,
4 line 24 is "That was after you had spoken with Mr. Miller?"
5 And the answer that you get from Mr. Chwastyk is "Yes"; is
6 that correct?

7 A No, sir. That is only part of the answer. It
8 continues on page 14.

9 Q Fine. With the rest of what appears on page 14.

10 A Yes, sir, that is the answer.

11 Q I would like to refer you to the same page, page
12 13 and the question by Mr. Moseley which begins on line 9
13 and the answer by Mr. Chwastyk which concludes on line 22.

14 Does not Mr. Chwastyk testify that it was after
15 he had talked to Mr. Miller?

16 A Yes, sir.

17 Q So prior to your asking that question
18 Mr. Chwastyk has testified that it was after he had talked
19 to Mr. Miller; is that correct?

20 A That is correct.

21 Q And I would like to direct your attention then
22 to the only other question you asked in the area of this
23 transcript identified by Ms. Bernabei which is at page 14,
24 line 4.

Sim 17-4

1 again. I am afraid we are opening up an issue, a new issue
2 which is not necessary to the decision in this case, and
3 that is the value, the value of Mr. Gamble's contribution.

4 Mr. Gamble's direct testimony was not related
5 to the contribution he made, but to his concern that others
6 did not make a contribution. And now we seem to be going
7 to a weighing of the value that he made to these interviews,
8 and that is not ---

9 MR. GOLDBERG: The clear testimony that he has
10 given is that he brought out information which the other
11 team members did not bring out. This is an example which they
12 have cited to support that, and the only two pieces of
13 information that were drawn out by Mr. Gamble in these
14 two questions were previously brought out by Mr. Moseley.

15 JUDGE SMITH: I am wrong. I just didn't
16 appreciate that. I am wrong.

17 MS. BERNABEI: I think that is incorrect from
18 a reading of the transcript. I think it is a
19 misrepresentation.

20 JUDGE SMITH: Well, whatever it is. I think
21 it is something that maybe you could argue over. This
22 business of trying to get witnesses to show contrition and
23 change their mind right on the witness stand is seldom
24 successful and it is very time consuming. I think it is
25 something you could point out in your proposed findings and

Sim 17-5

1 we can make our own judgment.

2 But, nevertheless, this question and answer, yes,
3 I think you should be allowed to pursue.

4 BY MR. GOLDBERG:

5 Q So the next question you asked there was "That
6 is the same conclusion that you had passed to Mr. Miller,
7 that you thought that it was real," and your answer was
8 "Yes"?

9 A That is correct.

10 Q Now I will refer you to Mr. Chwastyk's testimony
11 on the previous page in response to Mr. Moseley's question.

12 JUDGE SMITH: What page are we on now?

13 MR. GOLDBERG: Page 13, beginning with
14 Mr Moseley's question on line 9 and continuing through
15 Mr. Chwastyk's answer which concludes on page 22.

16 THE WITNESS: Page 22?

17 MR. GOLDBERG: Line 20 on Page 22

18 THE WITNESS: Okay, I have that.

19 BY MR. GOLDBERG:

20 Q And do you see the words there in his answer,
21 "'That the explosion was real,' it was real"?

22 A That is correct. My question is very different
23 than Mr. Moseley's of course.

24 Q Is the answer you got from your question different
25 from the answer that was elicited in response to

Sim 17-6

1 Mr. Moseley's question?

2 A I believe I got an additional answer that he
3 did not.

4 MR. GOLDBERG: Okay. Thank you.

5 JUDGE SMITH: Are you done?

6 MR. GOLDBERG: Yes.

7 JUDGE SMITH: I think probably the most important
8 part of your testimony is the allegation of Mr. Moseley's
9 restrictive agenda, and still I am troubled that we don't
10 understand all of it from the beginning.

11 So as I was asking you before, we begin with the
12 question selection process, which I think you have pretty
13 well described, and it seems to me to be a rather open,
14 well-thought-out process.

15 Would that be your judgment?

16 THE WITNESS: Yes, sir.

17 JUDGE SMITH: Then from that is evolved a list
18 of questions, and then the list of questions is taken to the
19 interview along with the same participants who were in that
20 question selection process.

21 Then where we began to stumble is did the lead
22 interviewer, and in the two cases we have been looking at,
23 Mr. Craig, did he have the authority to add add-on questions,
24 and I thought that your earlier testimony was that yes, he
25 had that authority, that the lead interviewer was not under

Sim 17-7

1 any particular strictures, but he understood the scope of
2 the interview.

3 You threw doubt on my memory of that testimony.

4 THE WITNESS: The only reason I threw any doubt
5 on it, sir, is that I don't believe I testified specifically
6 on that. As I recall the process in this investigation, the
7 particular point as to whether the lead interviewer could
8 ask follow-up questions was silent, and in fact it did occur
9 that the lead interviewer did ask follow-up questions, and
10 I don't recall any objections being posed by Mr. Moseley
11 to anyone. So presumably it was at least tacitly approved.

12 JUDGE SMITH: Certainly. And as I read
13 Mr. Craig's interview -- well, I am looking at -- I just
14 recently looked at two of them, Item 115 and Item 117 --
15 he quite obviously responded to varying answers that the
16 interviewed person would give, and one question followed
17 logically from the answers of interviewed persons, and he
18 seemed to have total freedom to ask questions.

19 THE WITNESS: Yes, sir.

20 JUDGE SMITH: So then while this is going on,
21 we discussed whether you could suggest questions to the
22 lead interviewer, perhaps handed him a note the way sometimes
23 it is done in hearings. And you said well, there was no
24 stated policy that that could or could not be done.

25 THE WITNESS: Right. My answer to that would be

Sim 17-8

1 in the same nature as to my answer to follow-up questions
2 by the lead interviewer. It was silent and it did in fact
3 occur.

4 JUDGE SMITH: So implicitly it was permitted?

5 THE WITNESS: Yes, sir.

6 JUDGE SMITH: All right. Then after the lead
7 interviewer by this process you just described has completed
8 his interviewing and then others at that point then must
9 seek Mr. Moseley's permission to add follow-on questions,
10 except you?

11 THE WITNESS: That was the procedure, yes.

12 JUDGE SMITH: And of course except Mr. Moseley?

13 THE WITNESS: Right, and Mr. Stello in the
14 interviews he participated in.

15 JUDGE SMITH: So actually what we have really
16 come right down to is the one restriction that is really
17 a restriction rather than a methodology is the need to get
18 Mr. Moseley's permission for follow-ons that were not fed
19 through the lead interviewer at the end?

20 THE WITNESS: His permission, plus the timing
21 of that occurring at the end of the interview.

22 JUDGE SMITH: Okay.

23 Mr. Au, you seem to be reaching for the
24 microphone. I have somewhat lost track of where we are ---

25 MR. AU: I didn't really have any questions, but

Sim 17-9

1 I wanted to at least make the motion to offer Commonwealth
2 Mailgram Exhibit 1, even though we don't have a connecting
3 memorandum, and I offer it for this purpose so we don't lose
4 track of where we are and what we have at this point.

5 JUDGE SMITH: All right. Hang on to it.

6 Is there any further questioning of Mr. Gamble
7 on his direct testimony?

8 MR. BLAKE: Yes.

9 JUDGE SMITH: You are going to have some.

10 Is this a good time for you to make your motion
11 anyway?

12 MR. AU: I think so.

13 JUDGE SMITH: All right.

14 MR. AU: I anticipate some objection, so let me
15 clarify where we stand.

16 JUDGE SMITH: Are there objections?

17 (No response.)

18 MR. AU: First, under a cover memo from William
19 J. Dircks, Executive Director of Operations to the Commissioners,
20 and apparently it was sent to the Commissioners, and in that
21 sense is a public document.

22 Now the only question we have is whether that
23 is an official position of the Office for Analysis and
24 Evaluation of Operational Data, and the cover memo says that
25 this is background information prepared by AEOD pertinent

Sim 17-10

1 to paragraph 4 of their memo. Of their memo I presume refers
2 to AEOD and it was transmitted on February 23rd, 1981.

3 So we don't know what that says. I presume that
4 is available somewhere in the Commission.

5 I make the offer for two purposes, and let me
6 explain those two purposes.

7 On page 2 of the contents of the memos there is
8 a conclusion of the offer which reads: "It appears that in
9 many areas the IE investigation reports ---

10 JUDGE SMITH: Where is that, page 2 to the
11 second page or it is page 2?

12 MR. AU: It would be numbered page 2 at the top.
13 The numbering didn't come through clearly.

14 JUDGE SMITH: I've got it.

15 MR. AU: Under Roman numeral II.

16 JUDGE SMITH: Oh, all right.

17 MR. AU: And the conclusion is "It appears that
18 in many areas the IE investigation reports, Reference 1, did
19 not go far enough, and in many areas the conclusions and
20 recommendations are not supported by the facts, for example,"
21 and then it leads on to some facts which the author wants
22 to bring to the attention of the reader.

23 Now I believe that supports Mr. Gamble's opinion
24 that that significant pieces of relevant information were
25 not developed in the investigation process. I don't know

Sim 17-11

1 whether Mr. Gamble agrees or disagrees with these particular
2 items, but I think that this is collaborative information
3 which supports his testimony on this particular point as to
4 what the investigators could have found out if they probed
5 more deeply.

