

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

EVIDENTIARY HEARING)

PUBLIC SERVICE COMPANY OF)

NEW HAMPSHIRE, et al)

(SEABROOK STATION, UNITS 1 AND 2))

DOCKET: 50-443-OL

50-444-OL

OFFSITE EMERGENCY

PLANNING

Pages: 12229 through 12486

Place: Concord, New Hampshire

Date: May 24, 1988

TR-01
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2 ATOMIC SAFETY AND LICENSING BOARD

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

9
10 Tuesday,
May 24, 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 9:36 a.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
18 Atomic Safety and Licensing Board
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
Washington, D.C. 20555
22
23
24
25

1 APPEARANCES:

2 For the Applicant:

3 THOMAS G. DIGNAN, JR. ESQ.
4 KATHRYN A. SELLECK, ESQ.
5 GEORGE LEWALD, ESQ.
6 Ropes & Gray
7 225 Franklin Street
8 Boston, Massachusetts 02110

9 For the NRC Staff:

10 SHERWIN E. TURK, ESQ.
11 Office of General Counsel
12 U. S. Nuclear Regulatory Commission
13 Washington, D.C. 20555

14 For the Federal Emergency Management Agency:

15 H. JOSEPH FLYNN, ESQ.
16 Federal Emergency Management Agency
17 500 C Street, S.W.
18 Washington, D.C. 20472

19 For the State of New Hampshire:

20 GEOFFREY M. HUNTINGTON, ESQ.
21 State of New Hampshire
22 25 Capitol Street
23 Concord, New Hampshire 03301

24 For the Commonwealth of Massachusetts:

25 CAROL SNEIDER, ASST. ATTY. GEN.
STEPHEN OLESKEY, ESQ.
Commonwealth of Massachusetts
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108

For the New England Coalition against Nuclear
Pollution:

ELLYN R. WEISS, ESQ.
Harmon & Weiss
2001 S Street, N.W.
Washington, D.C. 20009

25

1 APPEARANCES: (Continued)

2 For the Seacoast Anti-Pollution League:

3 ROBERT BACKUS, ESQ.
4 Backus, Meyer & Solomon
5 116 Lowell Street
6 Manchester, New Hampshire 03105

7 JANE DOUGHTY, DIRECTOR
8 Seacoast Anti-Pollution League
9 5 Market Street
10 Portsmouth, New Hampshire 03801

11 For the Town of Hampton:

12 MATTHEW T. BROCK, ESQ.
13 Shaines & McEachern
14 25 Maplewood Avenue
15 P.O. Box 360
16 Portsmouth, New Hampshire 03801

17 For the Town of Kensington:

18 SANDRA FOWLER MITCHELL, EMERGENCY PLANNING DIR.
19 Town Hall
20 Kensington, New Hampshire

21 For the Towns of Hampton Falls and North
22 Hampton and South Hampton:

23 ROBERT A. BACKUS, ESQ.
24 Backus, Meyer & Solomon
25 116 Lowell Street
Manchester, New Hampshire 03105

For the Town of Amesbury:

(No Appearances)

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I N D E X

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2	<u>WITNESSES</u>	<u>DIRECT CROSS REDIRECT RECROSS EXAM</u>	
3	<u>Panel:</u>		
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I N D E X

	<u>EXHIBITS:</u>	<u>IDENT</u>	<u>REC 'D</u>	<u>REJ</u>	<u>DESCRIPTION</u>
1					
2					
3	<u>MASS. AG:</u>				
4	25	12235	12236		6 pages, NRC
5					Announcement No. 3,
6					11 Jan. '88, McDonald
7	26	12367			to all NRC employees
8					
9	27	12368			2 pages, memo, 9 Jan.
10					'86, Lutz to Thomas
11	28	12370			2 pages, letter, 14
12					Jan, '86, Bickerton
13	29	12371			to Thomas
14	30	12430	12443		2 pages, memo, 13 Jan.
15					'86, Oleson to Thomas
16	31	12470	12482		2 pages, memo, 15 Jan.
17					'86, Church to Thomas
18					1 page, letter, 1 May
19					'87, Flynn to Reis
20					2 pages, memo, 17 Jan.
21					'87, Thomas to RAC
22					
23					
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P R O C E E D I N G S

JUDGE SMITH: Good morning.

Mr. Flynn.

MR. FLYNN: Yes, I have a brief matter.

Last week we had a discussion about two documents as to which attorney/client privilege was claimed. They are two handwritten -- well, excuse me. One is handwritten, the other is typed, two short memoranda: One from Richard Krimm to George Watson, and the other from George Watson to Richard Krimm, both of which are dated March 2, 1988. And I wish to submit these to the Board for in camera inspection, and I will await the ruling of the board.

JUDGE SMITH: Anything further before we proceed?

Mr. Oleskey.

MR. OLESKEY: Thank you, Your Honor.

I'd like to mark the Announcement No. 3 of the NRC just provided dated January 11, '88, attaching a copy of something called NUREG-0325, NRC Functional Organizational Charts which has five pages. The first four of which appear to be organizational charts for the Commission; the last of which for Region 1 of the Commission.

Mr. Turk can amplify on that, but subject to anything he wants to add or subtract, I would like to make it an exhibit consistent with our discussions on Friday that we have such a document.

1 MR. TURK: Is there a motion?

2 JUDGE SMITH: Well, he's offering it as an exhibit.

3 JUDGE HARBOUR: Mass. AG 25?

4 MR. OLESKEY: Yes, Judge Harbour.

5 (The document referred to was
6 marked for identification as
7 Massachusetts Attorney General's
8 Exhibit No. 25.)

9 MR. TURK: Your Honor, before we do that, I should
10 make a note of the nature of this document.

11 If the Board will recall, on Friday I indicated I
12 would be returning to Washington over the weekend, and I would
13 look for organizational charts. And I did that. I determined,
14 at least in my possession, the latest organizational chart were
15 those of January 1988. And there is a NUREG document that
16 consists of approximately 50 pages. I xeroxed -- well, without
17 getting into patent claims, I reproduced the pages which I
18 considered to be relevant to Mr. Oleskey's purposes. Those are
19 pages dealing with the executive director of operations, Office
20 of Nuclear Reactor Regulation in Region 1, particularly as they
21 apply to emergency planning.

22 And I assume the offer is simply for the purpose of
23 showing organizational, at least as of January 1988, and for
24 that reason I don't object.

25 MR. OLESKEY: Fine.

1 MR. TURK: I have to note I can't represent that this
2 is the latest organizational chart. It's the latest one in my
3 possession. I assume it's fairly current.

4 JUDGE SMITH: All right. There is no objection. The
5 exhibit is received.

6 (The document referred to,
7 having been previously marked as
8 Massachusetts Attorney General's
9 Exhibit No. 25 was received in
10 evidence.)

11 MR. TURK: Your Honor, I might as well put on the
12 record at the same time that I've distributed Dr. Murley's
13 notes of the January 19, 1988 meeting. I have redacted from
14 the first page of those notes the discussion pertaining to
15 Shoreham.

16 I would also like to note that Dr. Bores has had an
17 opportunity over the weekend to look for Attachment 17 to his
18 memo to me of October 15th. That's Staff Exhibit 2 and 2-A.
19 We have located that and it's available. I would like to show
20 it to counsel now so that they may see the original as it
21 existed in Dr. Bores's files.

22 (Pause.)

23 MR. TURK: And having done that, Your Honor, I'd like
24 to ask counsel if they agree that the original of this document
25 does in fact show a plus sign next to the entry for Warren

1 Church of HHS.

2 MR. OLESKEY: Looks that way to me.

3 Whereupon,

4 ROBERT BORES

5 WILLIAM LAZARUS

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

8 CROSS EXAMINATION (Resumed)

9 BY MR. OLESKEY:

10 Q Gentlemen, you have in front of you Exhibit 25 which
11 are the organizational charts for the Commission and the region
12 just marked.

13 Would you just look at the last page which says U. S.
14 NRC Region 1, and tell me if in your judgment that's an
15 accurate depiction of the structure of Region 1 today?

16 A (Lazarus) We have reviewed it. There are a couple
17 of minor changes.

18 Q All right.

19 A (Lazarus) Under Division of Resource Management and
20 Administration, the director is now Mr. John McOscar. And
21 under Division of Radiation Safety and Safeguards, one function
22 that was in the nuclear material safety and safeguards branch,
23 particularly safeguards inspections, that function has been
24 transferred up to the block above that, emergency preparedness,
25 radiological protection branch, and the name of that branch has

1 been changed to the facilities radiation safety and safeguards
2 branch now.

3 Q The Bellamy branch?

4 A (Lazarus) Yes.

5 Q The one you are in?

6 A (Lazarus) Yes.

7 Q Can you give us that name again?

8 A (Lazarus) Facilities radiation safety and safeguards
9 branch.

10 MR. OLESKEY: Now my understanding of where we were
11 on Friday afternoon at 3:00 was that I was ready to begin my
12 sequestered examination of Mr. Lazarus. So unless anyone else
13 has anything for Mr. Lazarus that doesn't deal with the time
14 period for the sequestration, we should begin that now.

15 THE WITNESS: (Bores) Can you give me an idea --

16 JUDGE SMITH: Go ahead. No one seems to have any
17 nonsequestered questions.

18 THE WITNESS: (Bores) Can I get an idea of how --

19 MR. OLESKEY: I'd try an hour an hour and a half,
20 something like that.

21 THE WITNESS: (Bores) I'd like to see if maybe I
22 could find a phone --

23 JUDGE SMITH: Well, we can give you a call, easy
24 enough. We have a phone, and if you will be in your room, we
25 can give you a call.

1 MR. OLESKEY: May the record reflect that the witness
2 is leaving the room.

3 (Whereupon, Witness Bores leaves the courtroom
4 temporarily.)

5 JUDGE SMITH: All right, Mr. Oleskey.

6 MR. OLESKEY: Thank you, Judge Smith.

7 Whereupon,

8 WILLIAM LAZARUS
9 having been previously duly sworn, was recalled as a witness
10 herein, and was examined and testified further as follows:

11 CROSS EXAMINATION

12 BY MR. OLESKEY:

13 Q Mr. Lazarus, do you have Exhibit 3 there which is
14 your memo of October 15th?

15 A (Lazarus) Yes, I do.

16 Q I wanted to be clear preliminary what it was that you
17 were asked to set forth in this memorandum back last October.
18 Would you -- strike that.

19 As I recall, you said that Mr. Bores, Dr. Bores had
20 called you and told you that Attorney Turk had spoken to him
21 about some recollections; is that accurate?

22 A (Lazarus) Mr. Bores came to see me.

23 Q Would you tell us what he said to you when he came to
24 see you?

25 A (Lazarus) He said that he had -- to the best of my

1 recollection, that he had had a conversation with Mr. Turk, and
2 that we had been asked to independently recall our -- recall
3 what had happened at the April and July RAC meetings, and to
4 document that in a memorandum to him.

5 Q Anything else?

6 A (Lazarus) I don't recall anything specifically. I
7 know that we were asked to do it independently to the best of
8 our recollection as to what had happened.

9 Q Were you asked to go through your files to provide
10 any documents that might relate to the series of events you
11 were being asked to recall in writing?

12 A (Lazarus) I don't recall that specific request, but
13 I certainly would have done that as part of this.

14 Q Did you go to your files in connection with preparing
15 this document?

16 A (Lazarus) Yes, sir.

17 Q By the way, did you dictate this or write it out?

18 A (Lazarus) I wrote it myself on a personal computer.

19 Q All right. What kind of documents did you have
20 available to assist you in preparing this memorandum?

21 A (Lazarus) I had none.

22 Q Had you taken notes at either one of those meetings
23 of April or July?

24 A (Lazarus) My recollection is I did not take any
25 notes.

1 Q Had you prepared any notes following the meetings?

2 A (Lazarus) No, sir.

3 Q So the memorandum that you prepared is entirely the
4 product of your own recollections sitting there at your
5 computer in October, is that it?

6 A (Lazarus) That's correct.

7 Q I think you said that you had had discussions with
8 Dr. Bores and with your superiors following the meeting.

9 A (Lazarus) Yes, that's correct.

10 Q Directing you to the April 15 meeting just over a
11 year ago now, how did you happen to attend that meeting?

12 A (Lazarus) I attended it as my -- in my position as
13 emergency preparedness section chief dealing with a significant
14 emergency planning issue in my section.

15 Q And what was that significant planning issue?

16 A (Lazarus) It was a review of the New Hampshire
17 Radiological Emergency Response Plan, and discussions
18 associated with that.

19 Q Well, the previous meeting had been, we've
20 established, in October of '86, correct?

21 A (Lazarus) Yes, I believe that's correct.

22 Q I think you indicated you did not attend that
23 meeting, am I right?

24 A (Lazarus) No, I did not.

25 Q Why was it when essentially the April meeting was

1 going to cover an update of the same material from October that
2 you chose to attend the April meeting?

3 A (Lazarus) I don't recall any basis for that
4 decision. I may have had other duties in October that I'm not
5 aware of now.

6 Q All right. Had you seen Dr. Bores's February 10-page
7 paper, as he calls it, before this meeting?

8 A (Lazarus) Yes, I had. I believe I was carbon copied
9 on a copy of that paper.

10 Q When it was sent to the RAC chairman?

11 A (Lazarus) Yes.

12 Q Had you been one of those people who had had a chance
13 to look at it before it was sent to the RAC?

14 A (Lazarus) Yes, I had.

15 Q Did you make any comments about it before it went
16 out?

17 A (Lazarus) No, I don't recall any specific comments
18 on it.

19 Q You didn't tell him not to send it, I take it.

20 A (Lazarus) No.

21 Q That is, you were comfortable with it going to the
22 RAC in the form in which it was finally sent?

23 A (Lazarus) I was comfortable with him submitting his
24 position as the NRC RAC representative to the RAC.

25 Q And insofar as you had any involvement in the RAC,

1 there was nothing in it which you wanted to change or thought
2 shouldn't be sent at the time it went in February, right?

3 A (Lazarus) That's correct. The issue would be
4 discussed at the meeting.

5 Q So you understood, I take it, that at least part of
6 the meeting of April 15th would focus on the material that Dr.
7 Bores had supplied.

8 A (Lazarus) Yes.

9 Q Did you two travel up there together?

10 A (Lazarus) Yes, I believe we did.

11 Q Was this a meeting in Boston?

12 A (Lazarus) Yes.

13 Q Now in your memorandum you say that five agencies, in
14 addition to FEMA and the NRC, and two representatives from NOAA
15 were present, isn't that right?

16 A (Lazarus) Yes, that's correct.

17 Q Can we agree that the RAC for Region 1 and I guess
18 nationally all RACs have 10 federal agencies if you include the
19 NRC and FEMA?

20 A (Lazarus) I couldn't recall without going to the
21 documents that describe the --

22 Q All right, let's take a look because it's in
23 evidence. It's part of Dr. Bores's memo. I think it was
24 Attachment -

25 MR. TURK: Which one?

1 MR. OLESKEY: -- 5 or 6. Global Page 14.

2 BY MR. OLESKEY:

3 Q Do you have the global numbers in front of you?

4 A (Lazarus) Yes, I have that.

5 Q Attachment 6.

6 I want to check and see if that accords with your
7 understanding of the members of the RAC by agency.

8 MR. TURK: I'm sorry. Do we have a page reference,
9 global page?

10 MR. OLESKEY: Fourteen, counsel.

11 THE WITNESS: (Lazarus) Yes, I believe it does.

12 BY MR. OLESKEY:

13 Q All right. So am I right that if you include FEMA
14 and the NRC, there are 10 RAC agency members?

15 A (Lazarus) I count nine. I'll check it again.

16 Q There's a third page there. Do you see that --

17 A (Lazarus) Yes.

18 Q -- that has NOAA on it?

19 A (Lazarus) I'm counting. There are two under
20 Department of Agriculture that appear.

21 Q Right.

22 A (Lazarus) That appears to make up the 10. I think
23 if you count the Department of Agriculture as one, it comes up
24 as nine, except FEMA is not on here which would be the tenth.

25 Q Right, okay.

1 And that Region 1 makeup by agency replicates the
2 nation's structure of all RACs, doesn't it? They all have
3 these same 10 agencies?

4 A (Lazarus) I don't know that.

5 MR. TURK: Before we go too far down this line, could
6 we ask the witness to go through the paper again and count
7 again if the number is important? I get a different number.

8 Would counsel like assistance on this?

E81 9 (Continued on next page.)

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t/ 1 MR. OLESKEY: Well, the witness and I are in
2 agreement, counsel, so my answer is, no. I'd like to move on
3 unless you think we're miscounting the witness and I --

4 MR. TURK: I think you are. And if you want me to
5 do --

6 MR. OLESKEY: Well, if it's a factual matter, let's
7 straighten it out.

8 THE WITNESS: (Lazarus) I think there may be one
9 confusion. I believe that FDA is a subdepartment under HHS,
10 Food and Drug Administration --

11 MR. OLESKEY: Yes.

12 THE WITNESS: (Lazarus) -- and Health and Human
13 Services, which would cut that total by one.

14 BY MR. OLESKEY:

15 Q Is that the case?

16 A (Lazarus) I believe that's the case.

17 Q Okay.

18 MR. TURK: So that's a total of nine, including FEMA?

19 THE WITNESS: (Lazarus) Yes.

20 BY MR. OLESKEY:

21 Q Now, when Mr. Bores began his testimony here last
22 week he said that two of the agencies listed, I think, on your
23 memo and his as being present, he'd checked with later and
24 found they were not present; do you recall that testimony,
25 Energy and HHS?

1 A (Lazarus) I'm sorry, which meeting are we discussing
2 now?

3 Q I'm talking about this meeting of April 15th, at the
4 beginning of your joint testimony Dr. Bores said he had a
5 correction to make to his recollection which were all to
6 effect, I suggest yours, namely, that he had checked with the
7 various agencies to establish, to his own satisfaction, who
8 attended and found that Energy and HHS were not in attendance
9 in April. And I'm asking if you recall that testimony?

10 A (Lazarus) Yes, I recall that testimony.

11 Q All right. And you don't have any independent
12 recollection, I take it today, whether they were here or not
13 there?

14 A (Lazarus) No, this is my best recollection of the
15 attendees.

16 Q So if he checked and found that they weren't there
17 you'd be guided by that information today yourself?

18 A (Lazarus) That could have an impact on my
19 recollections. However, they could be wrong in their
20 recollections, too, so I really wouldn't.

21 Q Well, as you sit here today, do you have any
22 recollection independent of your memorandum?

23 A (Lazarus) No, I do not.

24 Q All right. So if he's right, the agencies that were
25 there in April were the EPA, Transportation, Agriculture, NOAA,

1 FEMA, and the NRC, which would be five of the nine agencies on
2 the RAC; correct?

3 A (Lazarus) Would you repeat those for me, please.

4 Q EPA, Transportation, Agriculture, and NOAA, plus FEMA
5 and the NRC, I guess that's six of them; right?

6 A (Lazarus) I believe that's seven. Seven of the
7 total.

8 Q EPA, Transportation, Agriculture, and NOAA is four?

9 A (Lazarus) Yes.

10 Q FEMA and NRC makes six?

11 A (Lazarus) Those were six that you just named.

12 Q Right.

13 A (Lazarus) I'm not positive that's what Dr. Bores
14 testified to.

15 Q I'm saying, those are the six that were present, can
16 we agree on that?

17 A (Lazarus) Well, no, I can't agree on that. This is
18 my best recollection of who was present.

19 Q Okay, fine.

20 Then, whatever his recollection you find six agencies
21 plus FEMA and the NRC?

22 MR. TURK: I'm having a problem. The witness is
23 saying that his best recollection is his memo.

24 MR. OLESKEY: Yes. I'm counting it up and he has six
25 agencies plus FEMA and the NRC by my count.

1 MR. TURK: All right.

2 THE WITNESS: (Lazarus) That is correct, that's what
3 my memo reflects.

4 BY MR. OLESKEY:

5 Q Okay. Do you remember who it was that attended for
6 the Energy Department on this occasion?

7 A (Lazarus) No, I do not.

8 Q Do you recall who attended for HHS or FDA?

9 A (Lazarus) Warren Church.

10 Q And you do recall he was there at this meeting?

11 A (Lazarus) To the best of my recollection, that's
12 right.

13 Q All right. Do you recall who was there for
14 Agriculture?

15 A (Lazarus) Dorothy Nevitt.

16 Q The same woman who was there in July?

17 A (Lazarus) Yes, sir.

18 Q For Transportation?

19 A (Lazarus) Paul Lutz.

20 Q For EPA?

21 A (Lazarus) Byron Keene.

22 Q For NOAA?

23 A (Lazarus) No, I don't recall their names.

24 Q Okay. You hadn't met them before?

25 A (Lazarus) No, I had not.

1 Q What about for FEMA?

2 A (Lazarus) Mr. Edward Thomas. I believe Mr. Jack
3 Dolan was there. There were several others who attended, at
4 least, a part of the meeting. Mr. Bob Rospenda was an Argonne
5 FEMA contractor.

6 Q Who is Jack Dolan?

7 A (Lazarus) I'm not positive of his exact title. He
8 assists Mr. Thomas in FEMA, Region 1, in that division.

9 Q Okay. About how long would you say this meeting took
10 place, that is, when did it start and when did it end?

11 A (Lazarus) I don't recall. I just don't recall.

12 Q It was a meeting that took place in one day, in any
13 event?

14 A (Lazarus) Yes.

15 Q Did it take more than a couple of hours?

16 A (Lazarus) I believe so.

17 Q But you can't be more precise?

18 A (Lazarus) No, I can't.

19 Q All right. You say in the memo that the discussions
20 will include meteorological aspects of plume dispersion, do you
21 see that?

22 A (Lazarus) Yes.

23 Q What was your basis for knowing in advance that that
24 specific topic would be discussed at a meeting?

25 A (Lazarus) I believe that Mr. Thomas informed us that

1 because the NOAA representatives would be present, and they
2 normally were not present at RAC meetings.

3 Q And the same with respect to expected wind and
4 weather patterns typically of the Seabrook beach areas in the
5 summer?

6 A (Lazarus) Yes.

7 Q You knew that because you think Mr. Thomas as RAC
8 chairman had told you that?

9 A (Lazarus) I believe so.

10 Q Now, other than what's in this short paragraph, which
11 is the second paragraph to your memo of October 15th, do you
12 recall anything of the specifics of a discussion there on April
13 15th; who said what from each of these agencies about any of
14 these topics that you mention in paragraph one or paragraph
15 two?

16 A (Lazarus) I can't recall any specific comments or
17 quotes to be attributed to individuals at that meeting.

18 Q Do you recall any discussion about the containment at
19 that meeting?

20 A (Lazarus) Yes, I believe that was part of Dr.
21 Bores's memo and that was discussed.

22 Q What was the discussion that you recall on that
23 topic?

24 A (Lazarus) It was discussed relative to risk of an
25 accident at Seabrook.

1 Q All right. And what was the point that anybody made
2 about the containment and risk at Seabrook, as you recall it?'

3 A (Lazarus) The risk at Seabrook was deemed to be less
4 due to the containment special feature at Seabrook than at most
5 other nuclear powerplants.

6 Q Was that quantified in any respect how much less?

7 A (Lazarus) Yes. It was put as relative to distance
8 from the facility. To the best of my recollection, it was
9 compared to the risk, at Seabrook would be at two miles
10 equivalent to the generic nuclear powerplant studies at 10
11 miles.

12 Q Who made that point?

13 A (Lazarus) Dr. Bores.

14 Q Do you know where that information came from?

15 A (Lazarus) No, I don't recall.

16 Q Was there a Brookhaven National Laboratory study
17 which he, to your knowledge, had relied upon for that
18 information?

19 A (Lazarus) That may be; I'm not familiar with the
20 study enough to comment on it.

21 Q Do you recall what other members of the RAC said when
22 Dr. Bores made that point about the containment and risk
23 factors at Seabrook, at least in his judgment?

24 A (Lazarus) I remember that there was some confusion
25 over the quantification of the risk. The wording, or

1 initially, indicated that there were some attributes in
2 people's minds the risk was greater at two miles than 10 miles,
3 and it was discussed for some period of time on what that
4 actually mean; and eventually, every -- I believe everyone
5 understood that the risk was less at Seabrook because of the
6 way it was worded.

7 Q By the way, was there anybody on that RAC from any
8 other agency including FEMA who seemed to have a comfortable
9 working knowledge of the technical issues associated with the
10 containment in risk factors resulting from an accident?

11 A (Lazarus) I don't believe so.

12 Q With the possible exception of yourself, would you
13 include yourself as someone who's comfortable with those
14 topics, technically speaking?

15 A (Lazarus) Yes.

16 Q All right. So, aside from you and Dr. Bores you felt
17 that nobody else really was technically facile in those areas?

18 A (Lazarus) I really can't comment on that. I don't
19 know that.

20 Q But that would be your impression from the meeting,
21 in the meeting of July 30, is that fair to say?

22 A (Lazarus) Yes.

23 Q All right.

24 JUDGE SMITH: Mr. Oleskey.

25 MR. OLESKEY: Yes, Judge.

1 JUDGE SMITH: Apparently it is important to you and
2 to Mr. Turk as to how many representatives out of the potential
3 were --

4 MR. OLESKEY: Yes.

5 JUDGE SMITH: -- present, and I'm still confused.
6 Did you agree that there were nine potential representatives?

7 MR. OLESKEY: I only know the witness says that HHS
8 and FDA, to him, are the same agencies; and if that's accurate,
9 a matter that I'm not clear about at the moment, then there are
10 nine.

11 JUDGE SMITH: Well, all right, maybe there are two,
12 in that case there would be 10.

13 MR. OLESKEY: Yes.

14 JUDGE SMITH: And then how many have you agreed upon
15 were present in April?

16 MR. OLESKEY: Well, we seem to have conflicting
17 testimony. As I understand Mr. Bores's testimony from last
18 Wednesday, based on checking that he did at some time after
19 April 15th he struck Energy and HHS from the list of attendees
20 based on the representations by those officials from those
21 agencies that they were not in fact there.

22 Mr. Lazarus has said that he, not having been a party
23 to those telephone conversations, has -- is going to stick with
24 his own recollection.

25

1 BY MR. OLESKEY:

2 Q Isn't that right, Mr. Lazarus?

3 MR. TURK: Your Honor --

4 JUDGE SMITH: All right. I'm just -- I'm not going
5 into the merits, I'm just trying to see what the commonality of
6 understanding is.

7 MR. TURK: This is a proper characterization of Dr.
8 Bores's testimony. He indicated that at another meeting two
9 individuals came up to him and said they had seen his memo, I
10 believe this was at the January meeting, I'd have to double
11 check, had seen his memo and to their recollection they were
12 not at the April meeting. There were no telephone calls. Dr.
13 Bores did no checking. These individuals told him that.

14 Dr. Bores stated that his recollection was per his
15 memo; these other individuals had a different recollection, and
16 he was willing to accept their recollection. But his
17 recollection is as per his knowledge.

18 JUDGE SMITH: All right. Well, that wasn't the point
19 of my questioning nor the answer; I'm just trying to identify
20 what is the mutual understanding. All right.

21 MR. OLESKEY: Actually, Dr. Bores's statement in its
22 entirety is at page 11742.

23 JUDGE SMITH: Okay.

24 MR. OLESKEY: And he simply says: "After the October
25 -- after October 15th in discussions with other RAC members,

1 Church of FDA and Fish of DOE separately informed me they were
2 not at those meetings. So we made that correction," which is
3 the correction to his memorandum.

4 JUDGE SMITH: So we are -- we have six out of the
5 nine or 10 that could have been there, was the --

6 MR. OLESKEY: Yes.

7 JUDGE SMITH: -- understanding that you have with Mr.
8 Turk.

9 MR. OLESKEY: If Dr. Bores and the other two -- if
10 Dr. Bores and the two people who spoke to him are correct,
11 that's so. This witness, as I understand it, is going to stay
12 with his memorandum.

13 MR. TURK: Could I have a moment, please.

14 I don't know if it's an important point, Mr. Oleskey,
15 my recollection is that Dr. Bores indicated he still had his
16 own recollection apart from these witnesses, they do not
17 correct his recollection.

18 MR. OLESKEY: Quote, at page 11742: "So we made that
19 correction," unquote. Starting at 11741, "I better start by
20 asking Dr. Bores if he's made any changes he feels he should
21 make either to the cover memo to me or to the four page
22 enclosure which immediately follows." And then follows the
23 language, where he starts by saying: "Reviewing the document
24 this is my recollections, (sic) and my statements as true as
25 written on October 15th. Subsequent to October 15th," and then

1 follows the language I just gave you about his conversations.

2 MR. TURK: Maybe this has to be clarified.

3 JUDGE HARBOUR: Mr. Oleskey, your questions are still
4 relating to the April 15th --

5 MR. OLESKEY: Yes, Judge.

6 JUDGE HARBOUR: -- 1986 meeting?

7 MR. OLESKEY: Yes.

8 I'm sorry, Counsel Turk, are you waiting for me?

9 MR. TURK: No. I think when Dr. Bores comes in you
10 can ask him for clarification of those meetings.

11 MR. BACKUS: Judge, however, you said '86, you meant
12 '87 I think.

13 MR. OLESKEY: I'm sorry, I didn't pick that up
14 either. I heard it the way you said it, so --

15 JUDGE HARBOUR: I said 1986.

16 MR. OLESKEY: Okay. I'm sorry, it is --

17 JUDGE HARBOUR: It's '87.

18 MR. OLESKEY: -- it is '87.

19 JUDGE HARBOUR: All right, thank you.

20 MR. OLESKEY: And I apologize.

21 BY MR. OLESKEY:

22 Q Now, what about the discussion on the topics that you
23 came there -- that you come there anticipating, Mr. Lazarus,
24 plume dispersion, wind and weather patterns as they were part
25 of the typical meteorological patterns for that particular area

1 of the coast during the summer months; what do you recall about
2 that discussion?

3 A (Lazarus) I recall there was a presentation by the
4 National Oceanic Atmospheric Administration representatives who
5 described weather patterns in a shore environment; patterns of
6 wind shift during the day, sea breezes, land breezes, mixing
7 and those sorts of discussions.

8 Q Was their presentation focused on a, as you
9 understood it, a typical sea coast environment on this
10 particular point of the New Hampshire-Massachusetts coast?

11 A (Lazarus) My understanding was that it was a typical
12 sea coast environment.

13 Q In the northeast?

14 A (Lazarus) Just a typical sea coast environment, I
15 don't believe that it was discussed relative to a geographic
16 location.

17 Q So as, at least as you now recall it, it could have
18 been a typical sea coast environment anywhere in the world?

19 A (Lazarus) Yes.

20 Q All right. And what was the -- were there any
21 summary points or any conclusions that you took away from that
22 discussion about this -- about typical sea coast meteorological
23 patterns, and especially how they might affect an accident at
24 this plant or any plant?

25 A (Lazarus) I recall that we discussed what a typical

1 beach weather day would entail with heating of the land, and
2 that sets up a sea breeze condition with water, you know, air
3 coming in from the cooler water over the land. And the
4 discussion of where a land breeze could meet the sea breeze
5 between the plant and the beach area.

6 Q And where was that?

7 A (Lazarus) It varied. I recall that it was difficult
8 to pin down, you know, exactly what the situation would be with
9 the various wind patterns, weather patterns, mixing sea breezes
10 and land breezes.

11 Q You got the impression it was a highly variable
12 condition?

13 A (Lazarus) Yes, I did.

14 Q All right. What else?

15 A (Lazarus) We could -- we discussed recirculation of
16 where the land breeze would meet the sea breeze and what would
17 happen in that situation, where essentially the air would
18 recirculate, rise and then fall and recirculate in a pattern;
19 and discussed the fact that, in that case, there would be a
20 tremendous amount of dilution of any activity in a plume.
21 Those are -- that's really about all I can recall from those
22 discussions.

23 Q So what you understood in that aspect of the meeting,
24 if I understand you was, that there could be variable winds
25 which under some circumstances could result in dispersion of a

1 plume if it was moving from the plant toward the beaches?

2 A (Lazarus) That was part of the discussion, yes.

3 Q Yes. And what the dispersion would be would depend
4 on the temperature and the winds and the other meteorological
5 factors that were being described, is that right?

6 A (Lazarus) Yes. And whether or not the plume would
7 reach the beach based on where -- how far the sea breeze
8 penetrated in toward land.

9 Q Was there any discussion about how you could predict,
10 any given time, what the effect of the shoreline meteorology
11 would be on any plume released from the plant?

12 A (Lazarus) I don't recall that discussion.

13 Q Now you said that you had seen Dr. Bores's memo, both
14 before it went out and at the time it was sent to the RAC;
15 correct?

16 A (Lazarus) Yes.

17 Q And everybody at the RAC had a copy of that memo;
18 isn't that right?

19 A (Lazarus) I believe that's correct.

20 Q Now, there's some discussion in the area of
21 meteorology; isn't that right, in Dr. Bores's memo?

22 A (Lazarus) Yes.

23 Q Does he have meteorological training, to your
24 knowledge?

25 A (Lazarus) I don't know.

1 Q Do you know where that information came from in his
2 memo?

3 A (Lazarus) No, I do not.

4 Q It wasn't provided by you, I take it?

5 A (Lazarus) No.

6 Q You don't have meteorological knowledge yourself of a
7 sophisticated degree at least?

8 A (Lazarus) No.

9 Q Okay.

10 Now you say in paragraph two that Bob Bores's
11 submittal was one of the things that was discussed, do you
12 recall that?

13 A (Lazarus) Yes.

14 Q What was it in his paper that was discussed other
15 than this issue of the containment and the risk factors which
16 you've already mentioned?

17 A (Lazarus) Without referring to the paper I couldn't
18 -- I would have difficulty trying to recall exactly what was
19 discussed.

20 Q All right. We have a copy of it here, if it would
21 refresh your recollection about the meeting. It's part of
22 Staff Exhibit 2 and 2-A.

23 MR. TURK: I think the testimony is to Staff Exhibit
24 5.

25 MR. OLESKFY: I don't care where you get it from, Mr.

1 Lazarus. Attachment 7 to Exhibit 2 or a separate exhibit.
2 Just take a look at it, if you would.

3 MR. TURK: Mr. Oleskey, there are only two pages as
4 an attachment to Exhibit 2, you're best going to Exhibit 5.

5 MR. OLESKEY: That's correct. Thank you, Sherwin.

6 BY MR. OLESKEY:

7 Q Do you have a copy of Exhibit 5 there, Mr. Lazarus?

8 A (Lazarus) Yes, I do.

9 Q Have you had a chance to review this in the last week
10 or so?

11 A (Lazarus) I have not specifically sat down and read
12 through it again, no.

13 Q Why don't you just take a quick look to see if it
14 helps you recall anything about the discussion; I don't want to
15 prolong this phase of the examination.

16 (Pause)

et/82 17 (Continued on next page.)

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1 MR. OLESKEY: If it would be helpful, there is a
2 conclusion section --

3 THE WITNESS: (Lazarus) Yes.

4 MR. OLESKEY: -- on Page 10 which might provide you
5 with more focus.

6 THE WITNESS: (Lazarus) Okay.

7 BY MR. OLESKEY:

8 Q Does that brief glance through Dr. Bores's memorandum
9 of February '87 help you recall any aspects of it which were
10 discussed at the RAC meeting other than what you've already
11 testified to?

