

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of:)
)
EVIDENTIARY HEARING)
)
PUBLIC SERVICE COMPANY OF)
)
NEW HAMPSHIRE, et al)
)
(SEABROOK STATION, UNITS 1 AND 2))

DOCKET: 50-443-OL
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OFFSITE EMERGENCY
PLANNING

Pages: 11225 through 11352
Place: Concord, New Hampshire
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1 UNITED STATES NUCLEAR REGULATORY COMMISSION
2 ATOMIC SAFETY AND LICENSING BOARD

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3 In the Matter of:)
4)
5 PUBLIC SERVICE COMPANY OF) Docket Nos.
NEW HAMPSHIRE, et al.,) 50-443-OL
) 50-444-OL
6) OFF-SITE EMERGENCY
(SEABROOK STATION, UNITS 1 AND 2)) PLANNING
7)
8 EVIDENTIARY HEARING

9
10 Monday,
May 16, 1988

11 Room 210
12 Legislative Office Building
Concord, New Hampshire

13 The above-entitled matter came on for hearing,
14 pursuant to notice, at 1:33 p.m.

15 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
Atomic Safety and Licensing Board
16 U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

17 JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
18 U. S. Nuclear Regulatory Commission
19 Washington, D.C. 20555

20 JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
21 U. S. Nuclear Regulatory Commission
22 Washington, D.C. 20555

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(No Appearances)

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
<u>Panel:</u>					
ROBERT GOBLE					
ROBERT ECKERT					
VICTOR EVDOKIMOFF					
by Mr. Lewald					11290

P R O C E E D I N G S

T1 1
2 JUDGE SMITH: Is there preliminary business before we
3 return to the panel?

4 MR. OLESKEY: I have some questions, Judge Smith,
5 turning on some discussions that we'd had last week, but let me
6 turn initially to something that troubled me upon reviewing the
7 transcript of our telephone hearing of May 10th, and that was
8 the thrust of the comments that you made on behalf of the Board
9 about Mr. Thomas.

10 I've looked back and read the comments and thought
11 about what was being said, especially in light of Mr. Backus's
12 comments at the time.

13 I am concerned that my own reading of the earlier
14 testimony by Mr. Thomas, together with what else I know, would
15 not appear to support the comments that you made, especially at
16 Page 11146 of the transcript.

17 JUDGE SMITH: Would you give me that citation again?

18 MR. OLESKEY: Yes, 11146.

19 For example, and this may be in part a difference of
20 how people interpret a record, but I did not feel that it took
21 belabored cross-examination or hard work to establish at any
22 time from October to November to January that the NRC and FEMA
23 were in disagreement on the RAC and otherwise with respect to
24 the position on the beach population. I feel that had been
25 clear since 1985, the date of Mr. Thomas's memorandum to the

1 RAC members.

2 I also don't feel that Mr. Thomas made any secret of
3 the fact that there were differences between the view that FEMA
4 held, at least until recently, and the view that the NRC
5 representatives to the RAC expressed.

6 So where it's indicated in the transcript that it's
7 the Board's view that Mr. Thomas said he did not believe there
8 was any difference between his account of the July 30 meeting
9 and the account represented by Dr. Bores in the memorandum,
10 that would not be consistent with my reading of that situation.

11 I also feel --

12 JUDGE SMITH: Well, explain that.

13 This is one of the reasons why we would like to have
14 the people here, so that we can understand just what has
15 happened here.

16 MR. OLESKEY: Mr. Thomas testified at the -- what was
17 described, I think, as the Board-supervised deposition in
18 January here, that there were differences between, as I recall
19 it, not only his position, but other members of the RAC and
20 what was described as the majority position in the RAC, and I
21 think we went into some sufficient detail on that with all of
22 us asking questions.

23 Now, the Bores memorandum and the Lazarus memorandum
24 were not part of the record, but Mr. Thomas's testimony and Mr.
25 Bores's testimony in January is. Mr. Thomas also testified at

1 that time, as I recall, that he and Mr. Flynn had checked with
2 all the other members of the RAC as to whether or not there was
3 a vote, or a poll, or whatever it was that would constitute a
4 difference in the description between what Mr. Bores may recall
5 and what Mr. Thomas and others may recall back in July of '87.

6 And as I understood his testimony, and I think we may
7 have also covered this at his deposition, what he and Mr. Flynn
8 were able to learn in their questioning of other RAC members
9 prior to the January meeting, although it was apparently
10 reviewed again at the January RAC meeting, was that the other
11 members not from the NRC or FEMA also didn't have any
12 recollection of a vote or a poll.

13 Given all those circumstances, I'm concerned as to
14 why the Board, if my reading is reasonable and responsible,
15 would conclude that Mr. Thomas may have candor and
16 forthrightness problems, which I think were the terms used, if
17 there really is a major difference. I'm not sure there is,
18 but if there is one, it's equally plausible that the candor and
19 lack of forthrightness could be on the part of those who are
20 proffering a different interpretation.

21 So I'm concerned that the Board, as Mr. Backus argued
22 in the telephone hearing, seems to have jumped on facts that I
23 think are fairly read differently to a conclusion that Mr.
24 Thomas is on the hot seat; that his candor is in doubt and that
25 he should strongly consider getting a lawyer in coming here.

1 And I hope the Board will reconsider, if I have
2 accurately reflected the views that I think you intended to
3 convey last Wednesday, or Tuesday, in the hearing on the 10th,
4 reconsider its comments about Mr. Thomas, because I have
5 consciously tried to think it through myself and I can't come
6 out that way on the facts that are known to me, although I
7 think from the depositions which you don't have, I undoubtedly
8 have more information than the Board does.

9 JUDGE SMITH: Right.

10 We made it clear that we are aware that there is no
11 evidentiary support for -- there is no evidentiary record with
12 respect to Dr. Bores's and Mr. Lazarus's views of what
13 happened. We know that. That's exactly why we have required,
14 one reason why we have required their attendance here. We want
15 a complete record.

16 We also believe that it was only fair for Mr. Thomas
17 to confront people who we believe have indicated a large
18 different set of facts than we think Mr. Thomas testified to.

19 I've heard allusions to -- you said that you don't
20 see any difference, Mr. Thomas didn't see any difference, and
21 we see a big difference. We see a 180 degrees difference and
22 we just think it should be explored under oath where all the
23 parties can confront the difference of opinion, if they wish
24 to, with respect to Mr. Thomas and his right to have an
25 attorney. I don't think you will find in there he was strongly

1 urged to have one. We saw that he is running down the road
2 there where it may very well be that there will be witnesses
3 taking the stand here, under oath, testify to facts that he
4 disagrees with. And we believe that if he wishes to have an
5 attorney represent him on those issues, that's his right.

6 Now it seem to me we should be able to point out an
7 aspect of NRC practice which we think might be helpful to Mr.
8 Thomas without you or the media or anybody else picking that up
9 and running away with it, and taking it out of context.

10 We mean exactly what we said; that he should be
11 reminded that that is his right.

12 We did state that we had large concerns about Mr.
13 Thomas's forthrightness and candor. This is true. And whether
14 those concerns will survive or not, I don't know. We'll just
15 see. But that is exactly why we are doing it.

16 We could have, you know, taken the option of saying
17 nothing and allowing our concerns about his forthrightness and
18 candor appear for the first time in the initial decision. We
19 don't think that would be fair to you, or to Mr. Thomas, or to
20 anyone else.

21 I appreciate your concern about it. I don't think
22 that you are probably accustomed to having tribunals make
23 statements like that until after it's all over, until it's too
24 late. Well, in this instance, we announced them when we
25 thought timely so that whatever problems exist there can be

1 addressed.

2 MR. OLESKEY: Just one --

3 JUDGE SMITH: Let me go further. I infer that you do
4 not object to our expression of doubts about the revised FEMA
5 position. You probably think we are right on there, aren't we?

6 MR. OLESKEY: Insofar as I understand the Board's
7 views there, obviously the Board's views track to some extent
8 the discovery and subpoenaed documentation that various of the
9 Intervenors had filed, yes.

10 JUDGE SMITH: Well similarly, we have formed no
11 lasting opinion on that. We just simply think that they are
12 insufficient. They were pointed out to us by the Intervenors
13 to inquire further.

14 MR. OLESKEY: My concern in part was this, and if I
15 suggested now that Mr. Thomas said or that I believe there was
16 no difference between the two accounts, that wasn't what I was
17 trying to say. I was trying to indicate I don't believe the
18 difference was as large as your comments of last week reflect.

19 JUDGE SMITH: Would you help us understand that?

20 MR. OLESKEY: Surely.

21 JUDGE SMITH: We see a big difference. And if you
22 could help us understand that in the course of the evidence
23 unfolding, you would doing a service to the Board.

24 MR. OLESKEY: Of course. The only other point I
25 wanted to make was this.

1 By suggesting that there were doubts about Mr.
2 Thomas's candor and forthrightness on the record known to me,
3 and by suggesting that he might want to consider an attorney,
4 but by not making similar comments about Mr. Bores and Mr.
5 Lazarus, there was a potential, however inadvertent, in light
6 of what I feel had been the things that happened to Mr. Thomas
7 as a witness here, that he could be further intimidated, and
8 that concerned me.

9 JUDGE SMITH: Well, Dr. Bores and Mr. Lazarus haven't
10 testified yet.

11 MR. OLESKEY: No, but the Board --

12 JUDGE SMITH: Mr. Bores has testified under oath as
13 to how he viewed the circumstances.

14 MR. OLESKEY: Yes.

15 JUDGE SMITH: And now we're entering a phase where
16 his testimony may or may not be contradicted. This is the
17 threshold where I think that -- I hesitate to dwell on that too
18 much, because the mere fact that we think that under the
19 circumstances that he should be reminded of his right to have
20 an attorney and it's talked about too much, it was stressed too
21 much conveys maybe more than we intend for it to convey.

22 But he is singularly among the witnesses, the one who
23 has testified as to a version of facts, under oath, as a
24 federal official testifying before us, and nobody else has.
25 And for that reason we believe that he should be informed that

1 not only does he have that right, but we will try to
2 accommodate legal counsel, and it is a question -- frankly, Mr.
3 Oleskey, I think it would have been unfair for us not to have
4 made it clear to Mr. Thomas that he is free to bring whatever
5 resources that legitimately can be brought into this hearing to
6 protect himself.

7 Now there again, I'm not saying there is a need to
8 protect himself where it's an early phase, and it just came to
9 the threshold of it.

10 MR. WEISS: Mr. Chairman.

11 JUDGE SMITH: Ms. Weiss.

12 MS. WEISS: In order that we might be prepared to
13 address the issues that are of concern to this Board, may I
14 just inquire? Other than the question of whether there was a
15 vote taken of the RAC members in July, at the July RAC meeting,
16 is there some other particular part of the facts as to which
17 Mr. Thomas testified that you perceive as being a conflict with
18 the Bores and Lazarus versions?

19 JUDGE SMITH: No, this is -- Mr. Turk.

20 MR. TURK: If I may, Mr. Oleskey is protesting the
21 fact that the Board has made comments already. Ms. Weiss is
22 seeking an amplification of comments, trying to get more detail
23 from the Board.

24 JUDGE SMITH: I guess she would --

25 MR. TURK: I don't understand this posture that they

1 are putting us all into.

2 JUDGE SMITH: Well, I guess Ms. Weiss would like to
3 know what concerns there are so that her examining can address
4 them.

5 I think that the parties are very, very capable of
6 demonstrating, based upon an adversarial process, where they
7 view differences of opinion to lie. The fact that we have made
8 a threshold determination that the record needs to be expanded
9 is traditional. It is -- in looking for an analogy, it is one
10 of the pre-evidentiary, prelitigative determinations that
11 judicial officers must make routinely.

12 For example, we see claims of privilege, and where
13 the confidential information might be adverse to the interest
14 of one or another party, it is our responsibility to look at
15 that and ignore it. We make our decision on the evidentiary
16 record, upon the entire record, and only on the record, and it
17 consists of reliable, probative, and substantial evidence.

18 If there is a particular point after this whole thing
19 is ventilated, and I expect it will be, that we think still
20 lingers, we may bring it to the attention of the parties so
21 that they could be addressed. I don't know.

22 MS. WEISS: You know, my only reason for asking is I
23 understand there to be some dispute about whether there was a
24 vote taken. I think that what will emerge after all the
25 testimony is that that's not as big a dispute as it may now

1 appear, and it's probably a matter of semantics.

2 But, you know, what I -- just seeking the Board's
3 clarification as to whether there is any other part of this
4 fact situation that is, in particular, of concern to you.

5 JUDGE SMITH: Well, Ms. Weiss, as an overview, as Mr.
6 Flynn asks us to look at, when the Intervenors asked the Board
7 to sanction and discipline Mr. Dignan, and to restrain him or
8 some thing, we declined to do that.

9 And then we said, since a suggestion has been made
10 that testimony has been produced at our hearing which might be
11 interesting to the United States Attorney, and the only reason
12 he'd be interested in that would be because of a criminal
13 matter, we thought it was our responsibility to go back over
14 Mr. Thomas's testimony and see if we agreed with that
15 suggestion.

16 And we said that we could find -- and I don't have
17 this before me, but we said we could find no basis to challenge
18 his integrity.

19 That is not the same as saying that we believed him.
20 We generally have to take testimony from people who we think
21 are absolutely people of character and integrity and yet have
22 to make a choice between differing opinions.

23 Now we want, based upon what apparently is fully
24 informed parties, with discovery and whatever they had, is to
25 have these differences addressed and ventilated.

1 MR. BACKUS: Mr. Chairman, if I could be heard on
2 this.

3 Our concern, of course, is that we've had many
4 witnesses that have appeared here more than once, but only one
5 witness has been advised that he ought to consider bringing a
6 lawyer. That's Mr. Thomas. And we're all aware from Mr.
7 Thomas' first voir dire that he himself is now a member of the
8 Bar in Massachusetts. And I think he knows his legal rights,
9 and I think the suggestion about a lawyer can only be taken by
10 him in one light.

11 My concern, Mr. Chairman, and I just got as I came in
12 here the transcript of our telephone conference on May 10th, is
13 that I believe you may have made that suggestion on the basis
14 of an inaccurate statement about what Mr. Thomas testified to.

15 JUDGE SMITH: Mr. Backus, let me say that I hope so.

16 MR. BACKUS: Well, if it may --

17 JUDGE SMITH: I hope so.

18 MR. BACKUS: I'd like to lay this out.

19 I'm concerned about the third full paragraph on Page
20 11146 that Attorney Oleskey was referring to, where in our
21 conference call you, Mr. Chairman, said, and I quote, "But we
22 are concerned that Mr. Thomas when he testified the third time
23 about the RAC meeting in early January, in answer to my
24 question, said he did not believe that there was any difference
25 between his account of the July 30 RAC meeting and the account

1 represented by Dr. Bores in the Bores memorandum to Mr. Turk,
2 which Mr. Thomas was familiar with."

3 My concern about that is that on January 13th, when
4 Mr. Thomas was testifying, he did not say there was no
5 differences between his memory and that reflected in the
6 Board's memorandum. He said there was differences, and he
7 understood that, but he found them to be not significant.

8 JUDGE SMITH: All right.

9 MR. BACKUS: And I would refer --

10 JUDGE SMITH: I'd agree. That comports with my
11 memory too. I agree.

12 MR. BACKUS: And I would refer, just so the record
13 will be complete, to Pages 8897 and 8898 of the transcript of
14 January 13th where it was your questioning, Your Honor, Judge
15 Smith to Mr. Thomas where he said there were differences. He
16 did not think they were significant.

17 JUDGE SMITH: All right.

18 MR. BACKUS: So the transcript indicates that Mr.
19 Thomas was being challenged on testimony that he in fact did
20 not give.

21 JUDGE SMITH: All right. Mr. Backus, you may be
22 assured as this hearing unfolds that as I go back over the
23 record and I try to paraphrase it and characterize it, I will
24 make many, many errors, and I expect that you will be ready to
25 correct me on it. I think that your memory of it is quite

1 correct, but I think there is a difference itself without
2 significance when we're talking about what we're talking about
3 here. We're talking about a very important matter as far as I
4 can see.

5 MR. BACKUS: Well, if the difference -- if the
6 problem is Mr. Thomas' perception that the differences were not
7 significant, and if the Board believes that the differences are
8 significant, the differences that I am aware of are the ones
9 that Attorney Weiss was referring to; whether or not there was
10 a vote at the RAC meeting on July 30th, and to what extent
11 those that were not in agreement with FEMA were in active
12 disagreement as opposed to merely a nonconcurrence.

13 Now, if those are the items, and if in fact they are
14 important, and I must say from my point of view I don't think
15 they are important, but if in fact they are important, it seems
16 to me we should be having not just Mr. Bores and Mr. Lazarus,
17 but everybody that attended that RAC meeting to testify.

18 JUDGE SMITH: Okay. Now anything further?

E1 19 (Continued on next page.)
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1 MR. FLYNN: Your Honor --

2 JUDGE SMITH: Let's hear Mr. Oleskey.

3 MR. OLESKEY: I was going to make a different point,
4 Judge, if I may.

5 JUDGE SMITH: All right.

6 MR. OLESKEY: Because of the need to plan the week
7 I'd like to inquire of Mr. Flynn, for you, whether in fact
8 we're on schedule with the various FEMA witnesses for later in
9 this week?