6 Second ---

7 JUDGE SMITH: You want it solely for the
8 conclusion, Roman numeral II, without the bases for it?

9 MR. AU: No. Roman numeral II including the
10 bases which are spelled out by the author.

11 (Pause.)

12 JUDGE SMITH: Are you completed?

13 MR. AU: No. I thought you were reading that
14 portion. So I stopped.

15 JUDGE SMITH: Oh, okay. Proceed.

16 MR. AU: The second purpose, which is not directly
17 related to Mr. Gamble's testimony, but is more related to
18 Mr. Moseley's testimony is the portion which is spelled out
19 under Roman numeral I(2), which the author suggests that the
20 numerous telltale symptoms of the reactor revealed "an
21 uncontestable picture of significant damage to the core,"
22 which is my picking out of those words.

23 Then it lists five symptoms which he describes
24 as portraying this picture of damage to the core.

25 Now Mr. Moseley, as I recall his testimony,

Sim 17-12

1 indicated that it was beyond the range of operator, credible
2 operator knowledge to interpret the significance of the
3 pressure spike, and then gave his opinion of that based on
4 his evaluation of what knowledge was known at the time of
5 the afternoon of March 28th.

6 I think this opinion held by another official
7 within the NRC is contradictory to that opinion held by
8 Mr. Moseley.

9 JUDGE SMITH: If we were to receive this exhibit,
10 what would be your recommendation on proposed findings as
11 to which conclusion we adopt?

12 MR. AU: I am not saying that his conclusion is
13 any better than Mr. Moseley's. I am just saying that there
14 was at least a different opinion held by someone else
15 concerning the knowledge available to determine the status
16 of the reactor on March 28th.

17 JUDGE SMITH: But what would we do with that
18 differing opinion?

19 MR. AU: Well, you can weigh it in light of
20 whether there is ---

21 JUDGE SMITH: It is just helping us?

22 MR. AU: Well, it helps you decide whether,
23 you know, it is within the range of credible operator
24 knowledge as to the significance of the events and whether
25 management could have in fact determined the significance

Sim 17-13 1 of the pressure spike.

2 JUDGE SMITH: Are you going to have advice for
3 us as to which version we take or how much we reduce the
4 weight given to Mr. Moseley's testimony?

5 MS. BERNABEI: I think there is other evidence
6 in the record which can do that, and I would refer the Board
7 specifically to the Udall Report which I think comes to the
8 same conclusion and part on the same basis, that there were
9 other reactor indicators.

10 JUDGE SMITH: I am just trying to figure out
11 what the position of the Commonwealth is.

12 MS. BERNABEI: I understand.

13 JUDGE SMITH: If they are just tossing things
14 into the record, or if they have a position on it.

15 MR. AU: You are saying whether we adopt this
16 as ---

17 JUDGE SMITH: Yes. If you are going to have a
18 particular position on this issue, or if you are just trying
19 to complete the record.

20 MR. AU: No. I am not advocating a position
21 that what the author says is true in this case. We are not
22 advocating it in that sense. I am trying to complete the
23 record to demonstrate that at least there was a contrary
24 opinion.

25 JUDGE SMITH: Do you may or may not even propose

1 a finding on it?

2 MR. AU: That is correct.

3 JUDGE SMITH: Okay. Are there objections?

4 MR. BLAKE: Yes.

5 MR. GOLDBERG: Yes.

6 JUDGE SMITH: The objections probably relating
7 to the absence of Dr. Ornstein probably. Is that what it
8 is?

9 MR. BLAKE: Well, yes, that is one, that we are
10 unable to know I mean with conclusory documents of this
11 type. I don't know how it is to be used as an appropriate
12 value. Now let me say I would have no objection to the
13 admission of this document for the purpose solely of saying
14 somebody named Ornstein held a different opinion, but not
15 what the opinion is and not what it is worth and not to be
16 used to be cited from as ---

17 JUDGE SMITH: In that event it is pointless.
18 I mean so what does it matter if Ornstein had a different
19 opinion if the opinion itself is not ---

20 MR. BLAKE: Judge Smith, I am not proffering
21 this document, but I am saying that that ---

22 MS. BERNABEI: May I just ---

23 MR. BLAKE: Let me finish, Ms. Bernabei, please.
24 I have had previous few moments today, and I want to take
25 advantage of them.

Sim 17-15

1 Now in addition, Judge Smith, the document on
2 its face reflects that in a couple of days time apparently
3 the author looked at a couple of reports and provides his
4 views on these couple of reports.

5 I believe I have understood the Board in the
6 past to say we don't need somebody to tell us about reports.
7 We are going to look at the reports and we are going to
8 look at the evidence and we are going to judge the issues
9 in this case. And I think this is just contrary to what
10 the Board's thoughts are that have been expressed in the
11 past about the probative evidence which they needed.

12 MR. GOLDBERG: And I object to the admission
13 of this document for the truth of the matters asserted in
14 it.

15 I think we have gone far afield of the Board's
16 earlier ruling about the absence of any necessity to address
17 the conclusions in various reports because the Board was
18 going to hear firsthand from the important people involved
19 in this issue and reach its own conclusions.

20 I don't have any objection to the admission
21 of this document for the purpose of establishing that
22 Mr. Ornstein prepared this document and held this opinion
23 on February 19th, 1981. And if the Board wishes to have
24 that opinion in the record, then the staff has no objection
25 to it.

Sim 17-16

1

MS. BERNABEI: May I support Mr. Au's motion?

2

JUDGE SMITH: Sure.

3

4

MS. BERNABEI: First of all, this is not just the position of Mr. Ornstein. It is the position of Mr. Michaelson and his office. The NRC staff has not been kind enough to provide us with that cover memorandum, but we can provide it to the parties and the Board on Tuesday.

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It is the position of his office and it is as such corroborative of Mr. Gamble's testimony.

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But, secondly, the Board is able to look at the witnesses and view their testimony and make a de novo determination, and that is your charge.

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#18-1-SueT

1 However, you did determine that you would
2 listen to Mr. Moseley and his professional view on the
3 issue before you. I think given that fact you should
4 hear from others dissenting professional views within
5 the Agency. And that's one of the reasons you are hear-
6 ing from Mr. Gamble today.

7 I think similarly, as Mr. Gamble said, Mr.
8 Ornstein and Mr. Michaelson's views on the matter are
9 similar dissenting professional views, and as such I
10 think should be heard.

11 JUDGE SMITH: Yeah, but the difficulty is
12 they are not here.

13 MS. BERNABEI: Well, we would have no objection
14 if Mr. Ornstein were brought here to testify.

15 JUDGE SMITH: The question is, however,
16 should we at this late date call those witnesses in
17 rebuttal to Mr. Moseley, even may we.

18 MR. GOLDBERG: Judge Smith, before you
19 actually rule, I want to correct one thing. Did I
20 understand Ms. Bernabei to say that the Staff did not
21 provide her with Mr. Michaelson's memorandum?

22 Is that what you said?

23 MS. BERNABEI: That's what I said.

24 MR. GOLDBERG: I have a letter here right
25 in front of me.

#18-2-SueT

1 JUDGE SMITH: All right, work it out.

2 MR. GOLDBERG: Well, it's just not true that
3 we did not give it to her. And I have the letter right
4 in front of me.

5 JUDGE SMITH: All right, off the record.

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

7 Over the objections of the parties, we will
8 not receive Dr. Ornstein's views without Dr. Ornstein
9 here. Because of the posture of the hearing and the
10 nature of the views, we do not believe it is necessary
11 to require Dr. Ornstein's attendance. It's too late.

12 And part of our judgment is that we do not
13 need his judgment to decide issues that we are charged --
14 we do not need his opinions on the ultimate issues we
15 are charged to decide ourselves based upon the evidence.
16 That is, in the weighing of the importance of his
17 testimony as a consideration as to whether at this late
18 date in the hearing we should expand the hearing to
19 bring him to come in to present these views and be
20 cross-examined on them.

21 Do you understand the purpose of that reason-
22 ing?

23 (No reply.)

24 So, Commonwealth Exhibit Number 1 is rejected.

25 MS. BERNABEI: I think there was a second

#18-3-SueT 1 request that it be admitted for the purpose of corroborat-
2 ing Mr. Gamble's testimony. That is for a limited
3 purpose.

4 JUDGE SMITH: Well, for that purpose, too.
5 That's even less a purpose.

6 All right. So, do you understand, Mr. Au,
7 our procedure here is that your exhibit, although it
8 is rejected goes into the same file and everything else,
9 it follows the record as a rejected exhibit?

10 MR. AU: Yes, I understand that.

11 JUDGE SMITH: It's just it cannot be used in
12 proposed findings or a decision. We can't base a
13 decision on it.

14 If we're wrong in our decision, it's available
15 for reviewing authorities to see it.

16 MR. AU: May I also state for the record that
17 we had only received this document yesterday when it was
18 handed to us by the Staff.