12 A (Lazarus) Yes, I can recall some of the discussions
13 in general terms although I have no specific recollection.

14 Q All right. Would you tell us what you recall in
15 whatever terms you do recall it?

16 A (Lazarus) The discussion discussed the background of
17 the beach population issue, the planning basis of the planning
18 elements that were affected. There were --

19 Q By that do you mean the various elements of
20 NUREG-0654?

21 A (Lazarus) Yes.

22 Q All right.

23 Do you recall in that connection what the RAC's
24 collective concern or emphasis was evaluating the beach
25 population issue at this meeting against those elements?

1 A (Lazarus) The question was whether or not the New
2 Hampshire plan was adequate --

3 Q Do you recall --

4 A (Lazarus) -- or whether anything additional was
5 necessary for protection.

6 Q And do you recall what the specific focus or concerns
7 were with respect to those particular elements of NUREG-0654
8 which were being discussed?

9 MR. DIGNAN: I object. Have we decided not to let
10 him answer the question two questions ago that he was starting
11 on?

12 MR. OLESKEY: Well, there is --

13 MR. DIGNAN: Are you striking that question?

14 MR. OLESKEY: I don't know what question counsel is
15 referring to.

16 MR. DIGNAN: Well, you asked him a question about
17 what else was discussed, and the witness started through it,
18 and you started quizzing him out on individual things.

19 MR. OLESKEY: In my experience, it's a fairly
20 customary form of examination to ask a question, begin to get a
21 series of responses, and take up those responses in detail one
22 by one.

23 MR. DIGNAN: I have this funny quaint custom of
24 letting the witness finish the answer I first asked for.

25 MR. OLESKEY: In your examination you can follow your

1 quaint --

2 MR. DIGNAN: I object, Your Honor --

3 JUDGE SMITH: Wait a minute. He has indicated it his
4 plan to allow him to complete the answer, and we will allow him
5 to cross-examine the way he chooses consistent with a full
6 answer.

7 MR. OLESKEY: We discussed --

8 MR. TURK: Is there a question pending?

9 MR. OLESKEY: Yes.

10 MR. TURK: May I hear it again, please?

11 MR. OLESKEY: Well, he's giving the answer.

12 MR. TURK: I'd like to hear the question again,
13 please.

14 JUDGE SMITH: Could you restate it?

15 MR. OLESKEY: Yes.

16 BY MR. OLESKEY:

17 Q The question was, do you recall what specifics there
18 were about the beach population which were the subject of
19 discussion in terms of these various elements of NUREG-0654
20 which you had mentioned were part of the discussion at the RAC?

21 A (Lazarus) The specifics were discussion of the
22 provisions in the New Hampshire Radiological Emergency Response
23 Plan and whether or not, based on our knowledge, based on the
24 discussions of Dr. Bores memo, whether or not that planning was
25 adequate.

1 Q Well, let me just try a little more specifically.

2 Was there a discussion about whether people could be
3 evacuated from the beach in time given certain accident
4 scenarios? Was there a discussion about sheltering in
5 connection with these NUREG elements that you recall?

6 A (Lazarus) I believe that all of those issues were
7 discussed.

8 Q All right.

9 And it's in those general terms that you recall it,
10 is that right?

11 A (Lazarus) Yes.

12 Q All right.

13 Now would you go ahead and tell me what else you
14 recall having reviewed the memo?

15 A (Lazarus) I can't recall any specifics other than at
16 the conclusion of that meeting that everyone appeared to be in
17 agreement that the plan was adequate based on the discussions
18 presented by Dr. Bores in this memo.

19 Q Well, you used that term "appeared to be in
20 agreement" in your memo and you used it again now. Can you
21 tell us what you mean?

22 A (Lazarus) There was no discussion against the
23 provisions here indicating that anyone was in disagreement with
24 it.

25 Q That is, there seemed to be a consensus as people

1 would ordinarily understand that term?

2 A (Lazarus) Yes.

3 Q All right.

4 Did you understand that it was contemplated by the
5 RAC that Dr. Bores's paper would be, with whatever changes
6 there might be as a result of the meeting, the RAC statement on
7 the beach population issue?

8 A (Lazarus) Yes, I believe that there were statements
9 to the effect that with some minor wording changes that this
10 would be adopted as the position.

11 Q And Dr. Bores was going to make a few of those
12 changes; is that right?

13 A (Lazarus) I don't recall whether it was Dr. Bores or
14 someone from the FEMA staff who was going to make those
15 changes.

16 Q All right.

17 Did you understand that Mr. Rospenda was a kind of
18 secretarial scribe under contract to the RAC?

19 A (Lazarus) It went beyond being a secretary or a
20 scribe. He was also a technical consultant, I believe, for
21 FEMA.

22 Q All right.

23 On Page 10 of Dr. Bores's memo, the conclusions page,
24 you see there about five dot points from the bottom it says,
25 "ETEs for beaches are relatively small"?

1 A (Lazarus) Yes.

2 Q Do you recall -- you know what ETEs are, don't you?

3 A (Lazarus) Yes, evacuation time estimates.

4 Q Yes. Do you recall what numbers were being used for
5 ETEs at this meeting where this consensus was reached?

6 A (Lazarus) I don't recall the specific numbers. They
7 may be in this document. I believe I know what the range was.

8 Q All right. Well, I'm only interested in what you
9 recall the range which was discussed.

10 A (Lazarus) No, I don't. I don't recall specifically.

11 Q When you say you recall a range, you mean you have a
12 range in your own head that you associate with Seabrook?

13 A (Lazarus) Yes.

14 Q What's that?

15 MR. TURK: Objection. Your Honor, we're looking at
16 recollections of meetings here.

17 JUDGE SMITH: I see no purpose to that question
18 within the scope of Mr. Lazarus's appearance here.

19 MR. OLESKEY: Well, he's one of the -- the purpose
20 was that he is one of the responsible regional people who has
21 formulated the position of the RAC, helped to formulate the
22 position of the RAC, if not of the region in this area. I
23 think what his own understanding is bears on the position of
24 his agency.

25 JUDGE SMITH: Well, that may be, but that's not

1 relevant to the purpose of his appearance here that I can see.

2 MR. OLESKEY: Well, inevitably there will be things
3 that come up in the course of this portion of the examination
4 which will be material, in my judgment and I suspect all of
5 ours, to aspects of the case.

6 JUDGE SMITH: Well, I guess you're going to have to
7 establish why his understanding of the ETEs for the beaches,
8 uncommunicated as far as we know, are relevant to anything that
9 we're listening to.

10 MR. OLESKEY: Well, whether or not communicated, it's
11 something that is a basis for his understanding, and therefore
12 for his actions. And if he's a responsible official, then his
13 actions are meaningful, and we have him here because we believe
14 he's a responsible official whose actions are relevant to your
15 understanding and ours.

16 MR. TURK: The problem, Your Honor, is that Mr.
17 Lazarus has already testified that he's never reviewed the New
18 Hampshire emergency plans. He's not the RAC reviewer for the
19 NRC staff, and we're only looking at meetings. I don't see
20 what his personal opinions -- I don't see how what his personal
21 opinions may be has any bearing.

22 JUDGE SMITH: Objection sustained.

23 BY MR. OLESKEY:

24 Q You testified earlier here that you felt this meeting
25 went very well. Do you recall that?

1 A (Lazarus) I don't recall specifically saying very
2 well.

3 Q Well, words in substance meaning that you thought the
4 meeting was satisfactory.

5 A (Lazarus) Yes.

6 Q That the RAC, including Mr. Thomas, had accepted Dr.
7 Bores's views as stated in his February memorandum.

8 A (Lazarus) Yes.

9 Q You said it was a harmonious meeting. Do you recall
10 using those words?

11 A (Lazarus) Yes.

12 Q And you felt that everyone was coming together,
13 including FEMA, on this issue. Do you recall saying that?

14 A (Lazarus) Yes.

15 Q I take it by that you mean that Dr. Bores's memo had
16 furnished satisfactory explanations for all the members of the
17 RAC to use in concluding this inquiry that they'd been making
18 about the alignment of the beach population issues with these
19 NUREG-0654 elements that were discussed.

20 Is that a fair summary?

21 A (Lazarus) Yes, I believe that's fair.

22 Q And you said that you personally felt good when you
23 left because it looked like the beach population issue had been
24 resolved; do you recall that?

25 A (Lazarus) I don't recall that specifically, no.

- 1 Q But that's accurate?
- 2 A (Lazarus) Yes.
- 3 Q You thought a problem that had been there for the RAC
4 for sometime had been resolved.
- 5 A (Lazarus) Yes.
- 6 Q All right.
7 Did you brief your superiors after this meeting?
- 8 A (Lazarus) Yes.
- 9 Q And who would that be that you briefed?
- 10 A (Lazarus) Dr. Bellamy.
- 11 Q Was this an oral briefing?
- 12 A (Lazarus) Yes.
- 13 Q I take it you said in substance the things that you
14 and I have just reviewed in your testimony?
- 15 A (Lazarus) Yes.
- 16 Q All right.
17 Now you said in the third paragraph of your October
18 15 memo that, "After that meeting, Dr. Bores redrafted his
19 submittal in consultation with NRR and OGC to remove any
20 reference to Seabrook site-specific design features (double
21 containment, et cetera)," correct?
- 22 A (Lazarus) Yes.
- 23 Q That was something that happened in late May and
24 early June; is that right?
- 25 A (Lazarus) It would be that approximate time frame.

1 I don't recall.

2 Q What was your involvement in that process in any
3 respect of redrafting Dr. Bores's February memo and what became
4 the form that we have here dated June 4th of '87?

5 A (Lazarus) He discussed proposed changes with me.

6 Q All right. Before we get to that discussion, can you
7 put a date on that discussion?

8 A (Lazarus) No, I can't.

9 Q If I suggest that the memorandum was finally mailed
10 off to the RAC on June 4th, can you between April 15th and June
11 4th give us any idea when that discussion took place?

12 A (Lazarus) I'm sure it was discussed several times,
13 so I don't know exactly.

14 Q All right. What was your understanding of why he was
15 redrafting that February memo about which the RAC had coalesced
16 or concurred?

17 A (Lazarus) My understanding is that the site-specific
18 references were to be removed to make it clear that we were
19 relying on generic emergency planning considerations described
20 in NUREG-0654 rather than site-specific design features.

21 Q And the we there means the NRC Region 1?

22 A (Lazarus) I'm sorry, I don't recall the context of
23 the we.

24 Q You said, my understanding is that we were redrafting
25 it, and then you gave your answer. And my question is --

1 A (Lazarus) No, that is not correct. I should have
2 said that Dr. Bores was redrafting it. That was not accurate.

3 Q And why was he intent on removing the site-specific
4 references?

5 MR. TURK: Your Honor, I don't know how far down this
6 line we're going to go. I thought the purpose of sequestration
7 was to explore the credibility issues of matters raised in the
8 April and June meetings. It seems like we're going through the
9 whole history again of the evolution of Dr. Bores's second
10 paper.

11 MR. OLESKEY: It turns out that on the way to July
12 there is the rest of April, May and June, and I can't see
13 calling Dr. Bores back so he can have the pleasure of sitting
14 here while I discuss that.

15 In addition, I want to find out what contacts these
16 gentlemen had during that period.

17 So it doesn't break as neatly as Mr. Turk might like,
18 and therefore I'm proceeding chronologically in what I think is
19 a logical fashion.

20 MR. TURK: Well, we've already had testimony both in
21 direct and we've had opportunity for cross-examination to
22 explore the whole history of the evolution of Bores 2; that is,
23 the June 4th memo. I don't see that we're serving a purpose of
24 sequestration or the time of the witnesses very well by
25 exploring it again or in a sequestered fashion, particularly

1 since Dr. Bores is certainly the most knowledgeable person on
2 these matters.

3 MR. OLESKEY: I'm trying to find out what this
4 witness can offer about a period that started in April and runs
5 to July, and obviously there are some things that happened
6 after July that I also want to ask, having to do with the
7 October 15th memo, a few of which I have already asked.

8 JUDGE SMITH: I really don't understand it, but I
9 don't see that it's harmful either.

10 MR. TURK: Well, my only problem, Your Honor, is if
11 I'm going to have to accept the record based upon Mr. Lazarus's
12 recollections, I'm going to need to go through it with Dr.
13 Bores to make sure there's consistency.

14 MR. OLESKEY: Well, we're going to go through it with
15 Dr. Bores, counsel.

16 MR. TURK: That's one reason why I do not want a
17 sequestered panel except on credibility issues. I think for
18 the purpose of having a good record, we're best off witnesses
19 appear together on these matters, other than sequestered
20 matters.

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T/ 1 JUDGE SMITH: I guess if there were no time problem
2 we'd agree that we would try to get a lot of work done today.
3 We've already wasted enough time arguing about it than we'd
4 have taken for the question to unfold.

5 But it is a type of questioning that if it pervades
6 half of the day, forget the schedule. Just forget the
7 schedule, and we might as well just relax and face what's going
8 to happen and not have tension. If you're going to ask
9 questions like this throughout the day, then our schedule is
10 totally unrealistic.

11 MR. OLESKEY: Well, we all --

12 JUDGE SMITH: And we might as well observe that
13 early.

14 MR. OLESKEY: I'm willing to have it observed. We
15 had a discussion at the end on Friday saying, it's going to be
16 tight on Monday --

17 JUDGE SMITH: Yes.

18 MR. OLESKEY: -- on Tuesday. We're trying to cover
19 17 attachments and two memos and a lot of ground that took a
20 day and a half on direct, and we'll do our best.

21 JUDGE SMITH: That's --

22 MR. FLYNN: Your Honor, I need to know what that
23 implies about my witnesses, who have already left Washington
24 and are on their way here.

25 JUDGE SMITH: Well, I'm not -- it's difficult for

1 everybody to estimate the time. It is, in every case,
2 underestimated, but this I think is just another example of it.
3 We're not going to make it.

4 MR. OLESKEY: Well --

5 MR. TURK: Your Honor, I have a further problem. I'm
6 not allowed to speak to Dr. Bores about this sequestered
7 testimony, that means I'm going to have to go through the same
8 thing to make sure Dr. Bores agrees word for word of what Mr.
9 Lazarus is saying.

10 JUDGE SMITH: Well, is this appropriate -- is this
11 correctly a part of sequestered testimony? No, it isn't, is
12 it?

13 MR. OLESKEY: It makes sense to do it now. If they
14 want it --

15 JUDGE SMITH: It's now, but is it --

16 MR. OLESKEY: If they want to have both of them
17 sitting here, it's fine with me.

18 JUDGE SMITH: All right. So, he can talk to him
19 about this point?

20 MR. OLESKEY: Sure.

21 MR. TURK: I -- Your Honor, for sake of making it
22 easier, if we could just do the sequestered things now, I'm not
23 going to cut off Mr. Oleskey who wants to raise additional
24 questions when the both witnesses are back, and I'll ask Mr.
25 Lazarus to stay.

1 JUDGE SMITH: There's some merit to it, but the
2 gentlemen seem to be unusually intransigent this morning and it
3 does not bode well for an easy day.

4 Ask him. Can you defer it until they're both to get
5 back together?

6 MR. OLESKEY: Well, let me finish this question.

7 JUDGE SMITH: All right.

8 BY MR. OLESKEY:

9 Q I think your answer was, you said it was redrafted by
10 Dr. Bores to make it clear, we were relying on generic aspects
11 and not plant-specific features; do you recall that?

12 A (Lazarus) Yes. And again, that is my general
13 recollection.

14 Q All right. And when you said, we were relying on
15 generic aspects, did you mean the NRC Region or headquarters of
16 some combination thereof?

17 A (Lazarus) No, I meant Dr. Bores and myself, and it
18 should be more accurately Dr. Bores.

19 Q All right.

20 MR. OLESKEY: Now, I'll tell you, Judge, and Judges,
21 I do have some questions, if you want me to hold them I will,
22 about what this witness is aware of in the process of the RAC
23 and the two agencies interaction from April 15th to July 30th,
24 which for the sake of completeness I'd like to put now, if
25 you'd like me to hold them I will.

1 JUDGE SMITH: Well, I think -- naturally you're going
2 to come across things you had not anticipated need to be in
3 sequestered testimony.

4 MR. OLESKEY: Yes.

5 JUDGE SMITH: And when you come across those, please
6 defer them, and that way we will meet some of Mr. Turk's
7 requirements, too.

8 MR. OLESKEY: All right.

9 MR. TURK: Thank you, Your Honor.

10 BY MR. OLESKEY:

11 Q Let me just ask you a general question and then I'll
12 pass this area. Are you aware of other events affecting Dr.
13 Bores's paper and the RAC meeting of July 30, between the 15th
14 of April and July 30th other than the redrafting of his paper?
15 Interagency consultations?

16 A (Lazarus) No, I'm not.

17 Q The involvement of lawyers for the two agencies?

18 A (Lazarus) No, I'm not.

19 Q Okay, fine.

20 Directing you then to the July 30th meeting, you told
21 us why you attended the April 15th meeting, did you go to this
22 one for the same reason?

23 A (Lazarus) Yes.

24 Q Then you knew that the RAC members had the redrafted
25 Bores memorandum in advance of the July 30 meeting; isn't that

1 right?

2 A (Lazarus) I believe they had it, yes.

3 Q Had you personally had any discussion with any of the
4 RAC members other than Bores after April 15th before this
5 meeting?

6 A (Lazarus) No.

7 Q And your recollection is that the same RAC members
8 who you list as present in April were there in July except for
9 NOAA?

10 A (Lazarus) Yes.

11 Q Correct?

12 A (Lazarus) Yes.

13 Q Okay.

14 And again, apart from what's in this memorandum do
15 you have any independent recollection of the events of that
16 meeting?

17 MR. TURK: Could we get a clarification, you asked
18 him whether he has recall, if he didn't have to rely on this
19 memo?

20 MR. OLESKEY: Yes.

21 MR. TURK: Does the witness understand that?

22 THE WITNESS: (Lazarus) Yes. I recall that meeting
23 independent of this memo.

24 BY MR. OLESKEY:

25 Q Okay. Is this -- was this long paragraph here, the

1 third and last paragraph of your memo, an effort to be fairly
2 complete and exhaustive about what happened at that meeting?

3 A (Lazarus) No, it was not.

4 Q Did you decide to omit certain aspects of the meeting
5 from your summary of the meeting as set forth in the October 15
6 memo?

7 A (Lazarus) I made no conscious decisions to omit
8 anything. I tried to reconstruct in general terms what had
9 happened at the meeting and what transpired -- what the
10 conclusions were.

11 Q Well, when you did it, is it fair to say, you thought
12 that it was accurate as far as it went? By that I mean, you
13 might have put in more, but what you put in was accurate?

14 A (Lazarus) Yes.

15 Q All right. And did you feel that what you put in was
16 complete, in a general sense?

17 A (Lazarus) It was complete as far as key decisions
18 and outcome. It was not complete as far as all of the details
19 that came out of the meeting.

20 Q All right. And as you look at it today, other than
21 more detail, is it still, in your judgment, an accurate
22 recollection of the meeting as set forth here?

23 A (Lazarus) Knowing what I know today about the
24 controversies of that meeting, I would have been more complete
25 in this memo. At the time --

1 Q All I'm asking you is, without respect to
2 complete is what's here still accurate, as far as you're
3 concerned?

4 A (Lazarus) Yes, accurate but not totally complete.

5 Q All right. And you tried to supplement the memo by
6 testimony here on direct; correct?

7 MR. TURK: Objection.

8 JUDGE SMITH: I don't think that's a good
9 characterization, that he has tried to do anything.

10 MR. OLESKEY: You have --

11 JUDGE SMITH: He's answered the question.

12 BY MR. OLESKEY:

13 Q You have supplemented the memo with testimony here on
14 direct, which gives more detail; correct?

15 A (Lazarus) Yes, that's correct.

16 Q All right. Now, is it fair to say that this was --
17 that the tone of this meeting was very different than the
18 meeting in April?

19 A (Lazarus) Yes.

20 Q It was not harmonious; people were not coming
21 together?

22 A (Lazarus) That's a fair characterization; yes.

23 Q Is it fair to say that that is something that you
24 sensed about the meeting from the early aspects of parts of the
25 meeting or fairly early on, I should say?

1 A (Lazarus) Yes, fairly early on in the meeting.

2 Q All right. So whatever was happening in April to
3 bring people together on this issue was no longer happening in
4 July -- at July 30th; is that right?

5 A (Lazarus) The everyone being together, the sense
6 was, that nearly everyone was together on this, and that FEMA
7 was not with the rest of the group.

8 Q All right. Whereas, FEMA had been very much with the
9 rest of the group, you felt, on April 15th?

10 A (Lazarus) Yes. At least everyone appeared to be in
11 agreement at the April 15th meeting.

12 Q And when you refer to FEMA you're referring to people
13 other than Mr. Thomas here on July 30?

14 A (Lazarus) Where are you referring to?

15 Q I'm asking you. You said everyone but FEMA --

16 A (Lazarus) Yes.

17 Q -- and I'm asking you --

18 A (Lazarus) Mr. Thomas.

19 Q Anyone else, Mr. Dolan, Mr. Rospenda?

20 A (Lazarus) I don't recall any comments being made by
21 Mr. Dolan, Mr. Rospenda. I also did not, to the best of my
22 recollection, make any comments on the positions that were
23 taken.

24 Q Was Mr. Flynn the attorney at this meeting?

25 A (Lazarus) I don't believe so.

1 Q All right. Now, you say, preliminarily that Mr.
2 Thomas pointed out clearly that he was ignorant of any of the
3 technical aspects of nuclear power, indicating he depended upon
4 the technical expertise of the RAC members; correct?

5 A (Lazarus) Yes.

6 Q Why did that stand out?

7 A (Lazarus) It was the way that he said it, more than
8 just the statement of fact.

9 Q Frustration?

10 A (Lazarus) No, there was no sense of frustration.

11 Q What was it about the way he said it then, that made
12 it stand out?

13 A (Lazarus) It was just something that I would
14 consider as an odd statement to make. It was not -- well --

15 Q It was a self-evident proposition, wasn't it?

16 A (Lazarus) I'm sorry.

17 Q No one at that meeting had any doubt that he was
18 ignorant of the technical aspects of nuclear power?

19 A (Lazarus) I'm not sure that that's a fair
20 characterization. I don't know what was in --

21 Q You, yourself, didn't have any real doubts that that
22 wasn't an area where he was particularly well versed?

23 A (Lazarus) I did not know Mr. Thomas's full
24 background, so I had no way of judging that either.

25 Q All right. Nobody talked about the -- their

1 dependency upon the NRC members for technical expertise after
2 Thomas said that, it was just a comment that was said and then
3 the meeting moved on, is that what happened?

4 A (Lazarus) Yes.

5 Q All right. And the next thing you recall, at least
6 in your memo is, that the elimination of reference to site-
7 specific design features appear to be particularly troublesome
8 to Ed Thomas, correct?

9 A (Lazarus) Yes.

10 Q And by, particularly troublesome, do you mean that he
11 emphasized that as a problem for him?

12 A (Lazarus) Yes.

13 Q Occurring after the April meeting?

14 A (Lazarus) Yes.

15 Q As a result of the revisions in the document?

16 A (Lazarus) Yes.

17 Q All right. Was there any discussion about the
18 concern of his agency, as you recall it, over the elimination
19 of those aspects of Dr. Bores's February memo?

20 MR. TURK: As opposed to his own --

21 MR. OLESKEY: Yes.

22 MR. TURK: -- problem?

23 THE WITNESS: (Lazarus) If there were I don't recall
24 it.

25

1 BY MR. OLESKEY:

2 Q All right. And the features that were eliminated
3 from the memo had to do with the containment and risk, those
4 aspects?

5 A (Lazarus) Yes.

6 Q And then you responded, according to your
7 recollection, by saying in substance, this shouldn't have any
8 bearing on a finding of adequacy because those are only matters
9 that impact accident probability; was that the substance of it?

10 A (Lazarus) That's correct.

11 Q Did anybody say anything in response to that?

12 A (Lazarus) I didn't -- I don't recall any
13 disagreement with the statement, but I can't recall any
14 specific comments either.

15 Q And when you talk about a finding of adequacy, were
16 you talking about something that you thought the RAC should be
17 doing?

18 MR. TURK: Could we have a reference, please?

19 MR. OLESKEY: Yes.

20 MR. TURK: Same sentence?

21 MR. OLESKEY: Same sentence.

22 MR. TURK: The finding of adequacy.

23 THE WITNESS: (Lazarus) Yes, I believe that would
24 refer to the RAC.

25 BY MR. OLESKEY:

1 Q All right. So you meant there that the RAC, as a
2 result of this meeting or at some time, should prepare a paper
3 or position in which it found the plan adequate with respect
4 to the beach population; is that what you're saying?

5 A (Lazarus) No, this statement refers to the fact that
6 the risk items that we discussed and removed should not have an
7 impact on whether or not the plan was adequate.

8 Q As far as you were concerned?

9 A (Lazarus) Yes.

10 Q And Dr. Bores, I take it, agreed with that?

11 A (Lazarus) Yes, I believe so.

12 Q And the reason that you said that is given in your
13 next sentence in the memo, is that right, since you have to
14 plan for a spectrum of accidents without respect to
15 probability, you should remove probabilities from your
16 consideration of adequacy?

17 A (Lazarus) That's correct.

18 Q All right. Was there any discussion at that time in
19 the meeting or at any time in the meeting, not about plan
20 adequacy, but about a finding of reasonable assurance?

21 A (Lazarus) I don't recall any specific discussions
22 about the reasonable assurance issue.

23 Q You understand what I mean, generally, when I use
24 those words, don't you?

25 A (Lazarus) Yes.

1 Q All right. Then you go on to say, that sheltering
2 was discussed at length, do you see that? You say, on the
3 issue of sheltering which was discussed at length, and then you
4 point out something that you said?

5 A (Lazarus) Yes.

6 Q Other than what you said, what were the things that
7 were being said at length about sheltering at this RA' meeting
8 on July 30?

9 A (Lazarus) I believe that most of the discussion came
10 from Mr. Thomas, and his concern was with numbers of people,
11 unwinterized beach cottages, and those lines. I don't recall
12 anything else any more specific than that. I know that we did
13 discuss it for some period of time.

14 Q And then the point you made was, that sheltering only
15 gives a .1 -- 0.1 reduction, in any event, in a fast-breaking
16 accident, if that was the focus of Thomas's concern, it
17 wouldn't be of much use?

18 A (Lazarus) More than a fast-breaking accident; I
19 indicated a severe accident where you were concerned about
20 life-threatening doses, it did not appear to be reasonable to
21 say, well, we'll reduce doses by 10 percent by sheltering, that
22 evacuation would be the preferred protective action.

23 Q Did anybody discuss at this time any accident
24 scenarios under which sheltering might be a recommended
25 scenario?

1 A (Lazarus) No, I don't believe so.

2 Q Or preferred scenario?

3 A (Lazarus) I don't believe so.

4 Q Now, how long did this meeting take?

5 A (Lazarus) It was on the order of four hours, perhaps
6 a little longer.

7 Q So I think -- I think you testified earlier, in fact,
8 it started at 10:00 or 11:00 in the morning?

9 A (Lazarus) It was probably more like 10 o'clock in
10 the morning and ended some time after 2:00 in the afternoon.

11 Q Did you come there having in mind that you'd like to
12 get a position out of this RAC on the beach population issue?

13 MR. TURK: Could I -- I'm sorry, I didn't hear the
14 question.

15 BY MR. OLESKEY:

16 Q Did you come there with the intent or objective of
17 getting the RAC to take the position on the beach population
18 issue?

19 A (Lazarus) I don't recall going there with that
20 position in mind, but it would certainly have been desirable,
21 to be develop a position.

22 Q Is it fair to say that as the meeting went on and the
23 consensus that had been there in April, at least with respect
24 to FEMA's position and the other agencies, began to dissipate
25 that you felt somewhat frustrated by the drift of the meeting?

1 A (Lazarus) I was not frustrated by the drift of the
2 meeting; I was frustrated by the idea of adjourning the meeting
3 before it had been resolved.

4 Q You wanted to get the RAC to take a position that
5 would conclude the discussion of the beach population as an
6 open issue under those NUREG-0654 criteria or elements, isn't
7 that right?

8 A (Lazarus) I wanted the RAC to come to a correct
9 closure on this issue by what I believe were the important
10 issues before the RAC. Yes, I believe the issue -- there was
11 sufficient information to close it, the appropriate people were
12 there, and I thought it should be discussed and closed.

13 Q And a correct closure, as you use that term, would be
14 one that adopted the position in Dr. Bores's restated paper of
15 June 4th; correct?

16 A (Lazarus) That's correct.

17 Q And what you saw happening was that the meeting was
18 close to adjournment, it was 2 o'clock or so, and there'd been
19 no definitive statement of where each agency stood other than
20 in the context of the discussion that had gone on for three or
21 four hours; correct?

22 A (Lazarus) It was clear in my mind that there was a
23 definitive position being taken by those people at that
24 meeting, based on their comments.

25 Q Have there ever been any kind of polling or voting

1 done at any RAC meeting that you had been to?

2 A (Lazarus) No.

3 Q And you thought to get the correct position, to use
4 your term, on a record of this meeting there ought to be some
5 kind of showing, in some fashion, other than what had occurred
6 at that time of what each agency representative felt on the
7 issue; is that right?

8 A (Lazarus) I thought that it was important for my own
9 information to go -- to be in the position to brief my
10 management where each agency stood. That's why I had asked for
11 Mr. Thomas to take a vote.

12 Q I'm going to get to that request in a moment. At
13 this point that you're describing, 2 o'clock or so, on the 30th
14 of July last year, how many of the agency representatives were
15 left in the meeting?

16 A (Lazarus) To the best of my knowledge everyone
17 remained.

18 Q And that's everyone who was there in April except for
19 NOAA which didn't come?

20 A (Lazarus) Yes.

21 Q Where were you sitting or located at this time?

22 A (Lazarus) If the table was rectangular I was sitting
23 approximately in this position on the side of the table with
24 Mr. Thomas at the -- on my left at the end of the table.

25 Q And were the other representatives also at that

1 table?

2 A (Lazarus) Yes.

3 Q I think you said you'd worked through lunch, is that
4 right?

5 A (Lazarus) We may have, I'm not positive that we
6 worked through lunch.

7 Q So, what happened with respect to this issue of
8 polling or voting, what did you say at what point in the
9 meeting?

10 A (Lazarus) It was near the end where Mr. Thomas had
11 indicated that he would like to adjourn, he would have Mr.
12 Rospenda redraft the FEMA position and send it out for further
13 review by the members of the Regional Assistance Committee.

14 Q Did he talk about being tired?

15 A (Lazarus) Yes, he did.

16 Q All right. Did he say anything else before you got
17 to this issue of the vote?

18 A (Lazarus) I don't recall any other specific
19 comments.

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20 (Continued on next page.)

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25

T8 . Q Now you were not, as you've said, the official RAC
2 representative for your agency.

3 A (Lazarus) That's correct.

4 Q But you did feel that you wanted to speak up at this
5 point, I take it.

6 A (Lazarus) Yes.

7 Q All right. So you used the word "poll", did you?

8 MR. TURK: Could we have context?

9 THE WITNESS: (Lazarus) I believe that I --

10 MR. TURK: Context, please?

11 MR. OLESKEY: The context is the end of the meeting,
12 the conversation that Mr. Thomas has just had, and the witness
13 has indicated he then said something.

14 BY MR. OLESKEY:

15 Q Did you say, I'd like to take a poll, using that
16 word?

17 A (Lazarus) I believe I asked Mr. Thomas to take a
18 vote or a poll. I don't recall which word I used, but I
19 believe it was one or the other.

20 Q All right.

21 A (Lazarus) When he declined, is that what you're
22 asking me to respond to?

23 Q Yes. What did he say?

24 A (Lazarus) He reiterated that he would think it would
25 be a more proper way to redraft the position, get it out to the

1 individual members, and let them review and comment on it, and
2 have another meeting to discuss it.

3 Q Did he say anything in substance like, we never have
4 taken a vote here. We try to reach a consensus, and I'd like
5 to reach a consensus here if possible?

6 A (Lazarus) He may have indicated that it was not the
7 practice to take a vote. But I don't recall anything beyond
8 that.

9 Q All right. Then you said something else after he had
10 said, I'd rather not take a vote. We don't take votes, or
11 something along those lines, right?

12 MR. TURK: Well, is this a characterization? We just
13 had the witness's recollection.

14 MR. OLESKEY: Yes, that's an attempt at fair summary,
15 and the question is what did you then say.

16 MR. TURK: Mr. Lazarus said Thomas may have indicated
17 that it was not the practice to take a vote. He recalled
18 nothing further beyond that.

19 BY MR. OLESKEY:

20 Q What did you then say?

21 A (Lazarus) I said, or very closely my words were,
22 then I would like to know for my own information where each
23 member stands on the issue. Essentially if we're going to
24 adjourn at this point, I would like to know where everyone
25 stands.

1 Q Anybody else say anything?

2 A (Lazarus) No, not that I recall.

3 Q Mr. Thomas look unhappy that you were pressing the
4 issue at this time?

5 A (Lazarus) Yes.

6 Q You'd seized his prerogatives as the chair in a way,
7 hadn't you?

8 A (Lazarus) Yes.

9 Q Okay. And then you said, would you put your hands
10 up, or how did you put it?

11 A (Lazarus) I stated a question so that everyone would
12 know what they were responding to.

13 Q Oh, yes.

14 MR. OLESKEY: If I could have a moment, Judge.

15 (Pause.)

16 BY MR. OLESKEY:

17 Q You testified previously at Page 1195 --

18 JUDGE SMITH: Just a moment.

19 MR. OLESKEY: I'm sorry.

20 JUDGE SMITH: Let's take a --

21 MR. OLESKEY: Do you want to take the break?

22 JUDGE SMITH: Yes, let's take a break.

23 MR. OLESKEY: Ten minutes, Judge?

24 JUDGE SMITH: Yes.

25 MR. OLESKEY: Okay.

1 (Whereupon, a recess was taken.)

2 JUDGE SMITH: Proceed when you're ready.

3 MR. OLESKEY: I was just waiting for a couple of
4 missing folks.

5 (Pause.)

6 THE WITNESS: (Lazarus) Mr. Oleskey, I did recall
7 one additional thing that was said --

8 MR. OLESKEY: Yes.

9 THE WITNESS: (Lazarus) -- during that time period
10 near the end of the meeting. And that was that I told Mr.
11 Thomas to the effect that we have everyone here, why don't we
12 try to get this resolved. We still have some time, so let's
13 work and try to get this resolved.

14 BY MR. OLESKEY:

15 Q All right. Now, what you've told me until now is
16 your best recollection of the sequence that occurred at the end
17 of the meeting in the order in which it occurred, correct?

18 A (Lazarus) Yes.

19 Q Okay. Now, in the memo you say, at the point at
20 which I am now in my questioning, "He, Thomas, declined so I
21 asked for a show of hands for my own information."