10 MR. FLYNN: That's what I was about to take up, Your
11 Honor.

12 JUDGE SMITH: Mr. Flynn?

13 MR. FLYNN: There are three subjects that I need to
14 go into; two of them have to do with the scheduling matters
15 that Mr. Oleskey has just raised, and the third one goes back
16 to his original point, and when I get to that I would like to
17 suggest that the matters which have drawn so much attention may
18 have assumed an unnatural importance.

19 My first point goes to the availability of Mr.
20 Thomas. At the suggestion of the Board, and indeed,
21 independent of the suggestion of the Board my office advised
22 Mr. Thomas of his right to employ counsel.

23 JUDGE SMITH: This is before the Board made the
24 comment?

25 MR. FLYNN: Indeed, before we even had the telephone

1 conference we had that discussion with Mr. Thomas. I might
2 add, since the conference call we've also had a similar
3 discussion with Mr. Cumming. But to get back to Mr. Thomas,
4 the matter is still unresolved. We have not gotten a definite
5 or final response from Mr. Thomas as to what course he chooses
6 to take with respect to obtaining separate counsel.

7 The particular matter that remains unresolved is
8 whether he should have to bear that cost himself or whether
9 FEMA should pay the cost of him being separately represented.
10 I think that matter is close to resolution, but as I speak at
11 this moment it has not been resolved, so I am unable to report
12 whether or not he will have separate counsel. That has a
13 direct bearing on whether he will appear this week or not.

14 He has not indicated, although I have asked, whether
15 it will be necessary for a subpoena to be issued. What I would
16 like to suggest to the Board is that, if you can bear delay of
17 another day or so I think the matter of whether he will have
18 counsel will be resolved, and at that time we'll know whether
19 he will appear voluntarily or not.

20 JUDGE SMITH: The -- we indicated that we would
21 require his attendance. Again, that is only about half of it.
22 The other half is the part that is being argued and that is,
23 anticipating that there will be testimony that will bear upon
24 his credibility, he's invited.

25 It's not -- there's two set faces to the coin, same

1 coin. We would require his attendance, in part to satisfy the
2 motion to complete his deposition. And second is, he's
3 invited, in that there will be other people testifying
4 concerning events as to which he may have a different opinion.
5 So it's -- that part I think is being overlooked and -- there
6 again, the idea that he's invited or that we feel there's a
7 need to invite him it can be brought out of context. There are
8 differences and we think that the people involved, quite
9 naturally, just may wish to address them.

10 MR. FLYNN: You make a good point, Your Honor, and I
11 will pass that on to Mr. Thomas.

12 JUDGE SMITH: Anybody else want to be heard on this
13 before we proceed? Do you want to call the panel? The panel?

14 MR. FLYNN: I have two more points.

15 JUDGE SMITH: Oh, I'm sorry. I thought you were --

16 MR. FLYNN: No. No, I'm not quite done. The second
17 point goes to the availability of Mr. Peterson, Grant Peterson
18 and Mr. Dave McLaughlin. In the conference call we had a brief
19 colloquy about whether they would appear without the necessity
20 of subpoenas, and I indicated at that time that I assumed that
21 was the case and the way it was left was that I would get back
22 to you if there were any problem with that.

23 I'm still not entirely certain as to whether
24 subpoenas will be necessary. I don't mean to suggest that
25 there is a major problem. There are a couple of things,

1 however, that are unresolved in one sense or another.

2 The first goes to the scope of the examination; and
3 the second goes to the date or dates on which they would
4 appear.

5 I think the matter of scope has been resolved. I
6 have reviewed the transcript of May 10th and I am satisfied
7 that the direction that was given by the Board is clear.

8 I've also, as the Board suggested, had conversations
9 with the Intervenors and have come to an understanding of what
10 they expect to ask, and just for the sake of the clarity of the
11 record I'd like to go through those very briefly.

12 The first topic that they will be asked about,
13 obviously, is the meeting of January 19th, 1988.

14 The second topic that they will be asked about is the
15 reasons why the FEMA position changed between September '87 and
16 March of '88.

17 Now, the third point is the sticking point and that
18 has to do with the extent to which they will be asked to defend
19 technical positions. And as I have pointed out before and will
20 continue to insist, they are not technical people; they are not
21 experts.

22 It is fair and they will expect to be asked to
23 explain what they understood when they made their decisions and
24 what their decisions were based on.

25 It is my understanding that what I have just outlined

1 defines the scope of their examination.

2 The second matter that was unresolved had to do with
3 when they would appear. I had asked and was denied a request
4 that they not appear until after the exercise of the offsite
5 plans for the Seabrook plant. I'm not asking to revisit that
6 decision.

7 However, there are some things that I wish to bring
8 to the Board's attention. The radiological emergency
9 preparedness program for which Mr. Peterson and Mr. McLaughlin
10 are responsible is one of eight programs that they are
11 responsible for. They have broad responsibilities, civil
12 defense, disaster relief ^{are} ~~or~~ a couple of the other programs for
13 which they are responsible.

14 It is not possible for them to instantaneously clear
15 their schedules. In addition, they need time to prepare for
16 their testimony.

17 There was another matter which bears on the
18 scheduling and that is that Mr. Peterson's son is graduating, I
19 believe, from college in the week following Memorial Day. He
20 has scheduled some time to go back to Seattle to be with his
21 family and attend his son's graduation. He will be back in
22 FEMA on June 6th, allowing a week to prepare; that would make
23 him available on June 13th.

24 So I would ask that the Board accommodate him by
25 arranging his appearance no earlier than June 13th.

1 And I -- Mr. McLaughlin has a schedule that is
2 similarly busy, although the matter of attending a graduation
3 does not enter into his schedule. I would assume that the
4 Board and the parties would wish them to appear either
5 simultaneously or one right after the other. And the same
6 people who would be preparing Mr. Peterson are also involved in
7 preparing Mr. McLaughlin, so that for those reasons I would
8 also ask that Mr. McLaughlin's appearance be scheduled no
9 sooner than June 13th.

10 The other thing that I would ask is that, whenever
11 they are scheduled to appear that they be given a date certain
12 to appear, so that I don't have the senior management of FEMA
13 sitting in the back of the hearing room waiting for days on end
14 to appear and be examined.

15 The third point that I wanted to go into has to do
16 with putting the matters that were discussed earlier today in
17 perspective.

18 The importance of the RAC discussions in July of
19 1987, in January of 1988, and to an extent in February of '88,
20 it seems to me, have been perhaps taken out of context or blown
21 out of proportion. And I say that because it's clear that -- I
22 had a clear view of why things went the way they did, and I
23 think perhaps that I have not communicated that to the parties
24 or the Board. And I'm offering my perspective in an effort to
25 be helpful, not to challenge people's views, but to bring

1 perhaps to -- bring perhaps a sense of perspective to the
2 matter.

3 The discussion -- the thread of discussion that ran
4 through the several meetings, and I think it's clear from the
5 transcript of this hearing on January 13th and also from the
6 transcript of the RAC meeting in February of 1988 is that the
7 RAC was stuck on what a range of protective actions -- what the
8 requirement for a range of protective actions required.

9 And the polls of opinion in that discussion really
10 came down to something rather simple; and I would suggest
11 semantical. and that is, the term "range" of protective actions
12 implies that there be more than one. It was a matter of
13 defining range of protective actions.

14 Mr. Thomas advocated the view that were there only a
15 single protective action available, namely, evacuation, that
16 didn't satisfy the requirement or the definition of range of
17 protective actions. And for that reason he took the position
18 that planning elements J-9 and J-10-M had not been met.

19 The other point of view was represented by Dr. Bores,
20 and I think this came out on January 13th, although certainly
21 Dr. Bores was not the only advocate of that position. The
22 position that he took was that -- that the view advocated by
23 Mr. Thomas was too narrow; that when you looked at the plans
24 for the emergency planning zone as a whole there were several
25 protective actions. And that in any case it was not required

1 by the NRC regulations or guidance that there be sheltering
2 available for every subelement of the population of the EPZ.

3 Now, when FEMA filed its testimony in September of
4 1987, we understood that the matter had not been brought to a
5 final resolution within the RAC. But that was not interpreted
6 to mean that the RAC supported the view that we filed.

7 The discussion really centered around the fact that
8 the -- the issue was so elementary that it was a matter of
9 definition or semantics as to what range of protective actions
10 meant that whichever way the RAC went, that FEMA was still free
11 to make its own choice about how to interpret that phrase.

12 You might look at it as a legal matter or as a policy
13 matter or as a matter of semantics. But that was the issue;
14 what did range of protective actions mean? And FEMA's
15 understanding or interpretation of that change between
16 September and March of 1988.

17 Now, there's another issue which is important and
18 that is --

19 MR. BACKUS: Well, excuse me, but it sounds an awful
20 lot to me, Joe, like you're testifying about what the RAC was
21 all about. And the Board has apparently taken the view that
22 what happened at the RAC meeting was extremely important, and
23 if that's so I'd rather hear from the people who were the
24 members and in attendance than your version of it.

25 MR. FLYNN: Well, I don't think I've offered anything

1 that isn't on the record except my representations as to what
2 FEMA understood, and you will hear from Mr. Peterson and Mr.
3 McLaughlin on that.

4 JUDGE SMITH: This is by way of opening statement
5 that you expect the evidence to support?

6 MR. FLYNN: Well, yes, Your Honor.

7 The -- what I started to say was that, there's
8 another issue which I think is important to keep in mind and
9 that is, that part of the internal debate within FEMA had to do
10 with what a finding of reasonable assurance meant; and we were
11 guided in that by reference to 44 CFR 350.5(a) and 350.5(b).

12 Now, the language about reasonable assurance appears
13 in 350.5(b), but the references to the NUREG-0654 analysis
14 appear in 350.5(a). And it was our interpretation that the
15 guidance of the RAC went to the applicability of NUREG-0654.

16 And whatever the conclusion that came out of that
17 discussion, that the matter of whether there was reasonable
18 assurance was a separate issue. This has been referred to
19 either in the testimony or in some of the pleadings as the two-
20 tiered approach.

21 And the reason I bring this up is that, when analyzed
22 in that way the deliberations of the RAC assume lesser
23 importance. The deliberations of the RAC were confined to
24 whether the elements of NUREG-0654 had been met or not met,
25 they did not go to whether there was an overall finding of

1 reasonable assurance. And I believe the transcript of the
2 February 1988 RAC meeting bear that out.

3 I would like to suggest that when analyzed in that
4 way the comments that are attributed to Mr. Thomas about the
5 differences with the RAC members or within the RAC were not
6 that important, make more sense.

7 The -- in summary what I'd like to say is that, it
8 seems to me that all of the parties and the Board as well have
9 now come very close to the position that all of this is a
10 matter of law or very close -- or if we haven't all reached
11 that position we've come very close.

12 And the reason has become quite evident over the
13 discussions of the last couple of weeks and that is, that the
14 ruling that the Board made back in November on the Sholly
15 testimony and reaffirmed recently, in fact on May 10th, has to
16 do with the dose consequence analysis and so on; that not being
17 encouraged or even permitted by the NRC regulations or
18 guidance.

et/2 19 (Continued on next page.)
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1 So the substance of the FEMA testimony really goes
2 to the question of what was meant by range of protective
3 actions. And as I suggested in the beginning of my remarks
4 that is largely a matter of definition; and while people can
5 differ on what the definition may be and because of the
6 importance of the overall issue of the licensing of the
7 Seabrook plant to all the parties to this proceeding, that
8 narrow issue has taken on a very large importance.

9 What I would like to suggest in closing that the
10 differences in perspective or understanding among the witnesses
11 or the potential witnesses be viewed with what I have said in
12 mind.

13 Thank you.

14 JUDGE SMITH: I'm reminded, just as an aside here,
15 I'm reminded that on May 10th when we sustained the motion to
16 not accept the testimony of Sholly-Beyea as argued by Mr.
17 Traficonte, he did not offer it as an exhibit; then I would
18 imagine that he wants to do that.

19 MR. OLESKEY: We will do so, Judge Smith.

20 JUDGE SMITH: All right.

21 Ms. Weiss?

22 MS. WEISS: I'd just like to respond to what I think
23 was Mr. Flynn's first point or maybe it was his second point
24 about what he represents to be limitations and the scope of the
25 questioning for Mr. Peterson and McLaughlin.

1 Mr. Flynn approached us for the first time as we
2 walked into this room and he asked me if we were going to ask
3 his witnesses the technical bases for the FEMA position,
4 because he said, they don't really know much about the
5 technical bases.

6 In response to that very specific question my answer
7 was, I'm going to ask him why FEMA changed its position, and if
8 that response is dependent in any way on technical grounds I'm
9 going to find out how much he knows or doesn't know about
10 those.

11 I was not asked and I never suggested that that is
12 all that I intend to question these witnesses about, nor did
13 Mr. Flynn ever indicate that he was going to come into this
14 hearing room and suggest to the Board that we had entered into
15 some agreement on limiting the scope of the questioning.

16 I want it absolutely clear, I was not asked that and
17 I would not agree to that; and right now I'm not even prepared
18 to say today what I would question Mr. Peterson about because I
19 will be preparing that as we go along. I just want that
20 absolutely clear.

21 MR. OLESKEY: I was in the same conversation, Your
22 Honor, and would have the same comments.

23 MR. FLYNN: Your Honor, I will accept Ms. Weiss'
24 characterization of our conversation. I offered what I thought
25 or what I characterized as my own understanding and I perceive

1 now that my understanding was narrower than it ought to have
2 been.

3 The problem that raises for me is, I'm not sure I
4 know what the issues are. When these people come into the
5 courtroom and they're examined I have no idea what an
6 appropriate objection might be. I have no idea where the
7 bounds of relevancy are. And in fairness I cannot ask them to
8 come into the courtroom under those circumstances.

9 JUDGE SMITH: Today, as you sit here today?

10 MR. FLYNN: Yes.

11 JUDGE SMITH: This is a new element that I hadn't --
12 this is something I have not quite appreciated.

13 MR. FLYNN: Well, I brought this up on May 10th and I
14 was asking the Board to indicate what it felt the limits of the
15 scope were and you did offer some guidance, and I folded that
16 into what I represented this morning. But what I'm hearing
17 right now is that, that's not very firm at all.

18 JUDGE SMITH: I just didn't hear that. You said that
19 they are not -- are you still concerned about the technical
20 bases for the -- their ability to be examined on the technical
21 bases for FEMA's position; is that your concern?

22 MR. FLYNN: Yes, that is my concern. And that comes
23 directly from Mr. Peterson and Mr. McLaughlin.

24 JUDGE SMITH: If they had no technical underpinnings
25 of their own or technical expertise and they relied upon their

1 staff. I don't know what you do with that. I mean, it would
2 not be novel, by any means, among federal administrators to
3 take the technical -- take the advice of their technical staff
4 in arriving at a discussion and understand varying levels of
5 it.

6 I don't think that we should be requested to say in
7 advance or even, is it our -- within the scope of this hearing
8 for us to determine in advance how much expertise they should
9 have. We just simply have no opinion on that whatever.

10 But I don't believe that they can be insulated from
11 examination on, to what extent they did bring their own
12 expertise into understanding the technical bases, and to what
13 extent they relied upon opinions or whatever.

14 I mean, they're going to be asked to explain how FEMA
15 moved from one position to the next; and if it goes into
16 technical bases they can either defend in whole or in part or
17 not at all, I don't know. But we don't have any advance
18 feeling as to what they should be required to do. I mean, they
19 are, as has been pointed out I believe, appointees of the
20 President of the United States, or Mr. Peterson is, confirmed
21 by the Senate; and it's the President and the Senate that
22 decides what their qualifications are and not this Board.

23 I would -- maybe I'm getting off into a digression,
24 but we have no preset idea as to what their technical command
25 of these issues should be.

1 MR. FLYNN: I appreciate that, Your Honor, I think
2 that's as complete an answer as you can provide me.

3 JUDGE SMITH: Anything further?

4 Mr. Turk?

5 MR. TURK: Yes, a few preliminary matters, Your
6 Honor.

7 I don't want to take much time in responding to Mr.
8 Flynn, I would simply note that, in my view, whatever may have
9 been the legal and policy discussions within FEMA, that's a
10 different matter from testimony that appears before you in
11 terms of accounting of fact. And I think we just have to wait
12 and see how the record unfolds as to factual matters before we
13 can properly get an understanding of what the facts are and how
14 significant those facts may bear upon the ultimate position.

15 I want to move on to a few procedural matters.

16 JUDGE SMITH: I do think, however, that it's
17 appropriate for Mr. Flynn to have some idea of what the scope
18 of the examination of his witnesses is.

19 MR. TURK: Oh, yes. I wasn't addressing that point.

20 JUDGE SMITH: Well, I meant, maybe I didn't
21 understand your point.

22 MR. TURK: Very briefly, I note that Mr. Flynn has
23 exhibited a gentlemanliness, as usual for him, in seeking to
24 calm the tensions that have been associated with the beach
25 shelter issue for Seabrook; and I'm merely asking that we all

1 keep an open mind as to how important any factual accounting
2 differences may be with respect to this issue.