19 JUDGE SMITH: I understand. You did not
20 participate in discovery, as I understand?

21 MR. AU: We did not go to the discovery rooms
22 to look at all the documents that were produced. I did
23 read all the answers and responses that were mailed to
24 me.

25 MS. BERNABEI: I would just state that we

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#18-4-SueT 1

2 did not receive this in discovery even though we did
3 conduct extensive discovery on the Staff.

4 JUDGE SMITH: Okay. All right. Now, the
5 question is you have cross, you have follow-on cross?

6 MR. BLAKE: Yes, sir.

7 JUDGE SMITH: On his direct testimony. So,
8 let's complete that at least this evening.

9 FURTHER CROSS EXAMINATION

10 BY MR. BLAKE:

11 Q Mr. Gamble, you testified this afternoon
12 that there were arrangements in advance of some inter-
13 views with Company counsel concerning restrictions on
14 questions; is that correct?

15 A Yes, sir.

16 Q Were such arrangements in advance of the
17 interviews which led to restrictions on questions made
18 with any of Licensee's counsel, or did it involve any
19 Licensee employees?

20 A I have no way of knowing.

21 Q Do you have any knowledge that there were
22 such restrictions on any Licensee employee interviews?

23 A No, sir.

24 MR. BLAKE: That's all.

25 JUDGE SMITH: So, does that conclude now
Mr. Gamble's direct testimony?

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#18-5-SueT 1

2 What has been worked out among the parties as
3 to his rebuttal testimony, anything?

4 MS. BERNABEI: I have provided the questions
5 and answers.

6 JUDGE SMITH: Are there objections to the
7 presentation of the rebuttal testimony from the point
8 of view of timely notice?

9 MR. BLAKE: No. I will waive with respect
10 to timely notice, but there may well be objections in
11 terms of scope.

12 JUDGE SMITH: To substance?

13 MR. BLAKE: Yes.

14 JUDGE SMITH: How about you, Mr. Goldberg?

15 MR. GOLDBERG: We --

16 JUDGE SMITH: With respect to timely notice
17 of rebuttal testimony?

18 MR. GOLDBERG: No, I won't object to the
19 timeliness of this provided that if it's necessary for
20 the Staff to introduce rebuttal testimony to this that
21 we have an appropriate amount of time to prepare that
22 testimony.

23 JUDGE SMITH: Okay. Can you just generally
24 tell us what your rebuttal is going to be like? How
25 long is it going to take, Number One?

MS. BERNABEI: Well, a few of the questions

#18-6-SueT 1

were integrated into prior questioning. Maybe twenty
2 minutes at the most.

3

JUDGE SMITH: Okay. Proceed.

4

MS. BERNABEI: All right. Can I ask clarification
5 of the Board on one item?

6

I understood that the Board was not going to
7 strike Mr. Moseley's 1981 testimony. It was still in
8 the record. I obtained that understanding --

9

JUDGE SMITH: I don't even think we have
10 jurisdiction.

11

MS. BERNABEI: Okay. Whatever, I understand
12 that you are still free to rely on that in your decision.
13 If that is the case, I have two questions which are
14 based on his 1981 testimony. I also would represent to
15 the Board I had no idea I could cross-examine him on
16 that testimony, and that's why I chose not to do so at
17 the time.

18

JUDGE SMITH: I just recall a discussion at
19 length about the status or non-status of his 1981
20 testimony. I am having difficulty recalling all facets
21 of it, but I do have a clear memory of discussing every
22 conceivable facet of it.

23

And I don't understand really what your
24 problem is right now?

24

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MS. BERNABEI: I don't understand the

#18-7-SueT 1

2 position of the Board. I understand the position of
3 the Board has changed.

4 If the Board represents it will not rely on
5 any of the prior testimony in its decision, I will not
6 propose rebuttal testimony.

7 JUDGE SMITH: So, your problem is you want
8 an algorithm of -- you want a formula that will always
9 be applied in every aspect, and I don't know what it is.

10 But let me review what I thought we have
11 said. We relied upon Mr. Dieckamp's testimony in 1981
12 as a reason for not inquiring into the Dieckamp mailgram
13 issue.

14 MS. BERNABEI: Mr. Moseley.

15 JUDGE SMITH: Mr. Moseley, yeah. And he says,
16 well, you know, he thought it was all right and everything
17 was okay. And we were wrong.

18 Therefore, his conclusions and his testimony
19 to us with respect to that in 1981 is not a basis for
20 any decision on this remand. We cannot predicate our
21 decision in this remand from what he told us in 1981.

22 But he comes back in 1984, in December, or
23 November, last week, and he testifies again. But some
24 of that testimony says: I was right back in 1981 and I'm
25 still right.

Well, to the extent that he says that, and we

#18-8-SueT

1 believe him or don't believe him, we can base a finding
2 on that. That's where I see where we are.

3 MS. BERNABEI: So, if I understand correctly,
4 the Board will base a decision potentially only on those
5 aspects of his prior testimony in which he explicitly
6 relied in his current testimony.

7 JUDGE SMITH: Yeah, now, except the difficulty
8 is that Mr. Moseley was on the witness stand for a great
9 deal of time talking about various facets of I&E inspec-
10 tions which I don't know are even relevant here. I don't
11 know.

12 We are talking about his -- I'm talking about
13 his testimony and conclusions with respect to the
14 Dieckamp mailgram issue.

15 MS. BERNABEI: I understand.

16 JUDGE SMITH: Right. That is correct.

17 MS. BERNABEI: Okay.

18 JUDGE SMITH: And we can probably even go to
19 the transcript, pick out the very exact pages -- and I
20 think they are probably the pages that I had bound into
21 the transcript in a prehearing conference -- and say for
22 all practical purposes those pages are not in the record
23 anymore. I think that would even be possible, you know,
24 but I don't have them before me.

25 But the fact is, in 1981 where he answered my

#18-9-SueT

1 questions and Ms. Bradford's one or two questions about
2 the Dieckamp mailgram, that will not be the basis for
3 a decision. Where he came here to this remanded hearing
4 and said: I was right then when I said that, that can
5 be a basis for a decision.

6 MS. BERNABEI: Okay. My understanding then
7 is that if he adopted and reaffirmed his prior testimony
8 that may be relied on?

9 JUDGE SMITH: Yes.

10 MS. BERNABEI: And that only?

11 JUDGE SMITH: That only.

12 MS. BERNABEI: Well, let me give you --

13 JUDGE SMITH: And not the 1981 directly, yes.

14 MS. BERNABEI: Okay. Fine.

15 JUDGE SMITH: Does everybody agree with
16 that?

17 MR. GOLDBERG: That's what I've been saying
18 all along, only that portion of his prior testimony
19 which is like a page of the transcript. He came here
20 and adopted specifically in his prefiled testimony and
21 was available for cross-examination.

22 We cite --

23 JUDGE SMITH: I think everyone is in agreement
24 now.

25 MS. BERNABEI: Okay. Fine. That gets rid of

#18-10-SueT 1

two questions.

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REBUTTAL DIRECT EXAMINATION

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BY MS. BERNABEI:

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Q Do you have Mr. Moseley's prefiled testimony before you, Mr. Gamble?

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A No, I do not.

7

(Ms. Bernabei provides the witness with a

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copy of the document referred to.)

9

Q Okay. Referring to Page 2 of that prefiled testimony, Mr. Moseley explains that the team was asked to include in the investigation an assessment of whether the Dieckamp mailgram constituted a material false statement.

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And I believe in his testimony in this proceeding, he indicated his definition of a material false statement in approaching this assignment.

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Did you have occasion to have discussions with Mr. Moseley about the definition of a material false statement?

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A Yes, I did.

21

Q Okay. Can you describe for us the substance of those discussions?

22

23

MR. GOLDBERG: What's the time frame on this question, please?

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MS. BERNABEI: It's some time prior to

#18-11-SueT 1

September of 1980, which is the date of Mr. Dieckamp's
interview by Mr. Moseley.

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WITNESS GAMBLE: I recall discussion with
Mr. Moseley as to what constitutes a material false
statement early in the investigation. I would -- at
this point, I would estimate it as being in the time
frame of April, May or June 1980.

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JUDGE SMITH: I think this is a rather simple
point. Maybe you could just sort of hurry up the pro-
cess here.

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MS. BERNABEI: Okay.

12

BY MS. BERNABEI: (Continuing)

13

Q Okay. Did you derive an understanding of
Mr. Moseley's definition of a material false statement
from those discussions?

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16

A working, perhaps, definition of his --

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A I'm not sure we reached an actual definition,
but we had a discussion and there were two primary
points of view during that discussion. Mr. Hoefling was
at this discussion as the attorney representing the
Office of Executive Legal Director, and he and Mr.
Moseley were discussing an operative definition of a
material false statement as used in NRC regulatory pro-
ceedings.

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And that definition is, as I recall it,

#18-12-SueT 1 virtually the same as what you see in the final NUREG
2 0760 report under the discussion of the Dieckamp mailgram
3 issue.