22 Do you see that --

23 A (Lazarus) Yes.

24 Q -- at the bottom of the page?

25 A (Lazarus) Yes, I see that.

1 Q In your testimony you presented as something that
2 said a somewhat more detailed and elaborate statement as a
3 preface to this poll.

4 A (Lazarus) Yes.

5 Q Do you recall that?

6 A (Lazarus) Yes, I do.

7 Q Now back there on July 30th did you simply ask for a
8 show of hands, or did you give this statement that you recited
9 here in your direct testimony which now appears at Pages 11954
10 and -5 of the transcript?

11 A (Lazarus) I stated that question as indicated in the
12 prior -- my prior testimony, prior to asking for a show of
13 hands.

14 Q Okay. And that was one of the details that you
15 didn't think it necessary to put into the memo when you
16 originally drafted it.

17 A (Lazarus) Yes.

18 Q Okay. Then you said a number of things in posing the
19 question to these people, as I understand it.

20 First, you said, in light of what we know about the
21 New Hampshire plan as far as it relates to early closure of
22 beaches at the alert level --

23 MR. TURK: I'm sorry. Could you give me the page
24 reference?

25 MR. OLESKEY: 11954.

1 THE WITNESS: (Lazarus) Yes.

2 BY MR. OLESKEY:

3 Q Secondly, the protective actions that can be
4 disseminated over the PA system on the sirens, correct?

5 A (Lazarus) Correct.

6 Q Thirdly, the RAC's knowledge of the evacuation time
7 estimates, and the people who were unlikely to be in the plumes
8 for lengthy periods of time during evacuation.

9 MR. TURK: Objection. It's in the transcript.
10 There's no need to insert words.

11 MR. OLESKEY: Well, I said, "people who were
12 unlikely." I added a pronoun. Do you find that objectionable?
13 I like to make sense out of my questions.

14 May I continue?

15 BY MR. OLESKEY:

16 Q And you said, the people who were unlikely to be in
17 the plume for lengthy periods of time during evacuation,
18 correct?

19 MR. TURK: I'm going to object.

20 MR. DIGNAN: I object, because that changes the
21 statement, Mr. Oleskey, when you put the "who" in there. It
22 changes the sense of it. I'm sure it's not deliberate, but in
23 fact it does. He didn't break out a separate people who --

24 MR. OLESKEY: Please, counsel, I have very good
25 hearing, and I heard you the first time.

1 MR. DIGNAN: Okay.

2 BY MR. OLESKEY:

3 Q Backing up, thirdly, you described to the RAC members
4 their knowledge of the evacuation time estimates, correct?
5 Referred them to their knowledge of the ETEs?

6 A (Lazarus) Yes.

7 Q Made a statement, "People were unlikely to be in the
8 plumes for lengthy periods of time during evacuation", correct?

9 A (Lazarus) That's correct.

10 Q And then by my count, fifth, you said, the fact that
11 we just discussed -- that we had discussed just prior to this
12 the dose reduction factors would be on the order to, using your
13 word, 10 percent, right?

14 A (Lazarus) I believe I said of 10 percent. I don't
15 believe the transcript is correct there.

16 Q I don't want to be accused of misquoting you though.
17 The transcript says "to". Your recollection now is "of"; is
18 that right?

19 A (Lazarus) Yes.

20 Q All right.

21 So you summarized those five points.

22 MR. TURK: May I first have a clarification? What's
23 the correction, Mr. Oleskey?

24 MR. OLESKEY: No, the witness is making a correction,
25 counsel. And if you follow along, you won't have to ask so

1 many clarifying questions. He wants the word "to" in the
2 transcript to read more sensibly "of". That's fine with me.

3 MR. TURK: And you're asking him whether these are
4 five factors or some other number? You're asking him to agree
5 that it's five according to your count?

6 MR. OLESKEY: I think that was the gist of the
7 question, yes.

8 BY MR. OLESKEY:

9 Q Those were the hypotheticals or the propositions you
10 put these members of the RAC, correct, sir?

11 MR. TURK: I'm going to object if we're doing a
12 count, because I count differently.

13 MR. OLESKEY: But we all know from the record
14 whatever it is I said by my count, so we wouldn't have an
15 argument over it.

16 BY MR. OLESKEY:

17 Q You made these points, sir.

18 A (Lazarus) I made these points as indicated in my
19 testimony.

20 Q All right. Did you make any other points?

21 A (Lazarus) I don't believe so.

22 Q Did you have those points written down before you
23 made them?

24 A (Lazarus) No, I did not.

25 Q Those are just things that came to your head as

1 important --

2 A (Lazarus) Yes.

3 Q -- to bear in mind when the position was being stated
4 on this issue?

5 A (Lazarus) Yes.

6 Q And then you said, bearing those things in mind, does
7 each one of you think or not that the New Hampshire plan is
8 adequate as written at this time; is that right?

9 A (Lazarus) Yes.

10 Q And by adequacy of the plan at this time, were you
11 referring -- were you referring to the plan as a whole or only
12 to the beach population issues?

13 A (Lazarus) We were referring to the beach population
14 issues.

15 Q And do you think that was clearly by the context of
16 the meeting, that that was the issue you were posing?

17 A (Lazarus) Yes.

18 Q Okay. And then the first thing that happened is you
19 put your hand up like this. Your right hand or your left hand,
20 right?

21 A (Lazarus) My right hand, I believe, yes.

22 Q Then you looked around the table to see what other
23 folks had put up their hands?

24 A (Lazarus) Yes.

25 Q And what you saw was that the agencies who were their

1 put up their hands except for the FEMA representatives who did
2 not.

3 A (Lazarus) Yes, that's correct.

4 Q Then what happened?

5 Who said what or did what?

6 A (Lazarus) Mr. Thomas indicated that he would, as he
7 had stated before, have the FEMA position redrafted and
8 submitted to the individual RAC members for review.

9 Q Now, by the FEMA position, you understood at that
10 time he meant the June 4 filing?

11 A (Lazarus) Yes.

12 Q Before this Board.

13 A (Lazarus) Yes.

14 Q Did anybody else say anything?

15 A (Lazarus) I don't recall any specific comments as
16 there was some discussion between Mr. Rospenda and Mr. Thomas
17 as to what would exactly transpire as to redrafting that
18 position, but the meeting was adjourned very shortly after
19 that.

20 Q Did you say anything to the members after this poll
21 such as thank you, or I appreciate that?

22 A (Lazarus) I don't believe so.

23 Q Did you make any notes at that time?

24 A (Lazarus) No, I did not.

25 Q The last thing you say in your memo of October 15th

1 is this. "He," meaning Mr. Thomas, "did not follow up on his
2 commitment to provide a revised position to the RAC for review
3 and comment."

4 And there you're referring, I take it, to the FEMA
5 position that you just described of June 4th.

6 A (Lazarus) Yes.

7 Q "And instead drafted his own input," you said, right?

8 A (Lazarus) That really is incorrect. My
9 understanding now is they did not change their input. The
10 position had already been submitted on June 4th and was not
11 revised in September.

12 Q Yes, but when you wrote this, you said, "his own
13 input", didn't you?

14 A (Lazarus) Yes.

15 Q Meaning Mr. Thomas?

16 A (Lazarus) Yes.

17 Q Which was your way of indicating that you considered
18 the FEMA testimony of June 4th, or the FEMA filing of June 4th
19 to be Mr. Thomas's filing and not his agency's; isn't that
20 right?

21 A (Lazarus) I didn't come to any conclusions about
22 whether it represented his views or the agency's, and I don't
23 know whether or not that's a fact.

24 Q And you didn't know -- you didn't know on October
25 15th, isn't that right?

1 A (Lazarus) No, I did not.

2 Q But you used the word "his" rather than the agency's,
3 didn't you?

4 A (Lazarus) Yes, I used the word "his".

5 Q All right.

6 So that the sentence, when read in its entirety with
7 the clause following "largely ignoring the RAC comments from
8 the meeting" makes it appear that Mr. Thomas stubbornly went
9 ahead and did something on his own hook, ignoring what the RAC
10 had said and voted; isn't that right?

11 A (Lazarus) Yes, that's right.

12 Q And in fact what happened subsequently was that FEMA,
13 the agency, filed testimony in this proceeding on September 9
14 or 11 of 1987, as you now know; isn't that right?

15 MR. TURK: I object.

16 MR. OLESKEY: Wasn't that right, counsel?

17 JUDGE SMITH: What's the basis of your objection?

18 MR. TURK: Well, Your Honor, if we're looking to
19 establish from this witness what it was that FEMA established,
20 I don't know that we have a proper foundation for knowledge.

21 JUDGE SMITH: Well, this is cross-examination of the
22 most traditional type.

23 MR. TURK: If we're only dealing with his
24 understanding of what FEMA filed, fine. But I don't want any
25 sort of an understanding that Mr. Lazarus is capable of saying

1 what it was that FEMA filed.

2 JUDGE SMITH: Overruled.

3 THE WITNESS: (Lazarus) Could you repeat the
4 question, please?

5 MR. OLESKEY: May I have that read back? That's an
6 important question to me and I'd rather not try to rephrase it
7 and be inaccurate.

8 (Accordingly, the pending question was read
9 back by the court reporter.)

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1 THE WITNESS: (Lazarus) I do not know whether that
2 was the FEMA position filed in September, or FEMA Region 1
3 position.

4 BY MR. OLESKEY:

5 Q Well, then, you didn't really know back in October
6 15th, when you described it as Mr. Thomas's own input, did you?

7 A (Lazarus) No, I did not.

8 Q So you would say that's no longer accurate, wouldn't
9 you?

10 MR. TURK: Objection. You're asking the witness to
11 assume, as you do, that this is not his own input.

12 MR. OLESKEY: No.

13 MR. TURK: He's indicated he doesn't know what it
14 was.

15 MR. OLESKEY: No.

16 BY MR. OLESKEY:

17 Q I'm saying you don't know today whether the testimony
18 filed here by FEMA was an agency position or Ed Thomas's; is
19 that your testimony?

20 A (Lazarus) Yes, that's my testimony.

21 Q And you didn't know it on October 15, 1987, when you
22 drafted this either, did you?

23 A (Lazarus) Mr. Thomas indicated to us that he was the
24 one who was drafting the position. I'm stating that I don't
25 know whether that represented FEMA Region 1's views, or FEMA

1 views.

2 Q You adopted the interpretation when you drafted the
3 memo that it was Thomas's input that was filed under the name
4 of his agency, didn't you?

5 A (Lazarus) Yes.

6 Q Now you've testified here twice, last week and again
7 today, that the sequence of events was that Thomas said he was
8 tired and wanted to adjourn the meeting. And you then said,
9 wait a minute, I want a vote or a poll.

10 Do you recall that a couple minutes ago and also
11 earlier?

12 A (Lazarus) Yes. And as I indicated, we also -- I
13 also stated that we have everyone here who's been involved in
14 this. Why don't we work and try to get it resolved. We still
15 have some time left.

16 Q But back on October 15th, when your memory was
17 fresher presumably, you had the vote and the discussion all
18 taking place before a point at which Mr. Thomas said he was
19 tired and wanted to adjourn; didn't you?

20 And I point you to the fourth line down, the last
21 page of your memo.

22 A (Lazarus) Yes. In fact, I believe that he indicated
23 that he was tired twice during the --

24 Q But you didn't get the first recollection into the
25 original memo, did you?

1 A (Lazarus) No, I did not.

2 Q And it could make a difference in people's
3 perceptions of the meeting if they think that somebody says he
4 wants to adjourn first and then somebody presses a vote as
5 contrasted with a situation where there is a discussion,
6 followed by somebody saying, I'm tired, let's get out of here.
7 There is a difference in the way those situations could be
8 perceived, isn't there?

9 MR. TURK: Objection.

10 THE WITNESS: (Lazarus) I don't believe --

11 BY MR. OLESKEY:

12 Q You don't believe so?

13 A (Lazarus) No, I don't.

14 JUDGE SMITH: You can --

15 MR. OLESKEY: That's my last question on that.

16 JUDGE SMITH: When there is an objection --

17 THE WITNESS: (Lazarus) I'm sorry.

18 JUDGE SMITH: -- you withhold your answer.

19 MR. OLESKEY: Now I want to go on to some things that
20 you may or may not consider within the sequestration, and
21 specifically --

22 JUDGE SMITH: Well, do you?

23 MR. OLESKEY: Well, I'm going on to Schumacher's memo
24 which he dealt with. I don't care whether Bores is here or
25 not.

1 JUDGE SMITH: Well, the point is it's very important
2 to Mr. Turk.

3 MR. OLESKEY: Fine.

4 JUDGE SMITH: In deference to him, I think you should
5 accommodate him.

6 MR. OLESKEY: Okay. Just in terms of our timing, if
7 we have to get Lazarus back here to do this, it will presumably
8 delay us a little bit. Bores, excuse me.

9 MR. TURK: I would keep the witnesses available for
10 today's examination.

11 My sole purpose, Mr. Oleskey, is making sure that I'm
12 free to talk about certain things with the witnesses, and
13 making sure the record is clear.

14 Maybe other Intervenors have some sequestered
15 examination for Mr. Lazarus that we could reach now. If they
16 don't, I will ask Dr. Bores to return.

17 MR. OLESKEY: That may be. I only want to make it
18 clear I have several more topics, I think about three, for this
19 witness that fall within this general time frame which,
20 pursuant to our discussions, I'm not going to pursue until Dr.
21 Bores is here to avail Mr. Turk of all the discussion
22 opportunities that he may want.

23 So perhaps we should throw it open to other questions
24 of Lazarus on the subject matter I've covered this morning.

25

1 JUDGE SMITH: All right. That would be limited to
2 other Intervenor.

3 MR. OLESKEY: Yes, that's correct.

4 MR. TURK: Your Honor, one clarifying question.

5 If I have redirect based on the sequestered
6 testimony, should I pursue it now after other Intervenor, or
7 should I do it after all the testimony concludes?

8 MR. OLESKEY: Let's get the packages done now, I
9 would think.

10 JUDGE SMITH: I don't think that there is any
11 requirement that you have redirect under separation. I don't
12 know what it would be since the only request has been to
13 preserve the questions on cross-examination.

14 I guess you could violate the purpose of
15 sequestration by your redirect, but it would have to be -- he
16 may be more comfortable that way. I don't know. It's up to
17 you.

18 For now let's go to the other Intervenor, questions
19 that you might have that you could not have worked with lead
20 counsel on.

21 All right, Ms. Weiss.

22 CROSS-EXAMINATION

23 BY MS. WEISS:

24 Q At the July 30th meeting, Mr. Lazarus, was there any
25 discussion of action which FEMA had recently taken on the

1 Pilgrim plant?

2 MR. TURK: Objection.

3 JUDGE SMITH: Ms. Weiss, you're going to have to
4 explain that if you're going to justify it. It's so far beyond
5 the scope that you must -- you know that, and you have a reason
6 for it.

7 MS. WEISS: Let me ask another question.

8 JUDGE SMITH: I mean, it's so bad that you must have
9 a reason for it.

10 (Laughter.)

11 BY MS. WEISS:

12 Q Isn't it true that FEMA had just sent notification to
13 the owners of the Pilgrim plant that there was a potential
14 deficiency because of a large population on the beach near the
15 Pilgrim plant just prior to the July 30th meeting?

16 MR. DIGNAN: I'm going to object, because I see this
17 going I don't know where. If we can have a statement as to how
18 this is relevant to Seabrook, or this issue, maybe.

19 JUDGE SMITH: Well, does it have to be sequestered?

20 MS. WEISS: No.

21 JUDGE SMITH: All right. So that solves that.

22 And then I infer that you're trying to show
23 consistency?

24 MS. WEISS: Yes, and to what degree the people at the
25 July 30th meeting understood what was being discussed.

1 JUDGE SMITH: Okay. All right, so let 's defer it
2 because it doesn't have to be sequestered, and then limit --
3 the examination now is only that which must be sequestered in
4 the Intervenor's share of Mr. Oleskey's belief that it has to
5 be sequestered.

6 Do we have any further?

7 MS. WEISS: Yes.

8 JUDGE SMITH: Oh, you do?

9 BY MS. WEISS:

10 Q Could you take a look back at the transcript, Page
11 11954?

12 A (Lazarus) Yes, I have that.

13 Q We went over the proposition that you had stated to
14 the members of the RAC. I want to focus on the beginning, on
15 one phrase that begins on Line 19 where you reminded the
16 members of the RAC of, "Their knowledge of the evacuation time
17 estimates and people were unlikely to be in the plumes for
18 lengthy periods of time during evacuation."

19 Now had there been any discussion at the meeting of
20 the evacuation time estimates for the beach population?

21 A (Lazarus) Yes.

22 Q And did the -- in your review, did the RAC as a
23 collegial body have some view on what the appropriate
24 evacuation time estimates were for the beach population?

25 A (Lazarus) I don't recall if the RAC had a view. I

1 know that there were evacuation time estimates that had been
2 submitted and were available for the RAC to review.

3 Q Which cover quite a broad range; isn't that correct?

4 A (Lazarus) It covers a range.

5 Q Yes.

6 MR. TURK: Objection.

7 MS. WEISS: And --

8 JUDGE SMITH: Well -- too late.

9 BY MS. WEISS:

10 Q Did you state in the question that you had any
11 particular evacuation time estimates in mind?

12 A (Lazarus) I don't believe that I stated that.

13 Q Did you state a range?

14 A (Lazarus) No, I don't believe so.

15 Q So you have no basis for knowing what the members of
16 the RAC had in their minds what they considered their knowledge
17 of the evacuation time estimates for the beach population, do
18 you?

19 A (Lazarus) It would have been what we discussed at
20 the meeting.

21 Q Which was that?

22 A (Lazarus) I believe it was in the range of two to
23 six hours.

24 Q Two to six hours.

25 And with respect to your assertion that people were

1 unlikely to be in the plumes for lengthy periods of time during
2 evacuation, what do you mean by people? Did you mean the
3 people on the beach or the people in the EPZ, in general?

4 MR. TURK: What did he mean or what did he say?

5 MS. WEISS: What did he mean.

6 THE WITNESS: (Lazarus) I meant people on the beach.

7 BY MS. WEISS:

8 Q Did you state that?

9 A (Lazarus) No, I did not state that. That was the
10 issue that we were discussing.

11 Q But you believe that was clearly understood by the
12 people who heard you.

13 A (Lazarus) I do.

14 Q And what did you mean by lengthy periods of time?
15 Did you state that?

16 A (Lazarus) Yes, I believe so.

17 Q What periods of time did you state?

18 A (Lazarus) I believe I stated lengthy periods of time
19 without reiterating the exact numbers.

20 Q You gave no information other than lengthy periods of
21 time?

22 A (Lazarus) Yes.

23 Q Did you reference it back to the evacuation time
24 estimates?

25 Did you say, in view of my belief that people will

1 get out of the beaches before the plume passes over?

2 A (Lazarus) No, I was asking them to determine in
3 their minds, based on their knowledge of the evacuation time
4 estimates, whether they believed that it was accurate.

5 Q So you have no recollection -- I mean, you have no
6 basis of knowing whether the RAC members believe it to be true
7 when you called for this show of hands, whether people would in
8 fact get off the beach before the plume passes over, do you?

9 MR. DIGNAN: I going to object to this line. What is
10 the relevance of what the RAC did or did not think?

11 MS. WEISS: What I want to know, Mr. --

12 MR. DIGNAN: Excuse me, may I state my objection?

13 MS. WEISS: Yes.

14 MR. DIGNAN: In response to what was said. The
15 witnesses were here originally on certain credibility
16 questions. And as I understand what they're here on is their
17 recollection of what in fact happened at the meeting.

18 I fail to see any relevance to whether or not in fact
19 the people who did or did not, or whatever they did put their
20 hands up or how they voted, understood or didn't understand
21 what was said to them.

22 MS. WEISS: Well, I think it's extremely relevant
23 because the point of both of these memoranda is, and the point
24 of the entire direct examination, I submit, is that Ed Thomas
25 stood alone opposed to the entire RAC. And it's important to

1 know what the RAC understood, and when they raised their hands
2 what they had in mind and what exactly they were voting on.

3 JUDGE SMITH: Well, assume just for purpose of
4 argument that the RAC disagreed with Mr. Thomas on totally
5 erroneous, incorrect bases. Then where would you be?

6 MS. WEISS: Well, as I said last Friday, I think that
7 that's -- certainly if the RAC was misled or if the RAC
8 misunderstood what the situation is at Seabrook, then it would
9 be our view that any attempt to argue that the FEMA original
10 position was wrong because it was opposed to the RAC, or that
11 Ed Thomas was wrong because he stood in opposition to the RAC
12 would simply be an inappropriate argument.

13 JUDGE SMITH: So there's two issues.

14 MS. WEISS: Yes.

15 JUDGE SMITH: And why does this have to be
16 sequestered?

17 MS. WEISS: Well, because my understanding was that
18 all the questions on the 4/15 meeting, and the 7/30 meeting,
19 and the vote in particular, were to be sequestered.

20 JUDGE SMITH: Well, if you're trying to establish --
21 if you're trying to establish matters on the merits, and you
22 want the best information, wouldn't you want to share Dr.
23 Bores's and Mr. Lazarus's memory on it?

24 MS. WEISS: Well, it was just my understanding that
25 we were supposed to ask -- perhaps I misunderstood the

1 sequestration order. I thought we were supposed to ask all the
2 questions about those two meetings, and particularly about the
3 vote in sequestration.

4 JUDGE SMITH: Okay. Yes, I think this is at the
5 interface.

6 Overruled.

7 MS. WEISS: Well --

8 MR. TURK: But I forgot the question.

9 MS. WEISS: -- you may answer the question.

10 MR. TURK: I have forgotten the question. Can I hear
11 it again, please?

12 MS. WEISS: You can read the question back, Mr.
13 Reporter?

14 (Playback preparation interrupted by following
15 colloquy.)

16 (Continued on next page.)

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1 MR. DIGNAN: Your Honor, at the risk of hitting the
2 Board's patience, could I be heard further on this objection
3 briefly?

4 JUDGE SMITH: You wish us to reconsider?

5 MR. DIGNAN: Yes, I do, Your Honor.

6 JUDGE SMITH: All right.

7 MR. DIGNAN: Could I be heard briefly?

8 JUDGE SMITH: Yes.

9 MR. DIGNAN: The reason for the objection is simply
10 this. As I understand the reason for the appearances of Mr.
11 Lazarus and Dr. Bores was I had requested subpoenas to issue,
12 in part, because the Board indicated its own concerns as to one
13 matter.

14 Now where we are right now at this particular
15 question Mr. Thomas on at least three occasions, I don't know
16 how many, appears to have stated in under oath there was no
17 vote taken. These witnesses have stated under oath between
18 them now I guess three or four times that a vote was taken.
19 That's the issue. Now what we've --

20 JUDGE SMITH: That's one issue.

21 MR. DIGNAN: Well, that's the issue -- the issue on
22 direct. That was the issue the witnesses were brought back
23 for. Now we're on the question of whether the full RAC
24 understood the statement that Mr. Lazarus made prior to, as he
25 testifies, a vote being taken.

1 JUDGE SMITH: We're on a merits issue now.

2 MR. DIGNAN: Yes. And my problem with that is that
3 that's irrelevant to their testimony. They were brought up
4 here for a specific purpose. I don't see the relevancy of this
5 to the case as a whole, and I certainly don't see the relevance
6 to the purpose for which these witnesses are testifying.

7 Now if they want to request the NRC for specific
8 people and convince you they can have it to put their case on
9 the merits in, that's one thing. But keep in mind these are
10 two NRC employees who are here because the Applicant made a
11 demonstrated showing that they had peculiar knowledge that
12 necessitated specific employees to be called. And the Board
13 under 720(H) granted that motion.

14 My understanding, or at least my view of those
15 motions is when that is done, the NRC employees come up and
16 testify on the specific areas the Board has found that unique
17 knowledge is necessary, and then they leave having been cross-
18 examined on those subject. And this is ranging -- there is
19 only one issue that we're here for in terms of the vote. They
20 say, vote. Mr. Thomas says under oath, no vote. That's the
21 issue.

22 MS. WEISS: Well, you know --

23 MR. DIGNAN: The only issue that they're here for.

24 MS. WEISS: Lxcuse me. Maybe we've been different
25 places for the past two days, but these witnesses testified

1 under direct examination for a day and a half, and the subject
2 was described over and over again as the evolution of the FEMA
3 position as NRC knows it. They testified in great detail about
4 the deliberations of the RAC and what's been presented as the
5 direct testimony, and in particular, the memos, the Bores and
6 Lazarus and all the attachments have been offered to show that
7 the RAC and FEMA Region 1 in the person of Ed Thomas were at
8 odds. I mean that's been the -- unless I've been sitting
9 someplace else for the last day and a half, that's been what
10 this is all about.

11 JUDGE SMITH: Well, now, yes. See, that is one issue
12 that they were at odds.

13 The second issue is the merits of their being at
14 odds.

15 MS. WEISS: No, I don't intend to go into the merits
16 at all. My point is just --

17 JUDGE SMITH: All right, well, then --

18 MS. WEISS: -- did they understand -- when people are
19 alleged to have supposed to have raised their hands and voted
20 on something, did they understand that they were voting; did
21 they understand what they were voting on; and what was the
22 basis of their raising their hands in affirmation as the
23 witness says.

24 JUDGE SMITH: All right. So then I misunderstood our
25 last dialogue on this.

1 You're not trying to revive the credibility of the
2 former FEMA position by these questions?

3 MS. WEISS: All I'm doing is cross-examining on this
4 issue of the degree to which Thomas and the RAC as a collegial
5 body are said to have been at variance.

6 JUDGE SMITH: All right. Since these witnesses have
7 testified they are at variance, you're trying to demonstrate,
8 well, maybe in fact that they weren't.

9 MS. WEISS: Maybe it's not --

10 JUDGE SMITH: Maybe the question --

11 MS. WEISS: -- to the degree to which it's been
12 suggested.

13 JUDGE SMITH: Right. And maybe the questions put to
14 the people by this witness were such that it did not cast the
15 question as a question in being at variance to Mr. Thomas's
16 position.

17 MS. WEISS: Exactly.

18 JUDGE SMITH: All right, that's a little bit
19 different.

20 MR. TURK: I'm missing that, Your Honor.

21 MR. DIGNAN: So am I.

22 MR. TURK: I don't see that that's in any way related
23 to the line of questioning that Ms. Weiss is going after.

24 I see that the only purpose of these questions is to
25 try to determine whether Mr. Thomas was right to refuse to

1 agree with the RAC.

2 JUDGE SMITH: Well, maybe -- maybe Mr. Thomas could
3 have agreed to the hypotheses --

4 MS. WEISS: Exactly.

5 JUDGE SMITH: -- put to --

6 MS. WEISS: Exactly.

7 JUDGE SMITH: -- them by Mr. Lazarus. I think it's a
8 fair area of cross-examination.

9 MR. TURK: And there's a further --

10 MR. DIGNAN: On what direct, Your Honor.

11 MR. TURK: There's a further --

12 MR. DIGNAN: That's my only point.

13 JUDGE SMITH: On what?

14 MR. DIGNAN: On what direct?

15 There was no direct --

16 MS. WEISS: I just read from the transcript. I began
17 reading from the transcript.

18 MR. DIGNAN: May I finish my --

19 MS. WEISS: Yes, you may.

20 MR. DIGNAN: -- argument to the Board?

21 MS. WEISS: You certainly may.

22 MR. DIGNAN: Thank you.

23 MS. WEISS: You're welcome.

24 MR. DIGNAN: Your Honor, to what direct I asked
25 because of this. I certainly have not offered nor do I

1 understand the NRC to have offered -- Ms. Weiss, it would also
2 help if you would remove yourself from between myself and His
3 Honor so that I could address him. Do you suppose you could do
4 that? Thank you.

5 MS. WEISS: Pardon me, that was not intertional.

6 MR. DIGNAN: I'm sure it wasn't, otherwise I would
7 nave spoken more sharply.

8 The point I am making is that no one here that I'm
9 aware of, either the NRC Staff or myself, has attempted to
10 offer the individual opinion of RAC members as for or against
11 Mr. Thomas, or whether they are correct or incorrect.

12 The only issue that's up here is there's a vote
13 taken. And as Your Honor stated at the outset of the
14 discussion, let us assume all of the RAC members had no idea of
15 what the question was that was put to them.

16 JUDGE SMITH: What if the question were let's go to
17 lunch?

18 MR. DIGNAN: Yeah. And three times --

19 JUDGE SMITH: And pose the relevance of the question
20 to the issue that is being debated.

21 MR. DIGNAN: Well, Your Honor, I will subside because
22 I can't persuade you. To me the issue is the credibility of
23 testimony you heard under oath earlier that there was no vote.

24 JUDGE SMITH: Yes, Mr. Dignan, and I'm going to
25 consult with the Board.

1 My point is, yes, indeed, there was a vote
2 apparently, according to these witnesses; as you've pointed out
3 they've testified several times.

4 The question now as I see it is what was the vote
5 about.

6 MR. DIGNAN: If Your Honor believes that that issue
7 is open, I will withdraw the objection. I see Your Honor's
8 point. I see Your Honor's point. Objection withdrawn.

9 JUDGE SMITH: Well, have I characterized it
10 correctly?

11 MS. WEISS: Well yes. I mean, that's been the whole
12 point of the whole line of questioning, and I no longer recall,
13 unfortunately, the last one. I had to have the reporter go
14 back, but I honestly don't remember what the last one was.

15 JUDGE SMITH: Well, I mean, that's the thread of your
16 examination notwithstanding what the particular questions were?

17 MS. WEISS: Yes.

18 (Board confer.)

19 MR. DIGNAN: Your Honor, may I respectfully advise
20 the Board that I have withdrawn the objection. I don't know if
21 any ruling is called for.

22 JUDGE SMITH: I know but the Board has its
23 requirements.

24 (Board confer.)

25 JUDGE SMITH: Do you have the question?

1 (Whereupon, the Reporter read back the pending question.)

2 JUDGE SMITH: You may answer.

3 THE WITNESS: (Lazarus) My understanding of the
4 question is that the members of the RAC had no basis to know
5 whether or not the evacuation time estimates were true?

6 BY MS. WEISS:

7 Q The question was you have no basis for knowing
8 whether the RAC members believed it was true that the beach
9 population could in fact get off the beach before the plume
10 arrived when you called for that vote.

11 MR. TURK: Well, wait a minute.

12 JUDGE SMITH: Let's keep this question and answer in
13 context now.

14 MR. TURK: Where is the ---

15 MR. DIGNAN: Well, I've got an objection to that
16 question because where is it in the original testimony did the
17 witness ever say that he was saying everybody will get off
18 before the plume arrives. I don't understand that to be his
19 testimony at all.

20 MS. WEISS: We just spent 10 minutes getting --

21 MR. TURK: If that's true, I missed something.

22 JUDGE HARBOUR: Ask the right question.

23 MR. DIGNAN: Indeed, what he said was the people were
24 unlikely to be in the plumes for lengthy periods of time which
25 absolutely is the opposite of saying everybody's gone before

1 the plume arrives.

2 JUDGE SMITH: Ms. Weiss, I guess I have to agree with
3 Mr. Dignan.

4 MS. WEISS: Well, let's back it up a little bit, not
5 to belabor this point.

6 BY MS. WEISS:

7 Q When you asked this question, you gave no numbers
8 either with regard to the evacuation time estimates or with
9 regard to the time which it would take people to get off the
10 beach; is that correct?

11 A (Lazarus) No, but they had been previously discussed
12 during the meeting.

13 Q Ranges had been discussed.

14 A (Lazarus) Yes.

15 Q Is that correct?

16 A (Lazarus) That's correct.

17 Q And you said that the ranges of ETEs were two to six
18 hours; is that correct?

19 A (Lazarus) That's my recollection.

20 Q What about the ranges of time that it would take
21 people to get off the beach, what did you discuss at the
22 meeting with that -- in that regard?

23 A (Lazarus) That is what we discussed was the
24 evacuation time estimate times.

25 Q What about plume arrival times, did you talk about

1 that?

2 A (Lazarus) Yes, we talked about the plant at the
3 closest was approximately two miles to the nearest beach, at
4 various wind speeds what delay time. I don't believe we got
5 specific as far as numbers, but indicating that at slow wind
6 speeds it would take some time for the plume to get to the
7 beach. While it was getting to the beach, it would be diffused
8 or dispersed to some extent based on knowledge of atmospheric
9 dispersion.

10 Q Were you putting this -- were you stating this as a
11 given, or were you putting it as a proposition?

12 MR. TURK: Well, was who doing this?

13 MS. WEISS: Mr. Lazarus.

14 MR. TURK: Mr. Lazarus was saying --

15 BY MS. WEISS:

16 Q When you listed these --

17 MR. TURK: -- these were the discussions at the RAC.

18 JUDGE SMITH: Well, wait, wait. I don't -- what's
19 your -- I didn't hear his objection. Now hold on for a minute.
20 Give me your objection.

21 MR. TURK: Form of the question, Your Honor.

22 Ms. Weiss is asking when you did this, and all Mr.
23 Lazarus has said is that these were the discussions within the
24 RAC.

25 JUDGE SMITH: Well, I have a third problem with the

1 question, and that is you've only given two alternatives; that,
2 one, it was a given -- what were your two alternatives? One,
3 it was a given.

4 MS. WEISS: Were they --

5 JUDGE SMITH: Or it was his representation.

6 MS. WEISS: Were you presenting these as givens or as
7 propositions.

8 JUDGE SMITH: Givens or propositions, and I have yet
9 another concern, whether there should be a third alternative,
10 and I don't want to suggest an answer to the witness.

11 Well, I think we can -- yes, it doesn't matter,
12 because I think that the third alternative which should be put
13 to him is, or was an identification of the considerations that
14 they had discussed during the meeting.

15 MS. WEISS: Let me withdraw the question.

16 MR. DIGNAN: Your Honor, can I note an objection
17 to --

18 MS. WEISS: The question's withdrawn.

19 MR. DIGNAN: -- the framing of these questions?

20 JUDGE SMITH: Well, she's withdrawn it.

21 MR. DIGNAN: No, she's down the line.

22 JUDGE SMITH: Now let me deal with one statement at a
23 time here.

24 MR. DIGNAN: She's down a line, Your Honor. Here's
25 my problem.

1 If everybody would be kind enough to direct
2 themselves to 11954 and what the witness said at Line 15. He
3 said, "The statement that I presented was that in light of what
4 you know about the New Hampshire Radiological Emergency Plan,"
5 da-dot-da-dot-da-da.

6 JUDGE SMITH: That's exactly why I didn't think her
7 question gave sufficient alternatives.

8 MR. DIGNAN: There was no reason for him to give
9 ranges or anything else. He was asking them in light of what
10 you people know, and this entire line of questioning is taking
11 that -- pieces of this statement totally out of context.

12 JUDGE SMITH: We will get all of these factors in
13 sooner or later. I mean we will listen to everyone.

14 All right. So we have no question pending.

15 BY MS. WEISS:

16 Q Is it possible the meeting was adjourned when you
17 asked for the show of hands?

18 JUDGE SMITH: Had already been adjourned.

19 THE WITNESS: (Lazarus) No, it was not. There was
20 no -- typically there is no announcement this meeting is
21 adjourned at RAC meetings.