3 JUDGE SMITH: Okay.

4 MR. TURK: I have a few procedural points I wanted to
5 ^{put}~~point~~ on the record. First, I've gone back to the people at
6 NRC who attended the January 1988 meeting with FEMA and I've
7 asked them if they have any notes taken at that meeting or
8 beforehand or afterwards and I do have one set of notes which
9 I'll distribute to the parties today.

10 Also, I want to note that I asked Mr. Oleskey this
11 morning whether he will be producing any documents to us, and
12 he asked me what documents did I have in mind. And I pointed
13 out that in our telephone conference call I had again asked for
14 the documents which Mass. AG had withheld under claim of
15 attorney work product dealing with the communications between
16 Mass. AG and Mr. Thomas.

17 Mr. Oleskey indicated that I would know his position
18 on that when he addressed the issue. So I don't know where he
19 stands, but I would like to ask that that be taken up this
20 afternoon.

21 JUDGE SMITH: Well, there's already an order out. I
22 mean, we gave an order on May 10 to produce those notes.

23 MR. OLESKEY: May I say this, Judge, I had to leave
24 the hearing on May 10th before this came up, so I didn't
25 address it -- the Board addressed it with Mr. Traficonte.

1 I am troubled by that order.

2 JUDGE SMITH: You're asking now -- your remarks are
3 now in the sense of a motion for reconsideration?

4 MR. OLESKEY: Yes, exactly. I'm troubled by that
5 order, principally because I've never before been asked to turn
6 over interview notes in connection -- that I made any or any of
7 my staff made in connection with litigation. And I think that
8 it's a signal precedent in this proceeding, and otherwise,
9 without a greater showing of anything that's been made to you
10 by way of argument.

11 Now, as I understand it, it's entirely possible that
12 Mr. Turk has notes of conversations he had with Mr. Thomas or
13 others at FEMA in connection with this evolving series of
14 positions. And I'm sure that Mr. Flynn has notes which might,
15 in my judgment, well confirm the views that Mr. Thomas has
16 given at his deposition, in addition to Mr. Thomas' own notes
17 which the Board had directed Mr. Flynn to provide, and which I
18 gather are not yet forthcoming.

19 So I see two things. I see an order that, in my own
20 experience, although I think not always in other proceedings is
21 unprecedented, but that is rare and unique, and which ought to
22 have more thought and consideration by way of substantiation of
23 what I feel has been made here.

24 And I also strongly have the view that if we're going
25 to turn over our notes for the stated reason that there should

1 be a [redacted] on Mr. Thomas' testimony when he appears that we're
2 entitled to those notes from Mr. Flynn or Mr. Turk.

3 So I don't know if we need --

4 JUDGE SMITH: Addressed to Mr. Thomas?

5 MR. OLESKEY: Yes. I don't know --

6 JUDGE SMITH: I can't see why we would make the order
7 with respect to you and the same reasoning would not apply to
8 them. I don't look at it as a quid pro quo.

9 MR. OLESKEY: No, I understand.

10 JUDGE SMITH: I look at it as being similar in nature
11 and the same order, would seem to me, to apply.

12 MR. OLESKEY: I would agree. And in fact, we had
13 requested during Mr. Thomas' depositions notes that he had that
14 reflected conversations with Mr. Flynn. And I would think that
15 if our conversations with him are of interest in this
16 connection, so are Mr. Flynn's with his -- with Mr. Thomas.

17 JUDGE SMITH: We have agreed to accept these notes
18 and eliminate the mental impressions of counsel from them upon
19 identification.

20 MR. OLESKEY: Yes. The final point I wanted to make
21 was, I thought perhaps that this whole issue, because to me it
22 is important, not necessarily because of my notes but because
23 of the precedent that it establishes in this proceeding. Maybe
24 we should hold the whole thing until it's clear when Mr. Thomas
25 is going to be here and then exchange all those notes, which

1 would give my brothers a chance to make a comparable search,
2 the one that we have done.

3 MR. TURK: Your Honor, I don't see how we can come to
4 a hearing expecting that we're going to have notes in front of
5 us, presented to us so we can conduct cross-examination, and
6 then find for the first time a protest saying, I'm going to
7 hold back until other parties produce the same kind of notes to
8 Mr. Oleskey.

9 JUDGE SMITH: No, that's not what he said.

10 MR. TURK: No, what he's asking is that he not be
11 compelled to produce his notes yet. He wants to be able to
12 wait until Mr. Thomas' appearance is scheduled, and only then
13 give us the notes at the last minute, and presumably even hold
14 off --

15 JUDGE SMITH: Is that what you said?

16 MR. OLESKEY: I'm certainly willing to agree that
17 we'll produce at any point, but I don't want to make a
18 unilateral production today, especially since I've asked the
19 Board to rethink its position of last week, until my brothers
20 have had a chance to make the same search.

21 JUDGE SMITH: Let's take the merits, do you object to
22 producing any notes you may have had with Mr. Thomas?

23 MR. FLYNN: Your Honor, I don't keep notes. The only
24 thing that I would --

25 JUDGE SMITH: Or your office or your agency?

1 MR. FLYNN: I don't know what there is. The only
2 thing that I would have would be some correspondence that --
3 well, Ms. Weiss asked me for a few documents this morning and
4 I've agreed to produce those. But other than those few
5 documents I can't think of anything that Mr. Oleskey is asking
6 for that hasn't already been produced.

7 JUDGE SMITH: Mr. Turk?

8 MR. TURK: Your Honor, Mr. Oleskey had made a
9 discovery request of us last November and in December I made
10 production; and at that time I gave him all the documents in
11 the staff's possession other than a small group which I
12 withheld either under attorney/client privilege, the bulk of
13 which were drafts of the staff's rebuttal testimony as it had
14 been conceived, in addition to a group of documents which I
15 withheld under attorney work product.

16 I assume what Mr. Oleskey is now saying is he wants
17 that latter group of documents produced to him.

18 JUDGE SMITH: Well, as they pertain to interviews
19 with Mr. Thomas?

20 MR. TURK: I personally have never interviewed Mr.
21 Thomas, have never taken notes of meetings with Mr. Thomas.

22 JUDGE SMITH: But your agency?

23 MR. TURK: As of December, anything other than my own
24 attorney work product documents have been produced to Mr.
25 Oleskey.

1 JUDGE SMITH: Specifically, do you have any or aware
2 of any WRC documents which would pertain -- which would purport
3 to be notes of conversations with Mr. Thomas?

4 MR. TURK: Just one minute, Your Honor.

5 (Counsel conferring.)

6 MR. TURK: Your Honor, I don't think we have
7 anything, but I don't want to rest on that representation
8 alone, I think we'd have to conduct a document search to be
9 entirely certain.

10 JUDGE SMITH: I infer that -- you've been consulting
11 with Dr. Bores, and he would be the official that would be most
12 likely to know?

13 MR. TURK: Dr. Bores, as the NRC's member of the RAC
14 for Seabrook is the person who would have most of the daily
15 contacts with Mr. Thomas.

16 JUDGE SMITH: But is he the one who would be mostly
17 like to know whether there are notes in NRC files that purport
18 to be records of interviews of Mr. Thomas?

19 MR. TURK: We don't conduct interviews with Mr.
20 Thomas. If there are any notes bearing on communications with
21 Mr. Thomas, it's my guess, an informed guess, that probably 90,
22 95 percent or possibly even 100 percent of them would have been
23 in Dr. Bore's files or those of his immediate supervisors or
24 persons who attend the meetings with him.

25 JUDGE SMITH: And he would know about it, in any

1 event?

2 MR. TUFK: Yes, I believe so. But I don't want to
3 come out with a firm guarantee of that.

4 JUDGE SMITH: All right.

5 MR. TURK: However, we did make a production already.
6 And we had conducted an extensive document search of --

7 JUDGE SMITH: Of notes pertaining to conversations
8 with Mr. Thomas?

9 MR. TURK: Any documents relating to the beach
10 shelter issue for Seabrook.

11 Now, I don't know if we conducted, as part of that, a
12 search of personal notes; I'll have to verify with the
13 witnesses whether they actually -- not with the witnesses, with
14 the NRC staff employees, whether they previously went through
15 their personal notes, if any, which they may have taken. I
16 think they probably did, but I want to talk to them to be sure.

17 But, Your Honor, the problem is, we had already made
18 a document request of Mr. Oleskey. He conducted his search, he
19 identified documents and he withheld them. It's those
20 documents that I'm focusing on, the ones which he's already
21 searched for, which he has in his possession, and which I'm
22 asking to be turned over.

23 JUDGE SMITH: Now, I don't want to -- if the argument
24 has to go in that direction, so be it, but I don't understand
25 why it does. All we're doing is making sure, unless there's a

1 reason why we should not, that the rule we made with respect to
2 the Mass. AG is applied to you, unless there's a reason why it
3 shouldn't be. We're talking about notes purporting to be notes
4 of interviews of Mr. Thomas.

5 MR. TURK: We don't conduct interviews with Mr.
6 Thomas, so I think --

7 JUDGE SMITH: Well, conversations.

8 Gentlemen, I want openness and disclosure. I know
9 you're being careful, Mr. Turk, but just tell us; you know what
10 we're looking for. If you don't have it, that's fine.

11 MR. BACKUS: Your Honor, we're not concurring on that
12 point.

13 JUDGE SMITH: Well, he probably wants to hear what
14 you have to say, I imagine.

15 (Counsel conferring)

16 MR. TURK: Your Honor, I've been conversing with Dr.
17 Bores who's sitting next to me, as far as we're aware, as we
18 sit here today, there are no such notes. But again, I'm making
19 representation, I want -- if I'm going to have to make
20 representation I'm going to have to go back and do a search.

21 JUDGE SMITH: I understand that, Mr. Turk.

22 MR. TURK: But as we sit here we're not aware of
23 anything.

24 JUDGE SMITH: I understand that. I just was
25 concerned about, when you seemed to what to qualify the meaning

1 of our request, and I want you to look at what the essence of
2 our request is and address that.

3 MR. TURK: Yes, I understand. I didn't mean to limit
4 it to interviews except I thought that was a particular focus
5 of your question. But I understand that the inquiry to go into
6 conversations with him, with Mr. Thomas generally as they
7 pertain to the beach shelter issue for Seabrook.

8 And to the best of my ability to state it today,
9 we've already conducted a full document search through last
10 winter. We made production in December, and that's all we had,
11 as far as I'm aware, as of that date.

12 MR. OLESKEY: Two other points. I had asked in the
13 fall orally, when a parallel issue came up, whether Mr. Dignan
14 had any such notes and he said that he does not keep such
15 notes, as I recall.

16 I did not ask whether anyone in New Hampshire Yankee
17 organization had notes in connection with the same topic and I
18 will do so now and give him a chance to respond, if he'd like.

19 But my other point is that, in the document request
20 that's outstanding to FFMA, Mr. Flynn did withhold under claim
21 of attorney/client privilege, as we understand his response,
22 some notes involving Mr. Krimm and Mr. Watson on March 2 of
23 this year involving the decision not to use Mr. Thomas as a
24 witness in this proceeding. I would not understand those to be
25 any different position than the documents Mr. Turk has

1 requested from us; and I'd like to have the Board consider that
2 request in view of Mr. Flynn's declination to produce them on
3 attorney/client grounds and from appropriate statement by the
4 Board that those should be produced.

5 JUDGE SMITH: First, this has been brought to our
6 attention now.

7 MR. OLESKEY: Yes, that's correct, Your Honor.

8 JUDGE SMITH: Mr. Flynn?

9 MR. FLYNN: Your Honor, the -- you'd just gone
10 through an explanation of why the reasoning as to the documents
11 which need to be produced by the Massachusetts Attorney
12 General's Office, also applies to FEMA and the NRC. But that's
13 a far cry from saying that attorney/client privilege has been
14 overcome and has evaporated.

15 The subject matter here is different. It doesn't go
16 to conversations with Mr. Thomas, it -- I hesitate because I'm
17 trying to remember the contents of those two documents. There
18 was a very --

19 JUDGE SMITH: The reasons why the decision was made
20 to replace Mr. Thomas as a witness; that's the subject matter?

21 MR. OLESKEY: Yes, Your Honor.

22 There were two notes on March 2 of this year,
23 according to the response made by FEMA.

24 JUDGE SMITH: And this would be Krimm and --

25 MR. OLESKEY: Krimm and Watson. Mr. Watson being

1 then FEMA counsel, as I understand.

2 MR. FLYNN: There were two brief notes -- I'm sorry,
3 I didn't mean to interrupt. There were two brief notes, one
4 from Mr. Krimm to Mr. Watson, and the other a response to Mr.
5 Krimm. And they have some bearing on the question of whether
6 Mr. Thomas was going to continue to be a witness.

7 JUDGE SMITH: Now, if we were to apply the same
8 reasoning, you produce those notes, you can produce them and
9 identify to us aspects of it that reveal mental impressions of
10 counsel. All we're interested in here is factual.

11 MR. FLYNN: I'll have to go back and look at them,
12 Your Honor, I don't remember the contents that clearly.

13 JUDGE SMITH: If mental impressions of counsel or
14 litigative position is -- pervades the entire document, that
15 would be one thing. But I do believe that if you can have a
16 severable part which pertains to the factual bases for
17 replacing Mr. Thomas with other witnesses, it would seem to me
18 to fall in, within the same reach, same bounds of our order to
19 Massachusetts Attorney General.

20 MR. FLYNN: I will --

21 JUDGE SMITH: Off the record for a moment.

22 (Board conferring)

23 (Continued on next page.)

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1 MR. FLYNN: Another point, Your Honor, is that what
2 we have been talking about is attorney work product and the
3 privilege that I asserted as to those two documents was
4 attorney/client privilege, which is somewhat different.

5 Are you ruling that that has gone out the window,
6 too?

7 JUDGE SMITH: Well, I might say, Mr. Flynn, I don't
8 know. I was looking at it as attorney work product. I wasn't
9 looking at it as attorney/client.

10 I don't want to make remarks that escalates the
11 tension and the notoriety in the easily quoted information
12 here. But I thought that FEMA had expressed the desire that it
13 was going to come forward and present to this Board and to the
14 public a total rationale for what happened. That was my
15 understanding.

16 Now if there is a factual reason which does not
17 disclose mental impressions of clients, I would think that they
18 should be -- I mean mental impressions of legal counsel, I
19 think that they should be disclosed.

20 Now, attorney/client, I haven't look at it that way.
21 Go ahead, make your argument, and we'll just rule on
22 it. We'll decide whether it's attorney/client, and we'll
23 decided whether nevertheless it should be disclosed and we'll
24 do it.

25 We're having a great deal of trouble getting FEMA to

1 this hearing.

2 MR. FLYNN: I'm handicapped, Your Honor, by not
3 having the documents and not recalling clearly what the content
4 was.

5 May I suggest that if we wish to continue to assert a
6 privilege, that I submit the documents to the board in camera?
7 There are only two very short memos that we're talking about.

8 JUDGE SMITH: All right. That's what I'd propose.

9 MR. FLYNN: Thank you.

10 MR. TURK: Your Honor, I just --

11 MR. BACKUS: Your Honor, while we're on the subject
12 of documents, Attorney Flynn's transmittal letter accompanying
13 the two documents as to which executive privilege was first
14 claimed and overruled says --

15 JUDGE SMITH: Was that the agenda and --

16 MR. BACKUS: Yes, the agenda and the talking points.
17 The last sentence of his letter of May 12th which we just got
18 says, "I have inquired of the participants and the Federal
19 Emergency Management Agency in the meeting of January 12, 1988,
20 and they have each advised me that they took no notes of the
21 meeting."

22 Now I am certainly not going to challenge Attorney
23 Flynn's representation, but I find it surprising that there is
24 no documentary recollection of that meeting given the stature
25 of the people who are involved, the seriousness of the subject

1 and the controversy and everything.

2 And I just want to make it clear to Mr. Flynn and to
3 the parties that we are looking for not necessarily notes taken
4 at the meeting, but notes memorializing the meeting on behalf
5 of the agency. You did understand that.

6 JUDGE SMITH: This is a different subject matter now,
7 right?

8 MR. BACKUS: Well, I thought it was the same subject.
9 I'm focusing on the January 19th meeting. I guess that's
10 different.

11 I do understand that there is an attendance list
12 that's available, and we'll get that through the check in
13 system they have at FEMA; is that correct?

14 MR. FLYNN: Yes, Mr. Backus.

15 MR. BACKUS: And you do understand that the request
16 was for any notes memorializing that meeting, whether made
17 personally after the meeting or not.

18 MR. FLYNN: That is my understanding, and that was my
19 understanding. However, I will go back and check and make sure
20 that is also the understanding of the participants.

21 MR. BACKUS: Thank you.

22 MR. TURK: Your Honor, I want to come back for a
23 minute to the Massachusetts request of documents from the
24 staff, and I have two clarifications I would like to ask.

25 One, we haven't identified time frame. As the Board

1 may know, Dr. Bores has been involved with the RAC and the
2 beach shelter issue for the last seven years.

3 Are we to ask him to go back and look at everything
4 for seven years, or do we start with 1985, the way the initial
5 requests -- I believe that was the initial. Isn't that what
6 the initial request was?

7 MR. OLESKEY: That's my recollection, Judge. We were
8 tying it to Mr. Thomas's memorandum of December 31, '85, which
9 was an effort to get the RAC to deal with the beach population
10 issue, and I think that's reasonable.