4 The opposite point of view, or the different
5 point of view, I should say, was that held by me. And
6 I discussed and received an indication of agreement in
7 that definition from Marian Moe, the attorney from the
8 Office of General Counsel assigned to this investiga-
9 tion, in that we were using a working definition of
10 material false statement that is derived from the
11 criminal code, particularly from Title 18, United States
12 Code, Section 1001, which is broader than the definition
13 of material false statement that was being discussed by
14 Mr. Hoefling and Mr. Moseley concerning Atomic Energy
15 Act requirements for material false statements.

16 Q And what is that difference?

17 A The primary difference that we focused on
18 in this discussion was the fact that in the criminal
19 code a material false statement can occur when you have
20 a knowing and willful omission of a material fact in a
21 matter within the jurisdiction of the United States.

22 By comparison, the Atomic Energy Act defini-
23 tion required that there be some affirmative misrepre-
24 sentations within specific contexts such as application
25 for license and other reports required to be made to the

#18-13-SueT 1

Nuclear Regulatory Commission.

2 JUDGE SMITH: Excuse me. You do realize that
3 the Appeal Board did affirm by implication, at least,
4 our decision to disregard Mr. Moseley's definition of
5 material false statement. And it just simply doesn't
6 seem to be an issue in this remanded proceeding.

7 MS. BERNABEI: I think it's relevant as to
8 Mr. Moseley's narrow focus, and perhaps improperly narrow
9 focus, in his interview of Mr. Dieckamp.

10 It seems to me he offered his opinion as to
11 the scope of the interview which I think is somewhat
12 different from what Mr. Gamble understands Mr. Moseley's
13 definition was.

14 JUDGE SMITH: It just doesn't matter. It
15 just isn't going to effect our judgment at all. We
16 have already rejected the statutory definitions of
17 material false statement as a measure of Mr. Dieckamp's
18 mailgram.

19 And now how it affects Mr. Moseley's testi-
20 mony is so obscure that it just isn't worth this time
21 that you are putting us through listening to it. You
22 seem to have been able to get back all of your stricken
23 testimony by one device or the other. We read it when
24 he first wrote it.

25 So what? Just, so what? The issue is what

#18-14-SueT 1 were the facts developed in the investigation and what
2 did Mr. Dieckamp do.

3 MS. BERNABEI: Can I ask one follow-up
4 question? If this was Mr. Moseley's working definition
5 in the investigation?

6 JUDGE SMITH: Well, even his definition,
7 even his definition -- I don't want to get into it.
8 I just don't want to get into it. But just to point
9 out, even his definition is inadequate. And --

10 MS. BERNABEI: The question is what weight.
11 This is rebuttal to Mr. Moseley. Mr. Moseley took
12 an unduly narrow view of --

13 JUDGE SMITH: He only told how he happened
14 to get into the business to begin with.

15 MS. BERNABEI: Well, I asked him a question --
16 well, let me just recount the testimony that I believe
17 is in the record.

18 I asked Mr. Moseley -- it's not this testimony
19 but that which he was questioned on. I asked him what
20 his definition of material false statement was. He gave
21 me a definition.

22 JUDGE SMITH: On cross examination?

23 MS. BERNABEI: Right.

24 JUDGE SMITH: But the only reason he ever
25 mentioned it was to explain what he was doing talking

#18-15-SueT 1

to Dieckamp.

2

MS. BERNABEI: But you --

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JUDGE SMITH: I'm ruling right now that his definition of material false statement is irrelevant to the considerations that we have before us. I perhaps shouldn't have allowed you to explore with Mr. Dieckamp.

5

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7

You are just wasting our time; you are cluttering up the record.

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MS. BERNABEI: A proffer. I think it goes to Mr. Moseley's unduly narrow view of his task --

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JUDGE SMITH: Okay.

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MS. BERNABEI: -- going into the interview with Mr. Dieckamp.

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JUDGE SMITH: All right.

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BY MS. BERNABEI: (Continuing)

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Q I would like to refer you to Page 4 of Mr. Moseley's prefiled direct testimony. I am referring you to Answer 9 which appears on that page. The second -- excuse me, the third -- the fourth sentence in Answer 9: "This conclusion of mine is supported by my belief that no one present in the control room of TMI Unit 2 concluded on March 28th, 1979 that hydrogen was the cause of the pressure spike."

24

Do you -- and then that belief of Mr.

25

Moseley, do you know from where he derived that belief;

#18-16-SueT1

2 that is, what investigation or inquiry he did in order
3 to derive that belief other than his participation in
4 NUREG 0760?

5 MR. GOLDBERG: Objection.

6 JUDGE SMITH: Well, let's answer the first
7 question if he knows.

8 Overruled.

9 WITNESS GAMBLE: I don't know of any other
10 basis for his belief.

11 JUDGE SMITH: Oh, that was -- I understand.
12 That was the purpose of the question.

13 BY MS. BERNABEI: (Continuing)

14 Q Do you know of any other investigation Mr.
15 Moseley conducted in this general subject area other
16 than as Director of the Task Group?

17 A No.

18 JUDGE SMITH: I didn't understand the --

19 MR. GOLDBERG: This is supposed to be --

20 JUDGE SMITH: You are right. It should
21 have been sustained.

22 MR. GOLDBERG: This is supposed to be rebuttal
23 testimony. Mr. Moseley testified that he didn't do
24 any investigation other than the 0760 investigation.

25 JUDGE SMITH: All right.

MR. GOLDBERG: It sounds to me like this is

#18-17-SueT 1

supportive of that --

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JUDGE SMITH: All right. In that event, it's harmless so let's go on.

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BY MS. BERNABEI: (Continuing)

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Q Did you have any criticism of Mr. Moseley, or criticism of his conclusion that no one present in the control room of TMI Unit 2 concluded on March 28, 1979 that hydrogen was the cause of the pressure spike?

9

10

Did you hold any opinion of that at the time you were in the NRC?

11

A (Pause.)

12

13

I can't recall that I had a particular opinion on that.

14

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Q I would like to refer you to TMIA Exhibit 24, your memorandum to Mr. Moseley of January 26th, 1981, specifically your comment about unsupported conclusions of the report, Paragraph 2 on Page 2.

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In reading that, does that refresh your recollection as to any opinions you may have held about Mr. Moseley's conclusions regarding the Licensee awareness that hydrogen was the cause of the pressure spike?

23

24

JUDGE SMITH: Would you give me that item number again?

25

MS.BERNABEI: Yes, it's TMIA Exhibit 24.

#18-18-SueT1

JUDGE SMITH: Yes, but the page?

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MS. BERNABEI: Page 2, Item 2.

3

MR. BLAKE: It's not numbered 2. It must be the

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second page.

5

MS. BERNABEI: The second page.

6

WITNESS GAMBLE: This item is a generalized

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criticism of the conclusions drawn by the Task Group.

8

I can't recall articulating precisely my

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opinion or criticism of Mr. Moseley's conclusion directly

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on whether anyone in the control room was aware of

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hydrogen. My opinion here as expressed in Item 2 is

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generalized to all of the conclusions.

13

BY MS. BERNABEI: (Continuing)

14

Q Okay. Would that include this conclusion

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as well which appears in NUREG 0760?

16

A Yes, it would.

17

Q Okay. What is that criticism?

18

A My criticism was twofold. One, that often-

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times in the report, in my opinion, opinions of the Task

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Group were stated as conclusions. And the second aspect

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of my criticism which supports the first is that often-

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times there were insufficient facts, in my opinion,

23

that the investigative group should have drawn a

24

conclusion.

25

Q Now, on Page 4 Mr. Moseley states he bases

#8-19-SueT 1

2 his prior opinion -- this is the Answer 9 -- on, in
3 part on an interview he conducted of Mr. Dieckamp and
4 his impression during that interview that Mr. Dieckamp
5 was sincere.

6

7 Did you have an opportunity to observe Mr.
8 Moseley during the NUREG 0760 interviews?

9

10 A Yes, but not this particular interview.

11

12 JUDGE SMITH: Observe? Physically observing,
13 you mean?

14

15 MS. BERNABEI: Observe him conducting any
16 interviews, yes.

17

18 JUDGE SMITH: Did this witness have a
19 chance to physically observe Mr. Moseley conduct inter-
20 views?

21

22 MS. BERNABEI: Right.

23

24 WITNESS GAMBLE: Yes, not this particular
25 interview but other interviews in NUREG 0760.

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END #18

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BY MS. BERNABEI: (Continuing)

#19-1-Wal 1 Q Okay. How many other interviews did you
2 observe Mr. Moseley conduct?

3 A I believe -- I don't know a number. I believe
4 all of them except whatever ones were conducted during
5 this trip to New Jersey when they interviewed Mr. Dieckamp.

6 Q And did you have an opportunity to observe and
7 evaluate Mr. Moseley in other investigative activities
8 during this investigation, such as reviewing material,
9 reviewing interviews, discussing that review?

10 A I never observed him reviewing materials but I
11 did participate and observe him during discussions of
12 material.

13 Q Now, from your observation and knowledge of
14 Mr. Moseley in this process, did you come to any evaluation
15 with respect to Mr. Moseley's interviewing skills?

16 A I had opinions of his ability to ask questions.

17 Q Okay. And what was that? Or, what were those
18 opinions?

19 A Mr. Moseley's questions on particular points
20 appeared to be well-founded questions and designed to
21 elicit the facts he was seeking.