22 BY MS. WEISS:

23 Q Is it possible that some people were gathering their
24 things up and leaving?

25 A (Lazarus) No.

1 Q That's not possible?

2 A (Lazarus) No, it's not. At least that is not my
3 recollection.

4 Q That's not your recollection.

5 And have you talked to the other RAC members since
6 the meet g about their recollection?

7 MR. TURK: Other than Dr. Bores?

8 MS. WEISS: Yes.

9 THE WITNESS: (Lazarus) No, I have not.

10 BY MS. WEISS:

11 Q You haven't?

12 A (Lazarus) No, I haven't.

13 Q Some of them got your memo of October 15th, didn't
14 they? No?

15 A (Lazarus) If they did, it did not come from me.

16 Q Do you know whether any of them got it?

17 A (Lazarus) No, I don't.

18 Q Do you know whether any of them got Mr. Bores's memo,
19 Dr. Bores's memo?

20 A (Lazarus) No, I don't.

21 Q With respect to the meeting on April 15th, you
22 testified this morning that, I believe, you are comfortable
23 with the technical issues that have to do with risk of
24 accident; is that correct?

25 A (Lazarus) I'm sorry, I don't recall that context,

1 that I am comfortable with the risk --

2 Q Are you comfortable with the technical issues? Are
3 you sufficiently comfortable with your own technical knowledge
4 to be able to put forward a judgment about the risk of accident
5 or --

6 MR. TURK: Objection.

7 MS. WEISS: -- probability of various kinds of
8 accidents?

9 MR. TURK: Objection. We're not -- this witness is
10 not putting forward his views.

11 MS. WEISS: I haven't asked him for that. I asked
12 him if he felt comfortable with his own technical knowledge of
13 the issues presented in Bores 1.

14 MR. TURK: I object, Your Honor.

15 JUDGE SMITH: I think he's, number one, already
16 testified that he was.

17 Is this a different question?

18 MS. WEISS: No. That's my understanding. I was
19 reiterating my understanding of what he testified this morning,
20 that he felt comfortable with those technical issues in Bores
21 1.

22 JUDGE SMITH: Well, that's a different question, I
23 thought. I thought your question now -- well, that's true,
24 that was the earlier question.

25 Isn't your question now does he feel comfortable with

1 his technical -- you know, technical management of these
2 issues.

3 MS. WEISS: No, no.

4 JUDGE SMITH: All right.

5 MS. WEISS: No. Following up what I thought he had
6 said earlier this morning in response to a question from Mr.
7 Oleskey about what --

8 MR. DIGNAN: Your Honor --

9 MS. WEISS: -- transpired at the meeting on 4/15.

10 BY MS. WEISS:

11 Q And I believe that you said that you felt comfortable
12 with these technical issues that were discussed in Bores 1.
13 You felt competent to express an opinion on the technical
14 issues covered in Bores 1.

15 MR. TURK: Your Honor, my recollection of that,
16 according to my notes, is that he was asked whether the other
17 persons at the RAC were comfortable with the topic of
18 containment and risk.

19 MS. WEISS: Well, this --

20 MR. TURK: Persons at the April meeting. And he said
21 he couldn't comment on whether anyone else was comfortable with
22 that topic other than himself and Bores. And according to my
23 recollection, that's where it ended.

24 MS. WEISS: Well, can the witness just answer the
25 question? I mean really.

1 JUDGE SMITH: Do you understand the question?

2 MR. TURK: Well, she's asking on his competence, his
3 opinion of his competence rather than --

4 JUDGE SMITH: That's exactly what I don't know what
5 she's asking. Is she asking about whether he felt competent to
6 address the issues or whether he felt comfortable that the
7 issues -- that the memorandum addressed the issues?

8 MS. WEISS: No. The question is just -- he used the
9 words "comfortable" which is what I have in my notes.

10 BY MS. WEISS:

11 Q That is just a preparatory question whether you, Mr.
12 Lazarus, feel comfortable with your own technical knowledge on
13 the issues discussed in Bores 1; not whether you believe it's
14 all correct, but do you feel you have a basis for judging its
15 accuracy?

16 A (Lazarus) I --

17 MR. TURK: Your Honor, I'm going to object. I don't
18 know what we're going after here, but I don't see that this is
19 sequestered testimony.

20 JUDGE SMITH: Then don't object.

21 MR. TURK: Pardon me?

22 I think it's an irrelevant line and it doesn't relate
23 to the testimony or to the events of those meetings.

24 JUDGE SMITH: Overruled.

25 THE WITNESS: (Lazarus) I feel comfortable

1 discussing the concept of risk and the factors that affect
2 risk.

3 As far as to whether I feel comfortable with the
4 conclusions drawn from those comments, I have not researched
5 them myself to come to that conclusion.

6 BY MS. WEISS:

7 Q So from your own personal knowledge you can neither
8 confirm -- well, it's not confirm or deny, but confirm nor
9 object to any of the conclusions stated in Bores 1 with respect
10 to the Seabrook containment and risk?

11 MR. TURK: Objection. We're going into the merits
12 here, Your Honor.

13 JUDGE SMITH: Well, it's -- remember, his testimony,
14 as I recall, was that he believed that the Bores memoranda
15 correctly presented the issue, and he has not previously, to my
16 knowledge, been asked to testify, nor has he testified as to
17 whether he agreed with Dr. Bores. That's my recollection of
18 the state of the record. Is that your --

19 MS. WEISS: Yes.

20 JUDGE SMITH: Now where are we going with that?

21 MS. WEISS: Well, what I'm focusing on --

22 JUDGE SMITH: Now we know also that he feels that
23 he's competent to address the issues set out in the memorandum.

24 MS. WEISS: I'm really just trying to find out what
25 Mr. Lazarus's contribution was to the meeting on the 15th when

1 Bores 1 was discussed.

2 JUDGE SMITH: And all of that -- all of that you
3 intend to squeeze into 10 minutes, which has now become a half
4 hour, his entire competent background, professional background
5 and all that?

6 MS. WEISS: No, no, I'm just asking what his
7 contribution was at the April 15th meeting. And I would have
8 been long finished with this had I not met objections at
9 virtually every question.

10 JUDGE SMITH: I just don't know where it's going, and
11 we don't know why it's sequestered either.

12 (Continued on next page.)

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1 MS. WEISS: Doesn't have to be sequestered.

2 JUDGE SMITH: All right. Well, don't ask questions
3 that don't have to be sequestered.

4 MS. WEISS: Well, my understanding, I'm sorry, which
5 is obviously incorrect, was that all of the -- what happened at
6 the 4/15 and 7/30 meetings were under the sequestration order.

7 JUDGE SMITH: Well, when you're in doubt just ask Mr.
8 Oleskey.

9 MR. OLESKEY: I had the same problem, obviously --

10 JUDGE SMITH: I know.

11 MR. OLESKEY: -- the Judge had to clarify it several
12 times for me.

13 MS. WEISS: Well, if it's not under the sequestration
14 order --

15 JUDGE SMITH: Well, in any event, even if it's not
16 you're going very far afield now into his competence to
17 determine whether the issues were appropriate to be submitted
18 or rather they were appropriate matters to be submitted as
19 issues; that's going to be a big litigation, and I don't think
20 we want to go that --

21 MS. WEISS: Actually, it was a much narrower
22 question, Your Honor, it was just, what was his contribution at
23 the April 15th meeting.

24 JUDGE SMITH: Beginning with his competence, and
25 that's going to be a big issue.

1 MS. WEISS: No. First I want to know, did he feel
2 comfortable with those issues. If he did, did he make any
3 comments. Did he affirm, yes, I believe it's true. He made a
4 statement that everybody understood that the risk was less at
5 Seabrook.

6 JUDGE SMITH: All right. Well, we'll address it
7 again.

8 MS. WEISS: We can wait until the last question.

9 JUDGE SMITH: I think you've pretty well exhausted
10 his competence in this.

11 MS. WEISS: Well, can we have a stipulation that
12 we've exhausted his competence, I suppose we can move on.

13 MR. TURK: I'm not going to stipulate, Your Honor.
14 If Ms. Weiss wants the NRC staff --

15 JUDGE SMITH: We haven't exhausted his competence.
16 Ms. Weiss, do I have to be so careful in my comments.

17 MS. WEISS: Well, maybe I'm being obtuse this
18 morning, Your Honor, but I really don't understand the problem
19 with what I felt was a fairly limited line of questioning.

20 JUDGE SMITH: Probably, your basic problem is, we
21 don't understand. And it may be our fault, but nevertheless,
22 it's a fact of life that you were shackled with.

23 MS. WEISS: Well, what I've done is reserved for when
24 Mr. Bores gets back, and your ruling --

25 JUDGE SMITH: And I'm just warning you that we still

1 don't understand, so you have a problem.

2 MS. WEISS: You don't see the relevance of
3 questioning about their individual contributions at the meeting
4 of April 15th?

5 MR. TURK: That's --

6 JUDGE SMITH: It's another matter.

7 MS. WEISS: That exactly what I tried to say.

8 JUDGE SMITH: It's --

9 MR. TURK: Ms. Weiss asked about statements made --

10 JUDGE SMITH: We'll come back to it, but have a crisp
11 approach to it, if you will, Ms. Weiss, because we do want to
12 accomplish a lot of work today, if we can.

13 MR. TURK: Before we break may I ask whether anyone
14 else has sequestered examination for Mr. Lazarus or may I now
15 bring Dr. Bores back?

16 MR. BACKUS: Yes.

17 JUDGE SMITH: All right, we'll take it now.

18 MR. TURK: Can we take it before lunch?

19 JUDGE SMITH: Yes.

20 MR. BACKUS: Can I have the transcript.

21 CROSS-EXAMINATION

22 BY MR. BACKUS:

23 Q Mr. Lazarus, I wanted to go again to the statement
24 that's been the subject of some testimony here you made at
25 11954 of the transcript of May 19th, when you say: "In

1 preliminary comments, as I understand it," and I think you've
2 got that in front of you, you asked the members of the RAC to
3 consider their knowledge of the evacuation time estimates and
4 people were unlikely to be in the plumes for lengthy period of
5 times during evacuation, and then you went on to state, "And
6 the fact that we had just -- we had discussed just prior to
7 this dose reduction factors in the order of 10 percent." Okay,
8 you got that there?

9 A (Lazarus) Yes, I do.

10 Q Okay. When you asked them to discuss their knowledge
11 of the ETEs, as I understand it, you had in background -- in
12 mind the background of the prior discussion where you say, a
13 range of two to six hours was discussed; is that right?

14 A (Lazarus) Yes, that's correct.

15 Q Was that range of two to six hours for the entire EPZ
16 or was the people discussing it specifically relating that to
17 the evacuation of the beach areas?

18 MR. TURK: Asked and answered. Your Honor, objection.

19 JUDGE SMITH: Yes, it was, Mr. Backus, it was -- the
20 very question came up just a moment ago and his answer was, it
21 was the beach areas.

22 BY MR. BACKUS:

23 Q Is that correct, Mr. Lazarus?

24 A (Lazarus) Yes, that's correct.

25 Q Okay. In that regard, in the Bores 2 memorandum, was

1 there discussion by Dr. Bores, as you recall, of his statement
2 on page eight of the Bores memorandum of June 4th, which has
3 been marked as Staff Exhibit 6, that the relatively short time
4 estimates to clear the beaches was two to four hours?

5 MR. TURK: Can we have --

6 MR. DIGNAN: Is the question, what does the Bores 2
7 memo say?

8 MR. BACKUS: No, that wasn't the question.

9 MR. DIGNAN: Well, I heard it that way, and I'm going
10 to say --

11 JUDGE SMITH: Well, I'm sorry, could you --

12 MR. DIGNAN: -- let the document speak for itself.

13 JUDGE SMITH: I'm confused about the question, Mr.
14 Backus.

15 MR. BACKUS: I'm turning to page eight of Staff
16 Exhibit 6 which is the Bores memorandum of June 4th, 1987 -- at
17 least I think it's in June.

18 MR. TURK: Top of page eight?

19 MR. BACKUS: At the very top of the page; thank you,
20 Mr. Turk. There is a reference to -- well, the sentence
21 carries over from page seven. We've got to do this completely.
22 "In view of the New Hampshire plans for beach closure and
23 access control as early as the alert classification, the plume
24 travel time to the beach areas and the relatively short (two to
25 four hours) time estimated to clear the beaches, there is

1 reasonable assurance that the beach population will be
2 adequately protected in the event of an accident at Seabrook."

3 BY MR. BACKUS:

4 Q And my question, sir, is, was that statement of the
5 relatively short beach times as being two to four hours a part
6 of the discussion that preceded your solicitation of this vote
7 or poll?

8 MR. TURK: For context I ask counsel also to refer to
9 the top of page six.

10 MR. BACKUS: Can you do it on redirect?

11 JUDGE SMITH: No. But if it has to be -- I don't
12 have it, but if it has to be context it would be much
13 preferable if you get it all in now. I mean, assuming that it
14 is, you agree that it should be -- it's contextually related.

15 MR. BACKUS: The top of page six, if this is
16 important says: "The evacuation time estimates of the beach
17 population range from about two hours and 10 minutes to about
18 four hours and 20 minutes after the order to evacuate
19 individual areas has been given." Is that what you wanted
20 presented?

21 MR. TURK: "Similar evacuation time estimates, ETEs,"
22 again I'm quoting: "Similar evacuation time estimates, ETEs,
23 for the population area within a two-mile radius of the plant
24 range from two hours, 20 minutes to six hours, 40 minutes
25 according to the studies."

1 MR. BACKUS: All right.

2 BY MR. BACKUS:

3 Q Was the time estimate, as being relatively short, as
4 described on page eight as being two to four hours to clear the
5 beaches a subject of discussion at the RAC meeting that you
6 recall?

7 A (Lazarus) Yes.

8 Q And who discussed it?

9 A (Lazarus) I don't recall who specifically initiated
10 the conversation or the discussion, but the cogent points of
11 the Bores 2 memo that you have referred to were discussed at
12 that meeting, including evacuation time estimates.

13 Q Did any other member of the RAC other than Dr. Bores
14 or yourself, if you were one, put a number on the so-called
15 relatively short time estimates for beach clearance by
16 evacuation?

17 A (Lazarus) I did not as part of the question that I
18 posed at the end of the meeting, I am nearly positive that
19 those numbers were discussed during the course of the four hour
20 meeting.

21 Q Did anybody else have a number that they discussed
22 other than what came from Dr. Bores's memorandum?

23 A (Lazarus) I don't recall any, no.

24 Q All right. Now, you went on, on page 11954 --

25 JUDGE SMITH: Mr. Backus, now, does this have to be

1 sequestered? I want to remind everybody, we're requesting that
2 you limit your examination at this time to only that, that you
3 believe under the motion has to be sequestered.

4 MR. BACKUS: Well --

5 JUDGE SMITH: Of course, that exchange, I don't know
6 if it had anything --

7 MR. BACKUS: We've been talking about this in part of
8 the sequestered examination and I'm just following up on it.

9 JUDGE SMITH: Well, if you don't believe it has to be
10 sequestered, don't and then defer it.

11 MR. BACKUS: Well --

12 JUDGE SMITH: It's your call and Mr. Oleskey --

13 MR. BACKUS: All right. If I can, this is not going
14 to be lengthy and it relates to what we were just doing.

15 BY MR. BACKUS:

16 Q In your statement that you asked them to call upon
17 their knowledge of the ETEs, and people were unlikely to be in
18 the plumes for lengthy periods of time during evacuation, that
19 phrase, "And unlikely to be in the plumes for lengthy periods
20 starting at the time of evacuation," were you making a
21 statement of your own beliefs about what the facts were when
22 you said that?

23 A (Lazarus) No. What I was indicating were things
24 that had been discussed during the meeting and I wanted them to
25 reconsider what I considered to be the important items that

1 were discussed in this context.

2 Q Okay. And then when you stated that, thing I've just
3 quoted to you, were you purporting to summarize what the
4 discussion had been before then?

5 A (Lazarus) Yes.

6 Q And the summary was that people would be unlikely to
7 be in the plumes for lengthy periods during the period of an
8 evacuation; is that right?

9 A (Lazarus) I don't recall specifically that comment
10 coming up. We discussed plume widths at the beach, the fact
11 that the plume was blowing toward one beach it would not be
12 blowing toward another beach. And the fact that, due to plume
13 width at the beach area under certain atmospheric conditions,
14 that they would not likely be very wide and therefore people
15 would not likely be in the plume for a long period of time
16 during evacuation.

17 Q But this phrase is your summary of what you
18 understood to have been discussed by the RAC members preceding
19 your statement at that meeting; is that right?

20 A (Lazarus) Yes.

21 Q Now, you went to both the April 15th and the July
22 30th RAC meetings as you've testified; is that correct?

23 A (Lazarus) That's correct.

24 Q And was it your own decision to attend those
25 meetings, although you were not the member or were you asked to

1 go?

2 A (Lazarus) It was my own decision.

3 Q Did you inform anybody senior to you at NRC prior to
4 going to those meetings that you were going to go in addition
5 to Dr. Bores who was the designated RAC member for Seabrook?

6 A (Lazarus) I don't know if inform is correct. My
7 branch chief approves my travel, Dr. Bellamy.

8 Q So he would have known in advance that you were
9 planning to attend?

10 A (Lazarus) Yes.

11 Q Now, on the 30th meeting, there was a third NRC
12 representative there, as I understand it, Mr. Schumacher; is
13 that right?

14 A (Lazarus) Yes, Mr. Schumacher.

15 Q Schumacher, thank you. And was he there at your
16 request?

17 A (Lazarus) Yes.

18 Q Was it -- was Mr. Schumacher also there on the 15th,
19 April 15th?

20 A (Lazarus) Yes.

21 Q And was that also at your request?

22 A (Lazarus) Yes.

23 Q Did any other agency that has representation on the
24 RAC other than NRC and FEMA attend with more than one
25 representative at those meetings?

1 A (Lazarus) No. But the reason for Mr. Schumacher's
2 attendance were the fact that Dr. Bores is the RAC
3 representative solely for Seabrook and there were other non-
4 Seabrook agenda items on the agenda, which Mr. Schumacher would
5 represent his position on the RAC.

6 Q But in fact the only agencies that were represented
7 by more than one representative were NRC and FEMA; is that
8 right?

9 A (Lazarus) That's correct.

10 Q In your own decision to go and make a third member
11 for NRC at these meetings, what was the reason for that?

12 A (Lazarus) We did not make a third member at the
13 meeting. Dr. Bores was --

14 Q I'm sorry, third attendee?

15 A -- yes, a third attendee at the meeting, and your
16 question was, that was my decision?

17 Q Yes, and why did you make that decision to have three
18 NRC attendees at these two particular meetings?

19 A (Lazarus) I indicated that Dr. Bores attended as the
20 official RAC representative for Seabrook issues; Mr. Schumacher
21 attended as a RAC representative for all other FEMA, Region 1
22 plants; and I attended in my position as Emergency Preparedness
23 Section Chief because the issues were significant, and I
24 thought that my attendance and direct knowledge of the events
25 that transpired would be important.

1 Q On July 30th when you went to the meeting, had you
2 discussed with Dr. Bores in advance the possibility that
3 somebody from NRC in attendance would ask for a vote at the
4 meeting?

5 A (Lazarus) No, I did not.

6 Q Was there any break during the meeting where you and
7 Dr. Bores discussed undertaking this?

8 A (Lazarus) No, there was not.

9 Q Was there some reason why it was you who decided to
10 ask for the poll or the vote rather than the designated RAC
11 member on Seabrook which I understand was Dr. Bores?

12 A (Lazarus) There was no discussion as to who would do
13 it; it just occurred during the meeting, and since I was
14 initiating the discussions at that point I indicated that it
15 was for my own information that I would like to know where
16 people stood.

17 Q Now, I take it that your recollection is that both on
18 April 15th and on July 30th there was discussion of
19 meteorology; is that correct?

20 A (Lazarus) That's correct.

21 Q And in the cases of these discussions, as I
22 understand your question to Attorney Oleskey, the discussion
23 was not site-specific to Seabrook, but just dealt with seaside
24 -- shoreline meteorology general; is that right?

25 A (Lazarus) We discussed a position where a plant

1 would be approximately two miles from the ocean. We were
2 obviously discussing Seabrook, but it was not -- it was never
3 tied directly to a particular meteorological pattern, to my
4 knowledge, for specifically the New Hampshire shoreline.

5 Q Okay. On April 15th, if I understand it correctly,
6 among the RAC representatives in attendance were the people
7 from NOAA?

8 A (Lazarus) Yes. At April 30 -- the April 15th
9 meeting.

10 Q Right.

11 A (Lazarus) Was attended by representatives from NOAA.

12 Q And that's a part of the Department of Commerce; is
13 that right?

14 JUDGE SMITH: Yes.

15 MR. BACKUS: Okay.

16 (Laughter)

17 BY MR. BACKUS:

18 Q And those representatives from NOAA -- well, NOAA is
19 the agency which the RAC would turn to as having expertise in
20 the field of meteorology; is that right?

21 A (Lazarus) That's correct.

22 Q And those individuals were not in attendance on July
23 30th; is that right?

24 A (Lazarus) That's correct.

25 Q Did I understand you to say that one of the reasons

1 that Mr. Thomas suggested that the RAC meeting should be
2 adjourned when it was is because there had been discussion of
3 meteorology and the NOAA representatives were not in
4 attendance?

5 A (Lazarus) That's correct.

6 Q Did you discuss that at all when you interjected or
7 when you raised the issue of closing the issue by a poll or a
8 vote, did you discuss the issue that Mr. Thomas had addressed
9 that there were no NOAA people with expertise in meteorology
10 present?

11 A (Lazarus) I'm not positive. I believe that there
12 were indications at the time that we thought the meteorological
13 issues had been resolved at the previous meeting.

14 Q By the way, meteorology was discussed in both the
15 Bores memoranda that were discussed, the first one on April
16 15th and the revised one that was discussed on July 30th; is
17 that right?

18 A (Lazarus) Yes, I believe that's correct.

19 Q Now you said you had talked to management and
20 informed them about what went on at the July RAC meeting; is
21 that right?

22 A (Lazarus) That's right.

23 Q Who would you have talked to?

24 A (Lazarus) I talked to Dr. Bellamy and Mr. Tim
25 Martin.

1 Q Did you say on May 19th in your testimony, and I'm
2 going to refer you to page 11950, that during most of the
3 meeting you were just watching, watching the positions develop?

4 MR. TURK: May we have a reference.

5 THE WITNESS: (Lazarus) I don't have that transcript
6 in front of me.

7 MR. BACKUS: 11950.

8 BY MR. BACKUS:

9 Q Looking at the paragraph starting at line 14?

10 A (Lazarus) Yes.

11 Q You stated there, did you not, that: "Most of the
12 meeting I was sitting listening, as I was not the RAC member, I
13 was not doing any presenting. Mr. Bores was doing most of the
14 speaking for the NRC, that I was just watching, watching the
15 positions develop," correct?

16 A (Lazarus) That's what I said.

17 Q And when is it that you say you came forward in this
18 meeting to state some of the things that are reflected in your
19 October 15th memorandum which is Staff Exhibit 3?

20 MR. TURK: At what point in the meeting?

21 MR. BACKUS: Yes.

22 THE WITNESS: (Lazarus) I'd say that it was
23 principally the last 30 minutes of the meeting.

24 BY MR. BACKUS:

25 Q So you had had essentially nothing to say up until

1 the last 30 minutes or so of the meeting; is that correct?

2 A (Lazarus) I don't remember offering anything
3 substantive before that period of time, no.

4 Q All right. I take it that Dr. Bores would have
5 participated by saying things prior to that; is that right?

6 A (Lazarus) Yes.

7 Q And you were kind of watching because he had the
8 position of the official RAC NRC member for Seabrook, was that
9 while you were sitting there watching?

10 A (Lazarus) Well, it was more than that, he was the
11 person who provided the technical input on the position that
12 had been developed as the representative to the RAC, and he was
13 presenting that and defending that position.

14 Q So generally speaking, all the things that you talked
15 about setting forth for the RAC of July 30th as reflected in
16 your memo of October 15th and the polling that occurred at your
17 instigation, as you describe, it all occurred within about the
18 last 30 minutes?

19 MR. TURK: May I have a moment. Just a problem with
20 the use of the word "all the things in your memo."

21 MR. BACKUS: Well, I mean the statements concerning
22 what he may have said at the July 30th meeting.

23 MR. TURK: All right. Because I notice that there's
24 a long paragraph that doesn't involve this wrap up portion of
25 the show of hand.

1 BY MR. BACKUS:

2 Q Is that right?

3 A (Lazarus) I'm sorry, would you --

4 Q Let me restate the question. Of the things that you
5 say you expressed at the RAC as described in your October 15th
6 memo and the things you say you said as a preliminary to
7 getting an expression of this vote or poll, all this happened
8 within about 30 minutes of the end of the meeting; is that
9 right?

10 A (Lazarus) Yes, I'd say 30 to 45 minutes; it was the
11 last part of the meeting.

12 JUDGE SMITH: Mr. Backus, have you made any effort to
13 combine your cross-examination of --

14 MR. BACKUS: Oh, yes, I have reviewed Mr. Oleskey's
15 cross-examination plan.

16 JUDGE SMITH: That's not my question. Did you make
17 any effort to cooperate on his cross-examination? It looks
18 like you're -- we do have the lead Intervenor concept and it
19 looks like you're just offering your own. How much more do you
20 have?

21 MR. BACKUS: Oh, I have very little more. I'm just
22 basically trying to followup on the things that Attorney
23 Oleskey covered.

24 JUDGE SMITH: All right.

25 (Continued on next page.)

et/88

TA 1 MR. BACKUS: I think the other material I have would
2 not have to be sequestered.

3 JUDGE SMITH: All right, Mr. Brock.

4 MR. BROCK: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BROCK:

7 Q Mr. Lazarus, I'd like to followup just two brief
8 lines raised by Mr. Backus. As I understand it, at the April
9 15 meeting there was some, at least, limited discussion
10 regarding containment; is that correct?

11 A (Lazarus) Yes.

12 Q And that discussion focused around that Seabrook
13 provided greater protection than the generic site that it was
14 typically planned for; is that correct?

15 A (Lazarus) That's correct.

16 Q Was there any other discussion about containment at
17 the April 15 meeting that you recall?

18 A (Lazarus) There were more specifics as to the
19 Seabrook design, and discussion of what the design entailed.

20 Q The technical construction?

21 A (Lazarus) Yes.

22 Q Okay. And other discussion you recall?

23 JUDGE SMITH: Does this have to be sequestered?

24 Please, if it doesn't have to be, don't do it.

25 MR. BROCK: I appreciate that, Your Honor.

1 JUDGE SMITH: I just can't understand why it has to
2 be.

3 MR. BROCK: Your Honor, I believe an issue is
4 recollections of the meeting and specifically recalling
5 containment.

6 JUDGE SMITH: All right. If you represent that you
7 need to test his memory independently sequestered on this,
8 fine; I just don't recognize it.

9 MR. BROCK: Yes, Your Honor.

10 BY MR. BROCK:

11 Q Do you recall any further discussion at the April 15
12 than that to which you've testified?

13 A (Lazarus) No, I don't.

14 Q Do you recall any comments specifically by Dr. Bores
15 regarding containment at the April 15 meeting?

16 A (Lazarus) Just in the context that I've already
17 given as far as the containment design at Seabrook.

18 Q The technical construction?

19 A (Lazarus) Yes. And there also -- which the site-
20 specifics led to his risk assessment statement of comparison of
21 a generic plant at 10 miles with Seabrook at two miles.

22 Q Now, I want to bring you to the July 30 meeting and
23 this phrase which has been oft described about the people being
24 unlikely to be in the plume for a lengthy period of time. And
25 as I understood your answers to Mr. Backus's questions, you

1 were summarizing your understanding of the discussion which had
2 occurred at the meeting; is that correct, on that point?

3 A (Lazarus) That's correct.

4 Q Do you recall anyone specifically putting forth that
5 view?

6 MR. TURK: What view?

7 MR. BROCK: The view that people would be unlikely to
8 be in the plume for a lengthy period of time.

9 THE WITNESS: (Lazarus) I don't recall that specific
10 statement. We had discussed the evacuation time estimates as
11 noted in Dr. Bores's memo, and what that meant as far as
12 personnel evacuating the beaches.

13 BY MR. BROCK:

14 Q Well, was there any person or persons on the RAC who
15 were specifically promoting the view that it would be unlikely
16 people would be in the plume for a lengthy period of time, that
17 you recall?

18 A (Lazarus) Other than the context that I just noted,
19 that the time estimates that were shown as far as clearing the
20 beaches and evacuating the two mile EPZ as in this memo, no, I
21 do not.

22 Q Do you recall anyone disagreeing with that view?

23 A (Lazarus) I don't know. Mr. Thomas may have, I
24 don't recall.

25 Q Do you recall at the April 15 meeting NOAA

1 representatives raising concerns about the fact that the plume
2 could recirculate over the beach areas?

3 A (Lazarus) Yes, I do.

4 Q And NOAA was not present at the July 30 meeting, is
5 that correct?

6 A (Lazarus) That's correct.

7 Q Is it fair to say, you don't know what NOAA's view
8 would have been regarding the meteorology that was discussed at
9 the July 30 meeting, particularly in light of the prior
10 concerns they had expressed on April 15th?

11 MR. TURK: I don't --

12 MR. BROCK: is that an objection, Mr. Turk?

13 MR. TURK: It's going to be an objection.

14 MR. BROCK: Go ahead.

15 MR. TURK: You're simply asking, is it fair to say he
16 doesn't know what NOAA would have said had they been at this
17 meeting? There's already been testimony that this meeting
18 discussed the same matters that had been discussed at the April
19 meeting.

20 MR. BROCK: Let me withdraw the question and try
21 again.

22 BY MR. BROCK:

23 Q Isn't it fair to say, Mr. Lazarus, that when you put
24 forth the issue of people being unlikely to be in the plume for
25 a lengthy period of time, and given the fact, as I believe you

1 testified to Mr. Backus's question, that NOAA was the expert
2 agency to look to on meteorology issues, that the expert agency
3 was not present at the July 30 meeting, and obviously, then
4 could not express a view on that point; is that correct?

5 MR. DIGNAN: I object to the form of the question.
6 We've been through this once before; the statement that appears
7 on 11954 begins with the words, "The statement I presented was
8 that in light of what you know," meaning the people he was
9 speaking to. He did not put forth propositions.

10 MR. BACKUS: Well, I just object to that -- I just
11 say, I don't agree with that characterization of that
12 testimony.

13 MR. DIGNAN: I'm not characterizing it, I'm quoting
14 it.

15 MR. BACKUS: Well, you didn't quote it all.

16 MR. DIGNAN: All right, Mr. Backus, "In light of what
17 you know about the New Hampshire radiological emergency
18 response and as far as the early closure of beaches at the
19 alert level" --

20 MR. BROCK: Your Honor --

21 MR. DIGNAN: -- "protective actions being able to
22 be" --

23 MR. BROCK: I'll withdraw the question, Your Honor.

24 MR. DIGNAN: Thank you.
25

1 BY MR. BROCK:

2 Q Would you agree, Mr. Lazarus, that the expert agency
3 on meteorology, which had already expressed a concern about a
4 recirculating plume over the beach areas was not present on
5 July 30; do you agree with that?

6 A (Lazarus) I would agree that they weren't present on
7 July 30th. However, I would point out that, in my mind, and I
8 believe the rest of the RAC, the issues had been resolved at
9 the April 15th meeting with the NOAA representatives.

10 Q Is it your testimony that NOAA did or did not express
11 a view, a concern on April 15 about a recirculating plume over
12 the beach areas?

13 A (Lazarus) They did state a concern about that, and
14 we also discussed it and indicated even in recirculation there
15 will be massive dilution of the plume for that recirculation.

16 Q So it's your testimony, that was not a significant
17 concern of NOAA on April 15th?

18 A (Lazarus) I think it was a significant concern
19 during the meeting, but then I believe that it was resolved at
20 that meeting.

21 MR. BROCK: I believe that's all I have, Your Honor,
22 thank you.

23 JUDGE SMITH: All right. Anything further that has
24 to be done under sequestration.

25 (No response)

1 JUDGE SMITH: All right, return at 1:25, please.

et/89 2 (Whereupon, at 12:25 p.m. the hearing was recessed to
3 reconvene at 1:25 p.m., this same day, Tuesday, May 24, 1988,
4 at the same place.)

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AFTERNOON SESSION

(1:31 p.m.)

Whereupon,

ROBERT BORES

WILLIAM LAZARUS

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

JUDGE SMITH: Where are we now?

MR. TURK: Your Honor, it's my understanding the sequestered exam of Mr. Lazarus has been concluded.

JUDGE SMITH: Yes.

MR. TURK: And Mr. Oleskey agrees that there is no need for Mr. Lazarus to absent from the room, and in fact, he may resume his seat at the table, so --

JUDGE SMITH: That was my confusion. Yes, I see.

Fine.

MR. OLESKEY: Just a couple of points before I start. I have blended and melded my cross so many times to try to take account of the various constructions of what the sequestration is and who would go, that I'm not -- I think in some cases I may ask a question that's already been asked. And more importantly, I may not ask something, since I'm now working off multiple sets of cross-examination notes, that my colleagues anticipate I will ask.

Just because of trying to pull everything back

1 together and establish a logical progression for all of you and
2 for us, if that happens, I just -- I'm forecasting it now and
3 asking you to show more indulgence than you might, ordinarily
4 people picking up points that I missed, because it will be
5 inadvertent that I'm missing them, but I think understandable
6 under the circumstances.

7 JUDGE SMITH: Okay.

8 MR. TURK: Your Honor, I have that same problem every
9 day, because when I do a cross-examination plan it's without
10 consultation with anyone else who may take a side favorable to
11 mine, i.e., the Applicants in many cases. I'm constantly
12 required to tailor my cross-examination plan to make sure I
13 don't go into duplicative areas. And I would expect Mr.
14 Oleskey will make the same effort and where he does it, I'll
15 point it out to the best of my ability.

16 JUDGE SMITH: We hope that the pace this afternoon
17 might pick up a little bit, and that you continue your
18 restraint that you showed this morning.

19 (Laughter)

20 MR. TURK: I certainly will try, Your Honor.

21 MR. OLESKEY: Moving right along.

22 RESUME CROSS-EXAMINATION

23 BY MR. OLESKEY:

24 Q Do you have Exhibit 2 there, gentlemen?

25 A (Bores) I have 2-A right here.

1 Q All right, 2-A which is fine.

2 JUDGE SMITH: Why is he at the table? Why is he at
3 counsel table?

4 MR. OLESKEY: Who?

5 JUDGE SMITH: Mr. Lazarus?

6 MR. OLESKEY: Oh, Mr. Turk was explaining that --

7 JUDGE SMITH: Well, yes, I guess I missed a point.
8 He's at the witness table --

9 MR. OLESKEY: I guess Mr. Turk and I independently
10 arrived at the same view, I figured since Lazarus's
11 sequestration is through --

12 JUDGE SMITH: Right.

13 MR. OLESKEY: -- there might be some questions to
14 Bores that we want his view of, but having Lazarus sitting
15 there isn't going to affect Bores's independent testimony or
16 recollection, as long as Lazarus doesn't whisper in his ear.