11 MR. TURK: So that date is the starting date?

12 MR. OLESKEY: Yes.

13 JUDGE SMITH: Is that the same date that is
14 understood by the Attorney General to be the date that -- you
15 know, the scope of their --

16 MR. TURK: Their production to the staff?

17 MR. OLESKEY: My recollection, and we had gone
18 through this I think in December or January, is that we look
19 for any notes that we had at any time that would fit the
20 description, bearing in mind that various Attorneys General
21 have -- at the staff level have come and gone.

22 MR. DIGNAN: My understanding is you were also to be
23 sure that there was nothing in the offices of the Governor and
24 that group too. Am I wrong on that?

25 I believe that was the Board order.

1 MR. OLESKEY: That was discussed at that time. I
2 believe my letter was responsive on that point.

3 MR. TURK: It's my recollection as well that we're
4 talking about documents not just in Massachusetts AG's office,
5 but also in the Governor's office.

6 MR. OLESKEY: I'm almost positive I wrote Mr. Turk a
7 very clear letter on this point.

8 MR. TURK: What did it say?

9 MR. OLESKEY: I'll be happy to provide it to him if
10 he doesn't have a copy assuming we have a copy that --

11 MR. TURK: I thought we could shortcut that, Your
12 Honor.

13 It's my recollection that that was agreed. If Mr.
14 Oleskey doesn't recall, I can go back to his letter.

15 MR. OLESKEY: No, I said it's my very clear
16 recollection that that was the discussion and it's addressed
17 explicitly in my letter.

18 If Mr. Turk has forgotten that and doesn't have the
19 letter, I'll find it. And if there is any confusion, of
20 course, we'll deal with it. But I know I had the search made,
21 and I believe I dealt with another --

22 JUDGE SMITH: You had a search made of other
23 executive offices.

24 MR. OLESKEY: Yes.

25 JUDGE SMITH: I remember the conversation it would

1 be --

2 MR. OLESKEY: Yes.

3 JUDGE SMITH: -- executive offices and it wouldn't be
4 offices that had nothing to do with emergency planning.

5 MR. OLESKEY: Well, I think that would -- outside
6 that loop in a sense, but also not outside. It was the
7 Governor's office.

8 JUDGE SMITH: What was the last thing you said?

9 MR. OLESKEY: I said, in a way outside that loop of
10 civil defense, but also, because of the Seabrook, in it was the
11 Governor's office where we checked, Mass. civil defense, public
12 safety, I think those are the three places --

13 JUDGE SMITH: Right.

14 MR. OLESKEY: -- that I thought -- oh, and the energy
15 office might have something.

16 MR. TURK: And one further clarification. We're
17 looking now for communications, notes of communications with
18 Mr. Thomas.

19 MR. OLESKEY: Or concerning Mr. Thomas.

20 JUDGE SMITH: Well, now I didn't understand you to be
21 under any obligation to submit comments between one official to
22 the next as to what they thought about Thomas.

23 MR. OLESKEY: I thought that what was being asked of
24 me, in addition to our own files, covered generically the
25 situation where somebody said to one of us, or to an agency, I

1 talked to Ed Thomas.

2 JUDGE SMITH: Yes, right. Okay.

3 MR. OLESKEY: He said X, even though the writer
4 hadn't talked to Ed Thomas and was merely reporting something
5 about Ed Thomas.

6 JUDGE SMITH: Yes, right.

7 MR. TURK: Well, I'm not sure I understand. That's
8 my first understanding then. These are notes about
9 communications with Mr. Thomas.

10 MR. OLESKEY: Or concerning Mr. Thomas and his
11 position, or his statement of his agency's position on the
12 beach population.

13 JUDGE SMITH: Right. They don't have to be notes as
14 to the direct -- notes of the person who interviewed Mr. Thomas
15 or consulted with him or talked with him, but they could be at
16 another level, and that is, notes between a person that talked
17 to him reflecting his impressions from that talk to yet
18 somebody else. But the general common denominator of all these
19 notes is that they would purport to contain a memorial of
20 conversation with Mr. Thomas, or restatement of a replication
21 of it.

22 MR. TURK: I'm not sure how broad a search we're
23 getting into then. We already had made a full document search
24 for all documents pertaining to the beach position adopted by
25 FEMA.

1 JUDGE SMITH: Well, I don't see that this is
2 difficult. A talks to Thomas, you know, and A writes to B, I
3 talked to Thomas yesterday and blah-blah-blah as compared to
4 not keeping any notes by A. That's what I understand that
5 we're talking about.

6 MR. TURK: Thank you, Your Honor.

7 MS. WEISS: Your Honor, before we pass this document
8 issue, Mr. Flynn alluded some time ago to what I'm going to
9 bring up now.

10 We had made a Freedom of Information Act request in
11 1987 of FEMA. Certain of those documents were identified and
12 not produced to us as of September 8, '87. It's my
13 understanding that Mr. Turk has now agreed to provide those,
14 and I just wanted to make clear what they are on the record.

15 MR. TURK: I'm sorry.

16 JUDGE SMITH: You made a Freedom of Information Act
17 request to NRC.

18 MS. WEISS: No, to FEMA.

19 MR. TURK: And Mr. Turk has done something with it?

20 MR. WEISS: I'm sorry, Mr. Flynn.

21 JUDGE SMITH: Mr. Flynn.

22 MS. WEISS: Sorry.

23 MR. TURK: Okay.

24 MS. WEISS: Sit down.

25 (Laughter.)

1 MS. WEISS: The first is a letter from Thomas to Turk
2 dated March 4, 1986. The second is a letter from Flynn to
3 Reis, re: Seabrook hearings, one page dated May 1, '87. The
4 third is a memo, Flynn to Thomas, of six pages, re: review of
5 memo on evacuation time in Seabrook EPZ. And the fourth, the
6 fourth is the same title as the third, but is 11 pages long.
7 And the last is a letter or memo from Bores to Thomas, April
8 24, 1987, re: adding a sentence to the memorandum known as
9 Bores 1.

10 MR. FLYNN: Ms. Weiss, I may need some help from you
11 later on those. Nothing of six pages or 11 pages comes to
12 mind. I don't usually write that long.

13 MS. WEISS: Well, those are documents that you
14 identified in the agency's response to the FOIA request. If we
15 dig that out, that will have the title.

16 MR. FLYNN: Thank you.

17 JUDGE SMITH: Are we ready for --

18 MR. OLESKEY: I guess the only thing left was my
19 request of Mr. Dignan or his associates and for New Hampshire
20 Yankee for anything on the topic that's now consumed us for 15
21 or 20 minutes, communications of Mr. Thomas or concerning Mr.
22 Thomas and the beach population.

23 MR. DIGNAN: What does "concerning Mr. Thomas" mean?

24 MR. OLESKEY: We just discussed that, counsel, in
25 connection with Mr. Flynn's --

1 MR. DIGNAN: It's somebody saying that they talked to
2 Thomas and Thomas said such and such?

3 MR. OLESKEY: Yes.

4 MR. DIGNAN: As far as I am aware, but I'll be glad
5 to make a check, New Hampshire Yankee tells me the only
6 meetings they have ever had with Mr. Thomas were these
7 coordination, these public meetings.

8 Do you want whatever notes were taken despite the
9 fact that your office and everybody else was there?

10 MR. OLESKEY: Yes, because it turns out not
11 infrequently that people's perceptions and notes differ. But
12 I'm also talking, as I tried to make clear, Your Honor, in
13 connection with the colloquy with our brothers Turk and Flynn,
14 about a communication from somebody at New Hampshire Yankee who
15 reports on something Thomas has said or done about the beach
16 population; whether or not there was a public meeting or a
17 private meeting. Those have been in this for quite a long time
18 and I would that would be information that would be very
19 important to them about what Mr. Thomas is saying and doing
20 since he was the principal FEMA regional official on this issue
21 since 1981 or so.

22 So my understanding is they are going to make that
23 search. That's obviously satisfactory.

24 JUDGE SMITH: What's your -- I don't know. I've
25 slipped and missed the understanding now.

1 MR. DIGNAN: We'll be glad to make such a search,
2 Your Honor, if that's the Board's desire. But what I'm more
3 interested in is Mr. Oleskey sitting over there on these notes
4 that you have already ordered produced, and it's going to take
5 me awhile to make my search, going to take awhile for Mr. Turk
6 to make his search, I guess.

7 I have just been asked for mine. I want those notes,
8 Your Honor. I want them submitted to the Board today. I want
9 the Board to go through them and decide if their mental
10 impression is to be deleted, and then I want the Attorney
11 General's notes of his meetings with Mr. Thomas, and I don't
12 see why that should await any search I have to make. It will
13 be made as promptly as possible. I hope to report to you on it
14 tomorrow. It may be later than that because I've got to send
15 some people back to do it.

16 But those notes of the Attorney General's have been
17 culled out in front of him, answered to. All I'm looking for
18 is for those notes that were denied in the thing, the Board's
19 order to produce to the Board to remove attorneys' impressions,
20 and I want them, and I want them fast because I'm facing a
21 cross-examination of Mr. Thomas shortly.

22 MR. OLESKEY: Well, as I understand it, you may not
23 be facing the cross-examination of Mr. Thomas for quite some
24 time.

25 MR. DIGNAN: In that case, I still want them, because

1 I want them as long to work with them as I possibly can, Mr.
2 Oleskey.

3 JUDGE SMITH: Understand we have put aside concepts
4 of reciprocity on this issue.

5 MR. OLESKEY: I understand that, Your Honor.

6 JUDGE SMITH: We're trying to have evenhanded,
7 uniform application of the same idea. I would direct everybody
8 to present their documents that they find of the report as soon
9 as they get them.

10 MR. DIGNAN: Well, my understanding is that he's got
11 them.

12 JUDGE SMITH: I understand.

13 MR. OLESKEY: I represented in a letter that went out
14 months ago that I had them, and they were only requested, as a
15 result of that letter, last week.

16 MR. DIGNAN: But they can be produced to the Board by
17 tomorrow?

18 JUDGE SMITH: Produce them as soon as you are able.

19 MR. OLESKEY: I'll be happy to produce them tomorrow
20 morning.

21 I do want to make one point.

22 JUDGE SMITH: And don't forget, they are going to
23 somehow indicate the portions that you believe --

24 MR. OLESKEY: Yes.

25 JUDGE SMITH: -- should be withheld.

1 MR. OLESKEY: Because they are work product, there is
2 one point I want to make, and it flows from the nature of
3 notes, the inherent nature of such notes.

4 There is a topic discussed in a note that's important
5 to me to use in my cross-examination at the early part of this
6 case with the NRC people. And I don't think that I am obliged
7 to signal that topic by producing notes that relate to Mr.
8 Thomas's cross when the cross is imminent.

9 JUDGE SMITH: Now this will be something that
10 apparently to fit into your category. They won't necessarily
11 reflect mental impressions of counsel.

12 MR. OLESKEY: Correct.

13 JUDGE SMITH: But it will be something that purports
14 to be a statement by Mr. Thomas that is important in your
15 cross-examination.

16 MR. OLESKEY: Yes.

17 JUDGE SMITH: Would you --

18 MR. TURK: I don't buy it, Your Honor. If it's not a
19 mental impression, it doesn't qualify for withholding.

20 MR. OLESKEY: Well, what about --

21 MR. TURK: We have made a tremendous effort to
22 produce whatever documents we had in our possession regardless
23 of where they went with respect to the issues in the case,
24 regardless of whether they would help Mr. Oleskey or hurt Mr.
25 Oleskey. We produced what we had, and that's what he's

1 expected to do unless he has a valid privilege for withholding.

2 MR. OLESKEY: Well, of course, I have a valid
3 privilege, attorney --

4 MR. TURK: The whole purpose of discovery, Your
5 Honor, is to find out what the other side has on their case.

6 MR. OLESKEY: it's never been -- beg your pardon.
7 It's never been a valid purpose of discovery except in
8 exceptional circumstances to require an attorney to produce his
9 notes in preparation for trial, particularly notes of
10 interviews with actual potential witnesses.

11 What I'm saying here is because of the nature of
12 these notes, there is something there that I'd like to keep
13 from Mr. Turk and the adverse parties until I finish my NRC
14 cross. Can't possibly --

15 JUDGE SMITH: Until your NRC cross?

16 MR. OLESKEY: Yes, which is coming on first with Mr.
17 Bores and Mr. Lazarus as I understand it.

18 I can't understand how I --

19 JUDGE SMITH: Well, I didn't understand it the first
20 time. I thought you wanted to keep it until your cross of
21 Thomas.

22 MR. OLESKEY: No.

23 JUDGE SMITH: That may stand in a different light.
24 It may be a mild form of separation of witnesses or something
25 like that. I don't know. We'll have to take a look at it and

1 see.

2 MR. TURK: Your Honor, I just want to note I don't
3 see that at all. I mean the case is not bifurcated. You don't
4 make discovery production on your own determination of whether
5 it's going to help your opponent.

6 JUDGE SMITH: Well, we're taking it out of discovery
7 now, and it's just the timing of discovery. And if he believes
8 that revealing this information would interfere with his cross-
9 examination of your witnesses, that's legitimate. There is
10 different ways of approaching that.

11 We could have, for example, put -- had a separation
12 of witnesses. We could have put the witnesses under an order
13 not to read the transcripts, not to discuss the matter. It
14 seems to me his request is subsumed by the greater powers that
15 we may have to protect the right of cross-examination on
16 influence by extraneous matters. We will have to look at it.

17 MR. TURK: Your Honor, I only --

18 JUDGE SMITH: I want to say I understand what your
19 point is, and I don't know if we've characterized it correctly.

20 MR. OLESKEY: I think you have.

21 JUDGE SMITH: But you have no guarantee that you will
22 prevail after you give it.

23 MR. TURK: Your Honor, I would make one point.

24 When the staff made its production of documents, we
25 did so as a voluntary matter; granted at the Board's

1 requirement. But had the Staff wanted to rest on its
2 prerogatives under the NRC discovery rules, we could have
3 withheld document production, or at least we could have forced
4 Mr. Oleskey to go through the procedure of following the
5 regulations.

6 JUDGE SMITH: Well, now, Mr. Turk.

7 MR. TURK: Your Honor, I am asking only for equal
8 treatment with --

9 JUDGE SMITH: You're asking reciprocity.

10 MR. TURK: No, equal treatment, Your Honor. And by
11 that I mean we've come out of our -- we've gone out of our way.
12 We have made a production. We haven't sought to withhold
13 anything, and I'm asking that Mass. AG act with the same
14 respect for our position.

E4 15 (Continued on next page.)

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15 1 JUDGE SMITH: You make an argument, but you have not
2 addressed in the slightest the merits of his point.

3 What value is your argument if it doesn't even help
4 us on the merits of his point?

5 MR. TURK: As I understand his argument, it's that he
6 doesn't want to produce something that could help the NRC Staff
7 prepare for his cross-examination.

8 JUDGE SMITH: Of them.

9 MR. TURK: Of the NRC Staff.

10 JUDGE SMITH: Right.

11 MR. TURK: I'm going to --

12 JUDGE SMITH: Pure cross-examination, tradition,
13 particularly when we get off the area of technical matters,
14 engineering matters, and into the area of memory and perception
15 and human impressions. Very appropriate; very traditional.

16 MR. TURK: I'm at a loss to understand that there is
17 any merit to that argument, Your Honor.

18 JUDGE SMITH: How do we know? We haven't seen it.

19 MR. TURK: Mr. Oleskey is telling us, quite candidly
20 I think, that these are simply notes of something Mr. Thomas
21 stated to him, or to others in his office. He does not --

22 JUDGE SMITH: I assume that that's the case.

23 MR. TURK: He is not claiming that they reflect his
24 mental impressions. There is just not --

25 JUDGE SMITH: This is not attorney work product that

1 he's arguing.

2 He's saying that he does not wish to inform in
3 advance Dr. Bores and Mr. Lazarus an area that he intends to
4 cross-examine them on. And the hearing is going into a
5 direction where the traditional right to keep your cross-
6 examination plans separate from witnesses is more compelling.
7 I mean it's -- because we're out of an engineering
8 consideration. Now we are into memories, perceptions and that
9 type of human testimony that NRC hearings don't normally get
10 into although it seems to be my unhappy lot to have been
11 involved in quite a few of them.

12 MR. TURK: Well, it's difficult for me to understand.

13 JUDGE SMITH: He sees your witnesses at this time,
14 correctly, in terms of this litigation as adverse to him. He
15 wishes to cross-examine them as to presumably their memories,
16 their perceptions, and he does not wish at this time to flag it
17 or telegraph it. This is fundamental, pure, basic cross-
18 examination.

19 MR. TURK: But, Your Honor, the production we're
20 asking of the Mass. AG's office is akin to discovery. It's for
21 the purpose of learning what the other side intends to do, what
22 facts they are aware of, and how the litigation may be expected
23 to go.

24 JUDGE SMITH: See, I think we can accommodate
25 everybody's needs. We can accommodate, I believe, his right to

1 have cross-examination of fresh witnesses compared with your
2 right to discovery. It is not before Thomas appears. It is
3 before Bores and Lazarus appear that he wishes to have these
4 notes protected.