22 Q Did you have any other opinion as to his
23 interviewing skills or whether or not the interviews,
24 in fact, developed the record well?

25 A I don't believe I had any such opinions.

#19-2-Wal

1 Q Did you have any assessment or evaluation of
2 Mr. Moseley's investigative skills?

3 A I had opinions.

4 Q And what were those?

5 A (Pause.)

6 In my opinion, he did not appear to be -- he
7 did not approach investigations as far as how to handle
8 investigations in the manner that I thought was the most
9 suited to elicit the -- to accomplish the objective of
10 the investigation.

11 Q And what was the basis for that opinion?

12 A The very same things I've described earlier,
13 such as the manner in which he directed interviews be
14 conducted, restrictions on questioning, the conclusion --
15 the investigative reports, conclusions -- as they were
16 called -- being drawn that, in my opinion, were not
17 supported by facts, sufficient facts to draw those con-
18 clusions.

19 They primarily were the bases for that opinion.

20 Q I have one other question which may have been
21 covered.

22 Were you -- you were not informed of the inter-
23 view of Mr. Dieckamp held on September 12, 1980; is that
24 correct?

25 A That's correct.

#19-3-Wal 1 Q And do you know of any reasons that you were not
2 informed? Or, do you know of the reason or reasons you
3 were not informed?

4 A No, I don't.

5 Q Were there any interviews other than that of
6 Mr. Dieckamp of which you were not informed?

7 A At this point in time, trying to recall, I cannot
8 recall at this time whether there were any other interviews
9 done at the same time Mr. Moseley travelled to New Jersey
10 to interview Mr. Dieckamp. But if any other interviews
11 were conducted on that trip, I was not informed of them and
12 did not attend those.

13 With the exception of that possibility I was
14 informed of all other interviews that have been transcribed
15 and attended most of them.

16 MS. BERNABEI: I have no other questions.

17 JUDGE SMITH: Is there any cross examination?

18 MR. GOLDBERG: Very brief.

19 JUDGE SMITH: Okay.

20 CROSS-EXAMINATION

21 BY MR. GOLDBERG:

22 Q Mr. Gamble, I would like for you to tell me if
23 you can identify a document.

24 MR. GOLDBERG: Judge Smith, I apologize. I
25 believe I brought enough copies of this for everyone but

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#19-4-Wal 1 I can only find one. If the witness can identify it, I
2 will have copies made and I will distribute it.

3 MS. BERNABEI: Can the other counsel see the
4 document before --

5 MR. GOLDBERG: Sure. It's a document that has
6 been provided in discovery.

7 (The document is provided to the witness.)

8 BY MR. GOLDBERG: (Continuing)

9 Q Can you identify that document, Mr. Gamble?

10 A Yes, sir. This is a memorandum from Mr. Moseley
11 to me, dated February 2, 1981.

12 Q Did you receive a copy of that memorandum
13 shortly after it's dated?

14 A I received the original of this shortly after
15 it is dated.

16 Q Is that a response to your January 26, 1981
17 memorandum to Mr. Moseley which is now marked as TMIA
18 Mailgram Exhibit 24?

19 A Yes, sir.

20 MR. GOLDBERG: I would like to have this docu-
21 ment marked as Staff Mailgram Exhibit 3. And when I get
22 copies for everyone, which I guess will be Tuesday, I
23 will --

24 JUDGE SMITH: Haven't we already seen that?
25 It seems to me that that --

#19-5-Wal

1 MR. GOLDBERG: It was originally an exhibit
2 I believe to Mr. Gamble's earlier version of testimony.

3 JUDGE SMITH: Right.

4 MR. GOLDBERG: But that has not been identified
5 as an exhibit and hasn't been moved into evidence.

6 (The document referred to is
7 marked Staff Mailgram Exhibit
8 Number 3 for Identification.)

INDEXXXX

9 JUDGE SMITH: Is there an objection to receiving
10 that?

11 MS. BERNABEI: We would want to make sure that
12 Mr. Gamble's memorandum, which is TMIA Exhibit 24, be
13 admitted as well.

14 We have no objection --

15 JUDGE SMITH: It's a quid pro quo thing, or --

16 MS. BERNABEI: We have no --

17 JUDGE SMITH: I mean, they are subject matter
18 related.

19 MS. BERNABEI: One is a response to the other.

20 JUDGE SMITH: Oh, I see. One is a response to
21 the other. Fair enough. Right.

22 I thought you were saying we will let him have
23 that if they will let you have --

24 MS. BERNABEI: No.

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25 JUDGE SMITH: Okay. If there are no objections,

#19-6-Wal 1 we will receive both TMIA Exhibit 24 and Staff Exhibit 3.

2 (The documents previously marked
3 TMIA Exhibit Number 24 for
4 Identification and Staff Mailgram
5 Exhibit 3 for Identification are
6 received into evidence.)

INDEXXXX

7 Any further examination?

8 (No reply.)

9 All right. We have just one pending matter
10 here. Do you have any examination, Mr. Blake?

11 MR. BLAKE: No.

12 JUDGE SMITH: All right. We just have one
13 pending matter here. And that's Fortuna's lie detector
14 letter.

15 MS. BERNABEI: It's actually two, Judge Smith.
16 There is the Fortuna to Cummings memorandum which is more
17 expansive. That's on the OIA investigation, November 6th,
18 1980, which is TMIA 22.

19 JUDGE SMITH: All right. Are there objections
20 to Exhibit 22?

21 MR. BLAKE: Yes.

22 JUDGE SMITH: There are? This is -- all right.
23 Let's hear your objections.

24 MR. BLAKE: Well --

25 JUDGE SMITH: I seem to have attached to mine

#19-7-Wal 1 two reports of interview. Is that by design?

2 MR. BLAKE: That's my first. I think it's a
3 confusing document, in that --

4 MS. BERNABEI: This --

5 MR. BLAKE: -- it refers to, in the cover
6 memorandu, a report of interview by Neely to a Number 2,
7 which is deleted, which is attached in my copy, to two
8 other SIG interviews, neither which are attached.

9 And I have a second copy of what appears to be
10 the same as Enclosure 1.

11 JUDGE SMITH: Yeah. That's --

12 MS. BERNABEI: This is the way we received it
13 from the Agency. We 'didn't tamper with a lot of the
14 documents. We thought it was better not to tamper with
15 the document itself.

16 JUDGE SMITH: This document is being offered
17 for the limited purpose of demonstrating that the open
18 lines of inquiry on Enclosure 2, which is really a plan
19 for further investigation, was denied.

20 Isn't that the purpose of it?

21 MS. BERNABEI: Yes. There was additionally
22 some questioning I think by the Board, perhaps by Mr.
23 Goldberg, as to Mr. Cumming's restriction on the OIA
24 investigation as well. And I think for that purpose also
25 it should be admitted.

#19-8-Wal 1 JUDGE SMITH: That's what I mean. What is the
2 difference between what I said and what you have said?

3 MS. BERNABEI: Oh, well, the way I understand
4 the testimony is the investigative plan was to suggest not
5 only avenues for the OIA investigation but possible
6 techniques or strategies to be used in the IE investigation
7 to information flow.

8 That's what appears on the Enclosure 2, the
9 open lines of inquiry.

10 In addition, there was some testimony and
11 discussion about Mr. Cummings' restriction on the OIA
12 investigation. And I think for that purpose it should be
13 admitted as well. That was drawn out by the Board and
14 the parties. That was not the intention of -- our intent.

15 JUDGE SMITH: Well, the --

16 MS. BERNABEI: But we would offer it for both
17 purposes, since there is testimony on both those issues.

18 JUDGE SMITH: All right.

19 MR. GOLDBERG: I have an objection, in that
20 it is not clear to me that this document does what Ms.
21 Bernabei claims it does. In that apparently Mr. Fortunua
22 sent this memorandum as it was typewritten, without the
23 handwritten marks and deletions, to Mr. Cummings.

24 It also appears that Mr. Cummings sent a copy
25 of this to Mr. Stello. And the copy that Mr. Cummings sent

#19-9-Wal 1 to Mr. Stello included the handwritten deletions and diagonal
2 lines, including the one on Enclosure 2. And this docu-
3 ment is being offered for the purpose of showing that there
4 was some OIA Director restriction on an OIA investigation.

5 MS. BERNABEI: Let me --

6 MR. GOLDBERG: Mr. Stello was not in charge of
7 the OIA investigation.

8 MS. BERNABEI: That's --

9 MR. GOLDBERG: And I don't know how this docu-
10 ment establishes --

11 MS. BERNABEI: You know, I could be way off,
12 but I don't know of any testimony that addresses Mr.
13 Goldberg's point. I'm talking about testimony we have got
14 in the record, not testimony Mr. Goldberg is giving right
15 now.

16 The testimony, as I understand it, is first Mr.
17 Gamble looks at this and says this indicates avenues of
18 inquiry or techniques, strategies of inquiry, that I
19 thought would have been useful in the NUREG 0760, the IE
20 investigation into information flow. He refers to this
21 document because that indicates to him that, in fact,
22 there is information publicly available such that he can
23 speak about it outside the restrictions of the OGC letter.
24 That's one purpose. Okay. To indicate other avenues of
25 inquiry.