17 JUDGE SMITH: Okay.

18 MR. OLESKEY: Number two, I at least trying to be
19 responsive to your concerns to move it along, I'm desperate to
20 bring it all together and get it finished once and for all.

21 JUDGE SMITH: I was expecting Mr. Lazarus to be at
22 counsel table. I recognize he's there. All right. So it is
23 clear that you expect the witnesses -- the examination directed
24 to Dr. Bores to be independent and not helped by Mr. Lazarus.

25 MR. OLESKEY: Well, on the matters that were the

1 subject of sequestration.

2 JUDGE SMITH: Unless you express -- unless you,
3 yourself -- it's your responsibility to indicate where
4 it's --

5 MR. OLESKEY: Sure. And when we get outside the
6 sequestered area, if I don't call for a response from Mr.
7 Lazarus and he has a point to make, as we said on Friday, I'm
8 sure he'll make it.

9 JUDGE SMITH: All right.

10 BY MR. OLESKEY:

11 Q Mr. Bores, in answer to Ed Thomas's memo of December
12 31, '85, which is your Attachment 1, in asking for a response
13 within 14 days to his request, there were a few agencies that
14 did make an immediate response; isn't that right?

15 A (Bores) There were a few, yes.

16 Q And those agencies -- well, let me back up. You've
17 established that your agency did not make a response
18 immediately, but these other agencies did?

19 A (Bores) Some of the other agencies did.

20 Q Yes. One of them was Mr. Lutz or Lutz for
21 Transportation; do you recall that?

22 A (Bores) I know he responded, I'm not sure of the
23 time frame.

24 MR. OLESKEY: I have some responses which flags some
25 of these issues in early '86, but I don't have copies for

1 everybody. However, Mr. Turk has already produced them to me
2 and I assume everybody else, they're attached to the April 16,
3 '87 letter from Ed Thomas to Elaine Ch. 1.

4 BY MR. OLESKEY:

5 Q Let me show you a memo from Mr. Lutz to the RAC,
6 dated 9 January 1986, and see if that refreshes your
7 recollection as to one of the responses that was made? Does
8 that refresh your recollection?

9 MR. TURK: May I have a moment?

10 MR. OLESKEY: Sure.

11 (Pause)

12 BY MR. OLESKEY:

13 Q Dr. Bores, do you recall this being one of the
14 responses that came very shortly after Mr. Thomas's request?

15 A (Bores) It was a response dated January 9th.

16 Q Right.

17 A (Bores) Now, the RAC did not receive copies of those
18 until some time later.

19 Q Do you recall this as one of the earlier responses to
20 Mr. Thomas's memo?

21 A (Bores) Yes.

22 Q And do you recall Mr. Lutz described himself as an
23 old meteorologist and then went on to discuss wind as it might
24 affect the beaches at Seabrook in the summertime?

25 A (Bores) Yes, it did.

1 Q Okay. So this was some input that the RAC had
2 sometime in the winter of '86 from somebody who had -- who said
3 he had some familiarity with weather about the effect of winds
4 and weather on the beach -- on the beaches in the summertime?

5 A (Bores) That's what the memo discussed, yes.

6 MR. OLESKEY: There are a couple of memos here,
7 Judge, and I'm just going to -- I'd like to offer them to show
8 information that the RAC had in developing this position on the
9 beach population from early '86 which is about a year before we
10 get to Dr. Bores's memo of February '87; and this will be the
11 first of those memos.

12 MR. FLYNN: I don't have a copy of the memorandum,
13 but from the line of questioning I would raise a relevancy
14 objection. It seems to me that we're spending an inordinate
15 amount of time on the merits of the position, and this is very
16 far afield from what did people have in mind in the last 30
17 minutes of the meeting of July 30, a year and a half later.

18 JUDGE SMITH: Certainly he can't offer Mr. Lutz's
19 memorandum for the truth contained in it, only for the fact
20 that that information was communicated to RAC; that's all it
21 does.

22 MR. OLESKEY: This is -- I'm trying to show the
23 evolution of the RAC and the agency's position, and in this
24 case, that there were a number of responses in early '86 as
25 requested. They obviously didn't resolve the problem. The

1 problem wasn't resolved initially until Dr. Bores gave a very
2 detailed memo dealing with matters other than weather in
3 February '87.

4 So we're asked to deal with the evolution of the FEMA
5 position which involves in the RAC these other agencies. Mr.
6 Turk put in a great many materials, and I'm going to put in
7 some others to give a full picture of the evolution of the
8 position.

9 MR. FLYNN: If it is offered for that purpose only, I
10 will withdraw the objection.

11 MR. OLESKEY: Thank you.

12 MR. TURK: Your Honor, it might be useful to note
13 that there's also been testimony that there wasn't much going
14 on in the RAC with respect to beach shelter issues in that time
15 period. There may have been a memo that had been submitted,
16 but if there are no meetings discussing it and no attempt to
17 reach a closure on the issue, I don't see that the implication
18 that the matter was left unresolved until Dr. Bores's February
19 paper --

20 MR. OLESKEY: I'm not --

21 MR. TURK: -- has much significance.

22 MR. OLESKEY: I'm not arguing the consequences of all
23 this today; I'm trying to lay a foundation, put findings later
24 to the extent it's material.

25 Mr. Turk obviously thought it was material because he

1 started with December '85.

2 JUDGE SMITH: Okay.

3 MR. TURK: May I ask also if Mr. Oleskey intends to
4 make an exhibit of these, does he have extra copies to
5 distribute?

6 MR. OLESKEY: We'll make some either at the break or
7 I can send --

8 MR. TURK: I don't have a copy with me, Your Honor.

9 MR. OLESKEY: If it's important enough I can send Ms.
10 Keough out right now.

11 JUDGE SMITH: Well, you're not going to examine on
12 it, you've already examined on it.

13 MR. OLESKEY: Right.

14 JUDGE SMITH: Well, why don't you make your offer
15 after the break or whenever you get the copies --

16 MR. OLESKEY: Okay.

17 JUDGE SMITH: -- because they haven't even seen it,
18 apparently, or have they?

19 MR. OLESKEY: Well, they've seen it at one time, they
20 may not have it with them today.

21 JUDGE SMITH: Well, they should see it now.

22 MR. OLESKEY: Can I mark it on the record for
23 identification so we can go in later and fill in the blank.
24 For identification it would be MAG 26, memo from Mr. Lutz to
25 the RAC of 9 January 1986.

1 (The document referred to was
2 marked for identification as
3 Mass. AG Exhibit 26.)

4 MS. WEISS: Is Dr. Bores getting a copy of it?

5 THE WITNESS: (Bores) Does that have a cover memo of
6 April 16th, 1987?

7 MR. OLESKEY: Yes.

8 BY MR. OLESKEY:

9 Q Do you have a copy now, Doctor?

10 A (Bores) I have a copy, perhaps, of some of the
11 things you have; I'm not sure it's complete or if it's the same
12 copy.

13 Q I have what your counsel gave me, so if you have the
14 same thing -- we do have the same thing.

15 MR. TURK: Just for the record, I don't believe I
16 produced that to you, Mr. Oleskey, I think FEMA produced that
17 to you.

18 MR. OLESKEY: Okay. Whatever.

19 BY MR. OLESKEY:

20 Q Do you recall also a memo response to Mr. Thomas's
21 inquiry of December 31 from a George Bickertor, B-I-C-K-E-R-T-
22 O-R?

23 A (Bores) There's a letter in the package dated
24 January 14th, 1975.

25 Q I think it's a poor copy --

- 1 A (Bores) Yes.
- 2 Q -- of '86?
- 3 A (Bores) It looks like January 14th, 1986.
- 4 Q Yes.
- 5 A (Bores) And it's from George Bickerton.
- 6 Q Bickerton. What agency was he with?
- 7 A (Bores) Department of Agriculture.
- 8 Q Okay. And as you understand it, this was an early
- 9 reply of the Agriculture Department to Mr. Thomas's request, it
- 10 was an input under the December 31 memo; is that fair to say?
- 11 A (Bores) This is input to Mr. Thomas.
- 12 Q Yes.
- 13 A (Bores) We did not see this on the RAC until much
- 14 later.
- 15 Q Whenever you saw it, it was meant to be responsive to
- 16 Mr. Thomas's inquiry, and ultimately passed on to the RAC;
- 17 correct?
- 18 A (Bores) I'm sure that's correct.
- 19 Q Okay.
- 20 MR. OLESKEY: And I will be marking that now as Mass
- 21 AG identification Exhibit 27.
- 22 (The document referred to was
- 23 marked for identification as
- 24 Mass. AG Exhibit 27.)
- 25

1 BY MR. OLESKEY:

2 Q Then do you have in your package following that a
3 January 15, '86 memorandum to Mr. Thomas from Warren Church of
4 the FDA, one of the RAC members, also stating in its opening
5 sentence a response to the December 31, '85 request?

6 A (Bores) I have that.

7 Q Did that eventually come to the RAC as well?

8 A (Bores) I presume it eventually did.

9 Q Okay.

10 A (Bores) It was not sent out to RAC members, let's
11 put it that way.

12 Q In the first instance? It was sent to Thomas and the
13 RAC members got it from Thomas, is what you're saying; is that
14 correct?

15 A (Bores) I do not really recall whether these -- this
16 memo was sent out to the RAC, okay.

17 Q All right.

18 Then finally, there was a memo dated January 13, '86
19 from Mr. Oleson, O-L-E-S-O-N, is that in your package?

20 A (Bores) Yes, it is.

21 Q Is he with FEMA?

22 A (Bores) He was with FEMA.

23 Q Did he ever come to any of the RAC meetings?

24 A (Bores) He came to most of the earlier RAC meetings,
25 yes.

1 Q During -- would he have been there during this period
2 in late '85, early '86?

3 A (Bores) I believe he was. I'm trying to recall when
4 his retirement was.

5 Q That would be your best recollection?

6 A (Bores) Yes.

7 Q Was he someone in the regional office or the national
8 office?

9 A (Bores) He worked in the regional office in another
10 division.

11 MR. OLESKEY: That would be Exhibit identification
12 28.

13 MR. TURK: Which one is that?

14 MR. OLESKEY: It's the memo from Oleson to Thomas
15 dated January 13, 1986, subject, Seabrook Emergency Plans.

16 (The document referred to was
17 marked for identification as
18 Mass. AG Exhibit 28.)

19 MR. FLYNN: Did you identify the memo from Warren
20 Church?

21 MR. OLESKEY: Yes.

22 MR. FLYNN: What's the number?

23 MR. OLESKEY: All right, I apologize. It's dated
24 January 15, 1986, subject, Seabrook Emergency Plans, "In
25 response to your December 31, '85 request, I would like to

1 offer the following comments," and so on.

2 MR. TURK: So that the Church memo is Mass. Exhibit
3 28 for identification; and the Oleson memo is Mass. Exhibit
4 29 --

5 MR. OLESKEY: Yes.

6 MR. TURK: -- for ID.

7 MR. OLESKEY: Yes. Oleson is 28 and Church is 29.
8 (The document referred to was
9 marked for identification as
10 Mass. AG Exhibit 29.)

11 MR. DIGNAN: Oleson's 28 and Church is 29?

12 MR. OLESKEY: Yes.

13 BY MR. OLESKEY:

14 Q Were there any other responses in writing from the
15 date, 9th, to the 15th of January of these documents, Dr.
16 Bores, until your memorandum of the middle of February of the
17 following year 1987?

18 A (Bores) I'm not aware of any.

19 Q So what the RAC had in writing from the agencies on
20 April 15th was Mr. Thomas's memorandum ask -- identifying
21 possible issues and asking for input, the four memorandum that
22 I just referred you to and your memorandum?

23 A (Bores) Okay. You're talking February of 1987?

24 Q I'm saying, even later than February. By the time of
25 the April 15th meeting, the written materials the RAC had that

1 responded to Mr. Thomas's December 31, '85 request, were these
2 four memos from the three other agencies and FEMA and your own
3 February paper?

4 A (Bores) I do not know if the RAC had those papers.

5 Q Okay. Were there any papers that the RAC had that
6 are other than these fives, whether or not they had all of
7 them?

8 A (Bores) I just indicated, I do not know whether the
9 RAC had these papers in April.

10 Q My question took account of that, I said --

11 A (Bores) Okay.

12 Q -- whether or not everybody in the RAC had all these
13 papers, was there anything else available in April than these
14 five documents?

15 MR. TURK: In other words, did any of the RAC members
16 submit something beyond these papers?

17 THE WITNESS: (Bores) Looking for other RAC input;
18 is that what you're looking for?

19 BY MR. OLESKEY:

20 Q Was there any other input that went to Thomas or the
21 RAC, that you're aware of, other than these five documents,
22 your memo and the four we just marked for identification?

23 A (Bores) Well, material is very broad. I mean, there
24 were plan changes; there were, you know, meetings.

25 Q I understand. The whole context was, that was

1 responsive to Mr. Thomas's request to the RAC for input?

2 A (Bores) In that regard, no.

3 Q All right. Did you personally have these four
4 memoranda or not by April 15th, I'm not clear on that?

5 A (Bores) It is not clear that I had them all either.
6 I knew I saw one or two of them. I believe I had seen Mr.
7 Lutz's. And I'm not sure about any other.

8 Q You may or may not have seen them?

9 A (Bores) I may or may not have seen them.

10 Q Okay. You referred in your testimony last week to
11 your personal files in answering a question; do you recall
12 that?

13 A (Bores) No.

14 Q Well, do you have files that relate to the RAC
15 deliberations which could be characterized as your personal
16 files? Do you have notes, and memoranda, and so on?

17 A (Bores) Since my office seems to be a storage area,
18 there's a lot of material there, but I do not keep very many
19 notes. It's materials that we work with, letters,
20 documentation, things of that nature.

21 Q Yes?

22 A (Bores) Yes.

23 Q When you prepared for your testimony here did you
24 review some of that material?

25 A (Bores) When I prepared for this testimony?

1 Q When you prepared for the testimony that began last
2 week on direct from your counsel and has continued through
3 today, did you have access to various documents in your office?

4 A (Bores) I had access to it, but I think most of the
5 documents that I reviewed were documents that were produced
6 here.

7 Q Did you make notes during RAC meetings?

8 A (Bores) A few, very few, generally.

9 Q Well, did you make any in '86 or '87 that relate to
10 the beach population discussion?

11 MR. TURK: We've already produced them, Mr. Oleskey.

12 MR. OLESKEY: I'm entitled to ask the witness,
13 counsel, please don't interrupt so often.

14 (Continued on next page.)
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1 THE WITNESS: (Bores) I think the notes that I made
2 in '86 and '87, you primarily have. There was another document
3 which was a Rospenda-prepared document, I think, going into an
4 October meeting that I had comments on, but those comments
5 basically did not relate to the beach population.

6 BY MR. OLESKEY:

7 Q Okay, so you don't have a running set of memoranda,
8 whether in handwritten form or otherwise, that summarize
9 activities of the RAC or of your agency reflecting what the RAC
10 was doing on the beach population in '86 and '87?

11 A (Bores) No.

12 Q Okay.

13 At some point Mr. Turk began to counsel or take part
14 in preparation of the work you were doing for the RAC, or
15 became involved in the Seabrook issue, at least; is that fair
16 to say?

17 MR. TURK: Well, which question is it?

18 THE WITNESS: (Bores) At some point Mr. Turk got --
19 yes, he got involved in the Seabrook issue.

20 BY MR. OLESKEY:

21 Q Was that early '86?

22 A (Bores) I don't believe I had any discussions with
23 Mr. Turk until 1987.

24 Q Well, the other day we marked for identification a
25 coordination committee meeting of January '86 showing Mr.

1 Lazarus and Mr. Turk present.

2 Mr. Lazarus, can you and I agree that Mr. Turk was
3 involved in whatever respect as early as January of '86?

4 A (Lazarus) I'm sorry, you're referring to the
5 January --

6 Q Twenty-one.

7 A (Lazarus) -- 1986 coordination meeting?

8 Q Yes.

9 A (Lazarus) At Seabrook.

10 Q Yes.

11 A (Lazarus) I believe Mr. Turk was there, and if
12 that's indicated on the minutes, I would acknowledge that.

13 Q Okay, and what was Mr. Turk's role to be in
14 connection with the regional work at the RAC on Seabrook? Why
15 was he involved at all in '86, as you understood it?

16 MR. TURK: Your Honor, I'm going to note my place on
17 this. If Mr. Oleskey intends to inquire into attorney/client
18 discussions, I think we're going to start getting into
19 privileged areas.

20 MR. OLESKEY: I just want to flesh out the cast of
21 characters that's involved here, Judge, and understand what
22 someone from the general counsel's office was doing --

23 JUDGE SMITH: There's no objection yet.

24 MR. OLESKEY: All right.

25 THE WITNESS: (Lazarus) The January 1986 meeting was

1 not a RAC meeting. It was a planning, coordination, scheduling
2 meeting.

3 MR. OLESKEY: I understand.

4 THE WITNESS: (Lazarus) So it was not out of the
5 ordinary for Mr. Turk to be there.

6 BY MR. OLESKEY:

7 Q Then let me ask, in the ordinary course do people
8 from the headquarters office of general counsel become involved
9 in the evaluation of plans by the region?

10 JUDGE SMITH: Well, how would they know what --

11 MR. OLESKEY: Well, he is the RAC overseer for
12 several years.

13 JUDGE SMITH: With respect to that region.

14 MR. OLESKEY: Yes.

15 THE WITNESS: (Lazarus) Generally that would not be
16 the case. And as I indicated, at this meeting this was not a
17 meeting to discuss the adequacy of plans or any input into that
18 respect.

19 BY MR. OLESKEY:

20 Q But we can agree, can we not, that Attorney Turk was
21 involved in various aspect of the Seabrook plan evaluation from
22 at least January '86, on?

23 MR. TURK: Objection.

24 JUDGE SMITH: Why do you object? It's not
25 attorney/client.

1 MR. TURK: Well, the question is very broad, Your
2 Honor, and it asks whether counsel was involved in review and
3 evaluation of plans. To me that's a very broad use of
4 terminology.

5 My first objection is in terms of its -- in terms of
6 the form of the question.

7 Secondly, I think the natural course for Mr. Oleskey
8 to follow here is to try to probe into how NRC OGC counsel were
9 involved in addressing the Seabrook beach issues.

10 JUDGE SMITH: Wait till you get -- don't make
11 anticipatory objections now. I'll concede that the question
12 was very broad and the answer is not going to produce much by
13 way of probative evidence.

14 MR. OLESKEY: It was designedly broad so that I
15 wouldn't be hit with an objection I was prying into
16 attorney/client matters, to tell you the truth.

17 BY MR. OLESKEY:

18 Q Is it fair to say that commencing in January '86,
19 Attorney Turk was involved in various aspects of the Seabrook
20 matter as the region was considering it?

21 A (Lazarus) I -- to my knowledge, Mr. Turk was not
22 involved in reviewing plans or plan adequacy. To my knowledge,
23 the only reason that he had any contact at that point was
24 purely interest in scheduling and the other coordination issues
25 surrounding that. To my knowledge, there was no direct input

1 or review or participation by him on those matters.

2 Q Until what time?

3 A (Lazarus) The earliest that I'm aware that he was
4 involved in that issue was on the review of the Bores 1 memo.

5 Q Okay. The spring of '87.

6 A (Lazarus) Yes.

7 Q Does that according with your recollection too, Dr.
8 Bores?

9 A (Bores) Yes, it is.

10 Q Good.

11 Now, you enclosed, with your memo to Mr. Turk of
12 October 1987, a letter from Mr. Christenbury to Mr. Perry on
13 some legal issues in the case.

14 Do you recall that?

15 A (Bores) Yes.

16 Q All right. At the time were you told what the
17 background was to that memorandum, how it came to be prepared?

18 A (Bores) At that time.

19 Q Yes, in June, June of '86?

20 A (Bores) I was aware of it when the response was
21 issued.

22 Q All right. Did you understand the context in which
23 there came to be this memorandum from one lawyer at the NRC to
24 another at FEMA?

25 A (Bores) In general, yes.

1 Q Did you understand that there's something called the
2 three misconception memo that dealt with some issues of law in
3 the case, and that Mr. Boulay in Massachusetts had asked for
4 some clarification from the agencies?

5 Did you understand that?

6 A (Bores) I was aware of it, yes.

7 Q All right, and the Christenbury memo was actually a
8 joint position of the two agencies worked out by way of
9 response to some questions that arose from Mr. Dignan's earlier
10 memo of law; wasn't that your understanding?

11 A (Bores) That's my understanding.

12 Q Fine.

13 Now you say in paragraph three of your October memo,
14 "Since the Christenbury letter was generic and did not address
15 the specific beach issues and the Thomas memo of 12-31-85, I
16 felt it needed more specific information for the NRC RAC
17 member."

18 Do you recall that?

19 A (Bores) It doesn't say that. It says, "FEM: I felt
20 it needed more specific information."

21 Q That's true. With that correction, is that what you
22 said?

23 A (Bores) Yes.

24 Q By the way, I take it from the fact that this was
25 presented last week as part of your testimony, this October 15

1 memo, that you're still comfortable; that is, you feel that the
2 matters in here are stated accurately.

3 A (Bores) Yes.

4 Q And if you're testifying to them directly.

5 A (Bores) Yes.

6 Q And to that extent you adopt them as if they were
7 testimony.

8 A (Bores) Yes.

9 Q All right.

10 Now when you say, as you do, "to satisfy this
11 apparent need, I volunteer to address these issues," there
12 wasn't anybody else in the region who had responsibility to the
13 RAC for Seabrook other than you, was there?

14 A (Bores) At this time there was.

15 Q Who was that?

16 A (Bores) It was the Region 1 RAC member.

17 Q Mr. Schumacher? Or back in '86, you're talking about
18 Mr. Lazarus?

19 A (Bores) Mr. Schumacher, Mr. Lazarus, whoever came
20 before, yes.

21 Q So what you're saying here is that you felt you were
22 the person most able to address Mr. Thomas's request rather
23 than either one of them; is that it?

24 A (Bores) That's essentially correct, yes.

25 Q And you told them you'd do it and you proceeded to do

1 it; is that right?

2 A (Bores) Yes.

3 Q And you started some time after the Christenbury
4 letter in June '86, and you finished with your product in
5 February '87?

6 MR. TURK: Could I hear that again?

7 BY MR. OLESKEY:

8 Q You started some time after the Christenbury letter
9 of June '86, and you finished in February of '87.

10 A (Bores) Yes.

11 Q Okay. Did you have available any other work that had
12 already been done either by headquarters NRC or the region?

13 A (Bores) I did have the input of whatever RAC memos
14 had been distributed. As I said, I do recall Mr. Lutz's.

15 Q Yes. I'm not asking you about other agencies. I'm
16 asking you about your own agency.

17 Q I did not have available to me any other memos, or
18 documents, or anything else that had been initiated to respond
19 to this.

20 Q All right. Dr. Bellamy had never prepared any memos
21 or studies that could be considered responsive to the beach
22 population issue?

23 A (Bores) Not to my knowledge.

24 Q r. Harpster had never prepared anything that could
25 be considered responsive?

1 A (Bores) Not to my knowledge.

2 Q Did you have studies done by -- available to you that
3 you relied upon that were done by any consultants to your
4 agency or any other agency like Brookhaven, Argonne, anybody
5 else?

6 A (Bores) No.

7 Q So everything in your memo is something that you
8 understood yourself when you sat down to prepare it; is that
9 right? Your own knowledge?

10 A (Bores) It's my own knowledge and that of the RAC
11 and positions they had taken through the various RAC meetings
12 and where they stood at the current time.

13 Q Your comments on meteorology, for example, those came
14 out of remarks and information furnished by other people at the
15 RAC prior to '87?

16 A (Bores) I'm not sure I relied on any specific input.
17 I certainly had some discussions with some of our own
18 meteorologists, and with some other individuals. But there is
19 no specific -- you know, specific line that I followed here.

20 Q Well, you have staff meteorologists, do you, at the
21 region?

22 A (Bores) Not at the region.

23 Q Nationally, the headquarters?

24 A (Bores) Yes.

25 Q So you talked to them to get insight into shoreline

1 meteorology, is that what you're saying?

2 A (Bores) I've had some discussions related to me. I
3 did not specifically talk to "a meteorologist".

4 Q Somebody who talked to a meteorologist told you what
5 the meteorologist said?

6 A (Bores) Somebody who had prior discussions.

7 Q You --

8 A (Bores) I did not -- excuse me. I did not seek any
9 specific, you know, NRC headquarters's input into this of any
10 sort.

11 However, in some discussions with them, you know, I
12 took what I could.

13 Q It sounds like you were making a real effort not to
14 go near headquarters on this. Is that what you were thinking
15 at the time?

16 A (Bores) Let's go back again to what I had developed.
17 It was a Region 1 NRC RAC member's input into the RAC process.
18 And as I had related earlier, one of the things we tried to do
19 is to maintain these things as predecisional-type input. This
20 is the precedent that had been utilized at Shoreham. And so I
21 had sort of gone out of my way in fact to preserve that
22 privilege.

23 Q You wanted to compartmentalize what was going on here
24 so it could be said that it was only your input, not the
25 region's and not headquarters's, right?

1 MR. TURK: Objection. That's not the testimony.

2 JUDGE SMITH: It's not -- it doesn't have to be his
3 testimony. I don't believe it's his testimony, but
4 nevertheless he can ask the question.

5 You may answer.

6 THE WITNESS: (Bores) Would you please restate that,
7 Mr. Oleskey?

8 BY MR. OLESKEY:

9 Q You were trying to compartmentalize your product so
10 that it couldn't be said later by anybody, for whatever reason,
11 that your paper represented a view either of the region or of
12 national NRC headquarters; it was only your own product.

13 Wasn't that the substance of what you were doing?

14 A (Bores) I suppose it gets around to that, but it was
15 not what I had initially, you know, started about to do. The
16 only thing I was trying to do is to protect the privilege that
17 had been utilized before in terms of predecisional material.

18 Q You mean that in some other case, Shoreham or
19 somewhere else, you were told that if you didn't go to either
20 people on your staff for concurrence, or go to headquarters, if
21 there was litigation you wouldn't have to produce --

22 A (Bores) I was involved in the Shoreham issue, and I
23 know that went through the Licensing Board and the Appeal
24 Board, and at FEMA's request this was upheld; that individual
25 RAC members' input was not produced in terms of discovery or in

1 terms of the Freedom of Information requests.

2 Q As long as it wasn't "an agency document".

3 A (Bores) It's not an agency document.

4 Q All right. So you had in the back of your mind from
5 the Shoreham case that if you followed what you understood the
6 rulings to be there, this material wouldn't have to be produced
7 in litigation like this; isn't that the size of it?

8 A (Bores) That is correct, because it's predecisional
9 material.

10 Q Okay. So you got some weather information from
11 national headquarters, but because you got it from somebody who
12 talked to the weather people at national headquarters, you felt
13 that it wouldn't be subject to later discovery; is that what
14 happened on the weather side?

15 A (Bores) No. It doesn't really matter there if I got
16 it from, you know, the world's expert as a matter of fact, as
17 long as they were not part of produced in the paper per se.

18 Q My only question is, you got some information from
19 somebody in the NRC who talked to one of your own weathermen,
20 and you had that information available when you wrote your own
21 memo, right?

22 A (Bores) Yes.

23 Q All right. But you didn't go to the weatherman at
24 NRC and get the information directly, because you wanted to
25 preserve this approach that this was predecisional,

1 nondiscoverable material that you were working on, right?

2 A (Bores) No, as I explained. It wouldn't have
3 mattered whether I had gone directly. It is only the work
4 product in terms of circulation or producing comments and
5 copies, et cetera, that appears to be the --

6 Q Well, wouldn't you have felt more comfortable with
7 your RAC input on weather if you had been able to speak or gone
8 to speak directly with the weather experts at the NRC
9 headquarters instead of having this information filtered
10 through an intermediary?

11 MR. TURK: Your Honor, I don't know what the purpose
12 of this line is. We're not getting at the question of what
13 happened with FEMA's decision. We're getting at Dr. Bores's
14 process of coming together with his first paper in February of
15 '86. I don't see the relevance.

16 MR. OLESKEY: The argument is that Bores's paper was
17 so convincing in February of '86 that everybody fell in line
18 and said, terrific, we adopt it. I want to know what it was
19 that Bores did that was so good, what he had for background
20 that all these people fell all over themselves. And if it
21 turns out that he got second-hand information, and they
22 shouldn't have relied on it, that's rather probative when at
23 least some of them later fall off the wagon and say, wait a
24 minute, we're not so convinced any more.

25 JUDGE SMITH: All right, so you are going into

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1 the --

2 MR. OLESKEY: I'm following a chain of information.
3 I don't care whether it ultimately turns out to be right or
4 wrong. That's something you are to decide if you think it's
5 material. I simply want to know where he got it and what his
6 thought process was in putting it together.

7 MR. TURK: I don't see the point, Your Honor. It
8 sounds to me like --

9 JUDGE SMITH: There has to be -- now, see, we've
10 never had to make a flat-out ruling that I can see whether we
11 are going to attack the merits of the various RAC members'
12 positions and try to add them all up and come up with any merit
13 type of determination.

14 Up till now, I thought Ms. Weiss was going that way,
15 but she didn't. Up till now it's been a question of what did
16 the RAC people do. So now we have to decide.

17 You seem to be clearly going into a merits of the
18 FEMA position. Right now. You're going into the merits of the
19 RAC position and the merits of the FEMA position.

20 MR. OLESKEY: Of the NRC position.

21 MR. TURK: Of the RAC members for the NRC.

22 MR. OLESKEY: Yes, of the NRC's RAC member.

23 MR. TURK: Irrelevant.

24 JUDGE SMITH: Well, I think it is too.

25 MR. OLESKEY: Well, they proffered him here for a day

1 and a half.

2 JUDGE SMITH: No, no, not for that purpose.

3 MR. TURK: In fact, Your Honor, if Ms. Weiss -- when
4 I was going to introduce Exhibit 2 and 2-A for all purposes,
5 Ms. Weiss was very clear that she didn't want it in there for
6 all purposes. It was simply to show the evolution of events at
7 FEMA.

8 MR. OLESKEY: That's exactly --

9 MR. TURK: And Ms. Weiss specifically objected, and I
10 conceded and I said, all right, it's not going to be for all
11 purposes. It's simply to show the evolution. I don't see how
12 they can have it both ways, Your Honor.

13 MR. OLESKEY: Well, having it both ways is what Mr.
14 Turk wants. He wants to have the product of the NRC's work
15 considered insofar as it affects FEMA. But he doesn't want
16 consideration of how NRC got their own positions. They are two
17 sides to the same coin. These are two agencies that are locked
18 together here closely over the period of years thrashing about
19 looking for solutions to this problem.

20 You cannot understand the evolution of FEMA's
21 position unless you understand how NRC got its position
22 regionally, and what it did to try to influence FEMA's
23 position.

24 MR. TURK: Your Honor, at Page 11736 I was
25 introducing Dr. Bores's October 15, 1987 paper. Judge Smith

1 says, "Are there objections?"

2 Mr. Oleskey: "I think if this is being offered as
3 kind of a historical chronology and not literally to the truth
4 of all the matters therein, in that spirit I don't object."

5 MR. OLESKEY: Nothing inconsistent with that in the
6 line I'm pursuing.

7 MR. TURK: I don't see it that way.

8 JUDGE SMITH: I'm afraid I did not catch the drift of
9 the argument you just made before. Would you restate it?

10 I want to know -- do you disavow any intent to now go
11 into the merits of the RAC deliberation?

12 MR. OLESKEY: I'm interested in the evolution of the
13 position of the RAC as it's exemplified in the two primary
14 influences upon it -- FEMA and the NRC.

15 Right now, because I have NRC witnesses, I'm pursuing
16 the input that they made through their own deliberation to the
17 RAC. Tomorrow, apparently, I'll have the same privilege with
18 respect to the FEMA people.

19 But you can't understand what the RAC did or all this
20 argument about who said what in the RAC unless you understand
21 the jockeying of these two agencies as they put information in,
22 make arguments, and seek to influence each other and the RAC in
23 this process.

24 What happened --

25 JUDGE SMITH: What if he, for example, consulted a

1 tooth fairy on meteorology. How would that affect this
2 litigation?

3 MR. OLESKEY: It would explain -- it might explain
4 later why Thomas and others, on consideration later of the
5 revised memorandum, no longer felt it answered the questions
6 they posed, that Thomas posed in December 31, '85, when he
7 asked for help in resolving the technical issues about the
8 beach population.

9 JUDGE SMITH: But unless that infirmity in his
10 position was somehow transmitted through to RAC, it wouldn't
11 matter

12 MR. OLESKEY: Well, our position is that the
13 infirmities in the NRC's position were clearly discussed at the
14 RAC in July, in January and February. The NRC's position is
15 it's true that FEMA and other agencies, as the January
16 deposition here discloses, had these concerns, but they weren't
17 well founded. And, they argue, because they weren't well
18 founded, they should be disregarded. That's simply a
19 construction of somebody else's position.

20 You have to sort out in the end whether the claim by
21 the NRC that Thomas and NOAA and the Interior Department, in
22 January, had real concerns were process or merits or both. But
23 in my view, you can't understand it unless you understand, as
24 Turk to his credit very openly did starting back in December
25 '85, and putting in a version of how you get up to March of

1 '88, with particular emphasis on April and July.

2 MR. FLYNN: I wish to join in the objection. Your
3 Honor, you put a question to Mr. Oleskey about whether he
4 intended to go into the merits of the RAC position, the NRC RAC
5 members' position, and I don't know that you've gotten a direct
6 answer. But it makes --

7 JUDGE SMITH: I try to follow it and I slip off.

8 MR. OLESKEY: Well, when Ed Thomas says that the
9 containment was crucial, the merits of the containment and risk
10 probability issues were crucial in his mind in April, and when
11 they were gone in July he couldn't support it any more, is that
12 merits process, and how do you disentangle them? That's what
13 the guy says.

14 MR. FLYNN: I wish to be heard on this.

15 Your Honor, I have been arguing over and over again
16 that the one thing that you have to consider is, is the FEMA
17 position well founded. You look at the bases we've set forth
18 in our prefiled testimony, and you examine them, and you listen
19 to the testimony of our panel. and decide whether we can
20 support our position or not.

21 Now -

22 JUDGE SMITH: Trouble is there are two positions.
23 That's what causes the trouble.

24 MR. FLYNN: Well, then the question has become, and I
25 accept this, that the process, whether we considered the views

1 of the RAC and so on, becomes important. You have identified a
2 need to satisfy yourself on whether we followed the process
3 that we have announced ourselves.

4 Then I submit if that's what we're going into, then
5 the only thing that is relevant is the process, and the -- that
6 it's not relevant to what these witnesses were called for to go
7 into the technical merits of the positions that they espoused.