5 You will have an opportunity to confront fully the
6 information that is produced in those notes.

7 MR. TURK: When Mr. Thomas appears, but not before
8 that.

9 JUDGE SMITH: Whenever justice requires it. If you
10 need it then for redirect examination of Bores and Lazarus, if
11 justice requires it, if a full development of the record
12 requires it, that's when you will get it.

13 You understand that. Mr. Oleskey, that is already
14 subsumed in your understanding that you may not even get that
15 privilege.

16 MR. OLESKEY: True, Your Honor.

17 JUDGE SMITH: Just take it one step at a time.
18 That's all we can do.

19 MR. TURK: And one further point, Your Honor.

20 As I understand it, the Staff is to go back and make
21 a document search which presumably would run up to the current
22 date.

23 JUDGE SMITH: You've already represented that you
24 have made one document search. Now this is a very narrow one.

25 MR. TURK: All right. Coming up to the present date.

1 And I would ask that Mass. AG be requested to do the same thing
2 since their document search ended presumably in December or
3 January.

4 JUDGE SMITH: Well, when's the relevant cutoff date
5 for this search?

6 April 1st, is that good enough, or when was
7 discovery?

8 MR. OLESKEY: In a way it's still ongoing as this
9 afternoon indicates, I guess.

10 MR. TURK: I would say up to the present date, May
11 16th.

12 JUDGE SMITH: Make it May 10th, including May 10th.

13 MR. OLESKEY: I want it understood that outside our
14 own files I have to go back up -- if I'm going to go to the
15 other offices in the same -- the same process I went before,
16 which took me a couple of weeks.

17 JUDGE SMITH: Yes, it's --

18 MR. OLESKEY: I don't anticipate anything, but if the
19 request is to go to the other agencies and not just our own
20 files, it will take a little time.

21 MR. TURK: Your Honor, may I inquire as to whether
22 it's possible to have the request run to today rather than May
23 10th?

24 JUDGE SMITH: Yes, you did, and I have just ruled
25 arbitrarily May 10th, and you're lucky to get that unless you

1 have a particular reason.

2 You have a special factual-based reason, or is it
3 just something you think would be a conservative position to
4 take?

5 MR. TURK: Your Honor, on May 10th we had the
6 telephone conference call.

7 JUDGE SMITH: Yes, and I'm including May 10th.

8 MR. TURK: There may have been discussions about that
9 telephone conference call with Mr. Thomas on the part of the
10 Mass. AG's office. So my request --

11 JUDGE SMITH: That's okay. Even if there is, I think
12 that's got to be a good cutoff time.

13 Sooner or later we've got to get out of training and
14 into the ring, and now is the time.

15 MR. TURK: May I ask that we go off the record for a
16 moment?

17 JUDGE SMITH: Certainly.

18 (Discussion off the record.)

19 JUDGE SMITH: And then would the witness panel be
20 seated at the table when we return from break, which will be 15
21 minutes, please.

22 (Whereupon, a recess was taken.)

23 JUDGE SMITH: We're on the record now.

24 MR. HUNTINGTON: Your Honor, just for the record, I
25 had a conversation with Mr. Backus during the break in which he

1 asked that the same discovery requests that are currently
2 pending with several of the parties be extended to the State of
3 New Hampshire, and I said I would do a search and talk to the
4 Office of Emergency Management and we would be happy to provide
5 those documents within the scope of the request.

6 JUDGE SMITH: Okay, thank you.

7 Whereupon,

8 ROBERT GOBLE

9 VICTOR EVDOKIMOFF

10 ROBERT ECKERT

11 having been previously duly sworn, were recalled as witnesses
12 herein, and were examined and testified further as follows:

13 JUDGE SMITH: Mr. Lewald

14 CROSS-EXAMINATION

15 BY MR. LEWALD:

16 Q Dr. Goble, I understand that you are currently
17 working on an emergency plan for TMI?

18 A (Goble) Yes, that's right.

19 Q And for whom are you doing that?

20 A (Goble) That's a contract with the Three Mile Island
21 Public Health Fund.

22 Q Three Mile Island Public Health Fund?

23 A (Goble) That is correct.

24 Q Is that sponsored in any way by the utility?

25 A (Goble) No, it's not.

1 That fund was established as part of the settlement
2 after the accident at Three Mile Island. There was a large
3 class action suit, and there was a settlement, and the fund was
4 established to support research for the benefit of residents in
5 the vicinity of the Three Mile Island reactor, and emergency
6 planning was listed in the court settlement as one of the
7 things that the fund was supposed to support, the research of.

8 Q Under whose direction is the plan currently being
9 operated or carried on?

10 A (Goble) I'm sorry?

11 Q Under whose direction is the plan currently being
12 carried on?

13 A (Goble) The plan that we are preparing, or the
14 plan --

15 Q This plan that's hired you to do whatever you're going
16 to do.

17 A (Goble) Okay. It's the fund that's hired us to
18 prepare a plan which has no legal status, and the project
19 manager for that project is Professor Kasperson at Clark
20 University, and it's a rather large project with quite a few
21 people involved.

22 Q What other experience have you had in emergency
23 planning?

24 A (Goble) Well, let's see. I've had -- there is both
25 general experience and specific experience.

1 Q Actual experience.

2 A (Goble) Pardon?

3 Q Actual work.

4 A (Goble) Actual work.

5 My main work has been -- this is the largest piece of
6 experience that I've been working on this project for a year
7 and a half. I did a small amount of consulting for the
8 Attorney General's office of New Hampshire regarding the
9 Seabrook plans. I have done a project on reactor accident
10 consequences for the Ontario Nuclear Safety Board, which also
11 addressed some issues in emergency plan.

12 Q Does that appear in your curriculum vitae here
13 anywhere?

14 A (Goble) That last item may not appear in the
15 September --

16 Q What are the dates of that employment, or
17 undertaking?

18 A (Goble) The contract began summer -- last summer.
19 My appearance before the Ontario Nuclear Safety Board was end
20 of September, I think.

21 Q And is it through oversight you didn't list it here
22 in your curriculum?

23 A (Goble) Yes. In fact, it was a mistake. The
24 problem is the testimony was prepared last fall before that
25 project was completed, and we used my September resume, and I

1 had not at that point updated the September resume. And then
2 in submitting this testimony, I didn't worry about updating the
3 resume.

4 Q Well, would it be fair to say that your experience
5 with emergency planning began with that undertaking, that job?

6 A (Goble) No. I think that as far as my specific work
7 in emergency planning, the earliest -- the earliest specific
8 work I did was work for the New Hampshire Attorney General's
9 office, which was in I think 1983, although it might have been
10 '82, but I think it was 1983. And we could look.

11 And the major work that I've done is work on this
12 Three Mile Island plan which has now been going approximately a
13 year and a half.

14 Q Now, Dr. Eckert, I note that you are president of
15 Salmon Falls Research Associates.

16 A (Eckert) I'm currently vice president.

17 Q I'm sorry.

18 A (Eckert) That's all right.

19 Q Had you been president?

20 A (Eckert) No.

21 Q Now you're associated, are you not, with Dr. Befort
22 of the Forestry School of New Hampshire?

23 A (Eckert) Dr. Befort is no longer with that school,
24 but he was a colleague in the same department where I worked.

25 Q Was he at one time employed or a director of Salmon

1 Falls?

2 A (Eckert) He was a principal for a short period of
3 time, but he left last winter.

4 Q He left last winter you say?

5 A (Eckert) Yes.

6 Q Now in the introductory material of your testimony,
7 and I'm referring to Page 5, and apparently by everyone on the
8 Board, are you asked the purpose of your testimony, and you
9 state that it addresses, in short, the adequacy of the New
10 Hampshire Radiological Response Plan, Revision 2, and going on
11 to say with respect to provisions of sheltering the summer
12 beach population.

13 And you sum up your testimony to say that the plan is
14 grossly inadequate because it contains essentially no provision
15 for sheltering the summer beach population; is that correct?

16 A (Goble) That's correct.

17 Q Now is it inadequate because of no provisions for
18 sheltering, or no provisions for implementing sheltering for
19 the summer beach population?

20 A (Goble) Well, I think both -- I think both hold.
21 The provision -- I'm not sure I understand the distinction, but
22 the provisions within the plan, to the extent that they are
23 observable, are ambiguous at best, and they certainly are not
24 adequate provisions for implementing sheltering.

25 Q Well, going over to Page , again in the introductory

1 material, you talk about evaluating the shielding potential of
2 many of the buildings in the beach area, and you use the
3 pronoun "we".

4 Who is the "we" referring to there? The entire Board
5 or, I mean the entire panel?

6 A (Goble) Well, I think that the three of us have all
7 done various pieces of that. Professor Renn did not do
8 anything connected with evaluating the sheltering potential
9 except -- well, no, I would say he did not except for possibly
10 the questions of access. He contributed to our analysis of
11 access, so all of us had something to do with it.

12 Q What beach area are we talking about here, or are you
13 talking about?

14 A (Goble) Okay. We have been looking at the New
15 Hampshire beaches. We also looked at some of the Massachusetts
16 beaches, but I assume they are not germane to these hearings.

17 We spent most of our time on Seabrook and Hampton
18 beach because they were the closest and appear to be the most
19 crucial. However, we did also look at North Hampton and Rye
20 beaches.

21 Q Is there anything specifically in your testimony
22 about either Rye or North Hampton Beach?

23 A (Goble) I think that we have analysis from Rye and
24 North Hampton Beach about availability of shelter within the
25 testimony. I'd have to check, but our tables -- I'm quite sure

1 we made the calculations, and I think it's in the testimony.

2 Q Well, other than a response to a questionnaire that
3 Salmon Falls circulated, is there any other reference to Rye or
4 North Hampton Beach in your testimony?

5 A (Goble) You know, I think I -- I just have to look,
6 but I'm pretty sure we made an analysis of availability of
7 public space for both Rye and North Hampton beaches. And if
8 you just give me a minute, I could probably find it right in
9 the testimony.

10 Q Were you referring to your for lack of a better word,
11 an analysis of the Stone & Webster studies?

12 A (Goble) Yes.

13 Q And beyond that there has been no study of Rye or
14 North Hampton?

15 A (Goble) Well, I'm sorry.

16 Our review of the Stone & Webster study was not a
17 paper review. It involved visiting the beaches; it involved
18 collecting from other consultants population estimates; and
19 analyzing capacity. It was -- there was a study.

20 But, yes, that's what I'm referring to.

21 JUDGE SMITH: Off the record.

22 (Discussion off the record.)

23 THE WITNESS: (Goble) I forgot what I was doing. I
24 think I was referring you to table such as the table on Page
25 49.

1 BY MR. LEWALD:

2 Q Oh, this is based on your review of the Stone &
3 Webster material, the table on 49?

4 A (Goble) That's right; together with other
5 information as noted.

6 Q Now on Pages 7 to 9 there's a general recitation
7 about radiation exposures, and what is the source document or
8 documents for that testimony?

9 Is this something that someone on the board did and
10 compiled of his own knowledge, or does this come from someplace
11 else?

12 A (Goble) Well, I wrote it, but it's appended just as
13 a summary of standard, standard lore on the subject, and there
14 are thousands of sources.

15 I mean I probably -- probably my bibliography is
16 adequate on that. The basic NRC documents, NUREG-0696 and 654;
17 the regulatory documents, the WASH-1400 study.

18 A (Evdokimoff) May I add something?

19 A (Goble) NUREG-1210 consists of a primer in this
20 respect as well.

21 Q But do not each of these documents look to another
22 source or some authoritarian --

23 A (Evdokimoff) I also wrote something, Mr. Lewald.
24 Basically my -- I wrote some thing similar, and I'm referencing
25 the Aldrich, the January '78, the February '78, and the June

1 '78 Aldrich documents on sheltering. Those are --

2 Q Is that what's referenced here, these --

3 A (Evdokimoff) That's what I am referencing, yes. And
4 I have included those references in the bibliography.

5 Also, there was an FDA document that it also came
6 from. So there is four documents that I looked at. I think
7 the Aldrich ones are sort of standard.

8 Q The January Aldrich for inhalation, and the February
9 Aldrich for --

10 A (Evdokimoff) That's for multicompartmental
11 ventilation model. That would cover inhalation.

12 For sheltering, that would be the February '78.

13 Q For ground shine and cloud shine?

14 A (Evdokimoff) Cloud shine, right, and then there is a
15 June '78 Aldrich document which goes into all types of
16 accidents, PW-1, PW-2 and so forth.

17 Q Now in the bottom of Page 10 in your testimony, you
18 ask yourself the question, are there any special
19 characteristics of the beach population that would bear on the
20 use of sheltering.

21 And in answer, you go on, Dr. Goble, to state with
22 Dr. Renn, that the beach population in the Seabrook emergency
23 planning zone is for the most part comprised of two types of
24 people: the day trippers, meaning those who come to the beach
25 area just for the day or evening, and the short-term visitors.

1 And then you go on to say that a small percentage of
2 the beach population are permanent residents of the beach area,
3 and then there is a reference to see Dr. Luloff.

4 Does Dr. Luloff say this?

5 A (Goble) The -- I wrote this awhile ago.

6 My recollection of what Dr. Luloff states in his
7 testimony is that he gives the results of a beach survey in
8 which he, among other things, asks the people where they came
9 from, and how long they were staying at the beach, and that
10 there are results within that testimony that provides
11 percentages of people who are local residents and people who
12 came from afar.

13 I don't remember -- I don't remember any numbers, and
14 I don't remember this in detail.

15 Q Is what you're telling me now that in his survey, or
16 the survey that was conducted, that very few people on the
17 beach said they were permanent residents and therefore this
18 conclusion was reached?

19 Is this a fair summation of what you're telling me?

20 A (Goble) Yes.

21 Q But you're guessing.

22 A (Goble) Well, yeah, I would say it was a reasonably
23 good guess, which one could also make another one could also
24 get at in another way, which was through the -- I didn't do it
25 here -- which is through the report in number of people. If

1 you just add up the number of neighboring people, it's not
2 nearly enough people to supply the numbers of people who are
3 observed on the beach.

4 So that the number of permanent residents cannot be a
5 very high percentage of what's present on a high population
6 beach day.

7 Now the percentage who are there for one day and who
8 are there for several days, again one could that that probably
9 through looking at motel capacity and so forth, but that
10 information I don't have. So there I would be guessing.

11 Q Well, you go on to say that there are a number of
12 characteristics of the beach population, both day trippers and
13 short-term visitors which make their response in an emergency
14 difficult to predict or alter. And then you go on to say it's
15 difficult to educate them or prepare them for an emergency.
16 Any information that can be reliably communicated to them
17 during an emergency might be quite limited (And some of them do
18 not even speak English).

19 Now, it's clear here that we're not talking about
20 emergency workers within this group of the population; is it
21 not?

22 A (Goble) Yes.

23 Q Now, are there any studies that you are aware of that
24 show that pre-emergency education has any demonstrated role in
25 emergency responses by a population?

1 A (Goble) Yeah, this -- this, unfortunately, is
2 getting outside of my expertise, and I wish you would ask
3 Professor Renn about this.

4 Q He is more appropriate?

5 A (Goble) Yeah.

6 Q This whole beach characteristic thing is more
7 appropriate for Professor Renn?

8 (Continued on next page.)

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1 A (Goble) Well, I -- the specific question that you
2 just asked -- no, I wouldn't say the whole beach thing is more
3 appropriate for Professor Renn, but to ask how much of a
4 difference pre-emergency education makes, I'm trying to be
5 honest with you, I have some opinions about them that, but I
6 don't have what I call educated or expert opinions. And I've
7 certainly myself not reviewed the literature adequately.

8 Q Well, won't this segment of the beach population have
9 access to emergency warnings and won't these be a suitable
10 guide for their response just like any other part of the
11 population?

12 A (Goble) Well, there's a question as to what
13 access -- what it is they will have access to. Earlier in the
14 cross-examination we were speculating about, I think when Mr.
15 Turk was cross-examining Professor Renn we were speculating
16 what would the beach population do if all they heard were
17 sirens.

18 The nature of -- there are no provisions in the
19 plans, I've seen, for providing each beachgoer as he arrives in
20 the parking lot with information or brochures about the
21 presence of a nuclear reactor; what could be expected in the
22 event of a nuclear accident.

23 It does seem to me that the situation is rather
24 different for somebody who's arriving from a distance and
25 spending a day on the beach compared to a resident of a

1 community who has had opportunity to be educated about the
2 local nuclear powerplant.

3 Q Well, the beach population will have the same access,
4 will they not, to the brochures distributed locally at the
5 beach areas, the posters that are up, and the EBS messages?
6 And also, if you recall, doesn't Dr. Luloff say every other
7 person on the beach is going to have a radio?

8 A (Goble) Well, every other beach blanket. The -- I'm
9 trying to keep track of where we are in this question and this
10 particular response. The point of the response was simply to
11 say that the beach population poses a different problem for
12 emergency planning than permanent residents in the sense that,
13 likely is not, your only shot at communicating with them is,
14 one, though potential emergency broadcasting system messages
15 which makes those messages particularly critical because you do
16 not have a reservoir of information to draw upon.

17 Secondly, they are very unlikely -- there are no
18 provisions in the plans, insofar as I have seen them, of -- for
19 posters giving information about sheltering and where to find
20 sheltering. There have been no -- now, perhaps, these are
21 intended as additions to the plans, but they were not in the
22 plans when I was reviewing the plans, you have -- for the
23 purposes again of this answer, the issue is not just what is in
24 the plans at this particular time, the issue is what is a
25 particular problem in planning. And you have a different

1 problem in providing information to people who turn up for one
2 day or two days or three days on vacation than you do in
3 preparing people who are residents of a community; and that's I
4 think the statement on page 11 or wherever we are.