#19-10-Wal 1 At that point, or perhaps at the previous point,
2 the Board has shown a concern and interest in the OIA
3 investigation which the memorandum directly addresses.
4 There were some questions by the Board primarily as to
5 Mr. Cummings' restrictions on that investigation. I also
6 believe Mr. Goldberg asked some questions about Mr.
7 Cummings' restrictions.

8 This is relevant to -- and was, in fact, first
9 identified in the course of that questioning. And so I
10 think in two parts, both alternate investigative strategies
11 that could be employed in NUREG 0760 and suggested for
12 the OIA investigation; and, secondly, how Mr. Cummings
13 cut off or restricted the OIA investigation which the
14 Board has shown an interest in. That is, the IE inspector's
15 alleged failure to report information on the hydrogen
16 explosion.

17 JUDGE SMITH: All right.

18 MR. GOLDBERG: Judge Smith, I asked no questions
19 of Mr. Gamble concerning OIA's restrictions on an OIA
20 investigation.

21 MS. BERNABEI: No --

22 MR. GOLDBERG: When he said that there were
23 restrictions, my only question was who. He said Mr.
24 Cummings. I asked no further questions about that.

25 MS. BERNABEI: There was a long line of questions

#19-11-Wal 1 about the OIA --

2 JUDGE SMITH: My concern, as a package I just
3 don't see how this helps us at all. I have lost track of --
4 it has become so -- such a confusing series of links in
5 the chain that I no longer can attach it to the issue that
6 we are here for.

7 MS. BERNABEI: Let me say, we didn't bring this
8 up. Okay.

9 JUDGE SMITH: Okay. Well --

10 MS. BERNABEI: Let me just trace the history.

11 JUDGE SMITH: The Board isn't seeking to have
12 this put into evidence.

13 MS. BERNABEI: Well, I'm seeking to, because I
14 think it explains the testimony which is, one, they are
15 investigative techniques outlined by Mr. Gamble whose
16 capabilities were questioned by Mr. Goldberg.

17 JUDGE SMITH: It's offered for that purpose?

18 MS. BERNABEI: One, for that purpose.

19 JUDGE SMITH: That doesn't help. That would be
20 Enclosure 2?

21 MS. BERNABEI: Enclosure 2, that's right.

22 JUDGE SMITH: You don't want it in for that,
23 do you?

24 MS. BERNABEI: Yes.

25 JUDGE SMITH: To corroborate Neely interview,

#9-12-Wal 1 you -- that shows what a competent investigator he is,
2 interview Craig, confront with pictures --

3 MS. BERNABEI: I think you are making a determi-
4 nation on the merits.

5 JUDGE SMITH: That's exactly right. I'm looking
6 at it to see if it will accomplish the purpose for which
7 you offer it, which is one of our jobs.

8 MS. BERNABEI: I think that --

9 JUDGE SMITH: You have to look a little bit at
10 the substance of it before you can make these rulings.

11 My concern actually is the continuing concern
12 I've had throughout this hearing where we get an item
13 into evidence for a rather obscure point -- not a
14 particularly point -- and then you get a bunch of other
15 things that are misunderstood, confuse the record, and do
16 other damages.

17 And in this instance --

18 MS. BERNABEI: There seems to be this wide-
19 spread, almost paranoia of what use is going to be made
20 of documents. I can represent the only use that we will
21 make, if any, is the use that was made in this hearing
22 room. One, to show alternative investigative techniques
23 that could have been used in the NUREG 0760 investigation;
24 and, secondly, the Board itself was interested in OIA
25 investigations.

#19-13-Wal 1 JUDGE SMITH: Yes, but I'm saying if you are
2 doing it to do us a favor, don't, because we will take
3 care of our own inquiry. As far as it being something to
4 show that he would have done and was prohibited from doing,
5 this seems to go to Neely's investigation, the personnel
6 investigation.

7 And I'm having difficulty -- isn't that right?
8 It goes to what you would have done to investigate
9 Neely and you were foreclosed from doing it?

10 WITNESS GAMBLE: That's correct.

11 JUDGE SMITH: But later, as I understand, you
12 were allowed to do it anyway?

13 WITNESS GAMBLE: Not everything in that --

14 JUDGE SMITH: But a lot of it?

15 WITNESS GAMBLE: Yes, sir.

16 JUDGE SMITH: Yes. I mean, what in the world
17 are we going to make a decision based upon that type of --

18 MS. BERNABEI: Okay. Let me state one purpose.
19 The Board has requested -- and there are some interviews
20 in the Joint Mailgram exhibits -- information about the
21 OIA investigation. As I represented to the Board, we have
22 not chosen to bring this to your attention other than in
23 the interview forms because of the inconclusive nature
24 and the less thorough nature of the investigation.

25 Mr. Gamble has explained it. Now, I don't know

#19-14-Wal 1 what other use -- what the other parties want to make use
2 of the investigation --

3 JUDGE SMITH: I think that you can probably --
4 you don't need this. If it were just purely the open
5 lines of inquiry standing alone that you want to demonstrate
6 his testimony as to how he was frustrated, that would be
7 one thing.

8 But his testimony is good enough for that. You
9 know, you don't need it. And so there is no use attaching
10 that to other information which will tend to clutter up the
11 record needlessly and perhaps mischievously.

12 MS. BERNABEI: Well, then I assume that Mr.
13 Goldberg will not rely on Mr. Gamble's performance or
14 conduct in this investigation to draw any findings, because
15 I think this is relevant to that.

16 If I have that representation, then I have no
17 problem.

18 JUDGE GOLDBERG: I don't understand. I'm sorry.
19 It's late. I think what we had better do is -- I don't
20 know what to do.

21 I just don't believe that this is probative,
22 that it has any independent probative value. I don't
23 understand your last point at all. I just -- it just
24 doesn't make any sense to me.

25 It doesn't make any sense to me.

Sim 21-1

1 MS. BERNABEI: Let me just go through Mr. Goldberg's
2 reasoning and he can correct me.

3 I think there was an attempt to say you, Mr. Gamble,
4 participated in an OIA investigation and you did or did not
5 do certain things and couldn't you have done other things
6 and couldn't you have conducted it in a certain way. I am
7 not sure exactly, but I think there will be an attempt by
8 the staff to indicate that somehow Mr. Gamble's performance
9 or conduct in the course of the OIA investigation reflects
10 on his abilities, capabilities or his opinions as to the
11 IE investigation.

12 I think given that fact, we should be able to
13 draw on something which indicates that restrictions were put
14 on him.

15 That is my only concern. I have no affirmative
16 views.

17 JUDGE SMITH: I guess I have to apologize. I
18 have listened to you, but I just can't follow and I think
19 part of it is fatigue. I don't understand your point.
20 So we will have to defer it until later.

21 I simply do not yet understand how the investigation
22 into Neeley as alluded to here, an investigation which he was
23 allowed to complete, how it helps us at all.

24 Now the reason I wanted to get to these exhibits
25 tonight was because of the deferred opportunity to cross-

Sim 21-2

1 examine on Fortuna's letter to the Navy to have lie detector
2 tests taken. And Mr. Fortuna's judgment that those people
3 ought to have lie detector tests taken is of no probative
4 value to this Board.

5 The fact that Mr. Gamble wanted to have these
6 people tested on a polygraph, he can tell it. Let it go. I
7 mean it is going to help us decide the issues and it is
8 unnecessarily pejorative to the people involved. So we
9 won't receive that. So as such you have no need to cross-
10 examine on it.

11 Mr. Gamble, did you want to say something?

12 THE WITNESS: Yes. I just wanted to make one
13 concluding remark to you, sir.

14 JUDGE SMITH: All right.

15 THE WITNESS: As I indicated before I began
16 my testimony, I had a great deal of concerns about my
17 procedural posture here. And Mr. Rothchild with OGC when
18 I talked to him indicated that he does on behalf of OGC
19 review the transcript of this ongoing proceeding.

20 I would just like to state for the record that
21 I have throughout my testimony made a sincere good faith
22 attempt to observe the General Counsel's interpretation of
23 how I should act and would respectfully request that the Board
24 take note of that.

25 JUDGE SMITH: Okay. You are speaking, I take

Sim 21-3

1 it, to Mr. Rothchild through this transcript.

2 (Laughter.)

3 On behalf of Mr. Rothchild I will thank you
4 for it.

5 THE WITNESS: In a sense, but I would also, if
6 you would see fit, I would also appreciate your comment as
7 to my comportment during this testimony.

8 JUDGE SMITH: Oh, I have no quarrel with your
9 comportment. As a matter of fact, before we end, I want
10 to thank you again for taking the time from your job. It
11 has not been a pleasant experience, I would not imagine, for
12 you to go through the cross-examination or the whole thing.

13 The Board has some serious problems with your
14 testimony, as you can probably infer from some of the questions
15 we have asked you and perhaps some disagreements with some
16 of our theories. But that does not take away from the fact
17 that you are performing as a conscientious citizen and that
18 is very much appreciated by the Board and by all of us.