8 JUDGE SMITH: I -- if you can answer this, this is
9 the first time I've put this -- if you can answer yes or not.
10 Do you intend to go into the merits of the RAC deliberations
11 and review?

12 MR. OLESKEY: Maybe my problem in answering this
13 clearly as you would like is not understanding clearly what you
14 mean by the merits other than by asking you a Socratic
15 question. I have to ask another one by way of example.

16 Later, I think in his April transmittal letter with
17 his second -- I'm sorry, in his June transmittal letter with
18 his second paper, Dr. Bores alludes to the considerations, at
19 least in part, that led him to revise the paper. And one of
20 the things he says, as I recall, is that this Board, I think
21 Judge Hoyt then sitting, had denied the EPZ reduction position
22 between the time of Bores 1 and Bores 2.

23 That was an important enough action for him to note
24 it in his transmittal of Bores 2 as one of the reasons that led
25 to the revision. I'm going to ask -

1 JUDGE SMITH: It's the transmitting of that fact that
2 is important.

3 MR. OLESKEY: Yes. I'm going to ask him what it was
4 that was important about this Board's decision last April that
5 led him to revise his paper, because the other side of that is
6 his understanding why FEMA would be so affected that it would
7 file in June testimony that no longer supported and followed a
8 position that apparently everyone was willing to adopt two
9 months earlier in April.

10 I can't disentangle the merits and the process from
11 that very cleanly, and that's why I can't say yes or no.

12 MR. TURK: It's an interesting argument, Your Honor,
13 but the question Mr. Oleskey posed was wouldn't you have been
14 more comfortable if you had talked to a weatherman at the NRC
15 headquarters office.

16 Now how does that get into anything about what Mr.
17 Thomas may have been thinking at the April or July meetings?

18 How does that in any way --

19 MR. OLESKEY: Because if Thomas understands --

20 MR. TURK: Excuse me, let me finish my comments and
21 address them both.

22 How does that in any way affect the conflicting
23 testimony between Mr. Thomas and these witnesses which
24 indicated that the clear senses -- the clear sense of the RAC
25 was that they disagreed with Mr. Thomas, and in fact there was

1 even a show of hands at the end of the July meeting?

2 Now whatever Mr. Thomas's reasons may have been for
3 being concerned and refusing to go with the majority is another
4 issue which is not before the Board right now. We're looking
5 at the evolution of positions.

6 MR. OLESKEY: That's only a good --

7 MR. TURK: Statements made in these meeting.

8 MR. OLESKEY: That's only a good argument if you
9 start from the premise that the testimony of these gentlemen is
10 accurate as to what happened at the end of the meetings.
11 Thomas and others dispute that, and Mr. Flynn stated several
12 times ---

13 MR. DIGNAN: Who is the "and others"? You keep
14 saying "and others". Who under oath has disputed it?

15 MR. OLESKEY: Mr. Flynn has stated twice here before
16 the Board that he interviewed other RAC members and he said, in
17 substance, you haven't heard all of this. If you intend to
18 pursue this issue as an important one, you have to hear from
19 other members.

20 MR. DIGNAN: Mr. Oleskey, the record will speak for
21 itself, but I recall the Judge asking Mr. Flynn if he was
22 disputing the witness's testimony. And my recollection is Mr.
23 Flynn said he was not.

24 MR. OLESKEY: My recollection is that Mr. Flynn has
25 stated clearly ---

1 MR. DIGNAN: The record will speak for itself.

2 MR. OLESKEY: My recollection is Mr. Flynn stated
3 clearly that there is another version that supports Mr.
4 Thomas's position, or that, to put it another way, he heard
5 nothing when he interviewed other RAC members that is
6 inconsistent with Thomas's position.

7 MR. FLYNN: That is a different issue and I --

8 JUDGE SMITH: We'll consult.

9 MR. FLYNN: All right. I wish to be heard further on
10 the original objection which I raised. I'm sorry, I don't mean
11 to interrupt what you are doing if you want to consult, but I
12 do have something further to say.

13 JUDGE SMITH: Yes, we're struggling now with what is
14 the appropriate scope of this mini-inquiry here. It's my
15 temporary view until I consult my colleagues that the scope is
16 not - unless it goes to his credibility, directly to his candor
17 and credibility, which I don't think you're asking for that
18 reason. It is not how he arrived at his position, but what
19 position was actually transmitted to RAC and discussed; what
20 information did RAC act upon, not whether he was right or wrong
21 in either memorandum. That's the way I would rule, but I want
22 to check with my colleagues and see if I understand what's
23 going on, because I am having difficulty understanding the
24 nuances of your argument.

25 I would like to read them, but I mean you state them.

1 I understand every word you say, but I just can't seem to get
2 on top of them.

3 MR. FLYNN: I support your characterization, Your
4 Honor. The problem that I've had -- that I'm having with the
5 line of argument that's being advanced by Mr. Oleskey is that
6 now I'm put in the position where I have to support, or I have
7 to defend two different and to some extent inconsistent
8 positions, and I can't do that.

9 The only position I should have to defend is the one
10 that I've currently taken, or that FEMA has currently taken,
11 and the process. But what's happening with the argument is
12 that the process is becoming inextricably intermingled with the
13 merits of the earlier position, so that means that the scope is
14 broadened too far.

15 JUDGE SMITH: We had a debate the other day in which
16 the Intervenors stated that their -- well, Mr. Backus still has
17 hopes of reviving the rebuttable presumption, and I don't see
18 that that is shared by all Intervenors, so I'm not talking
19 about that.

20 But we have an avowed purpose by the Intervenors to
21 mine from the whole RAC process, to harvest from that you might
22 say, evidence supporting their position today. Now we never
23 wrestled directly with how that was going to happen, but that
24 is an avowed purpose that they have, and we have not said that
25 that's appropriate or inappropriate at this point.

1 Then there's the second point. That would be the
2 first point being the direct availability of substantive
3 evidence supporting their position.

4 The second point then is to undermine the present
5 position of FEMA which gives a rebuttable presumption adverse
6 to them, undermine that by showing that the evolution had flaws
7 in it and. I guess, that the first position was a better one to
8 begin with, but that goes back to the first point.

9 MR. FLYNN: Goes to the merits.

10 JUDGE SMITH: Yes, right. Well, see -- but when I
11 try to pin them down are they going to the merits, well, then
12 it gets fuzzy.

13 MR. OLESKEY: Well, it's fuzzy because it's not a
14 question that admits clean distinctions. When Thomas rejects
15 in July, and his agency earlier I believe the evidence will
16 show, the revised position from what Mr. Bores says is himself
17 as the RAC members, however you characterize it, because it
18 doesn't have the content it formerly had, and that content's
19 important to him, what he's saying, other than the merits of
20 the argument to him, are different.

21 Now how do you get at that than by talking about
22 whatever it was that the NRC puts into this decisional soup and
23 what gets taken out between February and June, and why.

24 They are the people who put this issue before us that
25 there is something really critical for you as judges to decide

1 based on whether there was a fleeting poll of six or seven
2 folks at the end of the meeting last July. We've always said,
3 and we agree with Joe Flynn here, that whether there was a vote
4 or not isn't critical. What's important are the position of
5 the agencies.

6 But Tom Dignan argued to you successfully on October
7 7th and November 4th, when the presumption was going the other
8 way, that the process was absolutely critical. So he started
9 this wagon moving and --

10 MR. FLYNN: But I don't hear anyone arguing that now.

11 MR. DIGNAN: No.

12 MR. OLESKEY: -- Sherwin Turk kept that going --
13 Sherwin Turk kept it going with a 17-page attachment in a
14 lengthy memo that talks about a lot of things and puts a lot of
15 matters into issue.

16 I'm not going to debate with these guys whether the
17 containment's most safe in the free world or not. We'd never
18 established that even if we started it. But I'm entitled to
19 explore, I believe, to explain this puzzle that you've decided
20 is important and that we're trying to explain to you what the
21 issue was about the containment and how it arose.

22 JUDGE SMITH: Well, don't characterize our decision
23 as being that we think this issue is important. We have
24 repeatedly stated that without -- without prejudging but
25 looking at where we are now, that the FEMA rebuttable

1 presumption, given the amount of evidence both way, is
2 susceptible to being diminished because of what happens to
3 rebuttable presumptions when it is countered with evidence.

4 So don't lay this importance to us. In fact, we
5 urged a stipulation on much of it. And it is very, very
6 difficult to keep in mind and keep the scope in mind as to
7 exactly why we're hearing this, because we weren't red hot for
8 it anyway, recognizing we did have an initial concern about the
9 integrity of our proceeding.

10 MR. FLYNN: I think this whole controversy is highly
11 artificial. For one thing, I don't hear anybody in this room
12 advocating now today that the issue of whether there was a vote
13 or not is important.

14 Mr. Oleskey has disavowed it, Mr. Dignan has
15 disavowed it.

16 MR. DIGNAN: What? No way.

17 MR. FLYNN: Okay.

18 MR. DIGNAN: What? I've told you why that's
19 important. That becomes important only so long as the Attorney
20 General of the Commonwealth seeks to bring Thomas back here,
21 and that's my point.

22 MR. FLYNN: Well, then that --

23 MR. DIGNAN: Credibility of Edward Thomas is
24 important to me only if he's going to testify further, and the
25 Commonwealth insists he is going to testify further.

1 MR. FLYNN: We'll find --

2 MR. DIGNAN: And that being the case, we're going
3 into the issue.

4 MR. FLYNN: Then that puts -- excuse me, I wish to be
5 heard out.

6 Okay, that puts that issue in perspective.

7 The other thing is the rebuttable presumption. And
8 what the Intervenors are seeking to do here is not just rebut
9 the presumption, but to create a negative presumption.

10 If FEMA got up from this table, left the hearing room
11 and never came back, you would still have to decide the very
12 same issues, and you would have evidence from other parties
13 that would enable you to make the decision that you have to
14 make.

15 What the Intervenors are trying to do is to say,
16 well, if two and two is four, that's one thing. But if FEMA
17 says two and two is four, then we have to litigate it for
18 months and months. And I submit that is artificial.

19 And if the Board has identified the process as
20 important to go into, as I said before, I accept that. But
21 when you get into the merits, I submit that is unnecessary. It
22 is entirely beyond what this hearing requires or what we agreed
23 to do.

24 JUDGE SMITH: Any last minute comments on it? We
25 don't think we are going to --

1 MR. OLESKEY: I don't want to reargue what we argued
2 Friday about Ed Thomas and rebuttable presumptions.

3 JUDGE SMITH: No.

4 MR. OLESKEY: But you all heard that.

5 MS. WEISS: I would just refer you to that, because I
6 don't -- I'm not going to reargue it, but our case is very
7 different from how Mr. Flynn described it. And if you want to
8 take a look at what we said back then.

9 JUDGE SMITH: We don't do research.

10 MR. OLESKEY: Okay. Okay, we said that we would be
11 happy to drop the whole issue as long as no adverse findings
12 were going to be sought against our clients on account of
13 anything Ed Thomas has testified to.

14 Tom Dignan then jumped up and said --

15 JUDGE SMITH: All right.

16 MR. OLESKEY: -- yes, I'll seek adverse findings
17 against all of you based upon what Thomas said.

18 MR. DIGNAN: That's not what I said.

19 MR. OLESKEY: We then --

20 JUDGE SMITH: Wait a minute. Wait. That was at a
21 hearing I wasn't at. I don't honestly --

22 MR. DIGNAN: Me, too, Mr. Oleskey.

23 JUDGE SMITH: No, I want to pursue this because I --

24 MR. OLESKEY: He said he wanted whatever adverse
25 inferences could be drawn against us from Thomas's testimony.

1 We said --

2 MR. DIGNAN: I said I wanted whatever adverse
3 interest could be drawn against the credibility of Mr. Thomas
4 would be something I would go for when, as, and if the
5 Commonwealth insists on using Mr. Thomas as a witness.

6 MR. OLESKEY: Okay, and we pointed out --

7 MR. DIGNAN: And you have insisted on doing so. That
8 means credibility is still up for grabs courtesy of the
9 Commonwealth; no one else.

10 MR. OLESKEY: That's a circular --

11 MS. WEISS: That's a different --

12 JUDGE SMITH: Now wait a minute, wait. I think that
13 this is probably right. The only interest that this Board now
14 has in this whole thing is if -- if you are going to harvest
15 the previous RAC process, and Mr. Thomas for evidence
16 supporting your position, well, then, we are going to have to
17 address it.

18 MS. WEISS: Well, may I be heard on that? I mean --

19 JUDGE SMITH: I mean if you're not, well, I think the
20 whole thing can go away.

21 MS. WEISS: What concerns me, and this is what I said
22 last Friday, is that inferences will certainly be suggested by
23 the findings on the -- by the parties adverse to us against our
24 substantive position in this case on the grounds that it is at
25 odds not only with FEMA's position, it is at odds with the

1 RAC's position, the RAC disagreed with Ed Thomas, they all
2 discussed it and voted.

3 JUDGE SMITH: If we closed the record today, would
4 they do that?

5 MS. WEISS: I'm sure they would do that.

6 JUDGE SMITH: No, no, they wouldn't. I don't know.
7 Maybe we can get a stipulation here. This is what I was
8 driving at Friday, you know.

9 MR. DIGNAN: If we closed the record today, the
10 findings of fact that would be offered by the Applicant sitting
11 in that briefcase now, and there is no finding of that nature
12 in it.

13 JUDGE SMITH: No. See, I -- maybe we can, maybe we
14 can get something here, because even if they were to, I don't
15 know what we would do with it. It would not be very
16 persuasive.

17 MR. BACKUS: Your Honor, from our point of view, we
18 think FEMA is not able to walk away from this proceeding. And
19 we think, in essence --

20 JUDGE SMITH: No.

21 MR. BACKUS: No, I mean, Joe Flynn's over there and
22 he says and I can understand him.

23 JUDGE SMITH: Well, I know what your point of view
24 is, but you're not going to get this Board to support a
25 litigation, or discovery, whatever you call it, which is

1 intended to try to revive any rebuttable presumption that FEMA
2 once gave you, or which is going to try to compel FEMA to give
3 you a rebuttable presumption. That would be impossible.

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4 (Continued on next page.)

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T/ 1 MR. BACKUS: What we've got here, and Joe Flynn has
2 expressed his problem, we have something that's never happened
3 before, before a Licensing Board of the NRC; we have FEMA
4 flipping its position, that's what happened in the course of
5 this proceeding.

6 JUDGE HARBOUR: Mr. Backus, that's not true. I
7 personally have participated in licensing hearings and I know
8 of others where the FEMA position as we've started in the
9 hearing was one thing, half way through the hearing they said,
10 we withdraw that testimony here on your testimony.

11 MR. BACKUS: Well, that may be. I don't -- you know
12 a lot more proceedings than I do, Judge Harbour. But as far as
13 I know the facts here haven't changed. I think everybody
14 agrees on that. The facts have not changed. And yet, FEMA's
15 position has changed. And we believe we're entitled to an
16 exploration of how that came about, and we thought that that's
17 what this hearing was about.

18 JUDGE SMITH: Well, Mr. Backus --

19 MR. BACKUS: And I don't think we can stipulate that
20 away by agreeing not to bring back Ed Thomas.

21 JUDGE SMITH: You make this argument -- you make this
22 argument, but you don't bring it into focus or into the context
23 of anything that this Board can do with the evidence that you
24 would like to have adduced except your argument which is not
25 very persuasive that you're going to somehow try to get a FEMA

1 position back in your corner.

2 MR. BACKUS: Well, --

3 JUDGE SMITH: But I think that, is there any area of
4 stipulation that the information which could be seen to be
5 adverse to Mr. Thomas could not be used to draw an adverse
6 inference against your position?

7 MS. WEISS: That's half of it.

8 JUDGE SMITH: Well, I don't --

9 MS. WEISS: The other half of it --

10 JUDGE SMITH: -- think it can be unless you bring
11 Thomas in as your witness.

12 MS. WEISS: Well, we are going to bring him in.

13 JUDGE SMITH: As your witness and your case in chief.

14 MS. WEISS: We've subpoenaed him.

15 JUDGE SMITH: As your case in chief. Let's filter
16 out why you want him. If it's defensively, that's one thing.
17 If it is a part of your case in chief, supporting your position
18 on the beach issue, that's an entirely different thing; and in
19 that case, down the road I guess we got to go as far as we're
20 willing to stand it. But if it's not part of your case in
21 chief, then something can be worked out. We can cut this all
22 short to everybody's benefit, believe me, and Mr. Thomas, too.

23 MS. WEISS: I -- let me just say that we believe or
24 at least I believe that we're entitled to show that the
25 concerns that Ed Thomas had about the beach population were

1 well-founded concerns. They're the same concerns that we have,
2 that his position is meritorious and it coincides with the
3 position of our experts; and we believe that our direct case is
4 bolstered by putting Mr. Thomas on and explaining why he took
5 that position and why. And not just him. The evidence will be
6 that that was concurred and approved all the way up the line.

7 JUDGE SMITH: You made that clear before, that you
8 would like to have that as a part of your --

9 MS. WEISS: That's right.

10 JUDGE SMITH: -- case in chief.

11 MS. WEISS: That's right.

12 JUDGE SMITH: As an adjunct or as a supplement to
13 your own witnesses.

14 MS. WEISS: Exactly.

15 JUDGE SMITH: All right. When you take that
16 position, then Mr. Thomas is up --

17 MS. WEISS: I submit, Your Honor, that Mr. Thomas has
18 already been put up. But, yes, --

19 JUDGE SMITH: Well, let me say that, really let's be
20 realistic. And I just wonder just how -- what's going to
21 happen. I mean, what can we look down the road for. You know,
22 just what will be the end result of all this vis-a-vis Mr.
23 Thomas and his -- and the weight of his position for either
24 side. And let's look at the -- what it might mean to Mr.
25 Thomas, too. I don't know. I mean, is it an area that demands

1 all of the time, all of the wheel-spinning, all of the
2 argument, all of the problems that everybody has. Is it really
3 going to end up by being that important in your case, anybody's
4 case, is it? You don't have to -- if we can work this out, I
5 can assure you, we don't -- would not take any inference
6 against anybody's position if it should be agreed that this is
7 not -- this area of inquiry is not likely to produce probative
8 evidence.

9 You know this Board now, you know what our reactions
10 are, you know what we're likely to use --

11 MS. WEISS: Let me tell you what my hesitation is,
12 let me be as frank as I can.

13 JUDGE SMITH: Well, do you want

14 MS. WEISS: We are going to --

15 JUDGE SMITH: Wait a minute. Do you want to have a
16 consultation in chambers?

17 MR. OLESKEY: At the Board's pleasure.

18 MS. WEISS: If the other people --

19 JUDGE SMITH: I really would like to. I mean, I
20 think that maybe we can -- somebody used the word, you know,
21 clean up some of the blood on the floor and stop stanching
22 some --

23 MS. WEISS: Unfortunately, it's all our blood that's
24 on the floor. That's --

25 JUDGE SMITH: Well, that's not -- let's address that

1 and see what can be done to help you.

2 MS. WEISS: That's what I'm saying.

3 JUDGE SMITH: That's what I'm interested in.

4 MS. WEISS: That's what I just stated.

5 JUDGE SMITH: That's what I'm interested in.

6 MS. WEISS: Well, I think we want to caucus before we
7 go to chambers.

8 JUDGE SMITH: All right. Let's have a break and then
9 caucus.

10 MR. OLESKEY: Could we have a --

11 JUDGE SMITH: But now in your caucusing let's --
12 well, you know all the elements, go ahead and caucus.

13 MR. OLESKEY: Could we have ten minutes to do
14 that --

15 JUDGE SMITH: Yes.

16 MR. OLESKEY: -- before we go with you?

17 JUDGE SMITH: Certainly. Yes, we'll take a 10 minute
18 break. And if you'd like to, we can have an In Camera
19 transcript, if you want to, but I would prefer not to.

20 (Whereupon, a brief recess was taken.)

et/93 21 (In Camera session of Board and parties, off the
22 record.)

23 (Continued on next page.)

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1 JUDGE SMITH: Before we broke there was a general
2 issue before us and that is, to what extent could Dr. Bores be
3 examined on the input that he had to his 2 memoranda to the
4 RAC; and although we don't -- are not confident that we
5 understand thoroughly the reasons why you're going into it --

6 MR. OLESKEY: What if I make it easier and withdraw
7 that question.

8 JUDGE SMITH: Well, no use withdrawing it if it comes
9 up again right away.

10 MR. OLESKEY: It might come up in some other context,
11 I don't know.

12 JUDGE SMITH: Well, it could be, and that's what I
13 wanted to say that, as far as the quality of his memoranda -- I
14 mean, the process by which he arrived at his opinions in that
15 memorandum, those memoranda -- 2 memoranda would be beyond the
16 scope unless for two reasons -- except for two reasons that I
17 can think of, now you may offer others: one is, if there was
18 input from FEMA that would be a different direction you'd be
19 going to, but you're not alleging that or suspecting that or
20 trying to develop that, as I understand.

21 MR. OLESKEY: Right.

22 JUDGE SMITH: And the other is, if it goes to his
23 personal integrity; and I don't think you're alleging that.
24 But you're trying to get, how did NRC would ever arrive at
25 that, and I think that that was pretty well -- it was already

1 pretty well established.

2 We don't want this have -- go into a merits
3 litigation on the merits of his memoranda.

4 THE WITNESS: (Lazarus) Your Honor, I have a
5 correction to -- response to a question I had this morning,
6 would this be an appropriate place to address that?

7 JUDGE SMITH: Yes.

8 THE WITNESS: (Lazarus) It really dealt with my
9 personal qualifications; I don't believe it impacted on
10 anything that was sequestered.

11 The question was in my area of expertise in
12 meteorology, and I believe that I misrepresented that, I do
13 have some formal training in meteorology, both as a Naval
14 officer and as a commercial instrument-rated pilot. I believe
15 it was unfair to passengers who had flown with me in the past
16 and those who may fly with me to state that I did not have any
17 knowledge of meteorology.

18 MR. OLESKEY: Mr. Huntington has something.

19 MR. HUNTINGTON: Before Steve continues with his
20 cross-examination, I have the documents that have been
21 requested by Mr. Backus and that I agreed to produce. I wanted
22 to inform the Board and the rest of the parties which I've done
23 in writing and I will serve on everyone, that we are going
24 to -- the State is going to claim privilege to five documents
25 and submit them for your In Camera view, and I will do that now

1 so that it's clear to everyone exactly what we're doing.

2 JUDGE SMITH: Oh, my, are those the documents?

3 MR. HUNTINGTON: No, no.

4 (Laughter)

5 MR. HUNTINGTON: These are not the documents that I
6 will submit. I'm going to produce -- these are the documents
7 I'm going to give you to take a look at.

8 JUDGE SMITH: Earlier Mr. Flynn submitted two
9 documents, both were dated on the note, letterhead of Federal
10 Emergency Management Agency, both dated March 2nd, 1988; one
11 from Dick Krimm to George Watson, and one from George Watson to
12 Dick Krimm. And he asserted an attorney/client privilege.

13 We -- and then during the break we agreed there may
14 be elements of work product privilege. We do not believe that
15 the probative value of the two documents which are related
16 outweighs the privilege, so we are withholding -- we're
17 upholding the privilege.

18 MR. OLESKEY: Privilege being attorney/client, Judge?

19 JUDGE SMITH: Attorney/client and work product. He
20 said attorney/client, and I asked him during the break, I said,
21 are you also asserting work product and he said, yes, or he
22 agrees there, I don't know.

23 Well, let's clarify that. I don't recall what your
24 response was.

25 MR. FLYNN: Well, while we were off the record, yes.

1 JUDGE SMITH: Let's -- do you mind if we say what --
2 that this was in the process of preparing testimony.
3 Memorandum of preparing testimony.

4 MR. FLYNN: Well, yes.

5 JUDGE SMITH: Right.

6 MR. FLYNN: That's quite clearly the case.

7 JUDGE SMITH: And they have mental impressions of
8 counsel.

9 MR. FLYNN: Yes.

10 JUDGE SMITH: Right.

11 MR. FLYNN: I think that might have been asserted in
12 the original document, the response to the request for
13 production; I don't have it with me, so --

14 JUDGE SMITH: Oh.

15 MR. FLYNN: -- I can't say for certain whether it was
16 or not. You're certainly correct that attorney work product
17 privilege would apply, and it is also my --

18 JUDGE SMITH: Then there is very definite elements of
19 attorney/client --

20 MR. FLYNN: -- I'm asserting that, yes.

21 JUDGE SMITH: -- in it, there's no question about
22 that. There's legal advice to a client in there quite clearly.

23 MR. FLYNN: Yes.

24 MR. HUNTINGTON: Your Honor, just so it's very clear,
25 a couple of questions were coming up, instead of circulating

1 around, I circulated a copy of the cover letter that I gave to
2 you that explains and outlines what the documents are that we
3 are asserting privilege over and the basis for them, so that
4 all the parties have a copy of that information. And then, I
5 have given each party a packet of what we are producing with an
6 explanation, again, as a cover letter that we are withholding
7 certain documents, and that this is -- what finishes off the
8 review of all of the files in the Governor's Office, the
9 Attorney General's Office, the New Hampshire Office of
10 Emergency Management, and are those documents beyond what we
11 had already made available through other discovery requests in
12 the past.

13 MR. OLESKEY: Just one clarifying question, I see in
14 the memorandum, which I guess is the May 24th document
15 addressed to the three of you, references to deliberative
16 process privilege, and I'm curious as to whether it's the State
17 of New Hampshire's position that there is such a position in
18 New Hampshire which they're invoking or as a matter of federal
19 administrative law, even though they're a state and not a
20 federal agency or the federal executive, they're able to invoke
21 in here before you, just as if they were a state -- a federal
22 administrative --

23 JUDGE SMITH: That's a very good point. And as far
24 as I know it's never been addressed. We might say that, our
25 most recent experience as serving on the NRC team advising the

1 NRC negotiating team on the high-level waste proceeding, that
2 we believe that as a matter of equity that states should be
3 given the executive privilege -- the executive privilege -- the
4 executive -- deliberative process privilege for the same public
5 policy reasons that applies to federal government; and as far
6 as I know that's the only time it has ever come up. But that
7 was my view, and that was the NRC's teams view.

8 MR. HUNTINGTON: I would concur with that view. I
9 would also say that there is, under New Hampshire RSA 91(a)
10 there is deliberative process privilege that we feel is
11 applicable to the documents as asserted here as well.

12 MR. OLESKEY: You did not attach the letter?

13 MR. HUNTINGTON: No, I did not.

14 JUDGE SMITH: Of course, you can waive it.

15 MR. HUNTINGTON: Yes.

16 JUDGE SMITH: Okay. You have 55 minutes. You took
17 that seriously, are you going to be able to make that?

18 MR. OLESKEY: I'm going to fill up the 55 minutes.

19 JUDGE SMITH: Okay.

20 MR. OLESKEY: I don't think that I'll finish --

21 JUDGE SMITH: You're not going to finish tonight,
22 though.

23 MR. OLESKEY: I think it's unlikely. And I --

24 JUDGE SMITH: Well, we --

25 MR. OLESKEY: -- would appreciate breaking at 5:00 or

1 some time close thereto, because I've got to prepare a lot for
2 tomorrow as the lead examiner for Mr. Flynn's people.

3 MR. TURK: May I make a request. I know Dr. Bores is
4 a member of the FEMA, Region 1 RAC, there is a RAC meeting he
5 would like to attend. If it's possible to finish with him and
6 possibly start FEMA and hour or two later in the morning to
7 allow extra time for Mr. Oleskey's preparation, if that
8 satisfies his needs, it would assist Dr. Bores with his.

9 JUDGE SMITH: Well, the best we can do is just start
10 moving right now. It was our plan to finish this -- these
11 witnesses before we took FEMA.

12 BY MR. OLESKEY:

13 Q Dr. Bores, was it your objective in submitting what
14 has become Exhibit 5, your February 1987 memo to the RAC, that
15 it served as a basis if accepted for the RAC's position on the
16 beach population?

17 A (Bores) I really didn't have that in mind when I
18 submitted it. It was provided as input to that RAC decision
19 process, and I expected that the points would be looked at
20 separately or together, and the RAC would be able to make a
21 decision.

22 Q Okay. And in the course of the April 15th meeting, I
23 take it, it evolved in the discussion that it would make sense
24 with whatever changes were going to be made in the paper for it
25 to become the RAC's position on the issue; is that fair to say?

1 A (Bores) That's essentially what happened, and I had
2 expressed surprise, as a matter of fact, to find the paper
3 being used in that fashion.

4 Q Surprise and pleasure?

5 A (Bores) Yes.

6 Q Okay. Directing you to page seven of that document,
7 which is Exhibit 5 as I noted, you began, as I understood it,
8 back on page six referring to some specific considerations in
9 the plans themselves for protecting the beach population, and
10 you laid out five of them by number; is that what you did
11 there?

12 A (Bores) Yes.

13 Q Okay. Then there's a new heading called "Plant
14 Features and Considerations," on page seven where you talk
15 about the type of reactor it is, a Brookhaven 1986 study, and
16 its conclusions; and then talk about the distance from the
17 station to the beach, dispersion and dilution.

18 And finally, on page eight more about the effect of
19 wind on a long day at the beach. Is any -- is it fair to say
20 that anyone reading your paper would conclude that you put
21 those descriptions and discussions in there at page seven and
22 eight and then discussed them further under the heading
23 "Discussion," at eight and nine, because you thought they were
24 meaningful facts for the RAC to have in weighing the safety of
25 the beach population against these NUREG-0654 criteria that

1 were the benchmark for their considerations?

2 A (Bores) The two considerations are separate. One of
3 them is whether or not the plans meet the criteria, and that
4 was addressed earlier. These were some additional
5 considerations that I had incorporated.

6 Q My question is, you put them in because you thought
7 they were significant enough as facts, at least as you
8 understood them as facts, to be considered by the RAC as it
9 deliberated the issue of beach population safety when weighed
10 against these NUREG elements it had on the spread sheets; isn't
11 that right?

12 A (Bores) Well, the spread sheets really don't go
13 into these sorts of discussions, because in fact -- yes. I
14 mean, they're not based on it. What I put in there is talking
15 points, yes. If that answers your question.

16 Q Well, points you thought were important enough to be
17 brought to the attention of the RAC and discussed at this
18 meeting?

19 A (Bores) I thought they were important enough, sure.

20 Q And in fact, at the top of page eight under the
21 heading "Discussion," the first sentence says: "The foregoing
22 discussions have indicated that the current New Hampshire plans
23 meet or will meet the criteria of NUREG-0654 in a generic
24 sense."

25 A (Bores) Okay. Now, that really refers back to the

1 previous discussions, because that's where we go through --

2 Q All right.

3 A (Bores) -- and take a look at the plan elements
4 relative to the beach discussion.

5 Q Yes, but then you go right into a discussion in the
6 second paragraph and the third paragraph of page eight and page
7 nine that deals with the containment risk and exposure; isn't
8 that right?

9 MR. TURK: Your Honor, just for clarification, if I
10 may. The Board may note that starting on page two Dr. Bores
11 has a section entitled "Review of New Hampshire Plan, Revision
12 2, August 1986." That discussion continues all the way down to
13 page five with a new section that commences reading:

14 "Additional plan discussion," and that continues all the way up
15 to page seven where the plant features and consideration
16 section begins. Discussion on page eight follows all that.

17 MR. OLESKEY: They have all that, counsel, and if you
18 think it's important, I know you'll bring it out later, but I'd
19 like to continue with my cross-examination.

20 THE WITNESS: (Bores) Okay. I did not go back and
21 talk about the plant features until there is a line in the --
22 on the bottom of page eight in about the middle of the
23 paragraph, which talks about decided negligible, quote,
24 "negligible probability of prompt containment failure at
25 Seabrook."

1 I think that's essentially the first mention.

2 BY MR. OLESKEY:

3 Q Well, starting in the middle of page eight where you
4 talk about the distance of the beaches from the station, and
5 that that provides distance for dispersion and dilution of a
6 plume, you go on and discuss weather and risk in a fashion that
7 makes it clear, I suggest --

8 A (Bores) Right.

9 Q -- that you incorporated that as part of what you
10 wanted the RAC to understand was important --

11 A (Bores) Well, certainly --

12 Q -- in getting this issue behind it; isn't that right?

13 A (Bores) Well, certainly you need to look at things
14 like distance to the population. And, you know, that's a fixed
15 distance, so when you're looking at risk you certainly don't
16 put a person at the fence line. So, I mean, that's a fixed
17 type of thing.

18 Just like we weight the beaches at all. I mean,
19 opposed to the other facility where the beaches may not be as
20 significant.

et/94 21 (Continued on next page.)

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T9 1 Q And then on Page 10 under conclusions, you say,
2 following are some of the areas considered above which includes
3 both Pages 1 to 6, and then the discussion -- or 1 to 7, and
4 the other discussion on 8 and 9, which were utilized in
5 arriving at a conclusion relative to the beach populations.

6 So you intended that the entire substance of your
7 paper leading up to Page 10 and the conclusions, as you very
8 candidly say at the top of Page 10, should be material that the
9 RAC should, with you, accept as utilized in arriving at the
10 conclusion that's at the bottom of the page that the plans are
11 adequate to protect the beach population; isn't that right?

12 A (Bores) I sort of lost the gist of the question
13 here.

14 Q Page 10 says, everything that comes before it is
15 important to me as the writer, and I think it should be
16 important to the RAC in arriving at the conclusion that when
17 New Hampshire does the things it's going to do under the plan
18 there is adequate protection for the beach population; isn't
19 that right?

20 A (Bores) Well, it was certainly areas that I had
21 considered.

22 Q Sure. And you didn't make any effort to carve out
23 site-specific issues from generic issues and say, as far as I'm
24 concerned as the NRC RAC representative the site-specific
25 stuff, or goodies in their enhancements, but there's nothing

1 really critical about them when you go to match the NUREG
2 elements with the concerns we have about the beach population,
3 did you?

4 A (Bores) No, I didn't.

5 Q You listed them down the page, what, 10 or 11 items
6 as if they all had equal merit in terms of your conclusions as
7 you are presenting them to the RAC; isn't that right?

8 A (Bores) As if they have equal merit. Certainly some
9 of them do not.

10 Q Yes. Well, you say that now, but there's nothing
11 from which the reader could conclude on Page 10 or elsewhere
12 that you didn't think they had equal merit; isn't that right?

13 A (Bores) That's correct.

14 Q Okay.

15 JUDGE SMITH: Well, that's the thrust of it. It's
16 what the readers would conclude from it.

17 MR. OLESKEY: Right.

18 JUDGE SMITH: And I would hope that you would direct
19 his attention to the very bottom of that page, and see if
20 within the context of the RAC, if he wouldn't believe that the
21 RAC members after looking at this might not conclude that the
22 containment was important in meeting the criteria of
23 NUREG-0654.