5 Q I appreciate what you've written here, Doctor, I'm
6 just trying to inquire into the basis of it. Wouldn't you
7 agree that if you could send out an emergency broadcasting
8 message that would be received by every other person on the
9 beach, would that communicate be quite good and better than you
10 might get to the permanent population?

11 A (Goble) I think there are two issues. One issue
12 is --

13 Q Can you answer that question?

14 A (Goble) I'm trying to answer it, okay.

15 Q All right.

16 A (Goble) I think there are two issues. One issue is
17 notification; and the other issue is communication, that is to
18 say, providing a message that people will understand what to do
19 with it. All right.

20 Now, in terms of notification I think that you have,
21 as you are suggesting, a definite advantage if you have a large
22 group of people in one place who have different means of
23 hearing messages. The fact that some people will hear the
24 message and respond to it will cause everyone to notice that
25 something is happening. So in terms of notification I would

1 agree with your characterization.

2 In terms of communication, how it is that you tell
3 people what to do in a form that is useful for them to act
4 upon, there it seems to me that there are many potential
5 problems such as the ones discussed.

6 Q Well, in the last analysis isn't the only message to
7 the beachgoer who is recommended to take shelter the need to
8 know how to identify a building, and distinguish a building
9 from a non-building; and this is a safe bet, you'd agree, even
10 for a transient, isn't it?

11 A (Goble) Well, I don't agree with the premises of
12 your question, so that makes it slightly difficult for me to
13 answer it simply.

14 The -- I think -- I think and my testimony states
15 that a sheltering strategy that's based simply on the question
16 of whether or not is something a building is deficient. All
17 right.

18 Secondly, I think that for a variety of reasons, that
19 perhaps we can go into now or we can go into later, you may
20 want to when we get to the details of the testimony, I don't
21 think it's a simple a matter as saying, go indoors. I think
22 that people carry with them a lot of impressions that will make
23 such a set of instructions not so easy to implement.

24 And I think further that when you consider the
25 dynamic process that will occur with a considerable amount of

1 confusion and frustration with people trying to do one thing
2 and then discovering that they're either blocked or have
3 recommendations against it, that in fact the communication of
4 what it is to be done will not proceed smoothly at all.

5 Q That may be well and good, Doctor, but we're talking
6 about special characteristics of a beach population, are we
7 not?

8 A (Goble) That's right. And the particular
9 characteristics I'm talking about here that relate to that are
10 the difficulty in preparing people for the notion of what
11 constitutes a sheltering strategy in this situation.

12 Q Do you think it's necessary that the beach population
13 have the entire sheltering strategy in order to -- for them not
14 to be a special population?

15 A (Goble) I don't understand that question.

16 Q You don't understand the question.

17 Do you think that the beach population needs to be
18 presented with the entire sheltering strategy before the
19 message to take shelter gets home?

20 MS. SNEIDER: I'm going to object. Dr. Goble has
21 testified that Dr. Renn was part of this response and that the
22 behavioral aspects are within Dr. Renn's area of expertise.
23 I've let this go on for a little while, but I think we're
24 really getting into the behavioral issues at this point.

25 MR. LEWALD: If Dr. Goble wants to take that

1 position, that's fine with me, I'll move on.

2 THE WITNESS: (Goble) Well, I don't want to testify
3 to things that I'm not expert in. I guess I want to say one
4 more thing just to try to get -- at least to try to get some
5 closure on this, which is, that I did not want to leave the
6 impression that I thought that one needed a very complex set of
7 instructions, one needed to provide every member of the beach a
8 very complex set of instructions or the educational experience
9 of sitting through hearings like this or something, in order
10 for a sheltering strategy to work.

11 So I did not want -- I did not want to imply that I
12 was demanding all possible details of a strategy. I think
13 the -- I think it's a question that's better addressed by
14 experts in communicating with people, how much information is
15 needed to enable people to respond effectively.

16 BY MR. LEWALD:

17 Q Now, going on to the next page you ask -- I guess you
18 asked yourself the question, are these characteristics that you
19 just mentioned unique to the Seabrook site; and these
20 characteristics you just mentioned are characteristics with
21 reference to the beach population, are they not?

22 A (Goble) Yes, I think --

23 Q Well, can you -- am I wrong in reading that?

24 A (Goble) Well, I don't -- I, now as I look at this,
25 don't like the phrasing of the question too well, but, yes, the

1 characteristics that we just mentioned were characteristics of
2 the beach population.

3 Q But the answer that you give has no relation to the
4 beach population, isn't that, no relation to the
5 characteristics of the beach population, but the
6 characteristics of something else, isn't that so?

7 A (Goble) Well, I don't like the phrasing of the -- I
8 don't like the combination of the question and the answer. I
9 don't think the answer is totally responsive to the question,
10 and I think it's the question that's at fault.

11 Q Excuse me, you're talking about my question?

12 A (Goble) No.

13 Q Well, thank you.

14 A (Goble) I'm talking about our question. The -- it's
15 relevant to the beach population. The point -- the point about
16 the beach population is that there's so many people on the
17 beach, and which provides a problem for emergency planning.
18 And in my answer I go on to discuss a number of the problems,
19 only one of which had been mentioned before. I would consider
20 this a literary flaw rather than anything else.

21 Q You're not suggesting we strike the answer as
22 nonresponsive?

23 A (Goble) I would prefer that you not. But if you
24 want to rephrase the question I'd be willing to.

25 Q Now, at the bottom of the page you ask, are there any

1 emergency situations in which sheltering, if it were
2 successfully implemented would be the most effective protective
3 measure for the beach population. And you answer, yes, and
4 then when you're asked to describe the situation then you first
5 talk about evacuation; is that not so?

6 A (Goble) That's right.

7 Q Then in the middle of the page --

8 A (Goble) But I do -- I do -- in this case I do
9 actually answer the question in the answer.

10 Q You do answer it afterwards?

11 A (Goble) That's right. It just has a little bit of a
12 preamble which is set in context.

13 Q Well, you say that sheltering is preferred situations
14 in which -- which have exposure times that would begin or that
15 are short compared with times it would take to complete an
16 evacuation. Now, are you saying -- by complete evacuation, are
17 you saying, for example, that the entire beach should be
18 evacuated; is this what the context of -- is this meaning in
19 the context of your answer one that I should apply?

20 A (Goble) I'm not sure --

21 Q It's only in that event you can't complete and
22 totally complete an evacuation that you ought to shelter or
23 recommend shelter?

24 A (Goble) The -- let me be sure I understand your
25 question. I think I understand your question, let me try to

1 answer is.

2 The problem is one of -- I think the problem is just
3 one of the use of technical vocabulary to characterize
4 situations where you don't want to draw precise limits.

5 All right. The phrase that I used is, situations in
6 which the exposure would begin in times that are short compared
7 to, okay. So in situation -- so that doesn't necessarily mean
8 that I know where to draw the line if evacuation can't quite be
9 completed in the amount of time of the exposure. It means that
10 if you've got a big discrepancy you would want sheltering.

11 Q But if it's only a small one then you would --

12 A (Goble) You might not. You would want to do some
13 sort of analysis, to the extent that you could predict what was
14 going on, to decide what was the best strategy.

15 Q And this you would have to make a decision at the
16 time of an event?

17 A (Goble) Yes. Well, yes; basically, yes. Some
18 amount of preplanning to identify basic types of situations is
19 a good idea.

20 Q Well, next you were asked that because the New
21 Hampshire Radiological Emergency Response Plan provides that
22 the beach areas closest to the plant may be closed in an alert
23 stage of an emergency, doesn't that mean that people on the
24 beaches would always be gone from the area before the plume
25 arrives. And you say, certainly not, although it is possible

1 in the case of slow-developing accidents.

2 Isn't the situation just the opposite of that?

3 Aren't you -- isn't what we're faced with is, in most cases,
4 yes, but in some cases -- in a few cases, no; wouldn't that be
5 a more appropriate answer than the one that you're giving here?

6 A (Goble) No, it would not. Can I just explain that?

7 Q Sure.

8 A (Goble) Because I think this is really -- really one
9 of the cruxes of this whole argument. The basic point is that
10 emergency response planning is primarily for emergencies, for
11 situations in which the planning makes a big difference in
12 which there's serious threats to human health and welfare. And
13 it's exactly those -- it is exactly these situations in which
14 an accident happens relatively quickly, which you have
15 relatively large releases of radioactivity for which emergency
16 planning is most needed, and for which, in fact, the planning
17 basis for emergency planning was established.

18 So, if you -- there are lots of small accidents that
19 might happen, but they're not particularly -- and they're much
20 more likely, we hope very much more likely than any kind of big
21 accident, which we hope will never get one. But they're not
22 the accidents for which emergency plans are primarily made.

23 Q Well, the question talks about precautionary action,
24 does it not, that is precautionary action of clearing a beach?

25 A (Goble) That's right.

1 Q And your answer talks about the standards that NUREG
2 sets forth, the planning guidance, for not precautionary
3 actions but for protective actions, does it not?

4 A (Goble) That's correct.

5 Q We're not really talking about the same thing, are
6 we?

7 A (Goble) Well, we're talking about the same thing in
8 the following sense. The criteria in NUREG-0654 are based on a
9 set of generic analyses of reactor accident characteristics,
10 and the problems that they pose for emergency planning, all
11 right.

12 So, built into this guidance are a set of assumptions
13 about what kinds of problems you have to plan for. And the
14 thinking that went into those documents back then was that, in
15 fact, there was no evidence that you will be able to anticipate
16 with sufficient warning most serious -- the development of most
17 serious accidents. And for that reason the development of
18 guidance for dealing with these was not built into the
19 requirements for emergency planning back then.

20 I would be an interesting question to try to
21 reinstate -- to redo that question and redoing some work on
22 that, but that's a major undertaking and gets into a lot of
23 technical analysis about, to what extent can you predict the
24 development of accidents which has so far been, to my
25 understanding, ruled out of on these proceedings where people

1 have not wanted to provide testimony on it. There's a great
2 deal of controversy, I should say, as to how much warning time
3 there would be for how many accident characteristics.

4 And right now my understanding is that people are
5 going on the guidance that's embodied in NUREG-0654 which was
6 the embodiment of the best knowledge available at that time.

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1 Q Well, the question you've asked yourself that we've
2 been discussing directs itself to a beach population where the
3 answer addresses itself to general population; does it not?

4 A (Goble) No, the answer directs -- well, the answer
5 directs itself to the question whether or not you will have
6 enough warning to remove the beach population, all right, which
7 it seems to me is the same question as to how much warning
8 you'll have to do something with the general population,
9 whether or not it was going to be the same thing that you would
10 do with them or with beach population.

11 Q Well, turn -- we could turn next to Page 15 and the
12 question two-thirds of the way down that page. You say, "In
13 summary, then, given the testimony you have just described as
14 early plume arrival, the evacuation time estimates for the
15 beach area ranging from five to 10 hours, would sheltering be
16 the preferred protective response?"

17 Now here you're talking about a beach area which is
18 greater than the beach population; is that not so?

19 A (Goble) Well, I think I really don't understand the
20 question.

21 There's a beach population which is on the beach in a
22 beach area.

23 Q Well, doesn't the beach area encompass not only the
24 people who are on the beach, but the people who are in the
25 adjacent buildings, the homes, the shops, whatever, that are

1 roughly within that two to three mile area from the plant that
2 might have a beach association by --

3 A (Goble) All right, so in --

4 Q Is this not how you're using it?

5 A (Goble) Yes. I'm using the beach area to include
6 the -- besides the beaches the commercial strip along -- the
7 beach and that includes areas where people have summer cottages
8 and some private residences.

9 Q Now your answer to that question that I've just
10 referred to, it doesn't talk about beach areas. It talks about
11 the beach, doesn't it?

12 A (Goble) It's talking about the beach population
13 which is people -- people on the beach, though some of them
14 will be walking along the strip.

15 I don't -- I guess I don't understand the question.

16 Q You don't understand the difference between the
17 population on the beach, the beach population if you will, and
18 the beach area population?

19 A (Goble) No, I understand that difference. Let me
20 rephrase my -- I don't -- I mean, yes, I understand the
21 difference. I don't understand how that difference is germane
22 to what we're talking about.

23 Q Then at times you can use the populations
24 interchangeably?

25 A (Goble) Well, I'm sorry. The context was a context

1 in which we were talking -- what you had immediately read
2 before was times for evacuating the beach area. All right, so
3 we were speaking about a beach population, the amount of time
4 it takes the beach population to evacuate the beach area.

5 Q When the rest of the area is evacuated at the same
6 time?

7 A (Goble) Whether or not the rest of the area is
8 evacuating at the same time. That will affect the evacuation
9 times. But in any event, the evacuation times are of the range
10 given in my answer.

11 Q And do you distinguish the situation where you are
12 only closing the beach and expecting the people on the beach to
13 evacuate the area?

14 A (Goble) Well, I view these as -- I view these as
15 problems in arithmetic. There is a behavioral question, how
16 many people will do what if you order a beach closing as
17 opposed to a beach evacuation.

18 And Dr. Adler has given testimony giving evacuation
19 times under various assumptions about numbers of people
20 evacuating, and they vary. They depend on how many people --
21 how many cars are actually leaving, and --

22 Q Are you drawing --

23 A (Goble) -- but they are all pretty long.

24 Q Excuse me.

25 Are you drawing from Dr. Adler's testimony for your

1 testimony?

2 A (Goble) Yes.

3 Well, insofar as -- for evacuation times, yes. I
4 think I state that explicitly too.

5 Q That's the five to 10 hours that you say in the
6 previous question?

7 A (Goble) Yeah. Well, that's also testimony from your
8 witnesses. It's the same model.

9 Q But that's for the entire population, is it not?

10 A (Goble) But the entire population within the beach
11 area.

12 Q Yes.

13 A (Goble) Yes.

14 Q And not simply to the people on the beach.

15 A (Goble) Well, excuse me.

16 There are a variety of -- first of all, the entire
17 population within the beach area is not substantially -- is not
18 enormously different from the beach population. The beach
19 population are -- are by far the largest fraction of the
20 population in that area.

21 Secondly, there are a set of runs given in Adler's
22 testimony that specifically look at fractions of the resident
23 population evacuating along with various fractions, including
24 100 percent of the beach population evacuating. All of those
25 times differ. You have a different number of cars. You've

1 got a different answer.

2 But the time estimates, unless you substantially cut
3 down the population which can only happen if the beach isn't
4 crowded, because they are the bulk of the population, the times
5 for people getting out of the beach area -- we're not even
6 talking about clearing the EPZ; we're talking about getting out
7 of the beach area -- are in excess of five hours.

8 Q Well, isn't it significant whether we're talking
9 about the beach population or the beach area population if
10 shelter is recommended?

11 A (Goble) Maybe you should ask a more specific
12 question.

13 Q You can't do with that the way it's put?

14 A (Goble) Well, I fear I could do too much with it.

15 Q All right. Didn't you just suggest that there was
16 little difference between the beach area population and the
17 beach population?

18 A (Goble) Relatively little difference.

19 Q And my question to you was, if we're considering
20 sheltering, isn't there a significance in the difference
21 between the two?

22 A (Goble) No, I really don't know what you're asking.
23 The significance -- I mean they are different populations.
24 They are differently set up with respect to shelter. There is
25 lots of differences between them, but what kind of significance

1 -- I just don't understand the question.

2 Q All right, let me move on.

3 In the middle of Page 16, you ask yourself the
4 question, doesn't your conclusion that people would be better
5 off sheltering than waiting in cars in the case of a rapidly
6 developing severe accident contradict the early evacuation
7 strategy advocated by, or advocated in NUREG-1210.

8 Does your position in any way depend on NUREG-1210?

9 A (Goble) No.

10 Q And could you tell me what the reason is that you are
11 introducing NUREG-1210 into the testimony?

12 A (Goble) Yes. I think there are two reasons.

13 One is that -- one is that, though it's not a
14 regulatory document, NUREG-1210 is a pretty good document which
15 I discovered after preparing.

16 Q You discovered it when?

17 A (Goble) Discovered it after preparing earlier drafts
18 of this testimony.

19 The second reason is that --

20 Q The first one you didn't -- it's just a recent
21 discovery?

22 A (Goble) No, no, I think it's a good document. So,
23 you know, it's part of maintaining a bibliography. It's worth
24 relating to new, relevant literature, so it's worthwhile -- it
25 seemed to me worthwhile figuring out the relationship between

1 my analysis and the analysis in the author of this document,
2 the analysis by the authors of this document. So that's one
3 reason.

4 The second reason is that the document was quoted as
5 the basis in testimony by FEMA for a number of the conclusions
6 drawn there. So it seemed pertinent to -- if that document was
7 going to be discussed in these proceedings, to address the
8 relationship between our testimony and that document.

9 Q Do you have a particular reference as to FEMA's use
10 of NUREG-1210 in testimony?

11 A (Goble) A particular reference.

12 No, I could probably dig it out.

13 Q I beg your pardon?

14 A (Goble) I said, no, but I could probably provide one
15 for you.

16 Q It's something that you have readily at your
17 disposal?

18 A (Goble) Not something with me, but something -- I
19 probably have something that I could look at and we could come
20 back to it tomorrow morning if you're not going to finish
21 today.