19 THE WITNESS: Thank you. I appreciate that.

20 JUDGE SMITH: With that then we will defer your
21 Exhibit 24.

22 MS. BERNABEI: Okay.

23 JUDGE SMITH: We turned down that polygraph
24 exhibit and we will defer any discussion about the remaining
25 witnesses unless you want to explore the possibility of having

Sim 21-4

1 a session on Monday. Is that feasible?

2 MS. BERNABEI: Can I just correct you. 24 was
3 received into evidence. You are deferring on 22 and you
4 are rejecting 23.

5 JUDGE SMITH: That is right. Thank you.

6 Or should we just put that off until Tuesday
7 morning? I think it is probably better to put off the
8 discussion as to the remaining witnesses until Tuesday
9 morning, unless there is a great value of doing it Monday
10 in Bethesda.

11 I think we can go off the record now.

12 MR. LEWIS: Before you do, could I ask that the
13 Board notifications be bound into the record. There are
14 two dated November 28th, two dated November 29th and three
15 dated December 5. That should bring you up to date.

16 JUDGE SMITH: Okay.

17 (The notifications referred to follow:)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	
)	
(Three Mile Island Nuclear)	Docket No. 50-289 SP
Station, Unit No. 1))	(Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

In its opening statement, TMIA stated that there was general knowledge on March 28, 1979 of a hydrogen burn or explosion. Tr. at 28,125. TMIA referred to the results of Licensee's questionnaire. Licensee expects this subject to be addressed in findings.

Licensee has filed a stipulation regarding certain questionnaire responses, and some respondents will be called as witnesses in this proceeding. However, Licensee also intends to refer in proposed findings to the following items in Part C of Mailgram Exhibit 1 in order to place in proper perspective the degree to which persons were aware of the pressure spike and/or appreciated its significance on the 28th.

The following items in Part C of Joint Mailgram Exhibit 1 refer to key people who were at TMI on the 28th and were not aware of the pressure spike:

Item 27, NRC Interview of J. Herbein (May 10, 1979) at pages 26-27.

Item 29, Congressional Hearings at page 295 (letter from Gary Miller).

Item 39, Testimony of Gary Miller before the Kemeny Commission (May 31, 1979) at pages 57-58, 59, and 63.

Item 67, Hart Commission Interview of J. Herbein (August 21, 1979) at page 19.

Item 70, Hart Commission Interview of I. Porter (August 22, 1979) at page 12-14.

Item 72, Hart Commission Interview of G. Kunder (August 22, 1979) at pages 25-27.

Item 77, NRC Interview of J. Logan (September 12, 1979) at pages 14-15.

Item 83, NRC Interview of Gary Miller (September 20, 1979) at pages 31-32.

Item 79, NRC Deposition of J. Higgins (September 13, 1979) at pages 49-51.

Item 87, NRC Deposition of L. Rogers (October 11, 1979) at pages 47-48.

Item 90, NRC Deposition of D. Neely (October 12, 1979) at pages 16-17.

Item 93, Hart Commission Interview of Gary Miller (October 18, 1979) at pages 28-29.

Item 95, NRC Deposition of G. Miller (October 29, 1979) at pages 18-22.

Item 97, NRC Deposition of I. Porter (October 30, 1979) at pages 24-27.

Item 100, Hart Commission Interview of L. Rogers (November 5, 1979) at pages 49-50.

Item 118, NRC Interview of G. Kunder (September 4, 1980) at pages 53-54.

Item 122, NRC Interview of G. Miller (September 5, 1980) at pages 111-123.

Item 129, NRC Interview of J. Higgins (October 7, 1980) at pages 22-24.

Item 130, NRC Interview of D. Neely (October 7, 1980) at pages 8-9.

Item 136, NRC Deposition of J. Logan (October 16, 1980) at pages 52-55.

The following items in Part C of Joint Mailgram Exhibit 1 refer to key individuals who were on site on March 28, 1979, were aware of the pressure spike, but did not recognize its significance.

Item 1, Met Ed Chronology dictated by H. McGovern (March 29, 1979) at page 2.

Item 11, Met Ed Interview of J. Flint (April 20, 1979) at page 4.

Item 13, NRC Interview of D. Berry (April 21, 1979) at pages 17-18.

Item 14, NRC Interview of J. Flint (April 23, 1979) at page 6.

Item 15, NRC Interview of W. Zewe (April 23, 1979) at pages 32-48.

Item 21, Met Ed Interview of H. McGovern (May 4, 1979) at page 8.

Item 28, Accident at Three Mile Island: Oversight Hearings Before a Task Force of the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs, 96th Cong., 1st Session, Part 1 at pages 143-147 (1979) (Testimony of E. Frederick and C. Faust)

Item 31, NRC Interview of W. Marshall (May 17, 1979) at pages 22-24.

Item 33, NRC Interview of M. Ross (May 19, 1979) at pages 3-5.

Item 56, NRC Interview of J. Flint (July 2, 1979) at pages 12-13.

Item 60, NRC Interview of C. Mell (July 14, 1979) at pages 6-7.

Item 69, Hart Commission Interview of C. Mell (August 22, 1979) at page 17.

Item 71, Hart Commission Interview of E. Frederick (August 22, 1979) at pages 11-13.

Item 75, NRC Interview of Faust, Frederick, Scheimann, and Zewe (September 11, 1979) at pages 11-12 and 257-265.

Item 81, NRC Deposition of M. Ross (September 18, 1979) at pages 42-44.

Item 92, Hart Commission Interview of W. Marshall (October 17, 1979) at pages 11-13.

Item 96, NRC Deposition of M. Ross (October 30, 1979) at pages 8-9.

Item 111, NRC Interview of H. McGovern (September 3, 1980) at pages 3-7.

Item 116, NRC Interview of L. Wright (September 3, 1980) at pages 7-13.

Item 119, NRC Interview of W. Zewe (September 4, 1980) at pages 40-44.

Item 124, NRC Interview of M. Ross (September 24, 1980) at pages 47-51.

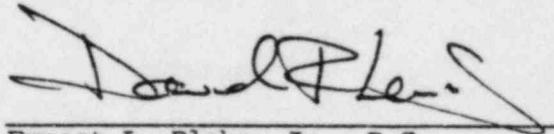
Item 132, NRC Deposition of E. Frederick (October 9, 1980) at pages 5-6.

Item 133, NRC Deposition of C. Faust (October 9, 1980) at pages 6-8.

Item 137, NRC Deposition of A. Miller (October 28, 1980) at pages 4-5.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

A handwritten signature in black ink, appearing to read "Ernest L. Blake, Jr.", written over a horizontal line.

Ernest L. Blake, Jr., P.C.
David R. Lewis

Counsel for Licensee

Dated: November 28, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear) Docket No. 50-289 SP
Station, Unit No. 1) (Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

In TMIA's Response to Licensee's Second Set of Interrogatories (September 5, 1984, at 7-8), TMIA asserted that Gary Miller may have associated the pressure spike with a hydrogen combustion. TMIA based this assertion in part on statements that an instruction not to operate electrical equipment may have been given on March 28, 1979. Licensee expects this subject to be addressed in findings. To address this assertion, Licensee intends to refer in proposed findings to the following items in Part C of Joint Mailgram Exhibit 1:

Item 70, Hart Commission Interview of I. Porter (August 22, 1979) at pages 19-20.

Item 71, Hart Commission Interview of E. Frederick (August 22, 1979) at pages 9-10.

Item 72, Hart Commission Interview of G. Kunder (August 22, 1979) at pages 24-25.

Item 95, NRD Deposition of G. Miller (October 29, 1979) at pages 22-30.

*Licensee also intends to refer to certain interviews or depositions of Messrs. Chwastyk, Mehler and Illjes, which Licensee understands may be cited freely in proposed findings.

Item 118, NRC Interview of G. Kunder (September 4, 1980) at pages 51-55.

Item 119, NRC Interview of W. Zewe (September 4, 1980) at pages 46-48.

Item 124, NRC Interview of M. Ross (September 4, 1980) at pages 66-67.

Item 125, NRC Interview of I. Porter (September 24, 1980) at page 14.

Item 129, NRC Interview of J. Higgins (October 7, 1980) at pages 29-30.

Item 130, NRC Interview of D. Neely (October 7, 1980) at pages 9-10.

Item 132, NRC Deposition of E. Frederick (October 9, 1980) at pages 8-9.

Item 133, NRC Deposition of C. Faust (October 9, 1980) at pages 16-18.

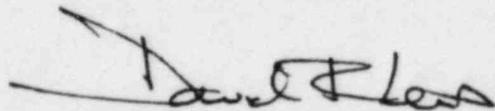
Item 135, NRC Deposition of W. Conaway (October 9, 1980) at pages 4-6.

Item 136, NRC Deposition of J. Logan (October 16, 1980) at pages 47-49.

Item 137, NRC Deposition of A. Miller (October 28, 1980) at pages 12-14.