24 MR. OLESKEY: I'm happy to adopt that question
25 because that's where I was heading.

1 JUDGE SMITH: Oh, I'm sorry. I thought you had
2 stopped at that.

3 MR. OLESKEY: I'm always -- no, no. I was catching
4 my breath, but I'm happy to have the interjection.

5 BY MR. OLESKEY:

6 Q Did you get that question from Judge Smith?

7 A (Bores) No, would you restate it, please.

8 JUDGE SMITH: Well, look at the bottom there.

9 THE WITNESS: (Bores) Yes.

10 JUDGE SMITH: Where you said, based upon the above,
11 and I guess above would, in my view, the reader would be --

12 THE WITNESS: (Bores) Follow the steps.

13 JUDGE SMITH: -- or said, but, in particular, the
14 bullets of your conclusions, based upon that you go on to
15 describe it, and then at the very end you say, and that these
16 plans -- that the above considerations will do -- will provide
17 for dose savings and are adequate to provide reasonable
18 assurance, and that these plans will essentially meet the
19 criteria of NUREG-0654 and the intent of NRC regulations in
20 this are. And if I were reading it, I would think that you
21 intended to say that the containment aspects go into the mix of
22 factors which provide for meeting the criteria of NUREG-0654.

23 THE WITNESS: (Bores) That's correct. I did not
24 separate them out.

25 JUDGE SMITH: Yes.

1 MR. OLESKEY: All right.

2 BY MR. OLESKEY:

3 Q You didn't consider that the site-specific aspects,
4 the risk issues and the containment issues were irrelevant at
5 that time to the consideration that the RAC was giving to
6 matching up the issue of the protection of the beach population
7 to these technical criteria of 0654 and the intent of the
8 regulations, did you?

9 MR. TURK: I'm sorry. I lost that. Could I hear it
10 again.

11 MR. OLESKEY: What was that, counsel?

12 JUDGE SMITH: He --

13 MR. OLESKEY: He couldn't hear?

14 JUDGE SMITH: He lost the question.

15 BY MR. OLESKEY:

16 Q You didn't consider at that time when you submitted
17 this and when the discussion took place that the site-specific
18 issues with respect to the containment and risk were irrelevant
19 or unimportant in any sense to the RAC's task of matching up
20 the protection of the beach population to these technical
21 criteria of NUREG-0654, did you?

22 A (Bores) The only consideration of that particular
23 aspect occurred in terms of indicating that the plans were
24 adequate as written without the consideration of the special
25 features.

1 Q Well, I want you to show me where in the preceding
2 nine pages you said that.

3 MR. TURK: Well, excuse me. The prior question --

4 JUDGE HARBOUR: Before you do that, I would just like
5 to ask, who are the readers of this document that he's
6 referring to?

7 THE WITNESS: (Bores) The readers of the document
8 were intended to be Region 1 FEMA and the RAC.

9 JUDGE HARBOUR: Now do Region 1 FEMA and RAC people,
10 do they know about NUREG-0654?

11 THE WITNESS: (Bores) They've been working with it,
12 you know, since about 1980.

13 JUDGE HARBOUR: All right.

14 THE WITNESS: (Bores) Same people.

15 MR. TURK: Your Honor --

16 JUDGE SMITH: Now, see, my point is unless Dr. Bores
17 has some special insight into how the readers of this
18 memorandum might read it and understand it, then we don't have
19 to pursue him because that would be our job then.

20 MR. TURK: Your Honor, I have a problem with the
21 pending question.

22 Mr. Oleskey asked in the question prior to this that
23 when he submitted this document, and in the discussions which
24 took place was there any indication that the plans were
25 adequate without regard to containment.

1 Dr. Bores gave him an answer. And now Mr. Oleskey is
2 challenging that saying where in this document does it indicate
3 that you say that the plans are adequate without regard. I
4 think there is going to be some confusion here unless we get
5 the questions clear.

6 BY MR. OLESKEY:

7 Q I know you say that you attempted to clarify and make
8 distinctions at the RAC meeting of April 15th, and you have
9 testified to that, but I'm not asking you that question.

10 A (Bores) Okay.

11 Q Okay.

12 A (Bores) If you go back to Page 5, following my
13 discussion of each of the pertinent NUREG elements to this area
14 and their status and their summary, we go into additional plan
15 discussion. And the first thing that I indicate there is that
16 the New Hampshire RERP for Seabrook site appears to meet or
17 will meet the NUREG criteria after the RAC comments are
18 resolved in the generic sense.

19 The only thing I've been talking about here is the
20 plan elements itself.

21 Q But then you go on and say in that same paragraph at
22 the bottom of Page 5, "In addition, particular attention was
23 given to specific features of the offsite land uses and
24 demography."

25 You make references to ETEs and so on, and

1 then --

2 A (Bores) Certainly, that's by the plant.

3 Q Okay. And then you lead from there, after your
4 summary five paragraph on Page 6 to the top of 7, to this other
5 discussion which I've been interrogating you about, correct?

6 A (Bores) That's correct.

7 Q Okay. Now at this meeting was there discussion that,
8 in connection with subsequent testimony in these hearings, this
9 would be, with whatever minor revisions were planned, the
10 essence of the RAC position that would be presented, and that
11 you would be or could be one of the people who presented that
12 position?

13 A (Bores) It was not clear at all how the FEMA
14 position would be utilized. I mean that certainly was not
15 really discussed at the RAC.

16 Q All right.

17 A (Bores) The intent was to resolve those NUREG
18 elements which were still open because of the beach population.

19 Q Okay. Is it fair to say that after the RAC meeting
20 there was discussion to which you were a party; that is, you
21 knew of it, about offering you as a witness for FEMA to testify
22 in substance to the conclusions of the RAC based on the paper
23 you had presented?

24 A (Bores) Well, those discussions were not really with
25 me, and I think they were proposed discussions, and it was not

1 really the RAC position, I don't believe. I think it was then
2 at that point the FEMA position, because it did -- because if I
3 read it correctly in terms of the response to the contentions,
4 that is, the prefiled response to the contentions, they appear
5 to rely very heavily on the containment features.

6 Q All right. Well, are we in agreement on this; that
7 you understood some time after April 15th, but before your
8 later paper was filed on June 4th, that FEMA was proposing that
9 you appear in this hearing as one of its witnesses and testify
10 on behalf of the RAC to the substance of the paper you had
11 provided which had been discussed on April 15th?

12 A (Bores) There was mention of it. Not really any
13 strong discussions as to what portion or what the substance of
14 discussions would be.

15 Q Let me show you a letter to Mr. Reis of OGC of the
16 NRC, the Office of General Counsel, from Mr. Flynn of May 1,
17 '87, and ask if you ever received a copy of that letter or saw
18 a copy of it?

19 A (Bores) I saw a copy of it, yes.

20 Well, as a matter of fact, I did get a copy of it,
21 not through chains, through the channel.

22 Q All right, and in that letter there is a discussion
23 about the possibility --

24 MR. DIGNAN: Mr. Oleskey, are you going to pass that
25 out?

1 MR. OLESKEY: Sure.

2 MR. DIGNAN: Thank you.

3 MR. OLESKEY: Let's mark it as 30 for identification.

4 (The document referred to was
5 marked for identification as
6 Massachusetts Attorney General's
7 Exhibit No. 30.)

8 BY MR. OLESKEY:

9 Q Now, were you indicating this is a letter on which
10 you were copied some time in May of '87?

11 A (Bores) No, I was never copied.

12 Q But you saw a copy of it at some time?

13 A (Bores) I did.

14 Q In May of '87?

15 A (Bores) I think the earliest I saw it was somewhere
16 around mid-June.

17 Q Okay. Was that after you came back from vacation?

18 A (Bores) Yes.

19 MR. OLESKEY: I'm going to offer this letter as an
20 understanding, at least on behalf of FEMA, of the significance
21 of the memorandum that Dr. Bores had supplied to the RAC under
22 date of February 18, which had been discussed on the 15th of
23 April, and of the view of the RAC, at least as conveyed to Mr.
24 Flynn, counsel to FEMA, on the significance of some elements of
25 that memorandum.

1 JUDGE SMITH: Objection?

2 MR. TURK: I would object to that, Your Honor.

3 JUDGE SMITH: You don't?

4 MR. TURK: I don't accept that characterization.

5 MR. DIGNAN: Neither do I, Your Honor. I object to
6 it.

7 MR. OLESKEY: It speaks for itself. I'm giving my
8 own summary of what I think it stands for. We can offer -

9 JUDGE SMITH: What you're is this is not limited --
10 this is not limited to the fact that the communication took
11 place, but you want to argue what the substance of it means.

12 MR. OLESKEY: I want to -- that's right. I want to
13 argue that it's a, from FEMA's perspective at least, a reliable
14 contemporaneous interpretation of the results of the April 15th
15 meeting which is important in light of the discussion that
16 these gentleman have made about what they thought went on and
17 what FEMA and other agencies reasonably could have expected
18 from the Bores memorandum and from what was said at the
19 meeting.

20 MR. DIGNAN: I object to it on this ground. A letter
21 from one lawyer to another reciting his views of what he
22 apparently understand Bores is needed for in testimony hardly
23 rises to the dignity of demonstrating the understanding of the
24 people at the RAC. All this tells me is that somebody may have
25 gone back to Mr. Flynn, remains nameless, and said this was a

1 concern. It is not --

2 JUDGE SMITH: This was an out-and-out request. This
3 was an agency action requesting the --

4 MR. DIGNAN: Yes, but that doesn't demonstrate that
5 the RAC had a misunderstanding. All this demonstrates is that
6 Flynn wants -- excuse me -- that FEMA's counsel wants a
7 competent witness to defend a certain proposition.

8 MR. OLESKEY: He talks about what the RAC has
9 concluded by way of resolving reservations, and ends up by
10 saying the RAC has determined it's essential to FEMA's
11 testimony that Bores be available to explain the basis for the
12 conclusions.

13 MR. DIGNAN: No, it says it was the sense of the RAC.
14 Now if Mr. Flynn or somebody wants to take the stand and say
15 they polled the RAC to get that sense, I'll buy it. But I
16 don't think he's going to testify to that. I think Mr. Thomas
17 gave them his view of what the sense of the RAC was.

18 MR. OLESKEY: We've had --

19 JUDGE SMITH: This letter is evidence that supports
20 the inference that Mr. Oleskey would ask us to draw. That by
21 no means means that it is conclusive on that point. But it is
22 relevant, it's reliable, it's genuine.

23 MR. DIGNAN: Not until you establish who stated the
24 sense of the RAC. That's the problem.

25 Mr. Flynn, who shouldn't be a witness, is not going

1 to be available for me to cross-examine what his statement of
2 the basis of the sense of the RAC is. And instincts tell me
3 they were the sense of Mr. Thomas, and that doesn't give me any
4 sense of the RAC in this setting.

5 JUDGE SMITH: That's an entirely different problem.

6 MR. DIGNAN: Well, if he's offering to prove that,
7 Your Honor, he's offering to prove the -- as I understood the
8 offer, it is evidence of what the sense of the RAC was.

9 JUDGE SMITH: I'll tell you, let's say that -- let's
10 take it from your point of view. I believe also that one of
11 the subissues here, as I understand it, is what Mr. Thomas
12 believed.

13 MR. OLESKEY: They've argued that --

14 MR. DIGNAN: I have no problem at all if it's argued
15 to underlie what Mr. Thomas believed in theory. I can deal
16 with that.

17 MR. OLESKEY: I want it offered and understood to be
18 offered for what FEMA -- FEMA, the agency, as expressed by the
19 assistant general counsel, understood, accurately or not, to
20 have been the sense of the RAC and the request for Dr. Bores to
21 testify to --

22 MR. DIGNAN: No problem if that's the offer; that
23 it's offered to prove what FEMA's understanding of the sense of
24 the RAC was.

25 MR. TURK: Well, I have a problem, Your Honor.

1 MR. DIGNAN: I withdraw the objection.

2 MR. OLESKEY: One horse has receded.

3 MS. WEISS: Subsided.

4 MR. OLESKEY: Subsided.

5 MR. DIGNAN: I know that choice of animal was
6 unintentional.

7 MR. TURK: The author of this paper is sitting in the
8 room with us today. It's Mr. Flynn. If Mr. Flynn was asked
9 about the background of this paper, he might have a different
10 conclusion about the statements made in here, whether they
11 actually -- whether they accurately reflect what happened at
12 the RAC or whether in fact this was simply Mr. Thomas's
13 characterization to Mr. Flynn, and in fact a request that Mr.
14 Flynn write a letter setting those things out according to the
15 way Mr. Thomas told Mr. Flynn. Where do we go from this?

16 MR. FLYNN: Mr. Flynn is trying very hard not to
17 become a witness in this proceeding, although I think the
18 record abundantly establishes that I was not at the RAC meeting
19 in the discussion in the letter. And I think the answer to the
20 problem is in the colloquy essentially between Mr. Oleskey and
21 Mr. Dignan, and that is, if it's offered simply to demonstrate
22 the understanding that FEMA collectively had about what went
23 on, whether the understanding is accurate or not, I think there
24 should be no problem with it.

25 If it goes beyond that, I have a hearsay problem with

1 it.

2 MR. TURK: I have a problem with that also, Your
3 Honor. I don't know the whole genesis. I know that I have
4 reason to suspect this is not the RAC's understanding, and that
5 it is in fact simply Mr. Thomas's characterization.

6 JUDGE SMITH: That may be, and now what we have here
7 is everybody is, I believe, to the point where it represents
8 FEMA's understanding, right or wrong.

9 MR. TURK: I don't know if there was an understanding
10 at FEMA, Your Honor. I know that Mr. Thomas may have made
11 representations to Mr. Flynn --

12 JUDGE SMITH: FEMA's understanding, this reflect
13 FEMA's understanding of the RAC consideration, and it does
14 that. And at one time I thought they had agreed that it also
15 can reflect Mr. Thomas's understanding.

16 MR. TURK: I would accept that as representing Mr.
17 Thomas's understanding, Your Honor.

18 JUDGE SMITH: How can you question that it represents
19 FEMA's understanding right or wrong? This is general counsel
20 saying what it says to Edwin Reis in an official request from
21 one agency to the next.

E95 22 (Continued on next page.)

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T/ 1 My scanning of it or my fast reading of it tells me
2 it is just absolutely opposite from what you say it is, Mr.
3 Turk.

4 Let me read it.

5 (Pause)

6 JUDGE SMITH: I'm sorry, I don't understand your
7 point at all.

8 MR. TURK: Your Honor, I certainly would accept this
9 paper as representing Mr. Thomas's characterization of events
10 in the April --

11 JUDGE SMITH: That's the least reliable aspect of it
12 so far. But everybody seems to have accepted that, that's
13 fine.

14 MR. TURK: And that's as far as I go with it.

15 JUDGE SMITH: All right. Your objection is overruled
16 based upon the patent purpose of the letter itself.

17 MR. TURK: Well, Your Honor, Mr. Flynn is here.

18 JUDGE SMITH: This is a genuine document, although it
19 was prepared in anticipation of litigation, it was prepared --
20 it is not -- it is not -- there is a big difference here, this
21 is executing the preparation for the litigation after the
22 agency represented by its Assistant General Counsel had decided
23 to points its needs as compared to, for example, the Schumacher
24 memorandum which was prepared purely for the purpose of
25 providing substantive information.

1 This is simply a mechanical routine exchange of
2 communication that has the -- it has the earmarks of
3 genuineness, the reliability of it, that FEMA came away from
4 that RAC, right or wrong, with the impression that Dr. Bores
5 would explain how the PRA of Seabrook was important in the
6 consideration.

7 MR. DIGNAN: Your Honor, if I may note, and this is
8 my concern, before you articulate it as having earmarks of
9 genuineness I would respectfully direct the Board's attention
10 to the last paragraph: "Because of the familiarity and
11 expertise in this area, which no one else on the RAC has, the
12 RAC has determined that it is essential to the effective
13 presentation of FEMA's testimony on this issue that Dr. Bores
14 be available."

15 There's been absolutely no testimony that I'm aware
16 of that the RAC ever discussed who would testify at the April
17 15 meeting; and the record is legion that there was no meeting
18 of the RAC between April 15 and May 1. So that statement is
19 just plain flat wrong.

20 JUDGE SMITH: That has nothing to do with it.

21 MR. DIGNAN: RAC made no such --

22 JUDGE SMITH: That has nothing to do with it. It
23 doesn't matter if everything contained in this letter is flat
24 wrong.

25 MR. DIGNAN: Well, the --

1 JUDGE SMITH: The letter is --

2 MR. DIGNAN: -- Your Honor said it had earmarks of
3 reliability, if everything in it is wrong --

4 JUDGE SMITH: Yes, under the circumstances --

5 MR. DIGNAN: -- it ain't reliable.

6 JUDGE SMITH: The circumstances surrounding it had
7 earmarks of reliability which is an entirely different
8 consideration as to whether in fact it is true or not when the
9 full record is developed.

10 This is an agency letterhead --

11 MR. DIGNAN: Your Honor --

12 JUDGE SMITH: -- from the Assistant Attorney General
13 to --

14 MR. DIGNAN: -- I submit --

15 JUDGE SMITH: -- the other in a normal course of the
16 memorandum of understanding, getting a witness.

17 MR. DIGNAN: I submit that --

18 JUDGE SMITH: The fact that -- go ahead.

19 MR. DIGNAN: I apologize Your Honor.

20 JUDGE SMITH: No, that's all right. I've interrupted
21 you, as a matter of fact.

22 MR. DIGNAN: I'm just submitting that while I
23 understand this concept of earmarks of reliability, earmarks of
24 reliability of a lot of thing, and when something makes a flat
25 factual statement that is demonstrated -- I don't think there's

1 anybody in this room who would argue that the RAC had made any
2 determination as to what witnesses were necessary, that
3 immediately starts to erode, at least in my mind, any
4 reliability.

5 And this is the problem with the document. The basic
6 problem with the document is it's written from one lawyer to
7 another, I'm not going to make him a witness and I don't think
8 any lawyer should ever be made a witness. You can't cross-
9 examine him. What this is, is what Ed Thomas told him. And
10 apparently, Thomas told him that the RAC had made such a
11 determination or he told him that it wasn't true.

12 JUDGE SMITH: The point is not, was Mr. Flynn correct
13 as to the PRA --

14 MR. DIGNAN: No, the point is, was Mr. Thomas
15 correct.

16 MR. OLESKEY: That's argument. They can argue until
17 the cows come home.

18 JUDGE SMITH: Well, even you agree that there could
19 be -- I agree. Even you agreed that it could be taken for Mr.
20 Thomas's impression.

21 MR. DIGNAN: FEMA's impression.

22 JUDGE SMITH: Oh, boy, I --

23 MR. OLESKEY: Because he did agree it to be taken
24 to the --

25 MR. DIGNAN: I went further, Judge, I went further

1 and said for FEMA's. I probably shouldn't have, but I did.

2 JUDGE SMITH: Well, then what are you arguing now?

3 MR. DIGNAN: What I'm arguing now is when Your Honor
4 starts calling it, having earmarks of reliability --

5 JUDGE SMITH: Yes.

6 MR. DIGNAN: -- this one on its face --

7 JUDGE SMITH: If it doesn't have earmarks and
8 reliability, then you should not have accepted it yourself.

9 MR. DIGNAN: I shouldn't have. I should have read
10 quicker.

11 MR. TURK: And you withdraw the acceptance.

12 JUDGE SMITH: It's got the earmarks of reliability.
13 Not accuracy, reliability as to -- in that sense, as earmarks
14 of reliability in that it is not -- it does not have the
15 earmarks of a contrived document.

16 MR. TURK: Well, --

17 JUDGE SMITH: Now, accuracy is something else.

18 MR. TURK: Your Honor, I don't know what purpose this
19 all has.

20 MR. DIGNAN: I think it was contrived, Your Honor,
21 and I think --

22 MR. TURK: I hear --

23 MR. DIGNAN: -- it has all the earmarks of a
24 contrived document.

25 JUDGE SMITH: Point them out to me then.

1 because --

2 MS. WEISS: This is outrageous. This is outrageous.

3 MR. DIGNAN: It was contrived in the sense that all
4 it represents is a statement by what this man wrote to a lawyer
5 at NRC which he was told by one person who sat in that RAC
6 meeting. Well, the question of whether he contrived it or not
7 is very much at issue.

8 JUDGE SMITH: It's not contrived by the author of it,
9 that's the point I'm making.

10 MR. DIGNAN: Certainly it was not contrived --

11 JUDGE SMITH: Then that is the earmark of reliability
12 upon which we depend. It can be as inaccurate as it can be,
13 but nevertheless, when the letter was written it was written
14 correctly, and there is no suggestion that he didn't believe
15 what he said.

16 Now, it could be just loaded with errors, that's an
17 entirely different matter.

18 MR. DIGNAN: Then the objection changes, Your Honor,
19 and it becomes very simple, to the extent it is offered for
20 what anybody at the RAC understood or anything else, Mr. Flynn
21 was not a competent witness to give that, he wasn't at the
22 meeting.

23 JUDGE SMITH: It's hearsay in that respect.

24 MR. DIGNAN: That's right.

25 MR. TURK: Your Honor, let me note for the record

1 that when Your Honor indicated he didn't think there was
2 anything here that indicated it may have been contrived, I
3 heard Mr. Flynn say off the record or in the back of his chair
4 that he thinks it was contrived.

5 MR. OLESKEY: Oh, this is pathetic.

6 MS. WEISS: I have never seen --

7 MR. OLESKEY: You know, Mr. Turk gets to testify
8 about what he thinks, now he's testifying about an across-the-
9 room alleged overheard conversation. Please, counsel.

10 MR. TURK: Well, Your Honor, I have no problem --

11 JUDGE SMITH: Well, all right. We will accept this
12 letter.

13 MR. TURK: For what purpose then?

14 JUDGE SMITH: Let me back -- we will accept this
15 letter as, number one, that it reflect what Mr. Flynn believed
16 to be the case when he wrote it. And it therefore reflect what
17 FEMA believed to be the case when he wrote it.

18 You seem -- everyone seems to agree that it reflects
19 what Mr. Thomas believed to be the case, and if you agree with
20 that, no problem, we'll accept that or we may have had some
21 problems with that.

22 Now, as to the weight which will be given to it. We
23 recognize that the statement at the bottom, as you can see, the
24 technical material provided by Dr. Bores is essential to RAC's
25 deliberation. Now, wait a minute.

1 you discover that your own Office of General Counsel had not
2 previously been aware that you had given the RAC the position
3 paper of February 18, '87?

4 A (Bores) I'm not sure how the Office of General
5 Counsel had gotten the paper. Well, yes, I do, as a matter of
6 fact, I guess we got it through the Office of Nuclear Reactor
7 Regulation, when they had asked for a copy of the paper --

8 Q From you?

9 A (Bores) From me so that they could review in
10 response to contentions. And because of the Freedom of
11 Information-type concerns I had, after a number of discussions
12 it was decided to send a copy to a member of the Office of
13 General Counsel at which the paper could be reviewed.

14 We were still treating it at that point as
15 predecisional material.

16 Q That is, it was decided by you and somebody else that
17 you'd send your paper to the lawyers at the NRC rather than to
18 somebody at NRR who needed it --

19 A (Bores) That is correct.

20 Q -- because they needed it for discovery.

21 A Again, it was in that manner that it was discussed
22 that it would be sent there and it could be viewed over there.
23 It was a concern again for uncontrolled circulation.

24 Q All right. And this came up because you found out
25 some time after the RAC meeting that your own lawyers in

1 Washington had never seen the paper; right?

2 A (Bores) Well, I knew they hadn't seen it. I hadn't
3 provided a copy; unless there was a leak outside of the NRC,
4 then they should not have gotten it.

5 Q But they made it clear to you that they found -- they
6 now knew it existed and they were concerned about it because of
7 the need for agency consistency; right?

8 A (Bores) No, we raised it with them in terms of how
9 to provide the information to our office of Nuclear Reactor
10 Regulation for their use.

11 Q Okay.

12 A (Bores) I think that's when, you know, OGC was
13 brought into it.

14 Q All right.

15 A (Bores) I mean, that's my understanding.

16 Q And that's after the RAC meeting; right?

17 A (Bores) That's after the April RAC meeting; that's
18 correct.

19 Q Okay. Now, at the same time you were drafting some
20 changes to the paper which you termed rather minor and Mr.
21 Rospenda was drafting up the summary of the meeting on behalf
22 of the RAC; correct?

23 A (Bores) I think I drafted up changes, you know,
24 prior to the -- providing a copy of the paper to our
25 headquarters.

1 Q Okay. But it's some time after the RAC, both these
2 things are going on?

3 A (Bores) That's correct.

4 Q Rospenda is working in Chicago, you're working in
5 King of Prussia, Pennsylvania?

6 A (Bores) That's correct.

7 Q Okay.

8 A (Bores) But in terms of time sequence, I mean, these
9 changes I think were drafted prior to sending a copy of the
10 paper down to headquarters.

11 Q Okay.

12 A (Bores) That's all.

13 Q Then you become aware because it's Attachment 12 to
14 your mailer to Mr. Turk and we all have it, that Mr. Rospenda
15 has sent to Elaine Chan, Mr. Turk's associate at the lawyer's
16 office there at the NRC a 16 page document which is entitled,
17 on page one, "Revised Town of Hampton Contention VIII to
18 Revision 2." Correct?

19 A (Bores) That's correct.

20 Q When did you become aware that Rospenda at Argonne,
21 the scribe for the RAC, had sent his draft out of the RAC
22 meeting down to your lawyers, the agency's lawyers in
23 Washington under the date of May 7th?

24 MR. FLYNN: I object to Mr. Rospenda being described
25 as the scribe for the RAC. That is not how Mr. -- how Dr.

1 Bores has described him.

2 MR. OLESKEY: The contractor who performed duties for
3 FEMA including taking minutes at the RAC, as you've testified.

4 BY MR. OLESKEY:

5 Q When did it come to your attention?

6 MR. TURK: When did he -- I see Dr. Bores looking at
7 his annual leave records, I don't know if he understands the
8 question.

9 THE WITNESS: (Bores) Yes, I do.

10 My guess is somewhere around mid-May, I can't put a
11 date on it.

12 BY MR. OLESKEY:

13 Q Did you review the document in mid-May when you first
14 saw it?

15 A (Bores) Not completely.

16 Q Did you form a judgment that it didn't reflect the
17 substance of what you thought the RAC had concluded back in
18 April 15th when you reviewed it in mid-May?

19 A (Bores) I think they concluded the general direct --
20 let me just say, I think the direction is right, but I think
21 the emphasis was wrong.

22 Q Well, the emphasis that was wrong was that the paper
23 in two or three places copied out your conclusions from your
24 original February memo, those dot points on page 10 as matters
25 that were considerations that were important to the RAC in

1 arriving at its conclusions on the beach population; correct?

2 A (Bores) Yes. But I also think they in their
3 discussion seemed to weigh much heavier the containment issue
4 than had been discussed at the RAC meeting.

5 Q In other words, Mr. Rospenda who sat there and took
6 notes throughout the meeting put a different emphasis on the
7 drift or thrust of that meeting than you did, looking back on
8 it; right?

9 A (Bores) Yes.

10 Q And he's a contractor for FEMA who works in Chicago
11 and not with FEMA in the region or in Washington on a regular
12 basis; right? He works at Argonne?

13 A (Bores) That's his normal office, yes.

14 Q In having determined that the emphasis in this
15 document was different than the emphasis you thought had been
16 placed on these technical issues in the RAC meeting a month
17 earlier, did you write to Rospenda?

18 A (Bores) I did not.

19 Q Did you call him?

20 A (Bores) No, I didn't.

21 Q Did you call Thomas and say, wait a minute, you guys
22 have got it wrong, this containment issue -- the risk issue are
23 not the important things, you misunderstand the position I was
24 making in April?

25 A (Bores) Well, at this time I was talking to Mr.

1 Thomas. And, however, at this point, talking about withdrawing
2 the entire containment issue.

3 Q Was this at the period that you told Mr. Thomas in
4 substance, I don't want to talk about the February paper
5 anymore because the lawyers are involved and it's getting very
6 complicated?

7 MR. TURK: Is that a quote from somewhere?

8 MR. OLESKEY: That's the substance of what I'm
9 asking.

10 MR. TURK: I've never heard that testimony.

11 MR. OLESKEY: I don't care whether you've heard it or
12 not, counsel.

13 THE WITNESS: (Bores) I haven't heard it either, so.

14 BY MR. OLESKEY:

15 Q Do you recall that -- do you recall saying something
16 along those lines to Mr. Thomas?

17 A (Bores) That I don't want to talk about the February
18 paper anymore.

19 Q There's no point in talking about the February paper
20 now that the lawyers are involved and there are questions about
21 whether it has to be withdrawn?

22 A (Bores) I could have told him that, I don't
23 remember.

24 Q But that was the case, wasn't it, in mid-May?

25 MR. TURK: What was the case?

1 BY MR. OLESKEY:

2 Q That the lawyers at the agency in Washington, your
3 agency, were involved with preparing a position of the agency,
4 as you've already said, and your paper had gotten drawn into
5 that process; isn't that right?

6 A (Bores) Our people at NRR were involved in terms of
7 responding to contentions, okay. But -- so it's not an agency
8 position per se.

9 Now, whether -- I'm not sure when Mr. Turk or other
10 counsel got involved in that process.

11 Q Well, you know, Ms. Chan was involved from the 7th of
12 May on because this is a telex that went to her with Rospenda's
13 draft of the --

14 A (Bores) I didn't see that.

15 Q -- until the middle of May?

16 A (Bores) I didn't see that until, I think it was
17 after that.

18 Q Well, you said the middle of May, what's your
19 recollection now?

20 A (Bores) Okay, you could be right on that.

21 Q Well, I'm not --

22 A (Bores) It may be the middle of May, yes.

23 Q I'm just telling you what I think you said earlier.

24 A (Bores) Middle of May, the end -- toward the end of
25 May, yes, somewhere in there. I could not find my travel

1 indication.

2 Q Well, you're saying that when this particular branch
3 of the headquarters, NRR, takes a position that's not a staff
4 position either, that's just a branch position?

5 A (Bores) It's staff position, not necessarily an
6 agency position, I would think, I mean, when they're
7 responding. But they -- you know, it's all kinds of different
8 sorts of things. When I send my paper in I can get
9 concurrence, it doesn't necessarily mean it's a staff position.
10 It means that they don't have any problems with it; that's
11 generally what a concurrence is.

12 Q It's the middle of May to the end of May, before you
13 go on vacation, you know that this branch of the NRC called NRR
14 is preparing the answers to contentions; right?

15 A (Bores) That's correct.

16 Q You know that your memo has at last gone down there
17 and is being looked at; right?

18 A (Bores) That's correct.

19 Q You know that Rospenda's draft of what he thinks, at
20 least, the RAC said and emphasized on April 15th has gone down
21 there to the lawyers; right?

22 A (Bores) I didn't know that.

23 Q You knew it by the mid to the end of May, you
24 said --

25 A (Bores) I meant the end of May, yes. So some of

1 these things are slightly out of sequence. So when I did one
2 thing I may not have been aware of something else.

3 Q All right.

4 A (Bores) I'm trying to --

5 Q Fair enough.

6 A (Bores) -- to provide --

7 Q I'm just trying to summarize the things that
8 apparently are happening that you're aware of in the mid to the
9 end of May.

10 And at the same time the lawyers had told you or
11 somebody at headquarters has told you that there may be reasons
12 why some of the site-specific material in your memo should not
13 in fact be relied upon by the RAC, that it should be withdrawn
14 and a new paper offered the RAC; isn't that right?

15 A (Bores) Someone told me that, yes.

16 Q Who was that?

17 A (Bores) Well, I had numerous of discussions with
18 people within the Nuclear Reactor Regulations and Emergency
19 Preparedness Branch and, you know, specifically. I did have
20 discussions with Mr. Turk.

21 Q What about the non-lawyers?

22 A (Bores) This is Nuclear Reactor Regulation.

23 Q Yes.

24 A (Bores) That branch.

25 Q Yes.

1 A (Bores) Oh, who were these specifically with? I
2 talked to Dr. Barrett who works for Dr. Congel. I talked to
3 Dave Matthews. I had talked to other members of the staff.

4 Q Okay. And this is after the point where you've made
5 your own revisions to the February paper and sent them off to
6 Mr. Thomas, is that right, because you did that in April?

7 A (Bores) Yes.

8 Q And now what you're hearing is, maybe the revisions
9 and the whole concurrence that the RAC put together there at
10 that harmonious meeting of April 15th is going -- something may
11 happen because the people in Washington who have to make sure
12 everything is consistent are concerned that your paper may have
13 gone too far; right?

14 A (Bores) That's correct.

15 Q Okay. And you conveyed this kind of information to
16 Mr. Thomas as it evolved, didn't you?

17 A (Bores) Periodically, yes.

18 Q I mean, you wanted him to know that the consensus
19 that had been built in April, that he'd started trying to build
20 in December of '85 was in danger or possibly in danger because
21 the linchpin which was your very detailed memo was in trouble
22 with your own people in Washington; right?

23 A (Bores) Only one aspect of it.

24 Q All right.

25 A (Bores) Very clearly, again, I had indicated that in

1 terms of the plan itself, that continued, you know, remained
2 with there is no change there. And as a matter of fact, the
3 bases of the review remains exactly the same.

4 Q That is matching up the plan with the NUREG elements?

5 A (Bores) That's correct.

6 Q All right. That was the first part of your memo?

7 A (Bores) That's correct.

8 Q It was the last part you were in troubled on in
9 Washington?

10 A (Bores) That's correct. And since it was not viewed
11 as essential --

12 Q By the NRC in Washington or by you?

13 A (Bores) Or by me.

14 Q Okay. Then it could be withdrawn, and as far as you
15 were concerned, and the folks you were talking to in Washington
16 were concerned, it shouldn't change the way the RAC came out;
17 right?

18 A (Bores) That's correct.

19 Q Okay. That was your attitude, wasn't it?

20 A (Bores) Yes, it was.

21 Q All right.

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22 (Continued on next page.)

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25

TS 1 And it was a problem for you when you saw later in
2 May Mr. Rospenda's draft of the minutes, because you understood
3 it wasn't just Ed Thomas who took --

4 A (Bores) Excuse me. Draft of minutes?

5 Q Yes, or the summary that Mr. Rospenda did that's
6 Attachment 12 to your memorandum, the draft RAC input.

7 JUDGE SMITH: Page is that?

8 MR. OLESKEY: Global 44, Your Honor.

9 THE WITNESS: (Bores) Oh, that's not draft RAC
10 input.

11 BY MR. OLESKEY:

12 Q All right, how should that be characterized?

13 A (Bores) This looks to me like it's draft response to
14 contentions.

15 Q Which relies in substantial part on the RAC process,
16 does it not, including the special meeting of the RAC which is
17 discussed starting at Page 45, the second page, in the middle
18 of the page?

19 A (Bores) Okay, RAC did not convene to discuss
20 contentions or response to contentions.

21 Q Yes.

22 A (Bores) This is a use of the paper in discussing
23 contentions by FEMA and its contractors.

24 Q And you were distressed when you finally saw this in
25 late May because you recognized it wasn't just Ed Thomas who

1 misunderstood your emphasis, it was also Mr. Rospenda, right?