22 Q Well, your answer, in any event, is no, and then you
23 go on to say that the strategy in NUREG-1210 is premised on the
24 observation that for most nuclear reactor sites only a few
25 hundred people live within the area two to three miles from the

1 plant, and therefore this immediate area could be evacuated in
2 almost all cases before the plume arrival.

3 Now is this statement a conclusion of yours based on
4 something that you have derived from the authors of NUREG-1210?

5 A (Goble) Yeah, this -- well, first of all, I have not
6 looked at population figures for almost all nuclear sites,
7 although I have looked at some.

8 Now, the statement is my reading of it, but that is
9 close to a direct quote. I'm quite sure that the document
10 states somewhere that at most sites only a few hundred
11 people --

12 Q You're taking from the text of the document and not
13 from any other information that you have; is my
14 understanding --

15 A (Goble) That's right. I have no -- I've not talked
16 to the authors of the document. I have read the document, and
17 what I am stating here is based on my reading of what's
18 written, but it's pretty clearly written.

19 Q And do you have a particular reference on 1210?

20 A (Goble) I might have -- all right, so I talk about
21 entrapment referenced in Page 19.

22 I would have to go back to the document. It's surely
23 in Volume 4, and it's probably near but not on Page 19. It's
24 probably part of the same discussion.

25 That one, I do have that document in my hotel room

1 and I could give you a page reference if you want it.

2 Q Doesn't NUREG-1210 make an exception also for those
3 cases where a plant is less than -- less than two or three
4 miles from the population, and doesn't 1210 in those instances
5 recommend evacuation in all occasions.

6 A (Goble) NU -- just trying to remember as well as I
7 can what it says.

8 What I believe NUREG-1210 recommends -- NUREG-1210,
9 according to my recollection, recommends evacuation as long as
10 there are not impediments to evacuation, and it lists --

11 Q Well, it uses the word "entrapment", does it not?

12 A (Goble) It lists entrapment as one of the possible
13 impediments.

14 Q And there are others?

15 A (Goble) Yes. It lists possibilities for adverse
16 weather to make an evacuation very slow or impossible.

17 Q Well, isn't that how they define entrapment is where
18 an ice or snow storm makes travel just impossible?

19 A (Goble) No, the --

20 Q Makes the roads impassable?

21 A (Goble) No, the -- the document also refers
22 specifically to a high population density causing evacuation
23 times of many hours. That may or may not be an exact quote.
24 That's the term that sticks in my mind.

25 Q Well, doesn't it recommend, or doesn't it discuss the

1 entrapment of a high density population and the entrapment is
2 from snow and ice which makes roads impassible?

3 That's not your recollection.

4 A (Goble) That's not my recollection. My recollection
5 is that it considers -- it considers the possibility of
6 entrapment from a very high density of population and/or from
7 adverse weather or other conditions that can block the
8 possibilities for evacuation.

9 Q Now was your example in your testimony about the
10 quick puff release also taken from NUREG-1210?

11 A (Goble) Well, it wasn't taken from NUREG-1210
12 because I made the example up before I read 1210.

13 Now, is it discussed in 1210?

14 I believe that it's discussed in 1210.

15 Q And it's just coincidental with your use of the puff
16 release as an example of an incidence maybe where shelter might
17 be appropriate?

18 A (Goble) Well, I wouldn't say it's coincidental. I
19 mean emergency planning is a subject that's been a lot of work
20 on for a lot of years and the basic problems of emergency
21 planning are well known and what options you have available for
22 dealing with them are well known, and I certainly wouldn't want
23 to claim originality in discussing the two examples that I
24 gave. Those are the standard problems that are posed for
25 protecting a population in which you would be particularly

1 concerned about providing sheltering. It's not a coincidence
2 at all.

3 Q Well, let's go on.

4 The next, and I'm at Page 17. You next ask yourself
5 the question that in a rapidly developing severe accident
6 sheltering would certainly be preferable to waiting outside in
7 cars. And then you say, does that mean sheltering could
8 actually result with substantial reduction of exposures,
9 possibly in the saving of early injuries and death.

10 And then your answer is, effective implementation of
11 sheltering, if it could be achieved, might reduce doses of a
12 factor of two or more. And then you have a note, see Aldrich,
13 et al., February 1978.

14 And then you go on to address, I think, things that
15 perhaps are also in Aldrich in the succeeding sentences; is
16 that true?

17 A (Goble) Yeah, I'm not -- I mean they're sort of
18 obvious things. They're probably in Aldrich but --

19 Q They're obvious to you before you were introduced to
20 emergency planning?

21 A (Goble) Well, oh, yeah. I mean, my background is in
22 physics. For a long time I've known how you shield from gamma
23 radiation and inhaled radionuclides.

24 Q Doctor, on the bottom of Page 17 you talk about
25 suitable shelters.

1 Now am I reading you correctly that your definition
2 of a suitable shelter is one which will afford protective
3 shielding of 50 percent or more from a dose exposure?

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4 (Continued on next page.)

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1 A (Goble) You're reading it correctly that this is in
2 effect a definition. I wouldn't want to draw a line, better
3 than 50 percent is good; worse than 50 percent is no good. I
4 would say in the range of roughly 50 percent you are talking
5 about something that you would call a reasonable shelter. It
6 might be 40 percent or 60 percent.

7 Q 40 to 60? And anything else is unsuitable, anything
8 below that?

9 A (Goble) Well, I get confused -- I always get
10 confused with the shielding factors that are 10 percent
11 reduction or 10 percent of the dose.

12 Q Excuse me, let's talk about a shielding factor, if
13 you will, and take 0.4 to 0.6?

14 A (Goble) All right. That I think is a reasonable
15 shelter. The -- however, a .9 --

16 Q I'm asking a suitable shelter, Doctor?

17 A (Goble) A suitable shelter?

18 Q Are you equating reasonable with suitable?

19 A (Goble) Yes. Though, I wouldn't necessarily want to
20 recommend that use of the language, but that's what I was
21 doing.

22 Q Then on page 19 you were asked, if an attempt were
23 made to implement shelter in the beach population based on
24 existing plans, would it be successful? And then you say, "No,
25 in my judgment most -- it would most likely aggravate the

1 condition of the accident and lengthen the period of exposure
2 for many people."

3 And then you ask yourself why is that. And then you
4 go on to identify some eight conditions which you say need to
5 be met to have a successful sheltering plan; am I stating that
6 correctly?

7 A (Goble) Yes.

8 Q Now, have you drawn on any source from which we might
9 pick out these same eight contentions that you've listed?

10 A (Goble) Well, I surely have. Let me think a little
11 bit about -- let me think a little bit about how to answer
12 that.

13 Actually there are nine items because it goes on --

14 Q There are nine, I'm sorry.

15 A (Goble) It goes on to the next page.

16 I'm not sure I can give you a satisfactory answer,
17 but let me try by telling you how this list was arrived at,
18 which was through a set of conversations between Professor Renn
19 and myself which we tried to agree on a list of conditions.
20 And the context in which we were doing this was in -- was in
21 the context of our review of plans and preparing plans on the
22 TMI project, which -- and that's why I'm having difficulty in
23 answering this because we had large numbers of discussions with
24 many experts in series of meetings.

25 And I would say that this is drawn less from the

1 literature that we've reviewed in a document as from
2 discussions, working group, meetings we've had with quite a few
3 people including one of your witnesses. And it was developed
4 in a collegial fashion rather than as based on a particular set
5 of references.

6 Q Well, do you know of any facility anywhere that has
7 an emergency plan in place that would satisfy the conditions
8 that you have set forth here in your testimony on pages 20 and
9 21?

10 A (Goble) The -- well, first of all, the conditions --
11 the first answer is that -- I mean, the answer is -- do I
12 know? Can I list somebody? The answer is, there probably are
13 places, but that's not very informative because the problems at
14 most nuclear sites within this close range are so much less
15 serious (hat to -- that to establish a suitable sheltering
16 strategy or even -- is just so much less of a challenge than it
17 is here, that to say that there are other sites does not, it
18 seems to me, and in fact -- I mean, I don't want to tread on
19 these rules. These conditions are close to being met in most
20 nuclear powerplants.

21 And at issue here is what is one doing in a situation
22 where they're difficult to meet.

23 Q Well, is it your position or the panel's that
24 sheltering for the beach population with what is at hand is
25 impossible at Seabrook?

1 A (Goble) I think I -- I think I would not want to say
2 without making a substantial more intensive study than I have
3 made. I would not want to give a definite, definitive answer
4 to that question. It seems to me, in fact, that -- that that's
5 not the burden of our testimony. The burden of our testimony
6 is that sheltering appears to be needed; and the existing
7 provisions are not adequate for implementing it; and whether it
8 could be done is something that I don't -- I can't testify as
9 to -- as an expert on.

10 I can testify and I think I have testified in this,
11 that it would be difficult. And if somebody invited me to
12 prepare a sheltering plan I would tell people beforehand that
13 it would be very difficult.

14 Q And difficult to impossible with what's at hand at
15 Seabrook?

16 A (Goble) I would not want to -- I mean, I would not
17 rule out -- there's also a question, what does it mean what's
18 at hand? I prefer just to leave it, it's difficult and I don't
19 know how to do it.

20 Q Well, at hand what I was referring to, if it's
21 assistance to you is the geographical and the physical makeup
22 of the area and the buildings that appear now on or in the
23 area?

24 A (Goble) And would you --

25 Q These are what I would consider to be at hand at

1 Seabrook?

2 A (Goble) Consider this at hand. Now, would you
3 consider any sort of modifications of buildings?

4 Q You mean a series of bunkers or something of that
5 nature?

6 A (Goble) Well, modifications. Building
7 modifications.

8 Q I'm talking about what's there now, Doctor?

9 A (Goble) So -- so you would exclude any kind of
10 modifications as not being there. You would exclude any kind
11 of -- you would exclude any kind of change in the physical
12 configuration whatsoever to permit better access. You would
13 exclude any control over the size of the population. You would
14 exclude changes in -- any changes that might effect evacuation
15 times or routes, all those things.

16 I think I could list enough exclusions so eventually
17 I would say it was impossible.

18 Q Now, on the bottom of -- now let me move on to -- on
19 page 22 you make the statement, and I gather that's a statement
20 of all the panel, "That we have found that any attempt to
21 implement a sheltering response at this site, given
22 characteristics and the size of the beach population, the type
23 of buildings in the beach area, and the present non-level of
24 planning, would likely make matters worse if ad hoc sheltering
25 was attempted." And you find that at the top of page 22?

1 A (Goble) Yes.

2 Q And then you go on to recite that, and this is
3 Doctors Goble and Eckert and Professor Evdokimoff that you
4 started by examining the buildings possible available
5 sheltering in the beach area --

6 A (Goble) Yes.

7 Q -- to determine whether sufficient sheltering space
8 exists in the beach area, and among other things. And then you
9 go on to say that, "The buildings can be divided essentially
10 into two groups: private residences, for Hampton and Seabrook
11 beaches, and the beach area closest to the plant predominantly
12 beach cottages, and public buildings," let me -- I'm reading
13 that disjointedly, let me do it again. "The buildings can be
14 divided essentially into two groups: private residences, which
15 for Hampton and Seabrook beaches, the beach area closest to the
16 plant, are predominantly beach cottages; and public buildings
17 which include commercial establishments, such as hotels,
18 restaurants and stores, as well as municipal buildings."

19 Now, you state that you undertook to examine the
20 buildings in this area which were possibly available to
21 shelter, and starting with the first group, private residences,
22 you examined only summer cottages. Since you say, permanent
23 residents make up only a very small percentage of the
24 population beach area, now is your reliance for this, again, on
25 Dr. Luloff's beach survey as to the number of permanent

1 residents in the beach area?

2 A (Goble) Well, no, I think it's --

3 Q Well, what is it?

4 A (Goble) Just -- I mean, you just visit the beach
5 area and you look and see what are the buildings, they're
6 mostly summer cottages.

7 A (Evdokimoff) May I add something?

8 A (Goble) Yes.

9 A (Evdokimoff) Since I was a co-author of this
10 statement, my comment came from talking with the fire people
11 and the police and they told me that most -- the area that I
12 was looking at, predominantly Hampton Beach was pretty much
13 summer cottages, and that if you look at the population ratio
14 that most of these people are not permanent residents. This is
15 relating to the summer.

16 So, my documentation came from the two fire officials
17 I talked with and the police, and I talked with about five out
18 of ten realtors. So in my part of the statement here, that's
19 where I drew my conclusions from.

20 Q Well, your part of the statement, you're referring to
21 pages 23 and 24, are you?

22 A (Evdokimoff) My name is in the middle of 23, yes.
23 And it's also on page 22 regarding private residences
24 versus --

25 Q So on the basis of discussions you had with fire

1 officials and others you came to the --

2 A (Evdokimoff) And others.

3 Q Pardon?

4 A (Evdokimoff) And others.

5 Q And others, yes.

6 A (Evdokimoff) And others.

7 Q You came to the conclusion that there were few
8 permanent residents in the area?

9 A (Evdokimoff) That's what they told me. I had never
10 been to Hampton Beach before, so I'm really not familiar with
11 the area, but I just relied on the people who were there all
12 the time and would perhaps be in a better position to know
13 what's going on there than I did, namely, the realtors and fire
14 and police officials, and I talked to some renters and that's
15 sort of what -- where I came up with this information.

16 Q Okay. Putting the permanent residents to one side,
17 after that you undertook an examination of summer cottages, did
18 you not?

19 A (Evdokimoff) That's true, Mr. Lewald.

20 Q Your answer is, yes?

21 A (Evdokimoff) Yes, sir.

22 Q And you say you performed a survey of the cottages,
23 and you examined what you considered to be a representative
24 sample of the cottages in the beach area?

25 A (Evdokimoff) Yes, sir.

1 Q Now, what you considered to be a representative
2 sample, we can agree, was not a random sampling of the beach
3 cottages in the area?

4 A (Evdokimoff) There's many ways of sampling. You
5 can, you know, stratified santed haphazard sampling.

6 Q Just answer, and then elaborate if you will.

7 A (Evdokimoff) Could you repeat the question and make
8 sure I understand it clearly.

9 Q Yes. The same thing that you did to arrive at
10 whatever you call representative sample was not done
11 randomly, was it?

12 A (Evdokimoff) I would say it had the elements of
13 randomness in it. in that -- well, let me just tell you what I
14 did, I pretty much covered most of the streets on the Ashworth
15 Avenue, Ocean Boulevard and the lettered streets. And in fact,
16 being up there in a week I probably covered all the streets.
17 But for this formal survey in which I just, you know, just
18 counted buildings. I counted 459, which is, you know, greater,
19 it's almost a 50 percent sample and that's, you know, that's a
20 pretty good sample -- sampling statistics.

21 Q You think that's a pretty good sample?

22 A (Evdokimoff) I think so, yes.

23 Q How did you -- what did you do to conduct the survey?

24 A (Evdokimoff) Well, I think what I did is, it's sort
25 of evolved --

1 Q Sort of what?

2 A (Evdokimoff) It evolved. I didn't have a plan in
3 mind because I went up there and I just was -- as a head
4 physicist I was asked to evaluate, you know, the shielding
5 potential for these cottages.

6 So the first thing I did is, I just walked around.
7 And what I did first of all, I started talking to people. I
8 talked to some renters. I then proceeded to -- went to the
9 fire station, figuring these people should know the area
10 because there are occupancy laws that the fire officials have
11 to enforce. I went to the police station just to get a sense
12 of what's, you know, what's really going on other than I drove
13 around the area initially and I did some walking.

14 So I started --

15 Q Excuse me, what area are we talking about?

16 A (Evdokimoff) I'm talking about the areas, in my
17 testimony, of Ocean Boulevard, Ashworth Avenue, and the
18 lettered streets, A through Q, I believe.

19 And my attachment on my testimony has what I mapped
20 out. It was predominant, you know, it was Hampton Beach
21 the --

22 Q It was what?

23 A (Evdokimoff) Hampton Beach area.

24 Q Predominantly the Hampton Beach area?

25 A (Evdokimoff) Yes. I did visit North Beach. I did

1 visit Seabrook. I did visit Salisbury. But I concentrated my
2 efforts on the Hampton Beach area.

3 Q There's nothing in your testimony with respect to
4 North Beach or Seabrook, is there?

5 A (Evdokimoff) No, no. But I did go to North Beach.
6 And as I said, I went to Seabrook, and I went to Salisbury.
7 And I went through the town to get a sense of what a typical
8 cottage or, excuse me, a typical house might be in the area to
9 have a reference to compare the cottages to. So that was
10 predominantly it.

11 Q Now, the typical cottage is a subjective judgment on
12 your part, is it not?

13 A (Evdokimoff) I don't think it's subjective at all; I
14 think it's objective. I know what I saw. I saw, I think,
15 predominantly wood structures without basements that are
16 probably -- many of them run down, they're hundred -- 50 to 100
17 years old, according to the testimony -- excuse me, according
18 to the statements from the fire officials and police officials
19 and realtors who I think should know.