Respectfully submitted,

SHAW, PITIMAN, POTTS & TROWBRIDGE



Ernest L. Blake, Jr., P.C.
David R. Lewis

Counsel for Licensee

Dated: November 28, 1984

November 29, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

METROPOLITAN EDISON COMPANY)

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

Docket No. 50-289 SP
(Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

During direct and cross-examination of Theodore Illjes, Mr. Illjes indicated he has little or no present recollection of the basis for certain prior statements at issue in this proceeding. Accordingly, in order to address Mr. Illjes' prior statements, Licensee intends to refer in proposed findings to the following items in Part C of the Joint Mailgram Exhibit 1.

Item 31, NRC Interview of Walter Marshall (May 17, 1979) at page 24.

Item 47, NRC Interview of R. Lentz (June 1, 1979) at pages 6-7, 9, and 15.

Item 49, NRC Interview of J. Moore (June 11, 1979) at pages 12-13.

Item 60, NRC Interview of C. Mell (July 14, 1979) at pages 6-7, 9-13.

Item 62, NUREG 0600 at I-4-49 to I-4-51.

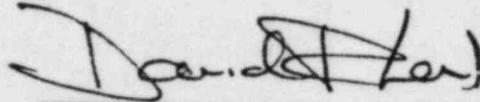
Item 69, Hart Commission Interview of C. Mell (August 22, 1979) at pages 17-19.

Item 104, SIG Interview Memo of W. Lowe (December 4, 1979)

Item 107, Memorandum from Rogovin/Frampton to Chairman Ahearne
(March 4, 1980) at pages 52-62.

Respectfully submitted

SHAW, PITTMAN, POTTS & TROWBRIDGE



David R. Lewis

Counsel for Licensee

Dated: November 29, 1984

November 29, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	
)	
(Three Mile Island Nuclear)	Docket No. 50-289 SP
Station, Unit No. 1))	(Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

During cross-examination and redirect, Mr. Chwastyk was asked about his conversations on March 28th concerning his appreciation of the pressure spike. On this point, in addition to the interviews and depositions of Brian Mehler and Theodore Illjes, Licensee intends to refer in proposed findings to the following items in Joint Mailgram Exhibit 1C.

Item 60, NRC Interview of C. Mell (July 14, 1979) at pages 11-12.

Item 83, NRC Interview of G. Miller (September 20, 1979) at page 31.

Item 90, NRC Deposition of D. Neely (October 12, 1979) at pages 16-17.

Item 95, NRC Deposition of G. Miller (October 29, 1979) at pages 22, 25.

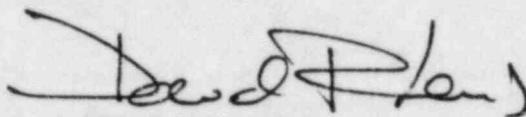
Item 106, NUREG/CR-1250: Report of the Special Inquiry Group (January, 1980) at page 906.

Item 122, NRC Interview of G. Miller (September 5, 1980) at page 122.

Item 130, NRC Interview of D. Neely (October 7, 1980) at
pages 8-17.

Respectfully submitted,

SHAW, PITIMAN, POTTS & TROWBRIDGE



David R. Lewis

Counsel for Licensee

Dated: November 29, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289
)	(Restart Remand
(Three Mile Island Nuclear)	on Management)
Station, Unit No. 1))	

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

During cross-examination of Messrs. William Lowe and George Kunder, TMIA referred to a meeting held at TMI at about 3:30 on March 29, 1979, in which hydrogen was purportedly discussed. Licensee expects this subject to be addressed in findings. Licensee intends to refer in proposed findings to the following items in Part C of Joint Mailgram Exhibit 1.

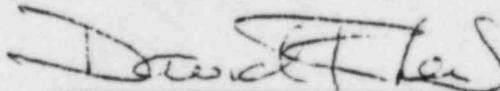
Item 50, NRC Interview of J. Abramovici (June 11, 1979) at pages 12-16.

Item 80, NRC Deposition of G. Kunder (September 18, 1979) at pages 72-89.

Item 118, NRC Interview of G. Kunder (September 4, 1980) at pages 52-55.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



Ernest L. Blake, Jr., P.C.
David R. Lewis

Counsel for Licensee

Dated: December 5, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	
)	
(Three Mile Island Nuclear)	Docket No. 50-289 SP
Station, Unit No. 1))	(Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

During discovery, TMIA has suggested that knowledge or appreciation of incore thermocouple readings on the 28th is relevant to appreciation of the pressure spike. Licensee anticipates that TMIA will address incore thermocouples in proposed findings. In such event, Licensee intends to refer in reply findings to the following items of Part C of Joint Mailgram Exhibit 1.

- Item 10, Statement by G. Miller et al. (April, 1979) at pages 15-16.
- Item 15, NRC Interview of W. Zewe (April 23, 1979) at pages 61-62.
- Item 18, NRC Interview of G. Kunder (April 25, 1979) at pages 49-50.
- Item 23, NRC Interview of G. Miller (May 7, 1979) at pages 51-52.
- Item 33, NRC Interview of M. Ross (May 19, 1979) at page 42.
- Item 34, NRC Interview of I. Porter (May 21, 1979) at pages 13-20.
- Item 52, NRC Interview of T. Wright (June 15, 1979) at pages 7-19, 24-29, and 34-37.
- Item 53, NRC Interview of N. Bennett (June 19, 1979) at pages 4-19.
- Item 54, NRC Interview of W. Yeager (June 20, 1979) at pages 9-20, 33-36.
- Item 56, NRC Interview of J. Flint (July 2, 1979) at pages 34-39.
- Item 57, NRC Interview of I. Porter (July 2, 1979) at pages 5-13.
- Item 59, NRC Interview of G. Kunder (July 11, 1979) at pages 12-14, 24-25.

Item 75, NRC Interview of Faust, Frederick, Scheimann, and Zewe (Sep. 11, 1979) at pages 265-267.

Item 77, NRC Interview of J. Logan (Sep. 12, 1979) at pages 13-14.

Item 81, NRC Deposition of M. Ross (Sep. 18, 1979) at pages 22-26.

Item 82, NRC Deposition of J. Herbein (Sep. 19, 1979) at pages 17-18.

Item 83, NRC Interview of G. Miller (Sep. 20, 1979) at pages 14-17.

Item 87, NRC Deposition of L. Rogers (Oct. 11, 1979) at pages 29-30, 53-54.

Item 91, Hart Comm. Interview of J. Gilbert (Oct. 16, 1979) at pages 2-16.

Item 92, Hart Comm. Interview of W. Marshall (Oct. 17, 1979) at page 4.

Item 95, NRC Deposition of G. Miller (Oct. 29, 1979) at pages 3-12.

Item 97, NRC Deposition of I. Porter (Oct. 30, 1979) at pages 4-24.

Item 100, Hart Comm. Interview of L. Rogers (Nov. 5, 1979) at pages 30-34.

Item 110, NRC Interview of L. Rogers (Sep. 2, 1980) at pages 24-27.

Item 112, NRC Interview of J. Gilbert (Sep. 3, 1980) at pages 2-31.

Item 118, NRC Interview of G. Kunder (Sep. 4, 1980) at pages 25-29.

Item 119, NRC Interview of W. Zewe (Sep. 4, 1980) at pages 30-33.

Item 122, NRC Interview of G. Miller (Sep. 5, 1980) at pages 37-38, 51-53, and 59-80.

Item 124, NRC Interview of M. ~~Blake~~ (Sep. 24, 1980) at pages 39-47.

Item 125, NRC Interview of I. Porter (Sep. 24, 1980, at pages 4-7, 15-16.

Item 136, NRC Deposition of J. Logan (Oct. 16, 1980) at pages 18-22.

Respectfully submitted

SHAW, PITTMAN, POTTS & TROWBRIDGE



Ernest L. Blake, Jr., P.C.
David R. Lewis

Counsel for Licensee

Dated: December 5, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

METROPOLITAN EDISON COMPANY)

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

Docket No. 50-289 SP
(Restart-Management Remand)

NOTIFICATION BY LICENSEE OF INTENDED
JOINT MAILGRAM EXHIBIT 1 REFERENCES

In proposed findings, Licensee intends to refer to the following items in Part C of Joint Mailgram Exhibit 1. With respect to Mr. Dieckamp's actions and beliefs after the Mailgram, these items have independent legal significance.

Item 62, NUREG-0600 (July, 1979) I - 4-47 to I - 4-51.

Item 106, NUREG/CR-1250: Report of the Special Inquiry Group (Jan. 1980) at pages 42-43, 902-911.

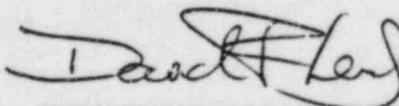
Item 107, Memorandum from Rogovin/Frampton to Chairman Ahearne (March 4, 1980) at pages 1-6, 43-62.

Item 108, Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works "Report to the U. S. Senate: Nuclear Accident and Recovery at Three Mile Island" (June 1980) at pages 13-18, 138-141.

Item 142, NUREG-0760 (Jan. 1981) at pages 22-31.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



Ernest L. Blake, Jr., P.C.
David R. Lewis

Counsel for Licensee

Dated: December 5, 1984

JUDGE SMITH: Okay. They are bound in.

(Whereupon, at 4:59 p.m., the hearing adjourned,
to reconvene at 10:00 a.m., Tuesday, December 11, 1984.)

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