2 A (Bores) I'm not sure that's any different. I mean
3 since Mr. Rospenda works for Mr. Thomas.

4 Q Well, he works for FEMA, doesn't he, sir?

5 A (Bores) He works for FEMA Region 1.

6 Q He works for FEMA. Isn't he under contract with
7 FEMA, not Ed Thomas?

8 A (Bores) Mr. Thomas, I am sure, tells him what he
9 needs to have known.

10 Q Don't you think he has to keep the agency happy and
11 not just the region officials, sir?

12 JUDGE SMITH: I think you're quarreling now.

13 BY MR. OLESKEY:

14 Q In any event, did you tell Mr. Thomas that you
15 thought this document that Rospenda had drafted wouldn't be
16 appropriate testimony for FEMA because it relied on aspects of
17 your position that you thought should no longer be relied upon?

18 A (Bores) I didn't tell him that, because in fact by
19 the time I found out about this we were already in the process
20 of redrafting, and I had indicated to him that I was going to
21 be removing a section of my paper.

22 Q Well, you understood when you did see Rospenda's
23 draft material here in mid to late May that it was going to be
24 used by FEMA as a basis for answers it had to make to
25 contentions in the case; is that right?

1 MR. TURK: At what point in time?

2 MR. OLESKEY: Mid to late May, counsel.

3 THE WITNESS: (Bores) The question was did I --

4 MR. OLESKEY: You understood --

5 THE WITNESS: (Bores) -- know that it was going to
6 be used in response to contentions?

7 BY MR. OLESKEY:

8 Q Yes, by FEMA?

9 A (Bores) By FEMA. That was my understanding, yes.

10 Q Okay. And you knew that FEMA had to make answers
11 filed before this Board in early June of last year, right?

12 MR. TURK: At what time? In mid May did he know
13 that?

14 MR. OLESKEY: Well, I'll accept that, counsel.

15 THE WITNESS: (Bores) I was not aware of filing
16 deadlines. I mean that was something I had not intended to get
17 involved with.

18 BY MR. OLESKEY:

19 Q Well, you say you knew that your own NRR in
20 Washington was making preparation for a filing, correct?

21 A (Bores) That's correct. They have their own
22 schedule.

23 Q Did you know what that was?

24 A (Bores) No.

25 Q All right, you just knew --

1 A (Bores) I mean I guess I probably heard the date,
2 but it didn't ring a bell because I was not responsible for
3 drafting it.

4 Q Okay, you just knew they had to make a filing and
5 FEMA had to make a filing in this proceeding.

6 A (Bores) That's correct.

7 Q And there was a lot of paper flying around involved
8 with both.

9 A (Bores) That's correct.

10 Q Okay. Now you described on a direct a process of
11 consultation, as I understood it, between yourself and folks in
12 Washington over the redrafting of your paper to the RAC,
13 correct?

14 A (Bores) I'm not sure how I described that. I can't
15 recall the --

16 Q What's the most accurate way to describe what's going
17 on in May between NRC headquarters or any part of it, and you
18 about what kind of paper would finally go back to the RAC?

19 A (Bores) Okay, I had a meeting with NRR, with Mr.
20 Turk and Ms. Chan.

21 Q And NRR, all one meeting?

22 A (Bores) Yes.

23 Q Was Matthews there?

24 A (Bores) As I recall, he was; at least for part of
25 it.

1 Q Okay. Congel?

2 A (Bores) I can't recall that.

3 Q Okay.

4 A (Bores) Dr. Barrett was.

5 Q Okay. And what was the purpose of that meeting?

6 A (Bores) The purpose of the meeting generally was to
7 discuss what they found objectionable, if you would, and to
8 look at an approach to redrafting the memo.

9 Q About when was this?

10 A (Bores) It's about the same time I found out about
11 the draft, FEMA draft response to contentions; whenever that
12 was.

13 Q Mid to late May, before you went on vacation; is that
14 right?

15 A (Bores) That's correct.

16 Q Okay. And as a result of that meeting did you have
17 an understanding of what you were supposed to do with respect
18 to further revisions in your paper?

19 MR. TURK: Did he have an understanding of what he
20 was to do?

21 MR. OLESKEY: Yes, counsel, that's the question.

22 THE WITNESS: (Bores) I understood --

23 MR. TURK: That assumes that somebody has told him
24 something about what he is to do. Going to ask that foundation
25 question?

1 MR. OLESKEY: Sure.

2 JUDGE SMITH: It's not necessary.

3 MR. OLESKEY: All right. I'll be happy to oblige
4 though if the Board wants it.

5 JUDGE SMITH: It's up to you.

6 THE WITNESS: (Bores) I had an understanding as to
7 what parts of the paper NRR had problems with as well as OGC.

8 BY MR. OLESKEY:

9 Q All right. Well, let's shorthand it. What were you
10 told in substance about the concerns that both of those arms of
11 the NRC staff had.

12 A (Bores) Well, they were concerned that it was sort
13 of extraneous material. It was not essential to the finding.
14 It was extraneous as far as the Brookhaven study or any other
15 containment analyses, or system analyses. Studies were not yet
16 completed. It would be some time before they were completed,
17 and therefore if they were not needed, we shouldn't include
18 them.

19 Q Was that -- that the concern from both the general
20 counsel's office and NRR?

21 A (Bores) Yes, I can't distinguish between them in my
22 own mind.

23 Q All right. So was there a consensus, if I may use
24 that word, at that meeting of what was going to happen
25 physically to the paper before it got resubmitted to the RAC?

1 A (Bores) No, I think it's more a consensus as to
2 what parts they felt certainly needed to have another look at.
3 They might, you know, for me to take another look at, or
4 perhaps rewrite.

5 Q Then they wanted to take a look at it before you sent
6 it back to the RAC?

7 A (Bores) That is correct.

8 Q Okay. Did you do that?

9 A (Bores) Yes.

10 Q All before you went on vacation on May 26th?

11 A (Bores) Yes.

12 Q So you made a redraft. Did you take it to Washington
13 or send it to Washington?

14 A (Bores) I had sent it down.

15 Q Was there then a conversation with some of these
16 people about how acceptable they found your changes?

17 A (Bores) There were several telephone calls.

18 Q As a result of those calls were any further changes
19 made in the draft?

20 A (Bores) I think it would be fair to say that I had
21 drafted several options, and we had discussed a number of them.

22 Q Did any of your options leave any references to the
23 containment or risk at Seabrook?

24 MR. TURK: Your Honor, are we going a little far
25 afield here? I mean we have Bores 1. We have Bores 2. What

1 possible relevance is there to whatever discussions may have
2 taken place about them, attempts to redraft Bores 1?

3 We have both papers. We know what's there and what
4 was taken out.

5 JUDGE SMITH: Well, he wants to probe how it got out,
6 or whatever.

7 MR. OLESKEY: They're saying that you have to be a
8 real idiot not to have gotten their point the first time. I
9 don't think you have to be an idiot to have taken another
10 construction to the Bores 1 paper than you did, and I'm
11 entitled to probe to see what constructions they themselves
12 gave to it in their internal discussions.

13 As soon as I get that answer, we're moving on.

14 THE WITNESS: (Bores) The question.

15 BY MR. OLESKEY:

16 Q Did any of your drafts leave in references similar to
17 those in the original draft of the containment or to risk as a
18 factor to be considering in making these assessments for the
19 beach population at Seabrook?

20 MR. TURK: Your Honor, I have an objection.

21 Am I overruled on it? What's the relevance of this?

22 JUDGE SMITH: He stated the relevance was -- which
23 was somewhat of a surprise to me -- that he wondered if there
24 was confusion as to the meaning of Bores 1 within the NRC.

25 MR. OLESKEY: Or the significance.

1 JUDGE SMITH: Significance.

2 MR. TURK: But that's not his pending question. He
3 question is --

4 JUDGE SMITH: That's his purpose. The question goes
5 to that end.

6 MR. FLYNN: Your Honor, I thought we were exploring
7 what the other RAC members understood when they took
8 whatever --

9 JUDGE SMITH: His point, as I understand it, is that
10 reasonable people could differ on what was meant by Bores 1.
11 And, indeed, even perhaps people in the NRC differed, and as I
12 understand what he's coming to.

13 MR. OLESKEY: Even he himself may have thought --

14 MR. FLYNN: But they may --

15 MR. OLESKEY: -- that there were different
16 constructions to be assigned to it.

17 JUDGE HARBOUR: Unless you're an idiot.

18 MR. FLYNN: There may have been 50 different drafts,
19 but if only one of them ever got to the RAC, what are the
20 others meant?

21 MR. OLESKEY: This is the RAC representative of the
22 NRC. He's in the position, in effect, of formulating policy
23 recommendations now to people in Washington.

24 (Board confer.)

25 (Continued on next page.)

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1 JUDGE SMITH: The Board has read this Bores 1, and
2 while we haven't read it word for word as we will with the
3 proposed finding in mind; we read it word for word but not with
4 this issue in mind. We note at the beginning he alludes to
5 additional plan discussion.

6 JUDGE HARBOUR: Page 6.

7 JUDGE SMITH: On Page 6. We also have read the
8 discussion about the containment and the conclusions about the
9 containment, and the containment bypass, and the ultimate
10 conclusion in the last paragraph on Page 10, and we believe, as
11 we sit here now, that reasonable minds could have interpreted
12 it as saying that the containment features are a part of
13 meeting the standards of NUREG-0654. Not that it's the best
14 way to read it, but it's a way it can be read.

15 Now if that impression helps you, can you cut short
16 some of your cross-examination?

17 MR. OLESKEY: Possibly. I'm pretty close to the end
18 of that phase anyway, because we're getting into June, and
19 there are different events as you're aware.

20 JUDGE SMITH: But the -- you know, you don't have to
21 kill it.

22 MR. TURK: Your Honor, the pending question has
23 nothing to do with that. The pending question is what kinds of
24 drafts were you working on with headquarters in revising Bores
25 1.

1 JUDGE SMITH: It's his way of getting, as he
2 represented, and it's his way of determining whether others at
3 NRC who are experts in this interpreted it that way too.

4 MR. TURK: But the first --

5 JUDGE SMITH: Maybe that's not the way you would do
6 it, but, you know, as we always said everybody does his own
7 thing here.

8 MR. TURK: Your Honor, the focus is on whether Mr.
9 Thomas had a reasonable perception of this. And there is
10 testimony by Dr. Bores about statements made in the --

11 JUDGE SMITH: That's different.

12 MR. TURK: -- April meeting.

13 JUDGE SMITH: That's different.

14 MR. TURK: Which could have --

15 JUDGE SMITH: -- he knows.

16 MR. TURK: Which would have cleared up any confusion.

17 JUDGE SMITH: That's argument. That's the whole
18 record. He's looking, he's going to this document now.

19 We do not have the ability now does any lawyer that
20 I've seen have the ability to in one big burst, wham, produce
21 all the evidence in full context. We have to accept it and
22 analyze it a piece at a time.

23 MR. OLESKEY: Pending --

24 JUDGE SMITH: Overruled, as you may have --

25

1 BY MR. OLESKEY:

2 Q The pending question was did any of your drafts leave
3 in references to the containment or risk as factors bearing
4 upon the safety of the beach population at Seabrook when
5 evaluating under the NUREG-0654 criteria?

6 MR. TURK: Well, wait a minute. Is that different
7 from saying -- a problem with that, Your Honor.

8 If all he's said is did any of your redrafts include
9 containment features, that's different from saying as part of
10 this means of meeting NUREG-0654.

11 MR. OLESKEY: All right, I'll rephrase it.

12 BY MR. OLESKEY:

13 Q Did any of your drafts offered on this second round
14 of discussion with your headquarters leave in references to the
15 containment or risk as affecting the safety of the beach
16 population at Seabrook?

17 A (Bores) As I recall, there was one draft that I did
18 not include any -- I mean I didn't include any risk on any of
19 them, but one of them I did have a two sentence or so
20 description of the containment, and that was also not
21 acceptable.

22 Q Okay. So you cut that out, too?

23 A (Bores) That's correct.

24 Q And he ended up with a document that got sent out on
25 June 4th, is that right?

1 A (Bores) That's correct.

2 Q Since you were on vacation who sent that document
3 out?

4 A (Bores) My supervisor, Mr. Thomas T. Martin.

5 Q Now what was the status of completion of your revised
6 memo when you left on vacation on May 26th?

7 A (Bores) It was essentially complete, and so I had a
8 number of telephone discussions with Mr. Martin --

9 Q Did Martin --

10 A (Bores) -- prior to him sending it out.

11 Q I'm sorry, I didn't hear that last.

12 A (Bores) I had several telephonic discussions with
13 Mr. Martin prior to his signing it out.

14 Q Oh, he called you on vacation?

15 A (Bores) Or I called him.

16 Q Or you called him, okay.

17 So you talked with Martin between the 26th of May
18 when you left on vacation and June 4th when he sent it out
19 under your name?

20 A (Bores) That's correct.

21 Q Okay. Did he tell you that the last draft you had
22 left had at that point whatever clearance it needed within the
23 NRC?

24 Did he tell you during that period that the last
25 draft you left when you went on vacation had whatever clearance

1 it needed to be sent to the RAC?

2 A (Bores) Okay. The last draft, we may have done some
3 minor word changes. I certainly had a copy with me. And I did
4 agree to any minor word changes that we may have meant -- may
5 have met.

6 Q And was Martin telling you that he was simultaneously
7 having conversations with Washington to make sure everybody who
8 was in this loop agreed that this was the final form of the
9 document?

10 A (Bores) Yes.

11 Q Okay. And was the final discussion you had with your
12 supervisor, Dr. Martin, on June 4th?

13 A (Bores) I don't know.

14 Q Well, it wasn't after June 4th, I take it, so it must
15 have been some time on that date or shortly before it.

16 A (Bores) On or before it.

17 Q Okay. Did Martin tell you that the NRC and FEMA had
18 had a meeting of headquarters people in Washington to talk
19 about this issue on June 2, 1987?

20 MR. TURK: June?

21 MR. OLESKEY: June 2, 1987.

22 MR. TURK: Check the date.

23 THE WITNESS: (Bores) I don't remember.

24 BY MR. OLESKEY:

25 Q Did you ever learn that?

1 A (Bores) I did not if that's true, but no.

2 Q If I represent to you that it's my understanding
3 there was a meeting of high officials from both agencies in
4 Washington on June 2nd to talk about this issue, this is the
5 first time you're aware of it; is that right?

6 A (Bores) I may have heard it, you know, much later
7 and just not remembered. But I certainly was not involved in
8 it. It did not make an impression on me.

9 Q And it doesn't today?

10 A (Bores) No, since I didn't know what was discussed.

11 Q Mr. Lazarus, were you aware of such a meeting on or
12 about the time it took place?

13 A (Lazarus) No, sir, I was not.

14 Q And you're not today?

15 A (Lazarus) No.

16 Q Okay. Now you came back from vacation on what, the
17 16th of June?

18 MR. TURK: Your Honor, may I note counsel has
19 misstated the dates, probably inadvertently. The vacation
20 started May 28th, not the 26th.

21 MR. OLESKEY: All right.

22 MR. TURK: And it ended on June 6th, according to the
23 prior testimony.

24 MR. OLESKEY: If that's right, I'll write it down
25 this time so I don't misstate it again.

1 THE WITNESS: (Bores) Glad I don't have to look it
2 up.

3 BY MR. OLESKEY:

4 Q Do you recall getting a memorandum from Ed Thomas as
5 RAC chairman some time after June 17, '87, but dated June 17,
6 '87, to all RAC members; subject: FEMA's Seabrook ASLB
7 submission; signed Jack Dolan, for Edward A. Thomas?

8 A (Bores) I don't remember.

9 Q You don't remember any document by that description?
10 Okay, let me show it to you.

11 A (Bores) I seldom remember titles and things of that
12 nature.

13 (Pause.)

14 MR. OLESKEY: Let's mark this, Judge, as Mass. AG
15 Exhibit 31, please.

16 (The document referred to was
17 marked for identification as
18 Massachusetts Attorney General's
19 Exhibit No. 31.)

20 THE WITNESS: (Bores) I do not remember seeing this
21 memo.

22 BY MR. OLESKEY:

23 Q What is that reference at the time?

24 What was your understanding of the reference at the
25 top to the date stamp and then NRC millstone 1, PO/2? Can you

1 help us with that at all?

2 A (Bores) Looks like it was received by fax either
3 probably from or at the millstone resident inspector's office
4 perhaps.

5 Q Okay. What about the handwriting on here which
6 appears to be one or more people? Can you identify the
7 handwriting under NRC millstone 1, and to the right of those
8 words on Page 1?

9 A (Bores) As to whose handwriting?

10 Q Yes.

11 A (Bores) I cannot.

12 Q Do you recognize some of the names as people at the
13 NRC: Turk, Matthews, Kantor, Congel?

14 A (Bores) Yes, they're all NRC names.

15 Q And the other names, Van Niel?

16 A (Bores) Yes.

17 Q They are too?

18 A (Bores) Yes.

19 Q Okay.

20 And then the reference received by Region 1, July 21,
21 '87, sent to J. Schumacher, RAC; do you see that?

22 A (Bores) Yes.

23 Q And both of you have indicated that he was involved
24 in the RAC process at this time?

25 A (Bores) That's correct.

1 A (Lazarus) For other sites.

2 A (Bores) For other sites.

3 Q Mr. Lazarus, have you ever seen this memo before?

4 A (Lazarus) I don't believe so. I just looked through
5 it briefly. I don't believe that I've seen it before.

6 Q Okay.

7 MR. OLESKEY: Your Honor, this was provided, I
8 believe, by Mr. Turk in one of his productions, either early in
9 December or December 24th, a Christmas Eve production. So my
10 view would be there is no question about its authenticity
11 except with respect to who put the handwriting on there, which
12 we don't seem able to clarify through these witnesses.

13 So I'd like to offer it in the same fashion that a
14 number of documents were offered by Mr. Turk; namely, as
15 another link in the historical chain of the evolving RAC and
16 FEMA position. It was a document which the Board is aware was
17 not included with the direct testimony or the submissions as
18 part of the direct testimony.

19 MR. TURK: And I take it you're not offering it for
20 truth of the contents. This was a communication that was made,
21 that's all.

22 MR. OLESKEY: Communication that was made, and it --
23 no, it says some things. I don't know if they're true or not.
24 It purports to state some information about what's happened.
25 That information may or may not be accurate, but it is stated,

1 or at least --

2 MR. DIGNAN: Well, yes, what is your offer? Is your
3 offer for the truth of the matters contained, or is your offer
4 simply for historical purposes?

5 Are you changing the offer now?

6 MR. OLESKEY: Ms. Weiss is suggesting, I think fairly
7 enough, that the same limitations that were applied to the NRC
8 documents as part of this chain be applied to this. So that
9 was part of the historical record, broadly speaking, as I
10 understood the Board's ruling.

11 JUDGE SMITH: But you will be proposing a finding
12 here that as of June 17, 1987, Mr. Thomas still believed that
13 the exceptional nature of Seabrook's containment was an aspect
14 of the FEMA position, and for the truth of that.

15 MR. OLESKEY: Well, that he still believed that a
16 crucial component of the first Bores paper, Bores 1 was the
17 inclusion of the technical opinion.

18 JUDGE SMITH: And it continued in effect through June
19 17th.

20 MR. OLESKEY: Yes. And I guess if this is a trial
21 with a jury, I'd be telling you when Mr. Thomas appeared I'd be
22 linking it up by having him say he sent it, and that was his
23 judgment at that time. I don't have him at this time.

24 JUDGE SMITH: That's partly for the truth contained
25 in there.

1 MR. OLESKEY: Yes. I don't have Thomas yet to say
2 that.

3 JUDGE SMITH: I understand.

4 MR. TURK: Can't accept it on that basis.

5 MR. DIGNAN: May I suggest it be received for
6 historical purposes only, and de bene for the other purpose
7 subject to it being linked up and cross-examined?

8 MR. OLESKEY: Well, you know, it's --

9 MR. DIGNAN: When and if Mr. Thomas appears.

10 MR. OLESKEY: It's essentially a business record of
11 FEMA done in the ordinary course of Thomas's duties. It does
12 reflect Thomas's state of mind. You may not agree that he had
13 the state of mind anybody else would have had at that time, but
14 it's what he had.

15 JUDGE SMITH: Well, I think that's an issue though.

16 MR. OLESKEY: No, I think the only issue is whether
17 or not -- the issue I understand being posed was was his view a
18 reasonable one for him to have held at that time.

19 JUDGE SMITH: No, I think -- well, maybe I don't
20 understand the issue, but I thought the issue might be that as
21 a consequence of the April 15th meeting Mr. Thomas knew that
22 the containment should not be a part of the NUREG-0654
23 evaluation, but nevertheless sent this memo on as I understand
24 the -- what I infer from what's happening here. That would be
25 different, wouldn't it?

1 I don't know. Am I wrong?

2 MR. OLESKEY: I don't know --

3 JUDGE SMITH: I'm asking that gentleman in the back
4 of the room, Mr. Dignan or Mr. --

5 MR. DIGNAN: My problem with the thing is not only
6 has Mr. Thomas had the benefit, if one credits Mr. Bores's
7 testimony, of a lecture on this subject at the meeting. But by
8 June 17th, he's had further lectures on this meaning as I've
9 heard the testimony, on the meaning of the NRC --

10 JUDGE SMITH: Well, aside from that, I'm just trying
11 to get the skeletal nature of what you believe is right or
12 wrong about this memo.

13 Is it your position that Mr. Thomas, as a consequence
14 of April 15th and further discussions, knew better than this
15 memo, or could you accept it for this reflects Mr. Thomas's
16 state of mind as of June 2nd, right or wrong?

17 MR. DIGNAN: I could not accept it for the latter
18 point absent Mr. Thomas connecting it up on the witness stand,
19 and subjecting himself to cross-examination.

20 JUDGE SMITH: Because you harbor doubts about it.

21 MR. DIGNAN: I certainly do.

22 MR. BACKUS: Your Honor, can I -- now I don't -- you
23 said this reflects his state of mind as of June 17th. I
24 wouldn't read it that way. I just wanted to note that in the
25 record. I think he's saying in here that as of the time of the

1 April 15th meeting he had a certain state of mind.

2 JUDGE SMITH: Okay. I haven't read it very well.

3 MR. FLYNN: I think there's more being read into this
4 than the letter actually says. He's not saying that as of June
5 17th he still had the impression that the containment was
6 essential to the finding.

7 Another way of reading it is, now that we -- now that
8 NRC has told everybody that it's not part of the rationale of
9 the -- of the original memo, that changes what FEMA is able to
10 do.

11 MR. TURK: Given the various interpretations that are
12 possible, Your Honor, I don't see why we need to accept if it
13 for any purpose except at this point to show the historical
14 flow of FEMA's position.

15 MR. OLESKEY: It's also there to show that the --
16 it's also offered to show that the position that FEMA had taken
17 on June 14th was not one that was sprung on the RAC on July
18 30th, which might have been understood from prior testimony.

19 JUDGE SMITH: What he's saying here -- the issue
20 between you now is, is it not, that Mr. Thomas is saying that
21 as of April 15th, throughout April 15th, despite Dr. Bores's
22 explanation at that meeting --

23 MS. WEISS: Assuming it took place.

24 JUDGE SMITH: -- assuming it took place, that the
25 Bores 1 memo was adopted. Is that the issue between you? I

1 mean that's what you would like for us to infer from here,
2 wouldn't you?

3 MR. DIGNAN: The crux of my problem is the statement
4 right after he describes the Bores memorandum. He says, a
5 crucial component of this position paper, meaning the Bores
6 memorandum, at least if I'm citing the antecedents correctly,
7 was the inclusion of expert technical opinion, and by
8 assumption, future testimony by the NRC on the exceptional
9 nature of Seabrook's containment system which would result in a
10 planning base for Seabrook way in excess of the current one-
11 half hour minimum described in NUREG-0654.

12 He's saying that that was a crucial part of the Bores
13 paper, which the Bores's memorandum, which he's adopted under
14 oath in this proceeding, states that he fully explained it
15 April 15th that that was not a crucial component.

16 Now if he wants it in for the truth of that
17 statement, I want Mr. Thomas on the witness stand and cross-
18 examine him on that question. That's my point. He's got to
19 connect that up or it's rank hearsay, and I do not think this
20 makes it as a business record.

21 JUDGE SMITH: Right. I'm just trying to identify
22 what is the issue in controversy that as to which we should not
23 accept hearsay testimony.

24 MR. DIGNAN: That's it, right there.

25 JUDGE SMITH: And I'm just trying to get it, and I

1 think I see it now. I mischaracterized it before as his view
2 as of June 17th, because I hadn't read it. But he's saying
3 clearly here that on April 15th, contrary to the memorandum of
4 Dr. Bores, that the RAC adopted Bores 1 memorandum, and that's
5 an issue very much in controversy. I think we'll have to limit
6 it to historical purposes unless --

7 MR. OLESKEY: No, there's no dispute about that.
8 They did adopt -- these witnesses and everyone else agrees, as
9 far as I understand it, they did adopt Bores's February paper
10 as the RAC position on April 15th.

11 JUDGE SMITH: What they understand and Thomas
12 understood at that time that containment was an additional -- I
13 don't know, I guess I have to sit down and read it.

14 MR. OLESKEY: Though it was an important or crucial
15 component --

16 MR. DIGNAN: Your Honor, the crux is whether or
17 not -- Thomas is saying here that crucial component of the
18 Bores memorandum that was adopted was the containment.

19 Bores says in his testimony, or excuse me, Dr. Bores,
20 I'm sorry, one gets abstract and I apologize. Dr. Bores says
21 in the memorandum which he's adopted under oath in this
22 proceeding as testimony, as I've heard him twice, he says he
23 explained at the April 15th meeting to Mr. Thomas, to Mr.
24 Thomas directly that that was not a crucial part of his
25 position.

1 Now this is trying to be offered to say that Thomas
2 understood at April 15th that it was a crucial component, and
3 that is in issue between us as to whether he could rationally
4 have had such an understanding or whether his testimony on that
5 point was correct.

6 JUDGE SMITH: Is correct.

7 MR. DIGNAN: And that being the case, it cannot be
8 admitted except de bene subject to Mr. Thomas taking the stand
9 and defend the position.

10 MR. OLESKEY: That's not so.

11 JUDGE SMITH: First, before you argue, agree or
12 disagree with his characterization of the issue.

13 MR. OLESKEY: I think that Thomas could reasonably
14 have taken the position, which is in fact what I understand he
15 did, that even if the containment and the risk studies weren't
16 crucial to the NRC, they were to him and others.

17 JUDGE SMITH: All right, that's fine, but that's the
18 issue.

19 MR. OLESKEY: Yes.

20 JUDGE SMITH: Okay. So it goes directly to the
21 subissue in dispute, and should be received only for historical
22 purposes, and not for -- it does not have the indications of
23 reliability that a regular business record would have, or a
24 record in the course of business would have.

25 MR. OLESKEY: Well, I'll offer one more comment on

1 that and then subside, in the parlance of the hearing.

2 It's fully consistent with the position ascribed to
3 Mr. Thomas from April 15th to this date, so I think it does
4 have the indicia of reliability.

5 JUDGE SMITH: I slipped off that.

6 MR. OLESKEY: I think that when a document supports
7 other evidence --

8 JUDGE SMITH: Yes.

9 MR. OLESKEY: -- particularly from the same witness,
10 it has the earmarks of reliability unless you believe that for
11 some reason the witness has made up his own state of mind
12 throughout. But that's not the position being argued here.

13 The position being argued is that Thomas held on to a
14 position he shouldn't have that somebody else would have let go
15 of, but I don't think anybody questions that he held on to it.
16 And all this says is, yup, that was my position on April 15th,
17 and here's what happened afterwards.

18 JUDGE SMITH: All right, that's a nuance in the
19 interpretation that, I don't know, I suppose if that's --
20 that's cutting it pretty fine, but that's one that --

21 MR. TURK: Your Honor, in response to Mr. Oleskey's
22 latest comment, the issue of what Mr. Thomas believed and
23 whether that belief was reasonable is what we're spending all
24 these many days of testimony on.

25 If Mr. Oleskey wants to represent what Mr. Thomas's

1 belief is as of this date, he should put him on the stand, and
2 that's what I understand he intends to do.

3 JUDGE SMITH: He's trying to put him on the stand.
4 But, you know, one of the problems we may have here is we may
5 never get him.

6 MR. TURK: Well, then the issue will have simply
7 dissolved and we don't need to address that issue.

8 JUDGE SMITH: I don't know.

9 MR. OLESKEY: The other point I'd make about
10 reliability is I read this memo insofar as it deals with the
11 Bores memo and April 15th as fully consistent with Mr. Flynn's
12 letter of May 1 to Ed. Reis about the FEMA understanding of
13 what happened at the RAC, and also Mr. Rospenda's draft which
14 is --

15 JUDGE SMITH: See, don't forget, Mr. Thomas himself
16 is an issue, and he's the author of it. I think the best we
17 can do -- your argument that Mr. -- this is evidence that Mr.
18 Thomas adhered to his original belief despite what may have
19 happened on April 15th is probably the most reliable
20 interpretation one could give it if we're going to give it.
21 And the best we can do is accept it for historical matters, and
22 see if we have to give it that kind of interpretation.

23 If Mr. Thomas comes, the matter will go away. If we
24 have to, then we'll revisit it. I don't know. We've argued
25 more than it's worth now. But we certainly are not receiving

1 it for -- that's the most we could receive it for, and we defer
2 that.

3 MR. OLESKEY: Okay. Mass. AG --

4 JUDGE SMITH: That's sort of messy, I know. That
5 leaves a messy exhibit, but --

6 MR. OLESKEY: I've dealt with messes before. Mass.
7 AG Exhibit 31 then, Your Honor.

8 JUDGE SMITH: With that basis, it's received.

9 (The document referred to,
10 having been previously marked
11 for identification as
12 Massachusetts Attorney General's
13 Exhibit No. 31 was received in
14 evidence.)

15 MR. DIGNAN: That basis being for historical purposes
16 only at this juncture?

17 JUDGE SMITH: Yes.

18 MR. DIGNAN: Thank you.

19 MR. OLESKEY: I'd just like to say at this point as a
20 matter of personal privilege, I've been examining for some time
21 and I find myself physically getting tired and weak.

22 JUDGE SMITH: Yes, I imagine. All right.

23 MR. TURK: May we get an estimate of how long the
24 examination will continue?

25 MR. OLESKEY: Well, what I'd like to do is go through

1 all of this and revise it so that I make it as concise as
2 possible, but I don't want to do that tonight because I have to
3 get ready for Mr. Flynn's three people as to whom I've never
4 had discovery.

5 JUDGE SMITH: Are they really going to testify
6 tomorrow?

7 What do you have on redirect, or are they going to
8 testify early?

9 MR. DIGNAN: I heard we're going to suspend these
10 people and go to the FEMA.

11 JUDGE SMITH: Is that what you've worked out?

12 MR. DIGNAN: That's my understanding.

13 MR. TURK: No, no. No one's informed me of that.

14 MR. DIGNAN: Oh, geeze, that's what I thought.

15 MR. OLESKEY: I have always thought that since we're
16 going to try to finish these people today, and since Mr. Flynn
17 has made such a point of how these people, for whatever reason
18 shouldn't be kept waiting, that wherever we were at the
19 witching hour tonight, those folks are going to go on the stand
20 at 9:00 tomorrow.

21 MR. DIGNAN: That was my understanding.

22 MR. TURK: That's not my understanding, Your Honor.
23 My recollection is that Your Honor asked that we convene early
24 today starting at 9:30, and go as long as necessary today so
25 that these witnesses could be excused, but their testimony be

1 finished.

2 JUDGE SMITH: Well, that what we wanted to
3 accomplish.

4 MR. TURK: I would like to ask that we finish with
5 these witnesses. I don't want to keep them coming back.

6 JUDGE SMITH: Tonight?

7 MR. TURK: No.

8 JUDGE SMITH: When?

9 MR. TURK: I understand that Mr. Oleskey --

10 JUDGE SMITH: That's another consideration though.
11 Well, all right, let me hear you out.

12 MR. TURK: My request is that we not simply suspend
13 their examination. We get them finished tomorrow as early in
14 the day as possible; then move on to FEMA's witnesses.

15 JUDGE SMITH: How about your direct, redirect?

16 MR. TURK: My redirect?

17 JUDGE SMITH: Yes.

18 MR. TURK: Very limited; maybe half a dozen questions
19 so far.

20 JUDGE SMITH: I know you're a meticulous lawyer, and
21 I do not say it --- I mean I do not say it --

22 MR. TURK: I'm serious, Your Honor.

23 JUDGE SMITH: Yes, I know.

24 MR. TURK: I'm serious. I have maybe a half a dozen
25 questions at this point. I've got them starred in my margins.

1 JUDGE HARBOUR: Mr. Oleskey, how much time do you
2 estimate you have left? Do you have any --

3 MR. OLESKEY: I would think an hour, Judge.

4 JUDGE SMITH: Well, maybe we can give you a greater
5 break tomorrow than we would normally take to get ready for
6 FEMA's people. Maybe they can come in on a later plane, and we
7 can --

8 MR. FLYNN: My understanding is they're already here,
9 Your Honor.

10 JUDGE SMITH: Well, I think it would be very
11 worthwhile if we could get them on our way. This is what we've
12 tried to do for everybody. At the same time you are tired and
13 I can appreciate that, and you do have to make a choice. But
14 you've got some very competent help, and it would be better if
15 you could give priority to finishing them up and maybe we could
16 take a longer break tomorrow so you can get ready for, or you
17 can blend it, you know, blend it. But I appreciate -- I
18 appreciate your attention span and everything. It beings to
19 erode and you have to quit now.

20 MR. OLESKEY: Do you understand I might not have much
21 of a cross-examination plan for the FEMA people, especially
22 because I understand there will be a fair amount of direct
23 because --

24 JUDGE SMITH: You give it your best shot on the
25 cross-examination plan. That's all I've ever asked from

1 anybody. Just give it your best shot. We share with your
2 plans, whatever they are. So let's do that.

3 MR. OLESKEY: We'll finish up --

4 JUDGE SMITH: The Intervenors, other intervenors try
5 to work through counsel here and we want to get this panel off.
6 We have given that consideration, when possible, to witnesses
7 and we want to get them moving. That's very important.

8 MR. FLYNN: Just so my position is clear, I'm not
9 insisting that my people start at 9:00 tomorrow morning. I
10 don't mind if we take a few hours to finish up this
11 examination. But the one thing that I am very concerned about
12 is that we don't get to Friday and discover that we've got
13 another 12 hours of examination and they have to come back.

14 JUDGE SMITH: Well, I expect your people to have -- I
15 don't know what --

16 MR. FLYNN: Well, we have a direct examination
17 prepared which I think will actually be instrumental in moving
18 things along.

19 JUDGE SMITH: All right. You're going to put all
20 three on at once?

21 MR. FLYNN: Yes.

22 JUDGE SMITH: Let's adjourn for the night until 9:00
23 a.m. tomorrow.

24 (Whereupon, at 5:40 p.m., the hearing was recessed,
25 to resume at 9:00 o'clock a.m., Wednesday, May 25, 1988.)

CERTIFICATE

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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 24, 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

(Signature typed): KENT ANDREWS

Official Reporter

Heritage Reporting Corporation