20 And there was -- I did a lot of walking in the area.
21 Took a car tour of the area, talked to people. So it's not a
22 subjective estimate by any means; I would say it's objective.

23 Q You think it's a scientific approach to the problem?

24 A (Evdokimoff) I would say it's -- ,

25 Q As a health physicist you're stating that?

1 A (Evdokimoff) Sure. I think if I submitted this to
2 a peer review journal, I think this is the type of information
3 that would be necessary to be considered for a publication, is
4 that you have to make measurements and observations and you
5 submit those measurements and observations to peer review.

6 Q How many measurements did you make?

7 A (Evdokimoff) Measurements meaning? I used
8 measurements in the generic sense; I didn't take measurements
9 of thickness of wood, if that's what you're referring to.

10 Q Well, what do you mean by, measurement in the generic
11 sense?

12 A (Evdokimoff) In other words, if I was to take the
13 temperature outside, that would be a measurement or if I was to
14 measure the wind velocity, that would a measurement. If I was
15 to look at air changes per hour, that would be a measurement,
16 if I used a velometer, for example, those are measurements.

17 Q Well, how did you take a measurement of the summer
18 cottages?

19 A (Evdokimoff) Well, I think what we have to do is
20 refer to the statement in Aldrich, it's somewhat simple,
21 Aldrich says -- and I'm referring to the two documents of
22 January '78 document on "Multicompartmental Ventilation
23 Models," which refers to inhalation dose; and the February 1978
24 document which refers to protecting from ground shine and cloud
25 shine.

1 Now, Aldrich got the references from Burson and
2 Profio from EG&G in Las Vegas, and the structures have certain
3 inherent shielding properties.

4 And you can see that if a house is made of wood that,
5 you know, this is an observation or if a house doesn't have a
6 basement you can make that as an observation or if there are
7 windows open in the house, then you know according to the
8 January 1978 report that the air changes per hour will go up.

9 Q Are you taking a winter rate or a summer rate from
10 that -- from Aldrich of January '78?

11 A (Evdokimoff) The Aldrich is --

12 Q It's a winter rate, isn't it?

13 A (Evdokimoff) It doesn't make much difference,
14 because if you open up the windows it will -- the air changes
15 per hour will go up or if it's windy out that will also -- in
16 fact, he states they can go to six to nine air changes per
17 hour.

18 Q Well, if you have differences in heat and temperature
19 and wind you're going to get air exchanges, aren't you?

20 A (Evdokimoff) Sure.

21 Q And if you don't have these in the summertime, then
22 you're not going to get air exchanges, isn't that true?

23 A (Evdokimoff) You're going to get air exchanges no
24 matter what you do. I mean, that's just the way things are.
25 If you have an insulated house you could have .1 air changes

1 per hour. If you have an old farm house that's drafty with
2 broken windows you could have six to nine air changes per hour.
3 And in the summer -- summer and winter time there are
4 differences, but basically the concept holds, the tighter the
5 structure the less air changes per hour.

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1 Q Well, if we can go back to your testimony in the
2 middle of Page 24, I guess is what you're referring to, did you
3 perform a survey of the cottages, and I examined what I
4 considered to be a representative sample of the cottages of the
5 beach area, and you've just told us how you conducted your
6 survey by what you concluded as a representative sample.

7 And then you ask, what did you do, and then you've,
8 as you've told us, you said you talked to fire officials,
9 police officials, and you learned that in Hampton Beach there
10 is well over a thousand cottages which can house one to three
11 families.

12 And then I take it that you made first an oversight
13 look at these thousand cottages?

14 A (Evdokimoff) Yes. When I first came into the area,
15 I didn't know --

16 Q Well, did --

17 A (Evdokimoff) I didn't know what the -- I had never
18 been to Hampton Beach, and so I just drove around to get a
19 sense of what it was like. And then from there I proceeded to
20 get out of the automobile and to walk around just to get a
21 sense. And then I proceeded to talking to people, and then I
22 went to the fire officials and I talked to police officials and
23 I talked to the realtors. And then from the realtors, I went
24 into the cottages, and the last thing I did was a formal survey
25 of the area, but I would say --

1 Q Well, let's --

2 A (Evdokimoff) Okay, you asked me what I did, and I
3 told you.

4 Q All right. This is a formal survey is what you told
5 me?

6 A (Evdokimoff) Right. The last thing I did -- the 459
7 would be the last -- you know, after I had been into the
8 cottages, the last thing I did was actually go up and down the,
9 you know, streets slowly and --

10 Q And you picked one house out of --

11 A (Evdokimoff) No, no. What I did is, for example, if
12 I could look at my exhibit here, I went to every street and
13 counted every cottage. I didn't cover all the streets on the
14 Ashworth side or the lettered streets or Ocean Boulevard. But
15 I would say I covered most of them, and I counted every single
16 cottage.

17 And then I also went back later after I had done this
18 formal survey, and did some spot checking to make sure I wasn't
19 missing anything. In other words, if I -- if I claimed that
20 this wasn't a basement, I just wanted to make sure by spot
21 checking -- my walking around to see that I was -- so this was
22 sort of I'm verifying my assumption by automobile. So I think
23 it was -- you know, I did many things to come to this
24 conclusion and it wasn't just one trip in an automobile and get
25 a sense of it. I did many things.

1 Q How did you arrive at 489?

2 A (Evdokimoff) I counted them.

3 Q And why did you stop at 489?

4 A (Evdokimoff) Because I thought I saw enough to get a
5 sense from a health physics point of view of a perception of
6 how these cottages might do in the event of an accident from
7 Seabrook --

8 Q Did you use some standard --

9 A (Evdokimoff) --in terms of a radioactive release.

10 Q Excuse me. I'm sorry, I didn't mean to cut you off.

11 A (Evdokimoff) I used some standard of --

12 Q Did you use some standard or measure to select the
13 489 out of the 1,000?

14 A (Evdokimoff) No, I just stopped when I felt like I
15 had -- you know, just by looking at my numbers I saw two
16 basements and one masonry structure out of all 459, and I said
17 basically we've got wood structures with no basement but crawl
18 spaces, and it's a fairly simple assumption from Aldrich that
19 in terms of cloud shine, you know, I have a factor of .9. From
20 ground shine, I have a factor of, you know, .6, or excuse me,
21 .4.

22 So it was fairly easy, you know. I didn't have to go
23 in and take measurements. You know, Aldrich is the expert.
24 Wood is wood. No basement means you've got a certain factor,
25 and that's how you call it.

1 Q So we're dealing with cottages out there with a
2 sheltering factor of .9 from cloud shine, and roughly, did you
3 say .4 from ground shine?

4 A (Evdokimoff) Right. That's what Aldrich's tables
5 are, and I'm not --

6 Q Mr. Brunson and -- excuse me.

7 A (Evdokimoff) Burson and Profio.

8 Q Profio actually. Okay.

9 A (Evdokimoff) Right, EG&G, right.

10 Q But Aldrich is using them and had adopted them.

11 A (Evdokimoff) Right, he's using those.

12 Q Now do I understand that when you got to 489, you
13 said that's enough, and --

14 A (Evdokimoff) Yeah, I think I had a -- you know, I
15 think -- scientists, you know, they can run experiments
16 forever, but I think a scientist after a certain point realizes
17 he's got enough data to make a conclusion statistically. You
18 know, with a sample size of 50 percent and the fact that I had
19 gone over other areas and had not counted that formally, I got
20 a sense of what I thought was going on here, and I believe
21 that's why I stopped. I didn't need to see anymore. I felt
22 that I could make a judgment on these cottages in terms of as a
23 health physicist.

24 Q Even though these weren't selected randomly.

25 A (Evdokimoff) Right.

1 Q Now in the middle of Page 26, you say you were able
2 to inspect 12 representative cottages.

3 Now by this are you suggesting that 12 were
4 representative of the 459 you surveyed?

5 A (Evdokimoff) Yes, I am.

6 Q Which, in turn, were representative of the 1,000 that
7 you looked at?

8 A (Evdokimoff) Yes, I am.

9 JUDGE SMITH: Excuse me. Was the answer to the last
10 question, question and answer, I understood you to say were the
11 459 or whatever the number is selected at random, or not at
12 random, or what was it?

13 I don't know whether it was yes or no.

14 MR. LEWALD: I asked him if it was at random, and he
15 said no.

16 THE WITNESS: (Evdokimoff) Perhaps, Mr. Lewald, you
17 should define what you mean by random. There is things called
18 haphazard sampling, there is gradient sampling. There is
19 different types of sampling techniques. And maybe before I
20 answer that, we should make sure we agree in terms of semantics
21 what we consider random.

22 So if I may turn the tables on you perhaps, what do
23 you consider random sampling?

24 JUDGE SMITH: Well, before you get done, what was the
25 question and answer?

1 MR. LEWALD: I thought we had the question asked and
2 answered as far as I'm concerned.

3 JUDGE SMITH: I know, you did. I'm just saying I
4 missed it and I would like to know what it is.

5 MR. LEWALD: Well, I asked him whether the sampling
6 was done randomly, and he said no.

7 JUDGE SMITH: That's right, that's it. It was
8 done --

9 MR. LEWALD: And now he's going to get into a
10 semantical discussion with me of what do we mean by random.

11 THE WITNESS: (Evdokimoff) Only because on
12 reflection perhaps maybe my interpretation of what you mean by
13 random may not be correct, and I could be answering the
14 question wrong, and I don't want to mislead you.

15 BY MR. LEWALD:

16 Q What I'm referring to is a sample that is done with a
17 sense of random numbers where these are selected by a
18 statistician or --

19 A (Evdokimoff) Okay. You're talking about a computer
20 random generation number system.

21 No, this was not --

22 Q I am talking about that to.

23 A (Evdokimoff) No, this is better than that because
24 the sampling size was so large, you know, I don't think you
25 have some of the inherent statistical problems of doing small

1 samples.

2 What I am telling you is that I looked at most of the
3 cottages in the area in this survey, and they were done one
4 right after another, and it was compilation of other things
5 with that, and this is how I came up with my judgment.

6 Q How did you select the 12 out of the 489 to inspect?

7 A (Evdokimoff) Well, I was concerned about bias in the
8 study because -- bias.

9 Q Oh, you're answering my question?

10 A (Evdokimoff) Yes, I am.

11 Q You understand the question.

12 A (Evdokimoff) Yes, I did.

13 Q Okay.

14 A (Evdokimoff) And I was concerned that if I went to
15 the realtors and I said that I'm from the Attorney General's
16 office. Can you show me 12 -- can you show me some cottages,
17 that remark could bias what I see. They could, you know,
18 depending on their feelings, if they were perhaps concerned --
19 let's say -- Judge Smith used the term "anti-nuke", and if I
20 could copy that. Perhaps if they were anti-nuke people, they
21 might show me the worst cottages possible.

22 Q Do you think it's significant that you don't --

23 A (Evdokimoff) No, I -- just let me finish.

24 Q Don't tell the source.

25 A (Evdokimoff) But perhaps they may not, and so what I

1 basically did is I went in there and I said, my family and I
2 are planning to come up next week, and this was the week before
3 Labor Day, and we have two kids, and we want to rent a cottage,
4 we want to rent an apartment or cottage for the weekend, and
5 could you show us a range, and they said, sure.

6 Q Did you come up with your family?

7 A (Evdokimoff) Did I come up with my family?

8 Q Yes.

9 A (Evdokimoff) Yes, I did.

10 Q And rented one of the 12 cottages?

11 A (Evdokimoff) No, no, I didn't do that.

12 So what I did was I -- and so based on that, but I
13 may go back there some day. I don't know that; possible.

14 So what they did is they just handed me keys, and
15 those were where I went. So I don't believe there was bias.
16 They didn't know who I was. They didn't know what my intent
17 was. My intent was to go in and just sort of get maybe a
18 closer view of what might be inside these structures.

19 So whatever they gave me, that's where I went.

20 Q And that's how you got what you say is a
21 representative sample out of the 459?

22 A (Evdokimoff) No, it's a small sample. I'm not saying
23 that a sample of 12 is statistically valid to make an
24 assumption about the whole beach, but I think it reflects
25 certain impressions that I had that I feel were validated.

1 Q Well, it's sufficiently small that you can't use it
2 to project to the population of cottages, can you?

3 A (Evdokimoff) Well, I think what it did is it gave me
4 more information on how -- what little mass there are in these
5 structures, and my concerns, for example, for things like cloud
6 shine and ground shine protection -- in fact, there were broken
7 windows in there in terms of inhalation doses and increased air
8 changes per hour, those are some of the things you may not be
9 able to see as you walk around the area or drive around the
10 area.

11 So this was just to get a little bit more
12 information, and I saw slats. Some of these -- I was surprised
13 that some of these cottages didn't even have ceilings. You
14 could see right through them to the outside. So there would be
15 a problem with ventilation.

16 Q All right. On Page 27 you talk again about the --
17 JUDGE SMITH: Excuse me. Before you leave that
18 point, did you give them a price range?

19 THE WITNESS: (Evdokimoff) Yes, I did, Your Honor. I
20 gave two price ranges just to make sure, and, you know, I think
21 it -- I think it reflects probably -- even though it was a
22 small number, I think it reflects probably a good sense of
23 what's going on in the area, because I saw some apartments
24 there that even though they were wood and had no basements
25 although you would still have the same factors according to

1 Aldrich, they had paneling, and they had rugs, and they had,
2 you know, storm windows, and they were quite aesthetically
3 pleasing.

4 And then I saw the other -- mainly the one-story
5 cottages, those seemed to be the ones that were in the worst
6 shape. I mean some of the windows couldn't be closed. There
7 were holes in the windows, holes in the screens. There were
8 small -- as I say, you could see light through the ceilings in
9 about three or four of them, I think four of them that I
10 testified to.

11 So interesting enough, I got -- by going to about
12 five realtors, I got about maybe three or four on each of the
13 things just sort of coincidentally, and I got, you know, I
14 think a pretty good sample for a small number of -- you know,
15 on the three sizes of the street -- you know, Ashworth, Ocean
16 and lettered, as well as one in two-story apartment.

17 So the way I did it, I don't think there was bias,
18 but I got a sense of some of these cottages.

19 JUDGE SMITH: Is this a good time to break for the
20 evening?

21 MR. LEWALD: It's as good as any, Your Honor.

22 MR. TURK: Your Honor, I want to make one note of a
23 preliminary matter that I should have done earlier, and I
24 wanted to put on the record that on Friday I had telephoned the
25 Board and asked for an extension of time for filing our

1 response to contentions, and that I had previously discussed it
2 with Mr. Dignan and Mr. Traficonte, Mr. Brock and Ms. Weiss,
3 and those parties did not object although I note Ms. Weiss said
4 she doesn't object, she doesn't favor. It was more
5 noncommittal than --

6 JUDGE SMITH: That also reminds me. Have you
7 reported to the parties what your response to the Board's
8 direction concerning the appearance of NRC witnesses are
9 concerned?

10 We required that the Executive Director for
11 Operations designate a witness to come to the hearing.

12 MR. TURK: We haven't had any communications, but in
13 fact the staff will be making witnesses available.

14 JUDGE SMITH: Well, do you intend to inform the
15 parties as to that?

16 MR. TURK: I can do it right now while everyone is in
17 front of us.

18 JUDGE SMITH: I think they probably might appreciate
19 it.

20 MR. TURK: We do have Mr. Bores and Mr. Lazarus here
21 in Concord today. Presumably they'll go on the stand after the
22 cross-examination of the Mass. AG's panel concludes.

23 We also have asked two other individuals, Frank
24 Congel and Dave Matthews, to appear to testify as to the
25 January 1988 meeting with FEMA, and I believe that they also

1 will be able to give some perspective on the evolution of the
2 FEMA position; at least insofar as the NRC staff is aware of,
3 facts which may have gone into FEMA's development of its
4 position.

5 Then in terms of schedule, we had assumed that Mr.
6 Thomas was going to be appearing this week. So I don't know
7 exactly when we will bring Mr. Congel and Mr. Matthews here.

8 JUDGE SMITH: Yes, I understand that problem. I just
9 wanted to resolve two things: who they were, and that if that
10 were the case you were going to comply with the Board's
11 direction.

12 MR. TURK: Yes, we certainly will comply with the
13 Board's direction.

14 JUDGE SMITH: Okay. Anything further this evening?

15 MR. TURK: Well, Your Honor, I just want to note in
16 terms of our response to contentions that the Board has granted
17 us an extension until May 27th to respond.

18 And, also, I anticipate hearing from Mr. Flynn
19 tomorrow as to Mr. Thomas's expected appearance and whether he
20 will be appearing this week or not. And after that I can talk
21 with my people and see what their availability will be.

22 JUDGE SMITH: Understand.

23 MR. BROCK: Your Honor, has the Board reached any
24 determination after this week as to hearing schedule?

25 JUDGE SMITH: We have reserved -- all right, that's

1 fine. We have reserved -- we can adjourn now and talk about
2 it.

3 (Whereupon, at 5:03 o'clock p.m., the hearing was
4 recessed, to reconvene at 9:00 a.m., Tuesday, May 17, 1988.)

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:
Name: PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.
Docket Number: 50-443-OL, 50-444-OL
Place: CONCORD, NEW HAMPSHIRE
Date: May 16, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken electronically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the recording is a true and accurate record of the foregoing proceedings.

(S/ Kent Andrews)

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